CHAPTER - V

FUNCTIONS

Equality of opportunity in the matters of public employment is the pious principle which our Constitution so ardently cherishes. Under Article 16 of the Constitution of India, it has been provided that -

16(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

This provision is made with a view to ensure the building up and maintenance of public services on the solid foundation of merit and to provide an equal opportunity to all the citizens. In order to translate this principle into reality, the Constitution has provided for the Public Service Commission.
1. **Constitutional Provision**

Under chapter 2 of the part XIV of the Constitution of India, detailed provisions regarding the Public Service Commission are made. Article 320 of the Constitution provides that -

"(1) It shall be the duty of the union and the State Public Service Commissions to conduct examinations for appointments to the services of the union and the services of the State respectively.

(2) It shall also be the duty of the Union Public Service Commission, if requested by any two or more States so to do, to assist those States in framing and operating schemes of joint recruitment for any service for which candidates possessing special qualifications are required.

(3) The Union Public Service Commission or the State Public Service Commission as the case may be, shall be consulted -

(a) On all matters relating to methods of recruitment to civil services and for civil post;

(b) On the principles to be followed in making appointments to civil services and posts and in making promotions.
and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;

(c) On all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters.

(d) On any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the Consolidated Fund of India, or as the case might out of the Consolidated Fund of the State.

(e) On any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of a State or under the Crown in India, or under the Government of an Indian State, in a civil capacity, and any question as to the amount of any such award, and it shall be the duty of a
Public Service Commission to advise on any matter so referred to them and on any other matter which the President or as the case may be, the Governor of the State, may refer to them.

The powers and functions vested in the Public Service Commission are of an advisory nature. The role assigned to the Commission is one that of Consultative and advisory rather than that of executive. Thus constitution has accepted the viewpoint of Samuel Hoare, the Secretary of State for India, who opined in the House of Commons that -

"It was the definite view of the Joint Select Committee and it is the definite view of my Advisers here and in India that the Public Service Commission had much better be advisory. Experience goes to show that they are likely to have more influence if they are advisory than if they have mandatory powers. The danger is that if you give them mandatory powers, you then set up two governments in a Province and two governments at the Centre and there is everything to be said against a procedure of that kind. From many points of view it is much better that they should be advisory."

The Government of India Act 1935, also assigned the advisory role to the Public Service Commission. Under
Article 266(1), the Government of India Act 1935, it was stated that the Provincial Public Service Commissions should conduct examinations for the selection of candidates for appointment for the Provincial Services. Moreover it was provided that Provincial Commission should be consulted:

"(1) On all matters relating to methods of recruitment of civil services and civil posts;

(2) On the principles to be followed in making appointments to civil services and posts, in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;

(3) On all disciplinary matters, affecting a person serving His Majesty in a civil capacity in India, including memorials or petitions relating to such matters;

(4) On any claim by or in respect of a person who is serving or has served His Majesty in a civil capacity in India, that any costs incurred by him in defending legal proceeding instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the revenues of the province;
(5) On any claim for the award of a pension in respect of injuries sustained by a person while serving His Majesty in a civil capacity in India, and on any question as to the amount of any such award, and it shall be the duty of a Public Service Commission to advise on any other matter which the Governor may refer to them.  

The words "shall be" in the clause (3) of the Article 320 of the Constitution of India is not to be construed as mandatory. It was decided in the case of State of U.P. vs. Shrivastava, A. by the Supreme Court in 1957 that in default of consultation, the action of the Government under any of the sub-clauses of the clause (3) of Article 320 would be null and void. Although the Commission is an advisory body, by way of convention its advice is to be considered as mandatory on government in all democratic countries. Personnel management being the line function, the final responsibility lies with the Government. But to ensure justice and upheld the principle of merit in public services, Government is required to seek the advice of the Commission before the decision is taken in this matter.

1 The Government of India Act 1935 Part X, Chapter III.
The Gujarat Public Service Commission performs its functions under the Article 320 of the Constitution of India. Accordingly it has three types of functions to perform: (1) Executive (2) Regulatory, and (3) Quasi-Judicial. Under the executive functions, it makes the selections for the public positions and for that purpose conducts the competitive examinations. Moreover it also performs some non-statutory functions by holding Departmental and Language examinations on behalf of the Government of Gujarat and also by organising for the All India Competitive Examinations on behalf of the Union Public Service Commission.

Under the regulatory functions, the Gujarat Public Service Commission tenders advice on the matters pertaining to the methods of recruitment and the principles to be followed in appointments, promotions and transfers. Its Quasi-Judicial functions include all disciplinary matters affecting public officials, and the claims regarding the cost incurred in the legal proceedings as well as the award of a pension in respect of injuries sustained by a servant while on government duty. Both these functions are of an advisory nature.

The Gujarat Public Service Commission thus draws its
authority from the Constitution itself, but its authority is very much circumscribed by certain constitutional provisions, government regulations and conventions.

2. Limitations on the Commission's Role

The Constitution of India has imposed two limitations on the functions of the Commissions.

(i) Reservations of posts referred to in clause (4) of Article 16 and in Article 335;

(ii) Exclusion of posts from the purview of the Commission through regulations made under proviso to Article 320(3)

"(i) Provision regarding S.C./S.T.:

Article 16(4) makes provision for the reservation of posts in favour of a backward class of citizens. It is provided that "Nothing in this article shall prevent the State from making any provision for the reservation of 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."

This clause is an enabling provision and it confers discretionary power on the State to make the reservation of posts in favour of backward classes. However, this clause
should be reconciled with that of Article 16(1) which gives equality of opportunity to all the citizens in matters of appointments under the State. This clause is also to be interpreted in the light of the provision made under the Article 335 as well. Article 335 requires the Government to take into consideration the claims of the members of the Scheduled Castes and Scheduled Tribes.

Article 335 of the Constitution of India provides that: "The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration consistently with the maintenance of efficiency of administration in the making of appointments to services and posts in connection with the affairs of the Union or of a State". This article operates as a limitation on the provision contained in Article 16(4), in the sense that Article 335 accords preferential treatment to members of the Scheduled Castes and Scheduled Tribes only and not to members of 'backward class' in general as provided in Article 16(4).

The Public Service Commission being a recruiting agency is bound by the provisions of the first two clauses of Article 16 and as such has to observe the principle of open competition in matters of recruitment to public
services. However, clause (4) of Article 320 exempts the Government from consulting the Commission in regard to the reservation of appointments or posts made in favour of any backward class of citizens under Article 16(4) or in giving effect to the requirement of special claims of the members of the scheduled castes and scheduled tribes being taken into consideration in making appointments under article 335. But once the manner of making reservation in respect of any backward class or of giving effect to the special claims of members of the Scheduled Castes and Scheduled Tribes is determined by the Government, the Commissions are at liberty to apply the principle of merit even in regard to these categories of citizens.

