

**COMMITTEE
ON
GOVERNMENT ASSURANCES
(1995-96)**

TENTH LOK SABHA

THIRTY-SEVENTH REPORT

**(Evidence of the Ministry of Finance on Pending Assurances of
Eighth Lok Sabha)**

(Presented on December 22, 1995)



**LOK SABHA SECRETARIAT
NEW DELHI**

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COMPOSITION OF THE COMMITTEE ON
GOVERNMENT ASSURANCES
(1995-96)*
CHAIRMAN

Shri Basudeb Acharia

MEMBERS

2. Shri Vishveshwar Bhagat
3. Shri Gurcharan Singh Dadhahoor
4. Shri Santosh Kumar Gangwar
5. Shri P.P. Kaliaperumal
6. Shri Prabhu Dayal Katheria
7. Shri Harpal Singh
8. Smt. Suryakanta Patil
9. Shri Shashi Prakash
10. Shri V. Sreenivasa Prasad
11. Shri J. Chokka Rao
12. Shri Asht Bhuja Prasad Shukla
13. Shri Ummareddy Venkateswarlu
14. Shri V.S. Vijayaraghavan
- **15. Shri Shailendra Mahto

SECRETARIAT

Smt. Reva Nayyar	—	<i>Joint Secretary</i>
Shri P.D.T. Achary	—	<i>Director</i>
Shri Mange Ram	—	<i>Under Secretary</i>

- * The Committee was nominated by the Speaker w.e.f. 4 February, 1995 and as published para 3723 of Lok Sabha Bulletin Part-II dated 13.2.1995.
- ** Nominated to the Committee on 9 August, 1995 as published *vide* para 4164 of Lok Sabha Bulletin Part-II dated 9.8.1995.

INTRODUCTION

1. I, the Chairman of the Committee on Government Assurances having been authorised by the Committee to submit the Report on their behalf, present this Thirty-Seventh Report of the Committee on Government Assurances.

2. The Committee (1995-96) was constituted on February 4, 1995.

3. The Committee at their sitting held on March 22, 1995 reviewed the pending assurances of Eighth Lok Sabha (1984-89). The Committee decided to take the oral evidence of the Ministry of Finance. On May 9, 1995, the Committee took oral evidence of the representatives of the Ministry of Finance on the following pending assurances:—

- (i) USQ No. 673 dated 7.11.86, USQ No. 2160 dated 20.11.87 and USQ No. 5322 dated 7.4.89 regarding National Tribunal for Direct Taxes/National Tribunal for Customs and Excise.
- (ii) USQ No. 522 dated 29.7.88 and USQ No. 1330 dated 18.11.88 regarding implementation of Fourth Pay Commission Recommendations.
- (iii) USQ No. 2288 dated 20.11.87 and USQ No. 417 dated 29.7.88 regarding Financial Powers to States.
- (iv) SQ No. 686 dated 21.4.89 regarding Consignment Tax.
- (v) USQ No. 8256 dated 5.5.89 and USQ No. 633 dated 21.7.89 regarding implementation of Central Income Tax Laws in Sikkim.

4. At their sitting on December 21, 1995, the Committee considered and adopted the draft Thirty-Seventh Report.

5. The Minutes of the aforesaid sittings of the Committee form part of the Report (Appendices).

6. The Conclusions/observations of the Committee are contained in this Report.

7. The Committee wishes to express their thanks to the officials of the Ministry of Finance for their cooperation.

NEW DELHI;
December 21, 1995

Agrahayana 30, 1917 (Saka)

BASUDEB ACHARIA,
Chairman,
Committee on Government Assurances.

(v)

CHAPTER I

ESTABLISHMENT OF NATIONAL TAX COURT

1.1 Shri Lakshman Mallick, MP, gave notice of the following Unstarred Question No. 673 for answer by the Minister of Finance on November 7, 1986:—

- “(a) whether it is a fact that Government have taken a decision to establish National Tax Court in 1987;
- (b) if so, whether Government have received some suggestions in this regard: and
- (c) if so, the details regarding the Constitution and functions of such Courts?”

1.2 The then Minister of State in the Ministry of Finance (Shri Janardhana Poojary) gave the following reply:

“(a), (b) & (c): No, Sir. Government have not yet taken a decision to establish National Tax Court. However, in the Discussion Paper on Simplification and Rationalisation of Direct Tax laws laid on the Table of both the Houses of Parliament on 14th August, 1986, there is a proposal to set up a National Court of Direct Taxes. Some suggestions in this regard have been received by the Government. They are being considered.”

1.3 The reply to the question was treated as an assurance by the Committee which was to be fulfilled within three months of the date of the reply *i.e.* by February 6, 1987.

1.4 On November 20, 1987 the following Unstarred Question No. 2160 given notice of the S/Shri S.M. Guraddi and G.S. Basavaraju, MPs, was addressed to the Minister of Finance:—

- “(a) whether the Law Commission has recommended structural changes in the hierarchy of courts dealing with conflicts and controversies arising out of levy and collection of taxes and enforcement of import-export laws;
- (b) if so, the main recommendations given by the Commission in this regard; and
- (c) the recommendations examined and accepted so far?”

1.5 The then Minister of State in the Ministry of Finance (Shri B.K. Gadvi) gave the following reply:—

(a) Yes, Sir,

(b) The main recommendations of the Law Commission are as follows:

DIRECT TAXES

The main recommendation is for the establishment of Central Court of Direct Taxes (with benches at various places) having all India jurisdiction at a stage above the Income-tax Appellate Tribunal and below the Supreme Court, The Income-tax Appellate Tribunal as at present would be the last fact finding authority. Central Court of Direct Taxes will have jurisdiction to entertain appeals on question of law against decisions of the Income tax appellate Tribunal. All reference presently pending with the High Court shall stand transferred to the Central Courts.

INDIRECT TAXES

The Law Commission has in para 3.10 expressed opinion that no Tribunal should be set up under Article 323-B of the Constitution. Similarly, in Chapter 4 (Para 4.7) of the Report, the Law Commission has recommended that the Central Tax Court for indirect taxes should also deal with the decision of the Chief Controller or the Additional Chief Controller rendered in appeal or as an adjudicating authority.

(c) The recommendations regarding Direct Taxes are under consideration of the Government.

The recommendation regarding setting up of a Central Tax Court for indirect taxes was examined. The Government did not consider necessary to review the decision already taken to set up a Tribunal under Article 323-B and for which the Act was already enacted.

1.6 Reply to part(c) of the question was treated as an assurance by the Committee which was to be fulfilled within three months of the date of the reply i.e. by February 19, 1988.

1.7 On April 7, 1989 Shri G.S. Basavaraju, M.P. gave notice of the following Unstarred Question No. 5322 to the Minister of Finance:—

“(a) whether Union Government propose to set up separate courts for dealing with appeals regarding direct and Central taxes;

(b) if so, whether any action plan has been drawn up in this regard; and

(c) by what time the same will be implemented?”

1.8 The then Minister of State in the Ministry of Finance (Shri Ajit Kumar Panja) gave the following reply:—

“(a) Yes, Sir. The Government is considering setting up the National Tribunal of Direct Taxes which when constituted would take over the work relating to Direct Taxes from the High Courts;

(b) & (c): The Bill for setting up the National Tribunal of Direct Taxes is under preparation and is expected to be introduced in the Parliament in the Monsoon Session."

1.9 Reply to parts (b) & (c) of the question was treated as an assurance by the Committee which was to be fulfilled within three months of the date of the reply i.e. by July 6, 1989.

1.10 Since these assurances remained pending, the Committee on Government Assurances (1991-92) at their sitting held on January 20, 1992 reviewed these assurances alongwith other pending assurances of the Eighth Lok Sabha. In their Third Report presented to the Lok Sabha on April 21, 1992 the Committee desired the Government to expedite implementation of these assurances.

1.11 These assurances however, were not implemented and were again reviewed by the Committee on Government Assurances (1995-96) at the sitting held on March 22, 1995 alongwith other assurances of Eighth Lok Sabha which remained unfulfilled. The Committee decided to pursue these assurances and also decided to take oral evidence of the representatives of the Ministry of Finance.

1.12 Meanwhile on March 30, 1995, the Ministry of Finance laid statements on the Table of the House in fulfilment of pending assurances in question. In their implementation report, the Ministry stated as under:—

"The proposal for setting up of the National Tribunal/Tax Court is in an advanced stage of consideration of the Government. However, the Andhra High Court has struck down the validity of Article 323 B of the Constitution in so far as it excluded the power of the judicial review of the High Court under Article 226. An appeal against this judgement is pending before Supreme Court. As the proposal for constitution of the Tribunal also contemplated exclusion of jurisdiction of High Court in accordance with Article 323B, the Law Commission has advised that outcome of appeal pending before Supreme Court may be awaited since decision of the Supreme Court will have far reaching implications on the working of the proposed Tribunal/Tax Court."

1.13 On May 9, 1995 the Committee took oral evidence of the representatives of the Ministry of Finance in regard to these assurances to know the reasons for delay in implementation.

