

**COMMITTEE ON THE WELFARE  
OF SCHEDULED CASTES AND  
SCHEDULED TRIBES  
(2000-2001)**

**(THIRTEENTH LOK SABHA)  
THIRTEENTH REPORT  
ON**

**MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS  
(DEPARTMENT OF JUSTICE)**

Action taken by the Government on the recommendations contained in the Second Report (Thirteenth Lok Sabha) of the Committee on the Welfare of Scheduled Castes and Scheduled Tribes — Representations of SCs and STs in Judiciary with special reference to the appointments in Supreme Court and High Courts.



*Presented to Lok Sabha on 23-4-2001  
Laid in Rajya Sabha on 23-4-2001*

**LOK SABHA SECRETARIAT  
NEW DELHI**

23 April, 2001/3 Vaisakha, 1923 (Saka)

Price Rs. 14.00

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**COMPOSITION OF THE COMMITTEE ON THE WELFARE OF  
SCHEDULED CASTES AND SCHEDULED TRIBES  
(2000-2001)**

Shri Kariya Munda — *Chairman*

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2. Shri Shiv Singh — *Assistant Director*

## INTRODUCTION

I, the Chairman, Committee on the Welfare of Scheduled Castes and Scheduled Tribes having been authorised by the Committee to finalise and submit the Report on their behalf, present this Thirteenth Report (Thirteenth Lok Sabha) on Action Taken by Government on the recommendations contained in their Second Report (Thirteenth Lok Sabha) on the Ministry of Law, Justice and Company Affairs (Department of Justice) regarding representation of Scheduled Castes and Scheduled Tribes in Judiciary with special reference to the appointments in Supreme Court and High Courts.

2. The Draft Report was considered and adopted by the Committee on 18th April, 2001.

3. The Report has been divided into the following Chapters:—

CHAPTER I	Report
CHAPTER II	Recommendations/Observations which have been accepted by the Government.
CHAPTER III	Recommendations/Observations which the Committee do not desire to pursue in view of replies of the Government.
CHAPTER IV	Recommendations/Observations in respect of which replies of the Government have not been accepted by the Committee and which require reiteration.
CHAPTER V	Recommendations/Observations in respect of which final replies of the Government have not been received.

4. An analysis of the Action Taken by the Government on the recommendations contained in the Second Report of the Committee is given in the Appendix-I. It would be observed therefrom that out of 20 recommendations made in the Report, 2 recommendations i.e. 10% have been accepted by the Government. The Committee do not desire to pursue 6 recommendations i.e. 30% of the total recommendations in view of the Government's replies. There are 12 recommendations i.e. 60% in respect of which replies of Government have not been accepted by the Committee and require further reiteration.

NEW DELHI;  
23 April, 2001

3 Vaisakha, 1923 (Saka)

KARIYA MUNDA,  
*Chairman,  
Committee on the Welfare  
of Scheduled Castes and  
Scheduled Tribes.*

## **CHAPTER I**

### **REPORT**

1.1 This Report of the Committee on the Welfare of Scheduled Castes and Scheduled Tribes deals with the action taken by the Government on the recommendations contained in their Second Report (Thirteenth Lok Sabha) on the Ministry of Law, Justice and Company Affairs (Deptt. of Justice) on "Representation of Scheduled Castes and Scheduled Tribes in Judiciary with special reference to the appointments in Supreme Court and High Courts."

1.2 The Second Report was presented to Lok Sabha on 15 March, 2000. It contained twenty recommendations. Replies of the Government in respect of these recommendations have been examined and may be categorised as under:—

- (i) Recommendations/observations which have been accepted by the Government (Sl. Nos. 19 and 20)
- (ii) Recommendations/observations which the Committee do not desire to pursue in the light of the replies received from the Government (Sl. Nos. 4, 5, 6, 11, 15, 16)
- (iii) Recommendations/observations replies to which have not been accepted by the Committee and need reiteration (Sl. Nos. 1, 2, 3, 7, 8, 9, 10, 12, 13, 14, 17, 18)
- (iv) Recommendations/observations in respect of which final replies of the Government have not been received (NIL)

1.3 The Committee will now deal with the action taken replies of the Government which need reiteration or merit comments:—

### **RESERVATION IN JUDICIARY**

#### **Recommendation (Sl. No. 1, Para 1.11)**

1.4 The Committee had noted that the Government in practice has adopted the policy of "Running with the hare and hunting with the hounds" in regard to the question of implementing the reservation policy. The Committee had, therefore, recommended that the relevant articles *i.e.* 124 and 217 of the Constitution may be amended suitably to include especially judiciary wing of the State within the ambit of reservation, and simultaneously a Judiciary Act may be enacted to spell out the governing principles of the proper functioning of the Judiciary especially the Supreme Court and High Courts.

1.5 In their reply, Ministry of Law, Justice and Company Affairs (Deptt. of Justice) have stated that appointment of Judges of the Supreme Court of India and High Courts is made under articles 124 and 217 of the Constitution which do not make any specific provision for reservation for any caste or class of persons. The Central Government has, however, been writing to the Chief Ministers of the States and the Chief Justices of the High Courts, from time to time, requesting them to locate suitable persons from the Bar belonging to Scheduled Castes, Scheduled Tribes, other Backward Classes, Minorities and Women for appointment as High Court Judges.

1.6 It has also been stated that the question of reservation in appointment of Judges in the Supreme Court and High Courts has been debated in and outside Parliament. The matter had gone into by the then Attorney General for India in 1983, who opined that the constitutional scheme did not permit making of reservations in the appointment of judges of the High Courts and the Supreme Court of India. The Minister of Law, Justice and Company Affairs, in reply to a question in the Rajya Sabha on December 01, 1999, observed that appointment of Judges of the Supreme Court of India and High Courts was made under articles 124 and 217 of the Constitution of India which did not provide for reservation for any caste or class of persons. He reiterated the commitment of the Government to provide proper representation to the Scheduled Castes/Scheduled Tribes in every sphere of life.

1.7 The Ministry have further stated that the matter has also been examined, in November, 1998, in consultation with the Law Commission who opined as under:

“So far as the appointment of High Court Judges is concerned, there can be no question of providing reservation. Appointment of High Court Judges is governed by provisions of the Constitution and the Constitution does not provide for any such reservation. These are constitutional posts and as such beyond the purview of the legislative power of the Parliament/State Legislatures. Even otherwise, it would be highly inappropriate and inadvisable to provide any reservation in the matter of appointment of High Court and Supreme Court Judges.”

#### Comments of the Committee

1.8 The Committee find it astounding that the Government has repeated its earlier point of view on the question of reservation for SCs and STs in Judiciary and has not made any endeavour to act according to the recommendation of the Committee. It seems that no serious thought has been given to the recommendation of the Committee which shows that the tall claim made by the Government to uplift those classes of the society, who have borne the brunt of neglect and injustice over the ages, has got no justification at all. The Committee take a very serious view of this stand of the Government and reiterate their earlier recommendation to amend Arts. 124 and 217 of the Constitution, if need be, to include Judiciary wing of the

State within the ambit of reservation and enacting a Judiciary Act to spell out the governing principles of the proper functioning of the Judiciary especially Supreme Court and High Courts. The Committee also recommend that SC/ST Additional/District Judges from the Lower Courts of States/Union Territories who are eligible for appointment to the High Courts may be appointed as Judges of the High Courts.

