REPORT
OF THE COMMISSION
ON
REVIEW OF ADMINISTRATIVE LAWS

VOLUME - II

DEPARTMENT OF ADMINISTRATIVE REFORMS
AND PUBLIC GRIEVANCES

MINISTRY OF PERSONNEL,
PUBLIC GRIEVANCES AND PENSIONS

GOVERNMENT OF INDIA

SEPTEMBER 1998
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Name of the Ministry/Dept.
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1. Ministry of Agriculture (Department of Agri. & Cooperation), Krishi Bhavan, New Delhi

**Status of Review of Laws, Regulations and Procedures of various Ministries/Departments in Central Government**

<table>
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<th>Recommendations of Task Force/Expert Group/Status Note on Action taken</th>
<th>Laws/Acts/Rules administered by the Ministry/Department</th>
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<td>Expert Group constituted on 27.10.97. The expert group has completed its deliberations and given its report. The Department has initiated requisite action based on the report of the Committee for amendments, etc. in the legislative enactments, wherever necessary. The status of various Laws/Regulations is as follows:</td>
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<td>(i) Fertiliser (Control) Order, 1985 (FCO) Comprehensive amendments are under process in the Department.</td>
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<td>(ii) Agricultural Produce Cess Act, 1940 and Produce Cess Act, 1966 Proposals for comprehensive amendments in the Agricultural Produce Cess Act, 1940 and Produce Cess Act, 1966 are at an advanced stage of finalisation.</td>
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<td>(iii) Insecticides Act, 1968, Destructive Insects and Pests (DIP) Act, 1914 and Plants, Fruits, Seeds (PFS) Order, 1964 The Expert Group have recommended that the Insecticides Act, 1968 may be amended to take care of the concerns expressed by the consumers and the pesticides industry.</td>
<td></td>
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<tr>
<td>(iv) Seeds Act, 1966 and Seed (Control) Order, 1983 The Expert Group have recommended that the Seeds Act, 1966 and rules thereunder and the Seed (Control) Order, 1983, may continue in their existing form.</td>
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<td>(v) Dangerous Machines (Regulation) Act, 1983 (DMRA) The Expert Group have recommended that a proposal for a revised comprehensive legislation to replace the existing DMRA may be formulated, taking into account the perception of users representatives, design experts, research organisations, State Governments, Ministry of Labour etc. The department may set up a Small Group representing these interests for conceptualising in a time-bound manner.</td>
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<tr>
<td>(vi) National Cooperative Development Corporation Act, 1962 and Multi State Cooperative Societies Act, 1984 Proposals for Comprehensive amendments have already been introduced in the Parliament and based on the recommendations of a Parliamentary Committee, a revised Amendment Bill is ready for being introduced in Parliament. In case of Multi State Cooperative Societies Act, 1984 also, proposals for a new</td>
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The commission requests the Department to proceed expeditiously with the amendments under consideration, and to formulate amendments to the remaining Acts and orders early for Government approval. The Department should review all existing orders for curbing movement of food grains and agricultural inputs. The Insecticides Act, Destructive Insects and Pests Act, and orders thereunder need to be amended early to reflect the concerns of agriculturists and the danger to health of the public.

The arrangements for coordination with Department of Fertilisers, public sector banks and other agencies impacting on agriculture operations, should be improved, along with more widespread dissemination of information.
legislation to replace the existing Multi State Cooperative Societies Act are at an advanced stage of finalisation for consideration of the Cabinet.

(vii) National Oilseeds and Vegetable Oils Development (NOVOD) Board Act, 1983

The Expert Group recommended that a comparative study of the functioning of the Board as a statutory organisation vis-a-vis other similar organisations within and outside the Department of Agriculture and Cooperation may be conducted for an assessment of the need for continuance of statutory status of the Board. They have also recommended that provisions relating to representation of states may be reviewed for inclusion of Oilseed producing States and that delegation of financial powers should be processed to ensure adequate autonomy in the functioning of the Board.

(viii) Coconut Development Board Act, 1989 (CDB)

The Expert Group have recommended that a study on similar lines as recommend for NOVOD be undertaken for assessing the continuance of statutory status and for granting adequate financial autonomy.


Task Force Constituted on 4.8.97

In the wake of European (E.U.) guidelines on animal products/ by-products meant for export and Office International Episodes (O.I.E.) guidelines on test containment procedures of certain diseases, a new legislation procedures of certain diseases, a new legislation is being drafted. In case it finally gets approved from technical angle, some of the existing Laws will get repeated.

3. Ministry of Science and Technology (Dept. of Bio-Technology) CGO Complex, New Delhi 110003.

Task Force Constituted on 1.12.97

The Expert Group has submitted its report. The major recommendations include:

1. More delegation in respect of personnel and financial management.
2. Creation of a Legal Schedule for biotechnology industries in the schedule of (D&R) Act.
3. DBT should be permitted to transfer the technologies on exclusive basis to the industries. This is essential, as most of the technologies are not covered by the patent protection.
4. A Legal Officer should be designated in the M/o Law exclusively to deal with all the issues related to scientific departments.
5. The scientific persons should have refresher/reorientation training in the relevant fields for at least one month during a time block period of 4 years and one week in a period of 2 years.

1. The Livestock Importation Act, 1898
2. The Indian Veterinary Council Act, 1984
4. The Milk and Milk Product Order, 1992 (MMPO)
5. Blanders and Farcy Act, 1899.

No legislation being administered by this depl. It would, however, involve efforts by other Ministries for Patents, Intellectual Property Rights, addition of Bio-technology in Schedule for Industries (D&R) Act, etc.

The Commission suggests repeal of the Acts at items 1 and 5 along with drafting of the new legislation as indicated in column 2.

While generally agreeing with the recommendations of the Expert Group, the commission makes further recommendations as below:

1. 'Bio-technology' may be added to the Schedule under I (D&R) Act, 1951 to make an enabling provision for its regulation.
2. Exclusive licence may be given by the Dept!, of Biotechnology on a case-to-case basis to the industry.
3. For the scientific departments as a whole, the Government may revise the rules for financial sanction, personnel management etc. on the lines of the Department of Atomic Energy.
6. The Committee also recommended that there should be a strong net working among all the scientific departments and the scientific institutions.

The Task Force constituted on 31.7.1997 and has submitted its report. The main recommendations regarding various acts/orders are as follows:

1. **Indian Power Alcohol Act, 1948**

   This Act is not in use for a long time and has almost become redundant. It is proposed to rescind this Act. Before it is rescinded, the views of the Ministry of Petroleum and NG and Ministry of Non-Conventional Energy sources have been called. Their views are still awaited. Further action will be taken when their comments are received.

2. **Drugs Prices Control Order, 1995**

   The BhQpal Gas Act is comprehensive Act of Parliament and presently there is no need for a review. The observations of the Expert Group are as follows:

   (i) It was noted that the Indian Pharmaceutical Industry is at a crucial juncture because of the impending product patent regime. There is a need to ensure the growth of domestic industry and at the same time not to be in conflict with our obligations towards WTO. It was also noted that most of the countries have control on prices of pharmaceutical in one form or the other.

   (ii) It was noted that there was a shift from essential drugs and market was flooded with non-essential drugs and irrational combinations/pacts. Therefore, the basis for the price control on drugs should preferably be health need and essentiality.

   (iii) The Group observed that while in 1979 almost all the drugs were under price control, today there are only 74 drugs under price control. Further, there was also a ceiling on overall profitability of pharmaceutical companies along with the product-wise price control. Therefore, there should be a drug price monitoring system instead of a product-wise price control system.

   (iv) The Group concluded that some sort of price control still remains imperative.

   (v) The Group recommended that the Department of Chemicals and Petrochemicals may consider the above suggestions as and when the review of the Drug Policy itself is undertaken.

   (vi) The Group recommended that Health care Policy and Drugs Policy have to be in consonance.

   (vii) There was a consensus in favour of retaining the existing Drugs (Prices Control) Order, 1995; however, in order to improve upon the practicability the following action was recommended.

   - Government should take a view on different aspects of manufacture, quality control, pricing etc. of drugs to be dealt with by one Dept. The administration of Drugs and Cosmetics Act and Drugs (Prices Control) Order, 1995 should be under one Ministry, either M/o Health or M/o Chemicals and Fertilisers. The Drugs (Prices Control) Order, 1995 should be more effectively enforced in the interests of assuring supply of drugs at prescribed prices. There should be a clear-cut definition of life saving drugs subject to control in order to prevent present abuses by manufacturers, pending a shift from process wise control to product wise control. An early decision on product patenting of drugs and pharmaceuticals is necessary. The Commission agrees that the Indian Power Alcohol Act, 1948 may be repealed.
5. Ministry of Civil Aviation, 
Rajiv Gandhi Bhawan, 
New Delhi - 110003

The Ministry is envisaging to formulate a Comprehensive Civil Aviation Act, which will take care of international conventions and will replace the Aircraft Act of 1934; it was, however, possible to finalise the Civil Aviation Act only after the policy was approved by the Government. It was hoped to place the matter before the Cabinet for approval within two months. Meanwhile, minor amendments to the Airport Authority Act and Carriage by Air Act will be processed after taking into account international conventions.

6. Ministry of Food and 
Consumer Affairs, (Dept. of 
Consumer Affairs), 
Krishi Bhawan, 
New Delhi - 110001

The following are the salient features of recommendations relating to the various legislations:

1. Essential Commodities Act, 1955: The Expert Group recommended retention of the Essential Commodities Act, 1955, but recommends some amendments to the existing provisions of the Act in order to soften on the one hand the provisions for punishment, technical violations/smal lapses and on the other, to provide quick disposal of cases in order to create greater deterrent effect on the defaulters. Care has been taken to reduce harassment of the traders by the lower level field functionaries.

2. The Essential Commodities (Special Provisions) Act, 1981: Subject to the amendment to the Essential Commodities Act, 1955, the Essential Commodities (Special Provisions) Act, 1981 may be scrapped.

(a) Medicines being as extremely important essential commodity, deserve rightly to be included in the list of "declared goods" under the Central Sales Tax Act so as to attract a uniform sales tax of 4% throughout the country. The Group recommended that this should be pursued vigorously by the Department.

(b) It was observed that provisions under Para 8(5) and Para 13 of the Drugs (Prices Control) Order, 1995 are not in consonance. Para 8(5) makes it mandatory for the fresh prices have been notified. On the other hand, para 13 gives the power to the Government to order deposit of the overcharged amount, charged by a manufacturer or importer beyond the price which had been fixed or notified by the Government. The Group hence recommended that para 8(5) may be suitably amended to clarify the situation.

(c) The Group observed that the words "minus 16% thereof" for the retailers margin, mentioned in para 19(1) of the Drugs (Prices Control) Order, 1995 needs to be examined.

(d) It was noted the paras 20(1) and 20(3) vested certain powers with the Government to call for records etc. The Group recommended that necessary amendments may be carried by the Department to permit exercise of such powers by State Government Officers.

1. The Commission agrees with the recommendation.
   Government to take action accordingly.

2. The Commission agrees with the recommendation.
   The Government should finalise Civil Aviation Policy early and then integrate and update different laws relating to Civil Aviation, with due regard to entry of private air transport operators, privatising airport services, etc.

3. The Commission agrees with the recommendation.

4. It is necessary to harmonise definitions under different orders and lengthen period of license. In the ECA (Amendment) Bill, the Commission endorses the proposed amendments, except that the period of imprisonment in summary trial be increased beyond 2 years and that Government secure enabling powers to notify deletion of commodities.

The amendments proposed by the Expert Group are broadly endorsed subject to detailed observations in the statement on all these legislations. The amendments should be enacted early. As regards consumer protection, there should be Alternate Dispute Resolution mechanism set up to reduce the burden on Courts. Chambers of Commerce and Industry should have voluntary grievance redressal forum. The C P Act should be more effectively implemented by State Governments with better selection of presiding officers of Forum, more funds, staff and infrastructure for the Courts. The labeling of imported packages should be rationalised. Attention should be given to ensuring in case of packaged goods that the MRP does not
3. The Bureau of Indian Standards Act, 1986: The Bureau of Indian Standards should be made the sole standard formulation body for harmonious development of standards. Besides, the Expert Group recommended some amendments to the existing provisions of the Act in order to give greater consumer thrust and to ensure better enforcement of mandatory certification scheme and strict adherence to Indian standards.

4. The Forward Contracts (Regulation) Act, 1952: The Expert Group recommended amendments to the Forward Contracts (Regulation) Act, 1952 to strengthen the Forward Markets Commission on the one hand and on the other, to reduce the prohibitory provisions to boost the commodity markets. The main amendments recommended include introduction of a definition of "future trading", extension of the period of delivery and payment from the present 11 days to 30 days in the case of ready delivery contract, to withdraw ban on options in good; and to introduce compounding of offences for violation of the Forward Contracts (Regulation) act, 1952.

5. The Consumer Protection Act, 1986: The amendments to the Consumer Protection Act, 1986 were earlier considered by a Committee set up in 1994 under the chairmanship of Shri Naren De, Minister of Food & Civil Supplies, Govt. of West Bengal. The recommendations made by the said committee are under consideration of the Government. The expert Group took note of those recommendations and did not reopen any of the recommendations made by the said Committee. However, the Expert Group recommended a few more amendments to the Consumer Protection Act, 1986 in order to ensure greater autonomy to the consumer courts, speedy disposal of cases by holding circuit courts, at regular intervals, in different regions of the States and also to include all incidental services and facilities connected with banking, finances, insurance, transport, etc, within the purview of Consumer Protection Act, 1986. The Expert Group has also recommended empowering the consumer courts to strike down unfair terms of contract where the terms of contract are heavily biased in favour of the stronger party.

6. The Emblems and Names (Prevention of Improper Use) Act, 1950: The Expert Group recommended retention of the Emblems and Names (Prevention of Improper Use) Act, 1950 but recommended a few amendments to the Act in order to reduce delay in instituting prosecution against the defaulters by the State Governments and also to increase the amount of fine in order to have adequate deterrent effect. In order to bring in transparency in the functioning of the standing committee set up under the Emblems & Names (Prevention of Improper Use) rules, 1982, the Expert Group has recommended inclusion of one representative each from non-government organisation and apex body of trade and industry.

7. The Standards of Weights & Measures Act, 1976 and the Standards of Weights and Measures (Enforcement) Act, 1985: The Expert Group considered the issue of merger of the two Acts, but in view of the existing constitutional provisions giving separate jurisdiction to the Centre and the States over preparation of standards and their enforcement, decided to keep the two Acts separate for the purpose of their smooth implementation. However, the expert Group recommended some amendments to these Acts with a view to make them more transparent and simple and the same time to exceed the exactory price by more than 30%.
eliminate unnecessary regulation and control. Many of the obsolete provisions have been done away with in the proposed revision.

8. The Spices Board Act, 1966
1. The Tea Act, 1957
2. The Tobacco Act, 1927
3. The Coffee Act, 1943
4. The Marine Products Export Development Authority Act, 1972
5. The Tobacco Board Act, 1953
6. The Coal Mines Provident Fund Act, 1949 (recently amended)
7. The Coal Mines (Nationalisation) Act, 1973 (Amendment under process)
8. The Coal Mines Nationalisation Act, 1972 (Amendment under process)
10. The Coal Mines Nationalisation (Amendment) Act, 1993 (Act Requires further examination)

The Commission agrees with the amendments proposed in the Acts mentioned at items 1 to 5 as they have been made in conformity with new economic thinking. The Commission agrees with the repeal of Tobacco Board Act, 1975 as well as Tobacco Cess Act, 1973.

Regarding items 7 to 10 the Commission agrees with the approach to the proposed amendments. As regards item 10, a provision for attaching the property on the lines relating to proviso in C. P. D. may be made.

The Commission agrees with the amendments proposed in the Acts mentioned at items 1 to 5 as they have been made in conformity with new economic thinking. The Commission agrees with the repeal of Tobacco Board Act, 1975 as well as Tobacco Cess Act, 1973.

The Commission agrees with the repeal of the Act.

The Commission agrees with the proposal to repeal the Acts at items 8 and 9 as they are of little relevance. Further examination of and amendments to remaining Acts and orders may be expedited. The Govt. may consider integrating all Acts relating to coal into one. It is necessary in general to adopt a common approach for repealing all pre-nationalisation Acts passed prior to nationalising LIC, GIC, Coal Mines, Air Corporation, etc.
(a) Unnecessary provisions of the Act as far as licensing is concerned should be weeded out.
(b) Prosecution which was removed under the FTDR Act needs to be reintroduced
(c) All cases of fraud, manipulation and forgery of documents should be dealt with seriously and fines imposed.

**Tobacco Act, 1975**

The Task force recommended repeal of this Act as tobacco cannot be a priority item for exports, in view of the anti-smoking movement throughout the world.

Amendments in other Acts relate mainly to the following issues:
1. Liberalising licensing requirement with a view to promote export.
2. Making the punishment provisions more rigorous.
3. Changing the composition of Board/authority.

Recently, Government has announced several measures to improve the export sector which are listed below:

i) Interest rates on pre-and-post-shipment credit reduced from 11% to 9%
ii) Govt. to pay interest if duty drawback or refund of terminal excise dues is delayed by two months.
iii) Manufacturer-exporters with record of specified export performance and above one year of unblemished export record to be given legal undertaking facility instead of bank guarantees for duty-free import of raw materials and for one time bond instead of repeated bonds.
iv) Extension of tax holiday for EOUs/EPZs extended from a block of five to 10 years.
v) EOUs to be permitted sub-contracting facility in domestic tariff area.
vi) Private software technology parks to be granted EPCG scheme benefits.
vii) Exports through couriers permitted from EPZs.
viii) Special package for hardware electronics to be announced shortly.
ix) Duty on mobile cooling and other cold chain equipment to be reduced to help processed food, horticultural and floricultural units.

The review of Manual of Office Procedure on Supply, Inspection and Disposals (MOPSID) has been completed by a Study Group that was constituted for reviewing the provisions of MOPSID. The Department have now sent the findings to the various Ministries and Trades for their views and comments before giving final shape to the Committee's recommendations.

DGPT should decentralise its operations and ensure adequate budget for refunds and for computerisation.
In the office of the Chief Controller of Accounts, the work on computerization of payment of suppliers' bills and maintenance of accounts is in progress. A software for payment and accounts module has been developed. The process of installation of computers in the National Test House Headquarters has simplified the procedure. NTH has also acquired Desk Top Publishing which has facilitated preparation of memorandum etc. A committee under the chairmanship of DDG (A) has submitted a report on modification of GFRs on the existing provisions on procurement. The report is presently under consideration of Do Supply. The Existing shipping manual is being reviewed, regarding delegation of authority, the powers of head of office have been delegated to the Dy. Controller of Accounts in branch offices. The DG, NTH has been delegated enhanced power on insurance of equipments etc.

1. The infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation, Supply and Distribution) Act, 1992
2. The Indecent Representation of Women (Prohibition) Act, 1986
3. The Immoral Traffic (Prevention) Act, 1956
5. Dowry (Prohibition) Act, 1961

As regards item 1, the Commission does not agree for its merger with Prevention of Food Adulteration Act. The provisions of this Act have to be strengthened to make them more effective. As regards item 2, provisions for punishment should be strengthened and there should be vigorous implementation of this Act. This may be called the Prevention of Derogatory Representation of Women Act. As regards item 3, there should be health regulation of prostitutes and proper management of protective homes. For prevention of AIDS or STDs there should be a separate Act for regulation of sex-workers. The codification of criminal laws concerning women, strengthening IPC provisions, obligation on police officers etc, should be pursued. Separate courts for trying these offences may be considered.

Expert Group Constituted in October, 1997

All the Acts being administered by the Deptt. have been reviewed and the recommendations that have emerged through these reviews have been transmitted to the appropriate quarters for their views. These are under examination in various stages in consultation with National Law School, National Commission of Women, Department of Legal Affairs, MoA etc.

The Expert Group felt that there is a strong need for modification of criminal laws concerning women, which are listed at sl. no. 2 to 4 in the next column. The various substantive criminal offences against women in these acts are to be included in the Indian Penal Code. It is also necessary that implementation of these acts should devolve by law on the police officers authorized in respect of offences under the Indian Penal Code.

The Status regarding the various acts is as follows:

a) The Commission of Sati (Prevention) Act, 1987 and
b) Dowry (Prohibition) Act, 1961

The Department is examining amendments to the Dowry (Prohibition) Act and Commission of Sati (prevention) Act based on the recommendations of the Expert Group. A cabinet note concerning amendments in these Acts was circulated to the concerned Ministries/Departments and their comments have been obtained. Action to remove certain differences of opinion between Ministry of Home Affairs and Deptt. of Legal Affairs on the one hand and this Deptt. on the other on the question of transferring criminal offences against women in these Acts to IPC, has been taken.

c) The Indecent Representation of Women (Prohibition) Act, 1986, and
d) The Immoral Traffic (Prevention) Act, 1956

The reports containing the proposed amendments in the Immoral Traffic (Prevention) Act and Indecent Representation of Women (Prohibition) Act received from the National Law School of India University, Bangalore are being examined by the National Commission for Women. The recommendations made by the
Expert Group with regard to the changes in these two Acts have been conveyed to NCW, so that the Commission can keep in mind the Expert Group's observation while framing the Commission's views.


A Task Force has been constituted in this Deptt. to suggest amendments to his Act to make it more effective. The Task Force will also consider as to whether there is any single law like Prevention of Food Adulteration Act where the provisions of this special act can be incorporated. The Task Force will keep in view the recommendations of the Expert Group.

Expert Group YET to be constituted. Considering the nature of laws being administered by this Department, it has been stated that it is not necessary to constitute an Expert Group.

The Department is considering amendments to the Act governing University Grants Commission and the Indian Universities. A Committee appointed by the UGC is taking a fresh look at this provisions governing the UGC Act. It should be possible to come forward with an Amendment Bill which would bring UGC's role in consonance with the changed higher education scenario.

The issue of amendment of the Copyright Act was taken up before the Cabinet and as directed by the Cabinet wide-ranging consultations and sensitizations have initiated. The matter would again be placed before Cabinet, after the exercise is over.

A special Task Force as set up in Feb., 1997 to examine issues pertaining to freedom of access of Governmental information to public, Introduction to Citizens' Charter and for improving services and simplifying relevant procedures in the Department. The recommendations of the Task Force are being implemented by DOE.

An Inter-Ministerial Standing Committee (under the Chairmanship of Secretary, DOE) is reviewing the relevant Acts/Laws, etc. relating to Cyber Laws and National Information Infrastructure (NI).

The Deptt. has formulated recommendations on Cyber-Laws which is under consideration by the Government.

This Department primarily administers laws relating to:
2. All India Council of Technical Education (AICTE).
3. Central Board of Secondary Education.
4. State Boards of Secondary Education.
5. Central Universities, IITs, etc.
6. Copyright Act, 1957.
Most of these laws provide a very broad framework of governance with the details being dealt with under Statutes and Ordinances - both being subordinate legislations with the difference that former is enacted with the approval of the President while the latter is framed and finalised by the appropriate institutional bodies. This arrangement prevents the relevant laws from being stale as periodic renewal takes place through amendments to existing Statutes and Ordinances and framing of new ones. Moreover, as these laws deal with governance of the relevant institutions and allied matters, they have very little role in the public domain.

This Deptt. is essentially a promotional and not a regulatory Department and there is no specific statute which is being implemented by them. However, review of general rules & practices is being done by a Task Force so that they can function in a more transparent and citizen friendly manner. It is framing cyber laws with the help of an inter-ministerial group.

The latest thinking on Conventions relating to IPR has to be reflected in the proposed amendments to Copyright Act, 1957 and linked to Cyber-Laws for digital rights

The Ministry should examine as to how indiscriminate proliferation of teaching shopfake universities could be checked so that they may not thrive on public gullibility. The amending Bills should be brought up early and should deal with the proliferation of poor quality colleges, commercialisation of education, award of fake degree, unregulated offer of degrees by foreign institutions in India, etc. The educational and eligibility standards prescribed by UGC, AICTE and deemed universities should be coordinated. Active steps to protect students from entering poor quality or spurious educational institutions are needed.

The Commission's views have already been sent to the Cabinet Secretariat on the recommendations on Cyber-Laws made by the Deptt. of Electronics. The required amendments to existing laws and new Cyber-Laws are needed to give effect to the action plan for information Technology.

1. In case of Forest (Conservation) Act, the rigour of anti-tribal and anti-poor provision needs to be diluted and pro-industry provisions need to be reviewed in the context of adequate forest conservation. The proposals in respect of the other Acts for review/revision/integration may be expedited.
Protection Act. This is being processed.

The Ministry is contemplating a separate exercise to review the Indian (Forests) Act, 1927 for which comments of State Govts. and voluntary agencies have been obtained and a revised draft legislation is planned to be prepared. The amendments to Wild Life Protection Act will be placed before the Management Board and final decision will be taken within three months. The Ministry feels that no immediate action is required in respect of other legislations under the Ministry. As regards the question of leasing out degraded forests lands to the industry, even though this issue has been a subject of discussion for the last three years, there is no decision to lease such forests lands to industry. As such, at this stage there is no proposal to obtain order of the Cabinet on the lease of forests lands to industry.

The Expert Group constituted on 5.11.97 and has finalised its report. The Expert Group has grouped its observations/ recommendations as follows:

I. List of Acts which do not require any change:
3. International Monetary Fund and Bank Act, 1945
5. International Finance Corporation (Status, Immunities and Privileges) Act, 1956
6. Legal Tender (Inscribed Notes) Act, 1964
7. Depositories Act, 1966
9. Contingency Fund of India Act, 1950
10. A list of Acts which need to be repealed:
   1. Banking Service Commission Act, 1984
   2. Currency Ordinance, 1940
   3. The Shipping Development Fund Committee (Abolition) Act, 1986
   4. Compulsory Deposit Scheme Act, 1963
   5. Additional Emoluments (Compulsory Deposit) Act, 1974
II. Acts in which changes are required:
1. Insurance Act, 1938
2. Life Insurance Corporation Act, 1956
   (The above three Acts are in need of revision, in view of the contemplated reforms in the insurance sector.)
5. Government Savings Certificate Act, 1959
   (The above three Acts need to be amalgamated under a single Act because these basically relate to voluntary public savings lodged with the Government.)
7. The Indian Coinage Act, 1906
8. Metal Tokens Act, 1889
9. Small Coins (Offences) Act, 1971
   (The above three Acts should be clubbed together and rationalised and strengthened.)
10. The Securities and Exchange Board of India Act, 1992
11. The Securities Contracts (Regulations) Act, 1956
   (There is a need to review afresh these two Acts in consultation with SEBI.)
12. Foreign Exchange Regulation Act, 1973
13. Securities Contracts (Regulation) Act, 1956
14. Public Debt Act, 1944
15. Contingency Fund of India Act, 1950
17. Section 20(3) of the Indian Trust Act, 1982
18. Metal Tokens Act, 1989
19. Contingency Fund of India Act, 1950
21. Foreign Exchange Regulation Act, 1973
22. Compulsory Deposit Scheme Act, 1963
23. Unit Trust of India Act, 1963
24. Insurance Act, 1938
26. Life Insurance Corporation Act, 1956
27. Securities & Exchange Board of India Act, 1992
28. Research and Development Cess Act, 1986
29. Reserve Bank of India (RBI) Act, 1934
30. Industrial Development Bank of India (IDBI) Act, 1964
32. Sild Industrial Companies (Special Provisions) Act, 1985
33. Depositories Act, 1996

The list of Acts administered by the Deptt. of Economic Affairs.
1. Foreign Exchange Regulation Act, 1973
2. Securities Contracts (Regulation) Act, 1956
3. Public Debt Act, 1944
4. Contingency Fund of India Act, 1950
5. Government Savings Bank Act, 1959
6. Section 20(3) of the Indian Trust Act, 1982 dealing with investments
7. Metal Tokens Act, 1989
9. Indian Coinage Act, 1906
10. Indian Security Act, 1920
11. International Monetary Fund and Bank Act, 1945
14. Compulsory Deposit Scheme Act, 1963
15. Unit Trust of India Act, 1963
16. Legal Tender (Inscribed Notes) Act, 1964
18. Public Provident Fund Act, 1973
19. Small Coins (Offences) Act, 1971
20. Cooperator and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971
21. Additional Emoluments (Compulsory Deposit) Act, 1974
24. Insurance Act, 1938
26. Life Insurance Corporation Act, 1956
27. Securities & Exchange Board of India Act, 1992
28. Research and Development Cess Act, 1986
29. Reserve Bank of India (RBI) Act, 1934
30. Industrial Development Bank of India (IDBI) Act, 1964
32. Sild Industrial Companies (Special Provisions) Act, 1985
33. Depositories Act, 1996

The Commission agrees with the suggestion to repeal five Acts as mentioned under heading II in column 2.

The Commission also agrees with the proposals listed in column 2 for integration/amendments to the Acts suggested and recommends that these be processed and necessary legislative action completed as expeditiously as possible.

The Commission finds that the Govt. is yet to announce its decision on the latest recommendations of the Narasimhan Committee for the Banking sector and would, therefore, urge for an expeditious decision on those recommendations and a quick follow up action.

The Commission has noted that FEMA in lieu of FERA, and other new Bill to regulate money-laundering have also been introduced in the Parliament.

The Commission also agrees with the suggestion of the Deptt. that the Bill to replace SICA which lapsed on the dissolution of the last Lok Sabha will be reviewed and a new Bill to that effect may be introduced. The same may be expedited.
IV. Acts in respect of which specific modifications are recommended:
1. Section 20(f) of the Indian Trust Act, 1882
2. Public Debt Act, 1944
3. Indian Security Act, 1920
4. Comptroller & Auditor General’s (Duties, Powers and Conditions of Service) Act, 1971
5. Charitable Endowment Act, 1890
7. Sick Industrial Companies (Special Provisions) Act, 1985
8. State Financial Corporation Act, 1951
9. Banking Regulation Act, 1949 (as applicable to Cooperative Societies)
10. Regional Rural Banks Act, 1976
12. Recovery of Debts Due to Banks and Financial Institutions Act, 1993
15. Bankers Book Evidence Act, 1891

V. Regarding the 19 Acts in the banking sectors, the Expert Group decided that the Narasimham Committee may make recommendations in the context of liberalisation of economy. Subsequently the Narasimham Committee Report has been submitted and is under examination of the Banking Division.

It has been intimated that the Sick Industrial Companies (Special Provision) Bill, 1997 was prepared on the basis of an overall approach towards the problem of incipient sickness in the industry and to meet with the deficiencies in the existing Act. In doing so, not only the recommendations of a Committee (Goswami Committee) and Government considerations thereon were kept in view but also consultations were held with different Ministries/Departments concerned and Financial Institutions. After that only the proposal on enactment of new law in place of existing Act was prepared. It was with the approval of the Cabinet that the Bill was prepared. Thus the Bill contains an overall approach for replacement of the existing Act, starting with the change in the definition of sickness to the overall procedure to be adopted by the BIFR. Action has been initiated to recast the Bill as it had lapsed on the dissolution of Lok Sabha in December, 1997

16. Ministry of Finance, (Deptt. of Expenditure), North Block, New Delhi

Task Force not constituted, because the Deptt. of Expenditure does not administer any legislation, however, they have been advised to look into the amendment of GFRs, DFPRs and FR/FR in order to expedite decisions on sanction of proposals and projects.

The Commission strongly feels that there is an urgent need for review/revision of General Financial Rules, Delegation of Financial Powers Rules, Fundamental Rules and Supplementary Rules with a view to simplifying, updating and codifying these without loss of further time, in consultation with the Ministries concerned. This should be done within a specified time-bound programme. The Commission also recommends that the proposal sent by the Deptt. of AR&PG for reforming the budgetary system on modern line should be expediously processed. Similar action should be taken in regard to the recommendations of the Eswaran Committee on reform of IFA System.
Ministry of Finance, Task Force constituted on 23.7.1997

The Expert Group has already identified laws/acts which can be repealed/amalgamated. Following simplifications are being considered for improving customs and excise administration:

i) With a view to simplifying the customs administration, the revenue department has decided to introduce audit-based post clearance scrutiny for identified importers, minimise pre-clearance scrutiny for import/export declarations and examination of goods, Introduce a system of release of goods even where the documentation is incomplete and move towards a single window clearance.

ii) To clean up the central excise regime, the department has decided to adopt unified modvat rules for inputs and capital goods, accept records maintained under Companies Act in lieu of statutory records and evolve simplified schemes for refunds and rebates due to manufacturers and exporters.

Besides, the department has also proposed to evolve cooperative initiatives with various organisations in order to facilitate the regulation of international trade. The document states that the revenue department would establish working partnership with airlines, shipping lines, custodians and other agencies and organisations involved in cargo clearance.

It would also evolve a uniform nomenclature based on harmonised system for levy of Customs and Excise duties, export and import trade policy and trade statistics.

iii) It would also institute formal consultative mechanism with the Director General of Foreign Trade and the Ministry of Commerce for introducing or making changes in export and import trade policies.

iv) The procedure for import of goods has been simplified from July, 1997. Under the simplified scheme, the importers can file their documents for clearance of import consignment 30 days prior to expected date of arrival of vessel or aircraft, carrying such goods. The importers can also present their documents against cargo coming in mother vessels bringing goods from port of loading to intermediate ports without waiting for details of the feeder vessel, which ultimately brings the goods into Indian port. The import documents will be processed in advance and goods assessed finally before the arrival of goods so that the importers can pay duty and get the goods cleared immediately on its arrival.

List of Acts identified for being repealed:
1. Benami Transactions (Prohibition) Act, 1988
2. Central Excise Laws (Amendments & Validation) Act, 1982
3. Sugar (Special Excise Duty) Act, 1959
5. Central Duties of Excise (Retrospective Exemption) Act, 1986

Separate groups have been set up to redraft Income Tax Act and Stamp Act. The Dept. is supervising amendments to Central Sales Tax Laws and to rationalise CST, VAT, etc.

Amendments are under Consideration in respect of following Acts:
1. Income Tax Act, 1961
2. Wealth Tax Act, 1957
3. Gift Tax Act, 1958 (since repealed)

A separate Bill on Money Laundering has already been introduced in the Parliament.

A brief note on review of Acts, laws, regulations and procedures:
1. Companies Act, 1956
   A Comprehensive review of the Companies Act, 1956 was undertaken by a Working Group set up for this purpose in August 1996. Based on its report, the Companies Bill, 1997 was introduced in the Rajya Sabha on 14.8.97, for replacing the existing Act. However due to dissolution of Lok Sabha, not much progress could be made.
   This Act was last amended in 1997. Meanwhile a Short Amendment Bill is being contemplated for carrying out certain urgently required changes in the Act. The Companies Bill, 1997 is likely to be withdrawn to facilitate further study.

2. MRTP Act, 1969
   This Act was last amended in 1991. A few amendments to the MRTP Act are being considered in consultation with the MRTP Commission and the Office of Director General Investigation and Registration.

3. Chartered Accountants Act, 1949
   Discussions are still being continued with the Institute of Chartered Accountants of India for amendment of the Act. The amendment proposals would be finalised after completion of these discussions.

   The amendment proposals are being discussed with the Institute of Cost & Works Accountants of India.

5. Company Secretaries Act, 1956
   A revised Cabinet Note is being prepared and would be submitted to the Cabinet soon for approval for making certain amendments to the Act.

The Commission feels that MRTP Act overlaps with Consumer Protection Act and needs to be rationalised in conjunction with Dept. of Consumer Affairs, especially with regard to unfair trade practices.

The nature of amendments proposed to enactments at items 3, 4, 5 have not been indicated to the Commission.

Department should take the lead in identifying problems at state level of NGO's in the operation of Societies Registration Act, 1860 and suggest model amendments.

The draft Bill for comprehensive amendments to company law should be revised and passed as soon as possible with due regard to related laws like SEBI Act instead of tinkering with few amendments like buyback of shares. The rules should then be taken up for repeal/simplification/consolidation.

(7) & (8) may be placed soon before Inter-State Council, Reference is invited also to Commission's observations on sectoral statement.


8. The Companies (Donation to National Funds) Act, 1951

A decision has been taken to repeal the Companies (Donation to National Funds) Act, 1951 by incorporating the relevant provisions in the Companies Bill, 1997.

7. Indian Partnership Act, 1932

This Act is concerned with the Act to a limited extent only, namely, exercise of certain functions under Chapter-VII of the Indian Partnership Act, 1932 in centrally administered areas. The administration of the Act actually vests in the State Government. At the moment, there has been no proposal for amending the Act. If any amendments are needed, this would be placed before the Inter-state Council and decided.

8. Societies Registration Act, 1860

This Department is concerned with the Administration of the Act only to a limited extent, namely, exercise of certain provisions in centrally administered areas only. At the moment there is no proposal to amend the Act. If any amendments are needed, this would be placed before the Inter-State Council and decided.

1. Fruit Product Order, 1955 (has already been amended to meet the requirements of the industry.)


(Action will have to be initiated by the Department of Animal Husbandry as the subject matter has been transferred to that Department)


(Since Repealed)

4. Rice Milling Industry (Regulation and Licensing) Rules, 1959

(Since Repealed)

1. The Medical Termination of Pregnancy Act, 1971


Process of amendments to the Act at item No. (1) may be expedited. Regarding the Act at item No. (2), action needs to be taken to effectively enforce the provisions of this Act.

1. Drugs and Cosmetics Act, 1940

2. Prevention of Food Adulteration Act, 1954

3. Transplantation of Human Organs Act, 1994

4. Indian Medical Council Act, 1956

5. Dentist Act, 1948

6. Registration of Nursing Home.

List of Acts administered by the Deptt.:

1. The Commission has noted the action and the initiatives taken in regard to various enactments administered by the Department, and would urge the Department to complete necessary action within a specified timeframe. In view of the large volume of work, Law Ministry may depute a competent officer to Health Department to process amendments to Acts and Rules.
Quality Control aspects, Rational use of Drugs and related matters. The question of setting up an autonomous body as proposed above, on the lines of the recently set up National Pharmaceutical Pricing Authority and other Regulatory bodies set up by the Deptts. of Telecom, Insurance etc., have been under consideration, in consultation with the Ministry of Law.

A committee is examining the possibility of evolving code of ethics for advertisements and agencies.

3. Prevention of Food Adulteration Act, 1954
In August, 1995, the Confederation of Indian Food Trade and Industry (CIFTI), a subsidiary body under the Federation of Indian Chamber of Commerce and Industry (FICCI) constituted a Task Force on Food Laws, under the Chairmanship of late Justice E.S.Venkataramiah, Retired Chief Justice of India. Task Force recommended 32 amendments in the P.F.A. Act, 1954. The Ministry of Health & Family welfare are inclined to accept 7 amendments in toto, 5 amendments are also found to be acceptable with certain modifications. 2 amendments need further consideration. The remaining 18 amendments cannot be accepted by the Mo H&FW.