1.14 During evidence the Committee desired to know the date of submission of 115th Report by the Law Commission in regard to constitution of a National Tribunal for Direct Taxes as also

the time by which the Ministry of Finance took up that Report for examination. The Secretary (Revenue), Ministry of Finance stated:

"We have actually completed all preliminary steps in setting up this Tribunal long back. It was completed last year itself, i.e. in 1994. But in the meanwhile, our Ministry received a letter from the Chairman of the Law Commission saying that Andhra Pradesh High Court had given a judgement in which it had been stated that the writ jurisdiction of the High Court would continue to be exercised given though it had been barred by virtue of the constitution of the Central Administrative Tribunal. Now this became a major issue because the same point will be raised in the course of the Constitution of the National Tribunal for Direct and Indirect Taxes as we had proposed to vest these two Tribunals with the same powers of the High Court. In the meanwhile, in one of the judgements, the Law Commission had been requested by the Supreme Court to examine the functioning of the Tribunals. So the Chairman of the Law Commission wrote to the Finance Ministry that while the Commission had to undertake this review, we should not implement the decision to set up these two Tribunals. In the meanwhile, we had also sent all our proposals for the comments of the Law Ministry and for their clearance. So the Law Ministry had also advised us that because of this judgement of the Andhra Pradesh High Court, which has been referred to a full Constitution Bench of the Supreme Court, we should not constitute these Tribunals. Right now they cannot say that will be the final outcome.

The Supreme Court has now to constitute a Constitution Bench and give the final verdict on the decision given by the Andhra Pradesh High Court. Otherwise our proposals are ready."

1.15 The Committee have been further informed that the Supreme Court has constituted a Constitutional Bench to examine the judgement of the Andhra Pradesh High Court and the matter is pending for consideration before the constitution bench.

1.16 Thereafter the Committee enquired whether the Andhra Pradesh High Court stayed the matter and what was the exact position. In reply, Secretary (Revenue), stated:

"The Andhra Pradesh High Court has struck down the Validity of Article 323(B) of the Constitution in so far as it excluded the powers of the High Court under Article 226."

1.17 In the case of *Shri Harinath vs. State of Andhra Pradesh* *vide* judgement pronounced on 26.10.1993, it has further been stated that the Andhra Pradesh High Court while dealing with Section 28 of the Administrative Tribunals Act, 1985 observed that the power of judicial

review of High Court under Article 226 cannot be taken away by Parliament.

1.18 Thereafter the Committee enquired about the expected time of the constitution of the National Tribunal. The representative submitted that they were unable to predict when it would be constituted and nothing could be done pending a decision from the Apex Court.

1.19 To a query regarding reduction of cases, the representative stated as follows:—

“We are trying to reduce the litigation, we are also advising that our officers should not go before the Tribunals or to the Court of flimsy grounds. The Chairman and Members of the CBDT have close interactions. Fifty per cent appeals are filed by our own officers. During the last two or three years, there has been a reduction in the number of cases filed by our own officers on account of constant education that they are receiving from the Senior Officers of the Board. Eventually, we have only to adopt a method by which we can reduce the number of cases.”

1.20 The Committee also desired to know the details of the Bill which was prepared regarding the setting up of a special court for dealing with appeals against direct central taxes and whether it was approved by the Cabinet.

1.21 The Committee have been informed through a written statement submitted to the Secretariat *vide* Ministry of Finance O.M.F. No. 15/12/92-ADIC dated September 5, 1995 that a draft National Appellate Tribunal for Direct Taxes Bill 1987 was prepared in January, 1987 and referred to the Ministry of Law for comments. The Bill was considered by the Cabinet in April 1987 and referred to a group of Ministries for a detailed consideration. After the observations of the group of Ministries, the draft Cabinet note was prepared more than once and referred to the various departments for their comments/concurrence before the approval of Cabinet was obtained. However, on account of announcement of election to the 9th Lok Sabha, the revised Cabinet Note could not be considered and returned by the Cabinet Secretariat in October, 1989 for submission to the new Government. At this stage a view was expressed in favour of uniformity of approach in the proposal for the two tribunals viz. the National Tribunal for Direct Taxes and the National Tribunal for Custom & Excise. Accordingly, revised Cabinet Note was submitted for comments of the various departments in August 1990, after detailed discussions of the matter in the Finance Ministry and the consideration of the pending issues relating to the tribunals by a Committee of the Secretaries in Feb., 1990. However, the proposals could not be cleared on account of change of Government in July, 1991. In light of the observations made by the Department of Personnel & Training in Feb., 1992, revised draft Cabinet Notes were prepared in respect of two tribunals in

December 1992/Febr., 1993 and attempts were made to resolve the points of disagreement between the various departments in relation to the Tribunals.

1.22 The Committee observe that the Government have not been able to set up the National Tribunal for Direct Taxes despite their assurance given in the reply to USQ No. 5322 on April 7, 1989 that the Bill was expected to be introduced in the Parliament in that year.

1.23 The Committee is distressed to note that the Andhra Pradesh High Court delivers its judgement on 26.10.93 but the Government communicates the same to the Committee on March 30, 1995. The Ministry of Finance has taken unduly long time in informing the House that the Andhra Pradesh High Court struck down the validity of Article 323B of the Constitution insofar as it excluded the powers of the judicial review of the High Court under Article 226 of the Constitution.

1.24 The Committee observe that the matter is lying in the highest court for its adjudication and till the decision is taken by the court the Government is not in a position to implement the assurance. Hence there is no alternative except to wait anxiously for the judgement. If the judgement of the Andhra Pradesh High Court is quashed, the Government should go ahead in formation of the National Tribunal on Direct Taxes and if not, the matter would be treated as closed.

CHAPTER II

IMPLEMENTATION OF FOURTH PAY COMMISSION RECOMMENDATIONS

2.1 Prof. Narain Chand Parashar, MP, tabled the following Unstarred Question No. 522 for answer on July 29, 1988 by the Minister of Finance:—

- “(a) whether any of the recommendations of the Fourth Pay Commission still remains to be implemented by Government in respect of any category of employees of the Central Government; and
- (b) if so, the details in this regard and the likely date by which uniform implementation of all the recommendations accepted by Government would be ensured and the reasons for delay?”

2.2 The then Minister of State in the Department of Expenditure in the Ministry of Finance (Shri B. K. Gadhvi) gave the following reply:—

“(a) & (b): Government orders have already been issued covering major recommendations of the Fourth Central Pay Commission relating to revision of Pay scales, Dearness Allowance, House Rent Allowance, City Compensatory Allowance and Retirement benefits etc.

Listed below are some of the important recommendations of the Pay Commission which are under process:

- (i) Revision of rates of subscription and utilisation of funds under the Group Insurance Scheme.
- (ii) Creation of pension fund, uniformity in definition of 'Family', new plan for commutation of pension and a medicare scheme for pensioners.
- (iii) Grant of non-interest bearing advance equal to half-a-month's basic pay once a year.

In addition, various Ministries/Departments of the Government of India are processing certain specific recommendations of the Pay Commission.”

2.3 The reply to the question was treated as an assurance by the Committee which was to be fulfilled within three months of the date of the reply i.e. by October 28, 1988.

2.4 The following Unstarred Question No. 1330 given notice of by Shri Hafiz Mohd. Siddiq, MP was addressed to the Minister of Finance for reply on November 18, 1988:—

- “(a) whether the process of consideration of the remaining recommendations of the Fourth Pay Commission has since been completed and if so, the details thereof; and

"(b) if not, the reasons for the inordinate delay and the time by which these will be finalised?"

2.5 The then Minister of State in the Ministry of Finance (Shri B.K. Gadhvi) gave the following reply:—

"(a) & (b): The remaining recommendations of the Fourth Central Pay Commission are actively under consideration of the Ministry of Finance and various other Ministries/Departments of the Government. Since the various Ministries/Departments have to consult the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training) as well as the Ministry of Finance before arriving at a final decision by them, it may not be possible to indicate a precise time limit by which these will be finalised."

2.6 The reply to the question was treated as an assurance by the Committee which was to be fulfilled within three months of the date of the reply *i.e.* by February 17, 1989.

2.7 Since these assurances remained pending, the Committee on Government Assurances(1991-92) at their sitting held on January 20, 1992 reviewed these assurances alongwith other pending assurances of the Eighth Lok Sabha. In their Third Report presented to the Lok Sabha on April 21, 1992 the Committee desired the Government to expedite implementation of these assurances.

2.8 However, these assurances were not implemented and again reviewed at the sitting of the Committee on Government Assurances (1995-96) held on March 22, 1995 alongwith other assurances of Eighth Lok Sabha which remained unfulfilled. The Committee decided to pursue these assurances and also decided to take oral evidence of the representatives of the Ministry of Finance.

2.9 On May 9, 1995 the Committee took oral evidence of the representatives of the Ministry of Finance in regard to these two assurances alongwith other assurances of the Eighth Lok Sabha to know the reasons for the delay in implementation.

2.10 The Committee enquired about the latest position regarding uniformity in age of superannuation in respect of employees of research organisation which had not been implemented despite the assurance given in 1988. Shri Krishnamurthy, Additional Secretary(E), Ministry of Finance, clarified as under:—

"That the implementation of the Fourth Pay Commission recommendations is with the Ministry of Finance, Department of Expenditure. The issue relating to retirement to scientific personnel from 58 years to 60 years is the concern of the nodal department, that is the Department of Personnel and Training. They have actually taken steps in this regard. I may say that nearly 90 per cent of the scientific and technical personnel retire at the age of 60 years. Only a certain percentage of people have the retirement at 58 years. They are identifying such posts regarding extension of their age of retirement to 60 years. There is another

suggestion by the Pay Commission that in the case of those who have to retire at the age of 60 years. A review should be held at the age of 58 years regarding their suitability for retirement at the age of 60 years. This aspect of the recommendation has been accepted by the Government and we are implementing it. A review is held when a scientific officer attains the age of 58 years to decide whether he can continue in service till the age of 60 years. It is done before allowing him to continue beyond 58 years. That recommendations of the Pay Commission has been accepted.

The only issue that is pending is whether there should be uniformity in the case of retirement of all of them. I think 90 per cent of them have got the retirement age as 60 years as of now. Department of Personnel and Training is in correspondence with the Department of Science and Technology also to identify the remaining posts. I understand that this issue is before the Fifth Pay Commission and their recommendations will also be taken into account."

