



NATIONAL COMMISSION FOR SCHEDULED TRIBES

**FOURTH REPORT
FOR THE YEAR
2008-09**

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D.O. No. 4/5/10-Coord.

Dated: 27th August, 2010

Respected Rashtrapati Ji,

The National Commission for Scheduled Tribes has been set up w.e.f. 19 February, 2004 by amending Article 338 of the Constitution and inserting a new Article 338A vide the Constitution (89th Amendment) Act, 2003. Article 338A, inter-alia, provides that it shall be the duty of the Commission to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of the safeguards available to the members of Scheduled Tribes and to make in such reports recommendations as to the measures that should be taken by the Union or any State for effective implementation of those safeguards and other measures for protection, welfare and socio-economic development of the Scheduled Tribes.

2. Since the post of Chairperson is lying vacant I have the honour to present to you the **Fourth Report** of the National Commission for Scheduled Tribes for the year 2008-09. During the period under review, the Members of the Commission held intensive discussions with the senior officers and people's representatives at State, district and local levels. The Commission also held a series of hearings with the senior officers of the State Govts., Central Ministries/ Departments, Central Public Sector Enterprises and financial institutions. The Commission has also deliberated upon various policy measures contemplated by the Government. The experiences of the Commission have been encapsulated in this Report, which has 8 Chapters covering (i) **ORGANIZATIONAL SET-UP AND FUNCTIONING OF THE COMMISSION**, (ii) **SERVICE SAFEGUARDS**, (iii) **RESETTLEMENT AND REHABILITATION OF DISPLACED TRIBALS**, (iv) **SCHEDULED TRIBES AND FOREST RIGHTS**, (v) **SCHEDULED TRIBE CERTIFICATES – ISSUES** (vi) **ATROCITIES AGAINST SCHEDULED TRIBES** (vii) **CASE STUDIES** and (viii) **CONSULTATION ON POLICY RELATED ISSUES**. A **SUMMARY OF RECOMMENDATIONS** made in each Chapter of the Report has been given in the Ninth Chapter.

3. The first Chapter on '**ORGANIZATIONAL SET-UP AND FUNCTIONING OF THE COMMISSION**' inter-alia, broadly dwells upon (i) various aspects of the functioning of the Commission and the initiatives taken for improved performance, (ii) needs and constraints faced by the Commission and (iii) laying of the Commission's reports in Parliament. Having acute shortage of staff, the Commission has not been able to take up matters relating to all duties and

functions assigned to it, the outcome of which reflects on the efforts made by the Commission. The Commission has, however, noted that while it submitted its 1st report to the Hon'ble President on 8 August 2006, 2nd Report on 03.09.2008, and 3rd Report on 29.03.2010, none of the reports has been laid in Parliament so far. The Commission has no information whether any of its Reports has been laid in any State Legislature under Clause (7) of Article 338A. The Commission accordingly recommended in all its reports that Clause (6) and Clause (7) of Article 338A should be amended to provide that the President/ Governor shall cause all reports submitted by the Commission to him/ her to be laid before each House of Parliament/ State Legislature within three months of such submissions and a memorandum of action taken shall be placed before each House of Parliament/ State Legislature within six months of such submission. The Commission is reiterating this recommendation as part of this report with the hope that the Government will initiate expeditious action to amend the above-mentioned Clauses of Article 338A.

4. The Constitution of India has made specific provisions for upliftment of the weaker sections of the society. These include provisions for reservation for Scheduled Castes and Scheduled Tribes in civil posts and services of the Government. There are several instructions and guidelines relating to implementation of policy of reservation by Govt. Departments and Public Sector Enterprises under them, including Banks, Insurance Companies and Central Universities, etc. **Chapter 2 on 'SERVICE SAFEGUARDS'** discusses some important aspects having vital bearing on the service safeguards available to the members of the Scheduled Tribes. The dereservation of posts in direct recruitment is already banned since 1989 but the dereservation in promotion is permissible. Since the proposed Reservation legislation remains to be enacted, the Commission reiterates its recommendation made in earlier reports that the dereservation should be banned totally.

5. As the need for accelerating the pace of planned development in various sectors of the economy started gaining momentum, the pressure to divert forest / acquire private land at various places for construction of dams, hydel projects, industries, mines etc. also started building up. The tribal people had to vacate land for the major part, for the simple reason that, through a natural co-incidence, the tribal habitats contained reservoirs of mineral resources and the catchments of streams and rivers possessing enormous irrigation and power potential. It is an admitted fact that the tribals are more vulnerable in the wake of industrialization; and they need a separate deal to ensure restoration of their livelihood in the relocated sites. It is, therefore, necessary to address issues related to relief, rehabilitation and resettlement of tribals in a timely and effective manner. Policy initiatives taken by the Government include institutional mechanisms to deal with displacement management, notably through the revised 'National Rehabilitation and Resettlement Policy', 2007, accompanied by some significant measures, viz., introduction of the Land Acquisition (Amendment) Bill, 2007 and the Rehabilitation and Resettlement Bill, 2007 in the Parliament and the initiative to formulate a 'National Tribal Policy', (which is still at the draft stage). The views of this Commission on these subjects have been discussed in the **Chapter 3 on LAND ACQUISITION AND RESETTLEMENT & REHABILITATION OF DISPLACED TRIBALS.**

6. The tribals have been residing on their ancestral lands in the forest areas from times immemorial. There exists a symbiotic relationship between the forest dwelling scheduled tribes and the biological resources in the country. They are integral to the very survival and sustainability of the forest eco-systems, including wild life. The legislative framework of the (reservation) processes for creating wilderness and forest areas somehow ignored the bona fide interests of the tribal community in the regions where tribal communities primarily inhabit. The simplicity of the tribals and their general ignorance of modern regulatory frameworks precluded them from asserting their genuine claims to resources in areas they depended upon for survival. It is only recently that forest management regimes have in their policy processes realized that forests have the best chance to survive if the tribal communities living in them participate in its conservation and regeneration measures; which has culminated into enactment of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. The status about implementation of this Act in various States and other related relevant issues are discussed in **Chapter 4 on SCHEDULED TRIBES AND FOREST RIGHTS.**

7. The need for uplifting the weaker sections of the society, particularly the Scheduled Tribes in the country has been receiving the attention of the Government for a long time. The Constitution provides for identification of certain communities only as Scheduled Tribes, so that only genuine persons can claim the benefits available for them. However, there are several hurdles and problems which genuine persons were facing in obtaining the Scheduled Tribe Certificate, while many non-eligible persons have availed the benefits by producing false ST certificates obtained fraudulently. Various issues relating to the Scheduled Tribe Certificates and the position obtaining in various States has been discussed in **Chapter 5 on SCHEDULED TRIBES CERTIFICATES-ISSUES.**

8. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 & PoA Rules, 1995 has been framed to protect the members of these communities from social denigration. There is, however, no substantial reduction in the number of incidents of atrocities on Scheduled Tribes. The Commission has also observed that about 19% of cases were decided by the Courts during the year 2008 out of which, on an average, only about 27% ended in conviction and 73% in acquittal. It has also been observed that the investigation process is not completed within a reasonable period of time. This is a matter of grave concern; and, there is imperative need to take more effective measures for curbing the incidence of atrocities upon Scheduled Tribes and ensuring prompt justice to the ST victims of atrocities and timely punishment to the perpetrators. The views of the National Commission for Scheduled Tribes regarding amendment of the SCs and STs (POA) Act, 1989 and the SCs and STs (POA) Rules, 1995 to achieve the above objective have been discussed in **Chapter 6 on ATROCITIES AGAINST SCHEDULED TRIBES.**

9. The Commission receives representations pertaining to grievances and violation of safeguards of Scheduled Tribes. These representations are referred to the concerned organizations of the Central Govt. or the State Govts. by the Commission, requesting them to furnish full facts within a given timeframe. The

facts furnished by the concerned organization are examined by the Commission and in case, on enquiry, the Commission feels that there has been violation of the safeguards provided to the members of Scheduled Tribes, either in the Constitution or under any other law or order of the Government, it advises the concerned organization to take corrective measures within a given timeframe and apprise the Commission of the action taken. The Commission's intervention brought relief in many cases. A few representative cases have been discussed in **Chapter 7** titled **CASE STUDIES**.

10. Clause 9 of Article 338A of the Constitution provides that the Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Tribes. During the year 2008-09, the Commission communicated its views on several policy-related issues, the details of which have been presented in **Chapter 8** on **CONSULTATION ON POLICY RELATED ISSUES**

11. Notwithstanding the handicaps, the Commission tried its best to perceive the basic problems of Scheduled Tribes in a holistic prospective; and has made recommendations and suggestions to safeguard their rights and improve the efficacy of existing measures to reach benefits to the Scheduled Tribes living in the remote areas. The Commission sincerely hopes that these recommendations and suggestions will be given serious consideration in the overall interest of Scheduled Tribes.

With kind regards,

Yours sincerely,

(Maurice Kujur)

Smt. Pratibha Devi Singh Patil,
Hon'ble President of India,
Rashtrapati Bhavan,
New Delhi.

CHAPTER 1

ORGANIZATIONAL SET-UP AND FUNCTIONING OF THE COMMISSION

1. Creation of National Commission for Scheduled Tribes

1.1.1 The National Commission for Scheduled Tribes (NCST) was established by amending Article 338 and inserting a new Article 338A in the Constitution through the Constitution (89th Amendment) Act, 2003. By this amendment¹ the erstwhile National Commission for Scheduled Castes and Scheduled Tribes was replaced by two separate Commissions namely- (i) the National Commission for Scheduled Castes (NCSC), and (ii) the National Commission for Scheduled Tribes (NCST) w.e.f. **19 February, 2004**. Detailed background information about the historical evolution of the National Commission has been given in Chapter-1 of the first Report of the Commission for the year 2004-05 and 2005-06.

1.1.2 The National Commission for Scheduled Tribes has a Chairperson, Vice-Chairperson and three other Members. The Members of the Commission who remained in office during the report year include Smt. Urmila Singh Chairperson(since 18.06.2007), Shri Tsering Samphel, Member (since 14.06.2007), Shri Maurice Kujur, Vice Chairperson (since 25.04.2008) and Shri Oris Syiem Myriaw, Member who assumed office on 17.04.2008. The office of the third Member remained vacant throughout the year under report.

2. Functions and Duties of the Commission

1.2.1 The functions and duties of the National Commission for Scheduled Tribes have been laid down in Clause (5) of the Article 338A of the Constitution. The Commission was assigned certain additional functions vide the Ministry of Tribal Affairs' Notification dated 23 August, 2005². The functions and duties of the Commission remained unchanged during the report period.

3. National Commission for Scheduled Tribes Chairperson, Vice-Chairperson and Members (Conditions of Service and Tenure) Rules, 2004

1.3.1 The conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other Members of the National Commission for Scheduled Tribes are governed by the National Commission for Scheduled Tribes Chairperson, Vice-Chairperson and Members (Conditions of Service and Tenure) Rules notified by the Ministry of Tribal Affairs on 20 February 2004. These Rules, *inter-alia*, provide that:

- (i) The Chairperson shall be appointed from amongst eminent socio-political workers belonging to the Scheduled Tribes, who inspire confidence amongst the Scheduled Tribes by their very personality and record of selfless service;

¹ Available under the link Acts and Amendments on NCST website <http://www.ncst.nic.in>

² Available under the link NOTIFICATION on NCST website <http://www.ncst.nic.in>

- (ii) The Vice-Chairperson and other Members out of whom at least two shall be appointed from amongst persons belonging to the Scheduled Tribes;
- (iii) At least one other Member shall be appointed from amongst women.
- (iv) The Chairperson, the Vice-Chairperson and the other Members shall hold office for a term of three years from the date on which he/ she assumes such office.
- (v) The Chairperson, the Vice-Chairperson and the other Members shall not be eligible for appointment for more than two terms.
- (vi) The Chairperson shall have the rank of a Cabinet Minister and the Vice-Chairperson that of Minister of State and other Members shall have the rank of a Secretary to the Government of India unless otherwise specified.

1.3.2 A proposal for replacement of the words "**at least one other member shall be appointed from amongst woman**" by the words "**at least one person appointed in the Commission shall be a woman**" in para 3(2)(c) of these rules was received from the Ministry of Tribal Affairs. The proposal was not supported by the Commission. Details are given in para 8.3.13 in Chapter 8 of this Report.

4. Powers of the Commission

1.4.1 Clause (4) of Article 338A of the Constitution provides that the Commission shall have the power to regulate its own procedure. The Commission accordingly notified the Rules of Procedure for the first time on 17 September 2004. These Rules define the responsibilities of the Chairperson, Vice-Chairperson and Members, and Secretary to the Commission, and further lay down that the Chairperson shall allocate subjects and responsibilities among the Members of the Commission. These Rules, inter-alia, also provide about (i) the procedure of investigation and enquiry by the Commission, (ii) frequency of meetings of the Commission, (iii) the duties of its Regional Offices, (iv) the advisory role of the Commission, and (v) its monitoring functions. A copy of the Rules of Procedure is also available on the website of the Commission (<http://www.ncst.nic.in>). No changes were made to these Rules during the year 2008-09.

1.4.2 Clause (8) of Article 338A provides that the Commission shall, while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of Clause (5) have all the powers of a civil court trying a suit and in particular in respect of (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath, (b) requiring the discovery and production of any documents, (c) receiving evidence on affidavits, (d) requisitioning any public record or copy thereof from any court or office, (e) issuing commissions for the examination of witnesses and documents, (f) any other matter which the President may, by rule, determine. The Hon'ble Supreme Court vide their judgment dated 31 October, 1996 in Civil Appeal No.13700 of 1996, however, held that the Hon'ble High Court of Delhi was justified in allowing the petition filed by the Indian Overseas Bank Officers Associations and Ors. in CW (P) No. 1362 of 1993 and C.M No. 2193/ 93, against the order (in the form of a letter) dated 4 March 1993 issued by a Member of the erstwhile NCSCST directing the Indian Overseas Bank 'to stop the promotion process pending further investigation and final verdict in the matter'. The Hon'ble

Supreme Court further held that all the procedural powers of a civil court given to the National Commission for Scheduled Castes and Scheduled Tribes by Article 338 (8) of the Constitution of India are for the limited purpose of investigating any matter under Article 338 (5) (a) or enquiring into any complaint under Article 338 (5) (b). The apex Court further held that the powers of a civil court of granting injunctions, temporary or permanent, do not inhere in the Commission nor can such a power be inferred or derived from a reading of Clause (8) of Article 338 of the Constitution. It was further held that the Commission, having not been specifically granted any power to issue interim injunctions, lacks the authority to issue an order of the type found in the letter dated 4 March, 1993 directing the Indian Overseas Bank to stop the promotion process pending further investigation and final verdict in the matter. The Hon'ble Supreme Court had further held that the Commission has the power to summon and enforce the attendance of any person from any part of India and examine him on oath; it can require the discovery and production of documents and so on and so forth. It was stated that all these powers are essential to facilitate an investigation or an enquiry. Such powers do not convert the Commission into a civil court. These observations of the Hon'ble Supreme Court were brought to the notice of all the Ministries and Departments of Govt. of India by the Department of Personnel & Training vide their O.M.No.36036/2/97- Estt. (Res.) dated 1 January, 1998, a copy of which is placed at **ANNEXURE-1.I**. The Commission has been cognizant of the orders of the Supreme Court, in letter and spirit.

1.4.3 Clause (9) of Article 338A provides that the Union and every State Govt. shall consult the Commission on all major policy matters affecting Scheduled Tribes. A statement indicating the subject matters/ issues on which National Commission for Scheduled Tribes was consulted by various Ministries/ Departments during the year 2008-09 is placed at **ANNEXURE 1.II**. These have been discussed in greater detail in **Chapter 8** of this Report.

5. Organizational Set-up of the Secretariat of the Commission

1.5.1 The National Commission for Scheduled Tribes functions from its Headquarters located at New Delhi. Till July, 2006 the representations/petitions received in the Commission at the Headquarters were being dealt with in three different functional Wings called (i) Economic and Social Development Wing, (ii) Service Safeguard Wing, and (iii) Atrocities Wing. It was observed that this was not a very rational and balanced system of distribution. The Commission at its meeting held on 20 July, 2006 decided to streamline the functioning of the Commission. Four Research Units were created in place of the then existing three operational Wings vide Office Order dated 26 July, 2006 to deal with all matters pertaining to socio-economic and educational development, services and atrocities in relation to Ministries/ Departments along with CPSEs and other Organizations under their administrative control and the States/UTs allotted to them, as given below para 2 of the said Office Order. Two Research Units each are presently headed by one Director-level officer. Apart from these four Research Units, there is an Administration & Establishment Unit and a separate Coordination Unit. While the Administration/Establishment Unit provides administrative support to the Commission, the Coordination Unit deals with the various activities relating to making arrangements for holding internal meetings of the Commission, issuing communications to the State Govts. for the visits of the

Chairperson, Vice-Chairperson or Members of the Commission, Parliamentary and court matters and any other matter not connected with the four functional Research Units, Administration and Establishment Unit. The Organizational Chart of the Commission as on 31/03/2009 is placed at **ANNEXURE - 1.III.**

6. Staffing Position at the Headquarter Office of the Commission

1.6.1 There are basically two categories of Staff at the Headquarter of the Commission at New Delhi, namely (a) Secretarial Staff belonging to the Central Secretariat Service (CSS), Central Secretariat Stenographers Service (CSSS) and Central Secretariat Clerical Service (CSCS) Cadres and (b) Joint Cadre Staff comprising (i) Director (in the scale of pay of Deputy Secretary to Govt. of India) (ii) Deputy Director, (iii) Assistant Director, (iv) Research Officer, (v) Sr. Investigator and (vi) Investigator. The staff in respect of posts at Sr.No. (i), (ii) and (iii) above, which are Group 'A' posts of Joint Cadre, is provided by the Ministry of Social Justice & Empowerment, being the Cadre Controlling Authority and the staff in respect of posts at Sr. No. (iv), (v) and (vi) is provided by the National Commission for Scheduled Castes, who are the Cadre Controlling Authority for these posts. The Staff belonging to CSS, CSSS and CSCS is provided by the Department of Personnel & Training, through Ministry of Social Justice & Empowerment. The Secretarial Staff in the Regional Offices of the Commission is also appointed and provided by National Commission for Scheduled Castes, which is the Cadre Controlling Authority for these posts. The Group 'D' posts and some of the Group 'C' posts are filled up by the National Commission for Scheduled Tribes itself.

1.6.2 The total sanctioned strength of the staff of the Commission including various categories of posts in Group 'A', Group 'B', Group 'C' and Group 'D' is 124, out of which 56 are for the Headquarter and 68 for its six Regional Offices at Bhopal, Bhubaneswar, Jaipur, Raipur, Ranchi and Shillong. Out of 56 sanctioned posts at the Headquarter, 42 were filled and 14 posts vacant on 31.03.2008. Similarly out of 68 sanctioned posts for Regional Offices, 35 were filled and 33 posts were vacant. The sanctioned strength of 124 is inclusive of the 35 posts to be filled from the Joint Cadre (referred to in the previous para), out of which 2 posts of the Deputy Director, 6 posts of Sr. Investigator and 8 posts of Investigator (total 16 posts) were vacant.

1.6.3 The Commission requested³ the Cadre Controlling authorities i.e. Ministry of Social Justice and Empowerment and National Commission for Scheduled Castes to fill up vacant posts. However, despite all efforts by the Commission to get these posts, particularly the posts belonging to Joint Cadre, filled up, not much progress in this direction has taken place; and, as a consequence thereof the work of the Commission continues to suffer. A study report on the performance of National Commission for Scheduled Tribes submitted by the Central for Policy Research, entrusted by the Department of Administrative Reforms & Public Grievances also pin-pointed this situation and strongly recommended for strengthening the NCST. While discussing the report in

³ Letter No. 1/9/NCST/2005-Admn dated 29/08/2005 addressed to MSJE and DO letter No. 1/9/NCST/2005-Admn. dated 15/02/2006 addressed to Secretary, NCSC followed by reminders

the meeting of the Commission held on 07/11/2008, the issue of filling up of the Joint Cadre posts and other posts in the Commission was also discussed. The Commission observed that NCST should function as Cadre Control Authority for various posts under it. The matter again came up for discussion in the meeting of the Commission held on 22/01/2009 during the course of discussion on the 33rd Report (14th Lok Sabha) of the Committee on the Welfare of Scheduled Castes and Scheduled Tribes. The Commission desired that immediate action for framing the new recruitment rules for the posts of Sr. Investigator and Investigator should be taken so that NCST should have its own cadre for these posts. It was further decided that the posts of Research Officer may continue in the combined cadre which may include Ministry of Tribal Affairs also and that the new recruitment rules for the post of Research Officer should also be prepared at the earliest. The draft recruitment rules for the posts of Investigator and Sr. Investigator in the NCST were sent to Ministry of Tribal Affairs on 26/02/2009 for obtaining approval from DoPT. After replying to certain queries by DoPT, the detailed proposal was sent to MTA on 09/07/2009. The proposal is presently stated to be under consultation by the MTA with Ministry of Law. In view of the foregoing, **the Commission reiterates its earlier recommendation contained in the third report for the year 2007-08. that the Ministry of Tribal Affairs as well as Ministry of Social Justice & Empowerment should make coordinated efforts to find a solution, including creation of a separate cadre for posts belonging to National Commission for Scheduled Tribes so that vacancies in various posts in the Commission do not remain unfilled for a long period at any point of time.**

7. Regional Offices of the Commission and their jurisdiction

1.7.1 The National Commission for Scheduled Tribes has six Regional Offices at Bhopal, Bhubaneswar, Jaipur, Raipur, Ranchi and Shillong. The location and jurisdiction of these Offices along with the name and designation of the Head of Regional Offices (as on 31 March 2009) are as given below:-

S.No	Location & Address of Regional Office	Name & Designation of the Officer incharge	Jurisdiction of the Regional Office
(1)	(2)	(3)	(4)
1.	Room No.309, Nirman Sadan, CGO Complex, 52-A, Arera Hills, Bhopal-462011	Shri R.K.Dubey, Assistant Director Ph: 0755 2576530 0755 2578272 (F)	M.P., Maharashtra, Karnataka, Kerala, Goa, and Union Territories of Dadra & Nagar Haveli and Lakshadweep.
2.	N-1/297, IRC Village, Bhubaneswar- 751015	Shri R.K. Mishra, Assistant Director Ph:0674 2551616 0674 2551818 (F)	Andhra Pradesh, Orissa, Tamil Nadu, West Bengal and Union Territories of Andaman & Nicobar Islands, and Pondicherry
3.	Room No.101 & 102, Ist Floor, Block-A, Kendriya Sadan Sector-10, Vidyadhar Nagar, Jaipur-302015	Dr. G.S. Somawat, Director Ph:0141 2741173 0141 2235488 (F)	Chandigarh, Gujarat, Haryana, HP, Jammu & Kashmir, Punjab, Rajasthan, Uttaranchal and Daman & Diu.

(1)	(2)	(3)	(4)
4.	R-26, Sector-2, Avanti Vihar, Post Office Ravigrade, Raipur-492006	Shri R.K.Dubey, Assistant Director (Addl. charge) Ph:0771 2443334 Ph:0771 2443335 (F)	Chhattisgarh
5.	14, New A.G. Co- operative Colony, Kadru, Ranchi-834002	Shri R.K. Mishra, Assistant Director (Addl. charge) Ph: 0651 2341677 0651 2340368 (F)	Bihar, Jharkhand, and Uttar Pradesh
6.	Rabekka Villa, Temple Road, Lower Lachumiere, Shillong-793001	Miss. P. Syiemlieh, Assistant Director Ph: 0364 2504202 0364 2221362 (F)	Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura,

1.7.2 The various duties assigned to the Regional Offices include:

- (i) to maintain effective interaction and liaison with the State Govts./UT Administrations,
- (ii) to provide information and documents about the policies and programmes of the Union Govt. for the welfare and advancement of Scheduled Tribes to the States, NGOs etc. in their respective jurisdiction and to obtain similar information and documentation from the State Govts. and to provide the same to the Headquarters of the Commission,
- (iii) to conduct on-the-spot enquiries into the cases of atrocity on Scheduled Tribes either on their own or as entrusted to them by the Headquarters and to interact with the concerned administrative/Police authorities and to submit report to the Headquarters,
- (iv) to deal with complaints/representations from members of Scheduled Tribes and their welfare associations etc. on various matters, and (v) to accompany the Chairperson and Members of the Commission on their tours in the States/UTs under their jurisdiction.

8. Meetings of the Commission

1.8.1 After the post of Vice-Chairperson, vacated in Feb 2007, was filled on 25.04.2008 and one of the two vacant posts of Members was filled on 17.04.2008, the Commission was able to muster a quorum for its meetings after an unduly long time.

1.8.2 During the year 2008-09, ten meetings of the Commission were held. List of the Agenda Items discussed in the meetings during 2008-09 is placed at **ANNEXURE 1.IV**. The agenda notes and minutes of the meetings are also made available on the website of the Commission in keeping with the spirit of the RTI Act, 2005.

9. Review Meetings

1.9.1 In order to monitor and evaluate the implementation status of various development schemes and progress of investigation and disposal of the cases of atrocities on the members of Scheduled Tribes by the police authorities and the courts, the Commission interacts with the State/UT Governments by holding detailed State level review meetings with the Chief Secretaries and other senior officers. These meetings are generally preceded with visits to the tribal Bastis, hostels, Ashram Schools etc. and interactions with them on the impact of the developmental projects. The Commission has noticed that these visits and meetings have been useful in enhancing the interest and involvement of the State/UT Governments, in better understanding of the genuine problems of the Scheduled Tribes and accordingly, in advising them to take suitable initiatives in working out remedial measures and adopting appropriate and relevant strategies.

1.9.2 The Commission and its Members also undertake review meetings with the district level officers to assess the impact of the developmental schemes and investigation of the cases of atrocities on members of Scheduled Tribes; and advises remedial action for better and more effective implementation of the projects, with a view to ensure the flow of benefits to all the tribals, including those living in inaccessible areas, and also to expedite the investigation and disposal of the atrocity cases and the cases relating to land alienation, etc. pending either with the district administration or in the courts. The Commission also interacts with tribal leaders or the members of tribal associations to ascertain ground realities and the implementation status of various projects and schemes before having review meetings with the district administration.

1.9.3 The Commission also undertakes review meetings with the organizations/ offices functioning under the administrative control of the Central Government, and the various Central Public Sector Undertakings including the financial institutions to ascertain the implementation of the reservation instructions in appointment to different categories of posts. These review meetings by the Commission are generally preceded by meetings with the representatives of SC/ST Employees' Welfare Associations operating in those organizations to understand the actual grievances of the ST employees working in these organizations.

1.9.4 The Commission has developed separate sets of Questionnaires for eliciting information from the (i) Central Ministries/ Departments (ii) Central Public Sector Undertakings, and (iii) State Govts./UT Administrations for the purpose of undertaking review meetings. The Commission generally undertakes the review after receipt of the detailed information in the respective Questionnaire⁴. There is a separate Questionnaire for undertaking review meetings at district level which are generally carried by the Members of the Commission whenever they propose to undertake review meetings with the district level officers.

⁴ The Questionnaire, information furnished to the Commission for these meetings and the Summary Record of the discussions is available under the link Hearings/ discussions on the NCST website i.e. <http://www.ncst.nic.in>

1.9.5 A statement indicating the details of visits undertaken by the Chairperson, the Vice-Chairperson and the Members of the Commission during 2008-09 is placed at **ANNEXURE 1.V**

10. Laying of Commission's Reports in Parliament

1.10.1 Clauses (5) (d) and (5) (e) of Article 338A provide that it shall be duty of the Commission to present to the President annually and at such other times as the Commission may deem fit, reports upon the working of the safeguards provided to Scheduled Tribes, and to make recommendations as to the measures that should be taken by the Union or any State for effective implementation of those safeguards and other necessary measures for the protection, welfare and socio-economic development of the Scheduled Tribes.

1.10.2 Clause (6) of Article 338A of the Constitution further provides that the President shall cause all such reports to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for non-acceptance, if any, of any of such recommendations. Similarly, Clause (7) of this Article provides that where any such report or a part thereof relates to any matter with which any State Govt. is concerned, a copy of such report shall be forwarded to the Governor of the State who shall cause it to be laid before the legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for non-acceptance, if any, of any of such recommendations. The Commission presented to the President its 1st Report for the years 2004-05 and 2005-06 on 8th August, 2006, 2nd Report for the year 2006-07 on 3rd September 2008 and 3rd Report for the year 200-08 on 29th March, 2010. However, not even the 1st Report has been laid in the Parliament so far.

1.10.3 The Commission has observed that there has been a large time gap between the submission of its Report to the President and its laying before the Parliament/ State Legislature. This delay has been the cause of concern to the Commission as it substantially detracts value from the Commission's recommendations as the Hon'ble Members of Parliament come to know of them many years after submission of the Report to the President. This phenomenon also prevents the Commission from timely dissemination of its reports to various organisations/ agencies including NGOs working for Scheduled Tribes as also to the senior officers of the Central Government and State Governments concerned with formulation of programmes and schemes for tribal development, thereby depriving them of the inputs provided by the Commission on various tribal issues.

1.10.4 The erstwhile National Commission for Scheduled Castes and Scheduled Tribes in its fourth Report for the year 1996-97 and 1997-98 recommended that Clause (6) and Clause (7) of Article 338 should be amended to provide that the President/ Governor of a State shall cause all Reports submitted/ sent by the Commission or the Ministry of Tribal Affairs to him to be laid before each House of Parliament/ State Legislature within three months of such submissions and a memorandum of action taken or proposed to be taken on the recommendations relating to the Union/ State shall be placed before each House

of Parliament/ State Legislature within six months of such submission. In the action taken report submitted in the Parliament at the time of laying of the fourth Report, the Ministry of Social Justice & Empowerment had stated as below:-

"It is not practical to expect a decision as well as action on the recommendations made by the Commission within a specified time of three months from various Ministries/ Departments of the Government. If we force the Ministries and Departments to take decision and action within a period of three months, the Ministries/Departments will not be able to take the recommendations with the seriousness they deserve. Therefore, the amendments proposed to be made in Article 338 of the Constitution shall not help in achieving the overall objectives of the Commission. Hence, this recommendation of the Commission cannot be accepted".

1.10.5 It is obvious therefrom that having focused only on consequential action; the Ministry of Social Justice & Empowerment did not fully appreciate the recommendation of the Commission which sought to de-link the laying of the Report in Parliament from the laying of the Action Taken Memorandum on the recommendations contained in the Report of the Commission.

1.10.6 The National Commission for Scheduled Tribes reiterated the above mentioned recommendation in its first as well as second Report submitted to the President on 8 August 2006 and 3rd September, 2008 respectively. As these Reports of the Commission have not yet been laid in Parliament alongwith an action taken report, the Commission is not aware of the final decision of the Government in this regard. **The Commission, however, is of the view that it is very important that Reports of the Commission are laid in Parliament and the State Legislatures, as the case may be, within a reasonable period of time i.e. not exceeding three months, and memorandum of action taken/proposed to be taken on its recommendations by the Ministry of Tribal Affairs/ the respective State Government are separately laid in the Parliament/ State Legislature within six months of such submission of the report. The Commission would, therefore, like to reiterate this recommendation. The Commission hopes that the Government will appreciate the concern of the Commission for timely submission of the reports in the Parliament and initiate expeditious action to amend the above-mentioned Clause of Article 338A of the Constitution on the above lines.**

11. Functional Activities

1.11.1 The Commission receives a large number of petitions from all parts of the country about the grievances relating to (i) alleged violation of service safeguards, (ii) matters relating to alienation of land, admission in professional and technical institutions particularly in medical, engineering etc., and (iii) atrocities. These petitions are referred to the respective organization and the reply received from the organization is sent for information to the petitioner. In most of the cases the petitioners submit rejoinders to the Commission, which are examined in consultation with the concerned organization. Depending on the nature of the reply received from the respective organization, the Commission, with a view to expedite the disposal of the petition, organizes hearings in which

the senior officers of the concerned organization are called to appear before it. After detailed interaction with them, the Commission issues the proceedings of the discussion, also requesting the organization concerned to take follow up action on its recommendations within a given timeframe. In the interest of the disposal of the maximum number of petitions, the Commission clubs all the cases/ petitions pending in the Commission in relation to an organization in a single hearing. This change has led to reduction in the number of hearings and at the same time marked increase in the disposal of cases/ petitions. This also led to increased awareness in those organizations about implementation of the reservation policy in letter and in spirit. During 2008-09, Hon'ble Chairperson held hearings in respect of cases relating to 4 Ministries/ Deptts./ CPSUs while Hon'ble Vice-Chairperson conducted hearing in respect of 7 Ministries/ Deptts./ CPSUs beside 12 hearings held by other Members. The Schedule and proceedings of the discussions of these hearings is also made available on the Website of the Commission in the interests of transparency and good governance.

1.11.2 As mentioned in the previous Report, the three functional Wings namely (i) Economic and Social Development Wing, (ii) Service Safeguard Wing, and (iii) Atrocities Wing were restructured into four Research Units (RU-I, RU-II, RU-III and RU-IV) during 2006-07. The same Units continued to function with the same operational jurisdiction during 2007-08.

1.11.3 With a view to providing information about the functioning of the Commission to the tribal petitioners who visit to the Commission, an Information and Facilitation Centre (I&FC) has been set up at the entry point of its office on 6th Floor.

1.11.4 In order to enable the poor tribal people living in different parts of the country to contact the officers of this Commission and also to send their grievances/complaints, a Toll Free telephone number **1800117777** with Fax facility has been commissioned on which the officers of this Commission can be contacted free of cost from BSNL/MTNL landline telephones from anywhere in the country. The petitioners/complainants can also know the position of the petitions already filed with the Commission.

1.11.5 With a view to making the tribal people and other persons/ Associations/ Organisations interested in tribal affairs and such bodies which have been entrusted with duties to promote tribal development, aware about the role, responsibilities and functioning of the Commission, the website of the Commission **<http://www.ncst.nic.in>** was launched on 12.2.2007. The information available on the website of the Commission was updated from time to time during the year 2008-09.

12. Compliance of the RTI Act, 2005

1.12.1 The Commission website contains information about the Commission, its functions and other information related to Schedule Tribes. On its website, the Commission has published up-to-date detailed information about pro-active disclosures, under RTI Act and other information of public interest like record of hearings, meetings of the Commission, visits of the Commission; atrocity cases investigation reports, important communications, notices and circulars etc.

The Website also provides useful links to several related websites. The website is being maintained by the Computer Cell of the Commission for uploading of contents and its customization.

13. Representation in Court Cases

1.13.1. For proper implementation of the Constitutional safeguards provided for the Scheduled Tribes and to advise the Union and the State Governments on all major policy matters affecting the Scheduled Tribes, the Commission is on occasion required to file affidavits containing its views in cases relating to important issues concerning the Scheduled Tribes filed in various Courts by various parties, including the members of the ST community and/ or by their associations, involving National Commission for Scheduled Tribes as one of the respondents. A statement showing the particulars of 10 court cases pertaining to the year 2008-09 and action taken thereon by the Commission is at **ANNEXURE 1.VI.**

14. Report on Study of performance of the National Commission for Scheduled Tribes conducted by Centre for Policy Research, New Delhi.

1.14.1 Ministry of Tribal Affairs, vide letter dated 07-05-2008 sought the comments of the Commission on a Study of performance of the National Commission for Scheduled Tribes conducted by the Centre for Policy Research, New Delhi entrusted by the Department of Administrative Reforms & Public Grievances (DAR&PG), Govt. of India. The Report was placed before the Commission in its meeting held on 12/05/2008. As the report needed detailed examination by the Commission, various observations and recommendations contained in the Report were discussed at length by the Commission in its meeting held on 07/11/2008. The observations of the Commission on the report were communicated to the Ministry of Tribal Affairs vide letter dated 16-01-2009 for onward transmission to DAR&PG. A copy of this letter along with the comments is placed at **ANNEXURE 1.VII.**

15. Introduction of Computerized Monitoring System

1.15.1 At present, NCST office is equipped with PCs, Printers and Scanners etc. All the officers and Sections/Units have been provided with computers for efficient handling of their work. The Computers are networked through NIC and have continuous support from the NIC Networking Group.

1.15.2 In the Annual report for 2006-07, the Commission observed that as many as about 3000 loose receipts were lying without examination, in the four Research Units (which deal with the petitions), which included fresh petitions, replies from the concerned organizations to the petitions referred to them, rejoinders and the de-reservation proposals received from various departments of the Central government. This was apart from about 5000 files which were being shown pending and were required to be reviewed to see whether any action was pending and whether these files needed to be closed. This was a matter of great

concern to the Commission and forced it to find new ways to get over the situation.

1.15.3 In order to establish an effective system for their disposal and monitoring of receipts and case files, action was initiated in April 2008 with National Informatics Center (NIC). Personnel & Public Grievances Informatics (PersInfotech) Division of NIC has implemented a computerized system by integrating and customizing “Centralized Public Grievance Redressal and Monitoring System (CPGRAMS)” and “File Tracking System (FTS)” to suit specific requirements of the Commission and to maintain the integrity of the data and its sharing. These systems stand evolved as an effective and powerful Complete Grievance Management Tool (CGMT), which is also being utilized as an effective Management Information System (MIS) and thus, can be renamed as “**Public Grievance Redressal and File Management System (PGRFMS)**”. The system has the following features:

- ◆ User Authentication (user name / Password)
- ◆ Access privilege to limit the access to the work pertaining to their areas only, i.e. Role-based access.
- ◆ In-built capability for automatic registration of grievances (both on-line and manual)
- ◆ Generation of forwarding-cum-acknowledgement letters after registration of grievances
- ◆ Generation of automatic reminders, with flexibility to generate manual reminders too.
- ◆ Registration of grievances either from the Diary Receipts or from a file created through FTS
- ◆ Enable linkage of any file with a registered grievance (if the grievance is registered in CPGRAMS) and corresponding file(s) which already exist, but has not been linked
- ◆ Facility to create “Dealing hand-wise unique file number”.
- ◆ Authorization to the administrator to change the section or ownership of any file.
- ◆ Editing of closed files in respect of limited parameters only
- ◆ Recording of Transaction Log related to editing of files
- ◆ Recording the ownership history of files into the system
- ◆ Facility of updating the status of grievances in the CPGRAMS through FTS without logging into CPGRAMS.
- ◆ Generation of various types of customized Reports.

1.15.4 The FTS is a web based application consisting of three modules viz. Diary, File and Dispatch Modules. The System has features like:

- ◆ Generation of files & receipts and forwarding to concerned officer/Section

- ◆ Merging of receipt(s), after their examination, into the concerned file(s). Receipts may also be de-merged from a file if necessary.
- ◆ Acknowledgement of physical receipt of files or receipts by the officers/sections
- ◆ Editing of files & receipts
- ◆ Closing of files & receipts
- ◆ Recording of movement of files/receipts facilitating their easier tracking.
- ◆ Identification of a dealing Section based on a unique number assigned to Section(s)
- ◆ Generation of various statistical and generic reports of Files & Receipts for monitoring purposes

1.15.5 The application enables the users to maintain a consistent watch over monitoring of files/receipts and their movements at different levels, which plays an important role in the decision making process. All files have been classified subject-wise to facilitate efficient handling.

Effectiveness of the Monitoring System

1.15.6 As a result of implementation of the **PGRFMS**, the ease and efficiency in handling and monitoring of large number of files and grievances stand enhanced with the following:

- ◆ Registration of grievances into the system, automatic creation of file (with category as Grievance) related to the grievance if one does not exist and the merging of the received receipt in the file thereof.
- ◆ Entry of all receipts in the System and forwarding them to the concerned sections/divisions.
- ◆ Creation and editing of files by the sections/divisions and merging of the receipts in the concerned files for further action.
- ◆ Timely generation of Reminders to the concerned authorities.
- ◆ Effective monitoring through customized features/tools:
 - Routine review of files & receipts
 - Attention to focus areas of works.
 - Search current location / status of any receipt from the FTS.
 - Tracking of the movement of files and receipts.
 - Management Information System with inter-linking of CPGRAMS and FTS, with facility to search/track any file/receipt based on selected criteria/parameters
 - Subject-wise categorization of files facilitating close monitoring of Court/Policy/VIP and other cases etc.

- In-built flexibility to generation of various statistical and generic reports of files and grievances for customized requirements.
- Status of pendency/disposal of files and receipts in the concerned sections/divisions and focus more attention to long pending cases.

1.15.7 During the year, all pending receipts were registered in the FTS and merged with the concerned files. Similarly, all the pending files (including those which were inactive) were registered in FTS categorized as 'Inactive' if no action was necessary or was not being pursued further by the petitioner. This permitted greater attention to be paid to the live cases and attendance to fresh ones without undue delay. The status of disposal/pendency of files in relation to various subject heads (categories) opened up to 31.3.2009 has been given in **ANNEXURE-1.VIII**. Similarly, the status of disposal of receipts including fresh petitions addressed to the Members of the Commission (including Chairperson & Vice-Chairperson), Senior Officers and the Sections/Units of the Commission is given in the **ANNEXURE 1.IX**.

Future Programme

1.15.8 At present, the **PGRFMS** has been implemented at the NCST Hqrs. In the next phase, it is planned to implement the System by hosting it on a Central Server in public domain after enhancing the existing system further. This will enable all the Regional Offices of the Commission access and use the System. The planned centralization of the System will enhance its effectiveness for handling and monitoring of grievances. This will also enable the public to file their grievances on-line and also to check status of their applications on-line. The upgradation, remote updating and maintenance of the System are planned to be carried out by the Computer Cell, NCST Hqrs.

1.15.9 It is also proposed to fully computerize the accounting system with supporting infrastructure and by providing training and technical assistance to the users in the Commission. A proposal for necessary grants for the requisite hardware, software and manpower in this regard has already been submitted to the Ministry of Tribal Affairs vide the Commission's letter dated 13 May, 2010

16. Virtual Library of the Commission:

1.16.1 A significant addition is the establishment of a sharable folder, named as 'Library', which allows access to the multiple Users in the Commission. All the Users may save file/ store matters pertaining to STs including (i) important letters/ instructions issued by the Govt. from time to time, (ii) communication by/ to the Commission on important issues, (iii) proceedings of various meetings of the Commission and hearings held by the Commission (iv) important Acts of Parliament and State Legislatures (v) important Court judgments and (vi) reference material , (vii) reports of the Parliamentary Committees/ and other Committees, (viii) research studies and (ix) Annual Reports of Ministry of Tribal Affairs, MSJE and other important Ministries etc in the Library folder. The material provides the User with enhanced searching capabilities in a digital format, the capability to download and use the text on desired manner.

17. Progress of disposal of petitions/cases.

1.17.1 As per information furnished in the 3rd Report 3468 cases were live at the end of the year 2007-08. The File Tracking System was introduced since July, 2008 in the Report year 2008-09. In order to place complete information about current as well as already closed files details about each file that was closed but not yet destroyed till July, 2008 were also entered in the FTS. Therefore, the number of case files brought forward from previous year as downloaded from the FTS is different from the information about number of live cases given in the 3rd Report. Thus, as per FTS, the number of files brought forward from previous year is 4408. During the year 2008-09 1517 new case files were opened while 2913 case files were closed. The progress of disposal of petitions/ case files during the year 2008-09 was as under:-

(i)	Number of case files brought forward from previous year	:	4408
(ii)	Number of files opened during the year	:	1517
(iii)	Number of files closed	:	2913
(iv)	Number of live cases at the end of the year 2008-09	:	3112

CHAPTER 2

SERVICE SAFEGUARDS

2.1 Constitutional Provisions

2.1.1 The Constitution of India provides for reservation for Scheduled Tribes in civil posts and services under the Government. The essence of relevant articles of the Constitution, pertaining to service safeguards, is summarized, as under:

- (i) **Article 16(4):** This Article empowers the States to make provision for reservation in appointment or posts for any backward class for ensuring adequate representation.
- (ii) **Article 16(4A):** This Article was added by the Constitution (Seventy Seventh Amendment) Act, 1995 w.e.f. 17 June 1995 to empower the State for making provisions for reservation in matters of promotion (with consequential seniority)¹ to any class or classes of posts in services under the State in favour of SCs/STs which, in the opinion of the State, are not adequately represented in services under the State.
- (iii) **Article 16(4B):** This Article (added by the Constitution (Eighty-first Amendment) Act, 2000) provides that backlog vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty percent reservation on total number of vacancies of that year.
- (iv) **Article 335:** The proviso to Article 335 (added by the Constitution (Eighty-second Amendment) Act, 2000) empowers the Union or a State for making any provision for SCs and STs for relaxation in qualifying marks in any examination or lowering the standards of evaluation for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State.
- (v) **Article 320 (4):** This Article provides that nothing shall require a Public Service Commission to be consulted as respects the manner in which any provision referred to in clause (4) of Article 16 may be made or as respects the manner in which effect may be given to the provisions of Article 335.

2.2 Constitutional validity of the amendments

2.2.1 The constitutional validity of the above-mentioned four amendments i.e. point number (ii), (iii) & (iv) was challenged in the Hon'ble Supreme Court of India in Writ Petition (Civil) No.61 of 2002 in M. Nagaraj & Ors. vs. Union of India & Ors. The Hon'ble Supreme Court observed that the impugned constitutional amendments by which Article 16(4A) and 16(4B) have been inserted, flow from Article 16(4) and do not alter the structure of Article 16(4). They retain the controlling factors or the compelling reasons namely backwardness and

¹ substituted by the Constitution (Eighty-fifth Amendment) Act, 2001

inadequacy of representation which enables the State to provide for reservation keeping in mind the overall efficiency of the State administration under Article 335. The Hon'ble Court further observed that the impugned amendments are confined only to SCs & STs and that they do not obliterate any of the constitutional requirements, namely ceiling- limit of 50% (quantitative limitation), and the concept of creamy layer (qualitative exclusion).

2.2.2 The Department of Personnel & Training, in consultation with the law officers of the Government, vide their letter No.36036/2/2007-Estt.Res dated 29 March, 2007, addressed to the Chief Secretaries of all the States and Union Territories clarified that reference to creamy layer in the concluding paragraph and other portions of the judgment mentioned above did not relate to the Scheduled Castes and Scheduled Tribes. Hon'ble Supreme Court also in its judgement dated 10.04.2008 in the case of Ashok Kumar Thakur Vs Union of India & Ors stated that "Creamy layer" principle is one of the parameters to identify backward classes. Therefore, principally, the "creamy layer" principle cannot be applied to STs and SCs, as they are separate classes by themselves.

2.3 Calculation of vacancies reserved for SCs/STs & OBCs in each mode of recruitment

2.3.1 The vacancies which were reserved for a category in an earlier recruitment year according to post-based reservation but remained unfilled in the previous recruitment attempt on account of non-availability of suitable candidates belonging to that category and are still lying unfilled are called backlog reserve vacancies. DoPT OM No. 36012/5/97-Estt(Res.) dated 29.08.1997 provided 50% limit on reservation to current as well as backlog reserved vacancies. These instructions were modified by DoPT OM No. 36012/5/97-Estt(Res.) Vol.II dated 20.07.2000 to the effect that the backlog reserved vacancies of SCs and STs would be treated as a separate and distinct group; and would not be considered together with the reserved vacancies of the year in which they are filled for determining the ceiling of 50% reservation on total number of vacancies of that year. The DoPT vide its OM No. 36033/1/2008-Estt.(Res.) dated 15.07.2008 issued instructions to treat the backlog reserved vacancies of OBCs also as a separate and distinct group the same way as the backlog reserved vacancies of the SCs and STs are treated. Thus, the ceiling of 50% reservation on filling of reserved vacancies would now apply only to the vacancies which arise in the current year and the backlog reserved vacancies of SCs, STs and OBCs in case of direct recruitment and backlog reserved vacancies of SCs and STs in case of promotion of earlier years, would be treated as a separate and distinct group.

2.3.2 There is a provision of relaxations and concessions for SCs and STs in all types of direct recruitment such as relaxation in the age limit, experience, qualification, permitted number of chances in written examination, extended zone of consideration larger than what is provided for general category candidates etc. Regarding prescription of lower qualifying marks / lesser standard of evaluation for SCs/STs candidates in departmental qualifying / competitive examinations for promotion, it was clarified by DoPT vide OM No. 36012/23/96-Estt.(Res) dated 22.07.1997 that henceforth there shall be no separate standards of evaluation for candidates of the SCs/STs for promotion, and assessment of all candidates for

this purpose will be with reference to uniform standards. Any other instructions of the Government, which provide for lower qualifying marks / lesser standards of evaluation in matters of promotion for candidates belonging to SCs/STs, may also be treated as having been modified to this extent. In pursuance of the enabling proviso of Article 335 of the Constitution, it was decided to restore, with immediate effect, the relaxations/concessions in matters of promotion for candidates belonging to SCs/STs by way of lower qualifying marks, lesser standards of evaluation that existed prior to 22.7.1997 vide DoPT Om No. 36012/23/96-Estt.(Res.) Vol.II dated 03.10.2000.

2.3.3 The Department of Personnel and Training clarified vide its OM No. 36011/1/98-Estt.(Res) dated 01.07.1998 that only such SC/ST/OBC candidates who are selected on the same standard as applied to general candidates shall not be adjusted against reserved vacancies. In other words, when a relaxed standard is applied in selecting an SC/ST/OBC candidate, for example in the age limit, experience qualification, permitted number of chances in written examination, extended zone of consideration larger than what is provided for general category candidates etc., the SC/ST/OBC candidates are to be counted against reserved vacancies.

2.3.4 The Hon'ble Supreme Court in its judgment dated 11.12.1998 in C.W.P. No.5893 of 1997 in the case of State of Punjab & Ors. vs. Dr. R.N. Bhatnagar & Another had, inter-alia, held that 'the quota of percentage of departmental promotion and direct recruits has to be worked out on the basis of the roster points taking into consideration vacancies that fall due at a given point of time, there is no question of filling up the vacancy created by the recruitment of a direct recruit by a direct recruit or the vacancy created by a promotee by a promotee'.

2.3.5 It was clarified by DoPT through an illustration that the term 'cadre strength' as referred to in their O.M. No.36012/2/96-Estt.(Res.) dated 2.7.1997 meant the number of posts required to be filled by a particular mode of recruitment in terms of the relevant Recruitment Rules.

2.3.6 As per DoPT O.M. No. AB.14017/30/89-Estt.RR dated 10.07.1990, where recruitment to a grade is made both by promotion and direct recruitment i.e. where separate quota for promotion and direct recruitment are prescribed in the Recruitment Rules, reserved vacancies falling in the promotion quota, which cannot be filled due to non-availability of eligible persons belonging to SC/ST in the feeder cadre, may be temporarily diverted to the direct recruitment quota and filled by recruitment of candidates belonging to SC or ST, as the case may be, in accordance with the provisions relating to direct recruitment contained in the Recruitment Rules. In the subsequent year(s) when reserved vacancies in the direct recruitment quota become available they may be diverted to the promotion quota to make up for the vacancies diverted earlier and filled from SC/ST candidates in the feeder cadre who might by then become eligible for promotion. This involves relaxation of the Recruitment Rules. The Ministries/Departments may themselves exercise the power of relaxation subject to approval of UPSC, wherever necessary.

2.4 Reservation in promotion

2.4.1 The Department of Personnel & Training vide their OM No. 36012/18/95-Estt.(Res.), Part-II dated 13.08.1997, in modification of their OM dated 19.08.1993, issued instructions to all Ministries/ Departments of the Govt. of India to continue the reservation in promotion for the Scheduled Castes and Scheduled Tribes in the service/posts under the Central Govt. beyond 15.11.1997 till such time as the representation each of these two categories in each reached the prescribed percentage of reservation.

2.4.2 The present instructions of the Govt.² provide for reservation in promotion by selection for SCs & STs upto the lowest rung of Group 'A', but not within the Group. But when promotions by selection are made from a Group A post to a Group A post, which carries an ultimate salary of Rs.18,300/- (pre-revised), or less, the SC and ST Officers, who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select list has to be drawn up, would be included in that list provided they are not considered unfit for promotion. (DoPT O.M. No. 36028/21/2003-Estt.(Res) dated 29.01.2004)

2.4.3 There is a prescribed **zone of consideration in the matter of promotion by selection** i.e. merit-cum-seniority. There is, however, no specified zone of consideration in the case of promotion by non-selection i.e. seniority subject to fitness. The following instructions are applicable for filling up the vacancies reserved for SCs & STs in promotions by selection:-

- (i) Scheduled Caste and Scheduled Tribe officers who are within the **normal zone of consideration** (i.e. twice the number of vacancies +4) shall be considered for promotion alongwith others and adjudged on the same basis as others and those Scheduled Caste and Scheduled Tribe officers amongst them who are selected on that basis may be included in the general select list. Such candidates shall be adjusted against unreserved vacancies.
- (ii) If the number of candidates from Scheduled Castes and Scheduled Tribes other than the candidates selected on their own merit and adjusted against unreserved (UR) vacancies, is less than the number of vacancies reserved for them, the difference should be made up by selecting candidates who are in the zone of consideration irrespective of merit i.e. irrespective of whether they meet the prescribed benchmark or not, but who are considered fit for promotion.
- (iii) If the number of SC/ST candidates found fit for promotion against reserved vacancies is still less, the difference should be made up by selecting candidates of these communities who are in the **extended zone of consideration (i.e. five times the number of vacancies)** irrespective of merit i.e. irrespective of whether they meet the prescribed benchmark or not, but who are considered fit for promotion.

² DoP&AR OM No. 10/41/73-Estt. (SCT) Dated 20.07.1974

2.4.4 In case of promotion by non-selection, if the number of Scheduled Caste/ Scheduled Tribe candidates found fit within the range of actual vacancies is less than the number of vacancies reserved for them, additional Scheduled Caste/Scheduled Tribe candidates to the extent required are to be located by going down the seniority list provided they are eligible and found fit for appointment.

2.4.5 The Department of Personnel & Training vide their O.M. No.22011/2/2002-Estt.(D) dated 6 January, 2006 modified the existing provisions relating to the size of the zone of consideration. As per the O.M. the normal zone of consideration for one vacancy will be 5 and for vacancies more than one it will be twice the number of vacancies plus four. The extended zone of consideration for SC/ST will be five times the number of vacancies.

2.4.6 As in the case of promotion by non-selection, there is no prescribed zone of consideration for making ad hoc promotions.

2.4.7 The Hon'ble Supreme Court of India in their interim order in Civil Appeal No.4026 of 1988 in the case of UP Rajya Vidyut Parishad SC/ST Karamchari Kalyan Sangh vs. U.P. State Electricity Board & Ors. held that there has to be a separate zone of consideration so far as SC/ST candidates are concerned.

2.4.8 The issue regarding drawal of a Separate Zone of Consideration for SCs and STs has been extensively discussed in the Second Report of the Commission for the year 2006-07. **The Commission reiterates that in compliance with the Hon'ble Supreme Court's directions, the DOPT should revise the instructions contained in O.M. No. 36012/27/2000-Estt.(Res.) dated 15.03.2002 at the earliest to provide for a separate zone of consideration for SCs & STs in the matter of promotion by selection.**

2.4.9 Some important OM's issued by DoPT during 2008-09, which are significant for STs are as follows:

1. 36028/21/2008-Estt.(Res.) dated 29.07.2008³

Reservation for SCs and STs in Posts filled by promotion: As per MHA OM No 1/12/67-Estt.(C) dated 11.7.68, there was no reservation for SC and ST employees in promotion by selection from Group C to Group B, within Group B and from Group B to lowest rung in Group A. However, there was provision that while assessing SC/ST employees, they would given one grading higher. The Govt. vide DoP&AR OM No 10/41/73-Estt.(SCT) dated 20.07.1974 withdrew the above provision and introduce reservation for SCs and STs in promotion by selection from Group C to Group B, within Group B and from Group B to lowest rung in Group A. This OM was issued to clarify that provision of giving higher grading does not exist anymore.

³ Complete OM can be seen on website of Ministry of Personnel (<http://www.persmin.nic.in>) and also on the web site of NCST (<http://www.ncst.nic.in>)

2.5 Representation of Scheduled Tribes in public services

A Representation of Scheduled Tribes in Central Ministries/ Departments

2.5.1 Representation of Scheduled Tribes in Central Govt services as on 01/01/2009 as per the information made available by the Department of Personnel and Training (Ministry of Personnel and Training) vide their letter No. 36027/1/2009-Estt. (Res.) dated 21/10/2009 is as given in the table below:

(As on 1/1/2009)			
Group	Total	STs	%age
(1)	(2)	(3)	(4)
A	42978	1674	3.9
B	45131	2192	4.9
C	696497	57732	8.3
D (Excl Sweepers)	67081	5470	8.2
Total(Excluding Sweepers)	851687	67068	7.87
Total (Including Sweepers)	864337	68129	7.88

Note: The above figures include information in respect of 35 Ministries/Departments only.

2.5.2 It is clear from the above data that, the representation of STs in posts in Group A and B is much less than the prescribed percentage of 7.5. It is obvious that this situation has arisen on account of the backlog vacancies in these Groups, which are not being filled up by the concerned Ministries/ Departments. **The Commission expresses its concern over this matter and re-iterates its earlier recommendation that the DOPT should take up the matter with all the Central Ministries/Departments particularly those which are cadre controlling authorities for appointment to various posts/ services and advise them to fill up the backlog vacancies reserved for Scheduled Tribes by launching Special Recruitment Drives (SRDs) and/or by making ad-hoc promotions in case eligible ST candidates are not available in the extended zone of consideration in the matter of promotion by selection. Where the Recruitment Rules provide for 100% recruitment by promotion, and it is not possible for the authority to introduce the element of direct recruitment therein, filling up of an equal number of resultant vacant posts at the lower level through direct recruitment (considering them as backlog vacancies) may be ensured. DOPT should formulate a time-bound Action Plan to fill up the vacant positions to meet the target.**

B Representation of Scheduled Tribes in Central Public Sector Enterprises (CPSEs)

2.5.3 Based on information furnished by the Ministry of Heavy Industry and Public Enterprises (Department of Public Enterprises), the representation of

Scheduled Tribes in CPSEs as on 1.1.2008 in various categories of posts i.e. Groups A,B,C and D is as given in the Table below:-

Group	Total No. of Employees	No. of STs	%age	Position as on 01.01.2007
(1)	(2)	(3)	(4)	(5)
A	1,96,116	9435	4.81	4.61
B	2,18,599	12,730	5.82	6.34
C	8,36,590	72,219	8.63	9.58
D (Excl. Safai Karamcharis)	2,76,445	34,409	12.44	15.97
Group D (Safai Karamcharis)	13,012	397	3.05	3.01
Grand Total	15,40,762	1,29,190	8.38	9.49

Note:- Group 'A': Executive level, Group 'B': Supervisory level, Group 'C': Workmen/Clerical level, Group 'D': Semi-skilled/Unskilled labour.

2.5.4 It is noted that there is a marginal improvement in the representation of STs in Group 'A', but in all other categories and overall there is a reduction in representation of STs as compared to the position as on 01.01.2007, the representation of STs in Group 'A' and 'B' is less than the prescribed reservation of 7.5%. **The Commission re-iterates its earlier recommendation that the Department of Public enterprises should advise the Central Public Sector undertakings to make concerted efforts to fill up the backlog vacancies reserved for Scheduled Tribes in Group A and B posts through SRDs to bring their representation to the prescribed level of 7.5%. DOPT and Deptt. of Public Enterprises should formulate a time-bound Action Plan to fill up the vacant positions to meet the target.**

C Representation of Scheduled Tribes in different cadres of the Public Sector Banks

2.5.5 The representation of Scheduled Tribes in the Public Sector Banks in respect of the cadre of (i) Officers, (ii) Clerks, and (iii) Sub-staff as on 01-01-2009 is given below:-

S. No	Name of the Bank	Officers			Clerks			Sub Staff		
		Total	ST	%	Total	ST	%	Total	ST	%
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1	Allahabad Bank	8216	495	6.02	7763	322	4.14	2562	122	4.76
2	Andhra Bank	8557	513	6.00	2790	66	2.36	2479	185	7.46
3	Bank of Baroda	13482	849	6.30	14887	734	4.93	6912	619	8.96
4	Bank of India	14102	1063	7.53	17578	1041	5.92	5392	506	9.38
5	Bank of Maharashtra	4250	264	6.21	6569	420	6.39	2775	246	8.86
6	Canara Bank	17763	1088	6.13	16614	839	5.05	7667	356	4.64
7	Central Bank of India	12719	767	6.03	12971	788	6.07	7555	574	7.60

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
8	Corporation Bank	4956	224	4.52	5002	254	5.08	2398	162	6.76
9	Dena Bank	3451	287	8.11	3938	510	12.95	2246	325	14.47
10	Indian Bank	7860	452	5.75	9192	239	2.60	3032	134	4.42
11	Indian Overseas Bank	10016	522	5.21	10948	404	3.69	3084	121	3.92
12	Oriental Bank of Commerce	6778	322	4.75	5096	196	3.85	2432	122	5.02
13	Punjab National Bank	19337	1110	5.74	26176	804	3.07	9673	584	6.03
14	Punjab & Sind Bank	5951	157	2.64	1442	37	2.56	1360	40	2.94
15	Syndicate Bank	10000	645	6.45	11308	650	5.75	3807	245	6.44
16	Union Bank of India	12634	779	6.16	8645	352	4.07	5489	456	8.31
17	United Bank	5051	370	7.32	6981	245	3.50	3420	127	3.71
18	UCO Bank	8133	514	6.00	11237	537	5.00	3650	179	5.00
19	Vijaya Bank	5098	260	5.10	4335	139	3.21	2208	151	6.84
20	State Bank of India	65809	3779	5.74	79309	4392	5.54	44889	3203	7.14
21	State Bank of Bikaner & Jaipur	4492	402	8.95	4592	302	6.58	2382	259	10.87
22	State Bank of Hyderabad	5047	314	6.22	4935	327	6.63	2746	192	6.99
23	State Bank of Indore	2359	186	7.80	2854	543	19.02	1065	234	21.97
24	State Bank of Mysore	3182	235	7.38	4487	205	4.56	1490	87	5.83
25	State Bank of Patiala	4385	153	3.50	4822	30	0.62	2176	60	2.75
26	State Bank of Travancore	4117	125	3.04	4994	167	3.34	1843	91	4.94
27	IDBI	7154	287	4.01	1506	44	2.92	952	69	7.25
28	NABARD	3979	294	7.39	873	104	11.91	0	0	0
29	EXIM Bank	219	19	8.67	0	0	0	8	0	0
30	SIDBI	786	44	5.60	111	11	9.91	72	15	20.83
31	Reserve Bank of India	8760	614	7.00	4908	545	11.1	5982	606	10.1
32	National Housing Bank	85	2	2.4	0	0	0	0	0	0

2.5.6 It is seen from the above Table that the representation of Scheduled Tribes in the officers' cadres is less than the prescribed percentage of 7.5% except in Dena Bank (8.11%), State Bank of Bikaner & Jaipur (8.95%), State Bank of Indore (7.80%) and EXIM Bank (8.67%). The percentage of STs in the cadres of Clerks is above the prescribed level of 7.5 only in State Bank of Indore (19.02%), Dena Bank (12.95%), SIDBI (9.91%), RBI (11.1%) and NABARD (11.91%). The representation of STs in the cadre of Clerks in some banks ranges between 5 to 6% and even 0.62% in State Bank of Patiala and 2.56% in Punjab &

Sind Bank. As regards the cadre of Sub-staff the percentage of representation for STs in some of the Banks is not satisfactory, for example Indian Bank (4.42%), Indian Overseas Bank (3.92%), Punjab & Sind Bank (2.94%), United Bank (3.71%), State Bank of Patiala (2.75%) and others. **Dena Bank is the only Bank in which representation of STs in all the cadres is 7.5 % or above.**

2.5.7 The respective Banks are the recruiting agencies for all the categories since 2001 and, therefore, the Commission fails to understand the low representation of Scheduled Tribes in respect of either Officer Cadre or Clerks Cadre or Sub-staff Cadre or all the three cadres. It appears that the banks have not taken effective steps to fill up the backlog vacancies reserved for Scheduled Tribes. **The Commission re-iterates its earlier recommendation that the Department of Economic Affairs (Banking division) should advise the banks to devise a time bound programme to make up the shortfall / backlog of ST vacancies by launching Special Recruitment Drive or by deputing special recruiting teams in the tribal areas or by both.**

2.5.8 The Commission also recommends that Department of Financial Services, Ministry of Finance should take special note of the efforts of the Dena Bank for achieving and maintaining the reservation percentage in respect of STs in all categories as a model employer.

D Representation of Scheduled Tribes in Group A, B, C and D posts as on 1.1.2009 in Public Sector Insurance Companies

2.5.9 The information relating to representation of STs in Public Insurance Companies as on 01/01/2009 was provided by the Ministry of Finance, Department of Financial services vide their letter No. 23/4/2009-SCT(B) dated 5/11/2009. The Group wise representation of STs in these Companies is as given in the table below:

S No.	Name of Insurance Company	Group	Total employees	ST employees	% age
(1)	(2)	(3)	(4)	(5)	(6)
1	Insurance Regulatory and Development Authority , Hyd.	Group A	60	1	1.60
		Group B	0	0	0.00
		Group C	33	2	6.00
		Group D	2	0	0.00
		Total	95	3	3.00
2	Life Insurance Corporation of India, Mumbai	Group A	23144	1495	6.46
		Group B	24049	1563	6.50
		Group C	64605	5112	7.91
		Group D	2736	200	7.30
		Total	114534	8380	7.31
3	General Insurance Corporation of India, Mumbai	Group A	266	12	4.50
		Group B	0	0	0.00
		Group C	140	12	8.60
		Group D	36	1	2.78
		Total	442	25	5.70

(1)	(2)	(3)	(4)	(5)	(6)
4	National Insurance Company Ltd., Kolkatta	Group A	4151	210	5.05
		Group B	1978	38	1.92
		Group C	7892	537	6.80
		Group D	2137	150	7.02
		Total	16158	935	5.70
5	The New India Assurance Company, Mumbai	Group A	5063	274	5.41
		Group B	2872	85	2.96
		Group C	9470	710	7.50
		Group D	2508	200	7.97
		Total	19913	1269	6.37
6	Oriental Insurance Company Limited, New Delhi	Group A	4387	228	5.19
		Group B	1990	60	3.01
		Group C	7048	530	7.50
		Group D	2284	230	10.07
		Total	15709	1048	6.67
7	United India insurance Company Limited, Chennai	Group A	4055	185	4.56
		Group B	2111	60	2.84
		Group C	8778	645	7.34
		Group D	2545	203	7.97
		Total	17489	1093	6.24
8	Agriculture Insurance Company Ltd., New Delhi	Group A	157	13	8.28
		Group B	0	0	0.00
		Group C	34	5	14.70
		Group D	13	1	7.70
		Total	204	19	9.31
	Total (All Companies)	Group A	41283	2418	5.86
		Group B	33000	1806	5.47
		Group C	98000	7553	7.71
		Group D	12261	985	8.03
	Grand Total all Companies – all Groups		184544	12762	6.92

2.5.10 It may be observed that the actual representation in Group A, B C & D (excluding sweepers) was 5.86%, 5.47 %, 7.71 % & 8.03 %. It is worth mentioning that the representation of STs in Group B is lesser than Group A i.e. 5.47 percent as compared to 5.86 percent in Group A. The representation of STs in Group B in the National Insurance Company is only 1.92 percent against the required percentage of 7.5.

2.5.11 However, it is appreciable that overall representation of STs in Group C & D is satisfactory. **The Commission therefore, re-iterates its earlier recommendation that the Ministry of Finance in order to enhance the representation of STs in Group A & B needs to take special measures like**

SRD to achieve the required representation of 7.5 percent in a time bound action plan.

E Representation of Scheduled Tribes in Teaching and Non-Teaching posts in Central Universities

2.5.12 The University Grant Commission provided statistical data in respect of Teaching & non-Teaching posts reserved for STs in respect of Central Universities vide their letter no. F .1-27/2009 (SCT) dated 14/09/2009. The post-wise representation of STs in Teaching posts for the year 2008-09 are as given in table below:-

(A)Teaching posts

S NO.	Name of the University	Professor		Reader		Lecturer		
		In Position (Sanctioned)	STs	In position (Sanctioned)	STs	In position (Sanctioned)	STs	Back-log (ST)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	Hyderabad	80(95)	0	129(143)	1	138(162)	8	4
2	Central Instt of English & Foreign Lang.	20(28)	1	37(48)	1	53(69)	4	1
3	Assam	24(34)	0	65(81)	1	153(175)	8	5
4	Tezpur	23(32)	0	27(46)	1	76(90)	5	2
5	Jamia Millia Islamia	81(109)	0	152(176)	0	366(434)	20	13
6	Jawaharlal Nehru	104(161)	0	196(285)	0	194(296)	11	11
7	MG Antar Rashtriya Hindi Vishwavidyalaya	5 (9)	0	4(9)	0	22(31)	1	1
8	Central Agricultural University, Imphal	14 (51)	0	29(94)	1	135(194)	12	3
9	Mizoram University	22(28)	1	41(45)	0	152(165)	10	2
10	Allahabad	8(59)		90(151)	0	205(330)	0	25
11	Babasaheb Bhimrao Ambedkar, Lucknow	12(23)	0	18(53)	0	45(67)	3	2
12	Banaras Hindu	176(346)	0	419(680)	0	896(1367)	21	82
13	Visva Bharti	44(62)	0	98(127)	0	281(352)	12	14
14	Pondicherry	26 (69)	0	57(138)	0	114(253)	7	12

2.5.13 It is observed from the above data that the representation of STs among the teaching staff is negligible in respect of Professors and Readers as against the required percentage of 7.5. Universities like Jamia Millia Islamia, JNU, Banaras Hindu University, Vishwabharti University, Hyderabad University, having large number of posts in the cadre of Professors, are not having even a single

Professor from the ST communities. The same position prevails in the cadre of Reader also, in these Universities. **The Commission, therefore, reiterate its recommendation contained in its earlier Reports that the Ministry of Human Resource Development (Department of Higher Education) and the University Grants Commission should issue strict instructions to all the Central Universities to ensure that 7.5% reservation is provided to the Scheduled Tribes in such posts of Professor and Reader, which are filled up, as per recruitment rules, by direct recruitment. These Universities should further be asked to work out the shortfall / backlog vacancies reserved for Scheduled Tribes in such posts of Professor and Reader which are filled up by direct recruitment, and to chalk out a time bound programme to fill up these vacancies. The Commission further recommends that the Ministry of Human Resource Development (Department of Higher Education) should also issue stringent instructions to all the Central Universities to fill up the shortfall/ backlog vacancies reserved for Scheduled Tribes in the grade/ post of Lecturer within a specified period.**

2.5.14 The Group-wise representation in non-Teaching posts for the year 2008-09 are as given in table below:-

(B)Non-Teaching posts

S. No.	Name of University	Group `A`		Group `B`		Group `C`		Group `D`	
		In position (Sanctioned)	STs	In Position (Sanctioned)	STs	In position (Sanctioned)	STs	In position (Sanctioned)	STs
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1	Hyderabad	67(75)	3	100(109)	4	442(489)	22	450(552)	31
2	Central Instt. of English & Foreign Lang.	13(28)	1	35(68)	0	97(140)	10	101(101)	5
3	Assam	19(22)	1	23(35)	0	151(174)	21	56(64)	5
4	Tezpur	31(36)	1	13(19)	1	83(99)	9	76(73)	3
5	Jamia Millia Islamia	58(65)	0	50(59)	2	587(645)	4	372(385)	2
6	Jawaharlal Nehru	72(102)	3	115(143)	5	556(645)	19	435(452)	16
7	MG Antar- rahtriya Hindi Vishwa- vidyalaya	9(10)	0	9(9)	0	35(42)	1	23(23)	0
8	Cental Agricultural University, Imphal	21(78)	1	33(88)	4	259(449)	81	210(354)	88
9	Mizoram University	18(26)	0	22(25)	0	139(148)	55	114(115)	53
10	Allahabad	30(48)	0	5(12)	0	570(584)	0	635(652)	0
11	Babasaheb Bhimrao Ambedkar, Lucknow	14(16)	0	7(8)	0	46(53)	1	22(25)	0
12	Banaras Hindu	162(238)	3	200(297)	12	2035(3127)	44	2270(3021)	83
13	Visva Bharti	72(88)	2	99(109)	4	512(642)	22	498(834)	48
14	Pondicherry	54(63)	1	49(55)	1	262(269)	10	195(215)	12

2.5.15 The above Table indicates that in all category of posts the representation of STs is much less against the required 7.5 %. It is a matter of concern that the representation of STs even in Group D post is lesser than 7.5 percent and therefore, needs immediate attention.

2.5.16 **The Commission would like to reiterate its recommendation contained in its earlier Reports that the Ministry of Human Resource Development (Department of Higher Education)/ University Grants Commission should issue stringent instructions to all the defaulter Central Universities to identify the backlog vacancies reserved for Scheduled Tribes in the non-teaching posts in respect of Group 'A', 'B', 'C' and 'D' and to launch SRDs to fill them within a specified time limit.**

2.5.17 The Committee on the Welfare of Scheduled Castes and Scheduled Tribes (1999-2000), Thirteenth Lok Sabha in their first report have recommended that

i) Government should issue instructions to the Aligarh Muslim University that it is bound to implement the reservation orders for SCs and STs. The Committee also recommended that if AMU fails to implement the reservation orders the status of Central University may be withdrawn from it and payment of grants, if any, may also be stopped.

ii) The reservation orders should be followed by the AMU in case of promotion of teaching and non-teaching staff.

iii) Reiterated the recommendation of in their 38th Report (8th Lok Sabha) that AMU must maintain rosters for filling up vacancies reserved for SCs and STs through direct recruitment as well as through promotion so that interest of these communities could be well protected.

iv) JMI should make special efforts to fill up vacant posts of SCs and STs in accordance with the Government guidelines which have already been adopted by the other Universities also. The Committee would like to be apprised of the action taken in the matter.

v) In each DPC/Board and SC/ST member should, invariably be associated, if SC/ST member of comparable status is not available within JMI, then a member from other university should be included to safeguard the interest of SC/ST employees.

2.5.18 It was noticed that representation of STs in Aligarh Muslim University (AMU) and Jamia Milia Islamia (JMI), which are Central Universities, was still very low. It was understood in discussions with the UGC that the reservation policy of the Govt. of India is not binding on a minority institution like AMU. A clarification regarding their minority status was sought from the UGC regarding AMU and JMI. In the absence of any response from UGC, AMU and JMI were expedited for requisite clarification in the matter.

2.5.19 Govt. of India, Ministry of Human Resource Development (Dept. of Secondary & Higher Education), vide their Order No. F.No. 6-30/2005 U-5 dated 06.12.2005 have issued directions to the UGC that in exercise of the powers

vested under Section 20(1) of the UGC Act, 1956, it has to ensure effective implementation of the reservation policy in the Central Universities and those of Institutions Deemed to be Universities receiving aid from the public funds **except in minority institutions** under Article 30(1) of the Constitution.

2.5.20 AMU mentioned that as per Section 2(L) and Section 5(2)c of the AMU Act, 1920 (as amended upto date), AMU is a Minority Institution.

2.5.21 JMI mentioned that the University was not having minority status and followed all guidelines pertaining to reservation to the SCs/STs in admission as well as in recruitment.

2.5.22 Though, AMU is claiming to be a Minority Institution, there was no confirmation from UGC in this regard. In order to clarify the matter a Sitting was arranged in the Commission with the Secretary, Department of Higher Education, Ministry of Human Resource Development, Chairman, UGC, Vice-Chancellor, Aligarh Muslim University and Vice-chancellor, Jamia Milia Islamia .

2.5.23 The Chairman, UGC explained that, Aligarh Muslim University is the only Central University with minority status receiving grants from the UGC in addition to other institutions viz colleges etc having minority status.

2.5.24 VC, AMU explained that in accordance with the Section 2(L) and Section 5(2)(c) of the AMU (Amendment) Act 1981 and Article 30(1) of the Constitution, AMU is a Minority Institution and as per the UGC guidelines, reservation policy is not applicable to Minority Institutions. He further intimated that the Hon'ble High Court of Allahabad in its Judgement dated 05.01.2006 in SA No 1324/2005 stated that AMU is not a minority institution within the meaning of Article 30 of the Constitution. Further Sections 2(l) and 5(2)c introduced in the Aligarh Muslim University Act 1920 by the 1981 Amendment Act are invalid and those insertion were struck down and also the Muslim quota of 50% in post graduate course in Department of Medicine was invalidated. Subsequently, AMU approached the Hon'ble Supreme Court against the Judgement of the Hon'ble High Court of Allahabad. Hon'ble Supreme Court in its decision dated 24.04.2006, stated that status quo as on the filing of writ petition in High Court of Allahabad should be maintained in AMU. The Council for AMU also gave an undertaking that 50% reservation to Muslims will also not resorted to.

2.5.25 During discussion, the Registrar, JMI informed the Commission that at present, out of a total 24 posts of Lecturer identified for STs, 14 posts had been filled up, 8 posts were lying vacant, while 2 posts had lapsed (1 in the year 2008-09 and 1 in 2009-10) as per UGC directives issued in July, 2002. It was further informed to the Commission that 8 vacant posts of Lecturers had already been advertised and these were likely to be filled within next 3-4 months. As per information available with the Commission, out of 109 posts of Professors and 176 posts of Readers, the representation of ST candidates is nil. The Registrar, JMI explained that the reservation policy of the Govt. of India was applicable in the University both for admission and recruitment. In the 200 point roster, the ST point is at 14 and in case of less than 14 vacancies, they were not able to consider ST candidates against the reserved vacancies. The Commission

pointed that the operation of roster as explained by the University is not correct. After the implementation of Post-Based Roster w.e.f. 02.07.1997, 50% of the vacancies can be filled up by the reserved category candidates, till such time the prescribed percentage of reservation is achieved. The reserved vacancies once attempted for recruitment are categorized as backlog vacancies in the subsequent recruitment attempts and these vacancies are over and above the 50% reserved vacancies. The reserved vacancies should be filled up following this process and if required concerned official must be imparted training for the purpose.

2.5.26 Regarding non-teaching posts, out of 7 posts identified for STs, 3 had been filled and 04 were vacant. These vacant posts had been advertised many times, but due to paucity of suitable candidates, these posts could not be filled in. A separate SC/ST Cell is also set up in the University to look after the welfare of SCs/STs and ensuring implementation of the reservation policy.

2.5.27 **In view of the position explained above, the Commission recommends that:-**

- (i) **Jamia Milia Islamia should take necessary steps to fill up the backlog ST vacancies both in teaching and non-teaching category within a period of three months. Vacant posts of Professor and Reader identified for STs should also be filled up by adopting the correct procedure as per reservation policy. They should also arrange training of their officials regarding operation of Post Based Rosters.**
- (ii) **UGC should amend the guidelines so that ST reserved vacancies are not lapsed as expressed by the Registrar, JMI.**
- (iii) **Aligarh Muslim University through their Executive Council, should take special initiatives to recruit candidates from weaker sections of the society (especially STs) in the teaching and non-teaching category to reflect diversity in representation in these categories.**

2.6 DERESERVATION

2.6.1 Existing instructions relating to appointment to civil posts require that, the vacancies reserved for Scheduled Tribes are required to be filled from the candidates belonging to Scheduled Tribes only, both in respect of direct Recruitment and promotion⁴. In this connection, various instructions have also been issued from time to time for launching Special Recruitment Drive (s) for filling the reserved vacancies⁵. However, many times, it is not possible to fill a vacancy

⁴ Ministry of Home Affairs Resolution No. 42/21/9/NGSad 13.9.1950

⁵ a. OM No. 36038/1/2004-Estt.(Res) dated 05.08.2004 – Special Recruitment Drive to fill up backlog vacancies reserved for SCs and STs.

b. OM No. 36038/2/2004-Estt(Res) dated 26.08.2004 – Special Recruitment Drive to fill up backlog vacancies reserved for SCs and STs in promotion quota.

c. OM No. 36038/3/2004-Estt.(Res) dated 03.11.2004 – Special Recruitment Drive to fill up the backlog vacancies for SCs and STs – Clarification regarding clearance from the Screening Committee and ban on filling up of vacancies.

reserved for ST candidates by promotion because of non-availability of any (or an eligible) candidate in the seniority list of the feeder grade; and at the same time, it is administratively not possible to keep the post vacant indefinitely as it may adversely affect the performance of a Ministry/ Department/Organisation. Such situations arise because, very often, adequate efforts are not made while making appointment to the posts in the feeder grade (or its next below feeder grade) through direct recruitment from candidate(s) belonging to ST category.

2.7 Ban on Dereservation in Direct Recruitment

2.7.1 In view of the alarming situation due to non-appointment of Scheduled Tribes in Direct Recruitment the Govt. of India imposed a ban on dereserving the post(s) to be filled by direct recruitment⁶. The instructions relating to ban on dereservation in Direct Recruitment provide that in exceptional cases in Group A services where posts cannot be allowed to remain vacant in public interest, the administrative Ministry/Department under which the recruitment was being made shall make a proposal for dereservation giving full justification for such action and consult NCST / NCSC by obtaining comments and place the same for consideration before the Committee comprising the Secretaries in the (i) Ministry of Personnel & Training (ii) Ministry of Welfare (now the Ministry of Social Justice Empowerment and Ministry of Tribal Affairs) and (iii) the administrative Ministry under which recruitment was being made. The recommendations of the Committee are required to be placed before the Minister in-charge of DoPT for a final decision.

2.8 Procedure for Dereservation of posts to be filled by promotion

2.8.1 Since inadequate appointment through Direct Recruitment caused non-availability of ST candidates for promotion, the Government of India, made it permissible to dereserve a vacancy in a post reserved for Scheduled Tribes subject to adherence to stipulated procedure while making appointment by promotion.

2.8.2 An elaborate procedure has been prescribed by DoPT for dereserving a reserved vacancy and filling the same by a candidate other than ST while making promotion, also ensuring that the rights of Scheduled Tribes, temporarily curtailed by the process of dereservation due to non-availability of eligible ST candidates in the feeder grade in a recruitment year, are restored to them in the next or subsequent recruitment year by carrying forward the reserved point for ST from the previous year to the next or subsequent recruitment year. Thus, one additional vacancy out of the vacancies occurring in the next or subsequent recruitment year is reserved for the Scheduled Tribes and is filled by promotion from amongst eligible ST candidates. In case the eligible ST candidate is not available in the next recruitment year, the same procedure of dereservation

d. OM No. 36038/3/2004-Estt(Res) dated 13.10.2005 – Special Recruitment Drive to fill up backlog vacancies reserved for SCs & STs – clarification reg.

e. OM No. 36038/1/2004-Estt(Res) dated 09.03.2006 – Special Recruitment Drive to fill up backlog of vacancies reserved for SCs and STs.

⁶ Department of Personnel & Training No. 16012/6/88-Estt.(SCT), New Delhi 25.04.1989 to all Ministries/Department of the Govt. of India

and filling the carried forward reserved point in the next recruitment year has to be followed.

2.8.3 The Commission is of the view that the instructions relating to diversion of reserved vacancies under the promotion quota to Direct Recruitment provided vide DoPT OM No. AB. 14017/30/89-Estt.RR dated 10/07/1990 may also be considered by the Department before considering to dereserve the post from promotion quota. The DoPT OM inter-alia, provides as follows:

Where recruitment to the grade is made both by promotion and direct recruitment (i.e.) where separate quota for promotion and direct recruitment are prescribed in the Recruitment Rules, reserved vacancies falling in the promotion quota cannot be filled due to non-availability of eligible persons belonging to SC/ST in the feeder cadre may be temporarily diverted to the direct recruitment quota and filled by recruitment of candidates belonging to SC/ST as the case may be in accordance with the provisions relating to direct recruitment contained in the Recruitment Rules. In the subsequent year(s) when reserved vacancies in direct recruitment quota become available they may be diverted to the promotion quota make up for the vacancies diverted earlier and filled from SC/ST candidates in the feeder cadre who might by then become eligible for promotion. This involves relaxation of the Recruitment Rules. The Ministries/ Departments may themselves exercise the power of relaxation subject to approval of UPSC, wherever necessary.

If, for instance, a candidate belonging to Scheduled Castes or Scheduled Tribes is likely to become eligible for promotion in the future, it may be preferable to keep the reserved vacancy unfilled till that time, rather than diverting the vacancy for Direct Recruitment of a candidate from outside. The powers for relaxation of Recruitment Rules in the manner indicated above may be exercised judiciously to ensure that the interests of persons belonging to Scheduled Castes and Scheduled Tribes are taken care of and are not adversely affected by following these instructions mechanically.

2.8.4 DoPT, vide OM No. 16/27/74-Estt. (SCT) dated 12/11/1975, inter-alia, provide that the Liaison Officers(SCs/STs) should ensure proper working of service safeguards for SCs/STs and that they should concur in the proposals of dereservation after carefully examining them with reference to the DoPT's instructions on dereservation. DoPT, vide OM No. 28/14/74/Estt. (SCT) dated 12/07/76, OM 36011/25/79-Estt. (SCT) dated 16/11/79 and OM 36012/17/2002/Estt. (Res.) dated 06/11/2003 has streamlined the procedure for submission of proposals for dereservation. As per these instructions, the administrative Ministries and Deptts. have been delegated the power to accord approval to the dereservation of reserved vacancies subject to the following conditions:

- (i) There is no SC/ST candidate available or likely to be shortly available eligible for promotion in the feeder cadre;

- (ii) A copy of the proposal for dereservation in the appropriate prescribed proforma is sent immediately to (i) the Department of Personnel and Training and (ii) the National Commission for Scheduled Tribes or the National Commission for Scheduled Caste as the case may be and thereafter the concerned Deptt. is required to wait for a period of 15 days before going for dereservation;
- (iii) The proposal for dereservation has been seen and concurred with by the Liaison Officer of the Ministry/Department concerned;
- (iv) The proposal for dereservation has been agreed to at a level not lower than that of the Joint Secretary to the Government of India in the administrative Ministry/ Department (Proper) concerned;
- (v) In the event of a disagreement between the appointing authority and the Liaison Officer, the advice of the DoPT has been obtained;
- (vi) The proposal contains a certificate that it is being made with the full knowledge and concurrence of the Liaison Officer of the Ministry/ Department concerned.

2.8.5 The above cited instructions further require that the proposal for dereservation of reserved vacancies in respect of posts under attached/ subordinate offices etc. should not be sent to the Department of Personnel & Trg. directly. Such proposals should be sent to the administrative Ministry/ Department who will examine the proposals and send them to the Department of Personnel & Trg. and NCST / NCSC after satisfying itself that the prescribed procedure has been followed.

2.9 Examination of dereservation proposals

2.9.1 Since dereservation in promotion has not been banned, the National Commission for Scheduled Tribes receives a large number of proposals for dereservation in promotions. Most of these proposals have one of the following two situations (discussed in the earlier report for the year 2007-08 also):-

- (i) The mode of filling a post or chain of posts in a cadre is 100% by promotion from the feeder grade post(s) and there is no ST candidate in the feeder grade and also in the next below feeder grade post(s). This situation might occur either because reservation instructions were not followed for years together while making appointment on Direct Recruitment basis to the lowest grade feeder post(s) or due to non-availability of ST candidates. Consequently, as no ST candidate is available for several years for making appointment by promotion against reserved points in various grades of posts in the channel, the concerned Ministry/ Department/ Organisation frequently resorts to dereservation. This leads to the situation in which "carried-forward" reserved points would never be filled in the absence of ST candidates in the feeder posts and suitable provisions in the RRs that a certain percentage of posts be filled up through direct recruitment. This situation also results in non-filling up higher promotion posts reserved for ST by the ST candidates.

- (ii) The eligible ST candidates are not available even after enlarging the zone of consideration (ZoC), upto five times the total number of vacancies to be filled in one recruitment year. In many cases, candidates fulfilling the eligibility conditions for promotion are available outside the extended ZoC.

2.9.2 The Commission is of the view that restricting the ZoC for the reserved category of posts is in violation of the spirit of the judgment of Hon'ble Supreme Court in Civil Appeal No. 4026 of 1988 in the case of UP Rajya Vidyut Board SC/ ST Karamchari Kalyan Sangh vs. UP State Electricity Board and Ors. in which the Hon'ble Court held that "We are prima-facie in agreement with the contention of the learned council for the appellant that there has to be a separate zone of consideration so far as SC/ ST candidates are concerned. Clubbing the Scheduled Castes with general category in same zone of consideration would defeat the very purpose of reservation". The issue of separate zone of consideration with reference to SCs/STs also came up for consideration before the Supreme Court in Civil Appeal No.14568-69/95 in the matter of C.D. Bhatia & Ors. vs. Union of India & Ors. in which the Supreme Court in their order dated 20.10.1995 held that "We are of the view that the law laid down by this Court in U.P. Rajya Vidyut Parishad's case is binding on all the authorities including Union of India" .

