

Selected Excerpts from Volume 1 of the Report of the NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION

(Submitted to Government Of India on 31 March 2002)

[Of the various recommendations, 58 recommendations involve amendment to the Constitution, 86 involve legislative measures and the rest involve executive action.]

Chapter 2 : Basic Approach and Perspective

Approach to Review :

2.1.2 The following characterizes the nature of the contemporary Indian State:

- *The crucial failure is the innate resistance in governments and governmental processes to the fundamental article of democracy, viz. that all power and all authority flows from the people and that all public institutions are meant solely to serve the public interest. The assurance of the dignity of the individual enshrined in the preamble of the Constitution has remained unredeemed;*
- *From this fundamental breach of the constitutional faith flow almost all our present ills. The first and the foremost need is to place the citizens of this country at center-stage and demonstrate this prioritization in all manifestation of governance;*
- *Citizens see their government "beseiged by uncontrollable events and are losing faith with institutions. Society is unable to cope with current events.*

Administrative inefficiency and Indifference: The burgeoning of Extra-Legal Systems :

2.5.1 It is a sad fact that needlessly harsh, lugubrious, unimaginative and indifferent administration has pushed the poor to the wall. Pervasive corruption, inefficiency and insensitivity – particularly in the distribution of public goods – has resulted in the burgeoning of ‘extra-legal’ systems. These "extra-legal systems", says an economist, "constitute the most important rebellion against the status-quo in the history of developing countries since their independence.

..... Crisis of leadership, corruption, insensitivity and inefficiency of administration have resulted in extra-legal systems and parallel economies and even parallel governments. Bureaucratic pettifoggeries which cause frustration in people in their daily life has a more serious fallout of pushing more and more people into extralegal systems.

Working of the executive:

2.17.2 The permanent civil service is another gargantuan structure. The salaries, perquisites and the other benefits of office are so heavy that very little is left out of the revenues towards social infrastructure, social security, health, and education and other needs of the society. The financial allocations for health, education and social security in terms of percentage of the GDP is dismally low. The mobilization of resources in the States present a discouraging picture. There is heavy leakage of taxes. The executive has failed to afford reassurances to the citizenry of prompt reasonable efficient services particularly in public utilities. The citizenry has no assurances of living under the adequate system. Public-Grievance-Redressal-Mechanisms are weak. Citizen Charters and Institutions of Charter Ombudsman have not taken off. Commission’s Report addresses some of these problems bedeviling the polity.

Parliament and State Legislature : Reforms

2.19.2 Maladministration has paralysed the creative energies of the people and has pushed people and their day to day living more and more into extra-legal systems. Owing to opportunistic and self-seeking politics and politicians and an increasing scenario of politician, criminal and bureaucratic nexus, the political climate of the country has been polluted bringing in its wake enormous corruption --- electoral,

political and bureaucratic. There is pervasive de-generation of values. The foremost requirement is the restoration of confidence in the institutions of democracy. This needs strong and enlightened national leadership to be able to address itself to the emergent problems in international relationships; to issues of national integrity and security, to issues of development and economics. This Report addresses some of these issues particularly in relation to the ticklish issues of dealing with the aspirations to enter Parliament and State Legislatures of those who have criminal records.

Political Parties

2.24.3 Political parties play a great role in the working of the Constitution and its democratic institutions. Issues of the organization, functioning, inner-party-democracy, transparency of funding, ethical standards are all matters of vital public concern. There are 552 political parties in the country at the last count. But there is no comprehensive law regulating their functions and operations which are crucial to the welfare of the nation and, indeed, to the very survival of the democratic spirit and tradition.

2.24.4 Political parties that control and run democratic governments themselves need to be arranged on transparent systems as to their organization, funding, accounts and audit. There is increasing criminalisation of politics and of the electoral process. If remedies are not found and implemented speedily there might remain very little of value to salvage.

Fifty years of Working of the Constitution: Achievements & Failures : A Balance Sheet

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

Administration

2.26.7

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

Administration of Justice:

2.26.9

- Judicial system has not been able to meet even the modest expectations of the society. Its delays and costs are frustrating, its processes slow and uncertain. People are pushed to seek recourse to extra-legal methods for relief. Trial system both on the civil and criminal side has utterly broken down.