2.11 When queried whether the retirement of scientific officers at the age of 60 years was as per the recommendations of the Fourth Pay Commission, Shri James K. Joseph, Joint Secretary, Department of Personnel and Training, deposed:—

"Ninety per cent of the scientists belonging to CSIR, DRDO, Department of Space, Department of Science, and Technology, Department of Atomic Energy and ICAR are enjoying this facility of retirement at the age of 60 years and the remaining 10 per cent belongs to a number of other departments. The Fourth Pay Commission recommended uniformity of retirement for all the scientists. In pursuance of that recommendation the Committee of Secretaries set up a Sub Committee in 1992 comprising the Secretary (Personnel), Secretary (Science and Technology), and Additional Secretary, (Expenditure) was set up to consider the question of identifying the scientific departments other than the ones I mentioned earlier. They were asked to identify the scientific departments which would be given this benefit. This Committee recommended that we must follow the UNESCO guidelines which define a scientists. So these definitions were given and accordingly, the Committee itself identified eight scientific departments for extending this benefit."

2.12 The Committee thereafter directed the representatives of the Ministry of Finance and Department of Personnel and Training to take up this matter with the Department of Science and Technology for early settlement of the issue.

2.13 The Committee take note of the fact that the recommendations of the Fourth Central Pay Commission Report were effected from January 1, 1986 and since some of the recommendations were left unimplemented, a question

was raised on July 18, 1988 for taking a decision on all the recommendations of the Commission. In reply the Minister gave the assurance that the remaining recommendations of the Fourth Central Pay Commission were under the consideration of the Ministry of Finance and various other Ministries/Departments.

2.14 The Committee observe that even after the expiry of nine years and eleven months a decision on one recommendation of the Commission regarding uniformity in the age of superannuation in respect of scientific and technical personnel working in the various Ministries of the Union of India has not been arrived at. Although 90% of the personnel working in the scientific/technical departments are being retired at the age of 60 years since 1.1.86, yet a decision in respect of the remaining 10% employees is of paramount importance with a view to enforcing uniformity and equality of treatment to all employees.

2.15 The Committee note that with the pendency of the decision on this recommendation of the Fourth Central Pay Commission, the age of superannuation in respect of 10% employees of the technical departments of the Union of India continue to be 58 years whereas 90% of their colleagues retire at 60 years of age which is an irreparable loss to the former.

2.16 The Committee desire that a decision should be taken at the earliest as further delay is not justified on one pretext or the other. The Committee do not appreciate the delay and hope that a decision will be taken within a month from the date of presentation of this Report so that discrimination could be removed.

CHAPTER III

FINANCIAL POWERS TO STATES

3.1 The following Unstarred Question No. 2288 given notice of by Shri K. Mohandas, MP, was addressed to the Ministry of Finance for answer on November 20, 1987:—

- “(a) whether there is a general demand from the States for more financial power;
- (b) if so, Government's reaction thereto;
- (c) whether the deficit in the budgets of most of the States is due to narrow resource base; and
- (d) if so, the steps contemplated in this regard?

3.2 The then Minister of State in the Ministry of Finance (Shri B. K. Gadhwani) gave the following reply:—

“(a) to (d). Demands from States for more financial powers have been considered by the Commission on Centre-State Relations set up on 9th June, 1983 under the Chairmanship of Justice R.S. Sarkaria. Resource base of the States as well as views of the Central Government thereon have also been considered by the Commission. The Commission has submitted its Report to the Government on 27-10-1987 which is under consideration.”

3.3 The above reply to the question was treated as an assurance by the Committee which was to be fulfilled within three months of the date of the reply i.e. by February 19, 1988.

3.4 The following Unstarred Question No. 417 given notice of by Shri K. Mohandas, MP, was addressed to the Minister of Finance for reply on July 29, 1988.

- “(a) whether the resource base of States has shrunk progressively since the First Five Year Plan;
- (b) if so, the details thereof;
- (c) whether some States have demanded more financial powers and wider resource base;
- (d) if so, the details of their demands; and
- (e) the reaction of Government thereto?”

3.5 The then Minister of State in the Ministry of Finance (Shri B. K. Gadhwani) gave the following reply:

“(a) & (b): No Sir. A statement showing the progressive increase in the resources of the States from the First Five Year Plan to the Sixth Five Year Plan is enclosed.

(c) & (d): Some States have suggested to the Commission on Centre-State Relations that their fiscal powers may be enlarged by empowering them to levy taxes and duties including in Articles 268 and 269 of the Constitution; transfer of residuary powers of taxation to the States; and removing/relaxing the limitations on their powers to raise resources including transfer of powers of taxation in regard to certain commodities, such as medical and toilet preparations containing alcohol and on futures market etc.

(e) The recommendations of the Commissions in this regard are under consideration of the Government”

3.6 The reply to part (d) of the question was treated as assurance by the Committee which was to be fulfilled within three months of the date of the reply i.e. by October 28, 1988.

3.7 Since these assurances remained pending, the Committee on Government Assurances (1991-92) at their sitting held on January 20, 1992 reviewed these assurances alongwith other pending assurances of the Eighth Lok Sabha. The Committee in their Third Report presented to the Lok Sabha on April 21, 1992 the Committee desired the Government to expedite implementation of these assurances.

3.8 As these assurances were not implemented, these were again reviewed by the Committee on Government Assurances (1995-96) at their sitting held on March 22, 1995 alongwith other assurances of Eighth Lok Sabha which remained unfulfilled. The Committee decided to pursue these assurances and also decided to take oral evidence of the representatives of the Ministry of Finance.

3.9 On May 9, 1995 the Committee took oral evidence of the representatives of the Ministry of Finance to ascertain the reasons for delay and the time to be taken in implementing both these assurances. The representatives of the Ministry of Finance submitted that many of the recommendations had been considered by the Government as well as by the Finance Commissions at various points of time.

3.10 On August 23 and November 29, 1995 the Ministry of Finance laid the statement on the Table of the House in fulfilment of both these assurances. In the Implementation report the following details were furnished:—

“A note indicating the action taken by the Government of India on the recommendations made by the Commission on Centre-State relations (Sarkaria Commission) is enclosed at Annexure. It may

be seen there from that adequate action has been taken on almost all the recommendations of the Sarkaria Commission relating to enlargement of fiscal powers to States. The assurance may, therefore, kindly be treated as fulfilled."

3.11 The Committee accept the implementation Report.

CHAPTER IV

CONSIGNMENT TAX

4.1 The following Starred Question No. 686 given notice of by Shri Uttam Rathod, MP, was addressed to the Minister of Finance for answer on April 21, 1989:—

“(a) whether at a recent conference at Delhi of Chief Ministers of States a consensus was arrived at to introduce the consignment tax system in respect of different commodities; and

(b) if so, the follow-up action being taken by Government in the matter?”

4.2 The then Minister of State in the Ministry of Finance (Shri Ajit Kumar Panja) gave the following reply:—

“(a) Yes, Sir.

(b) The States, Union Territories and concerned Ministries/Department of the Central Government have been addressed to indicate suggestions/views of formulate guidelines in the matter of grant of exemptions from the levy of consignment tax which the Central Government would do in consultation with the States. For this purpose a Committee of some Chief Ministers is being constituted. Action is also in hand to draft necessary legislation on consignment tax.”

4.3 During the course of supplementaries on the question, Shri Uttam Rathod desired to know the rate of the consignment tax and the time by which the bill in this regard was expected.

4.4 To this the then Minister of Finance (Shri S. B. Chavan) gave the following reply:—

“Sir, I have given a commitment that the Bill would be brought forward in the Monsoon Session of this year;

4.5 The above replies to part (b) of the question and supplementary point raised on the question were treated as an assurance and was required to be implemented by the Ministry of Finance by July 20, 1989 i.e. within three months of the date of the assurance given by the Minister.

4.6 Since the assurance remained pending, the Committee on Government Assurances (1991-92) at their sitting held on January 20, 1992 reviewed these assurances alongwith other pending assurances of the Eighth Lok Sabha. The Committee in their Third Report presented to

the Lok Sabha on April 21, 1992 the Committee desired the Government to expedite implementation of these assurances.

4.7 The Ministry of Parliamentary Affairs *vide* their U.O. Note Nos. XIFIN(63)-SQ 686-LS89, II fin(34) USQ 2973-LS90 and Ifin(7)SQ 178-LS91 dated December 2, 1993 forwarded a request of the Ministry of Finance to the Committee on Government Assurances on the plea that consultations with States had revealed that there was considerable divergence of views as regards the rates of Consignment Tax, the sharing of its proceeds and the general issues relating to concurrent exemptions. It was felt that it would be difficult to bring forward a Bill for this purpose unless a consensus was generated on the key parameters.

4.8 The Committee however did not agree to drop the subject matter and desired that a bill be introduced for enacting suitable legislation in the matter.

4.9 The Ministry of Parliamentary Affairs *vide* their U.O. Note No. XIV Fin. (63)-SQ 686-LS89 dated July 11, 1994 again forwarded a request of the Ministry of Finance to the Committee on Government Assurances for dropping the assurances reiterating the earlier plea.

4.10 The Committee reconsidered the request of the Ministry of Finance but again did not agree to drop the subject matter. The Committee made the following observations in their Twenty-Ninth Report presented to the House on May 31, 1995:—

"The Committee note that the Ministry of Finance have not made any headway in resolving the issue of consignment tax. In their Twentieth Report, the Committee had desired that the Ministry of Finance should give high priority in introducing Value Added Tax (VAT) both in the Centre and States as an alternative to the existing 'Commodity Tax' and introduce suitable Bill in this regard during the Monsoon session of the Lok Sabha in 1994. The Committee had also desired the Ministry of Finance to apprise them of the progress made in this regard from time to time. The Committee now note that instead of informing the Committee about the progress made in the matter, the Ministry of Finance have again chose an easy way to approach the Committee to get the assurance dropped on the grounds that the decision regarding levy of the 'Consignment Tax' cannot be taken by the Central Government alone as there appears to be a divergent opinions among the States and Centre.