## CONSTITUTIONAL SAFEGUARDS

### Recommendation (Sl. Nos. 2 and 3, Para Nos. 2.11 and 2.12)

1.9 The committee had noted that as per opinions expressed by the Law Commission and a former Attorney General of India, the constitutional scheme did not permit making of reservation for SCs and STs in the appointment of the Judges of the High Courts and Supreme Court. The Committee had further opined that it is not understandable how the Government could accept such a view as final or decisive on such a vital matter. The Committee had been informed that since High Court falls within the category of "State" within the meaning of Art. 12 of Part III of the Constitution, when Chief Justice of a High Court makes appointments of officers and servants under Art. 229, such appointments are within the meaning of "State". Therefore, Articles 14-16 do apply to the Chief Justice as in the case of the Governor of the State. But this explanation does not answer, the Committee's query as to how could the judicial wing of the Government be excluded from the definition of State in Art. 12.

1.10 The Committee further noted the Governments' clarification that although there is no specific provision for reservation in judiciary, the question is whether a constitutional amendment is required for this purpose or whether reservation can be possible without that. As interpreted by the Supreme Court, it cannot be said that the provision of Article 15(4) would not apply to the appointment of Judges of the Supreme Court and High Courts. The power conferred under Art. 15(4) is not whittled down in any manner by Arts. 124 & 217. The Committee had, therefore, recommended that in view of the changed circumstances, the Government should make reservation for Scheduled Castes and Scheduled Tribes in the matter of appointments of High Courts and Supreme Court judges, if need be, by amending the constitution.

1.11 The Government in their reply have stated that the position regarding reservation in judiciary in respect of the Supreme Court and High Court judges has been explained in reply to para 1.11 (Para 1.5 above refers). The report has been forwarded to all the State Governments, Union Territories and all High Courts. As regards appointment of judges in the Supreme Court and High Courts the position has been explained in the reply furnished in para 1.11 (Para 1.5 *ibid* refers).

### Comments of the Committee

1.12 The Committee are aghast to find that the views expressed by Law Commission and a former Attorney General regarding not having any provision in the Constitution for reservation of SCs and STs in the appointment of judges of Supreme Court and High Courts have been treated as decisive and no action has so far, been taken to deeply examine the fact that the Judiciary wing of the State can be brought under the reservation provision of the Constitution in terms of the power conferred under Art. 15(4). Moreover, since High Court falls within the category of "State" within the meaning of Article 12, when Chief Justice of a High Court makes appointments of officers and servants under Article 229, such appointments are within the meaning of "State". The Committee are unable to understand that, inspite of above admitted fact how could the Judicial Wing be excluded from the definition of State in Article 12 of the Constitution. The Committee, therefore, reiterate their earlier recommendation that early action should be taken to provide reservation for SCs and STs in the matter of appointments of High Court and Supreme Court Judges.

**Recommendation (Sl. Nos. 4, 5 and 6, Para Nos. 2.13, 2.14 and 2.15)**

1.13 The Committee had opined that there is no legal and constitutional bar for providing reservation in Judiciary and what is lacking is the political will and sincerity to do the needful in this regard. The provision of Article 15(4), as interpreted by the Supreme Court should be applied to the appointment of Judges of Supreme Court and High Courts. To facilitate this process, the Committee had, therefore, recommended that an All India Judicial Service should be constituted forthwith on the pattern of IAS, etc., which was mooted long back and now again recommended by the first National Judicial Pay Commission in its report. They had further recommended that necessary legislation for proper placement of the personnel from this Service at various levels of the higher Judiciary should also be enacted simultaneously.

1.14 In reply the Government have stated that one of the items of the National Agenda for Governance of the National Democratic Alliance is to set up a National Judicial Commission which would *inter alia*, recommend judicial appointments in the High Courts and the Supreme Court of India. The proposal would require an amendment to the constitution. Formation of an All India Judicial Service is under the Consideration of the Government. Views of the concerned Departments have been obtained. A Cabinet Note is under preparation.

### Comments of the Committee

1.15 The Committee feel that the reply given by the Government seems to be of dubious nature, because on the one hand it has been stated that National Agenda of National Democratic Alliance is to set up a National



Judicial Commission which would recommend appointments in the High Courts and Supreme Court and it requires an amendment to the Constitution on the other hand it has been stated that formation of an All India Judicial Service is under the consideration of the Government. Views of the concerned Departments have been obtained and a Cabinet note is under preparation. The Committee are at a loss to understand in case the above proposal requires an amendment to the Constitution then on what basis a Cabinet note is being prepared. The Committee would like to know the concrete and positive steps taken by the Government regarding the constitution of an All India Judicial Service and also setting up of a National Judicial Commission and would impress upon the Government to accelerate pace of process initiated in this regard.

**Recommendation (Sl. Nos. 7 and 8, Para Nos. 2.20 and 2.21)**

1.16 The Committee had noted that the Ministry of Law, Justice and Company Affairs had been requesting the Chief Ministers and Chief Justices of High Courts to recommend the names of suitable SC and ST advocates for appointment as Judges of the High Courts. The Committee were surprised to note that out of 481 High Court judges only 15 were from Scheduled Castes and 5 from Scheduled Tribes in position as on 1-5-1998 and none was in the judgeship of the Supreme Court in spite of the fact that some suitable, eligible and well-qualified SC/ST candidates were available in the consideration zone. Further, the Committee were also astonished to note that there had been not only no reservation for SCs and STs in the appointment of officers and staff of the Supreme Court but also no recruitment rules have been finalised during the last 50 years. The Committee were pained to note that the Ministry of Law, Justice and Company Affairs had stated that they have merely noted the Committee's observation. The Committee had, therefore, recommended that Government should take concrete and positive steps, if need to be by amending Articles 217 and 124 of the Constitution to give adequate representation to SCs and STs in the judgeship of High Courts and Supreme Court as well as in the appointment of officers and staff in their establishments as per prescribed percentage for SCs and STs on the basis of Census of 1991.

1.17 The Government in their reply have stated that a letter has been issued by the department of Justice to Registrars of all High Courts requesting for action taken note on the report. No reply has been received so far. The report has also been forwarded to all the State Governments/ Union Territories. It has been brought to their notice that it is the primary responsibility of the State Government in consultation with the concerned High Court to ensure adequate provisions for safeguarding the interest of SCs/STs, in the matter of recruitment, promotion etc. in the subordinate judiciary, for which reply is awaited.

1.18 As regards reservation in judiciary for appointment of judges in the Supreme Court and all High Courts the position has been explained in respect of reply to Para 1.11 (Pl. see para 1.5 above). The relevant extract of the report has been forwarded to the Supreme Court and all High Courts.

### **Comments of the Committee**

1.19 The Committee understand that on earlier occasions also the Ministry had been requesting to the Chief Ministers and Chief Justices of the High Courts, albeit, the representation of SCs/STs in the judgeship of the Supreme Court and High Courts as well as in the appointment of officers and staff is in dismal condition which reflect the jingoism and lackadaisical desire of the States towards their commitment for upliftment of Scheduled Castes and Scheduled Tribes. The Committee, therefore, reiterate their earlier recommendation for making necessary amendment in Article 124 and 217 of the Consitution, so that SC/ST people are properly represented in the judgeship of the Supreme Court and High Courts as well as in appointment to officers and staff cadre of the establishments of courts. The Committee should also be apprised of the replies received by the Government from all State Governments/Union Territories (UTs), Supreme Court and High Courts.

