



148

**PARLIAMENT OF INDIA
RAJYA SABHA**

**DEPARTMENT-RELATED PARLIAMENTARY
STANDING COMMITTEE ON HOME AFFAIRS**

ONE HUNDRED AND FORTY EIGHTH REPORT

ON

**THE NEW DELHI MUNICIPAL
COUNCIL (AMENDMENT) BILL, 2010**

**(PRESENTED TO RAJYA SABHA ON 22 February, 2011)
(LAID ON THE TABLE OF LOK SABHA ON 22 February 2011)**

**RAJYA SABHA SECRETARIAT
NEW DELHI
FEBRUARY, 2011/PHALGUNA, 1932 (SAKA)**

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NEW DELHI**

FEBRUARY, 2011/PHALGUNA, 1932 (SAKA)

CONTENTS

	PAGES
COMPOSITION OF THE COMMITTEE	(i)
PREFACE	(ii) - (iii)
REPORT	1 - 47
1. INTRODUCTION	1 - 2
2. SALIENT FEATURES AND NECESSITY OF BILL	2 - 7
3. PRESENTATIONS OF MINISTRY OF HOME AFFAIRS	7 - 10
4. VIEWS OF REPRESENTATIVES OF RESIDENTS WELFARE ASSOCIATIONS & MLA, DELHI CANTT., DELHI LEGISLATIVE ASSEMBLY AND MEMBER, NDMC,	11 - 12
5. COMMENTS OF GOVERNMENT ON EVIDENCE TENDERED BY NON-OFFICIAL WITNESSES	13 - 16
6. FINAL COMMENTS OF MINISTRY OF HOME AFFAIRS	16 - 22
7. DELIBERATIONS OF COMMITTEE	22 - 33
8. ANALYSIS OF GOVERNMENT JUSTIFICATION FOR RETAINING <u>STATUS QUO</u> OF NDMC	33 - 46
9. RECOMMENDATIONS OF COMMITTEE	47

* RELEVANT MINUTES OF MEETINGS OF COMMITTEE

x ANNEXURE

- I. The New Delhi Municipal Council (Amendment) Bill 2010
- II. Press Release
- III. List of persons/bodies from NDMC area who submitted Memoranda on the Bill
- IV. Written comments submitted by Members on the Bill.

x To be appended at the stage of printing

**Department-related Parliamentary Standing
Committee on Home Affairs
(re-constituted w.e.f. 31st August, 2010)**

Rajya Sabha

1. **Shri M. Venkaiah Naidu** - **Chairman**
2. Shri Rishang Keishing
3. Dr. N. Janardhana Reddy
4. Shri S.S. Ahluwalia
5. Shri Naresh Chandra Agrawal
6. Shri Prasanta Chatterjee
7. Shri Javed Akhtar^f
8. Shri Tariq Anwar
9. Dr. V. Maitreyan
10. Shri D. Raja

Lok Sabha

11. Shri L.K. Advani
12. Dr. Rattan Singh Ajnala
13. Dr. Kakoli Ghosh Dastidar
14. Shri Ramen Deka
15. Shri L. Raja Gopal
16. Shri Mohd. Maulana Asrarul Haque
17. Shri Naveen Jindal
18. Shri Jitender Singh Malik (Sonapat)
19. Shri Lalubhai Babubhai Patel
20. Shri Natubhai Gomanbhai Patel
21. Dr. Nilesh N. Rane
22. Shri Bishnu Pada Ray
23. Adv. A. Sampath
24. Shri Hamdullah Sayeed
25. Shri Neeraj Shekhar
26. Dr. Raghuvansh Prasad Singh
27. Shri Ravneet Singh
28. Shrimati Seema Upadhyay
29. Shri Harsh Vardhan
30. Shri Bhausahab Rajaram Wakchaure
31. Shri Dinesh Chandra Yadav

^f Shri Javed Akhtar nominated w.e.f. 21 September 2010 *vice* Shri Tiruchi Siva, who resigned from the Membership of the DRSC on Home Affairs w.e.f. 13th September, 2010.

SECRETARIAT

1. Shri Tapan Chatterjee, Joint Secretary
2. Shri P.P.K. Ramacharyulu, Director
3. Shri D.K. Mishra, Joint Director
4. Shri Bhupendra Bhaskar, Assistant Director
5. Shri Sanjeev Khokhar, Committee Officer

PREFACE

I, the Chairman of the Department-related Parliamentary Standing Committee on Home Affairs, having been authorized by the Committee to submit the Report on its behalf, do hereby present this One Hundred and Forty-eighth Report on the New Delhi Municipal Council (Amendment) Bill, 2010.

2. In pursuance of the rules relating to the Department-related Parliamentary Standing Committees, the Chairman, Rajya Sabha, referred the New Delhi Municipal Council (Amendment) Bill, 2010 (**Annexure -I**), as introduced in the Lok Sabha on 3rd August, 2010 and pending therein, to the Committee on 20th August, 2010*, for examination and report within two months i.e. by 19th October, 2010 which was extended initially upto 15th November, 2010, followed by another extension upto 31st January, 2011 and finally upto 25th February, 2011.

3. The Committee considered the Bill in eight sittings held on 21st & 30th September, 7th & 22nd October, 23rd November, 20th December, 2010 and 5th, 13th & 24th January, 2011. The Committee held preliminary discussion on the Bill in its sitting on 21st September, 2010 and heard the presentation of Home Secretary in its next meeting held on 30th September, 2010.

3.1 The Committee heard further presentation of the Home Secretary on the Bill in its meeting held on 7th October, 2010, and heard him once again in its next sitting held on 22nd October, 2010. In the sitting held on 22nd October, 2010, the Committee felt that as the Bill involved certain policy issues, it should hear the representatives of institutions of local self government, NDMC and Residents Welfare Associations of private as well as government colonies in the NDMC area. The Committee in its sitting held on 20th December 2010 heard representatives of RWA of a private colony and a government colony each from NDMC area and Shri Karan Singh Tanwar, MLA, representing Delhi Cantonment Constituency (which included Sarojini Nagar, an NDMC area) and also a member of NDMC, on the Bill.

3.2 In the sitting held on 20th December, 2010 the Committee decided to issue a press release inviting written memoranda from the residents of the NDMC on the provisions of the Bill. Accordingly, the press release was issued, (**Annexure- II**). In response thereto, fifteen memoranda were received (List of persons/bodies who submitted Memoranda is at (**Annexure- III**)). The Committee in its sitting held on 5th January, 2011, further heard the Home Secretary.

3.3 Detailed comments on the Memoranda were received from the Ministry of Home Affairs and circulated to the Members. The Committee in its sitting on 13th January, 2011, held another round of discussion on the Bill.

3.4 Eleven Members of the Committee submitted their views in writing, in support of the Bill, nine of which were identically worded. A Member of the Committee submitted his written comments, against the Bill. (A copy each of the written comments, is placed at (**Annexure- VI**)).

* vide Rajya Sabha Parliamentary Bulletin Part II No. 47660 dated 20th August, 2010.

3.5 The Committee in its next sitting held on 24th January, 2011 further considered the Bill in the light of the final response of the Ministry of Home Affairs. As no agreement emerged in the Committee on the provisions of the Bill, it could not proceed with the clause-by-clause consideration thereof and decided to present its report, incorporating all the view points.

4. The Committee in its sitting held on 14th February, 2011, considered the draft report and adopted the same.

5. The Committee has made use of the following documents in finalizing the Report:-

- (i) The New Delhi Municipal Council (Amendment) Bill, 2010;
- (ii) The New Delhi Municipal Council Act 1994 (No. 44 of 1994);
- (iii) Background Note on the New Delhi Municipal Council (Amendment) Bill, 2010;
- (iv) Eleventh Report of the Estimates Committee (14th Lok Sabha) on New Delhi Municipal Council;
- (v) Thirteenth Report on Action Taken by the Government on the recommendations contained in the Eleventh Report of the Estimates Committee (14th Lok Sabha) on the Ministry of Home Affairs - New Delhi Municipal Council;
- (vi) The New Delhi Municipal Council Bill, 1994(as introduced in the Lok Sabha on 13th June, 1994);
- (vii) L. S. Deb dated 14th June, 1994 on the New Delhi Municipal Council Bill, 1994;
- (viii) R. S. Deb dated 15th June, 1994 on the New Delhi Municipal Council Bill, 1994;
- (ix) The Govt. of National Capital Territory of Delhi Bill, 1991 (as introduced in the Lok Sabha on 16th December, 1991);
- (x) L.S. Deb dated 20th December, 1991 on the Govt. of National Capital Territory of Delhi Bill, 1991;
- (xi) R. S. Deb dated 21st December 1991 on the Government of National Capital Territory of Delhi Bill, 1991;
- (xii) The Govt. of National Capital Territory of Delhi Act, 1991 (No. 1 of 1992);

- (xiii) Report of Committee on Reorganisation of Delhi Set-Up (Balakrishnan Committee), Parts I & II, December, 1989;
- (xiv) Ashok Pradhan Committee Report on Multiplicity of Institutions (dealing with Urban Development & Civic Amenities) in Delhi, Ministry of Home Affairs, October, 2006;
- (xv) Local Governance: An Inspiring Journey Into the Future- Sixth Report of Second Administrative Reforms Commission, Govt. of India, October, 2007; and
- (xvi) State and District Administration- Fifteenth Report of Second Administrative Reforms Commission, Government of India, April 2009.

6. For facility of reference and convenience, observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

New Delhi
14th February, 2011

M. Venkaiah Naidu
Chairman
Department-related Parliamentary
Standing Committee on Home Affairs

REPORT

1. Introduction

1.0 The New Delhi Municipal Council (Amendment) Bill, 2010 (*Annexure-I*) seeks to amend certain provisions of the New Delhi Municipal Council Act, 1994 (No. 44 of 1994) relating to composition of the New Delhi Municipal Council (NDMC) and the procedure for presiding over the meetings of the Council.

1.1 The Ministry of Home Affairs, in their Background Note stated that the NDMC Area consists of about three per cent of the area of Delhi and three per cent population of the NCT of Delhi. It comprises the territory that has been described as Lutyen's Delhi and which has historically been referred to as the seat of central authority in the Union of India. The area houses important buildings like Rashtrapati Bhawan, Parliament House, Supreme Court, North and South Blocks and buildings abutting Central Vista and also diplomatic missions which function as territorial entities under the sovereign jurisdiction of their Flag States. It was further stated that the Government of India is nearly the sole land owner and also owns about 80% of the buildings in the NDMC area. Private ownership of property in this area is marginal. According to the Ministry, on account of these special characteristics it was felt that any scheme for the governance of this area based on conventional pattern of representative local self-government would be unworkable and out of place, as the pre-eminent character of this area is that of being the seat of Central Government.

1.2 The Ministry stated that a special legislation, namely, the New Delhi Municipal Council Act, 1994 was accordingly enacted for the governance of NDMC area. Regarding the composition of the Council, the provisions of Section 4 of the Act, reads as below:

“(1) The Council shall consist of the following members, namely:-

(a) a Chairperson, from amongst the officers, of the Central Government or the Government, of or above the rank of Joint Secretary to the Government of India to be appointed by the Central Government in consultation with the Chief Minister of Delhi;

(b) three members of Legislative Assembly of Delhi representing constituencies which comprise wholly or partly the New Delhi area;

(c) five members from amongst the officers of the Central Government or the Government or their undertakings, to be nominated by the Central Government; and

(d) two members to be nominated by the Central Government in consultation with the Chief Minister of Delhi to represent from amongst lawyers, doctors, chartered accountants, engineers, business and financial consultants, intellectuals, traders, labourers, social workers including social scientists, artists, media persons, sports persons and any other class of persons as may be specified by the Central Government in this behalf.

(2) The Member of Parliament, representing constituency which comprises wholly or partly the New Delhi area, shall be a special invitee for the meetings of the Council but without a right to vote.

(3) Out of the eleven members referred to in sub-section (1), there shall be at least three members who are women and one member belonging to the Scheduled Castes.

(4) The Central Government shall nominate, in consultation with the Chief Minister of Delhi, a Vice-Chairperson, from amongst the members specified in clause (b) and (d) of sub-section (1).”

