



**GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS**

COMMITTEE OF JURISTS

**REPORT ON
TELANGANA SAFEGUARDS
(PUBLIC EMPLOYMENT)**

MAY 1969

K. N. WANCHOO
CONVENOR

Government of India
MINISTRY OF HOME AFFAIRS
COMMITTEE OF JURISTS

New Delhi,
May 12, 1969.

My dear Minister,

I am herewith submitting the Report of the Committee of Jurists appointed in pursuance of the Resolution of the Government of India F. No. 7/12/69-Estt(C) dated 19-4-69.

With best regards,

I remain,
Yours sincerely,

Sd/-

K. N. WANCHOO

SHRI Y. B. Chavan,
Home Minister,
Government of India,
New Delhi.

GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS

REPORT
of the
COMMITTEE OF JURISTS
on
TELANGANA SAFEGUARDS
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This Committee has been appointed in pursuance of the Prime Minister's Statement in the Lok Sabha on the 11th April, 1969 in connection with the Telengana area of the State of Andhra Pradesh. The terms of reference of the Committee are these:—

- (1) To consider the implications of the recent judgment of the Supreme Court holding section 3 of the Public Employment (Requirement as to Residence) Act, 1957, insofar as it relates to the Telegana area of Andhra Pradesh *ultra vires* the Constitution.
- (2) To consider and report on suitable measures, including legislative measures, which are possible and necessary for the purpose of providing appropriate constitutional safeguards in the matter of public employment or appointment for people belonging to the Telengana area of Andhra Pradesh, in keeping with the spirit of the assurances contained in the Agreement reached between the Andhra and Telengana leaders in the year 1956 and the recent All Party Accord reached at Hyderabad on 19th January, 1969.
- (3) To review, for the purpose aforesaid, the various laws and rules pertaining to requirements as to residence which have been in force from time to time in regard to recruitment to public services including services under local and other authorities in the erstwhile State of Hyderabad and in the Telengana area of Andhra Pradesh and to report on the possibility of continuing the same or similar provisions.
- (4) To advise generally on all such matters as may be considered necessary for the purpose of the effective implementation of the recommendations made by the Committee on the above matters and the matters incidental and consequential thereto.

2. It is necessary and useful to have a historical background to the questions which the Committee has to consider. The Telengana area formed part of the former princely State of Hyderabad. It was roughly half of that State, the other half consisting of Marathwada (now part of the State of Maharashtra) and Karnatak (now part of the State of Mysore). As far back as 1919, the Nizam issued a Firman promulgating what are called the Mulki rules. These rules formed part of the Civil Service

Regulations of the former princely State and provided that "no person will be appointed in any superior or inferior service without the specific sanction of His Exalted Highness if he is not a mulki in terms of the rules laid down in appendix N." Appendix N provided who should be considered mulkis for purposes of appointment to all services in the former princely State. We are not now concerned with the detailed provisions of the Mulki rules. It is enough for our purposes to know that the object behind the rules was to reserve appointment to services in the former princely State to the subjects of the Nizam and for that purpose certain provisions were made to define who was a Mulki. One of the provisions with which we are mainly concerned now was that a person would be a Mulki who was resident in the Hyderabad State for at least 15 years and had abandoned the idea of returning to the place of his previous residence and had obtained an affidavit to that effect on a prescribed form attested by a magistrate. Thus one of the criteria for deciding who was a Mulki was 15 years' residence in the former princely State. This state of affairs continued right up to the time the Constitution of India came into force. It may be added, however, that in November, 1949, the Nizam issued another Firman which confirmed the provisions relating to the Mulki rules for appointment. These provisions were in force when the Part 'B' State of Hyderabad came into existence on the 26th January, 1950. The other Parts of the Mulki rules became invalid on the coming into force of the Constitution of India but the rule as to residence of 15 years continued to be in force by virtue of Article 35 (b) of the Constitution. Article 35 *inter alia* provides that the Parliament alone will have power to make laws prescribing in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment. Article 35(b) *inter alia* lays down that till Parliament makes such law, any law in force immediately before the commencement of the Constitution in the territory of India with respect to residence in a State or a Union territory shall continue in force subject to any adaptations and modifications made under Article 372. In consequence, the Mulki rules which required that no person could be appointed to the public services in the former princely State unless he was resident therein for 15 years continued to apply to the Part 'B' State of Hyderabad.