In 1960 when the State of Gujarat came into existence, the Government of Gujarat under the Bombay Government Resolution No. 490/46 dated 1st November 1950 laid down the policy for reservation for the backward class candidates. Accordingly 12% was reserved from all the State services and posts. In 1969, the percentage of the reservation of vacancies for candidates from backward classes was changed by the Government as per orders in Government Resolution. Under the new orders the

reservation was made only for Scheduled Caste and Scheduled Tribes. Accordingly 5% of the class I & II posts were reserved for scheduled castes and 10% of class I & II posts were reserved for the scheduled tribes. In the year 1974-75 the percentage of the reservation of vacancies for S.C. and S.T. candidates was changed by the Government. Accordingly now 7% of the class I & II posts are reserved for the Scheduled Castes and 14% of the class I & II posts are reserved for the Scheduled Tribes.

From the reports of the Gujarat Public Service Commission, it is evident that the Commission could recommend S.C. and S.T. candidates not only for the posts reserved but even more than that. However, in almost all the sixteen reports under study, it is stated that in respect of posts requiring technical qualifications or specialised experience, response from S.C. & S.T. candidates was not satisfactory but for the posts requiring non-technical qualifications, the response from such candidates was good. In the sixteenth report the Commission has even recommended to the Government to amend the rules authorising the Commission to relax the standard in the case of such candidates by 5% of the total marks.
(ii) Exemption from Consultation:

The recruitment to all kinds of civil posts is to be done by the Public Service Commission. The spirit of the constitution requires that all the posts should be within the purview of the Commission. However, the constitution itself provides that Government may exclude certain posts from the purview of the Commission. The proviso under the Article 320(3) empowers the executive to make regulations regarding the posts which does not require the consultation of the Public Service Commission. It is provided in the said proviso that -

"Provided that the President as respects the all-India services and also as respects other services and posts in connection with the affairs of the Union, and the Governor --- as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted."

Such a provision is made with a view that where the machinery of the Commission is not that competent, then the Government may take its own way of selection e.g.
Advocate-General. At the same time such regulations may be necessary in an emergency when there is a need to act quickly. It also relieves the Commission from the unnecessary burden of selection for the class III and class IV posts. Thus it is a prerogative in the hands of the Government to keep the posts outside the purview of the Commission. In order that the Government may not encroach upon the role of the Commission, the constitution has made provision for its safeguard.

In Article 320(5) it is provided that

"All regulations made under the proviso to clause(3) by the President or the Governor — of a State shall be laid for not less than fourteen days before each House of Parliament or the House or each House of the Legislature of the State, as the case may be, as soon as possible after they are made, and shall be subject to such modifications, whether by way of repeal or amendment, as both Houses of Parliament or the House or both Houses of the Legislature of the State may make during the session in which they are so laid."

All regulations made by the Governor specifying the matters in which it is not necessary for the Commission to be consulted are to be laid for not less than fourteen
days before each House of Legislature for its consent. However, the Government of India Act 1935 vested this power in the Secretary of State and the Governor-General in his discretion to make regulations in matters respecting the services and posts which were to be excluded from the scope of the Federal Public Service Commission. Under this power, the Governors of Bombay and Sind acting in their discretion, made regulations specifying matters in which the Commission were not required to be consulted. Briefly, the following posts and services were excluded from the purview of the Commission under the Act of 1935.

"(i) all services and posts to which appointments were to be made by the Governor acting in his discretion;

(ii) 'listed' posts - that is to say, posts which could be held only by members of the Indian Civil Service - on the executive as well as on the judicial side of the Indian Civil Service cadre;

(iii) all services and posts to which appointments were made by authorities subordinate to Government, except the Subordinate Secretariat Service, ministerial staff in the Directorate of Information, the office of the Oriental Translator to Government and the Record Office, Mamlatdars
and District Inspectors of Land Records in Bombay and Mukhtyarkars in Sind and Inspectors of Excise, Group II, the last when not filled by promotion.

(iv) all High Court appointments in Bombay and appointments in the Court of the Judicial Commissioner in Sind;

(v) the Principal and Perry Professor of Jurisprudence and Professors of Law at the Government Law College, Bombay; and

(vi) other appointment such as Sheriff, Deputy Sheriff, the Solicitor to Government, Honorary Medical Officers, District Government Pleaders etc.\textsuperscript{1}

Under the Proviso to Article 320(3) of the Constitution of India, the Governor of Gujarat made the Gujarat Public Service Commission (Consultation) Regulations 1960. In fact, these regulations are in line with the Bombay Public Service Commission (Consultation) Regulations 1951. The Government of Gujarat has made the necessary change in the title of these Regulations by notification.\textsuperscript{2}

\textsuperscript{1} Maharashtra Public Service Commission: Historical Record 1937-1962, 1966. p.10

\textsuperscript{2} No.G.S/75-103/RSC-1175/5722G dated 18th December, 1975.
Regulation of the Gujarat Public Service Commission (Consultation) Regulations was amended and the words "(Exemption from Consultation)" were substituted for the brackets and words "(Consultation)". The Regulations corrected up to 31st December 1969 are given in Appendix X.

The Government of Gujarat has made an amendment to these Regulations from time to time. To start with, on the formation of the State of Gujarat, the Government of Gujarat followed the pattern of the Bombay Public Service Commission (consultation) Regulations 1951 but with the exclusion of the posts of the Director of Medical Services and Director of Ayurved from the purview of the Commission. The Commission pointed out this omission and advised that even if the Government thinks it to have the direct selection necessary in cases where these posts are to be filled in from within the Government Service, it would not be proper not to consult the Commission. Agreeing with this viewpoint, the Government amended the Regulations on 16th March 1961.

In the years to follow, the Government has amended the regulations to exclude the posts -

(1) Regulation 10 was amended in '63 and substituted by
the new Regulation. It says "It shall not be necessary for the Commission to be consulted in respect of any orders passed under the Gujarat Civil Services (safeguarding of National Security) Rules 1962."

(2) In 1964 an entry No. 21-A was inserted in the Schedule. It reads "21-A The Chief Town Planner and Architectural Adviser".

(3) In 1965, entries Nos. 21-B, 21-C and 21-D were inserted in the schedule as under:

"21-B All posts in Gujarat Educational Service class II (collegiate Branch), if the appointments thereto are made from amongst persons who have successfully undergone training as senior fellows under the scheme of the Government of India for training teachers for Technical Institutes".

"21-C Part-time Professor of Law in the A.M. Parekh Law College, Rajkot".

"21-D The posts of Taluka Development Officers so far they are filled in by transfer of Mamlatdars to such posts."

(4) In 1966, Item No. 1 of the schedule, was amended and for paragraph (a) the following was substituted -
(i) "(a)" "cadre officers" as defined in the Indian Administrative Service (cadre) Rules 1954 and in the Indian Police Service (cadre) Rules 1954, and"

(ii) After item 1 the following item was inserted -

"1A All cadre posts as defined in the Indian Administrative Service (cadre) Rules 1954 or in the Indian Police Service (cadre) Rules 1954 which are filled by the appointment of persons other than cadre officers as defined in the said Rules."

(5) In October 1967 the post of Manager, Gujarat Bhavan, Delhi was brought outside the purview of the Commission.

