

COMMITTEE ON THE WELFARE OF  
SCHEDULED CASTES AND  
SCHEDULED TRIBES

(2006-2007)

(FOURTEENTH LOK SABHA)

SIXTEENTH REPORT

ON

MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT, MINISTRY OF TRIBAL AFFAIRS, MINISTRY OF FINANCE (DEPARTMENT OF DISINVESTMENT), MINISTRY OF HEAVY INDUSTRIES AND PUBLIC ENTERPRISES (DEPARTMENT OF PUBLIC ENTERPRISES) AND MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS (DEPARTMENT OF PERSONNEL AND TRAINING)

Action taken by the Government on the recommendations contained in Twenty-second Report (13<sup>th</sup> Lok Sabha) of the Committee on the Welfare of Scheduled Castes and Scheduled Tribes – “Fair Employment Policy for Scheduled Castes and Scheduled Tribes in Public and Private Sector – a review of position following globalisation and other reform measures”.

Presented to Lok Sabha on \_\_\_\_\_

Laid in Rajya Sabha on \_\_\_\_\_

LOK SABHA SECRETARIAT  
NEW DELHI

November, 2006 / Agrahayana, 1928(Saka)

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**COMPOSITION OF THE COMMITTEE ON THE WELFARE  
OF SCHEDULED CASTES AND SCHEDULED TRIBES  
(2006-2007)**

Shri Ratilal Kalidas Varma - Chairman

**MEMBERS**

**LOK SABHA**

2. Shri Anandrao Vithoba Adsul
3. Shri S. Ajaya Kumar
4. Shri M. Appadurai
5. Shri Biren Singh Engti
6. Shri Eknath M. Gaikwad
7. Dr. P.P. Koya
8. Shri G.V. Harsha Kumar
9. Shri Rajesh Kumar Manjhi
10. Shri Kailash Meghwal
11. Shri Rupchand Murmu
12. Shri Jual Oram
13. Shri Ashok Kumar Pradhan
14. Shri Harikewal Prasad
15. Shri Ashok Kumar Rawat
16. Shri Bajju Ban Riyan
17. Dr. (Col.) Dhani Ram Shandil
18. Shri Sugrib Singh
19. Shri Lalit Mohan Suklabaidya
20. Shri Vanlalzawma

**RAJYA SABHA**

21. Shri Sharad Anantrao Joshi
22. Shri Robert Kharshiing
23. Shri Surendra Lath
24. Shri Lalhming Liana
25. Shri Harendra Singh Malik
26. Dr. Radhakant Nayak
27. Shri Nabam Rebia
28. Smt. Maya Singh
29. Shri Veer Singh
30. Shri Nandi Yellaiah

## INTRODUCTION

I, the Chairman, Committee on the Welfare of Scheduled Castes and Scheduled Tribes having been authorised by the Committee to finalise and submit the Report on their behalf, present this Sixteenth Report (Fourteenth Lok Sabha) on action taken by the Government on the recommendations contained in their Twenty-second Report (Thirteenth Lok Sabha) on the Ministry of Social Justice and Empowerment, Ministry of Tribal Affairs, Ministry of Finance (Department of Disinvestment), Ministry of Heavy Industries and Public Enterprises ( Department of Public Enterprises) and Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) regarding Fair Employment Policy for Scheduled Castes and Scheduled Tribes in Public and Private Sector – a review of position following globalisation and other reform measures.

2. The Draft Report was considered and adopted by the Committee on 4<sup>th</sup> October, 2006 (Appendix I).

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

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

4. An analysis of the Action Taken by the Government on the recommendations contained in the Twenty-second Report (Thirteenth Lok Sabha) of the Committee is given in the Appendix - II. It would be observed therefrom that out of 6 recommendations made in the Report, no recommendation has been accepted by the Government. The Committee do not desire to pursue 1 recommendation i.e. 17 per cent of the total

recommendations in view of the replies of the Government. There are 5 recommendations i.e. 83 per cent in respect of which reply of Government have not been accepted by the Committee and require further reiteration.

NEW DELHI:

November, 2006  
Agrahayana, 1928(Saka)

(RATILAL KALIDAS VARMA)  
CHAIRMAN  
COMMITTEE ON THE WELFARE  
OF SCHEDULED CASTES AND  
SCHEDULED TRIBES

## **CHAPTER I**

### **REPORT**

1.1 This Report of the Committee on the Welfare of Scheduled Castes and Scheduled Tribes deals with the action taken by the Government on the recommendations contained in their Twenty-second Report (Thirteenth Lok Sabha) on the Ministry of Social Justice and Empowerment regarding “Fair Employment Policy for Scheduled Castes and Scheduled Tribes in Public and Private Sector – a review of position following globalisation and other reform measures.”

1.2 The Twenty-second Report was presented to Lok Sabha on 22<sup>nd</sup> November, 2002. It contained 6 recommendations/observations. The Committee while deliberating upon the report during their sitting held on 25<sup>th</sup> May, 2005 observed that replies in respect of these recommendations/observations were non-affirmative and justification given by the Government for not extending reservation to Private Sector was also not satisfactory. The Committee, therefore, decided to invite the representatives of the Ministry of Social Justice and Empowerment, Ministry of Tribal Affairs, Ministry of Finance (Department of Disinvestment), Ministry of Heavy Industries and Public Enterprises (Department of Public Enterprises) and Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) for a fresh evidence. Accordingly, evidence of the representatives of these Ministries was held on 6<sup>th</sup> January, 2006. Subsequently, a list of points was forwarded to them for furnishing additional information as well as clarifications sought by the Committee during the evidence. The

replies/clarifications given by the Ministry of Social Justice and Empowerment, Ministry of Finance (Department of Disinvestment), Ministry of Heavy Industries and Public Enterprises (Department of Public Enterprises) and Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) have now been examined and categorized as under:-

- (i) Recommendations/Observations which have been accepted by the Government (NIL).
- (ii) Recommendations/Observations which the Committee do not desire to pursue in view of replies of the Government (Sl. No. 2).
- (iii) Recommendations/Observations in respect of which replies of Government have not been accepted by the Committee and which require reiteration (Sl. No. 1,3,4, 5 and 6).
- (iv) Recommendations/Observations in respect of which final replies of Government have not been received (NIL).

1.3 The Committee will now deal with the action taken by the Government on above recommendations which need reiteration or comments.

#### **Recommendation (Sl. No. 1, Para No. 27)**

1.4 In regard to the question of extending reservation and fair employment policy for Scheduled Castes and Scheduled Tribes in private enterprises/sector, particularly in respect of those enterprises who receive Government grants and loans or other assistance, it was stated that the Department of Personnel and Training had examined the matter in consultation with the Attorney General for India who advised that

“reservation in private sector will not be permissible under Article 16(4) of the Constitution and will be violative of the equality provisions in the Constitution.” The Committee had opined that this Article has not been interpreted properly and correctly because Article 16(4) does not debar reservation for SCs and STs subject to specific provisions made for reservation for certain classes of the society. The Committee had expressed their serious concern over the unfavourable attitude of the Government for not extending national policy of reservation to SCs and STs in private sector. The Committee had, therefore, strongly recommended that the Government should change their policy and seriously reconsider the matter of providing reservation in private sector. They had also recommended that the Government must evolve a mandatory condition in the agreement for adequate representation for SCs and STs in the jobs while disinvesting any Government Institutions for safeguarding the interests of SCs and STs in jobs as guaranteed to them in the Constitution.

### **Reply of the Government**

1.5 In their action taken reply, the Ministry of Social Justice and Empowerment have stated that as far as the recommendation that the Government must evolve a mandatory condition in the agreement for adequate representation for Scheduled Castes and Scheduled Tribes in the jobs while disinvesting any Government Institutions to safeguard the interest of SCs and STs is concerned, the same cannot be enforced in the disinvested Public Sector Undertaking which becomes a part of the



Private Sector after disinvestment in the absence of a separate specific law on reservation in the Private Sector.

1.6 They have further stated that the Ministry of Disinvestment (now Ministry of Finance (Department of Disinvestment) with which the matter was taken up has stated that reservation in recruitment is not enforceable in the Private Sector. A Company remains a Public Sector Company as long as a majority share (51% or more) is held by Government/Public Sector. The moment the Government/Public Sector share goes below 51%, the company does not remain a Public Sector Company and the reservation provisions cannot be enforced as per the law of the land. As there is no law to extend the policy of reservation to private companies, provision cannot be made in the transaction agreement to continue the policy of reservation in Public Sector Companies(PSUs) after disinvestment. The Ministry of Disinvestment has, however, been requested that till such a time a mandatory provision in this regard is made, the 'best endeavour' clause being incorporated in the 'Disinvestment Agreement' needs to be more effective. It has been suggested to the Ministry of Disinvestment that the best endeavour clause needs to be more specific and provide for extent of reservation to be made available in direct recruitment and in promotion, after disinvestment.

1.7 During evidence, when asked about the "best endeavour" clause, the Secretary, Ministry of Finance (Department of Disinvestment) clarified as under:-

"In the existing cases, the 'best endeavour' clause has been applied in most of the cases. There have been 34 cases of privatization in the last 5 years or so. In many agreements which

were signed at the time of disinvestments following clause is included which says:-

“The Strategic Partner recognizes that the Government in relation to its employment policies follows certain principles for the benefits of members of the Scheduled Castes/Scheduled Tribes, Physically Handicapped persons, and other socially disadvantaged categories of the society. The Strategic Partner shall use its best efforts to cause the company to provide adequate job opportunities to such persons. Further, in the event of any reduction in the strength of the employees of the company, the Strategic Partner shall use his best efforts to ensure that Physically Handicapped persons are retrenched at the end”.

He further clarified:

“in some companies this clause is there. In one company, namely, the Modern Food Industries (India) Limited, the recital in the agreement was “that the parties envision that all employees of the company as of the date hereof will continue to be in the employment of the Company. So different clause are there”.

1.8 In their post-evidence note, the Ministry of Finance (Department of Disinvestment) have stated that Government's equity was disinvested through strategic sale along with transfer of management control in 11 Central Public Sector Enterprises (CPSEs), 19 hotel properties of Indian Tourism Development Corporation (ITDC) and 3 hotel properties of Hotel Corporation of India (HCI). The 'best endeavour' clause was incorporated as one of the Recitals in the Shareholders Agreement (SHA)/Share Purchase Agreement (SPA) signed at the time of strategic sales of Bharat Aluminium Company Ltd. (BALCO), CMC Ltd., Jessop & Co. Ltd. (JCL), Paradeep Phosphates Ltd. (PPL), IBP Co. Ltd., HTL Ltd, Hindustan Zinc Ltd (HZL), Videsh Sanchar Nigam Limited (VSNL), Indian Petrochemicals Corporation Ltd. (IPCL), and the 19 hotel properties of ITDC. The Recital containing the 'best endeavour' clause was not included in the Share Purchase Agreements signed at the time of sale of 3 hotel properties of Hotel Corporation of India (HCI) viz., Centaur

Hotel Juhu Beach (Mumbai), Indo Hokke Hotel and Centaur Hotel Mumbai Airport (Mumbai) and in the cases of Lagan Jute Machinery Limited and Modern Foods Industries (India) Ltd. (MFIL). A tabular statement containing the Recital Clause in the different SHAs/ SPAs is placed at Appendix III.

1.9 The advice of the Attorney General for India, has been furnished by the Ministry of Social Justice and Empowerment which *inter-alia* states that legislation for providing reservation in private sector for Scheduled Castes and Scheduled Tribes would be Constitutionally not in order (Appendix IV).

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

**1.10 The Government in their action taken reply have stated that the moment the Government/Public Sector share goes below 51%, the reservation provisions cannot be enforced as per the law of the land and since there is no law to extend the policy of reservation to private companies, provisions cannot be made in the transaction agreement to continue the policy of reservation in public sector companies (PSUs) after disinvestment. These are the very reasons which make the Committee more firm in their view that the hour has come to enact a law for reservation in private sector so that the interests of Scheduled Castes and Scheduled Tribes are safeguarded simultaneously while the State also makes progress economically. While the privatisation of economy has given momentum for country's economic development, the Government in no way can leave the Scheduled Caste and Scheduled Tribe**

communities to fend for themselves. It is all the more obligatory for the Government to take some affirmative action to protect the interest of Scheduled Caste and Scheduled Tribe communities so that their economic development does not stagnate while others march ahead. The Committee feel that the advice given by the Attorney General for India that legislation for providing reservation in private sector for SCs and STs would be constitutionally not in order is not binding on the Government and that they are the final authority to take a final decision in the matter. The Committee, therefore reiterate their earlier recommendation that the Government should initiate action to provide reservation in private sector through enactment of a specific law on reservation in private sector.

1.11 As for the best endeavour clause is concerned, the Committee fully agree with the view expressed by the Ministry of Social Justice and Empowerment that the best endeavour clause needs to be more specific and should provide for reservation after disinvestments. In the absence of specific law on reservation in private sector or till such law is enacted, the best endeavour clause should act as an effective instrument to protect the interest of Scheduled Castes and Scheduled Tribes at least in disinvested public sector undertakings. The Committee, however, observe that only 14 out of the 19 public sector companies which had been disinvested had recital clause in the agreements with the purchasers while 5 of those public sector companies did not have such clause. The Committee would,

**therefore, like to know the reasons why the recital clause was not included in agreements with those 5 purchasers.**

**Recommendation (Sl. No. 2, Para No.28)**

1.12 The Committee had presumed that after privatisation of the public sector companies, the strategic partner would make best efforts to continue policies of the Government, albeit the Government cannot bind the private sector to provide reservation to SCs/STs because there is no law for reservation in private sector companies. They were of the view that there is a veil difference between the private sector and a particular unit which was a public sector company till recently but which had been converted into a private sector after disinvestment. Though, it has become a private sector unit yet it is not fully private because of Government's share in the company. The Committee were of the strong opinion that reservation in private sector should be made a legal binding by entering into an agreement between Government/public sector and private sector in the Memorandum of Understanding at the time of disinvestment, so that the basic element of reservation should remain there. The Committee had desired that the Government should ensure that the reservation policy in the public sector unit is continued even after it gets converted into a private sector unit after disinvestment.