The Committee also note that the Minister of Finance was to convene a meeting of Ministers of Finance of States after the

Budget Session in 1994 to discuss the issue of consignment tax. The Committee are of the view that some decision ought to have been taken by now in this regard.

The Committee take a serious view of the fact that the Ministry of Finance have failed to communicate the progress made in the matter and the development made in regard to the introduction of Value Added Tax (VAT). The Committee, however, strongly recommend that a positive decision should be taken in the matter now without further delay so as to fulfil the pending assurances."

4.11 As the assurance was not implemented, it was again reviewed by the Committee on Government Assurances (1995-96) at their sitting held on March 22, 1995 alongwith other assurances of Eighth Lok Sabha which remained unfulfilled. The Committee decided to pursue the assurance and also decided to take oral evidence of the representatives of the Ministry of Finance.

4.12 On May, 9, 1995 the Committee took oral evidence of the representatives of the Ministry of Finance to ascertain the reasons for delay and the time to be taken in implementing the assurance. The representatives of the Ministry of Finance submitted that there are divergent views of the States regarding consignment tax-VAT.

4.13 The Committee understand that the State Governments are having divergent views on the replacement of the Consignment Tax and the assurance is pending since 1989.

4.14 The Committee note that a meeting of Ministers of Finance of States was to be convened after the Budget Session of 1994, but it is astonishing that no progress has been made in this regard so far. The Committee desire that the issue of introduction of Value Added Tax (VAT) as an alternative to Consignment Tax may be considered in the meeting of Ministers of Finance of States without further loss of time. The Committee are hopeful that concrete decision will emerge out of the discussions in the States. The Committee would reiterate that the decision taken in the meeting may be submitted to the Committee in the shape of the implementation Report.

CHAPTER V

CENTRAL TAXATION LAWS IN SIKKIM

5.1 The following Unstarred Question No. 8256 given notice of by Shri B.L. Shailesh, MP, was addressed to the Ministry of Finance for answer on May 5, 1989:—

- “(a) whether Central Taxation Laws have become effective in Sikkim since 1st April, 1989;
- “(b) if so, whether Union Government have set up an Income Tax Department and other offices in that State's headquarters; and
- “(c) if not, the reasons therefor?

5.2 The then Minister of State in the Ministry of Finance (Shri Ajit Kumar Panja) gave the following reply:—

- “(a) Yes, Sir.
- “(b) An Assistant Commissioner of Income Tax has been posted at Gangtok. Efforts are being made to set up an income-tax office at Gangtok.
- “(c) Does not arise?

5.3 The reply to part (b) of the question was treated as an assurance by the Committee which was to be fulfilled within three months of the date of the reply *i.e.* by August 4, 1989.

5.4 The following Unstarred Question No. 633 given notice of by Shrimati D.K. Bhandari, MP was addressed to the Minister of Finance for answer on July 21, 1989:—

- “(a) whether it is a fact that the Central Board of Direct Taxes had invited suggestions from people of Sikkim before implementation of the Central Income-Tax Laws to Sikkim;
- “(b) if so, the details of the suggestions made;
- “(c) whether Government have examined the suggestions; and
- “(d) the reaction of Government thereto?

5.5 The then Minister of State in the Department of Revenue in the Ministry of Finance (Shri Ajit Kumar Panja) gave the following reply:—

- “(a) The Direct Tax Laws, namely, the Income Tax Act, 1961, the Wealth Tax Act, 1957 and the Gift Tax Act, 1958 stand extended to the State of Sikkim with effect from 1st April, 1990 *i.e.* in respect of assessment year 1990-91 relevant to the previous year

1989-90 starting from 1.4.1989. The Central Government has constituted a Committee of officers of the Central Government and the State Government of Sikkim to examine if there are any difficulties in the implementation of the above mentioned Central Direct Tax Laws in Sikkim and to suggest solutions thereof. In this regard, an advertisement was published in newspapers wherein the residents of Sikkim and others were invited to write to the convenor of the Committee, constituted by the Government, if they envisaged any difficulties in complying with the provisions of the Central Direct Tax Laws.

(b), (c) & (d): The Committee is examining the difficulties brought to its notice in complying with the Direct Tax Laws and will offer its comments and solutions in its report to the Government."

5.6 The reply to parts (b), (c) and (d) of the question was treated as an assurance by the Committee which was to be fulfilled within three months of the date of the reply i.e. by October 20th, 1989.

5.7. Since both these assurances remained pending, the Committee on Government Assurances (1991-92) at their sitting held on January 20, 1992 reviewed these assurances alongwith other pending assurances of the Eighth Lok Sabha. The Committee made their observations in the Third Report of the Committee presented to the Lok Sabha on April 21, 1992 to expedite implementation of both these assurances.

5.8. The Committee while on Tour in June, 1992 also had informal discussions with the delegations of the Government of Sikkim and the Central Board of direct taxes on both of these pending assurances.

5.9. The Committee was informed that CBDT and State Government will motivate the people of the State and make them aware for the incentives available under the Acts. The Committee was also informally conveyed that the employees of the State of Sikkim should be given a place in the office of CBDT etc.

5.10. These assurances were again reviewed at the sitting of the Committee on Government Assurances (1995-96) held on March 22, 1995 alongwith other assurances of Eighth Lok Sabha which remained unfulfilled. The Committee decided to pursue both of these assurances and also decided to take an oral evidence of the representatives of the Ministry of Finance.

5.11. The Ministry of Finance in the brief note submitted to the Committee intimated as follows:—

BRIEF ON EXTENSION OF DIRECT TAX LAWS TO SIKKIM

"The Chief Minister, Sikkim has been opposing implementation of the three Central direct tax laws namely the Income-tax Act, 1961, the Wealth-tax Act, 1957 and the Gift-tax Act, 1958 in his State.

These Acts were made applicable to the State of Sikkim with effect from the assessment year 1990-91. The initial notification in this regard was issued by the Home Ministry under Article 371F(n) vide S.O. No. 1028(E) dated 7.11.1988."

2.1 The Government decided that the implementation of the Central direct tax laws in Sikkim may not be deferred indefinitely, as requested by the Chief Minister of Sikkim, but it may be effective from the assessment year 1991-92, instead of the assessment year 1990-91, as at present, provided the Chief Minister, Sikkim gave an unequivocal assurance that he will not seek any further extension for implementation of such laws and cooperate with the Income-tax Department in enforcing such laws in that State.

2.2 However, in his reply dated 15.3.1991, the Chief Minister, Sikkim, did not give any such assurance. Instead, he suggested that the extension of the direct tax laws in Sikkim may be deferred till the end of the Ninth Five Year Plan. In effect, he only repeated his earlier suggestion for an indefinite deferment. Subsequent Chief Ministers have also asked for deferment of Direct Tax laws to Sikkim.

3. The plea of the Chief Minister of Sikkim for postponement of the implementation of Central direct tax laws in Sikkim is untenable for the following reasons:—

(a) The three Central direct tax laws were extended to the State of Sikkim after prolonged discussions between the Central Government and the Government of Sikkim. The Income-tax Act was extended to Sikkim w.e.f. the Assessment Year 1989-90 (i.e. in respect of income arising during the period 1.4.88 to 31.3.89) while the Wealth-tax and Gift-tax Acts were extended w.e.f. the assessment year 1990-91. However, keeping in view the difficulties pointed out by the Chief Minister, the extension of the Income-tax Act was deferred by one year by amending the Finance Act, 1989. Accordingly, all the three direct tax laws stand extended to the State of Sikkim with effect from the assessment year 1990-91.

(b) In his D.O. letter dated 6.2.1989, the then Finance Minister had pointed out that the extension of the direct tax laws to the State of Sikkim will in no way cause loss of revenue to the State. He had also pointed out that in a system where 85% of the divisible pool of income-tax is appropriated to the State's account, the gross revenue earning of the State would be much higher if the direct tax laws were extended to the State. Besides, he had assured the Chief Minister that in case there was any loss of revenue to the State on account of extension of the three direct tax laws to the State *vis-a-vis* the yield from the prevailing local income-tax, the Central Government would consider making good the loss suitably.

(c) After a meeting with then Finance Minister and the then Prime Minister, the Chief Minister agreed to the extension of the direct tax laws to the State of Sikkim. The Chief Minister wrote to the

Governor of Sikkim in April, 1989 confirming this. However, there have been certain contrary signals as would be clear from the following:

(i) The Committee constituted by the Centre consisting of representatives of Central and State Governments in May, 1989, in accordance with the suggestion of the Chief Minister of Sikkim to examine the difficulties, if any, in the implementation of direct tax laws in Sikkim and to suggest solutions thereof had to submit its report without any response from the State Government's representatives.

(ii) The State Government's officers did not deduct income-tax at source in respect of payments made to its employees in accordance with the provisions of the Income-tax Act, 1961 even though this should have been done with effect from 1.4.1989. The non-Government organisations also did not comply with the law following the State Government example. There is thus non-compliance of statutory provisions.

(iii) Sikkim has already been notified as a backward area by the Central Government for the purposes of the Income-tax Act, 1961 and consequently all newly established undertakings will be eligible to claim the tax concessions available to industries set up in backward areas in other parts of the country. Apart from this, numerous tax concessions are provided in the Income-tax Act which would ensure industrial growth and prosperity.