3. The Government of Part 'B' State of Hyderabad issued a circular in June, 1950, by which it made it clear that the Mulki rules were no longer in force except with respect to the provision relating to residence for 15 years which was continued by virtue of Article 35(b). Further as the Mulki rules themselves provided that exceptions could be made by the order of the Nizam, the Government by this circular made it clear that such exceptions will be granted only by the Government. In 1955, the

Rajpramukh of Hyderabad framed the Hyderabad General Recruitment Rules in supersession of all the previous rules and orders on the subject prescribing *inter alia* requirement as to residence for purposes of employment under the State Government. One of the rules laid down that a domicile certificate would be necessary for appointment to a State or subordinate service and the issue of the domicile certificate depended upon residence in the State for a period of not less than 15 years. Government was also given the power to make exceptions in special cases for reasons to be recorded in writing. In effect the rules purported to do away with the Mulki rules with respect to residence and substitute in their place a new rule as to domicile. The new rules provided the same qualification of 15 years residence for the issue of a domicile certificate and thus made no substantial change in the pre-existing position. A question has been raised whether these rules promulgated in 1955 could abrogate the Mulki rules, for the Mulki rules having been issued under the Firman of the Nizam had the force of law while these rules issued in 1955 were merely rules under the proviso to article 309 of the Constitution. Besides, the Constitution having come into force, no rules as to residence could be made by the State in view of Article 16(3) read with Article 35. We may take it therefore that these rules of 1955 could not and did not abrogate the Mulki rules as to residence. But that makes no difference in substance for the qualification as to residence and the provision as to exceptions was the same in these rules as in the Mulki rules.

4. In 1956 came the reorganisation of the States. By virtue of the States Reorganisation Act No. 37 of 1956, the Part 'B' State of Hyderabad ceased to exist and its territories went to the three new States of Andhra Pradesh, Maharashtra and Mysore. As already indicated, the Telengana area went to Andhra Pradesh, the Marathwada area to Maharashtra and the Karnatak area to Mysore. Section 119 of the States Reorganisation Act provided that any law in force immediately before the new States came into existence continued to remain in force with respect to the territories to which it applied immediately before until otherwise provided by a competent legislature or other competent authority. The effect of this was that the Mulki rules as to residence continued to apply to the Telengana area of the State of Andhra Pradesh.

5. Then came the Public Employment (Requirement as to Residence) Act No. 44 of 1957. By section 2, this Act provided that "any law then in force in any State or Union territory by virtue of clause (b) of article 35 of the Constitution prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, that State or Union territory, any requirement as to residence therein prior to such employment or appointment shall cease to have effect and is hereby repealed". Section 3 of the Act gave power to Central Government to provide in regard to appointments to any

subordinate service or post under the State Government of Andhra Pradesh or in certain Union territories with which we are not concerned or any service or post under a local authority other than a cantonment board within the Telengana area of Andhra Pradesh or within the Union territories concerned any requirement as to residence within the Telengana area or the said Union territories as the case may be prior to such appointment. This Act was brought into force on the 21st of March, 1959 and the Government of India promulgated rules on the same day by which it was laid down that a person shall not be eligible for appointment to a post within the Telengana area under the State Government of Andhra Pradesh or to a post under any local authority other than the cantonment board in the said area unless he had been continuously residing within the said areas for a period of not less than 15 years immediately preceding and produces before the appointing authority concerned, if so required by it, a certificate of eligibility granted under these rules. The posts which were covered by these rules were all non-gazetted posts under the State Government of Andhra Pradesh within the Telengana area and the post of tehsildar by whatever name designated within that area and any post under a local authority other than a cantonment board within that area which carried a scale of pay, the minimum of which did not exceed Rs. 300 per month or a fixed pay not exceeding that amount. Such pay did not include any allowances but included special pay, if any, sanctioned for the post. It was also provided for certificates of eligibility under these rules as well as for exceptions, for which power was given to the State Government. Besides this, special provision was also made with respect to posts in the Secretariat Department and the offices of the heads of departments of the State Government of Andhra Pradesh situated in the cities of Hyderabad and Secunderabad, by which every second vacancy in every unit of 3 vacancies was to be filled subject to this requirement of residence for 15 years in the Telengana area.