### **Recommendation (Sl. Nos. 9 and 10, Para Nos. 2.26 and 2.27)**

1.20 The Committee had noted that the Ministry of Home Affairs had suggested to the Registrar of Supreme Court the need for framing suitable rules to provide reservation for SCs and STs in the establishment of Supreme Court. Similarly, the State Governments were also requested to persuade the High Courts to make reservation in their services on the basis of the reservation in the State services. The Committee had also noted that in the year 1976, the State Governments/UTs were intimated that the reservation for SCs and STs in case of Subordinate Judicial Services in States is applicable under Article 234 and 309 of the Constitution. Such rule of reservation in case of higher judicial services can be made under Article 309 of the Constitution.

1.21 The Committee had further noted that, at present, majority of the High Courts have made provisions for reservation in services for SCs and STs under them by framing suitable rules of recruitment. However, no such rules have so far been made by the Supreme Court. The whole attitude of the Supreme Court is very surprising. The Committee had also notes that there has been not only no reservation for SCs and STs in the appointments of officers and staff of the Supreme Court but no recruitment rules have so far been framed. The Committee had, therefore, recommended that Supreme Court and High Courts should implement reservation in recruitment and promotion of the officers and servants at various levels at the prescribed percentage and the backlog vacancies in the SC/ST categories must be filled up by conducting special recruitment drive.

1.22 It has been stated by the Ministry, in their reply, that the report of the Committee has been forwarded to the Registrar General of the Supreme Court of India and to all High Courts on 11.7.2000 and 18.8.2000 respectively for favour of information and appropriate action, if any, on the Report. They have further stated that the report has also been forwarded to all the State Governments and Union Territories on 22.9.2000.

### **Comments of the Committee**

1.23 The Committee express their displeasure over the reply given by the Government because there has been no initiative from the Government side to get recommendations implemented. The Government, by forwarding copy of the Report to Supreme Court, High Courts, State Governments and Union Territories for "favour of information and appropriate action, if any," cannot absolve itself from its responsibility of implementation of reservation policy in Judiciary. The Committee are deeply concerned over the pathetic situation in which no reservation exists for SCs and STs in the appointments of officers and staff of the Supreme Court and no recruitment rules have been framed so far. The Government should consider the gravity of the situation which may arise due to non-implementation of reservation policy in judiciary. The Committee are, therefore, constrained to reiterate its earlier recommendation that Supreme Court and High Courts should implement reservation in recruitment and promotion of the officers and servants of various levels at the prescribed percentage and the backlog vacancies in the SCs and STs categories must be filled by conducting special recruitment drives in a time bound programme.

### **Recommendation (Sl. No. 11, Para No. 2.31)**

1.24 The Committee had observed that out of 18 High Courts, 11 High Courts had furnished the information, which showed negligible representation of SCs and STs in the Cadre of Judicial Officers. The Committee had, therefore, recommended that concerted and serious efforts must be made by the concerned High Courts to fulfil the prescribed level of reservation in the Cadre of Judicial Officers in each State/Union Territory in a time bound programme.

1.25 In their reply, the Ministry of Law, Justice and Company Affairs (Department of Justice) has stated that a letter had been issued by the Department of Justice on 18.8.2000 to Registrars of all High Courts requesting for action taken note on the report. They have further stated that as no report was received from High Courts, the matter was taken up with the Chief Secretaries of State Governments/Union Territory Administrations and they had been requested to ensure adequate safeguarding of interests of SCs/STs in the matter of recruitment, promotion in the subordinate judiciary in consultation with their respective High Courts. However, their replies were till awaited.

### Comments of the Committee

1.26 The Committee are disturbed to find that no report has since been received from High Courts. The Ministry of Law, Justice and Company Affairs (Department of Justice) has also written to the Chief Secretaries of all States/Union Territory Administrations in this regard, but the replies are yet to be received. It gives wrong signal towards lethargic endeavour of the Government in implementation of reservation policy in Judiciary. The Committee would like to know, if any, extra efforts were made by the Government in this regard. The Committee in the first instance desire that each High Court must commit itself to fulfil the prescribed level of reservation in the Cadre of Judicial officers at the earliest.

### STAFF STRENGTH IN THE ESTABLISHMENTS OF HIGH COURTS

#### Recommendation (Sl. No. 12, Para No. 2.33)

1.27 The Committee had desired to have full information relating to officers and grade-wise/service-wise details in respect of employees of all the High Courts with the break-up of SCs and STs therein at an early date.

1.28 In turn, the Ministry in their Action Taken reply have stated that the matter was taken up with all High Courts on August 18, 2000 for action taken note in this connection. No reply has been received so far. Information relating to number of SC/ST judicial officers in the subordinate Judiciary was obtained from Delhi High Court only and the same was forwarded to the Lok Sabha Secretariat on 29.2.2000. Allahabad High Court did not send requisite information. They were reminded on 27.3.2000.

### Comments of the Committee

1.29 The Committee are seriously concerned to note that this report was presented to Lok Sabha on 15 March, 2000 but the action taken notes from all the High Courts are still awaited. The Committee would like to know steps taken by the Ministry of Law, Justice and Company Affairs to get the Action Taken replies at the earliest. Further, the Ministry have stated that information relating to number of SC and ST Judicial Officers in the subordinate judiciary in respect of Delhi High Court was forwarded to this Secretariat on 29.2.2000 and Allahabad High Court did not send the requisite information even after issue of reminder on 27.3.2000. The Committee are constrained to point out that this recommendation was about staff strength in the establishments of High Courts whereas, the Ministry is emphasising about information on the Judicial Officers in the Subordinate Judiciary. The Committee, therefore, reiterate their earlier recommendation and desire that full information relating to officers and grade-wise/service-wise details in respect of employees of all the High Courts with the break-up of SCs and STs therein must be made available to the Committee at once.

### **Recommendation (Sl. Nos. 13 and 14, Para Nos. 2.37 and 2.38)**

1.30 The Committee had observed that as the appointment of the officers and servants of the High Courts is an appointment to an office or a post under the "State" and the salaries are paid from the Consolidated Fund of India, the Chief Justice and his companion judges are bound to apply reservation. The Committee had also noted that the Bombay High Court has not yet adopted reservation rules and the Delhi High Court had asserted that employees of the High Court are taken out of the purview of Article 309 of the Constitution. Hence, the instructions issued by the Government relating to reservation for SCs and STs do not apply to the High Courts. The Committee had, therefore, recommended that suitable instructions might be issued and if need be, the Constitution may be amended to bring courts under the purview of reservation orders in respect of officers and staff working in their establishments. The Committee had further recommended that the State Governments were required to issue directions to amend, if not already done, the service rules of the staff of the subordinate courts providing reservation to the SCs and STs proportional to the population in the respective States in the direct recruitment as well as promotions at all levels. Similarly, Articles 229 and 146 should be amended directing the High Courts and Supreme Court to apply reservation in recruitment and promotion of the officers and servants of the respective courts at all the levels.

1.31 The Government in turn have stated that the above observations of the Committee were brought to the notice of High Courts of Delhi and Bombay. Delhi High Court had earlier intimated about the reservation position in respect of judicial officers which was forwarded to Lok Sabha Secretariat on 29.2.2000. It has further been stated that a copy of the Report was forwarded to all High Courts including High Court of Bombay. The report has also been forwarded to all the State Governments/Union Territories.

### **Comments of the Committee**

1.32 The Committee are deeply concerned over the unchanging and formalised reply of the Government. The Committee are of the view that while forwarding report of the Committee to all High Courts and all the State Governments/Union Territories, it should have been made clear to them to implement all the recommendations of the Committee, in letter and spirit. However, the Committee, strongly impress upon the Government to take all remedial steps for the implementation of the Committee's recommendations. The Committee, therefore, reiterate its earlier recommendation that the Constitution may be amended, if need be, to bring courts under the purview of the reservation orders in respect of officers and staff working in their establishments. The Committee further reiterate that State Government should make provision in the service rules of the staff of Subordinate Courts providing reservation to SCs and STs proportional to

their population in the respective State in direct recruitment as well as in promotions at all levels. On the same analogy Article 229 and 146 should also be amended providing reservation in the High Courts and Supreme Court in recruitment and promotion of the officers and servants of the respective courts at all the levels.