**Reply of the Government**

1.13 In reply to recommendation that the Government must evolve a mandatory condition in the agreement for adequate representation for SCs

and STs in jobs to safeguard their interests while disinvesting any Government Institutions for making it private sector, the Ministry of Social Justice and Empowerment have stated that according to the Ministry of Disinvestment, reservation for SCs and STs in recruitment exists in Government Companies. A Company remains a Public Sector Company as long as a majority share (51% or more) is held by the Government/Public Sector. The moment the Government/Public Sector share goes below 51%, the company does not remain a Public Sector Company and the reservation cannot be enforced as per the law of the land. As there is no law to extend the policy of reservation to private companies, provision cannot be made in the transaction agreement to continue the policy of reservation in PSUs, after disinvestment.

1.14 In their post evidence reply, the Committee have been informed by the Ministry of Finance (Department of Disinvestment) that the role of the Government in companies where its shareholding has been reduced below 51% by way of disinvestments is that of a shareholder who functions in accordance with the provisions of the Companies Act, 1956 and the provisions of Share Holders Agreement (SHA) and Strategic Partners Agreement (SPA).

1.15 When asked whether the Government's representative remains on the Board of Directors of Disinvested Companies or gets any right to vote in proportion to the share held, the Ministry of Finance (Department of Disinvestment) by way of post evidence note have stated that SHAs of 11 disinvested Central Public Sector Enterprises (CPSEs) contain provisions according to which Government is entitled to nominate

Directors on the Boards of these companies. In the cases of 19 hotel properties of India Tourism Development Corporation (ITDC), and 3 hotel properties of Hotel Corporation of India (HCI), there was no provision for appointing Government Nominee Directors on the Board of the disinvested companies. All the Directors have equal right to vote in the meetings of the company. Any breach or default of the obligations/representations for protection of the interests of employees in the SHA can result in invocation of the default clauses. A typical default clause for breach of obligations / representations is given at Appendix III. Further, the Government Nominee Directors on the Board of the disinvested companies are responsible for ensuring that the Government's interest, as enshrined in SHAs, is protected and in case of breach of any obligation/representation in SHA on the part of the strategic partner, the same is brought to the notice of the administrative Ministry for necessary action.

1.16 The Secretary, Ministry of Finance (Department of Disinvestment) during the evidence also submitted :-

“In all disinvestment agreements the relevant clauses are there. Where these agreements are framed, the advice of Ministry of Law is taken. After the agreements are entered into, it is the responsibility of the administrative Ministry to ensure implementation of these clauses because they appoint a Director on the Board of the Company”.

1.17 During evidence the Committee were also apprised that the Members on the Board of Directors of public sector undertakings are elected as per the guidelines issued by the Appointment Committee of Cabinet. However, the guidelines do not provide for reservation for

SC/ST candidates on the Board of Directors of PSUs. When asked whether the Government propose to enact a legislation to provide for reservation for SCs/STs on the Board of Directors, it was stated by the Secretary, Ministry of Social Justice and Empowerment that the matter comes under the Companies Act while the Secretary, Department of Public Enterprises stated that it depends on Government policy and that Cabinet can decide on making such a provision.

### **Comments of the Committee**

**1.18 The Committee note that in the absence of specific law for extending reservation in private sector, the Government can not make provision in the transaction agreement to continue the policy of reservation in PSUs after disinvestment. The Committee also note that the role of Government is also reduced to that of shareholders who function in accordance with the provisions of the Companies Act, 1956, provisions of Share Holders Agreement(SHA) and Strategic Partners Agreement. The Committee observe that SHAs of only 11 disinvested CPSEs contained a provision for appointing Government nominee Directors on the Board of Directors whereas the same provision had not been made in the Share Holders Agreements with the disinvested hotel properties of ITDC and HCI. It is a matter of great concern that the Government in one stroke have foregone their authority in all those disinvested hotel properties whereas it was desirable to protect the interest of all employees including that of SC/ST employees in all 19 hotel properties of ITDC**



and 3 hotel properties of HCl. The Committee feel that the Government have still some shareholding in those disinvested hotel properties. The Committee, therefore, desire that a review of these disinvested Hotels be made to see whether a Government Director could be nominated to watch the interest of SC/ST employees. The Committee also desire that the role of nominated Director in the disinvested PSUs be made more effective and result oriented so that any violation by disinvested Company should be brought to the notice of the administrative Ministry for remedial/corrective action.

#### **Recommendation (Sl. No. 3, Para No.29)**

1.19 The Committee had noted that where the investment in a particular Public Sector/Company goes below 50% then it becomes Private Sector Company and over all control goes into the private hands. They felt that the problem crops up because of reduction of the share of Government below 50%. The Committee, therefore, after examining the pros and cons of this aspect had recommended that the Government should not disinvest its share below 51 % so that the control remains in the hands of the Government. The Committee had observed that the infrastructural facilities like railways, posts, telegraph, water, electricity, National Highways etc. are provided by the Government and without these facilities it is not, at all, possible to carry out any business/Industrial service/trading in Private Sector. The Committee had, therefore, recommended, that reservation policy for SCs and STs should be extended to all such Industries/Trading Organisations which receive any type of such

assistance from the Government in addition to loans from Financial Institutions/Banks, subsidies from Central and State Governments, land allotment or other facilities/concessions.

### **Reply of the Government**

1.20 In their reply, the Government have stated that given the imperatives of the global economic scenario and the need for greater public-private participation and private financing initiative, disinvestment by Government of its shareholding in State owned enterprises, is now an instrument of economic policy accepted globally. India has been pursuing disinvestment as a part of its economic reform strategy for over a decade now. The policy of the Government is to bring down the equity in non-strategic PSUs to 26% or lower. The non-strategic PSUs are those which are not in the areas of arms and ammunitions and the allied items of defence equipments etc. atomic energy and railway transport. As per the policy of the Central Government, Government's equity in all non-strategic Central PSUs, whether profit making or loss incurring, can be taken up for disinvestment to a level of 26% or lower, if necessary, as decided on a case by case basis. The implementation of the Policy is constantly monitored and reviewed.

1.21 They have further stated that disinvestment has resulted in direct benefits to Government through additionality of resources and indirect gains through improvement in the performance of the PSUs including improvement in the lot of employees and consumers. With disinvestment, there has been overall improvement in the PSUs market capitalization and

the market as a whole which not only has benefited the investors but also the Government through its holdings in the PSUs and the investors at large through holdings of UTI etc. in such PSUs. These benefits would not accrue in case the nature of the company continues to be a Government company with Government holding more than 51%. The very purpose of economic reforms through disinvestment would be defeated. At the same time, the Ministry of Social Justice and Empowerment have initiated an informal dialogue with the Private Sector to see whether they can take affirmative action to protect the interests of the weaker sections.

1.22 During the course of evidence in reply to a query regarding disinvestments, the representative of the Ministry of Finance (Department of Disinvestment) stated as under :-

“..... the policy of the Government has changed. Formerly, the emphasis was on privatization through strategic sale. Now, the policy is that adopted in the National Common Minimum Programme. It says that generally profit-making companies will not be privatized. All privatizations will be considered on a transparent and consultative case by case basis. While every effort will be made to modernize and restructure sick public sector companies and revive sick industry, chronically loss-making companies will either be sold or closed, after all, workers have got their legitimate dues and compensation. The Government will induct private industry to turn around companies that have potential for revival. In accordance with this policy, the Government in January, 2005 decided in principle to list large profitable Central PSUs on domestic stock exchanges and to selectively sell minority shareholdings in listed profitable CPSEs.”

He further stated:-

“At present, the emphasis is to selectively sell small portions of equity in listed profitable CPSEs other than the Navratnas. So, normally, as per this policy, the Government could continue to hold more than 51 per cent of equity share capital and then the policy regarding reservation will continue to apply. The problem arises only when the

Government's share in the paid-up equity capital goes below 51 per cent. Then, the reservation policy cannot be enforced because there is no law to extend the policy of reservation to private companies. So, I think so far as the present policy is concerned, the Government's shareholding will normally be kept to a minimum of 51 per cent and, therefore, the policy of reservation will continue to apply".

1.23 When asked about the number of Companies/PSUs disinvested, the Ministry of Finance (Department of Disinvestment) have stated that Government's equity was disinvested through strategic sale alongwith transfer of Management control in 11 Central Public Sector Enterprises, 19 hotel properties of ITDC and 3 Hotel properties of Hotel Corporation of India as per details given at Appendix IV.

1.24 To a query as to how the Government propose to monitor the implementation of the reservation policy, if the share of the Government in a company goes below 26%, the Department of Disinvestment have stated that the reservation policy of the Government can be implemented in the disinvested companies only after a law to extend reservation to private sector has been enacted.

1.25 In reply as to how the Government have drawn the conclusion that disinvestment has resulted in direct benefits to Government whereas these benefits would not have accrued in case of a Government Company, the Ministry of Finance (Department of Disinvestment) have furnished the following information made available by ten of the eleven disinvested companies:-

- (1) In the case of Modern Food Industries Limited (MFIL), the loss has decreased within four years from Rs. 48.23 crore in 1999-2000 (ending March 2000) to Rs. 9.84 crore in the year

ending December, 2004. Sales increased from Rs. 160.53 crore in 1999-2000 (ending March 2000) to Rs. 185.18 crore in the year ending December, 2003 and decreased to Rs. 151.55 crore in the year ending December, 2004. Additional investments of Rs. 12 crore have been made in the company to modernise its operations.

- (2) In the case of Paradeep Phosphates Limited(PPL), the loss of Rs. 230 crore, at the time of disinvestment in 2001-02, decreased to Rs. 15.08 crore in 2004-05. Sales increased five-fold from 2.5 lakh tonnes in 2001-02 to 12.45 lakh tonnes in 2004-05.
- (3) In the case of Hindustan Zinc Limited (HZL), sales increased by 30% within two years from 2001-02 to 2003-04 and 54% by 2004-05. The level of profit increased from Rs. 68 crore in 2001-02, at the time of disinvestment, to Rs. 655 crore in 2004-05. Additional investment of around Rs. 1,023 crore has also been made post privatisation. The company is reported to have generated indirect employment of 1500 people in service sectors and ancillary industries. The capacity of Chanderiya plant is also being significantly expanded.
- (4) In Bharat Aluminium Company Limited (BALCO), sales increased by around 9.8% post privatisation by 2002-03 and 35.6% by 2004-05. Against a loss of Rs. 43.03 crore in the year of disinvestment (2000-01) the company made a profit

of Rs. 64.49 crore within two years by 2002-03 and Rs. 127.45 crore in 2004-05. Additional investment of around Rs. 1,802 crore has already been made and capacity expansion is under way.

- (5) In CMC, sales increased by 38% by 2004-05. The profits decreased from Rs. 25.09 crore in 2001-02 to Rs 23.06 crore in 2004-05.
- (6) In Indian Petrochemicals Corporation Limited (IPCL), the sales increased by 59% within two years of privatisation by 2003-04. The profit increased by 634% from Rs. 107 crore in 2001-02 crore to Rs.785 crore in 2004-05. Additional investment of Rs. 121 crore has been made in 2004-05.
- (7) In the case of Jessop and Company Limited (JCL), against a loss of Rs. 47.6 crore prior to disinvestment in 2001-02 the Company made a profit of Rs. 4.82 crore by 2004-05. Sales increased by around 83%.
- (8) In the case of IBP\*, sales increased from Rs. 8,453 crore in 2001-02 to Rs.13,622 crore in 2004-05. However, the profit got reduced from Rs. 196 crore in 2001-02 to Rs. 58.87 crore in 2004-05.

\* The Government's shareholding in IBP Ltd. has been purchased by Indian Oil Corporation Ltd. (IOC) , thereby making IBP Ltd a subsidiary company of CPSE, namely IOC.

- (9) In the case of HTL, sales increased from Rs. 211.11 crore in 2001-02 to Rs. 240.47 crore in 2004-05. The loss in 2001-

02 was Rs. 107.61 crore which came down to Rs. 25.23 crore in 2004-05.

- (10) In the case of Videsh Sanchar Nigam Limited (VSNL), sales decreased from Rs. 7,966 crore in 2000-01 to Rs. 3,303 crore in 2004-05. Profit decreased from Rs. 1,779 crore in 2000-01 to Rs. 756 crore in 2004-05.

1.26 Out of the eleven disinvested companies, data regarding taxes paid has been received from eight companies. In the case of six disinvested companies there has been an increase in the quantum of tax paid to the Government. In the case of other two disinvested companies, the quantum of tax paid decreased. The details are given below:-

- (1) The tax paid by BALCO increased from Rs. 174.38 crore in 2000-01 to Rs. 235.73 crore in 2004-05.
- (2) The tax paid by CMC increased from Rs. 28.33 crore in 2001-02 to Rs. 36.5 crore in 2004-05.
- (3) The tax paid by HZL increased from Rs. 262.62 crore in 2001-02 to Rs. 647.61 crore in 2004-05.
- (4) The tax paid by IPCL increased from Rs. 1,168.20 crore in 2001-02 to Rs. 1,897.33 crore in 2004-05.
- (5) The tax paid by IBP increased from Rs. 1,662 crore in 2001-02 to Rs. 2,775.50 crore in 2004-05.
- (6) The tax paid by JCL increased from Rs. 2.26 crore in 2001-02 to Rs. 2.85 crore in 2004-05.
- (7) The tax paid by VSNL decreased from Rs. 879.13 crore in 2000-01 to Rs. 694 crore in 2004-05.