4. Indian Medical Council Act, 1956 and Dentist Act, 1948
A draft Cabinet Note proposing the amendments to IMC Act and Dentist Act is ready for approval.

5. Indian Nursing Council Act, 1947
A committee under the Chairmanship of Director (PMS) has been constituted to look into the proposal of Indian Nursing Council and to advise the Ministry on the further course of action required in this regard.

6. Pharmacy Act, 1948
Amendments to this Act would depend on the outcome of the litigation in the Supreme Court. Powers of the proposed AICTE and Pharmacy Council are to be examined.

7. Indian Aircraft (Public Health) Rules, 1954
A Committee was constituted under the chairmanship of Ex-Addl. DG who have recommended certain amendments to be made under these Rules. A group of Experts has again been asked to go through these draft amendments before a final view is taken in the Ministry.

8. The Lepers Act, 1898
A draft Cabinet Note for obtaining the approval of Competent Authority to repeal the Act is under process.

9. Vaccination Act, 1880
A Proposal to repeal the said Act is under consideration.

10. Red Cross Society Act, 1920
Review of this Act is to be examined in consultation with the Red Cross Society of India. The Secretary-General, Red Cross has already been addressed in this regard by MS Section of the Ministry.

11. National Drug Authority

12. Tobacco Legislation

13. Airport Health Rules and Port Health Rules

14. Epidemic Diseases Act, 1897

15. Drugs & Magic Remedies (Objectionable Advertisement) Act, 1954


17. The Lepers Act, 1898

18. PGI Chandigarh Act, 1966

2. The Commission is of the view that there is an urgent need for a legislation providing for registration and regulation of private nursing homes. These should be considered at the appropriate level.

3. The Commission is of the view that there is a need for comprehensive legislation on use of Tobacco and Tobacco products at least in all public places.

4. The Commission agrees that the Lepers Act, 1898 and the Vaccination Act, 1880 may be repealed.
11. **Transplantation of Human Organs Act, 1994**
This Act is a recent one and a number of States are yet to adopt this Act. Unless all the States adopt the Act, it would not be possible to have the feedback on this, which is required for proposing amendments.

12. **Frugacacies Diseases Act, 1987**
Technical examination of this Act is under process in the Dte.GHS. Ministry will initiate action once the feedback is received from Dte.GHS on this.

13. **Mental Health Act, 1987**
It was felt by the Working Group that since this being a recent legislation, there was no need for amendment of this Act at this Stage.

14. **AIIMS Act, 1958 and PGI, Chandigarh Act, 1966**
Since these organisations are having separate Governing Bodies, no proposals are envisaged for amending the provisions of these Acts for the present.

15. **Tobacco Legislation**
The draft Cabinet Note is under preparation in consultation with the Law Ministry to introduce the new legislation.

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22. Ministry of Home Affairs, North Block, New Delhi - 110001

Task Force constituted under the chairmanship of Home Secretary has finalised its recommendations regarding all laws, rules, regulations and procedures administered in MHA including DoJ. The observation/recommendations have been grouped into following categories:

**A. LAWS OBSOLETE/TO BE REPEALED**

1. The Displaced Persons (Debts Adjustment) Act, 1951.
2. The Displaced Persons (Debts Adjustment) Rules, 1951.
5. The Salt Cess Act, 1953 as extended to Dadra & Naggar Haveli, UT.
6. The Tea Act, 1953 as extended to Daman & Diu, UT.
7. The Coir Industry Act, 1953 as extended to Daman & Diu UT.
8. The Coffee Act, 1942 as extended to Dadra & Naggar Haveli, UT.
9. Coal Mines Provident Fund and Bonus Scheme Act, 1948 as extended to Dadra & Naggar Haveli, UT.
10. The Laccadive, Minicoy and Amindivi Islands (Debt) Conciliation and Grant of loans (Regulation), 1964 and Amendment Regulation 1970.

A total of 56 Acts are administered by MHA, along with 56 Rules/Regulations as listed below:

**Act/Regulation**

2. The Explosive Substances Act, 1908.
3. The Passport (Entry into India) Act, 1920.
5. The Armed Forces Special Power Act, 1958 (Amended in 1972, proposed to be further amended).
7. Regulation 5 of 1873 (Bengal Eastern Frontier Regulation, 1873) dated 27.8.1875.
15. The Indian Penal Code, 1860.
22. Laccadive, Minicoy and Amindivi Islands (Civil Courts) Regulation 1965.

The Commission generally agrees with the approach adopted and the recommendations made by the task force set up by the Home Ministry and recommends that necessary action to give final administrative and legal shape to these recommendations be completed as expeditiously as possible.
11-29. About 19 Acts relating to Chandigarh may be repealed provided Government is satisfied that the repeal will not otherwise create any other administrative problem.

B. LAWS WHICH ARE ALREADY UNDER REVISION/AMENDMENT BY THE HOME MINISTRY AND AGREED BY THE EXPERTS

2. The Code of Criminal Procedure (Amendment) Bill, 1994 - Bill is to be considered by the new Parliament soon.
3. The Indian Penal Code, 1860 - The Law Commission Report is likely to be placed before the Parliament.
4. The Indian Prison Act, 1944.
7. The Assam Rifles Act, 1941.
8. The CISF Act, 1968.
9. The CRPF Act, 1949
10. The High Court Judges (Condition of Service) Act, 1954.

C. LAWS REQUIRING AMENDMENT TO THE SELECTED PROVISIONS

1. The Passport (Entry into India) Act, 1920.
2. The Foreigners Act, 1946.
6. The Court Fees (Control) Act, 1870.

D. ACTS WHICH REQUIRE AMALGAMATION

1. The Explosive Substances Act 1908 with the Explosive Act, 1884 in consultation with Ministry of Industrial Development.
3. Laccadive, Minicoy and Amindivi Islands Home Guards Regulation, 1977
13. The India Police Act, 1861.
14. The India Police Act, 1870.
17. The Official Secrets Act, 1923.
24. The Supreme Court (Number of Judges) Act, 1956.
3. Other Acts, Rules, Regulations etc., however, require no amendment.

63. The Evacuee Interest (Separation) Act, 1951.
64. The Displaced Persons (Debts Adjustment) Act, 1951.
65. The Displaced Persons (Claims) Supplementary Act, 1954.

Rules
5. A&N Islands Motor Transport Workers
22. The Constitution (Scheduled Tribes) (Union Territories) order, 1951.
23. Master Plan for Civil Defence.
Ministry of Industry, Task Force is NOT constituted. They have intimated that the position has been reviewed and they have no direct role in framing rules/regulations.

34. The Supreme Court Judges Rules, 1959.
38. NHRC Chairperson and Members (Salaries, allowances and other conditions of Service) Rules, 1993.
40. NHRC (Group C & D Posts) Recruitment Rules, 1996.
42. The Displaced Persons (Claims) Rules, 1950.
43. The Administration of Evacuee Property Rules, 1950.
44. The Evacuee Interest (Separation) Rules, 1951.
45. The Displaced Persons (Debts Adjustment) Rules, 1951.
46. The Displaced Persons (Claims), Supplementary Rules, 1954.
51. State Emblem of India, 1948.
52. Regulations relating to awards of Sarvottam Jeevan Raksha Padak, Uttam Jeevan Raksha Padak and Jeevan Raksha Padak, 1951.
53. Regulations relating to Ashok Chakra, Kirti Chakra and Saurya Chakra, 1952.
55. Rules relating to awards of Bharat Ratna, Padma Vibhushan, Padma Bhushan and Padma Shri, 1954.

23. Ministry of Industry, (Dept. of Heavy Industry), Udyog Bhawan, New Delhi - 110011

Task Force is NOT constituted. They have intimated that the position has been reviewed and they have no direct role in framing rules/regulations.

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thereunder as also the guidelines laid down by the Department of Public Enterprises. The Department has no direct role in framing rules and regulations.

A. Explosives Act, 1884
1. Explosive Rules, 1983
2. Gas Cylinder Rules, 1983
3. Static and Mobile Pressure Vessels (Unified) Rules, 1991

B. Indian Boilers Act, 1923
1. Indian Boilers Regulations, 1950

C. Intellectual Property Rights
1. Patents Act, 1970
3. Trade and Merchandise Marks Act, 1958
4. Trade and Merchandise Marks Rules, 1959 (framed under T&M M Act, 1958)
5. Designs Act, 1991

The Commission feels that due to long lapse in time, changes in technology and advent of modernisation, these Acts should be recast and reenacted. A new Bill on patents should be brought before Parliament on the basis of Expert Committee Report, to comply with WTO convention, along with amendments to other IPR laws, and missing areas like integrated circuits, geographic areas and trade secrets. The question of harmonising Explosives Act and Rules with the Explosives Substances Act, 1908 may be processed early to the extent possible.
5. A composite form for Foreign Collaboration and/or Industrial licence by merging two existing forms has been formulated by the Department.


Deptt. of Public Enterprises as well as the erstwhile Bureau of Public Enterprises have been issuing guidelines and directives on various aspects on operations of Public Sector Enterprises.

A Committee was set up to review guidelines issued by BPE and DPE for public sector enterprises a-c-d to recommend cancellations, re-drafting and/or simplification with the objective of eliminating or modifying guidelines which are no longer necessary or relevant.

Based on the recommendations of the committee, the Deptt. has decided to cancel 696 guidelines issued over a period by DPE/BPE in order to grant greater operational freedom to the public sector enterprises and with a view to rationalising/simplifying the existing set of guidelines to public sector enterprises.

1. The Commission is of the view that there should be a constant review of and reduction in the number of guidelines issued by the Department keeping in view the changing policy for greater autonomy to PSUs. Further, there should be review of procedures prescribed for obtaining Govt. approval for making further investments, appointment of staff, expenditure sanction, delegation of financial powers, etc.

2. The guidelines for disinvestment and strategic sale should be transparent and consistent.

27. Department of Small Scale Industries & Agro-based Rural Industries, Udyog Bhawan, New Delhi.

Task Force set up and it has not found any laws/regulations/procedures relating to the Deptt. of SSI & ARI requiring changes/repeat. However, it is continuing its work and if it identifies any such laws/regulations and procedures requiring amendments, further action will be accordingly taken.

It is proposed to revise the definition of SSI as decided by the Government and a number of orders have been issued consequent to the submission of the Abid Hussain report.

1. The Interest on Delayed Payment to Small Scale and Ancillary Industrial Undertakings Act, 1993.
3. COIR Act.

1. Confusion over the definition of SSI and entry for foreign investment in the sector should be removed.

2. The recommendation of Abid Hussain Committee for a separate legislation on SSI and Ancillary industries is endorsed by the Commission.

3. The various procedural constraints of SSIs at state level should be addressed. An integrated approach to SSIs in different sectors is needed including credit from banks and financial institutions.

4. Reference is invited to Commission’s observations in the Statement of Industry.


Task Force has not been constituted as review has been carried out recently. The status of review of law/Acts is as follows:

1. Press & Registration of Books Act, 1867.
2. Press Council Act, 1958
3. Prasar Bharti Act, 1990
4. Cinematograph Act, 1952

1. The nature of amendments to Acts at items (1) and (4) have not been indicated to the Commission. However, the same may be pursued expeditiously.

2. The rules relating to TV and Cable should be amended in the light of IT Action Plan announced recently by Govt.
2. **Press Council Act, 1978:**
Press Council of India, who are primarily concerned with this Act will be sounded on the need, if any, to amend this Act.

3. **Press Council Act, 1990:**
This Act has been recently come into force.

4. **Cinematograph Act, 1952:**
This has been reviewed recently and the amending Bill is before Rajya Sabha.

Task Force have been constituted. The Ministry has also set up a Departmental Committee to identify areas for legal reforms. The status of review is as follow:

(i) A Committee has been set up to suggest amendments to the Industrial Disputes Act, 1947, the Sales Promotion Employees Act, 1976 and the Payment of Bonus Act, 1965.

(ii) Proposals for amending the Contract Labour (R&A) Act, 1970 are under finalisation and will be submitted to the Cabinet.

(iii) Cabinet Note will soon be submitted for amendments to the Minimum Wages Act, 1948, a note has been submitted to Cabinet on Payment of wages Act, 1936.

(iv) The Trade Unions Amendment Bill (for amending Trade Union Act, 1926) will be introduced in the Parliament.

(v) The Bonded Labour System (Abolition) Act, 1976 is proposed to be amended in the light of Supreme Court decision.

(vi) A Cabinet Note is proposed to be submitted soon as to amend the Child Labour (P&RI Act, 1986 and the Inter-state Migrant Workmen (RECS) Act, 1979.


(viii) Based on the discussions in the Committee, some important legislations were required to be gone into in-depth by a Sub-Committee under the Chairmanship of Chief Labour Commissioner (Central). The Sub-committee has submitted its recommendations which are being examined by the Ministry whereafter the report of Sub-Committee along with the observations of the Ministry would be forwarded to the Ministry of Law.

(ix) The Ministry has taken note of the problems mentioned by a number of Departments relating to the abolition of contract labour and recent Supreme Court judgements. The Committee has advised the Ministry to bring forward necessary amendments to the Contract Labour (R&A) Act, 1970 before the Cabinet.

### Social Security Laws

1. **Factories Act, 1948.**
2. **Mines Act, 1952.**
3. **Dock Workers (Safety, Health & Welfare) 1986.**
4. **Payment of Gratuity Act, 1972.** (Amended in Sept., 1997)
5. **Employees State Insurance Act.**
6. **Minimum Wages Act, 1948.** (Cabinet Note is finalised and to be sent to Cabinet)
7. **Payment of Wages Act, 1936.** (Cabinet note is submitted to Cabinet)
8. **Payment of Bonus Act, 1985.** (Amendment under process)
9. **Contract Labour (Regulation and Abolition) Act, 1979.** (Proposal to amend is under the process of finalisation.)
10. **Inter-state Migrant Workmen Act, 1979.** (Proposal for amendment is under finalisation)
12. **Industrial Disputes Act, 1947.** (Amendment under process)
13. **Beedi & Cigar Workers (Conditions of Employment) Act, 1996.**
14. **Bonded Labour System (Abolition) Act, 1976.** (Proposal to amend the law is to be considered in the light of Supreme Court decision expected soon)
15. **Equal Remuneration Act, 1976.**
16. **The Sales Promotion Employees (Conditions of Service) Act, 1976** (Amendment under process)
17. **Child Labour (P&RI) Act, 1986** (Proposals for amendment are being finalised)
18. **Trade Union Act, 1926.** (Bill to amend will be introduced in Parliament)
The Employees Pension Scheme, 1995 has been amended to provide for 30 days statutory time limit for settlement of pension claims. In case a Provident Commissioner fails to settle a claim complete in all respects within 30 days, he shall be personally liable for the delay and claim interest @12% per annum and the benefit amount may be charged and recovered from the salary of the Commissioner.

It has been observed that a multiplicity of laws in the Central and State sector numbering over 200 in the labour sector have arisen on account of the subject being in the concurrent list and the reluctance of the State Governments to give up their power to legislate on labour matters. The problems have also been compounded by the changing views of the Supreme Court in judgements relating to the definition of industry under the Industrial Dispute Act 1947.

(x) The Employees Pension Scheme, 1995 has been amended to provide for 30 days statutory time limit for settlement of pension claims. In case a Provident Commissioner fails to settle a claim complete in all respects within 30 days, he shall be personally liable for the delay and claim interest @12% per annum and the benefit amount may be charged and recovered from the salary of the Commissioner.

The Department has already conducted an internal exercise to review the Acts administered by it. The status of review is as follows:

1. Advocates Act & Notaries Act
   These two Acts are processed for amendment of various provisions. Bill on Notaries Act has been introduced.

2. Arbitration and Conciliation Act
   This is a new enactment in place of the old Arbitration Act, 1940. Amendments have been processed with Government approval.

3. National Legal Services Authority
   The Legal Services Authority Act has been brought into force only w.e.f. November, 1995.

4. The Guardians and Wards Act
   The Guardians and Wards Act, 1890 is a new enactment in place of the old Guardians and Wards Act, 1890.

5. The Administration of Justice Act

6. The Evidence Act
   The Evidence Act, 1872 is a new enactment in place of the old Evidence Act, 1872.

7. The Indian Majority Act
   The Indian Majority Act, 1976 is a new enactment in place of the old Indian Majority Act, 1976.

8. The Hindu Marriage Act
   The Hindu Marriage Act, 1955 is a new enactment in place of the old Hindu Marriage Act, 1955.

9. The Hindu Succession Act
   The Hindu Succession Act, 1956 is a new enactment in place of the old Hindu Succession Act, 1956.

10. The Hindu Marriages Act
    The Hindu Marriages Act, 1955 is a new enactment in place of the old Hindu Marriages Act, 1955.

11. The Hindu Succession (Removal of Disabilities) Act

12. The Hindu Gains of Learning Act
    The Hindu Gains of Learning Act, 1930 is a new enactment in place of the old Hindu Gains of Learning Act, 1930.

13. The Indian Marriages Act
    The Indian Marriages Act, 1948 is a new enactment in place of the old Indian Marriages Act, 1948.

14. The Cutchi Memons Act
    The Cutchi Memons Act, 1938 is a new enactment in place of the old Cutchi Memons Act, 1938.

15. The Dissolution of Muslim Marriages Act
    The Dissolution of Muslim Marriages Act, 1939 is a new enactment in place of the old Dissolution of Muslim Marriages Act, 1939.

16. The Indian Matrimonial Causes (War Marriages) Act
    The Indian Matrimonial Causes (War Marriages) Act, 1948 is a new enactment in place of the old Indian Matrimonial Causes (War Marriages) Act, 1948.

17. The Bangalore Marriages Validating Act
    The Bangalore Marriages Validating Act, 1936 is a new enactment in place of the old Bangalore Marriages Validating Act, 1936.

18. The Arbitration and Conciliation Act

19. The National Legal Services Authority Act
    The National Legal Services Authority Act, 2016 is a new enactment in place of the old National Legal Services Authority Act, 1990.

20. The National Legal Services Authority Act
    The National Legal Services Authority Act, 2016 is a new enactment in place of the old National Legal Services Authority Act, 1990.

21. The Indian Gains of Learning Act
    The Indian Gains of Learning Act, 1930 is a new enactment in place of the old Indian Gains of Learning Act, 1930.

22. The Indian Marriages Act
    The Indian Marriages Act, 1948 is a new enactment in place of the old Indian Marriages Act, 1948.

23. The Hindu Gains of Learning Act
    The Hindu Gains of Learning Act, 1930 is a new enactment in place of the old Hindu Gains of Learning Act, 1930.

24. The Indian Marriages Act
    The Indian Marriages Act, 1948 is a new enactment in place of the old Indian Marriages Act, 1948.

25. The National Legal Services Authority Act
    The National Legal Services Authority Act, 2016 is a new enactment in place of the old National Legal Services Authority Act, 1990.
32. Ministry of Mines, Shastri Bhavan, New Delhi - 110001

The Act and the Rules have been subject to amendments from time to time keeping in view the National Mineral Policy and also the economic liberalisation.

A Task Force was constituted on 8.7.1997. The Committee has since submitted its report and based on its recommendations, necessary action has already been initiated for amendment in the MMRD Act, 1957 and rules made thereunder.

The Salient Features of recommendations are:

i) Greater delegation of powers, particularly to State Govts. under MMRD Act, MCR & MCDR.
ii) the committee has liberalised the provisions relating to grant of mining leases in respect of areas where evidence other than prospecting data suggests existence of mineral reserves and allows undertaking of such operations and has made extensive recommendations regarding simplifying the procedure for preparation and approval of mining plan.

iii) Provisions for increase of adhoc revision of royalty after three years on the basis of percentage of existing royalty rate in the event of delay in royalty revision has been recommended.

iv) Changes have been recommended in the criteria for according priority in respect of applications for mineral concessions, clear provision has been made enabling investment commitments/ investment intentions of the application to be a relevant factor while determining priority.

v) The Committee also favorably recommended setting up of separate whole-time Administrative Tribunal for dealing with revision applications against orders of State Governments and also recommended revision powers to be exercised by State Governments themselves against orders passed by authorities subordinate to them.

vi) The Committee has further, recommended strengthening of legal provisions for curbing illegal mining.

33. Ministry of Petroleum and Natural Gas, Shastri Bhavan, New Delhi - 110001

Task Force constituted on 27.7.1997.

The Status of review is as follows:

The Petroleum Rules, 1976 which govern the marketing and refining functions of the Oil Industry are under consideration of the Rajya Sabha Committee on Subordinate Legislation and the views of the Committee are yet to be received.

The Ministry has sought the permission of Committee on Subordinate Legislation, Rajya Sabha to notify the amendments to the Petroleum Rules in December, 1997.

Petroleum Act, 1934 and the Petroleum Rules, 1976

1. Lubricating Oils & Greases (Pricing, Supply, and Distribution Regulation) Order, 1987
2. High Speed Diesel Oil and Light Diesel Oil (Restriction on Use) Order, 1974
3. Furnace Oil (fixation of Ceiling Price and Distribution) Order, 1974
4. The Petroleum Products (Maintenance of Production) Order, 1970
5. The Petroleum Products (Supply and Distribution) Order, 1972
6. The Petroleum (Storage) Order, 1971
7. The Petroleum Products (Regulation of Supply to Retail Outlets) Order, 1971
8. Kerosene (Restriction on Use and Fixation of Price) Order, 1993
11. LPG Control Order, 1993

*These four orders are proposed to be amalgamated into a single new Control Order.

The Commission recommends that all orders may soon be amalgamated and simplified. It is of the view that the Ministry may notify amendments to Petroleum Rules without awaiting the views of the Committee on Subordinate Legislation. Various control orders should be reviewed from the point of view of commitments under Citizens' Charter.

34. Ministry of Communications, Deptt. of Telecommunications, Sanchar Bhavan, New Delhi

An Expert Group constituted.

The Group have furnished their interim report.

1. The Indian Telegraph Act, 1955.
2. Wireless Telegraphy (Possession) Act, 1933.

The Commission notes that Wireless Telegraphy (Possession) Act, 1933 has not been dealt with by the Expert Group. The definition of 'telegraph' has to be
The main recommendations are as follows:

i) The Indian Telegraph Act, 1985 has been amended to provide severe penalties for unauthorized diversion of telephone calls and is expected to curb fraudulent practices. The amendment has been vetted by Law Ministry and is awaiting notification. A Bill is to be introduced for providing punishment for diversion of lines and leakage of revenue. The proposal has been approved by Cabinet.

ii) There is an ongoing review of telephone rules/procedures to make them more responsive and customer friendly. The review does not entail reference to the Law Commission since it does not touch the basic features of Indian Telegraph Act.

35. Ministry of Communications, Deptt. of Posts, Dak Bhavan, New Delhi - 110001.


i) The Deptt. has formulated a draft Cabinet Note for amendment of the Indian Post Office Act. However, in view of many changes in the socio-economic scenario thereafter, and the need to study international experience, the proposed amendments are being further reconsidered.

ii) The National Postal Policy, which was drafted and submitted to the Consultative Committee for the Ministry of Communications is pending finalisation.

iii) The Expert Group has also submitted its report to the Deptt. of Posts on review of Indian Post Office Rules. The Deptt. of Posts are in the process of examination of its recommendations.

36. Ministry of Power, Shimla Shakti Bhavan, New Delhi

i) Electricity Regulatory Commissions Act, 1998

This Act has received the assent of the President (No. 14 OF 1998). This Act would provide for the establishment of a Central Electricity Regulatory Commission and State Electricity Regulatory Commissions, rationalization of electricity tariff, transparent policies regarding subsidies, promotion of efficient and environmentally benign policies and for matters connected therewith or incidental thereto. This is a comprehensive effort of the Govt. to regulate the transmission and distribution of Electricity.

ii) The Government has also introduced the Electricity Laws (Amendment) Bill, 1998 with a view to amend the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948. This follows the recommendations of the Expert Committee which was constituted in May, 1994 to review the existing provisions of Indian Electricity Act, 1910, Indian Electricity (Supply) Act, 1948 and amended to include modern facilities of communication. Wireless Rules have to be updated in view of S.C. Judgement that air space is free, and also in the light of Action Plan for I.T. The entire Telecom Rules need to be revised soon to make them customer friendly. The amending Bill for Telegraph act should be introduced soon, which will take note of the changes introduced by the latest Telecom Policy and entry of private providers. The conflict between role perception of Telecom Commission and the Regulatory Authority should be resolved soon.

1. Indian Post Office Act, 1998

"Courier Service" should be included in CPA. Postal Service should not have any indemnity clause. The definition of 'postal certificate' should be enlarged. The clauses exempting Department from liability should be reviewed. The revised manual should be soon enforced. Amendments to Act should be processed in the light of new policy, and the revised rules notified early.

2. Indian Electricity Act, 1910
3. Electricity (Supply) Act, 1948
4. Indian Electricity Rules, 1956
5. Bhakra Beas Management Board (BBMB) Act

The Commission commends the legislative effort of the Ministry. It notes that the Regulatory Commissions Act has been passed and the Central Regulatory Authority has been set up at the Centre. The rules should be notified soon. Procedures of CEA should be streamlined and time for approval reduced. Role of CEA vis-a-vis new Regulatory Authority should be clarified. The Commission notes that the Electricity (Supply) Act has been amended recently to restore an independent status to Central and State Transmission utilities.
Indian Electricity Rules, 1956. This Bill also aims at improving the situation vis-a-vis generation and transmission of Electricity.

ii) Expert Committees have been set up for reviewing BBMB Act and the DVC Act.

Task Force NOT Constituted as the Department has already conducted a review of rules, regulations, etc. The status of review of rules and regulations is as follows:

i) A Cabinet Note on amendments to Land Acquisition Act, 1894 is under submission.

ii) The Agricultural Produce (Grading and Marking) Act, 1937. (No need felt to amend this Act)

iii) Meat Food Products Order, 1973 (A review group under Cab. Sectt. reviewed the provisions of order and the matter is being processed further).

iv) Cold Storage Order, 1980 (since repealed in May, 1997).

v) Accelerated Rural Water Supply and Central Rural Sanitation Programmes: These are being implemented through States/UTs and their guidelines do not require any change at present. However, if need be, these can be reviewed in the light of the policy approach during the IX Five Year Plan.

vi) Extension to Schedule areas following the 73rd Constitutional amendment, was facing problems on account of difficulties experienced by certain States.

vii) The Dept. had referred to the Ministry of Environment and Forests, problems faced by the tribal population regarding ownership and use of forest produce.

viii) The department is reviewing all the rules and procedures under different schemes following the 73rd amendment. It is also taking up the issue of convergence in various social service under rural development schemes.

ix) As regards the schemes implemented in Deptt. of Waste Land Development, revised common guidelines have been brought into effect from 1.4.95. The panchayat institutions were also involved in formulating the guidelines. Decentralisation of authority and participatory approach has been fully built in the schemes of Deptt. of Wasteland Development.

1. Land Acquisition Act of 1894 (Core Group Report under study)
2. The Agricultural Produce (Grading and Marking) Act, 1937.
3. Meat Food Products Order, 1973
4. Cold Storage Order, 1980 (Since repealed in May 1997)
38. Department of Rural Employment & Poverty Aleeiation, Krisi Bhavan, New Delhi - 110001

Task Force NOT constituted. The Department has already conducted a review of rules, regulations etc.

The programmes executed by this Department are being reviewed from time to time to ensure transparency and better delivery. Keeping in tune with the spirit of Constitution 73rd Amendment, it has been decide to restructure the DRDAs who now function under the overall supervision and guidance of Zilla Parishad. The provisions of IRDP manual have been modified to ensure greater participation of the Gram Sabhas in the identification and selection of beneficiaries.


Expert Group constituted on 5.9.97 to examine the Collection of Statistics Act, 1953 to make it more relevant and meaningful.

It is proposed to consider the question of setting up of a Statutory Statistical Authority by setting up of an expert group for this purpose.

40. Ministry of Surface Transport, Transport Bhavan, New Delhi - 110001

Task Force constituted in September, 1997. (Four sub-groups have been constituted to look into different areas such as ports, roads, road transport and shipping). The status regarding the review of various Acts/Rules is as follows:

i) Admiralty Act of India
Enactment of a new Act is in process. Cabinet approved on 6.11.97 but could not be introduced in Parliament. As such a fresh note is prepared for consideration by the New Govt.

ii) The NHAI Act, 1988
(National Highways Authority Act)
All Acts/Rules are under-going regular periodic review. As a consequence of the last review of the National Highways Act, 1957 amendments were carried out therein in March, 1997. Similarly, NHAI Act was amended after review. As a result of the latest review amendments to National Highways Act were proposed during the last session of earlier Lok Sabha, which included land for housing etc. as part National Highway Land for public purposes. However, due to dissolution of Lok Sabha the Bill in respect of amendments could not be introduced. (since passed)

iii) The National Highways Rules, 1957
As a result of review, it is proposed to amend the Rules. Necessary action to obtain the approval of the Minister

The Department executes the following programmes of Government:

1. Poverty Alleviation Programmes (IFDP, TRYSEM, DWACRA, DRDA, etc.)
2. Indira Awas Yojana
3. Wage Implementation Programmes (JRY, Employment Assurance Scheme, etc.)

The Commission has no comments, but it notes that the entire structure of schemes for rural development and poverty reduction was reviewed jointly in a recent meeting with State Ministers.

Revision of rules should be completed. Act for Build, Operate and Transfer should be passed soon. Consultations with States on the problems of commercial operators should be taken up so that agreed norms and policies are installed and strikes are averted. Amendments to Road Transport Act, 1956 and Motor Vehicle Act, 1988 should be pursued. Proposals for amendments to other enactments and rules be also pursued.

The provisions for private sector entry in the roads and ports sectors should be streamlined. Transparent guidelines be issued in this respect, as also for issue of guarantees/counter-guarantees, escrow account, developmental rights, responsibility for acquisition, etc.
(SFT) is being taken. After Government accords approval, steps will be taken to issue the notification.

iv) Road Transport Corporation Act, 1950. A Review Committee which was set up for the purpose submitted its report on 17.3.93. The Main recommendations of the Committee are (a) the Composition of Board of Directors of SRTC's should be more broad based and should include professionals as well as representatives of the commutare; (b) the Corporation shall act on business principles in such a manner as to ensure a minimum rate of return of 3% on the capital invested (Section 22) and (c) to give greater autonomy to the Corporations in its functioning. In the light of the recommendations made by the committee, the Road Transport Corporn. Act, 1950 is proposed to be amended. The Ministry proposes to approach Cabinet with such proposal very soon. The proposal to amend the Act was submitted for obtaining the approval of New Minister (SFT), before sending the same to the cabinet. The proposal is with Secy (SFT) for approval.

v) Motor Vehicles Act, 1988
Amendment to the Act is under process by the Ministry. A draft Cabinet Note containing the proposed amendment was earlier approved by Ministry of Law. However, as the new Government has taken over, fresh concurrence/comments of the concerned Ministries are being obtained on the above draft Cabinet Note as per the advice of Ministry of Law. After obtaining the same, it will be placed before the Cabinet for its approval.

The status of review is as follows:
i) For the implementation of National Housing Policy and the augmentation of housing a number of legislations administered by departments were required to be amended. As desired by the

1. The repeal of the Urban Land (Ceiling and Regulation) Act, 1976 should be expedited and States should be advised to take similar action.

2. The amendment to the Delhi Apartment Ownership Act should be finalised and processed expeditiously. The
PM, the Ministry had set up an Inter-departmental Panel with the involvement of the industry to provide policy recommendations to set up investment in housing.

ii) The Ministry had formulated views on the legislations dealt by them and suggested amendments to general laws such as the Transfer of Property Act, Registration Act and the Indian Stamp Act.

iii) Amendment to the Urban Land (Ceiling and Regulation) Act, 1976, Delhi Development Act, Delhi Rent Control Act and the Delhi Urban Arts Commission are under process.

iv) The building byelaws for Delhi had been comprehensively reviewed. The State Govts. had also been requested to reduce the burden of stamp duty.

v) The Ministry has also formulated amendments to the Delhi Apartment Ownership Act and proposals will soon be brought up before the Cabinet.

42. Ministry of Welfare, Shastri Bhawan,


The Task Force have decided that only two Acts viz. Juvenile Justice Act, 1986 and Durgah Khwaja Saheb Act, 1955 need amendment. These two Acts are being processed for carrying out amendments. Proposals in respect of Juvenile Justice Act, 1986 are expected to be forwarded to the Cabinet. Rules and regulation in respect of Central Waqf Council are being finalised to replace the earlier Central Waqf Council Rules, 1965.

43. Ministry of Railways, Railway Board, Rail Bhavan, New Delhi - 110001

Task Force constituted on 1.7.1997 and the report of the Expert Group has been submitted in two volumes:

It was indicated that the old Indian Railways Act, 1890 was repealed and replaced by a revised Act in 1989 incorporating various changes dictated by developments of the past few decades. Similarly, RPF Act, 1957 along with Railway Protection Force Rules, 1987 as amended in 1997 is of recent vintage. Railway Claims Tribunal Act, 1987 is also a recent piece of legislation.

Salient features of recommendations are as follows:

1. SC/ST (Prevention of Atrocities) Act, 1989
2. Protection of Civil Rights Act, 1955
5. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Regulation in respect of Central Waqf Council are being finalised to replace the earlier Central Waqf Council Rules, 1965.

The Commission recommends that the proposals for amendment to Acts and Rules in column 2 be finalised soon for enactment/notification.

3. The States should be persuaded to enact changes to building rules and regulations as envisaged in National Housing Policy.

4. Model Rent Control Act should be commended for adoption by all States, starting with action to pass the amending Act for Delhi.

Reference is invited to other observations in the Statement.
i) Railways Act, 1989: Recommendations pertain basically to facilitation of passenger service and goods movement.

ii) Under the Railway Claims Tribunal Act, 1987, amendment for accident compensation, direct payment to party, counter claims of railway administration are the areas suggested for amendment.

iii) Amendment in Contract Labour Abolition Act regarding monopolies certificate, engagement of idle labour etc., is also suggested.

iv) Similar small amendments under the Railway Protection Act, Prevention of Corruption Act, 1988, Indian Telegraph Act, 1885 etc. have been suggested. Certain changes like abolition of 15% price reference to National Small Scale Industries Corporation (NSIC) and discontinuance of the preference given to Govt. agencies have also suggested as part of revision of rules, regulations and orders.


The recommendations may be grouped into following categories:
I. Retention

1. Essential Commodities Act, 1955: This Act may be retained.

2. Cotton Control Order, 1986: The Expert Group recommended that the Cotton Control Order, 1993 may be retained.

3. Hank Yarn Obligation Notification, March 1995: This Notification may be retained.

4. Notification for Statistical Returns: This Notification should be retained.

5. Textiles Committee Act, 1963: The Textiles Committee act, should be retained.


II. Repeal:

1. The Commission agrees to repeal of the Cotton, Ginning and Pressing Factories Act proposed by the Department as also to the amalgamation of the two orders in respect of Jute and Jute-textiles. The proposal to amalgamate the two Jute Acts in column 2 needs to be reconsidered in the light of the directions of the Speaker of the Lok Sabha given in the 1960s.

2. The Commission agrees with the amendments proposed to the two Textiles Orders.

3. The Commission recommends that all the orders mentioned in column 3 be reviewed and thereafter repealed or simplified as may be necessary. This should be done in a specified time-frame.

4. Some of the legislations and orders may be reviewed in the light of problems faced from WTO Conventions. The Ministry should examine representations relating to hank yarn obligation, and the restrictions on movements, and initiate amendments where needed.

44. Ministry of Textiles
Udyog Bhavan, New Delhi.
2. Cotton Transport Act, 1923: This Act has already been repealed in 1995 following the recommendations of the Special Review Group (Narayanan Committee).

III. Amalgamation:


2. Jute Textiles (Control) Order, 1956 and Jute (Licensing and Control) Order, 1961: The Expert Group noted that a draft amalgamated order incorporating the essential provisions of the Jute (Licensing and Control) Order, 1961 was pending with the Ministry of Textiles for a decision.

IV. Specific Amendments: The Textile (Development & Regulation) Order, 1993 and Textile (Consumer Protection) Regulation, 1988:

The Expert Group felt that the objectives could be achieved by issuing relevant order under the Textile (Development & Regulation) Order, 1993 by the Textile Commissioner, while the later, namely, Textile (Development & Regulation) Order, 1993 be retained.

V. Other issues:

Constitution of a Committee to investigate the complaints against the garment industry relating to trade mark piracy.

The Expert Group by and large have no objection to accepting the above suggestions of Prof. Shah (for constituting such a committee.)

Separate Piece of Legislation for refund of unwarranted levies.

The Expert Group recommends adoption of this piece of legislation (as drafted by the Office of the Textile Commissioner, Mumbai) with suitable amendments wherever necessary.


1) All the rules, laws and regulations administered by the Ministry of Personnel are proposed to be reviewed so as to revise the rules and regulations and amend the Central Laws and procedures affecting the activities of other central departments as well as State Governments. Lok Pal Bill as well as Bill on Freedom of Information proposed to be introduced in Parliament.

2) AIS Division:

1. Various provisions of All India Service Rules
2. CCS (CCA) Rules & AIS (Disciplinary & Appeal) Rules
3. FRI & II & S.R.
The task to streamline and simplify various provisions of the All India Service Rules governing the service conditions of All India Service Officers has been completed. The necessary amendments to various rules and regulations have been notified. As a sequel to Government's accepting the various recommendations of the Fifth Central Pay Commission, necessary amendments to All India Service (Pay) Rules, All India Service (Commutation of Pension) Regulations, All India Service (Leave) Rules, All India Service (Study Leave) Regulations have been issued and are under issue. An order has also been issued to the effect that the Orders issued by Ministry of Finance in regard to deserrsm allowance for Central Government employees as and when issued may be made applicable to AIS Officers also without waiting for any further directions/order from the Central Government in order to reduce delay in extending the benefits to AIS officers serving in the State Government.

iii) Establishment Division:

A review of UPSC (Exemption from Consultation) Regulations has been undertaken. A proposal to exempt certain categories of posts has been referred to UPSC for comments. Proposals for amendments to AIS (Disciplinary & Appeal) rules and CCS(CCA) rules have already been referred to Ministry of Law and UPSC. In regard to a comprehensive review of FRs/SRs, the Committee was informed that Mr. S.Krishnan, IA&AS(Retd) is agreeable to undertake the task of reviewing the provisions of FRs and SRs. The appointment of consultant would be put up to Secy(P) for approval after the concurrence of Ministry of Finance.

iv) Pension Division:

Action is being taken to implement the accepted recommendations of the Vth Pay Commission by revision of Pension Rules. Government has simplified the payment of pensions to central government civil pensioners. Under the new procedure, all formalities have to be completed within three months by the concerned banks and then pension will be paid on the basis of photocopy of the pensioner's pension payment order.

v) CS Division:

Comprehensive proposals for changes in the method of recruitment, eligibility criteria, etc. in the Service Rules of CSS, CSSS and CSCS are being considered in the light of the proposals sent by SSC and the suggestions of Vittal Committee.
vi) EO’s Division:

Orders issued on delegation of powers to Ministries for certain categories of posts in PSUs and Central Staffing Scheme. Review of Instructions on Foreign Assignments and policy on Foreign Training is being undertaken.

vii) AT Division:

The provisions of Central Administrative Tribunals Act are being reviewed in the light of Supreme Court Judgement.