(iv) The Income-tax Act will be applicable to the limited number of persons whose income are above the level liable to tax in the State, in view of the fact that exemption limit provided under the Income-tax Act 1961 is much higher than the limit provided under the State Income-tax Act. Most of the residents of Sikkim may not be affected by the extension of the direct tax laws.

(v) Agitations against the Central direct tax laws and threat to local residents that their property would be destroyed/damaged if it is led out to the Income-tax Department have made it impossible for the Department to set up an Income-tax Office at Gangtok.

(d) The State of Sikkim is being used as 'tax haven' for laundering of black money by tax payers from other parts of the country. In view of the fact that there is no enforcement of income-tax laws in the State of Sikkim now, tax payers find it convenient to launder black money through the State.

4. The non-administration of the direct tax laws in Sikkim for more than five years has resulted in uncertainty in the minds of tax payers in Sikkim about their liability under these Acts. It has also affected the credibility of the Department in enforcing the direct tax laws in the State.

5. The above note indicates the reasons because of which the Assurance given in response to the Questions tabled by Smt. D.K. Bhandari which was answered on July, 21, 1989 in the 8th Lok Sabha (USQ No. 633 dated 21.7.1989) and that by Shri B.L. Shailesh which

was answered on 5th May, 1989 in the 8th Lok Sabha (USQ No. 8256 dated 5.5.1989) could not be fulfilled. The Government has asked for time upto 30.6.1995 for fulfilment of the said Assurances.

5.12 On May 9, 1995 the Committee took oral evidence of the representatives of the Ministry of Finance.

5.13 The Committee enquired about the position of the assurance given in 1989 regarding setting up of an Income Tax Office at Gangtok. To it, the Secretary (Revenue) deposed:

“The position is very complicated. As far as the income tax, gift tax and wealth tax are concerned they stand extended to Sikkim from the year 1989. Thereafter, on request by the Chief Minister term was extended by one year and we made it effective from the year 1990-91. After this, efforts were made to open an office in Gangtok. But no response was forthcoming from the State Government even in securing a place for our office at Gangtok.

There was a Committee constituted by the Government to look into this matter. The Committee gave its report in 1989 saying that the laws would stand extended to Sikkim and if there is any loss to the State Government on account of their having to abolish their income tax, then for two-three years the Central Government would compensate that loss. The actual position is that the Government of Sikkim is levying income tax which is not correct. According to the Constitution, only the Central Government can levy income tax.

Now, in the meanwhile, we have been having correspondence with the State Government asking them that they should give cooperation in extending this law because the State Government will stand to benefit and they would also get the share of the income tax as per the recommendations of the Finance Commission.”

5.14 Asked about the share of the Union Government, the representative replied:

“It was 85 per cent till the Finance Commission gave its report. Subsequently, the Chief Minister of Sikkim said that it will stand extended and he will have no problem. Thereafter he went back on his commitment and nothing happened”.

5.15 The representative further added:—

“Again we got letters from the Chief Minister saying that tribals should be exempted. As you may recall, in the last Finance Bill in 1994, we made a provision to exempt tribals from the levy of income tax in Sikkim like the way in which we exempted tribals in the North-eastern States. Once the tribals were exempted they came up saying that all of them should be exempted. So, we dropped the amendment. Today, the situation is, we have three cases pending in the High Court of Sikkim where this matter of extension of income tax

laws and the direct tax laws has been challenged. We are arguing that this law has been extended to Sikkim but we are unable to recover income tax on account of various constraints we are facing due to non-cooperation from the State Government. The position now is a stalemate. Very few people in Sikkim are paying income tax".

5.16 The Committee were also informed that Sikkim was the only State that was not permitting extension of the Income Tax laws of the Union of India and that the Sikkim Government had been collecting tax as the Sikkim Tax Manual. The Committee were also informed that under the Sikkim Tax Manual a tax was levied even when a loan was taken. It was further stated that the department officials tried to educate the people of Sikkim at the time of President's Rule about the benefits of the Income Tax Laws.

5.17 The Committee enquired whether any writ petition was filed in this regard to extend the Income Tax laws in the State of Sikkim as the Union of Government is empowered to impose Income Tax and it was illegal on the part of the State Government not to extend it.

5.18 In reply, the witness submitted as follows:—

"This Sikkim Tax Manual is illegal as per the Constitution of India. In Calcutta High Court which has the jurisdiction of Sikkim also, a decision was given in favour of Government of India that it stands extended. Therefore, *ipso facto* this law becomes invalid."

5.19 *The Committee note that the Income Tax, Act, 1961, the Wealth Tax Act, 1957 and the Gift Tax Act, 1958 could not be extended to the State of Sikkim although a commitment was made by the then Chief Minister of Sikkim State to get these Acts extended there with effect from the assessment year 1991-92 but the commitment was not kept.*

5.20 *The Committee well understand the poor economic condition of the State of Sikkim as well as the scarce availability of natural resources in the State but expect due regards to these Acts from all the States of the Country. During the course of informal discussion, it was requested that 3 to 4 years time should be given for enforcing these Acts in the Sikkim State.*

5.21 *The Committee feel that the Ministry of Finance should take up this matter with the Minister of Finance and the Chief Minister of Sikkim to resolve it amicably and get their office established at Gangtok in the first instance and then start employing the people of the State in the office there.*

APPENDIX I
(Vide Para 5 of the Introduction)
MINUTES

Third Sitting

Minutes of the sitting of the Committee on Government Assurances held on Wednesday, March 22, 1995 in Committee Room No. 'B', Parliament House Annexe, New Delhi.

The Committee met on Wednesday, March 22, 1995 from 15.00 hours to 16.00 hours.

PRESENT

Shri Basudeb Acharia—Chairman

MEMBERS

2. Shri Gurcharan Singh Dadhahoor
3. Shri Santosh Kumar Gangwar
4. Shri Prabhu Dayal Katheria
5. Shri J. Chokka Rao

SECRETARIAT

1. Shri Murari Lal—Joint Secretary
2. Shri Madan Lal—Assistant Director
2. The Committee considered the draft Twenty Seventh Report of the Committee on Government Assurances and adopted the same. The Committee authorised the Chairman to present the Report of the Committee during the current Budget Session.

3. The Committee, thereafter, took up for consideration Memorandum No. 110 containing a batch of 59 pending assurances of the Eighth Lok Sabha pertaining to the Department of Atomic Energy, Ministries of Defence, Environment & Forests, Finance, Health and Family Welfare, Home Affairs, Human Resource Development, Labour, Railways, Steel, Surface Transport, Urban Development and Welfare. After reviewing all the 59 assurances, the Committee decided to take oral evidence of the representatives of the Ministries of Finance and Urban Development.

4. The Committee also took stock of the remaining 27 assurances of the Eighth Lok Sabha. The Committee was informed that implementation Reports in respect of 16 assurances had already been laid on the Table of the House by the Ministry of Parliamentary Affairs, 11 Assurances were,

however, still pending. The Committee decided to review the second batch of 11 pending assurances later on.

5. The Committee was also informed that the Secretary of the Ministry of Labour and the Secretary, Ministry of Urban Development appeared before the Chairman of the Committee on March 13 and March 20, 1995 respectively in respect of non-implementation of the following two pending assurances:—

(i) an assurance given on December 9, 1994 in reply to USQ No. 576 regarding Child Labour (Prohibition & Regulation) Act, 1986; and

(ii) an assurance given on December 7, 1994 in reply to USQ No. 24 regarding allotment of plots to the weavers of Sawan Park, Delhi.

6. The Committee was apprised by the Chairman that the Secretary, Ministry of Labour, assured the Chairman that a Bill regarding Child Labour (Prohibition & Regulation) Act, 1986 would be introduced during the current Budget Session of Parliament.

7. The Chairman also informed that the Secretary of the Ministry of Urban Development and the Vice Chairman, Delhi Development Authority had stated that alternate plots would be allotted to the weavers of Sawan Park latest by the end of June 1995.

The Committee then adjourned.

APPENDIX II

MINUTES

Seventh Sitting

MINUTES OF THE SITTING OF THE COMMITTEE ON GOVERNMENT ASSURANCES HELD ON MAY 9, 1995 IN COMMITTEE ROOM NO. '63', PARLIAMENT HOUSE, NEW DELHI

The Committee met on Tuesday, May 9, 1995 from 15.00 hours to 16.30 hours.

PRESENT

Shri Basudeb Acharia—*Chairman*

MEMBERS

2. Shri P.P. Kaliaperumal
3. Smt. Suryakanta Patil
4. Shri V. Sreenivasa Prasad
5. Shri J. Chokka Rao
6. Shri Asht Bhuja Prasad Shukla
7. Shri V.S. Vijayraghavan

SECRETARIAT

1. Smt. P.K. Sandhu — *Director*
2. Shri Madan Lal — *Assistant Director*
3. Ms. J.C. Namchyo — *Committee officer*

MINISTRY OF FINANCE AND DEPARTMENT OF PERSONNEL AND TRAINING.

1. Shri M.R. Sivaraman, Secretary (Revenue)
2. Shri M. Rangachary, Member (L)
3. Shri T.S. Krishan Murthy, Addl. Secretary
4. Shri James K. Joseph, Jt. Secretary (DOPT)
5. Shri A.K. Pradhan, Jt. Secretary (PF-I)
6. Shri Akhilesh Prasad, Director (TPL-I)

2. The Committee took oral evidence of the representatives of the Ministry of Finance and the Department of Personnel & Training in connection with the following pending assurances:—

1. USQ No. 673 dated 7.11.86, USQ No. 2160 dated 20.11.87 and USQ No. 5322 dated 7, 4.89 regarding National Tribunal for Direct Taxes National Tribunal for Customs and Excise.