- (8) The tax paid by HTL decreased from Rs. 83.02 crore in 2001-02 to Rs. 43.27 crore in 2004-05.

It may be mentioned that the present policy of the Government on disinvestment is different from previous one. The National Common Minimum Programme (NCMP) adopted by the Government outlines the policy of the Government with respect to the Public Sector, including disinvestment of Government's equity in CPSEs. The salient features of NCMP, in this regard, is placed at Appendix V.

1.27 On being enquired, during the course of the evidence, about informal meetings held with the representatives of private sector companies regarding taking an affirmative action in providing reservation of jobs to SCs and STs, the Secretary, Ministry of Social Justice and Empowerment submitted as under:-

“In pursuance of the Common Minimum Programme, we did initiate a dialogue with the private sector. The Government set up a Group of Ministers under the Chairmanship of the Agriculture Minister to go into this question.....We wrote letters to the major industrial associations and to the four national-level associations also seeking their views in the matter.....We have got a reply from only about 25 respondents. The Group of Ministers then called the four major national associations for a discussion. Individually also, we met people. The Minister for Social Justice and Empowerment met industrialists. We talked to the industrialists over a wide range on this issue. The first break-through came when the 21 captains of industry wrote a letter saying that they would support the question of skill formation.....The private sector was very strident in its opposition saying that they would go only by merit; they would not lower their standards of merit in any way. But with constant follow-up, they wrote that although merit is very important in recruitment in the globalised scenario, yet they understand that merit is shaped by social circumstances. This admission was a very big step forward. They admitted that merit is shaped by social circumstances and there is a need for them to do something to improve the capability of these people. They agreed that they would work towards skill-formation, scholarships and training of the weaker sections of society. But they also made it clear that they are not supporting reservation. After that also, the Group of Ministers met the four



major national Associations the CII, the PHD Chamber of Commerce and Industry, the FICCI and the ASSOCHAM. The representatives of the four major national-level associations were invited. There again, their ground was that they would support skill development but they remained silent on reservation. Subsequent to that also, the Minister for Social Justice and Empowerment has also been talking to industrialists but their stand remain the same”.

1.28 In reply to a similar question, the Ministry of Social Justice and Empowerment in their post evidence note have stated that Hon'ble Minister for Social Justice and Empowerment is having interaction with Chairman/CEOs of the corporate sector. They are against the concept of reservation on the ground that it will directly impact the competitiveness of industry particularly when viewed in the context of rigid labour laws. However, in order to meet the aspirations of Scheduled Caste and Scheduled Tribe youth, they are willing to undertake affirmative action in the form of skill building/training and scholarships. The process is continuing.

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

**1.29 The Committee note that the Government have now revised their policy on disinvestment. Earlier the policy was to bring down their equity holding in non-strategic PSUs to 26% or lower and now their policy is to selectively sell small portions of equity in listed profitable Central Public Sector Enterprises (CPSEs) other than the Navratnas and to continue to hold more than 51% of equity share. The Committee are happy that with the change in policy decision, the reservation policy would remain unaffected.**

**1.30 The Committee also note that disinvestments made earlier brought in some direct and indirect benefits to Government through**

additionality of resources and improvement in the performance of the PSUs including improvement in the lot of employees and consumers. The Committee agree, with disinvestments, there has been overall improvement in the PSUs market capitalisation and the market as a whole, which not only has benefited the investors but also the Government through their holding in the PSUs and the investors at large through holdings in such PSUs. But it also cannot be denied that with disinvestment to 26% or lower, the Government have also lost their exclusive right/their control over administrative matter which inter-alia include reservation policy for SC/ST employees. The Committee feel that a good number of SC/ST people may still be working in such PSUs where Government had disinvested to a level of 26% or lower of their shareholdings. The Committee, therefore, feel that it is in the fitness of things that constitutional rights of such SC/ST employees need also to be protected.

1.31 The Committee appreciate the efforts made by the Government in putting across their views for extending reservation in private sector. The affirmative action such as work towards skill formation, scholarships and training of the weaker sections of society which the private industry volunteered to take does not appear to be sufficient. The Committee strongly feel that only a legislation on reservation would guarantee employment for SCs and STs in private sector with which the Government also agree. The Committee, therefore, reiterate their earlier recommendation that a

**comprehensive legislation may be enacted to bring private sector under the ambit of reservation provisions.**

**Recommendation (Sl. No. 4, Para No. 30)**

1.32 The Committee had noted that though there is no provision of reservation in private sector, a recital has been included in the disinvestment process which is as follows:-

“The strategic partner (SP) recognizes that the Government in relation to its employment policies follows certain principles for the benefits of the members of the SCs, STs, Physically Handicapped persons, those in the other socially disadvantageous categories of society. The SP shall use its efforts to cause the company to provide adequate jobs for such persons. Further, in the event of any reduction in the strength of the employees of the company, the SP shall use its best effort to ensure that the physically handicapped persons, Scheduled Castes and Scheduled Tribes are retrenched at the end.”

1.33 The Committee were of the opinion that inspite of above recital there is no guarantee that private sector shall implement it in letter and spirit. The Committee had, therefore, recommended that whenever retrenchment of the staff working in the Government/ Public Sector organisation becomes inevitable due to new economic policy/ disinvestments, it should not adversely affect the interest of SCs/STs for rendering them unemployed. Moreover, some mandatory provisions should be made in the terms and conditions with the strategic partners so that SCs and STs should not face economic and social problems.

**Reply of the Government**

1.34 The Ministry of Disinvestment have stated that protection of the interests of the employees is an integral part of the disinvestment policy.

This is ensured by making appropriate provisions in the Shareholders Agreement entered into by the Government with the concerned Strategic Partner. A typical provision relating to employees' interest has been made part of the transaction documents to be signed at the time of the disinvestment of the Government equity, in a PSU. It is not possible at the moment to legally bind the Strategic Partner (SP) to the reservation policy. The Ministry of Social Justice and Empowerment have requested the Ministry of Disinvestment to consider expanding the present 'best endeavour' clause to make it more specific and purposeful. A typical provision related to employees interest incorporated in Shareholders Agreement as furnished by the Ministry of Finance (Department of Disinvestment) is at Appendix VI.

1.35 When asked whether the Department of Disinvestment have considered the request of the Ministry of Social Justice and Empowerment for expanding the "best endeavour" clause to make it more specific and purposeful, the Ministry of Finance (Department of Disinvestment) in their post evidence note have stated that the then Ministry of Disinvestment in their O.M. dated 22<sup>nd</sup> September 2003, observed that the 'best effort' clause suggested by the Ministry of Social Justice and Empowerment, while providing details of the percentage of reservation for SC/ST is silent with regard to such details for the handicapped and other socially disadvantaged persons. The suggested clause, is therefore, imprecise and in fact, can create further distinctions between, what the Strategic Partner (SP) is expected to do for SC/ST and for the other categories. Moreover, reference to Group 'A' may have a

meaning for the Government but not for a SP, who may have different ideas on nomenclature or pay scales. In view of the inconsistencies in the suggested clause, the existing 'best effort' clause, which is unambiguous, could remain unless the Ministry of Social Justice and Empowerment suggest another draft, which can take care of the comments of that Ministry. With respect to stating the details of the reservation policy of the Government, this can be separately communicated to SP through a side letter, for which the Ministry of Social Justice and Empowerment are requested to provide a note elaborating on Governments policies in recruitment/position etc. for all the categories mentioned in the clause. The Ministry of Finance (Department of Disinvestment) have also stated that no response has been received from the Ministry of Social Justice and Empowerment.

1.36 On being asked about steps taken to protect the interest of SC/ST employees in case of their retrenchment from the disinvested company as well as the number of employees retrenched so far, the Ministry of Finance (Department of Disinvestment) have submitted that out of 11 Central Public Sector Enterprises (CPSEs), 19 hotels properties of Indian Tourism Development Corporation (ITDC) and 3 hotels properties of Hotel Corporation of India (HCI), disinvested through strategic sale along with transfer of management control, information except in the case of Hotel Hassan Ashok of ITDC and three hotels of HCI was received from the administrative departments of the disinvested companies concerned. Based on the information received from these companies, 74 employees were retrenched in one disinvested company and two hotels. The total

number of employees retrenched and the number of SC/ST employees among them is given below:-

Name	Total number of employees at the time of disinvestment	No of employees retrenched, including SC/ST employees (as on 31 <sup>st</sup> December 2005)	No of SC/ ST employees included in column 3
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
Laxmi Vilas Palace Hotel, Udaipur	87	3	2
Modern Food Industries (India) Ltd	2037	70	11
Hotel Indraprastha, New Delhi	202	1	Nil

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

**1.37 The Committee note that the then Ministry of Disinvestment now Ministry of Finance (Department of Disinvestment) in September, 2003 had observed that the ‘best effort’ or ‘best endeavour’ clause as suggested by the Ministry of Social Justice and Empowerment was imprecise and could create further distinction between, what the Strategic Partner (SP) is expected to do for SC/ST and for other categories. They had also opined that reference to Group ‘A’ may have a meaning for the Government but not for a SP, who may have different ideas or nomenclature or pay scales. The Department of Disinvestment had desired that the existing clause, which is unambiguous could remain unless the Ministry of Social Justice and Empowerment suggest another draft which could take care of the comments of the Ministry of Disinvestment. The Committee are pained to note that even after lapse of three years, the Ministry of Social Justice and**

Empowerment have not responded to observation of Department of Disinvestment. The Ministry of Social Justice and Empowerment instead of initiating action as suggested by the Department of Disinvestment in September, 2003 stated vide their reply dated the 27<sup>th</sup> April, 2005 that the Ministry of Disinvestment has been requested to consider expanding the present 'best endeavour' clause to make it more specific and purposeful. The Committee are distressed to note the lackadaisical attitude with which the subject is being handled in the Ministry of Social Justice and Empowerment. The Committee feel that the Ministry of Social Justice and Empowerment in consultation with the Department of Disinvestment or Ministry of Law should have found out the solution to that problem by this time. Since the protection of interests of the employees is an integral part of the Government's disinvestment policy, the Committee would like to see that aforesaid clause would also take care of the interest of SC and ST employees.

1.38 The Committee note that except in the case of Hotel Hassan Ashok of ITDC and 3 hotels of HCI information on retrenchment in disinvested companies and hotels have been received. The Committee note with dismay that out of 74 employees retrenched, 13 employees belonged to SC/ST categories. The Committee strongly feel that had the 'best endeavour, clause was in place in those hotels, the employees would have been saved from retrenchment. The Committee, therefore, strongly reiterate that mandatory provision should be made in terms and conditions with strategic

**partners so that interest of SC/ST employees are protected and that they do not face economic and social problems.**

**Recommendation (Sl. No. 5, Para No. 31)**

1.39 The Committee were of the opinion that not only an Act could make reservation in private sector mandatory but the zeal of the implementing authority is equally vital. They observed that casual approach had been made by the Government in regard to earlier recommendations made in their 41<sup>st</sup> Report (5<sup>th</sup> Lok Sabha) and 4<sup>th</sup> Report (10<sup>th</sup> Lok Sabha). The Committee find that the Government did not seem to be serious in respect of these recommendations which is a matter of grave concern to them. The Committee also took note of the Republic Day Speech of the Hon'ble President of India, Bhopal Declaration, and Report of National Commission to Review the working of the Constitution etc. according to which it was evident that the reservation in private sector is need of the present time. The Committee had, therefore, strongly recommended for enactment of an Act for bringing private/public sector under gamut of the reservation provisions as well.

**Reply of the Government**

1.40 In their reply, the Government have stated that the Ministry of Social Justice and Empowerment sponsored a one day business session under the aegis of the National Law School of India University, Bangalore where eminent representatives of the disadvantaged sections, some distinguished jurists and social activists took part. This issue was deliberated at length and the group suggested constitutional and legal



modalities for providing reservation to SCs/STs in the private sector. The group felt that providing reservation to SCs/STs in the private sector would not violate the equality clauses of the Constitution and would not violate Article 16(4) of the Constitution, as advised by the Attorney General for India. This matter has been taken up with the Ministry of Law and Justice for greater in depth examination of the entire issue in the overall context of the views expressed by the Attorney General for India and recommendation of the Parliamentary Committee.

1.41 The Ministry of Social Justice and Empowerment in their post-evidence reply have stated that two courses are available according to the Ministry of Law and Justice to provide reservation of jobs for Scheduled Castes and Scheduled Tribes in the private sector. They are to amend the Constitution for the purpose or to enact a law and place the same in the 9<sup>th</sup> schedule of the Constitution. The Committee have also been apprised that this will also involve a Constitutional amendment and that a final view is yet to be taken in the matter.