Areas of Concern : Commission’s Perception

2.27 The following are the important areas of concern according to the perception of the Commission:

(a) There is a fundamental breach of the constitutional faith on the part of Governments and their method of governance lies in the neglect of the people who are the ultimate source of all political authority. Public servants and institutions are not alive to the basic imperative that they are servants of the people meant to serve them. The dignity of the individual enshrined in the Constitution has remained an unredeemed pledge. There is, thus, a loss of faith in the Governments and governance. Citizens see their Governments besieged by uncontrollable events and are losing faith in institutions. Society is unable to cope up with current events.

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(m) System of administration of justice in the country is another area of concern.

(n) Criminal justice system is on the verge of collapse. The quality of investigations and of prosecutions requires a strong second look. Law’s delay and costs of litigation have become proverbial. Victimology, victim-protection, protection of witnesses in sensitive criminal-trials need institutional arrangements. Recruitment, training, refresher and continuing legal education for lawyers, judges and judicial administrators need immediate attention. The increasing utilization of alternative dispute resolution mechanisms, such as mediation, conciliation and arbitration and mechanisms of auxiliary adjudicative services need to be stressed. Training programmes for conciliators, mediators etc. need to be institutionalized. Legal profession needs to be transformed to meet the increasing public-expectations. Modernizing the system and making it user-friendly is one of the urgent tasks.

Pandora’s boxes

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2.28.3 There is pervasive disenchantment with the working of the institutions of democracy. People themselves seem almost to have resigned to what they consider their inevitable fate. Their patience and emotional resources appear to be wearing thin, yielding place to a sense of revulsion against the State and a deep distrust against the machinery of the government, particularly - the police and the bureaucracy. There is pervasive and cynical disbelief that anything will change at all.

CHAPTER 3: Fundamental Rights, Directive Principles and Fundamental Duties

Freedom of Press and Freedom of Information

3.8.1 Article 19(1)(a) refers to ‘freedom of speech and expression’. It is proposed that the article must expressly include the freedom of the press and other media, the freedom to hold opinion and to seek, receive and impart information and ideas. It is also proposed to amend article 19(2) by adding a further restriction on disclosure of information received in confidence except if required in public interest.

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Right to compensation for being illegally deprived of one’s right to life or liberty

3.10 Article 9(5) of the ICCPR states, “any one who has been victim of unlawful arrest or detention shall have an enforceable right to compensation.” In *D.K. Basu vs. State of West Bengal* I, the Supreme Court of India held that the reservation made by India to this clause while acceding to the Convention does not come in the way of the Court’s awarding compensation in the cases of illegal arrest or detention. The High Courts in India have also been awarding compensation.

Right to justice and legal aid

3.15.1 The Commission recommends that after article 30, the following article should be added as article 30A:

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

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

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

CHAPTER 4: Electoral Process and political Parties

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High Cost of Elections and Abuse of Money Power

4.14.3 Transparency in the context of election means both the sources of finance as well as their utilization as are listed out in an audited statement. If the candidates are required to list the sources of their income, this can be checked back by the income tax authorities.

The Commission recommends that the political parties as well as individual candidates be made subject to a proper statutory audit of the amounts they spend. These accounts should be monitored through a system of checking and cross-checking through the income-tax returns filed by the candidates, parties and their well-wishers. At the end of the election each candidate should submit an audited statement of expenses under specific heads.

Law for Political Parties

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4.30.4 The law should make it compulsory for the parties to maintain accounts of the receipt of funds and expenditure in a systematic and regular way. The form of accounts of receipt and expenditure and declaration about the sources of funds may be prescribed by an independent body of Accounts & Audit experts, created under the proposed Act. **The accounts should also be compulsorily audited** by the same independent body, created under the legislation which should also prepare a report on the financial status of the political party which along with the audited accounts **should be open and available to public for study and inspection.**

CHAPTER 5: Parliament and State Legislatures

Need for Review

5.1 Parliament is the pivotal institution of our representative parliamentary democratic polity..... Also, it has to be remembered that in parliamentary democracy just as Government is responsible to Parliament, Parliament is also responsible to the people who are the supreme sovereign.

Image of Parliament

5.11.1 The Parliamentarians have to be like Caesar's wife, above suspicion. They must voluntarily place themselves open to public scrutiny through a parliamentary ombudsman. Supplemented by a code of ethics, which has been under discussion for a long time, it would place Parliament on the high pedestal of people's affection and regard.

CHAPTER 6: Executive And Public Administration

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Conceptual Weaknesses & failure to ensure socio-economic goals

6.2.5 Rights of the people are inalienable. The words **“We, the people”** signify not only the moral and historical insight of founding fathers but they serve to reaffirm they are the source of all constitutional authority and that the test of Good Governance was measure of people’s well being. **However, the**

functionaries of the State have failed to realize that they are servants of the people and not their masters. Test of a vibrant democracy is the degree of success in calling its Executive to be accountable to the people.