2.9.3 The DoPT, by way of implementing the above cited judgment of the Hon'ble Supreme Court, issued instructions vide their OM No. 36012/27/2000-Estt. (Res.) dated 15/03/2002 for drawing separate lists of all eligible SC/ ST candidates for promotion on ad-hoc basis. No instructions have so far has been issued in this regard in regard to regular promotions. The matter relating to drawal of separate zone of consideration in selection promotions in implementation of the above referred verdict of Hon'ble Supreme Court has been taken up by the Commission with the DoPT. However, the Commission has not heard anything in this regard from DoPT. In para 2.4.2.9 of its 2nd Report for the year 2006-07, the Commission expressed the view that the matter had been considerably delayed. **The Commission recommend that DoPT should revise the instructions contained in their OM No. 36012/27/2000-Estt. (Res.) dated 15/3/2002 at the earliest to provide for a separate zone of consideration for SCs and STs in the matter of promotion by selection.**

2.9.4 To facilitate proper examination of the dereservation proposals and to ensure uniformity, the Commission has framed standardized internal guidelines for dealing with dereservation proposals and their disposal, which are based on the DoPT's instructions. These guidelines, inter- alia, provide that in order to ensure that the rights of Scheduled Tribes are not likely to be encroached through the process of dereservation, the Commission should call for and examine the following information from the concerned authorities.

- ✚ Recruitment Rules for the post for which dereservation has been sought
- ✚ Post-based Roster and up-to-date Seniority list of the Officers holding the posts (one of which has been proposed for dereservation)
- ✚ Recruitment Rules for the post which is a feeder post for the post which

has been proposed to be dereserved.

- ✚ Post-based Roster and up-to-date Seniority list of the Officers holding the feeder cadre posts.
- ✚ Reasons for non-availability of ST candidates in near future from amongst the officers of the feeder cadre posts and efforts made in the past to fill the vacancies reserved for Scheduled Tribes in the feeder cadre as well as the posts out of which dereservation is sought.

2.9.5 After receipt of above information, if it is noticed that an eligible ST candidate is likely to be available in near future/ within a year, the concerned Ministry/ Organisation is to be advised to grant promotion on ad-hoc basis to such a candidate and to regularize him/ her on completion of eligibility condition. However, if no eligible ST candidate is likely to be available in near future or next Recruitment year, the proposal to de-reserve the post may be agreed to, subject to the following conditions:

- ✚ The reserved point agreed for dereservation will be carried forward to be filled in future or in the next recruitment year from amongst the ST candidates and the next vacancy occurring in the cadre may be reserved for ST.
- ✚ If there is no likelihood of availability of ST candidate in the feeder cadre posts in the near future/ next recruitment years, the vacancy to be filled against carried forward point may be filled by Direct Recruitment, if the RRs provide for DR; and, later on, a DR vacancy may be exchanged with a promotion vacancy as provided in para 3 of DoPT OM No. AB. 14017/30/89-Estt.RR dated 10/07/1990.
- ✚ In case RRs of feeder cadre post do not provide for DR and there is non-availability or no likelihood of availability of ST candidate in the seniority list, the concerned Ministry/ Organisation may consider amending the RRs of feeder cadre post and the post under consideration for making provision of the clause "failing which by DR" in the RR so that the point reserved for STs are filled timely from amongst ST candidates.

2.9.6 The National Commission for Scheduled Tribes received **154** proposals for 398+ posts from various Ministries/Departments for dereservation during the year 2008-09. A list of such proposals is placed at **ANNEXURE 2.I**. A few salient cases received for dereservation are discussed below.

Dereservation of 8 posts of PPS(Gr.'A'), NDMC

2.9.7 A proposal for dereservation of 8 posts in the cadre of Principal Private Secretary (PPS) (Group 'A') was received from the DoPT on 16/05/2008. The Commission vide letter dated 16/05/2008 sought certain clarifications /details relating to seniority lists, latest recruitment rules, roster register from the DoPT etc. As the requisite information was not received within the stipulated period, the case was examined based on the position indicated in the original proposal. It was observed that there was no ST candidate out of 66 PPS in position. Further, there was no ST candidate available out of total 1014 Stenographers Grade 'A' & 'B' in

the feeder cadre. As the proposal for dereservation of 8 ST vacancies in PPS grade would have led encroachment on the rights of ST, the proposal was rejected on 05/06/2008.

2.9.8 Subsequently, the requisite information was received later on 17/06/2008 from the DoPT. The Commission advised the DoPT to make efforts to fill up the posts in the feeder cadre or undertake one time exercise to fill up the posts through direct recruitment in the feeder cadre with a view to ensuring with availability of ST candidates for promotion. The Commission further enquired vide letter No. dated 04.12.2009 from the DoPT regarding status of filling up of the 8 posts. The reply from DoPT has not been received.

Dereservation of 35 posts of Sr. Assistant (Gr.'C'), NDMC

2.9.9 A proposal for dereservation of 35 posts in the cadre of Senior Assistant, Group-C to be filled by promotion (Seniority cum fitness) from feeder grade of Junior Assistant was received from the NDMC by NCST on 05.05.2008. Certain information was asked from the NDMC, which was not received within given time-frame. The proposal was not agreed and NDMC was communicated vide letter dated 01/07/2008.

2.9.10 From the available documents, it was observed that there were only 3 ST candidates out of total 401 Junior Assistant in the feeder grade. The representation of STs in cadre of Senior Assistant was also dismal. The Commission noted with great concern that NDMC had accumulated 35 vacancies and no serious efforts had been made on time to fill up these 35 vacancies with ST candidates. The Commission vide letter dated 04.12.2009 asked the NDMC about status of these 35 posts. No reply has been sent by NDMC in this regard.

Dereservation of 2 posts of SO, NDMC

2.9.11 Another proposal for dereservation of two posts in the grade of Section Officer was received from **NDMC** on 20/03/2008. Some additional information, required for examination of the case was asked for vide letter dated 29/04/2008 which was not received within given time limit.

2.9.12 On examination of the available documents, it was seen that there was only one ST candidate in the feeder cadre of Head Assistant of 144. It was observed that the NDMC had not taken due care to strictly implement the Reservation of 7.5% for STs. The proposal was rejected vide letter dated 16.05.2008.

Dereservation of 20 posts of Extra Assistant Director/ AE(Civil), Ministry of Water Resources.

2.9.13 A proposals for dereservation of 20 posts of Extra Assistant Director/ Assistant Engineers (Civil), Group-B Gazetted (18 for Diploma Holders + Two for Degree Holders) was received from the Ministry of Water Resources on 24/09/2008.

2.9.14 On examination, it was noted that 2 eligible ST candidates were available in the feeder cadre. The Commission therefore, recommended to promote these ST candidates on ad hoc basis against the reserved vacancies, which was not agreed to by the Ministry due to functional requirement and the Commission was requested for reconsideration of the proposal. The proposal was re-examined and it was advised:

- (i) to fill up all the other unreserved posts of EAD/AE to take care of the urgent requirement of CWC.
- (ii) To recruit ST candidate in the feeder grade of Jr. Engineers on priority basis for the future requirement.
- (iii) To modify the RRs notified on 28/03/2009, to incorporate a special provision to relax the experience for ST category candidates in case sufficient ST candidate were not available as per normal eligibility criteria.

2.9.15 Subsequently, the Commission vide letter dated 03.12.2009 wrote to the Ministry of Water Resources seeking information about status of the posts. The Commission has not received any reply in the matter.

Dereservation of 1 post of SO (Sectt.) in ARC , Cabinet Sectt.

2.9.16 A proposal was received from **Cabinet Secretariat** on 20/08/2008 to dereserve one post of Section Officer in the ARC (Secretarial Service). The Cabinet Secretariat Informed that as per seniority list in the feeder grade there was no eligible ST candidate. The method of Recruitment Rules provides 50% by promotion and 50% by limited departmental examination. The mode of promotion was selection and no ST candidate was available in the normal zone or extended zone of consideration. The only ST candidate available was at Sl. No. 42 of the seniority list, who had joined as a direct recruit on 06.06.2008 and had not completed the eligibility period of 3 years regular service in the grade of Assistant.

2.9.17 On examination of the proposal it was decided with the approval of Commission to agree for dereservation of post of Section Officer with the condition that when the ST candidate in the Feeder post of Assistant becomes eligible for promotion as per the Recruitment Rules, he must be promoted against a vacant post of Section Officer. The Cabinet Sectt. vide U.O. dated 20.11.2008 intimated the Commission that they would comply with the Commission's advice.

Dereservation of 4 posts of SFO (Tech) in ARC , Cabinet Sectt.

2.9.18 Another dereservation proposal dated 19.02.2009 was received in the Commission for dereservation of 4 posts of Senior Field Officer (Tech) from feeder grade of Field Officer (Tech) in the Technical cadre of the Aviation Research Center (ARC) in the **Cabinet Secretariat**. The requisite information which was not furnished alongwith the proposal was called for by the Commission vide letter dated 06.03.2009 for examination of the proposal.

2.9.19 On examination of the proposal and related documents, it was noted that as per strength of SFO(T), there were 110 posts and the method of

recruitment was 25% by direct recruitment and 75% posts are to be filled up through promotion channel from FO(T). The strength of direct recruitment of SFO(T) was 28 and through promotion was 82. The proposal was rejected vide letter dated 02.04.2009. The Commission observed that 4 posts of FO(T) on reserved point for ST at point No. 40,55,69 and 80 were not to be dereserved and filled as they were required to be filled through direct recruitment. The Cabinet Secretariat vide letter dated 11.05.2009 explained that as per 200 points roster, out of the promotion quota strength of SFO (T) i.e. 82 posts, there should be 12 SCs and 6 STs whereas only 11 SCs and 2 STs were available. Thus, there was a shortfall of 1 SC and 4 ST candidates. Since no SC or ST candidate was available in the zone of consideration for promotion, the Commission was requested to reconsider the matter and give its concurrence to the proposal. Vide its letter dated 22.05.2009, the Commission turned down the proposal of dereservation of 4 ST posts of SFO (T). The Commission vide letter dated 03.12.2009 subsequently enquired about the status of the 4 posts in question. The Cabinet Secretariat vide letter dated 11.02.2010 intimated that the said 4 posts of Senior Field Tech. Officer were not filled and action was being taken for filling these posts through direct recruitment.

Dereservation of 1 post of AD(Non-Police), Intelligence Bureau, MHA

2.9.20 A proposal for dereservation of 1 post of Assistant Director (Non-Police) in Intelligence Bureau was received in the Commission on 17/10/2008 from Intelligence Bureau. It was observed that the proposal was not received though the Administrative Ministry the Intelligence Bureau was advised to route the same through their administrative Ministry i.e., Ministry of Home Affairs alongwith necessary details for examination of the proposal. The Ministry of Home Affairs subsequently submitted the proposal alongwith requisite details relating to Recruitment Rules for the post of Assistant Director (Non-Police) and its feeder grade post of Section Officer, rosters and seniority list of these posts and reasons for non-availability of ST candidate in the feeder grade posts. On examination of proposal, the following points were noticed:

- (i) There were initially 49 posts of Assistant Director (Non-Police) in the scale of Rs. 10000-15200/-. 20 posts of Assistant Director (Non-Police) were filled by promotion during the Recruitment Year 2008-09. 7 more posts were sanctioned during the year and the proposal was to de-reserve one post reserved for ST within the Post-Based Roster (upto 56 posts). This post was to be filled by 100% promotion from the post of Section Officer in the scale of 6500-10000/-. As per existing Post-Based Roster 4 posts were to be reserved for ST and the officers at S.No. 25, 43 and 45 belonged to ST. The fourth point at S.No. 54 of Post Based Roster, which is reserved for ST had been proposed to be dereserved on the ground that there was no ST candidate within even extended zone of consideration amongst eligible Section Officers.
- (ii) As per Recruitment Rules, the post of Section Officer was the feeder grade post for Assistant Director (Non-Police). The sanctioned strength of SO was 243. The seniority list of SO indicated 236 posts having been filled upto 1/12/2006 in which the first available ST candidate was at S.No. 97 (94, 95, 96 having been promoted). However, out of 236 Section Officers,

52 had already been promoted to the post of Assistant Director (Non-Police), while 7 had retired. Therefore, the effective seniority of first available ST candidate was 37 and not 97.

- (iii) 20 posts of Assistant Director (Non-Police) had been filled by promotion during the Recruitment Year 2008-09 and 7 more were proposed to be filled during that current year. Therefore, the effective extended Zone of Consideration for locating SCs/ STs candidates would be five times the number of total vacancies (27) to be filled during the recruitment year 2008-09 and not w.r.t. 7 vacancies being filled in the second phase of the same recruitment year. Further, the Zone of Consideration will be counted from the seniority number above the seniority number upto which promotions were made during last recruitment year. Thus all the eligible SC/ST candidates within Zone of Consideration of 135 Section Officers would be eligible for consideration for promotion for the post of Assistant Director (Non-Police). As far as filling the post reserved for ST is concerned, one candidate Shri P. Gopalan was available at S.No. 97 (effective seniority number 57 including 20 already promoted during the current recruitment year). Even some more ST candidates were also available after this candidate within the extended Zone of Consideration of 135 amongst Section Officers.

2.9.21 Since ST candidates were available within the extended Zone of consideration for Scheduled Tribes in the feeder grade of Section Officer, the Commission, vide letter dated 03/12/2008, advised the Ministry of Home Affairs to promote the eligible ST candidate adding that in the given situation, need for dereservation in the post of Assistant Director (Non-Police) in Intelligence Bureau did not arise.

Dereservation of 1 post of UDC, National Bal Bhawan, MoHRD

2.9.22 A proposal for dereservation of 1 post in the grade of UDC in **National Bal Bhawan, New Delhi** under Department of School Education and Literacy, Ministry of HRD was received in the Commission on 13.02.2008. It was stated that consequent upon promotion of one UDC to the post of Office Assistant, a resultant vacancy had become available in the grade of UDC w.e.f. 14.4.2007 and the post was against the roster point number 14 earmarked for the ST category. As per RRs for the post of UDC, the post was to be filled up on promotion from feeder cadre of LDC with a minimum of 5 years regular service and no candidate belonging to ST category was available for promotion in the feeder cadre of LDC in National Bal Bhawan.

2.9.23 The Commission advised the Department to furnish the following information/ documents for examination of the dereservation proposal vide letter dated 18.02.2008:-

- (i) The RRs for the post of UDC and LDC (feeder grade)
- (ii) Copy of Reservation roster for the post of UDC and LDC (feeder grade)
- (iii) Copy of updated Seniority list for the post of LCD

- (iv) Reasons for non-availability of ST candidate in the feeder cadre and efforts made to fill up the ST vacancy.

2.9.24 No response was received from M/HRD. While reviewing the follow up on the status of the dereservation proposals received in the Commission, the Commission, vide letter dated 26/11/2009, asked Department of Education & Literacy, Ministry of HRD to furnish the status of the proposal. The Ministry of Human Resource Development informed the Commission vide letter dated 30.04.2010 that due to non-availability of ST candidate, the post of UDC had been filled up by promotion from amongst general candidate found eligible and reserved vacancy was being carried forward to the next recruitment year and was being reflected as a backlog vacancy.

Dereservation of 1 post of Purchase Officer, Department of Atomic Energy

2.9.25 **The Department of Atomic Energy** vide letter dated 18.09.2008 submitted a proposal for dereservation of 1 post of Purchase Officer in the Department. The Commission sought certain document/ clarifications /information for examination of the proposal.

2.9.26 After examination of the material received from DAE it was noticed that the Recruitment Rules of the post of Purchase Officer and other posts were not in a clear formats and did not furnish any information whether there was an element of Direct Recruitment in the Recruitment Rules. However, on receipt of clarification from Department of Atomic Energy that no eligible candidate in the feeder post of Assistant Purchase Officer was likely to be available before 2015, the Commission agreed to the proposal. The attention of the Department of Atomic Energy was invited to the fact that after dereservation, the reserved post was required to be carried forward to next recruitment year so that the carried forward reserved point may be filled from the vacancies arising in the grade in the next recruitment year.

Dereservation of 2 post of Group 'D', Coffee Board, Ministry of Commerce

2.9.27 A proposal dated 16.11.2007 was received from the **Ministry of Commerce** and Industry, New Delhi regarding dereservation of 2 ST vacancies in the cadre of Group 'D'–III in the Coffee Board. The post was Group 'D'-III in the scale of pay Rs. 2619-60-3050-65-3540. The prescribed mode for promotion was from amongst Group –D IV on seniority-cum-fitness basis. The Commission vide letter dated 19.12.2007 and 15.09.2008 sought the details of Seniority List, Reservation Roster, Recruitment Rules for the post of Group – D-III and Group D' IV etc. from the Ministry of Commerce.

2.9.28 The Secretary, Coffee Board vide letter dated 20.02.2009 informed that as per the 6th Central Pay Commission's recommendations and the Government's decisions thereon, all Group 'D' employees passing 10th standard were to be placed with a Grade Pay of Rs.1800/- w.e.f. 01.01.2006. The existing Group D employees were to be trained and placed in Pay Band-1 with Grade Pay

of Rs.1800/- after training. Hence, on the basis the the Government's decisions on the recommendations of 6th Pay Commission, promotion from Group-D-IV to Grade D-III will no more be required and the dereservation proposals should be treated as cancelled/withdrawn by the Coffee Board.

Dereservation of 44 posts of Supervisor, Fitter, AVS, Fitter Instrument, HS, Fitter Electronics, HS, Fitter HS, Examiner HS, Heavy Vehicle Factory, Ministry of Defence

2.9.29 A proposal for dereservation of (i) 3 posts in the grade of Supervisor (i) 06 posts in the grade of Fitter AFV, HS (ii) 01 post in the grade of Fitter Instrument, HS (iii) 03 posts in the grade of Fitter Electronics HS, (iv) 27 posts in the grade of Fitter HS and (v) 04 vacancies in the grade of Examiner HS, in respect of Heavy Vehicle Factory, Avadi was received on 26.08.2008 from the Ministry of Defence. The Commission vide letter dated 29.08.2008 asked for Recruitment Rules for all the posts for examination.

2.9.30 The above proposals were discussed in the Commission on 13.10.08 with the Jt. GM/HEF, Avadi. The Jt. GM/HEF intimated that the MoD had dereserved these posts vide their letter 14.07.2008, which was also confirmed by the MoD.

2.9.31 MoD vide letter dated 02.03.2009 submitted another proposal for dereservation of the post of Asstt. Civilian Staff Officer (ACSO). The post was to be filled by promotion from the feeder grade. The total number of ST posts were 9. The Commission vide letter dated 13.03.2009 sought updated Seniority List for the post of ACSO, latest recruitment rules for the post of ACSO and Assistant (feeder grade) for proper examination of the case. As the requisite details were not received within the stipulated time-frame, the proposal was rejeted vide Commission's letter dated 24.03.2009. Subsequently, vide letter dated 26.03.2009 and 27.03.2009, the MoD submitted a fresh proposal on the subject.

2.9.32 On examination of the proposal, It was noted by the Commission that the recruitment rules provided promotion as well as direct recruitment to the post of ACSO. It emerged that it was a fit case for diversion of promotion quota vacancies reserved for STs to the direct recruitment quota as provided in para 3 of DoPT OM No. AB14017/30/89-Estt(RR), dated 10.07.1990. In accordance with the para 4 and para 6 of the aforesaid OM, the vacancies reserved for STs may be kept unfilled if the ST candidates in the feeder grade were likely to become eligible for consideration for promotion to the Section Officer grade in the near future. MoD was therefore, advised vide Commission's letter and 06.05.2009 to take action accordingly.

2.9.33 MoD vide letter dated 14.05.2009 agreed that before the DPC for the current DPC year 2009-10 was convened, a complete stock-taking would be done and the Department would consider empanelment of all eligible ST candidates.

2.9.34 The Commission again re-iterated vide letter dated 21.07.2009 that before the DPC for the current year 2009-10 was convened, a complete stock taking should be done and the MoD should consider empanelment of all eligible

ST candidates against the shortfall, if any, and the reservation for STs should not be allowed to lapse. The MoD vide letter dated 14.12.2009 confirmed that the advice of the Commission in the matter would be adhered to.

2.10 Observations of the Commission on various proposals received in the Commission.

2.10.1 From examination of the various proposals for dereservation received in this Commission, it has been observed that:-

- (i) Proposals for dereservation of posts were not routed through the administrative Ministry.
- (ii) Proposals were not supported with requisite information/documents like Seniority List, Recruitment Rules, Post-Based Reservation Rosters and other related information relating to the post to be dereserved and the feeder grade which are necessary to examine the likelihood of availability of ST candidates from the feeder grade in near future.
- (iii) Several Departments submitted proposals for dereservation of substantial number of posts from 3 to 35 in various grades at a time. These vacancies were allowed to be accumulated by the Ministries/Departments over a long period in which no efforts appeared to have been made by the concerned Ministry/Department to fill up the posts.
- (iv) Ministries/Departments had not made efforts to fill the post in feeder grade at the appropriate time to avoid dereservation in subsequent promotional posts. This also indicates that the instructions on reservation and ban on dereservation were not followed while making Direct Recruitment.
- (v) A few Ministries/Departments, after submitting the proposals to the Commission proceeded for dereservation of the posts without furnishing the clarifications sought by the Commission. DoPT should investigate such case to improve compliance.
- (vi) OM No. 8/1/69-Estt(SCT) dated 28.01.1969 do not allow ex-post facto approval and prior approval for dereservation has to be strictly adhered at the time of filling them up by general candidates. Despite this, several departments, after filling the reserved posts from general candidates, had forwarded dereservation proposals for ex-post facto sanction.
- (vii) In certain cases, the recruitment rules provide filling up of the post through promotion only and there were no eligible ST candidates in the feeder grades. In respect of such cases, the Ministries/Departments should resort to amendment to the recruitment for provision of element of direct recruitment in default against reserved posts.
- (viii) It was noticed that the Ministries/Departments were sending proposals for dereservation of the posts in the grades of Peon, Drivers and UDCs, Stenographers, Private Secretaries etc. The nature, duties and eligibility conditions for appointment to these posts are such that there should be no cause for non-availability of ST candidates.

2.10.2 The Commission suggests that the DoPT may bring these observations to the attention of the Ministries/ Departments for improved compliance of its instructions.

2.11 Key Issues requiring urgent attention

2.11.1 A draft Bill 'The Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation in Posts and Services) Bill, 2004 was forwarded to the Commission by Department of Personnel and Training in 2004 for comments. However, it was noticed that the views of the Commission did not find full reflection in The SCs and STs (Reservation in Posts and Services) Bill, 2008. The significant omissions being as follows:

- (i) Judiciary, Armed Forces, Lok Sabha Secretariat and Rajya Sabha Secretariat should also be brought under the purview of the reservation policy.
- (ii) Any public sector undertaking or its subsidiaries or statutory authority constituted under any Central Act should also include such establishments which are jointly funded by the Central Govt. and the State Govt.
- (iii) A corporation should be included in which the paid-up share capital is held by the Govt. irrespective of its percentage. The word 'Government' should also be defined as 'the Central Government or the State Government or both, as the case may be, where the funding is done by both the Governments.'
- (iv) Public Schools and other schools and institutions such as hospitals etc., which, though not funded by the Govt., have received / are receiving concessions from the Govt. in respect of acquisition of land, buildings or other concessions respecting recognition/affiliation in regard to running of those institutions like electricity, water, provision of public transport etc. should be included.
- (v) There should be reservation in appointments for work-charged posts as well as for appointments for a period of less than 45 days.
- (vi) The reservation policy should not only be extended to the lowest grade Group A in respect of Scientific or Technical posts which are required for conducting research or for organizing or guiding and directing research, but also the grades higher than the lowest grade of Group A in such posts.
- (vii) The word 'knowingly' should be removed from the clause providing penalty for making false claim, as it would be difficult to establish whether false claim has been made / false certificate has been issued knowingly or otherwise.
- (viii) A clause should be added making provisions for penalizing public servants for non-implementation of the reservation policy of the Government.
- (ix) Reservation for SCs (15%) and STs (7.5%) in awarding Fellowships and Scholarships and reservation in training and assignments inside and outside the country should be provided.

- (x) The experience required for promotion to a post shall be relaxed in the case of members of SCs & STs if at any stage of their consideration for such promotion, sufficient number of candidates from these communities possessing requisite experience is not available to fill the reserved post.

Moreover, the comments of the Commission were also not sought before tabling it in the Parliament. **The Commission, therefore, recommends that views of the Commission may be considered while redrafting the bill and the Commission may be consulted before tabling it in the Parliament.**

2.11.2 The following issues have been taken up with the Minister of State for Department of Personnel and Training vide D.O. No 4/3/08-Coord dated 30.06.2009 from the Chairperson, NCST.

(i) The Hon'ble Supreme Court of India in Appeal (Civil) No. 4026/1988 has directed to draw a separate zone of consideration in the matter of promotion by selection for SCs and STs. DoPT has, however, issued instructions vide their OM dated 15/3/2002 to follow these directions of Hon'ble Supreme Court only in the matter of adhoc promotions of SCs and STs and not in regard to their regular promotions. This Commission has requested DoPT to issue revised instructions in compliance with the directions of the Hon'ble Supreme Court to provide a separate zone of consideration (ZoC) in respect of promotion by selection consisting of SC/ST candidates only. Despite several letters from the Commission, no action has been taken by DoPT in compliance with the directions of the Hon'ble Supreme Court; nor has the Commission been informed of anything in this regard. Besides, the concept of filling a single vacancy, reserved for STs (as per Post-Based Roster) arising during a recruitment year, by an unreserved candidate in a post also needs to be reviewed as it has no relevance in view of the process of replacement as per Post-Based Roster.

(ii) Rajya Sabha had passed the SCs and STs (Reservation in Posts and Services) Bill 2008 (which lapsed on dissolution of the 14th Lok Sabha), which, inter-alia, provides for ban on de-reservation in posts to be filled up by direct recruitment as well as by promotion (so far the de-reservation was banned only in respect of direct recruitment posts). This means that the vacancies reserved for members of SCs/STs shall be filled respectively by members of the SCs/STs only. However, a large number of vacancies, reserved for STs, have been lying vacant in most of the Ministries/Departments for a considerable period, in spite of various instructions issued by DoPT from time to time for launching of Special Recruitment Drives (SRDs) in direct recruitment as well as in promotion to fill up the backlog vacancies reserved for STs. This indicates imperative need for immediate review to evolve an effective mechanism/ initiatives to ensure timely filling of posts under SRDs to fill up the backlog ST vacancies as well as those arising in the normal course.

(iii) The Commission is of the view that certain steps need to be taken to make SRDs really effective. These may include: (i) introduction of a

computerized roster management system to introduce transparency and easier manpower planning and (ii) making enabling provisions in the Recruitment Rules (RRs) (a) to go for direct recruitment if an eligible ST candidate with required length of service is not likely to be available (in the feeder grade post) for promotion to the higher post and (b) temporarily downgrading the post to the feeder grade level and filling that downgraded post from amongst ST candidate(s). In the matter of computerization of implementation of reservation system, DoPT has since informed the Commission that the Government has not prescribed any format for maintenance of rosters; and, in the absence of a prescribed format for maintaining rosters/registers, it is not possible to develop computer software for this purpose, which seems rather odd, to say the least, since the Govt. is committed to spread of e-governance.

(iv) In order to assess the level of representation of STs in the service in different Ministries/Departments and to make recommendations for their proper representation, the Commission has been obtaining data in regard to representation of STs in different Ministries/Departments from the DoPT, as on 1st January of every year (to be sent to the Commission latest by 31st March of that year). Regrettably, every year this data is being furnished very late, in spite of repeated requests from the Commission. Moreover, the data furnished also doesn't cover all Ministries/Deptts. Under these circumstances, it becomes very difficult to analyse data in comparison with the preceding years to identify slippages and to suggest remedial measures. Such a position is not conducive to proper monitoring of implementation of reservation policy by the concerned Ministry/ Department, DoPT as well as the NCST.

2.11.3 DoPT's reply is still awaited. **The Commission regrets DoPT's indecision despite the matter having been taken up by the Commission time and again and at the highest level; and recommends immediate action to implement the suggestions made in the interests of transparent and effective implementation of Constitutional safeguards for Scheduled Tribes.**

2.12 Recommendations.

2.12.1 The National Commission for Scheduled Tribes made the following recommendations in its earlier Reports for the years 2004-05 2005-06 and 2007-08:

- (i) **There should be total ban on dereservation of posts reserved for Scheduled Tribes to be filled by any method i.e. whether Direct Recruitment or promotion.**
- (ii) **The ban on dereservation in Direct Recruitment should be monitored strictly as many Departments including DoPT have failed to appoint Scheduled Tribes candidates against Direct Recruitment posts/ grades of general nature, for which there should be no paucity of qualified/ eligible ST candidates.**
- (iii) **The composition of the Committee constituted in terms of the**

DoPT's OM dated 25/4/1989 to scrutinize the proposals for dereservation in direct recruitment in respect of the exceptional categories of Group 'A' posts reserved for Scheduled Castes and Scheduled Tribes in public interest may be revised to include the Ministry of Tribal Affairs also.

2.12.2 While re-iterating the earlier recommendations, the Commission would also like to make the following recommendations:

- (i) The DoPT OM No. 36011/14/83-Estt.(ST) dated 30/04/1983 relating to consideration of cases of ad-hoc promotion of SC/ ST employees should be applied in the matter of promotion of ST candidates against reserved posts instead of seeking dereservation of the post. The relaxation in period of ad-hoc appointments upto 3 years agreed in respect of Group 'C' and 'D' posts vide DoPT OM No. 28036/01/2007-Estt(D) dated 14/11/2007 may be allowed in case of ad-hoc promotion of ST candidates appointed against all categories of posts reserved for Scheduled Tribes.**
- (ii) If no ST candidate is likely to become available for a long time, steps should be taken to fill the reserved post from ST candidates through direct recruitment by amending the RRs, if the existing RRs do not provide for the same, instead of seeking de-reservation of the post.**
- (iii) Action should simultaneously taken to amend the RRs for each post to provide for direct recruitment to reserved posts in all cases where appointment is proposed to be made 100% by promotion, by incorporation of 'failing which' clause.**

CHAPTER 3

LAND ACQUISITION AND RESETTLEMENT & REHABILITATION OF DISPLACED TRIBALS

3.1. Introduction

3.1.1 Since independence, as the need for accelerating the pace of planned development in various sectors of the economy started gaining momentum, the pressure to divert forest / acquire private land at various places for construction of dams, hydel projects, industries, mines etc. also started building up. The tribal people had to vacate land for the major part, for the simple reason that, through a natural co-incidence, the tribal habitats contained reservoirs of mineral resources and the catchments of streams and rivers possessing enormous irrigation and power potential. It is estimated that more than 2 crore people¹ have so far been displaced on account of development projects in the country. Further, it has also been revealed that majority of the people displaced on account of development projects have invariably failed to restore and regain their former standards of livelihood. Development-induced displacement in the country has brought severe economic, social and environmental problems to the displaced people. Its most important serious consequence for the tribal people has been the dispossession of land, both agricultural and homestead, along with the loss of their traditional occupation, besides traumatic psychological and socio-cultural problems.

3.1.2 In recent times, India has been witnessing an ever-widening gulf between individuals who have benefited from economic growth and the vast group of others who seem to have been left out of the process. The displacement of people from their natural habitat resulting in loss of source of livelihood is a stark manifestation of this phenomenon. In the recent past, the displacement on account of development has also led to a lot of controversies and violence in a number of States like West Bengal, Orissa etc. It is an admitted fact that the tribals are more vulnerable in the wake of industrialization; and they need a separate deal to ensure restoration of their livelihood in the newly relocated sites. It is, therefore, necessary to address issues related to relief, rehabilitation and resettlement of tribals in a timely and effective manner.

3.1.3 The Government provided some policy initiatives and institutional mechanisms to deal with displacement management, notably through the revised 'National Rehabilitation and Resettlement Policy', 2007, accompanied by some significant measures, viz., introduction of the Land Acquisition (Amendment) Bill, 2007 and the Rehabilitation and Resettlement Bill, 2007 in the Parliament and the initiative to formulate a 'National Tribal Policy' (which is still at the draft stage). The provision for relief & rehabilitation measures in law will also help to avoid litigation and consequent delays and prevent cost overrun of the projects, besides uniformity in dealing with the cases by the Courts. Bodies like the National

¹ Development Induced Displacement and the Tribals by Prof. A. B. Ota,
Walter Fernandes, Indian Social Institute, Delhi 'Displacement in the major States in the country'

Disaster Management Authority and the various State Disaster Management Authorities have also been constituted under the Disaster Management Act (DMA), 2005 to provide for institutional mechanism to deal with disasters.

3.2. Types of displacement

3.2.1 Involuntary displacement of tribals has been occasioned in different parts of the country through a variety of forms², viz:

a. Disaster Related Displacement:

3.2.2 Disaster-related displacements are involuntary displacements due to earthquakes, floods and river erosion, cyclones and tsunamis, drought, landslides and avalanches, Nuclear, Biological and Chemical (NBC) disasters and terrorism, fire incidents, industrial accidents, etc. Disaster risks in India are further compounded by increasing vulnerabilities which include the vast disparities in income, haphazard urbanization, development within high-risk zones, environmental degradation, climate change, etc. Such types of displacements precipitate the socio-economic problems of displaced persons and affect their shelter, livelihood, livestock, etc. Some of the important instances encountered in the recent past in India are:

- Super cyclone that struck the coastal districts of Orissa in October 1999
- Gujarat earthquake that devastated large areas of Gujarat in January 2001.
- Tsunami, which hit the coastal India in December 2004.
- Earthquake in Jammu & Kashmir in 2005.

b. Development Related Displacement:

3.2.3 Mega development projects like construction of dams, industries, highways and roads have resulted in forced displacement of the people in large numbers. Usually it is the poor people, especially Scheduled Tribes, who face the consequence of such projects because their livelihood, habitat and assets are affected.

3.2.4 The areas inhabited by the tribals are also coincidentally a storehouse of the mineral wealth in the country. The tribal areas store bulk of the coal deposits (92%), Bauxite (92%), Iron ore (78%), Uranium (100%). Copper (85%) dolomite (65%) and the list goes on. Taking locational advantage, mineral-based industries have come up in the tribal belts, first in the public sector and now in the private sector also. However, these industries on the tribal soil, with very few exceptions, have been largely unable to relate to the tribal problems. There has been little job diversification and industrial employment for the tribals, even where mammoth projects, like the Heavy Engineering Corporation, Ranchi, Jharkhand and the Bokaro Steel Plant, Jharkhand and industries of similar nature have been set up. The Scheduled Tribes of Andhra Pradesh, Chhattisgarh,

² NHRC, Background Paper on National Conference on 'Relief and Rehabilitation of Displaced Persons' March, 2008

Jharkhand and Orissa, all rich in natural resources and with a large population of tribal people have suffered most due to development-related displacement.

c. Conflict Induced Displacement

3.2.5 According to non-governmental organizations, "There are over 6,00,000 conflict-induced IDPs [internally displaced persons] in India. This includes "33,362 displaced persons in Kokrajhar district and 74,123 in Gosaigaon district of Assam; 55,476 Kashmir Pandit families who were displaced due to the conflicts in Jammu and Kashmir since 1990; and about 35,000 Bru (also known as Reangs) from Mizoram who were displaced in October 1997 and took shelter in Tripura. As of 31st December 2006, there were 43,740 displaced persons in the *Salwa Judum* camps in Chhattisgarh."³

3.3. Magnitude of displacement

3.3.1 It is estimated that the total number of displaced persons (DPs) in mines, dams, industries and sanctuaries of the tribal region is 11.75 million. In so far as the tribal DPs are concerned, adding 1.33 millions by mines to 6.32 millions by dams, 0.31 millions by industries and 0.45 millions by parks and sanctuaries the total comes to 8.41 millions. If we add to them 0.5 millions displaced by other projects in the tribal regions and assuming that half of them are tribals the total number of tribal displaced would come to 8.539 millions. This would be 40.9 percent of all DPs between 1951 and 1989⁴. These estimates suffer from the defect that they do not take into account the smaller projects that cause displacement. Such projects are more numerous and the overall impact of these displacements is significant.

3.3.2 The dangers to the tribal lands have not ceased with liberalization/globalization of the Indian economy. To the contrary, the private capital is both more venturesome and enterprising. Nor is it bound by the lofty objectives of the Public Sector. The private capital led acquisition, therefore, represents a threat for greater in magnitude and multi-dimensional than what the tribals have experienced hitherto.

3.4. Land and the Tribals

3.4.1 Land is the primary means of production in the tribal society. Landlessness, therefore, is both socially and economically depriving⁵. A landless tribal is not able to fulfill many of the social functions expected of him. A social stigma, therefore, sets in with landlessness. Higher the incidence of landlessness greater is the calumny in the tribal society. This is also because of the fact that

³National Network for Human Rights Treaty Monitoring in India, 19 February 2007, Dimensions of Discrimination in India" – a shadow report to the UN CERD Committee

⁴Walter Fernandes, Indian Social Institute, Delhi 'Displacement in the major States in the country', National Workshop by Centre for Rural Studies, LBSNAA, Mussoorie. 'Background Papers & Sub-Themes on Land Acquisition for Development Projects in Scheduled Areas, Increasing Land Alienation among Tribals and PESA'. 3-4 March, 2008

⁵ National Workshop by Centre for Rural Studies, LBSNAA, Mussoorie. 'Background Papers & Sub-Themes on Land Acquisition for Development Projects in Scheduled Areas, Increasing Land Alienation among Tribals and PESA'. 3-4 March, 2008

the nature of the tribal economy is not accumulative and it uses little hired labour since the sharing of labour is still on 'cooperation' basis, the labour market within tribal communities is underdeveloped. The majority of the tribal people seeking employment do so outside their villages; and that too, mostly by migration.

3.4.2 The struggle of the tribals has historically centred on their land base, as land represents the greater asset of the tribal society. They cannot think of undertaking any other vocation as they are not capable for doing it. Restricting alienation of tribal land has, therefore, been a continuing element of State policy as well as legislative endeavour in the country for quite some time.

3.5. Tribals and land acquisition

3.5.1 Involuntary displacement of the tribals through the government-led acquisition process of their lands, homes and entire ecosystem, however, has emerged as one of the principal threats to the corpus of tribal land⁶. The irony is that the process of deprivation is carried out through the process of law and bears the stamp of the authority of the state. Land regulations generally prohibit transfer of tribal land to others, except with the approval of designated authorities. Therefore, surrogate acquisition by the Government on behalf of industries, developers, etc. has assumed larger dimension in recent times. Encroachment upon the tribal land rights by the State is difficult to oppose for the simple reason that this act is enforced in the name of development of the very people whom it destroys; and, consequently, the land resources of the scheduled tribes are being rapidly depleted.

3.5.2 The principal statutory instrument for acquisition of rights over land is the Land Acquisition Act, 1894, of colonial vintage. It was promulgated for the first time by the British in order to legalize the resumption of land by the State. However, the pace of acquisition has quickened much more since Independence, as special legislation, like the Coal bearing Areas Acquisition & Development Act, 1957, Railways Act, 1989, National Highways Act, 1956, etc. also came into existence in the country.

3.5.3 The LA Act, 1894 (as also other legislation with similar features) is a statutory statement of the State's power of 'eminent domain', which is considered a necessary adjunct to the doctrine of sovereignty to be invoked for the furtherance of public good. This Act denies to the individual, from whom the land is acquired, the right to exercise choice as to whether to part with the land or not, so long as the acquisition is done for a 'public purpose'. The only limitation to the power of 'eminent domain' is the entitlement of compensation to the land loser, which is only a concession, since compensation is given on the basis of the notional value in the market without considering the social cost-benefit of the land and treating the displaced person as a willing seller. The tribal is weak in bargaining strength and cannot negotiate nor exercise available legal remedies.

⁶ National Workshop by Centre for Rural Studies, LBSNAA, Mussoorie. 'Background Papers & Sub-Themes on Land Acquisition for Development Projects in Scheduled Areas, Increasing Land Alienation among Tribals and PESA'. 3-4 March, 2008

3.6. Evolution of resettlement and rehabilitation policy

3.6.1 The exercise of the principle of eminent domain for acquisition of private land has been leading to involuntary displacement of people, depriving them of their land, livelihood and shelter; restricting their access to traditional resource base, and uprooting them from their socio-cultural environment. This has resulted in an imperative need to recognize resettlement and rehabilitation issues as intrinsic to the development process formulated with the active participation of the affected persons, rather than as externally-imposed requirements. The socio-economic impact of displacement has also called for a broader concerted effort on the part of the planners to include in the displacement, resettlement and rehabilitation process framework not only those who directly lose land and other assets but also those who are affected by such acquisition of assets.

3.6.2 The National Policy of Resettlement and Rehabilitation, which was formulated in 2003 for Project Affected Families, and came into force w.e.f. Feb, 2004, had many issues which needed to be reviewed. These include a clear perception, through a quantification of the costs and the benefits that will accrue to society at large, of the desirability and justifiability of the project and the economic, environmental, social and cultural impact on affected families. In the context of new emerging requirements of infrastructure and development projects, which very often require large scale of land, the need to minimize (i) the total area required for a project, (ii) acquisition of agriculture land for non-agriculture use and; (iii) the displacement of people due to acquisition of land also emerged. In respect of the projects, where large number of families are affected, it is essentially desirable to conduct Social Impact Assessment (SIA) and provide all required infrastructural facilities and amenities in the resettlement areas. More particularly, where the Scheduled Tribes are being displaced in sizeable numbers, the need for a well thought out tribal development plan becomes essential. These requirements were taken care in the National Rehabilitation and Resettlement Policy, 2007, which was notified in October 2007.

3.7. International Perspective

a. UN Guiding Principles on Internally Displaced Persons, 1998

3.7.1 The above Principles⁷ are meant to serve as an international standard to guide governments as well as international humanitarian and development agencies in providing assistance and protection to IDPs.

3.7.2 For the purposes of these Principles, “internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of, or in order, to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.”

⁷ http://www.reliefweb.int/ocha_ol/pub/idp_gp/idp.html

3.7.3 The Principles identify the rights and guarantees relevant to the protection of the internally displaced in all phases of displacement. These provide protection against arbitrary displacement, offer a basis for protection and assistance during displacement, and set forth guarantees for safe return, resettlement and reintegration. Though not constituting a legally binding instrument, these guide the conduct of States. These Principles reflect and are consistent with international human rights and humanitarian law and analogous refugee law. Principle 6(C) of UN Guiding Principles prohibits arbitrary displacement in cases of large-scale development projects.

b. ILO Indigenous and Tribal Populations Convention 107 (1957)

3.7.4 The Convention (India ratified the Convention in 1958) primarily deals with the protection and integration of indigenous, tribal and semi-tribal groups. The Convention provides that, where as an exceptional measure tribal groups are removed from their land, they should be provided with lands of quality at least equal to that of the land previously occupied by them. It goes on to provide that they should be compensated for any “resulting injury or loss”.

3.7.5 The Govt. of India has ratified, and hence committed to follow the spirit of, the ILO Convention No.107 of June 1957⁸ concerning the protection and integration of indigenous and other tribal and semi-tribal populations in independent countries. The Convention, in Article 11, prescribes: “The right of ownership, collective or individual, of the members of the populations concerned over the lands which these populations traditionally occupy shall be recognized.” Articles 12.2 and 12.3 provide for “their present needs and future development” by making available “lands of quality at least equal to that of the lands previously occupied by them.” and alternative employment as also compensation in money or in kind as per their preference. Persons thus removed “as an exceptional measure” have to be fully compensated and rehabilitated “for any resulting loss or injury.”

c. ILO Indigenous and Tribal Peoples Convention 169 (1989)

3.7.6 The Convention⁹ has been ratified by 18 countries in 2007. However, India has not ratified it as yet. The key provisions of the Convention relating to rehabilitation of indigenous and tribal people are as under:

- (i) Participation in the process of development
- (ii) Right to decide their own priorities for the process of development
- (iii) Rights of ownership and possession over traditionally occupied lands; governments to identify these peoples' lands, and to establish procedures to resolve land claims
- (iv) Safeguard to the rights to natural resources on lands and territories, including the right to participate in the use, management and

⁸ <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C107>

⁹ <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C169>

conservation of resources. Where the State retains ownership of mineral and sub-surface resources, indigenous and tribal peoples should be consulted prior to programs of exploration or exploitation of resources and wherever possible, participate in the benefits of exploitation and receive compensation for damage resulting from exploitation. Indigenous and tribal peoples should not be removed from lands except where necessary as an exceptional measure and with their free and informed consent. If consent cannot be obtained, relocation should only occur in compliance with due legal process.

- (v) Whenever possible, right to return to traditional lands, or to receive compensation if return is not possible.

d. World Bank: Resettlement Concepts

3.7.7 In line with the ILO conventions, other international conventional and humanistic and equity concerns, the World Bank and its affiliates have adopted, in their rehabilitation policy for displacement, the principle that the project-affected persons (PAPs) to be compensated adequately to enable them to regain their livelihood and quality of life, if possible, at a higher level (World Bank, 1994). The means to attain this are:-

- a compensation for the assets at replacement cost
- b opportunities to share in the project benefits, and
- c compensation for informal customary rights to land and other resources, enjoyed by the tribal and analogous populations in India

3.7.8 The Bank's resettlement policy¹⁰ explicitly states that the affected persons cannot be denied compensation /resettlement assistance based on the lack of legal title. The project, where resettlement of indigenous peoples is required, need to be prepared and implemented with extreme sensitivity to the socio-cultural requirements of indigenous groups. The World Bank also emphasizes Baselines Surveys as an essential requirement as these:

- a. form the basis for identifying the various types of project impacts
- b. are a vital guide to designing effective resettlement programs
- c. constitute a baseline against which the incomes and standards of living of PAPs after the project can be measured.
- d. form the basis of all resettlement planning.

3.7.9 The entitlement policies, costs and budgets, institutional arrangements for implementation, etc. can only be worked out once the baseline surveys are completed

¹⁰ <http://go.worldbank.org/WL08QMA3I0>

e. International Finance Corporation's Performance Standards on Social & Environmental Sustainability: Indigenous peoples

3.7.10 The key provisions of the Standards¹¹ are:

- (i) Avoidance of adverse impacts through a process of Social and Environmental Assessment. When avoidance is not feasible, the client will minimize, mitigate or compensate for these impacts in a culturally appropriate manner through informed participation of affected Indigenous Peoples and contained in a time-bound plan.
- (ii) Ongoing relationship with the affected communities of Indigenous Peoples as early as possible in the project planning and throughout the life of the project.
- (iii) Protection of cultural heritage
- (iv) Culturally appropriate development benefits, commensurate with the degree of project impacts fostering the long-term sustainability of the natural resource on which they depend.
- (v) If the client proposes to locate the project on commercially developed natural resources located within, traditional or customary lands under use, the client will respect their use by documenting its efforts to avoid or at least minimize the size of land proposed for the project. Such adverse impacts may include impacts from loss of access to assets or resources, or restrictions on land use, resulting from project activities.
- (vi) The Indigenous Peoples' land use will be documented by experts in collaboration with the affected communities. The client will offer affected communities at least compensation and due process available to those with full legal title to land in the case of commercial development of their land under national laws, together with culturally appropriate development opportunities; land-based compensation or compensation-in-kind will be offered in lieu of cash compensation where feasible.
- (vii) The client will consider feasible alternative project designs to avoid the relocation of Indigenous Peoples from their communally held traditional or customary lands under use. Where feasible, the relocated Indigenous Peoples should be able to return to their traditional or customary lands, should the reason for their relocation cease to exist.
- (viii) Where a project proposes to use the cultural resources, knowledge, innovations, or practices of Indigenous Peoples for commercial purposes, the client will not commercialize unless it, after a good faith negotiation, provides for fair and equitable sharing of benefits from commercialization of such use.

¹¹[http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_full/\\$FILE/IFC+Performance+Standards.pdf](http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_full/$FILE/IFC+Performance+Standards.pdf)

3.8. Cernea's Impoverishment Risk and Reconstruction (IRR) Model in relation to displacement

3.8.1 The IRR model¹² rests on three basic concepts: risk, impoverishment, and reconstruction. These "building blocks" are further split into sets of specifying notions, each reflecting another dimension of either impoverishment or reconstruction (e.g., landlessness, marginalization, social disarticulation, social inclusion, and others). This set of interlinked concepts refines the theoretical discourse on displacement helping to capture better its nature, effects, or remedies. This way, the model reflects the dialectic between potential risks and actuality. It always remains open to also analyze whether some of its risks do not materialize in a given context.

3.8.2 The eight most common impoverishment risks captured in the IRR model indicating distinct risks in displacement and corresponding set of reconstructed risks-reversal pro-poor support activities are illustrated below:

Common impoverishment risks		Reconstructed risks-reversal support activities
1	Landlessness	Landlessness to land-based resettlement
2	Joblessness	Joblessness to reemployment
3	Homelessness	Homelessness to house reconstruction
4	Marginalization	Marginalization to social inclusion
5	Increased morbidity and mortality	Increased morbidity to improved health care
6	Food insecurity	Food insecurity to adequate nutrition
7	Loss of access to common resources and services	Loss of access to restoration of community assets and services
8	Social (community) disarticulation	Social disarticulation to rebuilding networks and communities

3.8.3 The relevant provisions of NTP, 2006, RR Bill, 2007 & LA(A) Bill, 2007 in relation to potential risks mentioned above are summarized below.

	NTP, 2006	RR Bill, 2007	LA(A) Bill, 2007
Scope/ Applicability	All Scheduled Tribes and Scheduled Areas.	Persons affected by acquisition of land under the Land Acquisition Act, 1894 or any other Act of the Union or a State for the time being in force; or involuntary displacement of people due to any other reason (C. 2)	Persons claiming interest in the land/ compensation, easement/ tenancy right holders, tribals/ forest dwellers with recognized traditional rights (C. 3)

¹²http://www.un.org/esa/sustdev/sdissues/energy/op/hydro_cernea_population_resettlement_backgroundpaper.pdf

Potential risks				
1	Landlessness	Provision for 'Land for land' exists. (P.8.6)	Provision for 'Land for Land' exists, if Govt. land is available (C.49(4))	Provision for compensation of land only
2	Joblessness	First right to get employment & other sources of income (P.8.6)	Preference to PAFs to get employment & other sources of income (C.40,41,42,44, 45,46)	A company can offer its share & debentures upto 50% (C.11C(1))
3	Homelessness	No exclusive provision	Provided (C.35,37,38)	Provision only for compensation
4	Marginalization	Provision to reduce marginalization in terms of finance & income generation (P.8.6)	To reduce by compensation, land for land, agriculture land, resettlement in groups with provision of basic infrastructure facilities and amenities, employment and source of income etc.(C.10(3)(i),26, 29,30,33, 36(1),42,47, 49(4),49(6), 49(12), 51,59	-Nil-
5	Increased morbidity and mortality	SIA and humane approach (P.8.6)	All infrastructural facilities including health care facilities shall be provided. (C.4(2),30(1), 49(8),49(12))	-Nil-
6	Food insecurity	Financial security will lead to food security (P.8.6)	Compensation, grants and benefits shall be indexed to CPI (C.51,59)	-Nil-
7	loss of access to common resources and services	Tried to retain land and socio-economic conditions (P.8.6)	Infrastructural facilities and community infra-structure shall be provided.C.4(2), 10(3)(i), 23(3)(i),(j), (m), 26(1), 29,30(2),(3),33, 49(1),(2),(4),(6),(7), (12))	-Nil-
8	Social (community) disarticulation	STs from Schedule Area shall be resettled in Scheduled Area. (P.8.6)	Life pension for vulnerable affected persons and TDP shall be prepared for displacement of 200 or more STs (C.46,47,49)	-Nil-

3.9. Overview of existing policy / legal framework in India:

a. National Rehabilitation and Resettlement Policy, 2007¹

3.9.1 In order to solve issues arising out of policies of economic liberalization/ de-regulation, the National Policy on Rehabilitation and Resettlement, 2003 has been reviewed and revised. The revised National Rehabilitation and Resettlement Policy, 2007 ("NRRP, 2007") has come into force from Oct. 2007. The new policy is applicable to all affected persons and families whose land, property or livelihood are adversely affected by land acquisition or by involuntary displacement of a permanent nature due to any other reason. These could be tenants, landless, the agricultural and non-agricultural labourers, artisans, and others dependent on the land.

3.9.2 One of the objectives of the policy is to minimize displacement of people and to promote non-displacing or least-displacing alternatives. It also recommends that only the minimum necessary area of land commensurate with the purpose of the project should be taken, and the use of agricultural land for non-agricultural purposes should be kept to the minimum; multi-crop land should be avoided and irrigated land use should be kept to the minimum for such purposes. Projects may preferably be set up on wastelands or un-irrigated lands.

3.9.3 The key features of the policy are:

- Coverage of all cases of involuntary displacement.
- Social Impact assessment (SIA) introduced for displacement of 400/200 or more families in plain/tribal, hilly, Scheduled areas, etc;
- Compulsory consultations with Gram Sabhas / public hearing;
- Rehabilitation before displacement;
- If possible, land for land as compensation;
- Skill development support and preference in project jobs (one person per nuclear family);
- Rehabilitation Grant in lieu of land/job;
- Option for shares in companies implementing projects to affected families;
- Housing benefits to all affected families including the landless;
- Monthly pension to the vulnerable, such as disabled, destitute, orphans, widows, unmarried girls, etc;
- Monetary benefits linked to the Consumer Price Index; also to be revised suitably at periodic intervals;
- Necessary infrastructural facilities and amenities at resettlement areas;
- Periphery development by project authorities;
- Committees for each project, to be headed by Administrator for relief and rehabilitation.
- Ombudsman for grievance redressal;

¹ Background Paper for NHRC Conference on "Relief and Rehabilitation of Displaced Persons" at New Delhi 24-25 March, 2008

- National Rehabilitation Commission for external oversight.

3.9.4 The revised policy covers all projects leading to involuntary displacement of people, and envisages special provisions for Scheduled Tribes and Scheduled Castes, the main features of which are given below: -

- Consultation with the concerned gram sabha or the panchayats at the appropriate level in the Scheduled Areas under Schedule V of the Constitution in accordance with provisions of the Panchayats (Extension to the Scheduled Areas) Act 1996. Each Affected family of Scheduled Tribe (followed by Scheduled Caste) shall be given allotment of land for land, if Government Land is available in the resettlement Area.
- In case of land being acquired from the members of the Scheduled Tribes, at least one third of the compensation amount be paid at the outset as first installment and the rest at the time of taking the possession of the land.
- Additional one-time financial assistance equivalent to five hundred days minimum agricultural wages for loss of customary rights or usage of forest produce.
- Scheduled Tribes to get free-of-cost land for community and religious gathering, to the extent decided by the appropriate government.
- Scheduled Tribes families resettled out of district to get twenty- five percent higher benefits in monetary terms.
- Affected Scheduled Tribes and Scheduled Castes families to be given fishing rights in the reservoir areas of the irrigation or hydel projects
- Affected Scheduled Tribes and Scheduled Castes families enjoying reservation benefits in the affected areas shall be entitled to get the reservation benefits at the resettlement areas.

b. Land Acquisition Act, 1894

3.9.5 The Land Acquisition Act, 1894 is the primary legislation that provides for acquisition of land. Section 3(f) defines public purpose to include carrying out any educational, housing, health or slum clearance scheme, the provision of any premises or building for locating a public office, the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities and so on. It includes provisions for compensation (s.11) and provides for recourse to legal remedies (s.18) regarding adequacy of compensation.

3.9.6 In 1984, the Land Acquisition Act, 1894 was comprehensively amended vide the Land Acquisition (Amendment) Act, 1984. The amendment provided that in addition to the market value, the award amount should be increased by 12% per annum for the period commencing on from the date of publication of the notice under section 4(1) to the date of award of the collector or taking possession of the land, whichever be the earlier. As per section 23(2), an amount equal to 30 % of the market value determined under section 23(i) was added as 'solatium' due to compulsory nature of acquisition. Besides, ordinary interest @ 9% payable during the interval between taking possession and making

payment would be enhanced to 15% after a year. The Act has been criticized for considering land only as a commodity, generating income. However, when a family is settled on a piece of land not only does it earn its livelihood from it but it also has a whole social network. Only the claims of land owners or other interest holders filing their claims are considered and other landless interest-holders, viz sharecroppers, etc and other persons who derive their livelihood by providing services to land owners are ignored. **Courts have observed that there are a number of inadequacies, viz absence of proper survey and planning before embarking upon acquisition, indiscriminate use of emergency provisions, notification of areas for larger than what is actually required and then making arbitrary deletions and withdrawals from acquisition, low amounts offered as compensation leading to long and expensive litigation, inordinate delay in payment of compensation and absence of any rehabilitation measures. The Commission recommends that these issues must be addressed whenever amending legislation is contemplated.**

c. Panchayat (Extension to Schedule Areas) Act, 1996

3.9.7 The Panchayati Raj Institutions secured Constitutional status in 1993 with passing of the 73rd Constitutional Amendment Act, but it did not apply to the Scheduled Areas under Article 244 of the Constitution. The Panchayat (Extension to Schedule Areas) (PESA) Act, 1996 came into force w.e.f. 24.12.1996 following the Bhuria Committee Report in 1995.

3.9.8 PESA was made applicable to 9 States i.e. Andhra Pradesh, Chhatisgarh, Gujarat, Jharkhand, Himachal Pradesh, Madhya Pradesh, Maharashtra, Orissa and Rajasthan. The main features of PESA are:

- (i) Any legislation to be in consonance with customary law, social and religious practices and traditional management practices of community resources.
- (ii) Gram Sabha shall be endowed with the following powers:-
 - a. Power to enforce prohibition or regulate, restrict sale and consumption of any intoxicant.
 - b. Ownership of minor forest produce.
 - c. Prevent alienation of land and restore unlawfully alienated land of Schedule Tribe landowners.
 - d. Exercise control over money lending.
 - e. Manage village markets etc.
 - f. Control over institutions and functionaries in all social sectors.
 - g. Control over local plans and resources including tribal sub-plan.
 - h. Gram Sabha to be center of decentralization in managing, protecting and preserving the traditions, customs of the tribals.

3.9.9 PESA Act incorporates the obligatory provision of 'Mandatory Consultation' with the 'Gram Sabha/ GP' at appropriate levels for the purpose of

land acquisition. However, diversion of forest land and grant of mineral lease/auction seem to have been overlooked. In order to make the PESA Act more effective, many of the State laws need to be suitably amended in conformity with the PESA Act. In this context, some State Govts. have attempted to align their various Acts like Minor Forest Produce Act, , Mines and Minerals Act, land Revenue Code/Act, SC/ST Land alienation Act, Money Lenders' Act, Regulated Market Act etc. with the PESA Act. **The Commission, therefore, recommends that various Acts of the State Govts. should be suitably amended/ revised in line with the spirit of the PESA Act for ensuring an effective as well as efficient management of local natural resources.**

d. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

3.9.10 Section 3(1)(a) of the Act recognizes the rights to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribes and Other Traditional Forest Dwellers. Moreover, section 3(1)(i) and 5 empower the community to protect community forest and their cultural and natural heritage. Further, section 7 makes any violation of these provisions makes a punishable offence. The Act, however, permits modification or resettlement of the forest rights recognized under the Act in respect of Critical Wildlife Habitat (CWH) of National Parks and Sanctuaries, provided that no forest right holders shall be resettled or have their rights in any manner affected for the purpose of creating inviolate areas for wildlife conservation except if, inter-alia, the following conditions are satisfied:

- (a) the process of recognition and vesting of rights as specified in section 6 is complete in all the area under consideration;
- (b) it has been established by the concerned agencies of the State Government, in exercise of their power under the Wild Life (Protection) Act, 1972 that the activities or impact of the presence of holders of rights upon wild animals is sufficient to cause irreversible damage and threaten the existence of said species and their habitat;
- (c) the State Government has concluded that other reasonable options, such as, co-existence are not available;
- (d) a resettlement or alternatives package has been prepared and communicated that provided a secure livelihood for the affected individuals and communities and fulfils the requirements of such affected individual and communities given in the relevant laws and the policy of the Central Government;
- (e) the free informed consent of the Gram Sabhas in the areas concerned to the proposed resettlement and to the package has been obtained in writing;
- (f) no resettlement shall take place until facilities and land allocation at the resettlement location are complete as per the promised package.

3.9.11 The Wildlife (Protection) Amendment Act, 2006, mandates that the State while ensuring the protection and conservation of tigers shall also ensure safeguards for agricultural, livelihood, developmental and other interests of the people living inside a forest or in and around a tiger reserve. Ministry of Environment and Forests (MoEF) has also issued a set of guidelines for the determination and declaration of Critical Wildlife Habitats (CWH) and Critical Tiger Habitats (CTH). The following views were expressed by the Commission on the decision taken by the NTCA in its third meeting regarding important issues concerning the relocation of STs in CWH:

- i) The villages and the inhabitants and their assets and properties to be relocated from the determined/proposed tiger reserves and protected areas should be identified on a priority basis as the issue of livelihood of inhabitants of relocated villages has to be planned and implemented in advance before execution of the project. This should be done after following the due consultation process with the Gram Sabha, in writing strictly as per provisions contained in the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006 (which has overriding effect over other provisions). Adequate security measures should be also be essentially taken in the extremist ridden areas for the safety and the security of the habitats of these areas. It may also be explored whether relocation can be possible outside the extremist-ridden areas.
- ii) In order to ensure that the provisions of STs and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 are given due importance in carrying out the process of relocation of villages and there is no forceful relocation, the Ministry of Tribal Affairs and Ministry of Environment & Forests together should keep a close watch on the relocation process to see that the provisions of the Act are not violated.
- iii) As the local forest tribals and other forest dwellers are well versed with the forest areas, conservation of forest and the wildlife, preference should be given to local forest dwelling tribal and other people, if necessary, by relaxing the prescribed qualifications for frontline staff posts. Similar provisions should be made while raising the proposed Special Tiger Protection Force.
- iv) A representative of the NCST preferably from the concerned Regional Office of the NCST, should be associated with the Technical Committee of NTCA in monitoring the village relocation activities.

3.9.12 The need for diversion of forest area for non-forest use for development and infrastructural projects like mining, construction of hydro power projects, highways, SEZ etc, involving displacement of tribals will continue as in the past. The adverse impact on tribals, their environment and associated potential risks in such displacement arising from diversion of forest area for non-forest use for development and infrastructural projects, will be in no way different from the displacement of tribals for CTH/CWH. In all such cases, it is also necessary that rights of the tribal people should be settled as per the provisions of the STs and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act before implementation of the project and they are also resettled in accordance

with CTH/CWH guidelines. **The Commission, therefore, recommends that keeping in view frequent diversion of forest land for development and infrastructural projects involving displacement of tribals:**

- (i) **the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act should have comprehensive provision for re-settlement of rights of the tribals in cases of involuntary displacement in and around forests.**
- (ii) **rights of the affected tribal people should be settled as per the provisions of the STs and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act before implementation of any development / infrastructural project.**
- (iii) **the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act should have comprehensive provision for resettlement and rehabilitation of tribals consistent with the spirit/provision of the RR Bill, 2007, as provided in respect of Critical Wildlife Habitat.**

e. National Mineral Policy, 2008

3.9.13 The National Mineral Policy, 2008¹³ lays special emphasis on optimal utilization of mineral resources, protection of environment and resettlement & rehabilitation of affected persons. The key features of the policy concerning Scheduled Tribes and environment are as under:

- A framework of sustainable development will be designed which takes care of bio-diversity issues and to ensure that mining activity takes place along with suitable measures for restoration of the ecological balance (paragraph 2.3).
- Special care will be taken to protect the interest of host and indigenous (tribal) populations through developing models of stakeholder interest based on international best practice. Project affected persons will be protected through comprehensive relief and rehabilitation packages in line with the National Rehabilitation and Resettlement Policy (paragraph 2.3).
- Social Impact Assessment will be undertaken to ensure that suitable relief and rehabilitation packages are evolved. Appropriate compensation will form an important aspect of the Sustainable Development Framework. In so far as indigenous (tribal) populations are concerned the Framework shall incorporate models of stakeholder interest for them in the mining operation, especially in situations where the weaker sections like the local tribal populations are likely to be deprived of their means of livelihood as a result of the mining intervention.
- A mechanism will be evolved which would actually improve the living standards of the affected population and ensure for them a sustainable income above the poverty line. For this purpose, all the provisions of the National Rehabilitation and Resettlement Policy or any revised Policy or

¹³ <http://mines.nic.in/NMP2008.pdf>

Statute that may come into operation, will be followed (paragraph 7.11).

- Once the process of economical extraction of a mine is complete there is need for scientific mine closure which will not only restore ecology and regenerate biomass but also take into account the socio-economic aspects of such closure (paragraph 7.12).

f. Resettlement and Rehabilitation Policy of Coal India Ltd. 2008

3.9.14 The Resettlement and Rehabilitation Policy of Coal India Ltd, (CIL), 2008 emphasizes to avoid or minimize the displacement and to improve or at least regain the original standard of living of the PAPs in the resettlement area. The key features of the policy are as under:

- To avoid or minimize displacement of the local population.
- To improve, or at least regain, former standard of living and earning capacity of the PAPs after a reasonable transition period, which is to be kept to a minimum.
- To share projects benefits with the PAPs. For this purpose, CIL subsidiaries will work closely with NGOs, which are legally recognized and constituted and also have the confidence of the project-affected people, in the preparation and implementation of the rehabilitation plans.
- In CSR projects, overriding priority should be given to villagers being displaced as a result of acquisition of land by coal companies.
- Special attempts will be made to ensure that women will be given adequate access to income generating opportunities offered under this policy.
- Coal companies will provide community infrastructure like school, road drinking water, electricity etc. at the resettlement site to all residents of the area, including PAPs and the host population.
- Budgetary provisions varying from 1 to 2.5 % of retained earnings of CIL (depending on the requirement) shall be created to intensify CSR activities in and around the villages where land is being acquired.

g. National Tribal Policy, 2006 (NTP)

3.9.15 A draft National Tribal Policy was prepared in 2006 with the following objectives:

- Providing an environment conducive to the preservation of traditional and customary systems of STs.
- Preventing alienation of land of STs.
- Protection and vesting of rights of STs on forest lands and ownership over minor forest produce (MFP), minerals and water bodies.
- Providing a legislative frame for R & R to minimize displacement.
- To promote self-governance and self-rule as per provisions and spirit of PESA Act, 1996.

- Protection of political rights to ensure greater and active participation of tribals in political bodies at all levels.

3.9.16 This Policy advocates that:

- Principle of least displacement to be followed mandatorily.
- Projects involving displacement of more than a fixed number, say 50000, would not be considered.
- Exhaustive social impact study to be conducted.
- Consultation with the community as provided in the PESA Act.
- The definition of 'public purpose' in the Land Acquisition Act needs to be reexamined.
- Use of tribal land on lease basis rather than on acquisition.
- The principle of 'land for land' to be followed strictly.
- STs displaced from the Scheduled Areas shall be resettled in Scheduled Areas only.
- Compensation would be computed on the concept of net present value, loss of opportunity cost, community rights, and livelihoods. The concept of NPV applicable to forest land when diverted for non-forestry purpose which calculates accruals in the future to the natural resource base, should be applicable to land being acquired from the STs for development projects.
- The cash compensation to be made available will be invested in such ventures as yield regular income.
- In industrial set up in Scheduled Areas, the community would get benefits such as made partner or a certain percentage of profit utilized for local development.
- The PAFs would have first right to employment in the project.

3.10. Review of proposed legal framework:

a. Land Acquisition (Amendment) Bill, 2007 (LA(A) Bill, 2007)

3.10.1 The Bill seeks to amend the Land Acquisition Act, 1894. The Bill was introduced in the Lok Sabha on 6 December 2007 and was referred to the Standing Committee on Rural Development by the Speaker. Subsequently, the Bill lapsed. However, NCST was not consulted for its view/comments at any stage. The key provisions proposed in the Bill were:

- The Bill redefined 'public purpose' as land acquired for defence purposes, infrastructure projects, or for any project useful to the general public where 70 per cent of the land has already been purchased. The Bill bars acquisition for companies except under the 70 per cent condition.
- For acquisition resulting in large-scale displacement, a social impact

assessment study must be conducted. Tribals, forest dwellers, and those with tenancy rights also eligible for compensation.

- Acquisition costs will include payment for loss or damages to land, and costs related to resettlement of displaced residents.
- While determining compensation, the intended use of land and value of such land in the current market is to be considered.
- Land Acquisition Compensation Disputes Settlement Authority proposed at the State and Central levels to adjudicate disputes resulting from land acquisition proceedings.

b. The Rehabilitation and Resettlement Bill, 2007 (R&R Bill, 2007)

3.10.2 The Rehabilitation and Resettlement Bill, 2007 was introduced in the Lok Sabha on 6 December 2007 and was referred to the Standing Committee on Rural Development by the Speaker. Subsequently, the Bill lapsed. However, NCST was not consulted for its view/comments at any stage. The key provisions proposed in the Bill were:

- Provision for rehabilitation benefits and resettlement compensation to people displaced by land acquisition or any other involuntary displacement. The Bill proposed project-specific, state and national authorities to formulate, implement, and monitor the rehabilitation and resettlement process.
- For large scale displacement, the government shall conduct a social impact assessment. It shall appoint an Administrator for Rehabilitation and Resettlement who is responsible for formulating, executing, and monitoring the rehabilitation and resettlement plan.
- Outlining of minimum benefits for displaced families and the criteria for eligibility. Benefits may include land, house, monetary compensation, skills training and preference for jobs.
- Establishment of Ombudsman to address any grievances from the rehabilitation and resettlement process. Civil courts barred from entertaining any suits related to this matter.
- Creation of monitoring mechanism for Rehabilitation and Resettlement of affected families/persons through R & R Committee at project level, through standing R & R Committee at district level, Oversight Committees at Ministry / Departmental level, through Commissioner for R & R at State level and at national level by constituting a National Monitoring Committee.
- Set up a National Rehabilitation Commission by Central Government to supervise and exercise general oversight over rehabilitation and resettlement of the affected families covered under this Act.
- Special provisions for rehabilitation and resettlement of members of the STs by preparing a Tribal Development Plan.
- Indexation of rehabilitation grant and other monetary benefits to the Consumer Price Index with reference to the date to be notified.

11. Recommendations/ suggestions of the Standing Committees of the Parliament and the National Human Rights commission (NHRC)

a. Standing Committee of 14th Lok Sabha on Ministry of Rural Development in its 39th report on 'Land Acquisition (Amendment) Bill, 2007' (presented in the Parliament on 21.10.2008)

3.11.1 The key recommendations of the Standing Committee on the various issues related to the 'Land Land Acquisition (Amendment) Bill, 2007' were as under:

- (i) All the benefits provided under the Land Acquisition and Rehabilitation and Resettlement legislation should be doubled at every stage in case of second and subsequent displacement of a family/ person.
- (ii) All rights and entitlements of such tribals emerging out of the existing documents should be preserved in perpetuity.
- (iii) Suitable provision in the Land Acquisition Bill should be made to declare the area where the tribals are rehabilitated as Scheduled Area as per the Constitutional position on the lines of the proposed provisions in the draft tribal policy.
- (iv) To indicate the cut off date (13.12.2005) in the Land Acquisition (Amendment) Bill, 2007' on the lines of 'The Rehabilitation and Resettlement Bill, 2007' keeping in view the fact that both the legislations are independent legislations.
- (v) Discretion provided to the Standing Committee of the Rehabilitation and Resettlement at the district level proposed in R&R Bill, 2007 to decide about the Social Impact Assessment Study where the number of families is below the stipulated criteria i.e. four hundred families en masse in plain and two hundred in hilly, tribal and scheduled areas. However, the Social Impact Assessment study should invariably be undertaken where the number of families exceeds the aforesaid threshold.
- (vi) The highest price of sale deed as indicated in the sale deeds of the last three years plus 50 per cent of the said highest price should be the criteria for assessing and determining the market value of the land. For tribal areas, the highest price of a sale deed of the adjoining non-tribal blocks/village for the last three years plus 50 percent should be the criteria in this regard. Provision should be made to provide some share of the resultant hike due to land acquisition to the persons on whose land the specific project is set up.

b. Standing Committee of 14th Lok Sabha for the Ministry of Rural Development in its 40th Report on 'The Rehabilitation and Resettlement Bill, 2007' (presented to the Parliament on 21.10.2008)

3.11.2 The key recommendations of the Standing Committee on the various issues related to the 'The Rehabilitation and Resettlement Bill, 2007' are as under:

- (i) The Land Acquisition (Amendment) Bill, 2007 and The Rehabilitation and Resettlement Bill, 2007 should be studied in detail and it should be ensured that wherever the issues have been duplicated, the language is the same so as to avoid contradictions and legal complications.
- (ii) The nature of involuntary displacement that the Government intend to cover for the purpose of providing Rehabilitation and Resettlement benefits through this legislation should be clearly indicated in the legislation itself.
- (iii) The involuntary displacement due to insurgency-like conditions should also be included for providing rehabilitation and resettlement benefits through the proposed legislation.
- (iv) There is an urgent need to have centralized data of land records as well as data base of families in each village/city at taluka and district level.
- (v) The residency period of five years should be reduced to three years to make the provisions proposed in the 'The Rehabilitation and Resettlement Bill, 2007' in line with the Rehabilitation and Resettlement Policy being implemented.
- (vi) Minor daughters should also be included in the definition of family to address the gender concerns. The words 'other relatives residing with him or her and dependant on him or her for their livelihood' should be dropped from the definition. Further, widowed/ divorced/ abandoned/ separated sisters/ sister-in-law, daughter/ daughter-in-law and the physically handicapped family members need to be covered by the definition of family.
- (vii) The language of the clauses 3(b)(iii),3(d),3(n) pertaining to Agricultural and non-agricultural labourer should be re-examined thoroughly and brought in consonance so as to avoid any confusion and misinterpretation.
- (viii) The words 'preceding the date of declaration of the affected area' may be changed by the words 'immediately before the declaration of the affected area' so as to avoid any confusion or misinterpretation.

The above recommendations should be read along with recommendation to change the provision of the five-year continuous residence to three years.

- (ix) As per existing Clause 3 (c) read with Clauses 20(1) and 34 indicates that rehabilitation and resettlement benefits would be applicable only when the number of displaced families is more than 400 in plains and more than 200 in hilly, tribal areas etc. Clauses 20(1) and 34 should be suitably modified so that it is absolutely clear that rehabilitation and resettlement benefits would be applicable to each and every affected family irrespective of the total number of families affected.

c. Draft suggestions of the National Conference on 'Relief and Rehabilitation of Displaced Persons' organised by the National Human Rights Commission in March, 2008, New Delhi

3.11.3 The recommendations of the NHRC sponsored conference placed at **ANNEXURE 3.I** lay special emphasis in the Rehabilitation and Resettlement Bill for the provision for "land-for-land" and employment to displaced persons without any dilution, equitable sharing of project benefits with the displaced people, assessment of emotional and psychological impact of displacement, inclusion of not only property owners but also others such as tenants, farm laborers or others whose livelihood may be dependent on the land, full justification for "Public interest" for large-scale development project, formulation of land-use plans and building rules by all local bodies, no non-agricultural activity in areas marked for agriculture, fixation of norms of Social Impact Assessment (SIA) and examination of at least three alternatives in the same area. The conference has also recommended that as in the case of forest land, where agricultural land is sought to be acquired, it should be mandatory that area of wasteland equal to double the area acquired will have to be acquired and reclaimed for public purpose or at least funds for the same should be deposited in a special fund to be created for the purpose.

3.12. Supreme Court Judgement: Samatha vs Govt. of Andhra Pradesh

3.12.1 Samatha - a NGO working in the Scheduled Tribe area of Andhra Pradesh - filed a case SLP(C) No. 17080-81/95 in the Supreme Court against the State Government of Andhra Pradesh for leasing out tribal lands to private mining companies in the Scheduled Areas. The judgement was delivered on 11.07.1997 by the Hon'ble Supreme Court. The main issue in the case was whether or not the word 'person' used in the section 3 of the Andhra Pradesh Scheduled Area Land Transfer Regulation includes Government. Section 3(1)(a) of the Regulation states:

'Notwithstanding anything in any enactment, rule or law in force in the Agency tracts, any transfer of immovable property situated in the Agency tracts by a person, whether or not such person is a member of a Scheduled Tribe, shall be absolutely null and void, unless such transfer is made in favour of a person who is a member of a Scheduled Tribe or Society.'

3.12.2 In its historic Judgment in July 1997, a three judge-bench of the Supreme Court held that 'person' would include both natural persons as well as juristic persons and constitutional governments and that all lands leased by the government or its agencies to private mining companies apart from its instrumentalities in the scheduled areas are null and void. In addition, it also held that transfer to the government or its instrumentalities is entrustment of public property as the aim of the public corporations is in public interest and hence, such transfers stand upheld. The judgment laid emphasis that there is less chance of environmental degradation and social destruction, when the activity is controlled, regulated, supervised by the local tribal community or instruments of the State.

3.12.3 The other important features of the Judgment are:

- Minerals to be exploited by tribals themselves either individually or through cooperative societies with financial assistance of the State.
- In the absence of total prohibition, the court laid down certain duties and obligations to the lessee, as a part of the project expenditure. At least 20% of the profits be utilized as permanent fund for development needs apart from the reforestation and maintenance of ecology.
- In the absence of total prohibition in some states with scheduled Areas, Committee of Secretaries and State Cabinet Sub committees should be constituted and decision taken thereafter.
- Conference of all Chief Ministers, Ministers holding the Ministry concerned and Prime minister, and central Ministers concerned should take a policy decision for a consistent scheme throughout the country in respect of tribal lands.

3.13. Earlier recommendation of the Commission

3.13.1 The earlier recommendations of the Commission¹⁴, concerning relief and rehabilitation of tribals are summarized below:

- (i) While acquiring the tribal lands for industrial purposes, steps should be taken to ensure that the likely displacement of the tribal families is minimal and where such displacement is unavoidable, the State Governments should also ensure while framing the resettlement and rehabilitation policies that the displaced tribal families are resettled in tribal belts where other tribal communities are residing with view to protect their cultural heritage.
- (ii) To issue suitable instructions to the effect that the owners of the industries shall give preference to the members of the affected tribal families (i.e. whose lands were acquired) for running tea shops, snack bars, giving licenses for operating canteens in the premises of the industrial plants etc.
- (iii) To make it mandatory for the upcoming industries in newly acquired areas to ensure that, over and above the compensation and the allotment of replacement land, at least one person of each displaced tribal family is given a suitable job in the industrial/mining etc. project within a reasonable period of time.
- (iv) In case the displaced tribal family had land in more than one village before acquisition, suitable job should be given to one person each against acquisition of their land in each village.

¹⁴ Para 4.1.4 of the First Report of the NCST for the years 2004-05 & 2005-06

3.14. Review of the cases received in the Commission involving displacement of tribals

a. Mapithel Dam in Manipur

3.14.1 A representation was received in April, 2008 in the Commission from Mapithel Dam Affected Villages Organisation (Thoubal Multipurpose Project), Manipur regarding non- formulation and implementation of a comprehensive Rehabilitation and Resettlement Plan by involving the affected villagers.

3.14.2 The project started with an estimated cost of Rs 47.25 Crore in 1980 with targeted time-frame for completion by 1990-91. The estimated cost was revised to Rs 130 Crore at the time of negotiation for compensation of land in 1992-93. The initial target was also rescheduled for 2008-09.

3.14.3 The State Govt had constituted two Committee viz. (i) A High Level Committee headed by the Chief Minister, Manipur in 1992 and (ii) A Sub-Committee headed by the Dy. Chief Minister, Manipur on 16.01.1993 for negotiation of the rate of compensation for the affected lands and implementation of the Resettlement and Rehabilitation programme. The Sub-committee had negotiated with affected villagers and executed an agreement in the form of memorandum on 19.06.1993, which was approved by the State High Level Committee on 02.07.1993. The Commission was informed that the State Govt. had totally failed to implement the agreed terms and conditions of the MoU and payment of compensation for the land.

3.14.4 The mode of acquisition of land was by way of direct purchase at local market value of land of 1993. In accordance with the MoU, the compensation for the land was to be completed within two years i.e. 1993-94 and 1994-95. However, the payment of compensation started in 1996 and seven instalments were paid up to Feb, 2003 making a cumulative payment of 86%. It was noted that more than 80% of the affected villagers were marginal farmers living below poverty line and payment of compensation in many instalments had not helped them to acquire any alternate source of income/land for want of required amount at any given point of time. It is also mentioned that the originally estimated cost of Rs.47.25 Crore of the project in 1980 was revised to Rs.715.81 Crore in June, 2007. The project affected persons demanded that the compensation should be worked out at the present market value of the land, as already done to work out the revised cost of the project. The Commission noted that the request of the PAPs in this regard was justified as the responsibility for timely payment of compensation solely rests with the requiring body and the PAPs are entitled for reasonable compensation for any delay in this regard.

3.14.5 **The Commission, therefore, recommends that in the event of inordinate delay in payment of compensation for the land, exceeding 3 years after taking possession, besides interest payable @15% under the LA Act, 1894, a penal interest of similar order should be paid on the compensation amount, up to a maximum of five years; and a new award as per prevailing market rate should be made in case payment is delayed beyond five years. 'On-account' payment of 80% of the estimated compensation may also be**

made in cases of delay in completion of award proceedings beyond the prescribed period (as for land taken possession of under urgency clauses of Section 17, LA Act, 1894). Advance possession should invariably be accompanied by advance payment also.

b. Dzongu, North Sikkim

3.14.6 Many Hydroelectric Power Projects are coming up in Dzongu, North Sikkim on the river Teesta. This place is considered holy by the Lepchas. A number of organizations have come up to protest these hydro-electric power projects. Affected Citizens of Teesta (ACT), one such organization of Lepchas has mentioned that the right to religion is a fundamental right to the citizen of India. Lepchas have no churches or temples as places of worship. They worship various hills and hillocks in and around Dzongu, where they believe the soul of their ancestors rests. The project in Dzongu is affecting their religious beliefs.

3.14.8 The matter was taken up with the Govt. of Sikkim, and a reply from Sikkim Power Development Corporation Limited (SPDCL) was received in the Commission. The SPDCL has mentioned that State has been primarily dependent upon central assistance for funding of social and developmental activities. Central Govt. has been pressurizing the State Govt. to explore the avenues of raising revenue resources to sustain developmental programmes, as well as create employment opportunities for its people. It is the responsibility of the State Govt. to minimize and mitigate the negative /adverse impacts of the development programmes as far as possible but at the same time ensure development to serve long term interest of the present and future generations. As per the survey by Ministry of Power, State Govt. has decided to tap its Hydro potential. Under the terms of such development projects, the opportunities for jobs will be available to the people in the project area. Therefore, the people of Dzongu should support the efforts of the State government by making constructive suggestions to minimize the adverse impacts and ensuring development programmes going on for prosperity and upliftment of the living condition of the people of Dzongu.

3.14.9 The SPDCL has also intimated that they are fully committed to protect and preserve the sanctity of Dzongu and the age-old customs and traditions of the people at all cost. The State Govt. has also intimated that the PAPs of the proposed 280 MW Panan Hydel Project in Dzongu have welcomed the project and have requested the Govt. for implementation of the project so that employment and other benefits can be availed by them and their children. The State Govt. has held many rounds of talk with the members of the affected Citizens of Teesta (ACT), who are protesting against implementation of the hydel projects in the State.

3.14.10 The SPDCL has also informed that all project related labour camps or colonies are to be established outside Dzongu area so that dilution of old law as protected under Article 371 (F) does not take place.

3.14.11 The Govt. of Sikkim has allotted the hydel projects to NHPC and some Independent Power Producers (IPPs). The private developers are engaged with the condition that a fixed percentage of power generated will be provided free

to the State upto 35 years and after 35 years projects to be handed back to the State Govt. free of cost. The State Govt. has mentioned that local public of Dzongu area support the policies of the State Govt. to implement the Hydropower projects in the area, this is reflected by election of candidates supported by the ruling party to power in recent Panchayat Elections.

3.14.12 The Commission, therefore, recommends that:

- (i) A Social Impact Assessment (SIA), including emotional and psychological impacts in respect of the projects undertaken/planned in Dzongu, North Sikkim, should be conducted by the State Govt., considering at least 3 alternative sites/ project definitions.**
- (ii) Participation of the local people should be encouraged in development projects to mitigate the adverse effects.**
- (iii) traditional and customary beliefs of the tribals should be given due importance.**
- (iv) the issues related to traditional and customary beliefs should be settled by involving as many local tribal people as possible in public hearings, workshops etc. besides involving people's representative of the area in the decision making body.**

3.15. Review of Identified Projects by the NCST

3.15.1 It was decided by the Commission to review rehabilitation and resettlement measures undertaken in some of the projects through field visits to understand the problems of the project affected persons and effectiveness of various policies and their implementation. The Ministries and States were requested to provide a list of projects in which STs were displaced and some projects were selected for review, based on the quantum of displacement of STs and the location of the project i.e. tribal dominated areas. For this purpose, the Commission prepared a questionnaire taking into consideration the provisions in the 'Draft National Tribal Policy, 2006', 'National Rehabilitation and Resettlement Policy, 2007' and State R&R policy of tribal dominated States to assess the rehabilitation efforts in these projects. The questionnaire was sent to the concerned project authorities to obtain the requisite information for on-site review. Replies received from some project authorities are appended to the Report (**ANNEXURE 3.II and ANNEXURE 3.III**).

3.15.2 The Commission visited the Raigarh and Korba Districts in Chhatisgarh State to review the Chhal Open Cast Project (OCP) and Dipka Expansion Project respectively. The cost of Chhal OCP is Rs 50.38 Crore whereas Dipka project costs Rs 1843.48 Crore. The targeted time- frame for completion of the Chhal and Dipka project is 8 yrs and 25 yrs respectively. The land acquired for Chhal project is about 360 hectares and total affected persons are 423, out of which 255 are STs. The land acquired for Dipka project is about 1701 hectares and total affected persons are 403 (after separation from Arera Project), which includes 287 STs.

3.15.3 The Commission had detailed discussion with the project authorities and affected persons. The project authorities have provided employment as per the norms. Further, they have also taken initiatives to create additional employment generating schemes like helping the PAPs to form a co-operative society and direct allocation of 20% of the work against a tender to the society at the lowest price against a tender even without society's participation in the tendering process, standing as a surety for the loans to the PAPs for purchase of LMV, and hiring their vehicles for official purposes etc. Regarding the long-term sharing of the profits against the projects, it was mentioned by the project authorities that option would be available to PAPs to take convertible preferential share in lieu of some monetary compensation from the next financial year after listing of the CIL in the stock exchange. (**ANNEXURE 3.IV**)

3.15.4 **The Commission recommends that positive initiatives taken by SECL (a subsidiary of Coal India Ltd.) to create additional employment through schemes like helping the PAPs to form a co-operative society and direct allocation of 20% of the work to the society at the lowest price against a tender even without society's participation in the tendering process, standing as a surety for the loans to the PAPs for purchase of LMV, and hiring their vehicles for official purposes etc. may also be explored by other project authorities.**

3.16. Key issues for consideration and recommendations

3.16.1 In accordance with Clause 9 of Article 338A of the Constitution, the Union and every State Govt. is obliged to consult the Commission on all major policy matters affecting STs. It is, however, mentioned that the Commission was not consulted in respect of both the Rehabilitation and Resettlement Bill, 2007 and the Land Acquisition (Amendment) Bill, 2007, which are major areas of concern affecting STs.