(6) In 1969 amendment was made and entries Nos 21-F, 21-G, 21-H were inserted in the schedule as under -

"21-F Section Officer so far as appointment by promotion is concerned"

"21-G Secretary, Gujarat State Soldiers', Sailors' and Airman's Board and posts under it" 

"21-H Secretary, District Soldiers', Sailors' and Airman's Board and posts under it"
(7) In 1972 the amendment in Regulation 3(b)(i) was made and the limit of 4 months was extended to 12 months in respect of posts in the subordinate Secretariat Service (Ministerial Branch) including the subordinate staff in the Directorate of Information, Junior Translators, Supervisors, Scrutinisers, if no candidate from the select list prepared by the Commission is available for appointment.

The Government has made a proposal to keep 49 subordinate class III posts under the Director of Information outside the purview of the Commission. The Commission has agreed with this proposal but the amendment has not been done so far.

During these sixteen years only once in 1973-74 the Government made a proposal to bring the posts of Range Forest Officers (so far as recruitment to it is not made by promotion) within the purview of the Commission. The PSC agreed to it and has been brought within the purview. Recently in 1979, the Government has brought the post of P.S.I. under the purview of the Commission.

The Gujarat Public Service Commission (Consultation) Regulations 1960 closely followed the Bombay Public Service Commission (Consultation) Regulations 1951. It
was not until 1951-52 when the fresh regulations were made even though the Bombay Sind Public Service Commission ceased to exist on 1st August 1947. The Regulations made in 1943 by the Governor Continued to be in operation even after the Constitution came into existence.

In the draft regulations made in 1951, all services and posts which were filled by the appointment of officers belonging to the All-India Services or of officers of the former Secretary of State's Services who had continued in service under Government after 15th August 1947 were excluded from the Commission's purview. Under the old regulations made by the Governor in 1943, all services and posts, appointments to which were made by the Governor in his discretion or in the exercise of his individual judgement were excluded from the purview of the Commission. Accordingly the Commission was not consulted regarding the appointment of an officer belonging to an All-India Service to any post whether the post was included in the cadre of his service or not. Under the draft regulations of 1951, so far as appointments to posts which were normally within the purview of the Commission were concerned, were not clear. So the Commission suggested a modified regulation providing that the exclusion
did not apply to the appointment of these officers to posts which were normally within the scope of the Commission. On this, the Government replied that intention was to exclude such appointments from the purview of the Commission and so the Commission's modified regulation could not be accepted. The Commission replied that they were aware about the intention of the Government but the regulation did not convey it clearly. However, the Commission wanted to record their disapproval of the exclusion of posts not belonging to the cadres of All-India Services solely because they were, on particular occasions, filled by All-India Service officers. Government clarified that even under the Government of India Act 1935, such appointments were outside the purview of the Commission. At last, the Commission did not pursue the matter further and the regulation was finally made acceptable.

In 1947-48, certain posts in the Directorate of Publicity were excluded from the purview of the Commission. These posts are (1) Director of Publicity (2) Assistant Director of Publicity (3) News Editor, (4) Information Officer (5) Assistant News Editor (6) Assistant Information Officer and (7) Field Publicity Officers.
Government consulted the Commission before the exclusion was made and was informed that the posts had been created to "put across" Government's point of view. The Government argued that academic qualifications and experience is not the adequate basis for determining the suitability of candidates for these posts and so the method of competitive selection would not be suitable. Therefore, it was necessary that Government should make the appointments. The Commission was not satisfied with the arguments and so disagreed to the exclusion. Again, in 1948-49 three posts viz. the posts of (1) Deputy Director of Publicity (2) Regional Publicity Officer and (3) Editor, Rural Magazine, all in the Directorate of Publicity were excluded from the purview of the Commission, although the Commission disagreed with the proposal. In the same year, with the approval of the Commission, the posts of Adjudicators under the Industrial Disputes Act, 1947 were taken out from the purview of the Commission. In 1949-50 with the approval of the Commission, Demonstrator, C.E.M. Dental College, Bombay was excluded and against the advice of the Commission, the posts of Film Officer in the Directorate of Publicity were excluded from the purview of the Commission. In 1950-51 posts of President, Industrial Court, when filled from serving or retired
judges of the High Court were taken out from the purview with the approval of the Commission. In the same year, the posts of part-time professors at the Government Law College, Bombay were excluded even though in the previous year the Government decided to accept the recommendation of the Administrative Enquiry Committee to bring all these posts within the purview of the Commission. In 1951-52, the Government proposed the posts of President and Members of the Bombay Co-operative Tribunal and President and non-official Member of the Bombay Revenue Tribunal to be excluded from the purview on the ground that it would not be appropriate to fill these posts on a competitive basis since the most suitable persons were not likely to submit the applications. The Commission did not agree with the proposal and said that if Government was of the view that the method of competitive selection should not be followed, the better course for the Government would be to take the entire responsibility for the appointments. Even then the posts were excluded.

In 1953-54, Government consulted the Commission on a proposal to put outside the purview, the posts which were not included in the cadre of an All India Service and were filled by the appointment of officers not belonging to such a service. So far the posts of
Secretaries to Government, Additional Secretaries to Government and Joint Secretaries to Government were outside the purview only when filled by the appointment of officers belonging to an All India Service. For this proposal, the Government stated underlying grounds that (1) the posts were of the same status as posts with similar designations in the Indian Civil Administrative cadre which were outside the purview of the Commission; (2) there would hardly be any occasion to appoint to the posts persons who were not in the Government service; (3) normally appointment would be made by promotion or nomination; (4) rarely when retired officer was selected, the Government was likely to select a person who had held the same or equivalent post; (5) there was no question of safeguarding service interests of any class of officers since they were not reserved for any class of officers. However, the Commission thought that the grounds stated do not justify the exclusion of the posts from the purview and so made counter arguments. But the Government issued a regulation excluding the posts from the purview of the Commission.

Other important posts brought outside the purview of the Commission were those of President and Members of the
Sales Tax Tribunal, the Aviation Adviser to Government, Pilot and Ground Engineer, Chief Instructor, Central Training Headquarters of the Home Guards; and certain newly created posts in the Directorate of Publicity, namely Public Relations Officer, Manager, Information Centre, and the State Tourist Officer. For the newly created posts in the Directorate of Publicity, the Government argued for its exclusion on the ground that the posts were mainly concerned with "putting across" the viewpoint of Government and so the Competitive selection would not be feasible. The Commission again did not agree as it did before but the Government excluded the posts from the purview.

In 1952-53 the Government proposed to exclude the posts required for the implementation of the Community Projects Scheme on the grounds that the appointments require a special attitude for the work. On this the Commission argued that they have no objection so far the appointments are made from the persons outside the Government service. But so far the serving officers are concerned, it involved an element of promotion and so the Commission should be consulted. The Government accepted the view of the Commission and the exclusion was restricted
to cases where the appointments were made of persons outside the Government Service.