2. Salient features and necessity of Bill

2.0 The Ministry stated that the necessity for amending the NDMC Act, 1994, arose partly as a result of the delimitation exercise in the NCT of Delhi and partly because of recommendations of the Estimates Committee of the 14th Lok Sabha and the Balakrishnan Committee. The Statement of Objects and Reasons (SOR) of the Bill explains the legislative intent and the salient features of the Bill, as under:-

"The New Delhi Municipal Council Act, 1994 has been enacted to provide for the establishment of the New Delhi Municipal Council and for matters connected therewith or incidental thereto. It provides, *inter alia*, that there shall be three Members of the Legislative Assembly of Delhi, whose constituency fall fully or partly in the New Delhi area, as Members in the New Delhi Municipal Council. After delimitation of Assembly Constituencies in

the National Capital Territory of Delhi, only two such Assembly Constituencies fall within the New Delhi area and consequently only two Members of the Legislative Assembly may become the members in the New Delhi Municipal Council.

2. Presently, the Member of Parliament representing the New Delhi area in the Lok Sabha is a Special Invitee to the meetings of the New Delhi Municipal Council without voting rights. The Estimates Committee of Fourteenth Lok Sabha in its Eleventh and Thirteenth Reports recommended, *inter alia*, that the Member of Parliament should be given voting rights.

3. In view of the aforesaid, it is proposed to amend the New Delhi Municipal Council Act, 1994 to provide, *inter alia*, that,—

(a) the Member of Parliament representing the New Delhi area in the Lok Sabha shall be made a member of the New Delhi Municipal Council with voting rights;

(b) the number of members of the Legislative Assembly, who are members of the Council, be reduced from three to two;

(c) the number of Members representing certain fields be increased from two to four;

(d) out of thirteen members there shall be at least three members who are women and two members belonging to the Scheduled Castes in the Council, out of which one shall be from the nominated Members representing certain fields.

4. In view of proposed inclusion of the Member of Parliament, referred to in sub paragraph (a) of the preceding paragraph, in the New Delhi Municipal Council and two Members of Legislative Assembly being the members of the New Delhi Municipal Council, it is further proposed to amend the aforesaid Act to revise the procedure for presiding over the meetings of the Council."

2.1 The Ministry of Home Affairs in its background note also stated that the Estimates Committee of the 14th Lok Sabha examined the whole issue of composition of the NDMC, and in its 11th Report, the Committee, *inter alia*, recommended that the Government should review the desirability of modifying the composition of the Council, as recommended by the Balakrishnan Committee. The Estimates Committee recommended as under:-

"The Committee note that Balakrishnan Committee constituted to look into the manner in which the governance of the Union Territory should be carried

on, also looked into the functioning of the municipal arrangements in the area.

That Committee had recommended that NDMC should consist of a certain number of Members elected on the basis of adult franchise and an equal number of members appointed by the Lt. Governor and the Vice Chairman, NDMC should be elected by members themselves. As the area covered by NDMC includes not only Government offices, Diplomatic Missions, etc., but also about three lakh resident population, the Committee are of the view that the recommendations of Balakrishnan Committee in this regard need to be reconsidered by the Government in all seriousness. This attains even greater significance in view of poor participation of nominated members of the Council in the meetings of the Council and its committees. The Committee also note that according to Section 4(2) of the NDMC Act, 1994, the Members of Parliament representing the constituencies which comprise wholly or partly the New Delhi area, shall be special invitees for the meetings of the Council without a right to vote. On the other hand, the MLAs representing constituencies which comprise wholly or partly the New Delhi area enjoy the right to vote in the Council meetings. The Home Secretary was candid in admission during evidence: 'I think it stands to reason that Members of Parliament should also have voting right'. The Committee, therefore, stress that Government should review the desirability of modifying the composition of the Council as recommended by Balakrishnan Committee, keeping in view the basic democratic principles and also granting voting right at the Council meetings to the Members of Parliament representing the constituencies comprising wholly or partly the area under the jurisdiction of NDMC"¹.

2.2 Responding to the above mentioned recommendation, the Ministry of Home Affairs furnished its Action Taken Note as under:-

"It has been decided that the aforesaid recommendations made by the Estimates Committee are required to be looked into in greater detail to come to correct conclusion and for the present the existing arrangement may be continued."²

2.3 The Estimates Committee (14th Lok Sabha) in its 13th Report on Action Taken by the Government on the recommendations contained in its 11th Report on New Delhi Municipal Council (NDMC), reiterated its earlier recommendation as under:-

"The Committee are not satisfied with the action taken reply furnished by the Ministry. Secretary, Ministry of Home Affairs in his deliberation during oral evidence has invariably (*sic*) stated: '.....But I think it stands to reason that Members of Parliament should also have a voting right'. Apparently no serious efforts appear to have been made in this regard after the presentation

¹ Eleventh Report of Estimates Committee (2006-07) (14th Lok Sabha) on New Delhi Municipal Council, page 43.

² Thirteenth Report of Estimates Committee (2006-07) 14th Lok Sabha on New Delhi Municipal Council page 2

of the Report to the House. The Committee, therefore, reiterate their earlier recommendation and desire that recommendations of the Balakrishnan Committee in regard to modifying the composition of the Council be reconsidered in all seriousness and Members of Parliament representing the constituencies comprising wholly or partly the area under jurisdiction of NDMC should be granted right to vote in the Council meetings."³

2.4 The Ministry, in its background note, further stated that the Government of India considered the recommendations made by the Estimates Committee, in consultation with the Government of NCT of Delhi, the Ministry of Urban Development and the New Delhi Municipal Council and decided that the existing system may continue, for the following reasons:-

- (i) The NDMC area has a special status as the seat of the Central Government, and as such a different kind of system had to be structured which took into account special characteristics of the area.
- (ii) While deciding composition of the NDMC, the recommendations made by the Balakrishnan Committee were considered in all seriousness at the highest level.
- (iii) The model adopted for the NDMC appears to be close approximation of what was recommended by the Balakrishnan Committee, taking into account the special characteristics of the NDMC area.
- (iv) There is adequate representation of the public in the Council as almost half of the total members of the Council are representatives of the public.
- (v) The elected Government of the NCT of Delhi is consulted in the appointment of the Chairperson, Vice-Chairperson and two representatives of the public.
- (vi) The Ministry of Urban Development, Government of NCT of Delhi and NDMC, as also the Ashok Pradhan Committee, set up by Ministry of Home Affairs to study multiplicity of institutions in Delhi, are in favour of maintaining status quo.
- (vii) The role of the Member of Parliament in the Council has been envisaged as 'Special Invitee', and not as a Member. As such, it may be difficult to grant voting rights to the Special Invitee.

2.5 The Ministry informed this Committee that the Government of India re-considered the entire issue relating to the composition of NDMC vis-à-vis

³ *ibid*, pp. 2-3

recommendations contained in the 11th and 13th Reports of the Estimates Committee (14th Lok Sabha), Balakrishnan Committee Report and in the wake of delimitation of constituencies. It was felt that the Member of Parliament representing the New Delhi area in the Lok Sabha, may be made a member of the Council with voting rights.

2.6 The Ministry stated that sub-section (1) of section 25 of the NDMC Act, 1994 provides that the Chairperson or in his absence, the Vice-Chairperson, or in the absence of both, such other member present, as is decided by the Council, shall preside at every meeting of the Council. It was, however, felt that this order may be re-arranged so as to ensure public representation in its correct spirit and perspective. The Ministry, therefore, stated that it was proposed that the following order may be followed in presiding over the meetings of the Council:

- (i) The meeting of the Council should be chaired by the Chief Minister in case he/she represents the constituency which comprises wholly or partly the New Delhi area, and such member of the Legislative Assembly of Delhi attends the meeting as a member of the Council.
- (ii) The meeting of the Council should be chaired by the Minister of the Central Government if he/she happens to be the Member of Parliament representing the constituency which comprises wholly or partly the New Delhi area and such Member of Parliament attends the meeting as a member of the Council.
- (iii) The meeting of the Council should be chaired by the Minister of the Government of NCT of Delhi if he/she represents the constituency which comprises wholly or partly the New Delhi area and such member of the Legislative Assembly of Delhi attends the meeting as a member of the Council.
- (iv) A meeting of the Council should be chaired by the Member of Parliament, not being a Minister of the Union, representing the Constituency which comprises wholly or partly the New Delhi area, and such Member of Parliament attends the meeting as a member of the Council.
- (v) In all other cases, the Chairperson of the Council may continue to chair the meetings of the Council as at present.

3. Presentations of Ministry of Home Affairs

3.0 The Home Secretary and other representatives of the Ministry of Home Affairs made a presentation before the Committee on 30th September, 2010.

3.1 Explaining the special characteristic of NDMC, the Additional Secretary, Ministry of Home Affairs stated that it is charged with the municipal governance of New Delhi area, consisting of about three per cent of area and three per cent of population of NCT of Delhi. It comprises of important buildings like Rashtrapati Bhawan, Parliament House, Supreme Court, South Block and North Block and also houses diplomatic missions which function as territorial entities under the sovereign jurisdiction of their Flag States. She also stated that the Government of India is nearly the sole land owner and owns about eighty per cent of the area while private ownership of property is marginal. NDMC area comprises the territory regarded as the seat of central authority in the Union of India. She argued that in view of the special characteristics of the area, governance based on conventional pattern of representative self-government was found unworkable. Accordingly, a special legislation, namely, the New Delhi Municipal Council Act, 1994 was structured for the New Delhi area.

3.2 The Additional Secretary, reiterating the salient features of the Bill, and elaborating the procedure for presiding over the meetings of the Council, stated that the following order was proposed for chairing the meetings of the Council to ensure public representation in correct spirit and perspective:-

- (i) Chief Minister of Delhi (In case he/she represents the New Delhi area in the Assembly)
- (ii) Minister of the Central Govt. (if he/she is an MP representing New Delhi)
- (iii) Minister of the GNCTD (if he/she is an MLA representing New Delhi)
- (iv) MP representing New Delhi constituency
- (v) Chairperson
- (vi) Vice-Chairperson

3.4 After the presentation, Members of the Committee felt that the Bill entailed some serious implications which called for detailed deliberations. The Home Secretary was asked to revisit the Balakrishnan Committee Report on the 'Reorganisation of the Delhi

Set-Up', the Estimates Committee Reports, and reconcile the present amendment Bill with their recommendations. A line of thinking emerged in the Committee as to why the NDMC could not be restructured to make it an elected body in place of its nominated character.

3.5 The Ministry of Home Affairs made another presentation on the Bill before the Committee on 7th October, 2010.

3.5.1 In the presentation, the Additional Secretary, Ministry of Home Affairs explained the composition of the NDMC vis-a-vis the proposed changes including the procedure for presiding over the meetings of the Council. The Committee Members were further apprised of the evolution of administrative structure of NDMC since 1912 and the implications of the Seventy-third and Seventy-fourth Constitution Amendments. The Committee was also told that the recommendations contained in the 11th and 13th Reports of the Estimates Committee (of 14th Lok Sabha) and the recommendations of the Balakrishnan Committee, were taken into consideration while drafting the present Bill.

3.5.2 Giving the highlights of the NDMC area, a representative of the Ministry stated that NDMC area, the seat of governance in India, was reduced from 84 square kms to 43 square kms. He also reiterated that the area housed diplomatic missions and the proportion of the property of the Government of India was much more as compared to private property. It was also stated that NDMC consists of an estimated floating population of ten lakhs which was many times more than the persons residing in the area.

3.5.3 Giving the background of NDMC area, the representative of the Ministry of Home Affairs stated that historically the area enjoyed a different system of local governance as all the Members of the Council were nominated from 1916 to 1994, under the Punjab Municipal Act. In 1994 the present structure of the NDMC was decided after considering the Balakrishnan Committee Report followed by a discussion by the Group of Ministers (GoM) and further discussion held among the Prime Minister, the Home Minister and the Chief Minister of Delhi. The representative of the Ministry argued that the NDMC Act strived to balance the imperatives of Central Government

control on governance of the capital city and rights of local inhabitants for self governance.

3.5.4 During the course of the oral deposition by the representatives of the Ministry, the Committee Members were informed that the Ashok Pradhan Committee (2006) extensively examined the Balakrishnan Committee Report; provisions of the NDMC Act and related developments thereafter and recommended that NDMC could not function on the conventional system of local governance i.e., representative local self-government, in view of the special characteristic of the NDMC area and the need for Central Government's control on the body.

3.5.5 The representative of the Ministry also stated that the Second Administrative Reforms Commission (2009) had examined the Balakrishnan Committee Report, Ashok Pradhan Committee Report vis-à-vis the provision of the NDMC Act and the governance structure in other capital cities, and recommended that as the Union Government owns eighty per cent of the land and buildings in the NDMC area and as foreign diplomatic missions are concentrated, it would be appropriate that the present structure of NDMC was not disturbed.