6. Before, however, the new State of Andhra Pradesh was formed by the States Reorganisation Act, 1956, an Agreement was arrived at amongst the leaders of public opinion in Andhra Pradesh in July, 1956, which made two provisions with respect to services. The first provision was that future recruitment to services will be on the basis of population from both regions (*i.e.* the Telengana area and the rest of the new State of Andhra Pradesh). The second provision was that some kind of domicile rules, *e.g.* residence for 12 years, should be provided in order to secure the prescribed proportion to recruitment of services for Telengana area. It will be noted that the first provision referred to all services in the new State of Andhra Pradesh and also referred only to recruitment and not to promotions and transfers. In pursuance of this agreement, the Government of India placed on the table of the Lok Sabha in August, 1956, a note on safeguards proposed for the Telengana area. This laid down

that a temporary provision will be made to ensure that for a period of five years, Telengana is regarded as a unit as far as recruitment to subordinate services in the area is concerned. Posts borne on the cadre of the services will be reserved for being filled by persons who satisfied the domicile conditions as prescribed under the existing Hyderabad Rules. It will be noticed that the Government of India did not accept the position that recruitment to all services in the State of Andhra Pradesh would be subject to domicile rules. It only accepted that recruitment to subordinate services will be so subject. Further there is no reference to promotions and transfers in this statement. It was in pursuance of the Agreement of July, 1956 and the Government of India's note as to safeguards for the Telengana area that the Public Employment (Requirement as to Residence) Act, 1957 was passed and was later brought into force from the 21st of March, 1959 along with the rules framed thereunder on the same day to which we have already referred.

7. The position after 21st March, 1959 was that recruitment to subordinate services was made as provided in the rules framed under the Act of 1957. The figures of appointment during the period 21st March, 1959 to the end of September, 1968 show that 92,552 posts which required the residence qualification under the rules of 1959 were filled. Of these, 88,164 were filled by persons with the requisite residential qualification; 799 were filled by persons who had not the residential qualification but, in whose case, exception had been made by the State Government; and the remaining posts appear to have been filled by persons, who were not qualified in accordance with the residential qualification and, in whose case, no exception had been made by the State Government. These figures show that by and large the residential qualification as to appointment in the Telengana area was actually given effect to during all this period and the exceptions were few. It may also be mentioned that though Section 3 of the Act of 1957 was originally passed for only five years, it was extended for another five years in 1964 and by another five years in 1969 and will thus now come to an end in March, 1974 along with the rules framed thereunder.

8. It appears that for some reasons, which are not quite clear, trouble started in the State of Andhra Pradesh in June, 1968 and was spearheaded by the Telengana Non-gazetted Officers' Union. The Union was concerned with purely service matters and raised questions as to maintenance of seniority lists, strict implementation of the ratios fixed between residents of Telengana and the rest of Andhra Pradesh in direct recruitment to posts in the secretariat and the reversion of non-Telengana personnel from posts reserved for Telengana residents. The demand was also made for continuing the Act of 1957 for another five years after the 20th March, 1969, which, as is already indicated, has been done now. Some times the agitation led to disturbances of law and order. So an all-Party meeting of

the leaders of the various parties in Andhra Pradesh took place in January, 1969, at which an agreement was reached with respect to certain matters. We are concerned only with that part of the agreement which deals with the services. The agreement provided that all non-domicile persons, who had been appointed either directly, by promotion or by transfer to posts reserved under the Andhra Pradesh Public Employment (Requirement as to Residence) Rules, 1959 for domiciles of Telengana Region will be immediately relieved from service. The posts so rendered vacant will be filled by qualified candidates possessing domicile qualifications and in cases where such candidates were not available the posts shall be left unfilled till qualified domicile candidates became available. Action on the above lines was to be taken immediately. It was, however, agreed that all non-domicile employees so relieved shall be provided employment in the Andhra region without break in service and by creating supernumerary posts, if necessary. Machinery was also created for carrying this out. It was further provided that there were some complaints that employment had been obtained on the basis of false domicile certificates and it was provided that an enquiry into such complaints would be made. In consequence of this agreement, the Government of Andhra Pradesh issued orders with a view to implementing the agreement providing that all non-domicile persons appointed on or after 1st November, 1956 to certain categories of posts reserved for domiciles of Telengana shall be relieved not later than 28th February, 1969. These categories were the same with respect to which the rules of 1959 had provided eligibility certificates. The above orders were to apply whether the appointments to the above posts had been made by direct recruitment or by promotion or by transfer. Other provisions were made in the Government Order of the 21st of January, 1969 for creation of supernumerary posts to absorb persons to be relieved from the Telengana area on the 28th February, 1969.