**Recommendation (Sl. No. 15, Para No. 2.41)**

1.33 The Committee had noted that mere provision of reservation in recruitment would not yield good result as the intention, sincerity and zeal of the implementing authority is the deciding factor. The Committee had, therefore, recommended that the Government must look into this basic aspect of reservation in Judiciary and amend the Constitution if necessary, to give due representation to SCs and STs in the Judiciary as well as in their establishments.

1.34 In reply the Government have stated that formation of an All India Judicial Service and National Judicial Commission is under the consideration of the Government. It further states that copies of the Report have been forwarded to all the State Governments/Union Territories for necessary action.

**Comments of the Committee**

1.35 The Committee feel that although the reply given by the Government for formation of an All India Judicial Service and National Judicial Commission is a positive one, but what concrete steps are being taken in this direction are not known. The Committee, therefore, desire that all steps taken/action initiated to form an All India Judicial Service and National Judicial Commission may be intimated to the Committee at the earliest.

**Recommendation (Sl. No. 16, Para No. 2.45)**

1.36 The Committee had recommended that the Government should see that court cases involving reservation aspects are defended with keen interest by well qualified and experienced advocates preferably from Scheduled Caste and Scheduled Tribe communities, and the National Commission for Scheduled Castes and Scheduled Tribes should invariably be made a party in such matters.

1.37 It has stated in their reply by the Ministry that the recommendation relates to the Department of Legal Affairs, who has sent a communication to all the Central Ministries/Departments, all Senior Central Government Standing Counsels of High Courts, CAT Benches, Branch Secretariats of Department of Legal Affairs in Mumbai, Calcutta, Chennai & Bangalore, Incharge of Litigation Section (High Court) and Central Agency Section of Supreme Court to comply with the observations of the Committee while conducting court cases involving reservation questions.

### Comments of the Committee

1.38 The Committee are happy to find that the recommendations of the Committee have been sent to all concerned for compliance. The Committee also wish that an effective mechanism may be devised by the Ministry to monitor the proper implementation of the recommendations of the Committee. If any shortcoming is noticed, quick remedial/corrective measures should be taken so that rights of SCs and STs are well protected in the Court of Law.

#### Recommendation (Sl. No. 17, Para No. 2.48)

1.39 The Committee had strongly recommended that a National Judicial Commission including one member each from Scheduled Caste and Scheduled Tribe be set up to deal with the appointment, transfer and placement of the Judges of the High Courts and Supreme Court, and this should be supplemented by Constituting an All India Judicial Service.

1.40 The Government in their reply have stated that one of the items of the National Agenda for Governance of the National Democratic Alliance is to set up a National Judicial Commission which would *inter alia*, recommend judicial appointments in the High Courts and the Supreme Court of India. The proposal would require Constitutional amendment. Formation of an All India Judicial Service is under the consideration of the Government.

### Comments of the Committee

1.41 The Committee feel that at least the Government has shown a little interest with regard to formation of a National Judicial Commission, but the Committee are still in doubt whether any concrete steps have been taken in this direction. The Committee's report was presented on 15.3.2000 and even after expiry of one year, there is no indication that the Government has shown any keen interest in this regard. Neither the proposed constitutional amendment has been brought out nor any action has been taken to form an All India Judicial Service and it seems that the matter is still under the consideration of the Government. The Committee are at a loss to understand how and when the Government will fulfil replies/assurances given by them in their Action Taken Notes. The Committee, therefore, reiterate their earlier recommendation that a National Judicial Commission with one member each from Scheduled Castes and Scheduled Tribes and an All India Judicial Service be constituted at the earliest.

#### Recommendation (Sl. No. 18, Para No. 2.51)

1.42 The Committee had observed that the concerned Ministry/Department had failed to locate an Office Memorandum No. B.C. 17016/1/79-SC & BCD. I issued by Ministry of Home Affairs on 4 October, 1980 relating to the vital question whether the special authority created under Article 338 of the Constitution is empowered to investigate all matters relating to safeguards for SCs & STs working under the authorities/bodies

created under the constitution, and whether he can incorporate the findings thereof in his Annual Report. The Committee had, therefore, recommended that immediate steps should be taken to fix responsibility on person or persons for such grave lapse and award appropriate punishment. The Committee had also desired that the action taken in the matter with full information on the unanswered query be communicated to the Committee.

1.43 In their reply the Government have stated that the attention of Ministry of Social Justice & Empowerment was drawn to the above Para of the Report. The Ministry, *vide* their letter of 17th July, 2000, informed that no point of the report comes under the purview of that Ministry. On a reference from the Ministry of Personnel, Public Grievances and Pensions indicating that the Ministry of Social Justice and Empowerment is concerned with para 2.49 to 2.51 of the said Report, the matter was again taken up with the Ministry of Social Justice and Empowerment to indicate the action taken particularly in respect of para 2.51. The matter relates to the Ministry of Social Justice & Empowerment.

#### Comments to the Committee

1.44 The Committee are perturbed to note that when the Committee had unveiled the fact about lapse on the part of the Government, the concerned Ministry i.e. Ministry of Social Justice & Empowerment is not ready to take the responsibility and has not even cared to give at least an interim reply in this regard the Committee have taken a serious view for treating Committee's recommendation very casually by the Ministry. The Committee, therefore, strongly urge that action taken in the matter with full details be communicated to the Committee at once.



## **CHAPTER II**

### **RECOMMENDATIONS/OBSERVATIONS WHICH HAVE BEEN ACCEPTED BY THE GOVERNMENT**

#### **Recommendation (Sl. No. 19, Para No. 2.52)**

In regard to the question whether the All India Judges' Association ever considered the matter of reservation of Scheduled Castes and Scheduled Tribes as per the constitutional provisions, the Ministry of Law, Justice and Company Affairs stated that they were not aware whether that Association had ever considered the question of implementation of the reservation policy. That shows that the Judges have never been concerned about the constitutional objectives of bringing about social change. The Committee would like the Ministry to communicate its displeasure over this state of affairs.

#### **Reply of the Government**

The observations of the Committee have been duly communicated to the All India Judges Association.