3.16.2 Beside displacement due to public sector projects, large scale displacement is being witnessed on account of private mega-industrial projects also. The Commission has noted that Rehabilitation legislation is pending enactment for more than two years after notification of the NRRP, 2007. The abnormal delay in this regard is adversely affecting normative definition/implementation of resettlement and rehabilitation and compensation packages for the benefit of displaced persons. **The Commission, therefore, recommends that the law should be urgently enacted and implemented at the earliest.**

3.16.3 There are certain provisions in the draft National Tribal Policy 2006, which were not properly/adequately reflected in the RR Bill, 2007 and LA (Amendment) Bill, 2007. Some of such provisions in the NTP, 2006 include mandatory least displacement option, threshold limit of displacement, use of tribal land on lease basis rather than outright acquisition, scrupulous adherence to the 'land-for-land' principle, mandatory consultation with Tribal Advisory Council, compensation for community rights, and livelihoods etc. NTP, 2006 also seeks re-examination of the definition of public purpose. Further, the NTP 2006 requires residency of 3 years in the affected area for displacement benefits, while the RR

Bill requires 5 years for this purpose. **The Commission, therefore, recommends that both R&R Bill, 2007 and LA (A) Bill, 2007 need to be harmonized, with various provisions of the draft NTP, 2006 in their application to tribal persons/ areas, as detailed in the following paragraphs.**

3.16.4 The definition of “public purpose” under which land is acquired under the LA(A) Bill, 2007 is a contentious issue. The LA(A), Bill, 2007 gives power to acquire any land (private, forest or government) for the ‘public purpose’, which includes:

- (i) the provision of land for strategic purposes relating to naval, military and air force works or any other work vital to the State;
- (ii) the provision of land for infrastructure projects of the appropriate Govt., where the benefits accrue to the general public; and
- (iii) the provision of land for any other purpose useful to the general public, for which land has been purchased by a person under lawful contract to the extent of seventy per cent but the remaining thirty per cent of the total area of land required for the project as yet to be required

3.16.5 It may be noted from above that the Bill empowers the government to acquire land for “public purpose” for “any other work vital to the State” [Sub-clause (i) of clause 3(f) of the principal Act] and “any other purpose useful to the general public” [Sub clause (iii) of clause 3(f)]. In addition, “any project relating to generation, transmission or supply of electricity” and “mining activities” [Sub-clause (ff) of Clause (f)] have been defined as “infrastructure project” which invokes involuntary land acquisition. This implies that government by invoking the LA Act can continue to acquire any amount of land for the companies for “generation, transmission or supply of electricity” and “mining activities”. It may be noted that the vast majority of commercial applications relate precisely to these purposes, which renders the limit of acquisition of land (up to 30%) for a company under sub-clause (iii) of Clause (f) redundant. **The amendment of definition of public purpose to provide for acquisition of lands for a company, whose object may only be of general use to the public, also significantly expands the scope of the Land Acquisition Act for private purposes. The Commission is therefore, of the view that in the interest of transparency, retention of Part VII of LA Act, 1894 along with substitution in the scope of the Section 38A to provide for acquisition only in cases where land has been obtained under lawful contract to the extent of 85% of the total area required for the project, may be preferred to surrogate acquisition garbed in obfuscatory definitions of public purpose – also because it may facilitate pari passu extension of resettlement principles to privately negotiated land deals causing displacement (though voluntary in nature). Agreement with government under Section 41 of the LA Act, 1894 should also include obligations regarding resettlement & rehabilitation, preventing and mitigating the social and environmental impacts & risks of the project and the share of costs thereof to be borne by the company.**

3.16.6 Under the theory of Eminent Domain¹⁵, private property can be taken over only for public purpose. A project serves a public purpose when it is intended to be used by people and is open to the community/public at large. This, however, may not necessarily serve public interest, e.g. an amusement park may be open to the public but it is not in public interest. Public interest will have to be determined not by who or how many have access to it but in terms of a) its overall costs, who it benefits and to what extent and b) whether the new use to which the land is intended to be put actually serves public interest in a greater way than in the manner in which it is currently being used. It is important to emphasize that the land and everything attached to it that is acquired in the name of public purpose is very often already serving a public purpose. For instance, forests acquired for creating a reservoir are also serving a public interest. The Land Acquisition legislation, to the contrary, treats everything acquired as if it were serving only the limited, individual private interests. The fact that the land proposed to be acquired may already be serving a public interest is significant and merits recognition in law. It also merits recognition in the cost-benefit analysis of the project in terms of, for instance, the marginal utility of the new public interest the project espouses vis-à-vis its present public interest value of the land use. As far as the tribals are concerned, this marginal utility has to be further subordinated to the consequential erosion of social weal even if alternative land can be made available for their resettlement and livelihood. **The Commission is, therefore, of the view that in order to ensure minimum displacement of tribals from ancestral lands, the purpose to which acquired land will be put to use should be open to judicial scrutiny; and individual notices should also be issued to all persons known to have an interest in the land (beside public notice) so that they may be enabled to seek judicial determination regarding the public purpose of intended acquisition.**

3.16.7 The Courts in various judgments have also held that the State being a sovereign power, under the doctrine of “Eminent Domain” has inherent rights to acquire land by paying suitable compensation to those displaced, re-iterated by the Supreme Court in its Judgement (dated 05.09.2008 in CA 5509/2008 & other CAs) dismissing a complaint against the Andhra Pradesh Govt. for acquiring land for Andhra Pradesh Infrastructure Investment Corp. (APIIC). The appellants argued that the Government of Andhra Pradesh sought to acquire a large chunk of land in the name of ‘public purpose’ with oblique motive to transfer valuable land of small farmers, whose only livelihood was dependant on land attempted to be acquired by the respondents, to a foreign company and few selected persons with vested interest. At the same time, huge land owned and possessed by influential persons and other persons in public life had been excluded. According to the appellants, power of ‘eminent domain’ has no application to such cases. The respondents submitted that the land was acquired for ‘public purpose’ and the acquisition was legal. Most of the appellants were not small land-holders or

¹⁵ Hugo Grotius defined eminent domain in 1625 as: ‘The property of subject is under the eminent domain of the state, so that the state or he who acts for it may use and even alienate and destroy such property, not only in cases of extreme necessity... but for ends of public utility, to which ends those who found civil society must be supposed to have intended that private ends should give way. But it is to be added that when this is done the state is bound to make good the loss to those who lose their property’.

(Usha Ramanathan. “A WORD ON EMINENT DOMAIN:” Published in Lyla Mehta ed., *Displaced by Development – Confronting Marginalisation and Gender Injustice* (New Delhi). International Environmental Law Research Centre, Geneva, Switzerland. Available at <http://www.ielrc.org/content/a0902.pdf>)

marginal farmers and have converted agricultural lands unauthorizedly into housing plots and sold them to various builders/developers/property dealers/estate agents. No doubt, there were certain small land- owners/farmers also. As per the industrial policy of the State Government, a decision was taken to construct 'Information Technology Park', under the Information Technology and Hardware Industrial Policy 2005-10. The State Govt. designated APIIC as Nodal Agency for development of Integrated Project and Emaar Properties, PJSC, Dubai was selected for implementation of the project. APIIC was having 26% share while Emaar Properties is having 74% share capital. The petitions were filed with a view to delay the proceedings which has resulted in gross injustice to Emaar which has made large investments.

3.16.8 The Hon'ble Court held that prima facie the Government is the best judge as to whether 'public purpose' is served by issuing a requisition order, but it is not the sole judge and its decision are not beyond judicial scrutiny. The courts have the jurisdiction and it is their duty to determine the matter whenever a question is raised whether a requisition order is or is not for a 'public purpose'. A writ court, while exercising powers under Articles 32, 226 or 136 of the Constitution, cannot substitute its own judgment for the judgment of the Government as to what constitutes 'public purpose'. The court ruled that any project which brings foreign exchange, generates employment opportunities and secure economic benefits to the State and the public at large serves the 'public purpose'.

3.16.9 Such a comprehensive interpretation of public purpose, though it may have been ordained by the highest court on accepted legal principles, will spell doom for the existence of tribals in all regions of the country, especially in view of the current fascination for PPP projects heavily geared in favour of changed land use as a substitute for public capital/ annuity payments. The NTP, 2006 has also stressed for re-examination of the definition of the 'public purpose'. It has also noted that the public purpose for one category of population may result in the trauma of displacement for the tribal people; and should be defined in such a manner that the rights of the tribal people are adequately safeguarded. NHRC have also suggested¹⁶ that there should be no arbitrary displacement of individuals from their home or place of habitual residence by state authorities. Particularly, "compelling" and "overriding public interest" should justify any large-scale development project. In all cases of large-scale development projects, authorities should also seek public consultations with people likely to be displaced. It is essential to develop mechanisms whereby tribal people are not easily deprived from their ancestral lands. The takeover of their land for development purposes should be based on equitable and just considerations. Development efforts should not destroy tribal livelihoods and culture; and should directly benefit them also.

3.16.10 **In view of the above and in the light of aforesaid court judgments in the matter, the Commission recommends that, instead of general usefulness, public purpose may be restricted to strategic needs,**

¹⁶ Draft suggestions of the National Conference on 'Relief and Rehabilitation of Displaced Persons' organized by the National Human Rights Commission in March, 2008, New Delhi

developmental works if the Govt. owns more than 51 % therein, or redevelopment in the interests of area planning. 'Public purpose' should also be determined through a participatory and transparent process and should incorporate additional safeguards for tribals in which:

- (i) The general interest of the community as opposed to the particular interest of individuals is directly and vitally addressed.
- (ii) Displacement should be justified through the benefits of the project option outweighing the costs of loss of land, livelihood, shelter, habitat/culture, environment, capital and operating costs incurred and any public interest value accruing from the existing use of the land and everything attached to it.
- (iii) The declaration of public purpose under Section 6 of the Land Acquisition Act, 1894 (and similar legislation) should be justiciable.
- (iv) The rights of the tribals are adequately protected by providing land in lieu of land (even by diversion of forest areas).

3.16.11 The LA (A) Bill, 2007 provided that once a person has acquired 70% of the total land required for a project useful to the general public, the government shall invoke the LA Act to acquire the remaining 30%. In this connection, it is pertinent to mention that the Government also has a responsibility to ensure the implementation of the laws adopted across the country to prevent alienation of the tribal land. **The Commission, therefore, recommends that a comprehensive provision laying down the process to be followed by any requiring body seeking involuntary acquisition of land should be substituted in its place. The new provision should, inter-alia, require that the body should justify the minimum total extent of land required for the project (to establish the need for compulsory acquisition) before any purchase of land through a lawful contract is resorted; and this land requirement should be made known through public hearings before the land transfers are recognized in law. The authorities competent to permit private transfer of tribal land should also be obliged to respect the same least displacement considerations which should govern determination of public purpose by the Govt. in the exercise of its right of eminent domain; and since private purchase and compulsory acquisition might proceed conjunctively in actual practice, they should attract similar obligations of rehabilitation and resettlement.**

3.16.12 It is often observed that the market value of tribal land is quite low, which fosters tendency to exaggerate project requirements of land leading to unwarranted displacement. The R&R Policy, 2007 clearly mentions the principle of three 'minima'. These are: (i) minimise displacement; (ii) minimise acquisition of land, and (iii) minimise agricultural land for non-agricultural use. Though it is mentioned in the RR Bill, 2007 that displacement of persons will be minimised by using available alternatives and the provisions of the RR Act, 2007 shall apply in respect of acquisition of land by the appropriate Govt. under the LA(A) Act (Cl. 4), the LA(A) Bill, 2007 does not articulate these principles. These principles of three minima should be incorporated as a part of the law to prevent misuse of this law

for acquiring more land than what the project requires. Further, the LA(A) Bill 2007 does not contain any provision for exit in the event of a project getting dropped or is abandoned (for example Singur where 997 acres were acquired forcefully for setting up a small car factory by M/s Tata Motors and later M/s Tata Motors abandoned the project in October 2008) or under utilisation of land. In this connection, it is also highlighted that NHRC have also emphasized the need to ensure proper utilization of land by making formulation of land use plans and building rules mandatory for all local bodies. NHRC have also suggested that as in the case of forest land, where agricultural land is sought to be acquired, it should be mandatory that area of wasteland equal to double the area acquired will have to be acquired and reclaimed for public purpose or at least funds for the same should be deposited in a special fund to be created for the purpose.

3.16.13 The Commission, therefore, recommends that:

- (i) While deciding public purpose under the LA Act (and similar laws), the first policy option should be one that would save tribals from displacement and alienation from their lands. The next preference should be a technology and project with minimum displacement, which should be accepted even if the costs are greater and the benefits are less than the greater displacement option.**
- (ii) If the acquired land is not used for the intended purpose or remains unutilized for a period of five years, it should be returned back to the original owner wherever possible, without insisting on the re-payment of the compensation amount.**

3.16.14 In case of acquisition of land by a company, the Commission recommends that compensation for land acquired has to be supplemented with (and not adjusted against) allotment of shares and debentures, as part of long-term profit sharing of the project derivable from land as a factor of production. The quantum of such “sweat” equity must be reasonably relatable to the nature of economic activity of the project and the equity base.

3.16.15 Further, the Commission recommends that instead of vesting title free of all encumbrances, only limited lease rights should be appropriated from land owners through the process of compulsory land acquisition. Multiple (and prospective) uses of the land acquired must be accounted for in the stakeholder compensation given to land owners. If agricultural land is acquired to be used for mining, then besides compensation for land surface rights, the future earnings from mining activity should also be shared with land owners in perpetuity. In case of mining projects, a sum equal to royalty be paid to the land owners for the duration of mineral extraction and restored land returned to the owners thereafter or future earnings shared if non-agricultural use is continued. 50% sweat equity (share in the future profits) be provided for land owners in case of land development projects. Land record of Rights should continue to make mention of land owners to compensate them for alternative usage of land in future.

3.16.16 The scope of applicability of RR Bill, 2007 extended to the persons effected by the acquisition of land under the LA Act, 1894 or any other Act of the Union or a State for the time being in force; or involuntary displacement of people due to any other reason. The RR Bill 2007 contains certain provisions with conditions which are not serving the stated Statement of Objects and Reasons of the Bill which highlight minimising displacement, protecting livelihoods, and improving living standards. For example, the provisions pertaining to the resettlement in the Bill include "land-for-land, to the extent Government land would be available in the resettlement areas [clause 49(2)(4)]; preference for employment in the project to at least one person from each nuclear family ... subject to the availability of vacancies and suitability of the affected person...[clause 41(i)]. The above conditionalities dilute the protective provisions in such important areas as land and employment to displaced persons. Further, words such as "wherever possible," or other similar phrases are scattered throughout the Bill. For instance, group settlement is laid down, but qualified by the phrase "wherever possible;" (clause 26(1)), training is to be provided "wherever necessary" (Clause 41(ii)). There are also qualifications such as "if government land is available" (Clause 36(1)) "preferably," (49(7)) and so on. They seem innocuous, but all of them involve discretionary decisions. **The Commission, therefore, recommends that the provisions of the Bill should be reviewed by amending the innocuous conditions to serve the stated objective of the Bill effectively.**

3.16.17 The displacement of tribals from their habitat raises issues not just of monetary compensation but other related issues too which pertain to their sustainable livelihood, preservation of the traditional sense of community, trauma of dislocation and alienation, deforestation and its related social and psychological impacts. Such adverse effects on tribals, as a result of loss of their land and consequent collateral damages are not exclusive to the nature/type of displacement viz. voluntary or involuntary, or even to the existing land use, viz agriculture or forest. Further, potential risks of landlessness, joblessness, homelessness, marginalisation, increasing morbidity and mortality, loss of access to common services and social (community) disarticulation are also invariably associated with both voluntary and involuntary displacements. In this connection, it is highlighted that the scope/ applicability of RR Bill, 2007 is limited to involuntary displacements from privately owned lands only. Thus, the voluntary displacement of the tribals as a result of the contractual purchase of their land is not covered under the present scope of the Bill. **The Commission feel that considering the future land needs of SEZ's, etc, imposition of rehabilitation resettlement obligations on large scale contractual purchases of land is essential – especially because the conjunctive acquisition of land together with negotiated purchases may become default practice if the provisions of the LA (Amendment) Bill, 2007 are enacted into law. Therefore, besides land acquired by the appropriate Govt., all other land transfers or change in land use of agricultural / forest land for a different purpose which will result in displacement of tribal owners / occupiers should also be brought within the scope of the legislation. Involuntary displacement of permanent nature due to disasters/natural calamity, external/internal and conflicts should explicitly be mandated. Legislation should specify that in case of displacement due to disasters/natural calamity and conflicts, the responsibility for resettlement**

and rehabilitation lies on the appropriate Government, while in the case of displacement occasioned by development projects, this responsibility would be of the requiring body (individual/ corporate house/Govt.). In the case of displacement arising from projects implemented by non-government / corporate bodies, the entire onus of implementing rehabilitation and resettlement plans should be that of the requiring body (individual/ corporate house) to avoid fragmentation / dereliction of responsibility. In default, the appropriate Govt. may undertake rehabilitation / resettlement (as for Govt. investments) at their cost which may form part of the award under the LA Act.

3.16.18 The marginalization of tribals owing to displacement from their traditional habitat has also led to deterioration not merely in economic condition but also in their social status and psychological attitudes. Apart from depriving them of their material resources, the changes also deprive them of the motivation they require to improve their socio-economic status. When pushed into the powerful external world without adequate preparation, the tribals internalize the value system of the dominant society and begin to consider their own society and culture of little value and incapable of developing themselves. Such internalization makes it impossible for them to rebuild their lives, leave alone improve their lifestyle. So their material standard, social status and psychological attitudes deteriorate. This provides the base for their exploitation and thus, the development provides a process of transferring their natural and other resources as a raw material to produce consumer articles or a source of profit to others, with tribals paying the price of development.

3.16.19 **The Commission, therefore, recommends that both SIA and rehabilitation schemes should be validated with reference to the potential risks and related risk-reversal programmes to ensure that tribals don't suffer from impoverishment as a result of their displacement, in any manner and the problems relating to marginalization are mitigated to the maximum possible extent.**

3.16.20 It is noted that the provisions for impacts in the Social Impact Assessment (SIA) are narrowly confined to physical assets (buildings, temples, institutions, facilities etc)(clause 4(2)). Social impacts should have wider perspective of social and emotional impacts including loss of identity, the disappearance of a whole way of life, the dispersal of close-knit communities, the loss of a centuries-old relationship with nature, the loss of roots etc. In this connection, NHRC have also noted that the Rehabilitation and Resettlement Bill treats land as a mere tradable commodity whereas in practice people's attachment to land goes beyond its commercial value. Therefore, there should also be a careful consideration about the emotional and psychological impact of displacement.

3.16.21 In accordance with Clause 4(1) of the RR Bill, Social Impact Assessment (SIA) would be mandatory where "there is likely to be displacement of 400 or more families *en masse* in plain areas and or 200 or more families *en masse*" in the hills, scheduled areas or desert development blocks. A large number of projects displace fewer than 400 families, while others displace them in

stages too. Since the tribal way of life has close attachment with the environment, habitat and traditional occupation, assessment of social impact on tribals due to their displacement from scheduled areas, irrespective of the number of the displaced families, is essential. Further, the density of population of the tribal habitations makes the stipulated threshold limit for SIA (200 or more families) irrelevant. To be a participatory exercise, the determination of public purpose has to be founded on the informed consent of the displaced persons. Diligent effort is essential to comprehensively identify all the environmental / displacement risks which tribals would be exposed to consequential to displacement; and establish the overriding public interest which demands such sacrifice from them. It is also desirable that SIA also assesses adequacy of proposed mechanisms/procedures to meet stipulated regulatory and statutory requirements. In this connection, it is also mentioned that NHRC have also recommended that norms of SIA should be laid down and at least three alternatives should be examined in the same area.

3.16.22 The Commission, therefore, recommends that SIA should:

- (i) be mandatory for all projects / land transfers / change in land use of agricultural / forest land for a different purpose which will result in the displacement of tribal owners / occupiers, irrespective of the number of families it displaces (or at least where the number of displaced tribal families exceeds 25), or the voluntary / involuntary nature of the displacement.**
- (ii) be conducted by multi-disciplinary teams considering the impact that the project will have in terms of Landlessness, Joblessness, homelessness, Marginalization, increased morbidity and mortality, food insecurity, loss of access to common resources and services and social disarticulation.**
- (iii) identify affected areas (including contiguous forest lands, water bodies, wherein tribals have rights) and enumerate all affected (interested) persons to facilitate enquiry into objections and subsequent determination of 'public purpose' under concerned LA Act.**
- (iv) SIA/EIA should identify collateral effects and remedial measures, which should be undertaken in the short, medium and long-term by the requiring body.**
- (v) focus first on measures to prevent the adverse social and environmental impacts of the project, then measures to minimize, mitigate or compensate for them.**
- (vi) include action plan needed to implement mitigation measures, corrective actions and monitoring measures necessary to manage the identified impacts and risks of the project.**
- (vii) incorporate views of the concerned elected local bodies in the scheduled areas**

3.16.23 Further, land acquisition under urgency provisions of the LA Act, 1894 should not be confused with emergency occupation of land in times of

conflict, calamity, etc., since the former only permits occupation of the land without prior payment of compensation but does not dispense with the need to survey the land and make declaration of public purpose, etc. SIAs / EIAs are necessary to provide a good substrate for resettlement planning to address / mitigate ensuing problems. Projects involving land proposed to be acquired under urgency provisions of the LA Act will also be accompanied by the same irreversible adverse effects of environmental degradation / displacement; and should, therefore, not be exempted from the requirements of EIA / SIA or the need to comprehensively weigh public purpose- at the least in cases where the number of displaced tribal families exceeds 25. To be a participatory exercise, the expert group to review the SIA and accord clearance should also include a representative of the displaced families. The implications of the SIA / EIA should also be explained to the persons likely to be displaced in public hearings, besides obtaining the views of the concerned elected local bodies, so that their informed concerns are comprehensively deliberated by the expert group. The R&R Bill does not provide any role for the requiring body, who will ultimately have to grapple with the problems faced by displaced persons. It is also doubtful whether the proposed administrative structure can undertake turnkey execution of all the regulatory, planning, brick and mortar tasks envisaged in the Act. Therefore, the responsibility for SIA, preparation of RR plans and implementation should be that of the requiring body, which may do the job itself or outsource it to other agencies (NGOs). The Administrator should be responsible for ensuring the observance of regulatory / development norms and processes prescribed in the R&R law. Since the Bill only prescribes a minimum framework of resettlement, the responsibility of preparation and execution of R&R scheme / plan should actually be that of requiring body or its agency, which should seek the approval of the regulatory bodies, the appropriate Govt. and the informal consent of the displaced persons. The RR plan should be approved by the RR Committee constituted as per Clause 12. Baseline survey should essentially aim to enumerate all the affected persons, nature of rights affected by displacement and resettlement requirements which could form the basis of the R & R plan. Even urban areas/population may require to be relocated on occasion. The components of the R & R plan should take into account such contingencies also. The Rehabilitation Scheme embodied in the legislation should spell out a minimum framework of resettlement to be followed by all displacers. Benefits under the act should be applicable to all cases of involuntary and voluntary displacement, by every project owned by Govt. or otherwise. The resettlement site should aim to offer better living conditions to families below the poverty line and should recognize subsequent division of joint families / separation of adult members in the matter of benefits till the RR plan is published under Clause 24(3). Forest dwellers affected by diversion of forest land should be resettled in the forest area itself. In case of tribals, the policy of land for land should be mandatory. Agricultural land may be purchased and allotted to displaced persons if no Government land is available and compensation in lieu of land should be discouraged in their case. Displaced ST persons who were in possession of forest land in the affected area prior to 13.12.2005 should be resettled in the forest area and similar rights be granted in resettlement area. Resettled tribals should also continue to enjoy reservation benefits in the resettlement area by concurrent modification of the Scheduled Tribes Reservation Orders.

3.16.24 The Common Property Resources (CPRs) form the basis of livelihood for tribal communities more than in the case of caste-based, settled agricultural societies. CPRs are generally community managed. Tribals, especially marginal farmers and landless, heavily depend on CPRs to enhance their household income and to meet their domestic and livestock needs. The loss of women's autonomy right over CPRs and, especially the conversion of collective rights of tribals over land to private property ownership during the process of resettlement, results in landlessness and deprivation. Resettlement does not ensure the continuation of the historical primacy of CPRs, particularly for tribals. This is all the more true in relation to the fact that resettlement generally takes place in non-forest areas and that too on a limited land-for-land basis. RR Bill, 2007 pays limited attention to CPRs. In accordance with Clause 49, under the Tribal Development Programme (TDP), to be prepared for a project by which 200 or more Scheduled Tribes will be displaced involuntarily, a programme for development of alternative fuel, fodder and non- timber forest produce resources on non forest land has been included, within a time period of five years to meet the requirements of the tribal community who are denied access to forests. However, the stipulated time period is grossly unrealistic for development of a forest. Therefore, it may be more appropriate to mandate diversion of forest areas for the resettlement of displaced tribals who are dependant on forest-based CPRs for their existence.

3.16.25 **The Commission therefore, recommends that the RR legislation should have substantive provisions for development of CPRs, including development of sufficient alternate fuel, fodder and NTFP resources on non-forest lands in the rehabilitation schemes to support household income, livestock, sustenance to meet the needs of the relocated community and to support ecology; and also appropriate institutional mechanisms for administration of CPRs on long-term basis, or alternatively, displaced tribals should be resettled in proximity to forest areas with corresponding rights in the new habitat.**

3.16.26 The mining sector has certain core issues pertaining to sustainability, risks and environment, which need to be given focus in relation to the Scheduled Tribes. The RR Bill, 2007 states that wherever it is required, as per the provisions of any law, rules and guidelines issued thereunder, to undertake EIA, the SIA study shall be carried out simultaneously with the EIA study (clause 6(1)). Mining is closely linked with forestry and environmental issues. A significant part of the nation's known reserves of some important minerals are in areas which are under forest cover. Further, mining activity is an intervention in the environment and has the potential to disturb the ecological balance of an area. In this connection, it is mentioned that small-scale miners, especially in the unorganized sector, have not been able to discharge their responsibility towards the environment and the local people to a great extent. In the context of entry of new age, large mining companies, both PSUs and MNCs in the mining sector now, it is desirable that mining companies should utilize the latest technology which is environment-friendly and does the least damage to the environment. These companies should also spend a significant part of their retained profit, comparable with the returns provided to shareholders, on Corporate Social Responsibility (CSR) with special attention to health, education,

water supply, opportunities for employment of local tribals and infrastructure development and ecological restoration. In this connection, it is pointed out that National Mineral Development Corporation (NMDC) has been allocating merely 5%¹⁷ of its retained earnings for extending social benefits under its CSR policy. **The Commission, therefore, recommends that:**

- (i) **in respect of mining projects, EIA and SIA should address the full range of anticipated social, economic and environmental risks to mitigate the adverse effects of mining on the people and the surroundings.**
- (ii) **R&R legislation should create a meaningful CSR model incorporating a significant part of retained profits, comparable with the returns provided to shareholders and set up a mechanism to monitor its implementation.**

3.16.27 The Scheduled Tribe and Other Traditional Forest Dwellers (Recognition of Rights) Act 2006, has no provision regarding resettlement and rehabilitation of tribals displaced due to diversion of forest land for non-forest purpose in the event of the extinguishment of existing rights of the tribals in the forest area. In this connection, it is relevant to mention here that National Mineral Policy, 2008 states that Project Affected Persons will be protected through comprehensive relief and rehabilitation packages in line with the National Rehabilitation and Resettlement Policy. **The Commission, therefore, recommends that a standard rehabilitation procedure should be drawn for diversion of forest land for mining and other such purposes and the provisions of National Rehabilitation and Resettlement Policy / legislation should be made applicable for tribals displaced due to diversion of forest land for non-forest purpose in the event involving the extinguishment of existing rights of the tribals in the forest area under the STs and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006; and all land acquisition process in tribal areas must be held in abeyance till settlement of tribal rights under The Scheduled Tribes and other Traditional Forest dwellers (Recognition of Forest Rights) Act, 2006. Land holdings regularized under The Scheduled Tribes and other Traditional Forest dwellers (Recognition of Forest Rights) Act, 2006 must not be alienated/acquired except in the case of emergency, wherein equivalent land must be provided in the forest with similar rights.**

3.16.28 As a result of displacement, the loss of livelihood of tribals and the absence of its viable alternatives have very often led to impoverishment and socio-cultural marginalization. The provision of dry and totally unproductive land to the displaced tribals has also resulted in decline in production of food grains leading to their impoverishment. The impoverishment also forces tribals to keep their children away from school and leads to working of children resulting in deterioration of status of their literacy. **The Commission, therefore, recommends that in such cases, technical and financial help should be given to make the land productive. Subsistence allowance should also be provided to the tribals till such time the land becomes productive without restricting it to a period of one year (Cl. 45).**

¹⁷ Press Information Bureau press release dated 16.01.2010.

3.16.29 The underlying assumptions in the RR Bill are that all land owners with titles will receive monetary compensation for the land acquired from them, the value of the land being determined on the basis of specified norms. The livelihood of tribals depends mostly on the land. The monetary compensation against a piece of land, which was a source of livelihood for them, lasts only for some time, leading finally to impoverishment. **The Commission, therefore, recommends that land should invariably be provided to the tribals as compensation against a land acquired from them which was a source of livelihood for them; and, if the Govt. land is not available in the resettlement area, private land may be purchased and made available to tribal agriculturists.**

3.16.30 **The Commission also recommends consideration of the recommendations of the Standing Committees of 14th Lok Sabha on the Ministry of Rural Development in its 40th Report on 'The Rehabilitation and Resettlement Bill, 2007' and the Standing Committee on Ministry of Rural Development in its 39th report on 'Land Acquisition (Amendment) Bill, 2007.**

3.16.31 Further, it is mentioned that the RR Bill, 2007 and LA (A) Bill, 2007 are interlinked through addition of clause 4 in the LA(A) Bill, 2007 stating that RR Bill, 2007 shall apply in respect of acquisition of land by the appropriate Govt. under the LA (A) Act and clause 2 of the RR Bill, 2007, which states that the provisions of this Act shall apply to the rehabilitation and resettlement of persons affected by acquisition of land under the LA Act, 1984 or any other Act of the Union or a State for the time being in force; or involuntary displacement of people due to any other reason. It is also noted that while provisions to address potential risks as a result of displacement have been made both in RR Bill, 2007 and LA (A) Bill, 2007, the issues pertaining to timely completion of acquisition proceedings / resettlement have not been specifically addressed.

3.16.32 It is essential to harmonize key stages of the processes involved to ensure successful implementation both in letter as well as spirit. The responsibility for SIA should devolve on the requiring body so that proceedings for acquisition are not initiated without a holistic consideration of the consequences which may ensue therefrom. Preliminary notification for land acquisition should only be issued thereafter; and all the suggestions and objections received in response thereto should also be considered by the expert group along with the SIA and the views of the concerned local bodies / statutory authorities before a finding on 'public purpose' is arrived and expert clearance accorded. Declaration of public purpose under the concerned land acquisition law should only be made thereafter, which should also be justiciable. The processes of two draft Bills i.e. Land Acquisition (Amendment) Bill, 2007 and Rehabilitation and Resettlement Bill, 2007 are depicted in a flow diagram in **ANNEXURE 3.V**. Impoverishment and marginalization particularly in relation to the tribals will continue to be a matter of concern, unless rehabilitation schemes are effectively implemented to avoid associated problems. **The Commission, therefore, recommends that the processes in the two draft Bills should be harmonized as shown in flow diagram at ANNEXURE 3.VI.**

CHAPTER 4

SCHEDULED TRIBES AND FOREST RIGHTS

4.1. Retrospect

4.1.1 The tribals have been residing on their ancestral lands in the forest areas from times immemorial. There exists a symbiotic relationship between the forest dwelling scheduled tribes and the biological resources in the country. They are integral to the very survival and sustainability of the forest eco-systems, including wild life. The conservation of ecological resources by forest dwelling tribal communities have been referred to in ancient manuscripts and scriptures. The colonial rule somehow ignored this reality for greater economic gains; and the enactments made during the British Rule were responsible for the conflicts between the Forest Dwelling tribals, who are the original inhibitor and traditional conservators of forest, and the government officials appointed in the name of the conservation of forests. After independence, in our enthusiasm to protect natural resources, we continued with colonial legislation; and adopted more internationally accepted notions of conservation, rather than learning from the country's rich traditions where conservation is embedded in the ethos of tribal life. The legislative framework of the (reservation) processes for creating wilderness and forest areas ignored the bona fide interests of the tribal community in the regions where tribal communities primarily inhabit. The simplicity of the tribals and their general ignorance of modern regulatory frameworks precluded them from asserting their genuine claims to resources they depended upon for survival. The modern conservation approaches also advocate exclusion rather than integration of the tribal with forest. It is only recently that forest management regimes have in their policy processes realized that forests have the best chance to survive if the tribal communities living in them participate in its conservation and regeneration measures. The tribals who have been living in and maintaining the forest from time immemorial should not be treated as encroachers. The fact that they have been living in and maintaining the forest from time immemorial certainly calls for their settlement in forest on the land under their occupation. If such tribal families are not settled/ rehabilitated in forest, the lofty pronouncements of policy will have no relevance.

4.2. Forest Legislations and Rights of Scheduled Tribes

4.2.1 The first attempt on forest legislation was made in 1865 with the enactment of the Indian Forest Act. The Act was not comprehensive and mainly provided for the protection of trees, prevention of fire, and prohibition of cultivation and grazing in forest areas. This Act was later amended in 1878, which extended to most provinces of then British India. The 1878 Act provided for the constitution of 'Reserve and Protected' forests.

4.2 (A) Indian Forest Act, 1927

4.2.2 The Indian Forest Act 1927 has 86 sections, in 13 chapters – preliminary; reserved forests, village forests, protected forests, control over forest

and lands not being the property of the Government, duty on timber and other forest produce, control of timber and other forest produce in transit; collection of drift and stranded timber, penalties and procedure; cattle trespass, forest officers, subsidiary rules, an miscellaneous regulations.

4.2 (B) Bar on accrual of forest-rights

4.2.3 Section 5 of the Indian Forest Act, 1927 prescribes that after the issue of a notification under section 4 for constituting any land a reserved forest, no right shall be acquired in or over the land comprised in such notification, except by succession or under a grant or contract in writing made or entered into by or on behalf of the Government or some person in whom such right was vested when the notification was issued; and no fresh clearings for cultivation or for any other purpose shall be made in such land except in accordance with such rules as may be made by the State Government in this behalf. The Act, however, recognized the claim to right of pasture or to the forest produce to be recorded by the Forest Settlement Officer.

4.2.4 Section 35 of the Indian Forest Act, 1927 provided for protection of forest for special purposes. The State Government was empowered to regulate or prohibit in any forest or wasteland, by notification in the Official Gazette. However, Sub-Section (3) of Section 35 provided that no notification shall be made under sub-section (1) nor shall any work be begun under sub-section (2), until after the issue of a notice to the owner of such forest or land calling on him to show cause within a reasonable period to be specified in such notice, why such notification should not be made or work constructed, as the case may be, and until his objections, if any, and any evidence he may produce in support of the same, have been heard by an officer duly appointed in that behalf and have been considered by the State Government. The Act, however, did not make mention about forest dwellers or the Scheduled Tribes living in the forest or the rights of the forest dwellers

4.2(C) Post independence strategy-the Forest Conservation Act, 1980 and the National Forest Policy 1988

4.2.5 The **Forest Conservation Act, 1980** was enacted to check indiscriminate diversion of forestland. Under this legislation, approval of the Central Government is required before any forest land (noted as such in Government records) is diverted for non-forestry purposes. Moreover, the transfer is allowed only with the provision that compensatory plantations/ afforestation in an equivalent area of non-forestland, or double the area in degraded forestland, are raised. In 1988, the Act was amended to make existing provisions more stringent. Some procedural difficulties were, however, experienced in implementing the Act. In order to streamline disposal of applications under the Act, the process of decision-making has been decentralized and procedures and requirements have been rationalized. Revised and comprehensive rules and guidelines under the Act were issued in 1992.

4.2.6 This Act is, by far, the most important tool the Government of India has to regulate and control the change in the land use of recorded forestland. On

the positive side, this Act has helped reduce diversion of forestland for non-forestry purposes. On the negative side, it is alleged that it has delayed development projects in forested districts, where the availability of land other than forestland for roads, bridges, etc. is severely restricted. The State Governments often do not spare enough time and resources to make proper proposals under the Act with suitable compensatory mechanism. Another pressing problem that has arisen with the coming of the Forest Conservation Act, 1980 has been uncertain status of the lands under shifting cultivation in Orissa, Andhra Pradesh, Madhya Pradesh and North Eastern States.

4.2.7 The Forest Conservation Act, 1980 to some extent recognized the rights of the forest dwellers treated as encroachers and the Scheduled Tribes forest dwellers (the original tribal inhabitants living in the Forest prior to the date of enactment) were entitled for resettlement. It required identification of the families settled on forest land prior to 25/10/1980. There were many hurdles in the process. In the meanwhile, for various reasons, the claimants for settlement continued to increase and the process of resettlement could not progress.

4.2.8 The Report of the National Forest Commission submitted in the year 2006 has also mentioned that Act has come as an obstacle to the regularization of encroachments of forestlands. Though, the 1990 guidelines under the Act provide detailed procedure to be followed in such cases, the States have virtually given up because of pre-requisites, such as provision of equal lands for compensatory afforestation, filing of proof that such regularization was agreed to as a matter of policy prior to 25 October 1980 (the date of promulgation of the Act), etc. This has also denied the opportunity to those who have been settled on forestland by the intermediary tenure holders in pre-land reform (zamindari abolition) years, or those whose lands have been notified under the Indian Forest Act pending settlement of their claims.

4.2.9 Subsequently, on 7th December, 1988, Government of India enunciated the National Forest Policy, 1988. The preamble of the policy states that the need to review the situation and to evolve, for the future, a new strategy of forest conservation has become imperative. Conservation includes preservation, maintenance, sustainable utilisation, restoration, and enhancement of the natural environment.

4.2.10 The principal aim of the National Forest Policy, 1988 is to ensure environmental stability and maintenance of ecological balance including atmospheric equilibrium which are vital for sustenance of all life forms, human, animal and plant. The derivation of direct economic benefit must be subordinated to this principal aim. The other factors relevant to the sustenance of tribals in the forest which were required to be followed while managing the forests, as mentioned in Para 3 of the Policy, are as given below:

- i) Diversion of good and productive agricultural lands to forestry should be discouraged in view of the need for increased food production.*
- ii) For the conservation of total biological diversity, the network of national parks, sanctuaries, biosphere reserves and other protected areas should be*

strengthened and extended adequately.

- iii) Provision of sufficient fodder, fuel and pasture, especially in areas adjoining forest, is necessary in order to prevent depletion of forests beyond the sustainable limit. Since fuel-wood continues to be the predominant source of energy in rural areas, the programme of afforestation should be intensified with special emphasis on augmenting fuel-wood production to meet the requirement of the rural people.*
- iv) Minor forest produce provides sustenance to tribal population and to other communities residing in and around the forests. Such produce should be protected, improved and their production enhanced with due regard to generation of employment and income.*

4.2.11 As regards the rights and concessions of the tribals over the forest, Para 4.3.4 of the Forest Policy envisaged that:

- i) The rights and concessions, including grazing, should always remain related to the carrying capacity of forests. The capacity itself should be optimised by increased investment, silvicultural research and development of the area. Stall-feeding of cattle should be encouraged. The requirements of the community, which cannot be met by the rights and concessions so determined, should be met by development of social forestry outside the reserved forests.*
- ii) The holders of customary rights and concessions in forest areas should be motivated to identify themselves with the protection and development of forests from which they derive benefits. The rights and concessions from forests should primarily be for the bonafide use of the communities living within and around forest areas, specially the tribals.*
- iii) The life of tribals and other poor families living within and near forests revolves around forests. The rights and concessions enjoyed by them should be fully protected. Their domestic requirements of fuel wood, fodder, minor forest produce and construction timber should be the first charge on forest produce. These and substitute materials should be made available through conveniently located depots at reasonable prices.*
- iv) Similar consideration should be given to scheduled castes and other poor living near forests. However, the area, which such consideration should cover, would be determined by the carrying capacity of the forests.*

4.2.12 Having regard to the symbiotic relationship between the tribal people and forests, the National Forest Policy envisaged that a primary task of all agencies responsible for forest management, including the forest development corporations should be to associate the tribal people closely in the protection, regeneration and development of forests as well as to provide gainful employment to people living in and around the forest¹. The policy envisaged that while

¹ National Forest Policy, 1988

safeguarding the customary rights and interests of such people, forestry programmes should pay special attention to the following²:

- i) One of the major causes for degradation of forest is illegal cutting and removal by contractors and their labour. In order to put, an end to this practice, contractors should be replaced by institutions such as tribal cooperatives, labour cooperatives, government corporations, etc. as early as possible;*
- ii) Protection, regeneration and optimum collection of minor forest produce along with institutional arrangements for the marketing of such produce;*
- iii) Development of forest villages on par with revenue villages;*
- iv) Family oriented schemes for improving the status of the tribal beneficiaries; and*
- v) Undertaking integrated area development programmes to meet the needs of the tribal economy in and around the forest areas, including the provision of alternative sources of domestic energy on a subsidised basis, to reduce pressure on the existing forest areas.*
- vi) Shifting cultivation is affecting the environment and productivity of land adversely. Alternative avenues of income, suitably harmonised with the right land use practices, should be devised to discourage shifting cultivation. Efforts should be made to contain such cultivation within the area already affected, by propagating improved agricultural practices. Area already damaged by such cultivation should be rehabilitated through social forestry and energy plantations.*

4.2.13 The National Forest Policy, however, did not support whole heartedly the rights of settlement of the original tribal dwellers on the land under their possession for decades. It directed as follows³:

- i) Encroachment on forest lands has been on the increase. This trend has to be arrested and effective action taken to prevent its continuance. **There, should be no regularisation of existing encroachments.***
- ii) Grazing in forest areas should be regulated with the involvement of the community. Special conservation areas, young plantations and regeneration areas should be fully protected. Grazing and browsing in forest areas need to be controlled.*
- iii) Adequate grazing fees should be levied to discourage people in forest areas from maintaining large herds of non-essential livestock.*

4.3. The Scheduled Areas and Scheduled Tribes Commission and Forest Policy

4.3.1 The first Scheduled Area and Scheduled Tribes Commission under Article 339 of the Constitution was set up in the year 1960 under the

² National Forest Policy, 1988

³ National Forest Policy, 1988

Chairmanship of Shri U.N. Dhebar. This Commission has dealt in detail the relationship between the forest and the tribals and the rights of the tribals. The second Scheduled Areas Commission set up after 42 years in July, 2002 under the Chairmanship of Shri Dileep Singh Bhuria also made detailed observations on the subject.

4.3.2 The Dhebar Commission⁴ recalled the relationship between tribals and foresters. They captured the essence of the relationship by observing that from times immemorial the tribal people have enjoyed freedom to use the forest and hunt its animals and this has fostered a deep conviction in their minds that forests belong to them. By about middle of nineteenth century, the extension of the authority of the Government in these areas and exercise of close control over forest products disturbed the tribal economy and introduced psychological conflict. That Commission concluded that a state of tension and mutual distrust existed between the tribals and the foresters and interfered with the work of forest development.

4.3.3 The Dhebar Commission⁵ also discussed about the Governments Forest Policy Resolutions of 1894 and 1952. The 1894 Forest Policy averred that "in almost all cases, the constitution of the forest involved, in greater or lesser degree, the regulation of rights and restriction of privileges of use in the forest are which may have previously been enjoyed by the inhabitants of its immediate neighbourhood". The hitherto inviolate forest domain of the tribals was now transgressed by the new alien power and their natural unfettered rights over forest were curtailed. It was the beginning of an era which the Dhebar Commission called of "delicate relations between them and the Forest Department". It marked the characteristic hegemonic bureaucratic authority bordering on repression. Among the other features of the Policy was one which enabled conversion of forests into agricultural lands "wherever an effective demand for cultivable land exists and can only be supplied from forest areas", subject to cultivation being permanent and not resulting in honey-combing of valuable forest by patches of cultivation.

4.3.4 The Dhebar Commission further mentioned that in 1952 the National Forest Policy was oriented towards evolving a system of balanced and complementary land use under which each type of land is allotted to that form of use under which it would produce the most and deteriorate the least. While it stressed ecology and sustained availability of forest products, it considered "realization of the maximum annual revenue in perpetuity consistent with the fulfillment of the needs enumerated...." as one of the six paramount needs of the country. The Dhebar Commission was obliged to remark that the 1894 Policy had turned the tribal into a subject placing him under forest department and the traditional rights of the tribals were derecognized. In 1894 they became "rights and privileges" and in 1952 they became "rights and concessions". Thus, the approach in general was towards progressive downgradation of rights of the forest dwellers. The 1952 Policy also adverted to the instructions of the Union Government which exhorted exercise of greater regulation and control not only for

⁴ Report of SA&ST Commission (Headed by UN Dhebar) 1961

⁵ Report of SA&ST Commission (Headed by UN Dhebar) 1961

the protection of forests but also for soil conservation, etc. Thus, from the middle of the nineteenth century, the control of foresters over forests kept on tightening.

4.3.5 The bearings and directions of the 1988 National Forest Policy Resolution differ from the earlier two resolutions. It may be said to revolve around environmental stability and conservation, conservation being signified to encompass preservation, maintenance, sustainable utilization, restoration and enhancement of the natural environment. Nevertheless, the focus on (a) ecological imperative (b) increased biomass through massive afforestation and social forestry programmes specially on denuded, degraded and un-productive land and (c) the requirements of fuel-wood, fodder, minor forest produce and small timber for the rural and tribal population, appear as the basic objectives. It declares provision of sufficient fodder, fuel and pasture as well as improvement and enhanced production of minor forest produce, among others, as essentials of forest management. For the first time, a separate section 4.6 "Tribal People and Forests", appears in the Resolution. It enunciates that the primary task of all agencies responsible for forest management should be to associate the tribal people closely in the production, regeneration and development of forests as well as to provide gainful employment to people living in and around forests. The 1988 Policy thus marks a new welcome trend in favour of tribals. It is, however, a different matter whether its implementation has kept up with its changed perspective and laudable objectives.

4.4 The Panchayats (Extension to the Scheduled Areas) Act, 1996

4.4.1 The Panchayats (Extension to the Scheduled Areas) Act, 1996 provided for transfer of control/ ownership over the natural resources, including the Minor Forest Produce to the local communities but non-implementation of the PESA Act in all the Scheduled Areas, mostly having forest areas in several States, have further compounded their miseries. Although the provisions of the Panchayats (Extension to Scheduled Areas) (PESA) Act, 1996 give the rights of ownership of MFP to the respective local communities, the collection and trade of most of the high value MFP is largely monopolized by the Corporations of the Forest Department of the States; and Forest Dwelling Scheduled Tribes are employed by the contractors only as wage earners.

4.5. Amendment of Wild Life Protection Act 1972 and the National Tiger Conservation Authority

4.5.1 The Wild Life Protection Act 1972 (No. 53 of 1972) was brought into force w.e.f. 9th September, 1972 to provide for the protection of wild animals and birds and for matters connected therewith or ancillary or incidental thereto. The Act extended, in the first instance, to the whole of the States of Andhra Pradesh, Bihar, Gujarat, Haryana, Himachal Pradesh, Madhya Pradesh, Manipur, Punjab, Rajasthan, Uttar Pradesh and West, Bengal and to all the Union territories; and was subsequently extended to such other States as may adopt this Act by resolution passed in that behalf in pursuance of clause (1) of article 252 of the Constitution. The Act provided that the State Government may, by notification, declare any area to be a game reserve and no hunting of any wild animal shall be permitted in such reserve except under and in accordance with a license issued

by the Chief Wild Life Warden or the authorized officer. The Act, however, did not specify any measures for the protection of the rights of the forest dwellers (including the Scheduled Tribes) inhabiting the forest areas. A pilot Project (Project Tiger) was also launched for the protection and preservation of the Tiger in the country. Many tribal villages and tribals were affected due to setting up the projects relating to establishing the sanctuaries, National Parks, and game reserves.

4.5.2 The Wild Life (Protection) Act has been amended several times. By the amendment carried out in the year 2006 vide the Wild Life (Protection) Amendment Act, 2002, Section (5) of the Act was amended to provide for constitution of the National Board for Wild Life with the Prime Minister as the Chairperson of the Board, the Minister in-charge of Forests and Wild Life as Vice-Chairperson and the Secretary to the Government of India, Ministry of Tribal Welfare as one of the Members of the Board

4.5.3 The Wild Life (Protection) Act, 1972 was again amended in the year 2006 to provide for constitution of the National Tiger Conservation Authority (NTCA) in place of the Project Tiger, vide the Wild Life (Protection) Amendment Act, 2006 which came into force w.e.f. 4th September, 2006. This amendment (dealt by the Ministry of Environment and Forests) was also carried out without seeking any consultation/ comments/ advice from the National Commission for Scheduled Tribes.

4.5.4 The National Tiger Conservation Authority has been assigned duties to plan and implement conservation of the tiger, declare tiger reserve areas and issue directions necessary for conservation of the tigers. One of the provision in the functioning of the NTCA provides that no such direction (issued by NTCA) shall interfere with or affect the rights of local people (not specifically the Scheduled Tribes).

4.5.5 The above matter regarding amendment of the Wild Life (Protection) Act, 1972 and constitution of NTCA was discussed in the meeting of the Commission held on 10/11/2006. The Commission observed that

- (a) *The Wild Life (Protection) Amendment Act, 2006 at the draft stage was never sent to the Commission for its comments by the Ministry of Environment and Forests, as mandatorily required by Clause (9) of Article 338A of the Constitution of India which provides that "The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Tribes".*
- (b) *The Ministry of Environment and Forests did not solicit the prior consent of the Chairperson of this Commission before nominating him as the Member of the National Tiger Conservation Authority.*

4.5.6 In view of the above, the Commission, vide letter No. 6/1/2006 C.Cell dated 27/11/2006 conveyed the following amendments in the "THE WILD LIFE (PROTECTION) AMENDMENT ACT, 2006 No. 39 OF 2006":

- (a) The Chairperson of National Commission for Scheduled Tribes have been

made member of National Tiger Conservation Authority under Chapter 38 L (2)(i) without consent of the Commission. The Chairperson of the National Commission for Scheduled Tribes conferred the status of Union Cabinet Minister and has to discharge his constitutional duties assigned under Article 338A of the Constitution of India. Therefore, in place of Chairperson "Secretary to National Commission for Scheduled Tribes" should be a member in place of Chairperson in National Tiger Conservation Authority.

- (b) Additional saving clause need to be added under Section 38 O Powers and Function of National Tiger Conservation Authority as section 3 under this Chapter replacing 2nd part of Sec.38 O (2) i.e. "Provided that no such direction shall interfere with or affect the rights of local people particularly the Scheduled Tribes" as Section 38 O (3) "Save as above no function mentioned in Section 1&2 shall interfere with or affect the rights of Scheduled Tribes."
- (c) Section 38 V (4) needs to be omitted in view of addition of Section 38 O (3) because tribals are governed by various constitutional provisions for their socio-economic developments and interface with the surrounding. Therefore, to avoid contradiction with the various acts relating to tribal rights, the Section 38 (v) (4) need to be omitted.

4.5.7 The Ministry of Environment and Forests has not intimated the action taken on the observations/ recommendations made by the Commission

4.6. Tenth Five Year Plan

4.6.1 There has been positive change in the objectives of Planning in favour of forest dwelling Scheduled Tribes. In this context, the following observations in the Tenth Five Year Plan (2002-2007) document of the Planning Commission needs mention:

4.2.55 Forests and Tribals share a symbiotic relationship. Tribals continue to live in forest areas, though in isolation, yet in harmony with environment. Recognising this dependency, the National Forest Policy, 1988, stipulated that all agencies responsible for forest management should ensure that the tribal people are closely associated with the regeneration, plantation, development and harvesting of forests so as to provide them gainful employment. Despite these special safeguards tribals continue to struggle for mere survival as they face formidable problems and displacement due to development of national parks and wild-life sanctuaries and other environmental restoration projects, lack of development in forest villages etc. The protection of rights of tribals in forests is key to the amelioration of their condition.

4.7. Scheduled Tribes (Recognition of Forest Rights) Bill, 2005

4.7.1 Non-recognition of the rights of the Scheduled Tribes over the land on which they have been living for generations persisted notwithstanding that all policy statements, including Forest Policy, 1988, circulars, guidelines and Govt. Orders issued by the Ministry of Environment and Forests have been espousing

the cause of tribal communities and emphasizing the need for putting these communities at the centre of any conservation measures. It was in this background that the Ministry of Tribal Affairs decided to formulate a comprehensive Central legislation to redress the historical injustice done to the tribal communities and for clear assertion of their legal rights on the land. Accordingly, a Technical Support Group (TSG), comprising the representatives of the Ministries concerned and some reputed experts having rich experience and deep association with the cause of environmental protection and welfare of tribal people, was constituted, under the Chairmanship of Secretary (Ministry of Tribal Affairs) to formulate a Bill to Recognize the Forest Rights of the Scheduled Tribes Forest Dwellers. The Director General (Forests), Ministry of Environment & Forests was also one of the members of the Group. After a series of meetings of the TSG, a draft Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 was formulated by the Ministry of Tribal Affairs and circulated amongst the Ministries concerned for their comments. A copy of the proposed Bill was also put on the website of the Ministry of Tribal Affairs inviting suggestions from members of public, tribal associations, NGOs working in the area of tribal development etc.

4.7.2 Though no formal consultation was made by the Ministry of Tribal Affairs with the National Commission for Scheduled Tribes as required under Article 338A (9) of the Constitution, the Commission considered it appropriate to make a detailed mention in its First Report about its observations on the various provisions included in the draft Bill. While welcoming the proposal of the Government to formulate a legislation to recognize the rights to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe and several other rights connected therewith, the Commission stated that the proposed Bill was a step in the right direction as it addressed the long standing and genuinely felt need of granting a secure and inalienable right to those communities whose right to life depends on right to forests. The Commission also mentioned its observations on various sections of the draft Bill in the Report. The extracts in this regard from 1st Report of the Commission are placed at **ANNEXURE 4.I**. However, by the time Report of the Commission was finalized it was learnt that the Bill had already been introduced in the Parliament and referred to the Joint Parliamentary Committee (JPC) headed by Shri V Kishore Chandra S Deo for further examination. The Commission also mentioned in the Report that it pained to note that no formal consultation on such a major policy issue affecting the interests of Scheduled Tribes was made with it by the Ministry of Tribal Affairs in terms of Clause 9 of Article 338A of the Constitution.

4.8. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

4.8.1 On 23 May 2006, the JPC submitted its recommendations on the issue of cut-off date, inclusion of all forest dwellers under its purview, increase in the ceiling on land occupation and the empowering of Gram Sabhas. Many of the recommendations were not in the interest of the originally intended beneficiaries i.e. tribals. The Ministry of Tribal Affairs objected to some of these recommendations of the JPC. A Group of Ministers (GoM), headed by the then External Affairs Minister Shri Pranab Mukherjee was established to evolve a

consensus. On 15 November 2006, the GoM managed to reach consensus and the 'Other Traditional Forest Dwellers' got included in the revised draft.

4.8.2 After acrimonious public debate for more than a year since tabling in the parliament on 13 December 2005, the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 was re-christened as "The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006" and was passed by the parliament, on 13 December 2006. The President of India assented to the Bill on 29 December 2006. However, the debate since the tabling of the initial bill in December 2005 to the passage of the Act in the Parliament have brought the age-old prejudices against the tribal peoples to the fore and further eroded their rights.

4.8.3 When the Government of India passed the Forest Conservation Act on the mid-night of 25 October 1980, hundreds of thousands of tribal people became illegal encroachers on land over which they have been living for generations. For two and half decades, the state governments failed to record and recognize even those limited ancestral rights of tribal communities permitted by the Forest Conservation Act and the subsequent 1990 Guidelines issued by the Ministry of Environment and Forest. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 thus corrected the imbalance in favour of Forest Dwelling Scheduled Tribes.

4.8.4 A critical examination of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, however, reveals that the rights of the tribals were compromised when the aims, objectives and spirit of the initial bill were diluted. The nomenclature of the original bill "Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 as tabled in the Parliament on 13 December 2005 recognised the symbiotic relationships of the tribals with forest. In its preambular paragraph, the original bill provided that it is "A Bill to recognize and vest the forest rights and occupation in the forest land of forest dwelling Scheduled Tribes who have been residing in such forest for generations but whose rights could not be recorded ..". However, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 states, "An Act to recognise and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded....". While tribals and forest are synonymous and one cannot be separated from the other, same is not the case with the "other traditional forest dwellers" i.e. non-tribals. Tribals have emotional, psychological and cultural attachments with the forest and they always lived in the forest. On the other hand, for non-tribal forest dwellers, forest and forest-related livelihood activities are the last resort. Non-tribals usually do not undertake livelihood activities in forest by choice. However, by legitimising their occupation of the forest lands under the guise of "Other Traditional Forest Dwellers", the Act relegated the spirit of the various safeguards available to the members of the Scheduled Tribes under the Constitution and other relevant laws of the country. Rather than improving the lot of the tribals, the Act may lead to conflict of interest between the forest-dwelling Scheduled Tribes and other forest dwellers.

4.8.5 Another conspicuous feature of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 is the extension of the cut-off date to qualify for holding of rights from 25 October 1980 to 13 December 2005. At the ground level, the cut-off date is quite immaterial to the majority of the forest dwelling Scheduled Tribes as they have been living in the forest for generations and, as such, they would have been covered even under the 25 October 1980 cut off date. This extension of the cut off date basically benefits the other traditional forest dwellers who are required to prove that they have been occupying the forest land for three generations under clause (o) of Section 2 of the Act. By extending the date from 25 October 1980 to 13 December 2005, one generation has already been covered!

4.8.6 Sub-section (6) of Section 4 of the Act states, "Where the forest rights recognized and vested by sub-section (1) are in respect of land mentioned in clause (a) of subsection (1) of section 3 such land shall be under the occupation of an individual or family or community on the date of commencement of this Act and shall be restricted to the area under actual occupation and shall in no case exceed an area of four hectares." This provision hardly benefits the Scheduled Tribes. Rather than empowering, this law seeks to dispossess the forest dwelling Scheduled Tribes of their ancestral lands that they have in possession in excess of 4 hectares as provided in Sub-section (6) of Section 4. Nor does the Bill provide for compensation to those who will be forced to share their lands in excess of 4 hectares. Thus a large number of forest dwelling Scheduled Tribes may have to mandatorily part with large chunks of ancestral lands that they have been actually occupying before the enactment of this Act.

4.8.7 The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 has not taken into account the fact that hundreds of forest dwelling scheduled tribes face charges under different provisions of the draconian Forest Conservation Act of 1980 for accessing minor produce. Although the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 ensures tenurial security and legitimizes the scheduled tribes' ownership over the minor forest produce and their role in the conservation of forest, it failed to address charges/prosecution pending against the tribals under the Forest Conservation Act of 1980 and Indian Forest Act of 1927 with retrospective effect. Section 4 (5) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Rights) Act, 2006 reads as given below:

(5) Save as otherwise provided, no member of a forest dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is complete.

4.8.8 However, the information about implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Rights) Act, 2006 furnished on the website as well as Annual Reports of the Ministry of Tribal Affairs do not indicate whether State Governments have taken any action for dropping or withholding of thousands of cases in the name of encroachments or for accessing minor forest produce filed against the forest dwelling scheduled tribes in various

Courts before 13/12/2005. As per media reports available on the internet, there were 2,57,226 forest cases pending against 1,62,692 tribals between 1953 to 30 June 2004 under Sections 26, 33 and 41 of the Indian Forest Act 1927, pertaining primarily to illegal felling of trees for domestic use and ferrying of wood by bullock carts in Chhattisgarh as on 8 November 2005 and 2,531 such cases in Orissa as on 10 March 2005.

4.8.9 The Government essentially sought to address the denial of rights to the tribals living in the forests. "The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006" did not address the concerns of the environmentalists; but certainly their actions were, however, successful in further eroding the rights of the tribals. **The Commission, therefore, recommends that in the first instance, all the cases of alleged encroachment of forest land by the Scheduled Tribes which were registered prior to 31.12.2007 may be withdrawn by the concerned authorities and their claims on forest lands may be settled as per provisions under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007.**

4.9. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007

4.9.1 In exercise of the powers conferred by sub-sections (1) and (2) of section 14 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007), the Central Government have notified the rules for recognizing and vesting the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers residing in such forests, namely **the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007**. The Principal Act has come into force on 31.12.2007 while the Rules are effective from 01/01/2008. The Rules extend to the whole of India except the State of Jammu and Kashmir.

Forest Rights Committees

4.9.2 These Rules have recognized the power of the Gram Sabhas in the matter of settlement of rights of Scheduled Tribes and other forest dwellers. It provides that the Gram Sabha shall be convened by the Gram Panchayat and in its first meeting it shall elect from amongst its members, a committee of not less than ten but not exceeding fifteen persons as members of the Forest Rights Committee, wherein at least one-third members shall be the Scheduled Tribes. It further provides that not less than one-third of such members shall be women and in case there are no Scheduled Tribes, at least one third of such members shall be women. The important provisions under these Rules are recapitulated below:

Rule 4. Functions of the Gram Sabha.- (1) The Gram Sabha through its Forest Rights Committee is required to -

- (a) initiate the process of determining the nature and extent of forest rights, receive and hear the claims relating thereto;*
- (b) prepare a list of claimants of forests rights and maintain a register containing such details of claimants and their claims as the Central Government may by order determine;*
- (c) pass a resolution on claims on forest rights after giving reasonable opportunity to interested persons and authorities concerned and forward the same to the Sub-Divisional Level Committee;*
- (d) consider resettlement packages under clause (e) of sub section (2) of section 4 of the Act and pass appropriate resolutions; and*
- (e) constitute Committees for the protection of wildlife, forest and biodiversity, from amongst its members, in order to carry out the provisions of section 5 of the Act.*

Rule 5. Sub-Divisional Level Committee.- The State Government shall constitute Sub-Divisional Level Committee (SDLC) which under **Rule 6** shall -

- (a) provide information to each Gram Sabha about their duties and duties of holder of forest rights and others towards protection of wildlife, forest and biodiversity with reference to critical flora and fauna which need to be conserved and protected ;*
- (b) provide forest and revenue maps and electoral rolls to the Gram Sabha or the Forest Rights Committee;*
- (c) collate all the resolutions of the concerned Gram Sabhas;*
- (d) consolidate maps and details provided by the Gram Sabhas;*
- (e) examine the resolutions and the maps of the Gram Sabhas to ascertain the veracity of the claims;*
- (f) hear and adjudicate disputes between Gram Sabhas on the nature and extent of any forest rights;*
- (g) hear petitions from persons, including State agencies, aggrieved by the resolutions of the Gram Sabhas;*
- (h) co-ordinate with other Sub-Divisional Level Committees for inter sub-divisional claims ;*
- (i) prepare block or tehsil-wise draft record of proposed forest rights after reconciliation of government records;*
- (j) forward the claims with the draft record of proposed forest rights through the Sub-Divisional Officer to the District Level Committee for final decision;*
- (k) raise awareness among forest dwellers about the objectives and procedures laid down under the Act and in the rules ;*
- (l) ensure easy and free availability of proforma of claims to the claimants as provided in Annexure-I (Forms A & B) of these rules;*
- (m) ensure that the Gram Sabha meetings are conducted in free, open and fair manner with requisite quorum.*

Rule 7. District Level Committee.- The State Government shall constitute District Level Committee (DLC) which under **Rule 8** shall –

- (a) ensure that the requisite information under clause (b) of rule 6 has been provided to Gram Sabha or Forest Rights Committee;*
- (b) examine whether all claims, especially those of primitive tribal groups, pastoralists and nomadic tribes, have been addressed keeping in mind the objectives of the Act;*
- (c) consider and finally approve the claims and record of forest rights prepared by the Sub-Divisional Level Committee;*
- (d) hear petitions from persons aggrieved by the orders of the Sub-Divisional Level Committee;*
- (e) co-ordinate with other districts regarding inter-district claims;*
- (f) issue directions for incorporation of the forest rights in the relevant government records including record of rights;*
- (g) ensure publication of the record of forest rights as may be finalized; and*
- (h) ensure that a certified copy of the record of forest rights and title under the Act, as specified in Annexures II & III to these rules, is provided to the concerned claimant and the Gram Sabha respectively ;*

Rule 9. State Level Monitoring Committee. - *The State Government shall constitute a State Level Monitoring Committee which under Rule 10 shall –*

- (a) devise criteria and indicators for monitoring the process of recognition and vesting of forest rights;*
- (b) monitor the process of recognition, verification and vesting of forest rights in the State;*
- (c) furnish a six monthly report on the process of recognition, verification and vesting of forest rights and submit to the nodal agency such returns and reports as may be called for by the nodal agency;*
- (d) on receipt of a notice as mentioned in section 8 of the Act, take appropriate actions against the concerned authorities under the Act;*
- (e) monitor resettlement under sub-section (2) of section 4 of the Act.*

Rule 12. Process of verifying claims by Forest Rights Committee.- *(1) The Forest Rights Committee shall, after due intimation to the concerned claimant and the Forest Department –*

- (a) visit the site and physically verify the nature and extent of the claim and evidence on the site;*
- (b) receive any further evidence or record from the claimant and witnesses;*
- (c) ensure that the claim from pastoralists and nomadic tribes for determination of their rights, which may either be through individual members, the community or traditional community institution, are verified at a time when such individuals, communities or their representatives are present;*
- (d) ensure that the claim from member of a primitive tribal group or pre-agricultural community for determination of their rights to habitat, which may either be through their community or traditional community institution, are verified when such communities or their representatives are present; and*

(e) prepare a map delineating the area of each claim indicating recognizable landmarks.

(2) The Forest Rights Committee shall then record its findings on the claim and present the same to the Gram Sabha for its consideration.

(3) If there are conflicting claims in respect of the traditional or customary boundaries of another village or if a forest area is used by more than one Gram Sabha, the Forest Rights Committees of the respective Gram Sabhas shall meet jointly to consider the nature of enjoyment of such claims and submit the findings to the respective Gram Sabhas in writing:

Provided that if the Gram Sabhas are not able to resolve the conflicting claims, it shall be referred by the Gram Sabha to the Sub-Divisional Level Committee for its resolution.

(4) On a written request of the Gram Sabha or the Forest Rights Committee for information, records or documents, the concerned authorities shall provide an authenticated copy of the same to the Gram Sabha or Forest Rights Committee, as the case may be, and facilitate its clarification, if required, through an authorized officer .

Rule 13. Evidence for determination of forest rights.- (1) The evidence for recognition and vesting of forest rights shall, inter alia, include –

(a) public documents, Government records such as Gazetteers, Census, survey and settlement reports, maps, satellite imagery, working plans, management plans, micro-plans, forest enquiry reports, other forest records, record of rights by whatever name called, pattas or leases , reports of committees and commissions constituted by the Government, Government orders, notifications, circulars, resolutions;

(b) Government authorized documents such as voter identity card, ration card, passport, house tax receipts, domicile certificates;

(c) physical attributes such as house, huts and permanent improvements made to land including leveling, bunds, check dams and the like;

(d) quasi-judicial and judicial records including court orders and judgments;

(e) research studies, documentation of customs and traditions that illustrate the enjoyment of any forest rights and having the force of customary law, by reputed institutions, such as Anthropological Survey of India;

(f) any record including maps, record of rights, privileges, concessions, favours, from erstwhile princely States or provinces or other such intermediaries;

(g) traditional structures establishing antiquity such as wells, burial grounds, sacred places;

(h) genealogy tracing ancestry to individuals mentioned in earlier land records or recognized as having been legitimate resident of the village at an earlier period of time;

(i) statement of elders other than claimants, reduced in writing.

(2) An evidence for Community Forest Rights shall, inter alia, include –

- (a) community rights such as nistar by whatever name called;*
- (b) traditional grazing grounds; areas for collection of roots and tubers, fodder, wild edible fruits and other minor forest produce; fishing grounds; irrigation systems; sources of water for human or livestock use, medicinal plant collection territories of herbal practitioners;*
- (c) remnants of structures built by the local community, sacred trees, groves and ponds or riverine areas, burial or cremation grounds;*

(3) The Gram Sabha, the Sub-Divisional Level Committee and the District Level Committee shall consider more than one of the above-mentioned evidences in determining the forest rights.

**4.10. Monitoring of Implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006--
Action Taken position on the actionable points for the Central Ministries and State Govts. for implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006**

4.10.1 The responsibility of implementing the Act primarily lies with the State Governments/ UT Admns. As provided under the Rules, each State Govt. is required to set up Forest Rights Committee of the Gram Sabhas and approval Committees at the level of Sub-division and District for settlement of claims of the forest dwellers; and the progress made by each Committee has to be monitored by the state Level Monitoring Committee of the concerned State Govt. Overall monitoring of the implementation of the FR Act has to be done by the Ministry of Tribal Affairs. Besides, Ministry of Environment and Forests is also required to take certain steps to monitor the implementation of the Act.

4.10.2 As per information available on the Website of the Ministry of Tribal Affairs, the Ministry of Tribal Affairs, Ministry of Environment and Forests, Ministry of Panchayati Raj and Ministry of Information & Broadcasting have taken certain steps to monitor the implementation of the Act.

(i) Action taken by Ministry of Tribal Affairs

4.10.3 The Ministry of Tribal Affairs has taken the following initiatives:

- (i) Since the responsibility of implementing the Act primarily lies with the State Governments/ UT Admns.; the Ministry of Tribal Affairs, soon after operationalization of the Act, addressed the State/ UT Governments on 11/01/2008 for constituting various Committees under the Act and for initiating necessary action for recognition and vesting of the forest rights in the forest dwelling Scheduled Tribes and other traditional forest dwellers. The Ministry of Tribal Affairs called a meeting of Secretaries of Tribal Development/ Tribal Welfare Departments of the States on 18-19 February 2008 to discuss the implementation of the Forest Rights Act. In the said

meeting, the progress of implementation of the Act as also the issues raised by the States, were discussed. Subsequently, a letter was addressed to the State Govts. on 25.2.2008 seeking State-wise information/ data, on the following parameters:

- (1) Appointment of Nodal Officer
- (2) Status of formation of various Committees
 - (a) Sub-Divisional Level Committee,
 - (b) District Level Committee,
 - (c) State Level Monitoring Committee
- (3) Translation of the Act and the Rules into the regional languages and distribution to Gram Sabha, FRCs, etc.
- (4) Creation of Awareness about the provision of the Act and Rules
- (5) Arrangements made for the training of PRI officials, Sub-Divisional Level Committee, District Level Committee members
- (6) Constitution of Forest Rights Committees by the Gram Sabhas
- (7) No. of claims filed at Gram Sabha level
- (8) No. of claims recommended by Gram Sabha to Sub-Divisional Level Committee
- (9) No. of claims recommended by Sub-Divisional Level Committee to District Level Committee
- (10) No. of claims approved by District Level Committee for title
- (11) Number of titles distributed
- (12) No. of claims rejected
- (13) Projected dated for distribution of title deeds
- (14) Problems

(ii) A comprehensive web-based information system for implementation and monitoring of the Act has also been made operational by NIC on the website <http://forestrights.gov.in>. Each State Government and UT Admn. is required to submit the monthly progress report to the Ministry of Tribal Affairs through the Web-based monitoring system. Action was also envisaged for setting up an Implementation and Coordination Cell in the Ministry.

(iii) A pamphlet (in English and Hindi) on the Act in a reader-friendly format for wide circulation to the States and other stakeholders has been prepared and sent to PIB, DAVP, AIR, Doordarshan and Directorate Field Publicity for organizing publicity campaign.

(iv) A Core Group consisting of representatives of Ministries of Panchayati Raj, Law & Justice and Environment & Forests as Members has been formed under the Chairmanship of Secretary (Tribal Affairs) for taking a view on queries and references from State Governments.

4.10.4 In order to remove difficulties in implementation of the Act, the Ministry of Tribal Affairs held review meetings with State Secretaries/

Commissioners of Tribal Welfare/ Development Departments on the implementation of the Act on 18/19th Feb 2008, 16th May 2008, 27th June 2008 and 11th Nov 2008. Various issues raised by the State/ UT Governments during the review meetings were examined by the Ministry and the requisite clarifications were issued to the State Governments to facilitate expeditious implementation of the Act. Some of the important issues raised by the State/UT Governments and the clarifications issued by the Ministry of Tribal Affairs are given at **ANNEXURE 4.II.**

4.10.5 The Hon'ble President of India in her joint Address to the Parliament on 4th June, 2009, emphasized the need to ensure the distribution of titles deeds to all the eligible claimants under the Act by end of December, 2009. The Hon'ble Prime Minister also wrote to the State Governments on 13.07.2009 emphasizing the need for accelerating the process of the implementation of the Act and ensuring the distribution of title deeds by end of December, 2009. In the context of the priority set by the Hon'ble President of India, and in order to interact more forcefully with State Governments, especially those which have large concentration of tribals and forest areas, the Ministry of Tribal Affairs also planned review meetings with selected States.

4.10.6 In continuity therewith the Ministry of Tribal Affairs organized a two-days Conference of Chief Ministers, State Ministers(Forest Departments) and State Ministers (Tribal Development/ Social Welfare Departments) on 4th and 5th November, 2009 to take stock of the status of implementation of the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006, the preparedness of States to adhere to the December 2009 deadline and a few major tribal development/ welfare programmes in the States. The Conference held at A.P. Shinde Symposium Hall, National Agriculture Science Centre, Dev Prakash Shastri Marg (Pusa Road), New Delhi was inaugurated by Prime Minister on 4th November, 2009.

4.10.7 In his inaugural speech on 4th November, 2009 the Prime Minister cited the Act as a landmark legislation providing for a legally enforceable way of guaranteeing rights to forest dwelling Scheduled Tribes and others who have lived in our forests for centuries, but whose contribution to their protection was not acknowledged or recognized earlier. The Prime Minister also emphasized that the distribution of the titles is but an important and necessary first step. The Prime Minister further emphasized that those whose lives are dependent on the forests should be made essential partners in the process of natural resource planning, conservation and protection and that the livelihood concerns of the forest dwellers should be the central to the development agenda in these area. A copy of the speech of the Prime Minister is placed at **ANNEXURE 4.III.**

4.10.8 It was reported by the Ministry of Tribal Affairs in the Background Note circulated in the two days Conference, that a number of writ petitions have been filed in different High Courts and Supreme Court against the Act. As per information received from the Ministry of Tribal Affairs, at the time of the Conference on 4th November, 2009, 12 Writ Petitions challenging the vires of the Act have been filed in different High Courts while 2 similar Writ Petitions have been filed in the Supreme Court. The Ministry of Tribal Affairs has filed two

Transfer Petitions on 5/4/2008 and 19/1/2009 respectively for transferring the WPs filed in the High Courts at Andhra Pradesh, Chennai, Madurai Bench of the Madras High Court, Bombay, Karnataka and Orissa for combined hearing alongwith the WP filed in the Supreme Court. The Ministry has also written to Central Agency Section, Ministry of Law & Justice for filing another Transfer Petition in the Supreme Court for transferring 3 new WPs filed before the Principal Bench of MP High Court at Jabalpur against the Act for combined hearing along with the WP filed in the Supreme Court. For defending the Government of India in the WPs filed in the Supreme Court, the Ministry of Tribal Affairs has engaged the eminent lawyer, Shri Fali. S. Nariman, in pursuance of a decision taken by the Committee of Secretaries.

4.10.9 In Writ Petition No.4533/2008 filed by Shri V. Sambasivan in High Court of Judicature at Chennai, the High Court had passed an interim order on 30.4.2008 directing that the process of verification of the claims shall go on, but before the certificate of title is actually issued, orders shall be obtained from the Court. Subsequently, similar interim orders were passed by the Andhra Pradesh High Court on 19.8.2008 and Orissa High Court on 2.9.2008. As a result, distribution of certificates of titles or pattas for the forest rights in Tamil Nadu, Andhra Pradesh and Orissa could be made only after permission was granted by the respective High Courts. The Ministry advised the concerned State Governments to file Stay Vacation Petitions in these High Courts and also filed SLPs in the Supreme Court for vacation of the stays.

4.10.10 The Government of Andhra Pradesh accordingly filed an impleading petition in the High Court of Andhra Pradesh. The Hon'ble High Court, vide its order dated 1.5.2009 permitted the State Government to issue certificates of title to the eligible forest dwelling Scheduled Tribes and other traditional forest dwellers under the Act. As a result, the State Government has been able to distribute more than 1.73 lakh titles to the eligible claimants under the Act. In the case of Orissa also, the Hon'ble High Court of Orissa, vide its order dated 12.8.2009, has vacated its interim order dated 23.8.2008, passed in WP(c) No. 4933 of 2008, and the State Government has been advised to take immediate steps for distributing all the titles approved by the District Level Committee. The Government of Tamil Nadu also assured that they are taking steps for vacation of the interim order passed by the Madras High Court, on the basis of the judgment of the Andhra Pradesh High Court.

4.10.11 To have update about the WPs filed in the Supreme Court, which is not available in the Background Note a search was made on the website of various Ministries and Organisations. As per information available on the Website⁶ of an NGO "Campaign for Survival and Dignity", Delhi, "Organisations like the Bombay Natural History Society, the Wildlife Society of Orissa, the Wildlife Trust of India, All Assam Tribal Youth League, Nature Conservation Society and the Tiger Research and Conservation Trust had also filed Writ Petitions (No. 50 of 2008 and 109 of 2008) in Supreme Court of India. The Supreme Court of India, after hearing the matter on 4th May, 2009 declined to issue any interim order despite the repeated appeals by the petitioners' Counsel. The final outcome of

⁶ www.forestrightsact.com

both the above cases, tagged together in the Supreme Court of India is not available.

(ii) Action taken by Ministry of Environment & Forests

4.10.12 The Ministry of Environment and Forests vide letter No. 5-5/86-FC dated 25/11/1994 addressed to the Chief Secretaries of all States and UTs had prescribed guidelines for diversion of forest lands for non-forest purpose under the Forest Conservation Act, 1980. In view of the provisions contained in the the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006, the Ministry of Environment & Forests, vide their O.M. dated 14.3.2008, suggested to the Ministry of Tribal Affairs a procedure to be followed for seeking prior approval for diversion of forest land for non-forest purposes for facilities managed by the Government under Section 3(2) of the Act. The Ministry of Tribal Affairs vide their letter No. 23011/15/2008-SG-II dated 18th May, 2009 **ANNEXURE 4.IV** have laid down the procedure for seeking prior approval for diversion of forest land for non-forest purposes for facilities managed by the Government under Section 3 (2) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

(iii) Action taken by Ministry of Panchayati Raj

4.10.13 The Ministry of Panchayati Raj is the Nodal Ministry with respect to the implementation of the Panchayats (Extension to the Scheduled Areas) Act, 1996. The Gram Sabhas have been given vital roles and responsibilities under this Act. The primary responsibility w.r.t. the settlement of claims of the forest dwellers on the forest land under the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006 also lies with the Forest Rights Committees of the Gram Sabhas. Therefore, the Ministry of Panchayati Raj has also addressed the Chief Secretaries/ Administrators of all States/ UTs on 15.2.2008, suggesting that all the States may organize Gram Sabhas during which the provisions of the Act and the rules and the roles and responsibilities of Panchayati Raj Institutions, Gram Sabhas and Forest Rights Committees be explained. In the Conference of the Chief Ministers and State Ministers in-charge of State Forest Departments and Tribal Welfare Department held on 4th and 5th November, 2009, the Ministry of Panchayati Raj made a detailed presentation with regard to the functioning of Panchayati Raj Institutions and the tribal areas. With reference to the implementation of the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006, the Ministry of Panchayati Raj informed that model guidelines have been circulated to all the States/ UTs to vest the Gram Sabhas with powers and frame PESA Rules and existing instructions to enable Gram Sabha to exercise power and functions. The Ministry of Panchayati Raj further emphasized that the Gram Sabhas have to determine the extent and nature of individual or Community Forest Rights which include right of residence, settlement, traditional knowledge, rehabilitation, grazing and fishing and ownership of Minor Forest Produce (which also includes high value items like Bamboo, Tendu, Lac) and other traditional rights

(iv) Action taken by Ministry of Information & Broadcasting

4.10.14 Ministry of I&B had requested the Ministry of Tribal Affairs on 24.1.2008 to provide software/ publicity content to PIB, DAVP, AIR and

Doordarshan for providing media support to the implementation of the Act. The same was provided to these media units on 8.2.2008. Subsequently the said publicity material was also provided to the Directorate of Field Publicity on 7.4.2008. Detailed information about action taken by the Ministry of Information and Broadcasting is not available

(v) Action taken by States and UTs

4.10.15 As mentioned earlier, the Ministry of Tribal Affairs vide its letter dated 25.02.2008 has envisaged action to be taken by the States and UTs on select parameters and submit monthly progress by uploading the data through the web-based monitoring system at <http://forestrights.gov.in>. The first progress Report on the implantation of the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006 in each State/UT was released by the Ministry of Tribal Affairs on its website on 07/05/2008. A copy of this Action taken report is placed at **ANNEXURE 4.V**. As per information about the reporting of the progress on the website of the Ministry, following is the position regarding the States which were not entering data on the web-based monitoring system.

(A) List of States not Entering Committee Data:

1. ANDAMAN AND NICOBAR ISLANDS
2. ARUNACHAL PRADESH
3. DADRA AND NAGAR HAVELI
4. DAMAN AND DIU
5. GOA
6. GUJARAT
7. MEGHALAYA
8. MIZORAM
9. SIKKIM
10. TAMIL NADU
11. UTTARANCHAL
12. UTTAR PRADESH

(B) List of States not Entering Claim Data:

1. ANDAMAN AND NICOBAR ISLANDS
2. ASSAM
3. ARUNACHAL PRADESH
4. DADRA AND NAGAR HAVELI
5. DAMAN AND DIU
6. GOA
7. GUJARAT
8. HIMACHAL PRADESH
9. KERALA
10. KARNATAKA
11. MIZORAM
12. MANIPUR
13. MEGHALAYA
14. SIKKIM
15. TAMIL NADU
16. UTTARANCHAL

17. UTTAR PRADESH
18. WEST BENGAL

(C) List of States/UTs that have not distributed any titles so far:

1. ARUNACHAL PRADESH
2. BIHAR
3. GOA
4. HIMACHAL PRADESH
5. KARNATAKA
6. MANIPUR
7. MEGHALAYA
8. MIZORAM
9. SIKKIM
10. TAMIL NADU (because of restrictive High Court's order)
11. UTTARANCHAL
12. DAMAN & DIU
13. DADRA & NAGAR HAVELI

4.10.16 The progress regarding implementation of the Act and Rules took certain time to settle down and, therefore, the actual progress has taken place in the year 2009 and mostly after 2008-09. Therefore, actual progress upto the end of 2009 is being reviewed in this Report. As per information available on the website of the Ministry of Tribal Affairs, status about action taken by various States and UTs in respect of each parameter as on 30/11/2009 is enclosed at **ANNEXURE 4.VI**. Salient points relating to the progress made by each State/ UT are discussed below:

(vi) General

4.10.17 Government of Arunachal Pradesh has stated that Department of Social Welfare has been selected as the Nodal Department for implementation of the Act in the State and no officer has been appointed as Nodal Officer. Government of Manipur has been stated that the tribal communities and tribal chiefs are already holding ownership of forest land as their ancestral land in non-Reserved Forest Area. Therefore, implementation of the Forest Rights Act is perceived minimal in Manipur.

4.10.18 Government of Nagaland has stated that that the land-holding system and the village system of the Naga people is peculiar in that the people are the land owners. There are no tribes or forest dwellers in the State of Nagaland to whom the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 may be applicable. However, a committee has been constituted to examine the applicability of the Act in Nagaland as per provision of Article 371(A) of Constitution of India

4.10.19 The Government of Sikkim has stated that there are no Forest Dwelling STs and Other Traditional Forest Dwellers in the true sense of the term in Sikkim. Most of the STs of Sikkim hold revenue land in their own name and they are not solely dependent on the forests for their livelihood. The Government of Sikkim has issued a notification dated 28.1.2008 regarding constitution of an Expert Committee for identification of Critical Wildlife habitats in Protected Areas

(PAs) and have also constituted the various Committees under the Act namely SDLC, DLC and SLMC. The State Government has, however, not sent any report regarding the progress of implementation of the Act in the State so far.

4.10.20 The Administration of Daman & Diu had made a reference to the Ministry of Tribal Affairs that the term “State Government” has not been defined under the Act or the Rules thereof. As Daman & Diu is a UT, they have not been able to constitute the prescribed Committees for implementing the Act. The Administration had requested that the term “State Government” may be defined that the State Government in relation to the Union Territories is the Administrator appointed under Article 239 of the Constitution of India. The Ministry had clarified the above issue to the Administration of Daman & Diu in the month of January, 2009. However, no further information about implementation of the the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006 has been received from the UT

4.10.21 As regards the Lakshadweep Union Territory, the UT Administration has intimated that there are no terrestrial forests and no forest tribes or traditional forest dwellers in Lakshadweep.

(A) Appointment of Nodal Officer

4.10.22 Nodal Officer for implementation of the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006 have been appointed in the States of Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Goa, Gujarat, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Meghalaya, Orissa, Rajasthan, Tamil Nadu, Tripura, Uttar Pradesh, Uttarakhand, West Bengal, Andaman & Nicobar Islands, Dadra & Nagar Haveli. Nodal Officer has not been appointed in the State of Mizoram.

(B) Formation of various Committees

4.10.23 As per information available, the Sub-Division Level, District Level and the State Level Committees have been formed in the States of Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Meghalaya, Mizoram, Orissa, Rajasthan, Tamil Nadu, Tripura, Uttar Pradesh, Uttarakhand, West Bengal, Andaman & Nicobar Islands and Dadra Nagar Haveli. As regards Goa, the State Government has stated that the committees are yet to be constituted.

(C) Translation of the Act and the Rules into the regional languages and distribution to Gram Sabha, FRCs etc. and

(D) Creation of Awareness about the provision of the Act and the Rules

4.10.24 The Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006 is originally notified in English as well as in Hindi. However, this may be hurdle in creating awareness among the tribals and the Gram Sabhas in the States having State languages other than English/ Hindi.

Similarly, certain tribal communities speak and use their own local languages which are different from Hindi or Devnagari. Therefore, translation of the Act into regional or local tribal languages has been envisaged. As per the available information the work relating to translation of the Act and the Rules into the regional/ local languages and distribution to Gram Sabha, FRCs etc. has been completed in the States of Andhra Pradesh, Assam, Gujarat, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Mizoram, Orissa, Rajasthan, Tamil Nadu, Tripura, West Bengal, Andaman & Nicobar Islands (translation completed but publication not yet done) and Dadra & Nagar Haveli. The States of Bihar, Himachal Pradesh, Uttar Pradesh and Uttarakhand have stated that there was no need for translation, while the translation was in progress in the State of Goa.

(E) Arrangements made for the training of PRI officials Sub-Divisional Level Committee, District Level Committee members

4.10.25 Since Gram Sabhas and the Forest Rights Committees set up by the Gram Sabhas have to play a vital role in settlement of the claims, it is necessary that the concerned officials are properly trained in the subject matter. The States of Andhra Pradesh, Chhattisgarh, Goa, Gujarat, Himachal Pradesh, Jharkhand, Kerala, Madhya Pradesh, Maharashtra, Orissa, Rajasthan, Tripura, Uttar Pradesh, Uttarakhand and West Bengal and the UT of Dadra & Nagar Haveli have reported that the training programmes have been conducted. There is no (or NIL) information in respect of the States of Arunachal Pradesh, Assam, Meghalaya, Mizoram and Tamil Nadu. The Government of Bihar has informed that the training has been completed in 50 Gram Sabhas out of 390 Gram Sabhas, while training has been started in the State of Karnataka and was under process in A & N Islands.

(F) Constitution of Forest Rights Committees by the Gram Sabhas

4.10.26 Claim applications received by the Gram Sabhas have to be processed by the Forest Rights Committee to be set up by the respective Gram Sabhas. Therefore, constitution of Forest Rights Committees by the Gram Sabhas is pre-requisite for processing of the claims. A statement indicating the position as on 30/11/2009 about constitution of Forest Rights Committees in different States is given in the following TABLE

TABLE

State	No. of Gram Sabhas	No. of Forest Rights Committees constituted
(1)	(2)	(3)
Andhra Pradesh	NA	3720
Arunachal Pradesh	NA	NA
Assam	NA	Yes
Bihar	390	In progress
Chhattisgarh	NA	Yes
Goa	NA	90
Gujarat	NA	Yes
Himachal Pradesh	151	142

Jharkhand	NA	2071
Karnataka	NA	2482
Kerala	NA	511
Madhya Pradesh	NA	Yes
Maharashtra	NA	Yes
Manipur	NA	NA
Meghalaya	NA	NA
Mizoram	NA	NA
Orissa	46515	46506
Rajasthan	NA	Yes
Sikkim	NA	NA
Tamil Nadu*	NA	In progress
Tripura	NA	Yes
Uttar Pradesh	NA	892
Uttarakhand	7541	3758
West Bengal	NA	Yes

4.10.27 It will be noticed from the above TABLE that the States of Andhra Pradesh, Assam, Chhattisgarh, Goa, Gujarat, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Mizoram, Orissa, Rajasthan, Tripura, Uttar Pradesh, Uttarakhand and West Bengal and the UT of A & N Islands have stated that the Forest Rights Committees have been constituted by the Gram Sabhas. On the other hand there is no information in respect of the States of Arunachal Pradesh, Meghalaya, Dadra & Nagar Haveli and Tamil Nadu while the work relating to Constitution of Forest Rights Committees was stated to be in progress in the States of Bihar and Himachal Pradesh.