3.5.6 The Home Secretary added that the Chief Minister of Delhi, the MP and the MLAs from the NDMC area, do not attend the meetings of the Council, as a Joint Secretary level officer of the Government of India presides over its meetings. He further added as under:

"What we have seen in the current working is: the Chief Minister herself is MLA from NDMC area. She is not attending any meetings of the NDMC. A question comes in, when the Chairman, NDMC, presides over the meeting, how can the CM attend as a Member of the NDMC. Similarly, local MP also does not attend the meeting as he does not have the voting rights. He also has the same issue. If he is a Minister in the Union Cabinet, he cannot come and attend a meeting of the NDMC where a Joint Secretary level officer of the Government of India presides over the meeting. It was in this light, the Government thought that there is need for certain amendments to be made. It is not the best of arrangements. There are a lot of combinations coming in. If you have Chairperson of the NDMC, how anybody else would preside over that meeting. Taking into account all

factors together, the Union Cabinet made this recommendation saying that if the CM comes for the meeting, she presides over the meeting, in her absence, if the Cabinet Minister is present, he will preside. This hierarchy is given. It is the basic background to the proposal."

3.5.7 When asked as to why the Government was not considering to make NDMC an elected body, the Home Secretary stated that the Central Government was trying to strike a balance between the Council being an elected body and representation of Central Government therein, keeping in mind the sensitivity of the area. He observed as under:

" I think the real issue as to why Governments, in the past, had been little chary of giving the voting rights, of having an elected body in this area, is,that if you include family members (of the Government servants), they will constitute two-thirds of the population, and the majority of the Council members will be family members of the Government Servants. Then, if you have family members of the Government Servants in charge of this, then, politicization may come in. Now, there is a feeling as to why it has been kept under the control of the Central Government, irrespective of the fact that 80 per cent of the land is owned by the Government. But I agree with the fact that there is a necessity for residents to have a little say on civic matters, electricity, water, sanitation, so on and so forth. We need to look at this issue which is now being brought to our notice, in the light of the 73rd and 74th Amendments."

4. Views of representatives of Residents' Welfare Associations and MLA from NDMC area

4.0 In the Committee's meeting held on 22nd October, 2010, the representatives of the Ministry of Home Affairs, with the approval of the Union Home Minister, stated that, keeping in view the unique characteristics of the NDMC area as the seat of the Central Government and housing the Diplomatic Mission of the foreign countries, the Ministry would still prefer to stick to the amendments and not to make any further changes in the proposed Bill. It was reiterated that the Central Government intended to strike a balance between adopting a system of governance that takes care of the rights of the residents as well as the concerns of the Central Government to have predominance in the civic administration of the area being the seat of power of the central authority and housing the diplomatic missions.

4.1 The Committee, after some deliberations, felt that in view of the serious issues involved in the Bill, it should hear the representatives of the associations of local self governments, and Residents Welfare Associations of the colonies in the NDMC area and the MLA representing Delhi Cantonment Constituency who is also a Member of the NDMC

4.2 Accordingly, the Committee in its sitting held on 20th December 2010 heard Shri Karan Singh Tanwar, MLA representing Delhi Cantonment Constituency (including Sarojini Nagar an NDMC area), the representatives of two Residents Welfare Associations (RWAs), one from a private colony and one from a Government Colony in the NDMC area.

4.2.1 The highlights of the views of the witnesses were as follows:-

(i) *Representatives of Golf Links, RWA*

- Permanent residents have no stake in the governance of NDMC.
- There should be some kind of elective mechanism to represent the permanent residents of NDMC in the Council.

- The Chairman of the Council should be a political head as he/she would be more effective.
- The NDMC should be a non-political elected body. The Chairman could still be the senior most officer of Central Government and no member of the Council should be senior to him.
- NDMC could also be a partly elected body. The elected members like MLAs would not help much in looking after day-to-day civic matters. The Council should have members directly elected by the people.

(ii) *Representatives of F,G & H Block, Sarojini Nagar, RWA*

- The Chairman of the Council should be a political person as he would be more effective.
- Present set up of NDMC is alright and need not be altered.
- There should, however, be some mechanism to protect the interests of Government Employees residing in an NDMC area. The Government Colonies RWAs should be given some representation in the Council.

(iii) *Shri Karan Singh Tanwar, MLA, Delhi Cantt. and Member, NDMC*

- The main problem with the functioning of NDMC is that the senior members do not attend meetings as it is presided over by a chairman who is junior in rank.
- Elected members of the Council do not get facilities which are available to nominated ones.
- Either NDMC should be made a totally elected body on the pattern of MCD or partly elected and partly nominated, on the pattern of Cantonment Board.

4.3 The Committee in its sitting held on 20th December 2010 decided to issue a press release inviting written memoranda from the Residents Welfare Associations of NDMC and other stakeholders. Accordingly, a press release was issued. In response, 15 Memoranda were received on the Bill. A majority of the RWAs pleaded for making NDMC an elected body. (list of the individuals/organizations/RWAs who submitted memoranda is at Annexure-). The Memoranda so received were circulated to the Members and forwarded to the Ministry of Home Affairs for furnishing comments thereon.

5. **Comments of Government on evidence tendered by non-official witnesses**

5.0 In response to the suggestions made by the representatives of RWAs, the Ministry of Home Affairs in its comments stated that the NDMC derives its present structure from the New Delhi Municipal Council Act, 1994, enacted by the Parliament. In exercise of the powers conferred by the proviso to Article 243ZB of the Constitution, the President extended the provisions of Part IXA of the Constitution to the NDMC area with exceptions and modifications. The Ministry asserted that even under the Punjab Municipal Act, it was all along a nominated body and at the time of enactment of NDMC Act 1994, these issues were examined in detail and were also deliberated in the Parliament. The Government had to strike a balance between the special characteristics of NDMC area and its local self governance. Hence, the present system was adopted by bringing the barest minimum area, under the special system of local governance. The Ministry, disagreeing with the argument that present structure of NDMC was unconstitutional, explained that the NDMC was run on democratic lines and every decision was taken on the basis of majority view in the meetings of the Council.

5.1 The Ministry further submitted that while deciding the composition of the NDMC, the recommendations made by the Balakrishnan Committee as well as various other models were considered in all seriousness at the highest level. It was stated that the model adopted for the NDMC appeared to be close approximation of what was recommended by the Balakrishnan Committee, taking into account the special characteristics of the NDMC area. It was claimed that there was adequate representation of the public in the Council as almost half of its members were peoples' representatives. Justifying the present set-up, the Ministry stated that the elected Government of the NCT of Delhi was consulted in the appointment of the Chairperson, Vice-Chairperson and two representatives of the public.

5.2 The Home Secretary, responding to the suggestions made by various RWAs in their memoranda, stated that after consulting the Union Home Minister, the view that had emerged was that on account of the special character of the area, the Government would not like to bring elected members into the governing structure of the NDMC and

that the Government was not in favour of changing the current structure of the Council and would like to press for the amendments proposed in the NDMC (Amendment) Bill, 2010.

5.3 The Committee in the same sitting desired to know the pattern of governance of the Delhi Cantonment Board. In response to that the Ministry of Home Affairs vide its communication dated 28th December, 2010 furnished the information which is reproduced below:

“The Cantonment Board is partly elected and partly nominated. The Board consists of the following members:

- (a) the Officer Commanding the station as ex officio or, if the Central Government so directs in respect of any cantonment, such other military officer as may be nominated in his place by the General Officer Commanding-in-Chief, the Command;
- (b) The District Magistrate or an Executive Magistrate not below the rank of Additional District Magistrate nominated by him;
- (c) the Chief Executive Officer;
- (d) the Health Officer ex officio;
- (e) the Executive Engineer ex officio;
- (f) three military officers nominated by name by the Officer Commanding the station by order in writing; and
- (g) eight members elected under the Cantonment Act, 2006.”

5.4 The Committee further desired to know the municipal structures in London and New York. In this context, the Ministry of Home Affairs furnished the following information :-

“Municipal Structure in London

Under the London Council Act of 1963, the Municipal Administration in London consisted of 32 Boroughs. These boroughs were created in the metropolis to work as the principal local authorities responsible for running most of the local services in their areas. They functioned under an apex body called the Greater London Council. In 1986, Margaret Thatcher abolished the GLC and transferred its strategic functions to bodies controlled by the Central Government or Joint Boards. For next 13 years, there was no single elected body at the apex level for the whole of London.

The situation was largely reversed when the Greater London Authority (GLA) Act was enacted in 1999. A 23-member Greater London Authority headed by a directly elected Mayor came into existence in the city in the year 2000. Its main activities concern:

(i) Transport (ii) Policing (iii) Fire Services (iv) Economic Development (v) Planning (vi) Culture (vii) Environment and (viii) Health

In 2007, the Act was amended enhancing the powers of the Mayor to include planning functions in relation to local development schemes and some other planning applications of strategic importance.

Municipal Structure in the City of New York

The city of New York is governed by a City Council. The New York City Council is a 51 Member body headed by a directly elected Mayor. The Mayor appoints several Deputy Mayors who are functional heads and assist the Mayor in his functions. There are 5 Boroughs and 51 City Councils in the territory. The City Councils are local bodies enjoying considerable power and discretion in providing services to the local citizens and can be compared with the boroughs of the Greater London Authority.”

5.5 In the sitting held on 5th January 2011, some Members of the Committee, displeased over the intransigence of the Ministry, despite the strong views of the Committee and the RWAs, wondered whether the people residing in the NDMC area would be convinced by the argument advanced by the Ministry in favour of retaining the status quo in so far as the structure of the NDMC was concerned. The Home Secretary was also asked to give the rationale for depriving the people of the NDMC area the opportunity to exercise their franchise especially when residents of all regions of Delhi, outside the NDMC area, exercise their right to vote in the elections to the MCD and the Delhi Cantonment Board. The attention of the Home Secretary was also brought to the

fact that in the representations received, there was overwhelming support for an elected NDMC and his views were sought on the suggestion that NDMC should be made an elected body, either partially or fully. With regard to provisions of revolving Chairmanship of the Council, some Members wanted to know the rationale behind it.

5.6 The Committee also enquired from the Law Secretary whether there would be any legal problem in converting NDMC into an elected body. The Law Secretary replied in the negative.

5.7 The Home Secretary then responded to the queries which were not found convincing. The Home Secretary was told that the Government should give a serious thought to the view which had emerged in favour of an elected NDMC and furnish an elaborate explanation on the stand taken by the Government in the matter.

6. Final comments of Ministry of Home Affairs

6.0 The Ministry of Home Affairs vide their OM No. 14011/39/2008- Delhi-II dated 13th January, 2011 furnished a detailed response on the final stand taken by the Government in favour of retaining the status quo in relation to the governing structure of NDMC. The Ministry submissions are as follows:

"The matter had been again examined in detail in this Ministry in the light of the views expressed in the meeting of the Committee held on 5th January, 2011. After careful consideration of the entire matter, the Ministry places the following facts for kind consideration of the Committee:

(i) The NDMC area has special characteristics as is evident from the following facts:

- The NDMC, which caters to about 3% of area and 3% of population of Delhi, is also seat of the Central Government in the Union Of India. Important buildings like Rashtrapati Bhawan, Parliament House, Supreme Court, North Block, South Block, etc are situated in its area. It also houses diplomatic missions. Thus, the area has national as well as international importance. Unlike other municipalities, the stakes here are not only local, but also national and international. As such, the NDMC has to be kept on a different footing.
- Government of India is nearly the sole landowner. Private ownership of property is marginal. Majority of the population is from Government

Colonies and Diplomatic Missions. The Central Government needs to have a direct role in the maintenance and upkeep of these areas.

- Besides the resident population, the NDMC also provides services to floating population, which is many times more than the residents. Their interests need to be protected.
- Historically, NDMC area has enjoyed a different system of Local Government.
- The other municipality in the National Capital Territory, namely, the Municipal Corporation of Delhi, which caters to almost 94% of area and population, is fully democratic. A conscious decision was taken by the Government, which was approved by the Parliament, that functional pattern of local self-government would be unworkable for the NDMC area.

(ii) It is true that no direct elections are held for the Members of the Council. However, the people's representation in the NDMC is achieved through the Members of Legislative Assembly, elected to the Delhi Legislative Assembly from the area. Representation is also given to persons having special knowledge in different fields. Further, the elected Government of the National Capital Territory is consulted in the matter of appointment of the Chairperson, Vice-Chairperson and two non-official nominated members. It is also proposed to make the Member of Parliament representing New Delhi as Member of the Council. Thus in the proposed Council, out of 13 members, there would be 3 persons directly elected by the people (2 MLAs and 1 MP), 4 persons of various fields nominated in consultation with the elected Government of the NCT of Delhi plus consultation with the elected Government of the NCT of Delhi in the matters of selection of Chairperson and Vice-Chairperson. Thus even the balance is getting tilted from official to non-official members.