During the years 1957 to 52, the following important posts were taken out from the purview of the Commission:

'(1) Honorary Economic Adviser to Government and the Honorary Consultant in the Planning and Economic Wing of the Finance Department;

(2) Honorary Professors at the Institute of Science, Bombay;

(3) Honorary Professors at the Government Law College, Bombay;

(4) Divisional Honorary Prohibition Organisers;

(5) Specialist Medical Officers at the Diagnostic Centre under the State Insurance Scheme;

(6) Secretary, Bombay State Soldiers' Sailors' and Airmen's Board;

(7) Assistant Directors and Deputy Directors in the Directorate of Small Savings;

(8) Liaison Officers in the Directorate of Publicity;
(9) Additional Director of Publicity;

(10) Chief Information Officer and Assistant Chief Information centre, New Delhi;

(11) Senior Commander and Deputy Engineer in the Aviation Department;

(12) Officer on Special Duty (Tagore Celebration);

(13) Members of Industrial Courts."¹

The exclusion of functions has very much limited the role of the Gujarat Public Service Commission. It generally covers the class I and class II gazetted posts. From these posts, the officers of All India Services are not within its purview. On 1st January 1976, as per civil list, there were 159 officers belonging to I.A.S.; 79 officers of I.P.S. and 39 officers of I.F.S.

There is no controversy regarding the prerogative being enjoyed by the executive with regard to the exclusion of functions from the purview of the Commission. This power is given to the executive with a view that management

of the personnel affairs is the sole responsibility of the executive. Generally speaking there are certain categories of posts which should be excluded from the purview of the Commission. These categories are:

1. Memberships and Chairmanship of Tribunals, Commissions or high-powered committees created for any enquiry or for advising the Government on the important issues.

2. Positions of a 'confidential' or high policy-determining character and posts such as personal assistants or private Secretaries.

3. Positions for which personality or experience may be the determining factor. Senior posts are reserved for the officers of class I and All India Services.

4. Part-time, temporary or officiating positions.

5. Posts belonging to the legislature and judiciary branches.

6. The bulk of class III and class IV employees and workers etc.

Unlike its predecessor, the present Constitution
requires parliamentary sanction for all regulations seeking limitations on the scope of the Commission. But this stage comes after the regulations are already made. So there is a need for consultation with the Commission before the regulations are made. Commission being the expert body on making selections, the consultation with the Commission only can become fruitful. At the same time, the consultation can not be made compulsory because the Commission is an advisory body. So only alternative is to establish a convention that before the posts are excluded from the purview of the Commission, the Government should consult the Commission. Such a practice becomes all the more necessary because the "spirit of the Constitution requires that exemption from consultation with the Public Service Commissions should be made very sparingly."¹

At the Centre, there is a healthy convention by which the Government elicits the views of the Union Public Service Commission before the posts are excluded from its purview. In this regard, the practice followed

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in the States is different. "In Andhra Pradesh, Jammu and Kashmir, Karnataka, M.P., Maharashtra, Manipur, Nagaland, Orissa, Punjab, Rajasthan, Tamil Nadu and Tripura, broadly speaking, the State Commission was consulted by the State Government before excluding any matter from the purview of the Commission,"¹ In certain other States the consultation is not thought necessary. For example in Nagaland, the "State Government was of the opinion that prior concurrence of the Service Commission was not necessary before excluding any post from the purview of the Commission and that only 'Consultation' was necessary."² In J & K, the Government makes the consultation, but in cases where the Commission disagrees with the proposal of the Government, there is no further procedure.

In Gujarat, a convention to consult the Commission before making the exclusion is followed. But the Government hardly takes the viewpoint of the Commission into consideration. This is perhaps because the Government considers it to be an advisory body only. This fact is

2 Ibid, p.120
evident from the various instances. For example, in the Eighth Annual Report of the Commission, it has been mentioned in the para 7(i) that:

"In March 1967, Government forwarded a proposal to the Commission for keeping the post of Manager, Gujarat Bhavan, Delhi outside the purview of the Commission on the basis that certain other posts at Delhi have also been kept outside the purview of the Commission. The Commission observed that the circumstances under which those posts were kept outside the purview of the Commission did not exist in this case. The Commission, therefore, did not agree with the proposal of Government. Government however, not accepting the advice of the Commission, issued orders in that respect in October 1967."

In this case, it is noticeable that the argument forwarded by the Government is not convincing. Moreover, although the Commission argued that the circumstances do not exist at present, the Government took its own course and issued the orders.

On the other hand, the Commission has also not come upto the expectations. It has not been that assertive
which it should have been. The Commission sometimes accepts the Government proposal on the one hand and advises the Government on the other lines. Such type of instance is given in the para 7 of the Fifth Annual Report of the Commission. It says:

"In November 1964, the Government forwarded a proposal to the Commission for keeping the post of Chief Town Planner and Architectural Adviser outside the purview of the Commission in order to fill up the post by direct negotiation as it was not likely to get suitable candidates through usual method of advertising the post by the Commission. While agreeing to the proposal the Commission also advised Government that it should not always be necessary to keep such posts outside the purview of the Commission merely because the post was of specialised character or because suitable persons were not likely to apply in response to public advertisement. The Commission informed the Government that in suitable cases it was not difficult for the Commission to devise methods for selecting and recommending suitable candidates for appointment to specialised posts without recourse to the normal methods of inviting applications through advertisement."
In this case, the Commission has calmly accepted the Government proposal. Moreover, the Government has not considered the Commission that competent to select the candidate for a specialised post. The case also reveals that Commission itself has not tried to be assertive in its own area of operation. This is perhaps because of the Constitutional provisions regarding the appointment of the members of the Commission and their tenure. Since the members of the Commission are appointed by the Government, they generally do not enter into the controversy. Moreover, the members have an eye on their future appointment after the retirement from the Commission. They expect some position in some semi-Government organisation. At the same time, the Constitutional provision makes them ineligible for any other employment under the Government. Because of this, the members that the Commission get are of old age. Young blood is not likely to accept this membership. So the Commission has always been packed with the aged persons. Generally, the aged persons are known for their 'status quo' attitude and so would not like to enter into the controversy. All these factors have played the part in making the Commission passive. It will go a long way if the mode of appointment is changed as suggested by the Study Team of the A.R.C. and a convention
is established to absorb the retiring members in some semi-Government organisations. That the Government should consult the Commission before making the exclusion of matters from the purview of the Commission is under discussion right from the beginning. An informal conference of the Chairman and Members of the Federal Public Service Commission and Chairmen of the Provincial Commissions held in Delhi in December 1941 observed that 'a convention should be established for consultation with the Commission before exclusion of matters from their purview'. The Eighth Conference of Public Service Commissions held in November 1976 also observed that "It would be desirable to make a provision in the Constitution for prior consultation with the Commission before any matter is excluded, from the purview of the Commission." The Secretary, UPSC in this context referred "that just as additional functions could be entrusted to the Service Commissions only by legislation, a similar provision be made in the Constitution that exclusion of any matters should also be through Legislation only." 

2 UPSC: Public Service Commissions in India, 1978, p.118
3 Ibid 119.
The ARC study teams have also endorsed a proposal of establishing a convention of consulting the Commission before the exemption from the purview is made.

Moreover, some other means are also suggested. The Eighth Conference of Public Service Commissions, which met in New Delhi in 1976 suggested that "It was therefore desirable that some guidelines or principles should be evolved as to the categories of posts which should normally be excluded from the purview of the Commissions."

On the other hand the study team on Recruitment, Selection, U.P.S.C./State P.S.Cs. and Training suggested that "All exemptions should be reviewed once in five years in consultation with the Public Service Commission."