VIII) Computerisation:

The Committee stressed the need for expeditious computerisation of various rules, regulations, and instructions for easy retrieval. The development of this system would require professional expertise and for this the option of giving this job to a professional institution is to be considered so that the system becomes operational within the prescribed time and budget.

ix) The Department of Administrative Reforms and P.G. have initiated an exercise for designing an Inspection Questionnaire along with 'Executive Summary for Secretary' on effective and responsive administration. The proposed questionnaire includes items on administration, establishment, public grievances, and O&M aspects. It is proposed that the 'Inspection Questionnaire' along with 'Executive summary for Secretary' would replace the existing questionnaire given at appendix 53 of the Central Secretariat Manual on Office Procedure (MOP) by making necessary changes in paras 133 to 138 of the MOP. It is proposed to conduct inspection of all Ministries/Departments and Attached/Subordinate offices by using the proposed questionnaire so as to cover more areas instead of only O&M aspects.
The present Government has placed before Parliament the revised National Housing Policy, based on greater encouragement and support to private sector, time-bound physical targets for housing the poor and other groups, increased flow of funds, fiscal concessions and removal of various legal constraints. It has to be remembered that housing and urban development are in the state sector, and there are varying scenarios of innovations and bottlenecks to housing and urban activity, and differing capacities of local bodies and housing agencies. Several measures have been proposed/taken during the last few years, duly taking into account the views/suggestions of real estate Industry/NGOs. Salient steps are :- Using urban land including FSI as a major resource to finance infrastructure, separate legislation proposed for acquisition of land in urban areas, alternative method of compensation for land through Transferable Development Right or negotiated land assembly. State Governments asked to amend municipal laws & building bye laws and Master Plans for the purpose similar to Maharashtra. Matter taken up with the Ministry of Finance for according many fiscal concessions needed (and some of them granted already) to promote private/corporate investment and public/private partnership in urban infrastructure, setting up of National Institute of Urban Development at Hyderabad, Urban Infrastructure Development Finance Co. in Tamil Nadu etc., or joint venture companies formed by State urban utilities with private sector and support to such partnerships under US Aid FIRE Project. Standing Committee on Urban Management, constitution of Working Groups to look into specific facets of urbanisation & research studies, States/UTs instructed to formulate plans keeping in view population projections for 2021. For involving private sector in a big way in housing industry this sector has been recently permitted in Delhi to undertake on the model of Haryana and other states, private assembly and development of land for house construction at Delhi subject to a number of conditions.

1. **LAND ACQUISITION ACT, 1894:**

   Experience has shown that inordinate delay occurs in the acquisition proceedings. There is consequent delay in the execution of large projects in and outside the various development plans. There are serious restrictions on the right to challenge acquisition of land, delay in payment of compensation, declining purchase value of compensation money, non-use of acquired land for long years by Government the Act lacks an exhaustive definition of "public purpose" and short notice is given to owner for taking possession.

   "Public purpose" should be made justifiable by amending the provisions of Section 6 of the Act suitably. Only genuine public purposes should be included. The Govt. should come out with a suitable policy on acquisition. Land which has been acquired and not used for long time should be offered to the original owner. Statutory ban should be placed on acquisition of good agricultural land. Central Land Acquisition Advisory Committee should be constituted in respect of Land use policy. Guidelines for rehabilitation of affected persons whose, land has been acquired should be devised.

   A Draft Amendment Bill, 1998 for amending the Land Acquisition Act, 1894 has been referred by Department of Rural Development to the Cabinet to ensure higher compensation to the landowner and for effective & time-bound acquisition of land. Amendments relate to empowering the collector to make consent award, compress the time for the acquisition of land from 3 years to one year, offer physical resettlement & rehabilitation of displaced families, increase peoples participation & transparency at all levels. Concept of compensation is being substituted by cost of acquisition, public purpose to include all infrastructure projects - public or private, reduction of time, public hearings before the Collector, S.6

   The mechanism of acquisition of land for public purpose has to be delinked from the mechanism of providing compensation to those whose land has been acquired. The Ministry of Rural Areas & Employment should finalise proposal for amendment to the Land Acquisition act, 1894 quickly after taking into account the views of the Ministry of Urban Affairs & Employment and other agencies and enact these amendments.
2. **BUILDING REGULATIONS:**

The Building Byelaws, 1983 as amended from time to time and in 1995 has been harmonised with modifications in the Master Plan 2001 for NCT Delhi. Under the cumbersome byelaws every builder has to submit 4-9 copies of plans /statements / clearances from Delhi Fire Service, Urban Arts Commission / L&DO etc., alongwith key plan, site plan, building plans, services plan, NOC on land use.

Under byelaw 6.7.1 Authority may or may not sanction and if applicant does not receive intimation within 60 days, approval is deemed to have been given. A single window clearance system should be introduced and number of documents to be given be reduced.

The building bylaws of Delhi have been proposed for amendments by Municipal Corporation. The Development Control Rules have been amended to enable this. Architects are permitted to sanction plans upto prescribed size of plot. However, there are still problems of seeking approvals from many authorities and delays in permissions. Steps to check unauthorised development are not adequate. The organisational capacity and mindset of agencies need change.

Reference is invited to Ministry's comments at SI. No. 5 also.

The Regulations need to be modified and made time bound, less cumbersome, and user-friendly. The occasion for use of discretion by State officials should be minimised. Model bye-laws should be formulated in the light of National Housing Policy for acceptance by State Governments.
3. With a sanction valid for 2 years residential & commercial buildings & 3 years for large complexes, owner has to notify the authority of his intention to start the work, site is inspected, owner has to submit notice of completion through licensed architect/engineer with copies of lease deed, permit for sewer, clearance from DVB, Delhi Fire Service etc.

Building approval procedures should be simplified. On ownership, authority should issue certificate accepting the ownership after scrutiny. Architect should submit the drawings with his certificate stating that the building is in conformity with Byelaws & Rules.

Comments of Ministry as at Sl. No. (2) above.

The Commission agrees with the suggestion. Urban Land Ceiling Amendment Bill should be enacted soon and commended to all States for adoption.

4. TRANSFER / MUTATION / SUBDIVISION OF LAND:

Difficulties arise in the matter of Sub-division/mutation of part of properties sold/inherited due to non-payment of property tax, earlier records are found to be torn/missing and follow up is required to be done at various offices.

There should be time bound periods prescribed to avoid delay and if the work is not done, there should be automatic approvals. Records should be maintained properly. All physical sub-divisions should be accepted and mutation allowed.

As part of land policy, the vacant land with public bodies and industry and inefficiently used land should both be released for use. State planning and land revenue laws need change. As the Urban Land (Ceiling and Regulation) Act, 1976 failed to achieve what was expected of it, a UL (C&R) Repeal Bill, 1998 for repeal of the said Act has been introduced in Parliament. This is referred to Standing Committee.

This is a case of regulation and should be examined.

5. PROPERTY TAX:

Before submission of building plans the owner has to get the NOC from assessment department by paying taxes on vacant land. Then tax is to be paid at the time of construction and then after completion. Enhanced bills are sent to owners who have to negotiate to reduce them against cash.

The Assessment Department should standardize and fix the rate for arriving at rateable value to reduce the exercise of discretion. Property be taxed only after completion and occupancy certificates are issued.

The Ministry of Urban Affairs & Employment has formulated Guidelines for Property Tax Reforms which constitute the most important tax in the non-octroi States & an important tax in octroi-levying States. These provide for area-based property tax models, division of municipal areas, classification of buildings, nature of use, calculation of unit area rates, determination of tax liability, exemptions & appeals. This could be linked to systems of valuation in other laws.

The Commission endorses the proposals of the Ministry of Urban Affairs and Employment. Inequities result when Rateable Value is related equated to Standard rent, or the cost of acquisition. The existing provisions need to be overhauled so as to increase activity in the housing sector. The Ministry of Urban Affairs and Employment should quickly finalise the proposal for Property Tax.
The Ministry has accepted substantially the recommendations of Malhotra Committee on the building bye-laws of Delhi & has issued the notification. Conversion of leasehold properties to freehold based on land rates as at 1987 has been made available till 31.12.98. Formula for revision of Ground Rent, Auction of vacant Commercial units by DDA, regularisation of unauthorised colonies, proposed abolition of Power of Attorney system for property transfer, are some of the measures being taken. Many proposals for amendments to allied laws like DDA, DMC, NDMC, NCRPB Act, Public Premises etc. Act, DUAC Acts, Requisition & Acquisition of Property Act, Slum Areas Act are under consideration of the Government. These amendments aim to free the housing and infrastructure of its growth-thwarting problems and bottlenecks and increase housing supply for the poor. The mortgage foreclosure system has to be streamlined by amendments to NHB Act and the burden of stamp duty reduced and the system of conveyance of properties simplified to reduce black money in real estate. The environmental laws like coastal area rules need to be liberalised. After studying improvements made in Andhra Pradesh, Patna etc. registration of titles on the Torrens Model can be introduced.
6. **TRANSFER OF PROPERTY ACT, 1882:**

The act does not recognise the concept of acquiring dwelling unit shop in a multistoried building. Mortgage provisions are not palatable to banks/FIs. The Act does not prescribe any format of documents.

Occupancy rights in a dwelling unit must be made marketable & alienable. Right of flat owners in co-operative societies may be made heritable and transferable. Right of sale without intervention of court in the case of English mortgages should be extended to Banks/FIs irrespective of location or community of the mortgagor. Scope of S.58(f) for equitable mortgages be extended and statutory formats of documents be prescribed.

Reference is invited to comments of Ministry at Sl. No. 5.

The Commission endorses the proposal of Ministry of Urban Affairs and Employment for initiating early amendments to Transfer of Property Act, 1882.

7. **REGISTRATION ACT, 1908:**

Scope of compulsory registration of transactions need to be enlarged.

The Act should provide for compulsory registration of title to immovable property on death, inheritance or other devolution other than by purchase. To facilitate banks/FIs, there should be no compulsory registration of mortgage by deposit of title deeds memorandum, there should be compulsory registration of lis pendens of property, all States should provide encumbrance certificates issued by the Sub-Registrar, officers of banks/FIs should be exempted from personal appearance in matters related to lending for housing. Procedure of registration should be simple and there should be expeditious release of the registered documents. Torrens System of title registration as in the West should be adopted in this country.

Reference is invited to Ministry's comments at Sl. No. 5. Department of Revenue has formulated comprehensive proposals for amendment of the Act after considering views of the State Governments.

The Commission recommends early action for amendment to the Act on the lines of proposals from Department of Revenue and Department of Urban Development.
8. **THE INDIAN STAMP ACT, 1899.**

There is a need to rationalise the differing duties in different States. Housing through cooperative may be promoted by not levying stamp duty on co-operatives for purchase of land for construction of dwelling units for its members as also on the deeds of conveyance executed by such societies in favour of its members on allotment of dwelling units. Stamp duty remission may also be considered on the transfer of dwelling units by builders to individuals in multistoried buildings in the event of first transfer. No stamp duty should be levied on mortgages created in favour of banks/FIs to secure loan for new dwelling units. Reference is invited to comments of the Department at Sl. No. 7. Remarks at Sl. No. 7 may be seen.

The Commission endorses enactment of Central legislation on Stamp Act applicable to all States, and a revised list of dutiable instruments in Central and State Schedules.

9. **Rent Control Act:**

This Act negatively impacts on housing supply, investment flow in the housing and increases the housing price. It is suggested that model Rent Control legislation introduced by the Central Government should be recommended to the State Governments for bringing uniformity in State Rent Control Laws with limited modifications to suit local conditions. The interests of both landlords and tenants should be protected. Model legislation for Rent Control laws has to be adopted by all states. Separate chapter for Housing Cooperatives, creation of Shelter Fund for the poor, automatic approval of Building Plan in many cases, foreclosure of mortgages for easy flow of finance mass rehousing of slum dwellers, encouragement to community based savings mobilisation for housing and income generation, support to low cost building materials, special attention to disaster prone areas in the northeast, restructuring housing agencies, greater role for HUDCO, increased lending by banks are all under active process. Delhi Rent Control Act will soon be amended. The Commission comments adoption of Model legislation for Rent Control in all the States. Revised legal framework for Rent Control in Delhi should be finalised and implemented early.
10. APARTMENT OWNERSHIP ACT/REGULATION OF BUILDERS.

There is a new concept of community housing popularly known as condominiums that has emerged but the existing Apartment Ownership Acts focus only on individual buildings.

It is suggested that a new Apartment Ownership Act may be formulated.

The Delhi Apartment & Property Regulation Amending Bill has been proposed to regulate the promotion of construction, sale, transfer and management of apartment ownership and to regulate property transactions & provide for Code of Conduct for promoters and estate agents, in the NCT of Delhi. Such legislation already exists in a number of states. Meanwhile, the builders have formed a self regulating council to lay down professional standards.

The Commission recommends that various steps initiated by the Ministry of Urban Affairs and Employment should be pursued and necessary legislation enacted in all the States.
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<tr>
<th>S1. Nature of Problem</th>
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<th>Comments of the Ministry/Department</th>
<th>Remarks of the Commission</th>
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<tbody>
<tr>
<td>1. Meaning of holding Company and Subsidiary Company.</td>
<td>Clause 4 proposes to take away creation of pyramid structure between the Holding and Subsidiary Companies to bring more transparency in corporate holding and help in regulating the confusion in companies with interlocking funds. The provision prohibiting pyramid structure would adversely affect foreign investment in India in particular in the infrastructural sector. There would be problems about the American Depository Receipt. The deemed public company status for certain companies which are subsidiaries of Foreign Company has no logic.</td>
<td>The existing Act, does not prohibit creation of pyramid structure between the holding and subsidiary companies. However, the Companies Bill, 1997 proposes to take away this, as proviso to Clause 4(1) of the Bill stipulates that no company which is a subsidiary of another company shall, after the commencement of this Act be a holding company. In the wake of representations on difficulties which will be faced especially by power and telecom sectors, the Department has taken a decision to modify this Clause so as to allow one more tier vertically. However, this will have to be finally decided by the Cabinet.</td>
<td>There are many deficiencies in the present Act and Rules. The Commission notes that the suggestions of the user Groups relate to the Draft Bill introduced in Parliament, but not yet pursued by Government. It is hoped that the suggestions on the bill will be considered and the bill enacted soon. This should be followed by action to consolidate all the scattered rules which now cause confusion, harassment and delay. The Department of Company Affairs should resolve the matter after consulting different affected interests including foreign companies, and then formulate the legal amendment.</td>
</tr>
<tr>
<td>2. Officer who is in default.</td>
<td>According to Clause 5 a Non-executive Director is an officer in default if he is a party to any decision of the Board of Directors. To avoid unintended contraventions taking place as a consequence of action taken with Board approval in a meeting in which all Directors were present including institutional nominees, it is suggested that this provision may be deleted. Moreover an auditor is not part of a Management team and his independence would be affected if he is treated as officer in default.</td>
<td>According to Clause 5, a Non-Executive Director is an officer in default, if he is a party to any decision of the Board of Directors. It is also provided that where a contravention of any provision of the Act has taken place with the consent or connivance or is attributable to any neglect on the part of any non-executive director, such directors shall also be deemed to be an officer in default. Moreover, auditor's independence would be affected by treating him as an officer in default. This requires modification in as much as he should be held responsible only for non-performance of his duties specified in Clause 183 of the Bill.</td>
<td>The Commission agrees with the present formulation in Draft Bill and with the explanation of the Department regarding the Auditor.</td>
</tr>
</tbody>
</table>
3. **Number of relatives.**

The definition of relatives in Section 6 of the Act has too many persons included therein which number needs to be reduced.

4. **Company Law Service.**

Though formed in 1965, the Company Law Service has not developed. As such it is suggested that Company Law Service should be revamped with competent officers having full knowledge of law, accounting, costing and business administration.

5. **Shifting registered office of Company out side the State.**

Permission of CLB should be necessary only for shifting registered office of company outside the State and not within the State.

6. **Availability of name of company proposed to be registered.**

There was too much delay in obtaining the availability of the name of a proposed company.

On the question of the number of relatives, it was proposed to reduce the number of 15 in the draft Bill as recommended by the Expert Group.

On the suggestion about providing Central Company Law Service, efforts were being made to constitute this as a Central Service and rationalise the present complicated system for recruitment and promotion of officers in the service, and to reduce the time taken for appointment and promotion with the approval of UPSC. Steps had been taken recently for arranging more training courses. Senior Officers of the service had been posted in the headquarters. The basic suggestion of the Secretary, Deptt. of Company Affairs regarding restructuring of the Department and the company law services, delegation of powers, computerisation etc. would require to be pursued with the help of recommendations of this commission.

As regards the requirement of taking the approval of CLB for shifting the registered office of the company, an amendment had been proposed to require this permission only for shifting the office outside the State. CLB approval was needed in the interest of both creditors and shareholders.

As regards name availability, the name of the firm was being given in 3 to 7 days in all places where computerisation had been completed. There was some delay in case the company proposed names which cannot be accepted such as a bank. Though the number of companies had increased tremendously from

The Commission agrees with the views of the Department.

Clause 47 of the Bill refers to this subject.

The issue has to be pursued in the context of restructuring the Deptt. of Company Affairs in order to harmonise the overall administration of the companies from the point of view of the control of their operations by different authorities such as Registrar of Companies, SEBI and RBI, and to provide integrated macroeconomic policy framework. Perhaps, Company Affairs could become a Division like Banking in the Finance Ministry, but service by competent and well equipped field offices. Meanwhile, the Department could proceed vigorously on the lines stated by the Secretary. The other agencies like Department of Personnel, Department of Expenditure should facilitate these efforts. Computerisation of the entire set-up and use of Internet for disseminating information and procedures, and for submitting returns would help the process.

The Commission agrees with the Department.

Proposed efforts to reduce delay should be vigorously pursued.
<table>
<thead>
<tr>
<th>7. <strong>Definition of Group.</strong></th>
<th>Definition of group must be done with great care since it will affect many critical aspects i.e. Board management, disclosure, financing, accounting, take over etc.</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Department has not given any comments.</td>
<td>The Draft Bill does not define the group. However, the Government may take into account the suggestions of industry on this point.</td>
</tr>
</tbody>
</table>

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<thead>
<tr>
<th>8. <strong>Group Resource Companies.</strong></th>
<th>The concept of group resource companies is not new to the Indian scenario and does not require specific recognition in the Companies Act.</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Department has not given any comments.</td>
<td>The concept of group resource companies could be pursued by Government.</td>
</tr>
</tbody>
</table>

<table>
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<tr>
<th>9. <strong>Private Limited Companies.</strong></th>
<th>It is suggested that the Companies Act should have a separate chapter exclusively dealing with Private Limited Companies.</th>
</tr>
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<tbody>
<tr>
<td>The Department does not agree with the suggestions as this was considered and rejected by the Working Group.</td>
<td>The Commission agrees with the Department.</td>
</tr>
</tbody>
</table>

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<tr>
<th>10. <strong>Shelf Prospectus.</strong></th>
<th>Clause 51 provides for filing of shelf prospectus by public financial institutions, public sector banks or scheduled banks. A company filing the Shelf Prospectus with the Registrar is not required to file prospectus afresh at every stage of offer of securities by it within the validity period of one year of shelf prospectus. It is suggested that the concept of Shelf Prospectus should be equally applicable to all companies and not restricted to only the above categories. This will avoid needless repetition when a company takes recourse to capital market more than once in a given year.</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Department has not given any comments.</td>
<td>The Govt. may amend Clause 51 of the Bill to extend the concession to listed companies and PSUs.</td>
</tr>
</tbody>
</table>

20,000 to 5 lacs, there had been no increase in the manpower of the Department after 1978. It was only recently that after considerable efforts Finance Ministry had agreed to create 211 posts. Even more than increasing staff, it was necessary to improve the productivity, skills and attitudes of the staff, rationalise the systems, introduce computerisation, and reorganise the structure.
### Issue of Prospectus

A time limit is necessary to be stipulated in the matter of issue of prospectus by companies. It was possible to consider a time limit of 15 days for the issue of prospectus. At this stage, the Secretary observed that a decision has now been taken that the SEBI will handle listed companies, the Department of Company Affairs will look after unlisted companies, and the Reserve Bank will supervise non-banking financial companies.

### Nomination facilities.

Nomination facilities may be introduced for shareholders through share transfer form. The Department has not given any comments. The Commission suggests that nomination facilities be provided to shareholders.

### Public Deposits.

Companies should be allowed to publish compact and abridged version of advertisement regarding public deposits to save cost to the companies. An Investment ombudsman can be considered similar to the banking ombudsman to deal with problems of the public relating to deposits, dividends, non-banking finance companies etc. The Commission agrees with the suggestions of the user groups and suggests that the Department may take appropriate action.

### Putting Common Seal.

Companies should be allowed to print Common Seal on the share certificate. The Department has not given any comments. The Commission agrees with the suggestions of the user groups and suggests that the Department may take appropriate action.

### Share Certificate.

Endorsement of splitting on share certificate should be done away with. It is necessary to pursue computerised transfer of shares through depositories since this is permissible under existing provisions of the company law. The Commission has no comments to offer.

### Non-voting shares.

Non-voting equity share may be issued only by companies having a track record of good performance, companies may be required to pay higher dividends on non-voting shares, non-voting share shall rank Paripassu with equity shares. Charitable institutions and NRIs may also be permitted to invest in these shares. If a company fails to pay dividend for 3 years non-voting shares may be entitled to have voting rights. Ceiling of 25% of total capital may be prescribed to which non-voting shares can be issued, non-voting share holder should have right to receive annual reports, issue of these shares should be permitted by special resolution of the Board. The Department has not given any comments. The Draft Bill contains no specific provision on non-voting shares. However, Commission sees a lot of merit in the proposal for non-voting shares. The concept can be introduced after detailed discussions with different interest groups. The Govt. should decide on modalities for restructuring the total capital to be raised by non-voting shares, and the relative rights of these shareholders vis-a-vis other categories of shareholders, investment by subsidiary companies in these shares etc.

Clause 69 of the Bill permits a Company to purchase its own share or other specified securities. The wording of the clause creates an impression that the conditions for any issue for buy-back of shares would be applicable to all buy-back of securities. It is suggested that the wording of the Clause be amended. Also debt equity ratio should not be laid down in the clause itself. The debt equity ratio of 2:1 or more is already there in respect of many companies. It is also suggested that buy-back facility should be available for both the extinguishment of the bought back securities and for their reissuance.

18. Insurance Coverage.

It is suggested that depositor should be entitled to insure the deposits and the depositing companies can be asked to pay the insurance premium in this behalf.

19. Power to Refuse Registration and Appeal Against Refusal.

In view of Section 111A shares of a listed company are freely transferable and a public company has no right to refuse registration of transfer of shares except for sufficient cause. This provision is wider than Section 22A of the Securities Contracts (Regulation) Act, 1956 (now omitted). The law on the subject should be clearly spelt out and made applicable to all companies whether regulated by SEBI or Deptt. of Company Affairs.

20. Registration of charges.

In view of large number of documents required to be registered, there is enormous delay in the registration of charges.

As regards registration of charges, the Secretary agreed that large number of documents were required at present and it was necessary to integrate the documents into a smaller number. The pendency had been suitably reduced and it was hoped that the time
21. **Place of keeping and Inspection of Registers and Returns.**

An Inspection should be allowed only once in six months during banking hours and proper applications with reasons should be submitted by the shareholders while asking for inspection/extract of any document. Employee shareholders should not be permitted to misuse confidential information in the case of Government Companies and BPE guidelines should be in conformity with the Companies Act for PSUs.

22. **Register of Members.**

Hard copy of Register of Members may be dispensed with since this is available on computers.

23. **Annual Report.**

Some information from the annual report like absorption of technology, energy conservation, high paid executives, foreign exchange earning which are of no utility to the shareholder should be dropped from the annual report.

24. **Passage of Resolution by Postal Ballot.**

Clause 151 empowers the Central Government to direct a company to pass resolution relating to specific business by means of postal ballot. This concept of postal ballot is fraught with problems because of the inadequacy of postal facilities. As such it is suggested that this concept of postal ballot should not be introduced.

25. **Demand for Poll.**

The notice must provide that persons desirous of demanding poll should send their request in advance before 48 hours as in the case of...
26. Managerial Remunerations.

There should be no restrictions on Managerial Remunerations which should be the prerogative of the Shareholder to fix at the AGMs.

The Department has not given any comments.

This is a matter of policy on which the Government may take a decision keeping in view all the relevant considerations.

27. Declaration of Dividends.

Any ban on companies from declaring dividends if they fail to pay the principal or pay interest is not a step in the right direction.

The Department has not given any comments.

The Commission does not agree with the suggestion given by the user group.

28. Unpaid Dividend.

It is suggested that unpaid dividend should remain with the companies instead of being transferred to the General Reserve Account with the Central Government.

The Secretary felt that there was a genuine problem as regards unpaid dividends. It has been proposed that the company can be allowed to handle this upto seven years, and beyond seven years the dividends can be remitted to a separate fund as provided in the Draft Bill.

The Commission suggests that the Government may invest the unpaid dividend in a separate "Investors Protection Fund" which should be managed by an autonomous body.

29. Dividends manner and time of payment.

Section 205A and 207 apply when dividend has been declared by a Company but do not apply to the payment of interim dividend by the Board as contemplated by Regulation 85 of Table A. It is suggested that Section 205A and 207 may accordingly be amended.

The Department has not given any comments.

The Commission agrees that Sections 205A and 207 of the Company's Act may be amended to provide for their applicability to a declaration of interim dividend by the Board of directors.

30. Chief Financial Officer.

It is not desirable to bring the appointment of Chief Financial Officer as a statutory provision and should be left to the decision of the shareholders and no stipulated qualification for Chief Financial Officer be prescribed.

The Department has not given any comments.

The reference in Clause 172 of the Bill is to Chief Accounts Officer. This provision should remain in the interests of good management of finances.

The Commission agrees with the suggestion of the Department in its reply.


While introducing the concept of Consolidation of accounts safeguards must be considered so that individual accounts of subsidiaries are compatible with respect to disclosure and other requirements of the holding companies. Contents of the various items to be disclosed should be uniform in the published accounts in order to present a comprehensive picture

CII submits that consolidation of group accounts should be optional. In terms of Clause 168 of the Bill, the consolidation of accounts of holding and subsidiary companies is optional and Central Government may direct by notification such a consolidation on a future date. Such a notification will be considered only after taking various view points in this regard.

The Commission agrees with the suggestion of the Department in its reply.
of the group's financial position. It is suggested that consolidation of accounts should be made optional and not mandatory as Income Tax Department does not accept the concept of group accounts for tax purposes and Public Sector Term Lending Institutions do not allow leverage on the basis of group assets.

32. Balance-sheet. Very often it becomes difficult to respond to questions raised on the Balance-sheet after a considerable period.

Commenting on the suggestion that no question should be asked on the balance sheet after a period of six months from submission, the Secretary felt that this cannot be agreed to. Many companies file balance sheets very late and the existing penalties for delayed submission were not deterrent. The Department was also required to raise questions in the balance sheet whenever irregularities came to notice. The number of officers was far too small to scrutinise five lakh balance sheets. At the same time, he agreed that time limit can be fixed at seven years and the Department could be given power to reopen cases beyond this period in case any irregularity was noticed.

The Commission agrees with the Department subject to the modification that instead of 7 years it should be 3 years.

33. Legal Expenses. It is suggested that total expenses incurred in legal matters towards legal fees should be allowed as business expenditure under both the Companies Act and the Income Tax Act.

The Department has not given any comments.

The Commission does not agree with the suggestion.

34. Computation of Profits. On account of certain provisions like Section 349 and 350 providing for a special method of computation of profits for purposes of managerial remuneration. The present proposal would work harshly on the companies and would be burden-some involving repetitive work. The efficiency of managerial personnel cannot be adequately rewarded on account of these provisions. As such Section 302, 349(iv) (Clause K & l, 350) may be deleted.

The Department has not given any comments.

The Commission agrees with the approach followed in Clauses 349 & 350 of the Bill.
35. Rotation of Auditors.

Clause 180(2) of the Companies Bill provides that no company shall appoint or reappoint an auditor for more than 5 consecutive terms. This clause has been added without public knowledge or debate. This change was not recommended by the working group. Rotation is not an internationally accepted practice, it will result in the decline of quality of audit, it will take away the independence of auditors, it will destabilise the profession, it will result in unhealthy practices, rotation has been rejected by earlier committees, it has been totally discredited in the USA and has been rejected by the Cohen Commission, it has been opposed by the Institute of Chartered Accountants of India, rotation will dismay foreign investors, rotation may have been introduced on a possible misapprehension of nexus between client and an auditor. It will result in instability and lowering of quality of the auditors.

36. Right of Persons to stand for Directorship.

It is suggested that the number of shareholders with whose consent a person may offer himself for Directorship should be made 500 or one percent of the voting power whichever is higher. It is also suggested that no single person should hold Directorship in more than 10 companies. This ceiling excludes Directorship in subsidiaries (where the group has over 50% equity stake) or more than 50% equity stake.

37. Retiring age of Directors.

Clause 224 lays down the age limit of 75 years for holding the office as a Managing Director or other Director of a Company whereas at present there is no age limit for the appointment to such position. It is suggested that this clause should be deleted as it is a retrograde step.

The Commission agrees with the proposed clause 190(2) of Draft Bill.

The provisions in the Bill on this subject are adequate. Any relaxation will affect the interests of shareholders as regards the number of shareholders to support Directorship. A single person could hold directorship in 15 companies including subsidiaries where the group has over 50% equity stake. If a person is a MD or full time Director in a company, he should not be a director in more than 5 companies.

The Department has not given any comments.

The Department has not given any comments.

The Commission agrees with Clause 224 of the Bill.
In fact it should be the prerogative of the shareholder to appoint such person on merit irrespective of age.

38. Resignation of Director and Auditor.

It is not clear from which date the resignation of Director will become effective and a clarification is required in this regard.

The Department has not given any comments.

Clause 222(3) of the Bill could be amended to clarify that if the resignation is in consequence of a disqualification, resignation will take effect from the date of disqualification, or, in the case of a voluntary resignation, from the date indicated in the letter of resignation, failing which from the date of the letter.

39. Director's Report

It is not necessary to give a detailed report on the appointment of Director.

The Department has not given any comments.

The Commission does not agree with the suggestion.

40. Rates of Depreciation Schedule III.

The Depreciation rates are different and higher than those provided in the existing schedule 14. It takes away the special treatment for continuous process plant apart from increasing the rate of depreciation for general plant and machinery. As a result continuous process plant would be subject to depreciation rate at 25% on WDV basis and at 9% on SLM basis. This would put the highly capital intensive Industry like Steel Machinery, Chemical and fertiliser in jeopardy etc. It is, therefore, suggested that existing depreciation rate should continue and in any case continuous process plant subject to flat rate of depreciation of 15% on WDV and 5% on SLM basis.

Depreciation rates in Schedule III of the Bill are higher than that of the rates prescribed in Schedule XIV of the Companies Act, 1956. Under the existing Act, there is a separate rate of depreciation for continuous process plant and this category has been deleted. It has also been contended that the separate rate for continuous process plant was introduced mainly to cater for highly capitalised industries where the plant life is longer. CII also apprehends that there is perhaps a move to align depreciation rates under Companies Act ('Account Depreciation Rates') with that of the depreciation rates under Income Tax (Tax Depreciation Rates). According to CII rates of depreciation under these Acts seek to achieve totally separate objective and therefore, it is obvious that the two rates will have to be different so long as different objectives are justified. It is submitted that the Companies Bill does not propose to align the Companies Act depreciation rate with that of the income tax. Moreover, Clause 160(2) (b) empower to Central Government to accord approval for
41. Inter Corporate loans and Investment

Clause 254 of the Bill provides that no company shall make any loan to any body corporate, give any guarantee or provide security or acquire by way of subscription, purchase or otherwise securities of any other body corporate which exceeds 60% of its paid-up share capital and free reserves or 100% of its free reserves whichever is more. The present section 370 and 372 provides a ceiling limit of 30% of the subscribed capital and free reserve of the company. This limit is exclusive of the quantum of guarantees and securities. Since amount pertaining to guarantee and securities should not be included in the proposed 60% limits, it is suggested that reference to guarantees and securities in this clause may be deleted.

42. Merger, Demerger and Corporate restructuring.

It would be difficult to maintain identity, period, restriction on sale of shares, bonafide business determination and enforcement of contemplated sale or business cessation.

43. Company Law Tribunal.

It is suggested that this Tribunal should be at par with CEGAT and an appeal to be allowed only to the Supreme Court.

44. Winding up of Companies.

Publication of notices for filing of papers and accounts with the registrars should be uniformly 30 days, publication in official gazette of notices should be dispensed with, no time limit be prescribed for official liquidator to give his report. Time limit for notices under Section 434

The Department has not given any comments.

The Commission agrees with the provisions of Clause 254 of Draft Bill. It does not agree with Chambers of Commerce as guarantees and security also constitute liabilities.

There are generally no problems for merger in organisations in the existing provisions of company law.

Recommendations have been made by the Working Group set up by Government on this point. The suggestions of industry and their recommendations may be considered by Government for a final view.

The Department has not given any comments.

The Commission does not agree in regard to the suggestion for direct appeal from the Tribunal to the Supreme Court. It is suggested that the powers of winding up of company may be conferred on the Company Law Tribunal.

The Secretary agreed that too much time was taken for voluntary winding up of the company as also for mergers and amalgamations. While a final decision was yet to be taken on the matter, it was possible to examine whether compulsory and voluntary winding up, mergers, recovery of dues of creditors, regulation of sick
45. Fees paid to Registrar of Companies

It is suggested that fees paid to Registrar should be made a one-time payment in a year based on the paid-up capital. It was difficult for companies to make payment of fees on as many as 14 occasions. There should be the facility of one-time payment of fees based on paid-up capital.

The Department has not given any comments.

46. Forms.

It is suggested that all forms should be simplified and rationalised and those which have out-lived their utility should be weeded out.

The Department has not given any comments.

The Commission agrees that fees paid to Registrar of Companies should be a one-time payment in a year and this should be based on the paid-up capital of the company.

The Commission agrees that all prescribed forms should be simplified and rationalised and those which have no use be weeded out.
47. Rules.

The rules pertaining to a common subject to be implemented by various agencies needs to be harmonised namely stock exchange requirement for notice period is 42 days and under Companies Act it is 21 days. Transfer of shares has to be done as per listing agreement within 30 days, and under the Companies Act in 60 days.

The Department has not given any comments.

The Commission agrees that there should be harmonisation between the rules under the Companies Act and the Stock Exchange requirements / listing agreements, as per the regulations made by SEBI.

48. SEBI and DCA.

There should be no overlapping of powers between SEBI and DCA.

The areas of operation between SEBI, RBI and Deptt. of Company Affairs should be clearly demarcated for dealing with listed, unlisted and non-banking finance companies and also for dealing with disputes in investor companies relating to each category of Companies. At present considerable confusion is there and companies are often able to delay proceedings or escape punishment.

There is considerable delay in decision at different levels in both the Company law board and the High Court. There is a proposal to convert the CLB into a judicial tribunal similar to CAT.

It is necessary to appoint full time Member for SEBI instead of single Chairman.

The Commission's observations at Sl. No. 11 (eleven) may be referred to.

49. Societies Registration Act, 1860.

The nature and severity of these legislations vary from State to State. In Tamil Nadu, management of a Society can be taken over by the State Govt. through a designated officer who is not necessarily a public servant. Uniform policy is required throughout India by which powers of dissolution of a registered society can be vested in Civil courts rather than in registering authorities.

Development organisations should be specifically brought under this Act, provisions should be made for accountability and social audit of societies registered under this Act.

This was a Central Act, but at present, it is administered by State Governments. It is for the state governments to take action.

The Commission observes that there is no effective State regulation of societies and the implementation of the act should be strengthened in different states with due regard to problems of voluntary agencies. The Department of Company Affairs may prepare model guidelines in consultation with NGOs and State Registrars and circulate for adoption by State Governments for more effective implementation and uniform application of the provisions of the Act throughout the country.
BANKING

<table>
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<th>St. No.</th>
<th>Nature of Problem</th>
<th>Suggestions for Reforms Received from User Groups</th>
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<tbody>
<tr>
<td>1.</td>
<td>Banks usually insist upon Personal Guarantee by Directors/promoters as additional security over and above the primary securities for sanctioning of various financial limits.</td>
<td>It is suggested that since banks are keeping sufficient margins in current assets, there is really no need for additional security in the form of personal guarantees of director.</td>
<td>The Commission does not agree with the proposal for doing away with Personal Guarantees of promoters/directors by way of additional security. In the view of the Commission this should be left to the discretion of the banks and should not be insisted upon as a rule.</td>
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<td>2.</td>
<td>There has been a significant increase in the bank charges in respect of various services. IBA in their revision of charges have withdrawn the caps on most of the banking transactions. As a result banks are charging on the volumes which is costing the corporates a substantial amount.</td>
<td>It is suggested that rates of bank charges should be brought down.</td>
<td>The Commission notes that in view of the general increase in the cost of banking services, the change in the banking charges may become unavoidable. The Commission recommends, however, the charges should be commensurate with the services rendered.</td>
<td></td>
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<tr>
<td>3.</td>
<td>Despite directions from RBI, many banks refuse to credit interest against delayed credits of outstation cheques.</td>
<td>It is suggested that IBA may look into this problem relating to interest on delayed payments.</td>
<td>The Commission recommends that the RBI directions on this matter should be reiterated.</td>
<td></td>
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<tr>
<td>4.</td>
<td>There is no uniform format for Bank Guarantees acceptable to all Banks.</td>
<td>It is suggested that IBA should prescribe a uniform format of Bank Guarantee and should advise the public sector undertakings not to insist upon such clauses or provisions which are contrary to the guidelines of RBI and which bankers have no objection to.</td>
<td>RBI has issued various circulars following the recommendations of Goipuria Committee as also instructions to banks for addressing problems represented by the users such as additional security for loans, uniform, forms for bank guarantee, clearance of cheques, permitting non-cash transactions in extra hours, introduction of computers, branch level decentralisation, etc.</td>
<td>It is suggested that IBA should provide a uniform format of Bank guarantee which would be acceptable to all banks.</td>
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</table>
5. Clearings in big cities should be fast. In Cities like Mumbai, Delhi, Calcutta, Chennai, Bangalore, Ahmedabad, Lucknow, there should be 1 to 5 clearing houses and at least 2 clearing in a day. Computerisation was being progressively introduced in all banking operations including clearance of cheques. The Commission is of the view that computerisation should be speeded up and that clearance in big cities should be faster.