(iii) Delhi, being the capital of India, always had a unique governance structure compared to other cities in India. There has been substantial evolution of administrative and governance structures in last 60 years. However, Delhi still retains the status of a Union Territory with Legislative Assembly. The critical subjects of law & order, public order and land are still under the domain of the Central Government. Even in case of municipal functions, specialized boards/utilities have been constituted for power, water supply, transport, shelter viz Delhi Vidyut Board (now DPCL), Delhi Jal Board, Delhi Transport Corporation and Delhi Urban Shelter Improvement Board. These unique governance structures in Delhi arise from the fact that Delhi is the national capital and the Central Government needs to have oversight on administration in the capital.

- (iv) Within overall Delhi area, New Delhi is the seat of the Central Government. Simultaneously, it is also a sub-city in its own right, with a legitimate need of citizens for local self government. Thus, the critical question is how the national interests in the capital city are protected within the context of local self-governance for its citizens.
- (v) Being the seat of Union Government, the municipal government of New Delhi has to ensure higher standards of services and infrastructure and has to meet the expectations of the national government. Further, the Union Government owns almost 80% land and properties in the NDMC area. Most of the citizens in NDMC area are government servants and their families. Further the foreign diplomatic missions are territorial entities under respected sovereign jurisdictions. Hence, the NDMC Act provides for greater national oversight through nomination of officers on the Council.
- (vi) It is mentioned that the estimated population residing in various colonies in NDMC and Municipal Corporation of Delhi (MCD) areas on either side of the NDMC boundary is as under:

S. No.	MCD		NDMC	
	Name of Colony in MCD area.	Population as per Census 2001.	Name of adjoining Colony in NDMC area.	Population as per Census 2001.
1	R.K. Puram	82,585	Moti Bagh	10,356
2	Karol Bagh (including Faiz Road, Pusa Road, Bedanpura)	49,396	DIZ Area	10,224
3	Defence Colony Sub Division ^λ	5,97,843	Sarojini Nagar	30,588
4	South Extn. (including Tyagraj Nagar, INA, Aliganj & Kotla Mubarakpur)	42,759	Jor Bagh	1,819

^λAs per the information furnished by NDMC Secretariat vide letter no. F.25(i)/CS/175/2010/D-582 dated 13.12.2010, total population of Defence Colony only is 10,334.

The estimated number of voters in the NDMC area and the Delhi Cantonment Board area, as indicated by the NDMC, is as under:

a)	Number of voters in NDMC area from New Delhi Constituency	1,35,600
	Number of voters in NDMC area from Delhi Cantonment Board area	35,910
	Total	1,71,510

b)	Number of voters in Delhi Cantonment Board area from Delhi Cantonment Constituency	39,407
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It may be seen that the adjoining area of NDMC with substantial population in private colonies were taken out of NDMC in 1958 and merged in MCD to bring maximum area and population under the conventional system of municipal governance. Barest minimum population and area have been kept under the NDMC area.

- (vii) So far as the government officials are concerned, the Conduct Rules and Service Rules prescribe that every government official shall be politically neutral. However, the family members of government employees are not legally debarred from contesting elections. In the present NDMC Governance system, two MLAs, elected from NDMC area are members and represent the interests of government servants as well. Therefore, it is not the case that the govt. servants and other residents of NDMC area are completely deprived of elected representation in NDMC affairs. It may also be noted that only about 20% NDMC population resides in private colonies, while almost 70% Cantonment Board population resides in private colonies.
- (viii) The suggestion of nominating at least 2 members from RWAs can be accommodated within the provisions of section 4 of NDMC Act, 1994. This needs to be examined in consultation with Govt. of NCT of Delhi, the Ministry of Law and Ministry of Personnel, Public Grievances & Pension, Govt. of India.
- (ix) The existing system of having area MLAs as Members of NDMC gives representation to private colony residents also in the affairs of NDMC. In addition, two non official members are also nominated in NDMC from amongst various fields. This is done in consultation with elected Govt. of NCT of Delhi. Hence the existing mechanism provide for representation of the residents of NDMC area.
- (x) It may be clarified that reduction in the number of MLAs is based on delimitation exercise undertaken by Election Commission of India. Before delimitation exercise undertaken by Election Commission of India, there used to be 3 Assembly Constituencies. After electoral delimitation, this is reduced to 2 Assembly Constituencies in NDMC area. The NDMC Act provides that MLAs elected from NDMC area (wholly or partly) are also

members of NDMC. Therefore, the membership of MLAs in NDMC is reduced from 3 to 2 after de-limitation. This has been captured in the proposed amendment.

- (xi) While the political aspirations and rights of citizens of New Delhi are well recognized and are important, they need to be weighed against the interests of states in the federation, against the special symbolic value to the nation of its lead city, and against the need to ensure the smooth running of the federal government itself. While the present governance structure of NDMC may appear incongruous with 73rd and 74th Constitutional Amendments, this aspect was considered by the Parliament in detail. The Government, accordingly, made specific exceptions and modifications, as per Article 243ZB while giving special dispensation under NDMC Act, 1994.
- (xii) Further, in the year 1958, the Government reduced the geographical area of NDMC by 50% from 86 sq. km to 43 sq. km. In this very limited NDMC area, the citizens are assured representation on the Council through their directly elected MLAs and MP from the area.
- (xiii) Thus, the NDMC Act, 1994 strives to balance and reconcile the competing needs of the Union Government for better control and of the citizens of New Delhi for representative self government. This is a difficult task as the national government wishes to control and develop the capital in the interests of the nation as a whole, while the people of the city naturally wish to govern themselves to the greatest extent possible. Accordingly, the NDMC Act provides for nominated non-official members, including the directly elected MLAs and MP from the area, rather than elected councillors as also for nominated government officers on the Council.
- (xiv) For meeting its expectations, the Union Government needs to have direct capacity to influence the decision making structure of NDMC. If direct elections are allowed at municipal level in NDMC, the capacity of the Union Government to influence the performance of municipal functions will be substantially reduced. It may not be possible to reach expected standards of municipal services due to competing demands on the municipal body.

- (xv) New Delhi houses a large number of government buildings, residential areas and foreign missions. The national government is responsible for ensuring high standard of security and local services in the area. But with local councillors, who are accountable to their voters, these needs may be compromised for populist policies. The expectations of the national government and the elected councillors may not match leading to confusion and administrative chaos at cutting edge level of municipal government. This may have negative influence on quality of municipal services (roads, water supply, heritage conservation, hospitals, etc). This may have serious impact on national image as most of the foreign missions are situated in NDMC area.
- (xvi) Thus, the national government needs to have a definite role in developing New Delhi in the interest of the nation as a whole. The constitutional and legal powers to do this in NDMC area may get limited with governance structure based on direct elections and with councillors more accountable to their voters. The Central Government may not be able to influence or ensure compliance of municipal government on critical issues. It may not be able to preempt the elected local body on critical policy areas, such as transportation, design and construction, land-use, heritage conservation, etc.
- (xvii) Keeping these factors in mind, during the debate in the Rajya Sabha on the NDMC Bill, 1994, the then Hon'ble Home Minister, Govt. of India had stated on 15.6.1994:-
- “If I give a directive, the directive will be binding on the nominated person. He cannot possibly have any kind of excuse to say I won't do this or I won't do that. If he were to say this, he will have to quit. In fact, it is that power which we have provided.”
- (xviii) The compulsions of electoral politics may end up posing the national government against the municipal government on key issues. The compulsions of electoral politics and intense political rivalry may create very awkward situations before the national government in cases involving huge political gains or losses. Similarly, the municipal services and infrastructure projects in New Delhi could be held hostage to populist demands at ward level. This may have adverse impact on national image as most of the foreign missions are situated in NDMC area.

- (xix) Further, in many state capitals of India, the State Governments have preferred to constitute various parastatals or parallel governance structures over and above the municipal body. Thus creation of MMRDA (Mumbai), BWSSB (Bangaluru), CWSSB (Chennai), HUDA (Hyderabad), etc also reflects the need of respective state governments to have clear command on critical infrastructure projects or municipal services in the capital cities.
- (xx) Under the constitutional scheme, the Indian Union has strong federal characteristics. Accordingly, the municipal governance structure of New Delhi, the seat of governance of the Union, is a symbolic representation of this. Thus, the municipal government of New Delhi must represent the federal reality and cultural diversity of various states and territories. If direct elections are allowed at municipal level, it may not be possible to ensure federal or regional neutrality of the elected structure. Thus in view of trend of competitive electoral politics, the decision-making authority may end up in having a strong regional or lingual bias.
- (xxi) Governance structure of NDMC area historically provided for strong influence of the national government. Thus even under the Punjab Municipal Act, 1911, the NDMC had all nominated members. Thus the tradition of the Union Government nominating members to the Council continues from 1920's.
- (xxii) It is also mentioned that while deciding composition of the NDMC, the recommendations made by the Balakrishnan Committee as well as various other models were considered in all seriousness at the highest level. The model adopted for the NDMC appears to be close approximation of what was recommended by the Balakrishnan Committee, taking into account the special characteristics of the NDMC area. Further, there is adequate representation of the public in the Council as almost half of the total members of the Council are representatives of the public. The elected Government of the NCT of Delhi is consulted in the appointment of the Chairperson, Vice-Chairperson and two representatives of the public.
- (xxiii) It may also not be out of place to mention here that regarding the NDMC, the Ashok Pradhan Committee set up by Ministry of Home Affairs to study multiplicity of institutions in Delhi and the Second Administrative Reforms Commission, are in favour of maintaining status quo."

7. Deliberations of Committee

7.0 The Committee held detailed discussions on the New Delhi Municipal Council (Amendment) Bill, 2010. The deliberations held on 30th September and 7th October, 2010

were mainly devoted to the presentation of the Ministry of Home Affairs on the Bill highlighting the special character of the NDMC area, existing structure of NDMC and the amendments proposed in the Bill and related queries of Members of the Committee thereon.

7.1 As mentioned earlier in the Report, the Ministry of Home Affairs repeatedly stressed on the need for the NDMC being composed of nominated Members. The Ministry of Home Affairs cited the recommendations contained in the Balakrishanan Committee Report, the Ashok Pradhan Committee Report, the Sixth Report of Second Administrative Reforms Commission to justify their stand on maintaining the status quo concerning the governing structure of NDMC.

7.2 Initially, a majority of the Members of the Committee supported the idea of NDMC being an elected body, to endow the democratic rights to the people, to enable them to participate in decision-making process relating to civic matters. Members expressed strong reservations on the concept of nominated Members in the NDMC and the proposed procedure of revolving chairmanship of the Council, in the Bill.

7.3 Participating in the discussion held on 30th September, 2010, a Member expressed his views in support of an elected structure of the NDMC, as under:

"By and large, Delhi should be administered completely by the Central Government, had been the approach so much so that it was a continuous effort by the people of Delhi to have some kind of representation that led to the formation of the Metropolitan Council. Earlier, there was no Metropolitan Council and Assembly. Later on, the Metropolitan Council was the first step and then came the Assembly, though Delhi continues to be the Union Territory. It continues to be even today. Similarly, in the case of NDMC also, I would think that it is desirable. After all, there is three percent of population of the Delhi residing in NDMC area. You cannot deny them the right to franchise. They must have the representation. So, the approach has to be that. And, as the Chairman has rightly said, while considering this Bill itself, the recommendations made in those Reports should be taken cognizance of. It has been said, at one place, that as many Members, who are elected, should be nominated. So, all these factors should be taken into account."

7.4 In the Committee's sitting held on 7th October, 2010, detailed deliberations took place in the light of the recommendations contained in the Estimates Committee and Balakrishnan Committee Reports and the issues raised by Members in its sitting held on 30th September, 2010. During the course of further presentation on the Bill, the Home Secretary, as discussed in detail earlier, reiterated that as the Chief Minister of Delhi, MPs and MLAs from NDMC area do not attend the meetings of the Council because of the fact that a Joint Secretary level officer of Government of India presides over its meetings and it became necessary to amend the NDMC Act to inter alia provide for a revised procedure concerning the presiding over of the meetings of the Council, keeping in view the seniority and the protocol requirements.