4.10.28 In order to know that constitution of the Forest Rights Committees has been completed in all the Gram Sabhas, it is first necessary to know the number of villages and the Gram Sabhas covered under the forest areas in each State/ UT under the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006. Information on this subject has not been asked from the State Governments/ UT Administrations in the monitoring system developed by the Ministry of Tribal Affairs. Therefore, one cannot judge the actual progress of constitution of the Forest Rights Committees and the processing of the claims in each State/ UT.

(G) Filing and disposal of the settlement claims by the Gram Sabha, Sub-Divisional Level Committee and approval and distribution of title to the approved claimants.

4.10.29 Two statements regarding the progress of disposal of individual and community claims received by the Gram Sabhas and distribution of the title deeds as on 30/11/2009 are placed at **ANNEXURE 4.VII & ANNEXURE 4.VIII**. These statements are based as per information relating to progress of implementation of the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006 available on the website of the Ministry of Tribal Affairs

(i) Receipt of claims by the Gram Sabhas

4.10.30 The statement at **ANNEXURE 4.VII** reveals that the State Government of Chhattisgarh received the highest number of claims i.e. 457857 followed by Madhya Pradesh (371993), Andhra Pradesh (325105), Orissa (306034), Maharashtra (279540) and Gujarat (185222) till 30/11/2009. All these are Scheduled Area States. Other Scheduled Area States are Rajasthan, Jharkhand and Himachal Pradesh. While Jharkhand received only 4539 claims, Rajasthan received 59557 claims only. Government of Himachal Pradesh have not furnished information stating that the completion of the implementation process relating to distribution of title deeds may be extended since the tribal areas will remain cut off due to early snow in the winter till April/ May, 2010. Since information relating to receipt of claims in Himachal Pradesh State is not furnished, it appears that the State Government has not yet initiated the process even in the last two summer seasons. As regards, Jharkhand the population of Scheduled Tribes as per 2001 Census is 70.17 lakhs which is more than the ST population (66.17 lakhs) in the State of Chhattisgarh. It is, therefore, surprising that number of claims filed in the State of Jharkhand upto 30/11/2009 is 4539 only; and possibly indicates that the work relating to inviting claims and distribution of title deeds is not in full swing in the State of Jharkhand. The State Government should create more awareness among the tribal dwellers in the forest area of the State and accelerate the process of inviting applications and disposal by various committees in the State. As per information available on the website of Ministry of Tribal Affairs, the guidelines for implementation of the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006 stipulate that the distribution of title deeds should have been completed by all States by the end of December, 2009. The available data show that the State Governments have to take more vigorous action for proper implementation of the Act.

4.10.31 The Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006 and Rules provide for settlement of individual as well as community claims. It will be noticed from the statement at **ANNEXURE 4.VIII** that only some of the States have furnished information about individual as well as community claims separately. It is, therefore, not clear whether community claims were received in those States or not. The claim of community over land and resources is of much relevance to all the inhabitants of the area and therefore, settlement of community claims and distribution of title deeds about community rights also has same relevance as the settlement of individual claims. Therefore, **Commission recommends that the Ministry of Tribal Affairs may advise the State Governments to furnish complete data on the monitoring system, web based or other wise.**

(ii) Disposal of claims by the Gram Sabhas and District Level Committees

4.10.32 Regarding disposal of the claims it is noticed from the statement at **ANNEXURE 4.VII** that upto 30/11/2009, Andhra Pradesh has disposed off highest number of claims (93.6%) followed by Chhattisgarh (86.05%), Rajasthan (55.38%), West Bengal (26.74%) and Orissa (19.04%). Information relating to

disposal of claims in respect of Madhya Pradesh State is not clear. Out of 371993 claims received by the Forest Rights Committees of the Gram Sabhas, the number of claims finally referred by Sub-Divisional Level Committee to District Level Committee is 333644 thereby rejecting 38349 claims. The number of claims approved for distribution of title by the District Level Committees is stated to be 315223. This indicates that 18421 claims have either been rejected by DLC or these claims were still pending for disposal by DLC and therefore a maximum of 56770 claims should have been rejected. However, the information furnished in respect of the Government of Madhya Pradesh indicates rejection of 227964 claims. Out of 315223 claims approved for distribution of titles 47460 titles have been distributed while 39799 titles were ready for distribution as on 30/11/2009. The sum of the claims shown as rejected (227964), claims granted title (47460) and the claims for which titles are ready (39799) comes to 315223. (The information relating to earlier periods also indicate similarly discrepancies) This does not take into account the claims already rejected by Gram Sabhas, and the SDLCs. There is no information about disposal/ rejection of claims in respect of the States of Assam, Bihar, Jharkhand, Karnataka, Tamil Nadu, Tripura, UP and Uttarakhand. The disposal of claims in the State of Tamil Nadu is held up due to the stay granted by the Madras High Court. **The State Government of Tamilnadu should take up the matter before the Hon'ble High Court of Madras for getting the stay vacated in the interests of the tribals living in forest.**

(iii) Final disposal of claims through distribution of title deeds

4.10.33 The disposal of the claims is finally done by the District Level Committees and, therefore, the claimants whose names are approved by the District Level Committees are entitled for allotment of title deeds. The disposal of the claims include the claims finally approved for grant of titles by DLCs and those rejected by the FRCs of the Gram Sabha or by SDLCs or DLCs. Therefore, the progress relating to distribution of title deeds has to be finally seen w.r.t. the number of claims finally approved in each State. Information in column (8) of the statement at **ANNEXURE 4.VII** indicate that the highest number of title deeds were distributed in the State of Chhattisgarh. Out of 393991 cases disposed in the State 192088 claims were approved for grant of titles and all of them (100%) have been granted the title deeds, although 63866 claims were still pending for disposal at the end of 30/11/2009. Similarly in the State of Andhra Pradesh, against the disposal of 304342 applications (out of 325105 claims) titles have been approved for 180047 claims, i.e. 55.38% of the claims have been approved for titles. By the end of 30/11/2009 the Government of Andhra Pradesh have stated to have distributed 173052 titles leaving a backlog of only 3.90% of the approved claims. Against the approval for grant of title deeds to 315223 claimants, the Government of Madhya Pradesh have distributed 47460 titles while 39799 titles were ready for distribution. As per this situation where the number of rejection is very high, the distribution of title deeds to approved claimants also appear to be a long drawn process impossible to achieve by end of December, 2009. The Government of Tripura has approved 87212 claims for grant of title and 50.26% of them (43836) have actually been distributed the title deeds.

4.10.34 In case of Rajasthan, against the disposal of 32987 claims (55.38%) out of 59557 claims received, the District Level Committees has finally approved for grant of title deeds to 10912 (18.32%) claimants only. Against this, title deeds have been distributed to a total of 6454 claimants making an achievement of 59.12% in regard to distribution target of 10192. As regard the Orissa State against the disposal of 58277 claims only (19.07%) out of 306034 claims received upto 30/11/2009, the DLCs has approved 58098 individual claims and 179 community claims for grant of title deeds. However, title deeds have been distributed to 50190 (86.13% of the approved) claimants. The position in Maharashtra is very poor as only 4807 claims (1.40%), out of 279540 claims filed with FRCs, have been disposed off. Similarly, the distribution of title deeds in the State is also not increasing as only 2453 titles have been granted till 30/11/2009. This is a very disheartening situation regarding grant of title deeds to the tribal and other forest dwellers in the State of Maharashtra. The situation is also similar in the State of Gujarat, as only 9272 (5%) of the 185222 claims have been disposed off so far. **The State Government of Gujarat has to take major initiative to dispose off remaining large chunk (95%) of the claims received in the State within a set time frame otherwise the objective of timely settlement of tribals as per the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006 will be defeated.**

4.10.35 In the State of West Bengal, against disposal of 37926 claims (26.74%) out of 141783 claims received by the Committees 17070 claims only have been approved for grant of titles, while rejecting 20856 (54.99%) claims. As regards grant of actual title deeds, 11101 claimants have been granted the deeds and 3894 claims were ready for distribution. It is seen that on the one hand, the disposal of the claims in the State of West Bengal is very slow on the other hand rejection of the claim is also very high. **The State Government of West Bengal has to take suitable steps to dispose off remaining (74%) of the claims received in the State within a set time frame and to ensure that genuine claims are not rejected.**

4.10.36 The over all position prevailing in most of the States indicate that (i) a large proportion of claims have not yet been disposed off, (ii) ratio of rejection out of the claims disposed by the various Committees is very high and (iii) barring a few States the pace of distribution of title deeds is slow. **The Commission, therefore, recommends that the Ministry of Tribal Affairs and the State Governments should evolve a strategy (i) for disposal of all the claims within a prescribed time frame, (ii) ensuring that genuine claims are not rejected, (iii) title deeds are distributed to all the approved claimants within the set time frame and (iv) furnishing full details in respect of individual claims as well as community claims separately.**

CHAPTER 5

SCHEDULED TRIBE CERTIFICATES - ISSUES

5.1. Definition of Scheduled Tribes

5.1.1 The Constitution of India makes special provisions for safeguarding and promoting the rights of Scheduled Tribes and for their development. There are also several schemes and orders of the Government for the welfare and development of the Scheduled Tribes. In order to avail such rights and benefits the claimant has to identify himself as belonging to one of the Scheduled Tribes. As per Article 366 (25) of the Constitution, Scheduled Tribes means such tribes or tribal communities as are deemed under Article 342 of the Constitution to be Scheduled Tribes. The provisions under Article 342 read as follows:

342(1) **Scheduled Tribes** --- the President may with respect to any State or Union Territory, and where it is a State, after consultation with the Governor thereof, by a public notification, specify the tribes or tribal communities or part of or groups within tribes or tribal communities as Scheduled Tribe in relation to that State or Union Territory as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

5.2. Specification/ Categorisation of Scheduled Tribes

5.2.1 Articles 366 and 342 both refer to the term Scheduled Tribes but the Constitution is silent about criteria for specification of a community as a Scheduled Tribe. However, the words and the phrase 'tribes or tribal communities or part of or groups within tribes or tribal communities as Scheduled Tribe in relation to a State or Union Territory' in Art. 342 relating to specification of Scheduled Tribes has a history.

(i) Pre-Independence

5.2.2 The terms "Tribe", "Primitive Tribe", "Criminal Tribe" and "Backward Tribe" have been used in the past to identify the communities needing special treatment on the basis of specific tribal traits. Initially some communities, which were suffering due to practice of untouchability, were specified as "Exterior Castes" and poor tribal communities were specified as Primitive Tribes in the Census for the year 1931. In the year 1935 some tribal communities were notified as Backward Tribes under the Government of India Act, 1935 on the basis of the outcome of the Census of India 1931. Some communities, which the then British Government in India found it difficult to settle peacefully, were declared "Criminal Tribes". Similarly, some of the specific tribal areas, in which the then British

Government could not maintain law and order as per their way of Administration, were declared as "excluded areas" and "partially excluded areas". Those excluded areas had their own system of Administration, as per their culture, beliefs, way of living and hierarchy among the tribal communities living in those areas.

(ii) Post-Independence

5.2.3 The so called "Criminal Tribes" were de-notified soon after adoption of the Constitution of the independent India. The lists of those tribes or tribal communities or part of or groups within tribes or tribal communities which were considered as backward in a State were specified as Scheduled Tribe in relation to that State in the year 1950. Similar lists in respect of Union Territories (initially categorized Part 'C' and Part 'D' States) were specified in the year 1951.

(iii) Backward Classes Commission (Kalelkar Commission)

5.2.4 Article 340 of the Constitution provides for appointment of a commission "...to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be made for the purpose by the Union or any State..."

5.2.5 On January 29, 1953, the Central Government appointed a Backward Classes Commission under the provision of Article 340 of the Constitution to investigate the conditions of socially and educationally backward classes. The Backward Classes Commission was set up with Kaka Kalelkar as its Chairman. In the preamble to their questionnaire regarding Scheduled Tribes, the Backward Classes Commission observed as follows:

"the Scheduled Tribes can also be generally ascertained by the fact that they live apart in hills, and even where they live on the plains, they lead a separate , excluded existence and are not fully assimilated in the main body of the people. Scheduled Tribes may belong to any religion. They are listed as Scheduled Tribes because of the kind of life led by them."

5.2.6 The Kaka Kalelkar Commission prepared a list of 2399 backward castes/ communities for the entire country and 837 of those were classified as 'most backward'. The Commission submitted its report on March 30, 1955. However, it decided not to specify any community as Backward Classes other than those already specified as Scheduled Castes or Scheduled Tribes.

(iv) Scheduled Areas and Scheduled Tribes Commission (Dhebar Commission)

5.2.7 In pursuance of the provisions of Clause (1) of Article 339, the first Scheduled Areas and Scheduled Tribes Commission was set up in 1960 under the Chairmanship of Shri U.N. Dhebar. The report of the Dhebar Commission is regarded as a high water-mark of this phase. It dealt comprehensively with a number of aspects of tribal affairs and development. Among the salient

observations of the Dhebar Commission were that the planning process was transforming the situation and important development activities had taken place in the fields of education, health and community development. A host of sectors were illumined by the suggestions and recommendations of the Commission. In forwarding the Report of Scheduled Areas and Scheduled Tribes Commission, the Chairman of the Commission stated:

"Amongst tribals also we have been able to notice four different layers – we feel that at the base of these four layers is the class of tribals which is in an extremely underdeveloped stage, and, at the topmost levels among the tribals is the layer which can well afford to forego any further help.

(v) Committee on revision of lists of SCs and STs (Lokur Committee)

5.2.8 The lists of Scheduled Castes and Scheduled Tribes appearing in the various Constitution Orders came up for criticism on a number of occasions, both in Parliament and outside, on the ground that they were not rational and contained several anomalies. It was decided to undertake review of the lists in consultation with the State Governments and others and an attempt would be made to rationalize the lists. A number of representations were received by the Government of India and the views of the Governments of the various States and Union Territories were invited thereon. They were also requested to make their own suggestions, if any. After a preliminary examination of the resultant proposals received from the States and Union Territories, a Committee, headed by Shri B.N.Lokur, then Secretary, Ministry of Law & Justice, was appointed by a Resolution dated 1st June, 1965 of the Government of India in the Department of Social Security (then in the Ministry of Home Affairs), with the following terms of reference:

- (1) *To advise on the proposals received by Government for revision of the existing lists of Scheduled Castes and Scheduled Tribes.*
- (2) *To advise whether, where a caste or a tribe is listed as a Scheduled Caste or a Scheduled Tribe in relation to a particular area in a State or an Union Territory, members of that caste or tribe residing –*
 - (i) *in other areas within the same State or Union Territory, or*
 - (ii) *in other States or Union Territories**should be recognized as belonging to the Scheduled Caste or Scheduled Tribe, as the case may be.*

5.2.9 The Lokur Committee submitted its report to the Government on 25th August, 1965. **Observations** made by the Committee in Para 10 and 12 of the report, **which are still relevant**, are reproduced below:

10. The specification of tribes and tribal communities as Scheduled Tribes present some problems. Even the social scientists have found it difficult to evolve universally acceptable definition for a tribe. The difficulty in setting out formal criteria for defining a tribe arises from the fact that the tribes in India are, and have been for some decades, tribes in transition. The first serious attempt to list primitive tribes was as in the case of

depressed castes, made at the census of 1931. Subsequently, under the Government of India Act, 1935 a list of "backward tribes" was specified for the Provinces of India. The list of Scheduled Tribes was prepared in 1950 by making additions to the list of backward tribes under the Government of India Act 1935; in considering fresh proposal for inclusion in the list it was noted that "care was necessary in drawing up the schedule in order to ensure that communities which had been assimilated in the general population were not at this stage invested with an artificial distinctiveness as tribes and the communities which might be regarded as tribes by reason of their social organisation and general way of life but which were really not primitive should not newly be treated as primitive.

X X X X X X

12. *It will be observed that in 1931 and 1935 as well as in 1950 and 1956, it was acknowledged that every tribe need not be regarded as requiring special treatment; the list of 1931 was of "primitive tribes" while the list of 1935 was of "backward tribe" and primitiveness and backwardness were the tests applied in preparing the list in 1950 and 1956. In revising the list of Scheduled Tribes, we have looked for indications of primitive traits, distinctive culture, geographical isolation, shyness of contact with the community at large and backwardness; we have considered that tribes whose members have by and large mixed up with the general population are not eligible to be in the list of Scheduled Tribes.*

5.2.10 The proposals for amendment of the lists of Scheduled Tribes received from various States were examined by the Government on the basis of the recommendations of the Lokur Committee and a Bill for Comprehensive revision of the lists of Scheduled Tribes and Scheduled Castes was introduced in the Lok Sabha on 12th August 1967. The motion for the reference of the Bill to a Joint Committee of the Houses was adopted by the Lok Sabha and concurred by the Rajya Sabha. The Joint Parliamentary Committee under the Chairmanship of Shri Anil K. Chanda was thus constituted consisting of 33 members from both the Houses. This Committee considered certain specifications of the communities to be considered as Scheduled Tribes. This Committee also adopted the criteria for judging the status of a community as a tribe as (i) indication of primitive traits, (ii) distinctive culture, (iii) geographical isolation, (iv) shyness of contact with the community at the large and (v) backwardness. The Bill, however, lapsed due to dissolution of the Lok Sabha in the year 1971. Finally, the comprehensive revision of lists of Scheduled Tribes (and Scheduled Castes) was done in the year 1976 vide the Constitution (Scheduled Castes and Scheduled Tribes) Orders Amendment Act, 1976. The list of Scheduled Tribes is State/UT/area specific and a community declared as a Scheduled Tribe in a State/UT/ area need not be so in another State/UT/ area.

5.2.11 Criteria for identifying the communities as (Scheduled Castes and) Scheduled Tribes was thus formulated by the Government on the basis of the references, observations, findings and recommendations contained in the report of the Lokur Committee. The same criteria was applied while examining the proposals for the revision of the lists of Scheduled Castes and Scheduled Tribes.

(vi) Synonyms and Sub-tribes

5.2.12 In the case of Bhaiya Ram Munda Vs. Anirudh Patar (AIR 1971 SC 2533) the Hon'ble Supreme Court of India held as given below:

Evidence is admissible for the purpose of showing what an entry in the Presidential Order was intended to mean, but not so as to modify the order by including other tribes. Since the first respondent's case was not that Patars are a district community who are regarded as Mundas but that Patars are Mundas, evidence may be given to show that the entry Munda includes Patars.

5.2.13 In the light of the Supreme Court's ruling mentioned above the Government of India, in consultation with the Ministry of Law and the Registrar General of India of India, specified equivalent names or names of synonyms and sub-castes/ tribes of (i) the Scheduled Castes and the Scheduled Tribes in relation to the States of Andhra Pradesh (**ANNEXURE 5.IA**), Bihar (**ANNEXURE 5.IB**), Gujarat (**ANNEXURE 5.IC**). The above mentioned order further clarify that the equivalent names, etc., mentioned in the Orders may be used only for the purpose of verification of Scheduled Castes and Scheduled Tribes claims and are not alterations/ amendment of parts of Schedule to the Presidential Order.

(vii) Original Constitution (Scheduled Tribes) Orders

5.2.14 So far following ten Constitution (Scheduled Tribes), Orders have been issued under Clause (1) of Article 342 of the Constitution

S. No.	Name of the Order	Date of notification of the Order	Name (s) of State (s)/UT(s) for which the Order is applicable
(1)	(2)	(3)	(4)
1.	The Constitution (Scheduled Tribes) Order, 1950	6.9.1950	Assam, Bihar, Bombay, Madhya Pradesh, Madras, Orissa, Punjab, West Bengal, Hyderabad, Madhya Bharat, Mysore, Rajasthan, Saurashtra and Travancore-Cochin
2.	The Constitution (Scheduled Tribes) (Part C States) Order, 1951	20.9.1951	Ajmer, Bhopal, Coorg, Himachal Pradesh, Kutch, Manipur, Tripura and Vindhya Pradesh
3.	The Constitution (Andaman and Nicobar Islands) Scheduled Tribes Order, 1959	31.3.1959	Andaman & Nicobar Islands
4.	The Constitution (Dadra and Nagar Haveli) Scheduled Tribes Order, 1962	30.6.1962	Dadra & Nagar Haveli
5.	The Constitution (Uttar Pradesh) Scheduled Tribes Order, 1967	24.6.1967	Uttar Pradesh
6.	The Constitution (Goa, Daman & Diu) Scheduled Tribes Order, 1968	12.1.1968	Goa, Daman & Diu

(1)	(2)	(3)	(4)
7.	The Constitution (Nagaland) Scheduled Tribes Order, 1970	23.7.1970	Nagaland
8.	The Constitution (Sikkim) Scheduled Tribes Order, 1978	22.6.1978	Sikkim
9.	The Constitution (Jammu & Kashmir) Scheduled Tribes Order, 1989	7.10.1989	Jammu & Kashmir
10.	The Constitution (Jammu & Kashmir) Scheduled Tribes Order, 1991	20.8.1991	Jammu & Kashmir

(viii) Modifications/ amendments made in some of the original Constitution (Scheduled Tribes) Orders

5.2.15 According to Clause (2) of Article 342 of the Constitution, any amendments in the lists of the Scheduled Tribes promulgated through the original Constitution (Scheduled Tribes) Orders issued under Clause (1) of Article 342 can be effected only through the Acts of Parliament. In pursuance of these provisions, comprehensive amendments have been made four times in the original orders in the year 1956, 1976, 2002 and 2003 through the following Orders/Acts:-

S. No.	Name of the Order	Date of notification of the Order/ Act	Name (s) of State (s)/UT(s) for which the Order/ Act is applicable
(1)	(2)	(3)	(4)
1.	The Scheduled Castes and Scheduled Tribes Lists (Modification) Order, 1956	29.10.1956	Andhra Pradesh, Assam, Bihar, Bombay, Kerala, Madhya Pradesh, Madras, Mysore, Orissa, Punjab, Rajasthan, West Bengal and then Part C States of (i) Himachal Pradesh, (ii) Manipur, (iii) Tripura and the (iv) Laccadive, Minicoy and Amindivi Islands.
2.	The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976	18.9.1976	Andhra Pradesh, Assam, Bihar, Gujarat, HP, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Orissa, Rajasthan, Tamil Nadu, Tripura, West Bengal and UT of A&N Islands.
3.	The Constitution (Scheduled Castes and Scheduled Tribes) Orders (Amendment) Act, 2002	7.1.2003	Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Goa, Gujarat, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Mizoram, Orissa, Sikkim, Tamil Nadu, Tripura, Uttar Pradesh and West Bengal.
4.	The Constitution (Scheduled Tribes) Order (Amendment) Act, 2003	19.9.2003	Assam

(ix) Re-organisation of the States, 2000

5.2.16 The States of Bihar, MP and UP were bifurcated into 6 States. Vide the Bihar Reorganisation Act, 2000; the Bihar State was bifurcated into Bihar and Jharkhand States. Similarly, vide the Madhya Pradesh Reorganisation Act, 2000 the MP State was bifurcated into Madhya Pradesh and Chhattisgarh States and the State of Uttar Pradesh was bifurcated into Uttaranchal and Uttar Pradesh States vide the UP Reorganisation Act, 2000. Consequent upon re-organisation, the lists were further revised in respect of the States of Bihar, MP and UP. Vide the same Reorganisation Acts, the lists of Scheduled Tribes were also issued in respect of the newly carved out States of Jharkhand, Chhattisgarh and Uttaranchal (subsequently renamed as Uttarakhand) States.

(x) Applicability of the Constitution Order/ Amendment Order specifying the communities as Scheduled Tribes

5.2.17 The Constitution Order specifying communities as Scheduled Tribes under Article 342 (1) of the Constitution in relation to certain States was issued in 1950. Another similar Order was issued in respect of the then Part 'C' States in 1951. However, Orders relating to U.P. were issued for the first time in 1967 and those relating to Jammu & Kashmir State were issued in the 1989. The status of persons belonging to Scheduled Tribes in U.P. and J&K State has to be determined with reference to their places of ordinary residence as on date of issue of the particular Constitution Order. Similarly, in the context of removal of area restrictions in relation to certain communities which were specified vide the Constitution Orders issued in 1950 and 1951 and in the context of inclusion of new communities as Scheduled Tribes in the existing lists specified vide the original Constitutional Orders, the date of applicability of the amendment has to be the date of notification of the amendment Act but not the date of notification of the original Constitutional Order(s).

5.2.18 The problem has increased alarmingly in the recent past after reorganisation of the States of Bihar, Madhya Pradesh and Uttar Pradesh. The characteristics and socio-educational-economic conditions of original Scheduled Tribes of the undivided States have not changed overnight due to reorganisation of the States. A Scheduled Tribe person of the erstwhile undivided State was treated as Scheduled Tribes irrespective of his actual place of living in any part of the undivided State, at the time of making claim/ availing admissible benefit. After reorganisation of the States and carving out of new States in the year 2000, the claimant suddenly has lost his status as Scheduled Tribe because he has to show evidence about his place of ordinary residence with respect to the year 1950 (the date of issue of first original Constitutional Order) and not with respect to the date of notification or implementation of the concerned State Reorganisation Act.

5.2.19 However, instructions are not clear about the status of persons belonging to a Scheduled Tribe community included for the first time in the list of STs in respect of his/her State/UT. Status of a person in respect of a community included for the first time in an order should be considered with reference to the date of inclusion and not with the date of original Order, which has subsequently

been amended to include the said tribal community/communities. In absence of clarity in the amendment orders, tribals in almost all the States are facing difficulties in getting ST certificates after the amendments to original Orders issued in 1950, and 1951. This issue was highlighted in detail in 2nd Report of the Commission and necessary recommendation was also made to overcome the problem. As the Report has not been laid in the Parliament and the Nodal Ministry has also not intimated its views on the subject, **the Commission reiterates its opinion that the amendments to original Presidential Orders issued under Article 342(1) of the Constitution should invariably include a clause clarifying that the place of ordinary residence in respect of persons belonging to the communities included in the Schedule for the first time or in cases where area restriction has been removed, the place of ordinary residence shall be determined with reference to the date of notification of the relevant amendment to the original Order.**

5.3. Revised procedure for inclusion in or exclusion from the lists of Scheduled Tribes

5.3.1 The modalities, formally laid down by the Government of India in June, 1999 for deciding the claims for inclusion in or exclusion from the lists of Scheduled Castes and Scheduled Tribes, have been revised vide the Ministry of Social Justice & Empowerment's letter No.12016/36/96-SCD (R.L. Cell)-Vol.III dated 30.7.2002 (**ANNEXURE 5.II**). The salient features of the revised modalities are indicated below :-

- (i) Cases favoured by both the State Governments and the Registrar General of India (RGI) in their most recent reports would be referred to the National Commission for Scheduled Castes and Scheduled Tribes for their opinion.
- (ii) Some issues concern not one but several States i.e. the status of SC/ST migrants. These would also be referred to the National Commission. if the RGI and majority of concerned States have supported modification.
- (iii) In the interest of fuller examination of the cases, the Commission is expected to associate panel of experts, RGI, ASI and State Governments and hold public hearings to examine claims. However, these guidelines cannot be binding on the Commission.
- (iv) Amending legislation would be proposed to the Cabinet in all cases in which the National Commission, RGI as well as the State Governments have favoured modification. Those cases with which the State Governments and the RGI are in agreement, but which the Commission have not supported, would be rejected at the level of Minister for Social Justice and Empowerment.
- (v) Claims recommended suo-moto by the National Commission would be referred to RGI and the State Governments.

5.4. Matters relating to Scheduled Tribes, their synonyms and sub-tribes received in the National Commission for Scheduled Tribes for Advice/ views/ comments.

5.4.1 The above modalities in respect of specification of Scheduled Tribes are being followed the Ministry of Tribal Affairs which is now the nodal Ministry for Scheduled Tribes matters. In view of the above guidelines, the Ministry of Tribal Affairs has so far sought the views of the National Commission for Scheduled Tribes, set up in Feb. 2004, in respect of the following proposals:

S. No.	State/ UT concerned	Proposal	Views of NCST
(1)	(2)	(3)	(4)
1	Manipur	Inclusion of MATE community in the list of Scheduled Tribes	Commission agreed to the proposal.
2	Manipur	Modification of entries at S.No. 8, 9 and 10 in the list of Scheduled Tribes of Manipur	Agreed to modify (add the communities) as highlighted below: S.No.8-Kabui, <u>Inpui, Rongmei</u> S.No.9-Kacha Naga, <u>Liangmai, Zeme</u> S.No.10-Koirao, <u>Thangal</u>
3	Tamil Nadu	Inclusion of 'MALAYALI GOUNDER' without any area restriction in the list of Scheduled Tribes of TN in place of existing entry 'MALAYALI' in relation to the districts of Dharmapura, North Arcot, Pudukotta, South Arcot, and Tiruchirapali.	Commission agreed to the proposal.
4	Arunachal Pradesh	Substituting the existing entry 'GALONG' by 'GALO' in the list of Scheduled Tribes of Arunachal Pradesh	Commission agreed to the proposal.
5	Andhra Pradesh	Amendment of Article 341 of the Constitution of India to confer enabling powers for categorization of Scheduled Castes, specified in respect of a State or a Union Territory – issue of Sub-Categorisation of SCs in Andhra Pradesh.	Proposal not agreed as the Commission remained unconvinced about the utility of sub-categorisation of Scheduled Caste communities.

6	Laksha- dweep	Amendment to Part I of the Schedule to the Constitution (STs) (UTs), Order, 1951 – In relation to the UT of Lakshadweep.	Dis-agreeing with the proposal, NCST advised that Section 2 of the proposed Amendment Bill may be substituted as follows: 2. In the Schedule to the Constitution (Scheduled Tribes) (Union Territories) Order 1951 in Part I— Lakshadweep the entry after the words “Throughout the Union Territory” may be substituted by the following: Original inhabitants (and their off-springs) of Laccadive, Minicoy and Aminidivi Islands who are permanent residents of these Islands on the date of constitution of these Islands as Union Territory of Lakshadweep.
7	Karnataka	Inclusion of "MEDARA" community as synonym of "MEDA" ST community at S.No. 37 in the list.	Proposal agreed

5.4.2 The detailed observations of the Commission and the recommendations/ views communicated by the National Commission for Scheduled Tribes to the Ministry of Tribal Affairs and other concerned authorities have been discussed in the Chapter on "Consultation on Policy Matters" in this Report.

5.5. Amendment of the lists of Scheduled Tribes or clarifications regarding

5.5.1 As mentioned earlier, the Notification specifying certain communities as Scheduled Tribes has to be issued by the President and such notification can not be varied except by an amendment carried out through an Act of Parliament.

5.5.2 In their order dated 02/05/1990 in Writ Petition (Civil) No. 989 of 1989 in Marri Chandra Shekhar Rao Vs. Dean, Seth G.S. Medical College, the Hon'ble Supreme Court declared that :-

“Subject to the law made by Parliament under sub-section (2) of Section 342, the tribes or tribal communities or parts of or groups within tribes or tribal communities specified by the President by a public notification shall be final for the purpose of the Constitution. They are the tribes in relation to that State or Union Territory and that any tribe or tribes or tribal communities or parts of or groups within such tribe or tribal communities, not specified therein in relation to that State, shall not be Scheduled Tribes for the purpose of the Constitution. The father of one Chandra Shekhar Rao who hailed from Tenali in Guntur District of Andhra Pradesh is a Settibalija by

caste which is recognised as a backward class. His father obtained a certificate from the Tahsildar, Tenali that he belonged to Scheduled Tribe and had got an appointment in a public undertaking of Bombay. On the basis of social status certificate obtained by his father and entries in service record of his father, he applied for admission into medical college as Scheduled Tribe. When he was not admitted, he filed the writ petition in this Court under Article 32 seeking a declaration that Settibalija though was not declared to be Scheduled Tribe in Maharashtra it was a Scheduled Tribe for the purpose of the Constitution and that he was entitled to the admission into the medical college on the basis of his social status as a Scheduled Tribe. This Court did not uphold the contention. This Court held that the declaration by the President by a public notification in relation to a State in consultation with the Governor of that State is conclusive and court cannot give such a declaration. The same view was reiterated by another Constitution Bench in Action Committee on issue of Caste Certificate to SCs and STs in the State of Maharashtra v. Union of India.

5.5.3 The issuing of clarification(s), if any, regarding a community being a synonym or even sub-tribe of a notified Scheduled Tribe rests with the Government of India through the Nodal Ministry which has adopted the modalities discussed above. It has, however, been noticed that some State Governments have not issued timely instructions to the concerned authorities (Certificate issuing authorities and the appointing authorities) regarding amendment of the list of the Scheduled Tribes in respect of the State. This results in delay in grant of caste certificates to eligible persons. This has also resulted in extension of benefits, which are admissible to genuine Scheduled Tribes only, to large number of non-entitled persons whose communities have been de-scheduled. **The Commission recommends that the Ministry of Tribal Affairs may issue instructions to all the State Governments and Central Ministries/ Departments and PSEs that the lists of Scheduled Tribes as Notified (with upto date amendments) should be followed by all concerned scrupulously.**

5.6. Format of the Caste Certificate

5.6.1 The Commission has noticed that the certificate issuing authorities in the States/ districts are not issuing certificates in the prescribed format. Some certificates are still issued in a casual manner containing information about present residence of the person only. In fact the format of the certificate prescribed by the Government of India vide MHA No. 12025/2/76 SCT. I dated 22.03.1977 (placed at **ANNEXURE 5.III**) also has not helped curbing the evil of availing benefits on the basis of false community certificate, which, in the recent past, has been assuming disturbing dimensions. To avoid misuse of certificates and also to avoid issue of false community certificates, certain amendments are required to be made in the prescribed format and the instructions also have to be issued. The existing format for issue of community certificates enjoins upon the issuing authorities to indicate in para 1 of the format the name of the Order or the Act under which the caste/tribe of the person was recognized as Scheduled Tribe e.g. The Constitution (Scheduled Tribes) Order, 1950 and the relevant Amendment Act. The Commission has observed that the name of the relevant Order and the Amendment Act is not correctly indicated by the issuing authorities,

which creates problems at the time of verification of the genuineness of the community certificates. In fact the certificate issuing authorities are not fully aware of all the Constitution Orders and amendments thereto issued from time to time.

5.6.2 Another important fact remains that the Ministry of Tribal Affairs and the Ministry of Social Justice and Empowerment which are nodal Ministries in respect of all matters concerning Scheduled Tribes and Scheduled Castes respectively and are handling the matters regarding revision of lists of Scheduled Tribes and Scheduled Castes respectively do not keep all concerned upto date by sending copies of the Constitution (SCs and STs) Orders Amendment Acts notified by them. The original Constitution (SCs and STs) Orders and Amendment Acts as notified by the Nodal Ministries have neither been made available in their reports nor on their Websites. Each Amendment Act is bound to make an impact on the status of a person whose community has been included in the list or has been excluded from the list. The certificate issuing authorities also ought to be updated on each Order and Amendment Act in original form on the subject. The candidate applying for the certificate should also be made aware about the upto date notifications on the subject. Therefore, the application form for obtaining the certificate must indicate the list of Constitution Orders and Amendment Acts relevant to the State/ UT. This will also enable the appointing authorities and the admission authorities in conducting preliminary examination of the certificates submitted by the SC and ST candidates. **The Commission, therefore, recommends that the Ministry of Tribal Affairs and the Ministry of Social Justice and Empowerment as well as the concerned Departments of the State Governments/ UT Administrations should place the copies of all Constitution (SC and ST) Orders and the Orders Amendment Acts, in their Original form on their respective Website.**

5.6.3 The Commission has noted that the Government of India in the MHA, (then Nodal Ministry for matters relating to Scheduled Castes and Scheduled Tribes) had earlier prescribed a caste/ tribe certificate format in 1982 for the convenience of those SCs/STs who had migrated from their original State to another State. By that order, they could obtain certificate for their children from the State of migration on the basis of caste/tribe certificates issued to them from the State of their origin (place of ordinary residence). This was meant to avoid inconvenience and hardships to them to the extent that they were not required to go back to their State/UT of origin and to get the caste/tribe certificate from the prescribed authority. This format was further revised in 1984 and a common format of certificate applicable to original SC/ ST residents as well as migrant SC/ST persons was prescribed. The list of authorities competent to issue the certificate was also incorporated in the format. The Ministry of Home Affairs had advised all the State Governments and UT Administrations to advise the prescribed competent authorities to issue the SC/ ST certificates in the revised formats after satisfying themselves of correctness of the certificate after proper verification based on the revenue records/ through reliable enquiries. It was stressed in the order that no other authority may be authorized to issue the SC/ ST certificates. A copy of the MHA letter No. BC – 16014/1/82-SC&BCD –I dated 6th August, 1984 alongwith its enclosure (revised format of caste certificate and list of authorities competent to issue certificate) is placed at **ANNEXURE 5.IV.** **The Commission recommends that the DoPT should issue instructions to all**

concerned that the children of the migrant SC/ ST parents do not find difficulty in obtaining the caste certificates in the revised format prescribed vide letter dated 6th August, 1984. To facilitate this process copies of all the original Constitution Orders and the Amendment Acts should be available in the office of each authority competent to issue the certificates and also placed prominently on the Websites of Ministry of Tribal Affairs, Ministry of Social Justice and Empowerment and Department of Personnel and Training as also on the Websites of the concerned Departments of the State Governments/ UT Administrations as well as each district administration respectively.

5.6.4 The Commission further recommends that the certificate issuing authorities should ensure that all details required to be filled in each blank space in the certificate, as per format, should be furnished before signing and issuing the SC/ ST community certificate (including complete present address as well as address of ordinary residence, name of father. name of the ST community and the relevant Constitution Order and the amendment Order, if any, under which the community has been specified in relation to the State of ordinary residence of the certificate holder).

5.7. Competent Authorities to Issue Certificates

5.7.1 As mentioned earlier, the format of the Caste Certificate and the list of the authorities competent to issue the certificates have been prescribed by the Nodal Ministry in the Government of India. Chapter 13 of the Brochure on reservation in services for Scheduled Castes, Scheduled Tribes and OBCs published by the Department of Personnel and Training, accordingly, prescribe that the Caste Certificate issued by the following authorities in the prescribed format only will be accepted by the appointing authorities as sufficient proof in support of the candidates' claim as belonging to Scheduled Caste or Scheduled Tribe:

- (i) District Magistrate/Additional District Magistrate/Collector Deputy Commissioner/ Additional Deputy Commissioner/Deputy Collector/1st Class Stipendary Magistrate/Sub Divisional Magistrate/Taluka Magistrate/ Executive Magistrate/Extra Assistant Commissioner.
- (ii) Chief Presidency Magistrate/Additional Chief Presidency Magistrate/ Presidency Magistrate
- (iii) Revenue Officer not below the rank of Tehsildar; and
- (iv) Sub-Divisional Officer of the area where the candidate and/or his family normally resides.

5.8. Status of Scheduled Tribes in various situations

5.8.1 The Ministry of Home Affairs, which was the Nodal Ministry for the subject matters relating to development of Scheduled Tribes prior to 1985 had issued instructions/ clarifications on the status of Scheduled Castes and Scheduled Tribes in various situations vide letter No. 35/1/72-RU(SCT-V) dated

2nd May, 1975, placed at **ANNEXURE 5.V**. In some situation specific instructions have also been issued. These are discussed hereinafter.

(A) CLAIM w.r.t. PLACE OF ORDINARY RESIDENCE

5.8.2 Where a person claims to belong to a Scheduled Castes or a Scheduled Tribes by birth it should be verified¹:-

- (i) that the person and his parents actually belong to the community claimed;
- (ii) that the community is included in the Presidential Orders specifying the Scheduled Castes and Scheduled Tribes in relation to the concerned State;
- (iii) that the persons belong to that State and to the area within that State in respect of which the community has been scheduled ;
- (v) if the person claims to be a Scheduled Caste, he should profess either the Hindu or the Sikh religion;
- (vi) that he should be permanent resident on the date of notification of the Presidential Order applicable in his case.

5.8.3 Government of India have issued following clarifications regarding place of ordinary residence²:

(a) A person who is temporarily away from his permanent place of abode at the time of the notification of the Presidential Order applicable in his case, say, for example, to earn a living or seek education, etc., can also be regarded as a Scheduled Caste or a Scheduled Tribe, as the case may be, if his caste/ tribe has been specified in that Order in relation to his State/ Union Territory. But he cannot be treated as such in relation to the place of his temporary residence notwithstanding the fact that the name of his caste/ tribe has been scheduled in respect of that area in any Presidential Order.

(b) In the case of person born after the date of notification of the relevant Presidential Order, the place of residence for the purpose of acquiring Scheduled Caste or Scheduled Tribe status, in the place of permanent abode of their parents at the time of the notification of the Presidential Order under which they claim to belong to such a caste/ tribe.

(B) STATUS WITH REGARD TO RELIGION

5.8.4 The Scheduled Tribes are identified on the basis of their isolation and distinct culture which has no connection with any religion whatsoever. The Scheduled Tribes may, therefore, profess any religion. Thus a person belonging to any Scheduled Tribe community continues to be a Scheduled Tribe even after change of religion³.

¹ MHA .No. 35/1/72-RU(SCT.V) dated 02.05.1975

² MHA.No. 12025/2/76 SCT.I dated 22.03.1977

³ MHA .No. 35/1/72-RU(SCT.V) dated 02.05.1975

(C) CLAIMS ON MIGRATION

5.8.5 The list of Scheduled Tribes is State/UT specific⁴. Therefore:

- (i) A member of a Scheduled Tribe is eligible for benefits in his/ her state of origin only.
- (ii) A member of Scheduled Tribe Community, who migrates to other State/ UT is not entitled to get Scheduled Tribe benefits from the state to which he/ she has migrated.
- (iii) Where a person migrates from the portion of the State in respect of which his community is scheduled to another part of the same State in respect of which his community is not scheduled, he will continue to be deemed to be a member of the Scheduled Caste of the Scheduled Tribe, as the case may be, in relation to that State;
- (iv) Where a person migrates from one State to another, he can claim to belong to a Scheduled Caste or a Scheduled Tribe, only in relation to the State to which he original by belonged and not in respect of the State which he has migrated.

(D) CLAIMS THROUGH MARRIAGES

5.8.6 The guiding principle is that no person who was not a Scheduled Caste or a Scheduled Tribe by birth will be deemed to be a member of a Scheduled Caste or Scheduled Tribe merely because he or she married a person belonging to a Scheduled Caste or a Scheduled Tribe⁵.

5.8.7 Similarly a person who is a member of a Scheduled Caste or a Scheduled Tribe would continue to be member of that Scheduled Caste or Scheduled Tribe as the case may be, even after his or her marriage with a person who does not belong to a Scheduled Caste or a Scheduled Tribe.

(E) STATUS OF THE OFF-SPRINGS OF INTER-COMMUNITY MARRIAGES

5.8.8 In general, the off-spring of an inter-community married couple will have the status of being ST or non-ST in accordance with the status of his/ her father. However, the crucial test followed to decide the status of an off-spring of a couple where one of the spouses is a member of Scheduled Caste /Scheduled Tribe, is:

- Whether the child has been accepted by the Scheduled Caste /Scheduled Tribe community as a member of their community and has been brought up in that surrounding and in that community or not.
- If the child has been accepted by the Scheduled Tribe Community and has been brought up in the surrounding of Scheduled Tribe spouse then, the

⁴ MHA .No. 35/1/72-RU(SCT.V) dated 02.05.1975

⁵ MHA .No. 35/1/72-RU(SCT.V) dated 02.05.1975

child would be treated as Scheduled Caste or Scheduled Tribe. However, each case is to be examined on its merit.

5.8.9 Government of India have also circulated⁶ legal views on the following situations:-

- (i) Legal view on the status of the off-spring of a couple where one of the spouses is a member of a Scheduled Caste
- (ii) Legal views on the status of the off-springs of a couple where one of the spouses is a member of a Scheduled Tribe.
- (iii) Legal views on the status of the off-springs of a couple where both the spouses are members of Scheduled Caste/ Scheduled Tribe but each belong to a different sub-caste/ sub-tribe.
- (iv) Legal views on the status of the off-springs of a couple where one of the spouses is a member of a Scheduled Caste and the other that of a Scheduled Tribe.

Views of the National Commission for Scheduled Tribes on the status of Off-springs of Inter-Community married couple

5.8.10 As provided under Art. 338A (9) of the Constitution, the Ministry of Tribal Affairs sought the views/ advice of the National Commission for Scheduled Tribes on the proposal of the Government of Kerala to issue the Kerala (Scheduled Castes & Scheduled Tribes) Regulation of issue of community certificates (Amendment), Ordinance, 2006-Status of Off-Springs which was received from the Ministry of Home Affairs through the Ministry of Tribal Affairs. The proposal has been examined in detail and the observations of the Commission are discussed in the following paras.

5.8.11 As per instructions issued in the past by the Government of Kerala, the children of inter-caste married couple either of which being Scheduled Caste/ Scheduled Tribe were being treated as belonging to SC/ST till the pronouncement of the judgment of the Hon'ble Supreme Court in Civil Appeal No. 659 of 2003 (Punit Rai Vs Dinesh Chowdhary) which, inter-alia, laid down that *"The caste system in India is ingrained in Indian mind. A person, in the absence of any statutory law would inherit his caste from his father and not his mother even in a case of inter-caste marriage"*.

5.8.12 In compliance with the above ruling of the Hon'ble Supreme Court, the State Government issued orders clarifying, inter alia, that Scheduled Caste/ Scheduled Tribe Community certificates shall be issued to the children of inter-caste married couples only as per the caste/ community of his/her father subject to the conditions of acceptance, customary traits and tenets stipulated in the Supreme Court Judgment.

5.8.13 Taking into account the subsequent pronouncements of the Hon'ble Supreme Court and the Kerala High Court, the Govt. of Kerala proposed to amend

⁶ MHA No. 39/37/73-SCT. I dated 21.05.1977

the Kerala (SCs and STs) Regulation of Issue of Community Certificates Act, 1996 through an Ordinance. The State Govt. proposed to insert a new Clause (Clause 5A) in the Act with a view to enabling the son or daughter of an inter-caste married couple to apply for SC/ST certificate by virtue of his/her father or mother being a member of SC or ST community.

5.8.14 The text of the proposed new clause was as under:-

"5A. Issuance of community certificate to the children born of inter-caste marriages.- Notwithstanding anything contained in any other provisions of this Act, or in any other law for the time being in force or in any judgment, decree or order of any court, the Competent Authority may issue a community certificate, on an application made to it under section 4, to a person, who is the son or daughter of an inter-caste married couple and claiming the status as Scheduled Caste or Scheduled Tribe, as the case may be, by virtue of his father or mother being a member of a Scheduled Caste or a Scheduled Tribe Community, as the case may be, in accordance with the procedure and manner of issue of community certificate prescribed under sub-section (1) of section 5 and also after satisfying about the genuineness or otherwise of the claim made thereunder:

Provided that no such certificate shall be issued if,:-

- (a) either of the parents does not belong to the Scheduled Caste or the Scheduled Tribe Community, as the case may be; or
- (b) on enquiry, it is satisfied that the son or daughter, as the case may be, is living in such circumstances and enjoying such facilities and that it cannot be inferred that he has been subjected to the same handicaps, sufferings or disadvantages attached to the Scheduled Caste or Scheduled Tribe Community, as the case may be, to which one of the parents belongs.

Explanation:- For the purpose of this section the expression "inter-caste married couple" shall mean a married couple of whom one of the partners belongs to a Scheduled Caste or Scheduled Tribe Community".

5.8.15 On the basis of the conclusion drawn by the Supreme Court in para 15 of its judgment, dated 14.02.2006 in civil Appeal No. 6445 of 2000, the Ministry of Tribal Affairs supported the above amendment with slight modification in proviso(b) of the above clause which, according to MTA, should read as under:-

- (b) on enquiry, it is **satisfactorily established** that the son or daughter, as the case may be, is living in such circumstances and enjoying such facilities and that it cannot be inferred that he has been subjected **socially, economically and educationally cumulatively** to the same handicaps, sufferings or disadvantages

attached to the Scheduled Caste or Scheduled Tribe Community, as the case may be, to which one of the parents belongs.

5.8.16 The issue was considered in the meeting of the Commission held on 12/05/2008 and it was decided to have wider consultations on the issue before communicating the view of the Commission to Ministry of Tribal Affairs. Accordingly, d.o. letters were addressed to the Chief Secretaries of the Fifth Schedule States requesting them to furnish their views in the matter. The issue again came up in the meeting of the Commission held on 11/07/2008 when it was decided to obtain the views of the North Eastern States also. D.O. letters, were therefore addressed to the Chief Secretaries of the NE States also requesting them for their comments on the subject.

5.8.17 The view received from the State Governments of Chhattisgarh, Nagaland, Madhya Pradesh, Himachal Pradesh, Andhra Pradesh and Maharashtra have been compiled in the statement at **ANNEXURE 5.VI**. The remaining States have not furnished their views despite reminders.

5.8.18 In the meantime the Government of Kerala have issued a Govt. Order on 20-11-2008 (**ANNEXURE 5.VII**) authorizing the competent authorities to issue SC/ST certificates to the children born out of inter-caste married couple of which one of the parents is SC/ST after ensuring that the claimant is subjected to same social disabilities and also following the same customs and traditions and the community has accepted that person to its fold as such. The issuing authority shall also ensure that:-

- (i) each case shall be examined individually in the light of the existing facts and circumstances;
- (ii) the claimant has suffered disabilities – socially, economically and educationally;
- (iii) the society has accepted the claimant to their original fold as one among them and is living in the same social tenet.

5.8.19 The issue involves the determination of the caste of the children of the inter-caste married couples taking into account whether a particular society is patriarchal or matriarchal and the environment in which they are brought up by the parents. The relevant excerpts from the legal views on the status of off-springs of a couple where one of the spouses is a member of a Scheduled Tribe mentioned in Annexure-B to the instructions issued by the Government of India vide Ministry of Home Affairs letter, dated 21-05-1977 (**ANNEXURE 5.VIII**) are as given below:

Similarly, in V.V. Giri v/s. D.S. Dora, reported in AIR 1959 S.C. 1318 (1327) the Court held –

"The caste-status of a person in the context would necessarily have to be determined in the light of the recognition received by him from the members of the caste into which he seeks an entry"

5. *"As..... it is the recognition and acceptance by the society of the children born out of a marriage between a member of Scheduled Tribe with an outsider, which is the main determining factor irrespective of whether*

the Tribe is matriarchal or patriarchal. The final result will always depend on whether the child was accepted as member of the Scheduled Tribe or not"

6. *"The general position of the law has been stated above. However, each individual case will have to be examined in the light of existing facts and circumstances in such cases".*

5.8.20 Some of the observations of the Hon'ble Supreme Court in the following important cases relevant to the issue are as under:-

(A) Valsama Paul against Cochi University (CSR 1996)

"A candidate who had the advantageous start in life being born in forward caste by adoption or marriage or conversion, does not become eligible to the benefit of reservation either under Article 15(4) or 16(4) as the case may be. Acquisition of the status of Scheduled Caste etc. by voluntary mobility into these categories would play fraud on the constitution and would frustrate the benign constitutional policy under article 15(4) and 16(4) of the constitution. The recognition of the candidate by the member of backward class would not be relevant for the purpose of his entitlement to the reservation under article 16(4)".

(B) Punit Rai Vs Dinesh Choudhary (Judgement, dated 19-08-2003 in Civil Appeal No.659 of 2003)

"The caste system in India is engrained in Indian mind. A person, in the absence of any statutory law would inherit his caste from his father and not his mother even in a case of inter-caste marriage".

(C) Anjan Kumar Vs Union of India (Judgement, dated 14-02-2006 in Civil Appeal No.6445 of 2000).

"Para 14. In view of the catena of decisions of this Court, the questions raised before us are no more res integra. The condition precedent for granting tribe certificate being that one must suffer disabilities wherefrom one belongs. The offshoots of the wedlock of a tribal woman married to a non-tribal husband-----Forward Class (Kayastha in the present case) cannot claim Scheduled Tribe status. The reason being such offshoot was brought up in the atmosphere of Forward Class and he is not subjected to any disability. A person not belonging to the Scheduled Caste or Scheduled Tribe claiming himself to be a member of such caste by procuring a bogus caste certificate is a fraud under the Constitution of India. The impact of procuring fake/bogus caste certificate and obtaining appointment/admission from the reserved quota will have far-reaching grave consequences. A meritorious reserved candidate may be deprived of reserved category for whom the post is reserved. The reserved post will go into the hands of non-deserving candidate and in such cases it would be violative of the mandate of Articles 14 and 21 of the Constitution of India.

Para 15. The Scheduled Caste and Scheduled Tribe certificate is not a bounty to be distributed. To sustain the claim, one must show that he/she suffered disabilities –socially, economically and educationally cumulatively. The authority concerned, before whom such claim is made, is duty-bound to satisfy itself that the applicant suffered disabilities socially, economically and educationally before such certificate is issued. Any authority concerned issuing such certificates in a routine manner would be committing a dereliction of constitutional duty".

5.8.21 In line with the views expressed by the Hon'ble Supreme Court, the National Commission for Scheduled Tribes communicated the following views to the Ministry of Tribal Affairs: `

"The issue involves determination of the caste of the children of the inter-caste married couples taking into account whether a particular society is patriarchal or matriarchal, and the environment in which they are brought up by the parents. The twin tests emerging from the relevant Supreme Court decisions viz. community membership as per personal law and disabilities suffered in the course of upbringing as the member of a particular community have to be jointly applied to determine eligibility for issue of Caste certificate. Since customary/ personal laws are not always gender neutral, it is perhaps not possible to have gender neutral definition of caste/ tribal status applicable to children born to couples one of whom is the member of a Scheduled Tribe; and such offspring may be assigned the community of the father or the mother respectively, depending on the patriarchal/ matriarchal nature of the communities, involved"

(F) PUNISHMENTS FOR OFFICIALS ISSUING SCHEDULED CASTE/ SCHEDULED TRIBE CERTIFICATES WITHOUT PROPER VERIFICATION

5.8.22 Government of India have issued instructions⁷ that action would be taken against them under the relevant provisions of the Indian Penal Code if any of them is found to have issued the Scheduled Caste/ Scheduled Tribe certificates carelessly and without proper verification in addition to the action to which they are liable under the appropriate disciplinary rules applicable to them.

5.9. Current Issues relating to specification of ST communities

I. Reduced relevance of identification criterion after long exposure to development

5.9.1 As mentioned earlier in this chapter, various committees and Commissions, particularly the Lokur Committee have observed that "the pace of social change has quickened since independence through the process of various Five Year Plans and Annual Plans and educational and economic standards have

⁷ MHA No. 12025/1/82-SCT BCD III dated 29.06.1982

improved, traditional social barriers have visibly crumbled, particularly in urban and industrialized areas. No reasonable persons can claim that the social, educational and economic position of any non-scheduled caste or tribe has, during the past decade, deteriorated to such an extent as to justify a fresh claim for special treatment in relation to the rural masses of India". The Committee further observed that "in several States, it has come across a multitude of organisations of castes and tribes, a few even at the all-India level, whose main object is to secure or retain a place in the lists of Scheduled Castes and Scheduled Tribes. The motivation for the growth of such organisations arises from what may be called the very attractive "package deal" of special facilities and benefits that are provided for communities included in the Schedules. Inclusion in the lists is regarded more as a coveted prize than as a reflection of backwardness". Therefore, the criteria and the characteristic for identifying a community as Scheduled Tribe, applied in 1931, 1935 and in 1950 may not be applicable now in case of large number of communities which have been included in the schedules to various Constitution Orders issued so far.

5.9.2 The Lokur Committee had further observed that "in the interests of National Integration, we feel that the time has come when the question of de-scheduling of relatively advanced communities should receive serious and urgent consideration". This Commission is, however, of the view that large number of families belonging to several Scheduled Tribe communities would have reaped the benefit of various development programmes through successive plans, but the impact of these programmes has not reached uniformly to all members of those ST communities. **Therefore, the Commission is of the view that de-scheduling of certain ST communities as a whole would not be in the interests of still poor and backward families among those Scheduled Tribe communities. The Government may, however, devise measures to ensure that share of the weakest amongst the Scheduled Tribes in the development schemes and economic upliftment programmes are not cornered by those members of Scheduled Tribes who have already availed the benefits and have risen to the average of the society. Moreover, the criteria for identifying a community as Scheduled Tribes as adopted so far needs to be followed strictly so that only deserving communities and economically weaker among those deserving communities are able to reap the benefits.**

II. Impact of migration of Tribals from original habitat

5.9.3 Various programmes and schemes for the educational and economic development of Scheduled Tribes have made varying impact on their lives. Many of them have migrated out of their native place in search of better educational opportunities, better sources of livelihood, resettlement at new places on account of displacement due to various projects and settled in the new places. These tribals have lost the original tribal characteristics; and they may even be better off than their counterparts who are still bound to their native places which are isolated. Another impact relates to changes in lifestyles and sources/occupations of livelihood as large number of tribal villages have been acquired for various projects and tribal/ other families from those villages have been relocated and settled at new colonies set up in same or another State. These involuntary migrated ST families are not recognized as ST in the State of resettlement, even

though their community is included in the list of Scheduled Tribes specified in relation to the State of resettlement. Resettlement creates a totally changed environment for the tribals and it takes years together for ensuring that the benefits of the services made available to them really accrue to them. Till such time they have to be given special treatment in the State of resettlement and the benefits which were admissible to them as Scheduled Tribe should continue to be made available to them. This issue of involuntary migration of the tribals has been discussed at length earlier also in Chapter 3 of 2nd Report of the Commission. **The situation, therefore calls for review of the status of various communities presently included in the list of Scheduled Tribes in respect of each State/ UT. The Commission also reiterates that the following recommendations made in para 3.9.7 of Chapter 3 in 2nd Report of the Commission may be considered and implemented on priority.**

- (i) There is need to advise the State Governments that
 - (a) they should issue instructions to provide that the families and children of the in-voluntarily migrated ST parents due to the resettlement in another State following displacement from his State of origin will continue to enjoy the same status in the State where they are resettled after displacement in case the community/ communities to which they belong has/ have already been notified as Scheduled Tribe/ Scheduled Tribes in that State and avail the benefits admissible to the Scheduled Tribes in that State.
 - (b) In case the community/ communities to which the resettled tribals belong has/ have not been notified as Scheduled Tribes in the State of resettlement, they (i.e. the State Govts.) should immediately initiate action to get that/ those community/ communities notified as Scheduled Tribe/ Scheduled Tribes effective from the date of resettlement and also ensure that pending the issue of said notification, the resettled tribals are allowed to avail the benefits admissible to Scheduled Tribes in that State.
- (ii) There is also need to advise the State Govts. that they should issue instructions to provide that in the context of creation of new States or transfer of territories from one State to another State following re-organisation of States, the Scheduled Tribes notified for the undivided States will continue to enjoy the same status in the successor States depending upon the place of their residence in the new State on the date of the notification of the State Reorganisation Act.

III. Reduction of Geographical isolation

5.9.4 Since independence huge investments have been made in various development programmes and also on infrastructure development in the country. Large proportion of rural areas has since been assimilated into urban and semi-urban areas. The tribal villages which were once remote are no more isolated and not unaffected by the development process. If a review of development of the tribal areas and tribal communities is undertaken, it will reveal that many tribal villages, which have since reaped the fruits of development process, do not now

fulfill the criteria of tribal characteristics. This, however, does not mean that all members of the communities specified as Scheduled Tribes have lost the tribal characteristics and do not need special efforts for their development as envisaged under the Constitution.

IV. Demands to include less backward communities by comparison with the present status of scheduled communities

5.9.5 It is a fact that tribal families have also reaped some fruits of development process. The level of literacy and education among the Scheduled Tribes and level of employment among them has also increased in comparison to the level which was existing at the time of adoption of the Constitution 60 years ago, but they still lag behind general population in all spheres. Consequently, the seats reserved for Scheduled Tribes in various academic and profession institutions remain unfilled and their quota in posts and services under the Union and the State Governments and their PSEs still contain shortfalls and backlogs because eligible/ suitable ST candidates are not available. On the other hand, cost of education has become very high while competition in employment has also increased. This situation has fostered tendency of the people to grab the benefits available for Scheduled Tribes by fraudulently obtaining/ procuring false ST certificates. It is also a fact that reservation for Scheduled Tribes in political institutions like Parliament, State Assemblies and Panchayati Raj Institutions have helped in elevating their social as well as economic status. This reservation is so far available for Scheduled Castes and Scheduled Tribes only. To take the benefit of the situation, people belonging to many communities which are already classified as other backward classes in the Union lists or in the State lists have been vying to get the status of a Scheduled Tribe. It will be useful to recall one such situation that led to large scale agitation and clashes between the existing tribals and the Gujjars in various parts of the country on the issue of granting status of Scheduled Tribes to the Gujjars of Rajasthan. There may be a little truth in the statement made by the Gujjars that the source of livelihood of Gujjars in Rajasthan was similar to that of Mina community in the State, but this is not the only criteria for identifying a community as Scheduled Tribe.

5.9.6 The Commission has been receiving representations from individuals and associations for inclusion of certain communities in the list of Scheduled Tribes under Article 342(1) of Constitution of India and has been forwarding those representations to the Ministry of Tribal Affairs to consider them in consultation with the concerned State Government or UT Administration and the office of Registrar General of India as per the laid down procedure (**ANNEXURE 5.II**). In view of the increasing tendency for inclusion in the list of Scheduled Tribes in various States, the erstwhile Chairman, National Commission for Scheduled Tribes desired that the Ministry of Tribal Affairs may be informed that such representations sent by the Commission to the Ministry should not be treated as recommended by the Commission and that each such representations is to be considered carefully on its merits. Chairman further observed that the representations for inclusion of communities in the list of Scheduled Tribes after 50 years of independence are not justified at this stage; and that those belonging to SC or OBC and already included in their respective Scheduled lists were trying to get included in the list of Scheduled Tribes. The National Commission for

Scheduled Tribes communicated the above views to the Ministry of Tribal Affairs vide letter D.O.No. INC/EXE/01/ST-2005/SSW dated 14/10/2005 a copy of which is placed at **ANNEXURE 5.IX. The Commission, therefore, recommends that the State Governments as well as Ministry of Tribal Affairs and Registrar General & Census Commissioner of India should make comprehensive examination of the demands made in the representations while properly applying the criteria for identification of a community as Scheduled Tribe before forwarding any proposal on the subject.**

5.10 Verification of Community Certificates

5.10.1 Despite several instructions regarding issue of the caste certificates and verification of the caste certificates issued by the Ministry of Home Affairs (then Nodal Ministry), non-ST persons have been availing or trying to avail the benefits admissible to genuine Scheduled Castes/ Scheduled Tribes only. Similarly, there have been many instances where Scheduled Castes/Scheduled Tribes migrated to other States and their children have been claiming the same status in the State of migration. These issues have been adjudicated in detail by the Supreme Court.

(A) Guidelines laid down by Supreme Court

5.10.2 The Hon'ble Supreme Court, while considering a case relating to a false certificate in Civil Appeal No.5854 of 1994 in Kumari Madhuri Patil & Ors. vs. Additional Commissioner, Tribal Development, Government of Maharashtra and Ors. observed as follows in para 13 of the judgment :-

13. The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate. It is, therefore, necessary that the certificates issued are scrutinized at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for the issuance of social status certificates, their scrutiny and their approval.

5.10.3 The Hon'ble Court laid down the following guidelines for issuance and verification of the social status certificates:

- (i) *The application for grant of social status certificate shall be made to the Revenue Sub-Divisional Officer and Deputy Collector or Deputy*

Commissioner and the certificate shall be issued by such officer rather than by the officer at Taluk or Mandal level.

- (ii) The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted or non-gazetted officer with particulars of castes and sub-castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the concerned Directorate.*
- iii) Application for verification of the castes certificate by the scrutiny committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.*
- (iv) All the State Governments shall constitute a Caste Scrutiny Committee of three officers, namely, (i) an Additional or Joint Secretary or any officer higher in rank to the Director of the concerned department, (ii) the Director, Social Welfare/ Tribal Welfare/ Backward Class Welfare, as the case may be, and (iii) in the case of Scheduled Caste, another officer who has intimate knowledge in the verification and issuance of the social status certificate. In the case of Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of groups of tribes or tribal communities.*
- (v) Each Directorate should constitute a vigilance cell consisting of senior Deputy Superintendent of Police in overall charge and such number of Police Inspectors to investigate into the social status claims:*
 - (a) The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from.*
 - (b) The Vigilance Officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian as the case may be. He should examine the school record, birth registration, if any.*
 - (c) The Vigilance Officer should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the proforma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the concerned castes or tribes or tribal communities etc.*
- (vi) (a) On receipt of the report from the Vigilance Officer, the Director concerned, if he finds the claim of social status to be 'not genuine' or 'doubtful' or 'spurious', or 'falsely or wrongly claimed' should issue show-cause notice supplying a copy of the report of the Vigilance Officer to the candidate by a registered post with acknowledgement due or through the head of the concerned educational institution in which the candidate is studying or employed.*

- (b) *The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case, on request, not more than 30 days from the date of the receipt of the notice.*
- (c) *In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/ reply shall convene a meeting of the constituted committee i.e. Scrutiny Committee and the Joint/ Additional Secretary as Chairperson shall give reasonable opportunity to the candidate/ parent/ guardian to adduce all evidence in support of their claims.*
- (d) *A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/ it.*
- (e) *After giving such opportunity either in person or through counsel, the committee may make such inquiry as it deems expedient and consider the claims vis-à-vis the objection raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.*
- (vii) *In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are found to be false or fraudulently obtained.*
- (viii) *Notice contemplated in Para (v) above should be issued to the parents/ guardian also, in case the candidate is minor to appear before the committee with all evidence in his or their support of the claim for the social status certificates.*
- (ix) *The inquiry should be completed as expeditiously as possible preferably by holding day-to-day proceedings within a period not exceeding two months. If after inquiry, the Caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of conclusion of the proceeding the result of the inquiry to the parent/guardian and the applicant.*
- (x) *In case of any delay in finalizing the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.*
- (xi) *The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution (relating to power of the High Courts to issue certain writs). No suit or other proceedings before any other authority shall lie.*

- (xii) *The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the Writ Petition/Miscellaneous Petition/Matter is disposed of by a single Judge, then no further appeal would lie against that order to the Division bench but subject to special leave under Article 136 of the Constitution.*
- (xiii) *In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/candidate should be prosecuted for making false claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or election to any local body, legislature or the Parliament.*
- (xiv) *As soon as the findings are recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the concerned educational institution or the appointing authority by Registered Post with acknowledgement due with a request to cancel the admission or the appointment. The principal etc. of the educational institution responsible for making the admission or the appointing authority as the case may be, should cancel the admission/ appointment without any further notice to the candidate and debar the candidate from further study or continuance in office in a post.*

(B) Direction of Delhi High Court for Verification of Certificates

5.10.4 In Civil Writ Petition No.5976 of 2003 filed by Shri Chandreshwar Prasad before High Court of Delhi, the petitioner, inter-alia, alleged that a large number of candidates had obtained employment under I of India and I of I of Delhi or its agencies on forged/false Scheduled Tribe (ST) certificates thereby denying the genuine ST candidates of their rights. Preliminary sample verification by I revealed that more than 30% of ST certificates presented by candidates were either forged or false. The High Court of Delhi, vide its order dated 5 May, 2005 directed the I of India to devise a credible mechanism to ensure that such people are detected and are dealt with in accordance with law. Details of action taken by the Central Govt and the Central Bureau of Investigation have been discussed in Chapter 7 of the 1st Report of the Commission. This matter has been highlighted again in this Report only to recapitulate the cognizance about menace of availing benefits admissible to Scheduled Tribes by non-Scheduled Tribes by fraudulent manners on the basis of false caste certificates.

(C) Constitution of Scrutiny Committee for verification/ validation of caste certificates

5.10.5 In view of the increasing incidence of the cases of false community certificates and in pursuance of Government instructions and Supreme Court's directives discussed above, some States have initiated steps to regulate the issuance and verification of caste certificates and providing for setting up Scrutiny Committees at District and State levels. The Commission requested the States and UTs having tribal population to furnish information about (i) setting up the Scrutiny Committee, (ii) composition of the Scrutiny Committee, (iii) disposal of

cases by Scrutiny Committee during 2007-08 and 2008-09 and (iv) the extent of cases of employment on the basis of false ST certificates. All the States/ UTs have not furnished the required information while some States/ UTs have furnished part information. The information has been received from the States of Andhra Pradesh, Bihar, Chhattisgarh, Goa, Gujarat, Himachal Pradesh, Kerala, Madhya Pradesh, Maharashtra, Nagaland, Sikkim, Tamil Nadu, Tripura, Uttar Pradesh and West Bengal and UTs of A&N Islands, Dadra & Nagar Haveli, Daman & Diu and Lakshadweep.

5.10.6 As per information available in this Commission, the States which have notified the Acts/ Rules/ Regulations regarding reservation for Scheduled Castes & Scheduled Tribes and matters connected therewith including the issuance, regulation and verification of the caste certificates are Andhra Pradesh, Kerala, Madhya Pradesh, Maharashtra, and Tripura. These regulations provide for constitution of the Scrutiny Committee for verification of the caste certificates and scrutiny of the complaints about caste certificates. The States of Bihar, Chhattisgarh, Goa, Gujarat, Himachal Pradesh, Sikkim, West Bengal and UTs of A&N Islands and Daman & Diu have set up the Scrutiny Committee by a Resolution or an Office Order duly notified by the Government/ UT Administration. Accordingly, Scrutiny Committees have been set up in the States of Andhra Pradesh, Bihar, Chhattisgarh, Goa, Gujarat, Himachal Pradesh, Kerala, Madhya Pradesh, Maharashtra, Sikkim, Tripura, West Bengal, and UT of A & N Islands and Daman and Diu. The UT Administration of Lakshadweep has informed that the ST certificate is issued to locals and, therefore, there is no Scrutiny Committee. However, as per direction of Hon'ble Court this UT is in process to constitute Scrutiny Committee for verification of ST certificates. **The Commission recommends that all States/ UTs, in relation to which ST communities have been specified, should set up the Scrutiny Committee for verification/ validation of ST caste certificates as per the directives of Hon'ble Supreme Court of India. The Ministry of Tribal Affairs should also take up the matter with all the States/UTs to impress upon them the need for putting in place an effective mechanism for the purpose of validation of the caste certificates and verification of the community status of such persons claiming to belong to Scheduled Tribes or scrutiny of complaints relating to availing benefits on the basis of ST certificates obtained fraudulently by non-Scheduled Tribes and the matters connected therewith.**

(D) Composition of the Scrutiny Committee

5.10.7 As per information received from various State Governments where Scrutiny Committee have been constituted, the Secretary-in-charge of Tribal Welfare Department in the State is the Chairperson of the Committee while a senior officer of the office of Commissioner (TD) or TW Department of the State is the Secretary or Convener of the Scrutiny Committee in most of the States. In the States of Chhattisgarh, Gujarat, and Madhya Pradesh the Committee is chaired by the Addl. Chief Secretary/ Principal Secretary in-charge of TW Department in the State. An officer of Tribal Research and Training Institute of the State, wherever such Institute exists, is also one of the expert members of the Committee, as per direction of the Supreme Court of India.

(E) Functioning of the Scrutiny Committee-Validation of caste certificates and scrutiny of complaints

5.10.8 As per directives of the Supreme Court of India, the beneficiary should get his/ her caste certificate validated from the Scrutiny Committee. The work relating to cases about verification of caste certificates, allegedly obtained for seeking employment or admission to an educational Institution is also referred to the Scrutiny Committee. Thus, the Scrutiny Committee has two kinds of activities. First is validation of the caste certificates and second is scrutiny of complaint regarding false caste certificates.

5.10.9 In its direction the Supreme Court of India has mentioned that application for verification of the castes certificate by the scrutiny committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post. The directions also impress upon the Committee to complete the inquiry as expeditiously as possible preferably by holding day-to-day proceedings within a period not exceeding two months. The same procedure has also to be followed in the matter of scrutiny of complaints regarding obtaining employment or admission on the basis of false caste certificates.

5.10.10 All the States and UTs were requested to furnish information about disposal of cases by the Scrutiny Committee during 2007-08 and 2008-09. This information has been furnished by only a few States viz; Chhattisgarh, Goa, Himachal Pradesh, Kerala, Sikkim, and Tripura. The information relating to 2007-08 and 2008-09, received from various States is given in the statements at **ANNEXURE 5.X** and **ANNEXURE 5.XI** respectively. The information received from the State Governments does not indicate the period normally taken by the Committee in validating the certificates and whether validation certificates were being issued within the time limit prescribed by the Supreme Court of India. The position as intimated by the State Governments/ UT Administrations is discussed below State-wise.

Andhra Pradesh

5.10.11 The State Government has set up State Level Scrutiny Committee as well as District Level Scrutiny Committee in each district. The State Government has not furnished any information about the regulation or resolution or order of the Government for setting up the Scrutiny Committees or composition of the Committees. The information relating to disposal of the cases by the Scrutiny Committee at State as well as District Level during 2007-08 and 2008-09 has also not been received from the State Government.

Bihar

5.10.12 The Scrutiny Committee has been constituted in the State of Bihar vide Resolution No. 3887 dated 8/11/2007 of Personnel and Administration Reforms Department of State. The three-Member Committee is headed by the Reservation Commissioner-cum-Administrative Reforms Commissioner/

Secretary- in-charge, Personnel and Administration Reforms Department. Other two Members are Director/ Joint Secretary(SC & ST Welfare Department) and an officer belonging to SC/ ST at the level of Under Secretary/ Dy. Secretary having adequate knowledge of verification of community certificates and social status of various community to be nominated by Personnel and Administration Reforms Department. Regarding disposal of the cases by the Committee it has been informed that three cases were referred to the Committee by the end of 2009 and those cases are under consideration.

Chhattisgarh

5.10.13 The Government of Chhattisgarh has intimated that 4306 cases relating to validation of certificates of Scheduled Castes, Scheduled Tribes and OBCs, for the purpose of employment and admission were received and disposed during the year 2007-08. However, the disposal during the year 2008-09 was very high as a total of 38009 (ST-11499, SC-9774 and OBC-16736) were received and disposed during the year. As regards disposal of cases relating to scrutiny of complaints, the Committee received 26 cases during 2007-08 beside a backlog of 118 cases from the previous year and disposed off 41 cases only. Out of these cases, 11 certificates were found correct and in remaining 30 cases the Committee ordered for cancellation of caste certificates. Thus, 103 cases were carried forward to year 2008-09. 69 fresh cases were received during the year 2008-09 and the Committee could dispose 39 cases only leaving a pendency of 148 cases for the next year 2009-10. Out of 39 cases, the Committee found 13 certificates as genuine while in remaining 26 cases Committee directed for cancellation of the certificates.

Goa

5.10.14 The Scrutiny Committee headed by Secretary, Social Welfare Deptt. was initially constituted vide Notification dated 22/4/2003. The Committee has not dealt any case relating to validation of certificates during 2007-08 and 2008-09 as regards scrutiny of certificates, there was a backlog of 34 cases in the beginning of 2007-08 and 589 fresh cases were received during the year. Of these 623 cases the Committee disposed off 553 cases out of which only 2 claims were rejected. Accordingly, 70 cases were pending at the end of 2007-08. However, the statement received from the State Government indicates zero pendency at the end of 2007-08 but a pendency of 138 cases in the beginning of 2008-09. As regards number of cases received and disposed off during 2008-09, it is stated that 1278 new cases were received (making a total of 1416 cases) against which 1136 cases were disposed during the year leaving a pendency of 280 cases at the end of the year 2008-09. But the statement indicates zero pendency at the end of 2008-09 also. It is also reported that only 4 claims were rejected during the year. Since the details of disposal and pendency of cases at the beginning as well as end of both the years are not correct, the other information relating to disposal also appear to be questionable and, therefore, does not give exact information about functioning of the Committee.

Gujarat

5.10.15 The Gujarat State Scrutiny Committee is head by Additional Chief Secretary/ Principal Secretary/ Secretary (TDD) while Commissioner (TDD) and Director, Tribal Research and Training Center, Ahmedabad are Members of the Committee and Dy. Commissioner (TDD) is the Secretary of the Committee. The State Government has not furnished any information about disposal of the cases by the Committee.

Himachal Pradesh

5.10.16 The Scrutiny Committee is headed by Special Secretary (TD). The Dy. Director (TD) is the Member while Research Officer (TD) is Member Secretary of the Committee. As regards disposal of the cases by the Committee, the entire information for both the years is stated to be NIL. It is noticed that the Committee has been set up vide Notification dated 13/1/2009 and, therefore, the information relating to the cases dealt by Committee is NIL.

Kerala

5.10.17 The Scrutiny Committee in the State of Kerala was initially set up vide Government Order dated 8th May, 1995. The Committee was reconstituted on 20th April, 2002 consequent upon the implementation of the Kerala (Scheduled Castes and Scheduled Tribes) Regulation of Issue of Community Certificates Act, 1996 (Act 11 of 1996). The Secretary, Scheduled Castes & Scheduled Tribes Development Department is Chairperson of the Committee and Director (SC Development), Director (TD) and Director (KIRTADs) are Members of the Committee. As regards disposal of the cases by the Committee it has been reported that two cases were disposed off 2007-08 and in both the cases the claims were rejected. There is no information about pendency of cases in the beginning or at the end of 2007-08 but 59 cases have been shown at the beginning of 2008-09. No fresh case was received during 2008-09 while a total of 21 cases were disposed during the year. It is also mentioned that claims were rejected in 21 cases and 35 cases in all were pending as on 31/12/2009. This information is not consistent and does not give clear picture about disposal of work by the Scrutiny Committee.

Madhya Pradesh

5.10.18 The Government of Madhya Pradesh initially set up the High Level Scrutiny Committee vide Order dated 8/9/1997. The Principal Secretary, SC & ST Welfare Department is Chairperson of the Committee and Commissioner (TD) is the Member Secretary while Secretary, State Commission for Scheduled Tribes and a representative of Tribal Research Institute of the other Members of the Committee. There is no information about disposal of the cases of the Committee.

Maharashtra

5.10.19 The Government of Maharashtra has enacted an Act viz; Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate

Act, 2000 and "Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003". The Act was brought into force with effect from 18th October, 2001 and the Rules thereunder were brought into force from 5th June, 2003. Presently, in Maharashtra eight Scheduled Tribe Certificate Scrutiny Committees are functioning in accordance with the Act & Rules made thereunder. These Committees verify the tribe claims of the employees referred by the State and Central Government organisations also and convey their decisions accordingly.

5.10.20 As regards disposal of the cases by the Committee it has been reported that the Committee received a total of 67414 cases during 2007-08 while 27335 cases were pending at the beginning of the year. The Committee issued validation certificates in 33575 cases beside disposing 34820 other cases. The claims were rejected in 1160 cases out of the cases disposed off by the Committee during 2007-08, leaving a pendency of 25928 cases at the end of the year. However, information relating to 2008-09 indicate a pendency of 25948 (not 2592) cases at the beginning of the year. 65059 cases are reported to have been received during the year out of which validations were issued in 37244 cases and 39173 other cases were disposed off. Out of these, the rejection was in 1591 cases. The pendency at the end of 2008-09 was 24400, which is less than the pendency at the end of previous year. It is, however, noted that the Commission has been receiving complaints/ representations from various persons alleging that the Scrutiny Committees were taking much longer time than prescribed by the Supreme Court of India and consequently many candidates could not get timely admission in professional courses. Although, the percentage of disposal of cases by the Scrutiny Committees of Maharashtra appears to be satisfactory, yet **the Government of Maharashtra may ensure that the Committees have adequate infrastructure and machinery so that the work relating to validation of the certificates and scrutiny of claims entrusted with the Committee get disposed within the prescribed time frame.**

Sikkim

5.10.21 The Scrutiny Committee in the State of Sikkim was set up vide Notification dated 07/3/2006 of Home Department of the State. The Committees have been set up in respect of each district with District Collector of the concerned district as Chairman and SDO/ SDM of the district as Member Secretary. The Superintendent of Police of the district, the Joint Secretary (SJE and Welfare Department) and the Joint Secretary (Home Department) are the other Members of the District Level Committee. There is no mention about State Level Scrutiny Committee. Regarding disposal of the cases by the Committee, it has been reported that no case was received by the Committee and, therefore, the information about disposal is NIL.

Tripura

5.10.22 The State Level Scrutiny Committee in Tripura was initially set up vide Notification dated 15/4/2004. However, as per provision contained in Rule 7(a)(b) of the Scheduled Castes and Scheduled Tribes (Reservation of vacancies in services and posts) (Second Amendment) Rules, 2007 the Committee was reconstituted vide Notification dated 27/10/2007. The Secretary-in-charge of Tribal

Welfare Department is Chairman of the Committee while Director (Welfare of Scheduled Tribes) is the Member Secretary. The Director (TRI) and Joint Secretary/ Dy. Secretary of the Law Department are the other Members of the Committee. In regards to the disposal of the cases by the Committee, 73 cases were pending at the beginning of the year 2007-08 and no fresh case was received during the year. Out of these 30 cases were disposed off during the year leaving a pendency of 43 cases for the year 2008-09. Three new cases were received during the year 2008-09 and the disposal by the Committee related to 8 cases only leaving a pendency of 38 cases at the end of the year 2008-09. No validation certificates were issued during the two-year period. There is no information about nature of disposal of the cases. From the data it appears that directives of the Supreme Court of India in the matter and consequent duty/functioning of the Committee is perhaps not clear to the Committee Members. 38 cases out of 73 cases which were pending at the beginning of 2007-08 were still pending at the end of 2008-09. Since only 3 fresh cases were received during 2008-09, it indicates that the Committee is not meeting regularly to dispose off the cases within the time frame prescribed by the Supreme Court of India. The delay in disposal of cases on the one hand causes problems for the genuine Scheduled Tribe beneficiaries and give undue benefits to the fraudulent claimants on the other hand.

West Bengal

5.10.23 The State Level Scrutiny Committee in the State of West Bengal has been formed by Notification dated 10/5/ 2007. The Vigilance Cell has also been formed in each district and amendment to formation of Vigilance Cell has been notified on 30/9/2008. The State Government has, however, not furnished any information relating to disposal of cases by the Committee.

Andaman & Nicobar Islands

5.10.24 The Scrutiny Committee has been constituted vide Order dated 15/5/2006. The Committee is headed by Secretary (TW) as Chairperson with Director (TW) and Research Officer (TW) as Members. It has, however, been informed that no case has been received for scrutiny by the Committee during 2007-08 and 2008-09

Dadra & Nagar Haveli

5.10.25 The Scrutiny Committee was constituted in the Union Territory vide Notification dated 13/7/2001. The Finance Secretary is the Chairman while Collector, Daman, Collector, Diu and Director (SW) are Members and the Assistant Secretary (SW) is the Member Secretary. No case has been received by the Committee during 2007-08 and 2008-09

(F) Incidence of obtaining employment on the basis of false caste certificates

5.10.26 The Commission has received information on the subject from State Government of Andhra Pradesh, Goa, Gujarat, Himachal Pradesh, Kerala, Nagaland, Tripura, Uttar Pradesh and Union Territories of A&N Islands and Dadra Nagar Haveli. Other States have not responded to the letters sent by the

Commission. The State wise position about the number of cases obtaining employment on the basis of false ST certificates, as received in the Commission is given in the following TABLE

TABLE

S.No .	State	No. of cases reported	Cases decided	Cases pending	Names of ST Community of which certificate obtained	Names of the original community of the false claimants
(1)	(2)	(3)	(4)	(5)	(6)	(7)
(i)	Andhra Pradesh	73 cases in r/o 11 districts (Information about other districts not available)		73	(i) Savarasa Kapu (ii) Kammara (iii) Yerukala (iv) Valmiki (v) Yanadi (vi) Chenchu (vii) Konda Kapu (viii) Wheelreddy/ Reddy (ix) Mannevarulu/ Manne (x) Palko (xi) Konda Dora (xii) Konda Reddy (xiii) Manne Dora (xiv) Lambada (xv) Thoti (xvi) Sugali (xvii) Boya (xviii) Yerukala (ixx) Lingadhari koya (xx) Naikpod	(i) Boya (BC) (ii) Gouda (BC)
(ii)	Goa	1	1			
(iii)	Gujarat	Not furnished				
(iv)	Himachal Pradesh	4	1	3 (pending in High Court)	(i) Gaddi (ST) (ii) Negi	(i) Gaddi Rajput (ii) Mohmaden Gujar (iii) Thakur
(v)	Kerala	118	28	48 (pending with committee) 42 (pending in the High Court)	(I) Malai Pandaram (ii) Koraga (iii) Kattunaikan (iv) Malai Aryan (v) Konda Reddy (vi) Mala Uraly (vii) Uraly (viii) Kadar (ix) H M Uraly (x) Malasar (xi) Mannan (xii) Malayan (xiii) Kannikar (xiv) Ulladan	
(vi)	Nagaland	NIL				
(vii)	Tripura	101	NA		(i) Tripuri, (ii) Mog (iii) Lepcha	

(viii)	UP	NIL				
(ix)	D. & N. Haveli	NIL				

5.10.27 It will be seen from the above TABLE that Government of Andhra Pradesh has furnished information about only those cases which are pending at various levels, in respect of 11 districts. Information in respect of other districts has not been received. This does not indicate the actual volume of the problem of obtaining employment on the basis of false caste certificates in the State of Andhra Pradesh. Same is the position with respect to the State of Tripura as information relating to disposal or pendency of the cases has not been furnished.

5.10.28 The Commission had sought to know the names of ST communities which were being used for obtaining false ST certificates. The information received from various States indicate that most of the certificates in the State of Andhra Pradesh were obtained in the name of Yerukala, Konda Kapu, Kammara and Lambada communities, while in the State of Kerala the most used ST communities are Malai Aryan, Malai Pandaram, Kadar, Kattunayakan and Konda Reddy. As regards Tripura State, in about 90% of the 101 cases the certificate was in the name of Tripuri community followed by Moga and Lepcha communities.

5.10.29 In order to know that people belonging to which non-ST community were trying to avail the benefits fraudulently, the State Governments were requested to furnish the details in respect of each case of false claim. Information has not been received in respect of most of the claims. It is, however, noticed that the persons belonging to OBCs have generally obtained the false ST certificates because ST seats normally remain unfilled due to non-availability of suitable ST candidates.

5.11. Corrective Steps to be taken to curb Issuance of False/Bogus Community Certificates

5.11.1 Prevention is always better than cure and, if the Government has to effectively combat the menace of bogus/false community certificates, it has to stick to the mechanism for pre-appointment verification of the genuineness of the community certificates, and not prevalent routine procedure for post- appointment verification, with a view to strike at the root of the problem. As per the existing instructions and procedure, laid down vide DoPT (then Department of Personnel and Administrative Reforms) OM No. 36011/16/80-Estt.(SCT) dated 27/02/1981, (copy at **ANNEXURE 5.XII**) the appointing authorities should verify the caste status of a Scheduled Castes/ Tribes officer at the time of initial appointment and promotion against vacancy reserved for Scheduled Castes/ Tribes. The OM further adds that this verification of caste status at every important upturn of employee's career is necessary so that the benefit of reservation and other scheme of concessions etc. meant for SC/ ST should go only to the rightful claimants and not those who become dis-entitled to them. These instructions have been reiterated vide DoPT OM No. 36011/3/2005-Estt.(Res.) dated 09/09/2005 (copy at **ANNEXURE 5.XIII**) . It has been noticed that all the candidates including the reserved category candidates recommended for appointment by the various recruiting agencies are offered appointment by the concerned appointing

authorities only after receipt of a satisfactory verification report from the police authorities of the respective district/ State regarding their character and antecedents. However, the verification of caste certificate of the reserved category candidate is generally not insisted upon at this stage, and the offer of appointment is generally issued to such candidates including the following clause prescribed vide DoPT OM No. 36012/6/88-Estt(SCT) dated 24/04/1990.