9. It appears, however, that in 1968, certain writ petitions had been filed in the High Court of Andhra Pradesh challenging the validity of the eligibility certificate based on residence for appointment to posts in the Telengana area. In February, 1969, a learned Single Judge of the Andhra Pradesh High Court held that section 3 of the Public Employment (Requirement as to Residence) Act, 1957 was void and inoperative and the State Government was directed not to apply the same. The Government of Andhra Pradesh went in appeal to the Division Bench and the Division Bench on the 20th of February, 1969 set aside the order passed by the learned Single Judge and held that section 3 of the Act of 1957 and the rules framed thereunder were valid. In the meantime, however, a writ petition had been filed in the Supreme Court of India challenging section 3 of the Act of 1957 insofar as it related to the Telengana area. This writ petition was decided on the 28th of March, 1969. The Supreme Court held that article 16(3) read with article 35 which gave power to Parliament

to make any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment, only authorised Parliament to fix residential qualification which would apply to the entire State and it was not open to Parliament to fix the residential qualification with respect to a part of the State only. In consequence, the Supreme Court held that that part of section 3 and the rules framed thereunder which required residence in the Telengana area, which was only a part of the State of Andhra Pradesh, were *ultra vires* the Constitution. It was after this judgment, which is now the law of the land, that the Prime Minister made a statement in the Lok Sabha on the 11th of April, 1969 and this Committee was appointed on the 19th April, 1969.

10. It is in this background that we have to consider the questions referred to us. It is to our mind clear in view of the interpretation placed on article 16(3) by the Supreme Court that it would not be open to Parliament to make any law requiring residence within a part of a State or part of a Union territory. Any law providing for a residential qualification must provide only for residence in the entire State or Union territory and cannot provide for residence within a part of a State or a Union territory as a qualification for employment or appointment to an office within that part. In other words, the constitutional provisions contained in article 16(1) and (2) as to the equality of opportunity in matters relating to employment or appointment to any office under the State and prohibition of discrimination on the grounds of religion, race, caste, sex, descent, place of birth, residence or any of them can only be cut down with respect to residence within an entire State or Union territory. It cannot be cut down by providing for a residential qualification within a part of a State or a Union territory. That is why the Supreme Court held that section 3 of the Act of 1957 and the rules framed thereunder were invalid insofar as they provided for a residential qualification for purposes of appointment within the Telengana area, which is only a part of the State of Andhra Pradesh. The implication, therefore, of the Supreme Court judgment is clear, *viz.*, that it is not open to Parliament to provide for residential qualification with respect to a part of a State or Union territory. If any residential qualification has to be prescribed by law, it must be with respect to an entire State or Union territory. Any law or rule which prescribes a residential qualification with respect to a part of a State or Union territory would be bad and would be liable to be struck down in view of the interpretation placed by the Supreme Court on article 16(3) of the Constitution.

11. The implication of the Supreme Court judgment being clear, the question now is whether any and what provisions can be made which would make it possible to provide safeguards in the matter of public employment or appointment to the people of the Telengana area of Andhra Pradesh

in keeping with what had been going on since 21st of March, 1959. We have already indicated that in view of the interpretation placed by the Supreme Court on article 16(3), it is no longer possible to make any law or rule prescribing residential qualification in a part of a State for appointments within that part. Any law or rule so made would be bad and would be liable to be struck down as *ultra vires* the Constitution. No legislative measures, therefore, whether in the form of a law or a rule promulgated under the proviso to article 309 of the Constitution are now possible to continue the position obtaining under the Act of 1957 and the rules framed thereunder in 1959 with respect to the Telengana area. Therefore, if any law is to be passed providing for residential qualification within a part of the State, then first there will have to be a constitutional amendment of article 16(3) by which the words 'or a part thereof' have to be added after the words 'any requirement as to residence within that State or Union territory'. Without such a constitutional amendment, it would not be possible to provide for a residential qualification within part of a State or Union territory either by law or rule.

12. As to a constitutional amendment, two considerations will have to be kept in mind. The first is that article 16(3) is an exception to article 16(1) and (2) and restricts the fundamental right contained in article 16(1) and (2). If, therefore, an amendment is made in article 16(3) by adding the words 'or a part thereof' at a suitable place as indicated above, it would mean further restriction of the fundamental right to which article 16(3) is an exception. Such further restriction may not be possible in view of the majority decision of the Supreme Court in Golaknath's case.