6.2.6 The new administrative class, working under the mesmeric spell of colonial attitudes, was reluctant to consider the people as citizens. They continued to treat them as subjects or '*ryots*' both owing allegiance to a superior master. This denial robbed them of power and made it possible for the Executive to diminish the significance of the people. It is the possession of power that gives people control over their destiny and authority over those whom they have chosen to serve them.

6.2.7 Another fundamental flaw in governance outlined above is inherent in the centralized nature of the Indian State which lays down the parameters of the administration. There is an indissoluble link between the two. This was evident when the norms of colonial administration, with their long ancestry, came early to stamp their features on the post-independence dispensation. Colonial administration had created a top-down system of command and obedience in which State and local units of government were treated as subordinate to the Central Government.....Downsizing of the Government should also follow. Big Governments are not always conducive to efficiency and promptness. People should know where the buck stops.

6.2.8 Democracy implies intellectual acceptance of the position that self government is better than even good governance. Unless self government is ensured by clear devolution of power from the centre to the periphery, people are prevented from participation in Governance. They can not eliminate arbitrariness in executive actions which generally tilts the balance in favour of the privileged. Moreover the 'top-down' state of affairs does not legitimise 'self-government' which is of primordial value. 'Top-down' administration stifles public initiative. To make people effective they must consciously enjoy and assert their constitutional entitlements and not be mere supplicants for or objects of administrative largesse. That is the rationale of the 73rd and 74th amendments to the Constitution. A strong sense of public duty comes from empowerment. People's attitude changes from one of obedience to authority to active participation in governance. It is only when the gap between the executive and the people is narrowed down through decentralisation that democratisation can occur. The whole configuration of governance changes if democratic order is conceived not as a 'once in five year ritual' of changing the guard but as a continuous renewal of democratic life from a knowledgeable and participative citizen body. A citizen as a political and social unit could alone take responsibility for transformation of the state of the society. The essence of the matter is that there should be effective participative democracy at all levels; once people become the fountainhead of power, their role in governance becomes meaningful and effective. It encourages an active sense of public duty, replacing emphasis from authority and obedience to active participation. **The Commission holds that while improving the nature and institutional response of administration to the challenges of democracy is imperative, the system can deliver the goods only through devolution, decentralisation and democratisation thereby narrowing the gap between the base of the polity and the super structure.**

Civil Society

6.5.2 One of the marked weaknesses of the present regime has been its failure to effectively play its role in the socializing process. It has failed to use the machinery of the state to create a society of equals founded on the principles of social justice, secularism and eradication of casteism. In this regard, the situation of the Dalits and backward castes points to glaring failure of the state. In spite of several programmes launched by it, the state has failed to energetically lift up the Dalits and members of other lower castes and also failed to liberate a large sections of society from gender discrimination. As the executive has overwhelmingly identified itself with the stratified sections of the privileged few, it remained insensitive to the calamities that befell the weaker sections of the society and reluctantly took steps to repel the most injurious actions perpetrated against them. Large sections of these people remained docile, submissive, passive and tame. Piecemeal changes improved the conditions slightly, but the very spirit of the people by which the Constitution was to be sustained continued to rap.

Administrative Reforms and All India Services

6.6.1 The structural problem of two of the All India Services, namely, the Indian Administrative Service and the Indian Police Service, is that they were founded on the imperial idea of territorial control. It was at the district level that the Raj became an operational reality. This colonial idea was not abandoned when the country became independent for reasons which emerge clearly from the Constituent Assembly debates. Thus the present structure of the All India Services would appear to be incompatible with the development of full-fledged democratic representative government at the district level. In plain language it means that 'law and order' has also to be brought within the ambit of the elected district Panchayat, which is constitutionally entrusted with responsibility for developmental activity. It is only thus that public service at the district level would acquire significance and be the real stepping stone for political leadership at higher levels.

6.6.2 The absence of a clear-cut relationship between the people and the state functionaries is responsible for much which has gone wrong. All this happened because, inadvertently or otherwise, we allowed the colonial legacy of administration to continue to hold sway in the post-independence era as well. For instance, the change of nomenclature from ICS to IAS did not even constitute a cosmetic change. The so-called 'steel frame' of the British Empire became the role model for the fledgling IAS fraternity. The '*guru mantra*' of the old guard, viz, the I.C.S., was the maintenance of the *status quo* and the new guard, viz. the IAS, was only too willing to oblige and follow suit. It is a naïve hope to expect status quoist to initiate or welcome changes for a variety of reasons. First, they have a vested interest in perpetuating their dominant advantageous position along with the privileges flowing from it. Second, being bureaucrats rather than intellectual leaders, they lack the vision and imagination to devise new and innovative policies, preferring to tread the beaten track, follow precedents and to continue familiar programmes.