7.5 Refuting the arguments put forth by Government that it was necessary to retain the present structure of NDMC, a Member of the Committee, while observing that three lakh people residing in the NDMC area are being denied active role in civic matters, made the following observations:

"What is being said about NDMC, today, was, at one time, the accepted fact about the Union Territory of Delhi. It is only the result of continuing agitations on the part of the people that how they can be denied self-governance. First, the very concept of having an Assembly for Delhi was supposed to be atrocious. How can you have it? If the Government of India rules here, the entire administration of UT of Delhi has to be looked after by the Central Government. All kinds of arguments were given. Gradually, things moved. Ultimately, we came to the concept of a Metropolitan Council and an Executive Council which were supposed to be equivalent to a State Assembly and a Ministry in the State; one by one. Now, in other UTs we have had Assemblies for a long time, for example, Pondicherry and Goa. But, in Delhi, there was no Assembly for a long time. Ultimately, it came and is similar to what we have in other UTs. My emphasis is that the population is so large that you cannot deny it. We have three lakh population in the NDMC area and this large chunk of population is denied an active role in the civic services of that region. It is not fair. This is the question. Therefore, there is recommendation to move towards democracy. All that democracy has been given is, you allow the MP there to vote, not the citizens."

7.6 Commenting on the concept of revolving Chairmanship of NDMC, as proposed in the Bill, the Member commented as under:

"You have a revolving Chairman for the NDMC which is something I cannot reconcile. You have four persons --including the Chairman and the Vice-Chairman and if they come to meeting they will vote -- entitled to vote. I prefer that they do not come to the meeting. Or, rather, they may be nominated but they may not have the voting right as has been the position earlier with the MP. But, this situation, I feel, is anomalous. In fact, I enquired from the Cantonment. They said that they do not have such a provision..... Furthermore, in case of the Chairman and the Vice-Chairman, who are the nominees of the Central Government, I see no reason why their posts should be revolving posts."

7.7 On a note of dissatisfaction over the present structure of NDMC, another Member desired that the people of NDMC area should be represented on the body by Members directly elected so that decisions could be taken by the people's representatives.

7.8 Participating in the deliberations, another Member highlighting the importance of local self government, underlined the fact that the functions of a civic body were different from those of the State Assembly or Parliament. The Member felt that a Councillor's work was different from that of the MLA or the MP. Therefore, the importance of grassroot representation in a body like NDMC needs hardly be emphasized. He flagged the point that there should not be any interference from the Government in the municipal administration, and NDMC should be allowed to function as a true local self governing body. He then suggested that NDMC should be as democratic as the Delhi Cantonment Board. The Member also desired that the families of the Government servants living in the NDMC area should not be denied the right to participate in and contest elections to the NDMC.

7.9 However, one Member felt that Government should keep in mind the importance and sensitivity of the areas falling under the NDMC, as it housed Central Government establishments and diplomatic areas.

7.10 The Committee in its meeting held on 22nd October 2010, took note of the views expressed by the Home Secretary that in view of the unique characteristics of the area as the seat of the Central Government with very important buildings and eighty percent of the area comprising of Government colonies besides Diplomatic Missions and other

factors, Government would, at the moment, still prefer to stick to the amendments and not to make any further changes in the proposed Bill.

7.11 The Committee further noted that the Home Secretary, while contending that making NDMC an elected body would lead to politicization in the ranks of government servants, however, conceded that there was a necessity for residents to have a little say on civic matters, electricity, water, sanitation, in the light of the Seventy-third and Seventy-fourth amendments of the Constitution. On this contention of the Home Secretary, the Chairman and majority of the Members of the Committee, while reiterating the need for an elected structure for the NDMC, made the following points:-

- (i) The Bill is against the spirit of the Seventy-third and the Seventy-fourth Amendments to the Constitution.
- (ii) There is a contradiction in the argument put forward by the Government. The Government Servants are legally debarred from contesting elections but the families of the Government Servants are not. They have the right to vote as well as to run for an election.
- (iii) The position of the Chairman, NDMC should not be a revolving one, as proposed in the Bill.
- (iv) Worldwide, the trend is towards more and more democratization even at the local level but the proposed Bill intends to take away from the people residing in the NDMC area, the right to franchise and get elected to the body.
- (v) In the Cantonment areas of the country, the family members of Defence personnel are allowed to contest elections to the Cantonment Boards.
- (vi) Representation of women and Scheduled Castes should be increased in the Council.

7.12 Some Members, however, while supporting the Bill, in its present form, felt that the Chairman of the NDMC should be an elected person and the present Bill in a way served that purpose. They also felt that in view of the special characteristics of NDMC area, it should not be made an elected body.

7.13 However, at a later stage, when the discussions on the Bill were drawing to a close, some Members of the Committee wrote letters to the Chairman of the Committee stating that they were in favour of the present structure of the Bill. These Members, while supporting the proposed changes in the composition of the NDMC and the order of precedence in presiding over the meetings of NDMC, stated *inter-alia* as under:-

- (i) There is no change in the governing structure of the New Delhi Municipal Council. However, the amendment seeks to broadbase the representative character of the NDMC with the objective of making it more meaningful by increasing the number of members belonging to the Scheduled Caste category as also mandatorily stipulating that one such member should be from the non-official category besides conferring voting rights on the Member of Parliament who at present is only a special invitee to the Council without any voting rights.
- (ii) In so far as the proposed amendment about the presiding over of the meetings of the Council are concerned, the same is necessitated on account of protocol requirements since in the absence of the same till date, neither the Chief Minister nor the elected Member of Parliament in the past have been able to attend the meetings of the Council.
- (iii) The ambit of the proposed amendments does not cover, within their entire sweep, the issue of direct elections and the issue of direct elections should no be used as a ploy to derail the passing of the proposed amendments and in effect, inhibiting the reform measures proposed for NDMC.
- (iv) The amendments in the current form as proposed by MHA may be accepted in larger public interest.

7.14 In the Committee's sitting held on 5th January, 2011, while taking note of the views of the Home Secretary that the Government would still like to retain the present structure of the NDMC, some Members strongly felt that NDMC should be an elected body as they were not convinced by the rationale put forth by the Ministry in favour of retention of the existing structure of NDMC specially when residents of all regions of Delhi outside the NDMC area exercise their right to vote in elections to MCD. Members pointed out that the Residents' Welfare Associations were overwhelmingly in support of an elected body for NDMC.

7.15 One Member, who supported the demand for an elected structure for the NDMC, observed as under:

“We would like to register this view that the entire Committee is unanimous that it should be an elected body, and we are really pained to see that the Ministry has been adamant in its original stand and sticking to it. I would like to register this very clearly that the entire Committee is unanimous on this view.”

7.16 Another Member, in support of an elected NDMC, observed as under:

“To felicitate civic amenities, residents of the NDMC area want their elected representatives, as proposed by the different residents associations. The functions of a legislator are quite different from the functions of a corporator or a councillor as..... So I think I cannot agree with the present structure proposed by the Ministry. There must be elected representatives in the NDMC so that the peoples’ views can be raised in the proper form.”

7.17 Responding to the viewpoints of the majority of the Members of the Committee, the Home Secretary responded as under:

“.....almost the world over, people have made sure that the Central Government in capitals are keeping control. Why they keep this control? Not only because you have the Central Government offices, you have President's Estate, you have Prime Minister's Office, you have Foreign Missions, you have State Bhavans and so on and so forth. You do not want a situation in the State, in the Federal Capital where a Council itself--if it is a majority run council-- I am just giving a worst case scenario-- X party has a majority in it; that X party has some problems with either the Central Government or even with another State belonging to another party. In that case, it can decide, okay, we will cut off the water supply to a particular State Bhavan or a Councillor applies to the US mission, does not get a visa, for whatever reasons his application is rejected, the Councillor then decides that okay, we will cut off water supply to the US Mission. I am just giving an example.”

7.18 Taking exception to the hypothetical argument of the Home Secretary, a Member of the Committee stated as under:

“It is this rationale and this apprehension that we expressed in respect of a Councillor of the NDMC if it were an elected body, which made all

Governments, in India, from the very beginning, deny an Assembly and a Chief Minister to Delhi. How can you have a Chief Minister, in Delhi, who can dictate to these Foreign Missions and who can do what he wants? And one does not know which party may come to power. It is this kind of a logic that denied to the Capital any kind of representation even at the level of the Assembly. In comparison to what the Chief Minister or a Minister can do, what can a poor Councillor do? So, you gave authority to the people of Delhi, much greater authority than could ever be enjoyed by an elected New Delhi Municipal Committee. Much greater authority. This is because over a period of time, everyone started accepting that unless you have representative bodies, the people's wishes cannot be duly taken cognizance of. But now, we want to confine that New Delhi area not having representation only in respect of civic matters in this body. In fact, even on the issue of police, there have been different views. After all, you have, in New York, the Mayor controlling the Police. Things have been changing fast. And here, we are not willing to change even the civic affairs of New Delhi! Therefore, I plead with you that the Committee should be given an elaborative explanation as to why the people of New Delhi must be denied their representation so far as civic matters are concerned.

Frankly speaking, every Member of this Committee and even, perhaps, the residents of New Delhi would not be convinced by these arguments. I can even understand that in the process, let us not jump and let us have partly elected and partly nominated representatives.”

7.19 The Committee in its next sitting held on 13th January 2011 directed the Rajya Sabha Secretariat to find out from the Ministry of Home Affairs whether at any point of time during the formulation and consideration of the Government of National Capital Territory of Delhi Bill, 1991 (as introduced in the Lok Sabha on 16.12.1991), the issue of a suitable structural arrangement for local self governance of the NDMC area with a view to maintaining special characteristics of that area, was discussed or not.

7.20 Responding to the query of the Committee, the Ministry of Home Affairs vide its communication No. 14011/39/2008-Delhi-II dated 24 January 2011 stated as under:

"the recommendations made by the Balakrishnan Committee on 'Reorganization of Delhi Set Up' formed the basis of the Government of National Capital Territory of Delhi Bill, 1991. The report of the Balakrishnan Committee runs into two parts. Part-I contains the recommendations on restructuring of Government set-up in Delhi and Part-II deals with municipal and other authorities functioning in Delhi. The

Committee has made recommendations regarding structural arrangement for the NDMC area in Part-II of its Report.

While introducing the Government of National Capital Territory of Delhi Bill, 1991 in the Parliament, the then Home Minister stated in the Parliament that the recommendations contained in Part-II were under consideration of the Government and that the Government would come before Parliament in due course for enacting legislation for implementing such of the recommendations contained in Part-II of the Report of the Balakrishnan Committee as were found to be acceptable. Subsequently, the Government introduced the New Delhi Municipal Council Bill, 1994, during discussion on which the recommendations of the Balakrishnan Committee regarding NDMC as also the special characteristics of the area were discussed in the Parliament and the present structure of the NDMC was adopted."

7.21 Meanwhile, a Member of the Committee, in his written communication dated 24th January, 2011, addressed to the Chairman of the Committee, while opposing the Bill, expressed his views, as under:

"The views of majority of Members of the Committee on this Bill during the discussions in various meetings, have been overwhelmingly for an elected body for NDMC instead of a nominated one. The representatives of various resident associations and bodies also supported the concept of an elected body for NDMC. The views of the Ministry in this regard are vague and evasive and do not reflect the concept of devolution of power to people which is the core essence of a vibrant democracy. Had the Ministry adopted a similar attitude in the 90s, the statehood for New Delhi would have remained a dream only. Under such circumstances, I strongly urge that the NDMC (Amendment) Bill, 2010 be returned with the recommendation for a new Bill incorporating fully or substantially elected members, keeping the number of nominated members to the essential minimum."

7.22 During the meeting of the Committee held on 24th January 2011, the Chairman observed that going by the discussions held in the Committee and the views expressed by the RWAs and the elected Member of the Delhi Legislative Assembly from New Delhi area and the spirit of the Constitution Seventy-third and Seventy-fourth Amendments, the view that had emerged was that the Committee should recommend to the Government that it would be better if NDMC was made an elected body, somewhat on the lines of the Cantonment Boards. At the same time, the Chairman also observed that another view had emerged, expressed by certain Members, in support of the Bill and in favour of retaining

the present governing structure of the NDMC. The Chairman then announced that as there was no agreement on the Bill in the Committee, it would not proceed with the clause-by-clause consideration thereof.

7.23 Agreeing with the views of the Chairman, a Member of the Committee stated as under:

“On the basis of the evidence presented to us by various RWAs and also on the basis of the discussion that we have had, we should stress that the Committee is in favour of an elected body. Suppose the Home Ministry takes a stand that it is not willing to accept it and it would like to pass the Bill as was presented.....the post of the Chairman, NDMC, should not be a revolving post. It does not happen even in the cantonments. If the Chairman, NDMC, is not there, the Vice Chairman will be there. You cannot have the Chief Minister presiding over the NDMC meeting only because she happens to be elected from that area. You cannot have a Minister of the Central Government presiding over the NDMC body. I am of the view that the post of the Chairman, NDMC, should not be a revolving post..... But the purpose of the Bill is that where the Chief Minister or a Minister of the Government is there, they will preside over it. I am of the view that this should not be there.”