13. The second aspect, which has to be considered in case a constitutional amendment of the kind indicated above is contemplated is the wide and far reaching implications thereof. If the amendment is made on the lines indicated and Parliament is authorised to provide by legislation requirement as to residence within part of a State for appointment to a service within that part, the result would be that it would be open to Parliament to pass a law requiring residential qualification with respect to any part of a State, howsoever small it might be. Such an amendment to article 16(3) may lead to a demand for reservation of posts for one district or even one city or, to go down further, one tehsil or one taluk and to reduce it to a complete absurdity, even to one village. Such an amendment, therefore, would not be a mere exception to the fundamental right provided in article 16(1) and (2) but would in effect be completely destructive thereof. It seems to us, therefore, that an amendment of article 16(3) by adding the words 'or a part thereof' at an appropriate place and thus empowering Parliament to make law as to residential qualification not only within a State but within parts of a State for purposes of public employment or employment under the local authorities, would be a blow to the

integration of our country, which was brought about by the Constituent Assembly under the Constitution. We cannot therefore contemplate such a constitutional amendment even if there was not the difficulty arising out of Golaknath's case in the matter of making that amendment. We may add that in the present case we are only dealing with the subordinate or non-gazetted services, but article 16(3) refers to all kinds of services within a State or Union territory and an amendment of it on the lines indicated above would indeed be fraught with grave danger, and may very seriously affect the efficiency of our services.

14. It seems to have been suggested in some quarters that if section 3 of the Act of 1957 in so far as it applies to Telengana area is bad in view of the Supreme Court judgment, section 2 thereof, which provides for repeal of all laws in force on the commencement of the Act in any State or Union territory by virtue of clause (b) of Article 35 of the Constitution, will also fall along with it. If that is so, it is said that the Mülki rules, which were in force by virtue of Article 35(b) so far as residential qualification in Telengana area is concerned upto the commencement of the Act of 1957 on the 21st March of 1959, would still remain in force. It is not possible for us to accept this for various reasons. In the first place, section 2 appears to us to be independent of section 3 which was for five years only. It is a general provision applying to all States and all Union territories in India and not merely to the State of Andhra Pradesh and the three Union territories mentioned in section 3. There is no reason, therefore, for section 2 to fall if section 3 falls in view of the Supreme Court judgment with respect only to a part thereof relating to the Telengana area. Secondly it appears to us quite possible that when Parliament came to enact a law relating to article 16(3) under article 35(a), it may well have thought to provide for doing away with all residential qualifications in all States or Union territories by section 2 and it may have done so even without enacting section 3 at all. The fact that Parliament also enacted section 3 in the same Act would not detract from Parliament's intention to do away with all residential qualifications in all States except insofar Parliament thought fit in its wisdom to provide for it itself by section 3. Thirdly, the interpretation of the words in section 2, which repeals on the commencement of the Act the law in force in any State or Union territory by virtue of clause (b) of article 35, is to our mind clear. What the section lays down is that if there is any law in force by virtue of clause (b) of article 35 in any State or Union territory, it stands repealed on the commencement of the Act. The fact that the law was in force only in part of a State and not in the whole State would make no difference to this position. We cannot apply the special interpretation which the Supreme Court has put on the words 'within that State' in article 16(3) in the recent judgment in the context of fundamental rights to the interpretation of the words "any law then in force in any State or Union territory" by virtue of clause (b)

of Article 35 of the Constitution" appearing in section 2 of the Act of 1957. These words must carry their full implication and they do not mean that only that law relating to residential qualification which applies to the whole State will go and not that law, as to residential qualification which applies to a part of a State. The words are clear and must be interpreted according to well-known canons of statutory construction. It could never have been the intention of Parliament that only those laws relating to residential qualifications should go which applied to the whole of a State or Union territory and not those laws which applied only to a part of a State or Union territory. All laws with respect to residential qualification, whether they applied to the whole or part of a State or a Union territory, must be deemed to have been repealed by these words on the commencement of the Act. Therefore, it is not possible now after the Act of 1957, which has not been struck down as a whole but only in a very limited part by the recent Supreme Court judgment to conclude that the Mulki rules which were continued by clause (b) of article 35 of the Constitution still continued after the Act of 1957 came into force on the 21st of March, 1959.