One item from exemption from consultation regulations has become the most controversial. That one is the temporary appointment. The regulation provides that the State Government can make temporary appointments for periods up to one year without consulting the Public Service Commission. This provision is made with a view to make use of it in exceptional cases only. However, the Governments have misused this power for the favouritism. The vastness of this problem can be seen from the Assam State Public Service Commission report 1964-65.
The Report says: "--- the Commission note with regret that almost all the Departments of the Government seem to regard the Commission as a rubber stamp rather than a body set up under the Constitution. Although appointments under Regulations 3(e) and 3(f) are supposed to be resorted to in exceptional emergent cases, almost 100% of all appointments are made under these Regulations as soon as vacancies arise and these cases are not only not referred to the Commission within the prescribed time limits, but the incumbents are frequently kept on in their jobs for years before they are advertised. Eventually, advertisements are sometimes so framed as regards qualifications concerning experience, etc. that the persons appointed under these regulations may receive preference over other candidates." \(^1\)

In Gujarat, the Government Departments send the quarterly reports regarding the temporary appointments. On getting these reports, the Commission starts sending the questionnaire to the respective departments. However, it is being noticed that the departments make delay in sending such reports and sometimes the appointments

continue for more than one year. The number of delayed references is given in the appendix XI.

This provision of making temporary appointments can be used for making favours as well. The Departments, after making appointment, send the requisition form in such a way that the man already in service on temporary basis gets the preference over the other candidates. The ARC Report on State administration has commented that "This is a highly undesirable state of affairs and defeats the very purpose of establishing independent Public Service Commission, viz. the operation of the merit system and what is even more important, the constitutional guarantee of equality of opportunity in matters relating to employment under government. Therefore, serious efforts are required on the part of State Government to ensure that the role assigned to Public Service Commissions by the Constitution is not whittled down. It is the duty of the Legislature to take note of the irregularities pointed out by the Public Service Commissions and set in motion the necessary corrective steps."¹ In this context, the report has made a plea that "The power of making temporary appointments without consulting the Public

Service Commission should be used only in very exceptional cases and not by way of circumventing the provisions of the Constitution."² The Eighth Conference of Public Service Commissions, met in 1976, observed that "It was also necessary to explain to the appointing authorities the provisions in the Consultation Regulations which contemplated that ad hoc appointments would be made only in cases where the candidates appointed were not expected to remain in the post on an ad hoc basis for a period of more than one year."² Prof. Rege, in this regard has remarked that "Another favourite method of the executive to encroach on the legitimate sphere of the Commission is to misuse the power enjoyed by it under the Limitation of Functions Regulations to make temporary appointments for periods not exceeding six months or so. This power, which was obviously intended to make appointments in emergencies so that government work should not suffer, has often been used too indiscriminately by Governments and has been a constant source of friction between them and the Commissions. The gross abuse of this power of making temporary appointments can be

1 Ibid p.85
2 Union Public Service Commission: Public Service Commissions in India, 1978, p.137
effectively checked by making it obligatory to prepare departmental annual forecasts of personnel requirements in terms of which the Commission would make recruitment, withholding the salaries of candidates after the expiry of the permissible period by the Accountant-General and by sending departmental monthly returns to the Commission showing the temporary appointments made during the month.\(^1\)

3. Extension of Functions of the Commission

The Constitution of India has made provision for the extension of functions of the Public Service Commissions. The Article 321 provides: "An Act made by Parliament or, as the case may be, the Legislature of a state may provide for the exercise of additional functions by the Union Public Service Commission or the State Public Service Commission as respects the services of the Union or the State and also as respects the services of any local authority or other body corporate constituted by law or of any public institution" Under the Government of India Act 1935, the Section 267 provided that the Federal and Provincial Legislatures can entrust by law additional functions to the Federal and Provincial Commissions.

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By the Calcutta Municipal Act 1951, the functions of the West Bengal Public Service Commission were enlarged. It provided that the appointment to certain posts in the Calcutta Corporation should be made on the recommendations of the State Public Service Commission. The Act also made a provision for the Municipal Service Commission with a member of the State Public Service Commission as its Chairman to deal with the appointments in the Calcutta Corporation to the posts of lower grades of pay.

The U.P. Legislature has enlarged the functions of the U.P. Public Service Commission by placing various services and posts under the Municipal Boards and Municipal Corporations and the District Boards by making provisions in that respect in sections 58, 107, 111 and 112(A) of the U.P. Nager Mahapalikas Adhiniyam 1959 and in sections 43, 47 and 57 of U.P. Kashe^tra Samities and Zila Parishads Adhiniyam 1961 and Section 8 of the U.P. Avas Evam Vikas Parishad Act 1965.

In Kerala the functions of the Commission have been extended to the selection of personnel for the Kerala State Electricity Board, Kerala State Road Transport Corporation and other Government-owned companies and corporations. The Kerala Public Service Commission (Additional
Functions) Act 1963 provided for the recruitment of officers and servants of the Kerala State Electricity Board. In 1970 the Act was passed by which the direct recruitment of officers and servants of the Kerala State Road Transport Corporation other than the Chief Executive Officer or General Manager and the Chief Accounts Officer. The Kerala Public Service Commission (Additional Functions as Respects certain Corporations and Companies) Act 1970 provided for the additional functions in the matter of recruitment to posts and services under certain Corporations and Government Companies.

In Bihar, subject to the provisions of Bihar and Patna University Act 1951 and subsequent acts constituting two universities, the Public Service Commission exercises powers and functions to advise different universities in Bihar in matters of appointment and promotion to post of teachers and officers of the universities (other than the Vice-Chancellor and the Pro-Vice-Chancellor).

In Gujarat the Government has not passed any Act under the provision made in Article 321 of the Constitution. In fact there are 31 Government Companies, 8 statutory undertakings, 5 joint sector companies and 4 municipal corporations in Gujarat at present. The names of these
companies and undertakings are given in the Appendix XII. The total financial investment in some of the Government companies are given in the Appendix XIII. In 1970, the Bureau of Economics and Statistics has revealed in its Bulletin that there were 672 1st class officers and 398 2nd class officers working only in the 14 State Government undertakings. In this context, it is interesting to note that "The public sector in India - comprising of the Government at the Centre and in the States, local authorities and public enterprises - employs nearly 14 million people, with a total wage bill of around Rs.9000 crores per annum. By all accounts, the community is not getting its money's worth from this huge array of employees, who may be collectively described as the country's bureaucracy."¹

Moreover, the Government of Gujarat has now provided for the 100% grants to privately managed secondary schools and colleges in the State. In addition there are 7 universities in the State. These educational institutions are governed by the grants-in-aid code. So it is being argued that since the educational institutions are under the grants-in-aid code, it can not be brought within the

purview of the Commission. It is also said that it is in the interest of the education that these institutions remain in the private management. But it is noteworthy that there is a demand from the teachers' associations of schools and colleges to nationalise the education in the State.