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

**1.42 The Committee note that in the business session sponsored by the Ministry of Social Justice and Empowerment eminent representatives of disadvantaged sections, some distinguished jurists and social activists, had suggested Constitutional and legal modalities for providing reservation to SCs and STs in the private sector. That group after deliberating the issue had felt that providing reservation to SC/ST in private sector would not violate the equality clauses of the Constitution and would not violate article 16(4) of the**

**Constitution as opined by Attorney General for India. The Committee also observe that this matter was taken up with the Ministry of Law and Justice who suggested two courses of action which are available to enable the Government to provide reservation in private sector i.e. either make an amendment in the Constitution or enactment of a law. The Committee are of the view that the hour has now come to decide one of the above options so that reservation for SCs and STs in private sector becomes a reality and the long pending recommendation of the Committee for extending reservation to SCs and STs in private sector as contained in their Forty-first Report (Fifth Lok Sabha) and Fourth Report (Tenth Lok Sabha) is realised. The Committee, therefore, considering the significance of the matter reiterate their earlier recommendation that a law should be enacted to bring private sector under the ambit of the reservation provisions.**

**Recommendation (Sl. No. 6, Para No. 32)**

1.43 The Committee were surprised to note that whenever a question for implementation of reservation order had arisen, the concerned Ministries try to shift the responsibilities on each other. They felt that there is total lack of coordination/ liaisoning among Department of Personnel and Training, Ministry of Social Justice and Empowerment, Ministry of Tribal Affairs and the State Governments. They were pained to learn that there is no central authority to exercise its authority to ensure intake of the Scheduled Castes and Scheduled Tribes as per the Government of India reservation orders. The Committee were of the view that in case of any

doubt/dispute in regard to implementation of reservation orders, instead of shifting responsibility by one Department to another, concrete and concerted efforts should be made to solve the problem. They were of the strong opinion that in the absence of any nodal Ministry for monitoring and coordination of implementation of reservation policy, the very purpose of reservation policy for Scheduled Castes and Scheduled Tribes is being defeated in the whole country in all the sectors. The Committee had, therefore, recommended that the Government should designate only one Ministry which should be a nodal Ministry to look after proper implementation of reservation orders. They had further recommended that there should also be a Central law to regulate the implementation of reservation policy for SCs and STs in all the State Governments, Ministries, Departments of the Government of India, Public Sector Undertakings and Private Sector.

### **Reply of the Government**

1.44 In their reply, the Government have stated that the Department of Personnel and Training (DOP&T) is the nodal agency in matters relating to the reservation policy in civil services under the Government of India. The issue regarding legislation on reservation has been examined in consultation with the DOP&T. The DOP&T has opined that executive instructions on reservation come within the meaning of law. The legal validity of these instructions had specifically been upheld by the Supreme Court in Mandal case. As regards Central Law to regulate the implementation of reservation policy in all the State Governments, it may be pointed out that reservation in State Services is exclusively the State

subject and is therefore outside the purview of the Central Government. Moreover, there cannot be a uniform law on reservation in all the States as each State has its own priorities and peculiar situations.

1.45 The DOP&T, when asked whether the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) have, so far, been able to ensure prescribed percentage of reservation in various services of Central Government or other Government bodies being nodal agency in the matter relating to reservation policy and if not, steps taken or proposed to be taken by the Government to fill up all the posts reserved for SCs/STs, in their post evidence reply have stated that reservation to SCs and STs is provided cadre-wise. In most of the cadres, SCs and STs appointed by reservation occupy the posts reserved for them. In some cases, reserved posts remain unfilled for the following reasons:

- (i) There is generally a time gap between occurrence of vacancies and filling up thereof as recruitment is a time consuming process.
- (ii) Some reserved posts remain vacant due to non-availability of requisite number of reserved category candidates.
- (iii) Some of the selected SC/ST candidates do not join the service or leave the service after joining because they get better opportunities elsewhere.

1.46 They have also stated that there is less representation of SCs/STs in higher rungs of services where posts are generally filled by promotion because SC/ST officers retire early due to higher age at the time of entry

into service, etc. It has also been stated that while quantum of reservation for SCs and STs is generally 15% and 7.5% respectively, their representation in services as on 1.1.2004 is 17.05% and 6.54% respectively. These figures do not include Safai Karamcharis and information in respect of one Ministry.

1.47 Asked as to what steps are proposed to be taken to fill up the posts reserved for SCs/STs, the DOP&T have stated that a Special Recruitment Drive has been launched to fill up all backlog reserved vacancies of SCs and STs. Besides, following provisions have been made to ensure that the reserved vacancies are filled by the respective categories only:

- (i) SC/ST candidates get concessions like relaxation in upper age limit by five years, exemption from payment of examination/application fee, relaxation in qualification regarding experience at the discretion of competent authority, relaxation in standards of suitability, etc. in case of direct recruitment.
- (ii) In the matter of promotion, SC and ST candidates get concessions like extension of zone of consideration to five times the number of vacancies in case suitable SC/ST candidates are not available within the normal zone of consideration, relaxation in marks/standards of evaluation, relaxation in upper age limit by five years where upper age limit for promotion, if prescribed, does not exceed 50 years, etc.

- (iii) There is a ban on de-reservation of reserved vacancies in case of direct recruitment.

1.48 The Ministry of Heavy Industries and Public Enterprises (Department of Public Enterprises) in their post-evidence reply have stated that the Department of Public Enterprises (DPE) is the nodal Department in respect of CPSEs. Department of Personnel and Training (DOP&T) issues instructions about the reservation policy of the Government for the Central Government employees and these instructions are extended by DPE for implementation by CPSEs. In order to enforce reservation in CPSEs, DPE also issued instructions to CPSEs to issue Presidential Directives in 1991. The present quota for reservation of candidates belonging to SCs/STs is as under:-

Categories	Group 'A' & 'B'	Group 'C'	Group 'D'
Scheduled Castes	15%	15%	15%
Scheduled Tribes	7.5%	7.5%	7.5%

1.49 Based on the information furnished by 211 CPSEs, to the Ministry of Heavy Industries and Public Enterprises (Department of Public Enterprises), the position regarding representation of SCs and STs as on

1.1.2005 under various categories is reported to be as under:-

Group	SC's percentage	ST's percentage
Group 'A'	12.61	3.99
Group 'B'	13.18	6.12
Group 'C'	19.74	9.77
Group 'D' (excluding Safai Karamcharis)	21.82	14.23
Group 'D' (Safai Karamcharis)	77.66	3.01

The overall percentage is as under:-

Scheduled Castes	19.11%
Scheduled Tribes	9.34%

1.50 The Ministry of Heavy Industries & Public Enterprises (Department of Public Enterprises) have stated that the percentage of SCs and STs in Group 'A' & 'B' group CPEs is less than prescribed limit of 15% for SCs and 7.5% for STs. This is mainly on account of non-availability of suitable candidates from both the communities in Group 'A' and Group 'B' posts, particularly in technical posts in direct recruitment and in promotions due to non-completion of requisite number of years of service by many SC, ST candidates in the feeder cadre. As a result, these posts have remained vacant.

1.51 They have also added further that the National Common Minimum Programme of the UPA Government stipulates that all vacancies reserved for SCs and STs in CPSEs are to be filled up in time bound manner. The Department of Public Enterprises has repeatedly written to the Secretaries of the administrative Ministries/Departments concerned with CPSEs to fill up all backlog vacancies reserved for SCs/STs in CPSEs under their control through Special Recruitment Drive by 31<sup>st</sup> December, 2005, which has now been extended up to 31<sup>st</sup> March, 2006. Secretary (PE) also held meetings with the senior officials of the PSEs and the Ministries/Departments concerned to discuss the backlog vacancy position as also to sort out ways and means to fill up these vacancies within the

time limits prescribed by DOP&T. As a result, a number of vacancies reserved for SCs/STs have been filled up in CPSEs.

1.52 In reply to a query as to how would the Government ensure that reservation policy is implemented by all the State Governments and whether a Central Law is not a solution to regulate the implementation of reservation policy for SCs and STs in all the State Governments, Union Territories, Ministries, Departments of the Government of India, Public Sector Undertakings, Statutory and Semi Government bodies, the DOP&T have stated that as regards reservation in services under the Government of India, the Government has introduced a Bill namely “The Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation in Posts and Services) Bill, 2004” in the Rajya Sabha on 22.12.2004. The Bill covers all Public Sector Undertakings, Autonomous Bodies, Universities, etc. which fall under the control of the Government of India.

1.53 They have further added that reservation in the services of a State is the prerogative of the State concerned. It would not be advisable to govern reservation in the services of the States by a Central Reservation Act because each State has its peculiar situation in terms of the composition of different castes/classes, extent of backwardness and need for reservation. Some of the States have enacted their own laws, keeping in view their requirements. Some others are implementing reservation by way of instructions. Each State also monitors implementation of its policy.

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

**1.54 Having noted that there is lack of co-ordination/liaisoning amongst the Department of Personnel & Training, the Ministry of**



**Social Justice & Empowerment and the Ministry of Tribal Affairs and the State Governments in implementation of reservation orders, the Committee had recommended for a Central Ministry to be designated as a nodal Ministry. The Committee have been apprised that the DOP&T is the nodal agency in matters relating to the reservation policy in civil services under the Government of India and the Ministry of Heavy Industries and Public Enterprises (Department of Public Enterprises) in respect of Central Public Enterprises. In spite of having DOP&T as a nodal agency for the purpose, the progress made in the direction of giving due representation to SCs/STs in services even after more than 56 years of inclusion of reservation provision in the Constitution has shown a dismal picture. The Committee are also not impressed by the overall percentage intake of SCs and STs both in Central Government and CPEs as neither the Central Government nor the PSEs have been able to fill up the prescribed percentage of SCs/STs at different levels in various services. Numerous measures undertaken by the Government by way of relaxations/concessions as well as special recruitment drives in recruitment have not shown encouraging results. The special recruitment drive as announced in August, 2004 is only for filling up backlog posts in direct recruitment whereas most of backlog posts exist in promotion as eligible SC/ST candidates are not usually available in the feeder cadre. Moreover, in higher echelon of posts, the representation of SCs and STs is still wanting and the Government also admit this fact. The Committee desire that the**

**Government should issue necessary instructions in regard to reservation in promotion in higher echelon of posts in the light of Article 16(4A) of the Constitution and thereby fulfil the Constitutional obligation.**

**1.55 The Committee note that the Government have introduced the Scheduled Castes, Scheduled Tribes and other Backward Classes (Reservation in Posts and Services) Bill, 2004 in the Rajya Sabha on 22<sup>nd</sup> December, 2004. The Bill is proposed to cover all Public Sector Undertakings, Autonomous Bodies, Universities etc. which fall under the control of the Government of India. The Committee, however, are also concerned that State Governments should also be covered by a Central Law. The Committee agree that each State has its peculiar situation in terms of the composition of different castes/classes, extent of backwardness and need for reservation. It is, therefore, all the more necessary to know the problems and difficulties each State is facing and to find a solution according to the need of each State in implementing the reservation policy. The Committee reiterate that there should be a Central Law to regulate implementation of reservation policy for SCs and STs in all the State Governments, Ministries, Departments of the Government of India, Public Sector Undertakings and Private Sector.**

**CHAPTER – II**  
**RECOMMENDATIONS/OBSERVATIONS WHICH HAVE BEEN**  
**ACCEPTED BY THE GOVERNMENT**

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**CHAPTER – III****RECOMMENDATIONS/OBSERVATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN VIEW OF REPLIES OF THE GOVERNMENT****Recommendation (Sl. No. 2, Para No. 28)**

3.1 The Committee may only presume that after privatisation of the public sector companies, the strategic partner will make best efforts to continue policies of the Government, but in fact the Government cannot bind the private sector to provide reservation to SCs/STs because there is no law for reservation in private sector companies. The Committee are of the view that there is a veil of difference between the private sector and a particular unit which was a public sector till recently and now converted into private sector because of disinvestment policy of the Government. Though it has become a private sector unit yet it is not fully private because of Government's share in the company. The Committee are of the strong opinion that reservation in private sector should be made a legal binding by entering into an agreement between Government/public sector and private sector in the Memorandum of Understanding at the time of disinvestment, so that the basic element of reservation should remain there, which is the constitutional right of the people belonging to SCs/STs. The Government should not, so simply, transfer the money of the people invested in a public sector to a third party without protecting the right of SCs & STs. The Committee desire the Government to ensure that the reservation policy in the public sector is continued even after converting it into a private sector after disinvestment.

### **Reply of the Government**

3.2 In their reply, the Ministry of Social Justice and Empowerment have stated that the Ministry of Disinvestment have stated that reservation for SCs and STs in recruitment exists in Government Companies. A Company remains a Public Sector Company as long as a majority share (51% or more) is held by the Government/Public Sector. The moment the Government/Public Sector shares goes below 51%, the company does not remain a Public Sector Company and the reservation cannot be enforced as per the law of the land. As there is no law to extend the policy of reservation to private companies, provision cannot be made in the transaction agreement to continue the policy of reservation in PSUs, after disinvestments.

(Ministry of Social Justice and Empowerment O.M. No. 16014/5/2001-SCD-I, dated 27 April, 2005).

3.3 As regards role of the Government in companies where its share has been reduced below 51% by way of disinvestments, the Ministry of Finance (Department of Disinvestment) through their post evidence note have informed that the role of the Government in companies where its shareholding has been reduced below 51% by way of disinvestments is that of a shareholder who functions in accordance with the provisions of the Companies Act, 1956 and the provisions of Share Holders Agreement (SHA) and Strategic Partners Agreement (SPA).

3.4 They further informed that in regard to representation of the Government on the Board of Directors of Disinvested Company, SHAs of 11 disinvested CPSEs contain provisions according to which Government

is entitled to nominate Directors on the Boards of these companies. In the cases of 19 hotel properties of India Tourism Development Corporation (ITDC), and 3 hotel properties of Hotel Corporation of India (HCI), there was no provision for appointing Government Nominee Directors on the Board of the disinvested companies. All the Directors have equal right to vote in the meetings of the company. Any breach or default of the obligations/representations for protection of the interests of employees in the SHA can result in invocation of the default clauses. A typical default clause for breach of obligations/representations is given at Appendix III. The Government Nominee Directors on the Board of the disinvested companies are responsible for ensuring that the Government's interest, as enshrined in SHAs, is protected and in case of breach of any obligation/representation in SHA on the part of the strategic partner, the same is brought to the notice of the administrative Ministry for necessary action.