2. USQ No. 522 dated 29.7.88 and USQ No. 1330 dated 18.11.88 regarding implementation of Fourth Pay Commission Recommendations.
3. USQ No. 2288 dated 20.11.87 and USQ No. 417 dated 29.7.88 regarding Financial Powers to States.
4. SQ 686 dated 21.4.89 regarding Consignment Tax.
5. USQ No. 8256 dated 5.5.89 and USQ No. 633 dated 21.7.89 regarding implementation of Central Income Tax Laws in Sikkim.

3. At the outset, the Chairman draw attention of the representatives to Direction 58 of the Directions by the Speaker and explained to them that their evidence was liable to be published unless the representatives specifically desired that all or any part of the evidence given by them was to be treated as confidential. It was explained to the representatives that even though the evidence was desired to be confidential, such evidence was liable to be made available to the Members of Parliament.

NATIONAL TRIBUNAL FOR DIRECT TAXES

4. Thereafter the Committee desired to know the date of submission of 115th Report by the Law Commission in regard to constitution of a National Tribunal for Direct Taxes as also the time by which the Ministry of Finance had taken up that report for examination. The Secretary (Revenue), Ministry of Finance stated:

"We have actually completed all preliminary steps in setting up this Tribunal long back. It was completed last year itself, i.e. in 1994. But in the meanwhile, our Ministry received a letter from the Chairman of the Law Commission saying that Andhra Pradesh High Court had given a judgement in which it had stated that the writ jurisdiction of the High Court would continue to be exercised given though it had been barred by virtue of the constitution of the Central Administrative Tribunal. Now this became a major issue because the same point will be raised in the course of the constitution of the National Tribunal for Direct and Indirect Taxes as we had proposed to vest these two Tribunals with the same powers of the High Court. In the meanwhile, in one of the judgements, the Law Commission had been requested by the Supreme Court to examine the functioning of the Tribunals. So the Chairman of the Law Commission wrote to the Finance Ministry that while the Commission had to undertake this review, we should not implement the decision to set up these two Tribunals. In the meanwhile, we had also sent all our proposals for the comments of the Law Ministry and for their clearance. So the Law Ministry had also advised us that because of this judgement of the Andhra Pradesh High Court,

which has been referred to by a full Constitution Bench of the Supreme Court, we should not constitute these Tribunals. Right now they cannot say that will be the final outcome.

The Supreme Court has now to constitute a Constitution Bench and give the Final verdict on the decision given by the Andhra Pradesh High Court. Otherwise our proposals are ready."

5. The Committee, however was not satisfied with the reply, and insisted for a definite reply. To this, the Secretary (Revenue), Ministry of Finance replied :

"I think in November-December 1993 we had finalised it. We are unable to proceed further We will give all the chronological details."

6. Thereafter the Committee enquired whether the Andhra Pradesh High Court stayed the matter and what was the exact position. In reply Secretary (Revenue) stated:

"The Andhra Pradesh High Court has struck down the validity of Article 323(h) of the Constitution in so far as it excluded the powers of the High Court under Article 226. As I mentioned, the composition of a Tribunal was contemplated. We were advised that till such time the Supreme Court gives its views the composition of the Tribunal may be held up. That is why the Law Ministry did not give the final clearance about the composition."

7. When enquired as to when did the Union Government prefer an appeal against the stay, the representative of the Ministry of Finance stated:

"We have been informed the Law Ministry is doing it, because this pertains to the Ministry of Law, not the Ministry of Finance. They are taking action in the matter. This case arose out of something concerning the Central Administrative Tribunal. The constitutional validity of the exclusion of the High Courts was challenged in respect of the constitution of the Central Administrative Tribunal. Therefore, the Ministry of Law will be acting on this."

8. When the Committee enquired about the grounds for challenging it in Andhra Pradesh High Court, the representative stated:—

"As far as I know I have not studied very carefully the intricacies because it does not pertain to us. It is basically about the structure of the Constitution, affecting the inherent powers of the judiciary."

9. When asked how it affected the basic structure, the representative deposed:

"The National Tribunal also envisages the review of the jurisdiction of the High Court. In the case of the CAT also the High Court referred to it."

10. Thereafter the Committee enquired about the expected time of the constitution of the National Tribunal. The representative submitted that they were unable to predict when it would be constituted.

11. When the Committee asked whether constitution of Tribunal would help in expeditious disposal of suits, the representative Stated:

"We have already the Settlement Commission where cases take a long time to be settled. The only advantage in the case of the Tribunal would be that some of the cases pending in the High Court would be transferred to the Tribunal. However, there is no guarantee that there will be expeditious disposal of cases."

12. The Committee thereafter desired to know, pending Supreme Court ruling, the proposal Government was contemplating towards constituting the National Tribunal for Direct Taxes. To this, the representative submitted that they could not constitute the Tribunal pending the decision.

13. The representative further elaborated:

"We are trying to reduce the litigation, we are also advising that our officers should not go before the Tribunals or to the court on flimsy grounds. The Chairman and Members of the CBDT have close interactions. Fifty per cent appeals are filed by our own officers. During the last two or three years, there has been a reduction in the number of cases filed by our own officers on account of constant education that they are receiving from the senior officers of the Board. Eventually, we have only to adopt a method by which we can reduce the number of cases".

14. The Committee thereafter desired to know the details of the Bills which was prepared regarding setting up of a special court for dealing with appeals against direct central taxes. The Committee also desired to know whether it was approved by the Cabinet, and why it could not be introduced in the Parliament. The representative, however, promised to furnish these details to the Committee.

RECOMMENDATIONS OF THE FOURTH PAY COMMISSION

15. The Committee thereafter enquired about the latest position regarding the recommendations of the Fourth Pay Commission about uniformity in age of superannuation in respect of employees of research organisations which had not been implemented despite the assurance given in 1988. Shri Krishnamurthy, Additional Secretary (E), Ministry of Finance, clarified as under:—

"That the implementation of the Fourth Pay Commission recommendations is with the Ministry of Finance, Department of Expenditure. The issue relating to retirement of scientific personnel from 58 years to 60 is the concern of the nodal department, that is the Department of Personnel and Training. They have actually taken steps in this regard.I may say that nearly 90 per cent of the scientific and technical personnel retire at the age of 60 years. Only a certain

percentage of people have the retirement at 58 years. They are identifying such posts regarding extension of their age of retirement to 60 years. There is another suggestion by the Pay Commission that in the case of those who have to retire at the age of 60 years, a review should be held at the age of 58 years, regarding their suitability for retirement at the age of 60 years. This aspect of the recommendation has been accepted by the Government and we are implementing it. A review is held when a scientific officer attains the age of 58 years to decide whether he can continue in service till the age of 60 years. It is done before allowing him to continue beyond 58 years. That recommendation of the Pay Commission has been accepted.

The only issue that is pending is whether there should be uniformity in the case of retirement of all of them. I think 90 per cent of them have got the retirement age as 60 years as of now. Department of Personnel and training is in correspondence with the Department of Science and Technology also to identify the remaining posts. I understand that this issue is before the Fifth Pay Commission and their recommendations will also be taken into account".

16. When queried whether the retirement of scientific officers at the age of 60 years was as per the recommendations of the Fourth Pay Commission, Shri James K. Joseph, Joint Secretary, Department of Personnel and Training, deposed:

"Ninety per cent of the scientists belonging to CSIR, DRDO, Department of Space, Department of Science and Technology, Department of Atomic Energy and ICAR are enjoying this facility of retirement at the age of 60 years and the remaining 10 per cent belongs to a number of other departments. The Fourth Pay Commission recommended uniformity of retirement for all the scientists. In pursuance of that recommendation the Committee of Secretaries set up a sub Committee in 1992 comprising the Secretary (Personnel), Secretary (Science and Technology), and Additional Secretary, (Expenditure) was set up to consider the question of identifying the scientific departments other than the ones I mentioned earlier. They were asked to identify the scientific departments which would be given this benefit. This Committee recommended that we must follow the UNESCO guidelines which define a scientist. So these definitions were given and accordingly, the Committee itself identified eight scientific departments for extending this benefit".

17. The Committee pointed out that the Committee was constituted in 1992 whereas the Fourth Pay Commission recommended uniformity in age of superannuation in 1986 and desired to know why was that particular

recommendation was not implemented in case of other 10 per cent of the employees, when 90 per cent employees were already enjoying the benefit the witness clarified:

"I will furnish to the Committee later the reasons for delay in implementing this recommendation of the Fourth Pay Commission. As regards the present position, based on the recommendation of the Committee the Science and Technology Department has to identify the posts which should be given the benefit of extension. It is still pending".

18. Thereafter, the Committee desired to know the Departments to which those 10 per cent of the employees belonged to. The witness deposed:—

"They belong to a number of Departments. Out of those Departments, this Committee identified seven Departments like Science and Technology, Ocean Development, Electronics and Environment."

19. The witness also promised to provide department-wise number of employees working in those Department.

20. The witness further elaborated:—

"There was a proposal that it should not be to Science & Technology. Doctors should also be given this benefit. Accordingly the Ministry of Health have made their recommendations in regard to doctors which are pending with us. We are waiting for the recommendations of the Science & Technology Departments regarding Scientists working in their Department. The Committee also felt that it should be extended to engineers and doctors who are working in their respective areas."

21. When asked whether scrutiny of cases were done in case of Scientific and Technical Personnel who were allowed to continue in service beyond 58 years under the extant orders, the witness stated:—

"In respect of 90 per cent cases who are enjoying this facility already, I am told that there is no scrutiny as such. It is a blanket sort of a thing. That is the recommendation of the Pay Committee.