"The appointment is provisional and is subject to the caste/ tribe certificate being verified through the proper channels and if the verification reveals that the claim, to belong to Scheduled Caste/ Scheduled Tribe, as the case may be, is false, the services will be terminated forthwith without assigning any further reasons and without prejudice to such further action as may be taken under the provisions of the Indian Penal Code for production of false certificates"

5.11.2 The process of verification after appointment takes long duration since the urgency which was required to fill the posts no longer exists after making appointment, thereby giving undue liberty to the employee appointed on the basis of false ST claim. **The Commission, therefore, recommends that:**

- (i) **The appointing authorities should seek, from the candidates, a copy of validation certificate alongwith the caste certificate. In case the candidate is not able to produce the validation certificate, he/ she may be given a period of about three months, for furnishing validation certificate, which is generally the time taken for verification of the character and antecedents of the recommended candidates by the concerned district authorities. Simultaneously, the concerned appointing authorities which write to the police authorities of the respective State for verification of character and antecedents may also write to the concerned district authorities viz. District Collectors, Deputy Commissioners, District Magistrates etc. for verifying the authenticity of the certificates or to certify that the candidate actually belongs to a Scheduled Tribe.**
- (ii) **The appointing authorities should generally issue the offer of appointment on receipt of a validation certificate or satisfactory report with respect to the genuineness of the community certificate produced by the candidate in support of his/ her claim of belonging to Scheduled Tribes. However, as advised by the Hon'ble Supreme Court of India in Civil Appeal No.5854 of 1994 in Kumari Madhuri Patil & Ors. vs. Additional Commissioner, Tribal Development, Government of Maharashtra and Ors., offer of appointment on provisional basis may be given to the ST candidate subject to the condition that his/ her probation will not be cleared until the receipt of validation certificate/ verification report, in case the validation certificate or the verification report from the District authorities regarding the authenticity (or otherwise) of the community certificates produced by the candidates along with their applications is not received within a maximum period of six months,**

- (iii) Pending switch- over to the proposed system (mentioned in the preceding sub-para) of getting the community certificates verified by the issuing authorities prior to the appointment of the candidates, the existing instructions of verifying the community certificates through the issuing authorities after the candidate has been appointed on provisional basis must be completed within a period of six months after the appointment of the candidate and in the event of failure to complete the verification within the specified period, the appointing authority should fix the responsibility on the concerned officer for this failure and take necessary action against the officer/ official held responsible for this failure.
- (iv) The fresh candidates recommended for appointment by the recruiting agencies are generally appointed initially on probation of one year or two years, and on satisfactory completion of the probation period, they are appointed on regular/ substantive basis. **The Commission recommends that in case a candidate belonging to ST category has been appointed against a vacancy reserved for ST quota on provisional basis pending verification of his/her community certificate, his probation should not be cleared until the process of verification of the genuineness of the community certificates produced by him is completed and a satisfactory report is received in this regard from the concerned district authorities. This will enable the Government to terminate the services of such candidate /candidates (who obtained employment fraudulently), by applying the Clause contained in the offer of appointment according to which the services of the candidate were liable to be terminated if the appointment was obtained on the basis of false information.**
- (v) **If the post-appointment verification by the appointing authority through the concerned District authorities/Scrutiny Committee reveals that the candidate had produced a fake/bogus or false certificate and he/she does not belong to a recognized Scheduled Tribe, his/her services (in case he has been appointed on regular/ substantive basis), should be dispensed with straightaway without giving him/ her any further notice in terms of the procedure laid down by Hon'ble Supreme Court in Civil Appeal No. 5834 - Kumari Madhuri Patil, Vs. Government of Maharashtra, 1994. The appointing authority should simultaneously also take up the matter with the Government for the purpose of launching of criminal proceedings under IPC against the fake/false community certificate holders.** It has been generally found that while the services of the fake/false community certificate holders are terminated, no action is taken by the appointing authorities to launch criminal proceedings against them (i.e. false community certificate holders).

5.11.3 It has been found that in some cases the appointing authorities allow the false ST certificate holders to work as a general candidate even after confirming that he/ she had obtained employment on the basis of false caste certificates. In some cases it has also been noticed that instead of terminating the

services of such an employee the process is not initiated timely and this delayed action gives an opportunity to the employee to approach the Court and obtain a stay on the action being taken or proposed to be taken by the Department. It takes number of years to get the post vacated, with the result that the delinquent employee takes liberty of non-performance of duty and also avail full salary till a final decision is communicated by the Court, because he/ she can not be removed from the service till delivery of the verdict by the Court. To mitigate this problem, the DoPT, vide letter No. 36022/1/2007-Estt.(Res.) dated 20th March, 2007, (copy at **ANNEXURE 5.XIV**) has issued instructions to the Chief Secretaries of all States and Union Territories to issue instructions to the District authorities to the effect that they should ensure at their own level that veracity of the caste/ community certificate referred to district authorities is verified and reported to the appointing authorities within a one month of receipt of request of such authorities. Instructions were also issued by Department of Personnel and Training vide their OM No. 42011/22/2006-Estt.(Res.) dated 29/03/2007 (copy at **ANNEXURE 5.XV**) for taking action against Government servants who get appointment on the basis of false SC/ST/OBC certificates. In this context, a detail of a similar case in which National Commission for Scheduled Tribes was also made a party is recalled below.

5.11.4 A representation dated 13/3/2008 was received against appointment of Smt. Madhu Keny, as Head Clerk in the vacancy reserved for ST candidate in Ali Yavar Jung National Institute for the Hearing Handicapped, Mumbai. The comments of the Director, AYJNIHH, Mumbai were sought by the Commission. The Director of the Institute intimated vide his letter dated 5/04/2008 that the matter has been forwarded to the Joint Secretary, Ministry of Social Justice & Empowerment to take up the matter with Department of Personnel and Training. It was mentioned that the reply from the Ministry is awaited and action will be taken as per communication from the Ministry. Attention of the Institute was invited by the Commission towards Supreme Court's directive that a woman (forward class) married to a tribal would not be entitled to claim the appointment to the post reserved for ST category. As treating a general candidate woman as Scheduled Tribe on the basis of her marriage with a Scheduled Tribe person would be a negation of the directive of Hon'ble Supreme Court of India, the Institute was advised vide Commission's letter dated 24/04/2008 that corrective action should be taken by the Institute. There was no response from the Institute

5.11.5 However, after more than a year, a notice dated 26/06/2009 from Anisha Narayanna, Advocate of High Court of Bombay in PIL WP No. 6/09 filed on behalf of Shri D.M. Bhosale Vs Director, AYJNIHH, National Commission for Scheduled Tribes, Ministry of Social Justice & Empowerment and Smt. Madhu Keny was received in the Commission. As no prayer was made for relief from National Commission for Scheduled Tribes, Ministry of Social Justice & Empowerment was requested, vide Commission's letter dated 08/04/2009, to watch the interest of the Commission during the course of proceedings of the WP. The High Court of Bombay disposed off the PIL (Re-numbered as No. 8 of 2009) on 24/02/2010 with the following directions:

- i) Enquiry to be completed within 8 weeks from today.

- ii) On the enquiry being completed and decision taken, respondent No. 1-3 to communicated to the petitioner within two weeks thereafter.

5.11.6 In accordance with the directions of the Hon'ble High Court of Bombay, inquiry was completed by the Institute and the report was submitted on 10/04/2010 and accepted by the Director of the Institute on 23/04/2010. The Inquiry Officer had acquitted the Delinquent Staff of all the allegations made against her by giving a detailed reasoned order. The Office Order issued by the Disciplinary Authority of the Institute on the basis of the findings/ conclusions of the inquiry report, highlight that

4.....Smt. Madhu Keny was working with Maharashtra Electronics Corporation Limited (MELTRON), a Government of Maharashtra Undertaking in Mumbai in a post which is reserved for Scheduled Tribe, by virtue of her being the wife of Shri Kishore Keny, who was recognized by the Maharashtra Government as Scheduled Tribe and who was holding Scheduled Tribe certificate. Smt. Madhu Keny while applying for the post, she was considered as Scheduled Tribe in Maharashtra as she was married to a Scheduled Tribe person, though, she did not belong to Scheduled Tribe before marriage. However, the Inquiry Officer has come to the conclusion that Smt. Madhu Keny had not represented that she comes from Scheduled Tribe community. The Department witnesses have clearly stated that though number of applications were received for the said post, they have properly processed and they have also gone through the Marriage Certificate of Smt. Madhu Keny with Shri Kishore Keny and also they have gone through the Scheduled Tribe Certificate of Shri Kishore Keny issued by the Competent Authority of Maharashtra. Thus, the Institute appointed her after proper scrutiny about 19 years back and the Inquiry Officer acquitted her of all the charges of making false representations that she belongs to Scheduled Tribe by giving cogent reasons.

5. In view of the fact that the Inquiry Officer has clearly exonerated her of the charges leveled against her in Memorandum No. Estt/498 dated 14/05/2008 and has said, in verbatim: "While appraising the evidence it is concluded that this is a peculiar case where Smt. Keny has not submitted any bogus/ false caste certificate to claim the reservation. However, she has been selected against ST vacancy apparently based on her husband's caste certificate and as such she cannot be held guilty for the charges leveled against her in Annexure I and II of the Memorandum No. Estt/498 dated 14/05/2009. Accordingly, the Inquiry Authority has exonerated Smt. Keny from all the charges leveled against her in the aforesaid Memorandum"

5.11.7 The findings and observations of the Inquiry Officer and the Office Order of the Disciplinary Authority of the Institute in the above mentioned case indicate that the Inquiry Officer as well as the Disciplinary Authority have not been fully cognizant of the instructions issued by the Government and the directives of the various Courts that status of woman does not change on marriage and, therefore, non-ST wife of a Scheduled Tribe person cannot represent to be eligible, and be considered for appointment against the post reserved for

Scheduled Tribe. Smt. Madhu Keny had applied against the post reserved for Scheduled Tribes on the basis of the ST certificate of her husband, she should not have been considered as an eligible ST candidate. The appointing authorities as well as the Selection Committee have erred in considering her candidature and also making a selection as ST candidate against the post reserved for STs. Instead of terminating the services of Smt. Madhu Keny and ordering action against the erring officials, the Institute exonerated Smt. Madhu Keny of all charges. On being appraised of the developments in the case, the Commission vide its letter dated 20/05/2010 advised the Director, AYJNIHH as given below:

As per judgment of High Court of Bombay dated 24/02/2010 in PIL No. 08/2009, it is mentioned that it is an accepted position that Smt. Madhu Keny does not belong to ST community. She was appointed against a ST reserved vacancy in the Institute. In the enquiry report of the Institute, it is stated that while Smt. Madhu Keny has not submitted any bogus/ false caste certificate to claim the reservation, she has been selected against a ST vacancy based on her husband's caste certificate; and as such, was not qualified or eligible in terms of the Recruitment Rules. Therefore, she is liable to be removed or dismissed from service as per para 3 of DoPT OM No. 42011/22/2006-Estt.(Res.) dated 29/03/2007 and action should be taken accordingly in the matter.

5.11.8 The Commission feels that in no case should the false ST certificate holders/ claimants be allowed to continue work as a general candidate. The services of such a fake/ false certificate holders/ claimants should be terminated after following the due procedure and the posts/seats so vacated should be filled from ST candidates for whom it was originally reserved. The Commission would like to advise the Department of Personnel & Training to reiterate these instructions to the appointing authorities to avoid repetition of this type of situation.

5.11.9 In some States there is a practice of issuing temporary community certificates pending issue of permanent certificates for want of field verification. It is also noticed that persons already having ST certificates in the name of their father or grandfather or a family member are also issued temporary certificates. The validity of temporary certificates is generally six months. However, permanent certificate issuing authorities/ Scrutiny Committees vested with the duty to validate the caste certificates have been taking more than the expected time for initiating field inquiries during the validity period, though the reason for such delays may be beyond their control. Consequently, in the absence of regular certificates, many genuine ST candidates get debarred from admission in educational and professional institutions or in obtaining appointment in posts and services reserved for them. Through the same delayed procedure, some unscrupulous persons are able to grab the seats, reserved for Scheduled Tribes, and obtained appointment on the basis of temporary certificates. Once a seat is obtained on the basis of temporary certificate, the claimant, who actually does not belong to ST community, goes to the Court of law and obtains stay on cancellation of admission or termination of appointment availed of against ST quota. This also adds to the loss of seat/ post for genuine ST candidates. **The Commission, therefore, recommends that the Ministry of Tribal Affairs may advise all the**

State Govts./UT administrations to ensure utmost care while issuing temporary caste/ tribe certificates; and that they should issue the community certificates on the basis of some preliminary enquiry or evidence in favour of the claim submitted by the applicant to discourage the persons who may try to obtain the caste certificate fraudulently.

5.11.10 Standing instructions of Government of India relating to issue of community certificates and format of community certificates for Scheduled Castes and Scheduled Tribes provide that sons and daughters of a person already having community certificate duly issued by a competent authority and containing all relevant information about the status of the person and address of his ordinary residence should be issued community certificates without fresh inquiry unless there is a doubt about genuineness of that certificate. This is not being followed by the certificate issuing authorities resulting in hardships and harassment of the applicants for such certificates. This issue was also highlighted in Chapter 7 of the First Report of the Commission. Since the First Report of the Commission is yet to be laid in Parliament alongwith action taken Memorandum on the recommendations contained in the Report, **the Commission reiterates its recommendation that the Department of Personnel & Training should issue necessary instructions to the certificate issuing authorities to carefully follow the instructions of the Government of India in the matter to ensure that sons and daughters of persons already having caste/ tribe certificates duly issued by a competent authority are issued the community certificates without fresh inquiry.**

5.11.11 The Government of India has been revising from time to time the formats for issuing community certificates for persons belonging to SCs/ STs. However, all State Governments are not issuing the community certificates in the prescribed performa. For instance, the format for issuing community certificate prescribed by Government of Madhya Pradesh is much different from the format prescribed by Government of India, although there are clear instructions issued by Government of India that the district level authorities in each State are required to follow the format prescribed by Government of India. **The Commission, accordingly, recommends that:**

- (i) **The Ministry of Tribal Affairs should direct all the State Govts to review the instructions for issue of caste/tribe certificates, issued by them to the district or taluka level authorities and advise them to use standard format for issuing the community certificates as prescribed by Government of India.**
- (ii) **The requests for issue of caste/tribe certificates should be entered in a register specifically maintained for the purpose at taluka/district level and that the certificate issuing authorities should ensure that the certificates issued by them contain the serial number or the registration number in the register recording requests for issue of caste/tribe certificate, and the Certificate No. on the face of the certificates alongwith other relevant details and should bear the clear seal and stamp of the issuing authority. This can be satisfactorily ensured if the record relating to issue of caste certificates is**

computerized and the certificate is also computer generated so that all required parameters are automatically mentioned on the certificate.

5.11(A) National Population Register and allotment of Unique ID No. to each person in the country.

5.11.12 The Government of India in the Ministry of Home Affairs has initiated action for preparing a **National Population Register** for maintaining record of each person in the country on select parameters and allotting a Unique ID number to that person which will be valid through out the country. The data, that will be used for generating the National Population Register, will be collected through the Census 2011. Since information about a person belonging to a Scheduled Tribe community is also collected through the Census process, the National Commission for Scheduled Tribes requested the Registrar General of India as well as Ministry of Home Affairs that the National Population Register may also contain information about the ST status of a person. Since the Unique ID No. will be able to confirm the identity of the person from any part of the country, on the one hand this will help to verify the status of a person belonging to a Scheduled Tribe community; and on the other it will put a curb on the issue of false caste certificates. The Ministry of Home Affairs, through the Registrar General of India and ex-officio Census Commissioner of India has not accepted the proposal of the National Commission for Scheduled Tribes. Given the interest of genuine Scheduled Tribes, the Ministry of Tribal Affairs which is the Nodal Ministry for matters tribal development should consider the preparation of a National Register of Scheduled Tribes recording the ST status of the person beside relevant details and the Unique Identity Number which will be of great help in ensuring delivery of rights to the genuine ST persons. **The Commission strongly recommends that the Ministry of Tribal Affairs may undertake a project to compile a data base of ST community certificates linked with UIDs immediately.**

5.12 Language of Caste Certificates

5.12.1 The community certificates issued to persons are required to be produced for availing various benefits and services extended by State Governments as well as Central Government like:

- (i) Admission to Institutions of higher education/ professional colleges.
- (ii) Appointments in Group 'A' and Group 'B' services in the State Governments and State PSEs.
- (iii) Appointments in Central Government, and CPSEs and appointments to various All India Services or to Services with All India transfer liability.
- (iv) Banks and Insurance Companies.
- (v) Availing benefits of various State Sector, Central Sector and Centrally Sponsored development Schemes,
- (vi) Availing benefits of various Loans and other schemes which are implemented by Banks and financial Institutions having staff with all India

transfer liability and generally not conversant with the local or regional language.

5.12.2 The Commission has noted a critical problem while examining the certificates received in the Commission in various contexts. In several States, particularly Southern States, the certificates are issued in local/ regional languages. The Constitution Orders specifying Scheduled Tribes in respect of each State/UT were initially issued in English. After enactment of the Official Language Act 1963, these Orders and the Amendment Orders are approved and notified bilingually i.e. in English and Hindi only as per Official Language Act and not in any other local or Regional/ State language. Therefore name of the community mentioned in the certificate in language other than English or Hindi can not be compared/ checked with the name mentioned in the Notification. This creates confusion and mis-interpretation by the concerned Officials as well as the claimant. This affects the selection process against reserved seat/ vacancy. It may lead to harassment to a genuine tribal person. It may also lead to misuse, by way of wrong interpretation of the information mentioned in the local or State/ Regional language. **The Commission is, therefore, of the view that the Department of Personnel & Training should advise all the State Govts./UT Administrations to issue instructions to the district/ taluk level authorities to ensure that the certificates are issued bilingually i.e. in regional language beside either English or Hindi language with a view to avoid harassment to the certificate holders as also to check their misuse.**

5.13. Bill to regulate the issue and verification of caste/tribe certificates

5.13.1 The Hon'ble Supreme Court in its judgment dated 18.4.1995 in the case of Director of Tribal Welfare, Government of Andhra Pradesh vs. Lavetti Giri & Ors. directed that "The Government of India would have the matter examined in greater detail and bring about a uniform legislation with necessary guidelines and rules prescribing penal consequences on persons who flout the Constitution and corner the benefits reserved for the real tribals etc. so that the menace of fabricating the false records and to gain unconstitutional advantages by fake/spurious persons could be prevented."

5.13.2 In view of the above judgment of the Supreme Court, the Government of India (Ministry of Social Justice & Empowerment) decided to enact a law to regulate the issue of community certificates relating to persons belonging to the Scheduled Castes/ Scheduled Tribes and Other Backward Classes. A Bill seeking to give effect to this decision was drafted by the Ministry of Social Justice & Empowerment and sent to all the State Governments for their views. The proposed bill seeks to lay down a well-defined procedure for issuing of community certificates for Scheduled Castes / Scheduled Tribes and OBCs, which would be applicable throughout the country. It seeks to provide for a competent authority that would issue the certificate *suo-moto* or on a complaint filed by any person or a case referred to it by an employing authority or head of an educational institution. It also provides for stringent punishment for those who obtain false community certificates and for those responsible for issuing the same. Action for withdrawal of benefits and recovery of payments already made has also been provided for. A copy of the draft bill was also sent to the erstwhile National

Commission for Scheduled Castes and Scheduled Tribes requesting its comments. On detailed examination of the Bill, the erstwhile National Commission for Scheduled Castes and Scheduled Tribes had suggested some amendments in the Bill. The main observations and comments of the erstwhile Commission were that the punishment should be higher so as to act as an effective deterrent. The erstwhile Commission also expressed a view that even in the case of elective offices, the false certificate holders should be debarred from contesting for a period of six years apart from facing the punishment prescribed under the law.

5.13.3 A Draft Bill prepared by the Ministry of Social Justice & Empowerment to regulate the issue of community certificate to persons belonging to Scheduled Castes/ Scheduled Tribes/ OBCs was received for obtaining comments / views of the National Commission for Scheduled Tribes from the Ministry of Tribal Affairs vide their letter dated 19.02.2009. Following are the salient features of the Draft Bill:

- (i) *Each State or UT shall constitute a Scrutiny Committee in every District to be headed by an officer to be decided by the State Govt; (Section – 8(A))*
- (ii) *The Scrutiny Committee may, either suo-moto or on a written complaint by any person, enquire into the correctness of such certificate; (Section – 9(1))*
- (iii) *The burden of proof that the applicant belongs to such caste/tribe/class or not shall be on applicant or complainant as the case may be; (Section – 7)*
- (iv) *Whoever obtains a community certificate by any fraudulent means be punishable, on conviction, with rigorous imprisonment for a term from two to five years and with fine of five thousand to ten thousand rupees; (Section – 10)*
- (v) *After cancellation of a false community certificate by the competent authority, the benefits obtained based on the community certificate stands withdrawn such as Degree/Diploma, appointment in any Government post, any payment in terms of scholarship, grant etc., election to elective offices, any assets created with Govt. assistance shall be forfeited; (Section – 11,12)*
- (vi) *The Committee may stay the execution of any such decision or order, which were made to satisfy themselves, pending exercise of their powers to enquire / examine; (Section – 9(2))*

5.13.4 The matter could not come up for discussion in the meeting of the Commission during the Report period 2008-09 and was discussed at length in the Meeting of the Commission held on 16/11/2009. However, the observations/ recommendations of the Commission on the draft Bill are included in this report for the sake of completeness.

- (i) Eligibility criteria for issue of Community Certificate should also be included in the Bill so that the same is not dependant on understanding of instructions issued from time to time/ legal pronouncements (Section- 4);
- (ii) In the interest of transparency and to facilitate verification of genuineness of certificates issued, a proper registration mechanism should also be

conceived in collaboration with Unique ID/ other identity – verification systems for citizens (Section – 4);

- (iii) In some of the States, like Maharashtra, all the caste certificates have to be compulsorily verified and validated by the Scrutiny Committee before any benefit can be claimed by the Certificate holder. It is, however, practically not possible for any body/ committee to verify and validate all issued certificates without inflicting harassment on the certificate holders besides causing undue delays; and, thus, no general revision exercise should be contemplated.
- (iv) The power to grant stay should not be conferred to the Committee as it often leads to arbitrary actions and delay in disposal of cases, besides diluting the accountability of the concerned authorities to take timely and reasoned decision [Section – 9(2)]. On the contrary, a time limit of 3 months should be stipulated for disposal of cases.
- (v) In some of the Clauses in the Bill, the word ‘Government’ is used, which possibly refers to the State Government since the Bill does not contemplate Central authorities for issue/ verification of certificates. To avoid ambiguity the appropriate Government should be clearly specified.
- (vi) Ordering of Sections of the Bill should be systematic. For instance functions & powers of the Scrutiny Committee are mentioned in Sections 6 & 7 before its composition is explained in Section 8(A). The authorities subordinate to it have also not been defined [Section 9(1)].

5.13.5 Since the above views and recommendation of the Commission on the draft Bill have been communicated to the Ministry of Tribal Affairs, **the Ministry of Tribal Affairs may impress upon the Ministry of Social Justice & Empowerment to revise the draft Bill taking into consideration the advice/ views/ recommendation of the Commission and introduce the Bill in Parliament at the earliest.**

CHAPTER 6

ATROCITIES AGAINST SCHEDULED TRIBES

6.1 Constitutional and Legal Rights of STs

6.1.1 Article 15 of the Constitution lays down that no citizen shall be subjected to any disability or restriction on the grounds of religion, race, caste, sex or place of birth. It also guarantees that every citizen shall have equality of status and opportunity.

6.1.2 The problems of social inequality and class divide in a country like India with heterogeneous groups and sub-groups need to be recognized and resolved by the all available democratic measures including special legislations to deal with particular acts constituting offences against such weaker sections of the society. 'Scheduled Castes' and 'Scheduled Tribes' are two such identified social groups. Article 46 of the Constitution of India expressly provides that the State shall promote the educational and economic upliftment of the weaker sections of the society, in particular of SCs & STs with special care and shall protect them from injustice and all forms of exploitation. Special social enactments have been made from time to time for them in order to uphold the Constitutional mandate and safeguard the interests of these sections of the society. The major legal enactments at the national level are:

- (i) Protection of Civil Rights Act, 1955;
- (ii) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

6.1.2.1 The Protection of Civil Rights Act, 1955 was enacted in furtherance of Article 17 of the Constitution to abolish untouchability and its practice in any form. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was brought into force w.e.f. 30 January, 1990 in order to check and deter crimes against SCs and STs by persons belonging to other communities. These enactments have extended positive discrimination in favour of SCs and STs in the sphere of criminal law; in as much as they prescribe penalties that are more stringent than the corresponding offences under Indian Penal Code (IPC) and other laws. Special Courts have been established in major States for speedy trial of cases registered exclusively under these Acts.

6.2 Certain features of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

6.2.1 The Parliament passed the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SCs & STs PoA Act) on 11th September, 1989. The statement of objects and reasons appended to the Bill while moving the same in the Parliament stated that "despite various measures to improve the socio-economic conditions of SCs & STs, they remain vulnerable. They are denied a number of civil rights; they are subjected to various offences, indignities,

humiliations and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious atrocities are committed against them for various historical, social and economic reasons.”

6.2.2 The Preamble of the Act also states the intent to “prevent the commission of offences of atrocities against the members of Scheduled Castes and Scheduled Tribes to provide for Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto.” Thus, the objectives of the Act very clearly emphasize the intention of the Government to deliver justice to these communities through affirmative action to enable them to live in society with dignity and self-esteem.

6.2.3 The SCs and STs (PoA) Act provides for criminal liability for a number of specifically defined atrocities and extend the scope of certain categories of penalizations given in the Indian Penal Code (IPC) as also for relief and rehabilitation for victims of atrocities. It also provides for setting up of special authorities for monitoring the implementation of the Act. The Act has the following main features:-

- (i) **Creation of new types of offences:** This Act enlarges the area of criminal liability and includes several acts of omission and commission which were covered neither under the Indian Penal Code nor under the Protection of Civil Rights Act, 1955 as amended in 1976.
- (ii) **Commission of offences only by specified persons:** The defining paradigm of the Act lies in the community identification of both the offender and the victim. The offender must be a person other than members of Scheduled Castes or Scheduled Tribes and the victim should be a member of Scheduled Castes or Scheduled Tribes.
- (iii) **Administrative measures for effective enforcement of the Act:** The Act makes arrangements for setting up of Special Courts to try offences under the Act to ensure speedy trial. It also makes provision for appointment of Special Public Prosecutors to conduct trial of offences under the Act in the Special Courts.
- (iv) **Special features of the Act:** With a view to giving teeth to the provisions of the Act, Special Courts have been empowered (i) to extern potential offenders from Scheduled Areas and Tribal Areas (ii) to declare any property, moveable or immoveable or both, belonging to the person who has been sued for the commission of that offence stand forfeited to the Govt. and (iii) to pass an order that all or any of the properties, moveable or immoveable or both belonging to the accused shall be attached. The Act also places restrictions on granting of probation to the convict of an offence under the Act. Among the preventive measures are included cancellation of arms license of non-SC/ ST persons in atrocity-prone areas and provision for grant of arms licenses to Scheduled Castes/Scheduled Tribes as a means of self-defence.

- (v) **Enhanced punishment for some offences:** It provides enhanced punishment for those offences under the IPC which are punishable with imprisonment for a term of 10 years or more.
- (vi) **Punishment for public servants for neglect of duties:** The Act also provides for punishment for public servant not belonging to SC or ST who willfully neglect his duties required to be performed by him under the Act.
- (vii) **Relief for victims or their legal heirs:** The Rules made under the Act provide for making arrangements for providing relief in cash or kind or in both to the victim and their family members and dependants. The scale of relief has been given in the schedule to the Rules. The relief provided under the PoA Rules is in addition to any other right to claim compensation under any other law.
- (viii) **Legal Aid to the victims or their dependants:** The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 also provide that the State Governments would make necessary arrangements for providing adequate legal aid to the victim of atrocity or his/ her dependants.

6.3 Mandate of the Commission

6.3.1 The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 or the Rules made thereunder do not provide any specific role for this Commission in this respect.

6.3.2 However, the duties assigned to the Commission by Clause 5 of Article 338A of the Constitution include investigation and monitoring of all matters relating to the safeguards provided for the Scheduled Tribes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards.

6.4 Procedure adopted by Commission in dealing with atrocity-related complaints

6.4.1 The Commission has formulated standard guidelines for dealing with atrocity-related complaints in a time bound manner. The guidelines require the authorities of the State Governments/UT Administrations to be asked to furnish report on the complaints within a stipulated period of 20 days (10 days in respect of offences relating to physical assault). The concerned authorities are advised to take necessary steps e.g. timely registration of FIR under relevant sections of (PoA) Act, alongwith the applicable sections of IPC. The guidelines further lay down that the report received from the State authorities should be examined in an objective manner and on-the-spot inquiry should be conducted if found necessary. A hearing may be held if the report/reply received from the concerned authority is not found to be satisfactory.

6.5 Crimes against Scheduled Tribes.

6.5.1 As per data compiled by National Crime Records Bureau a total of 5,532 cases against Scheduled Tribes were reported in the country during 2007 as compared to 5,791 cases in 2006 showing a decline of 4.5% in 2007 over 2006. The decline was observed in all heads except Kidnapping & Abduction, Arson and Hurt. The details are presented in the Table below. Madhya Pradesh has reported 27.1% (1,501) of the total cases in the country. However the crime rate was highest in Arunachal Pradesh at 2.7 as compared to only 0.5 at National level. The number of cases (head-wise) reported in the year 2007 are as follows:

- (i) A total of 140 cases of Murder of Scheduled Tribes were reported in 2007 as compared to 195 cases in 2006, showing a decline of 28.2%. Madhya Pradesh has reported 33.6% (47 cases) of the total cases reported in the country.
- (ii) A total of 627 cases of rape were reported in 2007 as compared to 699 cases in 2006 showing a decline of 10.3% in 2007. Madhya Pradesh has reported the highest number of cases (288) accounting for 45.9% cases of the total cases in the country.
- (iii) The incidents of Kidnapping & Abduction have slightly increased by 1.1% in the year 2007 over the previous year (2006) when 88 cases were reported. Madhya Pradesh has reported highest (17) cases followed by Andhra Pradesh, Assam and Orissa (10 cases each). These four States taken together accounted for 52.8% of the total cases reported in the country.
- (iv) A total of 9 cases of dacoity were reported in the country during 2007 as compared to 12 cases in the year 2006 showing a decrease of 25.0% over the previous year. 4 out of 9 cases were reported from Jharkhand and 3 cases were reported from Assam. 1 case each was reported from Chhattisgarh and Maharashtra.
- (v) A total of 21 cases were of robbery were reported during 2007 as compared to 29 cases in 2006. Assam has reported 23.8% (5 cases) and Orissa 19.0% (4 cases) of the total cases reported in the country.
- (vi) A total of 855 cases of hurt were reported during 2007 as compared to 838 cases in 2006 showing an increase of 2.0% in 2007. Madhya Pradesh, by reporting 207 cases, has accounted for 24.2% of total cases reported in the country followed by Orissa (150 i.e., 17.5% cases). The crime rate was highest at 1.4 in Sikkim as compared to National average of 0.1.
- (vii) A total of 54 cases of arson were reported in 2007 as compared to 46 cases in 2006 showing an increase of 17.4%. Rajasthan has accounted for 51.9% (28 cases) of total such cases reported in the country.

Comparative Incidence of Crime against Scheduled Tribes

Sl. No.	Crime-Head	Years					% Variation in 2007 over 2006
		2003	2004	2005	2006	2007	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1.	Murder	185	156	164	195	140	-28.2
2.	Rape	551	566	640	699	627	-10.3
3.	Kidnapping & Abduction	69	79	72	88	89	1.1
4.	Dacoity	30	40	27	12	9	-25.0
5.	Robbery	46	50	49	29	21	-27.6
6.	Arson	38	33	38	46	54	17.4
7.	Hurt	790	767	767	838	855	2.0
8.	PCR Act	37	11	162	49	5	-89.8
9.	SC/ST (POA) Act	1,340	1,175	1,283	1,232	1,104	-10.4
10.	Others	2,803	2,658	2,511	2,603	2,628	1.0
	Total	5,889	5,535	5,713	5,791	5,532	-4.5

Source: NCRB publication titled 'Crime in India'

6.6 Disposal of Crimes by Police & Courts

6.6.1 The average charge-sheeting rate for the crimes against Scheduled Castes and Scheduled Tribes stood at 90.6% and 96.5% respectively in comparison to National level general charge-sheeting rate of 80.1% for IPC crimes and 95.8% for Special Law (SLL) crimes.

6.6.2 The average conviction rate for crimes against Scheduled Castes and Scheduled Tribes stood at 30.9% and 29.0% respectively as compared to overall conviction rate of 42.3% relating to IPC cases and 83.8% relating to SLL cases. The crime head-wise and State/UT-wise details of disposal of crimes against Scheduled Tribes are presented in **ANNEXURES 6.I to 6.VI** (Total 6).

6.6.3 8,228 persons out of 9,483 persons arrested for crimes committed against Scheduled Tribes could be charge-sheeted accounting for 86.8% charge-sheeting rate. Only 2,183 persons could be convicted out of 8,073 persons against whom trials were completed representing 27.0% conviction rate. The details are presented in **ANNEXURES 6.VII to 6.X** (Total:4).

6.6.4 Comparative analysis in respect of cases under PoA Act in different years, pertaining to Scheduled Tribes is given in the following **Table**:

Year	Total No. of cases for Inves-tigation including pending cases from previous year	Cases withdra wn by Govt.	No. of cases in which					No. of cases pending investigat ion at the end of the year
			Investig ation refused	Investigation completed				
				Charge found false/mistake of fact or law etc.	Final Report true submitt ed	Char ge Shee ts subm itted	Total	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
2005	1711	9	7	157	72	935	1164	531
2006	1763	0	3	257	32	858	1147	613
2007	1717	0	1	247	21	855	1123	593

Source: NCRB publication titled 'Crime in India'

6.6.5 It is evident from the above that a large pendency of cases is existing at the end of the each year. Charge sheets are also evidently not being filed in Court within the period specified under the PoA Rules, since the carryover exceeds the proportionate institution of fresh cases per quarter.

6.7 Recommendations of the Committee on the Welfare of Scheduled Castes and Scheduled Tribes (2005)- Fourth Report for 2006-2007 pertaining to atrocities

6.7.1 The Parliamentary Committee on the Welfare of the Scheduled Castes and the Scheduled Tribes in its Fourth Report (Year 2006-07) had inter-alia recommended that Ministry of Social Justice & Empowerment, Ministry of Home Affairs, National Commission for Scheduled Castes and National Commission for Scheduled Tribes should meet regularly to devise ways and means to curb atrocities and ensure effective administration of the Protection of Civil Rights Act, 1955 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. In pursuance of this recommendation, a Committee for effective coordination to devise ways and means to curb offences of untouchability and atrocities against Scheduled Castes and Scheduled Tribes for effective implementation of the above Acts was set up by the Ministry of Social Justice & Empowerment vide OM No. 11012/11/2005-PCR(Desk) dated 29th March, 2006 under the Chairmanship of Minister of Social Justice & Empowerment. The Minister of Tribal Affairs is a Special Invitee on the Committee whereas Secretary (NCST) and Secretary (NCSC) are among its Members which include three non-official Members from amongst Scheduled Castes & Scheduled Tribes. A copy of the OM is placed at **ANNEXURE 6.XI**.

6.7.2 Eight meetings of the above Committee in different States have so far been held out of which the following three meetings were held during 2008-09:-

S. No.	Date of meeting	Venue	Participating State/UT
1	30-05-2008	Agartala	West Bengal, Orissa, Manipur and

			Tripura
2	28-01-2009	Bhopal	Uttar Pradesh, Uttarakhand, Madhya Pradesh, Chhattisgarh and Jharkhand
3	14-02-2009	New Delhi	Gujarat, Goa, Kerala, Meghalaya and UT of Dadra & Nagar Haveli

6.7.3 Important issues like registration of cases under the PCR and POA Acts, investigation of these cases by the police, disposal of the cases by the Courts, the functioning of Designated Special Courts and exclusive Special Courts, functioning of State level Vigilance & Monitoring Committees, monetary relief to the victims of atrocities, sensitization of the police and other administrative issues about the provisions of these Acts, awareness among SCs and STs about the provisions of the Acts, proactive disposal of land disputes and incentives for inter-caste marriage for prevention of atrocities, role of NGOs in combating the offences of atrocities, identification of atrocity prone areas, etc. were discussed in the meetings. Representatives of the Commission have been actively participating in these meetings and putting forward important suggestions on the above issues (**ANNEXURES 6.XII & 6.XIII**). The Ministry of Social Justice & Empowerment communicates the decisions/suggestions of the Committee to the concerned State Governments for necessary action.

6.8 Amendment proposed by National Commission for Scheduled Tribes and Ministry of Social Justice & Empowerment in the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

6.8.1 From the analysis of data relating to disposal of cases of atrocities on Scheduled Tribes by the Courts, discussed in the meeting of the Special (Coordination) Committee set up by the Ministry of Social Justice & Empowerment, it was noted that in many cases it took several years to dispose the cases which, possibly, led to acquittal in large number of cases. The Commission was informed that the Consumer Protection Act, 1986 (Section 3A) provided for time-bound disposal of the cases by the Consumer Forums (3/5 months), while the National Commission for Women had recommended that the Courts may dispose the cases relating to rape in a time-bound manner (within 6 months). It was felt that since the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is a special Act for protection of the Scheduled Tribes, similar provision should be incorporated in this Act also. The Commission discussed the proposal in detail in its meeting held on 03.07.2009. It was noted that while the provision for setting up Special Courts in the Act was aimed at speedy disposal of cases registered under the Act, experience so far had belied this expectation. **The Commission, therefore, recommended that the cases registered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 should be disposed by the Special Courts within 6 months. To meet this objective, the Act could also be amended to provide for setting up exclusive Special Courts (instead of designating a Session Court as a Special Court) for trial of cases under this Act.** The above recommendation of the Commission was forwarded to the Ministry of Social Justice and Empowerment vide letter, dated 16/07/2009 (**ANNEXURE 6.XIV**)

6.8.2 Ministry of Tribal Affairs forwarded a proposal from the Ministry of Social Justice & Empowerment for the following amendments in Sections 14 and 21 of SCs and STs (Prevention of Atrocities) Act, 1989 for comments of the Commission on the proposal :

- (iii) Re-numbering of the existing Section 14 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, whose text is reproduced below, as Section 14(1):-

Section 14(1)

“For the purpose of providing for speedy trial, the State Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for each district a Court of Session to be a Special Court to try offences under this Act.”

- (iv) Addition of the following new sub-section(2) in Section 14 after Section 14(1):

“(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, a Special Court specified under sub-section (1) shall be competent to try offences under this Act as a Court of original jurisdiction without the case having been committed to it by a magistrate under the said Code”.

- (iii) Addition of new sub-section (2A) in Section 21 (“relating to measure to be taken by the respective State Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to ensure effective implementation of the Act”), after existing sub-section (2) as mentioned below:-

“(2A) Whenever a First Information Report is registered for an offence punishable under sub-clause (i), (iv) or (v) of sub-section (2) of Section 3, the concerned State Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the Union Territory Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in the case of Union Territory with Legislature) or the Administrator of the Union Territory (in the case of Union Territory with Legislature) or the administrator of the Union Territory (in the case of Union Territory without Legislature) , as the case may be shall submit a detailed report in the matter to the Central Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and to the National Commission for Scheduled Castes and/or the National Commission for Scheduled Tribes, as the case may be, within four days of the registration of the First Information Report, in such manner as may be prescribed.”

6.8.3 The proposed amendments, forwarded by the Ministry of Tribal Affairs vide its letter dated 18/07/2008, were discussed in the meeting of the Commission held on 29/07/2008. The Commission endorsed the proposed amendments. The Commission observed that in view of the provision under new sub-section 2(A) under Section 21, proposed to be inserted vide the amendment,

the FIR information will be reported to the National Commission for Scheduled Tribes also. On receipt of information in National Commission for Scheduled Tribes about registration of cases under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the National Commission for Scheduled Tribes will have to investigate the cases as per mandate of the Commission under Clause (5) of Article 338A of the Constitution. Consequently, the workload relating to investigation and monitoring of cases of atrocities on Scheduled Tribes in this Commission will increase manifold. The Commission desired that to enable it to concentrate on such cases, a Special Cell, fully equipped with adequate manpower and infrastructure facilities will be required to be created in the Hqrs. Office. The Commission accordingly suggested that Ministry of Tribal Affairs should request the Ministry of Social Justice & Empowerment to make a provision for creation of a Special Atrocity Cell/ Unit with requisite complement of staff in the Commission in the financial memorandum to be enclosed with the Bill for amendment of the Act. A detailed proposal for setting up this Cell/ Unit will be submitted to the Ministry of Tribal Affairs in due course after the proposed amendments are notified. These comments/views of the Commission were communicated to them vide its letter dated 12/08/2008, with the request to ensure due consideration of Commission's views/comments on the proposed amendments by the Ministry of Social Justice & Empowerment.

6.8.4 Subsequently, Ministry of Tribal Affairs vide its letter dated 07.11.08 sought comments of the Commission on the Draft Cabinet Note received from Ministry of Social Justice & Empowerment, for amendments in the Section 14 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 & Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Prevention of Atrocities) Act, 1989 as under:

(i) Re-numbering of the existing Section 14 of the POA Act as Section 14(1) with text as mentioned above.

(ii) Addition of following new sub-section(2) in Section 14, on the lines of sub-section(1)(d) of Section 36 of the Drugs and Psychotropic Substances Act :

“(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, a Special Court specified under sub-section (1) may, upon perusal of police report of the facts consisting:

(a) an offence under this Act, and

(b) an offence, if any, under any other law for the time being in force,

take cognizance of such offence or, as the case may be, offences, without the case being committed to it for trial.”

6.8.5 In its meeting held on 17/12/2008, the Commission also agreed with the suggestions made in the draft Cabinet Note for amendment of the SCs & STs (POA) Act, 1989 as mentioned in paragraph above. The views of the Commission on the suggestions contained therein were communicated to the Ministry of Tribal Affairs vide its letter dated 13/01/2009, with the request to intimate the final outcome of the proposal. Ministry of Tribal Affairs vide letter dated 24/02/2009

informed that there had been no further communication from the Ministry of SJ&E and therefore, the Ministry was not aware of the final outcome of the issue.

6.9 Amendments of SCs and STs (Prevention of Atrocities) Rules, 1995.

6.9.1 The SCs and STs (PoA) Rules, 1995 were notified on 31-03-1995, under the SCs and the STs (PoA) Act, 1989. These Rules provide norms for relief and rehabilitation under the said Act which extend to whole of India except Jammu and Kashmir. The PoA Rules have not been revised after notification although the need for revision/amendment has become imperative, Taking into account this position, the Ministry of Social Justice & Empowerment proposed the following amendments in the SCs & STs (POA) Rules, 1995 and requested the views of the Commission during December, 2009 on the proposed amendments, whose salient features are as follows:

i) Amendment in Rule 7 to insert Rule 7-A.

Proposed insertion of Rule 7-A as follows:

“7-A. Submission of Reports to Central Government etc. in case of serious offences.

(1) Whenever a First Information Report is registered for an offence punishable under sub-clause (i), (iv) or (v) of sub section (2) of Section 3, the concerned District Magistrate shall submit a preliminary report within four days, in the matter, in such manner as may be prescribed, to the following:-

- (i) Concerned State Government/Union Territory Administration,
- (ii) The Central Government in the Ministry of Home Affairs and the Ministry of Social Justice & Empowerment / Tribal Affairs, depending on whether the offence relates to a Schedule Caste or a Schedule Tribe, and
- (iii) the National Commission for Scheduled Castes / the National Commission for Scheduled Tribes, depending on whether the offence relates to an SC or an ST.

(2) Within 45 days of the registration of the FIR relating to an offence mentioned in sub-rule (1), the concerned State Government/Union Territory Administration shall submit to the Ministries of the Central Government and the concerned National Commission, as specified in sub-rule (1) above, a detailed report in the matter in such manner as may be prescribed, in the light of the report submitted under sub-rule (2) of the Rule 7.”

6.9.2 The insertion of the new Rule (Rule 7-A) is proposed with a view to lay down an institutional mechanism for monitoring the specific incidents of offences of atrocities, especially heinous offences.

ii) Amendment in Schedule to Rule 12(4) at Annexure-I

6.9.3 The Schedule to POA Rules at Annexure-I is captioned “**Norms for relief amount**” and prescribes ‘**Minimum amount of relief**’. The relief amount varies between Rs. 20,000/- to Rs 2,00,000/-, depending upon the nature of offence and its payment is staggered. The Minimum relief amount as per Schedule to POA Rules at Annexure –I is proposed to be revised to between Rs.48,000/- to Rs.4,80,000/- as the cost of living has enormously gone up.

iii) Amendment in Annexure-II of Schedule to POA Rules

6.9.4 The proposal for amendment is as given below:

At Sr.No.19 of Schedule to Rule 12(4), the definition of 'Disability' is prescribed as follows:

*“**Disability.** The definitions of physical & mental disabilities are contained in the Ministry of Welfare, G.O.I. Notification No.4-2/83-HW.III, dated 6.8.1986, as amended from time to time. A copy of the Notification is at Annexure-II to the Schedule.”*

The entry at Sr. No.19 is required to be amended taking into account the definition of 'Disability' as given in Section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and the guidelines issued vide Ministry of Social Justice & Empowerment Notification No.154, dated 01-06-2001.

iv) Amendment in Rule 16(1)(iv)

6.9.5 Rule 16 of the POA Rules provides for constitution of a State-level Vigilance and Monitoring Committee. The composition of the Committee as stated in Rule 16(1) and Rule 16(1)(iv), inter-alia, mentions Director/Deputy Director, National Commission for the Scheduled Castes and the Scheduled Tribes as a Member. Rule 16(1)(iv) is required to be amended as the erstwhile NCSCST has been bifurcated into two separate Commissions, viz., NCSC and NCST in February, 2004.

6.9.6 The above amendments were discussed in the Commission's meeting held on 22-02-2010. The gist of discussion and the views of the Commission on the amendments are detailed below.

Observations of the Commission

(A) Amendment to insert Rule 7-A.

6.9.7 It was noted by the Commission that at present, there is no mechanism, wherefrom the Nodal Ministries in the Central Government (Ministry of Social Justice & Empowerment in case of SCs and Ministry of Tribal Affairs in case of STs) can obtain authentic and full details of specific incidents of offences of atrocities, especially heinous offences on a continuing basis. The Commission also noted that at present there is no definition of heinous offences in the Indian

Penal Code. It is also not mandatory under the Criminal Procedure Code to register an FIR immediately when a complaint is made.

6.9.8 The Commission noted that a large number of atrocities against Scheduled Tribes primarily pertain to grabbing of tribal land and crimes against (their) women folk. Therefore, it is advisable to report cases registered under sub-clause (iii), (v), (xi) or (xii) of sub-section (1) of Section 3 too for monitoring purposes. The Commission also felt that there should be prompt reporting of all such complaints made to the police, without awaiting the registration of an FIR. The report should preferably be sent through the Superintendent of Police (instead of District Magistrate), keeping in view the varying responsibility for criminal administration in different regions.

6.9.9 The Commission, therefore, broadly endorsed the amendment proposed by Min. of SJ&E with slight modification in the wording of proposed Rule 7-A which, according to the Commission, should read as under:-

(1) Whenever a complaint is made to a police officer regarding an offence punishable under sub-clause (iii), (v), (xi) or (xii) of sub-section (1) of Section 3 or sub-clause (i), (iv) or (v), of sub-section (2) of Section 3, the concerned Superintendent of Police shall submit a preliminary report within four days, in the matter, in such manner as may be prescribed, to the following:-

(i) concerned State Government/Union Territory Administration,

(ii) The Central Government in the Ministry of Home Affairs and the Ministry of Social Justice & Empowerment/Tribal Affairs, depending on whether the offence relates to a Scheduled Castes or a Scheduled Tribes, and

(iii) Within 45 days of the registration of the FIR relating to an offence mentioned in sub-rule (1). the concerned State Government/Union Territory Administration shall submit to the Ministries of the Central Government and the concerned National Commission, as specified in sub-rule (1) above, a detailed report in the matter in such manner as may be prescribed, in the light of the report submitted under sub-rule (2) of the Rule 7.

(B) Amendment of Schedule to Rule 12(4) at Annexure-I

6.9.10 The Commission in its first Report (2004-05 & 2005-06) had recommended that the amount of financial relief should be reviewed and suitably increased in recognition of the fact that the cost of living had gone up over the past one decade. In the Action Taken statement to the said recommendation, the Ministry of SJ&E stated that revision of minimum amounts will be taken up. **The Commission re-iterated its earlier recommendations in this regard and endorsed the proposed amendment to Schedule to PoA Rules at Annexure-I captioned "Norms for relief" taking into account the Consumer Price Index**

for Industrial Workers (CPIIW) as the benchmark. The Commission however observed that the added reference in Item 17 pertaining to mischief by fire etc. is probably unnecessary since it is already subsumed in Section 3 (2) (iv) of the PoA Act(as life imprisonment exceeds 10 years).

(C) Amendment in Annexure-II of Schedule to POA Rules

6.9.11 The Commission noted the definitions of physical and mental disabilities contained in the Ministry of Welfare, G.O.I. notification No.4-2/83-H.W.III, dated 06-08-1986. Since "disability" has subsequently been defined in Section 2 of the PWD Act, and guidelines for assessment of disability have also been amended, the Sr. No.19 of the Schedule was proposed to be amended as follows:-

"Disability. The definition of disability shall be as given in Section 2 of the PWD Act, and guidelines for their assessment shall be as contained in Ministry of Social Justice & Empowerment, G.O.I. notification No.154, dated 01-06-2001, as amended from time to time"

6.9.12 The Commission accordingly endorsed the proposed amendment and recommended that the existing Annexure-II to Schedule to PoA Rules, may be replaced by the latest instructions (Notification dated 01-06-2001), containing the revised definition of disability.

(D) Amendment of Rule 16 (1) (iv)

6.9.13 The Commission noted that Rule 16 of the PoA Rules, provided for the constitution of State-level Vigilance and Monitoring Committee and its composition. As the NCSCST was replaced in February, 2004 by two separate Commissions, namely the National Commission for Scheduled Castes and the National Commission for Scheduled Tribes, **the Commission endorsed the amendment proposed by Min. of SJ&E and recommended that Rule 16(1)(iv) is required to be amended as under:-**

"16. CONSTITUTION OF STATE-LEVEL VIGILANCE AND MONITORING COMMITTEE

(i) **The State Government shall constitute high power vigilance and monitoring committee of not more than 25 members consisting of the following:**

Chief Secretary, the Home Secretary, the Director General of Police, representative of the National Commission for the Scheduled Castes and/or National Commission for Scheduled Tribes – Members".

6.10 Analysis of complaints received in the Commission

6.10.1 The Commission receives complaints from various sources alleging atrocities against STs. More than 800 complaints about offences of atrocities were

received by the Commission during the years 2006-07, 2007-08 and 2008-09. The complaints were referred to the concerned States/UTs calling for their comments and action taken reports within 30 days. It has been observed that no response to the communications of the Commission was received from the States/UTs in more than 20% of the cases despite reminders. Even in the cases in which replies were received, complete details e.g. date of FIR, date of filing of chargesheet, payment of monetary or other relief and status of the case after chargesheet were not furnished to the Commission in most of the cases. Information about the time taken by police in completion of investigation was missing in almost all the reports received from States/UTs.

6.10.2 The Commission has observed that:

- (i) In some cases, the reports have not been found to be comprehensive with specific comments on the issues raised in the representation. This has resulted in non-availability of requisite input to the Commission to analyze the case with reference to the requirement of PoA Act at different stages and also in avoidable delay in examination of the cases by the Commission.
- (ii) Where the complaints have been made against the police personnel, it is necessary that such reports should pass through internal verification mechanism in the police deptt. However, in almost all cases, such verification are missing.
- (iii) The Commission has also noted that abnormal delay in spot investigation, prosecution after FIR, filing of chargesheet and payment of compensation is evident in many cases.
- (iv) The complainants should be given adequate and fair opportunity to present their case. In some cases, the ST complainants have not been heard during the process of investigation

6.10.3 With a view to analyzing the action being taken by States/UTs in implementing the provisions of PoA Act and PoA Rules, reports received in the Commission containing information about date of FIR, date of filing of chargesheet, invoking of provisions of PoA Act in FIR/ chargesheet, payment of monetary relief, etc. were scrutinized. A statement showing these details in respect of 75 cases is placed at **ANNEXURE 6.XV**.

6.10.4 It would be observed that the communications from the Commission are not given due priority by the States/UTs as replies within the stipulated period of 30 days were received in only 32 cases out of the 75 cases. Despite reminders, replies in 16 cases were received after a period of 1 to 3 months whereas more than 3 months' time was taken by the States/UTs in furnishing replies in respect of 22 cases. Reply in 5 cases were abnormally delayed for more than a year.

6.10.5 The Commission has noted that out of the total 75 cases analysed, FIRs had already been registered in 73 cases before the complaints were received in the Commission. In only 2 cases, FIRs were registered after the complainants approached the Commission. It shows that the cases are not disposed of in time by the police after registering FIRs as a result of which the

aggrieved ST persons approach the Commission requesting it to plead their cases with the concerned authorities for ensuring effective and timely redressal of their grievances. It is thus clear that the investigation of cases is not properly monitored at the senior levels in the police department. It is also possible that the provision of appointment of the Investigating Officer of the level of Dy. Supdt. of Police as contained in Rule 7(1) of PoA Rules is not being strictly followed by the States/UTs and police officers below the level of Dy. Supdt. of Police are being entrusted with investigation of cases. **The Commission therefore recommends that the above provision in Rule 7(1) of the PoA Rules should be strictly complied with by the State/UTs and investigation of atrocity cases should be closely monitored by the Supdt. of Police and higher officials.**

6.10.6 From the statement, it is apparent that the provisions of PoA Act were invoked in FIRs as well as chargesheets in 59 cases out of the total 75 cases under scrutiny; while in 5 cases, these provisions were invoked in the FIR but not incorporated in the chargesheets. PoA Act was not invoked in 11 cases.

6.10.7 In accordance with the provisions contained in Rule 7(2) of the PoA Rules, investigation of an offence of atrocity is required to be completed within thirty days by the Investigating Officer. This provision is aimed at ensuring the expeditious filing of chargesheets in courts in atrocity cases. The scrutiny of the above mentioned 75 cases in the Commission shows that chargesheet were not filed in 3 cases whereas dates of filing of chargesheets were not indicated in 4 cases. Time taken by the police in filing the chargesheets in the remaining 68 cases is indicated below:

	Time taken to file Chargesheet after registration of FIR	Nos. of Cases
(a)	Within one month	20 cases
(b)	Between 1 to 3 months	32 cases
(c)	Between 3 to 6 months	10 cases
(d)	Between 6 months to 1 year	04 cases
(e)	More than 1 year	02 cases
Total		68 cases

6.10.8 It would be observed from the position indicated above that chargesheets are not being filed in the courts in time in majority of the cases of atrocities, which causes delay in providing desired relief/justice to the aggrieved persons.

6.10.9 The norms for providing relief in cash or in kind or both in terms of provisions of Rule 12(4) of PoA Rules have been laid down in Schedule to the PoA Rules. These norms provide that in cases involving offences like outraging the modesty/sexual exploitation of a woman 50% of the total monetary relief of Rs.50,000/- should be paid after medical examination of the victim. Similarly, in the cases relating to offences like disability of the victim and bonded or forced labour monetary relief of 50% and 25% respectively of the admissible amount should be paid at FIR stage. In cases of death/murder, 75% of the relief amount is to be paid after postmortem. Out of the 75 cases under scrutiny, information about providing any relief to the victims of atrocities in 20 cases has not been provided by the States/UTs and no relief was paid in 10 cases. In only 2 cases monetary

relief was paid at the FIR stage whereas in 37 cases payment of relief was made after filing of chargesheets although a total of 26 cases fall in the category in which part of monetary relief was required to be paid at FIR/medical examination/postmortem stage. Date of payment of relief is not available in 5 cases. In a case of gang-rape of tribal girls in Manipur by extremist elements, monetary relief was sanctioned after a period of more than 2 years of the incident. It is thus obvious that the matter of payment of monetary relief to the victims of atrocities is not receiving desired attention of the concerned officers in the States/UTs. **The Commission therefore recommends that the State level and District level Vigilance & Monitoring Committees should closely review the implementation of provisions regarding payment of monetary relief to the victims of atrocities strictly in accordance with the norms laid down under PoA Rules.**

6.10.10 In the above context, some of the specific cases are illustrated below:

- (a) Attempted rape of ST woman r/o Pilikun Village, Einsoor Post, Viluppuram District, Tamil Nadu. [F.No. HT/Atrocity/TN/848/2008-RU-IV]

Date of incident	:	17-02-2008
Complaint to NCST	:	10-10-2008
Reference to State Govt.	:	11-10-2008
Reminder	:	16-11-2009
Reply received	:	08-01-2010 & 10-05-2010
(Received after hearing was fixed for 08-01-2010)		
Date of FIR (under PoA Act)	:	18-02-2008
Date of filing Chargesheet	:	17-08-2008

Note: Chargesheet found defective by the Court and returned with remarks Delay occurred as remarks were not corrected in time.
Monetary relief of Rs. 25,000 to the victim and Rs. 6,250 to her husband granted after Court proceedings dated 28-02-2009.

- (b) Rape of ST woman r/o Mallupalli Village of Konijelra Mandal, Khammam District, Andhra Pradesh. [F.No.RU-IV/Atrocity/AP-2/2008]

Date of incident	:	17-12-2006
Date of complaint to NCST	:	29-02-2008
Commission's reference to State Authorities	:	03-03-2008
Reminder	:	03-04-2008
Brief reply received vide Police Deptt. letter dt.	:	03-01-2009
Details called from DGP vide NCST letter dt.	:	11-01-2010,
Reminder issued by NCST on	:	13-03-2010
Report received vide Police Deptt. letter dt.	:	19-03-2010
FIR registered under PoA Act on	:	18-12-2006.
Investigation started on	:	18-12-2006
Accused arrested on	:	27-12-2006
Chargesheet filed on	:	05-03-2007
Monetary relief of Rs.25000/- paid in	:	August, 2009
Court decision	:	awaited.

- (c) Physical threat and caste abuse to an ST woman belonging to Jharkhand and living in Delhi [F.No. Delhi-04/2008/Atrocity/RU-I].

Date of incident : 10-01-2008
Date of complaint to NCST : 12-03-2008
Reference to Commissioner of Police : 26-03-2008
Date of Reply : 10-04-2008 & 26-05-2008
FIR registered on 20-01-2008 (PoA Act not invoked)
Accused arrested and released on bail.
A rejoinder dated 15-06-2008, received from the petitioner, sent to Delhi Police on 22-10-2008 for comments but no response received.
No information received about payment of monetary relief.
Case pending in Court

- (d) Physical assault and threat of life to ST woman belonging to Jharkhand and residing in Rohini, Delhi [F.No. Delhi/ST-1/2005-APCR]

Date of incident : 25-10-2004
Date of complaint to NCST : 06-01-2005
Reference to Dy. Commissioner of Police, Delhi. : 07-01-2005
Reminder : 19-01-2005, 14-02-2005
Reply received : 28/01/2005, 15/02/2005
FIR registered under IPC Sections on : 01-11-2004
Accused arrested : 01-12-2004
Chargesheet filed : 11-02-2005
Delhi Police advised to file chargesheet under PoA Act : 22-02-2005

Note: Delhi Police replied on 31/05/2005 that supplementary Chargesheet filed under PoA Act. No information about further progress in Court and about payment of monetary relief to the victim received from Delhi Police.

6.10.11 The deficiencies indicated in paragraph 6.10.2 above were also discussed in the Review Meetings organized subsequently with the representatives of the Governments of Rajasthan, Andhra Pradesh, Chhattisgarh, Tamil Nadu, Madhya Pradesh, Orissa, Jharkhand and the NCT of Delhi. The gist of discussion and important observations/ recommendations of the Commission in the Review Meetings are given below for the sake of completeness of the report:

- (i) The Commission was informed that generally there was no difficulty in the matter of verification of Caste status of the victim in Jharkhand, Orissa and Madhya Pradesh. The verification is carried out on the basis of the caste certificates and the statements of the neighbours in Orissa and Jharkhand. In Madhya Pradesh, the caste verification is done by Dy. SP after registration of FIR. However, representatives of the State Government of Rajasthan, Andhra Pradesh and Chhattisgarh explained that one of the main reason of delay in filing the charge-sheet in atrocity cases was the time involved in verification of caste certificate of the complainant and the accused by the district authorities. The Commission did not accept this position and observed that the necessity of verification of caste certificate in respect of the complainants and the accused in all cases should be examined by the

State Government considering the fact that any mis-representation of caste either by the complainant or by the accused itself invited registration of cases against them for fraud. The Commission emphasized the need for strict adherence of the time-frame of 90 days for filing the charge-sheets.

- (ii) In the case of Delhi, the Commission noted that a case under PoA Act was not registered until a caste-based offence was committed by the accused. In general, where a case was registered under the PoA Act, verification of caste certificate was not resorted to. The Commission expressed the view that the above procedure was not in conformity with the provisions of PoA Act which requires that if a non-SC/ST person commits an offence on a member of SC/ST community, a case should be registered under Section 3 of the Act. Moreover, as per provision of the PoA Rules, accused is to be arrested immediately and financial assistance is provided to the victim. Therefore, POA Act should be invariably attracted where accused is non-SC/ST and victim is a SC/ST and financial assistance should also be provided as per the provisions of POA Rules.
- (iii) The Commission observed with concern during the discussion with the representatives of the state Govt. of Rajasthan, Chhattisgarh and NCT of Delhi that sometimes atrocity and economic offence are committed at the same time (atrocity is committed to encroach upon the tribal land). Mostly in such cases, economic offences are proved and atrocity is not proved in the absence of evidences/witnesses and as a result a police report is sent mentioning that the case is purely of economic nature and there is no atrocity on the members of ST community. Realizing the fact that the atrocity in most of such cases can be proved only implicitly, the Commission recommended that cognizance should be taken of the atrocity committed on the victim mentioned in the complaint in such cases under POA Act.
- (iv) It was brought to the notice of the Commission that youngsters particularly young tribal girls, are being illegally migrated to other places from the States of Jharkhand, Orissa, Madhya Pradesh, Chhattisgarh, etc. in the name of employment. The Commission noted with concern that these youngsters are deployed as domestic helps by the placement agencies (most of which are unregistered) in Delhi and other big cities are being exploited financially, physically and sexually by these agencies and also by employers in some cases. The Commission expressed the view that some legal steps have to be taken by the State Governments as well as Central Government to check the illegal migration of tribal girls and their exploitation. It was also recommended by the Commission that a Regulatory Body/Act to regulate the working and monitoring performance of such placement agencies should be set up.
- (v) The Commission expressed the concern that a number of incidents of killing of women on suspicion of practicing witchcraft were taking place in Chhattisgarh despite the fact that there is a Tonahi Pratadana Adhiniyam in the State. The Commission advised the State Govt. that

the police and NGO should publicize the provisions of the above Act among the masses so as to minimize the above incidents. It was also advised by the Commission that the school curriculum in the tribal areas should be aimed at developing scientific temper against such social evils. The main reason for acquitted in large number of cases was that the victims and witnesses turned hostile in the Court mainly on economic considerations.

- (vi) The Commission noted with great concern that the acquittal rate (80%) in atrocity cases in Tamil Nadu was very high. The representatives of the State Govt. explained many reasons for the high acquittal rate. Some of the main reasons put forward include (i) the complainant turn hostile as they enter into compromise mostly because of economic reasons in majority of cases registered under Section 3(1) (x) of POA Act relating to verbal abuse on caste ground which form 90% of total cases registered under PAO Act (ii) absence of independent witnesses (iii) delay in issue of proceedings by the SP (iv) delay in establishing the community status (ST Status) of the victim. With a view to reducing the acquittal rate in POA cases, the Commission desired that quality of investigation should be improved and necessary steps should be taken to cut down delay in investigation process.
- (vii) The Commission was informed that 49 out of the 50 districts had one designated Special Court in Madhya Pradesh and that out of a total 9347 cases, the Courts disposed of 2484 cases during 2009. The accused were acquitted in 1460 cases while 470 cases resulted in connection and the remaining cases were closed due to out-of-Court compromise.
- (viii) The Commission was informed that there were 53 designated Special Courts in Orissa and there was a proposal of setting up of there exclusive Special Courts in the districts where pendency of PoA cases was high. The Commission also noted that conviction rate in atrocity cases in Orissa was 11% only. The reasons for low conviction rate were stated to be lack of evidence and turning of victims and witnesses as hostile during court hearings and making out of court compromise with the accused.

6.10.12 The following information was furnished by the representatives of the State Governments in response to the queries of the Commission:-

- (a) As many as 18 districts in Rajasthan and five districts in AP have been identified as atrocity-prone districts to have a focus on atrocity cases. In Madhya Pradesh, 45 areas extending over 17 districts have been identified as atrocity-prone areas whereas various areas extending over 12 districts in Jharkhand and 16 districts in Orissa have been identified as atrocity-prone areas.
- (b) The atrocity cases are monitored at the State level through an HR Cell in Rajasthan and Orissa, PCR Cell in Andhra Pradesh, Social Justice & HR Wing in Tamil Nadu and Jharkhand, AJK Cell (Anusuchit Jati/Jan Jati Kalyan Cell) in Madhya Pradesh and

Vigilance Branch in Delhi which are headed by the officers of IGP/Special Commissioner/Additional DGP level. Dy. SPs and Inspectors at the District Hqrs assist the above Cells/Vigilance Branch by providing requisite inputs. In this context, the Commission desired that with a view to ensuring the timeliness and quality of investigation, the State Governments should issue necessary instructions to the District Collectors and SPs to ensure close monitoring of atrocity cases on monthly basis and also timely submission of periodical reports to the HR Cell/PCR Cell/Vigilance Branch.

- (c) As required under Rule 16 of POA Act, two meetings of the State level Vigilance & Monitoring Committee were held during the year 2009 in Rajasthan. The Commission noted that this requirement was not being strictly complied with by Delhi, Chhattisgarh, Tamil Nadu and AP Governments. The fact that the meetings of the above Committee were being regularly held as provided under PoA could not be confirmed by the representatives of Madhya Pradesh, Orissa and Jharkhand. The Commission desired that the requisite number of meetings should be conducted regularly.
- (d) There were 21 SC/ST Courts in 18 sensitive districts of Rajasthan. Police officials have been specially trained to sensitize them towards weaker sections of the society. The conviction rate during the last 3 years was almost 37%.
- (e) Instructions have been issued in Rajasthan that SP will review 5% of the cases which were registered under POA Act but closed by the Police department. As per the procedure followed in Andhra Pradesh, closed cases can be re-opened with the approval of SP.
- (f) It was informed by the representatives of the Rajasthan Govt. that as the POA Act being a Central Act, is applicable to all persons from a community scheduled as SC/ST in any part of the country and it is not a fact that the cases under POA Act are not registered in cases where the victim is from ST community not Scheduled as ST community in Rajasthan.
- (g) The awareness programmes were being regularly conducted by the State Govts. of Rajasthan, Tamil Nadu and Andhra Pradesh with the help of NGOs. In Rajasthan, Orissa and Jharkhand there is a toll-free telephone number on which a complaint can be registered directly.
- (h) On being informed that there were certain problems in disbursement of TA and DA as per the entitlement of the victims and their witness with reference to the minimum wages system in Rajasthan, the Commission recommended that Department of SJ & E should transfer the funds to the Special Courts in the 18 sensitive districts, so that payment can be made on the same day of the court proceedings.
- (i) At present the victims and their witnesses are not being provided any TA/DA by Delhi Police. The Commission, therefore,

recommended that the Department of Welfare of SCs/STs should arrange payment of TA/DA to victims and witnesses as per the available provisions.

- (j) In Andhra Pradesh, the amount of Rs. 12/- paid as Bhatta to the victims was being increased to Rs. 200/- for strengthening the victim witness support system.
- (k) During the course of discussion on the working of Special Courts in Chhattisgarh, the Commission, inter-alia, advised the State Govt. for revising TA rates for witnesses and for suitably compensating them for loss of wages (at par with Minimum Wages rates).
- (l) No legal assistance was being provided to the victims and also no Special Prosecutors were being engaged by the Govt. of Andhra Pradesh. The Commission therefore advised the State Govt. to take necessary action in compliance of POA Act which provide for the legal assistance to the victims.
- (m) Noting the lack of awareness about the provisions of PoA Act and PoA Rules among the public in Jharkhand and Orissa, the Commission suggested that the State Govts. should utilize the funds provided by the Ministry of Social Justice and Empowerment and Ministry of Tribal Affairs as Central Assistance for implementation of the PoA Act for creating awareness through press and other media.
- (n) In Madhya Pradesh, Orissa and Jharkhand only small fixed amount of daily maintenance allowance (plus a small amount towards diet expenditure in Orissa and Madhya Pradesh) was given to the victims and their witnesses. The Commission, therefore, advised these State Governments that instead of payment of a fixed amount as maintenance allowance provision should be made for payment of the allowance at par with the minimum wages fixed from time to time.
- (o) In Orissa, free legal aid is provided to all SCs and STs at district level irrespective of income level in all cases except for election and political matters. The State Govt. proposes to extend this scheme upto block level. In Jharkhand also, free legal aid is provided to all SCs and STs.
- (p) There were 12 designated Special Courts in 12 out of 25 districts in Jharkhand and the State Govt. was considering to set up there exclusive Special Courts in the districts where the pendency of case was very high.

6.11 Assurance of safeguards provided under PoA Act to ST persons migrated to other states

6.11.1 Instances have recently come to the notice of the Commission where scheduled tribe persons when migrated to another State in which his/her community is not scheduled as ST and become victims of atrocity committed by a non-SC/ST person, have been denied registration of case under PoA Act on the plea that victim's community is not scheduled as ST in that State. One such case

was brought to the notice of this Commission by the Asian Human Rights Commission, Hong Kong through its letter dated 2/6/2008. It was mentioned that a teenage girl of tribal community belonging to Dungarpur District of Rajasthan and who was working as a labourer in a farm in Khatsana Village, Visnagar Block, Mehsana District, Gujarat was repeatedly raped and illegally confined by the owner of the farm. The Regional Office of this Commission at Jaipur took up the matter with the concerned authorities of the Govt. of Gujarat. The report received through the District Magistrate, Mehsana indicated that the accused had been arrested and a chargesheet was filed in the Court on 28/06/2008. It was also mentioned that the Sections of the POA Act had to be dropped in the above case on the advice of the Govt. Pleader on the ground that the victim girl belonged to a community which is recognised as ST in Rajasthan but not in Gujarat. The Commission brought the above case to the notice of the Ministry of SJE and the Ministry of Tribal Affairs. The Ministry of Tribal Affairs took up the matter with the Ministry of Law & Justice (Department of Legal Affairs) who referred to the ruling of a Division Bench of the Supreme Court in the case (Masumsha Hasanasha Musalman (2000) 557) and observed that “the State Government is under obligation to register a case under the Act of 1989 in respect of atrocities committed on the Scheduled Caste and Scheduled Tribes, migrated to that State for any social, religious or other cause and that the State Government cannot shrink its responsibilities for the atrocities committed on the members of the Scheduled Castes and Scheduled Tribes by the upper strata of the society.”

6.11.2 The Commission, therefore, recommends that the above observations of the Department of Legal Affairs should be brought to the notice of all States/ UTs for strict compliance.

6.12 General Recommendations

6.12.1 There is an imperative need of timely investigation of atrocity cases so that a chargesheet is submitted in the Court at the earliest. **The Commission, therefore, reiterates its earlier recommendations contained in the reports of the NCSCST for the years 1992-93 and 1994-96, that it should be ensured that the case is investigated by an officer of the rank of Dy. SP and investigation report is submitted by him within 30 days. The Commission also feels that the chargesheet should be filed with due care and with a sense of urgency to ensure that the accused person is not acquitted on technical grounds or on account of delay in filing the chargesheet.**

6.12.2 The delay in the arrest of the accused also leads to delay in investigation of the cases and which, in turn, causes delay in dispensing justice to the victim(s). **The Commission, therefore, reiterates earlier recommendations contained in NCSCST reports for the year 1996-98 that all efforts should be made by the police to ensure that the accused is arrested as early as possible particularly in the cases of heinous crimes like murder, arson, rape, etc.**

6.12.3 A large section of the general public and ST population is still unaware of the provisions of the PoA Act and Rules. **The Commission, therefore, reiterates earlier recommendations contained in NCSCST reports for the**

years 1992-93, 1993-94, 1994-96, 1996-98 and 1998-99 that with a view to create awareness among the masses about various provisions of the Act and Rules including the provisions for relief and compensation, Special Awareness Programmes should be conducted by the Government through the mass media and by organizing seminars and workshops at different places, particularly in rural and remote areas. NGOs working for the cause of combating crimes of atrocities on STs alongwith the local bodies should also be involved in the task by extending adequate financial help to them. Awareness about the provisions of the Act/Rules may also be spread by installing hoardings at prominent locations.

6.12.4 The Commission has noted that although there are clear-cut provisions in the Act/Rules for providing monetary relief and rehabilitation facilities to the victims of atrocities, district authorities are not prompt in carrying out this important duty. The erstwhile NCSCST in its reports for the years 1996-98 and 1998-99 had recommended that the District Magistrate should be held responsible for the failure of the district administration in providing timely and adequate relief/rehabilitation facilities to the victims and the members of their families. **In order to ensure effective implementation of the PoA Act, the Commission recommends that the District Level Vigilance and Monitoring Committee should review the implementation of the provisions of the Act, relief and rehabilitation facilities provided to the victims and other matters connected therewith, prosecution of cases under the act, role of different officers/agencies responsible for implementing the provisions of the Act and various reports received by the District Administration, at least once in three months in accordance with Rule 17 of the PoA Rules.**

6.12.5 Section 14 of the PoA Acts lays down that all States should set up Special Courts for speedy trial of various offences under the Act. This provision has not so far been implemented by many States where only designated Special Courts have been set up which remain burdened with the cases with the result that the disposal of atrocity cases is very slow. **The Commission, therefore, reiterates earlier recommendations contained in NCSCST reports for the years 1992-93,1993-94,1994-96 and 1996-98 that exclusive Special Courts should be set up by all the States/UTs urgently for rendering speedy justice to the victims of atrocities.**

6.12.6 The Commission has noted that even in the States, where Special Courts have been set up, a large number of cases remain pending disposal for a considerable time. **The Commission, therefore, recommends that the Government may consider for providing a time-limit for disposal of PoA cases by these Courts.**

6.12.7 The Commission also re-iterates earlier recommendations contained in NCSCST reports for the years 1992-93,1993-94, 1994-96 and 1996-98 that the police personnel in every State/UT need to be sensitized about the importance of effective implementation of the PoA Act through regular training and refresher programmes by the Police Training Institutes. The training programmes for the police personnel should also include

lessons about legal provisions and related procedures to ensure drafting of fool proof chargesheets in atrocity cases.

6.12.8 There is an imperative need to strengthen working of the Special Public Prosecutors also for timely disposal of the cases in the Special Courts. **The Commission, therefore, reiterates earlier recommendations contained in the reports of the NCSCST for the years 1994-96 and 1998-99 that Directorate of Prosecution should make all efforts to ensure that adequate number of Special Public Prosecutors are attached with the Special Courts for speedy trial of atrocity cases. The Special Public Prosecutor should possess requisite qualifications and experience and their selection should be made through a well laid down procedure. The fee of the Special PP requires to be suitably enhanced to attract more qualified and dedicated persons.**

6.12.9 The Commission has noted that the ST persons are, very often, subjected to naxalism in States like Chhattisgarh, Jharkhand and Orissa, ineffective implementation of Minimum Wages Act and Bonded Labour, non-implementation of land reforms and abnormal delay in redressal of land disputes etc. These results in denial of not only basic rights and freedom granted to them under the Constitution, but may also lead to the atrocities covered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. **The Commission, therefore, recommends that there is an imperative need to formulate a policy to have a focused approach for taking effective precautionary measures to check offences of atrocities and ensure effective implementation of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 in such cases**

6.12.10 The Commission has noted lack of effective monitoring of atrocity cases. **The Commission, therefore, re-iterates its earlier recommendations contained in the reports of the NCSCST for the years 1996-98 and 1998-99 that the State level Vigilance and Monitoring Committees should play proactive role in overseeing the implementations of PoA Act by holding quarterly meetings on regular basis. These Committees should issue necessary guidelines and directions to the District level Committees. Registration of FIRs and the disposal of cases by the Special Courts should be particularly monitored by the State level Committees.**

6.12.11 It has been observed by the Commission during the review meeting with various State Governments that a large number of cases are being closed by the Police Department on various counts including undue delay by police officials. **The Commission, therefore, recommends that all the State Governments/UTs Administration should issue necessary instructions that the Superintendent of Police in all the districts will review at least 5% of the closed cases on a quarterly basis and initiate action against the concerned police officials if the cases were closed due to delay on their part.**

6.12.12 It was brought to the notice of the Commission during the Review Meetings with the State Governments that in a large number of cases, the victims and their witnesses become hostile during the hearing of POA cases in the Courts. This results in the acquittal of the accused by the Courts. One of the

main reason behind the victims and witnesses turning hostile in the Courts was that there is no clear policy /norms for payment of TA/DA to the victims and witnesses in most of the States and a paltry sum is generally given to them for the days on which they are called in the Court which deprives them of their wages for the day(s) as most of the victims and witnesses earn their livelihood on daily wage basis. **The Commission, therefore, recommends that the State Governments/UTs should issue instructions to ensure that the victims and witnesses are paid TA/DA which should not be less than minimum wages fixed from time to time.**

CHAPTER 7

CASE STUDIES

1. Approach and Methodology

7.1.1 The Commission receives representations from individual members of Scheduled Tribes, or their associations, etc. These representations/ petitions pertain to (i) the violation of the instructions for reservation in services/ posts, (ii) problems relating to the socio-economic development of Scheduled Tribes such as admission in educational institutions, land alienation, rehabilitation and displacement as a result of setting up of projects etc. and (iii) atrocities on members of Scheduled Tribes by non-Scheduled Tribe persons. These representations are referred to the concerned organizations of the Central Govt. or the State Govts. by the Commission, requesting them to furnish full facts within a given timeframe. The facts furnished by the concerned organization are examined by the Commission; and in case, on enquiry, the Commission finds that there has been violation of the safeguards provided to the members of Scheduled Tribes, either in the Constitution or under any other law or order of the Government, it advises the concerned organization to take corrective measures within a given timeframe and apprise the Commission of the action taken.

7.1.2 A copy of the reply sent by the concerned organization is forwarded to the petitioner for his information and in case the petitioner submits a rejoinder containing additional material, the same is further examined in consultation with the concerned organization. If the Commission does not get a reply from the concerned organization on the points raised in the petition/ rejoinder despite repeated reminders, the Commission invites the Head of the organization and/ or any other senior officer of that organization to appear before the Commission for discussion. The recommendation made after the discussions are recorded and sent to the respective organization for taking necessary action on the Commission's advice/recommendation within a specified period of time. The Commission organized 23 sittings during the year. Details of 13 cases in which the recommendations of the Commission were not accepted/ implemented by the Organisation are given in statement at **ANNEXURE 7.I**

7.1.3 The Commission's intervention brought relief to a number of petitioners as per the list placed at **ANNEXURE 7.II**. A few representative cases dealt with at the Headquarters of the Commission at New Delhi are discussed below.

2. Grievances pertaining to Service matters

2(i) Shri K.Kubendriran, General Secretary, All India ST Employees Welfare Association, Salem, Tamil Nadu.

7.2.1 A representation was received from Shri K.Kubendriran, General Secretary, All India ST Employees Welfare Association, Salem, Tamil Nadu on 22.11.2008 wherein it was alleged that one Shri T.Kalaiselvan(ST), Administrative Officer(Scale-I), United India Insurance Company Limited, Divisional Office-II,

Salem was not given promotion to the Scale-II post in violation of the Reservation Policy.

7.2.2 The matter was immediately taken up with the Chairman-cum Managing Director, United India Insurance Company, Chennai and on the intervention of the Commission, Shri Kalaiselvan was promoted to the Scale-II post as intimated by the General Manager, Personnel Department, United India Insurance Company Ltd. vide his letter No.HO:PER:3887:2008 dated 01.12.2008.

2(ii) Sh. Dara Singh Meena, Law Assistant, Northern Railway Baroda House. New Delhi.

7.2.3 Shri Dara Singh Meena, vide his letter dated 01/10/2008 represented to the Commission that after his selection to the post of the Legal Assistant, he was declared medically unfit by the Civil Surgeon for the post and his request dated 13/06/2008 for re-medical examination of his eye-sight was not considered by the Railway authorities under the rules as admissible.

7.2.4 The Commission took up the matter with the Ministry of Railways vide letter dated 22/10/2008. Subsequently, the General Manager, Northern Railway vide letter dated 02/12/2008 informed that on re-medical examination, the petitioner had been declared fit in Cey-One category and appointed to the post of Legal Assistant vide Order dated 24/11/2008.

2(iii) Shri Mohd. Yusuf, Okhla, New Delhi

7.2.5 Mohd. Yusuf represented to the Commission in January 2009 that he was a Scheduled Tribe belonging to Jammu & Kashmir and had been residing in Delhi. He had applied for the post of Primary Teacher(Urdu) under MCD against the advertisement of DSSSB. In response to his application, DSSSB vide its letter dated 18/12/2008, posted to his Delhi address, sought verification of his credentials in connection with the selection to the said post applied by 27/12/2008. As Mohd. Yusuf was away to his home town in J&K, he could receive information about the letter in J&K only on 26/12/2008 and thereafter could reach Delhi on 03/01/2009. On 05/01/2009, Mohd. Yusuf approached the DSSSB authorities to accept his documents and pleaded for consideration of his case against the post reserved for ST. However, his name did not figure in the result declared by the DSSSB.

7.2.6 Taking into consideration the position brought out above and noticing that a tribal hailing from a remote area of J&K had missed a job opportunity against a reserved post for ST for no fault of his, the Commission took-up the matter with the DSSSB vide letter dated 22/01/2009 for comments and taking necessary action in the matter. Subsequently, DSSSB vide letter dated 9/3/2009 informed the Commission that as an exception, the candidature of Mohd. Yusuf was considered even after completion of the process of declaration of result and he was declared as selected vide Notice dated 5/3/2009.

2(iv) Smt. Sofia Minz, 4/1E, Gope Lane, Kolkata, West Bengal

7.2.7 Smt. Sofia Minz vide letters dated 05/10/2007 and 01/04/2008 represented to the Commission regarding her compassionate appointment in the Gun & Shell Factory, Cossipore, Kolkatta. Smt.Minz intimated that her Husband

Shri. Minz was an employee in Gun and Shell factory and had been missing since 9/12/1989. In this connection, she had also lodged FIR in Entally Police Station, Kolkata vide GDE No. 1807 dated 24/12/1989. Smt. Minz also reported that the Sealdah Div. 2 Civil Judge had passed an order declaring her husband to be presumed dead and the order of Hon'ble Court was also notified by the Gun and Shell factory on 14/12/2002.

7.2.8 Smt. Minz further mentioned that prior to declaration of the presumed death of her husband she had made protracted correspondence with the General Manager, Gun and Shell factory seeking employment on compassionate grounds. But the request was not acceded to on various grounds and finally, she was informed vide letter dated 03/01/2007 by the Factory that "The case of Smt. Minz was considered by the Committee of Officers on 12/11/2001 along with other cases and awarded a score point of 62 out of total 100. At that point of time 17 vacancies were available and 17 candidates, out of 131, who were awarded highest scoring 69 to 92 marks were considered for compassionate appointment. On 29/11/2002 the Committee of Officers reviewed total 57 cases. At that point of time, 3 vacancies were available and score points 91 to 83 marks were considered for compassionate appointment. On 30/08/2004, the Committee of Officers reviewed a total 75 cases. At that time 7 vacancies were available and the score points in between 87 to 72 marks were considered for compassionate appointment. Since Smt. Minz had been awarded 62 marks, She could not be offered appointment on compassionate ground, it was stated the case of Smt. Minz was duly considered by the competent authority in the light of the existing Govt. orders and a regret letter was been duly issued to her vide letter No. A/43/L, dated 07/06/1999"

7.2.9 The Commission noted abnormal delay in consideration of the request for compassionate appointment of an ST widow who was driven from pillar to post. The Commission, therefore, took up the matter with the Secretary, Ministry of Defence vide letter dated 29/04/2008. The matter was also followed up. Subsequently, the Ministry of Defence vide its letter dated 25/02/2009 intimated the Commission that Smt. Sofia Minz had been appointed on compassionate grounds for the post of Safai Karamchari vide offer letter dated 18/11/2008.

2(v) Shri Thakur Hansada, Joint Director (AR), DG,

7.2.10 The petitioner Shri Thakur Hansada, Joint Director (AR), DG, Doordarshan submitted a petition on 21/10/2007 requesting this Commission to intervene in the long pending matter of his promotion to the post of Director. In his petition, the petitioner Shri Thakur Hansada alleged that his senior colleagues namely Shri P.S. Murty and Shri Ramesh Chandra, who retired as Director (AR), were promoted directly from Dy. Director to Director on the basis of experience as Dy. Director (AR). The petitioner was eligible for promotion and three vacancies in the post of Directors were existing since 2002. The petitioner also reported that he was senior most Joint Director (AR) and eligible for promotion to the post of Director (AR) since 2002.

7.2.11 The Commission took up the matter with the Secretary, Ministry of Information and Broadcasting. As there was no satisfactory response in the case, a hearing was held on 21-01-2008 with the Secretary, Ministry of Information and

Broadcasting in the Chamber of Chairperson, NCST. On discussion and examination it emerged that:

- (i) As per the Recruitment Rules for the post of Director notified by the Govt., which had not been revised for several years, Dy. Director with five years regular service in the post was eligible for promotion of to the post of Director.
- (ii) The old recruitment Rules were still in operation due to non-implementation of the fresh Recruitment Rules notified by Prasar Bharati Nigam and it was on the basis of these Rules that Shri Ramesh Chandra and Shri Murthy Dy. Director were promoted as Director in the scale of Rs. 14300-18300.
- (iii) Shri Hansda's promotion to the post of Director by no stretch of imagination could be barred on the ground that he was Joint Director, a post higher than the post of Dy. Director.
- (iv) that gross injustice had been done to Shri Hansda by denying him his rightful promotion all along since June, 2004.
- (v) The Recruitment Rules notified in March, 2002 provide for appointment to the post of Director by promotion of officers having combined experience of 10 years or more in the post of DD and JD. Shri Thakur Hansda who was appointed DD in the year 1992 was in fact eligible for promotion to the post of Director in the year 2002 itself when the vacancy in the post of Director had arisen due to retirement of Shri Ramesh Chandra.
- (vi) Shri Hansda's eligibility was, in fact, further strengthened after his appointment to the post of JD in June 2004. Further, Ministry of Information and Broadcasting has been granting promotions in various categories of posts by seeking clarifications or relaxations from UPSC and other authorities for making appointments/ promotions on the basis of existing Recruitment Rules and the spirit of the Recruitment Rules framed by the Prasar Bharati Nigam.
- (vii) Shri Thakur Hansda was also eligible for promotion to the post of Director even if revised Recruitment Rules had not been framed for promotion from the post of JD to Director in Prasar Bharati Nigam.
- (viii) As some of the officers had been working as Director (I/C) under the orders of the Govt., the posts of Directors appeared to be still existing and the petitioner Shri Thakur Hansda also should have been considered for promotion to the post of Director from the date of his eligibility for promotion. Denial of promotion to the post of Director in the scale of Rs. 14300-18300 had put to a great social loss besides huge financial losses on account of less payments to him towards pensionary benefits.

7.2.12 In view of the above, the Commission observed that:

- (i) *The concerned authorities had not taken requisite action to fill the post of Director or convene DPC meeting to consider the case of promotion of the petitioner Shri Thakur Hansda to the post of Director (AR).*

(ii) *The Ministry as well as Prasar Bharati Nigam had also not taken any action in the matter since the last one year even after receipt of the communications from the National Commission for Scheduled Tribes.*

(iii) *The Ministry as well as Prasar Bharati Nigam were not inclined to grant the genuine right of promotion to a Scheduled Tribe officer and allowed the posts of Directors to lapse as deemed abolished (although it did not appear to be actually true).*

(iv) *The Ministry of Information & Broadcasting genuinely believes that the posts of Directors are actually deemed abolished, and the revival of these posts, which is also in the interest of the Prasar Bharati Nigam, may not be possible before 31.10.2008 when Shri Thakur Hansda is due to retire on superannuation.*

7.2.13 The Commission, accordingly, recommended that the Ministry of Information & Broadcasting may take immediate step to upgrade the post of Joint Director held by Shri Thakur Hansda to the post of Director in the scale of Rs. 14300-18300 on supernumerary basis from the date of his eligibility for promotion till the date of his retirement on superannuation, with all financial and consequential benefits as he has already been concurrently discharging the duties and functions attached to the post of Director (AR). The Commission was assured by Secretary, Ministry of Information and Broadcasting that she would look into the entire gamut of Shri Hansda's case to ensure that justice was done by giving him restoration promotion in terms of the Commission's recommendations.

7.2.14 The Ministry of I&B vide their letter dated 31.10.2008 informed this Commission that the petitioner Shri Thakur Hansada, Joint Director (AR) had been promoted to the post of Director (AR) in the pay scale of Rs. 14300-18300 (Pre-revised) w.e.f. 31.10.2008 (F/N).