(Ministry of Finance, Department of Disinvestment O.M. No.3/121/2003/DD-II (Vol. II), dated 24<sup>th</sup> February 2006).

### **Comments of the Committee**

3.5 Please see para 1.18 of Chapter I.

**CHAPTER – IV****RECOMMENDATIONS/OBSERVATIONS IN RESPECT OF WHICH  
REPLIES OF GOVERNMENT HAVE NOT BEEN ACCEPTED BY THE  
COMMITTEE AND WHICH REQUIRE REITERATION****Recommendation (Sl. No. 1, Para No. 27)**

4.1 The Committee note that in regard to the question of extending reservation and fair employment policy for SCs and STs to private enterprises/sector, particularly in respect of those enterprises who receive government grants and loans or other assistance, the government have stated that according to Department of Personnel and Training the matter was examined in consultation with the Attorney General of India who advised that “reservation in private sector will not be permissible under Art. 16(4) of the Constitution and will be violative of the equality provisions in the Constitution.” In the opinion of the Committee this Article has not been interpreted properly and correctly because Article 16(4) does not debar reservation for SCs and STs subject to specific provisions made for reservation for certain classes of the Society. The Committee are, therefore, seriously concerned over the unfavourable attitude of the Government for not extending national policy of reservation for SCs and STs in private sector and the Government, in the era of globalisation/disinvestment is still depending on the solitary advice of the Attorney General on such a vital matter of public importance and Constitutional provisions. The Committee, therefore, strongly recommend that the Government should change their policy and seriously reconsider the matter of providing reservation in private sector

also in the changed scenario of the Indian economy keeping in view the significant contribution made by these communities in the nation building. The Government must evolve a mandatory condition in the agreement for adequate representation for SC and ST in the jobs while disinvesting any Government Institutions for making Private Sector for safeguarding the interests of SC and ST in jobs as guaranteed in the Constitution.

### **Reply of the Government**

4.2 In their action taken reply, the Ministry of Social Justice and Empowerment have stated that as far as the recommendation that the Government must evolve a mandatory condition in the agreement for adequate representation for Scheduled Castes and Scheduled Tribes in the jobs while disinvesting any Government Institutions to safeguard the interest of SCs and STs is concerned, the same cannot be enforced in the Disinvested Public Sector Undertaking which becomes a part of the Private Sector after disinvestment in the absence of a separate specific law on reservation in the Private Sector.

4.3 They have further stated that the Ministry of Disinvestment with which the matter was taken up has stated that reservation in recruitment is not enforceable in the Private Sector. A Company remains a Public Sector Company as long as a majority share (51% or more) is held by Government/Public Sector. The moment the Government/Public Sector shares goes below 51%, the company does not remain a Public Sector Company and the reservation provisions cannot be enforced as per the law of the land. As there is no law to extend the policy of reservation to private companies, provision cannot be made in the transaction agreement to



continue the policy of reservation in Public Sector Companies(PSUs) after disinvestment. The Ministry of Disinvestment has, however, been requested that till such a time a mandatory provision in this regard is made, the 'best endeavour' clause being incorporated in the 'Disinvestment Agreement' needs to be more effective. It has been suggested to the Ministry of Disinvestment that the best endeavour clause needs to be more specific and provide for extent of reservation to be made available in direct recruitment and in promotion, after disinvestment.

(Ministry of Social Justice and Empowerment O.M. No.16014/5/2001-SCD-I, dated 27<sup>th</sup> April, 2005).

4.4 The Ministry of Finance (Department of Disinvestment) vide their post-evidence note have stated that Government's equity was disinvested through strategic sale along with transfer of management control in 11 Central Public Sector Enterprises (CPSEs), 19 hotel properties of Indian Tourism Development Corporation (ITDC) and 3 hotel properties of Hotel Corporation of India (HCI). The 'best endeavour' clause was incorporated as one of the Recitals in the Shareholders Agreement (SHA)/Share Purchase Agreement (SPA) signed at the time of strategic sales of Bharat Aluminium Company Ltd. (BALCO), CMC Ltd., Jessop & Co. Ltd. (JCL), Paradeep Phosphates Ltd. (PPL), IBP Co. Ltd., HTL Ltd, Hindustan Zinc Ltd (HZL), Videsh Sanchar Nigam Limited (VSNL), Indian Petrochemicals Corporation Ltd. (IPCL), and the 19 hotel properties of ITDC. The Recital containing the 'best endeavour' clause was not included in the Share Purchase Agreements signed at the time of sale of 3 hotel properties of Hotel Corporation of India (HCI) viz., Centaur Hotel Juhu Beach (Mumbai), Indo Hokke Hotel and Centaur Hotel Mumbai

Airport (Mumbai) and in the cases of Lagan Jute Machinery Limited and Modern Foods Industries (India) Ltd. (MFIL). A tabular statement containing the Recital Clause in the different SHAs/ SPAs is placed at Appendix I.

(Ministry of Finance, Department of Disinvestment O.M. No.3/121/2003/DD-II (Vol. II), dated 24<sup>th</sup> February 2006).

### **Comments of the Committee**

4.5 Please see para 1.10 and 1.11 of Chapter I.

### **Recommendation (Sl. No. 3, Para No. 29)**

4.6 The Committee note that where the investment in a particular Public Sector/Company goes below 50% then it becomes Private Sector Company and over all control goes into the private hands. The Committee feel that the problem crops up because of reduction of the share of Government below 50%. The Committee, therefore, after examining the pros and cons of this aspect recommend that the Government should not disinvest its share below 51 per cent so that the control remains in the hands of the Government. By doing this, the claim of whole galaxy of SC/ST people in the Public Sector will remain intact. The Committee observe that the infrastructural facilities like railways, posts, telegraph, water, electricity, National Highways etc are provided by the Government and without the help of these facilities it is not at all possible to carry out any business/Industrial service/Trading in Private Sector. The Committee, therefore, recommend, that reservation policy for SC and STs should be extended to all such Industries/Trading Organisations which receive any type of such assistance from the Government in addition to loans from financial institutions/Banks, subsidies from Central and State

Governments, land allotment or other facilities/concessions received from the Government.

### **Reply of the Government**

4.7 In their reply, the Government have stated that given the imperatives of the global economic scenario and the need for greater public-private participation and private financing initiative, disinvestment by Government of its shareholding in State owned enterprises, is now an instrument of economic policy accepted globally. India has been pursuing disinvestment as a part of its economic reform strategy for over a decade now. The policy of the Government is to bring down the equity in non-strategic PSUs to 26% or lower. As per the policy of the Central Government, Government's equity in all non-strategic Central PSUs, whether profit making or loss incurring, can be taken up for disinvestment to a level of 26% or lower, if necessary, as decided on a case by case basis. The implementation of the Policy is constantly monitored and reviewed.

4.8 They have further stated that disinvestment has resulted in direct benefits to Government through additionality of resources, and indirect gains through improvement in the performance of the PSUs including improvement in the lot of employees and consumers. With disinvestment, there has been overall improvement in the PSUs market capitalization and the market as a whole which not only has benefited the investors but also the Government. These benefits would not accrue in case the nature of the company continues to be a Government company with Government holding more than 51%. The very purpose of economic reforms through

disinvestment would be defeated. At the same time, the Ministry of Social Justice and Empowerment have initiated an informal dialogue with the Private Sector to see whether they can take affirmative action to protect the interests of the weaker sections.

(Ministry of Social Justice and Empowerment O.M. No.16014/5/2001-SCD-I, dated 27<sup>th</sup> April, 2005).

4.9 Regarding conclusion arrived at by the Government that disinvestments has resulted in direct benefits to Government whereas these benefits would not have accrued in case of Government Company, the Ministry of Finance (Department of Disinvestment) in their post evidence note have informed that as per the information made available by ten of the eleven disinvested companies, the change in performance both in previously loss making Central Public Sector Enterprises (CPSEs) as well as profitable CPSEs is given below:-

- In the case of Modern Food Industries Limited (MFIL), the loss has decreased within four years from Rs. 48.23 crore in 1999-2000 (ending March 2000) to Rs. 9.84 crore in the year ending December, 2004. Sales increased from Rs. 160.53 crore in 1999-2000 (ending March 2000) to Rs. 185.18 crore in the year ending December, 2003 and decreased to Rs. 151.55 crore in the year ending December, 2004. Additional investments of Rs. 12 crore have been made in the company to modernise its operations.
- In the case of PPL, the loss of Rs. 230 crore, at the time of disinvestment in 2001-02, decreased to Rs. 15.08 crore in 2004-05. Sales increased five-fold from 2.5 lakh tonnes in 2001-02 to 12.45 lakh tonnes in 2004-05.

- In the case of Hindustan Zinc Limited (HZL), sales increased by 30% within two years from 2001-02 to 2003-04 and 54% by 2004-05. The level of profit increased from Rs. 68 crore in 2001-02, at the time of disinvestment, to Rs. 655 crore in 2004-05. Additional investment of around Rs. 1,023 crore has also been made post privatisation. The company is reported to have generated indirect employment of 1500 people in service sectors and ancillary industries. The capacity of Chanderiya plant is also being significantly expanded.
- In Bharat Aluminium Company Limited (BALCO), sales increased by around 9.8% post privatisation by 2002-03 and 35.6% by 2004-05. Against a loss of Rs. 43.03 crore in the year of disinvestment (2000-01) the company made a profit of Rs. 64.49 crore within two years by 2002-03 and Rs. 127.45 crore in 2004-05. Additional investment of around Rs. 1,802 crore has already been made and capacity expansion is under way.
- In CMC, sales increased by 38% by 2004-05. The profits decreased from Rs. 25.09 crore in 2001-02 to Rs 23.06 crore in 2004-05.
- In Indian Petrochemicals Corporation Limited (IPCL), the sales increased by 59% within two years of privatisation by 2003-04. The profit increased by 634% from Rs. 107 crore in 2001-02 to Rs.785 crore in 2004-05. Additional investment of Rs. 121 crore has been made in 2004-05.

- In the case of Jessop and Company Limited (JCL), against a loss of RS. 47.6 crore prior to disinvestments in 2001-02 the Company made a profit of Rs. 4.82 crore by 2004-05. Sales increased by around 83%.
- In the case of IBP\*, sales increased from Rs. 8,453 crore in 2001-02 to Rs.13,622 crore in 2004-05. However, the profit got reduced from Rs. 196 crore in 2001-02 to Rs. 58.87 crore in 2004-05.

\* The Government's shareholding in IBP Ltd. has been purchased by Indian Oil Corporation Ltd. (IOC), thereby making IBP Ltd a subsidiary company of CPSE, namely IOC.

- In the case of HTL, sales increased from Rs. 211.11 crore in 2001-02 to Rs. 240.47 crore in 2004-05. The loss in 2001-02 was Rs. 107.61 crore which came down to Rs. 25.23 crore in 2004-05.
- In the case of Videsh Sanchar Nigam Limited (VSNL), sales decreased from Rs. 7,966 crore in 2000-01 to Rs. 3.303 crore in 2004-05. Profit decreased from Rs. 1,779 crore in 2000-01 to Rs. 756 crore in 2004-05.

4.10 Out of the eleven disinvested companies, data regarding taxes paid has been received from eight companies. In the case of six disinvested companies there has been an increase in the quantum of tax paid to the Government. In the case of other two disinvested companies, the quantum of tax paid decreased. The details are given below:-

- The tax paid by BALCO increased from Rs. 174.38 crore in 2000-01 to Rs. 235.73 crore in 2004-05.
- The tax paid by CMC increased from Rs. 28.33 crore in 2001-02 to Rs. 36.5 crore in 2004-05.

- The tax paid by HZL increased from Rs. 262.62 crore in 2001-02 to Rs. 647.61 crore in 2004-05.
- The tax paid by IPCL increased from Rs. 1,168.20 crore in 2001-02 to Rs. 1,897.33 crore in 2004-05.
- The tax paid by IBP increased from Rs. 1,662 crore in 2001-02 to Rs. 2,775.50 crore in 2004-05.
- The tax paid by JCL increased from Rs. 2.26 crore in 2001-02 to Rs. 2.85 crore in 2004-05.
- The tax paid by VSNL decreased from Rs. 879.13 crore in 2000-01 to Rs. 694 crore in 2004-05.
- The tax paid by HTL decreased from Rs. 83.02 crore in 2001-02 to Rs. 43.27 crore in 2004-05.

4.11 It may be mentioned that the present policy of the Government on disinvestment is different from previous one. The National Common Minimum Programme (NCMP) adopted by the Government outlines the policy of the Government with respect to the Public Sector, including disinvestment of Government's equity in CPSEs. The salient features of NCMP, in this regard, is placed at Appendix V.

(Ministry of Finance, Department of Disinvestment O.M. No.3/121/2003/DD-II (Vol. II), dated 20<sup>th</sup> February 2006).

4.12 The Ministry of Social Justice and Empowerment in their post evidence note have stated that Hon'ble Minister for Social Justice and Empowerment is having interaction with Chairman/CEOs of the corporate sector. They are against the concept of reservation on the ground that it will directly impact the competitiveness of industry particularly when viewed in the context of rigid labour laws. However, in order to meet the

aspirations of Scheduled Caste and Scheduled Tribe youth, they are willing to undertake affirmative action in the form of skill building/training and scholarships. The process is continuing.

(Ministry of Social Justice and Empowerment O.M.No.16014/5/2001-SCD-I (Vol.II), dated 24<sup>th</sup> February, 2006).