Modernizing the Civil Services – Creation of new services & curtailment of undue safeguards

6.7.1 Arbitrary and questionable methods of appointments, promotions and transfers of officers by political superiors also led to corrosion of the moral basis of its independence. It has strengthened the temptation in services to collusive practices with politicians to avoid the inconvenience of transfers and to gain advantages by ingratiating themselves to political masters. They would do the politicians' biddings rather than adhere to rules. Lest the situation becomes more vicious, it is necessary that a better arrangement be conceived under the Constitution. The question of appointments, transfers and placements is not to be left to the discretion of the politicians or administrative bosses but be entrusted to independent and autonomous boards. **The Commission, therefore, recommends that the questions of personnel policy including placements, promotions, transfers and fast-track advancements on the basis of forward-looking career management policies and techniques should be managed by autonomous Personnel Boards for assisting the high level political authorities in making key decisions. Such civil service boards should be constituted under statutory provisions.** They should be expected to function like the UPSC.

6.7.2 Above a certain level-, say the Joint Secretary level- all posts should be open for recruitment from a wide variety of sources including the open market. We should specialize some of the generalists and generalize some of the specialists through proper career management which has to be freed from day to day political manipulation and influence peddling.

6.7.3 Social audit of official working would be another way of developing accountability and answerability. **Officials, before starting their career, in addition to the taking of an oath of loyalty to the Constitution, should swear to abide by the basic principles of good governance. This would give renewed sense of commitment by the executives to the basic tenets of the Constitution.** It is important to recognize that change in existing policies and procedures will not come from the initiatives of those who stand to benefit from the existing arrangements. It needs the combined efforts of political avant-garde, activists in diverse fields, academic, and civil society institutions to generate pressures for change. Otherwise institutional decay will proceed apace with distressing consequences.

6.7.4 Systematic debasement as a consequence of high-handed conduct by certain sections of the executive has seriously dented the moral authority of the government. The functioning of the civil and police services have been far from satisfactory. Hence a negative perception of the Police that it ill serves the people has become deeply rooted in the psyche. The letter of the law may have been observed, but the spirit has been emasculated. Corruption and illegality have vitiated the course of justice. All this has contributed to a massive decline in the prestige of the public office. Evidence of moral and professional failure of administrative apparatus is too overwhelming to ignore. **Yet the services have remained largely immune from imposition of penalties due to the complicated procedures that have grown out of the constitutional guarantee against arbitrary and vindictive action (article 311).** The constitutional safeguards have in practice acted to shield the guilty against swift and certain punishment for abuse of public office for private gain. A major corollary has been erosion of accountability. **It has accordingly become necessary to re-visit the issue of constitutional safeguards under article 311 to ensure that the honest and efficient officials are given the requisite protection but the dishonest are not allowed to prosper in office. A comprehensive examination of the entire corpus of administrative jurisprudence has to be undertaken to rationalize and simplify the procedure of administrative and legal action and to bring the theory and practice of security of tenure in line with the experience of the last more than 50 years.** The need is not to discourage the good people; the need is to discourage the bad people which objective can be served only by sufficient and speedy procedures to bring the guilty to the book.

6.7.5 The present methods of evaluation of performance need drastic reform. At present neither the quantity nor the quality of output of individuals and collective units is properly measured. The result is that the good, the bad and the indifferent are all lumped together. Mostly chronology determines who goes ahead and who does not. **The civil service regulations need to be changed radically in the light of contemporary administrative theory to introduce modern evaluation methodology.**

6.7.6 The administrative structure and systems have to be consciously redesigned to give appropriate recognition to the professional and technical services so that they may play their due role in modernizing our economy and society. **The specialist should not be required to play second fiddle to the generalist at the top. Conceptually we need to develop a collegiate style of administrative management where the leader is an energizer and a facilitator, and not an oracle delivering verdicts from a high pedestal.**

6.7.7 It is essential to bring forward a parliamentary Bill under article 312(1) and to have it extensively debated in professional circles as well as by the general public.