[Ministry of Law, Justice and Company Affairs (Department of Justice)  
O.M. No. J-14014/4/2000-JR dated 18 October, 2000]

#### **Recommendation (Sl. No. 20, Para No. 2.53)**

The Committee note that with regard to remedy under the Constitution, the High Courts are capable of issuing writs and directions for the protection of certain fundamental rights of the Scheduled Castes and Scheduled Tribes. But this has rarely been invoked or applied to ensure justice for these people. The courts have failed in coming to the rescue of these deprived sections of the society. As a classic example of how the judicial administration has not been helpful in providing justice to Scheduled Castes & Scheduled Tribes, mention may be made to the handling of a Special Leave for appeal filed by the Union Government in 1978 against an Allahabad High Court's adverse judgement of 1977 in J.C. Malik's case regarding reservation for Scheduled Castes and Scheduled Tribes. The Supreme Court passed an interim order in September, 1984 allowing conditional promotions in accordance with the High Court Judgement. No action was taken on the Government's 1985 petition for vacating/variation of the interim orders of relief, with the result that various High Courts and CATs in the country also passed similar interim orders of relief, and the Government orders on reservation could not be implemented for a very long time. Ultimately, the Supreme Court delivered an adverse judgement only in July, 1995, after a period of

17 years. The Ministry of Railways have confirmed these facts. They have also admitted that the implementation of reservation policies of the Government on Railways during this period was in utter confusion resulting in a great loss of the interests of the Scheduled Caste/Scheduled Tribes employees. It has been stated in the Ministry's reply: "It is also very debatable and questionable approach that in R.K. Sabharwal case the Hon'ble Supreme Court has approved the judgement of Allahabad High Court without mentioning the argument put forth by the then learned Additional Solicitor General." It was also disclosed that the then Railways Minister & Minister of State continuously requested the then Minister of Law & Justice for engaging the Attorney General/Solicitor General in the case of J.C. Malik because they felt no counsel other than Attorney General/Solicitor General would be in a position to project the case properly before the Supreme Court. The Ministry of Legal Affairs agreed to this request. But at the final stage of the appearing of the case, neither Attorney General nor the Solicitor General appeared before the Court. The Committee find all these facts very disturbing and strongly urge upon the Government to take urgent steps to protect the constitutional rights of Scheduled Castes & Scheduled Tribes.

#### **Reply of the Government**

Department of Legal Affairs has requested Incharge, Central Agency Section; Incharge, Branch Secretariats Mumbai, Calcutta, Chennai and Bangalore; and Incharge Litigation (High Court) Section to ensure that cases regarding reservation for SC/ST are contested effectively in order to protect the Constitutional Rights of Scheduled Castes and Scheduled Tribes and where considered necessary, Senior Law Officers are engaged in such cases.

[Ministry of Law, Justice and Company Affairs (Department of Justice)  
O.M.No. J-14014/4/2000-JR dated 18 October, 2000]

## CHAPTER III

### RECOMMENDATIONS/OBSERVATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE TAKING INTO CONSIDERATION THE REPLIES OF THE GOVERNMENT

#### Recommendation (Sl.No. 4, Para No. 2.13)

The Committee note that the Home Secretary also more or less concurred with the view of the Law Secretary. He stated that if there is a political commitment to that, Article 15(4) is the instrument by which this objective can be achieved, then legal opinion can be sought. He, however, mentioned the fact that during the last 50 years Article 15(4) has not helped us to achieve this objective. He suggested two alternative courses of action to get over the difficulty. One option is to set up a National Judicial Commission, and the other is to constitute an All India Judicial Service with a legislative provision governing its recruitment method and placement.

#### Reply of the Government

One of the items of the National Agenda for Governance of the National Democratic Alliance is to set up a National Judicial Commission which would, *inter alia*, recommend judicial appointments in the High Courts and the Supreme Court of India. The proposal would require an amendment to the Constitution.

Formation of an All India Judicial Service is under the consideration of the Government views of the concerned Departments have been obtained. A Cabinet note is under preparation.

[Ministry of Law, Justice and Company Affairs (Department of Justice)  
O.M.No. J.14014/4/2000-JR dated 18 October, 2000]

#### Comments of the Committee

Please see para 1.15 of Chapter I

#### Recommendation (Sl. No. 5, Para No. 2.14)

The Committee are of the firm opinion that there is no legal and constitutional bar for providing reservation in the judiciary. What is apparently lacking is the political will and sincerity to do the needful. The provision of Article 15(4), as interpreted by the Supreme Court should be applied to the appointment of Supreme Court and High Court judges without any further loss of time. To facilitate this process the Committee, therefore, recommend that an All India Judicial Service should be constituted forthwith on the pattern of the I.A.S. etc., which was mooted

long back and now recommended again by the First National Judicial Pay Commission in its Report and necessary legislation for proper placement of the personnel from this Service at various levels of the higher judiciary should also be simultaneously enacted.

### **Reply of the Government**

Formation of an All India Judicial Service is under the consideration of the Government. Views of the concerned Departments have been obtained. A Cabinet Note is under preparation.

[Ministry of Law, Justice and Company Affairs (Department of Justice)  
O.M. No. J-14014/4/2000-JR dated 18 October, 2000]

### **Comments of the Committee**

Please see para 1.15 of Chapter I

### **Recommendation (Sl. No. 6, Para No. 2.15)**

Regarding the Memorandum on the Procedure adopted for appointment of the Chief Justice of India and of judges of the Supreme Court, the Committee could not appreciate the plea of confidentiality of the Memorandum for not furnishing it initially. It was, of course, made available later on the Committee's insistence. The Committee also desire that the existing procedure for appointment should be suitably amended or substituted in the light of the recommendations of the Committee.

### **Reply of the Government**

One of the items of the National Agenda for Governance of the National Democratic Alliance is to set up a National Judicial Commission which would *inter alia*, recommend judicial appointments in the High Courts and the Supreme Court of India. The proposal would require Constitutional Amendment. Once the above is done, essentially the procedure for appointment would undergo a change.

[Ministry of Law, Justice and Company Affairs (Department of Justice)  
O.M. No. 14014/4/2000-JR dated 18 October, 2000]

### **Comments of the Committee**

Please see para 1.15 of Chapter I

### **Recommendation (Sl. No. 11, Para No. 2.31)**

It is evident from the above statement that out of 18 High Courts information is available with regard to 11 High Courts only. An bird's eye view of the above figures reveals that representation of Scheduled Castes and Scheduled Tribes in the cadre of Judicial Officers is negligible. The Committee, therefore, recommend that concerted and serious efforts must be made by the concerned High Courts to fulfil the prescribed level of reservation in the cadre of Judicial Officers in each State/Union Territory in a time bound programme.

### **Reply of the Government**

A letter was issued by the Department of Justice on 18.8.2000 to Registrars of all High Courts requesting for action taken note on the Report. As no report was received from High Courts, the matter was taken up with the Chief Secretaries of State Governments/UT Administrations. They were requested on 22.9.2000 to ensure adequate safeguarding of interests of SCs/STs in the matter of recruitment, promotion in the Subordinate judiciary in consultation with their respective High Court. Their replies are awaited.

[Ministry of Law, Justice and Company Affairs (Department of Justice)  
O.M. No. J-14014/4/2000-JR dated 18 October, 2000]

### **Comments of the Committee**

Please *see* para 1.26 of Chapter I.

#### **Recommendation (Sl. No. 15, Para No. 2.41)**

The Committee note that mere provision of reservation in recruitment will not yield any good results because the intention, sincerity and zeal of the implementing authority is the deciding factor which the Committee feel is absent in most of the High Courts and at other levels of judiciary. The Committee feel that the crux of the problem is that neither the Government have ever considered this problem nor made any efforts to resolve it. The Committee, therefore recommend that the Government must look into this aspect and amend the Constitution, if necessary, to give due representation to Scheduled Castes and Scheduled Tribes in the Judiciary as well as in their establishments.

### **Reply of the Government**

Formation of an All India Judicial Service and National Judicial Commission is under the consideration of the Government. Copies of the Report have been forwarded to all the State Governments/Union Territories for necessary action.

[Ministry of Law, Justice and Company Affairs (Department of Justice)  
O.M. No. J-14014/4/2000-JR dated 18 October, 2000].

### **Comments of the Committee**

Please *see* para 1.35 of Chapter I.