### **Comments of the Committee**

4.13 Please see para 1.29 to 1.31 of Chapter I.

### **Recommendation (Sl. No. 4, Para No. 30)**

4.14 The Committee also note that though there is no provision of reservation in private sector, a recital has been included in the disinvestments process which is as follows:-

“The strategic partner (SP) recognizes that the Government in relation to its employment policies follows certain principles for the benefits of the members of the SCs, STs, Physically Handicapped persons, those in the other socially disadvantageous categories of society. The SP shall use its efforts to cause the company to provide adequate jobs for such persons. Further, in the event of any reduction in the strength of the employees of the company, the SP shall use its best effort to ensure that the physically handicapped persons, Scheduled Castes and Scheduled Tribes are retrenched at the end.”

4.15 The Committee are of the opinion that inspite of above recital there is no guarantee that private sector shall implement it in letter and spirit. The Committee, therefore, recommend that whenever retrenchment of the staff working in the Government/Public Sector organisation becomes



inevitable due to new economic policy/disinvestments, it should not adversely affect the interest of SCs/STs for rendering them unemployed. Moreover, some mandatory provisions should be made in the terms and conditions with the strategic partners so that SCs & STs should not face economic and social problems.

### **Reply of the Government**

4.16 In their reply, the Ministry of Disinvestment have stated that protection of the interests of the employees is an integral part of the disinvestment policy. This is ensured by making appropriate provisions in the Shareholders Agreement entered into by the Government with the concerned Strategic Partner. A typical provision relating to employees' interest has been made part of the transaction documents to be signed at the time of the disinvestment of the Government equity, in a PSU. It is not possible at the moment to legally bind the Strategic Partner (SP) to the reservation policy. The Ministry of Social Justice and Empowerment have requested the Ministry of Disinvestment to consider expanding the present 'best endeavour' clause to make it more specific and purposeful.

(Ministry of Finance, Department of Disinvestment O.M. No.3/121/2003/DD-II (Vol. II), dated 20<sup>th</sup> February 2006).

4.17 On the issue of contents of "a typical provision relating to employees" interest made as part of the transaction documents signed at the time of disinvestments, the Ministry of Finance (Department of Disinvestment) have furnished the details as given in Appendix VI.

(Ministry of Finance, Department of Disinvestment O.M. No.3/121/2003/DD-II (Vol. II), dated 24<sup>th</sup> February 2006).

4.18 When asked whether the Department of Disinvestment have considered the request of the Ministry of Social Justice and Empowerment for expending the “best endeavour” clause to make it more specific and purposeful, the Ministry of Finance (Department of Disinvestment) in their post evidence note have stated that Ministry of Social Justice and Empowerment, vide U.O. dated 26<sup>th</sup> August, 2003 suggested the following clause to be considered by the then Ministry of Disinvestment:-

“The Strategic Partner (SP) recognizes that the Government in relation to its employment policies follows certain principles for the benefit of the members of the Scheduled Castes / Scheduled Tribes, physically handicapped persons and other socially disadvantaged categories of the society. The SP should endeavour to provide adequate job opportunities for such persons and to continue the policy of 15% to 16 2/3% reservation for SCs and 7 1/2% for STs in all the categories of jobs filled on a direct recruitment basis and in promotion (up to the lowest rung of Group-A jobs). Further, in the event of any reduction in the strength of the employees of the Company, the SP shall ensure that the disabled persons, Scheduled Castes and Scheduled Tribes are retrenched at the end”.

4.19 In reply to the above mentioned suggestion, the then Ministry of Disinvestment in its O.M. dated 22<sup>nd</sup> September 2003, observed that “ the ‘best effort’ clause suggested by the Ministry of Social Justice and Empowerment, while providing details of the percentage of reservation for

SC/ST is silent with regard to such details for the handicapped and other socially disadvantaged persons. The suggested clause, was therefore, imprecise and in fact, could create further distinctions between, what the Strategic Partner (SP) is expected to do for SC/ST and for the other categories. Moreover, reference to Group A may have a meaning for the Government but not for a SP, who may have different ideas on nomenclature or pay scales. In view of the inconsistencies in the suggested clause, the existing 'best effort' clause, which is unambiguous, could remain unless the Ministry of Social Justice and Empowerment suggests another draft, which can take care of the comments of this Ministry. With respect to stating the details of the reservation policy of the Government, this can be separately communicated to the SP through a side letter, for which the Ministry of Social Justice and Empowerment was requested to provide a note elaborating on Governments policies in recruitment/position etc. for all the categories mentioned in the clause". Thereafter, no response has been received from the Ministry of Social Justice and Empowerment.

(Ministry of Finance, Department of Disinvestment O.M. No.3/121/2003/DD-II (Vol. II), dated 14<sup>th</sup> March, 2006).

4.20 About steps taken to protect the interest of SC/ST Employees in case of their retrenchment from the disinvested company as well as number of employees retrenched so far, the Ministry in their post evidence note have submitted that out of 11 Central Public Sector Enterprises (CPSEs), 19 hotels properties of Indian Tourism Development Corporation (ITDC) and 3 hotel properties of Hotel Corporation of India (HCI),

disinvested through strategic sale along with transfer of management control, information except in the case of Hotel Hassan Ashok of ITDC and three hotels of HCI was received from the administrative departments of the disinvested companies concerned. Based on the information received from these companies, 74 employees were retrenched in one disinvested company and two hotels. The total number of employees retrenched and the number of SC/ST employees among them is given below:-

Name	Total number of employees at the time of disinvestment	No of employees retrenched, including SC/ST employees (as on 31 <sup>st</sup> December 2005)	No of SC/ ST employees included in column 3
1	2	3	4
Laxmi Vilas Palace Hotel, Udaipur	87	3	2
Modern Food Industries (India) Ltd	2037	70	11
Hotel Indraprastha, New Delhi	202	1	Nil

(Ministry of Finance, Department of Disinvestment O.M. No.3/121/2003/DD-II (Vol. II), dated 20<sup>th</sup> March 2006).

### Comments of the Committee

4.21 Please see para 1.37 and 1.38 of Chapter I.

### Recommendation (Sl. No. 5, No. Para 31)

4.22 The Committee are of the opinion that it would be naïve to think that only an act could make reservation in private sector mandatory coupled with the fact that, the zeal of the implementing authority is also of vital importance. The Committee, therefore, observe that casual approach has been made by the Government to abide by Committee's earlier recommendations made in this regard in their 41<sup>st</sup> Report (5<sup>th</sup> Lok Sabha) and 4<sup>th</sup> Report (10<sup>th</sup> Lok Sabha). The Government are not seems to be serious in respect of these recommendations which is deeply disturbing

and a matter of grave concern to the Committee. It is also evident from the Republic Day Speech of the Hon'ble President of India, Bhopal Declaration, Report of National Commission to Review the working of the Constitution etc. that reservation in Private Sector is need of the present time. Keeping in view the overall prevailing circumstances at present, the Committee strongly recommend that enactment should be done to bring private/public sector under gamut of the reservation provisions as well.

### **Reply of the Government**

4.23 In their reply, the Government have stated that the Ministry of Social Justice and Empowerment sponsored a one day business session under the aegis of the National Law School of India University, Bangalore where eminent representatives of the disadvantaged sections, some distinguished jurists and social activists took part. This issue was deliberated at length and the group suggested constitutional and legal modalities for providing reservation to SCs/STs in the private sector. The group felt that providing reservation to SCs/STs in the private sector would not violate the equality clauses of the Constitution and would not violate Article 16(4) of the Constitution, as advised by the Attorney General of India. This matter has been taken up with the Ministry of Law and Justice for greater in depth examination of the entire issue in the overall context of the views expressed by the Attorney General of India and recommendation of the Parliamentary Committee.

(Ministry of Social Justice and Empowerment O.M. No.16014/5/2001-SCD-I, dated 27<sup>th</sup> April, 2005).

4.24 As regard views given by the Ministry of Law and Justice and reaction of the Government as well as enactment of a legislation to bring private sector under the purview of reservation policy, the Ministry of Social Justice and Empowerment in their post-evidence reply have stated that according to the Ministry of Law and Justice to provide reservation of jobs for Scheduled Castes and Scheduled Tribes in the private sector two courses are available viz. (1) to amend the Constitution for the purpose or (2) to enact a law and place the same in the 9<sup>th</sup> schedule of the Constitution. This will also involve a constitutional amendment. A final view is yet to be taken in the matter.

(Ministry of Social Justice and Empowerment O.M.No.16014/5/2001-SCD-I (Vol.II), dated 24<sup>th</sup> February 2006).

**Comments of the Committee**

4.25 Please see para 1.42 of Chapter I.

**Recommendation (Sl. No. 6, Para No. 32)**

4.26 The Committee are surprised to note that whenever a question of implementation of reservation order arises, the concerned Ministries tries to shift their responsibilities on each other's shoulders. During the evidence, when the issue of implementation of reservation orders by the State Government arose, the representative of DOPT replied as under: -

“.....We do not have any legal power to tell the State Government what to do with their employees.”

On being questioned whether DOPT is only for the Government of India, the witness further clarified:-

“.....We are DOPT for Government of India. We are not DOPT for the State Government. We can play an advisory role...” We

have issued circulars issued by the Government of India to all the State Governments” we have received requests for clarification...we are in the process of clarifying it.....”

He further clarified “ ... we impress upon all the circulars. It all depends on the State Government that how promptly they implement it...”

4.27 The Committee feel that there is total lack of coordination/Liaisoning among Department of Personnel and Training, Ministry of Social Justice and Empowerment, Ministry of Tribal Affairs and the State Governments. The Committee are pained to learn that there is no Central Authority at the moment to exercise its authority to ensure that the intake of the SCs & STs is as per the Government of India reservation orders. In Committee’s view, in case of any doubt/dispute in regard to implementation of reservation orders arises, instead of shifting responsibility by one Department to another, concrete and concerted efforts should be made to solve the problem. Further, the Committee is of the strong opinion that in the absence of any nodal Ministry for monitoring and coordination of implementation of reservation policy, the very purpose of reservation policy for SCs and STs has been getting defeated in the whole country in all the sectors. The Government should designate only one Ministry which should be a nodal Ministry to look after proper implementation of reservation orders. The Committee further recommend that there should also be a Central law to regulate the implementation of reservation policy for SCs & STs in all the State

Governments, Ministries, Departments of the Government of India, Public Sector Undertaking and Private Sector.

### **Reply of the Government**

4.28 In their reply, the Government have stated that the Department of Personnel and Training (DOPT) is the nodal agency in matters relating to the reservation policy in civil services under the Government of India. The issue regarding legislation on reservation has been examined in consultation with the DOPT. The DOPT has opined that executive instructions on reservation come within the meaning of law. The legal validity of these instructions had specifically been upheld by the Supreme Court in Mandal case. As regards Central Law to regulate the implementation of reservation policy in all the State Governments, it may be pointed out that reservation in State Services is exclusively the State subject and is therefore outside the purview of the Central Government. Moreover, there cannot be a uniform law on reservation in all the States as each State has its own priorities and peculiar situations.

(Ministry of Social Justice and Empowerment O.M.No.16014/5/2001-SCD-I (Vol.II), dated 27<sup>th</sup> April, 2006).

4.29 When asked whether the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) have, so far, been able to ensure prescribed percentage of reservation in various services of Central Government or other Government bodies being nodal agency in the matter relating to reservation policy, if not, steps taken or proposed to be taken by the Government to fill up all the posts reserved for SCs/STs, the DOP&T in their post evidence reply have stated that reservation to SCs and STs is provided cadre-wise. In most of the cadres, SCs and STs



appointed by reservation occupy the posts reserved for them. In some cases, reserved posts remain unfilled for the following reasons:

- (i) There is generally a time gap between occurrence of vacancies and filling up thereof as recruitment is a time consuming process.
- (ii) Some reserved posts remain vacant due to non-availability of requisite number of reserved category candidates.
- (iii) Some of the selected SC/ST candidates do not join the service or leave the service after joining because they get better opportunities elsewhere.

4.30 They have also stated that there is less representation of SCs/STs in higher rungs of services where posts are generally filled by promotion because SC/ST officers retire early due to higher age at the time of entry into service, etc. While quantum of reservation for SCs and STs is generally 15% and 7.5% respectively, their representation in services as on 1.1.2004 is 17.05% and 6.54% respectively. These figures do not include Safai Karamcharis and information in respect of one Ministry.

4.31 They have also added that a Special Recruitment Drive has been launched to fill up all backlog reserved vacancies of SCs and STs. Besides, following provisions have been made to ensure that the reserved vacancies are filled by the respective categories only:

- (i) SC/ST candidates get concessions like relaxation in upper age limit by five years, exemption from payment of examination/application fee, relaxation in qualification regarding experience at the discretion of competent

authority, relaxation in standards of suitability, etc. in case of direct recruitment.

- (ii) In the matter of promotion, SC and ST candidates get concessions like extension of zone of consideration to five times the number of vacancies in case suitable SC/ST candidates are not available within the normal zone of consideration, relaxation in marks/standards of evaluation, relaxation in upper age limit by five years where upper age limit for promotion, if prescribed, does not exceed 50 years, etc.
- (iii) There is a ban on de-reservation of reserved vacancies in case of direct recruitment.

(Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) O.M. No.36022/2/2002-Estt.(Res), dated 10<sup>th</sup> February, 2006).