So far the appointments in the Government Companies and statutory undertakings are concerned, the higher posts in these sector should be brought within the purview of the Commission. It is widely felt in the Gujarat State that appointments in these quasi-government bodies should be made by the impartial body like the public service Commission. Some of the former members and the ex-chairman of the Commission has expressed that higher posts in the statutory undertakings and the corporations should be within the purview of the Commission. On the other hand, some Government officials have felt that the Commission being not competent, it should not be brought under the purview of the Commission. In the former Bombay State, the Act was passed by which the appointments under the Bombay Municipality, carrying a minimum monthly salary of Rs. 300 or above was brought within the purview of the Commission.
In this context, the Estimates Committee observed that "for recruitment to statutory bodies/public undertakings there was no set uniform procedure and each body/undertaking recruited its personnel in its own way. The Committee urged that adequate machinery and procedure should be devised and brought into operation before long under the broad supervision of the Union Public Service Commission, to regulate recruitment for the increasing number of statutory bodies and the steadily growing public sector of economy."\(^1\) ARC report on Personnel Administration has also recommended that "The UPSC should be associated with the selection of personnel to, and their promotion within the quasi-government bodies entirely or substantially financed by Government."\(^2\) ARC study team on Recruitment, Selection, UPSC/State PSCs and Training has observed that "There are a number of institutions which are entirely financed by Government but which are technically not Government departments excluding the public sector undertakings, which are being dealt with by another Team of this Commission, we refer to the institutions like the Council of Scientific and Industrial

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Research, the Indian Agricultural Research Institute, and the Indian Council of Medical Research. By virtue of having formed themselves into registered societies the constitutional provisions regarding recruitment do not apply to them. Yet they are large establishments and undertake sizeable recruitment to technical as well as non-technical posts. The persons recruited to these institutions do make a lifetime career in them. They are governed in service matters by regulations which are identical with those applicable to regular government service. In the circumstances, it would be proper if, at least recruitment to these posts, if not other matters is handled by an independent body so that the same image of impartially is created as is the case with recruitment undertaken by the Union Public Service Commission. This would be ensured easily by entrusting recruitment to the Union Public Service Commission. The Chairman of the Eighth Conference of Public Service Commissions which met in 1976 observed that "if the Commissions were able to evolve methods of mass examination and generate necessary public confidence, there would be a demand from the Public,

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1 Administrative Reforms Commission: Report of the Study Team on Recruitment Selection, UPSC/State PSCs, and Training, New Delhi, Manager of Publications. 1967.
Parliament and Press to entrust the task of recruitment in public undertakings, Local Bodies or other Autonomous Organisations to the Public Service Commissions."

4. The Role of the Commission:

The role played by the Gujarat Public Service Commission is one that of a passive entity, and it works as if it is a Government department. So far, the Commission has not shown the spirit which the Constitution has envisaged.

Regarding the purview of the Commission, strong sentiments have been expressed in the legislative Assembly as well. Referring to the schedule of the Consultation Regulations, Shri Brahmkumar Bhatt observed in the Assembly that "the major portion of the main posts of our State is included in the schedule and that they are not required to be referred to the Public Service Commission. I understand that the State Government refers the posts of small cadre to the Public Service Commission. We should come forward and say that the Public Service Commission decides all these posts but we have done so that we have taken out the cream and have entrusted the task of churning the curd to the Public Service Commission. Then this list of important posts shows that the important task that we should entrust to the Public Service
Commission has not been entrusted and the State Government wants to keep all this power. I believe that it is not proper."¹ Shri Pratapray Shah remarked that "In the last years the Government has decided to put certain posts outside the purview of the Public Service Commission. The way in which the Government decides is not proper by any means. Hon. Chairman, I want to give one example that as the post of employment increases, all the posts if steadily comes within the purview of the Public Service Commission than it is an important matter for the Government, for the democracy and for the Administration."² Shri Manoharsinhji Jadeja felt that "I would wish that the scope of the Commission becomes wider. If we look into this report it gives the impression that certain services are kept outside the purview of the Commission. But it is to be considered that if we want to have a good work from the Commission than the posts which have been brought outside the purview of the Commission every year should steadily be brought within the purview of the Commission and it is desirable that it happens."³ He wanted that

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¹ The Legislative Assembly Debates, 20th March 1963, p.380
² The Legislative Assembly Debates No.2 book 9, 3rd September 1963.
³ The Legislative Assembly Debates No.2 book 9, 3rd September 1963.
anyone getting the salary more than Rs.100/- should be appointed by the Commission. Once again he strongly remarked that "I firmly believe that to increase the administrative efficiency, the scope of the Commission should be made wider --- but it is a matter of great regret that we are working in the opposite direction--- ---I want clarification from the Minister that why the two posts have been brought outside the purview of the Commission which were within the purview of Commission so far. When I am referring these two aspects from the report, I want to know that what advice was tendered by the Commission to the Government. But nothing is clear from the report---. I hope that wherever this type of policy is adopted, the Government must clarify it in the report." ¹

In 1966, while discussing the Commission's report, Shri Pratapray Shah made a plea in the Legislative Assembly that State Transport Corporation and Electricity Board etc. should be brought within the purview of the Commission. Shri Dharamsinhji Patel observed in the Assembly that "---mainly in our Gujarat Government, the ratio of exemption has increased day by day in the last

¹ The Legislative Assembly Debates, 5th February 1969
eight years. So far such exemption, the Government asks for the consent and the consent is given. This is a weak policy. So no Public Service Commission should keep the weak policy." Referring to the Government proposal to put certain posts from the information Department outside the purview of the Commission, Shri Patel observed that such posts in fact should be in the hands of the Public Service Commission. Shri H.M. Patel also remarked that "Hon. Chairman, the Public Service Commission started in 1935. At that time, it was a British Government. At that time certain posts were kept outside the purview of the Commission. In these appointments, every year there is an increase in the list. In the democracy, these appointments should not be kept outside the purview of the Public Service Commission."^2

Thus the members of the Legislative Assembly have shown concern about the role of the Public Service Commission. On the other hand, the Government takes the posts outside the purview of the Commission. Explaining the stand of the Government, one of the Ex-Parliamentary

1 Legislative Assembly Debates, 11th September 1968, p.1188
2 Legislative Assembly Debates, 11th September 1968, p. 1131.
Secretary of the Government said to me that it is the attitude of the Government to keep the posts outside the purview of the Commission and it is the desire of the Commission to bring the posts within the purview. But this stand has been severely criticised by the Social Workers as well. Shri Rikhavdas Shah while commenting upon the problem of recruitment has mentioned that "there is an information that in some of the cooperative and such other institutions the procedure for recruitment is most objectionable. For such institutions, recruitment should be made by deciding the proper standards and by inviting the applications through the advertisements or the work should be done after evolving some proper method. But in some institutions, the recruitments are made on the caprice of certain individuals as if the recruitments are to be made in the private body or in someone's private field. All this is so much shameful and it so reacts in the younger generation that it will not be surprising if some day it bursts out-----. It is not a proper belief that in our institution we appoint or select whoever seems to be fit to us." ¹

Commenting upon the role of the Gujarat Public Service

¹ Shri Rikhavdas Shah: 'Currents of the Public life'. In Sandesh (Gujarati Daily, 18-8-1975), Translated.
Commission, one of its ex-Chairmen explained that it is due to the culture of Gujarat that the Government is not taking over the welfare activities which the society likes to perform itself. In Gujarat, the Government has taken over many development activities during the last fifteen years. Now when the Government spends from the public fund, it is in the public interest to bring certain higher posts within the purview of the Commission. This will not only bring justice to the applicants but will also eradicate the favouritism and malpractices in the appointments. It will also add to the efficiency of the administration.