6. Quick clearance of cheques The system of certifying cheque as 'Good for Payment' should be reintroduced so that when such cheques are deposited the funds are available for utilisation immediately. High Value cheques should be cleared on the same day. Some decisions such as release of funds on outstation cheques or issue of drafts after working hours was not being fully enforced as compared to the private banks which could start with less staff and total computerisation from the beginning and offer 24 hours service. The Commission agrees that quick clearance of cheques should be ensured but the suggestion for certifying cheques as 'good for payment' can be considered by each individual bank on merits.

7. Banking hours Banking hours should be increased. In several countries banking hours are from 8.30 A.M. to 5.30 P.M. and in some cases upto 8.30 P.M. Increase in banking hours has been suggested by RBI and the Commission agrees with the same pending increase in the banking hours the Commission suggests that non-cash transactions may be permitted beyond present working hours for the public.

8. Loan against shares There is a need to remove the limit of loan against shares given by banks. The Commission does not agree with the suggestion.

9. Off-shore banking & privatisation Off-shore banking should be encouraged and MUMBAI should be developed as Indian International Commercial Centre. Govt. should be liberal in issuing licences in the private sector for opening of banks. The Department of banking may examine the suggestion as to Off-shore banking, and more licence for private sector banks or increase in their branches.

10. NPA Special Recovery Cell All banks should have special recovery cell with full judicial powers to tackle the problem of NPAs. The entire issue of recovery of NPAs of banks has to be tackled by pursuing effective recovery measures and by removing the bottlenecks in the recovery process. The working of Debts Recovery Tribunals should be made effective. The
11. Improvement in bank efficiency

Bank efficiency is affected due to over-staffing, non-adoption of modern technology and high transaction cost. Substantial mechanisation and computerisation is the need of the hour in all banks who should have access to modern banking software and time-bound programmes for this should be introduced.

12. Real interest rate is very high as compared to the International market causing slowdown in many industrial activities.

Government should control budget deficit and its borrowings as this has crowding effect on private investment. Banks are showing preference for riskless Govt. securities, because of regulations on NPA's and CAR. This needs to be looked into.

13. Banks are not prompt in passing the benefit of low interest rate even if RBI effects cuts in bank rate, CRR and SLR. Whenever, PLR is being reduced by the banks the full impact of the reduction in the PLR is not being passed on to different categories of borrowers.

It is necessary that Govt. borrowing are done at relatively low interest rates. Priority sector lending to the extent of 40% of total loans and advances at subsidised rate of interest leads to high interest rate for bank advances to other sectors. Interest cost should be brought down. PLR should be fixed 2% to 3% over the bank rate and the spread over the PLR should be restricted to 2% and penal interest at 1 to 2% should not be charged from the small medium sector.

14. Expeditious approval and disbursement and no consortium approach.

More decentralisation of decision making powers is necessary within the banks and power should be delegated from the CMD, FD or Zonal levels to lower level.

Computerisation in the banks had been initiated but was beset with resistance from the bank Unions because of the existing agreements with the Unions.

RBI has focussed on customer-friendly procedures and delegation of greater powers to the nationalised banks in various aspects of banking operation including fixation of interest rates and various policies.

The Commission has its own reservations of Asset reconstruction units.

The Commission is in agreement with the suggestion for improvement in bank efficiency by adoption of modern technology and computerisation. The positive attitude of the bank employees' unions in this behalf is required in the interest of productivity, good business and profitability.

The Commission feels that the problem should be periodically reviewed with due regard to macro-economic consideration.

The Commission appreciates the views of the Department and recommends early implementation of the report of Gupta Committee.

The Commission takes note of the views of the Department and urges that the process of decentralisation should be actively pursued in all the public sector banks. The management should ensure
15. Funds are available with the Banks but medium and small size companies have difficulties to get funds.

16. As a measure to curb volatility in the Rupees Dollar exchange rate, RBI imposed a surcharge of \(13\%\) interest on import finance. Importers who depend on foreign credit at Libor + maximum 2 points basis took to short term borrowings thus increasing the outgo of foreign exchange.

17. RBI has stipulated that all import payments are to be debited to a separate import finance account and retained for one month. This has resulted in blocking of funds for purposes other than imports.
18. First charge on the fixed assets over and above the current assets for availing of working capital requirements, hypothecation/mortgage is insisted by the banks. This results in long-term fund support becoming inadequate for acquiring fixed assets as problems arise as to providing securities. If fixed assets are supported by short-term debts, such debts are considered as part of current liabilities whilst working out the current ratio which is also adversely affected.

Bankers should not be insist on first charge on the fixed assets over and above the charge on the current assets though this is taken as collateral security.

19. In terms of RBI directive, importers can be given an advance to finance foreign suppliers of an amount not exceeding 15% of the value of the equipment imported which has to be supported by a Bank Guarantee from an international bank to be issued by the supplier in case where the value of the advance is more than US $15,000/-. This limit is small.

The limit is small and needs to be increased to US $100,000/-. Very often the suppliers take very long time. As a result projects are delayed. This aspect needs to be revised by the RBI.

20. The RBI decision to hike CRR from 10% to 10.5% is expected to suck Rs. 2400 crores out of the Banking system.

Even the Tarapore Committee has recommended reduction in the level of CRR to 3% by 1999-2000. It is necessary to progressively reduce CRR to ensure liquidity to finance developments at a lower interest rate.

This Commission notes that the RBI has agreed to look into this suggestion.

21. Commercial Banks are charging 'interest tax' on the interest charged by them for use of funds by companies and others as per Section 5 of the Interest Tax Act, 1974. As per S. 288 B of the Income Tax Act, the amount of tax shall be rounded up to the nearest rupee. But banks normally

Government must ensure that the interest tax is charged only at the actual rate and is not rounded up to its higher quarter (0.25%).

The Department of Revenue may examine this in consultation with the Indian Banks Association.

This is a matter for the individual banks to decide on the merits of each case.
22. As a result of Contract (Amendment) Act, 1987 w.e.f. 8.1.97, unless the original bank guarantee is received from the beneficiary Govt. departments, banks would not be able to round off the entry till the limitation period of 30 years.

Section 28 as amended be suitably modified to provide for deletion of bank guarantee given to Govt. Deptt. on expiry of the validity / claim period as at present. Corporates who have to frequently give bank guarantees to Govt. departments in connection with their dealings will be benefited.

23. Merger / Consolidation of Banks.

It is necessary to implement the recommendation of the Narasimhan Committee for consolidation of 3-4 international banks and 8-10 national banks.

It is suggested that implementation of V-SAT based linkage of all major locations in the country be hastened. A proper enactment on the lines of Electronic Fund Transfer Act as in USA is warranted. Nationalised banks should accept the concept of value dated credits based on predetermined time frame for realisation of cheques or transfer of funds.

The Commission was informed that the Legislative Department is already examining the matter. This may be expedited.

24. Electronic Fund Transfer.

It is a fact that RBI lacks the machinery to regulate all the non-banking finance companies. In addition to its already heavy supervisory responsibilities, possible solution would be to move rapidly for computerisation of banking operations, electronic transfer of funds, networking of banks etc. However, computerisation is held upon account of agreement of the banks with staff unions. The unions do not permit computerisation in banks with less than 250 vouchers per day, or for more than the agreed number of vouchers every year. Indian Banks Association, on the other hand, takes the position that unions cannot negotiate on the question of computerisation. The issue is also linked up with the problem of deploying

The Commission agrees with the need for Electronic Fund Transfer and recommends that necessary legislation in this connection should be enacted soon.
25. Improving credit assessment and delivery system.

Uniform documentation for transfer of share by bank to another, financial covenants and monitoring and stamp duty implications on transfer/assignment of loan in a syndication need review.

26. Supervisory Role and Responsibilities.

It is desirable that RBI be the sole entity for supervision instead of the M/o Finance. RBI needs to shift from micro management approach to macro performance parameters and control mechanism, provide further autonomy to banks and the need for RBI representation on the board of banks need to be reviewed. It should monitor, detect, and prevent financial crime must set the framework for compensation arrangements, cooperate in investigation enforcement and disciplinary work and corporates should be allowed to book and cancel forex contracts in respect of overseas instruments.

The RBI has advised its Regional Offices that whenever they receive complaints about the non-payment of deposits to companies, they should direct the complainants to the concerned branch of the Company Law Board (CLB) which has been given specific powers under the RBI Act to direct the defaulting companies to make repayments. CLB has since resolved the procedure for the purpose and Regional Branches of CLB have started issuing orders to defaulting companies. If an NBFC fails to honour the order of CLB the RBI can launch prosecution proceedings against it. The Bank has appointed Nodal Officer at its Regional Offices for instituting prosecution proceedings in such cases. A publicity campaign by RBI for educating the public investing in NBFCs cautioning them about pitfalls to be avoided is also launched.

27. Financial Institutions versus Banks.

There is a need to move towards universal financial institutions. Institutions as term loan providers and banks as working capital providers are showing signs of disappearance. There should be mergers between institutions with Banks and vice versa. This should help to reduce surplus staff, and the unwillingness of the urban staff to go to the rural areas.

The Commission agrees with the suggestion.

This is a policy matter.

This is a policy matter.

This is a policy matter.
28. RBI Act and Banking Regulation Act. RBI should prescribe standard form for recording and managing information by banking concerns. Section 18 & 24 of BR Act and S. 42 of RBI Act be amended to facilitate monetary adjustments on a day to day basis. RBI be empowered to make regulations instead of the Govt. on determining and prescribing Standard Accounting Practices, modern software, setting up Committee to prescribe standard internal audit system, eliminate routine returns and reports which are neither looked into nor processed.

An Expert Group has been set up by the Department of Banking in the Government to look into legal and regulatory framework for the banking sector. The Govt. has also taken action on the recommendations of the Narasimhan Committee set up by the Govt. Most of the actions were required to be taken by RBI and individual banks. The Goipuria Committee Report on Customer Service in Banks appointed by the RBI has made 97 recommendations. A number of decisions have been taken on the said recommendations and RBI has appointed Ombudsman for a number of nationalised banks. They helped in the conciliation of customer grievances and passed binding orders.

A number of recommendations have been proposed such as the Bankers Books Evidence Act before the Cabinet or the RBI regulations referred to the Law Ministry. The Ombudsman system was not very much effective since number of banks have gone to the civil courts against their decision. The banks were not happy with the RBI decision to make the Ombudsman's decision binding. There is a tentative proposal to set up another Expert Group to prepare a comprehensive legislation of banking Institutions.

The Commission recommends that the Government should expedite amendments to relevant legislation.

Corporates should be free to effect individual insurance based on market perceptions and need for funds with an all over limit for CP issuances. Any increase in limit for such issuances to be subject to rating agency review. Obtaining approval for individual issuances and validity of two weeks for such approvals needs review. Stamp duty structure needs rationalisation.

30. Venture Capital.

Capital tax concession to venture capital funds U/s 10(23)F of I. Tax Act should not be withdrawn and they may be exempted as was done in the case of Mutual Funds.


NBFCs should be permitted to issue abridged advertisements for raising public deposits, funds be made available to them and interest rates be rationalised and RBI may not fix a ceiling on fixed deposits.

A task force has been set up under the Chairmanship of Special Secy. (Banking) to examine suggestions relating to various issues relating to non-banking finance companies including those mentioned in this statement. Meanwhile RBI is considering some relaxation in respect of smaller companies. It is, however, felt that no insurance for depositories in these companies can be agreed to. Another possible approach is to ask the State Govt. to take up the supervision of smaller non-banking finance companies, so that the RBI could concentrate on the bigger companies. In that case, it is possible for the Company Law Board to consider complaints made by investors against large companies. State Govts. can easily combine their supervision with the control over chit funds etc. It is, however, to be noted that a number of State Govts. have still not extended the Central Chitfunds Act to the State.

The Commission noted with great concern that the regulatory mechanism in regard to NBFCs came into existence only very late, i.e. in Jan., 1997 through an Ordinance. But, the actual implementation of this regulatory mechanism by RBI started after one year. Even at present, the regulatory mechanism cannot be said to be either adequate or effective. Thousands of crores of investors money deposited with the defaulting NBFCs, before and after the Ordinance have been jeopardised with no sign of a reasonable solution to the problem or actual repayment. The role played by the CLB and RBI so far in this connection has come under serious criticism. The Commission is of the considered view that the Govt. cannot shirk its overall responsibility to the protection of depositors who had deposited funds with NBFCs before and after the initiation of registration procedures. The Commission, therefore recommends that the responsibilities in this matter should be clearly specified and this is part of overall RBI policy.

This is a policy matter.
From Jan., 1997 RBI was empowered to regulate NBFCs by stipulating minimum capital. Funds to be kept in liquid form, and other regulations, for prudent management. Only 7000 out of 37000 NBFCs were found fit for registration and others have been given time of three years to comply with eligibility requirements. The Shere Committee had recommended against setting up an Insurance System for small depositors. Maharashtra Govt. has taken a decision at its level to set up a special Tribunal to attach the assets of a defaulting NBFCs. There are also proposals for credit rating of NBFCs before accepting deposits from the public. For small companies the system of self regulation and group guarantee was being suggested. The Reserve Bank of India Act, 1934 was amended effective January/ April 1997 by making comprehensive changes in Chapter 11B, IIIC and V of the Act, vesting wide ranging powers with the RBI including issue of prohibitory order to NBFCs from acceptance of fresh deposits and filing winding up petition against NBFCs. By virtue of the powers vested with it under the Act, the bank with a view to protecting the interest of the depositors and providing more effective supervision over non-banking financial companies (NBFCs), particularly those accepting public deposits announced a new regulatory framework in January, 1998, covering inter alia acceptance of public deposits, prudential norms to be observed by NBFCs and the role of the Auditors of NBFCs. The directions relating to Prudential Norms were modified subsequently in May, 1998. The revised regulations stipulates an upper limit of public deposit which NBFCs

various measure for the protect of the depositors should be publicised. It further recommend a scheme of insurance of deposit with NBFCs by the NBFCs themselves should be quickly introduced. The detailed view of the Commission in this regard are reflected in the main report.
Adequate number of Tribunals be established for expeditious disposal of applications for recovery of banks debts. All state capitals should be covered and infrastructure be provided. Act be

There was a genuine problem of recovery of bank dues since tribunals were not proving to be of much help. In the long run, it was necessary to amend Transfer of Property Act and set up a speedy and

The Commission recommends that the Govt. should pursue various measures including legal remedies to support speedy recovery of debts.

can accept and limit is linked to the credit rating of an approved rating agency. An upper limit has also been put on the rate of interest on deposits in order to restrain NBFCs from offering unduly high rates and mobilizing excessive deposits, which they may not be able to service. Prudential norms have been revised and issued in the form of Directions, to make them mandatory. These norms cover income recognition, accounting standards, assets, classification, provisioning for bad and doubtful debts and credit / investment concentration. Furthermore, disclosure requirements have been strengthened and responsibilities have been cast on the Board of Directors and Auditors of the companies to ensure that the operations of the NBFCs conform to the deposit regulations and prudential norms prescribed by Reserve Bank of India. The NBFCs are also advised not to create any fresh assets including by way of granting loans, making investments, etc., if the public deposit accepted by them or interest thereon falling due for payment remains unpaid as per the terms and conditions of acceptance of such deposits. The Bank has also strengthened the supervisory mechanism. Both off-site & on-site on NBFCs and detailed guidelines have been issued to its offices for carrying out inspection of NBFCs and off-site surveillance and scrutiny of their financial statements. The new regulatory measures and supervisory mechanism are expected to make the NBFC Sector more viable and offer greater protection to public deposits.

amended to provide for a fund to run the
Tribunals scope be enhanced to cover
all loans, provision for limitation be
removed and High Court Judges be
appointed as POs. There should be
 provision to appoint Receivers at interim
stage and the proceedings before the
Company Court for winding up would be
delinked from the DRTs. IDCs Multilateral
Agencies and foreign Banks may be
brought under the purview of the Act
and DRTs be also empowered to entertain
claims of all creditors of its borrowers
in additions to banks and FIs.

**33. Recovery of decretal amounts by Banks.**

To counter delays by the borrowers, it
may be provided in the CPC that if appeal
is preferred, 50% of the decretal amount
should be deposited. Provision similar
to Sec. 29 of the State Financial
Corporation Act, 1951 for seizing and
selling movable and immovable assets
should be introduced in the CPC. All
banks be notified under the Revenue
Recovery Acts by the States and
authorities under the said Act should be
given punitive powers. In respect of loans
for vehicles, No Due Certificate and No
Objection Certificate from Bank be
insisted upon at the time of transfer of
the vehicle or for renewal of permit.

**34. Contract Labour Act and Bank.**

Banks should have the freedom to engage
contract labour. Small canteen
arrangements, watch and ward, Office
Cleaning etc. depending on the quantum
of work involved and the administrative
convenience can be entrusted to outside
contract labour. Engaging full time labour
for these works will be expensive.

Banks also faced problems in the
recovery of loans because of cumbersome
legal provisions.

Reference is invited to observations under
labour sector.
| 35. | Vigilance enquiries against bank staff. | The present practice of roving enquiries demoralise the officers and such atmosphere is not conducive for effective working of banks. 

In vigilance matters CBI/CVC should take the views of the CEO of the banks in deciding course of action. |
| 36. | Bank holidays under the Negotiable Instruments Act, 1890. | Since holidays vary from State to State it causes difficulty in banking operations between States where holidays are not uniform. It is suggested that Banks may uniformly follow the holidays declared by the Central Govt. N.I. Act be suitably amended for the purpose. Concept of optional holidays may be introduced so that there is a gap on the number of bank holidays. |
| 37. | The Indian Stamp Act, 1899. | Stamp duties for the same document varies from State to State. All documents used or related to banking operations should be governed by the Central Indian Stamp Act as it is done in the case of negotiable instruments. Stamp Act may be amended accordingly. |
| 38. | Preservation of Records by Banks. | As per the Preservation of Record Rules framed by the RBI under BR Act, 1949 banks are required to preserve records for a minimum period of 8 years which has become quite costly. By amending the Rules preservation in floppy hard disk, microfilm should be permitted. |
| 39. | Delhi Development Authority Act. | Banks have been asked to shift their branches from residential areas (non-conforming zones) to the conforming |

The Commission notes that the Deptt. of Personnel is seized of the matter.

It is not possible to have uniform holidays for different States which have differing holidays.

The suggestion is under consideration of the Govt. of India. Reference is invited to views of the Commission on this point under Housing and real estate sector.

The Commission notes that steps for preservation of bank record in the computer and for their evidentiary value are being considered under the proposed Cyber laws.

This is a matter of policy.
40. Apprentice Act, 1961 and Banks.

Banks may be exempted from the provisions of the Apprentice Act as they find it difficult to implement this Act as the considerations of maintaining secrecy and security of transactions and fixing up of accountability make it difficult task for banks when they engage Apprentices for a period of 12 months from those who have completed HSC with Banking as a vocational subject.

The Commission does not agree with the Suggestion.

41. Shops and Establishments Acts of Various States and Banks.

In view of the Supreme Court's decision in CV Raman Vs. Bank of India (AIR 1988 SC 1369) that the TN Shops & Establishments Act does not apply to Banks, the competition amongst banks to have 24-hr banking, there is need to have a uniform legislation to exempt banks from Shops and Establishment Act of all States.

This is a policy matter.

42. Provisions and income recognition under S.36(1) (via) Income Tax Act is at variance with RBI directive issued in April, 1997 regarding the norms to be followed.

As the provisions to be made on the basis of RBI directives will be considerably in excess of what is allowable under S.36 (1) (via) of I. Tax Act, the same be reconciled by suitable amendment.

A number of problem were faced with Income Tax law. These were required to be taken up urgently. Even where an issue had been decided by the Tribunal, the same issue was again raised by the assessment officer. The normal practice was to recover excess tax and then oblige the banks to ask for refund in appeal. The write-offs of arrears were not given tax concessions. There were many problems in the collection of impress tax and tax deducted at source. The income tax authorities also asked for unnecessary information regarding depositories. This

This may be examined by the Department of Revenue.
43. With effect from 1.4.96 the hybrid system of accounting was dispensed with and only cash basis or mercantile basis of accounting was allowed. With regard to Commission on bank Guarantee it is almost impossible to estimate and recognise income on mercantile basis. S. 145 of the I. Tax Act be amended to permit Banks to maintain the accounts on 'hybrid system' for tax purpose.

The problem was likely to increase after the enactment of the Money Laundering Bill.

The Commission notes that the mercantile system of accounting is already in vogue. The suggestion may be examined by Deptt. of Revenue.
<table>
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<tr>
<th>S.No</th>
<th>Nature of Problem</th>
<th>Suggestions for Reform received from user groups</th>
<th>Comments of Ministries/Deptts.</th>
<th>Remarks of the Commission</th>
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<tr>
<td>01.</td>
<td>FDI Policies are inflexible and ambiguous.</td>
<td>The policies of FDI should be flexible, unambiguous and transparent with long-term objectives and directives of the Government should have minimal mid-course policy changes.</td>
<td>The Director, Department of Economic Affairs, has stated before the Commission that there were no major problems for foreign institutional investments. The 1995 regulations of SEBI provided for the entry and regulation of foreign institutional investors, issue and transfer of shares etc. The actual materialisation of approvals of foreign and domestic investment was poor. As against USD 48.5 billion over 1991-98, only about 11 billion had actually materialised. Major problems related to power, telecom, and petroleum exploration because of hurdles in individual sectors. There was no problem in mobilisation of domestic resources by foreign investors.</td>
<td>Observations of the Commission are given in the main report.</td>
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<td>02.</td>
<td>Delay in clearance of approvals.</td>
<td>There is a need to fast-track clearance of approvals and mechanism for speedy implementation.</td>
<td>The Government has taken various steps to counter a fall in direct investment including that of NRIs. According to the Joint Secretary, Department of IPP, once approval was given to the foreign investor to set up operations, he is on par with any local company. Problems of delay in securing various approvals and multiple agencies still persisted. Some of these problems were specific to each sector such as the issues of fuel linkage, power projects, and tendering in telecom.</td>
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<td>03.</td>
<td>Case by case approach</td>
<td>Automatic clearance should replace case by case approach in the approvals of infrastructure sector up to 100%.</td>
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<td>04.</td>
<td>Policy on infrastructure.</td>
<td>Policy on infrastructure sectors should be clearly defined such as fuel policy and tendering in telecom.</td>
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<td>05.</td>
<td>Widening automatic approval list.</td>
<td>The list of industries for automatic approval up to 74% may be enhanced to include banking and financial sector and textile-based industries which have high potential for absorbing the foreign investment.</td>
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<td>06.</td>
<td>Improving Centre-State cooperation.</td>
<td>There is need for a mechanism to improve cooperation between the Centre and State level in granting State Government's clearances.</td>
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07. Encouraging joint ventures among SMEs with foreign investment. Govt. should encourage joint ventures among SMEs with foreign investment. This requires enhancing the level of plant and machinery for SSI sector to make it attractive for foreign investment.

08. Allowing FDI in consumer goods. Since India is a signatory to WTO and is bound to liberalise imports within a short time, this is the right time to permit FDI in consumer goods sector. But at the same time to encourage domestic industry to upgrade technologies to meet the competition.

09. Insurance cover. There should be an insurance scheme to investors to cover foreign exchange fluctuations.

10. Transfer of shares. There should be a modification in rules governing transfer of shares.

11. Balance sheet. There should be one balance-sheet for holding companies.

12. India as an attractive destination. Modifications in labour laws, company law, harmonisations of Patent Laws, and speedy disposal of disputes has to be carried out in order to render India an attractive destination for foreign investment.

13. Joint venture structures. There should be legal support to decide on the structure of the Joint venture company as per bilateral treaties between the investor and recipient countries.

14. Adequate compensation. There should be adequate compensation mechanism to be developed to guarantee investment in the country.

15. Asian partners. Industry should make more efforts to have direct contact with partners within the Asian region which has a high potential for investment flows.

16. Tasks before the industry. Industry should join hands with the Government in
creating global standards and improving the image of India for taking a great leap forward. Industry should encourage cooperation at enterprises level for creating necessary technological dynamism and promoting FDI.

The linkages between R&D institutions and industry must be mutually strengthened.

In the case of major industries, investment certificates from banks are not available on time resulting in remittance problems. Sometimes the banks do not credit interest. These matters may be looked into and solved.
## THE INDUSTRIES DEVELOPMENT AND REGULATION ACT, 1951

**01.** The preamble to the Act provides for the development and regulation of certain industries. In the context of the economic liberalisation, regulation of industry is no more required.

It is suggested that the preamble may read as: An Act to provide for the development of industries.

The Act could be renamed to give thrust for development of industries rather than regulation. The Act may also cover other forms of proposals like Foreign collaboration/ECU/IFT/STP. A designated monitoring agency for enforcement may be provided for in the Act. Laying of notifications issued before Parliament may be simplified.

(a) The proposed renaming of the Act is supported. The other suggestions of the Ministry are endorsed.

(b) The Commission also recommends that there should be a separate legislation for regulating SSI & Ancillary industries. The legislation should be comprehensive including provisions on labour matters on the lines recommended by the Abid Hussain Committee Report. If the States agree, this could be a Central Act; otherwise the Centre could formulate a model legislation on the above lines which the States could then enact and also apply to UTs.

**02.** The name of the Act would have to be changed if only development and promotion of industry is to be sought.

It is suggested that the Act may be called: Industries Development Act, 1997.

The Commission agrees with the suggestion of the User Groups.

**03.** As no regulation in takeover of industries is desired any more Section 2 which provides that it is expedient in the public interest that the union should take under its control the industries

Section 2 of the Act may be deleted.

It is difficult to consider deletion of various sections indicated in this broadsheet because the Govt. of India had enabling powers for the control of industries specified in the Schedule. Even after industries were delicensed, the responsibility of the Govt. for the control of industries in the larger public interest

The Commission agrees with the views of the Department.
04. It is necessary that the definition of 'ancillary industrial undertaking' contained in Section 3(aa) of the Act may be deleted. The definition of ancillary industries contained in Section 3(aa) of the Act may be deleted. The suggestion of the User Groups cannot be accepted unless the definition of ancillary industries is included in a separate legislation dealing with SSI and ancillary industries.

05. As registration of new article is no more desired and most of the industries are delicensed, the provision contained in Section 3(ad) of the Act needs to be deleted. Section 3(ad) of the Act may be deleted. It was possible to look at suggestions relating to ancillary and small scale industries after consulting the Department of SSI. The Commission agrees with the Department of SSI that Section 3(ad) of the Act cannot be deleted as it is required for industries which are subject to licensing such as potable alcohol, firearms and other ammunitions, industries making hazardous chemicals and other substances.

06. Power is given under Section 9 of the Act to levy cess on the wholesale price of articles manufactured or produced in any industry. The amount so collected is to be utilised by the Development Council strictly for the advancement of scientific and industrial research for the Central Government. It is suggested that cess should also be allowed to be used for infrastructure sector and accordingly Section 9 of the Act may be amended. There is no need to provide for use of levy of cess on certain industries in the budget for infrastructure since there are other budget provisions for infrastructure in different sectors. The Commission agrees with the views of the Department. However, the Department should ensure effective use of the funds colligated from the levy of cess for the authorised purposes.
improvement in design and quality, for training of technicians and labour and for incurring administrative expenses.

07. As most of the industries should be delicensed except for a short list of industries related to security and strategic concerns, hazardous chemicals and for environmental reasons, there is no need for any provision for the registration of existing industrial undertakings.

It is suggested that Section 10 of the Act dealing with registration of existing industrial undertakings may be deleted.

This section cannot be deleted. Deptt. of IPP would examine in consultation with Law Ministry whether industries licensed earlier but now falling in the delicensing category were required to conform to licensing conditions or export obligation. The 1994 Press Note issued by the Deptt. could be reviewed for the purpose.

In the view of the Commission, Section 10 of the Act dealing with registration of existing industrial undertakings should be retained for the sake of SEIs, and for the sake of full coverage of statistical data. The Deptt. could again clarify the position with regard to industries falling in the delicensed category as to whether they have to conform to licensing conditions.

08. As it is proposed to delete the provision relating to registration of existing industrial undertakings there is no need to have a provision in the Act for revocation of registration in certain cases.

It is suggested that the provisions of Section 10A of the Act may be deleted.

This cannot be agreed to.

There is no need to delete Section 10A.

09. At a time when the licence-Raj is sought to be done away with, there is no need to have in the Act any provision relating to licensing of new industrial undertakings by the Central Government.

It is suggested that the provisions of Section 11 of the Act may be deleted. The Rules framed under Section 30 may also be suitably amended.

As regards Sections 11, 11(a) and (b), this would be examined in the light of a proposal for deleting the definition of ancillary industrial undertaking.

There is no need to delete Section 11.
<p>| | | |</p>
<table>
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<tbody>
<tr>
<td><strong>10.</strong></td>
<td>There may be no need to have any provision in the Act requiring licences for producing or manufacturing new articles by undertakings registered under Section 10 of the Act.</td>
<td>It is suggested that the provisions of Section 11A of the Act may be deleted.</td>
</tr>
<tr>
<td><strong>11.</strong></td>
<td>Since it is proposed to delete the definition of 'ancillary undertaking', power of the Central Government to specify requirements to be complied with by ancillary undertakings for the purposes of the Act have to be amended.</td>
<td>It is suggested that Section 11B of the Act may be suitably amended so as to delete reference to ancillary undertaking therefrom. In view of derecognition of many SSI items, such items will have to be excluded from this Section.</td>
</tr>
<tr>
<td><strong>12.</strong></td>
<td>Under Section 12 of the Act, power is reserved to the Central Govt. for the revocation of or amendment of licence in cases where the licencee has failed to establish the industry within the time fixed in the licence. Under Section 13, further provision for licensing of industrial undertakings in special case has been laid down. Section 14 provides that before granting any licence or permission, the Central Govt. may require such</td>
<td>In view of abolition of licensing, the provisions of Sections 12, 13 &amp; 14 of the Act appear to be redundant and may be deleted.</td>
</tr>
</tbody>
</table>
purpose, to make a full and complete investigation in respect of applications received in this behalf and report to it the result of such investigation after following prescribed procedures.

13. Sections 15 to 18 of the Act lay down that the Central Govt. shall have power to cause investigation to be made into scheduled industries or industrial undertakings, into the affairs of a company in liquidation, have directions issued to industrial undertaking based on report of investigation and for powers of the investigators to take assistance of persons of specialised knowledge. It is suggested that since all these sections 15 to 18 relate to investigations, these sections should be amended and consolidated into one section as they would be applicable to limited industries on account of extensive amendment to Schedule I of the Act and the powers of the Central Govt. may be exercised under the Rules rather than the Act. Sections 15 to 18 may be retained as Govt. may wish to exercise control over the industries in the Schedule. This exercise could be reconciled with the provisions of SICA. Reasons for control over industry under IDA go beyond the revival of sick industries. Hence certain provisions should remain in IDA along with SICA.

14. Certain powers of the Central Govt. relating to assumption of management or control of an industrial undertaking in certain cases, cancellation of contracts in bad faith etc., making of declarations calling for report on the affairs of the company, making of inventory of assets and in order to make for uniformity in legislation, it is suggested that all these provisions contained in Sections 18A to 18B, 18C, 18D, 18E, 18FA, 18FB, 18FC, 18FD, 18FE, 18FG of IDA may be suitably amended and put in SICA.

The Act should provide for powers to the Central Govt. for collection of cess, declare compulsory licensing, lay down policies and norms for small scale sector, take over of management of a category of industries and powers of inspection and seizure of records call for reports and lay down conditionalities for monitoring.

The Commission agrees with the views of the Department. It is not possible to put in Sections 18A to 18FG of the Act in SICA as the BIFR is not competent to carry out the functions of the Central Government.
liabilities, control over supply and price of articles etc. are already in existence under the Sick Industrial Companies (Special Provisions) Act, Essential Commodities Act and the Companies Act as amended.

15. In view of delicensing of industries it may not be necessary to have in the Act any provision relating to inspection of the premises of any industrial undertaking or examine any records or person therein by any person authorised by the Central Government.

It is suggested that the provisions of Section 19 of the Act may be deleted.

It is not possible to delete Sections 10, 20 and 23. Govt. rarely exercised the power of inspection of premises of industrial undertakings.

It is not possible to delete Sections 19, 20 and 23 of the Act. Government may issue executive instructions in the matter to ensure reasonable exercise of such power.

16. As it is proposed that the govt.'s intervention in the industry should be minimum, it may not be necessary to have any provision of general prohibition of taking over management or control of industrial undertakings.

It is suggested that the provisions of Section 20 may be deleted.

The Commission does not agree with the suggestions.

This provision would be necessary as a number of industries continue to be licensed.

17. In view of abolition of licensing provisions in the Act there may not be any need to retain any provision for finality of the

It is suggested that the provisions of Section 23 may be deleted.
| 18. | Provision in the Act for penalties relates to contravention of sections which have been proposed to be deleted. Penalties have also been provided in the respective economic legislations. | It is suggested that the provisions of Section 24 may be deleted. | Provision for penalties under Section 24 may be deleted while the Act could be made more liberal in terms of approvals and exemptions. | The Commission is of the view that the provisions of Section 24 be retained. |
| 19. | The Central Govt. by notification in the Official Gazette can exempt industrial undertakings and scheduled industries from the operation of all or any of the provisions of the Act or any rule or order made thereunder. | It is suggested that a time limit for exemption should be fixed for period of 10 years and after 10 years there should be no difference between small scale industry and other delicensed industries. | The Deptt. of SSI is not in favour of the suggestion for limiting the period for exemption to 10 years. | The Commission is in favour of retaining the provision. |
| 20. | Amendments/deletions required in the First Schedule to the Act in the context of liberalisation/delicensing of industries. | It is suggested that the following headings may be deleted: 1 to 38. In heading 19, hazardous chemicals needs to be defined and other chemicals needs to be deleted. | Service sector should be also included and items based on NIC Classification, 1987 be covered under the Act. Central Govt. be given powers to amend the schedule entries as in ECA. | The Act should be amended to provide for power to Central Government to clarify by notification the description of industries specified in the schedule in so far as it does not provide for any new industry. The suggestions made by specific industries may be considered by Government. |
The definition of 'sick industrial company' in Section 3(p) of the Bill is too restrictive and needs to be changed in the liberalised environment.

02.

It is not advisable to link the definition of 'industrial company' to Schedule I of lORA.

03.

If each Bench of the BIFR is headed by a judicial member it would help in disposal of cases in accordance with rule of law, and principles of natural justice.

04.

Clause 12 of the Bill makes it discretionary to make a reference to BIFR in case of permanent sickness but mandatory in the case of potential sickness. The order may have to be reversed.

Suitable amendments may be made so as to provide for mandatory reference in the case of permanent sickness and discretionary in potential cases.

This Bill was prepared on the basis of an overall approach towards the problem of incipient sickness in the industry and to meet with the deficiencies in the existing Act. In doing so, not only recommendations of a Committee (Goswami Committee) and Government considerations thereof were kept in view but also consultations were held with different Ministries/Departments concerned and Financial Institutions. After that only the proposal on enactment of new law in place of existing Act was prepared. It was with the approval of the Cabinet that the Bill was prepared. Thus the Bill contains an overall approach for replacement of the existing Act starting with the change in the definition of sickness to the overall procedure to be adopted by the BIFR. It has thus not been found possible for the Department of Economic Affairs (Banking Division) to comment on the suggestions which propose to change the basic framework of the Bill. However, now that action has been initiated to recast the Bill as it had lapsed on the dissolution of Lok Sabha in December 1997, the suggestions forwarded by this broadsheet will be kept in view while recasting the Bill.

Point No. 1 to 6:

The Commission agrees with the approach reflected in the SICA (Amendment) Bill, 1997. It recommends that the Government should pursue early passage of the Bill after incorporating all the suggestions of the Goswami Committee.
05. The requirement in Clause 13 of the Bill for a certificate from public or state level financial institution or bank as to sickness for making a reference to BIFR would appear quite unnecessary in the liberalised environment.

06. The time frame stipulated in clause 15(5) of the Bill is of 15 days which is too short a period for the sick company to frame a scheme. It is suggested that the time limit of 15 days prescribed for framing a viable restructuring scheme may be increased to 45 days. More teeth should be given to BIFR to enforce its directions on banks, FIs and the State Governments.

07. Clause 16 of the Bill requires the BIFR to mediate and attempt to formulate a viable restructuring scheme if the sick company has failed to submit a scheme under Section 15. It may also direct the secured creditors to formulate a scheme in that event. It is suggested that the provisions should be amended to give powers to BIFR to enforce its decisions and it should act as a quasi-judicial body and not a mediatory organ. The words 'the board shall formulate' should be substituted in place of 'mediate and attempt'. Clauses 17 and 18 of Bill may be deleted.

08. Clause 28 of the Bill which replaces Section 22 of the Act relating to suspension of legal proceedings, contracts etc. enables all such proceedings to continue save and except for which BIFR has granted a stay. To have a balanced view of the matter the existing Section 22 may be retained otherwise framing of scheme will be difficult if not impossible with litigations being proceeded with by various parties.

Point No. 7 to 10:
The Commission agrees with the suggestions made by user groups for necessary amendments.
09. Clause 31(1) of the Bill deals with the powers of the BIFR so far as misfeasance proceedings are concerned involving the sick industrial companies. Since these powers are quite important it would be advisable that each bench of BIFR is presided by a judicial member.

10. Clause 32 deprives the sick industrial company from making any appeal against any order, scheme or sale effected under the Act. At least one right of appeal should be provided as even High Court orders are appealable. Moreover, if no provision for appeal exists, then Articles 226/227 of the Constitution will be frequently invoked by a company or persons concerned against each and every order of BIFR.

11. Explanation to Clause 38 of the Bill provides that for the purpose of this Section:

(a) Company means any body corporate and includes a firm or other association of individuals; and

(b) director in relation to a firm means a partner in the firm.

As firms are covered under the law but only undertakings, registered companies are covered by Section 31(1)(p) this Clause should be amended accordingly.

The Commission does not agree with the suggestion.
### ESSENTIAL COMMODITIES ACT

1. Various control orders regulating the manufacturers, distribution and commercialization of food articles have been promulgated by different departments such as Fruits Product Control Order, 1955 administered by Ministry of Food Processing, Vegetable Oil Product Control Order, 1947 administered by Directorate of Sugar. It has been found that in certain cases the specifications are at variance thus leading to confusion in the minds of the manufacturers for example PFA Act does not allow use of artificial sweeteners in food products except in Carbonated water and Pan Masala whereas FPO permit use of the same in some food products.