2(vi) Shri Heera Singh, Insurance Inspector / Mgr. Gd. II, ESIC SC/ST Officer & Employees Welfare Association, New Delhi

7.2.15 The General Secretary, ESIC SC/ST Officers & Employees Welfare Association, New Delhi submitted a representation vide letter dated 13/3/2007, alleging that the DPC conducted by Union Public Service Commission (UPSC) and the ESIC had committed many serious irregularities adversely affecting the interests of the SC and ST officers. Such cases included denial of promotion to Shri Heera Singh, Insurance Inspector / Mgr. Gd. II.

7.2.16 The Commission sought the comments of the Director General, ESIC vide letter dated 20/3/2007 in the matter with a detailed report on the various issues raised in the representation. ESIC informed vide letter dated 26/12/2007 that the representation had some merits and therefore, a proposal for review DPC had been sent to the UPSC on 7/6/2007.

7.2.17 As timely response was not forthcoming from the ESIC, Vice-Chairperson, NCST fixed-up a meeting on 29/8/2008 with the DG, ESIC to review progress of the case. The ESIC vide letter 21/08/2008 had informed the Commission that based on the recommendations of the review DPC held on

22/7/2008, Shri Heera Singh alongwith 5 other ST candidates holding the post of Insurance Inspector/Mgr. GD.II had been promoted to the post of Assistant Director/Mgr. Gd.I. on regular basis w.e.f. 8/11/2006 (FN). ESIC also informed that all the promotees had been allowed their due position in the seniority list of AD/Mgr. Gd. I.

2(vii) Shri Prem Singh Bhalavi, Lower Division Clerk, Hindi Granth Academy Bhopal (MP)

7.2.18 Shri Prem Singh Bhalavi, Lower Division Clerk, Hindi Granth Academy, Bhopal submitted a petition dated 01/02/2005 to the Regional Office of the Commission at Bhopal alleging that he had not been promoted to the post of UDC in the Academy against the vacant post reserved for Scheduled Tribes. The petitioner also stated that he had been working in the Academy for the last 7 years and repeatedly requesting the concerned authority for his promotion. It was alleged that roster points were not being followed in the Academy; and in some instances, the candidates belonging to general communities were being given preference by violating the roster system. The Commission took up the matter with the concerned authority vide letter dated 23/2/2007, followed by reminders.

7.2.19 To expedite the matter, the Secretary, NCST had a meeting with the Acting Director, Madhya Pradesh Hindi Granth Academy on 22/11/2007. In the said meeting, it was pointed out by the Commission that one post of Junior Accountant was vacant due to the retirement of the incumbent since 01/08/2006 and the post was reserved for the STs. As per reservation roster, Shri Bhalawi was eligible for promotion against the reserved post for ST. The Acting Director, informed that the case regarding promotion of Shri Bhalawi had been under reference to the Department of Higher Education, Govt. of Madhya Pradesh for certain clarification(s).

7.2.20 In view of the above, the Commission took up the matter with the Principal Secretary, Higher Education, Govt. of M.P. Subsequently, the Academy informed the Commission vide letter dated 3/3/2009 that Shri Prem Singh Bhalawi had been promoted to the post of UDC w.e.f. 20/01/2009 as per the recommendation of the DPC and his pay had also been fixed in the grade pay of Rs. 3050-75-3950– 80-4590.

2(viii) Shri Hariram Meena, Administrative Officer, National Insurance Co. Ltd., Branch Samrala, Ludhiana, Punjab.

7.2.21 Shri Hariram Meena, Admn. Officer, National Insurance Company Ltd. (NICL) represented to the Commission vide letter dated 31.07.2008 regarding consideration of his request by the NICL for his transfer from Samrala, Punjab, where he was serving since 18.01.2006 to Dausa (Rajasthan) due to family circumstances. He stated that after his wife's death in October 2007, there was nobody to look after his three children (below 11 years of age) at his native place.

7.2.22 The Commission took up the matter with the CMD, NICL vide letter dated 19/09/2008. NICL informed the Commission vide letter dated 23/07/08 that as per the provision of NICL Promotion Policy & Transfer and Mobility Policy,

requests for transfer were usually not considered before completion of three years at the new place of posting. In the instant case, Shri Hariram Meena had completed only one and a half year in his new place of posting. Moreover, the special exercise conducted to clear ST backlog vacancies, by virtue of which Shri Hariram Meena was promoted to Scale-I officer, was against the vacancy identified under Punjab Region. NICL further explained that a few other requests of transfer from ST employees could not be acceded in view of aforesaid policy constraints.

7.2.23 Taking into consideration the personal problems projected by Shri Meena and also reiterated vide his rejoinders dated 15/10/2008 and 16/10/2008, NCST recommended to NICL for a sympathetic consideration of the request of Shri Meena for transfer to Dausa vide letter dated 06/11/2008. Subsequently, NICL vide letter dated 21.11.2008 informed the Commission that notwithstanding the administrative constraints, the representation of Shri Hariram Meena for his transfer from Samrala to Dausa was considered favorably, without prejudice to any other pending transfer cases.

2(ix) Shri Anuranjan Toppo, Divisional Accountant, AG(A&E), Ranchi Jharkhand

7.2.24 Shri Anuranjan Toppo, Divisional Accountant (Probationer) Sch. Tribe (Terminated) vide his representation dated 24.01.2007 requested special chance for appearing in the Divisional Accountant Exam. He requested that in the meantime he may be reinstated in the lower scale as he was the only earning member in his family.

7.2.25 The Commission took the matter with AG (A&E) Ranchi vide this office letter no. 6/2/2007-J dated 29.01.2007, 21.08.2008. Shri Toppo intimated vide letter dated 29.05.2008 that he had been appointed in the post of Accountant in the O/o the AG (A&E) Jharkhand, Ranchi

2(x) Shri Sirajbhai Sadal, President, SC, ST and Muslim Grievances Forum, Nagpur (Mah)

7.4.26 Shri Sirajbhai Sadal, President, SC, ST and Muslim Grievances Forum, Nagpur forwarded a representation of Shri V.S. Moray, Additional Director, Industrial Safety and Health, Ministry of Labour, Govt. of Maharashtra, Nagpur in which it was alleged that he was discriminated and deprived promotion for the post of Director by way of wrong interpretation of Govt. circular and recruitment rules though he was the seniormost officer. The petitioner also alleged that efforts were being made to fill up the post of Director, Industrial Safety and Health by direct recruitment through Maharashtra Public Service Commission, instead of filling it by promotion. He requested the Commission to help in the matter of his promotion and in getting additional charge of the post till that time.

7.4.27 The matter was referred to the Principal Secretary, Labour Department, Govt. of Maharashtra, Mumbai for sending a detailed report to the Commission who, vide his letter dated 30-08-2008 informed the Commission that the applicant had been promoted to the post of Director, Industrial Safety and Health vide order dated 11/08/2008.

3. Grievances pertaining to Development matters

3(i) Shri M. Narayanan, Manager, Indian Rare Earths Ltd., Manavalakurichi, Kanyakumari Distt. (TN)

7.3.1 A representation was received from Shri M. Narayanan, Manager, Indian Rare Earths Ltd. regarding atrocity by the Police on workers agitating due to non-payment of wages for work under NREGA. The Principal, Secretary, Rural Development and Panchayat Raj Department, Govt. of Tamil Nadu vide letter dated 01/12/2008 furnished the report, which revealed that a few people agitated and held a 'road rako' in Rettanai Panchayat in Villupuram Distt. on 16/08/08 demanding payment of Rs. 80/- as daily wage to workers under National Rural Employment Guarantee Scheme. The Police asked them to maintain peace in the locality to disburse the violent mob.

7.3.2 There were 1104 Panchayats in Villupuram Distt. and out of these works were taken up in 900 Panchayats continuously. The Gram Sabha met on 15/08/08 and 17/08/08 and no works were taken up on those days. Due to heavy rains on 17/08/08 night, water stagnated in the areas/places where the works were taken up. There was shortfall in the number of works taken up on 18/08/08 in few Panchayats. However, 634 works were taken up in 609 Panchayats on 19/08/08 which comes to 55.16%. Out of 22 Panchayat Unions in Villupuram Distt, except in 3 Panchayat unions, several works had been taken in all other Panchayat Unions. Necessary steps had also been taken to take up more number of works and to carry out works in full swing in all Panchayat Unions including those 3 Panchayat Unions where minimum works were taken up during the mentioned period. The Secretary, RD&PR Deptt also intimated that the schemes were implemented smoothly with the co-operation of the workers.

3(ii) Complaint of Shri Poonam Chand S/o Shri Mangatia R/o Village-Bhilkeda, Tehshil and District Badwani (MP)

7.3.4 Shri Poonam Chand S/o Shri Mangatia R/o Village-Bhilkeda, Tehshil and District Badwani sent a represented to the Commission that he was an oustee of Sardar Sarovar Project and was entitled to compensation and rehabilitation. He stated that the Grievance Redressal Authority (GRA) of the project has also given decision in his favour but the land acquisition officer of the District was not extending the benefits admissible under the rules. Keeping in view the seriousness of the matter, the District Collector, Badwani was requested to inquire into the complaint and send a report to the Commission.

7.3.5 After constant follow-up, the District Collector informed the Commission that the mother of petitioner had been paid an amount of Rs. 1,28,892/- as first installment of special rehabilitation grant. She had also been paid an amount of Rs. 2,44,032/- as first instalment in pursuance of the decision of GRA. The second installment shall be paid after the purchase and registration of land by the petitioner.

3(iii) Shri Bimal Kumar Minz , Mayur Vihar, Phase-II, Delhi- Allotment of a flat under Ambedkar Awas Yojna in the year 1989 by the Delhi Development Authority (DDA).

7.3.6 Sh. Bimal Kumar Minz, Mayur Vihar Phase-II, Delhi represented to the Commission vide letter dated 28/01/2008 regarding non-allotment of a flat under Ambedkar Awas Yojna in the year 1989 by the Delhi Development Authority(DDA) as a result of misplacement of the allotment letter due to change of his residential address. It was also informed that the eligibility list for the flat was declared by the DDA on 25/07/1991, which included his name at S.No. 6109. Subsequently, the petitioner submitted an application dated 19/08/1998 for change of address of communication, which was acknowledged by the DDA vide Receipt No. 2420. Shri Minz also intimated that on 05/02/2006 that through a news published in the "Times of India", he came to know that that allotment had been completed and those who had not received the letter, were advised to contact the DDA office. However, when Shri Minz approached the DDA, he was informed that in the year 2003, allotment letter was dispatched at his old address. Subsequently, DDA vide letter dated 06/03/2007, advised Shri Minz to submit proof of the address, which was submitted by him vide DDA Receipt dated 30/03/2007.

7.3.7 The Commission sought the comments of the DDA vide letter dated 06/02/2008 asking for full facts of the case along with the reasons of delay that occurred in the case. Subsequently, DDA vide letter dated 17/06/2008 intimated the Commission that the case of Shri. Minz had been examined by the competent authority and approval for allotment of another flat to him in the same locality and same floor was granted under the change of address policy and that, the allotment will be made in the next coming draw.

3(iv) Mr. Rebecca Mardi, Kolkatta National Institute of Fashion Technology (NIFT), West Bangal

7.3.8 On 1st July 2008 Ms. Joy Rebecca Mardi resident of Kolkatta represented to the Commission that she appeared at the entrance examination for the NIFT, New Delhi in the year 2008 and stood at 25th on the merit list of SC Category. She further mentioned that while filling in the application form, she by oversight / error ticked on the box provided for SC category instead of ST. Now her application / candidature was likely to be cancelled on this account.

7.3.9 The Commission immediately on 1/7/2008 took-up the matter with the Director, NIFT, bringing to his notice the oversight / error in filling in the form by Ms Rebecca Marandi. As a result of the immediate intervention of the Commission, NIFT took prompt action in the matter and provided a seat to Ms Rebecca Mardi in, Mumbai, in B. Design (Knitwear Design).

3(v) Reservation of LPG Retail outlet of HPCL for Scheduled Tribes in Andhra Pradesh. Representation from the General Secretary, Akhil Bhartiya Adivasi Parishad, Srikakulam District Branch (A.P)

7.3.10 General Secretary Akhil Bhartiya Adivasi Vikas Parishad (A.P.), Srikakulam Distt. Branch, approached the Commission on 8/10/2007 regarding

reservation of distributorship of LPG allotment for Scheduled Tribes. The Association informed that Seethampeta of Srikakulam Distt. was a Notified Agency Area because more than 90% of persons residing in this Mandal were Scheduled Tribes. However, as per the HPCL advertisement dated 30/10/2007, the Seethampeta LPG Distribution was notified for the general category and, therefore, reservation was not provided in respect of tribals for the distributorship.

7.3.11 The NCST called for comments from the CMD HPCL on 4/4/2008. On review of the case, HPCL informed the NCST on 12/5/2008 that the category in respect of Seethampeta was reviewed and corrective action taken, through an advertisement dated 30/10/2007, reserving the Mandal for ST category only.

3(vi) Shri Keshav Chandra Oraon, Village-Khokra, Tahsil & District-Raigarh (Chhattisgarh)-continuity to pursue MBBS course

7.3.12 Shri Keshav Chandra Oraon, Village-Khokra, Tahsil & District-Raigarh sent a representation dated 21-04-2008 to the Commission and informed that he was a regular student of Gajra Raja Medical College, Gwalior and had passed Ist Professional MBBS course in the year 1998, but he could not continue his studies from 1998 to 2001 due to poor financial condition of the family. In the year 2002, he desired to continue his studies and submitted examination fee of Rs 1500/- in the Medical College but he was not allowed to appear in the examination. He requested the Dean, Gajra Raja Medical College, Gwalior and Director, Medical education, Govt. of M.P to allow him to appear in the IInd Professional MBBS examination but it didn't yield any result. The matter remained unsettled since the year 2002. He requested the Commission to help him in continuing his studies.

7.3.13 The matter was taken up with Dean, Gajra Raja Medical College, Gwalior by the Commission who forwarded the case to Secretary, Medical Council of India, New Delhi for guidance and instructions. Then the matter was directly taken up by the Commission with Secretary, Medical Council of India, New Delhi who referred the case of a similar nature and the decision taken then by MCI to the Dean, Gajra Raja Medical College, Gwalior and advised him to take appropriate action in the matter. Ultimately, the student was allowed to continue his studies in IInd Professional MBBS course.

3(vii) Shri Santosh Kumar Dhruv, S/o of Shri Budh Ram R/o Village-Tora, Post-Andhiyar khor, Tahsil-Navagarh, District-Durg (Chhattisgarh)-Disbursement of loan

7.3.14 Shri Santosh Kumar Dhruv, s/o of Shri Budh Ram R/o Village-Tora, Post-Andhiyar khor, Tahsil-Navagarh, District-Durg sent a representation to the Commission and informed that he was having 2 acres and 54 decimal land in his village and had obtained permission to establish a brick-kiln unit from the Mineral Department of the State. He further informed that he had submitted a loan proposal of Rs 1 lacs, along with all necessary documents before the District Antyavasai Sahakari Vikas Samiti in the office of the Collector, Durg. Though, the loan was sanctioned by the Samiti, the Executive Officer is not disbursing the loan and harassing him by calling him again and again daily for one reason or the other. Previously also, he was sanctioned a loan but it was not disbursed. He

requested the Commission to help him in getting the loan amount at the earliest so that he can establish the unit.

7.3.15 The matter was taken up with The Managing Director, Chhattisgarh State Antyavasai Sahakari Vitta evam Vikas Nigam, Raipur by the Commission who directed the Executive Officer, District Antyavasai Sahakari Vikas Samiti, Durg to take necessary action in this matter and inform him. After receiving a report from the District, the Managing Director, Chhattisgarh State Antyavasai Sahakari Vitta evam Vikas Nigam, Raipur informed the Commission that the applicant had not submitted required documents in the District office and he was not sanctioned any loan; and that now, he had submitted his Caste Certificate and other records on 21-01-09 and further action shall be taken soon. Ultimately, the Executive officer, District Antyavasai Sahakari Vikas Samiti, Durg, vide his letter number 937/2009 dated 16-02-09 informed the Commission that the petitioner had been sanctioned a loan of Rs 1 lakhs for establishing a brick-kiln unit on 6-02-09 and first installment of Rs 50,000 had been paid to him vide cheque dated 11-02-09. He shall be paid second installment of Rs 50,000 on demand. The applicant also confirmed the receiving of cheque of first installment of loan and thanked the Commission for helping him.

3(viii) Shri R.H. Bansal, Chief Editor, Human Rights Observer, New Delhi-Death of 8 Baiga tribals in Kawardha district (Chhattisgarh)

7.3.16 Shri R.H. Bansal, Chief Editor, Human Rights Observer, New Delhi sent a representation to the Commission and informed that 06 Baiga tribals had died and many others were seriously ill due to food poisoning or vomiting in Gabhora village of Kawardha District of Chhattisgarh. He further informed that there was no facility of drinking water and food in the village and the Tribals are consuming poisonous mushroom. He requested to inquire into the matter and take necessary steps in ensuring water and food supply in the village and for providing medicines, financial assistance, etc. to the affected families.

7.3.17 As the matter was related to death of Baigas which is a Primitive Tribal Group (PTG), the issue was immediately taken up with the Superintendent of Police, Kawardha by the Commission who informed the Commission that the death of 8 Baigas (males and females) due to vomiting and loose motions, had come to notice in Gabhora and its dependent village Majhgaon. Out of above 8 deaths, only one incident (Budhiyaro Bai w/o Chain Singh, 28 years) was reported in the Kukdur Police Station. The matter was also taken up with the District Collector, Kawardha. He was requested to take urgent steps in preventing spread of diseases in the area, ensuring water, food and health facilities and also providing financial assistance to the tribals.

7.3.18 The District Collector sent a detailed report to the Commission on 22-07-08 and informed that Gabhora para was a very remote settlement of village Majhgaon under Birhuldi Gram Panchyat in Pandriya Tashil of the District, which was a 500-750 feet low-lying land. He further informed that after receiving information about the death of 8 Baigas in the village, the District Administration took immediate action and prepared a work plan at District level for controlling epidemics. Combat teams were formed by District nodal officer in Community Health Centres, PHCs and District hospitals. In the rural areas, chlorine tablets were provided through the rural Health workers for water purification. Water

sources were also purified by using bleaching powder. Health camps were also organized. People were advised to consume fresh prepared food. A Baiga-Gunia conference was also called where they were educated about the ways of preventing spread of epidemics and water-borne diseases. As the people of the area were affected by diarrhoea and gastro-enteritis, Chief Medical and Health Officer of the District and combat teams of Borla and Pandriya reached there inspite of rainy season and unfavourable conditions and established temporary Health Camps in Majhgaon, Taregaon, Baijalpur and Borla, where the patients were treated. Temporary relief camps were established in Banki, Borla and Kukdur where food and drinking water was also made available. Serious patients were referred to CHC Borla, District Hospital and Raipur Medical College for special treatment. After conducting tests, **Cholera** was confirmed in the patients.

7.3.19 According to the report of District Collector, the State Govt. officers also visited the area and the services of Doctors from adjoining Districts were also taken. Financial assistance was provided by the Chief Minister to the families of the deceased. The Public Health Department had arranged clean drinking water in the affected area. Supply of food and kerosene oil in the area had also been ensured on priority basis. There was no shortage of food in the Baiga dominated area. The administration has started employment generating works in the area and an anganvadi has also been sanctioned. The District Collector also informed the Commission that old age Pension and Sukhad Sahara yojana were also being implemented in the Birhuldih Gram Panchayat for the eligible beneficiaries.

3(ix) Shri Amar Singh Chauhan, R/O Rajiv Gandhi Nagar (Dipa Para), Raigarh (CG)-Loan under self employment Scheme.

7.3.20 Shri Amar Singh Chauhan, a disabled member of Scheduled Tribe R/O Rajiv Gandhi Nagar (Dipa Para), Raigarh sent a representation to the Commission and informed that he had applied for a loan from Chhattisgarh Nishakt Jan finance and Development Corporation, Raigarh for opening a bicycle store. He had submitted all necessary documents along with the application but the dealing Clerk had demanded Rs. 200/- as bribe. As the petitioner had not paid the bribe, the concerned person and the Manager were harassing him. The applicant was meeting the authorities daily but they were not responding properly and saying that his application was incomplete. He requested the Commission to help in this matter.

7.3.21 The matter was taken up with Managing Director, Chhattisgarh Nishakt Jan finance and Development Cooperation, Raipur who vide his letter No. 157/2008/49 dated 21-05-08 informed the Commission that the matter was being inquired into through District Collector and the work of loan disbursement for the welfare of disabled persons had been taken away from the dealing Clerk against whom the complaint has been made.

3(x) Smt. B. Sumitra, W/o Late B.Sriamulu, Ekalavyanagar, Hyderabad (Andhra Pradesh) – Insurance claim.

7.3.22 Smt.B.Sumitra, W/o Late B.Sriamulu, Ekalavyanagar, Hyderabad submitted a representation in regarding settlement of her insurance claim by ICICI Lombard General Insurance, Mumbai.

7.3.23 The matter was taken up with the concerned authorities for settlement of her claim immediately. As per the information received from the National Manager, Legal, ICICI Lombard, Mumbai vide his letter No.24492 dated 16.04.2008 a sum of Rs.1.00 lakh was paid to B.Sumitra towards the insurance claim vide Cheque No.774487.

3(xi) Smt. Galli Bai Meena W/o Shri Lokesh Kumar Meena, village Tikari Zafian, Post Salampur Tehsil Mahawa, Distt. Dausa (Rajasathan) – payment of scholarship

7.3.24 A representation from Smt. Galli Bai Meena w/o Shri Lokesh Kumar Meena, village Tikari Zafian, Post Salampur Tehsil Mahawa, Distt. Dosa was received in this office on 25/3/2008 regarding payment of scholarship. A letter No. 2/4/Raj/3/2008-R.U. dated 26/3/2008 was sent to the Deptt. of Social Justice & Empowerment , Rajasthan Government, Jaipur for taking necessary action in this matter. The petitioner vide its letter dated 20/5/2008 informed the Commission that the Institute had made the payment of scholarship as a result of Commission's intervention.

4. Grievances pertaining to atrocities against Scheduled Tribes.

4(i) Complaint by Shri P. Narayana Swami, President, Palamoori Contract Labour Union, Venkateshwara Colony, Mahabubnagar (A.P).

7.4.1 It was brought to the notice of NCST by President Palamoori Contract Labour Union that in Mehabubnagar Distt. 600 ST Chenchus labourers had been engaged by SEW contractors to work at Laxmi Power Project situated at 11 Kms from 'Meghalaya. The labourers were working since 6 A.M. in the morning to 6 P.M. in the evening i.e. 12 Hrs per day. The labourers were not getting minimum wages and overtime wages and weekly holidays. They were getting only 2 holidays in a month without wages. Contractor had been arranging low quality food for them. Due to severe cold the labourers were getting viral diseases. There was no drinking water facility for them. The contractor and Principal employer had not registered their establishment under Inter-State Migrant Labour (Regulation of Employer and Condition of Services) Act, 1979 and the labourers were not getting minimum wages, overtime wages, various welfare and health facilities under the provisions of the labour Act.

7.4.2 The NCST immediately took cognizance and drew the attention of Distt. Collector, Mehabubnagar on 18.04.2006 and requested him to send the factual position and report in the matter. The Govt. of AP (Tribal Welfare Department) vide letter No. 4713/TW.SER-III/2006-2 dated 10.07.2006 informed that District Collector, Mahabubnagar had deputed a team of officers, to bring back the Chenchus working as labourers in Laxmi Power Project, Meghalaya.

7.4.3 It was further informed that, the team of officers visited the Dam site at the distance of 40 Kms from Jowai town, Distt. Head Quarters, Jaintia Hills, where 280 Lambada and Chenchu labourers were working. The dam and the tunnel works were being executed by Southern Engineering Works, Hyderabad and ITD Cementation Ltd. The labourers disclosed that the Mistris had cheated

and brought them to this place without their consent and the weather conditions were not suitable for them. They had taken wage advances from Mestries, ranging Rs. 6,000/- to Rs. 10,000/- to meet urgent domestic expenditure at home and they were not paid a single rupee since last five months and they have to work from 7.30 AM to 6.00 PM. Further, two women died at the dam site and the company paid Rs. 5000/- each for cremation expenses. The team of Officers observed the following:-

- (i) The element of payment of advance to exploit the labourers was found
- (ii) The non-payment of daily/weekly wages and adjustment of wages towards the loan/advances taken was also found,
- (iii) The conditions which prevent their freedom to work and confining them to once place under unfamiliar weather conditions also amounts to bonded labour
- (iv) It was revealed that, the Chenchus who were unwilling to work were not allowed to leave the work place on threat of repayment of advances.
- (v) Non-observance of working hours also amounts to Bonded Labour

7.4.4 The team of Officers met Additional Dy. Commissioner and other authorities and brought (133) Chenchu families back to Mehbubnagar District alongwith a sum of Rs. 5,00,000/- received from Niranjana Reddy, Labour Contractor towards payable wages to labourers on 24.02.2006. After careful consideration of all facts reported, the R.D.O. Nagarkurnool, Mehbubnagar Dist. issued proceedings releasing (133) Chenchu families from Bonded Labour.

7.4.5 A comprehensive rehabilitation Programme was started for these families under various ongoing schemes of ITDA, SC Corporation. An amount of Rs. 25,27,000/- was released as advance to the E.D, S.C. Corporation, Mahabubnagar by the ITDA (PTG –Chenchu), Srisailem Dam East, Kurnool to ground the rehabilitation schemes, through Bank with loan component. Action was also taken to address the following immediate needs of the 133 Chenchu families.

- (i) 20 Chenchus were given AAY Ration Cards
- (ii) 35 Chenchus were given sanction order of IAY houses
- (iii) The Dist. Collector sanctioned Rs. 17.00 lakhs under NFFW @ 1 work for each habitation for employment generation. All the works were grounded under NFFW programme.
- (iv) Medical treatment was given.
- (v) Migrated women were formed into Self-Help Groups and covered under food security programme.
- (vi) Children were admitted to Ashram Schools and Residential Schools.
- (vii) All migrated families were enrolled under National Employment Guarantee Scheme and Job Cards were issued.

7.4.6 Rehabilitation schemes were sanctioned to 94 Chenchus who were released from bonded labour under Bonded Labour Act. Out of these 87 beneficiaries were sanctioned amount at @ Rs. 19,000/-, 4 beneficiaries @ 51,800/- and remaining 3 beneficiaries @ Rs. 20,000/0 (Total Rs. 19.20 lakhs).

An amount of Rs. 1000/- was already sanctioned for each of the 133 Chenchus for immediate relief. Action was being taken to sanction schemes under Land Purchase Scheme and other economic support schemes by giving first priority to the migrated Chenchu families.

7.4.7 The Labour Union informed the NCST on 03.11.2008 that on account of immediate intervention of NCST, now there was no complaint from Chenchu labourers and they had been rehabilitated.

4(ii) Death of Shri Papu Thakur, Raisen District, Madhya Pradesh

7.4.8 A complaint was received on 01/08/2008 in this Commission from Smt. Jamunna Devi, Leader of opposition, Madhya Pradesh Vidhan Sabha, regarding the death of Shri Pappu Thakur in Police custody. The matter was taken up with the authority concerned. A report was received in this Commission on 25/08/2008 vide letter No. PHQ/AJK/A-3/1167/2008 dated 13/8/2008. It was revealed that on 27/7/2008, Shri Santosh Sahu aged about 22 years r/o village Saikheda, Tehsil-Silwani, District-Raisen lodged a complaint in Police Station Silwani about theft of electric wire by Sh. Pappu Thakur. On this complaint, a case under crime no. 130/08 section 379 IPC was registered on 27/7/2008 and Shri Pappu Thakur was called at Silwani Police Station for interrogation where he committed suicide in the Police Station Bathroom. Since Shri Pappu Thakur had allegedly committed suicide during Police Custody, on the basis of prima-facie evidence, the concerned Police personnel / officials were suspended and Shri Sanjay Chauhan, JMFC Silwani was assigned to conduct judicial inquiry. The Commission was informed that an amount of Rs. 20000/- cash was paid to the Family members of the deceased. An inquiry was also conducted by a team headed by Shri Tsering Samphel, Hon'ble Member of the National Commission for Scheduled Tribes . The Commission recommended detailed in-depth enquiry into the case. The Report of the investigation is still awaited from the State Govt.

4(iii) Rape of a tribal woman R/o Village Mahodia, SEHORE (MP)

7.4.9 It was brought to the notice of the Commission that a tribal woman R/o Village Mahodia under Jawar PS in Sehore District was forcefully raped by Gajraj Sendho in her house.

7.4.10 The Commission requested the Superintendent of Police, Sehore to send a report in the matter. Superintendent of Police, Sehore informed the Commission that the accused had been arrested and the matter was in the Court. He further stated that as the victim hailed from Dewas district, monetary relief could be sanctioned from that District. The Commission took up the matter with District Collector, Dewas who, vide his letter dated 29-03-2008 (received in the Commission on 07-04-2008) informed that the caste certificate of the accused was obtained from SDOP (AJK), Sehore and now an amount of Rs. 25,000/- has been provided to the victim as monetary relief.

4(iv) Rape of a tribal girl by Police Constable in Shahdol District (MP)

7.4.11 A news appeared in Dainik Bhaskar News Paper, Bhopal edition dated 27-10-2008 regarding rape of a tribal girl by a Police Constable in Shahdol District of MP. The girl had arrived in Shahdol from Anuppur District for studies. In

view of the seriousness of the case, the Commission sought immediate report from District Collector and Superintendent of Police, Shahdol in the matter.

7.4.12 Superintendent of Police, Shahdol sent a detailed report dated 05-11-2008 to the Commission and confirmed the incident. He informed that a case No. 13/08 u/s 376, 506 IPC and 3(2)(v) of SC and ST (POA) Act, 1989 had been registered against the Police Constable in AJK Police Station. The accused, who was absconding after the incident, was being searched. The Commission examined the reply and requested the SP concerned to arrest the accused and inform the Commission about monetary relief provided to the victim. The Superintendent of Police, Shahdol vide his letter dated 24-01-2009 informed the Commission that the accused had been arrested on 03-12-2008 and the case was now pending in the Court. Monetary relief was being provided to the victim.

4(v) Encroachment on land of Smt. Budhan Bai and Smt. Saim Bai Daughters of Shri Dani Gond R/o Village Khamha, PS-Jaisingh Nagar, Distt- Shahdol (MP)

7.4.13 Smt. Budhan Bai and Smt. Saim Bai daughters of Shri Dani Gond R/o Village Khamha, PS-Jaisingh Nagar, Distt- Shahdol sent a joint representation to the Commission and informed that they were Pattas holders of one acre land in Arajhi Khasra No. 319 in the Village and that one Smt. Fajunnat Begum has forcefully encroached on their land. The revenue authorities had also found encroachment on her land. It was stated that the encroacher was not vacating the land and whenever the petitioners requested her to vacate the encroached land, they were threatened and abused on caste ground. The petitioner requested the Commission to help them in the matter.

7.4.14 The Commission took up the matter with District Collector, Shahdol who sent a detailed report dated 27/09/2008 to the Commission and informed that the matter was inquired into through Sub Divisional Officer (revenue), Sohagpur and the complaint was established. A case under section 447, 34 IPC and 3(1)(iv) of SC/ST (POA) Act, 1989 had registered against the two accused. The accused were arrested and the case is pending in the Court.

4(vi) Complaint of Shri T.Thilkan, R/o Perakathu Veedu, Anthayar PO, Koottikkal Village, Kanjirappally Taluk, Kottayam District (Kerala)

7.4.15 Shri T.Thilkan, R/o Perakathu Veedu, Anthayar PO, Koottikkal Village, Kanjirappally Taluk, Kottayam District (Kerala) sent a representation to the Commission and informed that he had obtained a loan of Rs. 1,50,000/- for education of his children from Shri K.N. Vijay Kumar by keeping land of his wife as mortgage. The petitioner also gave a blank cheque as security. He repaid Rs. 1,75,000/- including interest to Shri K.N. Vijay Kumar. He also sold a part of land to Shri K.N. Vijay Kumar and paid the remaining amount. Thereafter, he demanded the from Shri Vijay Kumar to return his blank cheque but the accused refused to return the same and demanded Rs. 2,00,000/- more as the outstanding balance. The applicant claimed that he had paid all his dues and the demand of the accused was not justified. He requested the Commission to intervene in the matter.

7.4.16 In view of the above, District Collector, Kottayam (Kerala) was requested to inquire into the case and send a report. District Collector, Kottayam (Kerala), vide his letter dated 31/10/2008 informed the Commission that he had directed SP, Kottayam to settle the issue after discussion with both the parties and provide adequate protection to the petitioner. He assured the Commission to send a final report soon. District Collector, Kottayam vide his letter dated 24/01/2009 informed the Commission that the matter had been settled after discussion with both the parties.

4(vii) Shooting of Shri Narendra S/o Shri Ghisa Lal Bhilala R/o Balkuan, District Barwani (MP)

7.4.17 It was brought to the notice of the Commission that Shri Narendra S/o Shri Ghisa Lal Bhilala R/o Balkuan, District Barwani (MP) was shot by a fire arm by the accused Gaja injuring him. The non applicant had also abused him in public. A report was called by the Commission from Superintendent of Police, Barwani who informed that a case u/s 307, 294, 506 IPC and 3(2)(v) of SC and ST (POA) Act, 1989 had been registered against the accused. The report also revealed that the accused has been arrested and the Chargesheet has been submitted in the Court. An amount of Rs. 50,000/- was sanctioned as monetary relief under SC and ST (POA) Rules, 1995 to the petitioner.

4(viii) Shri Umrao Singh S/o Mohan Singh Barela, R/o Village Rosmal under Pati Police Station, District Barwani (MP)

7.4.18 It was brought to the notice of the Commission that Shri Umrao Singh S/o Mohan Singh Barela, R/o Village Rosmal under Pati Police Station in District Barwani was beaten and abused by three persons when he was returning to his house from the block office, Pati on his motorcycle along with his wife Budhi Bai, who is Sarpanch of the Village Panchayat. A report was called by the Commission from Superintendent of Police, Barwani who informed that a case u/s 341, 294, 323, 506, 34 IPC and 3(1)(x) of SC and ST (POA) Act, 1989 has been registered against the accused. The report also revealed that all the three accused have been arrested and the Chargesheet has been submitted in the Court. An amount of Rs. 6,250/- had been paid as monetary relief under SC and ST (POA) Rules, 1995 to the petitioner.

4(ix) Kidnapping of Smt. Sona Bai W/o Shri Nanu Ram Bhil R/o Village-Bada under Oon Police Station of Khargone District (MP)

7.4.19 It was brought to the notice of the Commission that Smt. Sona Bai W/o Shri Nanu Ram Bhil R/o Village-Bada under Oon Police Station of Khargone District was kidnapped by Asharam and some other persons from Barwani District. A report was called by the Commission from Superintendent of Police, Barwani who informed that a case u/s 366, 376, 368, 34 IPC and 3(1)(xii), 3(2)(v) of SC and ST (POA) Act, 1989 has been registered against the accused. The report also revealed that all the five accused have been arrested and the kidnapped lady has been freed. A Challan has been submitted in the Court.

7.4.20 A supplementary report was called by the Commission regarding the payment of monetary relief from the District Collector, Barwani who informed that the victim hails from adjoining Khargone District and the case has been

transferred to that District for payment of monetary relief. Then, the matter was taken up with District Collector, Khargone who informed that an amount of Rs. 50,000/- has been sanctioned and deposited in her account in Bank of Maharashtra, Khargone.

4(x) Smt. Imal Bai W/o Late Shri Ram Kishore Uikey R/o Gobari Badhona, Tahsil Saunsar, Distrcit Chhindwada. (MP)

7.4.21 Smt. Imal Bai W/o Late Shri Ram Kishore Uikey R/o Gobari Badhona, Tahsil Saunsar, Distrcit Chhindwada (MP) sent a petition to the Commission and informed that her late husband worked as a labourer in the fields of Shri Uttam S/o Shri Lakhan Bhutange of Village Khairi in the same Tahsil. Whenever her husband demanded for payment of his wages, he was paid a small amount of money due to which they were hand-to-mouth. It the meantime, her husband was murdered and the remaining amount of wages due to him could not be paid. The petitioner has three dependent children and she is facing a lot of problems for their survival. She requested the Commission to help in the matter so that she could get the remaining wages due to his late husband.

7.4.22 A report was called by the Commission from Superintendent of Police, Chhindwada who, vide his letter dated 14-08-2008 informed the Commission that the matter was inquired into by the Police. It was found that the husband of the petitioner and the father of the non applicant were murdered together in the night of 09-06-2006 and a case No. 92/06 u/s 302 IPC was registered in the Police Station. As the owner of the field had also died in the incident along with husband of the petitioner, wages due to him could not be paid. However, the son of the field owner has now paid the remaining amount of wages during investigation and the applicant is satisfied with the agreement.

4(xi) Rape of woman r/o Chowki-hall, Village Dhanora under Anjad PS of Barwani District B/3102/BARWANI/MP/8/08-GR)

7.4.23 It was brought to the notice of the Commission that a woman who was r/o Chowki-hall, Village Dhanora under Anjad PS of Barwani District was raped by one Mansharam Mankar on 21-07-2008. A report was called by the Commission in the matter from Superintendent of Police, Barwani who informed that a case u/s 376 IPC and 3(2)(v) of SC and ST (POA) Act, 1989 has been registered on 22-07-2008 in Anjad PS. As the accused was not arrested at the time of sending report to the Commission, the Superintendent of Police was requested to arrest the accused immediately and furnish information related to payment of monetary relief under SCs and STs (POA) Rules, 1995 to the victim. The Superintendent of Police, Barwani vide his letter dated 07-10-2008 informed the Commission that the accused has been arrested on 24-07-2008 and an amount of Rs. 25,000/- has been sanction to the victim as per rules. The case is pending in the Court of Law.

4(xii) Smt. Sevanti Bai W/o Shri Gina Barela, Village Balwadi, PS Varla, District Barwani. (MP)

7.4.24 It was brought to the notice of the Commission that Smt. Sevanti Bai W/o Shri Gina Barela, Village Balwadi, PS Varla, District Barwani MP was abused by some non SC/ST persons on caste grounds in absence of her husband. She

was thrown out of her house along with her daughter and belongings causing damage to her property.

7.4.25 In view of the above, the Commission requested the Superintendent of Police, Barwani to arrest the accused persons and take necessary step to provide monetary relief to the victim. The Superintendent of Police, Barwani, vide his letter dated 19-03-2009 informed the Commission that a case has been registered against the accused persons u/s 147, 294, 452, 427 IPC and 3(1)(v), 3(1)(x), 3(1)(xv) of SC and ST (POA) Act, 1989. All the five accused have been arrested and an amount of Rs. 25,000/- as has been sanctioned as monetary relief to the victim. The Court has punished all the five accused with six months imprisonment and a fine of Rs. 2200/- on each of them.

4(xiii) Complaint by Smt. Bhagwati Meena W/o late Shri Ram Prasad Meena, village Kchhpur, Post Angai, Tehsil Basedi, Distt. Dhaulpur (Rajasthan)

7.4.26 A representation dated 21.04.2008 was received from Smt. Bhagwati Meena w/o late Shri Ram Prasad Meena, village Kchhpur, Post Angai, Tehsil Basedi, Distt. Dhaulpur regarding non-grant of economic relief under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. It was reported that a dispute between petitioner's husband late Shri Ram Prasad and Ors, Ram Prasad had met his death caused by a gun shot injury. A case No. 24/2008 had been registered in Sirmathera Police Station, Distt. Dhaulpur under 143, 323, 336 and 307 of IPC and section 3-1(1) and 302 (5) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. A letter was sent to the District Collector, Dhaulpur for taking necessary action in this regard. Reminders were issued on 13/8/2008 and 1/12/2008. District Probationary and Social Welfare Officer, Dhaulpur informed the Commission vide his letter No. 2691 dated 22/12/2008 that an amount of Rs. 1.50 lakh had been paid to Smt. Bhagwati Meena on 20/11/2008.

4(xiv) Rape of a minor tribal girl in Rajasmand Distt. (Rajasthan)

7.4.27 A news appeared in "Punjab Kesari" dated 26.06.2006 that an ST minor girl has been raped. The Regional Office, Jaipur vide letter dated 03.07.2008 addressed to the Collector, SP, Rajasmand district sought detailed report in the case. This was followed by reminder dated 13.08.2008. The Commission was informed that the case was registered under section 376 of IPC and sections 3(1)(11)(12) and 3(2)(5) of SC/ST (POA) Act, 1989 against the accused. The accused was arrested and chargesheet was filed against the accused in the Court. District Collector, Rajasmand subsequently informed the Commission that that economic relief under the Rules Rs. 1.00 lakh (50%) had been sanctioned to the victim as per SCs & STs (PoA) Rules, 1995.

4(xv) Shri Prem Narayan Meena, Vill-Khanpuria, Tehsil and Police Station-Atru, Distt-Baran (Rajasthan)

7.4.28 Shri Prem Narayan Meena, Vill-Khanpuria, Tehsil and Police Station-Atru, Distt-Baran represented to the Commission's Regional Office, Jaipur on 02.04.2007 regarding the harassment of his family. The Commission's Regional Office, Jaipur took up the matter with the Collector and Police Superintendent, Distt. Baran. The Superintendent of Police vide letter dated

16.07.2007 informed that case had been registered under section 447,148,149,326,325,324,323,336,307 and IPC and Section 3(2)(5) under SCs & STs (POA) Act, 1989 against the accused and chargesheet has been presented in the Court. Subsequently, the Commission took up the matter regarding final assistance to the victim with the District Collector. The District Collector informed vide letter dated 02.05.2008 that Rs. 50,000 had been sanctioned to Shri Prem Narayan Meena as economic relief.

4(xvi) News Item published in Hari Bhoomi Newspaper, Raipur regarding beating of tribal couple in Surguja district (CG)

7.4.29 A news item appeared in Hari Bhoomi News paper, Raipur edition on 01/07/2008 regarding beating of a tribal couple by 3 persons after keeping them hostage for several hours in Lau Village of Raipur development block in Surguja District. The matter was taken up by the Commission on the same day with Superintendent of Police, Surguja. SP sent a detailed report on 12/07/2008. According to his report, the three accused had severely beaten Shri Kharu and his wife Reshma Bai at around 08.00 P.M on 28/06/2008 and kept them hostage without any reason. They were release in the morning when the Sarpunch, Up-Sarpunch and Chowkidar of the village came there. Medical examination of the victims was conducted and a case no. 72/08 under section 342, 294, 506, 323 and 34 of IPC and section 3(1) 10 of SC and ST (POA) Act, 1989 had been registered against the 3 accused. Then the Commission requested the District Collector, Surguja on 29/08/2008 to provide financial assistance, as admissible under SC and ST (PoA) Rules, 1995. Ultimately, financial relief vide order no. dated 09/03/2009 was provided.

4(xvii) Complaint of Shri Umesh Saha Gond At/Po Murarpur P.S. Janta Bazar Distt. Chapra (Bihar)-inaction by the Police.

7.4.30 Shri Umesh Saha Gond At/Po Murarpur P.S. Janta Bazar Distt. Chapra vide his representation dated 06/06/2008 to the Commission stated that his brother Surendra Saha Gond had lodged a complaint case no. 26/08 in Janta Bazar P.S. against Ram Bhadur Ray and other for theft. But Police did not take any action against the named persons. Due to this the named persons again attacked his family. Women members were molested. Then he filed a complaint case in the court of Chief Judicial Magistrate, Chapra. He stated that due to threatening and fear of molestation they were unable to come out of their house.

7.4.31 This Commission took up the matter with the SP, Chapra vide this office letter no. BIHAR-1/31/2008-Gen. dated 28/08/2008. The S.P, Chapra vide his letter dated 27/10/2008 intimated that after enquiry of the case, chargesheet, had been submitted in the court against the accused persons.

4(xviii) Shri Misri Saha Gond (ST) Vill.- Bandi P.S. Dewariya, Distt. Muzafarpur (Bihar),

7.4.32 Shri Misri Saha Gond (ST) Vill.- Bandi P.S. Dewariya, Distt. Muzafarpur, Bihar vide his representation dated nil stated that the named person Shri Shiv Shankar Vidyarti and other are not being arrested by the Dewariya Police in Dewariya P.S. case no. 18/08 dated 07.05.2008 u/s 341/323/427/379/504/34 and u/s 3(X) SC/ST PAO Act. The case was enquired into by the P.S. Muzafarpur and was found to be true. He had a good rapport

with the Police and, therefore, the Police are not making any efforts to arrest him. He is a anti-social element of the area.

7.4.33 The Commission took up the matter with the S P Muzafarpur vide letter dated 28.08.2008. The SP Muzafarpur vide letter dated 10.10.2008 intimated the Commission that all the named accused persons were arrested on 01.08.2008 and were bailed by the Court.

4(xix) Smt. Hamanti Devi w/o Shri Rama Shankar Gond Vill. Nuwa, P.S. Krishnabramah, Distt. Baxar (Bihar)

7.4.34 Smt. Hamanti Devi W/O Shri Rama Shankar Gond Vill. Nuwa, P.S. Krishnabramah, Distt. Baxar Bihar vide representation dated 09.07.2008 sought intervention of the Commission for addition of relevant section of the SC/ST (PoA) Act, 1989 to the B. Krishna Brampur case no. 184/07 dated 05.11.2008 in which Smt. Hamanti Devi, her husband and her son were badly beaten up and abused. She was also molested and Rs. 200/- were also taken away by Shivaji Yadav & Co of the same village.

7.4.35 NCST Regional Office took up the matter with the S.P Baxar, Bihar vide this office letter no. Bihar-1/39/2008-Gen. dated 25.09.2008 and the S.P. Baxar vide his letter no. 1261 dated 01.11.2008 intimated that after enquiry into the incident, case was registered U/S 147/148/149/341/323/448/379/307/354/504/427 IPS against Shri Shivaji Yadav and 9 others on 16.12.2007. The Hon'ble Court ordered to add Sections 3(i)(x)(xi) of the SC/ST PoA Act, 1989.

CHAPTER 8

CONSULTATION ON POLICY RELATED ISSUES

8.1 Constitutional provisions

8.1.1 Clause 9 of Article 338A of the Constitution provides that the Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Tribes.

8.1.2 The views professed by the Commission on policy-related issues fall in 3 categories as under:

- (i) Proposals received from the Central and the State Governments/UT Administrations pursuant to Clause 9 of Article 338A of the Constitution
- (ii) Suo-moto recommendations by the Commission on various tribal concerns (mostly contained in the reports which are submitted to the President in terms of Clause 5(d) of Article 338A).
- (iii) Submissions made in Court cases in which the Commission is one of the Respondents.

8.1.3 During the year 2008-09, the Commission communicated its views on several policy-related issues, the details of which have been given below in para 8.3, 8.4 and 8.5 respectively.

8.2 Procedure adopted by Commission in dealing with policy related issues

8.2.1 The Commission has formulated standard guidelines for dealing with policy related issues in a time-bound manner. The guidelines detail the procedure for selection and approval of agenda item, content and format of the agenda note, presentation of agenda note and preparation/issue of minutes.

8.2.2 The policy-related issues received from any Ministry for comments/ views/ advice of the Commission, or any Court case having policy implications in which NCST is one of the respondents is brought to the notice of the Secretary, NCST to decide whether the matter needs immediate attention of the Chairperson or that of the Vice-Chairperson (in case the Chairperson is unavailable) and whether the matter requires discussion in the meeting of the Commission. On approval of the agenda items by the Secretary, the material received from Ministry/ Deptt. for discussion is immediately circulated by the Unit concerned, for comments amongst all Members and Senior Officers of the Commission. After receipt of the comments, Agenda Note on the issue is prepared for consideration in the meeting of the Commission.

8.2.3 The agenda note includes, *inter-alia*, conceivable effects of the proposed policy on scheduled tribes, earlier recommendations of the NCST or the erstwhile NCSCST, if any/ status of its implementation and present position, validity of the earlier recommendation(s) of the Commission(s) alongwith suggestions for fresh opinion and draft comments/views/advice for consideration of the Commission. If the matter had been received earlier also, then the purpose of referring the matter again by the Government is also brought out in the agenda note.

8.2.4 The Commission also endeavours to communicate the views/comments/ advice on policy related issues in a time-bound manner and also solicits feedback/outcome regarding acceptance or non-acceptance of the comments/ views/advice rendered by the Commission from the concerned Ministry/ Department.

8.3 Views communicated on the proposals received from the Central and the State Governments pursuant to Clause 9 of Article 338A of the Constitution

8.3.1 Inclusion in/ exclusion from the list of Scheduled Tribes in relation to the States of Tamil Nadu, and Arunachal Pradesh

Proposal in brief

8.3.1.1 Ministry of Tribal Affairs (Government of India) forwarded the following two proposals from the State Govt of Arunachal Pradesh and the State Govt. of Tamil Nadu on the subject:

MTA ref.	Proposal
Letter dated 07/05/2008	Substitution of 'Galong' with 'Galo' at S. No. 5 of ST list of Arunachal Pradesh, submitted by the State Govt. of Arunachal Pradesh
Letter dated 12/05/2008	Inclusion of 'Malyali Gounder' without area restriction in ST list of Tamil Nadu instead of 'Malayali' scheduled tribe of Tamil Nadu, submitted by the State Govt. of Tamil Nadu

Views of the Commission

8.3.1.2 The proposals were discussed in the meeting of the Commission held on 11.07.2008. The views of the Commission in the matter were as follows:

- (i) Chairperson recalled that in the emergent meeting held on 23.06.2008 (which was attended by the Vice-Chairman and the two Members) it was unanimously decided to agree with the recommendation of the Govt. of Tamil Nadu for inclusion of 'Malayali Gounder' without any area restriction in the list of Scheduled Tribes of Tamil Nadu in place of existing entry 'Malayali' in relation to certain districts of Tamil Nadu, namely Dharmapura, North Arcot, Pudukotta, South Arcot, and Tiruchirapali districts. The Commission decided to reiterate the decision taken in the meeting held on

23.06.2008. The Commission noted that the recommendation of the State Govt. of Tamil Nadu was duly supported by the office of Registrar General of India. Further, the office of RGI in its comments had, *inter-alia*, stated that the Lokur Committee (1965) had also recommended for substituting the existing entry 'Malayali' by 'Malayali Gounder' along with removal of area restriction.

- (ii) The Commission also decided to agree with the recommendation of the Govt. of Arunachal Pradesh, duly supported by the office of Registrar General of India, for substituting the existing entry 'Galong' by 'Galo' in the list of Scheduled Tribes of Arunachal Pradesh. The Commission noted that State Govt. of Arunachal Pradesh while making this recommendation had informed that there would be no administrative problem in substituting 'Galong' with 'Galo' and that the ST certificates in the name of 'Galong' issued to Scheduled Tribe persons in the past will continue to be honoured. The Commission also noted that the office of Registrar General of India in its comments had, *inter-alia*, stated that 'Galo' and 'Galong' are synonyms to each other and that the word 'Galong' had been derived from 'Galo'.

Action taken status

8.3.1.3 The above views of the Commission were communicated to the Ministry of Tribal Affairs vide the Commission's letter dated 22/07/2008 and 27/07/2008 respectively. Subsequently, Ministry of Tribal Affairs was requested vide d.o. letter No. 12/2/09-Coord. dated 16/12/2009 from the Chairperson, NCST to communicate the details of the action taken on the advice/ views tendered by the Commission in the matter.

8.3.1.4 Ministry of Tribal Affairs have informed vide letter dated 20/05/2010 that there were the representations for non-inclusion of 'Malayali Gounder' in the ST list of Tamil Nadu as the 'Malayali' community had already been notified as ST. Therefore, the matter has again been referred to the State Govt. vide MTA letter dated 03/10/2008 for clarifying as to how the Malayali ST community people will be treated in future, and what will happen to those who already have Malayali ST certificate, if the proposed changes were to be effected,. Reply from the State Govt. is awaited.

8.3.1.5 The action taken on the advice/ views of the Commission on the proposal of the State Govt. of Arunachal Pradesh for 'Substitution of Galong with Galo at S. No. 5 of ST list of Arunachal Pradesh' is awaited.

8.3.2 Setting up an Equal Opportunity Commission (EOC)

Proposal in brief

8.3.2.1 Ministry of Tribal Affairs sought the comments of the Commission on the Draft Note for the Cabinet, including the draft EOC Bill, 2008 from the Ministry of Minority Affairs regarding setting up of an Equal Opportunity Commission (EOC) vide letter dated 21/07/2009. The setting up of the EOC was proposed as a statutory Commission, emphasizing that the size and complexity of issues in the

country warrant a specialized agency to promote the constitutional goals particularly on behalf of deprived and disadvantaged sections of people. The proposed Commission was aimed to address group discrimination and denial of equal opportunity to disadvantaged sections, as a watchdog institution to evolve and evaluate measures for affirmative action.

Views of the Commission

8.3.2.2 The proposal was discussed in the meeting of the Commission held on 29/07/2008. The advice/views of the Commission were as under:

- (i) The Constitution of India provides for safeguarding the rights of two specially deprived groups of communities through the institutions of two special Commissions, namely, the National Commission for Scheduled Tribes, and the National Commission for Scheduled Castes. These Commissions had their genesis in the Office of Special Officer (Commissioner) for SCs and Scheduled Tribes provided under Article 338 of the Constitution since the adoption of the Constitution. Similarly, separate Commissions have been set up for safeguarding the rights of Minorities, Linguistic Minorities (Commissioner), Women, Children, Backward Classes, Nomadic & Denotified Tribes, disabled (Commissioner), and Safai Karamcharis. Besides, there also exists a high-powered National Human Rights Commission to protect the rights of all sections of people particularly the disadvantaged ones. The Commission noted that all these Commissions were also mandated to eliminate all forms of discrimination and denial of equal opportunities in all walks of life in relation to specified groups. The Commission also noted that other countries like USA and UK etc. did not have separate Commissions for each category of deprived groups and Equal Opportunity Commissions had been set up by them, primarily, in the context of their concern for the multi-racial migrant population. Therefore, setting up a Commission like Equal Opportunity Commissions may be necessary in those countries.
- (ii) The functions proposed to be assigned to the Equal Opportunity Commission overlapped with the functions assigned the various Commissions mandated to protect the rights of the disadvantaged groups in the respective jurisdiction, which were in addition to the National Human Rights Commission whose area of jurisdiction covered all deprived sections of the society. In view of this, the Commission felt that there was no emergent need for setting up a separate Equal Opportunity Commission to look after the interests of the deprived or discriminated groups, which were already being taken care of by the respective Commissions.
- (iii) Instead of creating a separate multi-member Equal Opportunity Commission with provisions for Regional Commissions, the Govt. should consider strengthening the existing Commissions by providing adequate legal authority, manpower and infrastructure to enable them to effectively discharge the functions assigned to them

Action taken status

8.3.2.3 The views of the Commission in the matter were communicated to the Ministry of Tribal Affairs vide letter dated 12/08/2008 for taking into account while considering the proposal. Subsequently, Ministry of Tribal Affairs was requested vide d.o. letter No. 12/2/09-Coord. dated 16/12/2009 from the Chairperson to communicate the details of the action taken on the advice/ views tendered by the Commission in matter. Reply is still awaited.

8.3.3 Amendments to Section 14 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

Proposal in brief

8.3.3.1 Ministry of Tribal Affairs vide their letter dated 18/07/2008 forwarded a proposal received from the Ministry of Social Justice & Empowerment for the following amendments in the Sections 14 and 21 of SCs and STs (Prevention of Atrocities) Act, 1989 for comments of the Commission thereon:

- (i) Re-numbering of the existing section 14 of the POA Act, whose text is reproduced below, as Section 14(1):-

Section 14(1)

“For the purpose of providing for speedy trial, the State Govt. shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for each district a Court of Session to be a Special Court to try offences under this Act.”

- (ii) Addition of the following new sub-section(2) in Section 14 after Section 14(1):

“(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, a Special Court specified under sub-section (1) shall be competent to try offences under this Act as a Court of original jurisdiction without the case having been committed to it by a magistrate under the said Code”.

- (iii) Addition of new sub-section (2A) in Section 21 (relating to measures to be taken by the respective State Govt. to ensure effective implementation of the Act), after existing sub-section (2):-

“(2A) Whenever a First Information Report is registered for an offence punishable under sub-clauses (i), (iv) or (v) of sub-section (2) of Section 3, the concerned State Govt. and the Union Territory Govt. (in the case of Union Territory with Legislature) or the Administrator of the Union Territory (in the case of Union Territory without Legislature) , as the case may be shall submit a detailed report in the matter to the Central Govt. and to the National Commission for scheduled Castes and/or the National Commission for Scheduled Tribes, as the case may be, within four days of

the registration of the First Information Report, in such manner as may be prescribed.”

8.3.3.2 Subsequently, Ministry of Tribal Affairs vide its letter dated 07.11.08 sought comments of the Commission on the Draft Cabinet Note received from Ministry of Social Justice & Empowerment for amendments in the Section 14 of SCs & STs (Prevention of Atrocities) Act, 1989 as under:

- (i) Re-numbering of the existing Section 14 of the Act as Section 14(1) with text as mentioned above.
- (ii) Addition of following new sub-section(2) in Section 14, on the lines of sub-section(1)(d) of Section 36 of the Drugs and Psychotropic Substances Act :

“(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, a Special Court specified under sub-section (1) may, upon perusal of police report of the facts consisting:

- (a) an offence under this Act, and
- (b) an offence, if any, under any other law for the time being in force,
[take cognizance of such offence or, as the case may be, offences, without the case being committed to it for trial.”]

Views of the Commission

8.3.3.3 The proposed amendments were discussed in the meeting of the Commission held on 29/07/2008. The Commission unanimously agreed to the proposed amendments. The Commission also desired the following steps to be taken to make the proposed amendment meaningful:

- (i) The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 should also be amended to carry out the provisions of the Act as per the proposed amendment
- (ii) The information about registration of cases of atrocities on Scheduled Tribes is regularly collected and compiled by National Crime Records Bureau. The Commission observed that now in view of the provision under new sub-section 2(A) under Section 21, proposed to be inserted vide the amendment, the information will be reported to the National Commission for Scheduled Tribes also. On receipt of information in National Commission for Scheduled Tribes about registration of cases under PoA Act, the National Commission for Scheduled Tribes will have to investigate the cases as per mandate of the Commission under Clause (5) of Article 338A of the Constitution. Consequently, the workload relating to investigation and monitoring of cases of atrocities on Scheduled Tribes in this Commission will increase manifold. The Commission desired that to enable it to concentrate on such cases, a Special Cell, fully equipped with adequate manpower and infrastructure facilities will be required to be created in the Hq. Office. The Commission accordingly suggested that Ministry of Tribal Affairs should request the Ministry of Social Justice &

Empowerment to make a provision for creation of a Special Atrocity Cell/ Unit with requisite complement of staff in the Commission in the financial memorandum to be enclosed with the Bill for amendment of the Act. It was indicated that a detailed proposal for setting up this Cell/ Unit will be submitted to the Ministry of Tribal Affairs in due course after the proposed amendments are notified. The NCST sent a unified proposal for phased creation of additional staff posts (including this requirement in Phase-II of the proposal) on 21/10/2009.

8.3.3.4 In its meeting held on 17/12/2008, the Commission also agreed with the suggestions made in the draft Cabinet Note for amendment of the SCs & STs (POA) Act, 1989 as mentioned in paragraph 8.3.3.2 supra.

Action taken status

8.3.3.5 The comments/views of the Commission on the proposed amendments, sent by Ministry of Tribal Affairs vide their letter dated 18/07/2008 were communicated to them vide its letter dated 12/08/2008 with the request to ensure due consideration of Commission's views/comments on the proposed amendments by the Ministry of Social Justice & Empowerment. The views of the Commission on the draft Cabinet note were communicated to the Ministry of Tribal Affairs vide letter dated 13/01/2009 with the request to intimate the final outcome of the proposal. Ministry of Tribal Affairs vide letter dated 24/02/2009 informed that there had been no further communication from the Ministry of SJ&E and therefore, the Ministry was not aware of the final outcome of the issue. Subsequently, Ministry of Tribal Affairs was requested vide d.o. letter No. 12/2/09-Coord. dated 16/12/2009 from the Chairperson, NCST to communicate the details of the action taken on the advice/ views tendered by the Commission in matter. Reply is still awaited.

8.3.4 Recommendations contained in the Report submitted by National Commission for Denotified Nomadic and Semi-Nomadic Tribes (NCDNSNT), constituted in March, 2005.

Proposal in brief

8.3.4.1 Ministry of Tribal Affairs vide letter dated 02/09/2008 and Ministry of Social Justice and Empowerment vide letter dated 17/09/2008 sought comments of the Commission on point no 45, 47 & 76 and point No. 53 and 55 respectively of the recommendations of the Report of the National Commission for Denotified Nomadic and Semi-Nomadic Tribes (NCDNSNT), submitted in March 2005 for raising the living standards of DNSNT. The recommendations, referred above, are reproduced below:

Point No.45

The DNTs are also victims of atrocities like Scheduled Castes committed by anti- social elements. It is, therefore, necessary that the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 be, mutatis mutandis, made applicable to DNTs as well and the central assistance be granted to the States in the same ratio as in the case of SCs and STs.

Similarly, special cells may be set up by the States for the implementation of the above Act. To expeditiously prosecute cases under this Act, the number of Special Courts be suitably increased to effectively deal with the cases relating to DNTs.

Point No.47

It has been observed that in most of the cases of atrocities committed against the DNTs the villagers or a group of villagers are involved and all the accused get acquitted due to lack of identification and evidence. Hence it is recommended that whenever such a crime takes place where all the villagers or a group of villagers are involved, the entire village should be collectively punished. The punishment may be in the form of stopping or holding up the financial assistance, or loans which are supposed to come to the village for at least 2/3 years.

Point No.76.

As stated earlier, a number of castes/communities from amongst the Denotified, Nomadic and Semi-nomadic Tribes have been included in the lists of SCs, STs, and OBCs from time to time. It has been noticed that in many cases the same caste/community has been included in the list of SCs in one or more States, and the same caste/community has been included in the lists of STs or OBCs in some other States and has not been included in any list at all in some States. Similarly, a caste/community has been included in one list in some Districts of the State and in another list in some other Districts and in no list in the remaining Districts. This is not only unreasonable but also discriminatory and iniquitous and has created anger and dissatisfaction among various castes/communities in the country. Such examples have been referred to in the chapter on 'Anomalies'. It is, therefore, strongly recommended that all such anomalies be identified and corrected to ensure that a caste/community is in the same list in all the States and also within the same State.

8.3.4.2 It was further stated that it had also been noticed that various Denotified, Nomadic and Semi-nomadic Tribes have been identified district-wise in the same State. This is also unreasonable. In an age of occupational mobility, if a family moves from one district to another, it should not mean a loss of status of that family. A typical example of this is the State of U.P. It is, therefore, recommended that narrow area restrictions be removed forthwith and castes/communities ordinarily be allowed to enjoy the same status throughout the State.

Point No.53

Considering their socio-economic conditions, which are generally worse than those of the Scheduled Castes and the Scheduled Tribes, it is suggested that they may be given constitutional status and support on the same lines as given to the Scheduled Castes and the Scheduled Tribes under Article 341 and

Article 342 of the Constitution. Accordingly, the Constitution may be amended by adding Article 342 A as follows:-

“342-A. Scheduled Communities -

- (1) The President may with respect to any State or Union Territory and where it is a State, after consultation with the Governor thereof, by public notification specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purpose of this Constitution be deemed to be Scheduled Communities (Denotified and Nomadic Tribes), in relation to that State or Union Territory, as the case may be.
- (2) Parliament may, by law, include in or exclude from the list of Scheduled Communities specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but have as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.”

Point No.55.

Simultaneously, Scheduled Communities (Denotified & Nomadic Tribes) which have been included in the list of Scheduled Castes and in the list of Scheduled Tribes may be excluded from these lists in accordance with Article 341 (2) and Article 342 (2) of the Constitution. Also, such Scheduled Communities as have been included in the list of the OBCs may be excluded from such list in accordance with the provisions of National Commission for Backward Classes Act, 1993.

Views of the Commission

8.3.4.3 The Commission noted that the DNSNT had, *inter-alia*, made the following recommendations which needed to amend the Constitution:

- (i) to add a new Article 342A to define DNTs as 'Scheduled Communities' (Recommendation No. 53).
- (ii) to delete DNTs from the list of SC/ST/OBC as the case may be (Recommendation No. 55).
- (iii), (iv), & (v) to give electoral reservation to them in (a) Lok Sabha and State Legislatures (b) Panchayati Raj Institutions and (c) Urban Local Bodies.
- (vi) to set up a National Commission for DNTs as a permanent Constitutional Body like NCSC and NCST.
- (vii) to reserve 10% of Govt. jobs for DNTs even if the ceiling of 50% is exceeded.

8.3.4.4 The Commission discussed the above recommendations in its meeting held on 03/10/2008 and observed, as under:

- (i) As entire estimated population of DTs and NTs are stated to be already getting the benefits as either SCs or STs or OBCs, it may not be appropriate to delete them from these categories and put them in a new Constitutional category.
- (ii) In case the people belonging to DTs and NTs have not been able to get the benefits as SCs/ STs/ OBCs, as has been stated by the NCDNSNT, the solution lies in addressing those problems and removing them, rather than making large scale amendments in Constitution and subsequent Govt. Orders
- (iii) Many of the DTs/ NTs already categorized as SCs/ STs/ OBCs, may not like the existing arrangements to be disturbed as they would have to forgo the benefits already guaranteed to them as SCs/ STs/ OBCs
- (iv) Efforts to maintain social harmony will be jeopardized by further dividing the society on caste basis by specifying another Constitutional category viz; "Scheduled Community".
- (v) In view of (i) above there is no need to set up a separate Commission for DTs and NTs beside NCSC , NCST and NCBC.

Action taken status

8.3.4.5 The comments/views of the Commission were communicated to the Ministry of Tribal Affairs and Ministry of Social Justice & Empowerment vide letter dated 08/10/2008 with the request to intimate the final recommendations sent from the Ministry of Tribal Affairs on the recommendations of NCDNSNT. Subsequently, Ministry of Tribal Affairs was requested vide d.o. letter No. 12/2/09-Coord. dated 16/12/2009 from the Chairperson, NCST to communicate the details of the action taken on the advice/ views tendered by the Commission in matter. Reply is still awaited.

8.3.5 Draft DoPT O.M in the matter of instructions regarding implementation of reservation for the SCs, STs, and OBCs with reference to their OM dated 02.07.1997

Proposal in brief

8.3.5.1 The Department of Personnel and Training (DoPT) sought comments of the Commission on the draft O.M in the matter of instructions regarding implementation of reservation for the SCs, STs, and OBCs with reference to the DoPT OM dated 02.07.1997 vide letter dated 5 December 2007.

8.3.5.2 DoPT OM dated 02.07.1997 laid down the policy of reservation in line with the judgment of the Supreme Court in the case of R.K. Sabharwal vs State of Punjab. .Briefly, the said judgement of the Supreme Court, propounds the principle that prescribed reservation (ST: 7.5 %, SC: 15 %, OBC:27 %) has to be determined with reference to the strength of the cadre. When prescribed

percentage of the reservation is achieved, the running account have to come to an end, and thereafter posts have to be filled up on the principle of substitution or replacement.

8.3.5.3 The aforesaid O.M. dated 02.07.1997, inter-alia, stipulated that the reservation in respect of the SCs, the STs or the OBCs should not exceed the prescribed percentage of reservation for these categories at any point of time ie ST: 7.5%, SC: 15% and OBC: 27%. By applying this principle, the number of seats reserved for SCs, STs and OBCs comes either equal to the percentage of reservation prescribed for them or less than that. For example, in a cadre of 100 sanctioned posts, STs should not get more than 7.5 seats, meaning thereby that STs in that cadre may get only 7 posts, to the disadvantage of STs. Thus, the OM truncates reservation always to the disadvantage of reserved categories, though Supreme Court in its Judgement quoted above has not imposed any such restriction that at any point of time, reservation should not exceed the prescribed percentage for the STs (7.5%).

8.3.5.4 DoPT, therefore, proposed that reservation in any cadre should be determined by calculating the number of posts required to be kept reserved for the SCs/STs/OBCs as per percentage of reservation prescribed and applying the principle of rounding off the fraction to the nearest whole number, subject to the ceiling 50 % at any point of time for the total reservation. For cadres with more than 6 posts, reservation rosters would be substituted by a Reservation Register in the appended format.

8.3.5.5 The proposed OM also included the following principle of rounding-off the reservation to the nearest whole number without exceeding the reservation limit of 50%:

- (i) First, the reservation for STs should be taken up. If reservation for the STs exceed a whole number and the fraction is equal to or greater than 0.5, it may be rounded off to the next higher whole number, provided total reservation does not exceed 50%. In the above case reservation for STs would be 2.
- (ii) After adjusting the posts for STs, the reservation for the SCs may be taken up in the same manner. In the above example reservation for the SCs would be 4.
- (iii) The reservation for the OBCs should then be adjusted applying above principles. In the above example reservation for the OBCs would have to be restricted to 6.

Views of the Commission

8.3.5.6 The proposal was discussed in the meeting of the Commission held on 14/10/2008. The views/comments of the Commission in the matter were as under:

- (i) The Commission noted that the system of vacancy-based rosters for implementation of reservation in services was replaced by the post-based reservation rosters w.e.f. 02.07.1997 to bring the policy of reservation in

line with the law laid down by the Supreme Court of India in the case of R.K. Sabharwal Vs State of Punjab. The OM dated 2nd July, 1997 inter-alia stipulates that representation of each of the reserved category should at no point of time exceed the reservation prescribed for it. By applying this principle the number of posts reserved for SCs, STs and OBCs is either equal to the percentage of reservation prescribed for them or less than that. Thus, the OM prescribed downward rounding-off of reservation to the disadvantage of reserved categories. Implementing authorities have also been finding it very difficult to operate reservation rosters for implementing the reservation provisions. Therefore, DoPT has now proposed upward rounding-off of reservation to the advantage of STs, SCs, and OBCs, keeping total reservation within the prescribed ceiling of 50%. The fractional share of posts reserved for Scheduled Tribes will be rounded-off to the next higher number, if the fraction is more than $\frac{1}{2}$. For instance, out of 25 posts the share for Scheduled Tribes is 1.875 and in actual practice one post only is given to Scheduled Tribes out of 25 posts, effectively reducing their share by one post. Similarly, the share of Scheduled Tribes out of 10 and 20 posts is 0.75, 1.5 respectively and the actual share given is zero and one only, thereby leading to lesser representation than the actual entitlement of STs. The Commission endorsed this proposal as upward rounding-off will take care of this anomaly and will, therefore, be beneficial for STs.

- (ii) The Commission noted that in accordance with paragraph 9 of the Draft Cabinet Note, registers/ rosters are to be maintained as per instructions contained in the draft OM proposed to be issued in the matter (Annexure-III of the draft Cabinet Note). According to paragraph 4 of the said OM, in case of cadres having more than 6 posts, there is no need to maintain any roster to maintain reservations for SCs, STs, and OBCs. In such cases a reservation register as per APPENDIX-A to the said OM is required to be maintained in place of roster being followed at present. However, in respect of cadres up to 6 posts, a 14-point roster is to be followed in the format given in APPENDIX-B of the said OM. The Commission felt that there was a need to ensure a transparent system of implementation of reservation for SCs, STs, & OBCs. A majority of Govt. Organisations will have cadre strength more than 6 and thus, will be affected by the revised system. The existing system of maintaining rosters ensures transparency both with regards to sequence as well as number of vacancies in respect of the reserved posts, both during initial recruitment as well as subsequent replacements. Therefore, the Commission recommends that reservation rosters should continue to be maintained with the revised instructions of rounding-off. A computerised system should also be developed/ established for compilation of reservation rosters, identification/ enumeration of vacant posts and preparation of eligibility lists/ zone of consideration, etc.
- (iii) Since the SCs and STs may not get reservation in small cadres even after applying the principle of rounding off, small cadres may be grouped with posts in the same Group (class) for purpose of reservation, as per practice

currently in vogue. A 14-point roster may be maintained, where grouping is not possible.

Action taken status

8.3.5.7 The views of the Commission in the matter were communicated to the DoPT vide letter dated 20/10/2008 with the request to indicate action taken position. In response to the Commission's letter dated 03/11/2009, DoPT vide their letter dated 29 December, 2009 has informed that the matter is pending for want of comments of the National Commission for Scheduled Castes.

8.3.6 Draft O.M. to revise the proforma for sending proposal for de-reservation of vacancies reserved for SCs and STs.

Proposal in brief

8.3.6.1 The Department of Personnel and Training forwarded a proposal for seeking comments of the Commission on issue of a draft O.M. in the matter of revised proforma for sending proposals for de-reservation of vacancies reserved for Scheduled Castes and Scheduled Tribes by various Ministries/Departments/Organisations of the Central Govt. vide letter dated 27 November 2007. It was, inter-alia, stated that a ban on de-reservation of reserved vacancies of SCs, STs and OBCs in case of posts filled by direct recruitment had already, been imposed. However, in case of posts filled by promotion, DoPT OM No. 36012/17/2002-Estt(Res.) dated 06.11.2003 provides that if sufficient number of SC/ST candidates fit for promotion against reserved vacancies do not become available, such vacancies may be de-reserved and filled by candidates of other communities after following the procedure laid down by them.

8.3.6.2 DoPT also mentioned that after introduction of the post-based reservation, there have been some modifications in the instructions about implementation of reservation. Some of the important modifications are:

- a) Reservation is now with reference to posts and not vacancies.
- b) No. of points in a roster in a cadre shall now be equal to the number of posts in the cadre.
- c) Exchange of reservation between SCs and STs is not permitted.
- d) In cadres having more than 13 posts, reservation does not lapse and the reserved points are carried forward till such time the candidate(s) belonging to the reserved category become(s) available. It is only in cadres having 13 or less number of posts where 14-point L-shaped roster is followed, reserved post is carried forward only for three subsequent years.
- e) SC/ST candidates promoted on their own merit are not adjusted against quota reserved for them.

8.3.6.3 Keeping in view the changes that have taken place, DoPT proposed to revise the proforma for sending proposals for de-reservation of reserved vacancies of SC and ST to the NCSC / NCST and DoPT.

Views of the Commission

8.3.6.4 The proposal was discussed in the meetings of the Commission held on 14/10/2008 and 17/12/2008. The advice/views of the Commission in the matter were as under:

- (i) The Commission agreed with the proposal of DoPT for revising the proforma for sending proposal for de-reservation of vacancies reserved for SCs and STs. While re-iterating its earlier recommendations that the de-reservation of vacancies reserved for Scheduled Tribes in the matter of promotion should also be banned as in the case of Direct Recruitment, the Commission recommended amendment of RRs to provide for temporary diversion of unfilled vacancies from promotion quota to direct recruitment. The Commission was also of the view that the following documents should also be annexed to proposals for dereservation:
 - (a) Recruitment Rules of the post for which dereservation has been sought
 - (b) Recruitment Rules of the feeder post.
 - (c) Post-Based Roster and updated seniority list of the feeder post
 - (d) Reasons for non-availability of ST Officers in feeder post
- (ii) Efforts made by the department in the past to fill the vacancies reserved for ST in the feeder post as well as the post proposed for de-reservation and for temporary diversion of reserved vacancies from promotion to direct recruitment quota should also be indicated in the de-reservation proposals. Further, HRD policy, if formulated, in this regard should also be quoted with extract thereof and status of its implementation.

Action taken status

8.3.6.5 The views of the Commission in the matter were communicated to the DoPT vide letter dated 13/01/2009 with the request to intimate the final outcome of the proposal for information of the Commission. In response to the Commission's letter dated 03/11/2009, DoPT has informed vide their letter dated 29/12/2009 that the proforma for sending proposals for de-reservation of vacancies for SCs and STs has been revised vide their OM dated 07/12/2009. A copy of the revised proforma is placed at **ANNEXURE 8.I**

8.3.7 Age relaxation for the SCs, STs and OBCs in case of appointment against unreserved vacancies

Proposal in brief

8.3.7.1 DoPT forwarded a proposal for seeking comments of the Commission on age relaxation for the SCs, STs and OBCs in case of appointment against unreserved vacancies vide letter dated 04/11/2008.

8.3.7.2 At present, SC/ST/OBC candidates selected on their own merit are adjusted against unreserved vacancies. DoPT O.M. No. 36011/1/98-Estt.(Res.) dated 1.7.1968 clarified that only such SC/ST/OBC candidates who are selected

on the same standard as applied to general candidates shall not be adjusted against reserved vacancies. The OM further clarified that when a relaxed standard is applied in selecting an SC/ST/OBC candidate, for example in the age-limit, the SC/ST/OBC candidates are to be counted against reserved vacancies and only such SC/ST/OBC candidates would be able to be adjusted against unreserved vacancies who are within the age limit prescribed for general category candidates.

Views of the Commission

8.3.7.3 The proposal was discussed in the meeting of the Commission held on 17.12.2008. The Commission felt that since Scheduled Tribe children generally join School at very late stage, the grant of age relaxation is essential to make them eligible to compete with the general candidates on an equal footing. The Commission felt that since age relaxation, without grant of concession or relaxation in minimum educational and other qualifications for the post would not in any way be inconsistent with the maintenance of efficiency in administration, Scheduled Tribe candidates thus selected ought to be classified as having been selected on own merit and the Commission accordingly recommended suitable modifications in DoPT's OM No 36011/1/98-Estt.(Res.) dated 1.7.1968 to this extent.

Action taken Status

8.3.7.4 The comments/views of the Commission in the matter were communicated to the DoPT vide letter dated 13/01/2009 with the request to intimate the final outcome of the proposal for information of the Commission. DoPT has informed vide their letter dated 29/12/2009 that the matter is still under examination.

8.3.8 Report on 'Study of performance of the National Commission for Scheduled Tribes', conducted by the Centre for Policy Research, New Delhi – Comments thereon.

Proposal in brief

8.3.8.1 Ministry of Tribal Affairs sought the comments of the Commission on the above mentioned Report vide letter dated 25 July 2008.

8.3.8.2 The study of the performance and effectiveness of the NCST was entrusted to the Centre for Policy Research, New Delhi by the Department of Administrative Reforms and Public Grievances (DARPG). The Report covered role and functioning of the Commission and made various recommendations in the related areas for improving its performance and effectiveness. The Agency has made certain observations, *inter-alia*, regarding the mode of the appointment of Members of the Commission, shortage of staff at the Hqrs. At New Delhi and Regional Offices of the Commission on account of non-filling of sanctioned posts by the cadre controlling authorities as also due to non-creation of adequate number of posts to enable the Commission to deal with the additional duties assigned to the Commission vide the Notification of the Ministry of Tribal Affairs dated 23 August, 2005, treating of the Commission by the Ministry of Tribal Affairs as an appendage of its normal activities and thereby preventing it from performing

the watch-dog-functions it was meant to, non-laying of the 1st Report of the Commission (submitted to the President of India on 8 August, 2006) in the Parliament, etc.

Views of the Commission

8.3.8.3 The Report was discussed in the meetings of the Commission held on 12/05/2008 and 07/11/2008. The views/ comments of the Commission on some of the observations of the Agency regarding (i) the appointment of the Members of the Commission, (ii) shortage of the staff and (iii) independent functioning of the Commission are given below:

- (i) Appointment of Members of the Commission are made as per the prescribed conditions laid down in the National Commission for Scheduled Tribes, Chairperson, Vice-Chairperson and Members (Conditions of Service and Tenure) Rules, 2004. It was stated that those persons who fulfill the eligibility conditions prescribed in Section 3(1) notified by the Ministry of Tribal Affairs on 20-02-2004 should be considered for appointment as Chairperson, Vice-Chairperson or Members of the Commission, irrespective of their political affiliation.
- (ii) An important highlight in the report related to shortage of staff and large number of vacancies against the sanctioned strength of the Commission. It was stated by the Commission that there are different Cadre Controlling authorities for various category of posts in the Commission and Commission does not have control over these posts except certain Group 'C' and all Group 'D' posts. Joint cadre posts and secretariat posts are filled by the Ministry of Social Justice & Empowerment. It was also mentioned that the National Commission for Scheduled Tribes needs additional posts to look after increasing workload in the Hq. Office and the six Regional Offices consisting of Investigators, Senior Investigators, Research Officers, Assistant Directors, Deputy Directors and Directors (at Bhopal, Bhubaneswar, Jaipur, Raipur, Ranchi and Shillong) besides opening of new Regional Offices. It was mentioned that to cover mostly the Scheduled Area States, detailed proposals for additional posts may be forwarded to the Ministry of Tribal Affairs and after sanctioning of the additional posts, the National Commission for Scheduled Tribes should be declared as the Cadre Controlling Authority for all categories of various posts, including already existing and new posts sanctioned for the Commission. It was stated by the Commission that till such time independent NCST cadres are formed, Ministry of Social Justice & Empowerment should constitute a Coordination Committee of MSJE, MTA, NCST, and NCSC comprising officials from each participating organisation with a view of fill up, the existing vacancies for smooth functioning of each Commission (as stated to be in existence at the time of erstwhile Offices of the Commissioner for Scheduled Castes and Scheduled Tribes and the National Commission for Scheduled Castes and Scheduled Tribes).
- (iii) Copy of order(s) relating to financial powers delegated to National Commission for Scheduled Tribes as a Ministry/ Department of Central Govt. under DFP Rules 1978 may be obtained from the Ministry of Social

Justice & Empowerment / Ministry of Tribal Affairs. In case such delegation does not exist, Ministry of Tribal Affairs may be asked to issue necessary orders without delay.

- (iv) In accordance with Clause (5) and (9) of Article 338A of the Constitution, the National Commission for Scheduled Tribes is vested with duty to monitor and evaluate the working of the safeguards provided for the Scheduled Tribes, participate in the planning process and advise the Union and the State Govts. on major policy matters affecting the Scheduled Tribes and make recommendations. These recommendations urge the Union and State Govts. to initiate or modify programmes and schemes for welfare, development and protection of Scheduled Tribes and prepare the grounds for protective and legal enactments. Axiomatically, therefore, the views of the Commission on various issues and advice offered by the Commission in legal and other important matters is likely to be at variance with extant views of the Govt. and the executive agencies. The expectations aroused by this role of a constitutional body like the National Commission for Scheduled Tribes also result in the Commission being made as one of the respondents in various Court cases. In all such cases, if the views and recommendations of the NCST do not reach the Courts or authorities considering the issues, the outcome of the considerations may be totally against the interest of the Scheduled Tribes; and also unconstitutional in certain cases. It was stated that it had, however, been noticed that the views expressed/ conveyed by the National Commission for Scheduled Tribes to Ministry of Tribal Affairs, Ministry of Social Justice & Empowerment, Ministry of Panchayati Raj and other Ministries in various Court cases were not incorporated in the Affidavits filed by them, or even referred to in the Affidavits filed by the concerned Ministry. Similar is the situation w.r.t. the policy matters and legal amendments concerning wider interest of Scheduled Tribes.

Action taken status

8.3.8.4 The comments of the Commission on the Report were communicated to the Ministry of Tribal Affairs vide letter dated 16 January 2009 with the request to communicate the same to the DARPG under intimation to the Commission. The Commission has not heard anything so far from the MTA in the matter.

8.3.9 Amendments to Part-I of the Schedule to the Constitution (Scheduled Tribes) (Union Territories) Order, 1951 vide the Constitution (Scheduled Tribes) (Union Territories) Order (Amendment) Act, 2008.

Proposal in brief

8.3.9.1 Part-I (Lakshadweep) of the Schedule to the Constitution (Scheduled Tribes) (Union Territories) Order, 1951 provides that the inhabitants of Laccadive, Minicoy and Aminidivi Islands who, and both of whose parents, were born in those Islands shall be deemed to be Scheduled Tribes throughout the Union Territory of Lakshadweep. The Ministry of Tribal Affairs informed the

Commission in the year 2004-05 that several representation were received from Union Territory of Lakshadweep that these existing provisions were creating difficulties for islanders who are born on the mainland on account of non-availability of adequate health services in the islands and that accordingly a Bill to amend this Order was introduced in Rajya Sabha on 5 March 2003 and further that the consideration of above Bill was deferred on 9 April 2003 on the request of Ministry of Home Affairs to include the cases other than Medical ground cases in the said amendment Bill of 2003. The amendments in question were proposed to add a proviso that if children born outside Lakshadweep to such parents both of whom were born in these Islands settle permanently in Lakshadweep, they shall be deemed to have been born in Lakshadweep. The Ministry of Home Affairs requested the Commission in the year 2004-05 to give its comments on the definition of expression 'settle permanently' as a minimum period of stay of 10 years either for education or otherwise in the Islands of Lakshadweep as proposed by MHA in consultation with Lakshadweep administration. The matter was first considered by this Commission in its meeting held on 1 March 2005 and comments of the Commission were communicated to the Ministry of Tribal Affairs on the same day i.e. 1 March 2005. These comments have been given in Para 1.16.6 of the 1st Report of the Commission for the year 2004-05 and 2005-06 and are re-produced below: .

- (i) The conditionality of stay of a minimum period of 10 years in the Islands in respect of children born on mainland on account of labour cases being referred by the competent medical authorities of the UT would operate harshly against them as their delivery cases were referred by the competent medical authorities of Lakshadweep and, therefore, their births outside the Islands was on account of circumstances beyond their control arising from non-availability of the requisite medical facilities in the Islands. The Commission accordingly observed that the cases of children born on mainland on account of labour/delivery cases being referred by the competent medical authorities of the Union Territory of Lakshadweep for safe delivery of children of the inhabitants of the UT should be treated on a different footing and not on par with non-medical cases, and that the conditionality of stay for a minimum period of 10 years in the Islands after the birth of the children on the mainland should not be insisted in case of children born on the mainland on account of labour cases being referred by the competent medical authorities and in these cases their return to the Islands soon after their birth should be sufficient to treat them as regular inhabitants of these Islands within the meaning of the Constitution (Scheduled Tribes) (Union Territories) Order, 1951 in relation to Lakshadweep.
- (ii) A minimum period of stay of 10 years either for education or otherwise in the islands of Lakshadweep may be made mandatory in respect of only such children who are born on mainland not on account of labour cases but due to other circumstances/grounds.
- (iii) Such children who are born on mainland on account of circumstances not related to labour cases and who return to the Islands soon after their birth on the mainland should be provided with all concessions/reservations in the

educational institutions during the period prior to completion of a minimum stay of 10 years in the Islands, available to such children who born in the Islands.

8.3.9.2 In July, 2007, the Ministry of Tribal Affairs stated that the Ministry of Home Affairs had suggested a new formulation for the purpose of the amendment in question and that the new formulation had been considered by them (i.e. Ministry of Tribal Affairs) and the Hon'ble Minister for Tribal Affairs had approved the following formulation for amending Part-I of the Schedule to the the Constitution (Scheduled Tribes) (Union Territories) Order, 1951: -

“Throughout the Union Territory:-

Inhabitants of Laccadive, Minicoy and Aminidivi Islands who, and both of whose parents, were born in those islands”.

Provided that if children, born outside Lakshadweep, in the mainland of the India, to such parents, both of whom were born in these Islands, settle permanently in Lakshadweep, they shall be deemed to have been born in Lakshadweep.

Explanation: The term “settle permanently” would have the same meaning as defined under Clause 3(l) (d) of the Lakshadweep Panchayat Regulation, 1994, which is reproduced as under:

3(l) A Gram Sabha shall consist of persons registered in the electoral rolls relating to an Island or group of Islands comprising the area of Village (Dweep Panchyat): Provided that a person shall be disqualified for being a member of the Gram Sabha, if he

(d) is not ordinarily a resident within the Island for which the Gram Sabha is established.

Explanation: For the purpose of Clause (d) a person shall be deemed to be “ordinarily resident” in an Island if he has been ordinarily residing in such Island or is in possession of a dwelling house therein ready for occupation.