15. As we have already indicated, the Mulki rules as they were in force in the former princely State of Hyderabad applied to all the districts in that State and they were not meant specifically for the Telengana area. The main rule out of the Mulki rules with which we are concerned is the rule of residence for 15 years which continued under article 35(b) of the Constitution. This rule applied originally to all the services in the princely State. It also applied to services under the local authorities in the princely State by virtue of their having adopted the rule for their purposes. Such a rule cannot now prevail in view of the judgment of the Supreme Court for what was originally applicable in the whole of the princely State and what was later applicable in the entire Part 'B' State of Hyderabad by virtue of the rule continuing by the force of article 35(b) has now only become a rule applicable to a part of the new State of Andhra Pradesh, which came into being in 1956 by virtue of the States Reorganisation Act. The rule, therefore, whether in the form of law or a rule, under the proviso to article 309 cannot now continue in a part of the State of Andhra Pradesh. We can see no possibility of continuing such a rule whether in the shape of law or in the shape of a rule under the proviso to article 309 of the Constitution for the Telengana area only in view of the recent Supreme Court judgment. Nor can we think of any similar provision being made or continued for a Part of the State of Andhra Pradesh, viz., the Telengana area. In the present circumstances, it must be held that a law prescribing residential qualification for a part of a State or a rule made under the proviso to article 309 for the same purpose is not possible now after the judgment of the Supreme Court as to the interpretation of article 16(3).

16(1). This brings us to the question whether any other measures are possible which might to some extent go to meet the aspirations of the people of Telengana, in view of the Agreement of 1956 as modified by the Government of India's statement laid on the table of Parliament with respect to non-gazetted or subordinate services in the Telengana area of Andhra Pradesh. We may point out that in the States in Northern India (and one of us knows personally about U.P. and Rajasthan), recruitment to subordinate services, *i.e.* what is equivalent to class III and class IV services under the Government of India, is made by local heads of offices for their own offices. Thus, for example, a district judge recruits class IV and class III staff for his office locally after such publicity in the district as is considered necessary and desirable and after such tests, oral or in writing, as may be considered suitable. There is no constitutional bar to such a procedure for recruitment to local offices to fill class III and class IV posts therein for there is no impediment to any one competing for such appointment. But in actual practice, the experience has been that the recruitment being made for local offices by the heads of those offices and the vacancies in each case being small, the persons who compete for such posts are by and large local people and a person from outside the district hardly competes for such posts. The result of this kind of recruitment by each head of a local office for his own office is that practically all vacancies in local offices are filled by local people so far as class III and class IV staff is concerned. It seems, however, that in the State of Madras as it was before the Constitution, a system had grown up of recruitment to class III posts by means of a competitive examination held by the State Public Service Commission, which was open to all the residents of the State. Under this system, the vacancies all over the State in the local offices were pooled and they were, therefore large in number. The result of this was that people all over the State competed for this large number of vacancies and were selected in such manner as was provided by the rules relating to the mass examination conducted therefor. So far as class IV posts were concerned, we are given to understand that even in Madras State as it was before the constitution, the vacancies were filled by heads of offices locally.

16(2). The State of Andhra Pradesh also followed the same system and all class III posts for the entire State are filled by a mass examination held by the State Public Service Commission. The result of this is that candidates from all over the State compete for the large number of vacancies at this examination. In such an examination there can be no reservation for districts in view of the provisions of Article 16 and the result many a time is that candidates from what may be called backward areas are at a disadvantage. We think that if the system in vogue in Andhra Pradesh following the system which was in vogue in Madras is given up and the system, which prevails in the States of Northern India,