#### **Recommendation (Sl. No. 16, Para No. 2.45)**

The Committee note that as per suggestion made by the Commissioner for SCs and STs to the then Deptt. of Personnel and Administrative Reforms in 1978-79 to make itself an active party in court cases involving reservation questions so that the Government view could be projected correctly and the interest of SCs and STs are well protected, the Ministry of Law, Justice and Company Affairs have stated that the same has been brought to the notice of all Ministries of the Government of India for

remedial action. The Committee would like to have copy of such instructions and would urge the Government to see that in future, cases involving reservation aspects are defended with keen interest by well qualified and experienced advocates preferably from Scheduled Caste and Scheduled Tribe communities which alone will boost the faith of these communities in the Government. National Commission for Scheduled Castes and Scheduled Tribes should invariably be made a party in such matters.

### **Reply of the Government**

The recommendation relates to Department of Legal Affairs. The Department of Legal Affairs *vide* their OM No. F-44 (11)2000-Judl. dated 26th June, 2000 (copy Enclosed as Annexure I) has sent a communication to all the Central Ministries/Departments all Senior Central Govt. Standing Counsels of High Courts, CAT Benches, Branch Secretariats of Department of Legal Affairs in Mumbai, Calcutta, Chennai & Bangalore, Incharge of Litigation Section (High Court) and Central Agency Section of Supreme Court to comply with the observations of the Committee while conducting court cases involving reservation questions.

[Ministry of Law, Justice and Company Affairs (Department of Justice)  
O.M. J-140144/2000-JR dated 18 October, 2000]

### **Comments of the Committee**

Please see para 1.38 of Chapter I.

## CHAPTER IV

### RECOMMENDATIONS/OBSERVATIONS, REPLIES TO WHICH HAVE NOT BEEN ACCEPTED BY THE COMMITTEE AND NEED REITERATION

#### **Recommendation (Sl. No. 1, Para No. 1.11)**

From a general survey of the present state of affairs in the country the Committee find that a firm policy of reservation is the only remedy. The Government in practice has, however, adopted the policy of "Running with the hare and hunting with the hounds" in regard to the question of implementing the reservation policy. This stance of the Government must change. The Committee, therefore, recommend that the relevant articles *i.e.* 124 and 217 of the Constitution may be amended suitably to include especially judiciary wing of the State within the ambit of reservation, and simultaneously a Judiciary. Act may be enacted to spell out the governing principles of the proper functioning of the Judiciary especially the Supreme Court and High Courts.

#### **Reply of the Government**

Appointment of Judges of the Supreme Court of India and High Courts is made under articles 124 and 217 of the Constitution which do not provide for reservation for any caste or class of persons.

The Central Government has, however, been writing to the Chief Ministers of the States and the Chief Justices of the High Courts, from time to time, requesting them to locate suitable persons from the Bar belonging to the Scheduled Castes, Scheduled Tribes, other Backward Classes, Minorities and Women for appointment as High Court Judges.

The question of reservation in appointment of Judges in the Supreme Court and High Courts has been debated in and outside Parliament. The matter was gone into by the then Attorney General for India in 1983, who opined that the constitutional scheme did not permit making of reservations in the appointment of Judges of the High Courts and the Supreme Court of India. The Minister of Law, Justice and Company Affairs, in reply to a question in the Rajya Sabha on December 01, 1999, observed that appointment of Judges of the Supreme Court of India and High Courts was made under articles 124 and 217 of the Constitution of India which did not provide for reservation for any caste or class of persons. He reiterated the commitment of the Government to provide proper representation to the Scheduled Castes/Scheduled Tribes in every sphere of life.

The matter has also been examined, in November, 1998, in consultation with the Law Commission who opined as under:—

“So far as the appointment of High Court Judges is concerned, there can be no question of providing reservation. Appointment of High Court Judges is governed by provisions of the Constitution and the Constitution does not provide for any such reservations. These are constitutional posts and as such beyond the purview of the legislative power of the Parliament/State Legislatures. Even otherwise, it would be highly inappropriate and inadvisable to provide any reservations in the matter of appointment of High Court and Supreme Court Judges.”

[Ministry of Law, Justice and Company Affairs (Department of Justice) O.M. No. 140144/2000-JR dated 18 October, 2000]

### **Comments of the Committee**

Please see para 1.8 of Chapter I

### **Recommendation (Sl. Nos. 2 and 3, Para Nos. 2.11 and 2.12)**

The Committee note that as per opinions expressed by the Law Commission and a former Attorney General of India, the constitutional scheme did not permit making of reservation for Scheduled Castes and Scheduled Tribes in the appointment of the judges of the High Courts and the Supreme Court. It is not understandable how the Government could accept such a view as final or decisive on such a vital matter. The Committee were also informed that since High Court falls within the category of “State” within the meaning of Article 12 of Part-III of the constitution of India, when Chief Justice of a High Court makes appointments of officers and servants under Article 229, such appointments are within the meaning of “State”. Therefore, Articles 14—16 do apply to the Chief Justice as in the case of the Governor of the State. But this explanation does not answer the Committee’s query as to how could the judicial wing of the Government be excluded from the definition of State in Article 12.

The Committee also note the clarifications given by the Ministry of Law, Justice and Company Affairs in regard to the question of reservation in judiciary. It has been stated that although there is no specific provision for reservation in judiciary, the question now is whether a constitutional amendment is required for this purpose or whether reservation can be possible without that. Referring to the Supreme Court judgement in the case of Government of Andhra Pradesh vs. P.B. Vijay Kumar (AIR 1995 SC 1648), the Law Secretary has clarified that clause (4) of Article 15 has to be read harmoniously with Articles 124 and 217 which provide for the appointment of the judges of the Supreme Court and High Courts. It cannot be said that the provision of Article 15(4) would not apply to the appointment of judges of the Supreme Court and High Courts. The



Committee, therefore recommend that in view of the changed circumstances, the Government should make reservation for Scheduled Castes and Scheduled Tribes in the matter of appointments of High Court and Supreme Court judges, if need be by amending the Constitution.

### **Reply of the Government**

The position regarding reservation in judiciary in respect of the Supreme Court and High Court judges has explained in reply to para 1.11 (Please see reply of the Government given under previous recommendation Sl. No. 1)

The Report has been forwarded to all the State Governments, Union Territories and all High Courts.

As regards appointment of Judges in the Supreme Court and High Courts the position has been explained in the reply furnished in para 1.11 (Please see reply of Government given under previous recommendation (Sl. No. 1)

[Ministry of Law, Justice and Company Affairs (Department of Justice)  
O.M. No. J-14014/4/2000-JR dated 18 October, 2000]

### **Comments of the Committee**

Please see para 1.12 of Chapter I

**Recommendation (Sl. Nos. 7 and 8, Para Nos. 2.20 and 2.21)**

The information available upto 1.5.1998 confirms the Committee's apprehension about a very sad state of affairs in the matter of representation of Scheduled Castes and Scheduled Tribes in the higher judiciary. The Committee is surprised to see that out of 481 High Court judges only 15 Scheduled Castes and 5 Scheduled Tribes were in position as on 1.5.1998. The representation of Scheduled Castes and Scheduled Tribes in the judgeship of the Supreme Court was nil on the date in spite of the fact that some suitable, eligible and well qualified SC/ST Candidates were available in the consideration zone. In a participatory democracy appointment of the Scheduled Castes and Scheduled Tribes to the Supreme Court and High Courts is also necessary to ensure their participation in the administration of justice. The attitude of some High Court Registries in refusing to furnish the information on the plea of not disclosing the caste identity is astounding. When the Committee asked for comment on the above observation, the Ministry of Law, Justice and Company Affairs in their post evidence note have stated that the observation of the Committee has been noted and the Department of Justice does not have any comments to offer. The Committee find that it is abundantly clear that the Scheduled Castes and Scheduled Tribes have dismal representation in the judiciary, other equally more important wing of the State either on the administrative side or on the judicial side. Judges take oath that they uphold the Constitution and the laws. But the Supreme Court, and a few High Courts by claiming power above the Constitution, practice untouchability and are disobeying the Constitution with regard to Articles 16(4) and 16(4A).