8.3.9.3 A status note sent by the Ministry of Tribal Affairs vide their D.O. letter dated 8 July 2007 indicated that the suggestion of the Ministry of Home Affairs (mentioned above) was examined and it was felt that the Ministry of Home Affairs' formulation was contrary to the principle of geographic isolation, the main basis for treating all such inhabitants of Lakshadweep, who and both of whose parents were born in these Islands as Scheduled Tribes; and that the other formulation suggested by Ministry of Tribal Affairs was not accepted by MHA who reiterated in favour of the new formulation suggested by them vide its letter dated 9/9/2005. The matter was also discussed with the Deptt. of Legal Affairs (Ministry of Law and Justice) and it was found by the Ministry of Tribal Affairs that in view of the advice of the Deptt. of Legal Affairs, Part-I of the Schedule of the Constitution (STs) (UTs) Order, 1951 would have to be amended by making it a community – specific list. If the clarification given by them dated 4/3/2005 (on a reference made

by the State of Gujarat) was to be made applicable to the UT of Lakshadweep and for this purpose, a community-wise list of ST in Lakshadweep was required to be prepared after authentic survey. In view of this, the matter was again discussed between the Minister for Home Affairs and Minister for Tribal Affairs on 25/3/2007, in which the former suggested that necessary action be initiated to bring an amendment in a Bill already introduced in Rajya Sabha in 2003 incorporating the aforesaid formulation read with the definition of the term “permanently settle”. It was also stated that the Minister for Tribal Affairs had finally approved the new formulation suggested by the Ministry of Home Affairs for amending the Bill (referred to para 9.3.9.2). The Commission was requested to communicate its comments/ views on the new formulation suggested by MHA. The matter was examined in the Commission and with the approval of the Chairperson, NCST, Ministry of Tribal Affairs was informed vide letter dated 20/7/2007 that the Commission endorsed the formulation suggested by the Ministry of Home Affairs as mentioned in para 8.3.9.2 supra.

8.3.9.4 The Ministry of Tribal Affairs vide their d.o. letter dated 14 November, 2008 informed the Commission that the Ministry of Tribal Affairs had introduced a revised Bill viz; the Constitution (STs) (UTs) Order (Amendment), Bill, 2007 in Rajya Sabha on 27/11/2007 and that the Bill had been referred to the Standing Committee on Social Justice & Empowerment on 14/12/2007 and further that the Standing Committee in its 36th Report had stated that “while agreeing with the proposed amendment in the Bill, the Committee recommend that the term ‘settle permanently’ should be clarified/ defined under ‘explanation of clause (2) of the proposed Constitution (STs) (UTs) Order (Amendment) Bill, 2007 as

“a person shall be deemed to be a ‘ordinary resident’ in the Island if he has been ordinarily residing in such Island and is an possession of a dwelling house therein”.

8.3.9.5 The proposal was discussed in the meeting of the Commission held on 17.12.2008. The Commission noted that:-

- (i) The Constitution (Scheduled Tribes) (Part C States) Order 1951 renamed and modified in the year 1956, as the Constitution (Scheduled Tribes) (Union Territories) Order 1951 specifying the inhabitants for the first time of Laccadive, Minicoy and Aminidive Islands who, and both of whose parents were born in those Islands as Scheduled Tribes throughout the Union Territory.
- (ii) The name of the Union Territory of Laccadive, Minicoy and Aminidivi Islands was substituted by the name Lakshadweep vide the Laccadive, Minicoy and Amindivi Islands (Alteration of Name) Adaptation of Laws Order, 1974, for Part I- The Laccadive, Minicoy and Aminidivi Islands (w.e.f. 1.11.1973)
- (iii) As adequate Health and Medical facilities were not available in Lakshadweep Islands, many original inhabitants of the UT availed the medical facilities for deliveries in Kerala and other States. These children of the original inhabitants who were not born on the Islands were not eligible

to be treated as Scheduled Tribes as per the provision in the above Constitution Order.

- (iv) On the earlier references on the subject, the Commission had observed that children born on the mainland for medical/ non-medical reasons should be treated as regular inhabitants of the islands with a minimum period of residence of 10 years. The Commission, had also concurred with the proposed definition of the term “settle permanently”
- (v) The Commission felt that the currently proposed amendment to the aforesaid Order would enable children born on the mainland to be treated as Scheduled Tribes, but at the same time, it also felt that the proposed views of the Standing Committee regarding requirement of permanent residence in the islands was not only harsh but also inconsistent with the position obtaining in the rest of the country as per which permanent residence in the native State was not a condition for being a Scheduled Tribe.
- (vi) The Commission felt that the modification suggested by the Standing Committee implies that children of the inhabitants born on the mainland will be required not only to be ordinarily residing in the islands but also be in possession of a dwelling unit. This was discriminatory in favour of the economically better-off sections. Since socio-economic backwardness arising from geographical isolation of the “inhabitants” of the islands has been the criterion for assigning Scheduled Tribes status to them (as also observed by the Parliamentary Standing Committee), the Commission felt that there is really no imperative reason to add a superfluous qualifying phrase “if such children settle permanently in the islands” in the new proviso to the order, and then attempt to define meaning by reference to unrelated statutes; and accordingly the Commission suggested that the same, including subsequent “Explanation” may be deleted from Clause 2 of the Bill.
- (vii) After implementation of the amendment of the Constitution (Scheduled Tribes) (Union Territories) Order 1951, as suggested above, and in view of the Government instructions dated 22.03.1977 relating to issue of SC and ST certificates, all the indigenous families having permanent abode in Lakshadweep on 01.11.1956 will be eligible to be treated as Scheduled Tribes and the same status will devolve upon their children and grand children irrespective of their place of birth. No other person or his/ her family not having permanent abode in Lakshadweep on 01.11.1956 or those who have moved from other States to Lakshadweep will be eligible to be treated as Scheduled Tribes in relation to the Union Territory of Lakshadweep

Action taken status

8.3.9.6 The views/comments of the Commission in the matter were communicated to the Ministry of Tribal Affairs vide Commission’s letter dated 19/01/2009. The Ministry of Tribal Affairs vide letter dated 19/1/2009 informed the Commission that the Constitution (Scheduled Tribes) (Union Territories), Order, 1951 had already been amended vide The (Scheduled Tribes) (Union Territories),

Order (Amendment) Act, 2008 (No. 2 of 2009) which had been published in Gazette of India Extraordinarily Part-II Section-I, dated 9/1/2009. A copy of the Amendment Act, 2008 is placed at **ANNEXURE 8.II**. Subsequently, Ministry of Tribal Affairs vide letter dated 20/05/2010 informed that in view of the position explained above, the Ministry of Tribal Affairs was unable to take note of the Commission's views so late in time.

8.3.9.7 In this connection, it is highlighted that in terms of Ministry of Social Justice and Empowerment letter No. 12016/36/96-SCD (R.L.Cell) Voll-II dated 30/07/2002 (copy at **ANNEXURE 5.II**) the prescribed modalities for deciding claims for inclusion in/ exclusion from and other modifications in the order specifying SCs and STs list stipulate that:

“Amending legislation would be proposed to the Cabinet in all cases in which the National Commission, RGI as well as the State Govts. have favoured modification. Those cases with which the State Govts. and the RGI are in agreement, but which the Commission have not supported, would be rejected at the level of Minister of Social Justice and Empowerment”.

It is also mentioned that the Ministry of Tribal Affairs had sought the comments/ views of the Commission on the proposal vide letter dated 14/11/08, immediately, within that week (which was ending on 14/11/08 itself, being Friday). It is pertinent to mention that such matters are considered by the Commission in accordance with para 45/47 of the Rules & Procedure of the Commission, which, inter-alia, normally requires issuance of the notice for a meeting two weeks in advance, circulation of the agenda at least seven days before the date of the meeting and also presence of at least three members including the Chairperson and/or Vice-Chairperson for the quorum.

8.3.9.8 It is thus evident that the modalities prescribed for seeking comments/views of the Commission vide the letter dated 30/07/2002 quoted above were not followed by the Ministry of Tribal Affairs in the instant case as **the proposed amendment was processed in isolation without taking into consideration the comments/views of the Commission.**

8.3.10 Issue of community certificate to a person who is the offspring of an inter-caste married couple one of whom is a SC/ST by amending The Kerala (SCs & STs) Regulation of Issue of Community Certificates Act, 1996.

Proposal in brief

8.3.10.1 The State Govt. of Kerala wrote to the Ministry of Home Affairs in July 2006 to communicate to them the approval of the Central Govt. for promulgation of The Kerala (SCs & STs) Regulation of Issue of Community Certificates (Amendment) Ordinance 2006 to amend the abovementioned Regulation for issue of a community certificate to a person who is the offspring of an inter-caste married couple one of whom is a SC/ST. Ministry of Home Affairs vide their letter dated 21-08-2006 requested, inter-alia, the Ministry of Tribal

Affairs to examine the Ordinance and make observations in respect of the following:-

- (i) whether the proposed legislation is Constitutionally valid; or
- (ii) whether there is any conflict with an existing Central Law, and, if so, whether the conflict may be consciously permitted; or
- (iii) whether the proposed State enactment involves any deviation from existing national or Central policy to its detriment, or would be a hindrance to enactment of uniform laws for the country.

8.3.10.2 The Ministry of Tribal Affairs requested this Commission to furnish its views on the proposed amendments.

Views of the Commission

8.3.10.3 The contents of the Ordinance was first discussed in this Commission in its meeting held on 12-05-2008. The views of the Commission were as under:

8.3.10.4 As per the existing instructions of the Govt. of India, children in a family generally get the caste status of their father and accordingly, children of a ST woman with a non-ST male spouse are not entitled to ST status. The proposed amendment by the Govt. of Kerala is of considerable importance for the original Scheduled Tribes as granting status of Scheduled Tribes to the off-spring of non-ST males and ST females may lead to encroachment upon the rights of genuine Scheduled Tribes. Further, enactment of such a provision in relation to Kerala State will have a widespread repercussion throughout the country. It is also a fact that tribal communities in different regions of the country had their own traditions and cultural systems. Many communities accept marriages of an ST woman with non-ST man and vice-versa while others do not. Therefore, It was decided that the Commission should go for wider consultation on this issue.

8.3.10.5 The Commission accordingly vide its letter dated 12-06-2008 wrote to the Chief Secretaries of the Scheduled Area States requesting them to apprise it of their considered views on whether the proposed enactment would serve the overall interest of the Scheduled Tribes or whether it will be a retrograde step which would have detrimental effect on the overall development of Scheduled Tribes as it could lead to deprivation of the genuine rights by those who has been bought up in forward families and thereby, not subjected to the same handicaps, sufferings or disadvantages (socially, economically and educationally) attached to the Scheduled Castes and Scheduled Tribes in general. The Commission vide its letter dated 13-06-2008 informed the Ministry of Tribal Affairs that the Commission had decided to have wider consultations on the issue and it would take some more time in communicating its views to the Ministry of Tribal Affairs.

8.3.10.6 The proposal of the State Govt. was discussed again in the meeting of the Commission held on 17-11-2009. The Commission was apprised of the views received from the States of Chhattisgarh, Madhya Pradesh, Himachal

Pradesh, Nagaland, Andhra Pradesh and Maharashtra. It was also brought to the notice of the Commission that the Govt. of Kerala had, in the meanwhile, issued order No.GO(MS)No.109/2008/SCSTDD dated 20-11-2008 about issuing SCST certificates to children of the inter-caste married couples of which one is SC/ST. The said order stated that the Issuing Authority should ensure that :

- (i) each case shall be examined individually in the light of the existing facts and circumstances.
- (ii) the claimant has suffered disabilities – socially, economically and educationally.
- (iii) the society has accepted the claimant to their original fold as one among them and that the claimant is living in the same social environment.

8.3.10.7 The Commission expressed the view that the Govt. of Kerala seemed to have relied on the extant orders issued by the Government of India. As per the observations of the Supreme Court in Anjani Kumar's case, instructions dated 04-03-1975 of the Govt. of India can't be treated as law under Article 13 of the Constitution of India. The issue involves the determination of the caste of the children of the inter-caste married couples taking into account whether a particular society is patriarchal or matriarchal, and the environment in which they are brought up by the parents. The twin tests emerging from the relevant Supreme Court decisions viz. community membership as per personal law and disabilities suffered in the course of upbringing as the member of a particular community have to be jointly applied to determine eligibility for issue of Caste certificate. Since customary/personal laws are not always gender neutral, it is perhaps not possible to have gender neutral definition of caste/tribal status applicable to children born to couples one of whom is the member of a Scheduled Tribe; and such an offspring may be assigned the community of the father or the mother respectively, depending on the patriarchal/matriarchal nature of the communities, involved".

Action taken status

8.3.10.8 The views of the Commission were communicated to the Ministry of Tribal Affairs vide the Commission's letter dated 04-12-2009 with the request that the action taken by the Ministry of Tribal Affairs w.r.t. its views/ recommendations may be communicated to the Commission at the earliest.

8.3.10.9 The Ministry of Tribal Affairs has informed vide letter dated 20/05/2010 that the views of the Commission were examined in the Ministry and the NCST was requested vide MTA letter dated 12/01/2010 for furnishing the clear comments for forwarding to MHA. The Ministry of Tribal Affairs has also informed vide the aforesaid letter dated 20/05/2010 that the MHA, vide their letter dated 09/12/2009, has returned the Bill to the State Govt. of Kerala with suggestions that an appropriate Bill may be introduced in the Legislature as the long efflux of time has taken away the element of urgency in the legislation.

8.3.10.10 In response to the Ministry of Tribal Affairs, the NCST has furnished the agenda note on the above issue considered by the Commission.

8.3.11 Recommendations made by the 2nd Administrative Reforms Commission (ARC) in its Fourth Report titled “Ethics in Governance” relating to “Reducing Discretion” and “Promoting Competition”.

Proposal in brief

8.3.11.1 Ministry of Tribal affairs sought the comments of the Commission on the subject vide letter dated 21/07/2008. The recommendations of the ARC relating to “Reducing Discretion” and “Promoting Competition” are re-produced below:

Reducing Discretion

- (i) All government offices having public interface should undertake a review of their activities and list out those which involve use of discretion. In all such activities, attempt should be made to eliminate discretion. Where it is not possible to do so, well-defined regulations should attempt to ‘bound’ the discretion. Ministries and Departments should be asked to coordinate this task in their organizations/ offices and complete it within one year.
- (ii) State Governments should take steps on similar lines, especially in local bodies and authorities, which have maximum ‘public contact’.

Promoting Competition

- (i) Every Ministry/ Department may undertake an immediate exercise to identify areas where the existing ‘monopoly of functions’ can be tempered with competition. A similar exercise may be done at the level of State Governments and local bodies. This exercise may be carried out in a time bound manner, say in one year, and a road map laid down to reduce ‘monopoly’ of functions. The approach should be to introduce competition along with a mechanism for regulation to ensure performance as per prescribed standards so that public interest is not compromised.
- (ii) Some Centrally Sponsored schemes could be restructured so as to provide incentives to States that take steps to promote competition in service delivery.
- (iii) All new national policies on subjects having large public interface (and amendments to existing policies on such subjects) should invariably address the issue of engendering competition.

Views of the Commission

8.3.11.2 The recommendations were discussed in the meetings of the Commission held on 17/11/2008 and 22/01/2009. The Commission noted that that draft guidelines for dealing with cases processed by the NCST had been prepared

which had been circulated to the Members. The Commission agreed that by adopting these standard guidelines, the recommendation of ARC relating to “Reducing Discretion” and “Promoting Competition” can be implemented.

Action taken status

8.3.11.3 The above advice/views of the Commission were communicated to the Ministry of Tribal Affairs vide letter dated 05/02/2009. Subsequently, Ministry of Tribal Affairs was requested vide d.o. letter No. 12/2/09-Coord. Dated 16/12/2009 from the Chairperson, NCST to communicate the details of the action taken on the advice/ views tendered by the Commission in matter. Reply is still awaited.

8.3.12 Amendment to Article 341 of the Constitution of India to confer enabling powers for categorization of Scheduled Castes (SCs), specified in respect of a State or a Union Territory-issue of Sub-Categorization of Scheduled Castes in Andhra Pradesh

Proposal in brief

8.3.12.1 Ministry of Tribal Affairs forwarded a proposal of the Ministry of Social Justice and Empowerment alongwith a draft note for the Cabinet on the subject for comments/views of the Commission vide its letter dated 30/12/2008.

8.3.12.2 Ministry of SJ&E proposed in the draft Note for the Cabinet for sub-categorising 59 Scheduled Castes of the State in 4 groups based on relative backwardness, taking into consideration, inter-alia, (i) the Judgement of the Supreme Court on 05/11/2004 against the Act promulgated by the Andhra Pradesh State in 2000, and recommendations of the Commission of Enquiry, headed by Justice P. Ramachandra Raju (May 1997), (ii) recommendations of the State Government, (iii) opinion of the Attorney General for India (AGI) in 2005, and (iv) the recommendations of the National Commission for Sub-Categorisation of SCs (NCSCSC), set up by the Govt. of India, in May 2008.

In the draft Note for the Cabinet, the Ministry of Social Justice & Empowerment proposed to seek the approval of the Government for introducing a Constitution Amendment Bill in Parliament for insertion of following two new clauses, (3) and (4) to Article 341 of the Constitution:

Scheduled Castes-

“(3) Parliament may, by law, provide for sub-categorization or de-sub-categorization of the castes, races of tribes, or part of or group within any castes, races of tribes specified in a notification issued under clause (1), or by law made by Parliament under clause (2), in respect of a State or Union Territory passed unanimously, recommending such sub-categorization or, as the case may be, de-sub-categorization.

(4) Upon the Scheduled Castes of a State/Union Territory being sub-categorized as per clause (3) above, it shall, notwithstanding anything

contained in clauses (1) and (2) above, be lawful for such sub –categories to be treated as a distinct entity for the purpose of reservation in the services in connection with the affairs of that State or, as the case may be, Union Territory, in pursuance of clause (4) of Article 16, and in admission to educational institutions run or substantially aided by the Government of that State or, as the case may be, Union Territory, in pursuance of clause (5) of Article 15’.

Views of the Commission

8.3.12.3 The proposal was discussed in the meeting of the Commission held on 22/01/2009. The observations of the Commission were as under:

“Certain communities that were relatively more empowered and able to avail the facilities available for development are enjoying a larger share in the reservation in appointments in services/ posts and also in professional educational institutions, which has caused ire among disadvantaged groups, both from within as well as outside the group. On the other hand, certain other communities still remain below the threshold; and may not be able to enjoy the fruits of reservation in the next several years as the facilities that may empower them are not easily available or accessible to them. The population of each of such relatively more backward communities may not be substantial; and therefore, a very small percentage, reserved for them in proportion to their population percentage, may only guarantee a seat/ post at large intervals of time. For instance, the reservation suggested by the Raju Commission for most backward SC communities included in category ‘A’ is only 1%. Most of the service cadres have very small cadre strengths; and, therefore, in a roster-based system, it cannot be assured as to when the share of 1% reservation will be available and whether a vacancy against the reserved point will be available whenever eligible candidates from these communities become available for appointment. In such a situation, it is apprehended that vacancies reserved for the backward and more backward/ marginalized communities (erstwhile criminal tribes, etc.) which remain unfilled due to non-availability of qualified and eligible candidate(s) from amongst them may be filled by unreserved candidates. The present system of reservation (without sub-categorisation) at least enables the posts reserved for Scheduled Castes to be filled from amongst any SC community; and de-reservation is agreed only when no SC candidate is available or likely to be available in the near future. Therefore, Sub-Categorisation of SC communities on the basis of backwardness and merely earmarking a fixed percentage of reservation in proportion to their population within each sub-category may not help them in availing reservation; and a relatively larger proportion will have to be reserved for these backward communities among Scheduled Castes. Also, unless all-out efforts are made to empower such communities by extending educational and health care facilities at their door-step and preparing them to enjoy the fruits of development, even these efforts may be insufficient”.

8.3.12.4 The Commission, therefore, remained unconvinced about the utility of sub-categorisation of Scheduled communities. Since, multiple stratification of SC communities according to their population does not appear feasible or even in the interest of backward and numerically smaller communities, the better course

may be to categorise the Scheduled Castes communities in each State on the basis of quantifiable criteria into broadly 3 categories viz; developed, under-developed and undeveloped (including those totally marginalized) and earmark progressive (larger than population share) reservation in favour of more backward communities. Separate schemes may also be launched for each category of communities, keeping in view the level of development of the communities in each category. Since the Commission did not possess legal expertise, it did not comment on the need for the constitutional amendment proposed.

Action taken status

8.3.12.5 The views of the Commission on the proposal were communicated to the Ministry of Tribal Affairs vide the Commission's letter dated 05/02/2009. Ministry of Tribal Affairs vide letter dated 20/05/2010 has informed that the comments of the NCST in the matter have been forwarded to the Ministry of Social Justice and Empowerment vide MTA letter dated 26/02/2009. The Ministry of Tribal Affairs have not received any further response from the Ministry of Social Justice and Empowerment in this regard so far.

8.3.13 Proposal of the Ministry of Tribal Affairs for amendment of National Commission for Scheduled Tribes Chairperson, Vice-Chairperson, and Members (Conditions of Service and Tenure) Rules 2004.

Proposal

8.3.13.1 The Ministry of Tribal Affairs proposed to replace the existing entry "at least one other Member shall be appointed from amongst women" in para 3(2) (C) of the Rules by "at least one person appointed in the Commission shall be a women"

Views of the Commission

8.3.13.2 The proposal was discussed in the meeting of the Commission held on 22/01/2009. The Commission expressed the view that at present, the post of the Chairperson, NCST is held by Smt. Urmila Singh and one post of Member is vacant and as per the Rule this post is meant for woman Member. In the present context, if the existing vacancy is filled up and a male Member is appointed then, after the expiry of the tenure of existing Hon'ble Chairperson, the Govt. will be bound to appoint future Chairperson (s) from amongst women only. This situation may not, however, arise at all times in future if women Members are appointed vice retiring male Members. As the proposal has the effect of diluting representation of women in the Commission, the Commission did not agree to amend the National Commission for Scheduled Tribes Chairperson, Vice-Chairperson, and Members (Conditions of Service and Tenure) Rules 2004.

Action taken status

8.3.13.3 The Ministry of Tribal Affairs has not informed about the action taken on the recommendation of the Commission. However, as on the date of finalization of this Report one Woman Member has been appointed in the Commission.

8.3.14 Change in the interview system of Civil Services Examination.

Proposal in brief

8.3.14.1 DoP&T forwarded a proposal received suggesting change in the interview system of Civil Services Examination and requested the views of the Commission in the matter vide their OM dated 23.10.2007.

8.3.14.2 The proposed change in the interview system included (i) allotment of randomly generated un-identifiable roll nos. to SC/ST and OBC candidate during interview in place of identifiable roll nos. being issued at present, (ii) randomly grouping of such candidates equal to the number of interview boards in various envelopes and picking up of one envelope by the chairman of the interview board, (iii) communication of code numbers to a candidate and to respective interview board only 15 minutes before interview, and (iv) debarring the interview board from asking any personal details from the candidate during the interview to avoid identification of candidates. It was indicated that the proposed change will introduce objectivity, transparency and will be free from casteism, bias and corruption and also promote the feeling of brotherhood and equality for strengthening national unity and integrity.

Views of the Commission

8.3.14.3 The Commission discussed the issue in its meeting held on 03/02/2009 and was of the view that the existing system of holding separate interview for ST/ SC candidates appeared more advantageous for them, as during a separate interview, all reserved category candidates actually compete amongst themselves only, being judged by relaxed standards within the same range of maximum and minimum scores; and do not suffer undue comparison with unreserved candidates.

Action taken status

8.3.14.4 The views of the Commission were communicated to the DoPT vide letter dated 27/02/09 with the request to intimate the final outcome of the subject proposal for information of the Commission. Subsequently, Ministry of Personnel, Public Grievances and Pension was requested vide d.o. letter No. 12/2/09-Coord. Dated 16/12/2009 from the Chairperson, NCST to communicate the details of the action taken on the advice/ views tendered by the Commission in matter. Reply is still awaited.

8.3.15 Recommendations made by 2nd Administrative Reforms Commission (ARC) in its Seventh Report titled “Capacity Building for Conflict Resolution – Friction to Fusion”.

Proposal in brief

8.3.15.1 Department of Administrative Reforms and Public Grievances (DARPG), (Ministry of Personnel and Public Grievances) requested comments of the Commission on the recommendations made by the second Administrative Reforms Commission (ARC) in its Seventh Report titled “Capacity Building for Conflict Resolution – Friction to Fusion” vide their letter dated 08/12/2008.

8.3.15.2 The recommendations of ARC relating to matters pertaining to the Scheduled Tribes are as under:

Recommendation No. 23. (Para 14.3.1.2.5)

Institutional Arrangements for Conflict Management – The National Commission for Scheduled Castes and the National Commission for Scheduled Tribes.

115(a) The National Commission for Scheduled Castes and Scheduled Tribes have an important mandate to guide review and monitor the implementation of safeguards provided for SC/STs in various fields, including in the matter of their service conditions. It is imperative that the focus of the two Commissions remains on policy and larger issues of implementation rather than on cases of an individual nature which can be looked into by the administrative Ministries/appropriate forum with the Commissions playing a critical overseeing role.

116(b) The administrative Ministries connected with the two Commissions may undertake an exercise, and in consultation with these bodies, work out the details of how these bodies could be better enabled to discharge their constitutional mandate

Views of the Commission

8.3.15.3 The recommendations were discussed in the meetings of the Commission held on 03/02/2009. The Commission endorsed the suggestions made in recommendations at S. No. 115 and 116 w.r.t. Para 14.3.1.2.5 of the Report as mentioned below:

Recommendation No. 115

- (i) Keeping in view the fact that the scope of Constitutional safeguards for Government is extensive, the Commission endorses the recommendations contained in para 14.3.1.2.5. The Commission, however felt that it could not ignore the cases of individual nature as per the obligations of the Commission under Article 338A (5) (b) of the Constitution.
- (ii) The National Commission for Scheduled Tribes follows detailed Rules of Procedure, which, *inter-alia*, lays down the procedure for enquiry and, approach and methodology to be adopted by the Commission. In order to deal effectively and promptly with individual complaints, draft guidelines are also under consideration of the Commission.
- (iii) A computerized system for expeditious processing and close monitoring of the complaints received in the Commission is also under implementation.

Recommendation No. 116

- (i) In order to enable the Commission to effectively discharge its constitutional mandate, the following issues need to be addressed:
- (ii) The National Commission for Scheduled Tribes endorses the view of *Administrative Reforms Commission* that *“the secretariats of the two Commissions need to build suitable capacity for monitoring and*

evaluation of programmes, including monitoring of 'action research', carried out by other institutions on the socio-economic status of SC/Government. The existing sanctioned and available strength of the Commission is grossly inadequate to achieve the assigned objectives. The Commission observed that while setting up the National Commission for Scheduled Tribes by the Constitution (89th) Amendment Act, 2003, the Government of India did not sanction any functional posts for the National Commission for Scheduled Tribes, which has adversely affected the functioning of the Commission.

- (iii) The Commission has to discharge multifarious functions in fulfillment of its Constitutional mandate. To ensure the functioning of the Commission in a smooth and effective manner, it deserves financial autonomy which has not been granted to it. In the absence of adequate financial powers, a lot of time and manpower has to be devoted to pursuing routine proposals with the Ministry of Tribal Affairs; and delay in clearance of the proposals often put the Hon'ble Chairperson, Vice-Chairperson and Members of the Commission to a lot of avoidable inconvenience, which also hampers the Action Plan of the Commission.
- (iv) In cases, where the investigation by the Commission discloses any violation of safeguards of the Government or negligence in the prevention of violation of these safeguards by a public servant, and for taking corrective remedial measures including action against the erring officials, it should be mandatory for the concerned organization of the Central Government or the State Government to accept such recommendations. The Commission should also be empowered to penalize the recalcitrant officials who delay supply of information (as for the Central Information Commission).
- (v) As mandated under Article 338A (9) of the Constitution, the Ministries and State Govts should refer all policy matters affecting Government, including draft Bills and Rules to the Commission for its consideration. There is a need to ensure timely and due attention by the concerned Department/ Ministry of the Government on the recommendations of the Commission on such policy related issues; and its views should be placed before the competent authority without modification.
- (vi) In legal matters arising out of policy issues, where the National Commission for Scheduled Tribes is a party, separate legal representation should be arranged for the Commission in case its views are at variance with extant views of the Govt.
- (vii) In accordance with the clause (6) of Article 338A of the Constitution, the reports of the Commission are required to be placed before Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations. This procedure has resulted in abnormal delay in tabling of the Annual Reports, as its 1st Report pertaining to the year 2004-05 and 2005-06 submitted to the President in August 2006 and 2nd Report pertaining to the year 2006-07 submitted to the President in September, 2008 had not been tabled in Parliament till date. The

Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes has also in this regard adversely commented upon this delay. The Commission is of the view that, even if complete ATRs cannot be submitted simultaneously, there should be no hesitation in placing the report before Parliament without undue delay, as this will create timely awareness of the recommendations in general public as well as in various Govt. Deptts., State Govts. and other agencies for effecting timely corrective action.

- (viii) The State level Commissions for STs should have close linkages with the NCST so that they can lend a helping hand in matters relating to handling of local grievances and monitoring of implementation of development programmes.

8.3.15.4 In passing, the Commission also discussed an important recommendation (at S.No. 92 w.r.t. Para 12.6.6.3 of the Report) which relates to the preparation of a National Register of Indian citizens. The Commission was of the view that the Identity-cards to be issued to each individual citizen may also indicate the social status (SC/ ST caste status) of the Card holder. This will subsequently help the Card holder and his/ her children in obtaining the SC/ ST caste certificates from the Certificate Issuing authorities and availing the benefits of various schemes for Scheduled Castes and Scheduled Tribes.

Action taken status

8.3.15.5 The views of the Commission with reference to ARC's recommendation No.115 and 116 were communicated to the Secretary, DARPG vide the Commission's letter dated 27.02.09, requesting them to apprise the Commission of the final outcome on its recommendations. The DARPG vide their letter dated 22/01/2010 informed that the comments of the NCST were considered by Core Group on Administrative Reforms in its meeting held on 19/05/2009 and 26/05/2009 and then by Group of Ministers (GoM) in its meeting held on 08/12/2009 and that GoM accepted recommendation of the ARC.

8.3.16 Issues emerging from the decisions taken in the 3rd meeting of National Tiger Conservation Authority (NTCA) held on 21/05/2008, concerning the Scheduled Tribes

Proposal in brief

8.3.16.1 The Wildlife (Protection) Amendment Act 2006 was amended in the year 2006 to provide for constitution of the National Tiger Conservation Authority (NTCA) in place of the Project Tiger, vide the Wildlife (Protection) Amendment Act 2006, which came into force w.e.f 4th September, 2006. This Amendment (dealt by the Ministry of Environment and Forests) was carried out without seeking any consultation/comments/advice from the National Commission for Scheduled Tribes. The Act aims at taking care of ecological and administrative concerns for conserving tigers as well as addresses the livelihood concerns as well as man-wild animal conflicts in the fringe areas of tiger reserves.

8.3.16.2 From the decisions taken in the third meeting of the NTCA, the Commission subsequently noted that there were four policy-related issues concerning Scheduled Tribes. These pertained to relocations/rehabilitation from tiger reserves, protection of rights in accordance with the provisions of the

Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, engagement of STs in tiger protection and involvement of Regional Offices of the Commission in monitoring relocation activities.

Views of the Commission and Action taken status

8.3.16.3 The decisions of the NTCA on the four policy related issues concerning scheduled tribes were discussed in the meeting of the Commission held on 17/12/2008 and the views of the Commission in the matter were communicated to the NTCA vide letter dated 19/01/2009. The comments of the NTCA w.r.t. the views of the NCST, which were approved in the 4th meeting of the NTCA on 06/10/2009, as confirmation of the minutes of the 3rd meeting held on 21/05/2008 are as under:

Sr. No.	Decisions of NTCA on the issues concerning STs	Views of NCST on the issues	Comments of the NTCA
(i)	In the context of relocation of villages from the tiger reserves, there is a need for effective surrender policy in extremist ridden areas where paramilitary forces have been deployed. A representative of Ministry of Home Affairs would be invited in future meetings.	A holistic approach should be made while considering the matter relating to conservation of tigers in the forest. The vital issues relating to subsistence of the STs who have been living in the forest for centuries and contributing towards the preservation of forest cannot be overlooked. The villages and the inhabitants and their assets and properties to be relocated from the determined /proposed tiger reserves and protected areas should be identified on a priority basis as the issue of livelihood of inhabitants of relocated villages has to be planned and implemented in advance before execution of the project. This should be done after following the due consultation process with the Gram Sabha, in writing strictly as per provisions contained in the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2007(which has overriding effect over other provisions) It should be ensured that relocation process is carried out peacefully and proper and effective measures are taken for	Section 38V(5) (i) to (vi) provide for completion of recognition and determination of rights of STS and Other Forest Dwellers in the core/ critical tiger habitats, apart from ensuring consent of such people to consultation process, with resettlement package fulfilling the requirements given in the National Rehabilitation and Resettlement police. It is pertinent to add that the ongoing Centrally Sponsored Scheme Project Tiger has been revised February, 2009, to enhance the relocation package from Rs. 1 lakh per family to Rs. 10 lakhs. Guidelines have been issued to ensure the centrality of Panchayat Raj institution in the relocation process. The provisions of the Wildlife (Protection) Act, 1972 as amended in 2006, would be read alongwith the provisions on the STs and Other Traditional Forest Dwellers (Recognition of Forest

		rehabilitation of the people of relocated villages. Adequate security measures should also be essentially taken in the extremist ridden areas for the safety and the security of the habitats of these areas. It may also be explored whether relocation can be possible outside the extremist-ridden areas.	Rights), 2006 during the relocation process. Adequate safety measures would be taken in extremist ridden areas.
(ii)	The provisions of the Scheduled Tribes and Other Traditional Forests Dwellers (Recognition of Forest Rights) Act, 2006 should also be kept in view while notifying new core or critical habitats under the Wildlife (Protection) Act, 1972.	Provisions contained in Section 4(2) of the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2007 which lay emphasis on the protection of rights of local people, particularly Scheduled Tribes, while considering establishment of Tiger Reserves have overriding effect in view of Section 4 of this Act. In order to ensure that (i) the provisions of the STs and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 are given due importance in carrying out the process of relocation of villages and (ii) there is no forceful relocation. The Ministry of Tribal Affairs and Ministry of Environment & Forests together should keep a close watch on the relocation process to see that the provisions of the Act are not violated.	As stated above, the provisions of the STs and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006 would be read alongwith the provisions of the Wildlife (Protection) Act, 1972 during relocation. There would be no forceful relocation. Apart from the mandate given to the Technical Committee of the NTCA, monitoring for overseeing village relocation and to suggest monitoring benchmarks, has been constituted under the Chairmanship of Ms. Sunita Narain (Chairperson, Tiger Task Force) The monitoring would ensure that there are no statutory violation.
(iii)	Filling up of frontline staff vacancies under the Tiger Protection Force should be expedited by making adequate budgetary allocations. Proposal for raising a National Force for Tiger	As local forest tribal and other forest dwellers, as defined under the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2007, are well versed with the forest areas, conservation of forests and the Wildlife, preference should be given to local forest dwelling tribal and other people, if necessary, by relaxing the prescribed qualifications for such posts. Similar provisions should	The personnel for Special Tiger Protection Force (STPF) would be recruited locally from the districts, within which the tiger reserve is located by the Police Department of the State, as done for their own armed Battalion. The views of the NCST regarding relaxation of prescribed qualifications for

	Protection (Special Tiger Protection Force) should be implemented	be made while raising the proposed Special Tiger Protection Force.	given preference to local forest dwelling tribals and other people would be communicated to the State
(iv)	Technical Committee of NTCA will monitor the village relocation activities.	A representative of the National Commission for Scheduled Tribes preferably from the concerned Regional Office of NCST, should be associated with the Technical Committee of NTCA monitoring the village relocation activities.	The view of the NCST have be noted for compliance.

8.3.16.4 Elsewhere in the report, the Commission has repeatedly observed that it has not been consulted while enacting important legislations of vital significance to the well being and existence of tribal people, viz; Reservation Bill, the Bill relating to Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006, the Land Acquisition (Amendment) Bill, 2007, the Rehabilitation and Resettlement Bill, 2007 and Wild Life Protection (Amendment) Act, 2006. Since legislation is the most pristine articulation of the policy measures undertaken by the State, it is rather distressing to note that most Ministries of the Government are generally oblivious of the need and obligation to consult the Commission in respect of those legislative proposals which may affect Scheduled Tribes. **The National Commission for Scheduled Tribes recommends that the Cabinet Secretariat and the Ministry of Law and Legal Affairs should be tasked with the responsibility of ensuring such consultations with the National Commission for Scheduled Tribes before such proposals are placed for consideration before the Council of Ministers.**

8.4 Suo-moto recommendation made by the National Commission for Scheduled Tribes.

8.4.1 As has been stated earlier, in terms of Clause 5(d) of Article 338(A) of the Constitution, the Commission is required to present to the President reports upon the working of the Safeguards made available to Scheduled Tribes by the Government.

8.4.2 The Commission has accordingly already submitted three Reports to the President of India in August 2006 (for the years 2004-05 and 2005-06) in September 2008 (for the year 2006-07) and in March 2010 (for the year 2007-08) which are required to be tabled in both the Houses of Parliament along with a memorandum (with respect to each report) explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any such recommendations. The Commission has given a slew of recommendations on all major issues affecting the Scheduled Tribes. These reports are yet to be tabled in the Parliament by the Ministry of Tribal Affairs.

8.4.3 In addition to the above, the Commission also took up certain critical issues, concerning STs which are mentioned below. For the purpose of their continuity and clarity, the position in respect of such cases has been updated till date although the present Report of the Commission is for the year 2008-09.

8.4.3.1 Amendment in the Schedule for collection and compilation of information relating to migrant ST population during Census, 2011

8.4.3.1.1 The Commission has noted that a large number of tribals migrate to the States other than the States of their origin in the process of acquiring higher education and in search of livelihood and employment, since requisite educational facilities of higher education were not available within tribal areas. However, while counting of migrated population is conducted during Census, information relating to the migrant ST population is not collected. Consequently, the population of Scheduled Tribes living in the place of their nativity only is counted while estimating the population of Scheduled Tribes during the Census. In the absence of actual ST population figures, this results in under-counting the population of the STs in the country, which would lead to faulty assessment, inadequate schemes and also large segment of ST population in the country remaining outside the gamut of the planning process for the development of STs.

8.4.3.1.2 The Commission, therefore, discussed the matter with the Registrar General and Census Commissioner of India on 08/04/2008 in the context of Data Users' Conference in relation to Census-2011 held on 24/4/2008. A copy of the proceeding of the meeting, conveyed to Registrar General of India vide letter dated 15/4/2008 is placed at **ANNEXURE 8.III**. This matter was again raised by the Commission in the Data Users' Conference held on 24/4/2008, but the Registrar General of India stated that inclusion of this point in the Questionnaire was not within his jurisdiction. Accordingly, a meeting to discuss the issue with the Secretary, Ministry of Home Affairs and Secretary, Ministry of Tribal Affairs (Nodal Ministry for matters relating to Scheduled Tribes) was convened on 8 July, 2008. This meeting however, could not take place due to requests from time to time for postponement of the meeting received from the Office of Secretary, MHA. Therefore, the Commission, vide d.o. letter dated 28/01/2009 from the Hon'ble Chairperson requested the MHA to direct the Registrar General of India and Census Commissioner of India to amend the schedules for collecting and compiling the information relating to the migrant ST population during Census-2011, as per the suggestion made by the Commission earlier. In response, the Home Minister vide d.o. letter dated 28/01/2009 informed the Commission that the Office concerned in the MHA had been asked to discuss the matter with the Commission expeditiously. However, till date the proposed discussion has not taken place.

8.4.3.2 Legal representation of the Commission in matters relating to monitoring of effective implementation of various safeguards provided in the Constitution and various other protective legislations for the STs.

8.4.3.2.1 The Constitution enjoins upon the Commission to monitor all matters relating to the safeguards provided for the Scheduled Tribes under the Constitution or under any other law or under any order of the Government, and to participate and advise on the planning process of socio-economic development of the Scheduled Tribes.

8.4.3.2.2 In the process of discharge of these constitutional roles, the Commission is sometimes arraigned as one of the respondents by the petitioners, who file cases about violation of safeguards and rights of the Scheduled Tribes in various courts in order to make known the stand taken or proposed to be taken by this Commission on the vital issues relating to the Scheduled Tribes raised in those petitions. Obviously the observations and views of the NCST on various issues concerning the STs may sometimes be at variance with the views of the Government. This does not require the Government to suppress the views of the Commission from being made known to all concerned. On the contrary, the reports of the Commission are submitted to the President of India and subsequently laid in Parliament. Therefore, in all such cases the views of the Commission should be placed before the concerned court, irrespective of the views of the other Govt. respondents. In such cases, the same Counsel cannot also represent the National Commission for Scheduled Tribes as well as the Ministries/ Departments of the Central Government.

8.4.3.2.3 In the above context, the Commission invited attention of the Ministry of Tribal Affairs to a Writ Petition (WP) No. 4860 of 2008 filed in the High Court of Judicature of Bombay Bench at Aurangabad [in the matter of Vikramsing and Another (Petitioners) vs the State of Maharashtra and Ors. Regarding non-implementation of the provisions of the Panchayats (Extension to Scheduled Areas) Act 1996 in elections to Zilla Parishads and Panchayats in Scheduled Areas of the State of Maharashtra] in which Ministry of Panchayati Raj, Ministry of Tribal Affairs and the NCST were also respondents. The stand of the Commission on the subject, indicated in the communication sent by this Commission to the State Government (which was also annexed with the WP), has been vindicated by the Court, although Ministry of Panchayati Raj and Ministry of Tribal Affairs did not take cognizance of the Commission's views in the affidavit filed on behalf of the respondents in the High Court.

8.4.3.2.4 The Commission is of the view that whenever matters are referred to this Commission for advice or comments, the views expressed by this Commission should invariably be placed, without any oversight or modification, before the concerned authorities for their consideration, as the final decision on the issue rests with the concerned authority. This Commission is also of the view that, in court cases on the subject matters allotted to the Commission, where NCST is also a respondent and other authorities of the Central Government may be a petitioner party or a respondent, the Commission should file its reply independently through a separate Central Govt. Counsel, so that views of the Commission reach the Court without modifications. To avoid delay, it may also be examined whether there is any real need for routing such requests for legal representation through the Administrative Ministry (MTA), as the Ministry has no oversight role to play regarding recommendations / views of the Commission on matters in relation to other Ministries/ Departments/ Organizations.

8.4.3.2.5 The views of the Commission as mentioned in para 9.4.3.2.4 above were communicated to the Ministry of Tribal Affairs vide d.o. letter dated 19/12/2009 from the Chairperson, NCST with the request to issue necessary

instructions in the matter to all concerned on priority. Response on the subject from the MTA is awaited, despite reminder dated 28/05/2009.

8.4.3.3 Delay in consideration of the Annual Reports submitted by the Commission and critical problems relating affective functioning of the Commission.

8.4.3.3.1 The Commission vide d.o. letter dated 05/03/2010 from the Vice-Chairperson, NCST to the Minister of Tribal Affairs (**ANNEXURE 8.IV**) sought intervention of the Ministry of Tribal Affairs for resolving certain critical problems, pending with the Ministry of Tribal Affairs relating to (i) timely consideration of the Annual Reports submitted by the Commission, (ii) timely action for appointment of new Members, (iii) sanction of additional posts and setting up 4 Regional Offices and grant of administrative and financial powers of the department of the Central Govt. The Commission highlighted the considerable delay in the consideration of the Annual Report submitted by the Commission, indicating that none of the previous two Annual Reports (submitted to Hon'ble President on 8th August, 2008 and 3rd September, 2009) have been laid in the Parliament so far. Consequently, the recommendations made by the Commission on various issues and violation of rights and safeguards provided to the Scheduled Tribes under the Constitution are in danger of losing contextual importance. Vide the aforesaid D.O., the Commission has also suggested that the tabling of the Commission's report may precede submission of action taken Memorandum, which may be placed before Parliament subsequently. Response is awaited.

8.4.3.4 Financial autonomy to the National Commission for Scheduled Tribes

8.4.3.4.1 A proposal for grant of financial autonomy to the Commission for its smooth and effective functioning was submitted to the Ministry of Tribal Affairs vide U.O. Note dated 21/01/2009. In the aforesaid U.O., it was highlighted that the Committee on the Welfare of SCs and STs had also strongly recommended for granting full administrative and financial powers to the Commission so that it was not dependent on the administrative Ministry for every proposal having financial implications. In response, MTA raised some queries vide their letter dated 18/2/2009, which were duly clarified by the Commission vide letter dated 23/3/2009 requesting MTA that NCST may be notified as a Department of the Central Govt. so that it is empowered to exercise the powers of the Ministry/ Department under the Delegation of Financial Powers Rules, 1978; General Financial Rules, 2005; the Fundamental and Supplementary Rules; Central Civil Services (Leave) Rules 1972 the Central Civil Services (joining Time) Rules 1979; the General Provident Fund (Central Services) Rules 1960; Contributory Provident Fund Rules and similar other rules. The Ministry of Tribal Affairs vide letter date 20/05/2010 have sought certain clarifications/ details specially with regard to the areas of the proposed financial autonomy.

8.4.3.5 Constitution of separate cadre for the posts of Investigator and Sr. Investigator, Research Officer, Assistant Director, Dy. Director and Director under NCST.

8.4.3.5.1 A proposal dated 9th July 2009 has been submitted to the MTA for constitution of separate cadre for the posts of Investigator and Sr. Investigator, Research Officer, Assistant Director, Dy. Director and Director under NCST in order to have effective administrative control over the management and filling of these posts in the Commission. The matter was discussed in the Commission's meeting held on 07/11/2008 in the context of the discussion on the Report of Study on Performance of NCST by Center for Policy Research entrusted by Department of AR & PG. It was inter-alia, observed by the Commission that NCST should function as cadre controlling authority for various posts under its control after additional posts as per requirement of the Commission were sanctioned by the Govt. The matter again came up for discussion in the Commission's meeting held on 22/01/2009 during the course of discussion on the Thirty Third Report (14th Lok Sabha) of the Committee on the Welfare of SCs and STs. The Commission desired that immediate action for framing the new recruitment rules for the posts of Sr. Investigator and Investigator should be taken so that NCST have its own cadre for these posts. It was further desired that the posts of Research Officer may continue in the joint cadre so as to provide for adequate promotion avenues for Sr. Investigators and to provide for more opportunities to the officers of this grade to seek posting as the stations of their choice. The matter was again discussed in the Commission's meeting held on 30/06/2009, wherein the Commission reiterated its decision to have separate cadre for the posts of Investigators and Sr. Investigators of the Commission, and, if necessary, for higher level posts also. MTA was also expedited in the matter in the meeting held with the Joint Secretary, MTA on 8th March, 2010, followed by reminder dated 31/05/2010.

8.5 Submissions made in Court cases

8.5.1 Writ Petition No. 4860 of 2008 filed in the High Court of Judicature of Bombay Bench at Aurangabad in the matter of Vikramsing and Another vs. the State of Maharashtra and Ors. Regarding non-implementation of the provisions of the Panchayats (Extension to Scheduled Areas) (PESA) Act, 1996 in elections to Zilla Parishads and Panchayat Samitis in the Scheduled Areas of the State of Maharashtra

Main issue in WP

8.5.1.1 The moot issue raised in the WP is in relation to the non-implementation of the provisions of the PESA Act, 1996 in the matter of elections to Zila Parishads and Panchayat Samitis in the Scheduled Areas, in the Districts of Dhule and Nandurbar of the State of Maharashtra. As the Act is administered by the Ministry of Panchayati Raj (MoPR), the MoPR was the principal Respondent in the WP on behalf of the Govt. of India. The main issues were referred in para 12, 13, and 14 of the WP.

Submission made in the Court

8.5.1.2 The Commission discussed in detail the issues contained in the WP and the para-wise comments with reference to paras 12, 13, and 14 of the WP in its meeting held on 08/10/2008. It was resolved that the comments should clearly

highlight that the provisions of The Panchayats (Extension to the Scheduled Areas) Act, 1996 should be implemented in letter and spirit while making legislation relating to elections of Panchayats at all levels in the State. Accordingly, the following comments were furnished in reply to paras 12, 13, & 14.

Article 243D in Part IX of the Constitution relates to Reservation of Seats in Panchayats: It, *inter-alia*, provides that:

- “(1) Seats shall be reserved for (a) Scheduled Castes and (b) Scheduled Tribes in every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat.
- (2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.
- (3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.
- (4) The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide.”

8.5.1.3 The Commission noted that Article 243M provides that nothing in this Part (i.e. Part-IX) shall apply to the Scheduled Areas referred to in clause (1), and the tribal areas referred to in clause (2), of Article 244. The Commission further noted that Section 3 of The Panchayats (Extension to the Scheduled Areas) Act, 1996 provides that the provisions of Part IX of the Constitution relating to Panchayats are hereby extended to the Scheduled Areas subject to such exceptions and modifications as are provided in Section 4 (of the said Act). In the present context, attention is invited to Section 4(g) of The Panchayats (Extension to the Scheduled Areas) Act, 1996 which reads as follows:

- “(g) the reservation of seats in the Scheduled Areas at every Panchayat shall be in proportion to the population of the communities in that Panchayat for whom reservation is sought to be given under Part IX of the Constitution.

Provided that the reservation for the Scheduled Tribes shall not be less than one-half of the total number of seats;

Provided further that all seats of Chairpersons of Panchayats at all levels shall be reserved for the Scheduled Tribes;”

8.5.1.4 The Commission noted that the Panchayats (Extension to the Scheduled Areas) Act, 1996 does not make any mention about rotation of reserved constituencies.

8.5.1.5 The Commission observed that various Articles in the Constitution provide for taking special and suitable measures by the State for the development of Scheduled Tribes and also adequate representation of Scheduled Tribes in political governance. Articles 244, 275 and the 5th Schedule of the Constitution of India relate to special provisions for control and administration of Scheduled Areas in the country. Article 164 (1) further provides that in the (Scheduled Area) States of Bihar, Madhya Pradesh, and Orissa, there shall be a Minister-in-Charge of Tribal Welfare who may in addition be in charge of the welfare of the Scheduled Castes and Backward Classes or any other work. Keeping in view the spirit of this provision, most of the States have a Minister-in-Charge of Tribal Welfare and in many cases, the Minister in-charge of Tribal Welfare belongs to a Scheduled Tribe community. According to the Fifth Schedule, a Tribes Advisory Council is also required to be established in the States having Scheduled Areas, $\frac{3}{4}$ th of whose Members shall be representatives of the Scheduled Tribes in the Legislative Assembly of the State. The same spirit has been incorporated in the Panchayats (Extension to the Scheduled Areas) Act, 1996 in relation to the governance of Scheduled Areas at sub-State levels; and the same can not be overlooked while deciding the framework for holding elections to the Panchayats at various levels and giving adequate representation to the tribals living in a Panchayat area, particularly those living inside the Scheduled Areas.

8.5.1.6 It was felt that due to their shy nature, Scheduled Tribes have more confidence in the Scheduled Tribe leaders in the matter of representation of their needs and problems. Rotation of reservation of constituencies is, therefore, not very desirable in Scheduled Areas.

8.5.1.7 The Commission expressed the view that taking into account the spirit of PESA Act, 1996, it was necessary that out of the reserved seats within ZP/PS, the number of seats may be earmarked in relation to the Scheduled Area which is part of the Zilla Parishad or the Panchayat Samiti as the case may be and thereafter, the process of rotation may be made applicable to the seats calculated to be reserved for areas outside the Scheduled Area while rotation should not be applied to the seats earmarked for Scheduled Areas within a ZP/PS. In other words, the process of rotation of seats reserved for Scheduled Tribes in a ZP/PS may be restricted to the number of seats that are required to be reserved in respect of the ST population in the areas outside the Scheduled Areas within a ZP/PS and not inside the Scheduled Areas. This will require further explanation of the second proviso under Section 12(2)(b) and 58(1B)(b) of the PESA Act.

8.5.1.8 The Commission forwarded its para-wise comments on the WP based on the discussion held in its meeting on 03/10/2008 to the Ministry of Panchayati Raj on 07/10/2008. However, the Ministry of Panchayati Raj (MoPR) vide its letter dated 08/10/2008 communicated that as comments of the Commission were not received by 29/09/08 as requested earlier, MoPR had already drafted a counter affidavit, duly vetted by the Ministry of Law and Justice and forwarded this to the Central Govt. Counsel. Thus, counter affidavit didn't

contain views of the Commission, as communicated vide its letter dated 07/10/2008. MoPR, vide aforesaid letter dated 07/10/2008, also communicated that while vetting draft affidavit submitted by the MoPR, the Deptt. of Legal Affairs had noted that “National Commission for Scheduled Tribes was a statutory authority constituted under National Commission for Scheduled Tribes Act. Normally, we do not vet the affidavits to be filed by such statutory authorities.” . MoPR also advised that if Commission thinks it necessary, it may file a supplementary affidavit in the case.

8.5.1.9 Subsequently, the officials of the Commission discussed the matter regarding vetting of the comments of the Commission with the with Shri D.R. Meena, Addl. Secretary and Shri M.K. Meena, Addl. Legal Adviser, Ministry of Law and Justice, wherein Ministry of Law and Justice agreed to vet the para-wise comments prepared by the Commission if the same were routed through the administrative Ministry i.e. Ministry of Tribal Affairs. Accordingly, Ministry of Tribal Affairs was requested vide the Commission’s d.o. letter dated 17/10/2008 to get the draft vetted from the Deptt. of Legal Affairs to ensure its submission before the next hearing of the case on 21 October 2008. Pursuant to this, Ministry of Tribal Affairs forwarded para-wise comments to the MoPR vide letter dated 20/10/2008 for getting it incorporated in the draft affidavit. However, no counter-affidavit was filed thereafter, containing the comments of the Commission in the matter, as communicated vide Commission’s letter dated 07/10/2008.

8.5.1.10 Meanwhile, Hon’ble High Court pronounced its judgment on 31 October 2008 in the matter, concluding as under:

- i. Second proviso to each of Sections 12(2)(b) and 58 (1-B) (b) of ZPPS Act are in conflict with first proviso to section 4 (g) of PESA.
- ii. Second proviso to each of Sections 42(4)(a) and 67 (5) (a) of ZPPS Act are in conflict with the second proviso to section 4 (g) of PESA.
- iii. Proviso to Rule 4 (2) of 1996 Rules is also in conflict with first proviso to Section 4 (g) of PESA.
- iv. It is desirable for Law Departments of State and Union to have a dialogue to remove the discrepancy.
- v. Till the time discrepancy is removed, provisions of ZPPS Act/1996 Rules to the extent of repugnancy with PESA, as indicated herein above, will have to be ignored for practical application.
- vi. It is not possible to treat Scheduled Area and other part from the same Panchayat, as separate zones, controlled by PESA and ZPPS Act, for the purpose of elections to Panchayats.
- vii. State Election Commission cannot deny responsibility of implementation of PESA in the field.

8.5.1.11 The Hon’ble Court, in its Judgement directed the Secretary, Rural Development Deptt., Govt. of Maharashtra and the Election Commission, Maharashtra State to implement the provisions of the PESA Act for the elections of Panchayats at all levels in the districts of Dhule and Nandurbar.

8.5.1.12 An analysis of the case reveals that the views of the Commission on an important and policy related issue could not be submitted before the Hon'ble Court due to lack of clarity on the procedure to be followed to ensure legal representation of the Commission in such cases before the courts.

8.5.1.13 In view of the foregoing, Ministry of Tribal Affairs was approached vide U.O. note dated 22/10/2008 to approach the Ministry of Law for their advice regarding the mode/manner of legal representation of the Commission in various legal for a and to clarify the legal course open to the Commission on the following points:-

- (a) In the said Writ Petition, the National Commission for Scheduled Tribes through its d.o. letter dated 11 July 2008, from Chairperson, NCST to the Chief Minister, Maharashtra have been quoted in the matter. In such situation, the rational course of action was that the Commission should either make representation in the Court through their Standing Counsel or seek deletion from the list of respondents explaining reasons thereof in case the proceedings are of no interest to them. Since issues of fact/opinions held are involved, it would appear that the Commission is duty-bound to make representation before the Court and cannot be absolved of this responsibility merely by delegating the task to other arms of the Government.
- (b) In accordance with Clause (9) of the Article 338A, the Commission has been assigned with the duty to advise the Union and State Govts. on all major policy matters affecting Scheduled Tribes. The views of the Commission being advisory in nature, they may often have divergence with the views/opinion of the Govt. In this connection, it is also pointed out that there has been considerable time-lag in taking decision by the Govt. on the recommendations made by the Commission in its Reports. Therefore, it would appear that on important policy matters like this WP, the Commission is expected to place its views before the Hon'ble Court within the prescribed time limit; or face the criticism of legal authorities for failing to fulfill Constitutional obligations.

8.5.1.14 The Commission has not heard anything so far from the Ministry of Tribal Affairs in the above matter. In view of the position explained **the Commission recommends that the Ministry of Tribal Affairs, in consultation with the Ministry of Law and Legal Affairs, should urgently finalise mode/manner of legal representation of the Commission in various legal forums to enable it to discharge its constitutional mandate in accordance with the Clause (9) of the Article 338A.**

8.5.2 Writ Petition (Civil) No. 393 of 2008 in Supreme Court of India, filed by Shri Vineeth K. and Others vs State of Kerala and Ors. Regarding admission of ST students into MBBS courses in Kerala.

Main issue raised in WP

8.5.2.1 The main issue raised in the WP relates to the removal of the condition of minimum qualifying marks of 40% in the Common Entrance

Examination (CEE) conducted by the Commissioner, CEE, Kerala in respect of ST candidates for admission to MBBS and BDS courses. It has been stated that the existing procedure has resulted in a large number of such seats remaining unfilled and diversion of infrastructure available for Scheduled Tribes for use to other category candidates. The petitioners had pointed out that out of 51 seats reserved for ST candidates in these two courses, only two seats had been filled by ST candidates and the remaining seats had been diverted to non-ST candidates.

8.5.2.2 The Commission discussed the issues raised in the WP in its meeting held on 08/10/2008 and noted that the State of Kerala (represented by Principal Secretary, Deptt. of Higher Education) (Respondent No. 1), the Commissioner for Entrance Examination, Kerala and the Medical Council of India, New Delhi (Respondent No. 3 & 4) were primarily concerned with the subject matter in WP. The National Commission for Scheduled Tribes was Respondent No. 7.

Interim directions of the Hon'ble Supreme Court

8.5.2.3 The WP came up for urgent hearing on 26.09.2008. The Hon'ble Supreme Court of India in its interim Order dated 26.09.2008, *inter-alia*, observed that "this has been experience in the previous years also and many States were unable to fill up the seats reserved for Scheduled Castes and Scheduled Tribes candidates. It is high time that the State should take up steps for giving some proper orientation course to the SC/ST students or to set up some other formula so that sufficient number of candidates should be admitted in the course. MCI and Union of India will have to suggest appropriate remedy to find out and work out the solution". The Hon'ble Court also directed the States of Jharkhand, Maharashtra, Gujarat, Orissa, West Bengal, Uttar Pradesh, Madhya Pradesh and Karnataka to be impleaded.

8.5.2.4 Based on the above observations/ directions of the Hon'ble Supreme Court of India, the Govt. of Kerala (Deptt. of Education) had issued an order dated 27 September, 2008 that for the year 2008-09 seats for MBBS and BDS courses for the ST quota in the State lying unfilled for the reason that ST candidates had not secured 40% marks in the Entrance Examination, shall be filled by the Commissioner of Entrance Examination (CEE) from the ST candidates who had obtained more than 40% marks in their qualifying examination.

Views of the Commission

8.5.2.5 The Commission observed that having regard to the inability of ST candidates to compete alongwith general candidates in the Medical Entrance Test due to their poor economic conditions and lack of general awareness among them arising from their habitations in inaccessible areas, making arrangements for special coaching/ orientation for Scheduled Tribes, as suggested by the Hon'ble Court, may not be of much help for the present in getting the seats reserved for Scheduled Tribes in these courses filled up through entrance examinations. The Commission felt that inability of ST students to qualify the standards of Entrance Examination despite having passed the qualifying Board examination with high marks also casts an adverse reflection on the design of the Entrance Examination,

and the suggested that the process should be re-examined as directed by Hon'ble Supreme Court of India in the interim order.

8.5.2.6 The Commission, decided to support the decision taken by the Govt. of Kerala regarding admission of ST candidates in the MBBS/ BDS courses on the basis of condition of obtaining at least 40% marks in the qualifying Board examinations. The Commission also expressed the view that same procedure may be adopted in other States also where seats reserved for ST candidates had generally remained unfilled on account of their having secured less than 40 marks in the entrance tests for the year 2008-09 (or alternatively all the eligible ST candidates who have secured minimum prescribed score in the qualifying Board examination may be admitted in order of merit in the Entrance Examination irrespective of any cut-off level).

8.5.2.7 Based on the above views of the Commission, an affidavit was filed in the Hon'ble Supreme Court. Hon'ble Supreme Court in its Order dated 03/05/2010 has noted that after the orientation course, the petitioners had qualified in the examination and had been admitted to MBBS/ BDS courses, which they have been prosecuting and passed the order that their admission be regularized with the direction not to be treated as precedent in other cases. The Court has also directed the staff to conduct orientation course to enable the SC/ ST candidates qualify for appearing in the entrance examination.

8.6 The Commission would like to mention that final views of the Govt. on such policy related issues not only provide an important feedback and wider perspective of the related issues that are considered by the Government while taking final decision in these matters for the Commission in future references in similar cases, but also enables the Commission to report the effectiveness of its recommendations.

8.7 **A review of the above position reflects that the concerned Ministries/ Deptts. have not been vary forthcoming about the status with regard to acceptance/ non-acceptance of recommendations/ the comments/ views/ advice of the Commission on various policy related issues. The Commission, therefore, recommends that all the concerned Ministries/ Deptts of the Central Govt. and State Governments should communicate action taken on the comments/ views/ advice rendered by the Commission at the earliest so that the same can be highlighted in the reports submitted by the Commission.**

CHAPTER 9

SUMMARY OF RECOMMENDATIONS

The recommendations of the Commission on various aspects have been highlighted in the respective Chapters to facilitate convenient identification for the purpose of taking up follow up action on them. A summary of these recommendations is given as below:-

CHAPTER-1: ORGANIZATIONAL SET-UP AND FUNCTIONING OF THE COMMISSION.

- 1 The Commission reiterates its earlier recommendation contained in the third report for the year 2007-08. that the Ministry of Tribal Affairs as well as Ministry of Social Justice & Empowerment should take coordinated efforts to find a solution, including creation of a separate cadre for posts belonging to National Commission for Scheduled Tribes so that vacancies in various posts in the Commission do not remain unfilled for a long period at any point of time **[Ref: Para 1.6.3]**.
- 2 The Commission, however, is of the view that it is very important that Reports of the Commission are laid in Parliament and the State Legislatures, as the case may be, within a reasonable period of time i.e. not exceeding three months, and memorandum of action taken/ proposed to be taken on its recommendations by the Ministry of Tribal Affairs/ the respective State Government are separately laid in the Parliament/ State Legislature within six months of such submission of the report. The Commission therefore would like to reiterate this recommendation. The Commission hopes that the Government will appreciate the concern of the Commission for timely submission of the reports in the Parliament and initiate expeditious action to amend the above-mentioned Clause of Article 338A of the Constitution on the above lines. **[Ref: Para 1.10.6]**.

CHAPTER-2: SERVICE SAFEGUARDS.

- 1 The Commission reiterates that in compliance with the Hon'ble Supreme Court's directions, the DOPT should revise the instructions contained in O.M. No. 36012/27/2000-Estt.(Res.) dated 15.03.2002 at the earliest to provide for a separate zone of consideration for SCs & STs in the matter of promotion by selection. **[Ref: Para 2.4.8]**.
- 2 The Commission expresses its concern over this matter and re-iterates its earlier recommendation that the DOPT should take up the matter with all the Central Ministries/Departments particularly those which are cadre controlling authorities for appointment to various posts/ services and advise them to fill up the backlog vacancies reserved for Scheduled Tribes by launching Special Recruitment Drives (SRDs) and/or by making ad-hoc promotions in case eligible ST candidates are not

available in the extended zone of consideration in the matter of promotion by selection. Where the Recruitment Rules provide for 100% recruitment by promotion, and it is not possible for the authority to introduce the element of direct recruitment therein, filling up of an equal number of resultant vacant posts at the lower level through direct recruitment (considering them as backlog vacancies) may be ensured. DOPT should formulate a time-bound Action Plan to fill up the vacant positions to meet the target. **[Ref: Para 2.5.2].**

- 3 The Commission re-iterates its earlier recommendation that the Department of Public enterprises should advise the Central Public Sector undertakings to make concerted efforts to fill up the backlog vacancies reserved for Scheduled Tribes in Group A and B posts through SRDs to bring their representation to the prescribed level of 7.5%. DOPT and Deptt. of Public Enterprises should formulate a time-bound Action Plan to fill up the vacant positions to meet the target. **[Ref: Para 2.5.4].**
- 4 The Commission re-iterates its earlier recommendation that the Department of Economic Affairs (Banking division) should advise the banks to devise a time bound programme to make up the shortfall / backlog of ST vacancies by launching Special Recruitment Drive or by deputing special recruiting teams in the tribal areas or by both. **[Ref: Para 2.5.7].**
- 5 The Commission also recommends that Department of Financial Services, Ministry of Finance should take special note of the efforts of the Dena Bank for achieving and maintaining the reservation percentage in respect of STs in all categories as a model employer. **[Ref: Para 2.5.8].**
- 6 The Commission therefore, re-iterates its earlier recommendation that the Ministry of Finance in order to enhance the representation of STs in Group A & B needs to take special measures like SRD to achieve the required representation of 7.5 percent in a time bound action plan. **[Ref: Para 2.5.11].**
- 7 The Commission, therefore, reiterate its recommendation contained in its earlier Reports that the Ministry of Human Resource Development (Department of Higher Education) and the University Grants Commission should issue strict instructions to all the Central Universities to ensure that 7.5% reservation is provided to the Scheduled Tribes in such posts of Professor and Reader, which are filled up, as per recruitment rules, by direct recruitment. These Universities should further be asked to work out the shortfall / backlog vacancies reserved for Scheduled Tribes in such posts of Professor and Reader which are filled up by direct recruitment, and to chalk out a time bound programme to fill up these vacancies. The Commission further recommends that the Ministry of Human Resource Development (Department of Higher Education) should also issue stringent instructions to all the Central Universities to fill up the shortfall/ backlog vacancies reserved for Scheduled Tribes in the grade/ post of Lecturer within a specified period. **[Ref: Para 2.5.13].**

- 8 The Commission would like to reiterate its recommendation contained in its earlier Reports that the Ministry of Human Resource Development (Department of Higher Education)/ University Grants Commission should issue stringent instructions to all the defaulter Central Universities to identify the backlog vacancies reserved for Scheduled Tribes in the non-teaching posts in respect of Group 'A', 'B', 'C' and 'D' and to launch SRDs to fill them within a specified time limit. **[Ref: Para 2.5.16].**
- 9 The Commission recommends that:-
 - (i) Jamia Milia Islamia should take necessary steps to fill up the backlog ST vacancies both in teaching and non-teaching category within a period of three months. Vacant posts of Professor and Reader identified for STs should also be filled up by adopting the correct procedure as per reservation policy. They should also arrange training of their officials regarding operation of Post Based Rosters. **[Ref: Para 2.5.27(i)].**
 - (ii) UGC should amend the guidelines so that ST reserved vacancies are not lapsed as expressed by the Registrar, JMI. **[Ref: Para 2.5.27 (ii)].**
 - (iii) Aligarh Muslim University through their Executive Council, should take special initiatives to recruit candidates from weaker sections of the society (especially STs) in the teaching and non-teaching category to reflect diversity in representation in these categories. **[Ref: Para 2.5.27(iii)].**
- 10 The Commission recommends that DoPT should revise the instructions contained in their OM No. 36012/27/2000-Estt. (Res.) dated 15/3/2002 at the earliest to provide for a separate zone of consideration for SCs and STs in the matter of promotion by selection. **[Ref: Para 2.9.3].**
- 11 The Commission, therefore, recommends that views of the Commission may be considered while redrafting the bill and the Commission may be consulted before tabling it in the Parliament.. **[Ref: Para 2.11.1].**
- 12 The Commission regrets DoPT's indecision despite the matter having been taken up by the Commission time and again and at the highest level; and recommends immediate action to implement the suggestions made in the interests of transparent and effective implementation of Constitutional safeguards for Scheduled Tribes. **[Ref: Para 2.11.3].**
- 13 The Commission recommends that:
 - (i) There should be total ban on dereservation of posts reserved for Scheduled Tribes to be filled by any method i.e. whether Direct Recruitment or promotion. **[Ref: Para 2.12.1(i)]**
 - (ii) The ban on dereservation in Direct Recruitment should be monitored strictly as many Departments including DoPT have failed to appoint Scheduled Tribes candidates against Direct Recruitment, posts/ grades of general nature for which there should be no paucity of qualified/ eligible ST candidates. **[Ref: Para 2.12.1(ii)]**

- (iii) The composition of the Committee constituted in terms of the DoPT's OM dated 25/4/1989 to scrutinize the proposals for dereservation in direct recruitment in respect of the exceptional categories of Group 'A' posts reserved for Scheduled Castes and Scheduled Tribes in public interest may be revised to include the Ministry of Tribal Affairs also. **[Ref: Para 2.12.1(iii)]**
- 14 While re-iterating the earlier recommendations, the Commission would like to make the following recommendations:
- (i) The DoPT OM No. 36011/14/83-Estt.(ST) dated 30/04/1983 relating to consideration of cases of ad-hoc promotion of SC/ ST employees should be applied in the matter of promotion of ST candidates against reserved posts instead of seeking dereservation of the post. The relaxation in period of ad-hoc appointments upto 3 years agreed in respect of Group 'C' and 'D' posts vide DoPT OM No. 28036/01/2007-Estt(D) dated 14/11/2007 may be allowed in case of ad-hoc promotion of ST candidates appointed against all categories of posts reserved for Scheduled Tribes. **[Ref: Para 2.12.2(i)]**
 - (ii) If no ST candidate is likely to become available for a long time, steps should be taken to fill the reserved post from ST candidates through direct recruitment by amending the RRs, if the existing RRs do not provide for the same, instead of seeking de-reservation of the post. **[Ref: Para 2.12.2(ii)]**
 - (iii) Action should simultaneously taken to amend the RRs for each post to provide for direct recruitment to reserved posts in all cases where appointment is proposed to be made 100% by promotion, by incorporation of 'failing which' clause. **[Ref: Para 2.12.2(iii)]**

CHAPTER-3: LAND ACQUISITION AND RESETTLEMENT & REHABILITATION OF DISPLACED TRIBALS

- 1 Courts have observed that there are a number of inadequacies, viz absence of proper survey and planning before embarking upon acquisition, indiscriminate use of emergency provisions, notification of areas for larger than what is actually required and then making arbitrary deletions and withdrawals from acquisition, low amounts offered as compensation leading to long and expensive litigation, inordinate delay in payment of compensation and absence of any rehabilitation measures. The Commission recommends that these issues must be addressed whenever amending legislation is contemplated. **[Ref: Para 3.9.6].**
- 2 The Commission, therefore, recommends that various Acts of the State Govts. should be suitably amended/ revised in line with the spirit of the PESA Act for ensuring an effective as well as efficient management of local natural resources. **[Ref: Para 3.9.9].**

- 3 The Commission, therefore, recommends that keeping in view frequent diversion of forest land for any development and infrastructural projects involving displacement of tribals:
 - (i) the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act should have comprehensive provision for re-settlement of rights of the tribals in cases of involuntary displacement in and around forests. **[Ref: Para 3.9.12(i)].**
 - (ii) rights of the affected tribal people should be settled as per the provisions of the STs and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act before implementation of any development / infrastructural project. **[Ref: Para 3.9.12(ii)].**
 - (iii) the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act should have comprehensive provision for resettlement and rehabilitation of tribals consistent with the spirit/provision of the RR Bill, 2007, as provided in respect of Critical Wildlife Habitat. **[Ref: Para 3.9.12(iii)].**
- 4 The Commission, therefore, recommends that in the event of inordinate delay in payment of compensation for the land, exceeding 3 years after taking possession, besides interest payable @15% under the LA Act, 1894, a penal interest of similar order should be paid on the compensation amount up to a maximum of five years; and a new award as per prevailing market rate should be made in case payment is delayed beyond five years. 'On-account' payment of 80% of the estimated compensation may also be made in cases of delay in completion of award proceedings beyond the prescribed period (as for land taken possession of under urgency clauses of Section 17, LA Act, 1894). Advance possession should invariably be accompanied by advance payment also. **[Ref: Para 3.14.5].**
- 5 The Commission, therefore, recommends that:
 - (i) A Social Impact Assessment (SIA), including emotional and psychological impacts in respect of the projects undertaken/planned in Dzongu, North Sikkim, should be conducted by the State Govt., considering at least 3 alternative sites/ project definitions. **[Ref: Para 3.14.12(i)].**
 - (ii) Participation of the local people should be encouraged in development projects to mitigate the adverse effects. **[Ref: Para 3.14.12(ii)].**
 - (iii) traditional and customary beliefs of the tribals should be given due importance. **[Ref: Para 3.14.12(iii)].**
 - (iv) the issues related to traditional and customary beliefs should be settled by involving as many local tribal people as possible in public hearings, workshops etc. besides involving people's representative of the area in the decision making body. **[Ref: Para 3.14.12(iv)].**

- 6 The Commission recommends that positive initiatives taken by SECL (a subsidiary of Coal India Ltd.) to create additional employment through schemes like helping the PAPs to form a co-operative society and direct allocation of 20% of the work to the society at the lowest price against a tender even without society's participation in the tendering process, standing as a surety for the loans to the PAPs for purchase of LMV, and hiring their vehicles for official purposes etc. may also be explored by other project authorities. **[Ref: Para 3.15.4].**
- 7 Beside displacement due to public sector projects, large scale displacement is being witnessed on account of private mega-industrial projects also. The Commission has noted that Rehabilitation legislation is pending enactment for more than two years after notification of the NRRP, 2007. The abnormal delay in this regard is adversely affecting normative definition/ implementation of resettlement and rehabilitation and compensation packages for the benefit of displaced persons. **[Ref: Para 3.16.2].**
- 8 The Commission, therefore, recommends that both R&R Bill, 2007 and LA (A) Bill, 2007 need to be harmonized, with various provisions of the draft NTP, 2006 in their application to tribal persons/ areas, as detailed in the following paragraphs. **[Ref: Para 3.16.3].**
- 9 The amendment of definition of public purpose to provide for acquisition of lands for a company, whose object may only be of general use to the public, also significantly expands the scope of the Land Acquisition Act for private purposes. The Commission is therefore, of the view that in the interest of transparency, retention of Part VII of LA Act, 1894 along with substitution in the scope of the Section 38A to provide for acquisition only in cases where land has been obtained under lawful contract to the extent of 85% of the total area required for the project, may be preferred to surrogate acquisition garbed in obfuscatory definitions of public purpose – also because it may facilitate pari passu extension of resettlement principles to privately negotiated land deals causing displacement (though voluntary in nature). Agreement with government under Section 41 of the LA Act, 1894 should also include obligations regarding resettlement & rehabilitation, preventing and mitigating the social and environmental impacts & risks of the project and the share of costs thereof to be borne by the company. **[Ref: Para 3.16.5].**
- 10 The Commission is, therefore, of the view that in order to ensure minimum displacement of tribals from ancestral lands, the purpose to which acquired land will be put to use should be open to judicial scrutiny; and individual notices should also be issued to all persons known to have an interest in the land (beside public notice) so that they may be enabled to seek judicial determination regarding the public purpose of intended acquisition. **[Ref: Para 3.16.6].**
- 11 The Commission recommends that, instead of general usefulness, public purpose may be restricted to strategic needs, developmental works if the Govt. owns more than 51 % therein, or redevelopment in the interests of area planning. 'Public purpose' should also be determined through a

participatory and transparent process and should incorporate additional safeguards for tribals in which **[Ref: Para 3.16.10]**:

- (i) The general interest of the community as opposed to the particular interest of individuals is directly and vitally addressed. **[Ref: Para 3.16.10(i)]**
- (ii) Displacement should be justified through the benefits of the project option outweighing the costs of loss of land, livelihood, shelter, habitat/culture, environment, capital and operating costs incurred and any public interest value accruing from the existing use of the land and everything attached to it. **[Ref: Para 3.16.10(ii)]**
- (iii) The declaration of public purpose under Section 6 of the Land Acquisition Act, 1894 (and similar legislation) should be justiciable. **[Ref: Para 3.16.10(iii)]**
- (iv) The rights of the tribals are adequately protected by providing land in lieu of land (even by diversion of forest areas). **[Ref: Para 3.16.10(iv)]**

12 The Commission, therefore, recommends that a comprehensive provision laying down the process to be followed by any requiring body seeking involuntary acquisition of land should be substituted in its place. The new provision should, inter-alia, require that the body should justify the minimum total extent of land required for the project (to establish the need for compulsory acquisition) before any purchase of land through a lawful contract is resorted; and this land requirement should be made known through public hearings before the land transfers are recognized in law. The authorities competent to permit private transfer of tribal land should also be obliged to respect the same least displacement considerations which should govern determination of public purpose by the Govt. in the exercise of its right of eminent domain; and since private purchase and compulsory acquisition might proceed conjunctively in actual practice, they should attract similar obligations of rehabilitation and resettlement.. **[Ref: Para 3.16.11]**.

13 The Commission, therefore, recommends that:

- (i) While deciding public purpose under the LA Act (and similar laws), the first policy option should be one that would save tribals from displacement and alienation from their lands. The next preference should be a technology and project with minimum displacement, which should be accepted even if the costs are greater and the benefits are less than the greater displacement option. **[Ref: Para 3.16.13(i)]**.
- (ii) If the acquired land is not used for the intended purpose or remains unutilized for a period of five years, it should be returned back to the original owner wherever possible, without insisting on the re-payment of the compensation amount. **[Ref: Para 3.16.13(ii)]**.

- 14 In case of acquisition of land by a company, the Commission recommends that compensation for land acquired has to be supplemented with (and not adjusted against) allotment of shares and debentures, as part of long-term profit sharing of the project derivable from land as a factor of production. The quantum of such “sweat” equity must be reasonably relatable to the nature of economic activity of the project and the equity base. **[Ref: Para 3.16.14].**
- 15 The Commission recommends that instead of vesting title free of all encumbrances, only limited lease rights should be appropriated from land owners through the process of compulsory land acquisition. Multiple (and prospective) uses of the land acquired must be accounted for in the stakeholder compensation given to land owners. **[Ref: Para 3.16.15].**
- 16 The Commission, therefore, recommends that the provisions of the Bill should be reviewed by amending the innocuous conditions to serve the stated objective of the Bill effectively. **[Ref: Para 3.16.16].**
- 17 The Commission feel that considering the future land needs of SEZ’s, etc, imposition of rehabilitation resettlement obligations on large scale contractual purchases of land is essential – especially because the conjunctive acquisition of land together with negotiated purchases may become default practice if the provisions of the LA (Amendment) Bill, 2007 are enacted into law. Therefore, besides land acquired by the appropriate Govt., all other land transfers or change in land use of agricultural / forest land for a different purpose which will result in displacement of tribal owners / occupiers should also be brought within the scope of the legislation. Involuntary displacement of permanent nature due to disasters/natural calamity, external/internal and conflicts should explicitly be mandated. Legislation should specify that in case of displacement due to disasters/natural calamity and conflicts, the responsibility for resettlement and rehabilitation lies on the appropriate Government, while in the case of displacement occasioned by development projects, this responsibility would be of the requiring body (individual/ corporate house/Govt.). In the case of displacement arising from projects implemented by non-government / corporate bodies, the entire onus of implementing rehabilitation and resettlement plans should be that of the requiring body (individual/ corporate house) to avoid fragmentation / dereliction of responsibility. In default, the appropriate Govt. may undertake rehabilitation / resettlement (as for Govt. investments) at their cost which may form part of the award under the LA Act. **[Ref: Para 3.16.17].**
- 18 The Commission, therefore, recommends that both SIA and rehabilitation schemes should be validated with reference to the potential risks and related risk-reversal programmes to ensure that tribals don’t suffer from impoverishment as a result of their displacement, in any manner and the problems relating to marginalization are mitigated to the maximum possible extent.. **[Ref: Para 3.16.19].**
- 19 The Commission, therefore, recommends that SIA should:
- (i) be mandatory for all projects / land transfers / change in land use

- of agricultural / forest land for a different purpose which will result in the displacement of tribal owners / occupiers, irrespective of the number of families it displaces (or at least where the number of displaced tribal families exceeds 25), or the voluntary / involuntary nature of the displacement. **[Ref: Para 3.16.22(i)]**
- (ii) be conducted by multi-disciplinary teams considering the impact that the project will have in terms of Landlessness, Joblessness, homelessness, Marginalization, increased morbidity and mortality, food insecurity, loss of access to common resources and services and social disarticulation. **[Ref: Para 3.16.22(ii)]**
 - (iii) identify affected areas (including contiguous forest lands, water bodies, wherein tribals have rights) and enumerate all affected (interested) persons to facilitate enquiry into objections and subsequent determination of 'public purpose' under concerned LA Act. **[Ref: Para 3.16.22(iii)]**
 - (iv) SIA/EIA should identify collateral effects and remedial measures, which should be undertaken in the short, medium and long-term by the requiring body. **[Ref: Para 3.16.22(iv)]**
 - (v) focus first on measures to prevent the adverse social and environmental impacts of the project, then measures to minimize, mitigate or compensate for them. **[Ref: Para 3.16.22(v)]**
 - (vi) include action plan needed to implement mitigation measures, corrective actions and monitoring measures necessary to manage the identified impacts and risks of the project. **[Ref: Para 3.16.22(vi)]**
 - (vii) incorporate views of the concerned elected local bodies in the scheduled areas. **[Ref: Para 3.16.22(vii)]**.
- 20 The Commission therefore, recommends that the RR legislation should have substantive provisions for development of CPRs, including development of sufficient alternate fuel, fodder and NTFP resources on non-forest lands in the rehabilitation schemes to support household income, livestock, sustenance to meet the needs of the relocated community and to support ecology; and also appropriate institutional mechanisms for administration of CPRs on long-term basis, or alternatively, displaced tribals should be resettled in proximity to forest areas with corresponding rights in the new habitat. **[Ref: Para 3.16.25]**.
- 21 The Commission, therefore, recommends that:
- (i) in respect of mining projects, EIA and SIA should address the full range of anticipated social, economic and environmental risks to mitigate the adverse effects of mining on the people and the surroundings. **[Ref: Para 3.16.26(i)]**.
 - (ii) R&R legislation should create a meaningful CSR model incorporating a significant part of retained profits, comparable with the returns provided to shareholders and set up a mechanism to monitor its implementation. **[Ref: Para 3.16.26(ii)]**.

- 22 The Commission, therefore, recommends that a standard rehabilitation procedure should be drawn for diversion of forest land for mining and other such purposes and the provisions of National Rehabilitation and Resettlement Policy / legislation should be made applicable for tribals displaced due to diversion of forest land for non-forest purpose in the event involving the extinguishment of existing rights of the tribals in the forest area under the STs and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006; and all land acquisition process in tribal areas must be held in abeyance till settlement of tribal rights under The Scheduled Tribes and other Traditional Forest dwellers (Recognition of Forest Rights) Act, 2006. Land holdings regularized under The Scheduled Tribes and other Traditional Forest dwellers (Recognition of Forest Rights) Act, 2006 must not be alienated/acquired except in the case of emergency, wherein equivalent land must be provided in the forest with similar rights. **[Ref: Para 3.16.27].**
- 24 The Commission, therefore, recommends that in such cases, technical and financial help should be given to make the land productive. Subsistence allowance should also be provided to the tribals till such time the land becomes productive without restricting it to a period of one year (Cl. 45). **[Ref: Para 3.16.28].**
- 22 The Commission, therefore, recommends that land should invariably be provided to the tribals as compensation against a land acquired from them which was a source of livelihood for them; and, if the Govt. land is not available in the resettlement area, private land may be purchased and made available to tribal agriculturists. **[Ref: Para 3.16.29].**
- 23 The Commission also recommends consideration of the recommendations of the Standing Committees of 14th Lok Sabha on the Ministry of Rural Development in its 40th Report on 'The Rehabilitation and Resettlement Bill, 2007' and the Standing Committee on Ministry of Rural Development in its 39th report on 'Land Acquisition (Amendment) Bill, 2007'. **[Ref: Para 3.16.30].**
- 24 The Commission, therefore, recommends that the processes in the two draft Bills should be harmonized as shown in flow diagram at ANNEXURE 3.VI. **[Ref: Para 3.16.32].**

CHAPTER-4: SCHEDULED TRIBES AND FOREST RIGHTS

- 1 The Commission, therefore, recommends that in the first instance, all the cases of alleged encroachment of forest land by the Scheduled Tribes which were registered prior to 31.12.2007 may be withdrawn by the concerned authorities and their claims on forest lands may be settled as per provisions under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007. **[Ref: Para 4.8.9].**
- 2 The claim of community over land and resources is of much relevance to all the inhabitants of the area and therefore, settlement of community

claims and distribution of title deeds about community rights also has same relevance as the settlement of individual claims. Therefore, Commission recommends that the Ministry of Tribal Affairs may advise the State Governments to furnish complete data on the monitoring system, web based or other wise. **[Ref: Para 4.10.31]**.