of recruitment to local offices by heads of each local office is introduced, it will be possible to meet the aspirations of the people of Telengana in view of the practical experience of what happens in the States of Northern India through this method of recruitment. We would, therefore, suggest in order that the Agreement of 1956 as modified by the Government of India's statement tabled in the Lok Sabha restricting it to subordinate services only may be substantially carried out, the method of recruitment to local offices by the heads of each office is introduced. Rules for such recruitment as the Andhra Pradesh Government may consider necessary may be framed and such posts in class III services as can be suitably filled by local recruitment of this type may be taken out of the purview of the Public Service Commission. A beginning in this behalf has already been made by the Government of Andhra Pradesh in their G. O. Ms. No. 197 dated 3rd April, 1969. By this order, the Government of Andhra Pradesh has withdrawn from the purview of the Andhra Pradesh Public Service Commission recruitment to what is called Group IV services and has entrusted it to the district collectors with immediate effect. This is a step in the right direction, but we would go further and suggest that the recruitment to these services should be made not by the district collectors only for the entire district and that each head of office may recruit separately for his own office subject to such rules as the State Government may deem fit to make in that behalf. We would also suggest that this procedure of recruitment should also be extended to the Andhra Pradesh Judicial ministerial service for district judges' offices in concurrence with the High Court of Andhra Pradesh. We would further suggest that such other class III services as can be recruited district-wise or division-wise or range-wise, may be so recruited through the heads of the local or district offices or heads of divisional offices (like Commissioners or Superintending Engineers) or heads of range offices (like Deputy Inspectors General of Police).

16(3). The question whether something on similar lines can be done for the Secretariat Departments or for offices of the heads of departments should also be considered. But reservations based on residential qualification in any particular area of a State have now to go in view of the recent Supreme Court judgment.

16(4). The local recruitment in the form suggested by us, which is in force for most of class III services in the States of Northern India, should in our opinion meet the aspirations of the people of Telengana area and substantially give them what the Government of India rules of 21st March, 1959 were intended for. This will require that all these class III posts which are to be recruited locally under this new system should be withdrawn from the purview of the Public Service Commission. There can be no objection to this course as something like this is already in force in most of the States in Northern India. We can think of no other

method to meet the aspirations of the people of Andhra Pradesh arising out of the Agreement of 1956 after the recent judgment of the Supreme Court, for nothing short of a constitutional amendment can get over that judgment and we cannot contemplate that as already indicated. No law or rule can now be made making reservations on the basis of residence in part of a State. But we have no doubt that if the system of local recruitment in the manner suggested by us is introduced, the aspirations of the people of Telengana based on the Agreement of 1956 as modified by the statement tabled by the Central Government in Parliament restricting it to subordinate services only will be largely met.

17. This leaves us with the all-Party Accord of January, 1969. We must say that that Accord has gone much further than the Agreement of 1956, as modified by the Government of India's statement tabled in Parliament, for it speaks not only of recruitment, i.e. direct appointments for the first time, but also of promotions and transfers. The Agreement of 1956 only dealt with recruitment and there was nothing in it with respect to promotions and transfers. Promotions and transfers arise out of exigencies of service and it may be difficult to restrict promotions and transfers in the manner envisaged in the all-Party Accord of January, 1969. It may be mentioned that promotions and transfers are bound to be a two-way business—people may be transferred from the Telengana region to the other part of Andhra Pradesh and/or they may be transferred from the other part of Andhra Pradesh to Telengana due to exigencies of service. Similarly promotions may result in persons going from Telengana to the other part of Andhra Pradesh and persons coming from the other part of Andhra Pradesh to Telengana region again due to exigencies of service. It would not be wise to put any restrictions on promotions and transfers, for that may affect the efficiency of the services. There could, however, be no objection to promotions and transfers being so made that going from one region to the other is reduced to the minimum. That is a matter, which, we have no doubt, the State Government will always keep in mind when making promotions and transfers, so that the aspirations of the people of Telengana may be met. Subject to the above, therefore, we think that the all-Party Accord of 1969 which has gone beyond the Agreement of 1956 and taken in its sweep the promotions and transfers also, should be restricted to recruitment, i.e. direct appointment for the first time.

18. It is necessary, however, to provide some watch on the system that we are proposing and that, we believe, will meet the aspirations of the people of Telengana substantially in accordance with the Agreement of 1956 as modified by the Government of India's statement thereon tabled in Parliament.