6.7.8 The professional bodies like the Institution of Engineers, the Chartered Accountants, Medical Council, Bar Council of India, etc. which could have played a vital role in buttressing the role of civil society in governance have been content to act as lobbyists fighting for benefits to their constituency but not much else beyond narrow self-interest. Thus we have arrived at a situation in the judicial administration where courts are deemed to exist for judges and lawyers and not for the public seeking justice.

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Right to Information

6.10 Major assumption behind a new style of governance is the citizen's access to information. Much of the common man's distress and helplessness could be traced to his lack of access to information and lack of knowledge of decision-making processes. He remains ignorant and unaware of the processes which vitally affect his interest. Government procedures and regulations shrouded in a veil of secrecy do not allow the clients to know how their cases are being handled. They shy away from questioning officers handling their cases because of the latter's snobbish attitude and bow-wow style. **Right to information should be guaranteed and needs to be given real substance. In this regard, government must assume a major responsibility and mobilize skills to ensure flow of information to citizens. The traditional insistence on secrecy should be discarded. In fact, we should have an oath of transparency in place of an oath of secrecy. Administration should become transparent**

and participatory. Right to information can usher in many benefits, such as speedy disposal of cases, minimizing manipulative and dilatory tactics of the babudom, and, last but not most importantly, putting a considerable check on graft and corruption.

Freedom of Information Bill, 2000

6.11 The object of the Freedom of Information Bill, 2000 now pending before Parliament is to promote transparency in government activity. The public has a right to know what decisions are being taken and why. Dissemination of information about policies and actions in the public realm leads to a more accountable government. This deserves full support. **The Commission recommends that the Union Government should take steps to move the Parliament for early enactment of the Freedom of Information Legislation. It will be a major step forward in strengthening the values of a free and democratic society.**

Probity in Governance

6.16.1 Integrity, in the widest sense of the term, in the holders of public offices is what distinguishes a good public administration from a bad one. There may be other indicators but in the absence of integrity other competencies are not capable of yielding the desired results. Integrity is much more than financial honesty in official dealings. Unless public office is regarded as a trust that a public servant holds for public good, even the most enlightened policies for promoting the welfare of the society will not work. **How to restore this ethical and moral dimension to public life in India is one of the most crucial issues of governance at present.**

6.16.2 We cannot hope to succeed in this endeavour if we rely solely on legislation. For instance, the spirit of cooperative, team work, helping the deprived and the weak to obtain the protection and the benefit of the law require a vigorous social and political movement to really become part of our work culture and social behaviour. However, we should at the same time block some of the escape routes that the dishonest find to their advantage in the existing laws.

6.16.3 One of the measures adopted in several western countries to fight corruption and mal-administration is enactment of Public Interest Disclosure Acts which are popularly called the Whistle-blower Acts. **Similar law may be enacted in India also. The Act must ensure that the informants are protected against retribution and any form of discrimination for reporting what they perceived to be wrong-doing, i.e., for *bona fide* disclosures which may ultimately turn out to be not entirely or substantially true.**

Misfeasance in Public Office

6.17 The current situation is that public servants cannot be held personally responsible for their arbitrary, malicious, and outrageously unfair actions that cause injury to the public and loss to the State. A person can be detained illegally and subjected to unauthorised violence in custody, resulting in death, without any individual being called to account and having to pay damages for his patently illegal and arbitrary action. Other such examples can be cited. There is no law at present that defines the principles on the basis of which misfeasance can be rendered punishable. Time has come to consider framing a law that would place responsibility on public servants for damages/compensation for patently *mala fide* actions. The basis for action under the law may be an audit report or a report by a commission, committee or body competent to examine the relevant facts. **The Commission recommends that the Government examine the proposal for enacting a comprehensive law to provide that where public servants cause loss to the State by their *mala fide* actions or omissions, they would be made liable to make good the loss caused and, in addition, would be liable for damages.**

Benami Transactions (Prohibition) Act, 1988

6.19 This law was enacted to penalise public servants and others who acquire property in a clandestine manner out of ill gotten money.But this provision which is under Section 5 can be

implemented only if rules are made under Section 8 for prescribing the authority, the manner and procedure for acquiring *benami* properties by the State. Such rules have not been made so far. **The Commission recommends that the Union Government frame rules, without further loss of time, under Section 8 of the Benami Transactions (Prohibition) Act, 1988 for acquiring *benami* property and that a law be enacted to provide for forfeiture of benami property of corrupt public servants as well as non-public servants.**

CHAPTER 7 :The Judiciary

Background

7.1.1People turn to the judiciary in the quest of justice. There is need to review the working of the judiciary during the last half-a-century and more, to assess how far our justice delivery system has been able to ensure equal social, economic and political justice to all the people as ordained by the Constitution and its Preamble.