There is an immediate need to harmonise the various control orders and the specifications contained therein.

Govt. had promulgated an Ordinance in April 1998 to amend the ECA. Govt. also decided in October 1997 not to extend the Essential Commodities (Special Provisions) Act. Subsequently, a Bill was introduced to amend ECA which provided for the implementation of recommendations of the Expert Committee including transfer of some provisions from the Special Provisions Act, constitution of special courts by State Govts and summary procedure for trials, for prevention of misuse of power by lower field functionaries and for the elimination of delays. Further recommendations of the group are compulsory review of the list of essential commodities at least once a year in consultation with trade bodies and consumer organisations, giving allowance for difference between physical stock and stock on record due to climatic conditions and movement of stock in transit, power of search and seizure with Tehsildar, power of District Collector to sell commodities through PDS channels. The Bill has been referred to a Select Committee. An inter-ministerial group headed by Secretary, Department of Consumer Affairs reviews steps to reduce/simplify the orders issued by 13 Ministries.

The Commission feels that there is a need to harmonise the various control orders that have been issued from time to time with regard to specific matters so as to reduce the confusion existing in this matter. The Commission recommends that to secure harmonization of the orders, all control orders which other Ministries issue should be in consultation with the Department of Consumer Affairs. Efforts should also be made to reduce and simplify the orders from time to time. The continuance of a commodity as an essential commodity specified or notified in the Act should be reviewed at least once a year.
2. It has been provided in the Act that no officer below the rank of Sub Inspector of Police shall arrest any person accused of committing an offence under this Act notwithstanding anything contained in the Code of Criminal Procedure, 1973.

3. The penal provisions of the Act were made more stringent through Essential Commodities (Special Provision) Act. It has been extended for periods of five years. An appellate jurisdiction has been extended for periods of five years. An appellate jurisdiction has been transferred from the judiciary to the executives and innocent traders are being harassed for the offence without any mens rea.

In view of the problems stated and as production of foodgrains have multiplied between 1955 and 1995 and Consumer Protection Act has been introduced to safeguard consumers' interest, it is necessary to withdraw the Essential Commodities (Special Provision) Act. The list of essential commodities may be shortened on the basis of its mass consumption, being an important raw material for mass consumption items, that it is a universal intermediate which goes into the production of a wide range of products and on the basis of demand and supply. The limits placed on stock and foodgrains should be removed and should be enforced only during time of scarcity. Restrictions on movement of foodgrains should be lifted, only senior officer of the Company should be liable for prosecution, variations in stock limits should be allowed. A seizure should be restricted only to the commodities in respect of which violation is noticed and not of all the commodities in the shop. The guidelines issued by the Central Government for implementation of the Act should be circulated to Chambers of Commerce & Industry and Trade Associations.

Standards of Weights and Measures Act, 1976

1. The provisions of the Act are applicable to all food imported or manufactured in the country. Out of experience in mentioning the MRP on the label, imported packages are it should be made possible for domestically manufactured items to use MRP on the labels.

After August 1993, the use of price stickers on packages is not permitted. Packages of some imported products contained stickers. Domestic trader should require the foreign supplier to provide for packaging and labeling in conformity with Indian law.

The Commission endorses actions taken by the Department. It urges the Department of Consumer Affairs to persist with its efforts for coordinated action by other Ministries enforcing EC Act. The interests of traders and consumers would need to be balanced in the implementation of the Act, since the prevention of hoarding and profiteering is in the interests of weaker sections.
allowed to use stickers whereas domestically manufactured items are not allowed to use the same.

2. The Weights & measures (Packaged Commodities) Rules expect that all information required thereunder should be printed in the pre-displayed package, the information relating to date of manufacture, MRP or such like other information which varies from batch to batch cannot be shown on the pre-displayed package.

The respective rules made under the Act to be amended to obviate the problem of manufacturers. The details about the product can be stated at any other place for consumers observation and not necessarily on the pre-displayed package.

Industry or trade were required to mention MRP on the label, but it may be difficult to mention the ex-factory price because of the reluctance of Deptt. of Revenue. Trader is not allowed to use "local taxes extra" except for drugs. Problems of MRP should be resolved after discussion with Deptt. of Revenue & Industry. Standing Committee on pre-packaged commodity is considering.

The respective rules made under the Act to be amended to obviate the problem of manufacturers. The details about the product can be stated at any other place for consumers observation and not necessarily on the pre-displayed package.

3. The Director or any authorised person has powers under the Act to seize the goods from the premises of the traders for any offence under this Act.

It is suggested that goods which are subject to speedy or natural decay may be disposed of by the Director or other authorised person in such manner as may be prescribed. All searches and seizures made under the Act shall conform to the provisions of the Cr.P.C. 1973 relating to searches and seizures.

The existing provisions provided for disposal of perishable goods and for following the procedure under Cr.P.C.

The Commission agrees with the Department.

4. Difficulty arises with regard to the definition of Pre-packaged Commodity Rule 2(e).

The definition of pre-packed commodity should be amended to make the rule applicable only to sealed packages. Such packages where the customer can take out the commodity from the protective covering for packaged goods. The Commission recommends that the maximum retail price (MRP) label on the packaged goods should not exceed 30% of the ex-factory price or cost of manufacture. In the case of goods which are subject to excise, the cost of the manufacturer should be known. This suggestion is, subject to the concurrence of Deptt. of Revenue. However, the enactment should have an enabling provision by virtue of which a customer can challenge the price stated on the goods. The standard and packaging requirements prescribed for Indian manufacturers should apply to imported goods also. An early decision on this point may be taken.

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examination and trial should not be treated as prepackaged commodity.

5. The provision of waiver for illegible/rubbed off declarations.

Rules 24, 25 and 26 should be amended to avoid harassment of a manufacturer, packers where a single package declaration is rubbed off or made eligible due to any reason whatsoever and the manufacturer should get the same benefit of 5% errors waiver as applicable for clearing a batch of packages while they are tested for error or deficiency in weights and measures. The system being followed by the manufacturer should be given due consideration while filing cases. The Inspector must check larger number of packs with dealers and not file prosecution for the information missing in one or two packs.

It is not possible to make any allowance for failure to make the declaration in respect of commodities but allowance can be made for accidental erasure and for lesser quantity upto 1 to 2% of the sample. The number of cases booked for rubbing off information is negligible.

The Commission is of the view that the Department may implement their decision early.

6. Warranty Clause

Traders should not be held responsible for any shortage or deficiency in the case of packed items sold in the original form in which they are supplied to them by the manufacturer or packers if they have not been tampered with. It is suggested that the following provision may be incorporated in the Act.

"The bill, cash memo or invoices in respect of sale of any pre-packaged commodity given by a manufacturer, distributor, dealer in such pre-packaged conditions to the vendor thereof, shall be deemed to be a warranty given by such manufacturer, distributor or dealer to the effect that such pre-packaged commodity is in compliance with all the provisions of the Act and Rules.

This could be considered by the Committee but it was felt that it would be misused by the trader. Normally, retailer is not held responsible for the package has not been tampered with.

The Commission felt that if the packaged item has not been tampered with at the time of sale of the item, the warranty clause should apply to the manufacturer and distributor/dealer who has supplied the goods.

7. Offences by Companies.

Many partners/directors who do not take active part in the day to day operations of the firm, companies are prosecuted for offences under the Act. It is necessary that unnecessary harassment to them may be avoided by giving opportunity of being heard before launching prosecution. Companies should be entitled to authorise any officer director or manager to exercise all powers and ensure compliance under the Act and the rules and shall give notice to the office of the Controller, Legal Metrology of the concerned State or Union Territory about such

This suggestion can be considered. Normally, notice is given to the Directors of the company before taking up prosecution. Out of about 10,000 cases taken up each month all over the country, about 90% are usually compounded. It is difficult to step up the rate of prosecution due to inadequate staff. The Expert Group has recommended that a company may nominate a person responsible for the compliance of the Act.

The Department may consider the suggestion of users. The Commission suggests that the provisions of the Act should be comprehensively and effectively enforced at the ground level itself.

Also, provisions for making appeal, revision of
CONSUMER PROTECTION ACT, 1986

1. Under this Act, it is necessary to improve the consumers grievance redressal system and promote effective functioning of consumers courts in particular.

It is suggested that a full time judicial Member and one part time non-judicial Member should sit on the Consumer Court. It is found that generally there is no judicial member and two non-Judicial Members attend the Consumer Court during alternate weeks by turn or some alternate arrangements. All decisions of the Consumer Courts in all the 3 tiers are subject to one Appeal. Judgement writing responsibility falls on one full time judicial member, the Chairman. In the absence of the law clerk or legal researcher, there is delay in delivery of decisions. In United States there used to be one law clerk attached to one judge, now 4 law clerks are attached to a judge with further assistance of staff Attorney who help in writing draft judgements.

The Department of Consumer Affairs monitors the functioning of the National Commission and gets periodic information of the working of State & District Consumer forums. It was found that most cases were disposed of between 6 months to a year and 25% cases were disposed of in 90 days.

State Governments are quite lax in enforcing the Act and assign low priority to the functioning of consumer courts. The quality of case disposal suffers due to shortage of members. Department has suggested to have benches for National & State Commissions. The working of the Act was being regularly reviewed in meetings with State officials. It was found that the collected funds are often not fully used for improving the courts' infrastructure, and there were shortfalls in staff and appointment of members. Low remuneration led to a few qualified persons opting to be members.

The Commission has been told that the Ministry of Consumer Affairs monitors the functioning of the National Consumer Disputes Redressal Commission only and depends on the State Governments for monitoring the working of State CDR Commissions and the District Forums. From the figures furnished, the Commission finds that the time taken for disposal of cases is too long, and adjournments are given repeatedly. The Commission is of the view that the State CDR Commissions should be asked to monitor the working of the District Forums as provided in the Act. They should be asked to ensure effective supervision over the District Forums. There should be dissemination through internet and other modes of important decisions.

The Commission found that the District forums are not deciding cases expeditiously and the time limit for disposal of cases is not being followed. In many cases their working is more akin to the civil courts.

The Commission recommends that where the institute or pendency of cases in a district is more, there should be more district forums. The State CDR Commissions should consider sitting in benches on tour in circuit. The National Commission should go in for more circuit hearings of matters. So far as District Forums are concerned, the sitting District Judge of the district should not be made the simultaneous Presiding Officer of the District Forum i.e., there should be no dual arrangement. The Presiding Officer should be a whole-time person. The remuneration payable to non-judicial members should be revised upwards and adjournment of cases due to want of quorum should be minimised. State Governments should assign higher priority to consumer
2. **Alternate Disputes Resolution.**

To reduce the load of Consumer Court and to make redressal of grievances quick and inexpensive it is necessary to follow alternative disputes resolution mechanism. An alternate dispute resolution through arbitration may be introduced with the help of CII and FICCI to have system akin to Better Business Bureau of USA and Canada.

This suggestion can be examined. The Expert Group has recommended that the term 'services' be redefined as to its scope, consumer courts be autonomous, branch office be redefined, consumer courts to dispose the cases speedily and protect the interests of helpless consumers, State Commission to constitute benches to reduce the pendency of cases and seniormost member to act as President when the President in office of a District Forum or State Commission is by reason of absence, unable to perform his duties.

The Commission is of the view that an Alternate Dispute Resolution mechanism should be set up by trade and industry on lines similar to Better Business Bureau in USA and Canada. If necessary, Government may make provision in the Consumer Protection Act for this purpose. There should be a statutory provision also for consumers to resolve disputes through arbitration on the lines of provisions contained in CPC amending bill.

3. **Ombudsman in the Banking Sector.**

Ombudsman Scheme introduced by the Reserve Bank of India some years ago have shown some inadequacy. Firstly banks do not honour the award given by the Ombudsman and in some cases challenge them in the Court of Law. Secondly, some Ombudsman are taking a very strict narrow view of the jurisdiction going literally by the words used in the scheme. The RBI should issue some directions to the Ombudsman in this behalf. Ombudsman must also have the powers to declare the unfair contracts or conditions of contractors as illegal and not binding on the consumers.

This suggestion can be examined. The Commission has recommended to the Experts Group that the term 'services' be redefined as to its scope, consumer courts be autonomous, branch office be redefined, consumer courts to dispose the cases speedily and protect the interests of helpless consumers, State Commission to constitute benches to reduce the pendency of cases and seniormost member to act as President when the President in office of a District Forum or State Commission is by reason of absence, unable to perform his duties.

The Commission commends effective use of Ombudsman in the Banking Sector as suggested by users.

4. **Ombudsman in the Insurance Sector.**

The scheme to introduce Ombudsman in the insurance sector should be finalised in consultation with the consumer organisations.

This suggestion has been agreed to. The Commission recommends early implementation.

The Commission supports voluntary arbitrations as suggested, in order to reduce the load on civil and consumer courts.

5. **Voluntary Arbitration.**

The use of voluntary arbitrations in US and Canada for resolving all disputes relating to business, employer and employee, government and contractors, consumer and business, sexual harassment of female employee, denial of statutory rights and discrimination against arbitrations. Retired judges and lawyers offer services for conciliation.

There was no proposal to consider voluntary arbitration.

The Commission supports voluntary arbitrations as suggested, in order to reduce the load on civil and consumer courts.
6. Unfair terms of contracts. Goods once sold shall not be taken back is engraved in all bills issued by traders and shopkeepers. This denies relief or remedy to the consumer. In the UK, there is Statute called "Unfair terms of Contract Act". Many advanced countries also have Product Liability Act and Right to Information act. These laws should be made and enforced in India also.

7. Builders Licensing Board Act. With increasing number of complaints against builders right from the defective title to the property, delays and unsafe structure, escalation in price, mis-representation regarding land/build-up or the violations of municipal laws make it necessary that like advanced countries we should also have Builders Licensing Board Act. The expression builder should also include those who are engaged in big and small jobs connected with constructions, plumbing, electrical and wiring contractors. A 7 years guarantee for any defect in the construction should be provided for, a model contract between builder and consumer should be prepared.

8. Imported Food Article and Drugs. It is suggested that the Government may examine application of standards, certification of marks, information labelling and care labelling in respect of imported foods, pharmaceutical or other electronic appliances. Same should be done in respect of pre-packaged drinking water.
### Annexure to Statement 7

**List of 129 Orders issued under the Essential Commodities Act by 13 Ministries/Departments**

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Ministry/Department</th>
<th>Commodity</th>
<th>Title of Control Order</th>
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<tbody>
<tr>
<td>1.</td>
<td>D/o Coal</td>
<td>Coal including coke and other derivatives</td>
<td>Collery Control Order, 1945 - amended in 1996.</td>
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<td>2.</td>
<td>M/o Steel</td>
<td>Iron &amp; Steel, including manufactured products of Iron &amp; Steel</td>
<td>Iron &amp; Steel (Control) Order, 1956 - clause (7) kept in abeyance. This relates to conditions for use of Iron &amp; Steel.</td>
</tr>
<tr>
<td>3.</td>
<td>D/o Agriculture &amp; Cooperation</td>
<td>Fertilizers, whether inorganic, organic or mixed</td>
<td>Fertilizer (Control Order), 1985</td>
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<td></td>
<td></td>
<td>Seeds of food crops &amp; seeds of fruits and vegetables</td>
<td>Fertilizer (Movement Control) Order, 1973</td>
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<td></td>
<td></td>
<td>Seeds of cattle fodder &amp; jute seeds</td>
<td>Plants. Fruits &amp; Seeds (Regulation of Import into India) Order, 1989</td>
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<tr>
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<td>Seeds (Control) Order, 1983</td>
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<tr>
<td>4.</td>
<td>D/o SSI &amp; ARI</td>
<td>Coconut husk (raw or retted)</td>
<td>Coconut Husks Control Order, 1973</td>
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<td>Coir fibre extracted from coconut husks</td>
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<tr>
<td>5.</td>
<td>D/o Food &amp; Civil Supplies</td>
<td>Foodstuffs, including edible oilseeds &amp; oils</td>
<td>The Coarse Grains (Removal of Control) Order, 1954</td>
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<td></td>
<td></td>
<td></td>
<td>Delhi (Restriction on Import of Wheat Atta) Order, 1959</td>
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</table>
(iv) Delhi Roller Flour Mills (Atta Price Control) Order, 1958
(v) Delhi Roller Flour Mills Products (Price Control) Order, 1962
(vi) Delhi Roller Mills Wheat Products (Ex-Mills and Retail) Price Control Order, 1971
(vii) Delhi Roller Mills Wheat Products (Ex-Mill and Retail) Price Control Order, 1979
(viii) Delhi Specified Food Article (Movement Control) Order, 1966
(ix) Delhi Specified Foodstuffs (Declaration & Prohibition of Sale) Order, 1965
(x) Delhi Sugar (Declaration of Stock & Prohibition of Unauthorized Sale) Order, 1965
(xi) Delhi Sugar (Restriction on Sale & Possession) Order, 1996
(xii) Delhi Wheat (Export Control) Order, 1959
(xiii) Delhi Wheat & Wheat Products (Export Control) Order, 1959
(xiv) Delhi, Meerut & Bulandshahr Milk Products (Control) Order, 1973
(xv) Foodgrains Movement Restriction (Exemption of Seeds) Order, 1971
(xvi) Foodgrains (Licensing & Procurement) Order, 1952
(xvii) Foodgrains (Prohibition of Use in Manufacture of Starch) Order, 1966
(xviii) Foodgrains (Prohibition of Use in Manufacture of Starch) Order, 1971
(xix) Food Products Order, 1955
(xx) Gur (Movement Control) Order, 1963
(xxi) Gur (Regulation of Use) Order, 1968
(xxii) Imported Foodgrains (Prohibition of Unauthorized Sale) Order, 1971
(xxiii) Imported Foodgrains (Prohibition of Unauthorized Sale) Order, 1958
(xxiv) Indian Maize (Temporary Use in Manufacture of Starch) Order, 1970
(xxv) Inter-Zonal Wheat & Wheat Products (Movement Control) Order, 1964
(xxvi) Inter-Zonal Wheat & Wheat Products (Movement Control) Order, 1973
(xxvii) Inter-Zonal Wheat & Wheat Products (Movement Control) Order, 1976
(xxviii) Levy Sugar Supply (Control) Order, 1979
(xxix) Levy Sugar Supply (Control) Order, 1972
(x) Meat Food Products Order, 1973
(xi) Pulses, Edible Oilseeds & Edible Oils (Storage Control) Order, 1977
(xii) Rice (Prohibition of Use in Wheat Products) Order, 1958
(xiii) Rice & Paddy (Southern Zone) Movement Control Order, 1976
(xiv) Roller Mills Wheat Products (Price Control) Order, 1965
(xv) Roller Mills Wheat Products (Ex-Mill) Price Control Order, 1969
(xvi) Salt (Price Control) Order, 1977
(xvii) Salt (Reserve Stock) Order, 1955
(xviii) Salt (Assam Reserve Stock) Order, 1973
(xix) Solvent-extracted Oil, De-oiled Meal & Edible Flour (Control) Order, 1967
(x) Solvent-extracted Oil, De-oiled Meal & Edible Flour (Delegation of Powers) Order, 1968
(xii) Sugar (Control) Order, 1966
(xiii) Sugar (Packing & Marketing) Order, 1970
(xiv) Sugar (Movement Control) Order, 1959
(xv) Sugar (Price Determination for 1986-87 Production) Order, 1986
(xvi) Sugar (Price Determination for 1987-88 Production) Order, 1987
(xvii) Sugar (Price Determination for 1988-89 Production) Order, 1988
(xviii) Sugar (Price Determination for 1989-90 Production) Order, 1989
(xix) Sugar (Price Determination of 1990-91 Production) Order, 1990
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<tr>
<th>No.</th>
<th>Ministry/Department</th>
<th>Description</th>
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<tr>
<td>7</td>
<td>D/o Animal Husbandry &amp; Dairying</td>
<td>Cattle fodder, including oil cakes and other concentrates</td>
</tr>
<tr>
<td>8</td>
<td>M/O Textiles</td>
<td>Cotton &amp; woolen textiles, Raw Cotton, either ginned or unginned and cotton seeds</td>
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<td></td>
<td></td>
<td>Raw Jute</td>
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<td>Jute textiles</td>
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9. Dye Chemicals & Petrochemicals

Textile Machinery:
(i) Knitting machine
(ii) Spinning machine
(iii) Lace making machine
(iv) Powerloom and
(v) Processing machinery

Textiles made from silk

Textiles made wholly or in part from man-made cellulosic and non-
cellulosic spun fibre

Textiles made wholly or in part from cellulosic and non-cellulosic
filament yarn

Man-made cellulosic and non-
cellulosic staple fibre

Yarn made wholly or in part from
any of the following materials,
namely:
(i) cotton (ii) wool
(iii) man-made cellulosic spun
fibre.
(iv) man-made non-cellulosic spun
fibre
(v) silk

(i) Man-made cellulosic and non-
cellulosic filament yarn
(ii) Nylon tyre/cord/fabric

Drugs

Insecticides, Fungicides,
Weedicides and the like

Textiles (Control) Order, 1956
Cotton Textiles (Control of Movement) Order, 1948
Cotton Textiles (Control) Order, 1958
Jute Textiles (Control) Order, 1956
Jute (Licensing and Control) Order, 1961
Jute Textiles (Control) Order, 1958
Linoleum (Price Control) Order, 1974
Staple Fibre Distribution Order, 1972
Synthetic Rubber (Price Control) Order, 1969
Textiles (Control) Order, 1966
Textiles (Furnishing of Information & Statistics) Order, 1987
Textiles (Production by Handlooms) Control Order, 1956
Textiles (Production by knitting, Embroidery, Lace making and Printing Machines) Control
Order.
Textiles (Production by Powerloom) Control Order, 1956
Woolen Textiles (Production and Distribution Control) Order, 1962
Drugs (Price Control) Order, 1979

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10. D/o Industrial Policy and Promotion

Component parts and accessories of automobiles
Paper, including newsprint, paperboard and straw board
Cement
General lighting service lamps
Household appliances such as electric irons, heater and the like
Electric cables and wires

(i) Switches for domestic and similar purposes
(ii) 2-Amp switches
(iii) 3-pin plugs and socket outlets

- Drugs (Price Control) Order, 1987
- Insecticides (Price, Stock, Display and Submission of Reports) Order, 1986
- Cement (Conversation and Regulation of Use) Order, 1974
- Cement Control Order, 1981
- Cement Control Order, 1987
- Cement (Quality Control) Order, 1962
- Electric Appliances (Quality Control) Order, 1987
- Electric Appliances (Quality Control) Order, 1988
- Electric Cables and Wires (Control) Order, 1970
- General Service Electric Lamps (Quality Control) Order, 1989
- Household Electric Appliances (Quality Control) Order, 1981
- Imported Cars (Control) Order, 1961
- Imported Cement (Control) Order, 1978
- Motor Cars (Distribution and Sale) Control order, 1959
- Newsprint Control Order, 1962
- Non-Pressure Stove (Quality Control) Order, 1990
- Oil Pressure Stove (Quality Control) Order, 1985
- Oil Pressure Stove (Quality Control) Order, 1997
- Paper (Control) Order, 1979
- Paper (Conservation and Regulation of Use) Order, 1974
11. M/o Petroleum and N.G. Petroleum and Petroleum Products

   (i) Lubricating Oils and Greases (Processing, Supply and Distribution Regulation) Order, 1987
   (ii) High Speed Diesel Oil & Light Diesel Oil (Restriction on use) Order, 1974
   (iii) Furnace Oil (Fixation of Ceiling Price & Distribution) Order, 1974
   (iv) The Petroleum Products (Supply & Distribution) Order, 1972
   (v) The Petroleum Products (Maintenance of Production) Order, 1970
   (vi) The Petroleum (Storage) Order, 1971
   (vii) The Petroleum Products (Regulation of Supply to Retail Outlets) Order, 1974
   (viii) Kerosene (Restriction on use & Fixation of Price) Order, 1993
   (x) LPG Regulation of Supply & Distribution Order, 1993
   (xi) Paraffin Wax (Supply, Distribution & Price Fixation Order, 1997
   (xii) Light Diesel Oil (Fixation of Ceiling Prices) Order, 1973
   (xiii) LPG (Restriction on Use) Order, 1974

12. M/o Commerce Tea

   (i) Tea (Registration of Dealers & Declaration of Stocks) Order, 1984

13. D/o Education Exercise Books
<table>
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<tr>
<th>SL.No</th>
<th>Nature of Problem</th>
<th>Suggestions for Reforms</th>
<th>Reforms Received from User Groups</th>
<th>Comments of Ministry/Department</th>
<th>Remarks of the Commission</th>
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<tr>
<td>1.</td>
<td>Prevention of food Adulteration Act, 1954</td>
<td>The word 'Prevention of Adulteration' indicates a negative sense and much confusion arises because of efforts to treat both street food and food manufactured in the organised sector and sold in packs equally.</td>
<td>It is suggested that the name of the Act should be changed to Packaged Food Act and separate set of guidelines and regulations should be applicable to street food.</td>
<td>The objective of the existing Act is to prevent adulteration of food. The objective has to be achieved irrespective of mode of marketing food. In developing countries like India where loose rate is predominant, the Act cannot make differentiation in the quality of food sold in packaged/un-packaged form. To the best of our knowledge, such differentiation does not exist in any other country.</td>
<td>The Commission agrees with the views of the Ministry.</td>
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<td>2.</td>
<td>These days minor variations in the specifications are being treated as adulteration and minor variations in the declaration is treated as 'misbranding'. Degree of punishment is same for all types of violations. Deviations within tolerance limits should not be considered as adulteration provided they are not injurious to health. Minor variations which do not have any bearing on the quality of the product like colours should not be penalised.</td>
<td>The expression 'adulterated' and 'sub-standard' should be two distinct clauses and punishment should be graded according to the gravity of the offence. Minor violations in printing should not also be considered as adulteration.</td>
<td>The suggestion for gradation of penalty clause is already under consideration in the Department of Health, which is considering the amendment of the PFA Act, 1954 on the basis of the Report of Task Force.</td>
<td>The Commission noted the proposals under the consideration of the Ministry and also suggests that punishment may go up to life imprisonment or death, if the adulteration results in death of grave physical disability.</td>
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<td>3.</td>
<td>Checking tampering of Quality by spurious manufacturers.</td>
<td>The word 'wrapper' may be replaced as 'pre-packed wrapper' in Section 2(x) in the definition of 'package'.</td>
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<td>Noted</td>
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<td>4.</td>
<td>The current definition of primary food is not realistic and does not cover animal products in natural form like milk. Several High Courts have held milk and other natural products to be primary food.</td>
<td>The definition of primary food in Section 2(xia) should be amended to provide for any product obtained from an animal.</td>
<td>The suggestion to include 'product obtained from an Animal' in the definition of Primary Food is not acceptable as unlike whole fruits and vegetables, paddy etc. where tempering is not possible, traditionally milk is adulterated with water since ages.</td>
<td>The Commission agrees with Ministry's views.</td>
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5. Constitution of CCFS

In view of the huge size of the Committee it has not been able to give attention to the Administration of the Act and the formulation of the rules thereunder. It is, therefore, suggested that DG Health Services, Director (CFL), two experts in Food Safety, 3 officers from the Central Government, 1 representative of every State in each Zone and Union Territory, 5 representatives from Agriculture Commerce and Industry, Consumer and the SIS should be appointed to be Members of the CCFS.

The suggestion has already been considered by the Dept. of Health while considering the Report of Task Force for amending the PFA Act, 1954. The suggestion has not been accepted as the States/U.Ts. implementing the Act have to be associated as Members. The present procedure could be improved upon only when full fledged C.C.F.S. Secretariat is created.

The proposal for creation of Food ombudsman was not agreed by the Central Committee for Food Standards (CCFS).

The Commission is of the view that following changes should be made in the composition of CCFS:

A)(i) The Chairman should be an independent non-official expert.

(ii) Reduce official representation from Central Govt. under Sub-section 2(d) of Section 3.

(iii) Instead of representation to all the States, provide for 4 to 5 representatives on a rotational basis and reduce the UT representation to one, by rotation under clause 2(two)

(iv) Reduce the representation of consumer organisation to 3(three).

B) The CCFS should set up a Standing Committee which would take final decision on the reports of sub-committees throughout the year and remit them for the decision of the Govt.

C) The Ministry should initiate urgent action to set up a full-fledged secretariat of CCFS with adequate professional staff. The head of this Secretariat should be a full time convenor of the CCFS, Standing Committee & Sub-Committee.

6. Storage Simplicity

Storage simplicitor cannot be an offence as large industries and hotels take measures to upgrade the quality of food before serving it to the customer. It is, therefore, inequitable that they may be penalised for storage simplicitor. It is suggested that after the word "store" in Section 7 of the Act, the word "store for sale" may be added and the explanation to the Section may be deleted.

The proposed amendment to quantify the word 'store' as 'store for sale' is not accepted as the same may lead to implementation problems in respect of checking of raw materials used in the manufacture of finished products.

The Commission agrees with Ministry.
7. Any item not intended for sale should not be a legitimate concern of the Law. Therefore, there is no point in sampling what is not intended for sale. A proviso may be added to Section 10(2) of the Act as follows - "Provided further that no sample of any article of food shall be taken under this Sub-Section from any quantity which is not intended for sale". Not accepted for the reasons given in para 6 above.

8. There is no provision in the Act for giving a part of the sample to the person from whom the sample is taken. The sample should be divided into 4 parts instead of 3 and one part should be given to the person from whom the sample has been taken. Section 11(1)(b) and (c) of the Act may be amended accordingly. We may agree, provided the 4th Counter part of the sample is accepted by the Vendor for his own satisfaction. But the same should not be used for any legal purpose. Person from whom sample is taken should also be given a sample duly sealed which can be used only in case of dispute regarding authenticity of the sample.

9. Section 13(2) of the Act provides for notice only to the person from whom the sample is drawn and any person whose name has been disclosed under Section 14 A. It would be equitable to add a new explanation to Section 13(2) as follows: 'for the purpose of this sub-section all the accused persons in a trial are entitled to notice'. The proposed suggestion does not appear to be legally and practically enforceable. The Commission agrees with the Ministry's views.

10. Unlimited power has been given to the CFL in respect of its test report. When any discrepancy or mistake occurs the same cannot be accounted for. The report of the Public Analyst if believed to be erroneous may be disregarded and another report obtained. CFL are sometimes not well equipped with sophisticated equipment and chances of human error on the part of the analyst are very high. Any penalty decision or fine based on these wrong reports cannot be justified. Section 13(2E) should be deleted altogether as it provides that the certificate issued by the Director of CFL shall supercede the report given by the public analyst. Not accepted, as the Report of the Director Central Food Laboratory has to be given higher status for the proper administration of the PFA Act, 1954. The Commission agrees with the Ministry's views.

11. There should be some provision for compounding of an offence in the case of 'Sub-Standard' product as in the case of Weights and Measures Act. Compounding in the case of sub-standard products should be introduced in place of punishment and necessary amendments in the penalty section may be carried out. The suggestion may be accepted as a proposal on this aspect is already under the consideration of the Dept. of Health and Family Welfare. The Ministry should expedite implementation of the suggestion.

12. In Section 17(2) it is not specified as to which local authorities, a company is supposed to file the papers. The nomination papers for a company shall only be filed at the State capital with a local authority notified by the State for this purpose. Accordingly, Section 17(2) read with Rule 12-B may be amended. The existing provisions under Rule 12-B of the Prevention of Food Adulteration Rules, 1955 clearly provide that nominations u/s 17(5) of the PFA Act, 1954 can be sent to the Local (Health) Authority of the concerned Local Area and hence there is no confusion on this point. The Commission agrees with the Ministry's views.
13. Under Section 20, the Government can authorise a person to institute prosecution under the Act but no qualifications are laid down.

14. There is a need to delete Section 20 AA as it does not provide for probation on very insufficient premises.

15. Notice before Prosecution.


17. Compounding of offences

The suggestion has already been considered by the Deptt. of Health in connection with the report of Task Force but the same was not agreed to.

It may not be rightly resorted to in serious cases where the offender is anti-social and his immediate and prolonged confinement is the best assurance of society's protection. However, the Deptt. of Health may like to consult Ministry of Law on this point.

This is not a feasible proposition, We may not agree.

A proposal on this aspect has already been accepted by the Deptt. of Health while considering the Report of the Task Force.

A proposal on this aspect has already been accepted by the Deptt. of Health while considering the Report of Task Force.

The Commission recommends early implementation.

Taken note of Ministry's comments.

The Commission agrees with the Ministry's views.
18. There is no time limit under the Act within which a prosecution should be initiated.

A new Section 20 E may be added to provide for a time limit of 6 months for prosecution from the date on which the sample is taken.

The Dept. of Health has already agreed to provide for a time limit of one year for launching of prosecutions under the provisions of the PFA Act, 1964.

The Commission agrees with Ministry's comments.

19. Non-interference by Officers.

A new Section 22 C may be added to provide that the officers exercising any function under the Act shall not cause any inconvenience that is avoidable or any interference with trade or business that is not reasonable and it should be provided that a breach of the same will invite penalty for the concerned officers.

The suggestion has been considered by the Dept. of Health earlier also but not accepted.

The Commission agrees with Ministry's comments.

20. Action under other laws.

If an offence committed under this Act also amounts to an offence under any other law (not being the IPC) then in respect of such offences, a prosecution shall not be instituted except where the offence may lead to death or grievous hurt. A new Section 22B may be added.

The suggestion has been considered by the Dept. of Health earlier also but not accepted.

The Commission agrees with Ministry's comments.

21. Identifying the Laboratories.

A new Section 23(1) (ee) should be inserted allowing Public Analyst to conduct tests in identified and authorised private laboratories.

The Dept. of Health has already accepted the suggestion while considering the Report of Task Force.

The Commission noted the comments of Ministry and suggested early implementation.

22. In the past some State Govts. with delegated powers had issued orders without obtaining the sanction of the State Legislatures.

In Section 24(e), the word 'after consultation with Committee' should be replaced by 'written consent' of the Committee of the CCFS.

The suggestion is not linked with the nature of problem.

The Commission agrees with the comments of Ministry.

23. Food Inspector

The Act should prescribe uniform method of sampling and analysis for different classes of products and the manual specifying these methods should be notified and made part of the rules. It should be strictly followed by the Food Inspectors and Public Analyst to ensure transparency.

The general procedure for sampling have already been laid down under the PFA Act/ Rules. Guidelines for sampling of milk and milk products and also fats have also been circulated to the States/UTs. The manual of methods of analysis have been brought out and made available to States/UTs, Industry and Consumer Organisations. As these methods need to be updated from time to time, they cannot be brought under the statutory rules.

Comments of Ministry noted.
24. **Rationalisation of Penalties**

The penalty provided under the Act should be graded as follows:

- **a)** substances falling below prescribed standards due to natural factors but not harmful be considered as adulterated.
- **b)** substances falling below prescribed standards due to human agency but not injurious may be left to the discretion of the Court.
- **c)** food injurious to health - imprisonment or fine or both.
- **d)** food likely to cause death or grievous hurt - maximum life imprisonment or fine.
- **e)** mis-branding/labelling where consumer is not prejudiced - compounding may be allowed.

25. **Violations of guarantee discretion of the Court.**

- **i)** Various laws govern labelling such as PFA, Weights and Measures Act, BIS Act, Control order like FPO, VOP etc. Since some of these Acts/Orders are at variance with PFA, this leads to harassment to the food industry and trade.
- **ii)** Moreover, many labelling rules under PFA have become obsolete and ought to be deleted in view of the international labelling regulations.
- **iii)** At present there are no guidelines for labelling of nutritional food, health food, dietary food. These needs to be provided to protect the consumer exaggerated claims.

26. **Licensing**

License laws of various State/Corporations for food establishments are not uniform. They do not provide GMP or GHP. The Committee on Subordinate Legislation of Parliament has suggested draft model bye laws for adoption of the States.

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The suggestion for rationalisation of penalties has in principle been agreed to by the Department of Health and is under the consideration of the Govt.

The Prevention of Food Adulteration Rules are amended from time to time in the light of the provisions existing under various other Acts. The person who has made the suggestion may bring out a paper pin-pointing the obsolete provisions.

Guidelines for Labelling of Nutritional/Health Foods are being worked out by the C.F.T.R.I., Mysore.

Draft Model State Prevention of Food Adulteration Rules have since been circulated to the States/UTs for the purpose of ensuring the uniformity. Moreover other Co-related issues are examined when such draft rules are sent to the Directorate General of Health Services u/s. 24(1) of the PFA Act, 1954 for Consultation of the C.C.F.S.

Reference is invited to observation of the Commission at Sl. No.2.

The problem raised by user groups requires serious consideration.

Ministry should address the problem in consultation with the user groups.

The suggestion deserves serious consideration.

The Ministry should finalise the model rules early.
27. Problem of State laws and rules for PFA. Apropos the comments of the Task Force of CIFII, how to reconcile contrasting provisions for penalty (even life sentence in West Bengal) in different States, and the problems this causes for inter-state movement and trade.

At present there is no inconsistency in the penalty provisions laid down by the Govt. of West Bengal and under the PFA Act, 1954 as far as life imprisonment is concerned. The problem alleged to be faced in the inter-state movement and trade need to be spelt out by the person suggesting the amendment.

The Commission is of the view that the provision of a different punishment in a State Law does not necessarily mean inconsistency with the Central Law.

28. Food standards for imported and exported articles. CODEX and BIS is also concerned here. Problems of exported Indian foodstuffs conforming to PFA Act but not conforming to international standards, and problems for conformity for exporters to India. This has implications for foreign trade and WTO. What happens if the exporting country's standards are inferior?

The export and import is always governed by bi-lateral agreements. CODEX Standards are not mandatory. This has been clarified by the SPS Committee of WTO which has held that countries should formulate their own standards.

The Commission agrees with the comments of Ministry.

29. Use of food additives. Use of food additives namely colour, preservative, anti-oxidant, flavour, artificial sweetness have been added on different occasions in the rules. These need to be re-edited and aligned with international standards as well as WTO Agreement on SPS etc.

The use of additives has to be governed by technological needs, cultural/traditional/dietary practices prevailing in the country as well as nutritional status of the consumers.

CODEX Standards are taken into account but it is not feasible to accept CODEX Standards in toto. WTO Agreement on SPS also does not advocate compulsory adoption of CODEX Standards.

The Commission agrees with the comments of the Ministry.
## II. Drugs and Cosmetics Act, Rules and related laws

### 1. Penalties

In the interest of responsive enforcement Graded penalties for offences instead of obligatory imprisonment in all cases. Divide the offences into two categories: those requiring a prison sentence and those with financial penalties.

Set up Special courts for cases where Cr.P.C. is not required to be followed, and thus permit award of compensation also.