22. The Committee, thereafter, pointed out that the scrutiny was for all scientific and technical personnel who continue in service upto 60 years of age. In reply, the witness elaborated:—

"I will make the position clear. In respect of 90 per cent of the scientific personnel this facility of retiring at the age of 60 year is already there even before the Fourth Pay Commission's recommendation without any conditions. With reference to the 10 per cent cases, the Pay Commission recommended not only uniformity but also given extension upto 60 years but we have to do the scrutiny at the age of 58. This scheme is under the consideration of the Government. We are waiting for the Report of the

Department of Science and Technology to identify posts among the 10 per cent category which deserve consideration of benefit of extension. Once that comes to us, we will process it."

23. The Committee enquired when the Department of Science and Technology was asked to identify the post it was informed that the Committee of Secretaries had asked them to identify it on 19 May, 1993.

24. Asked whether the posts have been identified, the witness deposed:

"No, Sir, although the UNESCO guidelines and the norms had been given to them yet the matter is still pending with the Department of Science and Technology."

25. When the Committee enquired whether the Government could reject the recommendation of the Pay Commission, the Secretary (Revenue) Ministry of Finance stated:—

"It can"

26. When the Committee further inquired why the recommendation was neither rejected nor implemented, the Secretary, (Revenue), Ministry of Finance stated:—

"There are a number of Departments who can be called scientific departments but they may not be necessarily doing the scientific work. The Department of Science and Technology is doing a lot of scientific work. The Department of Electronics does not do any scientific work. They are promoting the growth of scientific industries. There may be lot of reasons why in some cases they would like to give 60 years benefit and in some cases they may not be able to do it."

27. The other representative further elaborated:—

"At that time, doctors and engineers had taken up this issue saying that they should also be covered under the Pay Commission. So, the implications of this were quite substantial. The department of Personnel and Training have been remaining the Department of Science and Technology. My understanding is that the first reminder was sent long before. The latest reminder being the one sent in April, 1995."

28. When the Committee enquired whether the Pharmacists in MCD and NDMC were retiring at the age of 58 and that some of them who approached the court were permitted to continue in the service even after their retirement, the witness promised to check up the position and furnish the details in this regard to the Committee.

29. The Committee agreed that the Department of Personnel & Training was the nodal Ministry in this assurance but pointed out that the onus of fulfilling the assurance lay with it, the witness from the Ministry of Finance submitted as follows:—

“In these matters when several Departments are concerned, the Ministry of Finance can not take a unilateral decision. Actually, the Ministry of Finance have no alternative but to send reminders to the Departments concerned. We cannot take a unilateral decision that this recommendation is rejected. There are many implications which the concerned Ministry can resolve or they can give clarifications. Even the Department of Personnel get replies from other Departments, they can formulate the ruling; otherwise, if they are not getting a reply, they are finding it difficult to come to a decision. That is why my colleague from the Department of Personnel is not in position to give a categorical answer. I will request the Secretary, Department of Personnel to expedite the whole thing and submit a final reply to the Committee.”

30. The Committee thereafter enquired how the monitoring of assurance in the Ministry of Finance was being done. To this, the representative of the Ministry of Finance deposed:—

“There are three Departments in the Ministry of Finance. So each department has got its own review mechanism. You asked how we review it. The Additional Secretary concerned reviews the assurances concerning his responsibility. The CBDT reviews their portion. CBEC reviews their portion. Whenever we find that we are unable to fulfil the assurance, we seek the Minister’s orders.”

This is how we review the assurances given by the Minister on the floor of the House.

31. The other representative added:—

“The same procedure is followed as far as the Department of Expenditure is concerned.”

32. When the Committee desired to know the efforts made to implement the assurance, the representative explained:—

“Certainly the recommendation of the Pay Commission is monitored, but the actual implementation is to be done by the respective Department.”

33. The Committee thereafter directed the representatives of the Ministry of Finance and Department of Personnel and Training to take up this matter with the Department of Science and Technology for early settlement of the issue.

DEVOLUTION OF FINANCIAL POWERS TO THE STATES AS PER THE SARKARIA COMMISSION RECOMMENDATIONS

34. Thereafter, the Committee enquired about the main recommendations of the Sarkaria Commission made to the Government in 1987. To it, the Secretary (Revenue) Ministry of Finance deposed:—

"The Sarkaria Commission made a number of recommendations. I have not got the recommendations as such. They have made a number of recommendations pertaining to the empowering of the State Governments on revenues and taxation, under Articles 268 and 266 of the Constitution and also on the transfer of residual powers of Taxation to the States. Many of the recommendations have been considered by the Government at various points of time. These have also been considered by the Finance Commissions. The problem is that there are certain issues which can be resolved only by Constitutional Amendments. They cannot be resolved easily by the Central Government in the Ministry of Finance taking a decision. Even if we have to devolve certain powers to the State Governments, that will have to be done only by Constitutional Amendments. One other recommendation, which keeps on coming is the devolution of a portion of the Corporation Tax to the State Governments.

Every Finance Commission has looked into this aspect. Even when I was the Finance Secretary, I had also recommended like that. This can be resolved only by a major constitutional amendment. That can come up only when it is taken up for a change. The Tenth Finance Commission which also went into this question has also recommended about sharing of tax revenue whereby they said that all the tax revenues should be pooled and thereafter a particular portion of it would go to the States and the rest would remain with the Centre. This can come about only by a constitutional amendment.

Pertaining to some of the recommendation, which can be looked into, which are not difficult like for example, stamp duties or excise duty on medicinal preparations. In the case of excise duty on medicinal preparations, the Government of India had increased the duty by 50 percent as early as 1989-90. In regard to the stamp duty, the National Institute of Public Finance and Policy carried out a complete study of the present position regarding the levy and collection of stamp duty by different States and what should be done to rationalise it. They have submitted a report; this has been

circulated amongst all the State Governments to elicit their views regarding their recommendation so that suitable legislative action can be taken. Unfortunately, so far no State Government has responded to it."

35. Asked when was it sent to the State Governments, the representative replied:—

"It was sent to them in August-September, 1994. No State Government has responded to it. I have not seen any response from them."

36. The representative further stated:

"The other important point is concerning the consignment tax. It has been looked into by different committee of Chief Ministers, and the National Development Council; and now the position is that in regard to the levy of consignment tax, while there is a constitutional provision to its levy there is no unanimity of views amongst the State Governments regarding either exemptions or on its levy. Some State Governments like North Eastern States or Kerala or even Madhya Pradesh have been consistently saying that the consignment tax should not be levied. In the light of such a difference in approach amongst the States, the NIPFP was asked to conduct a study as to whether the levy of consignment tax would benefit the country as a whole. NIPFP in its report came to the conclusion that in the context of India becoming one economy and one large market, the levy of consignment tax will tend to benefit only certain States like Maharashtra, Gujarat or Tamilnadu or West Bengal or those States which produce goods; and the other States like the North Eastern States or Orissa or Kerala which consume good will stand to lose a lots of revenue. Many of the State Governments did not agree. States like Himachal Pradesh said that there should be a levy of consignment tax because later on if they produce power and if they export it to other States, they want to levy consignment tax. Some other States which produce iron ore like Bihar say that they want to levy consignment tax on raw materials. If it is levied on raw materials and if they come to the producing States, it gets added to the cost of the raw material; then ultimately when the raw material becomes a finished product and that product goes to the same States which have given the raw material, again, a consignment tax would be levied. So, there will be a consignment tax on consignment tax. So many State Governments thought that it will be very injurious to those States which have no industrial base.

This matter was also discussed in the conference of Finance Ministers which the Union Finance Minister called in last May. This point was again raised and all theoreticians were of the view

that we should not have consignment tax and even that central sales tax. By having taxes on inter State Trade you are blocking the free movement of goods. But in India, we are levying an inter State tax which accentuates the resource difference between the State Governments. The State Governments that have got by enormous industrial bases will be able to take great advantage of this. The other States which are consuming will be at a less advantage. Some States say that we should not levy consignment tax for goods which are distributed through public distribution system, for example, foodgrains. Punjab says that consignment tax should be levied on goodgrains. This point was discussed among the State Finance Ministers with the Union Finance Minister and these differences emerged even in that meeting. There was no unanimity on this issue. Some said that half of it should be retained and the half should be distributed according to a formula. Thus there are number of issues in regard to levy of consignment tax. NIPFP's earlier report was against this tax. They said that if there are compulsions that the consignment tax ought to be levied, then it should be seen that the levy should be at a nominal rate and that the central sales tax should also be reduced to a nominal rate. The reforms committee have also said that the consignment tax should not be there."

37. When the Committee desired to have copies of Raja Chelliah Committee Report as well as the Report of the NIPFP, the representative stated:—

"NIPFP do not favour consignment tax. In their interim report, they have said that this is not the legitimate way of raising resources for the Government. Levy of Central Sales Tax and consignment tax, they have said, would be in general inimical to the interest of the backward or less industrialised States. I will give you one example now. If a company in manufacturing motor car of the capacity of 2500 cc engine capacity, they have to send them to Gujarat where the whole motor car will be assembled demand that consignment tax should be imposed at the rate of 4 per cent and so, when it comes to Gujarat, the total value included 4 per cent tax on the engine. There may be some other components coming from, say West Bengal. Then there will be a consignment tax on the consignment tax. Ultimately, the tax element in a particular commodity or an item will be so enormous that it leads to total inefficient allocation of resources. The tax reforms carried out by the Government of India is to ensure that this kind of cascading effect of tax is not there as it leads to less industrial growth. As you have suggested, we will give you a copy of this report."

38. When the Committee pointed out that a broad consensus had emerged in 1992 that there should be levy of consignment tax but there were difference of opinion among States and between States and Centre

with regard to the sharing of tax jurisdiction and exemption, the representative explained:—

“Yes, there were strong differences of opinion. Subsequently, when the National Institute of Public Finance Policy came out with a review, a major State like Madhya Pradesh took the stand that there should not be any consignment tax. Kerala was also of the view that the levy of consignment tax would go against their interest. As I mentioned already the consensus was only on the levy. There was a divergence of views on sharing of proceeds, exemptions, etc. Unless these operative portions of the consignment tax are sorted out, mere levy will not be of any use.”