Functioning of the Judiciary

7.9 In terms of performance, there has been a certain amount of uneasy dissatisfaction in the functioning of the judiciary. In particular, the problem areas are:-

- i) Undue delays in the disposal of cases and lack of sensitivity (accountability) to the mounting arrears of cases.
- ii) Injecting avoidable uncertainties in the law and thereby making the task of the Executive more difficult and sometimes unmanageable.
- iii) Lack of transparency in judicial appointments and transfers.
- iv) Poor management of resources and ineffective standards of judicial administration including legal aid.
- v) Absence of strategic Action Plans for clearance of arrears in courts.

Criminal Justice Administration

7.14.1 The criminal justice system in India requires a strong second look.

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7.14.5 The greatest asset of the police in investigation of crimes and maintenance of law and order is the confidence of the people. Today, such public confidence is at the lowest ebb. The police are increasingly losing the benefit of this asset of public confidence. Hard intelligence in investigations comes from public cooperation. If police are seen as violators of law themselves or if they abuse their powers for intimidation and extortion, public develop an attitude of revulsion and the onerous duties and responsibilities that the police shoulder become more onerous and difficult.

Victim Orientation and Victimology

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7.15.3 The case for a viable, social justice-oriented and effective scheme for compensation victims is now widely felt. **The Government at the Union level and in the states are well advised under the directive principles as well as under International Human Rights obligations to legislate on the subject of an effective scheme of compensation for victims of crime without further delay.**

7.15.4 The tremendous support which the criminal justice might derive from the people once the compensation scheme is introduced even in a modest scale, and the possibilities of advancing the crying need for social justice in a very real sense, are attractive enough for the State to find money to float the scheme immediately.

CHAPTER 9: Decentralisation and Devolution

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Constitutional Provision

9.4.1 The Constitution (73rd Amendment) Act, 1992 relating to Panchayats containing articles 243 to 243-O and the Constitution (74th Amendment) Act, 1992 relating to Municipalities (articles 243P to 243ZG) imparted some basic features of certainty, continuity and strength to Panchayat Raj institutions all over the country.

9.4.2 The main features of the 73rd Amendment are - (i) a three-tier system of Panchayat Raj for all States having a population of over twenty lakhs; (ii) Panchayat elections to be held regularly every five years; (iii) reservation of seats for the Scheduled Castes and Scheduled Tribes and for women (not less than one-third of seats), (iv) constitution of State Finance Commissions; (v) constitution of District Planning Committees to prepare development plans for the district as a whole; (vi) establishment of State Election Commissions; and (vii) establishment of Gram Sabhas.

The Problems.....

9.5.2 In the process of implementation of the 73rd and 74th Amendments, considerable gaps have been noticed. The Union Government and the State Governments continue to exercise powers in planning, and the Panchayats and Municipalities do not enjoy autonomy – financial or administrative – as institutions of local self-government. While today Panchayats elect some three million members of whom one-third are women, the objectives envisaged in the Amendments have not been fully achieved even after more than eight years.

CHAPTER 10: Pace of Socio-Economic Change and Development

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Issues of governance

10.3.1 In line with our earlier analysis of the Executive and Public Administration (Chapter 6), we emphasise the paramount need for a radical redefinition of governance to change the mind-set of the political executive and the permanent civil service. The movement must be from governance to self-governance.Since civil society is an important element figuring conceptually in model of self-governance, it has to be emphasised that civil society must include Scheduled Caste, Scheduled Tribes, Backward Classes and other deprived categories outside Government and governmental institutions and they should be enabled to have a hand in the continuing process of development and programmes.

10.3.2. The Commission recommends that Citizens' Charters be prepared by every service providing department/agency to enumerate the entitlements of the citizens. In case a citizen fails to receive the public goods and the services in the manner and to the extent set out in such charters, he/she should have recourse to an easy and effective system of grievance redressal through chartered Ombudsman.

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10.3.3 Personnel policy should consciously aim at sensitizing public servants, especially officers in the Indian Administrative Service and the Indian Police Service to the special needs of women, the scheduled castes, the scheduled tribes, minorities, and other weaker sections.....**For this purpose, the Commission recommends that provision be made for Social Justice Clearance before an officer of class I or class II is promoted along the lines detailed in para 3.2 at pages 1390-1391 of Book-3, Vol.II.**

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