The suggestion in respect of graded punishments is acceptable. These gradings should be based on intensity of defects as discussed and classified by the Drug Consultative Committee (DCC), viz. lesser defects classified as B-defects and serious defects classified as A-defects. The State Licensing Authorities are competent to award for both A and B defects except in the case of Blood Banking regulations where only DCG(I) is the prescribed Central License Approving Authority.

At the moment State Licensing Authorities take administrative action for B type of defects, viz. show cause notice, suspension order, warning etc. A type of defects, viz. grossly substandard, or adulterated or spurious or failing in sterility etc. are subjected to penalties as prescribed under S.27 of Drugs and Cosmetics Act, 1940.

Under S.32 of the D&C Act, 1940, no Court inferior to that of a Metropolitan Magistrate of the first class shall try an offence punishable under the relevant Chapter (Chapter IV of D&C Act). Investigation of cases leading to prosecution sometime attracts Cr.P.C. Similarly, manufacture of spurious or adulterated drugs by unlicensed manufacturers is required to be investigated by the Police or with the assistance of the Police.

The recommendations of the DCC followed by State Licensing Authorities are advisory in nature and such recommendations including provisions for penal actions, can be made statutory through amendment after approval of...

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<th>S.No</th>
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<td></td>
<td>Drugs and Cosmetics Act, Rules and related laws</td>
<td>In the interest of responsive enforcement Graded penalties for offences instead of obligatory imprisonment in all cases. Divide the offences into two categories: those requiring a prison sentence and those with financial penalties. Set up Special courts for cases where Cr.P.C. is not required to be followed, and thus permit award of compensation also.</td>
<td>The suggestion in respect of graded punishments is acceptable. These gradings should be based on intensity of defects as discussed and classified by the Drug Consultative Committee (DCC), viz. lesser defects classified as B-defects and serious defects classified as A-defects. The State Licensing Authorities are competent to award for both A and B defects except in the case of Blood Banking regulations where only DCG(I) is the prescribed Central License Approving Authority.</td>
<td>Views of the Commission on all the points: The Commission noted the comments of the Ministry. Observations of the Commission are reflected in the main report.</td>
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</table>
2. **Enforcement**

(a) Strengthen the machinery of Drugs Controllers in the light of observations of the Lentin Commission in Maharashtra.

(b) enable withdrawal of banned drugs from the stockists and retailers and permit publicity of such action.

(c) enable inspection of retailers by authorised citizen groups and for such reports to be acted upon by Drug Controllers.

(e) Under the Capacity Building Project of World Bank, envisaged during the IXth Five Year Plan period, the Drug Controller General (India) in consultation with the States and the UTs has submitted a Plan of Action for strengthening enforcement staff and testing laboratories (to test minimum 1 lakh samples per year), both for the State Drug Control and Central Drug Control System, so as to fall in line not only with the recommendation for strengthening the drug control system, propounded by Hon'ble Justice Lentin but also to fall in line with recommendation of the Task Force, as well as the Central Council of Health & F.W. The Plan is under consideration of the Govt.

(b) At the last meeting of the Committee of the Experts of Core Committee, constituted by Hon'ble Supreme Court of India held on 30.5.98 under the Chairmanship of DGHS, DGAFMS and other experts have been asked to give a working paper to ensure how best to comply that drugs and formulations banned from time to time under S.26(A) of Drugs & Cosmetics Act by Government of India through various Gazette Notifications do not surface in the market and a mechanism by which a manufacturer and a distributor can recall from sale as fast as possible the drugs reported to be banned through notification. Once this paper is ready and approved wide publication to the States/UTs would be given by the Govt.

(c) The suggestion to permit authorised citizen groups for inspection of retailers will be discussed as an agenda in the forthcoming DCC Meeting to be held during October, 1998. The
(d) Implement Hathi Committee recommendations e.g. abolition of brand names, revision and updating of national formulary to eliminate dangerous formulations.

DCC consist of all State Drugs Control Authorities as members to deliberate on the subject agenda.

(d) As regards Hathi Committee recommendation to abolish brand names, the Hon'ble Supreme Court of India has dismissed the SLP filed by Union of India against the judgement of the Delhi High Court.

The revision of National Formulary is related to the essential formulation of drugs revised and edited from time to time in the official compendium viz., Indian Pharmacopoeia (IP). The IP has been revised in the year 1996, having about 1500 monographs. Govt. is examining the suggestion of constituting independent I.P. Commission which will replace the ad-hoc Indian Pharmacopoeia Committee so that both IP and National Formulary of India (NFI) can be brought out regularly as done in developed countries. For this purpose, an IP Commission having independent status and also having permanent working scientists under its panel with independent budget is proposed to be constituted. Once IPC is formed the hurdles of bridging the NFI will be overcome. In this context, it may be pointed out that the Govt. of India in consultation with States and UTs and many beneficiary agencies, viz., CGHS, ESIC, DGAfMS, Railways and also expert bodies, viz., WHO, have in 1996 compiled the National Essential Drug List (NEDL) under different therapeutic classifications giving dosage form and strength of each dosage form generally prescribed. The NEDL contains about 300 drugs and formulations which are considered essential for the country. These lists have been sent to various Govt. Hospitals and UTs and also form a basis for guideline to make hospital formularies. The objective of NEDL giving specific dosage and formulation is very close to the object of NFI, for the benefit of prescribers as well as dispensers.
In 1982, Govt. had empowered itself under Section 10A and Section 26A of the D&C Act, 1940 to prohibit, import and manufacture for sale, respectively, drugs moving in the market licensed by States - which are considered by experts to be harmful or irrational in the context of present knowledge. This is, however, a continuous process and the Expert Committee sits at least once a year to screen formulations in the market. The Govt. has so far banned 53 categories of such drugs and formulations.

(e) Control over the counter sales and sales of drugs without prescriptions.

(f) How to confront problem under point 28 of PFA Act above?

(e) The problem of enforcement at the level of retail sale is expected to be minimised once the scheme for strengthening the enforcement staff for the States is accepted. There are about 6 lakh retail shops all over India, and compared to that the enforcement staff (which has also to inspect manufacturing units, involve themselves in investigation of various nature, preoccupation with court cases etc.) are grossly inadequate under the State Govt. for minimal inspections of retail shops and hence need to be strengthened. In this context, many drugs which are over the counter drugs (OTC) is dispensed without the prescription of an RMP, happen to be prescription drugs under Schedule H of D & C Rule, 1945. It is proposed to discuss in DCC, whether the big list of prescription drugs given in Schedule H can be condensed, as many of such drugs may not need administration under supervision of doctors. This will have 2 advantages, one for the patient, because he does not have to go to the doctor for prescription for which he will have to pay for doctor's consultancy and secondly, it will take away some load from retail chemists as OTC drugs do not have to be dispensed against prescription and for which they are required to maintain separate register.
III. New Laws and Systems

Regulation and accreditation of private nursing homes and clinics proactive health care.

Drafting central legislation of a model law for Advocacy of Citizens' Charter for all hospitals PHC's, Drug Controllers, and Food inspectorates.

The Citizen's Charter for Dr. Ram Manohar Lohia Hospital, Safdarjung Hospital and Smt. Sucheta Kriplani Hospital, New Delhi has been prepared which has been duly approved by the Core Group constituted by the Cabinet Secretary to monitor operationalisation of the Citizen's Charter. The Charter seeks to provide a framework which enables users to know:

- What services are available in the hospital;
- the quality of services they are entitled to;
- the means through which complaints regarding denial or poor quality of service will be redressed.

A copy of Citizen's Charter prepared for Dr. Ram Manohar Lohia Hospital has been sent to Health Secretaries of all States/UTs with the request to consider framing similar Citizen's Charter of hospitals on the lines of Charter approved for Dr. RML Hospital for the hospitals under their administrative control vide D.O. No.Z.28015/29/97-H dated 14.11.1997.

Note on Nursing Homes Act

There are Nursing Homes Act in Delhi, Maharashtra and some other States in the country which regulate the functions of private hospitals/nursing homes in the respective States. This Ministry has requested National Institute of Health and Family Welfare, New Delhi to frame a model legislation which can be applicable on private hospitals/nursing homes in the country. The National Institute of Health & Family Welfare, New Delhi has framed a draft legislation which is being examined in the Ministry/Delo CHS.
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<tr>
<td>1.</td>
<td>Consents are required under S.26/25 of Water Pollution Control Act, 1974 &amp; under S.21 of Air Pollution Act, 1981. Authorisation for handling hazardous waste is also required.</td>
<td>It is suggested that a common or a single consent for all of the three purposes may be provided through a common consent format.</td>
<td>It is possible to consider a common consent for all the three purposes although a separate procedure is followed for hazardous tests. Most of the consents are initiated by the Pollution Control Boards on the basis of industrywise guidelines given by the Central Pollution Control Board. However, sometimes State Boards insist on additional conditions which could result in more delay.</td>
<td>The Commission agrees with the views of the Department and recommends early action by the Ministry to implement Common Consent application.</td>
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<td>2.</td>
<td>Consent conditions prescribed by State Pollution Boards create confusion.</td>
<td>Industrywise conditions should be formulated by the CPCB in consultation with the State PCBs for the sake of clarity and conformity.</td>
<td>Industrywise guidelines already exist.</td>
<td>The Commission recommends that the available guidelines should be published and enforced.</td>
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<td>3.</td>
<td>Consent granted for operation of an industry is against a specific application giving details of manufacturing process, pollution control systems and quantity of waste generated and treated.</td>
<td>In an industry if none of these conditions change, there should be no need for renewal of consent. Alternatively, the processing procedure in the State PCBs may be decentralised to their Regional offices or renewal be made mandatory once in five years.</td>
<td>It is possible to agree to renewal of consent upto three years and provide it on a decentralised basis. Action can be taken against an industry for default at any time of the year.</td>
<td>The Commission recommends early action by the Ministry to implement the proposed decision on renewal of consent and decentralisation.</td>
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<td>4.</td>
<td>Under the existing procedure no objection certificate (consent to establish) has to be obtained from State Board and the application</td>
<td>It is suggested that all papers for environmental clearance be submitted to State Boards which can, after issue of NOC forward the papers to MOEF which can return the papers to the State Board which can issue the final letters. A single window clearance may be adopted.</td>
<td>There are two points of view from the industry. Once view requires the Ministry to give the clearance on the basis of the recommendation made by the State Board, subject to other clearance being obtained simultaneously. However, the other view is to provide for all the</td>
<td>Noted the comments of the Ministry. The Ministry should initiated further action to simplify the procedure for environmental clearance in consultation with user groups and State Boards.</td>
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</table>
for environmental clearance has to be submitted to Ministry of EF. NOCs are also required from Central & State level for power, water, factory inspector, Controller of Explosives and six months are spent to select site and Environmental Impact Assessment. It takes 18-24 months to get a final clearance.

5. Public hearing conducted for small projects results in enormous delays as time limit is not built in the procedure. Public hearing should be confined to mega projects of over Rs. 1500 crores or those likely to displace a large volume of the population. EIA Notification dated 4.5.1994 should be reviewed. It is difficult to agree to the suggestion in view of the approach to public hearing.

6. Existing format of application needs urgent review. The authorities always ask for clarifications/additional information/specific study reports from project proponents even after receiving filled up application. A simplified format should be devised and only information relevant to the project should be asked for at one go. This is acceptable. The Ministry, in fact, had taken up an exercise for prescribing a consolidated form. This included three parts. First part can be filled up by the applicant with all relevant information, along with the floppy. The second part will consist of comments of concerned authorities and will be directly obtained by the Ministry of Environment and Forests with the help of State Boards. This will then be submitted to one of the six Environment Appraisal Committees headed by a non-official expert. The Committee takes about three to six months for a final decision. This will then be submitted to the Minister for approval. Thereafter this will be incorporated in part 3 and will be made available for the information of the industry.

The Commission is unable to recommend linkage of public hearing for Environmental Impact clearance with volume of investment. All efforts should be made by public hearing authorities to expedite the completion of hearing.

The Commission strongly recommends early implementation of the Ministry’s proposals with the time limits for each stage.
7. The 'hot spots' identified in the country should be notified for the public for future expansions and modernisations in a planned manner.

Preparation of zonal atlases by the CPCB should be expedited and made public in the interest of entrepreneurs.

The Central Pollution Control Board have identified 22 hot spots, information regarding which is available to the industry. In addition, the Ministry is in the process of preparing a zonal atlas in order to guide the industry about the areas where industries can be located and environmental clearance will be given. Industries are expected to avoid areas of industrial pollution, except where they can convince the Ministry that they will not add to the pollution load. The Ministry of Surface Transport has been requested to identify potential areas for future expansion in consultation with the Ministry of Environment and Forests.

8. A provision for time bound deemed consents exists for renewal of water and air consents, if there is no response from the State Boards, after expiry of four months from the date of receipt of application. This leads to uncertainty as industry cannot confidently assume deemed consent as the board may at any time refuse to renew the consent.

Some method of rationalising this provision, through issuance of letter at Chairman of Board level or member Appellate authority appointed to formalise such cases should be undertaken so that industry can take advantage of the same.

It is difficult to agree to the concept of deemed consent since it will go against public interest and the objective of reducing pollution. The real solution is to devise a more efficient and prompt system for providing environmental clearance.


Submission of EIA Report should be made optional. Modernisation/minor expansion upto 33% additional capacity should be exempted from environment clearance. Review of any case should be completed within 4 weeks and preliminary site clearance be given within 8 weeks.

The submission of EIA report is not legally mandatory. However, the project proponent is expected to submit this report along with all the required information, which in any case is required to be provided by him for other purposes, to the banks etc. It is hoped that the revised form to be introduced by the Ministry will avoid the duplication of information submitted for EIA and for getting clearance from State Pollution Control Boards. It is agreed that the preparation of the EIA report costs over Rs.20.00 lakhs and takes about one year to prepare, but the cost cannot be avoided. It is

The Commission notes the Ministry's comments but recommends simplification of procedures for Environmental I.A. Report and assistance to small units to prepare EIA Reports.

The Commission recommends that wide publicity to the proposed measures may be given by the Ministries of Environment and Surface Transport along with suitable steps to guide the industry.
10. Submission of Audit Report.

It is difficult to furnish the requisite details of the report within the short time such as on impact of pollution control measures, on conservation of natural resources etc. Date of submission of EIA should be modified from 15th May to 30th September every year.

The Ministry is agreeable to the suggestion. The Commission recommends implementation of the suggestion.

11. Application proforma

(i) It is not possible to give information against point No.9 regarding health status through preliminary screening of work force labour and staff at the time when the project is at the planning stage.

The suggestion cannot be accepted. Suggestion of user group may be reconsidered by the Ministry.

(ii) This point should be deleted. Project costs go up because entrepreneur has to collect data himself on noise levels, air and water quality data etc., from the surrounding environment. This is unnecessary.

The Commission is unable to agree with the suggestion of user groups.


These Acts are being misused. The Acts must be administered by a quasi-Government body in the interest of sustainable development.

State Pollution Control Boards are already quasi Govt. bodies. No further action is called for.

13. Fees charged.

The fees charged for the grant of consents/Authorisations should be uniform all over the country.

These relate primarily to the State Pollution Control Boards. While generally guidelines are provided by the Central Board for levying water cess or consent fees, it is left to individual States to fix the actual rates.

The Central Government should initiate measures for rationalising the Fee Structure by State Governments.


It is suggested that industry categories liable to pay water cess may be defined explicitly to avoid difficulties in interpretation. For e.g., item 9 of Schedule I include cement industry even if it is using dry process. Also item 15 thereof.

The Ministry is proposing to amend a legislation to cover all the industries which use water during operations as liable to payment of water cess. This will take care of the suggestions made in points 14 and 15.

Noted.

15. Water Cess Rebates.

Industry is entitled to 25% rebate in payable Water Cess. At present out of 16 sectors covered in Schedule I, water consumption per unit of product is prescribed for 7 sectors only. The remaining sectors may also be not possible to exempt modernisation of the plant from environment clearance.

Noted.
Cess if it conforms to the stipulated conditions and having water consumption per unit of product equal to or less than the stipulated quantity.

16. Water Cess rates are different in different States.

A guideline needs to be developed for providing a basis for calculation of the Water Cess in various States and any change therein proportionate to the inflationary rates.

This observation is incorrect. Rates are the same.

17. Air Quality Notification No.GSR 176(E) dt. 2.4.96 of MOEF.

Sub Rule 3B of the notification debar discharge or emission beyond the relevant concentration in ambient air as set out against each pollutant in Schedule VII. Dust level in ambient air cannot be released only with industrial emissions. This sub rule may be deleted.

The suggestions cannot be agreed to, since the Central Board fixed the standards on the basis of source of emission.

18. Disposal sites for hazardous wastes have not been identified or made public by many States/PCBs as per Hazardous Wastes (Management and Handling) Rules, 1989.

(i) The issue of identification of waste disposal sites requires immediate attention.

(ii) There is also the need to harmonise these Rules with Manufacture, Storage and import of Hazardous Chemical Rules, 1989.

The hazardous waste is governed by the Hazardous Wastes Rule 1989 and the Manufacture and Storage of Hazardous Chemical Rules 1989. These rules were designed for different purposes and cannot be combined. Certain amendments have been worked out by the Ministry. It is agreed that waste disposal sites were not identified and this requires to be attended to immediately.

The Commission agrees with the comments of the Ministry.

19. The Public Liability Insurance Act 191 stipulates that owner is liable to take insurance for an amount upto maximum Rs.50 crores while the Rules under the Act provide for Rs.5 crores.

As insurance companies do not allow enterprises to take policy in excess of Rs.5 crores, the Rule requires immediate amendment.

The suggestion deserves to be accepted, and the Ministry has already taken it up with the Finance Ministry.

The Commission recommends early action to implement the suggestion.
20. The Forests Act, 1927

The Forest Act of 1927 does not require any amendment. However, the Ministry have taken up an exercise for consolidating different legislations to control the pollution of air and water and environment protection.

21. Coastal Zones

The Ministry is aware that certain regulations such as those prescribed for coastal zones have proved in practice to be highly restrictive, and the environment impact assessment procedures are also found to be difficult to comply. Steps are being taken to reduce the delay and problems involved in compliance with these regulations. The Ministry faces problems in liberalising the laws because of the Supreme Court decisions for strict enforcement of regulations like coastal zones or the preservation of forests, and because of the representations made by environmental groups for strict enforcement.

22. Major Infrastructure Projects

Major infrastructure projects including power and coal mines are facing problems in getting clearance of the Ministry where forest areas are involved. Supreme Court has expanded the definition of forests. At the same time, there is considerable pressure on existing forest areas on account of the population living in adjoining areas and because there is not enough budget provision for afforestation. In respect of mines which have to be set up in forest areas, the Ministry generally permits the activities subject to concerned undertaking providing double the amount of forest land in an alternate area. However, the entire process of clearance can take up a few years. The first stage clearance involving two months is initiated by an application sent through State Forest Department. This permits the location of the industry in the forest area subject to identification of alternate area. In the second stage, clearance is given after alternative land is acquired in the name of the industrial unit, and this can take a lot of time. The permission for locating the unit in the forest area itself is given.

The exercise for consolidation of Acts should be expedited.

The Commission recommends that the Government should formulate and implement guidelines for the preservation of coastal zones and environment consistent with the needs of speedy development and the concerns of affected population.

Same as above.
at present only for public sector units. They were also permitted to take up afforestation on degraded land in case land cannot be acquired. And this can be executed by the State Forest Department on behalf of the PSUs.

23. Environment Impact Assessment

The environment impact assessment and environmental clearance is required primarily in respect of 29 activities notified by the Ministry in 1994. There is no investment ceiling for clearance, but the criterion relates to pollution load. This is because even small units like tanneries often create a lot of pollution. The Ministry has started the procedure of public hearing about 18 months ago which is conducted by State Pollution Control Boards. This helps the Ministry to elicit all the likely objections to the project right at the beginning and minimise litigation. It is true that the Pollution Control Boards take a lot of time to conduct the inquiry but it is not possible to fix any definite time frame. As a result of competition amongst different States for getting investment, the State Pollution Control Boards are under pressure to reduce the time.

Noted, however, the completion of hearing should be expedited.
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<td>1.</td>
<td>Industrial Disputes Act, 1947</td>
<td>The definition of 'workman' defined in Section 2(S) of the Act needs to be amended in the context of certain economic and social realities of today.</td>
<td>It is suggested that monthly income limit be fixed at Rs.3500/- It is also suggested that uniform definition of workman be laid down in this Act and it should be made applicable to the entire range of Labour Laws. Further it is also proposed that the employees working in hospitals, charitable organisations and educational institutions should be excluded from the definition. The definition as suggested by Section 2(J) as proposed to be amended in 1982 should be notified.</td>
<td>The Mitra Committee constituted by the Ministry of Labour on 20.10.97 has suggested that the title of the Act be amended as &quot;The Employment Relations Act&quot; and the preamble be amended as &quot;regulation of the relations between employers and workmen so as to promote and maintain industrial harmony&quot;. In the definition of workman, wage ceiling should have no nexus with the status of workmen and it should exclude supervisory, administrative and managerial personnel. It should also be extended to 'teachers' as an interim measure till separate legislation for them is made by Ministry of HRD.</td>
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<td>2.</td>
<td>The definition of 'lock out' needs to be amended so as to include a part of the place of employment within its scope.</td>
<td>It is suggested that the words &quot;or part thereof&quot; should be added after the words &quot;place of employment&quot; in the definition.</td>
<td>The Commission agrees with the suggestion for amending the definition of 'lock out'.</td>
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<td>3.</td>
<td>In case of industrial dispute raised by individual 'workman', it is necessary to exclude superannuation or retirement from the meaning of dismissal, etc.</td>
<td>It is suggested that in Section 2 A, the words &quot;other than superannuation or retirement&quot; may be incorporated after the words 'otherwise terminates the services of an individual workman'.</td>
<td>The Commission agrees with the suggestion for amendment of Section 2A for excluding superannuation or retirement in the case of a dispute raised by an individual workman.</td>
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<td>4.</td>
<td>Works Committee in an industrial establishment where 100 or more workmen are employed.</td>
<td>In case of industrial establishments where recognised trade unions exist, it is not necessary to have a works committee within the meaning of Section 3 as there is a possibility of conflict of interest or over-lapping of interest between trade unions vis-a-vis Works Committee.</td>
<td>In view of the proposal to have Negotiating Councils, the provision relating to Works Committees which has not been effectively used, may be deleted.</td>
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<tr>
<td>5.</td>
<td>Under Section 9 A of the Act an employer has to effect</td>
<td>It is suggested that requirement of notice may be removed where the workmen are not affected in terms of</td>
<td>The Commission agrees that in view of the proposal for having Negotiating Councils, the provision relating to Works Committees may be deleted.</td>
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Statement 10
change in conditions of service after giving notice.

6. Under Section 10 B of the Act State Government has power to determine the terms and conditions to be observed by employers and employees during pendency of disputes including payment of money by employer.

It is suggested that the State Government may not be vested with powers to direct any employer to make mandatory payment during the pendency of a dispute as that would amount to pre-judging the dispute.

Based on the recommendations of the Ramanujam Committee it has been accepted to have Negotiating Councils. These would act as collective bargaining agents and thus discourage avoidable multiplicity of trade unions which vitilates industrial harmony. These may consist of equal number of representatives of employers and workers not exceeding twenty. The inter-se strength of the Unions could be determined either by secret ballot or by check-off system.

The Commission agrees with the views of the Department.

7. Under Section 10A there is a provision for voluntary reference of disputes to arbitration.

As the entire machinery of arbitration of disputes through courts and tribunals are time consuming, it is suggested that appropriate government may make references to an Arbitration Board comprising of two members - one from industry and another from labour with a Chairperson with status of high court judge for resolving disputes quickly.

It is desirable that existing 8.9C be replaced by a new section elaborately providing for the establishment of Grievance Redressal machinery at the shop level so that disputes do not develop. Right of two appeals be provided and if the worker is not satisfied, recourse to arbitration or adjudication could be taken.

The Commission agrees with the views of the Department.

8. Under Section 11 A of the Act power has been given to Labour Court/Tribunal/National Tribunals to set aside the case of discharge or dismissal and direct reinstatement.

It is suggested where the enquiry is fair and held in accordance with the principles of natural justice and findings are not perverse the labour court/tribunal/national tribunals should not interfere with the dismissal or discharge of an employee on mere technical grounds.

It is felt necessary to have an independent and autonomous Industrial Relations Commission both at the Centre and in the States. It would be an authority independent of the executive. It may generate funds by prescribing fees for cases. It would have three wings viz. Conciliation, Arbitration and Enforcement Wings with an Administrative Cell.

The Commission would suggest that this provision should not be misused by either side and circumstances should be taken into consideration in applying the provisions.

9. Under Section 17B of the Act there is a provision for payment of full wages to workman pending proceedings in the higher courts if the workman had not been employed in any establishment during such period.

It is suggested that this section may be deleted since it puts unreasonable restriction on the employer. It is suggested that maximum limit of wages which may be permitted to be paid by 50%.

Based on the recommendations of the Ramanujam Committee it has been proposed that a mandatory notice of one month should be stipulated for strikes and lock-outs in all services whether public utility or non public utility.

The Commission agrees with the proposals of the Mitra Committee for a mandatory notice of one month for strikes and lock-outs in all services and related recommendations in column 3 and that Sections 22 &

It is suggested that these Sections may be deleted or alternatively the provision for prior permission should be deleted. Moreover, retrenchment should be classified in two parts i.e. if prior approval is obtained, present retrenchment compensation will continue and if not obtained the retrenchment compensation may be enhanced to three months.

The Committee recommends that keeping pace with the ongoing economic reforms the prior approval of the appropriate Government may not be necessary for lay-off, retrenchment and closure. There is a need to enhance the scale of compensation payable for lay-off and retrenchment including redundancies arising out of closure of industries to 60 days wages for each completed year of service which shall not exceed the wages for the remaining period of service.

12. Special provision relating to layoff retrenchment closures in certain establishments applicable to industrial establishments in which not less than 100 workmen were employed on an average per working day during the previous 12 months.

It is suggested that minimum number of workmen should be increased to 500 for the purpose of coverage under the Chapter 5-B.

The Commission agrees with the recommendation of the Mitra Committee.

13. Prohibition of lay off except with prior permission of appropriate Government unless such lay off is due to shortage of power or to natural calamity.

It is suggested that no permission of the appropriate government should be mandatory if lay off is due to shortage of power, natural calamity, strike of workmen, break-down of plant and machinery or shortage of raw material, etc.

The Commission feels that the suggestion for increase in the minimum number of workmen deserves consideration.

14. Condition precedent to retrenchment of workmen i.e. giving of three months notice in writing and prior permission to be obtained from the appropriate government under Section 25 N.

It is suggested that the employer should be allowed to retrench upto 25% strength of the workmen without prior permission from the Government if the workmen have been given 3 months notice in writing or wages in lieu thereof and compensation at the rate of 2 months wages for every completed year of service.

The Commission agrees with the suggestion at column 2.

15. Under Section 33(2)(b) of the Act an employer can discharge or punish a workmen for any misconduct not connected

not. Essential services connected with safety, water supply, electricity, medical shall be exempted from strikes and lock-outs. These may also be prohibited during pendency of proceedings before Negotiating Councils. Strike notices should be backed by Union's resolutions having 51% strength of the workers S.22 & 23 may accordingly be amended.

Reference is invited to Commission's observation at G.No. 11.

The Commission agrees with the suggestion made in column 2.
with the dispute pending adjudication if he has been paid one month wages and application for approval has been moved.

16. Appeal against awards passed under Act
Act and application should be made within 15 days from the date of dismissal or discharge.

It is suggested that appeal against awards of labour court/tribunal should be restricted to one appeal only at the High Court level. A regular Labour Bench may be fixed at the High Court for quick disposal of labour appeals.

17. Under Section 36(4) a legal practitioner can appear before Labour Court or tribunal with consent of the other party to the proceedings and with the leave of the labour court.
It is proposed that provision may be made to take permission only of the labour court/tribunal before whom the dispute is pending and not any consent from the opposite party.

18. Provision against go-slow.
It is suggested that a definition of the expression “go-slow” as defined by the Supreme Court should be provided for in the Act itself. The definition should be “any conduct by a person or body of persons employed in an industrial establishment which is likely to result in or results in cessation or retardation of work.” It should also be provided that the employer will be entitled to deduct wages from workman who resorts to go slow thereby causing loss to the industrial establishment.

19. There is a provision for penalty of 1 to 6 months imprisonment or fine which may extend from 1000 to 5000 rupees or with both under Section 25 Q, 25 R and 30 A of the Act as penalties in case of retrenchment lay off, closure without following relevant procedures under Section 25 N, 25 M and 25 F F A.
It is suggested that as held by the Supreme Court and High Court penal provisions are very stringent and in order to promote healthy industrial growth in the country, it is suggested that these Sections 25 Q, 25 R and 30 A be amended so as to delete the penalty of imprisonment.

20. Adjudication Procedure under the Act
It is suggested that in the interest of productivity bipartism should be encouraged. Certain units at national level, regional level and state level in public and private sector should be identified which should be visited by the national leaders and central trade unions. The time taken by the Labour Ministry on a failure report from

The Commission is not agreeable to the suggestion and there is also no provision at present for regular appeal.

The Commission is of the view that consent of both the parties is not necessary but the Presiding Officer should give his views after ascertaining the views of either party.

The Commission suggests the inclusion of the definition of the term “go slow” in the Act. Further, depending on the definition of the term “go-slow”, the employer would be entitled to take necessary disciplinary action against the employee.

The Commission does not agree to the suggestion to delete the penalty of imprisonment.

In the views of the Commission, the suggestion is partly covered by the proposal to constitute Industrial Relations Commission.

The Commission also agrees with some of the recommendations of the Mitra Committee on
II 

Factories Act, 1948

The penal provisions of the Act are very rigorous and the occupier of the factory/nominated director as occupier are made liable for any breach of the Act. Though the provisions of the Act require disposal of cases within 3 months or within a year as per procedure laid down in the rules, this time limit is not followed by the tribunal or labour courts. There should be compulsory arbitration where conciliation fails.

It is not always possible to attribute the element of mens rea to the Director/Occupier of a factory. The punishment provided for is also dis-proportionate and for minor procedural irregularities industry has to face a floodgate of prosecutions. Harsh penalties also promote corruption in the government machinery. It is, therefore, suggested that the provision for imprisonment should be totally deleted from the Act. In the case of multi-nationals the directors live abroad or may be having residences far away from the factory areas. A simple penalty of fine should be sufficient instead of dragging the director to the court on innumerable occasions.


In the actual working of this Act is found that the conciliation officials is more than a year at the level of Desk Officer and other concerned officials. This time limit is not followed by the tribunal or labour courts. There should be compulsory arbitration where conciliation fails.

The implementation of the provision of the Act should be left to the discretion of both the employer or the

rationalization and simplification. These are deletion of certain definitions from Section 2 which are no longer relevant, deletions of sections 5, 13, 6, 14 and 36A of the Act. It agrees with retention of Section 36-B, and is of the view that delegation of powers by the Central Government to an officer or authority subordinate to State Govt. should be done under Section 39 after consultation with the State govt. It endorses the suggestion to fix a limitation of three years for raising industrial disputes. It is also agreeable to dispensation of publication of Awards of Labour Courts/Tribunals. As regards appointment of Presiding Officers of Labour Courts/Tribunals under sections 7 & 7A, the Commission endorses the recommendations of the Mitra Committee that Additional Legal Advisers who have three years of legal experience and Deputy Chief Labour Commissioners with 5 years experience can be appointed. However, their selection should be made through a selection process.

The Commission also endorses the recommendations of the Mitra Committee on the amendments proposed to the Payment of Bonus Act, 1965 and to the Sales Promotion Employees (Conditions of Service) Act, 1976.

The Commission is of the view that this Act is a social security measure and having regard to the problems of the working class, it is of the view that punishment shall be imposed on the Director/Occupier only after ascertaining that he had a role in the matter of alleged violation by commission or omission. The Commission does not agree with doing away of the quantum of punishment as now prescribed in the Act may be increased and be graded according to whether the offence is of a serious nature. In case of offences punishable by fines only and offences of a minor nature, provision should be made for compounding of the offences at a level higher than the prosecuting authority.
provisions are not being used either in the interest of the employees or the employers. A lot of time is taken and work has to be done to remit the contribution of the employees even if an employee works for a day or for years.

2. With regard to the issue of infancy protection, the government has amended the 1952 Act by eliminating the infancy period of 3 years available to new units. With the result the Act is applicable to a unit right from the day of its establishment.

3. It is found that many contractors do not want to become members of the provident fund because withdrawal of provident fund from RPFC is very difficult. Moreover, there are no exemption provisions in respect of employers who are willing to pay suitable terminal benefits to employees in place of pension.

IV Employees State Insurance Act, 1948

Section 85 of the Act provides for punishment upto 3 years and minimum imprisonment of six months for failure of contribution on the part of any person who is liable to pay.

These defaults are civil in nature and some time beyond the control of the employer. It is suggested that provision for imprisonment should be deleted.

The Government may re-consider the proposed amendment and revert to the bill in original form.

It is suggested that a time limit of 60 days should be provided for obtaining the withdrawal of provident fund from RPFC. Employee should also be paid terminal benefits in place of pension. The contribution of provident fund should be made optional for the employers who may have better terminal provision for their employees.

The Commission is of the view that the exemption period for infancy protection may be fixed at one year from the date of its establishment.

The Commission is of the view that deduction and contribution of provident fund should be reflected in the Pay-slip issued in respect of an employee. The Commission is of the view that stock-option may be allowed in place of CPP, but only on the application of the employee. Employers may not be given the option to give any other terminal benefit in place of provident fund. The Commission would favour effective monitoring of existing scheme, computerisation and adequate staffing facilities.

The Commission is of the view that this Act is a social security measure and it is important to ensure health care of the worker. The Commission would emphasise the need for improving facilities available in ESI hospitals and does not favour any proposal to scrap the scheme or for deletion of imprisonment as a penalty for violation of the Act.
V  
Trade Unions Act, 1926

1. Section 4 of the Act says that any 7 or more employees can form a union and get themselves registered under the Act. It is suggested that at least 10 percent of the total strength of workmen in a factory or 100 whichever is less should be the criteria for registration to eliminate large number of unions. It is further suggested that 25% of the total workmen may apply for registration of trade union and a union commanding at least 25% membership should be liable for recognition and also as bargaining agent. Membership must be verified by the Registrar of trade union once in a year during renewal of registration.

2. Section 22 of the Act requires that 1/2 of the total number of office bearers of every registered union shall be actually engaged or employed for the industry. It is proposed that 1/2 should be changed to 75% so that internal leadership in the unions develops. The Registrar of trade union should have authority to decide inter se union rivalry and trade union activities during working hours should be strictly prohibited.

VI  
Contract Labour Regulation and Abolition Act, 1970

Prohibition of employment of Contract Labour, it is suggested that services of supporting nature like canteen, cleaning, etc. should be allowed to have contract labour. Also contract labour working in notified jobs should be absorbed. The emphasis should be to regulate contract labour in core activities only. It may also be allowed in activities related to project work of modernisation or upgradation of existing infrastructure, market survey, loading and unloading of products and mainly in activities which are seasonal in character. It is also suggested that notification to abolish contract labour should be issued in respect of Railway and Public Sector.

The Commission is strongly of the view that for harmonious industrial relations, multiplicity of trade unions should be reduced. The Commission agrees with the criteria of registration suggested in column 2. The Commission is further of the view that, for recognition of the trade unions by the establishment, the Union should command at least 50% membership. The negotiating council suggested by the Mitra Committee should be the sole bargaining council.