7.24 The Committee then took exceptions to certain statements contained in the Ministry of Home Affairs OM dated 13th January 2011 which appeared to the Committee to be anachronistic as those were contrary to the spirit of the Constitution Seventy-third and Seventy-fourth Amendments.

7.25 In this context, the Committee took note of the following comments made in DD Basu’s Shorter Constitution of India, dwelling on the objective of introducing Part IXA in the Constitution dealing with the municipalities:

“The object of introducing Part IX-A in the Constitution was that in many States the local bodies were not working properly and the timely elections were not being held and the nominated bodies were continuing for long periods,. Elections had been irregular and many times unnecessarily delayed or postponed and the elected bodies had been superseded or suspended without adequate justification at the whims and fancies of the State authorities. The new provisions were added in the Constitution with a view to restore the rightful place in political governance for local bodies. It

was considered necessary to provide a constitutional status to such bodies and to ensure regular and fair conduct of elections.”⁴

7.26 The views of Members expressed in various sittings of the Committee, the deposition of witnesses before it and the letters addressed to the Chairman of the Committee, are summarized as under:

Views in favour of making NDMC an elected body

- The Committee should stress upon the point that NDMC should be an elected body and that the citizens could not be denied their civic rights and discharge their responsibilities.
- While making structural changes in the NDMC, the model of the Cantonment Boards should be kept in mind wherein there were components of both elected and nominated members.
- The functioning of MPs and MLAs is completely different from the duties and responsibilities of Councillors. The former cannot effectively discharge the functions of a corporator, as the former has larger constituency to cater who neither has time nor the understanding of local ward level neighbouring issues which is the area cut out for a corporator.
- The post of the Chairman, NDMC should not be a revolving one. In case the Chairman, NDMC was not present, there could be a Vice Chairman to preside over the body. It would not be in order for the Chief Minister or for that matter a Minister of the Central Government to preside over the NDMC, only because of protocol requirements.
- The residents must have a say in the functioning of NDMC, particularly on civic matters.
- If NDMC is not made an elected body then at least its name should be changed to ‘New Delhi Municipal Board’.

Views in favour of Bill

- Keeping in view, the special character of NDMC area, the amendments proposed in the Bill should be accepted.
- The Bill is more in the nature of making procedural changes necessitated by recent developments and protocol requirements and providing additional representation in the body, by making it broad based.

⁴ D.D Basu, Shorter Constitution of India, 14th Edition 2009, Vol. II, LexisNexis Butterworths Wadwa, Nagpur.

- The issue of direct election should not be used as a ploy to derail the passing of the proposed amendments and in effect inhibiting reform measures proposed for the NDMC.

8. Analysis of Government's justification for retaining status quo of NDMC

8.0 It has been noticed that time and again the Government has cited the recommendations made by the Balakrishnan Committee, the Ashok Pradhan Committee, debates in both Houses of Parliament on the NCT of Delhi Bill, 1991 and the NDMC Bill, 1994 and the recommendations made by the Second Administrative Reforms Commission in its Fifteenth Report, for retaining the status quo of governance structure of NDMC. An attempt has, therefore, been made to critically analyse the policy of the Government in relation to the NDMC, in the light of the reports and deliberations cited above and the spirit of the Constitution (Seventh-third) and (Seventy-fourth) Amendments Act, 1992.

8.1 Shri S. Balakrishnan, the then Advisor in the Union Ministry of Home Affairs, in his communication dated the 14 December 1990 to the then Union Minister of Home Affairs, while presenting the report of the Committee on 'Reorganization of Delhi set-up', chaired by him, made the following general observations:

“The task of designing a proper structure of Government for the national capital particularly for a country with a federal set up like ours, has always proved difficult because of two conflicting requirements. On the one hand, effective administration of the national capital is of vital importance to the national Government not only for ensuring a high degree of security and a high level of administrative efficiency but also for enabling the Central Government to discharge its national and international responsibilities; to ensure this, it must necessarily have a complete and comprehensive control over the affairs of the capital. On the other hand, the legitimate demand of the large population of the capital city for the democratic right of participation in the government at the city level is too important to be ignored.”⁵

8.2 The Balakrishnan Committee made the following recommendations with regard to the New Delhi Municipal Council:

⁵ Balakrishnan Committee Report on Reorganisation of Delhi Set-Up, page (i)

“We have already stated a number of times that the Centre is vitally concerned in maintaining high level of efficiency in civic services in the capital. We have also stressed at the same time that with the establishment of a democratic government for the people’s representatives in the administration should have a say in the proper delivery of services. These two considerations can, in our views, best be reconciled by making the following arrangements:

- (i) The Central Government should have control over NDMC, the area in which many of the important offices of the Union Government and Embassies are located.
- (ii) The general control and supervision over other municipal bodies as provided for under the law can be with the Delhi Administration as the subject of local self government is a matter within the purview of the representative Government of Delhi, but to issue directives and to supersede a decision of the Corporation should be only with the Central Government.

It would be appropriate to provide that the powers of the Central Government under item (i) and (ii) above should be exercised in consultation with the Government of Delhi and that such powers can be exercised on the initiative of the Government of Delhi or on its own.

We are clearly of the view that it is high time that the archaic Punjab Municipal Act 1911, as applied to New Delhi Municipal Committee, is replaced by appropriate provisions in a law of Parliament for organizing and functioning of the NDMC..... The area covered by NDMC consists not only of Government Office and employees but also a sizable population of others. It is, therefore, quite necessary that the NDMC should be run on democratic lines.

The NDMC should consist of a certain number of members appointed by Lt. Governor either by name or by office and equal number of members elected from among the inhabitants of NDMC area.....the elected members may be chosen by direct election on the basis of adult franchise from various wards into which New Delhi may be divided.”⁶

⁶ op cit, paras 11.9.1, 12.3.1, 12.3.2 and 12.3.3

8.3 The Committee notes that contrary to the claim of the government, the present structure of NDMC as well as the proposed amendments in the NDMC (Amendment) Bill, 2010 are not in consonance with the recommendations contained in para 12.3.3 of the Balakrishnan Committee Report which inter-alia has recommended for a certain number of members to be elected on the basis of adult franchise. Therefore, the refrain of the Ministry of Home Affairs that the existing structure of NDMC is in tune with the recommendations of the Balakrishnan Committee Report, does not hold ground in view of the fact that the membership of the MP and MLAs in the NDMC is more in the nature of ex-officio rather than being directly elected by the people at the ward level and that the sphere of functioning MPs and MLAs is altogether different from the directly elected councillors/corporators.

8.4 It is noteworthy to mention that during the consideration of the Government of National Capital Territory of Delhi Bill, 1991 (as introduced in the Lok Sabha in 16.12.1991) a reference was made by a Member regarding the NDMC structure. Responding to that, the then Home Minister stated as under:

“.....we will come before this Parliament with a legislation so that the set up of the different kinds of corporations that we are going to have and also the NDMC and Delhi Municipal Corporation, all these corporations and also the Power Corporation, Water Corporation, all other corporation that we have, will be decided. What is going to be the relationship between the Members of the Assembly and the different corporations? They are definitely autonomous but at the same time, whether it is proper or improper to give representation to Assembly Members is a point which will have to be considered by Government and thereafter the entire matter is going to come up before this House. So, there should be nothing to worry on that score.”⁷

8.5 During the consideration of the Government of National Capital Territory of Delhi Bill, 1991 in the Rajya Sabha on 21.12.1991, in response to the query of a Member regarding absence of provision in the said Bill on the structural and functional system of NDMC and whether Delhi Assembly would change the related laws, the then Home Minister, made the following observations:

⁷ L.S. Deb dated 20.12.1991, c. 1189

“Another point which was made was about part 2 of Balakrishnan Committee report with regard to the entire set-up of different corporations the municipal corporation and the other corporations, like the road transport corporation, etc. This is going to be dealt with by a separate legislation. We are going to bring those before the Parliament. This is not going to be by an executive order; it is going to be through a regular Bill. The hon. Members are going to get the full opportunity of putting forward their points of view on the multiplicity of agencies, which in fact is one of the factors due to which we do not have the kind of efficiency that we need in Delhi.”⁸

8.6 It would be appropriate to go back to the legislative history and intent of the Constitution Seventh-third and Seventy-fourth Amendments which sought to restore the rightful place in political governance for local bodies and to provide a constitutional status to such bodies.

8.7 The Government introduced the Constitution (Seventy-second Amendment) Bill, 1991 in the Lok Sabha on 16.9.1991. The Bill sought to insert Part IX and Eleventh Schedule to the Constitution for the constitution of panchayats at the village, intermediate and district levels. The Bill was referred to the Joint Committee which presented its report on 14.7.1992. The Bill as reported by the Joint Committee was debated in the Lok Sabha on 1st, 2nd, 4th, 21st and 22nd December, 1992 and on 23rd December, 1992 in the Rajya Sabha. The Bill, after being passed by both the Houses was ratified by the State Legislatures as per the requirement of proviso to Article 368 (2). After receiving Presidential assent, the Bill was enacted as the Constitution (Seventy-third Amendment) Act, 1992 and came into force on 24.4.1993.

8.8 The relevant extracts from the Statement of Objects and Reasons of the Bill are reproduced below:

“Article 40 of the Constitution which enshrines one of the Directive Principles of State Policy, lays down that the State shall take steps to organize village panchayats and vest them with such powers and authority as may be necessary to enable them to function as units of self-government. In the light of the experience of the last forty years and in view of the shortcomings which have been observed, it was considered that there was an

⁸ L.S. Deb dated 21.12.1991, c. 263

imperative need to enshrine in the Constitution certain basic and essential features of Panchayati Raj Institutions to impart certainty, continuity and strength to them.

Accordingly, it was proposed to add a new Part relating to Panchayats in the Constitution to provide for, among other things, Gram Sabha in village or group of villages, constitution of Panchayats at village and other level or levels, direct elections to all seats in Panchayats at the village and intermediate levels, if any.”⁹

8.9 Subsequently, the Constitution (Seventy-third Amendment) Bill, 1991 was introduced in the Lok Sabha on 16th September, 1991. The Bill sought to insert part IXA and Twelfth Schedule in the Constitution relating to the constitution and composition of urban local bodies. The Bill was referred to the Joint Committee which presented its report on 14th July, 1992. The Bill, as reported by Joint Committee, was debated in both the Houses of Parliament, along with the Constitution (Seventy-second Amendment) Bill, 1991. After being passed by both Houses of Parliament, the Bill was ratified by the State Legislatures as per the requirement of proviso to Article 368(2). After receiving the Presidential assent, the Bill was enacted as the Constitution (Seventy-fourth Amendment) Act, 1992 and came into force on 1.6.1993.

8.10 The relevant extracts from the SOR of the Bill are reproduced below:-

“In many States, local bodies have become weak and ineffective on account of a variety of reasons, including the failure to hold regular elections, prolonged suppression and inadequate devolution of powers and functions. As a result, Urban and Local Bodies are not able to perform effectively as vibrant democratic units of self-government.

Having regard to these inadequacies, it was considered necessary that provisions relating to Urban Local Bodies be incorporated in the Constitution, particularly, for:

- (i) putting on a firmer footing the relationship between the State Government and the Urban Local Bodies with respect to:
 - (a) the functions and taxation powers; and
 - (b) arrangements for revenue sharing;

⁹ *Constitution Amendment in India, P.D.T Achary (Ed.), Lok Sabha Secretariat, New Delhi, 2008 p. 260*

- (ii) ensuring regular conduct of elections;
- (iii) ensuring timely elections in the case of supersession; and
- (iv) providing adequate representation for the weaker sections and Scheduled Castes, Scheduled Tribes and women.

Accordingly, it was proposed to add a new Part relating to the Urban Local Bodies in the Constitution to provide for.....”¹⁰

8.11 Coming to the NDMC Bill, 1994, the then Home Minister observed as follows, during the debate in the Lok Sabha on 14th June 1994, with regard to the Constitution (Seventy-fourth) Amendment Act 1992, as under:

“With the insertion of Part IX-A, Municipalities in States/Union Territories are to be constituted in terms of provisions of Part IX-A. The provision of the Delhi Municipal Corporation Act, 1957 have already been brought in conformity with the provisions of Part IX-A in August, 1993. Article 243ZB provides that the provisions of IX-A shall apply to the Union Territories. It also provides that the President, by public notification, direct that the provisions of this part shall apply to any Union Territory or part thereof subject to such exceptions and modifications as he may specify in the notification. On the question whether any part of the Union Territory can be exempted from the application of the provisions of Part IX-A of the Constitution, the opinion of the Attorney General of India was sought. The Attorney General has opined that it is constitutionally and legally feasible to modify the provisions relating to Municipalities included in the Constitution in respect of NDMC.”