Though there has been different viewpoints regarding the scope of the Commission, the Government and Commission have not entered into a tug of war. The usual procedure is that the Government proposes to take the post outside the purview and Commission just advises on it and at last the Government amends the regulation. This is, perhaps, due to the political culture of Gujarat. In this context, it is interesting to note what Prof. Pravin Sheth has observed: "Modest and moderate, Gujarat politics, on the whole, had been more informed, by gentle and peaceful tradition and centrist position. It had been devoid of sharp or bitter ideological conflicts. Even its
radicals were moderate and opted for peaceful management of conflict; constitutional method rather than agitational approach was preferred by the Leftist Segment of Gujarat Community. Its people favoured democratic process and peaceful methods and moderation in solving problems. Pragmatism rather than revolutionary rhetoric was the guiding light of their behaviour.\(^1\)

Gujarat, having its commercial culture, is known for the rightist tendencies. The pragmatic and peaceful attitude of the Gujarat Community has favoured consensus rather than conflict. These cultural aspects have played its part in establishing the independent organisations rather than government agencies on the one hand and compromising attitude in our public life on the other.

5. Annual Reports:

The Fathers of the Constitution has looked upon the Public Service Commission as a bulwark of democracy. Meticulous care was taken to ensure its independence and to enhance its prestige. Although the clauses (1) to (3) of Article 320 correspond to sub-sections (1) to (3) of

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Section 266 of the Government of India Act, 1935, two new provisions, that of clause (5) of Article 320 and Article 323 to ensure parliamentary control were introduced. These provisions try to satisfy the protectionist as well as management schools of thought.

The Constitution of India has assigned an important functions to the Commission, but on the other hand it has been assigned an advisory and consultative role. The ultimate authority to take the decision is the Government. The Government is under no obligation to accept the advice of the Commission. This brings in the basic issue whether the Commission can effectively perform its role with the advisory powers. On 9th April 1925, the then Secretary of State for India raised this issue when he remarked that "whether a Commission constituted on the limited advisory basis—would command the confidence of the public and of the services to the degree which is necessary, if it is to function effectively." In a memorandum submitted to the Simon Commission, Sir Ross Barker, the first Chairman of the Public Service Commission, agreed with the above view and advocated for more powers of the Commission. But Sir Samuel Hoare, the then Secretary of State observed in the House of Commons that: "it is the definite view of my advisers here and in India
that Public Service Commission had much better be advisory——. The danger is that if you give them mandatory powers, you set up two Governments and there is everything to be said against that procedure."

In the Constituent Assembly as well, strong plea was made by the members that "all matters relating to appointment, promotion and transfer must be solely and exclusively vested in the Commission." However, the Public Service Commissions in India were given an advisory role but a constitutional restraint was imposed on the non-acceptance of the advice given by the Commission. Under Article 323 of the Constitution of India, it is provided that (1) It shall be the duty of the Union Commission to present annually to the President a report as to the work done by the Commission and on receipt of such report the President shall cause a copy thereof — together with a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance to be laid before each House of Parliament (2) It shall be the duty of a State

1 Parliamentary Debates, House of Commons, Session, 1934-35 Vol. 300 p.858
2 Constituent Assembly Debates, August 23, 1949 p.618
Commission to present annually to the Governor —— of the State a report as to the work done by the Commission, and it shall be the duty of a Joint Commission to present annually to the Governor—— of each of the States the needs of which are served by the Joint Commission a report as to the work done by the Commission in relation to that State, and in either case the Governor—— shall, on receipt of such report, cause a copy thereof together with a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance to be laid before the Legislature of the State."

The Article 323 assigns a duty on the President or the Governor to explain annually to the Legislature the reasons for non-acceptance of the advice given by the Public Service Commission. The annual report together with the memorandum has to be laid before the Parliament or the State Legislature as the case may be. As Prof. Muttalib observes, Commission's report serve two important objectives: as an instrument of management and as a democratic device. As an instrument of management, the

Commission aids the President or the Governor in effective policy formulation, execution and co-ordination. As a democratic device, it seeks to ensure its responsibility to Parliament or the State Legislature and to the citizen. Moreover, as Prof. Muttalib remarks "the system puts the Commission on its mettle, for it whets the awareness of the Commission that its conclusions are, by and large, in the nature of advice and, therefore, nothing but their expertness and practical value can elicit compliance from the administrative agencies. The type of authority which the Commission exercises is through the respect it commands because of its knowledge in service matters."  

However, by way of convention, the advice of the Commission is considered mandatory on Government in the democratic countries. In U.K., the decisions of the Commissioners are never questioned. It is provided under the Superannuation Act of 1859 that no civil servant can draw a pension unless he produces a certificate that his appointment was made with the concurrence of the Civil Service Commission. In Canada, as Prof. White observes "the Civil Service Commission of three members has been given complete control of the service both with respect to

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regulation and with respect to recruitment, subject to the supervision of the Governor in Council."

In our country, the Governments are not perturbed by the Constitutional provision perhaps because of the sure majority at their back. Very often the tendency is not to accept the advice of the Commission and so they employ other means. It is noteworthy that one of the Union Home Ministers stated on the floor of the Parliament that the Government was not a rubber stamp of the Union Public Service Commission, while one of the Chief Ministers stated in the State Legislature that the Ministers should have the last word in making appointments because they are the elected representatives of the people. The Government of Punjab was not even submitting the Memorandum explaining the reasons for non-acceptance of the advice of the Commission. On the other hand, in Haryana, we find that the report is so small but the Memorandum is too big.

The first Commission for Bombay and Sind Provinces, which is a forerunner of the present Gujarat Public Service Commission, established a convention that the advice tendered by the Commission should be accepted by the Government. The convention was incorporated as an instrument of instructions. This instruction was revised
in 1939-40 providing that when the Department considered that there were sufficient grounds to depart from the advice tendered by the Commission, such grounds should be put up for the orders of Government.

The convention to accept the advice of the Commission is still observed in Gujarat but with a difference. The reports of the Commission reveal that there is hardly a case in which the Government has differed. In the Memorandum which the Government presents along with the report, generally it mentions that "The relations between the Government and Gujarat Public Service Commission continued to be cordial during the year. The Commission was consulted during the year in a large number of cases and there was no case during the period under report for Government to depart from the advice tendered by the Commission."

The copy of the Memorandum is given in the Appendix XIV.