4.32 So far as filling up of posts reserved for SCs/STs in the Central Public Sector Enterprises (CPSEs) are concerned, the Ministry of Heavy Industries and Public Enterprises (Department of Public Enterprises) by way of a post-evidence reply have stated that the Department of Public Enterprises (DPE) is the nodal Department in respect of CPSEs. Department of Personnel and Training issues instructions about the reservation policy of the Government for the Central Government Employees and these instructions are extended by DPE for implementation by CPSEs. In order to enforce reservation in CPSEs, DPE also issued instructions to CPSEs to issue Presidential Directives in

1991. The present quota for reservation of candidates belonging to SCs/STs is as under:-

Categories	Group 'A' & 'B'	Group 'C'	Group 'D'
Scheduled Castes	15%	15%	15%
Scheduled Tribes	7.5%	7.5%	7.5%

4.33 They further stated based on the information furnished by 211 CPSEs, the position regarding representation of SCs and STs as on 1.1.2005 under various categories is as under:-

Group	SC's percentage	ST's percentage
Group 'A'	12.61	3.99
Group 'B'	13.18	6.12
Group 'C'	19.74	9.77
Group 'D' (excluding Safai Karamcharis)	21.82	14.23
Group 'D' (Safai Karamcharis)	77.66	3.01

The overall percentage is as under:-

SCs	19.11%
STs	9.34%

4.34 From the above, it is seen that the percentage of SCs and STs in Group 'A' & 'B' group is less than prescribed limit of 15% for SCs and 7.5% for STs. This is mainly on account of non-availability of suitable candidates from both the communities in Group 'A' and Group 'B' posts, particularly in technical posts in direct recruitment and in promotions due to non-completion of requisite number of years of service by many SC, ST candidates in the feeder cadre. As a result, these posts have remained vacant.

4.35 They have also added further that the National Common Minimum Programme of the UPA Government stipulates that all vacancies reserved for SCs and STs in CPSEs are to be filled up in time bound manner. The

Department of Public Enterprises has repeatedly written to the Secretaries of the administrative Ministries/Departments concerned with CPSEs to fill up all backlog vacancies reserved for SCs/STs in CPSEs under their control through Special Recruitment Drive by 31<sup>st</sup> December, 2005, which was now been extended up to 31<sup>st</sup> March, 2006, Secretary (PE) also held meetings with the senior officials of the PSEs and the Ministries/Departments concerned to discuss the backlog vacancy position as also to sort out ways and means to fill up these vacancies within the time limits prescribed by DOP&T. As a result, a number of vacancies reserved for SCs/STs have been filled up in CPSEs.

(Ministry of Heavy Industries and Public Enterprises (Department of Public Enterprises) O.M. No.6/12/2002-DPE(SC/ST Cell), dated 13 February 2006).

4.36 Regarding enactment of a Central law to regulate the implementation of reservation policy for SCs and STs in all the State Governments, Union Territories, Ministries, Departments of the Government of India, Public Sector Undertakings, Statutory and Semi Government bodies, the DOP&T in their post evidence reply have stated that as regards reservation in services under the Government of India, the Government has introduced a Bill namely "The Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation in Posts and Services) Bill, 2004" in the Rajya Sabha on 22.12.2004. The Bill covers all Public Sector Undertakings, Autonomous Bodies, Universities, etc. which fall under the control of the Government of India.

4.37 They further added that Reservation in the services of a State is the prerogative of the State concerned. It would not be advisable to govern

reservation in the services of the States by a Central Reservation Act because each State has its peculiar situation in terms of the composition of different castes/classes, extent of backwardness and need for reservation. Some of the States have enacted their own laws, keeping in view their requirements. Some others are implementing reservation by way of instructions. Each State also monitors implementation of its policy.

(Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) O.M. No.36022/2/2002-Estt.(Res), dated 10<sup>th</sup> February, 2006).

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

4.38 Please see para 1.54 and 1.55 of Chapter I.

**CHAPTER – V**

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

**- N I L -**

**New Delhi  
November, 2006  
Agrahayana, 1928(S)**

**(RATILAL KALIDAS VARMA)  
CHAIRMAN  
COMMITTEE ON THE WELFARE  
OF SCHEDULED CASTES AND  
SCHEDULED TRIBES**

**MINUTES****COMMITTEE ON THE WELFARE OF SCHEDULED CASTES  
AND SCHEDULED TRIBES  
(2006-2007)****(FOURTEENTH LOK SABHA)****SIXTH SITTING****(4.10.2006)**

The Committee sat from 1500 to 1600 hrs.

**PRESENT**

Shri Ratilal Kalidas Varma - Chairman

**MEMBERS****LOK SABHA**

2. Shri S. Ajaya Kumar
3. Shri M. Appadurai
4. Dr. P.P. Koya
5. Shri Kailash Meghwal
6. Shri Rupchand Murmu
7. Shri Jual Oram
8. Shri Harikewal Prasad
9. Shri Ashok Kumar Rawat
10. Shri Baju Ban Riyan
11. Dr. (Col.) Dhani Ram Shandil
12. Shri Sugrib Singh
13. Shri Vanlalzawma

**RAJYA SABHA**

14. Shri Sharad Anantrao Joshi
15. Shri Robert Kharshiing
16. Shri Lalhming Liana
17. Shri Harendra Singh Malik
18. Dr. Radhakant Nayak

**SECRETARIAT**

1. Shri P.K. Bhandari, Joint Secretary
2. Shri Gopal Singh, Director
3. Ms. J.C. Namchyo, Under Secretary

At the outset, the Hon'ble Chairman welcomed the Members of the Committee. The Committee then considered the draft report on (i) Reservation for and Employment of Scheduled Castes and Scheduled Tribes in Airports Authority of India (AAI); and (ii) Action taken by the Government on the recommendations contained in Twenty-second Report (13<sup>th</sup> Lok Sabha) of the Committee on the Welfare of Scheduled Castes and Scheduled Tribes on the subject "Fair Employment Policy for Scheduled Castes and Scheduled Tribes in Public and Private Sector – a review of position following globalization and other reform measures" and adopted the same with some modifications.

2. The Committee also authorised the Hon'ble Chairman to finalise the report and present the same to both the Houses of Parliament.

The Committee then adjourned.

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**APPENDIX-II****(Vide Para 4 of the Introduction)**

Analysis of Action taken by the Government on the recommendations contained in the Twenty-second Report (Thirteenth Lok Sabha) of the committee on the Welfare of Scheduled Castes and Scheduled Tribes.

1. Total number of recommendations .....6
2. Recommendations/observations which have been accepted by the Government (Nil).
3. Recommendations/Observations which the Committee do not desire to pursue in view of the Government replies (vide recommendation Sl. No.2).  
 Number .....1  
 Percentage to the total .....17%
4. Recommendations/Observations in respect of which replies of the Government have not been accepted by the Committee and which require reiteration (vide recommendations Sl. No. 1,3,4,5 and 6).  
 Number .....5  
 Percentage to the total .....83%
5. Recommendations/Observations in respect of which final replies of the Government have not been received (Nil).

**APPENDIX - III**

Name of the Company	Signatories to the Agreement	Recital Clause as per Agreement
1. BALCO	Ministry of Mines, Sterlite Industries (India) Ltd. and BALCO.	J. The SP recognizes that the Government in relation to its employment policies follows certain principles for the benefit of the members of the Scheduled Castes/Scheduled Tribes, physically handicapped persons and other socially disadvantaged categories of the society. The SP shall use its best efforts to cause the company to provide adequate job opportunities for such persons. Further, in the event of any reduction in the strength of employees, the SP shall use its best efforts to ensure that the physically handicapped persons are retrenched at the end.
2. CMC Limited	Department Of Information Technology on behalf of the President of India and Tata Sons Limited	(i) The SP recognises that the Government in relation to its employment policies follows certain principles for the benefit of the member of the Scheduled Cases/ Scheduled Tribes, physically handicapped persons and other socially disadvantaged sections of the society. The SP shall use its best efforts to cause the Company to provide adequate job opportunities for such persons. Further, in the event of any reduction in the strength of the employees of the Company, the SP shall use its best efforts to ensure that the physically handicapped persons are retrenched at the end.
3 IBP Co. Ltd	Ministry of Petroleum and Natural Gas, Indian Oil Corporation and IBP Co. Ltd.	The SP recognizes that the Government in relation to its employment policies follows certain principles for the benefit of the members of the Scheduled Castes/Scheduled Tribes, physically handicapped persons and other socially disadvantaged categories of the society. The SP shall use its best efforts to cause the company to provide adequate job opportunities for such persons. Further, in the event of any reduction in the strength of employees, the SP shall use its best efforts to ensure that the physically handicapped persons are retrenched at the end of any such proposed reduction.

4. HTL Limited	(1) The President of India through Deputy Director General (PIP), Department of Telecommunications, Ministry of Communications and (2) Himachal Futuristic Communications Ltd. and (3) HTL Limited.	H: The SP recognises that the Government in relation to its employment policies follows certain principles for the benefit of the members of the Scheduled Caste/ Scheduled Tribes, physically handicapped persons and other socially disadvantaged categories of the society. The SP shall use its best efforts to cause the Company to provide adequate job opportunities for such persons. Further, in the event of any reduction in the strength of the Employees of the Company, the SP shall use its best efforts to ensure that the socially disadvantaged and physically handicapped persons are retrenched at the end.
5. HZL	Ministry of Mines and Sterlite Opportunities and Ventures Ltd and HZL	H. The SP recognizes that the Government in relation to its employment policies follows certain principles for the benefit of the members of the Scheduled Caste/Scheduled Tribes, physically handicapped persons and other socially disadvantaged categories of the society. The SP shall use its best efforts to cause the Company to provide adequate job opportunities for such persons. Further, in the event of any reduction in the strength of the Employees of the Company, the SP shall use its best efforts to ensure that the physically handicapped persons, Scheduled Castes/Scheduled Tribes are retrenched at the end.
6. JCL	Bharat Bhari Udyog Nigam Ltd. (BBUNL) and the strategic buyers.	H: The SP recognises that BBUNL in relation to its employment policies follows certain principles for the benefit of the members of the scheduled castes/ scheduled tribes, physically handicapped persons and other socially disadvantaged sections of the society. The SP shall use its best efforts to cause the Company to provide adequate job opportunities for such persons. Further, in the event of any reduction in the strength of the employees of the Company, the SP shall use its best efforts to ensure that the physically handicapped persons are retrenched at the end.
7. PPL	President of India, acting through the Joint Secretary, Department of Fertilizers and the strategic buyers	G. The Strategic Partner recognizes that Government in relation to its employment policies follows certain principles for the benefit of the members of the Schedule Caste, Schedule Tribes, physically handicapped persons and other socially disadvantaged categories of the society. The Strategic Partner shall use its best efforts to cause the Company to provide adequate job opportunities for such persons. Further, in the event of any reduction in the strength of the employees of the Company, the Strategic Partner shall use its best efforts to ensure that the physically handicapped persons are retrenched at the end.

8. IPCL	President of India, acting through the Secretary, Department of Chemicals and Petrochemicals.	<b>H:</b> The SP recognizes that the Government in relation to its employment policies follows certain principles for the benefit of the members of the schedule caste/ scheduled tribes, physically handicapped persons and other socially disadvantaged categories of the society. The SP shall use its best efforts to cause the Company to continue to provide adequate job opportunities for such persons. Further, in the event of any reduction in the strength of the Employees of the Company, the SP shall use its best efforts to ensure that the physically handicapped persons remain in the employment of the Company for as long as practicable.
9. VSNL	(1) The President of India through Shri Rakesh Kumar, Deputy Director General, M.L., Ministry of Communications and Information Technology and (2) Panatone Finvest Limited and (3) Tata Sons Limited and (4) Tata Power Company Limited and (5) Tata Iron and Steel Company Limited and (6) Tata Industries Limited and (7) Videsh Sanchar Nigam Limited.	<b>I:</b> The Strategic Partner recognizes that the Govt. in relation to its employment policies follows certain principles for the benefit of the members of the Schedule Caste/Scheduled Tribes, physically handicapped persons and other socially disadvantaged categories of the society. The Strategic Partner shall use its best efforts to cause the Company to continue to provide adequate job opportunities for such persons. Further, in the event of any reduction in the strength of the employees of the Company, the Strategic Partner shall use its best efforts to ensure that the physically handicapped persons remain in the employment of the Company for as long as practicable.
10. The Lagan Jute Machinery Co. Limited	Bharat Bhari Udyog Nigam Limited and Murlidhar Ratanlal Exports Limited	No Recital Clause.
11. MFIL	D/o Food Processing Industries, M/o Agriculture Hindustan Lever Ltd. and Company	Does not exist
<b>12. Hotel Corporation of India</b> 1. Centaur Hotel Juhu Beach Mumbai	1. HCI 2. SP	Does not exist
2. Indo Hokke Hotels	1. HCI 2. SP 3. Company	Does not exist
3. Centaur Hotel Mumbai Airport	1. HCI 2. SP	Does not exist
<b>13. ITDC –</b> 1. Hotel Airport Ashok, Kolkata	1. Ministry of Tourism 2. SP 3. Company	The Purchaser specifically recognizes that the Government in relation to its employment policies follows certain principles for the benefit of the members of scheduled caste / scheduled tribes, physically handicapped persons and other socially disadvantaged sections of the society and the Purchaser has agreed that upon consummation of the transactions contemplated herein it shall use its best efforts to cause the Company to provide adequate job opportunities for such persons and shall also ensure that in the event of any reduction in the strength of the Company, the Purchaser shall use its best effort to ensure that the physically handicapped persons are retrenched at the end.

2 Hotel Aurangabad Ashok, Aurangabad	-do-	-do-
3. Hotel Hassan Ashok, Hassan	-do-	-do-
4 Hotel Manali Ashok Manali	-do-	-do-
5 Hotel Indraprastha, New Delhi	-do-	-do-
6 Hotel Bodhgaya Ashok	-do-	-do-
7 Qutab Hotel New Delhi	-do-	-do-
8 Kovalam Ashok Beach Resort Kovalam	-do-	-do-
9 Temple Bay Ashok Beach Resort Mamallapuram	-do-	-do-
10 Laxmi Vilas Palace Hotel, Udaipur	-do-	-do-
11 Hotel Varanasi Ashok	-do-	-do-
12 Ashok Khajuraho Ashok	-do-	-do-
13 Lodhi Hotel New Delhi	-do-	-do-
14 Hotel Kanishka New Delhi	The India Hotels Co. Ltd., SP and Company	-do-
15 Hotel Agra Ashok	-do-	-do-
16 Chandigarh Project	ITDC, SP and Company	-do-
17. Madurai Ashok	Ministry of Tourism, SP and Company	-do-
18. Hotel Ranjit, New Delhi	ITDC, SP and Company	-do-
19. Hotel Ashok, Bangalore	Kumarakruppa Frontier Hotels (P) Ltd and Bharat Hotels Ltd	-do-

**OPINION**

Sub:- Whether a Central law can be enacted to provide reservation for Scheduled Castes and Scheduled Tribes in the services of private sector within the existing provisions of the Constitution – reg.