It is therefore proposed that the application of the provisions of Part IX A of the Constitution was proposed to be modified in respect of the following Articles:

- (1) with regard to Article 243R on composition of the Municipalities, it is proposed that the provisions of this article may be modified under article 243ZB to provide that the NDMC may have a Chairperson appointed by the Central Government in consultation with the Chief Minister, Delhi.....
- (2) with regard to Article 243W on functions, the functions of NDMC are proposed to be the same as those in respect of MCD. In addition the NDMC continue to receive water and electricity in bulk and be responsible for their distribution.

¹⁰ *op cit*, p. 275

- (3) With regard to Article 243Y regarding Finance Commission, it is proposed that the Finance Commission constituted under the Delhi Municipal Corporation Act, 1957 may also be responsible for the functions assigned to them in respect of NDMC.
- (4) As regards control, the Central Government may be empowered to issue directions to NDMC regarding the efficient delivery of services to the public and generally in regard the municipal administration. Failure to comply with such directions may be a ground for its dissolution, after observing necessary procedure.
- (5) In all other matters there may be uniformity as far as possible, between the NDMC and the MCD.
- (6) Setting-up of Committees: The NDMC may constitute a committee or committees under the Chairmanship of the Chairperson of the Council to advise it on any matter which the Council may refer or for discharging any power or any function of the Council or for exercising power which the Council may, by resolution, delegate.....”¹¹

8.12 Advocating for an elected NDMC, a Member (Shri Kalka Das-Karol Bagh) while participating in the debate in the Lok Sabha on the NDMC Bill, 1994, stated as under:

“Every political party has promised the people of Delhi that there will be an elected body in the NDMC which will solve the problems of the people here. But a totally a new structure has been provided here. In the past, also, the administrator used to be a serving officer of the Government of India and even today its chairperson will be a serving officer of the Government of India. Then what is the difference now. There had been a Sarkaria Commission and a Balakrishanan Committee who had studied it elaborately and concluded that half of the Members of the NDMC should be elected representatives and the other half should be nominated members..... While going through this Bill we find that the recommendation of the Sarkaria Commission which took two years to submit its report have not been adopted. That is why this body does not comprise of a single elected member. I would like to point out here that it was not only the suggestions of the Balkrishan Committee, but our Constitution has also directed to have a democratic system in the country.

In a democratic system, elections should be held but here there are no elected representatives. The main feature of the democracy is that elected representatives are accountable to the people They formulate policies because the people have direct access to them and they are well acquainted

¹¹ LS Deb, cc. 446-449

to the difficulties of the people. Every man can see them and they know the difficulties of the people. Therefore, elected representatives formulate policies and the officials execute them but, here it is found the opposite. Here Government official will be the Chairman and the remaining Members will be nominated from three Legislative Assemblies. Members will be selected from amongst Government officials”.¹²

8.12.1 Another Member of the Lok Sabha, (Shri Tej Narayan Singh- Buxar) pleaded for an elected NDMC as under:-

“I oppose the way this Bill has been brought. Municipal Council must be there in Delhi but its proposed structure is contrary to the very objective of the Bill. Even after 46 years of Independence, the elected representatives of the people do not find a place in the Municipal Council. It will not be democratic, if only the Government employees the Chair. I think that if the elected representatives of the people hold the chair, the people will have much faith on it but God knows why the Government does not rely on the elected representatives. Had the Government faith on them, it would not have made a Government officer the Chairman.”¹³

8.12.2 A Member of the Lok Sabha (Shri Pawan Kumar Bansal- Chandigarh), spoke in support of the Bill, as under:-

“I think the only course which could be chosen to govern the territory is the one over which the Central Government has the control. I, like anybody else who has spoken earlier, have firm belief that democratic principles have to be given primacy. But, given the situation that prevails in this area, with almost all the land owned by the Government of India, that is the Central Government, and over 80 per cent of the buildings being the property of the Government of India, if in that situation we were to have some sort of what you call the local self-government as we are setting up in almost all the cities of the country, a somewhat incongruous situation would develop. In that case a situation could be faced where members of that committee could say and I am sure such a situation would definitely arise where these members would say that their writ does not run large over this area. To avoid such a situation, I suppose the best course is what the Government of India has chosen for this area.”¹⁴

8.13 The then Home Minister made an identical speech on the Bill, in the Rajya Sabha on 15.6.1994. Some Members of the Rajya Sabha raised the issue that there had been

¹² LS Deb dt. 14.06.1994, cc 451-452

¹³ LS Deb dt. 14.06.1994, cc 461-462

¹⁴ LS Deb dt. 14.06.1994 c 464

gross violation of the provision of the Constitution (Seventy-Fourth Amendment) Act 1992 and the cardinal principle of local self Government at the grass root level.

8.13.1 Participating in the debate in the Rajya Sabha, a Member (Shri Vijay Kumar Malhotra-Delhi) spoke as under:

च....."यह जो बिल बनाया गया है इसमें पूरी तरह, 100 परसेंट नामीनेटेड बाडी इसको बना दिया। गवर्नमेंट ने एक बालकृष्ण अपना सरकारिया कमीशन एप्वाइंट किया था। इनकी रिकमेंडेशंस गवर्नमेंट ने मानी है, उनकी रिकमेंडेशंस गवर्नमेंट ने एक्सेप्ट की है। उनके रिकमेंडेशन भी कोई बहुत अच्छे नहीं थे परन्तु उन्होंने भी यह कहा था। टोटल मेम्बर्स में से आधे इलेक्टेड हों, आधे नामीनेटेड हों, यह बालकृष्ण कमेटी या सरकारिया कमीशन ने कहा। फिर उन्होंने कहा कि इसके लिए सेंट्रल गवर्नमेंट अपने पास डाइरेक्टिव देने का एक राइट रख सकती है। उस बालकृष्ण कमेटी की सिफारिश की धज्जियां उड़ा दीं। एक भी मेम्बर इलेक्टेड नहीं है। एक भी इलेक्टेड मेम्बर को उसमें नहीं रखा है। इसके साथ-साथ उन्होंने कांस्टीट्यूशन की भी धज्जियां उड़ा दीं। जब अंग्रेज हिन्दुस्तान में राज करते थे तब यह एन.डी.एम.सी. अंग्रेजों के जमाने में 1913 में बना जबकि हिन्दुस्तान की कैपिटल दिल्ली में आ गयी। 25 मार्च, 1913 को दिल्ली में एक म्यूनिसिपल कमेटी बनायी गयी। 1916 में उसे रायसीना म्यूनिसिपल कमेटी करार दिया गया। फिर 1927 में नई दिल्ली म्यूनिसिपल कमेटी बन गयी। तब भी इलेक्टेड मेम्बर थे। तब कोई दिक्कत नहीं हुई। बेसिक क्वश्चन यह है कि आपने कांस्टीट्यूशन की हत्या की, जनतंत्र की हत्या की, दिल्ली की जनता के हितों की हत्या की और पूरी तरह से यहां ब्यूरोक्रेटिक रिजीम स्थापित करने का फैसला किया।.....छ¹⁵

8.13.2 Taking part in the debate in the Rajya Sabha, another Member (Shri O.P. Kohli-Delhi) spoke as under:-

मैं नई दिल्ली म्यूनिसिपल कौंसिल बिल, 1994 का विरोध इसलिए करता हूँ कि इस बिल की माफत जो ढांचा दिया गया है वह अलोकतांत्रिक है। इलेक्टेड एलीमेंट और नोमिनेटेड एलीमेंट में कोई संतुलन नहीं रखा गया है। इसमें 11 लोगों में से 8 लोग नोमिनेटेड होंगे। दिल्ली के मुख्यमंत्री की कान्फ्रेंस भी नहीं, केवल कंसलटेशन होगी और 3 लोग नई दिल्ली क्षेत्र के विधायक होंगे। सरकार कह सकती है कि हमने निर्वाचित विधायकों को स्थान दे ही दिया है। तो फिर सवाल यह पैदा होता है कि अगर एक बोडी के लिए निर्वाचित लोगों को ही जगह-जगह इस्तेमाल करना है तो विधानसभा के लिए 70 लोग तो चुने ही गए हैं, उन्हीं को आप दिल्ली नगर निगम के लिए इस्तेमाल कर लीजिए, उन्हीं में से आप दिल्ली केप्टोनमेंट बोर्ड के लिए इस्तेमाल कर लीजिए। दिल्ली कण्टोनमेंट बोर्ड के लिए आपको अलग से निर्वाचित लोगों की आवश्यकता नहीं रहनी चाहिए, नगर निगम के लिए भी अलग से चुनाव कराने की कोई जरूरत नहीं होनी चाहिए, लेकिन लोकतंत्र का तकाजा है कि अलग-अलग बोडी के लिए लोग चुने जाएं, जिससे जनता की भागीदारी हो। मैं यह महसूस करता हूँ कि जो बाडी गठित की गई है, यह

¹⁵ RS Deb dt. 14.06.1994, cc. 436-441

बाड़ी पूरी तरह से संतुलन को तोड़ती है। इसमें इलेक्टिड एलीमेंट्स हैं ही नहीं। नामिनेटिड एलीमेंट्स से पूरी तरह यह बाड़ी हावी है।

यह सब वह सरकार कर रही है जिसने संविधान के 74वें संशोधन में लोकल सैल्फ गवर्नमेंट के लिए रिप्रजेंटेटिव बाड़ीज़ होने का प्रावधान किया है और एनडीएमसी को कांस्टीट्यूट करते समय इस प्रावधान की पूरी तरह से अनदेखी की है।अगर वहां पर 50 परसेंट नामिनेटिड और 50 परसेंट इलेक्टिड लोग हो सकते हैं, कंटोनमेंट बोर्ड में, तो नई दिल्ली में इस प्रकार का संतुलन क्यों नहीं हो सकता? इस संतुलन को तोड़ने की क्या आवश्यकता है?उपसभाध्यक्ष महोदय, इसलिए मेरा यह आरोप है केन्द्र सरकार पर कि लोकल सैल्फ गवर्नमेंट के माध्यम से सत्ता के विकेन्द्रीकरण का जो एक सर्व स्वीकृत सिद्धांत और दर्शन है उसकी धज्जियां उड़ाई गई हैं, पहली बात। दूसरी बात, नई दिल्ली के निवासियों की लोकतंत्र आकांक्षाओं और अधिकारियों (एवमेव) की पूरी तरह उपेक्षा हुई है। तीसरी बात, दिल्ली की जनता द्वारा चुनी गई लोक प्रतिनिधि सरकार की नई दिल्ली म्यूनिसिपल कमेटी के गठन में कोई रोल, कोई भूमिका नहीं रखी और केवल नाममात्र के लिए कंसलटेशन विद दि चीफ मिनिस्टर इतना भर किया है। दिल्ली सरकार को इस तरह से नई दिल्ली म्यूनिसिपल कौंसिल के मामले में टोटली मार्जनलाइज कर देना यह लोकतंत्र का मखौल है और जनतंत्र की हत्या है।¹⁶

8.13.3 Another Member (Shri R.K. Dhawan -Andhra Pradesh), while participating in the debate in the Rajya Sabha lent his support to the proposed structure of NDMC in the Bill, as under:-

“.....the area that is covered by the NDMC has its own special features.....and the people of this area expect a special treatment to this area.....keeping all these necessities in mind, the local administration of this area can, by no stretch of imagination, be treated on a par with the local administration, of other parts of the country. It is very essential, keeping in view the national interest.....the New Delhi Municipal Council strikes a balance between the democratic aspirations of the people of the area and the requirement of the administration.....and fulfils the democratic aspirations of the people. Apart from that, this composition of the Council is very essential in view of the Constitution (Seventy-fourth Amendment) Act. It has to make the NDMC in consonance with the provisions relating to the local bodies.”¹⁷