In an interview, Dr. P.C. Vaidya, the Ex-Chairman of the Gujarat Public Service Commission, said that "In Gujarat, the Commission is held in high esteem. It is a tradition. No effort is made to influence the Commission. Government respects the decision of the Commission. In cases of controversy, the Chief Secretary comes to the Commission and explain the point of view. In appointments, no change is made. In Haryana, the report is small and memorandum is
big but in Gujarat there is a small memorandum.\(^1\)

However, this rosy picture is not without thorns. There is no outright disagreement between the Government and the Commission, but very often the matter is kept 'under consideration' or 'under correspondence'. Sometimes the contradictory statements are given in the report and so it makes the discussion, in the Assembly more difficult. On 3rd September 1963, the ex-MLA Shri Narandas P. Popat observed that "It is written in it (report) that 'in all the cases the advice of the Commission is accepted by the Government.' Now see, in the same paragraph, it is again written that 'the number of cases in which the decision is against the Government proposal is very small. What is true?\(^2\)" It was also remarked by Shri Sabubhai Vaidya that "It has so happened here that the Government has accepted almost all the recommendations as is evident from the report. It is not evident which recommendation has not been accepted and why it has not been accepted. If all the recommendations are accepted then it means that the mind of both the Public Service Commission and the Ministers sitting in the

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1 Dr. P.C. Vaidya in an interview on 12-3-80.  
2 The Legislative Assembly Debates 3-9-63.
Government are the same."¹

At the same time, the practice of presenting the prototype memoranda does not serve the purpose. The Government gives very little about the controversies in the Memoranda and the reports also does not give the controversial issues. Except the third and forth report, the reports of the Commission also toe the line taken by the Government. In this regard, Shri H.M. Patel, Ex-MLA said in the Assembly that "It seems to me that in presenting the reports of this nature before the House for its consideration, it ought to be the practice also for government to indicate in a note what its general view of the report is. What is its general view of the recommendation and conclusions of the report? What it proposes to do in order to make the task of the Public Service Commission more fruitful? In order to make it possible for the Public Service Commission to serve the Government better in its sphere of action which is indicated? But we don't have that. In fact, Sir, the discussion becomes somewhat artificial, somewhat unsatisfactory, because there is no guidance obtained from Government at all. The report gives,

¹ The Legislative Assembly Debates, 3-9-1963.
from that report the only thing on which Government has commented is where, and that too not in all cases, in one or two cases, it has departed from the recommendation of the Commission. There ought to have been an assessment on the part of the Government of some of the facts mentioned in the report giving full explanations of their attitude in this matter. In fact, I may say Sir, that there are cases in which reference by the Commission has been made to the Government but which has remained unanswered for months and sometimes for years. There are departments here who have made appointments and then not bothered to go before the Public Service Commission, not within a matter of 12 months, but not within a matter of three years, and Government does not think that even such a matter calls for any comments from it. The report is just presented to the House as it is without comments whatsoever. It would almost seem as if Government does not regard the Public Service Commission of this State as an institution of importance; that it is one of the most important institution; that it is an institution which provides aid initially with Government servants to start their services. It also enables, in fact it is a body by which Government inspires confidence amongst its servants that the promotions etc. will always be made in accordance
with certain rules, that there will be no arbitrary action on the part of the Government and yet this report is full of instances, full of instances, Sir, in which promotions have been made in arbitrary manner and when the Commission has drawn the attention of the Government, there has been no attempt at replying for months on it."  

Moreover the reports are laid before the House after two to three years. This practice of presenting the reports after the lapse of certain period is in almost every State including Gujarat. Such time-lag prevents the Members of the Assembly from discussing the issues that might have arisen between the Commission and the Government. Time and again this problem has been raised in the Assembly. On 11th September 1968, Shri Dharmsinhbhai Patel, Ex-MLA remarked in the Assembly that "The Report of the year 1964-65 has been printed in '67 and comes for the discussion in '68. This means that Report is too old. In fact it should be laid before the Assembly every year, but it is delayed for two to three years which should not happen."  

On the same day, Shri Nagajibhai Arya, Ex-MLA said that "The Reports of

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2 The Legislative Assembly Debates, 11th September 1968 pp.1187-83.
1964-65 and 1965-66 has come in September 1968 which means that they have come so late that I feel that it is of no use presenting the reports so late and the reports have become so old that it is of no use expressing my views. So I make one recommendation that the Report of this Commission should come before this House every year and the Members should get more time so that proper and exact views can be expressed."¹ On 3rd September 1963 Shri Chhabildas Mehta, ex-MLA, expressed that "If I forget not, it is provided in our Constitution that every time the report should be presented and if the report is not presented then when the report is presented the reasons along with it also should be presented that because of these reasons the report is presented late."²

This principle of legislative review appears good in principle but how far it has succeeded in practice is a matter to be examined. Though there is a possible limitation of a dearth of time for such legislative review, the members pay only scant attention on these reports. The reports are to be laid on the table of the House. It will

¹ The Legislative Assembly Debates, 11th September 1968, pp. 1203-1204
² The Legislative Assembly Debates, 3rd September 1963.
be deemed as accepted by the House after a lapse of fourteen days from the date on which it was laid on the table unless a motion is moved by a member for not accepting the report. This means that no resolution is required for the acceptance of the report by the House. If at all there is a discussion on the report, only then the light can be thrown on the instances of non-acceptance. But the history of Indian Legislatures reveal that discussion on the reports of the Commissions has remained a matter of Constitutional provision. We notice from the proceedings of the State Assemblies that either there is no discussion or that the discussion is irrelevant. Thus the safeguard provided in the Constitution is in practice nullified and it defeats the purpose for which the Public Service Commissions has been established.

Gujarat has inherited a convention which was established in the beginning that the advice tendered by the Commission should be accepted by the Government. The convention was incorporated as an instrument of instructions under the Act of 1935. In this regard, it is noteworthy that under the Act, it was not provided for the preparation or publication of the report by the Commission. The Commission in Madras used to publish the report. The reports of the Bombay-Sind Public Service Commission for 1937-38 and
1938-39 were also published. This convention is still followed and very few cases of non-acceptance of the Commission's advice take place. In the controversial cases, the Government either keeps the matter under correspondence with the Commission or sends the officer to the Commission to explain the point of view. Thus the cases of non-acceptance is meagre in Gujarat. Dr. P.C. Vaidya, Ex-Chairman of the Commission considers this trend as a "healthy sign."

However Shri Raghavaji Leuva, the first Chairman of the present Commission is of the view that there can not be the discussion on the activities of the Commission. Now, so far the internal administration of the Commission is concerned, Shri Leuva is right but on the problems of pur-view, appointments of the Members of the Commission or in the cases of non-acceptance, the discussion should take place. The discussion in the House can throw light on the stand taken by the Government and it also helps in maintaining the status of the Commission. In fact, many Government officials in Gujarat resent for not having a purposeful discussion in the Legislative Assembly.

The history of the discussion on the Commission's reports in the Gujarat Legislative Assembly reveals that
it is becoming poorer day by day. This is because of the
time factor and also because the memoranda attached along
with the reports is of one para. It is also to be
noticed that the purposeful discussion used to take place
till 1969, but after that the standard of discussion has
come down. This is perhaps because of the political in-
stability which started after 1969. The discussions were
rich enough during the years 1963-64 to 1963-69, but after
that there is no worthwhile discussion in the Assembly. It
has so happened that the Government in office has to
present the report of the earlier Government and perhaps
that is why the opposition members do not raise the
issues. Thus the political atmosphere has adversely
affected the discussion on the Commission's reports. This
is not a healthy trend and it has pushed the Commission
into the background. The public know very little about the
Commission's activities and the respect it receives from
the Government. This aspect has also created an impression
that the Commission is either passive or has become just a
Government department.