19. Article 371(1) *inter alia* provides for the constitution and functions of a Regional Committee of the Legislative Assembly of the State of Andhra Pradesh and for any special responsibility of the Governor in order to secure the proper functioning of the Regional Committee. In pursuance of this article, the President passed an order on the 1st of February, 1958 (S. R. O. 443-A) constituting a Regional Committee of the Assembly for the Telengana region consisting of Members of the Assembly who for the time being represent the constituencies of that region. The order also provides that the Regional Committee shall have power to consider and pass resolutions recommending to the State Government any legislative or executive action affecting the Telengana region with respect to any scheduled matters, so however that, the executive action relates to general questions of policy and the legislative or executive action does not involve any financial commitment other than expenditure of a routine and incidental character. The scheduled matters in this order are nine. We suggest in order that the Regional Committee for Telengana may be able to watch the system we have recommended to see how it works to meet the aspirations of the people of Telengana, a further item be added to this schedule, viz. "subordinate services in the Telengana region". We trust that the addition of this item in the Presidential Order of 1958 will satisfy the people of Telengana that their Regional Committee will be there to watch their interests with respect to subordinate services in that region and evaluate the result of the system we have recommended and suggest ways and means if necessary to improve the system, so that it subserves the objects with which it is introduced, always of course in keeping with the provisions of article 16 of the Constitution. We would, therefore, recommend the addition of another item to the First Schedule of the Order of the President in the following terms:—

"10. Subordinate services in the Telengana Region."

20. We have also considered whether any provision can be made for the Telengana region under article 16(4) of the Constitution, which provides that nothing in the earlier part of article 16 shall prevent the State from making any provision or reservation for appointments or posts in favour of any backward class of citizens which in the opinion of the State is not adequately represented in the services under the State. We have, however, come to the conclusion that article 16(4) only provides for reservations in favour of any backward class of citizens. It cannot permit reservation in favour of the whole of what may be called a backward area. Nor do we think that it will be rational to declare everyone living in an area as a backward class of citizens, for that may amount to a fraud on article 16(4). Therefore, we do not think that article 16(4) can be used for providing reservation of the type that was in force in the Telengana area.

21. We have also considered whether anything can be done to meet the aspirations of the people of Telengana by an order under the Fifth Schedule to the Constitution. Clause 6(1) of that Schedule lays down that the expression 'Scheduled Areas' means such areas as the President may by order declare to be scheduled areas. It appears that under that clause declarations have been made by the Scheduled Areas (Part A States) Order, 1950 and the Scheduled Areas (Part B States) Order, 1950. It also appears that certain areas now included in the Telengana region of Andhra Pradesh were declared to be scheduled areas. It seems, therefore, that the President has already considered what areas in Telengana should be declared scheduled areas and has done so. This was done at a time when Telengana was part of the Part B State of Hyderabad. It also appears that certain other areas of the Part B State of Hyderabad were declared scheduled areas. It is doubtful, therefore, whether the President can now make any order declaring the whole of Telengana as a Scheduled Area. Such an order, if now made, may also be considered to be a fraud on the Constitution even if the President has power to make a further declaration under clause 6(1) after the two declarations of 1950. Further clause 6(2) of the Fifth Schedule shows what kind of order the President may make after he has declared the Scheduled Areas under clause 6(1).

Firstly the President can direct at any time that the whole or any specified part of a Scheduled Area shall cease to be a Scheduled Area or a part of such an area. That means that if conditions in a Scheduled Area already declared under clause 6(1) have so improved as to warrant exclusion from the Scheduled area, the President may do so. Secondly the President can alter, but only by way of rectification of boundaries, any Scheduled Area. This power is clearly a minor power given to the President to rectify the boundaries of any Scheduled Area if it so happens that in the order passed under clause 6(1) of the Fifth Schedule there has been a mistake. Thirdly, the President has power on any alteration of the boundaries of a State or on the admission into the Union or the establishment of a new State, to declare any territory not previously included in any State to be, or to form part of, a Scheduled Area. This provision obviously cannot now be utilised for declaring Telengana a Scheduled Area. We have, therefore, come to the conclusion that the Fifth Schedule cannot be applied to the Telengana area and any advantages flowing from that application cannot now be given to the Telengana area as a whole. It may be that those areas which have already been declared Scheduled Areas and are in the Telengana region may benefit by the provisions contained in Fifth Schedule; but that benefit cannot be extended to the entire Telengana area.

22. We have given anxious consideration to all aspects of the matters referred to us and hereby submit this report. We wish to express our thanks to the Home Ministry and the Law Ministry of the Government of

~~them, who~~ assisted us in our work. We also wish to express our thanks to the Education Minister of Andhra Pradesh and to the Law Department of the State of Andhra Pradesh for their assistance in the task before us. We may reiterate that we have no doubt that if the steps recommended by us are taken, they will, by and large, meet the aspirations of the people of Telengana.

K. N. WANCHOO,
Convenor..

M. C. SETALVAD,
Member..

NIREN DE,
Member..

Bombay, May 5, 1969.