The Commission is of the view that the Act should be made pragmatic and services of peripheral nature/supporting nature should be allowed to be engaged on contract. In view of this recommendation the Government may process early amendments for this purpose.
## INCOME TAX

<table>
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<tr>
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<tbody>
<tr>
<td>1.</td>
<td><strong>Income Tax Act, 1961</strong>&lt;br&gt;Current Tax base is very narrow in view of the population and income distribution of the country.</td>
<td>It is suggested that the focus should shift from meeting very stiff targets from current tax payers to widening the tax base as a whole. It is also suggested that the procedure should be simplified and made transparent.</td>
<td>There is a continuous effort of widening the tax base. Last year a new-equality criteria for filing IT returns was introduced. This is being increased to cover such persons who fulfill one out of the given six criteria. Besides PAN is also being made compulsory. There is very little emphasis on scrutiny this year.</td>
<td>Announced measures should be implemented with due regard for feedback from assesses. Procedures should be simple and transparent.</td>
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<td>2.</td>
<td><strong>Existing provisions are complex, discriminating and create distortions. A number of provisions have become redundant.</strong></td>
<td>The law must be made transparent bearing no room for interpretation. The redundant provisions numbering around 50 should be excluded.</td>
<td>Fiscal laws are at times so complex that two views become possible. However, the discretion with the A.O. is being reduced. Many redundant provisions have already been removed on the suggestions of a Committee formed for this purpose. If there are any more such provisions, list may be provided.</td>
<td>Obsolete circulars may be withdrawn/deleted and an updated compendium of circulars should be issued periodically. Efforts should be continued to make the formulations simple and transparent.</td>
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<td>3.</td>
<td><strong>Codification.</strong>&lt;br&gt;There should be a separate chapter provided for substantive laws and procedural provisions.</td>
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<td>The suggestion is commended for early implementation.</td>
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<td>4.</td>
<td><strong>Number of Rules.</strong>&lt;br&gt;Certain rules have been omitted but they still exist in the Income Tax Rules, 1962. These should be excluded.</td>
<td>All rules have not been removed from the Act, even though omitted because income can be assessed and also these rules will become relevant in such assessment. However, if a list is provided, it will be considered.</td>
<td>For those omitted rules which are still found in the IT Rules, specific mention should be made of the date of omission.</td>
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<td>5.</td>
<td><strong>Settlement Commission.</strong>&lt;br&gt;The scope of Settlement Commission should be increased.</td>
<td></td>
<td>Will be considered.</td>
<td>The suggestion is commended for early implementation.</td>
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<td>6.</td>
<td><strong>Return Forms.</strong>&lt;br&gt;There should be one consolidated form for Income Tax, Gift Tax and Wealth Tax to avoid multiplicity of authorities.</td>
<td>The authority for Gift Tax, Wealth Tax and Income Tax is the same. In this session, Gift Tax is repealed. If Income Tax, Wealth Tax is put in one form it may make it cumbersome. However, the suggestion will be considered.</td>
<td>The Commission agrees with the comments of the Ministry.</td>
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<tr>
<td>Number of Forms</td>
<td>Certain forms which have been omitted from the Income Tax Rules, 1962 still exist and need to be removed. In certain forms information asked for create unnecessary problems for the assesses like TDS Forms for salaries. Reliance should be placed on the tax audit Report and government interference should be the exception.</td>
<td>Reply to 4 above may please be seen. Recently some modifications have been made to the TDS Form for salaries. Reliance is placed on audit report and minimum scrutiny.</td>
<td>Efforts may be continued to reduce the number of forms and simplify them.</td>
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<tr>
<td>Arbitrary Assessment</td>
<td>Principle of accountability on the part of Tax Administration should be provided to avoid litigation.</td>
<td>The Department has issued instructions on this.</td>
<td>Reply of the Department is noted.</td>
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<td>Creation of National Court of Direct Taxes.</td>
<td>The NCDT should be set-up and its orders may be made final except for writ cases under Articles 32 &amp; 226 of the Constitution.</td>
<td>This is in the purview of the Ministry of Law.</td>
<td>The suggestion is commended for early implementation.</td>
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<td>Advisory Committee.</td>
<td>This committee is formal and confines itself with policy aspects and does not take into account the real grievances of day-to-day matters of the assesses. There should be an Income Tax Payers Advisory Committee constituted with the CBDT and should meet at least twice in a year. Income Tax Officers may be sent in the field for assisting the assesses.</td>
<td>Tax Payers Advisory Committees are already in existence.</td>
<td>Procedures and problems of general application, apart from policy matters should be allowed to be discussed in the Advisory Committee.</td>
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<td>Deduction be made only on actual payment.</td>
<td>The certificate issued by the Auditor of the company should be taken as sufficient evidence for allowing the deduction under Section 43 B in view of the practical difficulties.</td>
<td>Normally accepted, except for some test check. The report of the auditor is often vague and qualified. Unless the auditor is made accountable, not possible.</td>
<td>Agreed with the comments of Department.</td>
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<td>Income Tax Refunds.</td>
<td>There has been complaints of delay in tax refunds by the assesses. It is suggested that provisions should be made so that refunds are paid within one month.</td>
<td>The Department is conscious of grievances on account of delay in issuing refund. Existing instructions on the issue will be considered.</td>
<td>A refund order should accompany the Assessment Order, unless there is a problem which should be specifically mentioned in the order.</td>
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<td>Delay in decision making.</td>
<td>In the tax laws obligations of the assesses are time bound. Accordingly the obligations of tax authorities</td>
<td>For tax authorities most actions are barred by limitations. Even for revisions by Commissioners</td>
<td>Positive effort should be made at every level to avoid delay.</td>
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<td>15. Approvals under the Act</td>
<td>Provisions should be made to the effect that if approval is not granted within the prescribed time it should be deemed to have been given.</td>
<td>Will be considered.</td>
<td>The Deptt. should lay down and enforce time limits for various approvals.</td>
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<td>16. Offences and punishment under the Act</td>
<td>The punishment of rigorous imprisonment needs to be looked into and rationalised.</td>
<td>In this age of voluntary compliance, strong deterrence is important.</td>
<td>The Commission agrees with the views of the Deptt.</td>
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<td>17. Computation of taxable income.</td>
<td>The legislative formulations relating to computation of taxable income and tax liability should be simple to understand and easy to administer.</td>
<td>This is the goal of the Department towards which it is constantly endeavouring.</td>
<td>The Commission noted Deptt.'s views.</td>
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<td>18. Grievances redressal machinery.</td>
<td>This should be activated and the cells attending to this work should be manned by officers especially selected and suitably trained.</td>
<td>There is an effective grievance redressal machinery.</td>
<td>Relevant details of the existing Public Grievance Redressal Machinery and procedure should be adequately publicised in accordance with the Citizens' Charter.</td>
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<td>19. Personal appearance.</td>
<td>There should be minimal requirements of personal appearance for the tax payers. The tax authorities should send all their queries in writing to the assesses and seek a written explanation or visit the assesses at a pre-determined time to clarify his doubts.</td>
<td>With minimal scrutiny, personal appearance is not required very often. However, this is a good suggestion and will be considered. Enquiries are normally sent in a written form to which assesses are required to give a written answer.</td>
<td>The Deptt. should formulate and publicise clear guidelines on the subject.</td>
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<td>20. Prime facie assessment under Section 143(1) results in ad-hoc addition to the income by the assessing officer without giving due opportunity to the assesses.</td>
<td>It is suggested that no addition to the income should be made without show cause notice and opportunity of personal hearing to the assesses. Assessing Officer should be made answerable for frivolous additions which are subsequently set aside by the Appellate Authority.</td>
<td>No addition is made without affording the assesses an opportunity of being heard. Only 'prime facie' adjustments, which are apparent from the return are made. For this CBDT has issued detailed instructions. If the assesses are called for this also, if would be contrary to (19) above.</td>
<td>As at Sl.No. 19.</td>
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<td>21. Unnecessary litigation.</td>
<td>In order to reduce the unnecessary litigations and difference of opinion between the assesses and the income tax department, judicial wing of CBDT should be strengthened. They should issue public circulars every quarter based on Supreme Court and High Court decisions.</td>
<td>Good suggestion.</td>
<td>The Deptt. should implement the suggestion soon.</td>
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<td>22. Accountability.</td>
<td>It is suggested that senior officers exercising any statutory power or any administrative control over the assessing officers should make them accountable for their lapses and omissions which should also be taken</td>
<td>Already being done.</td>
<td>The Deptt. should review the existing system of performance evaluation as soon as possible.</td>
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</table>
23. **Disposal of pending cases.**

In order to accelerate the disposal of pending cases, a review of pending cases may be made to see if they are governed by precedents. Cases of similar nature may be grouped, temporary additional benches to clear backlog may be given and the fee structure for appeals may be rationalised. This bunching has successfully been done in Delhi High Court and the Supreme Court.

Delay in passing orders or assessment certificates should also be taken into account. The reply of the Deptt. is not specific. The system of bunching of cases for quicker disposal, as in High Courts and Supreme Court should be adopted.

24. **Binding nature of High Court judgment.**

Assessing Officer's refusal to follow ratio laid down by the Supreme Court or High Courts on the flimsy grounds that the department had not accepted it may be curbed. In cases where the department has not gone in appeal against the High Court's judgment, it should be made mandatory for the assessing officer to follow the same. The law is that the judgements of the Supreme Court or of the jurisdictional High Court are binding. Other High Court judgments, unless there is a judgement to the contrary are also binding.

25. **Appellate Orders.**

Provisions should be made to the effect that CIT (Appeals) and the Tribunal Orders be given effect to by the Assessing Officers within 3 months of the date of receipt of the Appellate Order by the department. Good suggestion. Users suggestion should be implemented.

26. **Capital Gains Tax.**

It is suggested that domestic companies should be at par with NRIs and FIsLs and subject to 10% Capital Gains Tax as provided by Finance Act, 1997 in Section 115E of the Income Tax Act because fluctuation in value of foreign currency vis-a-vis Indian currency in between the time of inflow and outflow of currency.

Already done. Noted.

By introducing this provision the Govt. ensures that TDS is spread over the year and the assessee "Pays as he earns". Otherwise entire TDS would be deferred to March.

The Deptt. should not insist on uniform deduction as a rule. But, if for ulterior reasons there has not been uniform deduction, action can be taken.

27. **TDS(Tax Deposit at Source) procedures.**

When the tax is deducted at source for salary it is expected that the company would deduct the tax uniformly over 12 months but there is additional tax on account of promotions given to employees or because of the revision in the pay scales. The Income Tax Department issues notices for non uniform deduction. This needs to be reviewed and considered.

Also, the limit fixed for not deducting TDS on interest should be raised to Rs.10,000/-. Will be considered. Noted.

By introducing this provision the Govt. ensures that TDS is spread over the year and the assessee "Pays as he earns". Otherwise entire TDS would be deferred to March.

The Deptt. should not insist on uniform deduction as a rule. But, if for ulterior reasons there has not been uniform deduction, action can be taken.

28. **Immunity from TDS, under Section 197A.**

It is suggested that the norms for granting immunity from TDS may be suitably amended to avoid inconvenience and hardship that the rigidity of the existing procedure of giving a declaration may cause.

This declaration has to be made to the person paying interest/dividend etc. and not to the department. This is only to inform the tax deductor and safeguard him. Noted.
<table>
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<td>29.</td>
<td>Pass Book Scheme.</td>
<td>It is suggested that a Pass book Scheme may be considered for payment of tax by assesses on his income so that the need for making numerous visits to designated banks to pay advance/self-assessment tax is avoided, misplacement of Challans etc., are also reduced.</td>
<td>Good suggestion. Will be considered.</td>
</tr>
<tr>
<td>30.</td>
<td>Tax exempt entities.</td>
<td>At present these entities are required to obtain exemption certificate in Form 15A for receiving interest free TDS. These entities are in any case exempted from tax under Section 10 of the Act. Hence putting them through rigor of obtaining certificate in Form 15A is unnecessary.</td>
<td>Same as for 28 above.</td>
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<tr>
<td>31.</td>
<td>General issues.</td>
<td>Tax should be deductible only when interest becomes due for payment and not when it merely accrues. There should not be any levy of interest for shortfall in advance tax or penalty under Section 143 (1A) if the approval for scheme of Amalgamation is not ultimately granted by the High Court. Domestic companies involved in Mutual Funds may be allowed to invest in debt instruments. State Governments should eliminate or reduce Stamp duties levied on the issuance and trading of financial instruments related to finance of infrastructure. Stamp duties on debt securities may be made uniform in all States and secondary market transactions should be abolished.</td>
<td>This would lead to problems on implementation with financial institutions/banks. When the system of taxation is the basis of payment, this requires consideration by the Department.</td>
</tr>
</tbody>
</table>

Other Observations of the Commission:

1. With a view to making the forms easily available to the assesses specific publishing firms should be allowed to print and sell approved forms at a fixed price.
2. The Deptt. may consider steps to be taken to prevent filing of ante-dated returns in order to prevent fraud or loss of revenue by collection.
3. The acknowledgement slip of the return filed should be taken as assessment order in the case of individuals except in the case of random checks made within one or two years of the filing of the return.
4. Professionals and others who have to pay service tax should be dealt with by the CBDT and they should not be required to register themselves with indirect taxes authority, like CBEC.
# EXCISE & CUSTOMS

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<td>1</td>
<td><strong>CENTRAL EXCISE ACT</strong></td>
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<tr>
<td>01.</td>
<td>The arrangement of Central Excise Rules 1 to 264 indicate that adhoc additions have been made by adding alphabets in the serial numbers of the Rules.</td>
<td>Substantive provisions in the Rules should be transferred to the Central Excise Act as excise duty is being levied on all commodities and the structure and procedures have been enlarged on several occasions.</td>
<td>This exercise is already being undertaken by the Dept. A Working Group has submitted the Report. Ministry is constituting an “Expert Group” which will also look into various aspects of the Central Excise Act and Rules.</td>
<td>Noted. The Commission also recommends that the process may be expedited.</td>
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<td>02.</td>
<td>Tariff rates have been given in 96 Chapters (effective tariff rates vary from nil to 66%) lead to unnecessary litigation.</td>
<td>Number of Tariff rates should be reduced to 3 (minimum) to bring uniformity and simplicity.</td>
<td>An ideal tax structure would be one where, barring the mean rate, there is one lower rate for items deserving concession and a higher rate for what may be described as demerit goods. The proposals regarding changes in excise duty have been guided by the overall need to rationalise the rate structure so as to reduce the multiplicity of rates and ensure convergence towards a mean rate of 18% ad valorem. F.M’s speech (para 152, Part B) during budget 1998 presentation clearly indicates this policy of the Government.</td>
<td>Noted.</td>
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<td>03.</td>
<td>Notifications are amended from time to time which create confusion.</td>
<td>To avoid day by day notifications, explanatory notes should be attached.</td>
<td>The notification issued under the Central Excise Law are being tabled in the Parliament in accordance with the provision of Section 36 of Central Excise Act, 1944 along with Explanatory Memorandum explaining the changes made under the respective notifications. However, the suggestion for appending Explanatory Note will be examined in consultation with Law Ministry.</td>
<td>Comments of the Department are noted. The comments for appending the explanatory notes in this notification should be implemented.</td>
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04. In terms of Rule 56B and Notification No. 177 SS Collector is only empowered to grant permission to enable an assessee to carry out jobs like repairs etc. Power should be delegated downwards to expedite the formalities and to remove the harassment. Most of the powers under the Central Excise Rules have been delegated to the subordinate officials. Where revenue is involved power vests with the Commissioner.

05. There is no time limit fixed for giving personal hearing and for passing an order thereafter in regard to a show cause notice or for approval of classification price list. Classification and price approval should be deemed to have been allowed if not done within 15 days from the date of application. Moreover, prices once fixed should under no circumstances be challenged. No approval of price list and classification lists are required since 1994 and 1995 respectively. The assessee has to declare correct value on the invoices. Only in few cases, ‘declaration’ is required from the assessee, which does not require any approval.

06. Some documents do not serve much purpose, viz., Form 4, RT 12, RT 5, GR 23A, GP 1 etc., yet they take a lot of time. The documents can be consolidated into one or two records. Clearance time for RT should be reduced to one month. IIFT may be requested to reduce the paper work. Rules have been amended in June 1996 to dispense with Form 4 and R.T. 05. G.P.1 has been replaced by manufacturer’s invoice. R.T. - 12 has been simplified in 1996. RG-23A is absolutely essential.

07. Three audits take a lot of time of the management as well as the Excise staff. These audits do no good except leading to malpractices. Mandatory audit needs to be avoided. Selective audit may be done from time to time. There are only two audits - Selective Audit by the Deptt. and Revenue Audit by the CERA of the C&AG.

08. Some units are put under physical control of the Excise Department which means that all clearances including spare parts etc., are to be done only in the presence of excise officials. Such physical controls may be dispensed with as a spare part is always needed. Physical control is in existence in “Cigarettes”. All other excisable goods are recovered under Self Removal Procedure, including spare parts.

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09. A lot of Inspectors/Collectors visit the factories. Inspector Raj should be removed and a Data Bank could be designed for requisite information. Recently, instructions have been issued restricting visits of Inspectors - once in a month for PBC checks with approval of Suptd. SSI Units can be visited only with the approval of Asstt. Commissioner. Noted. Continuous effort should be made to reduce the Inspector Raj.

10. Formalities for registration are cumbersome and time consuming. Registration should be done at the factory itself by the Excise official who visits the factory. Temporary registration should start from the date production commences. Procedure of registration was simplified in 1992, where production can be started immediately after submission of application for registration. Registration is 'deemed' to be granted after 30 days of applying. Noted.

11. Deemed Exports take lengthy and cumbersome procedures, particularly for enhancement/revalidation of export obligation. Deemed Export Licence (SIL) should also be issued in dollar value like physical exports. Certificate should be issued for deemed exports for which no excise duty is chargeable and this should apply to both manufactured and bought out items. In case duty has already been paid on bought out items, a simple system of refund should be formulated as in the case of physical exports. Pertaining to Ministry of Commerce. This should be examined by the Ministry of Commerce.

12. Litigations take years to settle with Tribunals having huge pendency. Settlement Commission should be set up at the earliest for expeditious action. In the Budget 1998-99, 'Settlement Commission' has been proposed and will come into effect with the enactment of the Finance Bill, 1998. Noted.

13. There are too many Forms which serve no useful purpose. Only important Forms should be asked for to cut on delays in availing concessional Excise Duty. Purchase Order should be released along with CT-2 Form and delivery period should be reckoned from the date of receipt of CT-2 Form. This Form should be issued without any expiry date. Procedure Form RWC should be done away with as suggested by the Tribunal in the case of Larsen & Toubro for speedier process. Minimum forms and procedures are essential as it exist now, under Chapter X procedure where goods are cleared for special industrial purposes without payment of duty. Number of forms may be reduced and simplified as a continuing process.

14. There have been disputes on the method of arriving at cost of raw materials where the assessee has An explanation should be added to Rule 6 b(ii) of Central Excise Valuation Rules, 1975 that excise duty paid on raw materials is not includable in the cost of production even if MODVAT credit is availed thereof. As far as amendment of Rule 6(b)(ii) of Central Excise Valuation Rules, 1975 is concerned, action could be taken by TRU only. Noted.
availed of MODVAT credit. CEGAT has ruled that Excise duty paid on inputs should be excluded but some jurisdictional authorities have rejected this.

15. Excise duty is required to be paid by manufacturer at the place of removal (depot) and at factory gate. Due to price fluctuations with different customers, there may be litigations.

A simplified procedure may be adopted whereby goods may be cleared from the works at the estimated price and the depots could account for the differential price between the actual realization and transfer price. The excise duty on such differential price may be allowed to be paid at the individual depots and local excise authorities could be entrusted with assessing the differential excise duty at the depot level.

16. The amended Section 11B of Central Excise Act, 1944 because of its retroactive operation discriminates between assesses whose refund claims made prior to the amendment (i.e. 20.9.1991) have been finally settled with those whose refund claims are pending. It is also silent about refunds where the assessee has not availed of MODVAT or is not entitled to it and the goods manufactured are for captive consumption.

Chartered Accountants' certificate should be accepted as proof that burden of duty has not been passed on to the customer by the assessee. Operation of Section 11B may be made prospective and an exception may be made relating to duty paid on goods manufactured for captive consumption.

17. The Supreme Court in the MRF Case (1995) has allowed deductions for transport and some others.

A necessary clarification may be issued as to whether transport and other charges as admissible by the MRF judgment will be granted, to avoid undue litigation.

As far as position in the matter is concerned in the case of Ms. Dai Ich Karkaria Vs CCE the Tribunal has held duty paid on inputs has not to form part of cost of production even if MODVAT credit is availed thereof for determination of assessable value. However, Deptt. has filed an Appeal with the Hon'ble Supreme Court against this order.

Under the circumstances, it will be appropriate to await the decision of the Hon'ble SC in the matter.

In this regard necessary clarification had already been issued vide C.R. No. 25185-96-CX dated 14.10.1996 (First point of doubt and clarification thereof) - copy of circular is enclosed.

As per the Act, Asstt. Commissioner has to be satisfied whether duty has been passed on to the buyer. The suggestion to make Section 11B prospective is not acceptable. Further, the question whether Section 11B is applicable in respect of captive consumption is sub-judice before the Supreme Court.

All expenses incurred till the removal of goods from "place of removal" will form part of the sale price/assessable value. However, there already exists a provision under Section 4(2) of CE Act.
on the ground that these are post-manufacturing expenses. The benefit of this judgment should be made available in the context of amendment of Section 4 Central Excise Act carried out in the budget of 1996-97 by including godowns (depots) in the expression "place of removal".

18. Rule 49(1) proviso of Central Excise Rules lends itself to an interpretation that the Commissioner may impose any condition that he desires, when an application is made to reprocess/destroy defective quality goods in the bonded warehouse. There is no need for the exercise of discretion on the part of the Commissioner in granting permission for reprocessing/destruction.

Vide Notification No. 45/97-CE(NT) dated 30.8.1997 it is provided that in case annual capacity of production determined by the formula in Rule 3(3) of Hot Rerolling Steel Mills Annual Capacity Determination (Amendment) Rules, 1997 is less than the actual production of the Mill during the financial year 1996-97, then the annual capacity so determined shall be deemed to be equal to the actual production of the Mill during the financial year 1996-97. This works unfairly if production in 1997-98 is lower than 1996-97.

19. Providing "Where, in relation to any excisable goods the price thereof for delivery at the place of removal is not known and the value thereof is determined with reference to the price for delivery at a place other than the place of removal, the cost of transportation from the place of removal to the place of delivery shall be excluded from such price".

Under the circumstances, the position is clear in this regard.

There is no need for the exercise of discretion on the part of the Commissioner in granting permission for reprocessing/destruction.

As it involves revenue, the suggestion is not acceptable.

The provision of determining capacity for the purpose of levy of excise duty based on last year production may be withdrawn.

The problem does not pertain to administrative reforms and relates to a policy decision pertaining to excise duty determination. The issue is already pending decision in the Supreme Court.
20. It has been held in several judgments of the Supreme Court, High Courts and Tribunal that the department must show the extent of benefit obtained by the assessee on the interest free loan obtained by him and to that extent only the price has to be loaded for the purpose of determining the assessable value. CBEC Circular No. 215/49/96-CX (F.No.6/1/91-CX) dated 27.5.1996 was issued as a result of the above cases. Department has been indiscriminately loading the assessable value without bothering about the above judgements. 

A notification under Section 37B of the Central Excise Act may be issued putting the onus on the Department to prove the nexus between receipt of interest and a depressed price, and if proved only then interest should be loaded on price.

21. In the case of Khandelwal Metal & Engineering Works (1985) the Supreme Court held that waste and scrap are also commodities which are excisable goods because they are marketable. In the case of Indian Aluminium (1995) the Supreme Court ruled that although dross and skimmings are sold in the market for some price they cannot be taken as marketable goods and therefore they cannot be regarded as excisable goods. But manufacturers hold their waste and scrap as refuse and a lot of appeals have been preferred.

Waste and scrap should be clearly defined so that there is no confusion about its excisability or otherwise.

Comments in this regard will be furnished separately.

The matter has again been examined and revised instructions have been issued vide Circular No. 404/37/98-CX dated 22.6.1998.

The comments have not been received. The Deptt. should examine the suggestion and decision be taken as soon as possible.
22. Under Rule 173H(3) of Central Excise Rules, powers to grant permission vest with the Chief Commissioner who takes a long time to grant permission in respect of loading of two different end products of different units of same management in one truck. To reduce the delays involved, CBEC may delegate the powers to Assistant Commissioner instead of Chief Commissioner of Central Excise and a time limit be fixed for granting such permissions.

The matter is under examination. The decision should be expedited.

23. Where repair/rectification of duty paid goods rejected by the buyer can be carried out manually without the aid of power and machinery, the manufacturer should be allowed to carry this out at the depot itself situated near the buyer's premises.

CBEC may issue a general circular that the rejected goods can be brought at Depot under Rule 173H or 173L and after rectification in the Depot the goods can be removed under Modvatable Invoice under CE Rule 57GG.

It is not applicable as rules are applicable for factory premises only and not depot premises. Noted.

24. Very often the manufacturer finds that the duty paid material rejected by the buyer is beyond repair/rectification and has to sell it as scrap after it is received back under Rule 173H or 173L.

CBEC may issue a circular to clarify whether provisions of CE Rule 57(18) are applicable on such scrap or not and if not, to make the necessary provision for refund of the differential amount of duty paid on initial removal of goods and the scrap under Rule 173H as it amounts to payment of duty twice on the same material.

Rule 57F(18) is not applicable. Goods brought in under Rule 173H, no duty is to be paid at the time of clearance. Noted.

25. Under Rule 51A and 173H entry of Traded Items in the factory is restricted if they are similar or identical to the items manufactured by an assessee.

Rule 51A should be amended to allow temporary entry for 7-10 days for export purposes in factory for common container load and combined load and combined AR 4 and other documents should be executed by Excise staff.

Matter is under examination. Should be expedited.
26. Some excise formations have taken the view that plastic products made by the plastic processing unit from the 'moulds' supplied by the user industry should include the value of the mould since the final product cannot be made without the use of mould. This view is disputable as it is difficult to ascertain the number of components which could be made with a particular mould during its life-span. Whatever duty is paid on the raw materials or at the semi-finished stage is set off against duty on the final products and thus there is no revenue loss whatsoever to the Government.

Valuation procedure should be based on clear provisions of Section 4(1)(a) of the Central Excise Act and inclusion of value of the mould should not be insisted upon.

As the matter has already been clarified by Board Circular No.1704/96-CX dated 23.1.1996 (copy enclosed). It has been clarified that the proportionate cost of pattern has to be included only in the assessable value of the casting even in cases where such patterns are being supplied by the buyers of the casting or are got prepared/manufactured by the job worker at the cost of the buyer.

27. There is some ambiguity in the language of the entry under Chapter 9 subheading 09.02 on two elements, namely, (a) unit container and (b) brand name of the Central Excise Tariff Act in relation to classification of packaged Tea in branded form.

The Tariff description under 0902.10 should be -

"0902.10 Packed in Unit containers of content not exceeding 20 kgs and ordinarily intended for sale to consumer in that pack".

The words "retail sale to consumers" may be inserted in place of the word "trade" in Note NO. 5 explaining "brand name".

Comments in this regard will be furnished separately.

Same as at Sl. No. 21.

28. Notifications under the Central Excise Act, 1944 are being issued on 'non-economic basis' and their increased numbers are leading to complex situations, disputes and dissatisfaction amongst tax payers.

There has to be a clearer policy on issue of notifications and existing regulatory mechanism has to be strengthened to prevent misuse of notifications. Exemption notifications no longer relevant should be discontinued.

The policy of the Government has been to rationalise duty structures and to minimise the number of notifications. Specific cases may be brought to the notice of the Board for appropriate action.

The views of the Deptt. are noted. CBEC should take appropriate steps to examine all exemption notifications which are not in force and they should be rescinded.
29. Procedural delays are affecting administration of tax laws adversely.  
   There is need for timely finalisation of provisional assessments and adjudication of cases. 
   Instructions have already been issued to finalise provisional assessment and adjudication in time bound manner.
   Noted. CBEC should monitor strict adherence to specified time limits.

30. Overassessment should be made accountable.  
   Where tribunals reject more than 50% demands, action should be taken against assessment officer. 
   Adjudication of demand is a quasi-judicial function and there, the officers cannot be accountable in case demand is dropped by Tribunal.
   The Department should review the existing guidelines for performance evaluation.

31. The provisions in the Central Excise Act and rules provide for offences which are punishable by imprisonment and levy of penalty. Mandatory penalty and interest provisions have also been made. 
   Mandatory penalty and interest provisions be amended in such a manner that the provisions act as a deterrent rather than a tool of punishment which gives considerable discretionary powers to the officials. There should be provision that launching of proceedings will only be after concurrence by the concerned Commissioner. 
   There is no discretion in respect of mandatory penalty. Prosecution is launched after obtaining sanction of Chief Commissioner.
   Noted.

32. Self removal procedures in Central Excise was introduced to enable the assessee to pay the duty and clear the goods with minimum interface with the department. But many SRP rules requiring prior intimation, declaration, documentation etc. are causing many problems to assessees. 
   It is suggested that the following Rules may be deleted as being irrelevant in the context of liberalisation: 
   Rule 8(Except tobacco). 
   Rules 44,45,46,55,173D,173E, 210(redraft) 
   Rule 224, 273C(1) 
   Rule 55 & Rule 173D have already been deleted. Rule 273C(1) does not exist. Rules 173E and 210 cannot be amended or deleted. Other rules are being looked into by a Working Group. 
   Noted.

33. Various kinds of audit are carried out by the Excise Department including Special Audit (Section 14A) and Audit of MODVAT Credit (Section 14AA). 
   Proper guidelines should be issued for selection of cases for special audit under Section 14AA. The assessee should be allowed to nominate a Cost Accountant from a panel maintained by the Department. MODVAT Credit should not be frozen during the period of Cost audit. 
   The instructions have already been issued not to freeze MODVAT Credit during Cost Audit. There are inbuilt provisions under Section 14A for its restrictive use. The suggestion for nominating Cost Accountant by the assessee cannot be accepted. 
   The suggestion for allowing the assessee to nominate a Cost Accountant from a panel maintained by the Deptt. should be reconsidered.

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34. Excessive powers have been given to Central Excise Officers at the level of Inspectors/Superintendents/Asstt. Commissioners such as free access to premises or goods (Rule 197), unlimited power of search (R.200), night without search warrant (R.201) and power to summon any person to give evidence or produce documents. These powers are often misused, summons issued without cause, show cause to senior company officials on flimsy grounds are also issued.

It is suggested that the powers enjoyed by junior officers should be reviewed.

The powers in these rules are to meet exceptional situations and are necessary.

35. Under Rule 187 Central Excise Officials are making 100% check of export goods resulting in interface causing unhealthy practices. Customs officials have the powers of selectively opening and checking the consignments.

Self-sealing should be permitted in the case of export consignments at least in the case of those who are trading houses, star trading houses etc.

Matter is under examination.

Should be expedited.

36. Section 11B provisions may result in unjust enrichment if due to bonafide mistakes or suppression of facts or misrepresentation by the assesses, refund of duty is obtained where it has already been passed on to the consumer.

The entire law relating to unjust enrichment should be reviewed.

Provisions relating to unjust enrichment have already been upheld by the Supreme Court.

No comments.
1. "The Fast Track Clearance for Imported Goods" was introduced vide Circular No.63/97-Cus dated 21.11.1997 with further improvements made on 11.3.1998 to speed up clearances at the ports. Some important auto parts and components which are imported by actual users and contribute customs revenue have been left out.

2. There is delay of 3-6 months in logging of DEEC Book at all major ports after submission of all relevant documents.

3. Delay and hardship is caused because under the DEEC Scheme shipping bills are allowed to be filed only along with Application for Removal i.e. AR 4 duly attested by the Central Excise authorities after goods are packed in the container and sealed.

4. Notification No.43/96-Customs dated 23.7.1996 permits exports of material for purposes of coating, electroplating or polishing and thereafter being reimported into India. The customs duty on the reimport is levied only upon the to and fro freight and charges for the process carried out overseas.

It is suggested that bearings, motor vehicle parts and diesel engines should also be included in the scheme. There should be time bound feeding of manifest to avoid delay in filing of Bill of Entry.

It was a conscious decision to exclude sensitive goods from the purview of the Fast Track Scheme. It will be looked into at the time of next review of the scheme.

The delay can be overcome if all the ports are linked up with computers. Customs authorities should put in their endorsement in the DEEC book at the time of clearance of export consignments.

Computerization of all major ports is going on at a fast pace.

At the time of filing of shipping bills, AR 4 should not be insisted upon and it should be allowed to be produced to the Assistant Commissioner at the time of clearance of the consignment at the port.

Yes, agreeable.

The notification seeks to exempt the customs duty to the extent specified only in cases of the specified processes, namely, coating, electroplating or polishing. Extension of the exemption also to rolling requires a policy decision not related to administrative reforms.

Noted.

The Commission recommends early computerisation of all major ports and customs transaction. The suggestion regarding endorsement in the DEEC Book deserves to be examined.

Noted.

The Deptt. should implement the suggestion.
5. **Customs clearance procedures are perceived as cumbersome and involve time consuming documentation, scrutiny of goods and a high degree of individual discretion.**

   Preclearance scrutiny of import/export declarations should be minimised. Effective targeting of 'at risk' goods to minimise physical examination of goods, should be achieved.

6. **The various provisions of the Customs Act, 1962 provide for offences which entail punishments including imprisonment, payment of fine and penalty not exceeding five times the duty sought to be evaded. These provisions presume a culpable mental state of the accused/assessee.**

   The suggestion is too general. Scrutiny for export is less than 5% and is done at random.

   **There should be time bound programme for adjudication of cases:-**

   - Show cause notices - 3 months time.
   - Appeals before the Commission - 6 months time
   - Appeals before the Tribunal - 1 year.

   Time limit for issue of show cause notice is 6 months. In other case the time limit cannot be fixed statutorily.

   **A Settlement Commission for Indirect Taxes may be set up to which pending cases can be referred. Mensrea should be an ingredient for offences under the Act. Threshold limit of turnover/duty/penalty may be fixed for cases and immunity be provided to assessees where cases are decided by the Commission.**

   The Commission recommends that the existing procedure should be simplified as a part of the EXIM policy.

   Noted.

   All possible efforts should be made by the Deptt for expeditious disposal of cases and a monitoring scheme should be evolved by them for the purpose.
### EXIM POLICY AND PROCEDURAL ISSUES

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<td><strong>Export Promotion Capital Goods Scheme</strong></td>
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<td>a)</td>
<td>Enhancement of export obligation by 20% stipulated in para 6.5(1) of Exim Policy dated 13.4.1998 if the exporter is further processing the goods to add value on goods manufactured or produced would cause hardship to exporter, as being on the high side. Value addition may be done at job worker’s place and goods exported from there.</td>
<td>Enhancement of export obligation be linked to actual value addition, the enhancement should not affect the first manufacturer and exports may be allowed from the premises of the job worker where value addition has been carried out.</td>
<td>The suggestion can be agreed to, but the export should be made in the name of the licencee.</td>
<td>The Commission noted recent initiatives and measures taken by the Govt. in the areas of exports and imports, and the Commission endorses these. Most of the suggestions/points raised by the user groups pertain to policy issues on which the Commission does not consider it proper to express any views. However, the Commission feels that the suggestion at 1(b) deserves sympathetic consideration provided it is followed uniformly. Regarding 4(g) the Commission understands from a press report that the Finance Ministry has already taken a decision to refund the amount due to the exporters within a fixed time failing which an interest for the delay would be paid.</td>
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<td>b)</td>
<td>Sometimes the EPCG Committee/COS meet and approve the exporter’s application in one year but the EPCG licence is issued after the close of the year in which approval has been given. This prevents the exporter from reflecting the average level of exports achieved in the preceding three licensing years.</td>
<td>For the purpose of average level exports made during three preceding years, the year when application for EPCG licence was submitted should be taken irrespective of the year when the licence was actually issued.</td>
<td>This can be considered on merits by the Commission.</td>
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<td>c)</td>
<td>Deemed export supplies made by the domestic manufacturers are made in competition with foreign</td>
<td>Para 6.5(iv) of Exim Policy be amended suitably so that ‘deemed export’ supplies by EPCG licence holders he considered towards fulfillment of export obligation with full deemed export benefits.</td>
<td>This cannot be agreed to in view of the prevailing policy on deemed exports.</td>
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suppliers so far as price, delivery period and quality are concerned. But for such suppliers deemed export benefits mentioned in para 10.3 of Exim Policy will not be admissible which means benefit of duty free Special Imprest Licence/Drawback Refund of Terminal Excise Duty and STL are to be foregone.

d) Rupee Trade with Russia is not considered towards fulfilment of export obligation under EPCG Scheme because para 6.5(iii) of Exim Policy provides that export proceeds shall be realised in freely convertible currency for fulfilment of export obligation under EPCG Scheme.

II Duty Exemption Scheme

a) As per para 7.13 of Exim Policy exporters having past export performance in the preceding three licensing years are eligible for Advance licence and Intermediate licence without an export order upto average FOB value of exports during last 3 years. As a result, new units are not eligible for licence without an export order even though they have exported goods in a big way during the previous year.

Manufacturer exporters having made exports of Rs5 crores or more during previous year or committed export obligation of Rs 5 crores for current year may be allowed to take duty free licence without an export order. There should be relaxation of the present 3 years provision on the basis of value of exports made during previous year or export obligation committed for the current year.

This cannot be agreed to in view of the clear policy underlying the sanction of advance licence without export order. Others could follow the normal route of advance licence.
b) As per para 7.25 of Handbook of procedures Vol.1, a Payment Certificate in the format given in Appendix 14B is required to be furnished in support of fulfilment of export obligation against Special Import Licence issued under Duty Exemption Scheme for Deemed exports. In the event of delay in delivery of equipment/completion of order, the Project Authorities enforce Liquidated Damages clause of the contract which results in reduction in payment (Export Obligation Value) by an amount ranging from 5% to 10%. Also, it is common practice for the Project Authorities to hold back some payment, particularly in large projects, till the performance of the plant is evaluated to be totally satisfactory. Without payment certificate bank guarantee/bond is not released. Customs authorities at the port issue notices to deemed exporters to furnish required documents failing which enforcement of bank guarantee is threatened. Exporters are not able to avail of reduction in value of export under Para 7.28(iv) of Handbook of Procedures Volume 1 in cases where export obligation has been fulfilled in terms of quantity but there is shortfall in terms of value. Fulfilment of export obligation should not be linked up with payment and instead the exporters may be permitted to furnish a prescribed certificate from the Project Authority to the effect that 100% supplies have been made in terms of the contract entered into with the supplier.

Deemed export benefits are given with reference to the realisation of value and not the fulfilment of obligation in terms of quantum. Hence the suggestion cannot be agreed to.
Duty Entitlement Passbook Scheme

a) In the revised Handbook of Procedure Vol.1 issued on 13.4.98 para 7.50 stipulates that no exports shall be allowed under post export or pre-export DEPB Scheme unless the DEPB rate of export is notified. Earlier, exports under DEPB scheme exports were allowed in anticipation of notification of credit rate for products covered under standard Inputs Outputs norms. Exporters were thus motivated to undertake exports but now withdrawal of flexibility acts as disincentive to the exporters. For formulations of bulk drugs the DGFT has relaxed the new provision vide Circular No.4(rev.98) 98-99 dt.15.5.98.

b) Vide Public Notice No. 39 DGFT issued on 6.8.97 exporters have been required to file application for fixation of rate of credit under DEPB Scheme and a format of the application form has been incorporated in the revised Handbook of Procedures, Vol.1(App.62).

c) Para 7.36 of Handbook Vol.1 states that exports/imports made from the ports mentioned in para 7.19 alone shall be entitled to DEPB and certain ports are in order to reduce the time lag between submission of application by the exporter and fixation of DEPB rate, time schedule for fixation of DEPB rate may be laid down in the handbook in para 15.10. Apart from 264 additional items have been covered by DEPB Rates on 15.4.98, there are still large number of items for which DEPB rates have not been announced.

This cannot be agreed to since DGFT has consciously decided not to permit export under DEPB of those items where DEPB rates have not been notified, and to notify new rates only for items where export potential is more than Rs.20 crores. Out of 4000 items, only about 2000 items are frequently traded, and most of these items have been notified. Those who wish to export other items can follow the normal duty drawback scheme.
considered as single port for the purpose of DEPB.

This list includes Coimbatore Airport and Coimbatore ICD.

may be treated as single port for the purpose of DEPB.

IV

Deemed Exports

a) In the case of deemed exports, terminal excise duty is paid by the manufacturer and later refund is claimed from DGFT offices as per para 10.3(c) of Exim Policy. For claiming refund as per procedure in para 10.15 of Handbook, Payment Certificate from customer is required which is not always available on time and in that way getting refund is delayed. Working capital is thus blocked putting the manufacturer to extra cost.

Execution of Bond instead of payment of excise duty by manufacturer may be allowed as in the case of physical exports. Refund of Terminal Excise duty may be allowed on submission of Project Authority Certificate of having received the supplies instead of Payment Certificate.

b) Para 10.2(g) of Exim Policy states that supply of ‘goods’ to Power Projects are entitled for deemed export benefits while in para 10.11 of Handbook supply of ‘capital goods alone’ is mentioned which creates confusion. Under the same para 10.11 domestic supplier of capital goods to power projects are eligible for deemed exports benefits provided the same is certified by Central Electricity Authority and

The words ‘capital goods alone’ in para 10.11 of Handbook should be replaced by ‘goods’ to cover items like cables etc. In case of Central/State undertakings like NTPC/State Electricity Boards, list of goods to be supplied should be certified by Project Authority. In case of private party, list of goods signed by IPP/PPC contractor countersigned by Chief Engineer of concerned State Electricity Board who has signed the Power Project Agreement with the Independent Power Plant should be allowed. ICB condition may be amended in line with the provisions for Refinery and Oil & Gas sectors.