The Committee note that the Ministry of Law, Justice and Company Affairs have requested a number of times the Chief Ministers and Chief Justice of High Courts to recommend the names of suitable Scheduled Castes and Scheduled Tribes advocates for appointment as Judges of the High Courts. On the other side of the coin, the Committee are surprised to note that out of 481 High Court judges only 15 were from Scheduled Castes and 5 from Scheduled Tribes in position as on 1.5.98 and none was in the Judgeship of the Supreme Court. The Committee are also astonished to note that there has been not only no reservation for Scheduled Castes and Scheduled Tribes in the appointment of officers and staff of the Supreme Court but also no recruitment rules have been finalised during the last 50 years. The Committee are pained to note that the Ministry of Law, Justice and Company Affairs have stated that they have merely noted the Committee's observation. The Committee, therefore recommend that the Government should take concrete and positive steps, if need be, by amending Articles 217 and 124 of the Constitution to give adequate representation to Scheduled Castes and Scheduled Tribes in the Judgeship of High Court and Supreme Court as well as in the appointment of officers and staff in their establishments as per prescribed percentage for Scheduled Castes and Scheduled Tribes on the basis of census of 1991.

### **Reply of the Government**

A letter has been issued by the Department of Justice to Registrars of all High Courts requesting for action taken note on the report. No reply has been received so far.

The report has also been forwarded to all the State Governments/Union Territories. It has been brought to their notice that it is the primary responsibility of the State Government in consultation with the concerned High Court to ensure adequate provisions for safeguarding the interest of SC/ST in the matter of recruitment, promotion etc. in the subordinate judiciary. Reply is awaited.

As regards reservation in judiciary for appointment of judges in the Supreme Court and all High Courts the position has been explained in respect of reply to Para 1.11 (Please see reply of the Government given under recommendation Sl. No. 1 of this chapter)

The relevant extract of the report has been forwarded to the Supreme Court and High Courts.

[Ministry of Law, Justice and Company Affairs (Department of Justice)  
O.M. NO. J-14014/4/2000-JR dated 18 October, 2000]

### **Comments of the Committee**

Please see Para 1.19 of Chapter I

### **Recommendation (Sl. Nos. 9 and 10, Para Nos. 2.26 and 2.27)**

The Committee note that the Ministry of Home Affairs had suggested to the Registrar of Supreme Court the need for framing suitable rules to provide reservation for SCs and STs in the Establishment of Supreme Court. Similarly, the State Governments were also requested to persuade the High Courts to make reservations in their services on the basis of the reservation in the State services. The Committee also note that in the year 1976, the State Governments/UTs were intimated that the reservation for SCs and STs in case of subordinate judicial services in States is applicable under Articles 234 and 309 of the Constitution. Such rule of reservation in case of higher judicial services can be made under Article 309 of the Constitution.

The Committee further note that at present, majority of the High Courts have made provisions for reservation in services for SCs and STs under them by framing suitable rules of recruitment. However, no such rules have so far been made by the Supreme Court. The whole attitude of the Supreme Court is very surprising. Its Registry has intimated that the requisite information regarding representation of SCs and STs is not available with that office. Such secrecy or suppression of information is highly undesirable which is also a proof of non-observance of reservation. It has been repeatedly stated that the Chief Justice of India always considers the claims of Scheduled Castes and Scheduled Tribes in the matter of appointments in the Registry, but when the Committee wants the number of SCs and STs and present serving the Supreme Court, the reply comes that the information is not readily available. It is a very sad commentary on the functioning of the Country's Apex Court. It is further noted that there has been not only no reservation for SCs and STs in the appointments of officers and staff of the Supreme Court but framing of codified rules regarding their recruitment has also not been finalised during the last half century. How can the weaker sections of the society have any faith left in such a Court. The Committee are, therefore, of the view that when the Supreme Court is receiving the salaries from the Consolidated Fund of India for its staff, it is a condition that the Chief Justice and the Companion judges of the Supreme Court as well as High Courts should also implement reservation in recruitment and promotion of the officers and servants at various levels at the prescribed percentage and the backlog vacancies in the categories of Scheduled Castes and Scheduled Tribes must be filled up by conducting special recruitment drive.

### **Reply of the Government**

The Report of the Committee has been forwarded to the Registrar General of the Supreme Court of India on 11.7.2000 for favour of information and appropriate action if any, on the Report. The Report has also been forwarded to all the State Governments and Union Territories on 22.9.2000.

The Report has been forwarded to the Supreme Court and all High Courts on 11.7.2000 and 18.8.2000 respectively.

[Ministry of Law, Justice and Company Affairs (Department of Justice)  
O.M. No. J-14014/2000-JR dated 18 October, 2000]

#### **Comments of the Committee**

Please *see* para 1.23 of Chapter-I

#### **Recommendation (Sl. No. 12, Para No. 2.33)**

From the information furnished, the Committee find that the said information relates to only total number of employees and the number of SCs and STs among them and not according to categories as asked for. However, two of the High Courts, namely Allahabad and Delhi, have not furnished any information at all in this regard which cannot be expected from these esteemed organisations. The Committee also observe that the representation of SCs and STs employees in the establishment of various High Courts is deplorable. The Committee desire that full information relating to officers and grade-wise/service-wise details in respect of employees of the High Courts with the break-up of SCs and STs therein should be made available to the Committee at an early date.

#### **Reply of the Government**

The matter was taken up with all High Courts on August 18, 2000 for action taken note in this connection. No reply has been received so far. Information relating to Number of SC & ST judicial officers in the subordinate Judiciary was obtained from Delhi High Court and the same was forwarded to the Lok Sabha Secretariat on 29.2.2000. Allahabad High Court did not send requisite information. They were reminded on 27.3.2000.

[Ministry of Law, Justice and Company Affairs (Department of Justice)  
O.M. No. J-14014/2000-JR dated 18 October, 2000]

#### **Comments of the Committee**

Please *see* para 1.29 of Chapter-I

#### **Recommendation (Sl. Nos. 13 and 14, Para Nos. 2.37 and 2.38)**

The attitude of the High Court of Delhi is highly objectionable in the matter of interpretation of Article 229 regarding recruitment of officers and staff of the court. They have talked of unfettered power of the Chief Justice, who has been cited as the supreme authority in this regard, as if he is above the Constitution whereas they are controlled and bound by the Constitution and Articles 16(4) and 14(4A) are equally applicable to them. It has been asserted that the employees of the High Court are taken out of the purview of Article 309 of the Constitution. The Committee takes a serious view of all such utterances. The Bombay High Court is yet to adopt the reservation rules after half a century of working of the

Constitution. What a sad commentary on the judiciary who are supposed to oversee the working of the Constitution regarding affirmative action for the weaker sections of society. The appointment of the officers and servants of the High Courts is an appointment to a office or a post under the State and the salaries are paid from the Consolidated Fund of India. Therefore, the Chief Justice and his companion judges are bound to apply reservation.