8.13.4 Yet another Member, (Dr. Biplab Dasgupta- West Bengal) opposing the Bill in Rajya Sabha, spoke as under:-

¹⁶ RS Deb dt. 15.06.1994, cc. 446-448

¹⁷ RS Deb dt. 15.06.1994, cc. 451-452

“.....the Government have treated the people of Delhi as inferior citizens. Not only that, there has been a gross violation of the provisions of the Constitution (Seventy-fourth) Amendment Bill. It talks about autonomy to the municipalities. The excuse given by the Home Minister for accepting this violation was that some recommendation had come from the Attorney-General. This does not appear to be convicting to me.....Government is bringing forward a Bill which gives no role to the elected representatives. It is zero. Everything is being given to the bureaucrats. I do not know what kind of democracy they are talking about.....And I would request the Home Minister to completely redraft the law and make it conform to the Seventy-fourth Amendment of the Constitution so that the real democratic rights are given. Exclude all the nominated people and give the people of Delhi the real democracy which they deserve.”¹⁸

8.14 The Ministry of Home Affairs has repeatedly referred to the recommendations contained in the Eleventh and Thirteenth Reports of the Estimates Committee of the Fourteenth Lok Sabha, as justification for the proposed amendments in the NDMC Act, 1994. The Estimates Committee (14th Lok Sabha) had considered the Balakrishnan Committee Report and recommended in its Eleventh Report, that the Government should review the desirability of modifying the composition of the Council as recommended by the Balakrishnan Report, keeping in view the basic democratic principle.¹⁹ The Estimates Committee, in its Fourteenth Report, reiterated their earlier recommendation and observed that the recommendation of the Balakrishnan Committee in regard to modifying the composition of the Council, be reconsidered in all seriousness.²⁰

18.15 The Ashok Pradhan Committee set up in the year 2006 to study the “Multiplicity of Institutions (dealing with Urban Development and Civic Amenities) in Delhi” noted the following:

“the Balkrishnan Committee on the Reorganisation of Delhi Set-up (1989) recommended the replacement of Punjab Municipal Act, 1911 as applied to the New Delhi Municipal Committee, by fresh enactment, creating New

¹⁸ RS Deb dt. 15.06.1994, cc. 461-465

¹⁹ Eleventh Report of Estimate Committee (2006-07) of 14th Lok Sabha on New Delhi Municipal Council p. 43

²⁰ Thirteenth Report of Estimate Committee *ibid*, p. 2

Delhi Municipal Council and the NDMC should continue to receive special dispensation but should be run on the democratic lines. However, the Central Government decided to retain the nominated character of the local body.”²¹

8.15.1 That Committee had, however, in its report made the following observation regarding NDMC:

“a close look at the Statement of Objects and Reasons mentioned at length at the time of introduction of NDMC Bill, 1994 reveals that special dispensation has been given in regard to establishment of NDMC, by providing exemptions and modifications in terms of article 243 ZB in the matter of application of the provisions of articles 243R, 243T, 243U and 243V of the Constitution. The overriding consideration in this regard has been that a different kind of a local system was to be structured for NDMC on account of special characteristics of NDMC area, which historically has come to be regarded as a seat of Central Authority in the Union of India, rendering a scheme of governance for this area based on a conventional pattern of representative local self-government, unworkable and out of place. Keeping this in view, the Committee recommends status quo in regard to its status, control and functioning.”²²

8.16 The Ministry of Home Affairs made a reference to the recommendation of the Second ARC contained in the Fifteenth Report on “State and District Administration”, which favoured the continuation of the existing structure of the NDMC. The relevant recommendation of the said Commission reads as under:-

“In view of the fact that the Union Government owns 80 per cent of the land and buildings in the NDMC area, many of which are important Union Government offices and residences as well as a concentration of foreign diplomatic missions it would be appropriate that the present structure of NDMC is not disturbed.”²³

8.16.1 However, it is interesting to note that in its Sixth Report on “Local Governance: An Inspiring Journey into the Future”, the Second Administrative Reforms Commission, considered and emphasized the core principles of local governance i.e. application of the principle of subsidiarity in the context of decentralization; clear delineation of functions of local governments vis-à-vis State Governments and among

²¹ Ashok Pradhan Committee Report, p. 107

²² *ibid*, p. 87

²³ 15th Report of Second Administrative Reforms Commission:- State and District Administration, p. 125

different tiers of local governments; effective devolution of these functions and resources accompanied by capacity-building and accountability; integrated view of local services and development through convergence of programmes and agencies and above all, ‘citizen-centricity’.²⁴ The Commission in this regard made the following observation/recommendation:

“Article 243C(3)(c) and (d) stipulates that the State Legislature may by law provide for the representation of the Members of Parliament and State Legislature of the State at levels other than the village level. The Commission is of the view that the imposing presence of Members of Parliament and the State Legislature in the Panchayats would subdue the emergence of local leadership which is a sine qua non for development of vibrant local governments. Therefore, the Commission is of the view that Members of Parliament and State Legislatures should not become members of local bodies. This would endow the local bodies with decision-making capabilities.”²⁵

8.16.2 The Committee finds that the observations and recommendations of the Second ARC, made in its 6th and 15th Reports, contradict each other.

8.17 Be that as it may, it is ironical that while the government has heavily relied on the Balakrishnan Committee Report in justifying the stand taken by it that in view of the special characteristics of the NDMC area, the Council cannot be made an elected body, it has ignored the spirit of the recommendations of that Committee for restructuring the composition of the Council with nominated as well as equal number of elected members on the basis of adult franchise. It needs also to be observed that while citing the recommendations of the Estimates Committee (14th Lok Sabha) as one of the grounds for bringing in the amendment Bill, the Government has bye-passed the essence of that Committee’s recommendation for reviewing the desirability of modifying the compositions of the Council as recommended by the Balakrishnan Committee keeping in view the basic democratic principles. It needs further to be pointed out that the Government has conveniently used the recommendations made by the Second ARC in its Fifteenth Report in

²⁴ 6th Report of Second Administrative Reforms Commission on Local Governance : An inspiring journey into the future, p.13

²⁵ 15th Report of Second Administrative Reforms Commission:- State and District Administration p. 125

taking the stand that the present governance structure of NDMC should not be changed while disregarding the observations made by the said Commission in discussing the core principles of Local Governance and the recommendations made by it in the context of discussion on common issues, as contained in its Sixth Report.

8.18 For seventy eight long years i.e, from 1916 till the enactment of the NDMC Act 1994, NDMC was governed by the provisions of the Punjab Municipal Act, 1911. In discussing the history of the NDMC, the Balakrishnan Committee Report, has referred to Section 11 of the Punjab Municipal Act, 1911. The relevant extracts from the Balakrishnan Committee Report are in this context, reproduced below:

“ ...under Section 11 of that Act a Municipal Committee is to consist of not less than five members either appointed by the State Government or elected from among the inhabitants of partly of the one and partly of the other. However, the appointed members shall not ordinarily be more than one fourth of the total members. One of its members is to be elected as President of Committee, and one or two of its member as Vice-President or Vice-Presidents.....”²⁶

8.19 **The Committee would like to point out that the law which formed the basis of the composition and functioning of the NDMC for nearly eight decades, provided for a substantial component of members elected from amongst the inhabitants of the area. On the contrary, the Government’s policy all along has been to retain the nominated character of the NDMC.**

8.20 **Time and again, the Ministry of Home Affairs have argued that in the event of NDMC being made an elected body, composed of Councillors, accountable to the voters, the Central Government may not be able to influence and ensure compliance of municipal governance on critical issues. The Ministry feels that Central Government may not be able to pre-empt the elected local body on critical policy areas. These arguments of the Ministry are as fallacious as others, inasmuch as Chapter-XXII of the NDMC Act 1994 contains adequate provisions empowering the Central Government to exercise oversight of the functioning of NDMC. Thus, Sections 393-398 of the said Act give powers to the Central Government to require**

²⁶ Balakrishnan Report on Reorganisation of Delhi Set-up, Part-II, p. 15

**production of documents; inspection; issue of directions and enforcement thereof;
and dissolution of the Council.**

Recommendations of Committee

9.0 The Committee has deliberated on the Bill at length. However, on the question of making NDMC an elected body, rather than a nominated body as at present, the Committee is divided. There is no consensus in the Committee either in favour of or against the Bill. A section of the Members are of the view that the Bill should be passed in its present form. The other section of the Members strongly feel that keeping in view the spirit of the Constitution (Seventy-Third Amendment) Act, 1992, the Constitution (Seventy-Fourth Amendment) Act, 1992, the structure of the Cantonment Boards and the aspirations of the residents of the NDMC area, the Council should be made into an elected body, at least partially, on the lines of the Cantonment Boards, to subserve the core principles of local self governance as enshrined in the Constitution.

9.1 The issue of revolving Chairmanship of the NDMC, for the purpose of presiding over the meetings of the Council, repeatedly came up for discussion in the Committee. The majority view in the Committee disagreed with the concept of revolving Chairmanship.

9.2 Be that as it may be, in view of the divergent perception in the Committee on the subject matter of the Bill, and the persistent stand of the Government of making no change in the governance structure of NDMC, the Committee is of the considered view that the Government should take up the issue at the larger level with major political parties and other stakeholders to reconcile the differing viewpoints and to explore the possibility of evolving a consensus on this issue, before piloting the Bill in Parliament.

Annexure- II

S. No.	Name of Individuals/Organisations	Suggestions
1.	Babar Road Colony Lease Holders Association, Babar Road, New Delhi	<p>⇒ The present system of governance of NDMC is undemocratic and unconstitutional.</p> <p>⇒ The NDMC should be made an elected body rather than a nominated one as it is at present.</p>
2.	Bengali Market Traders Association (Regd.) 2-3 Bengali Market.	
3.	Shri Mukesh Bhatt (Individual)	
4.	Shri Bal Ram Jain (Individual)	
5.	Shri R.N. Chandeliya (Individual) Former Member of Delhi Metropolitan Council (NDMC Area)	
6.	Gram Sudhar Samiti (Regd.), Sarojini Nagar, New Delhi	
7.	Sarojini Market Shopkeepers Association (Regd.)	
8.	Shankar Market Traders Associations (Regd.), (New Central Market)	
9.	Bhagat Singh Market Vyapar Mandal (Redg.), New Delhi	
10.	Federation NDMC Residents Welfare Associations (Regd.), Palika Niwas, Lodi Colony,	
11.	President Residents Welfare Association (Regd),New Delhi	<p>⇒ NDMC should have representatives of people.</p> <p>⇒ Nominated MLA and MP already happen to be busy with their legislative functions in Assembly and Parliament respectively.</p> <p>⇒ NDMC houses sensitive areas like President Estate, offices of Central Ministries, etc. In any new scheme sanctity of these important areas should be maintained.</p>
12.	Residents Welfare Association,M-40/4, Moti Bagh New Delhi	<p>⇒ Support for NDMC being an elected body</p> <p>⇒ However, amendment to section 4(1)(b) and the consequent reduction of MLAs on the Council, we may lose our elected representative on the Council and thus our voice in the NDMC.</p>

13.	Central Government Employees Residents' Welfare Association, (X & Y Blocks) Sarojini Nagar, New Delhi	⇒ There should be a provision for electing/nominating at least two members from registered and recognized Central Government Residents Welfare Association which comprises wholly or partly in the NDMC area, to act as members of the Council.
14.	Central Government Employees Residents' Welfare Association, F, G & H Blocks, H-101, Sarojini Nagar, New Delhi	<p>⇒ The present system of nominating members in the New Delhi Municipal Council is delivering excellent services, but, in order to have adequate representation of the area covered by Central Government Employee's Resident Welfare Association, number of nominated members may be increased.</p> <p>⇒ As regards amendment to Section 4, Sub-section 1 in Clause (d) for the word 'two members', the word 'four members' may be further increased to accommodate representatives of various Government colonies. This is basically to give proper and sufficient, representation to Central Government servants residing in NDMC area and by nominating them as members of NDMC.</p> <p>⇒ Since these RWAs are recognized/approved by the Central Government (through DoP&T) as per the conditions laid down, DoP&T may be entrusted the job of forming/combining group of recognized RWAs/Federations and allow them to select/elect representative to be nominated as the member of NDMC from each area such as Lodi Colony, Sarojini Nagar, Laxmibai Nagar, Netaji Nagar, Moti Bagh, Gole Market, etc.</p>
15.	Central Government Officers Residents Welfare Association, Type-IV & III Flats, Laxmi Bai Nagar, New Delhi	⇒ when NDMC is made an elected body, there are chances that if a clause is inserted that only permanent residents

		<p>of the area/ward are allowed to contest the election then the villagers living in the midst of these Govt. colonies would only be eligible to contest the election as representative of these areas which would be of no use and residents of these Govt. colonies would be compelled to approach such villagers for their civic work from NDMC.</p> <p>⇒ In view of this RWAs Registered and Recognized by the DOP&T, Govt. of India may be allowed to contest the election.</p>
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