This is acceptable to DGFT. Department of Revenue could consider a system of running bonds, and would discuss the matter further with DGFT for a solution. They would also consider the other proposal of DGFT for accepting bonds in the place of bank guarantees for manufacturer, exporters and export goods of more than Rs. 100 crores.

This would not be agreed to by DEA or DGFT.
International Competitive Bidding procedures have been followed.

Para 10.10(b) was added in the Handbook Vol.1 vide Public Notice No 45(FN) dated 29-1997 and the benefits of deemed exports were extended to fertiliser plants which are set up/revamped/modernised during 9th Plan with a new stipulation that provided price preference is not available to the supplier of capital goods and its spares. If a PSU Fertiliser plant gives price preference for CST and Octroi, the indigenous supplier is not eligible for deemed export benefits.

The abnormal situation created by the Public Notice dated 29.9.97 may be examined and the new condition imposed about price preference may be deleted.

It is felt that the position may be reviewed by DEA in the light of conditions prescribed for international competitive bidding for World Bank projects.

Necessary clarification about the eligibility of refund of 3% Excise duty under the said circumstances may be incorporated in para 10.11 of Handbook as OIL is interpreting that in view of said provision of refund upto 3%, they would pay the supplier 7% Excise duty out of 10% charged under CE 212/87 for such common items and the balance 3% is to be claimed by supplier from DGFT in terms of para 10.3(c) of Exim Policy.

It is a matter of policy to be decided by Government.

d) Customs Notification 23/98-SI.No. 178 dated 2.6.1998 allows import of specified goods required for the purpose of on-shore or off-shore oil exploration or oil exploration at Customs duty of 20% and CVD of 10% which benefits ONGC & OIL. DGFT has governed such supplied by indigenous manufacturers under Deemed Export category under para 10.2(g) of Exim Policy and para 10.11 of Handbook with limited benefits of terminal excise duty refund restricted to 3% and SIL @ 6% of FOR value.
Para 10.12 of Handbook of Procedures Vol.1 provides that supplies made by an Indian sub-contractor of an Indian or foreign main contractor are eligible for deemed export benefits provided that the name of the sub-contractor is included in the contract and payment certificate is issued by the Project Authority in the name of the Sub-contractor.

Supplies made by indigenous manufacturers to foreign main contractors within India against payment in free foreign exchange through Banking channel should also be treated as deemed exports. Otherwise, indigenous manufacturers would not be able to give competitive offers in contracts awarded to foreign companies against ICB procedure as they are not eligible for deemed export benefits even if the foreign contractor is willing to pay in foreign currency.

In terms of para 10.2(g) of Exim Policy read with para 10.11 of the Handbook of Procedures Vol. 1 deemed export benefits of refund of Terminal excise duty and Special Import Licence are allowed for supply of goods to Power Projects. These deemed export benefits are given to indigenous manufacturers in view of the fact that Addl Duty (CVD) is nil on Power Project Imports under Customs Notification 23/96-SI No. 261 dt. 2.6.98 but the indigenous supplies suffer excise duty. Same is the case for import of goods under Chapters 72, 73, 84, 85, 90 by Power Plants for Renovation etc.

Supply of goods of Chapter 72, 73, 84, 85 or 90 of Customs Tariff by indigenous manufacturers to Power Plants for the purpose of Renovation/Modernisation may be treated as deemed exports with limited benefits of Refund of Terminal Excise duty & SIL.

This is acceptable to DGFT subject to clearance by DEA.

Every deemed exporter has to claim refund of Terminal Excise duty from the various offices of DGFT as also Drawback under Deemed Export Drawback Scheme which involve a lot of delay. The Time bound programme for fixation of Drawback rate as well as for processing of deemed export benefits claim may be incorporated in Para 15.10 of Handbook of Procedures Vol.1. Availability of funds with the disbursing officers throughout the year may be ensured.

This is acceptable to DGFT. However, the availability of funds with DGFT to meet all the claims was dependant on adequate budget provision. Steps had been taken to reduce the time taken for processing claims, and it was hoped that this could be reduced from three months to 2 weeks.
delay is caused by delay in fixation of drawback rate, in processing of claim and non-availability of funds with the paying authority.

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h) In view of the importance of technology imports, plans, drawings and designs falling under Customs Tariff heading 49.11 are exempted from whole of Customs duty even under the latest Notification 2396-SI No. 97 dt. 2.6.98, in ITC(HS) Classification of import and Export items issued by the Ministry of Commerce, plans, drawings and designs would be covered under Exim Code 49119100. Customs authorities are taking the view that while plans, designs and drawings can be imported duty free, these items are not covered under OGL and therefore specific licence is required. They hold that plans and drawings under Exim Code 490600 00 freely importable refer to drawings prepared by hand and their reproductions on sensitised paper and carbon copies. But these days drawings are prepared on CAD machines and prints taken out and thereafter photocopies are sent out.

There is a need to incorporate another entry after 491191 00.10 for ‘plans, drawings and designs’ with import policy as “Free”.

This suggestion would be considered in the next meeting of the DGFT Committee.
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<td>1.</td>
<td>For setting up a project, clearances are required from 17 agencies. And different authorities use different Forms.</td>
<td>To avoid multiplicity of authorities which add to project implementation time and cost, single window clearance should be implemented. One comprehensive single Form should be introduced which should cover all the requisite information.</td>
<td>The Ministry of Power had constituted an Expert Committee in May 1994 to review the existing provisions of Indian Electricity Act, 1910, Indian Electricity (Supply) Act, 1948 and Indian Electricity Rules, 1959. The recommendations of the Committee were examined by a Consultant who made the suggestions for amendments. A National Electricity Regulatory Authority and State Electricity Regulatory Authority at State level was proposed to empower the State Governments to reform their respective power sectors without coming to Ministry of Power. The Chief Ministers Conference approved setting up of CERC and SERCs. Draft Bill to this effect was introduced in Parliament on 14.8.1997 and has since been passed by Parliament. The Electricity Regulatory Commission Act, 1998 will prevail over the existing Electricity Laws. This Act provides for the establishment of Central Electricity Regulatory Commission and State Electricity Regulatory Commissions rationalisation of electricity tariff, transparent policies regarding subsidies, promotion of efficient and environmentally benign policies and for matters connected therewith. An Electricity Laws (Amendment) Bill, 1998 was passed in Parliament which provides for amendment of Indian Electricity Act, 1910, creation of Central and State Transmission utilities and amendments to Electricity (Supply) Act, 1948. To that extent review/amendment of existing laws may not be required.</td>
<td>The Commission commends various initiatives of the Ministry. These however need to be matched by actions at State level to create the desired impact and investor confidence. It is noted in the paper circulated by the Ministry of Power that the number of required clearances is reduced from 17 to 5, and many powers of CEA and Ministry of Environment for approvals are delegated to state agencies. This needs to be pursued actively further. Single Window systems should be installed as far as possible. Even where statutory approvals can be given only by particular agency like Ministry of Environment &amp; Forests, the designated state agency can secure all approvals from different agencies at central, state and local level on behalf of the project proponent, and will canalise queries back to him as far as possible by electronic mode. The Commission welcomed the move for the state govt. itself to get all necessary clearances before selection of the project proponent and then assign it to the selected proponent. The concurrence of concerned agencies to this procedure may be examined soon, and rules amended where necessary.</td>
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2. Procedure for Power Connection is quite cumbersome, lengthy and needs drastic simplification. To obtain power connection, entrepreneur has to file as many as 15 documents. If the State Govt., is of the view that all the documents are important then the procedure which is followed after the filing of documents should be stopped such as visits of Inspector several times after installation of meter and transformers. Inspector Raj should go and if permission for power connection is not granted within 90 days of resubmission of defective documents, the permission should be deemed to be given.

3. There is inordinate delay up to 6 months for construction power. The temporary connection is for two months only extendable by another two months. Delay is involved in finalization of maximum demand, laying of mains, availability of meters. Inadequate provisions for upgradation of Sub-station, capacity additions, trained manpower. There is lack of testing equipment, manpower and procedures are outdated. Cumbersome procedures delay availability of Coal, Oil, Gas, Naptha LSHS, FO, HFO, etc.

4. Transmission

Inadequate existing transmission lines for transmitting and evacuating power from the upcoming IPP projects. Huge investment is required in this sector. Problems of interstate wheeling of power generated by IPPs. Poor equipment leads to high transmission losses.

The Ministry of Power, on the advice of Chief Ministers' Conference has also initiated another exercise to recognize transmission as a separate entity to ensure higher investment including private investment in this sector.

Excessive transmission and distribution losses were due to unauthorised use of electricity by families in slum colonies. Steps have been taken to deter such illegal usage and increasing efficiency of power networks.

The Ministry of Power is to be commended for passing three important laws on this subject in the Budget session. This should be operationalised soon, along with steps to privatise/corporatise transmission and distribution. The problems of interstate wheeling of power, transmission losses, supply of power by Independent Power Producers (IPPs), etc. need to be addressed by clearly stated and enforcing guidelines.

Same as above. Generally enough attention and funds have not been given for distribution and maintenance of systems, upgrading and adding transformers and substations, training and orientation, computerization of procedures, improving billing systems, checking leakages and thefts of power etc. This has to be pursued as at (1), having regard to response of the Ministry on this item. The SEBs should stick to preannounced power cuts and ensure prompt and decentralized response to complaints on the basis of a Citizens' Charter. Computerised customer care centres for power connections, complaints on supply and billing should be set up.

The complaint is genuine and has to be addressed jointly by the Ministry of Power and State Govts., having regard to the improvements made in a few States. The Inspector Raj should be eliminated and documentation simplified. Insistence on many NOCs for the grant of power connection and sanction of power load should be waived on the basis of single window systems devised by State promotional agencies and District Industries centres.
5. Distribution  
Wide fluctuation in frequency is harmful to the large equipment particularly motors causing adverse impact on the manufacturing process. Due to inefficient distribution network, low voltage power is supplied. The problem related to distribution losses, meter tampering, pilferage, etc. can be dealt with primarily by privatization or corporatization of distribution. This has been taken up in Orissa already.

For review of the DVC Act and BBMB Rules, Committees have been set up for the purpose who are yet to submit their reports. The Coelho Committee Report which has made several suggestions to improve the Distribution System has been circulated to the States for considering the same while privatizing the distribution system.

Improvements in Delhi Vidyut Board by making adequate investments, setting up of a Tariff Regulatory Authority have been initiated and DBV has sought PPF from World Bank. Engagement of outside meter readers on contract basis to counter wrong, inflated and provisional billing, monitoring of No Current Complain Centres, posting of Supervisors & AEs mobile distribution transformers, breakdown gangs, redressal of public grievances, bijli and Lok Adalats and theft prevention measures are being undertaken.

This should be attended to in the course of SEB reform including provision of funds for and attention to periodic maintenance and replacement, field supervision and interacting with user organizations. Computerized MIS similar to Andhra Pradesh will help. Reference is invited to comments at Sl.Nos. (3) & (4) also.

6. Meter Calibration  
High percentage of distribution losses due to pilferage and meter tampering. Third party independent calibration not acceptable to SEB's. Lack of coordination between SEB and Electricity Inspector obstructs supply to consumer.

This can be attended to by franchising meter reading and replacement as in New Mumbai. The state government has to review the role of Electricity Inspector in the liberalisation context and transfer his powers to Regulatory Commission. The performance of DVB has to be monitored by Delhi Government and Ministry of Power with due regard to all points noted here.

7. Clearances  
IPP projects subjected to multiple clearances from CEA/SEBs/State Govt. u/s 15A, 18A, 29, 30, 44 of Electricity Supply Act, 1948 leads to long gestation periods. Obtaining other clearances under other laws is cumbersome.

Problems of fuel linkage, counter guarantees and capital should be clearly addressed by transparent and predictable guidelines. Reference is invited to the comments at Sl. No. 1 also.
1948. The process of grant of TEC by CEA has been speeded up. Out of 44 TEC cleared power projects, 13 projects have succeeded in tying up finances with Indian Financial Institutions of which only 9 projects have achieved financial closure. Construction has begun in 11 projects, of which 4 have so far been fully commissioned.

The real constraints hampering the progress of private power projects is not delay in obtaining various clearances but other issues like tying up of finances with financial institutions arranging escrow facilities from the State Government/SEBs, finalising commercially viable fuel supply agreements and transportation agreements. Since various agencies/departments required interministerial/departments consultations, the statutory bodies, agencies cannot pronounce their orders without adhering to the principles of natural justice. It is therefore, not possible to give all clearances under the single window. The actions initiated by the Ministry should be vigorously pursued. The roles of CEA and the Regulatory Authority should be clarified. Environmental clearances should be decentralised nodal points on centre and state should hold themselves responsible to pursue all clearances.

A number of States have already set up Electricity Regulatory Commissions. The Ministry has taken various steps to simplify the procedures for private investors in India and abroad. The CEA has so far approved 44 proposals for private generation. A number of powers of the CEA and Ministry of Power have been delegated to the States. They could now approve projects up to specified level of investment and specified generation capacity at their level. It has not been possible to achieve single window approval because there are too many statutory authorities to be approached at Central and State level. However clear guidelines have been issued for this purpose by CEA. Considerable powers have been delegated to State Governments by CEA and Ministry of Environment. State Govts. could arrange all clearances before bids are invited so that delays are avoided after approval.
8. **Penalty Clauses**

There are no enforcement provisions.

The commission recommends that this should be resolved soon.

Statutory provisions and procedures should be clarified and publicised urgently and effectively enforced.

9. **Quality of Power**

Power supply is erratic and never supplied as per standard supply and frequency. SEBs should be made to pay compensation for failing to provide continuous supply on 33 KV lines and for unscheduled shutdown.

Reference is invited to comments at item(3). The Commission is of the view that the consumer should be compensated for failure of SEBs/distributive authorities to provide continuous power supply of the requisite quality and for unscheduled power cuts.

10. **Electrical Inspection**

The PWD Inspector conducts delayed inspection. Private parties should be appointed to collect revenue on behalf of the Government. This will help to identify safety hazard in industries as well as improve cash flow in Government revenues.

SEB's may consider using accredited or licensed electrical contractors instead of inspectors. The role of Electrical Inspector could be subsumed by the Regulatory Authority.

11. **Tariffs**

Tariffs are different in all the States, the patterns are highly skewed and these are fixed without consultation with affected parties.

Frequent amendments to the Principal Notification dated 30.3.92 should be avoided to reduce instability.

All the states should set up Regulatory Authorities. Consistency, consultation and transparency is needed in this regard. The Regulatory Authorities should specify clear guidelines and operate consistent provisions for channelling budgetary subsidies for defined groups of consumers together with swift mechanisms for dispute resolution. Reference is invited to comments at St. No.(4) also.

12. **Payment Security**

Commercially unviable SEBs are not able to provide payment guarantees/back up payment facilities from SEBs/State Govts. or Counter Guarantees from GOI. Govt. establishments are unable to undertake/bear risks and penalties to make some key arrangements/contracts bankable and financeable.

There is need for predictable and transparent guidelines for this also on the basis of ongoing centre-state dialogue. Long-term policies are needed to attract foreign investment as the investment in the sector is of long gestation.

13. **Power Sector**

Like penalty imposed on industry in cases of low power factor SEB could consider to give concession for high power factor above 0.9

The suggestion may be examined.
14. **Electricity Duty**
The present system has electricity duty as the percentage of bill amount. With increase in the tariff rates, the duty amount increases. Thus the electricity duty should be on the Kwh basis and not on bill amount.

15. **Fuel Cost Adjustment (FCA)**
The SEB recover the cost of fuel consumption used in producing the electricity. The recent pattern of FCA has shown that some other inadmissible expenses are being forced on the industry in the disguise of FCA.

16. **Minimum Contract Demand**
This is fixed between the SEB and the consumer industry. The minimum number of units have to be consumed and if not consumed for the reasons like plant breakdown etc., the consumer industry is billed which has to face additional burden of financial loss and also lose production at the same time.

17. **Interest on Security Deposit**
The electricity supply companies take security deposit equivalent to a month's bill amount and give only 5.5% annual interest on this amount. These interest rates should be increased as per the existing bank rates.

18. **Captive Power**
The bottlenecks towards setting up of captive power plants are several. Policy differs from State to State. For granting Approvals there are no guidelines to SEBs and other State Authorities. Wheeling charges vary from State to State. SEBs take uneconomical charges for wheeling third party sales not allowed and concept of banking is adverse to them. Policy regarding taxes and duties on electricity generated from captive power plants viz. DG sets is inconsistent. State Govts. could consider to exempt industry from payment of electricity duty and follow uniform policies.

These steps are commendable. The Ministry should pursue present initiatives and operate consistent and predictable guidelines across all the projects. The tariff policy should also be guided by uniform parameters to be taken into account by Regulatory Authorities.
which identified payments by consumers are credited and the payment liabilities to the IPP is the first charge on this account and linking power generation with distribution. It is proposed that State Governments, SEBs, implementing agencies will obtain clearances from the concerned agencies before inviting bids for the projects. Once the bidding process is completed, the clearances obtaining from the respective Ministries will be transferred in favour of the IPP selected through the ICB route, subject to certain conditions like there being no change in the scope of the project and the new promoter adhering to the conditions laid down by the concerned Ministries/Agencies. The revised guidelines for international competitive bidding for private power project are being finalised and would be sent to the State Governments soon.

Delegation of Powers to States to give a fillip to the power projects have been initiated. States can clear generation projects having capital costs upto Rs.1000 crores, for R&M Schemes of existing power stations upto Rs.500 crores and all other schemes upto Rs. 100 crores. Debt limit of 40% from Banks/FIs relaxed for small hydroelectric schemes in private sector, environmental clearances delegated to the States, foreign equity participation up to 100% on the automatic route up to Rs.100 crores, creation of Website on the Internet, competitive bidding based on tariffs linked to plant availability, modifications in the liquid fuel policy have been introduced. It is proposed to set up a Power Trading Corporation for power across state borders.

19. Safety

The Rules and Regulations have inadequate provisions. Electrical Inspectors should be subordinate to Central and State Governments.

Reference is invited to comments at St.No.(10).

20. Fuel linkage

Fuel linkage in respect of the projects have been issued by the Ministry of Petroleum & Natural Gas who have also circulated a model fuel supply agreement. A national policy on hydro power development is being finalised.

Both policies on fuel linkage should be finalised and announced soon.
Status of follow-up action taken by M/o Railways on review of rules, laws, regulations, etc.

Expert Group constituted in the M/o Railways has given its report in two volumes. Generally, items requiring inter-ministerial coordination are dealt with in Volume-I and those issues pertaining to Railway Department only are deliberated in Volume-II.

Findings relating to Volume-I of the Report

The Committee in Volume-I undertook a detailed review of the various laws, particularly Railways Act, Railways Protection Act and Rules. It was indicated that the old Indian Railways Act, 1890 was repealed and revised by an Act, in 1989 incorporating various changes dictated by developments of the past few decades. Similarly, RPF Act, 1957 along with Railway Protection Force Rules, 1987 as amended in 1997 is of recent vintage. Railway Claims Tribunal Act, 1987 is also a recent piece of legislation.

Under the rules of Railway Act, 1989, the following areas have been suggested for amendment:

i) Payment of accident compensation should be expedited by authorising the railway administration to pay the compensation directly to the claimant except in case of disputes/doubts which can be decided by the Railway Claims Tribunal. (Para 7.3.1 (i)

ii) Rules regarding refund of fares and change of name of passengers should be liberalised. (Para 7.3.1 (ii)

iii) Rules regarding change of name of passenger to be modified. (Para 7.3.1 (iii)

iv) The role fo travel and tourism trade as an important intermediary should be recognised by Railway Administration by accrediting their apex bodies. Necessary changes in the rules to be made.

v) Rules regarding Rationalisation of tariff and the rationalisation scheme issued there-under to be resolved. (Para 7.3.1. (v)
vi) Powers and jurisdiction of Railway Rates Tribunal needs to be widened. (Para 7.3.1. (vi)

vii) Rules regarding movement of salt traffic under Section 71 (IRA-89) should be dispensed with. (Para 7.3.1. (vii)

viii) Amendment in Sec. 93 (I) of IRA-89 regarding repudiation of Claims on the grounds of unforeseen risk. (Para 7.3.1. (viii)

ix) Compensation for damage to consignment carried in open wagon without reckoning the commission given on account of provision of tarpaulin by the customer needs to be reviewed. (Section 104/RA-89). (Para 7.3.1. (ix)

x) Amendment in Section 176 (c) of IRA, 1989 to prevent tampering of communication equipment. (Para 7.3.1 (x)

xi) Amendment in Railway Property (Unlawful Possession) Act, 1966 to prevent theft of electricity. (Para 7.3.1. (xxi)

xii) Amendment in IRA-1989 to protect OHE from trees infringements/encumbrances. (Para 7.3.1 (xxii)

xiii) Amendment for providing for punishment for negligence of motor drivers at manned level crossing also. (Para 7.3.1 (xxvi)

xiv) No compensation to passengers in case of passenger travelling on the roof of bogie. (Para 7.3.1. (xxiv)

xv) Amendment with respect to auction of undelivered goods (Section 83 & 84 of IRA-89). (Para 7.3.1 (xxvi)

xvi) Amendment regarding auction of perishables in case of accidents (Section 85 of IRA-89 (Para 7.3.1 (xxvii)

xvii) Percentage charges to be reviewed in view of escalation in prices since enactment of Railway Rules, 1990. (Para 7.3.1 (xxiv)
xviii) Amendment for notice of claim for compensation and refund of overcharge (Section 106 of IRA-89). (Para 7.3.1 (xxx)

xix) Amendment of penalty for unauthorised carrying of business of processing and supply of railway tickets (Section 143 of IRA-89). (Para 7.3.1 (xxxi)

Under the Railway Claims Tribunal Act, 1987, accident compensation, direct payment to party, counter claims of railway administration are the areas suggested for amendment.

Amendment in Contract Labour Abolition Act regarding monopolies certificate, engagement of idle labour etc., is also suggested.

Similar small amendments under the Railway Protection Act, Prevention of Corruption Act, 1988, Indian Telegraph Act, 1885 etc. have been suggested. Certain changes like abolition of 15% price preference to National Small Scale Industries Corporation (NSIC) and its continuance of the preference given to Govt. agencies have also been suggested as part of revision of rules, regulations and orders.
Findings relating to Volume-II of the Report

The items, which are listed below, pertain to the Railways on which the Committee has given its recommendations:

1. Time limit for payment of claims
2. Siding agreements to incorporate local conditions also. (IRCA Commercial Manual (Para 2503 to 2505)
3. Rules regarding lien in the Indian Railway Establishment Code
4. Rules regarding payment from Provident Fund towards Insurance Policy
5. Exercise of option for fixation of Pay on promotion
6. Leave Rules
7. Minimum Educational Qualification for Group 'D' Staff
8. Assessment of vacancies
9. Medical Attendance Rules
10. Indian Railway Code for the Accounts Department, 1984
11. Reduction in cash handling
12. Cash Exchequer Control System
13. Indian Railway Finance Code, 1982
14. Amending IRS conditions of contract in regard to Arbitration clause.
15. Procedures related to interface with Stores suppliers
16. Acceptance of Banker's cheque towards earnest money
17. Ancillarisation and procurement of critical stores involving safety of Railway working to be procured only from known sources.

The recommendations pertain to the above items, in brief are summarised below:

1. The Railways should self-impose a time limit of six months to settle a compensation claim or to pay interest for delayed payments.
2. Difficulties of siding owners in the use of the siding and calculation of free time for loading/unloading should be resolved. Necessary amendments are suggested.
3. Rules regarding lien retention etc. being redundant may be discarded.
4. Provisions regarding payment of insurance policies from provident fund are redundant.

5. Exercise of option for fixation of pay on promotion-time limit to be increased from one month to two months.

6. Certain restrictions are called for in regard to option available with a Government servant to convert leave from one account to another account.

7. Minimum qualification for Group D staff may be fixed as 10th standard or above.

8. Period for assessment of vacancies to be increased from one year to two years.

9. Rationalisation and simplification of internal check procedures through extensive computerisation of various kinds of transactions.

10. Reduction in cash handling taking advantage of improvement in the banking services.

11. Refinements in cash exchequer control systems.


13. Continuous review of delegation of powers to make it sensitive to change and comprehensive review once in two years.


15. Time bound procedures relating to Stores supplies should be laid down.

16. Acceptance of banker cheque toward earnest money.

17. Anciliarisation and procurement of critical store involving safety to railway working to be procured only from know sources.
Status Report on follow-up action taken by Ministry of Surface Transport on review of rules, laws, regulations etc.

Task Force was constituted in September, 1997. Four sub-groups were constituted to look into different areas such as ports, roads, road transport and shipping. A note issued by the Ministry on constraints in the freight transportation sector is enclosed as appendix.

I. Shipping Wing:

Of the 24 Acts and Rules under this Wing, no change has been made in case of 6 (six) and it is observed that no review is required in case of 5 (five). Amendment to rules is under process and at different stages of review in case of the following Acts/Rules:

<table>
<thead>
<tr>
<th>Name of the Act/Rule</th>
<th>Current Status</th>
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</thead>
<tbody>
<tr>
<td>1. Merchant Shipping Act, 1958</td>
<td>Certain amendments in the Act were last made in October, 1993. A couple of amendments were also made in pursuance of ratification of ILO convention No. 147 in September, 1997 by promulgation of an Ordinance twice, last being on 23.4.98. It will be replaced by a bill in the ensuing Session of Parliament. A couple of urgent amendments in sections 76 and 95 of the Act are also being made and approval of Cabinet is being sought afresh. Comprehensive amendments to the Act, covering more than 170 Sections is under finalisation in consultation with Law Ministry. For amendment of Section relating to pollution control, four Cabinet Notes have been floated separately. Thus the Act is under constant review.</td>
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<td>2.</td>
<td>Admiralty Act of India</td>
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<td>3.</td>
<td>Multi-modal Transportation of Goods Act, 1933</td>
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<td>5.</td>
<td>Recruitment Rules relating to Group A&amp;B (Non-Technical Posts) in the Directorate General of Shipping &amp; R.O. (Sails)</td>
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<tr>
<td>6.</td>
<td>M.S. (Examination of Engine Drivers of Sea Going Ships) Amendment Rules, 1992.</td>
</tr>
<tr>
<td>7.</td>
<td>M.S. (Sailing Vessels) Rules, 1997.</td>
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<td>8.</td>
<td>M.S. (Apprenticeship to Sea Service) Rules, 1997</td>
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<td></td>
<td>Description</td>
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<tr>
<td>13.</td>
<td>Light Houses Accounting Rules</td>
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</table>
### Roads Wing:

Of the 8 Acts and Rules under this Wing, no change is required in case of two. The status of amendment/Review in case of others is as follows:

<table>
<thead>
<tr>
<th>Name of the Act/Rule</th>
<th>Current Status</th>
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</thead>
<tbody>
<tr>
<td>1. The National Highways Act.</td>
<td>These Acts are undergoing regular periodic review. As a consequence of the last review of the National Highways Act, 1957, amendments were carried out therein in March, 1997. Similarly NHAI Act was amended after review. As a result of the latest review, amendments to National Highways Act were proposed during the last session of earlier Lok Sabha, which included acquisition of land for housing etc. as part of National Highways land required for public purposes. However, due to dissolution of Lok Sabha, the Bill in respect of the amendments could not be introduced.</td>
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<tr>
<td>2. The National Highways Authority of India Act, 1988</td>
<td>Necessary action to obtain the approval of the Minister (SFT) is being taken. After Minister has accorded his approval, steps will be taken to issue the notification.</td>
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<tr>
<td>3. The National Highways Rules, 1957</td>
<td>As a result of review, it is proposed to amend the Rules.</td>
</tr>
</tbody>
</table>
4. The National Highways Authority of India (Budget, Accounts and Audit investment funds and Powers to enter the premises) Rules, 1990.

Amendments to these rules have been notified on 11.12.97.


Notified on 27.9.97.


The Bill is to be introduced in the Parliament.
### Road Transport:

Of the 5 Acts & Rules, the status of amendment/review in case of two is as follows:

<table>
<thead>
<tr>
<th>Name of the Act/Rule</th>
<th>Current Status</th>
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<tbody>
<tr>
<td>1. Road Transport Corporations Act, 1950.</td>
<td>A Review Committee which was set up for the purpose submitted its report on 17.3.93. The Main recommendations of the committee are (a) the Composition of Board of Directors of SRTCs should be more broad based and should include professionals as well as representatives of the commuters; (b) the Corporation shall act on business principles in such a manner as to ensure a minimum rate of return of 3% on the capital invested (Section 22) and (c) to give greater autonomy to the Corporations in its functioning. In the light of recommendations made by the committee, the Road Transport Corporations Act, 1950 is proposed to be amended. The Ministry proposes to approach Cabinet with such proposal very soon. The proposal to amend the Act was submitted for obtaining the approval of New Minister (SFT), before sending the same to the Cabinet.</td>
</tr>
<tr>
<td>2. Motor Vehicles Act, 1988</td>
<td>Amendment to the Act is under process by the Ministry. A draft Cabinet Note containing the proposed amendment was earlier approved by Ministry of Law. However, as the new Government has taken over, fresh concurrence/comments of the concerned Ministries are being obtained on the above draft Cabinet Note as per the advice of Ministry of Law. After obtaining the same, it will be placed before the Cabinet for its approval.</td>
</tr>
</tbody>
</table>
IV. **Ports Wing:**

The status of amendment/review in case of the 3 Acts is as follows:

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<tr>
<th>Name of the Act/Rule</th>
<th>Current Status</th>
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<tbody>
<tr>
<td>1. Indian Ports Act, 1908</td>
<td>The Committee constituted to review the Act has almost finalised its recommendations.</td>
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<tr>
<td>2. Major Port Trusts Act, 1963.</td>
<td>The Committee constituted to review the Act has completed more than 80% of its work. Remaining part is under process. The Committee is to submit its report expected by the end of June, 1998.</td>
</tr>
<tr>
<td>3. Dockworkers (Regulation of Employment) Act, 1948.</td>
<td>Rajya Sabha has passed the Bill to amend the Act.</td>
</tr>
</tbody>
</table>
Status Report on follow-up action taken by Deptt. of Telecommunications on review of rules, laws, regulations etc.

The Deptt. of Telecommunications has taken up the review of Telephone Rules/Procedures which have been brought into force under the statute of Indian Telegraph Act with a view to make the Deptt. more responsive and customer friendly. The review of the Telephone Rules is an ongoing exercise since the rules need to be changed/modified as and when a new service is introduced. In addition, following specific changes in procedures/regulations have been taken up to improve the functioning of the Telecommunications sector:

1. **NEW TELEPHONE CONNECTIONS**

   The proforma for registration of new telephone connections now provide for joint registration as well as nomination facility. It is also now possible to register from outstations.

2. **SHIFTING**

   A. Local Shift
   
   i) The orders for the usage of latest technologies such as “pair gain” systems and ‘WILL’ have already been issued to facilitate the consumer with a quicker shift.

   ii) Computerised service for commercial, TR, fault control, DQ etc. is already in use in Mumbai and Delhi Telephones. The orders for having a customer service centre in all exchanges of above 1600 lines capacity have already been issued. These customer service centres are to have a single window concept for all consumer services.

   B. Shifting of Telephones on All India Basis

   i) The Orders permitting shift of telephone under “TATKAL” Scheme have already been issued.

   ii) Widespread use of E-Mail is being contemplated to adhere to the time limit specified in this regard in the interest of the consumer.
3) **TRANSFERS**

i) The permission fee for the usage of the telephone of the landlord by the tenant has been reduced to Rs. 100 from Rs. 500. The permission also is being granted for asking.

4) **ACCESSORIES**

i) The consumer is free to use any accessories subject to their being compatible with the telephone network and also have the AC isolation facility. The orders for display of a list of such standardised accessories at the consumer service centres are being processed.

ii) The use of cordless telephone has been now totally deregulated.

5) **DATA FACSIMILE SERVICE**

i) Licences for the commercial use of fax machines.

   The use of fax machine is not being allowed freely subject to their conformating to TEC/DOT specifications. The orders for display of a list of TEC/DOT approved machines at all customer service centres are being processed.

ii) Rules for issue of permission to use FAX equipment on PSTN for public purposes.

   Payment of annual charges of Rs. 300 for access to PSTN by the bonafide users has already been dropped. The action to drop the annual charges for the service if it is to be put public use has also been initiated.

6) **PUBLIC CALL OFFICES**

i) To avoid the overcharging to the consumer by the PCO's normally the pulse for the operation of generator at the PCO end is being provided from the exchange. However, at time due to capacity constraint, it is technically not feasible to extend it to all PCO's. Moreover, there are technical problems with regard to the PCOs outside a radius of 5 KMs from the exchange. In these cases the use of individually owned programmable pulse generator after TEC/DOT approval is under consideration.

ii) The transfer of public call offices is now being allowed to their legal heir only subject to unemployment condition.
7) **PAY PHONES**
   
i) The coin operated pay phones presently in network are highly prone to tampering by the unscrupulous elements. The introduction of card pay phones is in advance stage.

8) **EXCESS METERING COMPLAINTS**
   
i) After the introduction of electronic exchange on a mass scale, there has been a quantum drop in the excess metering complaints. Notwithstanding, orders have been issued to investigate the excess billing complaint promptly and wherever the excess bill exceeds the previous bi-monthly bills by substantial amounts, temporary relief to subscriber by way of issuing a split bill is being considered.

9) **PAYMENT OF BILLS**
   
i) Presently by and large the collection of telephone bills is being done at the CTOs/DTOs in telecom centres. In a number of places these centres have been computerised for the benefit of the consumer. However, one problem generally being faced by all telephone users is the limited availability of collection centre for the payment of bills. Presently only the State Bank of India is authorised to receive the payments of telephone bills and more often than not the branches of this bank refuse to accept bills on the pretext of not being adequately staffed. Efforts are afoot to draw consent from the Department of Banking/Economic Affairs to make use of services of other nationalised banks to mitigate the problems of the consumers.

   ii) In rural areas where the bill collection centres are at large distance from the users, plying of a collection van in the usage areas on predetermined dates is under consideration.
### List of Persons/Organisations with whom the Commission interacted

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Name of the Organisation</th>
<th>Name of the Person</th>
<th>Designation</th>
<th>Date(s)</th>
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<tbody>
<tr>
<td>2.</td>
<td>Law Commission</td>
<td>Justice B.P.Jeevan Reddy</td>
<td>Chairman</td>
<td>12-08-98</td>
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<tr>
<td></td>
<td></td>
<td>Sh. N.L. Lakhanpal</td>
<td>DGFT</td>
<td>18-06-98</td>
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<td></td>
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<td>Sh. Ajai Sahai</td>
<td>Dy. DGFT</td>
<td>18-06-98</td>
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<td>Sh. L.B. Singhal</td>
<td>Dy. DGFT</td>
<td>23-07-98</td>
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<td></td>
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<td>Sh. H.S. Dubey</td>
<td>DDG (CMR)</td>
<td>21-07-98</td>
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<td></td>
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<td>Sh. V.K. Mahendra</td>
<td>DDG (SR)</td>
<td>21-07-98</td>
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<td></td>
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<td>Sh. O.P. Khanna</td>
<td>Dir (TR)</td>
<td>21-07-98</td>
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<td>Sh. R.K. Shukla</td>
<td>Dir (PG)</td>
<td>21-07-98</td>
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<td>Sh. S.K. Bhardwaj</td>
<td>AGD (PHA)</td>
<td>21-07-98</td>
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<td>5.</td>
<td>M/O Environment and Forests</td>
<td>Sh. V. Anand</td>
<td>Secretary</td>
<td>31-07-98</td>
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<td></td>
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<td>Sh. K. Roy Paul</td>
<td>Addl. Secy.</td>
<td>31-07-98</td>
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<td>Sh. R.H. Khawaja</td>
<td>Jt. Secy.</td>
<td>27-05-98</td>
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<td>Sh. Vijai Sharma</td>
<td>Jt. Secy.</td>
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<td>Sh. A.B. Akolkar</td>
<td>Scientist (CPCB)</td>
<td>31-07-98</td>
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<td>6. M/O Finance (D/O Economic Affairs)</td>
<td>Sh. Anoop Mishra</td>
<td>Dir (FI)</td>
<td>10-07-98</td>
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<td></td>
<td>Sh. G.R. Summan</td>
<td>Dy. Secy.</td>
<td>10-07-98</td>
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<td>Dr. K. Shivaji</td>
<td>Dy. Secy.</td>
<td>10-07-98</td>
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<td></td>
<td>Sh. P.R. Suresh</td>
<td>OSD (EE)</td>
<td>22-07-98</td>
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<td></td>
<td>Sh. K.S. Saha</td>
<td>Under Secy.</td>
<td>22-07-98</td>
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<tr>
<td></td>
<td>(Banking Division)</td>
<td>Sh. P. Mohan</td>
<td>Director</td>
<td>29-06-98</td>
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<tr>
<td></td>
<td>(D/O Revenue)</td>
<td>Sh. R.N. Das</td>
<td>Dir (IT)</td>
<td>27-05-98</td>
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<tr>
<td></td>
<td>Ms. Mala Dutt</td>
<td>Dy. Secy.</td>
<td>02-07-98</td>
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<td>(Central Board of Direct Taxes)</td>
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<td>Consumer Edn. and Research Centre, Ahmedabad</td>
<td>Dr. J.A. Siddiqui</td>
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<td>Sh. M.N. Dandekar, Chief Exe. &amp; Secretary</td>
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<td>Sh. R.N. Vasisht President</td>
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<td>Sh. K.L. Mahendra Genl. Secy.</td>
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<td>Bhartiya Mazdoor Sangh (BMS)</td>
<td>Sh. Mange Lal Rustagi</td>
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<td>Sh. O.P. Verma</td>
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97. Reserve Bank starts awareness campaign on finance firms (Banking Bureau 5.8.98).
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98. PHDCCI - Major Suggestions from the Deliberations of the International Conference-Prospectus for Foreign Direct Investment in India.

99. PHDCCI - Note on ‘Payment of Bills through Electronic Media’.

100. PHDCCI - All India Food Processors’ Association - Section by section - Recommendations suggested in PFA Act, 1954.


RESERVE BANK OF INDIA (RBI)


107. Summary of the report of the Committee on Customer Service in Banks - (Appointment by RBI under the Chairmanship of Shri M.N. Goipuria).

UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP)


109. Report of the Task Force for Industrial Sector under UNDP Project No: IND/95/008 (The Task Force was constituted by Haryana Govt. vide their Notification No.36/10/96-41/BI dt. 22.4.97).