The Committee note that the Bombay High Court has not yet adopted reservation rules and Delhi High Court stated that employees of the High Court are taken out of the purview of Article 309 of the Constitution. Thus, instruction issued by the Government relating to reservation for SCs/ STs do not apply to that High Court. The Committee also note with dismay that the Ministry of Law, Justice and Company Affairs have no comments to offer. The Committee, therefore, recommend that suitable instructions may be issued and if need be, the Constitution may be amended to bring Courts under the purview of the reservation orders in respect of officers and staff working in their establishments so that the under privileged strata of the society also get their due share in the judicial system as well. The Committee further recommended that the State Governments require to be directed to amend, if not already done, the service rules of the staff of the subordinate Courts providing reservation to the Scheduled Castes and Scheduled Tribes proportional to the population in the respective States in the direct recruitment as well as promotions at all levels in promotion. Equally Article 229 and Article 146 should be amended directing the High Court and the Supreme Court to apply reservation in recruitment and promotion of the officers and servants of the respective Courts at all the levels.

### **Reply of the Government**

The above observations of the Committee on the Welfare of Scheduled Castes and Scheduled Tribes were brought to the notice of High Courts of Delhi and Bombay. Delhi High Court had earlier intimated about the reservation position in respect of judicial officers which was forwarded to Lok Sabha Secretariat on 29.2.2000.

A copy of the Report was forwarded to all High Courts including High Court of Bombay. The report has also been forwarded to all the State Governments/Union Territories.

[Ministry of Law, Justice and Company Affairs (Department of Justice)  
O.M. No. J-144014/4/2000-JR dated 18 October, 2000]

### **Comments of the Committee**

Please see para 1.32 of Chapter I

### **Recommendation (Sl. No. 17, Para No. 2.48)**

The Committee note that a proposal for setting up of a National Judicial Commission was made by the Commissioner for Scheduled Castes and

Scheduled Tribes more than a decade ago, which had also been reiterated by the Law Commission of India in its 121st Report. The Committee regret to note that the matter is still under examination by the Government. The Committee, therefore, strongly recommend that a National Judicial Commission including one member from Scheduled Caste and one member from Scheduled Tribe be set up early to deal with the appointment, transfer and placement of the judges of the High Courts and Supreme Court. This should be supplemented by constituting an All India Judicial Service.

### **Reply of the Government**

One of the items of the National Agenda for Governance of the National Democratic Alliance is to set up a National Judicial Commission which would *inter alia* recommend judicial appointments in the High Courts and the Supreme Court of India.

The proposal would require Constitutional amendment. Formation of an All India Judicial Service is under the consideration of the Government.

[Ministry of Law, Justice and Company Affairs (Department of Justice)  
O.M. No. J-14014/4/2000-JR dated 18 October, 2000]

### **Comments of the Committee**

Please *see* para 1.41 of Chapter I

### **Recommendation (Sl. No. 18, Para No. 2.51)**

The Committee find the attitude of the Government as astounding in regard to an outstanding issue of vital importance which took about 30 years for a final decision in 1980 and then again forgetting about it since then and now pleading the inability of even tracing the Government instructions of 1980. When the Committee could get a copy of the Government instructions of October 1980 from other sources, it is surprising that the concerned Ministry/Department have failed to locate any such instructions. The Office Memorandum issued in this regard on 4th October, 1980 (as reproduced in Annexure to this report) shows that it was sent to all Ministries/Depts. For bringing the clarification to the notice of the authorities/bodies created under the Constitution. Twenty years have passed since then and the Government is oblivious even of its existence, and the Committee's query about any assessment made of the actual working of the aforesaid decision in practice by the concerned authorities/bodies has remained unanswered. The Committee would, therefore, urge upon the Government to take immediate steps to fix responsibility on person or persons for such grave lapse and award appropriate punishment. The action taken in the matter along with full information on the unanswered query should be communicated early to the Committee.

### **Reply of the Government**

The attention of Ministry of Social Justice & Empowerment was drawn to the above Para of the Report. The Ministry *vide* their letter of

17th July, 2000, informed that no point of the report comes under the purview of that Ministry. On a reference from the Department of Personnel, Public Grievance and Pensions indicating that the Ministry of Social Justice and Empowerment is concerned with para 2.49 to 2.51 of the said Report, the matter was again taken up with the Ministry of Social Justice and Empowerment on 17th August, 2000. A reminder was sent on 12.9.2000 to the Ministry of Social Justice & Empowerment to indicate the action taken particularly in respect of para 2.51. The matter relates to the Ministry of Social Justice & Empowerment.

[Ministry of Law, Justice and Company Affairs (Department of Justice)  
O.M. No. J-14014/4/2000-JR dated 18 October, 2000]

**Comments of the Committee**

Please see para 1.44 of Chapter I

## CHAPTER V

RECOMMENDATIONS/OBSERVATIONS IN RESPECT OF WHICH  
FINAL REPLIES OF THE GOVERNMENT HAVE NOT BEEN  
RECEIVED

-NIL-

NEW DELHI;  
23 April, 2001  

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3 Vaisakha (Saka) 1923

KARIYA MUNDA,  
*Chairman,  
Committee on the Welfare  
of Scheduled Castes  
and Scheduled Tribes.*



## APPENDIX-I

(*vide* para 4 of the Introduction)

Analysis of the Action Taken by the Government on recommendations contained in the 2nd Report (Thirteenth Lok Sabha) of the Committee on the Welfare of Scheduled Castes and Scheduled Tribes:

1.	Total Number of Recommendations	20
2.	Recommendations/Observations which have been accepted by the Government ( <i>vide</i> recommendations Sl. Nos. 19 and 20)	
	Number	2
	Percentage of Total	10%
3.	Recommendations/Observations which the Committee do not desire to pursue in view of the Government replies ( <i>vide</i> recommendation Sl. Nos. 4,5,6,11,15 and 16)	
	Number	6
	Percentage of Total	30%
4.	Recommendations/Observations in respect of which replies of the Government have not been accepted by the Committee and which require reiteration ( <i>vide</i> recommendations Sl. Nos. 1,2,3,7,8,9,10,12,13,14,17 and 18)	
	Number	12
	Percentage of Total	60%
5.	Recommendations/Observations in respect of which final replies of the Government have not been received.	NIL

## **APPENDIX-II**

**F.No. 44 (11)/2000-Judl.**

**Government of India**

**MINISTRY OF LAW, JUSTICE & COMPANY AFFAIRS**

**DEPARTMENT OF LEGAL AFFAIRS**

**Judicial Section**

**New Delhi, the 26th June, 2000**

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### ***Office Memorandum***

The undersigned is directed to state that the Committee on the Welfare of Scheduled Castes and Scheduled Tribes on the Ministry of Law, Justice and Company Affairs, in Para 2.45 of its 2nd Report (13th Lok Sabha) has observed as under:

“The Committee.....would urge the Government to see that in future, cases involving reservation aspects are defended with keen interest by well-qualified and experienced Advocates, preferably from Scheduled Castes and Scheduled Tribes Communities, which alone will boost the faith of these Communities in the Government..... National Commission for SCs and STs should invariably be made a party in such matters.”

All concerned are, therefore, requested to comply with the above observation of the Committee while conducting Court Cases involving reservation questions.

S/d.

(D.R. MEENA)

Joint Secretary & Legal Advisor to the Govt. of India

Copy to:—

1. All Ministries/Departments to the Government of India.
2. All Senior Central Government Standing Counsels of High Courts and CAT Benches.
3. Branch Secretariat—Mumbai, Calcutta, Chennai and Bangalore.
4. Incharge, Litigation (High Court) Section.
5. Incharge, Central Agency Section.
6. Lok Sabha Secretariat w.r.t. their O.M. No. 32/2/1/SCTC/97 dated 16th May, 2000.

S/d.

(D.R. MEENA)

Joint Secretary & Legal Adviser to the Govt. of India.