Perused the Statement of Case dated September 26, 2005 prepared by Smt. Poonam Suri, Assistant Legal Adviser, Department of Legal Affairs, Ministry of Law and Justice, Government of India. My opinion has been sought on the question as to “whether a Central law can be enacted to provide reservation for Scheduled Castes and Scheduled Tribes in the services of private sector within the existing provisions of the Constitution.” This question, though worded differently, was referred to me earlier also, during my previous tenure as Attorney General for India, by a Statement of Case dated January 22, 1993 prepared by the then Joint Secretary & Legal Adviser Smt. Lakshmi Swaminathan which read as *“whether legislation for providing reservation in services of Scheduled Castes and Scheduled Tribes in the private sector would be constitutionally in order?”*

In my Opinion of March 30, 1993, I had concluded that, “I am of the opinion that legislation for providing reservation in the private sector is constitutionally not in order.” The said Opinion dated March 30, 1993 has been annexed as Annexure III to the Statement of Case dated September, 26, 2005. I do not see any reason nor any cogent material has been brought to my notice for taking a different view from what I have already opined in my said Opinion of March 30, 1993.

I may mention that an earlier Opinion dated April 20, 1991 of the then Attorney General for India that subject to certain difficulties, there is no bar for legislation providing reservation of jobs for handicapped persons in employment under private sector, has been included in the Case for Opinion. However, the Central Legislation, viz., the Persons with the Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, which was enacted subsequent to the said Opinion dated April 20, 1991, also does not provide for reservation of job in private sector for physically challenged persons. Section 33 of the said Act provides for reservation of posts in Government establishments or departments and not in private sector.

Irrespective of the aforesaid discussions regarding reservation for persons with disabilities, I reiterate my earlier Opinion of March 30, 1993 that legislation for providing reservation in the private sector for Scheduled Castes and Scheduled Tribes would be constitutionally not in order.

**(Milon K. Banerji)**  
Attorney General for India

New Delhi.  
07<sup>th</sup> October, 2005

## APPENDIX - V

**Typical Default provisions incorporated in the Shareholders Agreement, which can be invoked in the event of breach of the obligations/representations for protection of the interests of employees by either parties to the Agreement :-**

Article --- Consequences of Breach by Parties

Article --- (a) **If either of the Strategic Partner, or Government commits any breach or default of the terms of this Agreement (the “Defaulting Party”) which if capable of being remedied, is not remedied within 30 (thirty) days of receipt of notice (and such period being referred to as “Preliminary Default Remedy Period”) of such breach, from the other party (the Non-Defaulting Party”), the Non-Defaulting Party shall have the right, exercisable at its sole discretion, at any time within 60 (sixty) days of the expiry of he Preliminary Default Remedy Period to give another notice (such notice being referred to in this Clause --- as the “Default Notice”) to the Defaulting Party containing an offer by the Non-Defaulting Party, at the option of the Non-Defaulting Party to either:**

**(i) sell all or any of the Equity Shares held by the Non-Defaulting Party to the Defaulting Party (such offer being referred to in this Clause -- as an “Offer to Sell”) at a price that is equivalent of 125% (one hundred twenty five percent) of the price of such Equity Shares determined in accordance with Clause --. Provided however, that in the event that the Defaulting Party is the Strategic Partner and the event of breach committed by the Strategic Partner is under the terms of Clause -- or Clause -- or Clause -- or this Article 5, the price at which Government (the Non-Defaulting Party) may make the Offer to Sell shall be 150% (one hundred fifty percent) of the price of such Equity Shares determined in accordance with Clause -- and the Strategic Partner shall be obligated to buy at such price; or**

**(ii) purchase (in the case of Strategic Partner either directly or through its Affiliates and in the case of the Government either directly or indirectly through a designated nominee), all or any of the Equity Shares held by the Defaulting Party (such purchase being referred to in this Clause -- as an “Offer to Purchase”) at a price that is equivalent of 75% (seventy five percent) of the price of such Equity Shares determined in accordance with Clause --. Provided however, that in the event that the Defaulting Party is the Strategic Partner and the event of breach committed by the Strategic Partner is under the terms of Clause -- or Clause --- or Clause -- or this Article -, the price at which Government (the Non-Defaulting Party) may make the Offer to Purchase shall be 50% (fifty percent) of the price of such Equity Shares determined in accordance with Clause -- and the Strategic Partner shall be obligated to sell at such price.**

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## APPENDIX -VI

## Details of Strategic sale from 1999-2000 to 2004-05

S.No.	Name of CPSE disinvested	Name of buyer	Percentage of Government equity sold
<b>1999-00</b>			
1.	Modern Food Industries (India) Ltd. (MFIL)	Hindustan Lever Ltd.	74% (a)
<b>2000-01</b>			
1	Bharat Aluminium Company Ltd. (BALCO)	Sterlite Industries (India) Ltd.	51%
2.	Lagan Jute Machinery Company Limited (LJMC)	Murlidhar Ratanlal Exports Ltd	74%
<b>2001-02</b>			
1	HTL Ltd. (HTL)	Himachal Futuristic Communication Ltd.	74%
2	CMC Ltd. (CMC)	Tata Sons Ltd.	51% (b)
3	<b>India Tourism Development Corporation (ITDC)</b>		
	i) Ashok Bangalore	Bharat Hotels Ltd.	--
	ii) Bodhgaya Ashok	Lotus Nikko Hotels	89.97% (c)
	iii) Hassan Ashok	Malnad Hotels and Resorts (P) Ltd.	89.97% (c)
	iv) Madurai Ashok	Sangu Chakra Hotels Private Ltd.	89.97% (c)
	v) TBABR, Mamallapuram	G.R. Thanga Maligai (P) Ltd.	89.97% (c)
	vi) Agra Ashok	Shri Mohan Singh	89.97% (c)
	vii) Laxmi Vilas Palace, Udaipur	Bharat Hotels Ltd.	89.97% (c)
	viii) Qutub Hotel, New Delhi	Sushil Gupta and Consortium	89.97% (c)
	ix) Lodhi Hotel, New Delhi	Silverlink Holdings Ltd. & Consortium	89.97% (c)
4.	<b>Hotel Corporation of India Ltd. (HCI)</b>		
	i) Centaur Hotel Juhu, Mumbai	Tulip Hospitality Pvt. Ltd.	100%
	ii) Indo Hokke Hotels Ltd. Rajgir	Inpac Travels (India) Pvt. Ltd.	100%
5.	IBP Ltd. (IBP)	Indian Oil Corpn.	33.58% (d)
6.	Videsh Sanchar Nigam Ltd. (VSNL)	Panatone Finvest Ltd. (a Tata Group Co.)	25% (e)
7.	Paradeep Phosphates Ltd. (PPL)	Zuari Maroc Phosphates Pvt Ltd.	74% (f)
<b>2002-03</b>			
1	Hindustan Zinc Ltd. (HZL)	Sterlite Opportunities & Ventures Ltd.	26% (g)
2	Indian Petrochemicals Corporation Ltd. (IPCL)	Reliance Petro Investments Ltd	26% (h)
3	<b>ITDC</b>		
	i) Kovalam Ashok Beach Resort	M. Far Hotels Ltd.	89.97% (c)
	ii) Manali Ashok	Auto Impex Ltd.	89.97% (c)
	iii) Khajuraho Ashok	Bharat Hotels Ltd.	89.97% (c)
	iv) Varanasi Ashok	Ramnath Hotels (P) Ltd.	89.97% (c)

	v) Aurangabad Ashok	Loksangam Hotels & Resorts Pvt Ltd.	89.97% (c)
	vi) Kanishka, New Delhi	Nehru Place Hotels Ltd.	89.97% (c)
	vii) Indraprastha, New Delhi	Moral Trading & Investment Ltd.	89.97% (c)
	viii) Chandigarh Project	TAJGVK Hotels & Resorts Ltd.	100%
	ix) Hotel Ranjit, New Delhi	Consortium of Unison Hotels Ltd. & Formax Commercial Pvt. Ltd.	89.97% (c)
	x) Hotel Airport Kolkata	Bright Enterprises Pvt. Ltd.	89.97% (c)
4	<b>HCI</b> – Centaur Hotel Airport, Mumbai	Batra Hospitality Pvt. Ltd.	100%
<b>2003-04</b>			
1	Jessop & Co. Ltd (JCL)	Ruia Cotex Ltd.	72 % (i)

#### Note

- (a) Residual shareholding of the Government (25.995%) in MFIL was sold to Strategic Partner (SP) through ‘Put Option’ in 2002-03.
- (b) 6.06% of the shareholding of the Government in CMC was sold to Employees and the residual shareholding of the Government (26.25% ) was sold through ‘Offer for Sale’ in 2004.
- (c) The entire shareholding of the Government (89.97%) in the hotel properties of ITDC was sold. Hotel Ashok, Bangalore was given through 30 years lease-cum-management contract
- (d) Residual shareholding of the Government (26%) in IBP was sold through ‘Offer for Sale’ in 2004.
- (e) 1.85% of the shareholding of the Government in VSNL was sold to Employees and presently Government holds 26.12% equity.
- (f) The shareholding of the Government in PPL has come down to 19.55% consequent to Rights Issue made by PPL in November 2003.
- (g) 1.46% of the shareholding of the Government in HZL was sold to employees. 18.92% was sold through Call Option by SP. Presently, Government holds 29.53% equity.
- (h) 4.58% of the shareholding of the Government in IPCL was sold to employees and 28.95% was sold through ‘Offer for Sale’ in 2004. Presently, Government holds 0.42% equity.
- (i) Bharat Bhari Udyog Nigam Limited (BBUNL) held 99% of JCL’s equity out of which 72% was disinvested. The shareholding in JCL got reduced from 27% to 4.16%, consequent upon Rights Issue made by JCL in October 2005.

**APPENDIX - VII**

Salient features of National Common Minimum Programme (NCMP) with respect to the Public Sector, including disinvestment of Government's equity in Central Public Sector Enterprises (CPSEs).

(i) The Government is committed to a strong and effective public sector whose social objectives are met by its commercial functioning. But for this, there is need for selectivity and a strategic focus. The Government is pledged to devolve full managerial and commercial autonomy to successful, profit-making companies operating in a competitive environment. Generally profit-making companies will not be privatised.

(ii) All privatizations will be considered on a transparent and consultative case-by-case basis. The Government will retain existing "navratna" companies in the public sector while these companies raise resources from the capital market. While every effort will be made to modernize and restructure sick public sector companies and revive sick industry, chronically loss-making companies will either be sold-off, or closed, after all workers have got their legitimate dues and compensation. The Government will induct private industry to turn around companies that have potential for revival.

(iii) The Government believes that privatization should increase competition, not decrease it. It will not support the emergence of any monopoly that only restricts competition. It also believes that there must be a direct link between privatization and social needs – like, for example, the use of privatization revenues for designated social sector schemes. Public sector companies and nationalized banks will be encouraged to enter the capital market to raise resources and offer new investment avenues to retail investors."

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**APPENDIX - VIII**

Typical provisions related to employees' interest incorporated in the Shareholders Agreement :-

Recitals:

- Subject to the substantives clauses in this regard, the Parties envision that all Employees of the Company on the date hereof will continue in the employment of the Company.
- The SP recognises that the government in relation to its employment policies follows certain principles for the benefit of the members of the Scheduled Caste / Schedules Tribes, physically handicapped persons and other socially disadvantages categories of the society. The SP shall use its best efforts to cause the Company to provide adequate job opportunities for such persons. Further, in the event of any reduction in the strength of the employees of the Company, the SP shall use its best efforts to ensure that the physically handicapped persons are retrenched at the end.

**Representations**

- Notwithstanding anything to the contrary in this Article \_\_, the Government, shall at any time and at its sole discretion, have the option of selling shares from its shareholding in the company, representing not more than \_\_ of the share capital of the company existing as of date of this Agreement, to the employees of the Company ("employees sell share"). In the event that the Government exercises its option to sell part of its shares to the employees, the employees shall be issued fresh share certificates for the shares transferred to the employees. The Shareholders agree that, upon the completion of transfer, the shares transferred to the employees pursuant to this sub-clause shall not be subject to any restrictions in this Agreement, whether by way of a voting arrangement or a right of first refusal.
- The SP covenants with the Government that
  - a. notwithstanding anything to the contrary in this Agreement, it shall not retrench any of the Employees of the Company for a period of 1 (one) year from the Closing Date other than any dismissal or termination of Employees of the Company from their employment in accordance with the applicable staff regulations and standing orders of the Company or applicable Laws;

- b. notwithstanding anything to the contrary in this Agreement, but subject to Sub-Clause (a) above, any restructuring of the labour force of the Company shall be implemented in the manner recommended by the Board and in accordance with all applicable Laws;
  
- (c) notwithstanding anything to the contrary in this Agreement, but subject to Sub-Clause (a) above, in the event of any reduction of the strength of the Company's Employees, the SP shall ensure that the Company offers its Employees an option to voluntarily retire on terms that are not, in any manner, less favourable than the VRS applicable before disinvestment.

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