39. Asked which were the States that had not agreed, the representative mentioned that Kerala, M.P., J&K, North Eastern States excluding Assam, UT of Pondicherry were some of the States that opposed levy of consignment tax.

40. When queried as to what happened to the Committee constituted to look into that aspect the representative explained:—

“In May 1994, the Finance Ministry constituted a Committee of State Finance Ministers. Some differences of opinion emerged in its first meeting. A meeting was held last Saturday. In that meeting, they did not even go into the issue of consignment tax. The Committee comprises Finance Ministers of eleven States. Shri Raja Chelliah is also in the Committee.”

41. The Committee, thereafter enquired whether there was a proposal to replace the consignment tax with a VAT (Value Added Tax) the representative explained:—

“Value Added Tax is a modern tax which replace the sales tax. There is fair amount of unanimity amongst State Finance Ministers that the State Government should go in for value added tax in stages. Though they have not come to a final conclusion, there is a fair amount of unanimity about its introduction. Some of the States have already introduced value added tax in the case of certain commodities. In all, three States have brought certain elements under the Value Added Tax and general sales tax system. Representatives of a few State Governments went to the European Economic Community. Some of them went to Spain, some of them to Belgium, some of them to Thailand and Indonesia. They have come back with the feeling that they should also have a common market in India and should also go in for a Value Added Tax system. This is the general feeling amongst them. Now, they will finalise the report and that report would go to all the State Finance Ministers. By the end of June or mid-July, they would come to the final recommendations as to what should be done in regard to the

introduction of Value Added Taxes. Once the Value Added Tax comes in, then the problems relating to the Central Sales Tax and the Consignment Tax will have to be sorted out. Otherwise, there will be complications in introducing the Value Added Tax system."

TAX LAWS IN SIKKIM

42. Thereafter the Committee enquired about the position of the assurance given in 1989 regarding setting up an Income Tax Office at Gangtok. To it, the Secretary (Revenue) deposed:—

"The position is very complicated. As far as the income tax, gift tax and wealth tax are concerned they stand extended to Sikkim from the year 1989. Thereafter, on request by the Chief Minister term was extended by one year and we made it effective from the year 1990-91. After this efforts were made to open an office in Gangtok. But no response was forth coming from the State Government even in securing a place for our office at Gangtok.

There was a Committee constituted by the Government to look into this matter. The Committee gave its report in 1989 saying that the laws would stand extended to Sikkim and if there is any loss to the State Government on account of their having to abolish their income tax, then for two-three years the Central Government would compensate that loss. The actual position is that the Government of Sikkim is levying income tax which is not correct. According to the Constitution, only the Central Government can levy income tax.

Now, in the meanwhile, we have been having correspondence with the State Government asking them that they should give cooperation in extending this law because the State Government will stand to benefit and they would also get the share of the income tax as per the recommendations of the Finance Commission."

43. Asked about the share of the Union Government, the representative replied:—

"It was 85 per cent till the Finance Commission gave its report. Subsequently, the Chief Minister of Sikkim said that it will stand extended and he will have no problem. Thereafter he went back on his commitment and nothing happened."

44. The representative further added:—

"Again we got letters from the Chief Minister saying that tribals should be exempted. As you may recall, in the last Finance Bill in 1994, we made a provision to exempt tribals from the levy of income tax in Sikkim like the way in which we exempted tribals in the North-Eastern States. Once the tribals were exempted they came up saying that all of them should be exempted. So, we

dropped the amendment. Today, the situation is, we have three cases pending in the High Court of Sikkim where this matter of extension of income tax laws and the direct tax laws has been challenged. We are arguing that this law has been extended to Sikkim but we are unable to recover income tax on account of various constraints we are facing due to non-cooperation from the State Government. The position now is a stalemate. Very few people in Sikkim are paying income tax."

45. The Committee were also informed that Sikkim was the only State that was not permitting extension of the Income Tax laws of the Union of India and that the Sikkim Government had been collecting a tax as the Sikkim Tax Mannual. The Committee were also informed that under the Sikkim Tax Mannual a tax was levied even when a loan was taken. It was further stated that the department officials tried to educate the people of Sikkim at the time of President's Rule about the benefits of the Income Tax laws.

46. The Committee enquired whether any writ petition was filed in this regard to extend the Income Tax laws in the State of Sikkim as the Union of Government is empowered to impose Income Tax and it was illegal on the part of the State Government not to extend it.

47. In reply, the witness submitted as follows:—

"This is illegal as per the Constitution of India. In Calcutta High Court which has the jurisdiction of Sikkim also, a decision was given in favour of Government of India that it stands extended. Therefore, *ipso facto* this law becomes invalid."

48. *The Committee then adjourned.*

APPENDIX III

(*Vide* Para 5 of the Introduction)

MINUTES

Twenty-Second Sitting

MINUTES OF THE TWENTY-SECOND SITTING OF THE COMMITTEE ON GOVERNMENT ASSURANCES HELD ON DECEMBER 21, 1995 IN COMMITTEE ROOM 'B', PARLIAMENT HOUSE ANNEXE, NEW DELHI

The Committee met on Thursday, December 21, 1995 from 15.00 hours to 16.30 hours. The following members were present:—

- 1. Shri Basudeb Acharia—*Chairman*
- 2. Shri Santosh Kumar Gangwar
- 3. Shri Prabhu Dayal Kathuria
- 4. Shri Shashi Prakash
- 5. Shri V.S. Vijayaraghavan

SECRETARIAT

- 1. Shri P.D.T. Achary —*Director*
- 2. Shri Mange Ram —*Under Secretary*
- 3. Km. J.C. Namchyo —*Committee Officer*

* * * * *

3. The Committee considered the draft Thirty-Seventh Report of the Committee and adopted the same.

ANNEXURE I

(Vide Para No. 3.10 of the Report)

Note indicating the action taken by the Government of India on the recommendations made by the Commission on Centre-State Relations (Sarkaria Commission)

The Sarkaria Commission on Centre-State Relations made recommendations relating to financial relations in Chapter X of its Report.

2. The Sarkaria Commission recommended at Sl. No. 102 of Chapter X of its Report that under the present circumstances duties on all the items covered by Article 268 did not appear to be a buoyant source of revenue amenable to frequent revisions. However, since basic circumstances did not always remain constant, the Commission recommended that the Union Government should, in consultation with the State Governments, particularly consider and explore the revision of these duties.

3. Article 268 of the Constitution relates to stamp duties and duties of excise on medicinal and toilet preparations mentioned in the Union List, levied by the Union but collected and appropriated by the States. The rates of stamp duty on instruments in Entry 91 of the Union List have been revised from time to time and hence, action stands taken.

4. Excise duty on medicinal and toilet preparations, which come under the purview of the Union List was enhanced by about 50% of the existing rates as mentioned by the FM in his Budget Speech for 1989-90.

5. The Commission *vide* Sl. No. 121 of Chapter X of its Report recommended that the Union Government should bring in suitable legislation enabling levying of the Consignment Tax. The matter has been examined and was also put up in the meeting of Inter-State Council, where a Sub-Committee was constituted to consider the recommendation of the Commission chapter-wise. Thereafter, the recommendation regarding 'Consignment Tax' was discussed in the meeting of Finance Ministers of State Government held on 27.5.1994. In the meeting differences surfaced about the transaction and commodities to be exempted from Consignment Tax as also the distribution of the proceeds and institutional arrangements in this regard. It was resolved in the meeting to constitute a committee of State Finance Ministers to go into various aspects of tax reforms including levy of Consignment Tax. The Committee has since been constituted.

6. The Commission after considering the suggestions put forth by different State Governments regarding removing/relaxing the limitations on their powers to raise resources, recommended *vide* Recommendation No. 103 of Chapter X that the monetary limit of Rs. 250 per annum fixed 37 years ago on professional tax should be revised upwards in consultation with the States immediately and reviewed periodically. The limit stands enhanced to Rs. 25000 per person per annum through the Constitution (Sixtieth Amendment) Act, 1988.

7. Regarding a suggestion to transfer residuary power of taxation to States, the Commission observed that the power to tax may be invoked not only to raise resources but also to regulate economic action and that new subjects of taxation may involve matters with inter-State or national implications requiring uniformity in approach. The Commission accordingly did not recommend transfer of residuary power of taxation to either State List or Concurrent List.

8. The Commission at Sl. No. 105 & 106 of Chapter X recommended that by an appropriate amendment of the Constitution, the net proceeds of Corporation Tax be made permissibly sharable with the States and consequent adjustments be made by bringing down the share of States in Income-Tax and Union Excise Duties. The Tenth Finance Commission, which looked into the aspect of sharing of Central Taxes, and which was also approached by the States in this regard, did not recommend sharing of the Corporation Tax by reducing the share of States in Income Tax and Union Excise Duties. The Tenth Finance Commission has, however, recommended an alternative scheme of resource sharing where States get a share of the gross receipts of Central Taxes including Corporation Tax. The Government has not taken any decision on the alternative scheme of devolution, which would require an amendment of the Constitution.

9. The Commission observed at Sl. No. 118 of Chapter X of its Report that it may be desirable to provide in the special terms of reference of the Finance Commission to make available resources, with effective monitoring arrangements, to fill up the inter-State gap in administrative capabilities. In this regard, the recommendation of the Tenth Finance Commission regarding upgradation grant of Rs. 2608.50 crores to States over the period of the Tenth Finance Commission, has been accepted by the Government of India.

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