- 3 The disposal of claims in the State of Tamil Nadu is held up due to the State granted by the Madras High Court. The State Government of Tamilnadu should take up the matter before the Hon'ble High Court of Madras for getting the stay vacated in the interests of the tribals living in forest. **[Ref: Para 4.10.32]**
- 4 The State Government of Gujarat has to take major initiative to dispose off remaining large chunk (95%) of the claims received in the State within a set time frame otherwise the objective of timely settlement of tribals as per the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006 will be defeated. **[Ref: Para 4.10.34]**
- 5 The State Government of West Bengal has to take suitable steps to dispose off remaining (74%) of the claims received in the State within a set time frame and to ensure that genuine claims are not rejected. **[Ref: Para 4.10.35]**
- 6 The Commission, therefore, recommends that the Ministry of Tribal Affairs and the State Governments should evolve a strategy (i) for disposal of all the claims within a prescribed time frame, (ii) ensuring that genuine claims are not rejected, (iii) title deeds are distributed to all the approved claimants within the set time frame and (iv) furnishing full details in respect of individual claims as well as community claims separately. **[Ref: Para 4.10.36]**

CHAPTER-5: SCHEDULED TRIBE CERTIFICATES-ISSUES

- 1 The Commission reiterates its opinion that the amendments to original Presidential Orders issued under Article 342(1) of the Constitution should invariably include a clause clarifying that the place of ordinary residence in respect of persons belonging to the communities included in the Schedule for the first time or in cases where area restriction has been removed, the place of ordinary residence shall be determined with reference to the date of notification of the relevant amendment to the original Order. **[Ref: Para 5.2.19]**

The Commission recommends that the Ministry of Tribal Affairs may issue instructions to all the State Governments and Central Ministries/ Departments and PSEs that the lists of Scheduled Tribes as Notified (with upto date amendments) should be followed by all concerned scrupulously. **[Ref: Para 5.5.3]**

- 2 The Commission, therefore, recommends that the Ministry of Tribal Affairs and the Ministry of Social Justice and Empowerment as well as the concerned Departments of the State Governments/ UT Administrations should place the copies of all Constitution (SC and ST)

Orders and the Orders Amendment Acts, in their Original form on their respective Website. **[Ref: Para 5.6.2]**

- 3 The Commission recommends that the DoPT should issue instructions to all concerned that the children of the migrant SC/ ST parents do not find difficulty in obtaining the caste certificates in the revised format prescribed vide letter dated 6th August, 1984. To facilitate this process copies of all the original Constitution Orders and the Amendment Acts should be available in the office of each authority competent to issue the certificates and also placed prominently on the Websites of Ministry of Tribal Affairs, Ministry of Social Justice and Empowerment and Department of Personnel and Training as also on the Websites of the concerned Departments of the State Governments/ UT Administrations as well as each district administration respectively. **[Ref: Para 5.6.3]**
- 4 The Commission further recommends that the certificate issuing authorities should ensure that all details required to be filled in each blank space in the certificate, as per format, should be furnished before signing and issuing the SC/ ST community certificate (including complete present address as well as address of ordinary residence, name of father. name of the ST community and the relevant Constitution Order and the amendment Order, if any, under which the community has been specified in relation to the State of ordinary residence of the certificate holder). **[Ref: Para 5.6.4]**
- 5 Therefore, the Commission is of the view that de-scheduling of certain ST communities as a whole would not be in the interests of still poor and backward families among those Scheduled Tribe communities. The Government may, however, devise measures to ensure that share of the weakest amongst the Scheduled Tribes in the development schemes and economic upliftment programmes are not cornered by those members of Scheduled Tribes who have already availed the benefits and have risen to the average of the society. Moreover, the criteria for identifying a community as Scheduled Tribes as adopted so far needs to be followed strictly so that only deserving communities and economically weaker among those deserving communities are able to reap the benefits. **[Ref: Para 5.9.2]**
- 6 The situation, therefore calls for review of the status of various communities presently included in the list of Scheduled Tribes in respect of each State/ UT. The Commission also reiterates that the following recommendations made in para 3.9.7 of Chapter 3 in 2nd Report of the Commission may be considered and implemented on priority. **[Ref: Para 5.9.3]**
- 7 (i) There is need to advise the State Governments that
 - (a) they should issue instructions to provide that the families and children of the in-voluntarily migrated ST parents due to the resettlement in another State following displacement from his State of origin will continue to enjoy the same status in the State where they are resettled after displacement in case the community/

communities to which they belong has/ have already been notified as Scheduled Tribe/ Scheduled Tribes in that State and avail the benefits admissible to the Scheduled Tribes in that State. **[Ref: Para 5.9.3(i) (a)]**

(b) In case the community/ communities to which the resettled tribals belong has/ have not been notified as Scheduled Tribes in the State of resettlement, they (i.e. the State Govts.) should immediately initiate action to get that/ those community/ communities notified as Scheduled Tribe/ Scheduled Tribes effective from the date of resettlement and also ensure that pending the issue of said notification, the resettled tribals are allowed to avail the benefits admissible to Scheduled Tribes in that State. **[Ref: Para 5.9.3(i) (b)]**

(ii) There is also need to advise the State Govts. that they should issue instructions to provide that in the context of creation of new States or transfer of territories from one State to another State following re-organisation of States, the Scheduled Tribes notified for the undivided States will continue to enjoy the same status in the successor States depending upon the place of their residence in the new State on the date of the notification of the State Reorganisation Act. **[Ref: Para 5.9.3(ii)]**

- 8 The Commission, therefore, recommends that the State Governments as well as Ministry of Tribal Affairs and Registrar General & Census Commissioner of India should make comprehensive examination of the demands made in the representations while properly applying the criteria for identification of a community as Scheduled Tribe before forwarding any proposal on the subject. **[Ref: Para 5.9.6]**
- 9 The Commission recommends that all States/ UTs, in relation to which ST communities have been specified, should set up the Scrutiny Committee for verification/ validation of ST caste certificates as per the directives of Hon'ble Supreme Court of India. The Ministry of Tribal Affairs should also take up the matter with all the States/UTs to impress upon them the need for putting in place an effective mechanism for the purpose of validation of the caste certificates and verification of the community status of such persons claiming to belong to Scheduled Tribes or scrutiny of complaints relating to availing benefits on the basis of ST certificates obtained fraudulently by non-Scheduled Tribes and the matters connected therewith. **[Ref: Para 5.10.6]**
- 10 The Government of Maharashtra may ensure that the Scrutiny Committees have adequate infrastructure and machinery so that the work relating to validation of the certificates and scrutiny of claims entrusted with the Committee get disposed within the prescribed time frame. **[Ref: Para 5.10.20]**
- 11 The Commission, therefore, recommends that:
 - (i) The appointing authorities should seek, from the candidates, a copy of validation certificate alongwith the caste certificate. In case

the candidate is not able to produce the validation certificate, he/ she may be given a period of about three months, for furnishing validation certificate, which is generally the time taken for verification of the character and antecedents of the recommended candidates by the concerned district authorities. Simultaneously, the concerned appointing authorities which write to the police authorities of the respective State for verification of character and antecedents may also write to the concerned district authorities viz. District Collectors, Deputy Commissioners, District Magistrates etc. for verifying the authenticity of the certificates or to certify that the candidate actually belongs to a Scheduled Tribe. **[Ref: Para 5.11.2 (i)]**

- (ii) The appointing authorities should generally issue the offer of appointment on receipt of a validation certificate or satisfactory report with respect to the genuineness of the community certificate produced by the candidate in support of his/ her claim of belonging to Scheduled Tribes. However, as advised by the Hon'ble Supreme Court of India in Civil Appeal No.5854 of 1994 in Kumari Madhuri Patil & Ors. vs. Additional Commissioner, Tribal Development, Govt. of Maharashtra and Ors., offer of appointment on provisional basis may be given to the ST candidate subject to the condition that his/ her probation will not be cleared until the receipt of validation certificate/ verification report, in case the validation certificate or the verification report from the District authorities regarding the authenticity (or otherwise) of the community certificates produced by the candidates along with their applications is not received within a maximum period of six months. **[Ref: Para 5.11.2(ii)]**
- (iii) Pending switch- over to the proposed system (mentioned in the preceding sub-para) of getting the community certificates verified by the issuing authorities prior to the appointment of the candidates, the existing instructions of verifying the community certificates through the issuing authorities after the candidate has been appointed on provisional basis must be completed within a period of six months after the appointment of the candidate and in the event of failure to complete the verification within the specified period, the appointing authority should fix the responsibility on the concerned officer for this failure and take necessary action against the officer/ official held responsible for this failure. **[Ref: Para 5.11.2(iii)]**
- (iv) The fresh candidates recommended for appointment by the recruiting agencies are generally appointed initially on a probation of one year or two year, and on satisfactory completion of the probation period, they are appointed on regular/ substantive basis. The Commission recommends that in case a candidate belonging to ST category has been appointed against a vacancy reserved for ST quota on provisional basis pending verification of his/her community certificate, his probation should not be cleared until the

process of verification of the genuineness of the community certificates produced by them is completed and a satisfactory report received in this regard from the concerned district authorities. This will help the Government to straightaway terminate the services of such candidate/candidates as per Clause contained in the offer of appointment according to which the services of the candidate were liable to be terminated if the appointment was obtained on the basis of false information. **[Ref: Para 5.11.2(iv)]**

- (v) If the post-appointment verification by the appointing authority through the concerned District authorities/Scrutiny Committee reveals that the candidate had produced a fake/bogus or false certificate and he/she does not belong to a recognized Scheduled Tribe, his/her services (in case he has been appointed on regular/substantive basis), should be dispensed with straightaway without giving him/ her any further notice in terms of the procedure laid down by Hon'ble Supreme Court in Civil Appeal No. 5834-Kumari Madhuri Patil, Vrs. Govt. of Maharashtra, 1994. The appointing authority should simultaneously also take up the matter with the Central Bureau of Investigation for the purpose of launching of criminal proceedings under IPC against the fake/false community certificate holders. **[Ref: Para 5.11.2(v)]**

- 12 The Commission feels that in no case should the false ST certificate holders/ claimants be allowed to work as a general candidate. The services of such a fake/ false certificate holders/ claimants should be terminated after following the due procedure and the posts/seats so vacated should be filled from ST candidates for whom it was originally reserved. The Commission would like to advise the Department of Personnel & Training to reiterate these instructions to the appointing authorities to avoid repetition of this type of situations. **[Ref: Para 5.11.8]**
- 13 The Commission, therefore, recommends that the Ministry of Tribal Affairs may advise all the State Govts./UT administrations to ensure utmost care while issuing temporary caste/ tribe certificates; and that they should issue the community certificates on the basis of some preliminary enquiry or evidence in favour of the claim submitted by the applicant to discourage the persons who may try to obtain the caste certificate fraudulently. **[Ref: Para 5.11.9]**
- 14 The Commission reiterates its recommendation that the Department of Personnel & Training should issue necessary instructions to the certificate issuing authorities to carefully follow the instructions of the Govt. of India in the matter to ensure that sons and daughters of persons already having caste/ tribe certificates duly issued by a competent authority are issued the community certificates without fresh inquiry. **[Ref: Para 5.11.10]**

- 15 The Commission, accordingly, recommends that:
- (i) The Ministry of Tribal Affairs should direct all the State Govts to review the instructions for issue of caste/tribe certificates, issued by them to the district or taluka level authorities and advise them to use standard format for issuing the community certificates as prescribed by Government of India. **[Ref Para: 5.11.11(i)]**
 - (ii) The requests for issue of caste/tribe certificates should be entered in a register specifically maintained for the purpose at taluka/district level and that the certificate issuing authorities should ensure that the certificates issued by them contain the serial number or the registration number in the register recording requests for issue of caste/tribe certificate, and the Certificate No. on the face of the certificates alongwith other relevant details and should bear the clear seal and stamp of the issuing authority. This can be satisfactorily ensured if the record relating to issue of caste certificates is computerized and the certificate is also computer generated so that all required parameters are automatically mentioned on the certificate. **[Ref Para: 5.11.11(ii)]**
- 16 The Commission strongly recommends that the Ministry of Tribal Affairs may undertake a project to compile a data base of ST community certificates linked with UIDs immediately. **[Ref: Para 5.11.12]**
- 17 The Commission is, therefore, of the view that the Department of Personnel & Training should advise all the State Govts./UT Administrations to issue instructions to the district/ taluk level authorities to ensure that the certificates are issued bilingually i.e. in regional language beside either English or Hindi language with a view to avoid harassment to the certificate holders as also to check their misuse. **[Ref: Para 5.12.2]**
- 18 Since the views and recommendation of the Commission on the draft Bill have been communicated to the Ministry of Tribal Affairs, the Ministry of Tribal Affairs may impress upon the Ministry of Social Justice & Empowerment to revise the draft Bill taking into consideration the advice/ views/ recommendation of the Commission and introduce the Bill in Parliament at the earliest. **[Ref: Para 5.15.5]**

CHAPTER-6: ATROCITIES ON SCHEDULED TRIBES

- 1 The Commission, therefore, recommended that the cases registered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 should be disposed by the Special Courts within 6 months. To meet this objective, the Act could also be amended to provide for setting up exclusive Special Courts (instead of designating a Session Court as a Special Court) for trial of cases under this Act. **[Ref: Para 6.8.1].**

- 2 The Commission, therefore, broadly endorsed the amendment proposed by Min. of SJ&E with slight modification in the wording of proposed Rule 7-A which, according to the Commission, should read as under:-

(1) Whenever a complaint is made to a police officer regarding an offence punishable under sub-clause (iii), (v), (xi) or (xii) of sub-section (1) of Section 3 or sub-clause (i), (iv) or (v), of sub-section (2) of Section 3, the concerned Superintendent of Police shall submit a preliminary report within four days, in the matter, in such manner as may be prescribed, to the following:-

(i) concerned State Government/Union Territory Administration,

(ii) The Central Government in the Ministry of Home Affairs and the Ministry of Social Justice & Empowerment/Tribal Affairs, depending on whether the offence relates to a Scheduled Castes or a Scheduled Tribes, and

(iii) Within 45 days of the registration of the FIR relating to an offence mentioned in sub-rule (1), the concerned State Government/Union Territory Administration shall submit to the Ministries of the Central Government and the concerned National Commission, as specified in sub-rule (1) above, a detailed report in the matter in such manner as may be prescribed, in the light of the report submitted under sub-rule (2) of the Rule 7. **[Ref: Para 6.9.9].**

- 3 The Commission re-iterated its earlier recommendations in this regard and endorsed the proposed amendment to Schedule to PoA Rules at Annexure-I captioned "Norms for relief" taking into account the Consumer Price Index for Industrial Workers (CPIIW) as the benchmark. The Commission however observed that the added reference in Item 17 pertaining to mischief by fire etc. is probably unnecessary since it is already subsumed in Section 3 (2) (iv) of the PoA Act(as life imprisonment exceeds 10 years). **[Ref: Para 6.9.10].**

- 4 The Commission accordingly endorsed the proposed amendment and recommended that the existing Annexure-II to Schedule to PoA Rules, may be replaced by the latest instructions (Notification dated 01-06-2001), containing the revised definition of disability. **[Ref: Para 6.9.12].**

- 5 The Commission endorsed the amendment proposed by Min. of SJ&E and recommended that Rule 16(1)(iv) is required to be amended as under:-

"16. CONSTITUTION OF STATE-LEVEL VIGILANCE AND MONITORING COMMITTEE

(i) The State Government shall constitute high power vigilance and monitoring committee of not more than 25 members consisting of the following:

Chief Secretary, the Home Secretary, the Director General of Police,

representative of the National Commission for the Scheduled Castes and/or National Commission for Scheduled Tribes – Members".**[Ref: Para 6.9.13].**

- 6 The Commission therefore recommends that the above provision in Rule 7(1) of the PoA Rules should be strictly complied with by the State/UTs and investigation of atrocity cases should be closely monitored by the Supdt. of Police and higher officials. **[Ref: Para 6.10.5].**
- 7 The Commission therefore recommends that the State level and District level Vigilance & Monitoring Committees should closely review the implementation of provisions regarding payment of monetary relief to the victims of atrocities strictly in accordance with the norms laid down under PoA Rules. **[Ref: Para 6.10.9].**
- 8 The Commission, therefore, recommends that the above observations of the Department of Legal Affairs should be brought to the notice of all States/ UTs for strict compliance. **[Ref: Para 6.11.2].**
- 9 The Commission, therefore, reiterates its earlier recommendations contained in the reports of the NCSCST for the years 1992-93 and 1994-96, that it should be ensured that the case is investigated by an officer of the rank of Dy. SP and investigation report is submitted by him within 30 days. The Commission also feels that the chargesheet should be filed with due care and with a sense of urgency to ensure that the accused person is not acquitted on technical grounds or on account of delay in filing the chargesheet. **[Ref: Para 6.12.1].**
- 10 The Commission, therefore, reiterates earlier recommendations contained in NCSCST reports for the year 1996-98 that all efforts should be made by the police to ensure that the accused is arrested as early as possible particularly in the cases of heinous crimes like murder, arson, rape, etc. **[Ref: Para 6.12.2].**
- 11 The Commission, therefore, reiterates earlier recommendations contained in NCSCST reports for the years 1992-93, 1993-94, 1994-96, 1996-98 and 1998-99 that with a view to create awareness among the masses about various provisions of the Act and Rules including the provisions for relief and compensation, Special Awareness Programmes should be conducted by the Government through the mass media and by organizing seminars and workshops at different places, particularly in rural and remote areas. NGOs working for the cause of combating crimes of atrocities on STs along with the local bodies should also be involved in the task by extending adequate financial help to them. Awareness about the provisions of the Act/Rules may also be spread by installing hoardings at prominent locations. **[Ref: Para 6.12.3].**
- 12 In order to ensure effective implementation of the PoA Act, the Commission recommends that the District Level Vigilance and Monitoring Committee should review the implementation of the provisions of the Act, relief and rehabilitation facilities provided to the victims and other matters connected therewith, prosecution of cases under the act, role of different

officers/agencies responsible for implementing the provisions of the Act and various reports received by the District Administration, at least once in three months in accordance with Rule 17 of the PoA Rules. **[Ref: Para 6.12.4].**

- 13 The Commission, therefore, reiterates earlier recommendations contained in NCSCST reports for the years 1992-93,1993-94,1994-96 and 1996-98 that exclusive Special Courts should be set up by all the States/UTs urgently for rendering speedy justice to the victims of atrocities. **[Ref: Para 6.12.5].**
- 14 The Commission, therefore, recommends that the Government may consider for providing a time-limit for disposal of PoA cases by these Courts. **[Ref: Para 6.12.6].**
- 15 The Commission also re-iterates earlier recommendations contained in NCSCST reports for the years 1992-93,1993-94, 1994-96 and 1996-98 that the police personnel in every State/UT need to be sensitized about the importance of effective implementation of the PoA Act through regular training and refresher programmes by the Police Training Institutes. The training programmes for the police personnel should also include lessons about legal provisions and related procedures to ensure drafting of fool proof chargesheets in atrocity cases. **[Ref: Para 6.12.7].**
- 16 The Commission, therefore, reiterates earlier recommendations contained in the reports of the NCSCST for the years 1994-96 and 1998-99 that Directorate of Prosecution should make all efforts to ensure that adequate number of Special Public Prosecutors are attached with the Special Courts for speedy trial of atrocity cases. The Special Public Prosecutor should possess requisite qualifications and experience and their selection should be made through a well laid down procedure. The fee of the Special PP requires to be suitably enhanced to attract more qualified and dedicated persons. **[Ref: Para 6.12.8].**
- 17 The Commission, therefore, recommends that there is an imperative need to formulate a policy to have a focused approach for taking effective precautionary measures to check offences of atrocities and ensure effective implementation of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 in such cases. **[Ref: Para 6.12.9].**
- 18 The Commission, therefore, re-iterates its earlier recommendations contained in the reports of the NCSCST for the years 1996-98 and 1998-99 that the State level Vigilance and Monitoring Committees should play pro-active role in overseeing the implementations of PoA Act by holding quarterly meetings on regular basis. These Committees should issue necessary guidelines and directions to the District level Committees. Registration of FIRs and the disposal of cases by the Special Courts should be particularly monitored by the State level Committees. **[Ref: Para 6.12.10].**

- 19 The Commission, therefore, recommends that all the State Governments/UTs Administration should issue necessary instructions that the Superintendent of Police in all the districts will review at least 5% of the closed cases on a quarterly basis and initiate action against the concerned police officials if the cases were closed due to delay on their part. **[Ref: Para 6.12.11]**.
- 20 The Commission, therefore, recommends that the State Governments/UTs should issue instructions to ensure that the victims and witnesses are paid TA/DA which should not be less than minimum wages fixed from time to time. **[Ref: Para 6.12.12]**.

CHAPTER-8: CONSULTATION ON POLICY RELATED ISSUES

- 1 The proposed amendment was processed in isolation without taking into consideration the comments/ views of the Commission. **[Ref: Para 8.3.9.8]**
- 2 The National Commission for Scheduled Tribes recommends that the Cabinet Secretariat and the Ministry of Law and Legal Affairs should be tasked with the responsibility of ensuring such consultations with the National Commission for Scheduled Tribes before such proposals are placed for consideration before the Council of Ministers. **[Ref: Para 8.3.16.4]**
- 3 The Commission recommends that the Ministry of Tribal Affairs, in consultation with the Ministry of Law and Legal Affairs, should urgently finalise mode/ manner of legal representation of the Commission in various legal forums to enable it to discharge its constitutional mandate in accordance with the Clause (9) of the Article 338A. **[Ref: Para 8.5.1.14]**
- 4 A review of the position reflects that the concerned Ministries/ Deptts. have not been very forthcoming about the status with regard to acceptance/ non-acceptance of recommendations/ the comments/ views/ advice of the Commission on various policy related issues. The Commission, therefore, recommends that all the concerned Ministries/ Deptts of the Central Govt. and State Governments should communicate action taken on the comments/ views/ advice rendered by the Commission at the earliest so that the same can be highlighted in the reports submitted by the Commission. **[Ref: Para 8.7]**

GOVERNMENT OF INDIA
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS
Department Of Personnel & Training, New Delhi

OFFICE MEMORANDUM

No. 36036/2/97-Estt.(Res)

Dated: 01, January 1998

Sub: Reservation policy for the Scheduled Castes and Scheduled Tribes-Implementation of

The undersigned is directed to say that, in terms of this Department's O.M. No. 36011/15/79-Estt(SCT) dated January 6, 1981, if other Ministries/ Departments intend to depart from the policies laid down by the Department of Personnel, it is mandatory for them to consult the Department of Personnel, in terms of sub rule 4 of Rule 4 of the Transaction of Business Rules, otherwise the policies laid down by the Department of Personnel are binding on them.

2. The instructions contained in this Department's Office Memorandum dated July 2, July 22, August 13, and August 29, 1997 continue to be in operation and there is no proposal to withhold or to keep in abeyance their implementation.

3. In the All India Indian Overseas Bank Scheduled Castes and Scheduled Tribes Employees Welfare Association and others Vs. Union of India and others (Civil Appeal No. 13700 of 1996) the Supreme Court has held that the National Commission for Scheduled Castes and Scheduled Tribes has no power of granting injunctions, whether temporary or permanent. The Court also held that the powers of the Commission in terms of Article 338(8) of the Constitution are all the procedural powers of a civil court for the purpose of investigating and inquiring into the matters and that too for that limited purpose only.

4. In view of the judgment of the Supreme Court referred to in para-3, the National Commission for Scheduled Castes and Scheduled Tribes has no power to direct withholding of the operation of any orders issued by the Government.

5. Ministry of Agriculture etc. may, therefore, keep in mind the directions contained in this Department's O.M. dated 06.01.1981 and the judgment of the Supreme Court referred to above while dealing with the directions given by the National Commission for Scheduled Castes and Scheduled Tribes. Ministry/ Departments etc. must, however, in all fairness consider the recommendations of the Commissions in the light of policies laid down by the Department of Personnel and Training.

Sd/-

(J. Kumar)

Under Secretary to the Govt. of India

To,

1. All Ministries/ Departments of the Government of India.
2. Department of Economic Affairs (Banking Division), New Delhi
3. Department of Economic Affairs (Insurance Division), New Delhi
4. Department of Public Enterprises, New Delhi
5. Railway Board
6. Union Public Service Commission/ Supreme Court of India/ Election Commission/ Lok Sabha Secretariat/ Rajya Sabha Secretariat/ Cabinet Secretariat/ Central Vigilance Commission/ President's Office/ P.M.O./ Planning Commission.
7. Staff Selection Commission, CGO Complex, Lodhi Load, New Delhi.
8. All Officers/ Sections of the Department of Personnel and Training/ Deptt. of Administrative Reforms & Public Grievances/ Department of Pensioners Welfare.

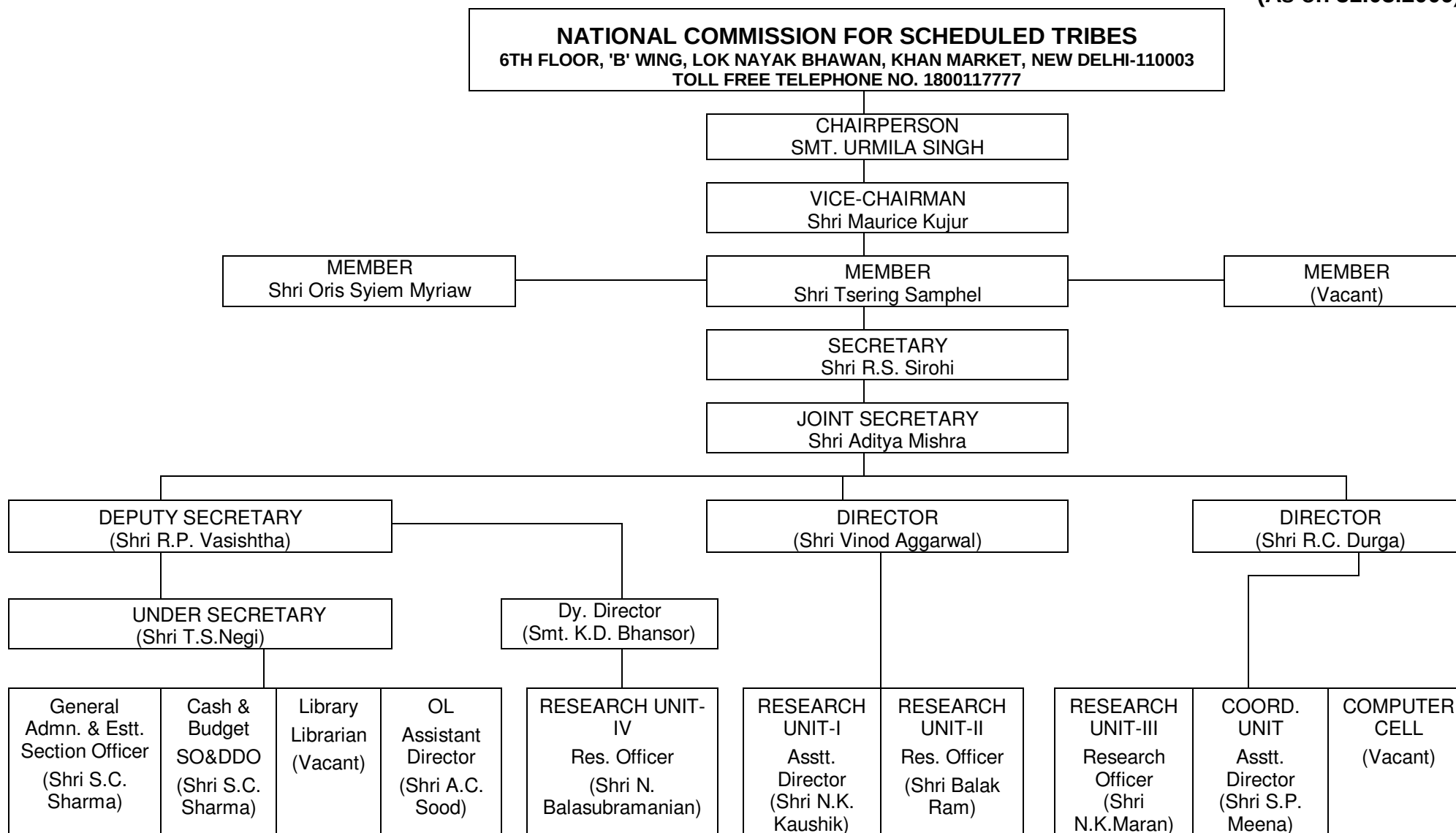
ANNEXURE-1.II
(Ref. para 1.4.3)

Matters received for advice of National Commission for Scheduled Tribes from various Ministries/ Depts.

S. No.	Subject matter	Received from and Reference of communication	Reference of letter furnishing advice/ comments by the Commission
(1)	(2)	(3)	(4)
1	Decisions taken in the third meeting of National Tiger Conservation Authority held on 21/05/2008 on the issues concerning the STs	National Tiger Conservation Authority letter No. 15-1/2007-NTCA(Part.), dt. 13/6/2008	Letter No. RU-IV/ Forest/ Policy-1/ 2006 dt. 19/1/2009 to NTCA
2	Proposed Amendments in the SC & ST (PoA) Act, 1989	Ministry of Tribal Affairs letter No. 16/9/2008-CP & R dt. 18/07/2008	Letter No. CFJ/ Atrocity (Policy)/ MTA /572/ 2008/ RU-II dt. 12/08/2008 to MTA
3	Draft Note for the Cabinet regarding setting up of an Equal Opportunity Commission	Ministry of Tribal Affairs letter No. 16016/1/2008-MER dt. 21/07/2008	Letter No. S/Service/Others/MTA /604/2008/ RU-II dt. 12/08/2008 to MTA
4	Recommendation made by the 2nd Administrative Reforms Commission in the fourth report titled 'Ethics and Governance'	Department of Personnel and Training letter No. 17019/15/2008/PC&V dt. 21/7/2008	Letter No. Misc./9/2008/RU-I dt. 05/2/2009 to DoPT
5	Recommendations in the Report submitted by National Commission for Denotified Nomadic and Semi-Nomadic Tribes (NCDNSNT),	Ministry of Tribal Affairs OM No. 16016/1/2008-P&M(Vol.II) dt. 02/09/2008	Letter No. Press Clipping/ Service/ Others/ MTA / 703/ 2008/ RU-II/1 dt. 08/10/2008 to MTA
6	Draft Cabinet Note on instructions regarding implementation of reservation for SCs , STs, and OBCs issued vide DoPT O.M. No. 36012/2/96/ Estt.(Res.) dt. 02/07/1997	Department of Personnel and Training letter No. 36012/38/2007-Estt. (Res.) dt. 07/10/2008	Letter No. Policy-03/ Service/ 2008/ RU-I dt. 20/10/2008 to DoPT
7	Age relaxation for the SC/ST/OBC in case of appointment against unreserved category	Department of Personnel and Training letter No. 42011/10/2008-Estt.(Res.) dt. 04/11/2008	Letter No. Policy Matter/ VIP/ 09/ 2008/RU-I dt. 13/01/2009 to DoPT

8	Recommendations of the Standing Committee on SJ&E on the Constitution (Scheduled Tribes) (UTs) Order (Amendment) Bill, 2007 in relation to the UT of Lakshadweep	Ministry of Tribal Affairs letter No. 12016/11/2001-TA(RL)/C&LM-1 dt. 25/11/2008	Letter No. RU-IV/ Policy/ Incl/ Lakshadweep/-1/ 2007 dt. 19/1/2009 to MTA
9	Report of Administrative Reforms on capacity Building conflict resolution – friction to fusion	Ministry of Personnel and Public Grievance, AR Wing letter No. K1102/16/2008-AR dt. 08/12/2008	Letter No. RR/ Policy/ 17/VIP/ 1000/2008/RU-I dt. 27/2/2009 to MoP&PG
10	Proposal to amend Article 341 of the Constitution of India to confer enabling powers for categorization of Scheduled Castes specified in respect of a State or a Union Territory-issue of Sub-Categorization of Scheduled Castes in Andhra Pradesh	Ministry of Tribal Affairs letter No. 12014/13/2008-C&LM-1 dt. 30/12/2008	Letter No. RU-IV/ Policy/ AP/ 1/ 09 dt. 05/02/2009 to MTA
11	Providing reservation to Economically Backward Classes & General Category (Unreserved Category)	National Economically Backward Commission letter No. 36/CEBC/ 2007 dt. 15/1/2009	Letter No. MBS/Service/ SJ&E/ EBC Reservation/ 2009/ RU-II dt. 16/7/2009 to NEBC

ANNEXURE 1.III
(Ref: Para 1.5.1)
(As on 31.03.2009)



ANNEXURE 1.IV
(Ref Para 1.8.2)

Issues discussed in Commission's Meetings held during Year 2008-09

S.NO.	DATE	CHAired BY	Issues discussed in brief
1.	28.04.2008	Chairperson	1. Draft of Office Order relating to allocation of work among Vice-Chairperson and Members of the Commission 2. Nomination of officers for dealing with specialized areas 3. Plan of Action for reviews of State governments and Central Ministries by the Commission 4. Periodicity of holding of meeting of the Commission 5. Bill for amendment of The Kerala (SCs and STs) Regulation of Issue of Community Certificates Act, 1996 Information relating to implementation of reservation policy in Central Universities contained in the draft report of the Commission for the year 2006-07 Draft of the 2nd Report of the Commission 6. Enumeration of ST migrants during 2011 Census.
2.	12.05.2008	Chairperson	1. Kerala (Scheduled Castes and Scheduled Tribes) Regulation of issue of Community Certificates (Amendment Ordinance), 2006. 2. Proposal for inclusion of MEDARA Community as a synonym of MEDA Community in the list of STs for Karnataka. 3. Schedule of Review Meetings of Commission with States and UTs and Central Ministries. 4. Guidelines for dealing with cases relating to Service Safeguards received in the Commission. 5. Report on Study of performance of the National Commission for Scheduled Tribes conducted by Centre for Policy Research, New Delhi entrusted by Department of Administrative Reforms & Public Grievances, Government of India.
3,	11.07.2008	Chairperson	1. Action taken on the decisions taken in the meeting of the NCST held on 12.05.2008. 2. Proposals received from Ministry of Tribal Affairs for Inclusion in/ exclusion from the list of Scheduled Tribes in relation to the States of Tamil Nadu, and Arunachal Pradesh. 3. Status of implementation of Annual Action Plan
4.	29.07.2008	Chairperson	1. Proposal of Ministry of Social Justice & Empowerment received through Ministry of Tribal Affairs for Amendments in the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 2. Draft Note for the Cabinet regarding setting up an Equal Opportunity Commission 3. NCST Budget 2008-09 -Expenditure Management-Economic Measures and Rationalization of Expenditure

5.	03.10.2008	Chairperson	1. Writ Petition No. 4860 of 2008 filed in the High Court of Judicature of Bombay Bench at Aurangabad in the matter of Vikramsing and Another Vs. the State of Maharashtra and Ors. regarding non-implementation of the provisions of the Panchayats (Extension to Scheduled Areas) (PESA) Act, 1996 in elections to Zilla Parishads and Panchayat Samities in the Scheduled Areas of the State of Maharashtra. 2. Writ Petition (Civil) No. 393 of 2008 in Supreme Court of India, filed by Shri Vineeth K. and Others vs State of Kerala and Ors. Regarding admission of ST students into MBBS courses in Kerala. 3. Recommendations in the Report submitted by National Commission for Denotified Nomadic and Semi-Nomadic Tribes (NCDNSNT),
6.	14.10.2008	Chairperson	1. (Draft) Cabinet Note on Instructions regarding implementation of reservation for Scheduled Castes, Scheduled Tribes, and OBCs received from Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training . 2. Review of Office Memorandum No. 36012/2/96-Estt.(Res.) dated 02.07.1997 issued by DoPT in the light of the judgment of the Supreme Court dated 16.09.1999 in the case of Ajit Singh-II and the comments of Attorney General of India. 3. Revised proforma for sending proposal for de-reservation of vacancies reserved for SCs and STs-Reference from DoPT
7.	07.11.2008	Chairperson	1. Report on Study of performance of the National Commission for Scheduled Tribes conducted by Centre for Policy Research, New Delhi entrusted by Department of Administrative Reforms & Public Grievances, Government of India. 2. Recommendations made by the 2nd Administrative Reforms Commission in its Fourth Report titled "Ethics in Governance" relating to "Reducing Discretion" and "Promoting Competition"
8	17.12.2008	Chairperson	1. Revised proforma for sending proposal for de-reservation of vacancies reserved for SCs and STs. 2. Note for the Cabinet for Amendment in Sec. 14 of the SCs & STs (PoA) Act, 1989. 3. Age relaxation for the SCs, STs, and OBCs in case of appointment against unreserved vacancies 4. Recommendations of the Standing Committee on SJ&E on the Constitution (STs) (UTs) Order (Amendment) Bill, 2007 in relation to the UT of Lakshadweep 5. Decisions taken in the third meeting of National Tiger Conservation Authority held on 21/05/2008 on the issues concerning the Scheduled Tribes
9	22.01.2009	Chairperson	1. Recommendations made by the 2nd Administrative Reforms Commission in its Fourth Report titled "Ethics in Governance" relating to "Reducing Discretion" and "Promoting Competition". 2. Comments / ATR on Conclusions/ Recommendations Contained in the report of Committee on Welfare of Scheduled Castes and Scheduled Tribes (14th Lok Sabha)

			3. Proposal to amend Article 341 of the Constitution of India to confer enabling powers for categorization of Scheduled Castes (SCs), specified in respect of a State or a Union Territory-issue of Sub-Categorization of Scheduled Castes in Andhra Pradesh 4. Proposal for Inclusion of 'Medara' community as a synonym of 'Meda' community in the ST list of Karnataka 5. Questionnaire by the Commission on Centre State Relations 6. Proposal of the Ministry of Tribal Affairs for amendment of National Commission for Scheduled Tribes Chairperson, Vice-Chairperson, and Members (Conditions of Service and Tenure) Rules 2004. 7. Para-wise comments of the NCST on the WP No. 24981 of 2008 in the High Court of Judicature at Madras in the matter of All India SC/ST General Insurance Employees' Welfare Association Vs. Secretary, Ministry of Finance & Ors. relating to implementation of reservation policy for SC/ST employees.
10	03.02.2009	Chairperson	1. DoPT, proposal for change in the interview system of Civil Services Examination for SC/ ST candidates. 2. Recommendations made by Administrative Reforms Commission in its 7th Report titled "Capacity Building for Conflict Resolution-Friction to Fusion" 3. WP (Civil) No. 590 of 2008 of Shri Surmukh Singh vs Union of India and Ors. in the Supreme Court of India regarding rotation of reserved Assembly and Parliamentary Constituencies in the State of Haryana and also in whole of India after each General Assembly/ Parliamentary Election respectively. 4. Review of the implementation of programmes and reservation policies in the States and by the Central Ministries and Departments

ANNEXURE 1.V

(Ref: Para 1.9.5)

NATIONAL COMMISSION FOR SCHEDULED TRIBES**Visits of the Commission during 2008-09****Smt. Urmila Singh, Chairperson**

S.No.	Date of Visit	Name of States/ UTs/ Orgn./ PSUs
(1)	(2)	(3)
1	01 – 14 April, 2008	Madhya Pradesh and Maharashtra - Field visit of Tribal Areas, Bhopal - Meeting with Tribal Delegates, Bhopal - Meeting with Air Corporation SC/ ST Employees Association at Mumbai organized by TATA Institute of Social Science. - Field visit of Tribal Areas, Mumbai - Meeting with Tribal Delegates, Mumbai
2	23 – 24 April, 2008	J&K - Meeting with tribal delegates, Jammu - Meeting with District Level Officers
3	14 – 18 May 2008	Uttar Pradesh - Field visit of tribal delegates, Varanasi - Meeting with District Level Officers, Varanasi
4	24 May, 2008	Uttar Pradesh - Meeting with SC/ ST Association at Virindawan - Meeting with District level Officer
5	27 May-01 June 2008	Madhya Pradesh - Meetings with tribal delegates, Indore - Meeting with District Collector and other District Level Officer, Indore
6	5 -7 June, 2008	Jammu & Kashmir - Meeting with Executive Councillor, Ladakh Autonomous Hill Development Council, Leh - Visit to see projects undertaken under TSP(Tribal Sub Plan) - Visit to Lamdon School, Imania Mission School, Chusrhot and Mahabodhi Residential School at Dewachan. - Visit to Pangong Lake and Thicksay Monastery.
7	23 June – 6 July., 2008	Madhya Pradesh - Meeting with tribal delegates Bhopal - Meeting with District Collector and other District Level Officers, Dindori - Meeting with District Collector and other District Level Officers, Mandla - Field visit at Gansore - Meeting with District Collector, Seoni, SDM and other

		District Level Officers, Ghansore - Field visit at Bhopal
8	12 – 16 July 2008	Orissa - Meeting with tribal delegates, Puri - Meeting with Chairman & Managing Director, Mahanadi Coal Ltd. on the issue of implementation on reservation policy for Scheduled Tribes and displacement and rehabilitation at Bhubaneshwar. - Meeting with Management of PPT - Meeting with CMD, OSFDC and TDCC
9	17 – 22 July 2008	Madhya Pradesh - Meeting with tribal delegates, Bhopal - Field visit, Bhopal
10	08 – 12 August 2008	Madhya Pradesh, Chhattisgarh and Jharkhand - Meeting with tribal delegates, Katni - Meeting with District Collector including Project Officers of ITDPs and PTG Project of Umariya district - Meeting with District Collector including Project Officers of ITDPs and PTG Project of Shahdol district - Meeting with District Collector including Project Officers of ITDPs and PTG Project of Anuppur district - Meeting with District Collector including Project Officers of ITDPs and PTG Project of Sarguja district - Local visit of Jashpur district - Meeting with District Collector including Project Officers of ITDPs and PTG Project of Jashpur district - Meeting with District Collector including Project Officers of ITDPs and PTG Project of Gumla district - Visit to Tribal Research, Ranchi and discussion with Director, TRI - Meeting with CMD, Jharkhand State Scheduled Tribes Finance and Development Corporation.
11	13 – 19 August 2008	Madhya Pradesh - Meeting with tribal delegates, Indore - Field visit at Bhopal - Meeting with tribal delegates, Bhopal
12	17 – 20 Sept. 2008	Rajasthan and Uttar Pradesh - Visit of Regional Office, Jaipur - Meeting with tribal delegates Jaipur - Field visit of Mathura
13	28 Sept. – 01 Oct., 2008	Madhya Pradesh - Meeting with tribal delegates, Indore - Meeting with tribal delegates Ujjain
14	07 – 10 Oct., 2008	Chhattisgarh - Meeting with tribal delegates - Field visit of Raipur

		- Field visit of Raigarh district
15	24 – 30 Oct, 2008	Madhya Pradesh - Meetings with tribal delegates, Bhopal - Field visit of Tribal Areas, Bhopal
16	12 – 24 Nov, 2008	Madhya Pradesh - Field visits, Indore - Meeting with tribal delegates Indore
17	13 – 14 Dec., 2008	Rajasthan and Uttar Pradesh - Field visits of tribal areas, Jaipur - Meeting with tribal delegates, Jaipur - Local visits, Mathura
18	20 Dec. – 05 Jan, 2009	Madhya Pradesh - Meeting with tribal delegates, Bhopal - Meeting with tribal delegates, Indore - Local visits, Indore
19	16 – 21 Jan 2009	Madhya Pradesh - Meetings with tribal delegates, Bhopal - Meeting the H.E. Governor - Meeting with GM, Indian Ordinance Factory, Itarsi - Meeting with tribal delegates, BHEL, Bhopal - Meeting with Executive Director, BHEL, Bhopal - Meeting with Chief Secretary, Principal Secretary and Other Sr. Officers of Government of MP
20	04 – 06 Feb 2009	Uttarakhand - Meeting with tribal delegates, Dehradun - Meeting with ST Welfare Association, ONGC - Meeting with CMD and other Sr. Officers of ONGC - Meeting with ST Welfare Association, ICFR&E - Review Meeting with DG, ICFR&E - Meeting with Chief Secretary and other Sr. Officers of the State to review the implementation of reservation policy and development of Scheduled Tribes in Uttarakhand State - Meeting with Chief Minister, Uttarakhand State - Meeting with tribal delegates, Haridwar
	12 – 17 Feb 2009	West Bengal - Visit of the 17 Burnt Houses of Adivasis at Meenglas Tea Garden - Meeting with Chairperson, Muncipal Committee and Other Officers at Malbazar - Meeting with representatives of Adivasi Vikas Parishad and elected Members of PRI - Meeting with West Bengal Tribal Student Sangh - Meeting with Deputy Commissioner and other District Level Officers, MLAs, MPs and other dignataries. - Meeting with ST Welfare Association of Garden Ship Builders and Engineers Ltd.

		- Meeting with Chairman and other Sr. Officers, Ordnance Factory Board, Kolkata - Meeting with Chief Secretary and other Secretary level Officers of the State to review the implementation of reservation policy and development of Scheduled Tribes in West Bengal State - Meeting with Chief Minister, West Bengal State

Shri Maurice Kujur, Vice-Chairman

S.No.	Date of Visit	Name of States/ UTs/ Orgn./ PSUs
(1)	(2)	(3)
1	14 - 25 May 2008	Orissa - Meeting with tribal delegates, Bhubaneswar - Field visits, Sundergarh - Meeting with District Collector, and Sr. Level Officers of Bhushan and Vedanta Projects, Jharsuguda - Meeting with District Collector, Sundergarh - Meeting with Chief Secretary, - Meeting with Officials of Rourkela Steel Plant
2	05 – 07 June 2008	Jammu & Kashmir - Meeting with Executive Councillor, Ladakh Autonomous Hill Development Council, Leh - Visit to see projects undertaken under TSP(Tribal Sub Plan) - Visit to Lamdon School, Imania Mission School, Chusrhot and Mahabodhi Residential School at Dewachan. - Visit to Pangong Lake and Thicksay Monastery.
3	15 – 16 June 2008	Maharashtra - Meeting with tribal delegates, Nagpur
4	12 – 16 July 2008	Orissa - Meeting with CMD, Mahanadi Coal Ltd, Bhubaneshwar - Meeting with tribal delegates, Puri - Meeting with the Management of Paradeep Port Trust(PPT), - Meeting with MD, OSFDC and TDCC, Bhubaneshwar - Visit of Tribal Museum and Research and Training Institute (TRI) - Review Meeting with Chief Secretary and Senior Officers of Govt. of Orissa, Bhubaneshwar - Meeting with Chief Minister, Bhubaneshwar - Meeting with MD and other Senior Officers of Utkal Alumina, Rayagada, Vedanta Aluminium Ltd, Lanjigarh , Neelachal Ispat Nigam Limited (NINIL)

		Kalinga Nagar, Bhubaneswar
5	07 – 12 August 2008	Madhya Pradesh, Chhattisgarh and Jharkhand - Meeting with tribal delegates, Umariya District - Meeting with Collector and other officers of ITDPs and PTG, Umariya District - Meeting with Collector and other officers of ITDPs and PTG, Shahdol District - Meeting with Collector and other officers of ITDPs and PTG, Anuppur District - Meeting with ST Employees welfare association of SECL, Manendragarh - Meeting with Collector and other officers of ITDPs and PTG, Sarguja District - Meeting with tribal delegates, Jashpur - Meeting with Collector and other officers of ITDPs and PTG, Jashpur District - Meeting with Collector and other officers of ITDPs and PTG, Gumla District - Visit of Tribal Research Institute, Ranchi - Meeting with MD, Jharkhand State STs Finance and Development Corporation.
6	12 – 21 August 2008	Orissa - Meeting with Collector, Sundergarh - Meeting with tribal representatives - Meeting with Collector, SP, Sundergarh - Meeting with BDO, Sundergarh
7	29 Oct. – 04 Nov. 2008	Orissa - Meeting with Tehsildar, Sundergarh - Meeting with Management of Vedanta Aluminium Ltd. Sundergarh - Meeting with District Collector, Sundergarh
8	21 Dec. 2008 – 03 Jan 2009	Orissa - Meeting with State Govt. Officials and Collector, Sambhalpur - Meeting with tribal delegates, Sundergarh - Meeting with Executive Director, Orissa Cement Ltd.
9	16 – 21 Jan 2009	Madhya Pradesh - Meeting with Governor, MP - Meeting with GM & Sr. Officers, Indian Ordinance Factory, Itarsi - Meeting with GM & Sr. Officers, Security Papers Mill, Hoshngabad - Meeting with Executive Director & Sr. Officers, BHEL, Bhopal - Meeting with Chief Secretary and Principal Secretary, MP

10	04 – 06 Feb. 2009	Uttarakhand - Meeting with ST Welfare Association of ONG - Review meeting, ONGC - State Review Meeting with Chief Secretary and Other Officers - Meeting with Chief Minister, UN - Field visits, Haridwar
11	12 – 17 Feb. 2009	West Bengal - Meeting with tribal delegates, Siliguri - Meeting with Chairperson, Municipal Committee and Other Officers, Malbazar - Meeting with Dy. Commissioner and Sr. Officers, Jalpaiguri - Review meeting with CMD, Ordinance Factory Board, Kolkata - State review with Chief Secretary and Other Sr. Officers - Meeting with Excellency Governor, WB - Meeting with Chief Minister

Shri Tsering Samphel, Member

S.No.	Date of Visit	Name of States/ UTs/ Orgn./ PSUs
(1)	(2)	(3)
1.	15 - 20 April 2008	Jammu and Kashmir - Meeting with district level officers of Leh - Review meeting with district level officers of Ladakh
2.	23 – 24 April, 2008	Jammu and Kashmir - Meeting with district level officers of Jammu
3.	03 – 09 May 2008	Jammu & Kashmir - Meeting with district level officers of Leh - Review meeting with district level officers of Ladakh
4.	05 to 07 June, 2008	Jammu & Kashmir - Meeting with Executive Councillor, Ladakh Autonomous Hill Development Council, Leh - Visit to see projects undertaken under TSP (Tribal Sub Plan) - Visit to Lamdon School, Imania Mission School, Chusrhot and Mahabodhi Residential School at Dewachan. - Visit to Pangong Lake and Thicksay Monastery.
5.	02 – 04 July, 2008	Himachal Pradesh - Meeting with district level officers of
6.	07 – 09 August, 2008	Madhya Pradesh - Meeting with district level officers of Bhopal

		- Review meeting with district level officers of Raisen
7.	12 – 18 August, 2008	Jammu and Kashmir - Meeting with district level officers of Leh - Review meeting with district level officers of Ladakh
8.	14 – 18 Sept.,2008	Jammu and Kashmir - Meeting with district level officers of Leh - Review meeting with district level officers of Ladakh
9.	18 – 22 Sept. 2008	Karnataka - Review meeting with district level officers of Bangalore
10.	11 – 14 Nov. 2008	Uttar Pradesh - Meeting with district level officers of Khusinagar
11.	15 – 16 Nov. 2008	Uttarakhand/ Uttar Pradesh - Meeting with district level officers of Muradabad
12.	17 – 20 Nov. 2008	J& K - Meeting with district level officers of Leh
13.	23 – 25 Jan. 2009	West Bengal - 7th National Conference of UCO Bank SC/ ST & OBC Employees Council at Kolkata
14.	28 Feb. - 1 March 2009	Rajasthan - General Body Conference of All India SC/ST/OBC Employees Association at Jaipur

Shri Oris Syiem Myriaw, Member

S.No.	Date of Visit	Name of States/ UTs/ Orgn./ PSUs
(1)	(2)	(3)
1	18- 23 Apr. 2008	Meghalaya - Meeting with tribal delegation - Meeting with Chief Secretary and other State level officer of Government of Meghalaya - Visit of Regional Office, Shillong
2	30 Apr. – 06 May,2008	Assam and Meghalaya - Meeting with tribal delegation - Visit of tribal areas - Attend a function organized by tribal delegation at Assam
3	26 May – 3 June, 2008	Assam, Meghalaya and Nagaland - Meeting with Chief Secretary, Government of Nagaland to discuss the matter relating to Scheduled Tribes - Meeting with Chief Minister, Government of Nagaland - Meeting with Local tribal Leaders - Meeting with AD, Regional Office Shillong

4	02 -11 Aug 2008	Meghalaya - Meeting with Tribal Leaders and Parents/ Guardians of Sanmer Secondary School - Meeting with Annual meeting of Bormanik College with Shri P.R. Kendiah, Hon'ble Minister for Tribal Affairs as Chief Guest. - Meeting with district level officers
5	18 - 22 Sept. 2008	Meghalaya - Meeting with tribal delegates - Meeting with Tribal Leaders officers of
6	17 - 29 Oct. 2008	Assam and Meghalaya - Meeting with Local Tribal Leaders and attend local function - Meeting with district level officers of Guwahati
7	21 Dec. 2008 – 01 Jan. 2009	Orissa - Meeting with State Level Officers - Meeting with tribal delegation - Meeting with district level officers
8	06 – 16 Feb. 2009	Assam - Meeting with Chief Secretary, Government of Assam - Meeting with Chief Minister, Assam - Meeting with tribal delegation - Meeting with Local Tribal Leaders

ANNEXURE 1.VI

(Ref: Para 1.13.1)

NATIONAL COMMISSION FOR SCHEDULED TRIBES
LIST OF COURT CASES RECEIVED IN THE COMMISSION DURING THE YEAR 2008-09

S. No.	Particulars of the case	Views of the Commission and action taken by it
1.	O.A.No.109/2008 & MA/110/2008 in the CAT Ahmedabad by Sh. A.S. Vestabhai, SP, Kheda-Vs-Union of India and Ors. regarding his nomination in IPS Cadre.	As no relief has been sought from the Commission, a Misc. Application has been filed on behalf of the Commission requesting for deleting the name of the NCST from the array of Respondents in OA No. 109/2008 and for an appropriate order in the case.
2.	PIL No. 40/2007 in the Guwahati High Court of Assam filed by the members of Shella Action Committee, Shillong Vs. the State of Meghalaya & others in the matter of an application under Article 226 of the Constitution of India regarding exploitation of land and mineral resources of the State.	As the Commission was not concerned with the matter and it was listed only as one of the Proforma Respondents, Govt. of Meghalaya was requested to get the Commission delisted from the list of proforma Respondents. Name of the Commission was deleted from the list of proforma Respondents in November, 2008.
3.	W.P. No. 12736 of 2008 in the High Court of Hyderabad between Shri Peram Venkateswarulu, s/o late Vengaiah Syndicate Bank, Podlakur Branch, Nellore District Vs. the CMD, Syndicate Bank challenging the penalty of compulsory retirement.	As per the notice received from the High Court, all the documents relating to the case available with the Commission (Respondent No.5) were sent to the Registrar, High Court of Judicature, AP, Hyderabad vide Commission's letter, dated 16-07-2008.
4.	Writ Petition No. 4860 of 2008 filed in High Court of Judicature of Bombay Bench at Aurangabad in the matter of Vikramsing and Another Vs. the State of Maharashtra and Ors. regarding non-implementation of the provisions of the Panchayats (Extension to Scheduled Areas) (PESA) Act, 1996 in elections to Zilla Parishads and Panchayat Samitis in the Scheduled Areas	The issues raised in the WP were discussed in the Commission's meeting on 03-10-2008 and the Commission expressed the following views: "The process of rotation of seats reserved for Scheduled Tribes in a ZP/PS may be restricted to the number of seats that are required to be reserved in respect of the ST population in the areas outside the Scheduled Areas within a ZP/PS and not

	of the State of Maharashtra.	inside the Scheduled Areas. This will require further explanation of the second proviso under Section 12(2)(b) and 58(1B)(b) of the PESA Act." The above views were not included in the affidavit filed on behalf of the Union of India & other respondents by the Ministry of Panchayati Raj in the High Court. The High court decided the case on 31-10-2008 and upheld the contention of the petitioner.
5.	Writ Petition (Civil) No.393/2008 in Supreme Court of India, filed by Shri Vineeth K. and Others Vs. State of Kerala and Ors. regarding admission of ST students into MBBS/BDS courses in Kerala.	The Commission discussed the issue in the meeting held on 03-10-2008 and supported the decision taken by the Govt. of Kerala (after the interim order passed in the case by the Supreme Court on 26-09-2008) regarding admission of ST candidates in the MBBS/BDS courses on the basis of condition of obtaining at least 40% marks in the qualifying Board examinations. The Commission also expressed the view that same procedure may be adopted in other States also where seats reserved for ST candidates had generally remained unfilled on account of their having secured less than 40% marks in the entrance tests for the year 2008-09 (or alternatively all the eligible ST candidates who have secured minimum prescribed score in the qualifying Board examination may be admitted in order of merit in the Entrance Examination irrespective of any cut-off level). A Counter Affidavit containing the above views of the Commission was filed in the Supreme Court on 02-12-2008. The matter was disposed of by the Supreme Court on 03-05-2010.
6.	W.P. No. 24981 of 2008 in the High Court, Madras filed by Shri V. Ponnusamy, c/o National Insurance Company Limited, Coimbatore (TN), General Secretary, All India SC/ST General Insurance Employees' Welfare Association Vs. the Secretary, Ministry of Finance	Prescribing of written qualifying examination for promotion in the new Promotion Policy-2006 was challenged by the petitioner. The issues of Protection Clause and Zone of Consideration for SC/ST officers were also raised in WP. The above issues were discussed in the Commission's meeting held on 22-01-2009. It was found that prescribing of

	and 8 others. Challenging the new Promotion Policy-2006 for Officers' Cadre in the public sector insurance companies.	written qualifying examination for promotions by seniority-cum-fitness or by selection is not violative of the instructions of the Government. The Commission however desired that the instructions about the concession of Protection Clause and fixation of zone of consideration for SC/ST officers in the matter of promotion by selection should be implemented properly by the companies. A Counter Affidavit containing the above views has been filed in the High Court on behalf of the Commission on 13-04-2009. The case is pending in the High Court.
7.	Writ Petition No. 6337 of 2008 in the High Court of Chhattisgarh at Bilaspur in the matter of M.K. Chaudhary and Ors. Vs. the State of Chhattisgarh and 12 Ors. regarding denial of promotion to SC and ST Officers of Chhattisgarh State Electricity Board after bifurcation of Madhya Pradesh State Electricity Board, consequent to re-organisation of MP State in the year 2001.	The Commission dealt with the WP with a view to resolving the problems of tribal families about their status as STs on their migration to other States due to their resettlement resulting from their displacement in the State of their origin or due to reorganization of States. The issues raised in the WP were discussed in detail in the Commission's meeting held on 30-06-2009. The Commission expressed the view that there was urgent need on the part of the Ministry of Social Justice & Empowerment and Ministry of Tribal Affairs to issue specific instructions to the State Governments for ensuring that the involuntarily migrated tribals were not put in a disadvantageous position in any manner regarding benefits admissible to STs in that State. The Assistant Solicitor General (ASG) has been requested to prepare a Counter Affidavit on behalf of the Commission, which is yet to be received from ASG.
8.	WP (Civil) No.590 of 2008 of Shri Surmukh Singh Vs. Union of India & Ors. in the Supreme Court of India regarding rotation of reserved Assembly and Parliamentary Constituencies in the State of Haryana and also in whole of India after each General Assembly/ Parliamentary Election respectively.	The issue was considered by the Commission in its meetings held on 03-02-2009 and 03-07-2009 and the Commission expressed the view that the spirit of the special provisions relating to conduct of Panchayat elections in the Scheduled Areas as provided under the Panchayats (Extension to the Scheduled Areas) Act, 1996 cannot be made applicable while considering the rotation of seats reserved for Scheduled Tribes and Scheduled

		Castes in elections to Parliamentary and Assembly Constituencies. A Counter Affidavit on behalf of the Commission has been filed in the Supreme Court in January, 2010. The case is pending in the Supreme Court.
9.	SLP (Civil) No.26541 of 2008 (Renumbered as 3118/2009) (arising from the judgement and order dated 31-10-2008 of the High Court of Judicature of Bombay, Bench at Aurangabad in Writ Petition No.4860 of 2008) filed in the Supreme Court by Rahul & ANR Vs. State of Maharashtra & Others regarding the provisions of the Panchayats (Extension to Scheduled Areas) (PESA) Act, 1996 in elections to Zilla Parishads and Panchayat Samitis in the Scheduled Areas of the State of Maharashtra.	The issue raised in the SLP relates to the issues raised in WP 4860/2008 in the High Court of Judicature of Bombay, Bench at Aurangabad. The views (as given at S. No. 4 above) of the Commission on the issue as emerged in the Commission's meeting on 03-10-2008 w.r.t. the WP 4860 were filed in the Supreme Court on 21-07-2009. The case is pending.
10.	PIL W.P. No.8/2009 in the Hon'ble High Court of Judicature at Bombay by Shri D.M. Bhosale, S.W.O. & Member Secretary, SCs/STs Cell of Ali Yavar Jung National Institute for Hearing Handicapped Bandra, (West) Mumbai Vs. the Director, Ali Yavar Jung National Institute for the Hearing Handicapped, Member a non-ST challenging the appointment of an employee of the Institute against a post reserved for ST.	As no relief had been sought against the Commission, Ministry of Social Justice & Empowerment was requested to watch the interests of the Commission while dealing with the case. PIL was disposed by the Hon'ble High Court on 24-02-2010 directing for an enquiry in the matter. On the basis of the findings of the inquiry conducted by the Institute, the Commission advised the Institute on 20-05-2010 for removal/ dismissal of the concerned employee. The Institute has informed vide letter, dated 25-05-2010 that a PIL relating to the inquiry conducted by the Institute has since been filed in the Hon'ble High Court. The Institute was pursuing the matter in the High Court.



**MOST
IMMEDIATE**

भारत सरकार

राष्ट्रीय अनुसूचित जनजाति आयोग

GOVERNMENT OF INDIA

NATIONAL COMMISSION FOR SCHEDULED TRIBES

(A Constitutional Commission set up under Art. 338A of the Constitution to investigate and monitor all matters relating to violation of rights and safeguards provided for STs.)

संख्या/ No. **18/1/08-Coord.**

दिनांक/ Date: **16.01.2009**

To,

The Secretary,
Ministry of Tribal Affairs,
Shastri Bhawan,
New Delhi-110001

Sub: Comments of National Commission for Scheduled Tribes on Report on Study of performance of the National Commission for Scheduled Tribes conducted by Centre for Policy Research, New Delhi entrusted by Department of Administrative Reforms & Public Grievances, Government of India.

Sir

I am to refer to your letter No. 17014/03/05-C&LM I dated 02.01.2009 regarding comments of the National Commission for Scheduled Tribes on the Report on Study of performance of the National Commission for Scheduled Tribes conducted by Centre for Policy Research, New Delhi entrusted by Department of Administrative Reforms & Public Grievances, Government of India. Various observations and recommendations contained in the Report were discussed by the Commission in its 8th meeting. The observations of the Commission on the study Report are given in the statement annexed herewith. It is requested that the observations of the Commission are duly conveyed to the Department of Administrative Reforms & Public Grievances under intimation to this Commission.

Yours faithfully,

Sd/-
(Aditya Mishra)
Joint Secretary

**REPORT ON THE PERFORMANCE OF
NATIONAL COMMISSION FOR SCHEDULED TRIBES**
Comments of the National Commission for Scheduled Tribes
on the Observations made in the Report

Point No.	Issues & Comments of the National Commission for Scheduled Tribes
	GENERAL COMMENTS
	The study is incomplete as details about role, duty, functions and powers of the Commission, and its actual working and needs & problems have not been discussed by the Researcher before writing the Performance Report. Besides, the Report does not provide any information about working of the Regional Offices of the Commission having been reviewed or discussed with any officer of the Commission by the Researcher or the need to open more Regional Offices in the country to enable the Commission to reach the grass root level tribals and check violation of their rights under the Constitution, investigate and monitor matters relating to the safeguards and also evaluate the working of those safeguards as per constitutional provisions.
I.	ORGANISATION
i)	The running down of the regional offices is a trend that has continued till the present, when there are only six regional offices to deal with Scheduled Tribes across the country. <u>These are severely understaffed to deal with the areas they are meant to cover</u>
	<u>Comments</u>
	The Commission needs more Regional Offices to be opened in the country and more officers and staff to deal with various matters at Hqrs. as well as in the Regional Offices.
ii)	Appointments of Chairpersons and members have been political sinecures for those ST Representatives of the ruling party whom it needs to satisfy. They have displayed little vision or imagination in addressing the issues of Scheduled Tribes, and been unwilling to take up issues that are uncomfortable for their party.
	<u>Comments</u>
	Appointment of Members of the Commission, are made as per the prescribed conditions laid down in the National Commission for Scheduled Tribes, Chairperson, Vice-Chairperson and Members (Conditions of Service and Tenure) Rules, 2004. Those persons who fulfil the eligibility conditions prescribed in Section 3(i) of these Rules should be considered, irrespective of their political affiliation.

II.		FUNCTIONS AND POWERS
	i)	In 2004, the Ministry of Tribal Affairs (MOTA) also assigned the NCST additional functions to carry out studies and hold workshops on specific subjects. It requested MTA to sanction additional funds under the head of ‘Other Administrative Expenses’ to meet the cost of workshops and studies on these issues. ... <u>This manner of handing over responsibility for such studies to the NCST and the list of issues themselves betray government’s attitude towards the rights of Scheduled Tribes. First, MTA seems to be assuming the right to give instructions to the NCST, thus establishing a relation of superiority over NCST.</u>
		<u>Comments</u>
		There is a need to strengthen the Commission with certain powers as mentioned below, to enhance its autonomy, efficiency and effectiveness; (i)The National Commission for Scheduled Tribes is not able to exercise financial autonomy since formal order(s) relating to financial powers delegated to National Commission for Scheduled Tribes as a Ministry/ Department of Central Govt. under Delegation of Financial Powers Rules 1978 have not been issued by the Administrative Ministry. Ministry of Tribal Affairs may issue necessary orders without further delay. (ii) Under Art. 338(A) (4) of the Constitution the Commission has been given powers to regulate its own procedure and it should be allowed to create infrastructure according to its needs. Funds should also be made available as per need.
	ii)	While Article 338A (9) clearly states that “the Union and every state government shall consult the Commission on all major policy matters affecting Scheduled Tribes”, this does not seem to be happening. that <u>it appears to be MTA which controls NCST because it controls funding, infrastructure and the ATR, rather than the other way around</u>
		<u>Comments</u>
		Since Ministry of Tribal Affairs is presently the nodal (administrative) Ministry for all matters relating to Tribal Development, this Ministry should issue instructions to other Central Ministries and Departments and the State Govts. for seeking the advice of NCST on policy matters affecting STs, directly or indirectly.
	iii)	Annual Report of the NCSCST and first report of this Commission have not been tabled in Parliament.
		<u>Comments</u>
		The Commission is of the opinion that its Annual Report should be immediately placed before the Parliament. As per the existing procedure, these Reports are tabled along with the ATR by the Ministry of Tribal Affairs on the recommendations contained in the

		Report. This has resulted abnormal delay in tabling of the Annual Reports; Report pertaining to the year 2004-05 and 2005-06 submitted in August 2006 has not been tabled till date. The delay in this regard has been adversely commented upon by various agencies. The Commission is of the view that the Constitutional provision about laying of the report does not prohibit the government in placing the reports before Parliament immediately, even if complete ATRs can not be submitted simultaneously. The Commission, therefore, impresses upon the Govt. that there should be no hesitation in placing the report before Parliament without undue delay as this will lead to timely awareness of the recommendations in general public as well as in various Govt. Deptts., State Govts. and other agencies for effecting timely corrective action.
	iv)	While Article 338A of the Constitution envisages the Commission as an independent body empowered to give advice to the government, the Government and the Ministry of Tribal Affairs treat the NCST as an appendage of its normal activities. Thus it is unable to play the balancing, watchdog function it is meant to. The fact that it has no independent powers to sanction officials who have committed atrocities against Scheduled Tribes makes it somewhat of a paper tiger.
		<u>Comments</u>
		While the Commission may not be assigned the role of adjudication, yet the Commission should be conferred powers to impose sanctions on defaulting officials to enable the Commission to effectively discharge its functions relating to safeguards of the Scheduled Tribes. In accordance with Clause (5) and (9) of Article 338A of the Constitution the National Commission for Scheduled Tribes is vested with duty to monitor and evaluate the working of the safeguards provided for the Scheduled Tribes, participate in the planning process and advise the Union and the State govt. on major policy matters affecting the Scheduled Tribes and make recommendations. These recommendations urge the Union and State Govts. to initiate or modify programmes and schemes for welfare, development and protection of Scheduled Tribes and prepare the grounds for protective and legal enactments. Axiomatically, therefore, the views of the Commission in various issues and advice offered by the Commission in legal and other important matters is likely to be at variance with extant views of the Govt. and the executive agencies. In such matters, the Ministry of Tribal Affairs has no oversight role to play regarding recommendations / views of the Commission on matters in relation to other Ministries/ Departments/ Organizations. The expectations aroused by this role of a constitutional body like the National Commission for Scheduled Tribes also result in the Commission being made a respondent in various Court cases. In all such cases, if the views and recommendations of the NCST do not reach the Courts or authorities considering the issues, the outcome of the considerations may be

		totally against the interest of the Scheduled Tribes; and also unconstitutional in certain cases. It has, however, been noticed that the views expressed/ conveyed by the National Commission for Scheduled Tribes to Ministry of Tribal Affairs, Ministry of Social Justice & Empowerment, Ministry of Panchayati Raj and other Ministries in various Court cases were not incorporated in the Affidavits filed by them or even referred to in the Affidavits filed by the concerned Ministry. For instance in a recent case pertaining to the Writ Petition (WP) No. 4860 of 2008 filed in the High Court of Judicature of Bombay bench at Aurangabad [in the matter of Vikramsing and Another (Petitioners) vs the State of Maharashtra and Ors. regarding non-implementation of the provisions of the Panchayats (Extension to Scheduled Areas) Act 1996 in elections to Zilla Parishads and Panchayats in Scheduled Areas of the State of Maharashtra] in which Ministry of Panchayati Raj, Ministry of Tribal Affairs and the National Commission for Scheduled Tribes were also respondents. The judgement reveal that the stand of NCST on the subject, indicated in the communication sent by this Commission to the State Government (which was also annexed with the WP), has been vindicated by the Court, although Ministry of Panchayati Raj and Ministry of Tribal Affairs did not take cognizance of the Commission's views in the affidavit filed on behalf of the respondents in the High Court. Similar is the situation w.r.t. the policy matters and legal amendments concerning wider interest of Scheduled Tribes in which advice of the Commission are (required to be) sought. The Commission, therefore feels that, keeping in view the mandate, duties and responsibilities of the Commission, it is necessary that whenever matters are referred to this Commission for advice or comments, the views expressed by this Commission should invariably be placed, without any oversight or modification, before the concerned authorities for their consideration, as the final decision on the issue rests with the concerned authority. Similarly, in court cases on the subject matters allotted to the Commission, where NCST is also a party and other authorities of the Central Government may be a petitioner party or a respondent party, the Commission should file its reply (if necessary..... independently through a separate Central Govt. Counsel) without routing the matter through the Ministry of Tribal Affairs so that views of the Commission reach the Court without modifications and without delay and for this purpose the Ministry of Law & Justice should directly provide adequate legal support to the Commission for contesting the petition.
III.		ACTUAL FUNCTIONING
	i)	Some members tend to tour their own areas, whereas others tour more widely.
		<u>Comments</u>
		The Members of the Commission are expected to visit the tribal areas

		of the State under their jurisdiction and get acquainted with their problems and needs. The Members of the Commission, give more weightage to the State to which they belong. This is a natural phenomenon in respect of every public figure and Members of the Commission cannot be exception to it.
	ii)	<u>One Chairman is said to have spent the last few months of his tenure visiting all the swamis and peeths in the country.</u>
		<u>Comments</u>
		There is no such information with this Commission. It is not understood as to what is the basis of this report.
	iii)	Principle Investigators assigned to each research unit: It is this level which is most crucial for the bulk of cases handled by the Commission, and the impact felt by the public in everyday matters (which do not require major policy or political interventions). <u>These units are severely understaffed, and fresh recruitment appears to be a serious problem.</u>
		AND
	iv)	Unfortunately, even all the petitions that the Commission gets are not recorded. I am personally aware of petitions submitted to the Commission following a meeting with the Chairperson, but which do not figure in the records of the relevant research unit. The mismatch between the atrocities that take place and the cases that the Commission deals with could be due to at least three reasons: 1.) not all cases which are registered require the intervention of the Commission, 2.) lack of staff to deal with the volume of cases that come in (each research unit gets about 4-500 letters on average per month) 3.) a tendency among staff to concentrate on the more easily manageable service cases where the petitioners are more organised and hence more vocal, and thus neglect the atrocities cases. <u>The shortage of staff is quite severe, and appears to be half of the sanctioned strength.</u>
		<u>Comments (iii) and (iv)</u>
		Keeping in view the role, duties, functions and power assigned to the Commission, this Commission is very much understaffed and the sanctioned staff needs to be positioned for effective functioning of the Commission. As per rules for appointment of Members of the Commission, the Chairperson has the status of Union Cabinet Minister while Vice-Chairperson has the status of Minister of State in the Union Cabinet while Members of the Commission are having the status of

	Secretary to the Govt. of India. The post of Secretary, NCST is also in the rank of Secretary to the Govt. of India. However, the Ministry of Tribal Affairs, which is the administrative Ministry of this Commission, while setting up the Commission and making appointments of the Members of the Commission did not sanction required number of staff in the personal sections of the Chairperson, Vice-Chairperson, Members and Secretary and Joint Secretary of the Commission. <u>The Ministry also did not sanction any working staff to assist the senior level Officers of the Commission.</u> However, meagre staff, along with a few vacant posts, was transferred to this Commission by the National Commission for Scheduled Castes and a large number of these vacancies still continue to exist in this Commission because there are different Cadre Controlling Authorities for each category of posts in the Commission, and NCST does not have control over any post. There is a Joint Cadre of the specialised categories of posts in NCST, NCSC, Ministry of Tribal Affairs and MSJE and some of the Joint Cadre posts (Group 'A') and all secretariat posts are filled by the Ministry of Social Justice & Empowerment. Junior level Joint Cadre posts are controlled by the National Commission for Scheduled Castes. The problem can be resolved only if the Recruitment Rules are amended and the National Commission for Scheduled Tribes is declared as Cadre Controlling Authority in respect of some categories of the posts in the Commission, as outside authorities are not likely to take requisite interest in providing requisite staff to NCST. Besides, to enable this Commission to reach grass root tribals and check violation of the rights provided to them under the Constitution, investigate and monitor matters relating to the safeguards and also evaluate the working of those safeguards as per constitutional provisions, the National Commission for Scheduled Tribes needs additional posts (a) to look after increasing workload in the Hq. Office and the Regional Offices and (b) for opening new Regional Offices in the country. As already mentioned with regard to filling the vacancies and posting of officers in various categories of posts in the National Commission for Scheduled Tribes, several posts continue to remain vacant in the National Commission for Scheduled Tribes inspite of DPC for various posts having met in the matter of promotion. Therefore, till such time an independent NCST cadres are formed, Ministry of Social Justice & Empowerment should constitute a Coordination Committee with representation from each participating organisation to consider postings and transfers within MSJE, MTA, NCST, and NCSC for smooth functioning of each Commission (Such a Committee is stated to be in existence at the time of erstwhile Offices of the Commissioner for Scheduled Castes and Scheduled Tribes and the National Commission for Scheduled Castes and Scheduled Tribes). As regards timely action on fresh cases of grievances relating to Scheduled Tribes, a computerized Grievance Management and File Management System has been introduced recently for proper

		processing and monitoring of grievances/ complaints. Guidelines are also being developed for prompt handling of different kinds of petitions/ grievances within the Commission, but this can not be achieved without adequate staff at each level.
	iv)	The usual procedure is for the Commission to write letters to the concerned Secretary/ Chairperson of the organisation from which the complaint originated, or with which the complaint is concerned and ask for an explanation. In cases where they do not get an answer they can issue summons to the officer to appear in person before the Commission and explain. However, this is rare, and from March 2004-2007, summonses have been issued in only two cases.
		<u>Comments</u>
		The provision for issue of SUMMONS should not be seen as the only tool for settlement of grievances. Through initial letters calling for facts in each case, Authorities are also made aware about the power of the Commission to issue SUMMONS. Therefore, many cases have been resolved by holding hearings/ meetings without issuing SUMMONS.
	v)	“Where rules are knowingly violated by the administration, the tendency is to cover up the matter.” In such cases, the Commission is helpless. This procedure is especially problematic for STs, since a large number of the atrocities committed on them are by agencies of the government like the police and the forest staff. The point, however, is that while not every case can be independently investigated by the Commission and letters asking for an explanation do constitute some form of pressure, this mode of functioning as the dominant norm needs to be seriously rethought. Apart from visits by the members, the existing independent investigating machinery in the Commission needs to be strengthened.
		<u>Comments</u>
		It is a fact that a large number of grievances relating to violation of rights of Scheduled Tribes is because of discrimination by Govt. Officials/ Agencies against members of Scheduled Tribes. The Scheduled Tribe beneficiary is innocent, unaware of the rules and schemes of the Govt. for their welfare and development and the Govt. Agencies/ employees either show lethargy in extending flow of benefits to them or do not intend to ensure adequate consideration of their rights. Field Investigation by a team of Officers from the NCST is not required in each case. To formulate an independent view of events, a large contingent of Investigators and Officers would have to be provided to the Commission. It is practically not possible for the Commission to do all policing, investigation and monitoring of each case received in the Commission, otherwise the Commission will become another State or District level

		implementing, investigative and monitoring body. However, in order to effectively deal with the matter relating to violation of rights of Scheduled Tribes, the Commission should be conferred powers to impose sanctions on defaulting officials to enable the Commission to effectively discharge its functions relating to safeguards of the Scheduled Tribes.
	vi)	In effect however, the Service Safeguards wing acts as an internal branch of the government, ensuring better service conditions for the scheduled tribe employees of the government.
		<u>Comments</u>
		Service matters normally do not require field visits and therefore more number of such cases can be dealt in limited time. Moreover, it is the constitutional duty of the Commission to monitor the implementation of safeguards and rights of the Scheduled Tribes.
	vii)	Moreover, all these cases are of individual atrocities and the Commission seems unwilling to take up the widespread atrocities on adivasis that are going on in the name of militarization and internal security, both in the north-east and central India, including the gang rapes and widespread murders by the Salwa Judum in Chhattisgarh, or by the armed forces in the north-east despite these having been brought to its notice.
		<u>Comments</u>
		This is not correct. As reported by the Researcher herself, the commission is not able to take up many cases due to acute shortage of staff in the Headquarter as well as Regional Offices of the Commission. The issues have been taken up by the Commission with the concerned authorities. However, the NCST has a limited role in such matters as the Commission cannot assume the responsibilities assigned to other Govt. Agencies set up to take such issues, beside the fact that the Commission is not empowered to take direct or indirect action against the involved parties or impose sanctions on them.
IV		OVERALL IMPACT OF THE COMMISSION
	i)	Certain issues have not been taken up by the Commission at all despite petitions – e.g. militarization.
		<u>Comments</u>
		The position is well clarified while making comments on III (vii) above. As mentioned earlier, Commission needs more Regional Offices to be opened in the country and more Officers and staff to deal with various matters at Hq as well as in the Regional Offices.
V.		<u>RECOMMENDATIONS</u>
	i)	The primary recommendation in this report is that the Government follow the Constitution in the spirit it was envisaged, among other things, by strengthening the role of the Commission

		as a truly independent watchdog body with punitive powers.
	ii)	The composition of the Commission needs to be examined, in particular, the implications of a commission composed entirely of political appointments by the ruling party. The qualifications of the Chairperson and Members should be publicly available, and there should be an effort to involve people from different professions concerned with Scheduled Tribes.
	iii)	The overlap with the Ministry of Tribal Affairs needs to be examined, and the independence of the Commission vis-à-vis MOTA asserted.
	iv)	The Commission is short staffed, as well as under funded and therefore unable to deal satisfactorily with the volume of cases. The Regional offices need to be strengthened, along with an independent investigating mechanism. This should replace the standard procedure of asking for clarification as the dominant mode of functioning.
		<u>Comments V (i) to (iv)</u>
		The recommendations (i, ii, iii & iv) are worthy of consideration since they may enhance the autonomy, efficiency and effectiveness of the Commission. However, the comment regarding overlap probably emanates from the fact that the MoTA and NCST share a common functional area though with different roles assigned to each. Commission needs more Regional Offices to be opened in the country and more Officers and staff to deal with various matters at Hq as well as in the Regional Offices. The National Commission for Scheduled Tribes has been given power to regulate its own procedure and it should be allowed to create infrastructure according to its needs. Funds should also be made available as per the needs of the Commission keeping in view the role, duty, functions and power assigned to the Commission under the Constitution. <u>Please also see the comments w.r.t. III (v) above.</u>

ANNEXURE 1.VIII
(Ref: Para 1.15.7)

Status of Files registered up to 31st March 2009

category of File	Inactive	Current	Forward ed Outside Ministry	Linked with Main File and Lying in Section	Merged in Main File	Grand Total
Annual Plan/TSP	3	1				4
Annual Report	1					1
Budget	7					7
Commn. Meeting		19				19
Commn. Sitting		1				1
Consultation		1				1
Court Cases	62	17				79
De-reservation	279	11				290
General	3283	213	7	1	1	3505
Grievance	1770	913		1	2	2686
Medical	9					9
Parliament question	2					2
Policy	35	5				40
Review/ Monitoring	8	21				29
RTI	58	1				59
VIP Reference	30	1				31
Visits/Tours		8				8
Grand Total	5547	1212	7	2	3	6771

ANNEXURE 1.IX
(Ref: Para 1.15.7)

Inflow/Outflow Details of Receipts (From: 01/04/2008 To: 31/03/2009)

Section	Opening Balance (a)	Receipts Added^{&} (b)	Total (a+b)	Disposed (c)	Balance (a+b-c)
CHAIRPERSON	0	657	657	656	1
VICE CHAIRMAN	0	11	11	11	0
MEMBER(TS)	0	7	7	7	<u>0</u>
MEMBER(OSM)	0	9	9	9	0
SECRETARY	0	341	341	341	0
JOINT SECRETARY	0	1004	1004	1004	<u>0</u>
DIR(RU-I & RU-II)	0	1058	1058	1058	0
RESEARCH UNIT - I	<u>0</u>	1462	1462	1435	27
RESEARCH UNIT -II	<u>0</u>	723	723	712	11
DIR(RU-III & Coord.)	<u>0</u>	1093	1093	1092	1
RESEARCH UNIT - III	<u>0</u>	1262	1262	1234	28
COORDINATION UNIT	<u>0</u>	304	304	302	2
DS(RU-IV & Admn.)	0	772	772	772	0
RESEARCH UNIT - IV	<u>0</u>	1756	1756	1738	18
ADMINISTRATION	<u>0</u>	391	391	389	2
GEN ADMIN*	<u>0</u>	2383	2383	2381	2
HINDI	<u>0</u>	6	6	<u>0</u>	6

[&] Receipt Added under Column (b) indicates receipts received/created upto 31/03/2009

* GEN ADMIN is a Central Registry and Receipts received are marked to various officers and Units/ Sections as per work distribution. Receipts are also received directly by officers and Units/ Section and diarized in the concerned Personal Section of Officers/ Section/ Unit.

ANNEXURE 2.I
(Ref: Para 2.9.6)

**Dereservation proposals received from various Ministries/ Departments
during the year 2008-09**

S. NO	File Number	Subject	Views of NCST and final Status
1	De-res/CAG/Ser/ 684/ 2008/RU-I	1 post of Audit Officer DG of Audit, P&T, Delhi.	Not agreed vide letter dated 07/10/2008 and advised to fill up the post on Ad hoc basis from ST candidate. No further communication received.
2	De-res/CAG-34/ 2008/ Ser/RU-I	2 posts of Section Officer in O/o A.G.(A&E-I-UP) Allahabad	Not agreed vide letter dated 24/03/2008 and 07/10/2008. Action taken status not reported.
3	De-rese/CAG-35/ 2008 /Ser/RU-I	1 post of Supervisor Group 'B' Non Gazetted Principal Accountant General Kolkata.	Not agreed vide letter dated 24/03/2008, Action taken status not received.
4	De-res/CAG/VIP/ 43/ 2008 /RU-I	1 post of Junior Accounts Officer, O/o AG(A&E), Kerala.	Not agreed vide letter dated 07/05/2008. No further information available.
5	De-res/ DOPT/ Service/ 2008/RU-I	8 posts of PS Group- 'A' Ministry of Personnel (DOPT) ,New Delhi	Not agreed vide letter dated 3/6/2009. Status report was asked vide letter dated 04/12/2009. No reply received.
6	Deres/Water Res/ Ser/ VIP/ 808/2008/ RU-I	2 posts of Extra Asstt. Director/ Asstt. Engineer, Central Water Commission, Ministry of Water Resources	Not agreed vide letter dated 3/6/2009. Status report asked vide letter dated 03/12/2009. No reply received.
7	De-res/CBI/Ser/786/ 2008/ RU-I	1 Post of Office Supdt. Central Bureau of Investigation, Ministry of Personnel (DoPT), New Delhi	Agreed vide letter dated 17/02/2009 with a condition to fill the post by unreserved candidate purely on ad-hoc basis. CBI replied vide letter dated 26/02/2009 that the post filled purely on ad-hoc basis.
8	De-res/CAG/ Ser / 627/ 2008/ RU-I	1 post of Sr. Audit Officer, CAG	Not agreed vide letter dated 7/10/2008& 14.10.2008. No further information available.
9	De-res/CAG/Service/ 688/2008/RU-I	1 post of Audit Officer Pr. Accountant General (C&RA), Ahmedabad.	As documents requested vide letter dtd. 25/09/2008 not received, the proposal was rejected. Status is not available.
10	CAG/34/Service/200 7/RU-I	1 post of Assistant Audit Officer/Accounts Officer, IA & AD.	Not agreed vide letter dated 07/12/2007, 15/04/2008, 19/05/2008, 03/12/2009 and 16/01/2010. Status not available.
11	De-res/CAG/VIP/ 00026/ 2009/RU-I	1 post of Sr. Audit Officer, O/o Pr Accountant General (Audit), Guwahati	Not agreed vide letter dated 20/01/2009. Status not available.

12	De-res/CAG/VIP/00025/2009/RU-I	1 post of Accounts Officer, O/o The Accountant General (A&E), Shimla.	Not agreed vide letter dated 20/01/2009 and 29/01/2009. Status not available.
13	De-res/CAG/VIP/00024/2009/RU-I	1 post of Sr. Accounts Officer - O/o Accountant General (A&E), Shimla.	Not agreed vide letter dated 20/01/2009 and 29/01/2009. Status not available.
14	De-res/CAG/VIP/00023/2009/RU-I	2 posts of Divisional Accounts Officer, Grade-I The Accountant General (A&E)-I, Kolkata.	Not agreed vide letter dated 20/01/2009 and 29/01/2009. Status not available.
15	De-res/CAG/VIP/00022/2009/RU-I	1 post of Sr. Accounts Officer The Accountant General (A&E)-I, Allahabad.	Not agreed vide letter dated 20/01/2009 and 29/01/2009. Status not available.
16	De-res/CAG/VIP/00021/2009/RU-I	1 post of Accounts Officer-The Accountant General (A&E)-I, Allahabad.	Not agreed vide letter dated 20/01/2009 and 29/01/2009. Status not available.
17	De-res/CAG/VIP/00020/2009/RU-I	1 post of Accounts Officer-The Pr. Accountant General (A&E), Thiruvananthapuram	Not agreed vide letter dated 20/01/2009 and 29/01/2009. Status not available.
18	De-res/CAG/VIP/00019/2009/RU-I	1 post of Audit Officer O/o The Pr. Accountant General (CA), Hyderabad	Not agreed vide letter dated 20/01/2009 and 29/01/2009. Status not available.
19	De-res/CAG/VIP/00048/2009/RU-I	1 post of Accounts Officer O/o The Sr. Deputy Accountant General (A&E), Srinagar.	Not agreed vide letter dated 20/01/2009 and 29/01/2009. Status not available.
20	De-res/CAG/VIP/00050/2009/RU-I	1 post of Audit Officer O/o The Accountant General (Audit), Ranchi	Not agreed vide letter dated 20/01/2009 and 29/01/2009. Status not available.
21	De-res/CAG/VIP/00056/2009/RU-I	1 post of Sr. Divisional Accounts Officer, O/o The Accountant General (A &E)-I, Gwalior.	Not agreed vide letter dated 20/01/2009 and 29/01/2009. Status not available.
22	De-res/CAG/VIP/00057/2009/RU-I	2 posts of Sr. Divisional Accounts Officer- O/o The Accountant General, Patna	Not agreed vide letter dated 20/01/2009 and 29/01/2009. Status not available.
23	De-res/CAG/VIP/00067/009/RU-I	1 post in the merged cadre of SO/AAO O/o The Pr. Accountant General (Audit), Patna	Not agreed vide letter dated 21/01/2009 and 29/01/2009. Status not available.
24	De-res/CAG/VIP/00047/2009/RU-I	1 post of Accounts Officer O/o The Accountant General (A&E), Bangalore	Not agreed vide letter dated 21/01/2009 and 29/01/2009. Status not available.
25	De-res/CAG/VIP/00049/2009/RU-I	1 post of Sr. Accounts Officer - O/o The Sr. Deputy Accountant General (A&E), Srinagar	Not agreed vide letter dated 21/01/2009 and 29/01/2009. Status not available.
26	De-res/CAG/VIP/00051/2009/RU-I	2 posts of Audit Officer of SO/AAO O/o The Accountant General (A&E), Shimla	Advised vide letter dated 21/01/2009 to fill-up the post by D/R. No reply received. Status not available.

27	De-res/CAG/VIP/00052/2009/RU-I	2 posts of Audit Officer- O/o The Director General of Audit, Defence Services, New Delhi.	As documents requested vide letter dated 19/01/2009. Not received. Proposal rejected vide letter dated 29/01/2009.
28	De-res/CAG/VIP/00053/2009/RU-I	1 post of Sr. Audit Officer - O/o The Account General (Audit), Chandigarh	As documents requested vide letter dated 19/01/2009. Not received. Proposal rejected vide letter dated 29/01/2009.
29	De-res/CAG/VIP/00054/2009/RU-I	1 post of Sr. Audit Officer - O/o The Pr. Director of Audit, Economic & Services New Delhi	As documents requested vide letter dated 19/01/2009. Not received. Proposal rejected vide letter dated 29/01/2009.
30	De-res/CAG/VIP/00055/2009/RU-I	1 post of Sr. Audit Officer – O/o The Pr. Director of Accountant General (A &E) , Chandigarh	Not agreed vide letter dated 21/01/2009 & 29/01/2009. Status not available.
31	De-res/CAG/VIP/00058/2009/RU-I	1 post of Sr. Divisional Accounts Officer – O/o The Accountant General (A&E) -II, Allahabad.	Not agreed vide letter dated 20/01/2009 & 29/01/2009. Status not available.
32	De-res/CAG/VIP/00059/2009/RU-I	3 posts of Audit Officer – O/o The Pr Accountant General (Audit) , Chandigarh.	Not agreed vide letter dated 20/01/2009 & 29/01/2009. Status not available.
33	De-res/CAG/VIP/00060/2009/RU-I	7 posts of Audit Officer – O/o The Commercial Audit Wing of the IA & A D.	Not agreed vide letter dated 20/01/2009 & 29/01/2009. Status not available.
34	De-res/CAG/VIP/00063/2009/RU-I	1 post of Supervisor O/o The Principal Director of Audit, Economic & Services, New Delhi	Not agreed vide letter dated 20/01/2009 & 29/01/2009. CAG vide letter dt.04/05/2009 requested to consider the proposal. Vide letter dtd 08/05/2009 CAG was advised to re-submit a fresh proposal. No communication received.
35	De-res/CAG/VIP/00064/2009/RU-I	8 posts of Senior Audit Officer O/o The Commercial Audit wing of the IA & A D..	Not agreed vide letter dated 20/01/2009 & 29/01/2009. Status not available.
36	De-res/CAG/VIP/00065/2009/RU-I	2 posts of Senior Audit Officer O/o The Pr. Accountant General (CCA) , Bangalore.	Not agreed vide letter dated 20/01/2009 & 29/01/2009. Status not available.
37	De-res/CAG/VIP/00066/2009/RU-I	2 posts of Audit Officer O/o The Pr. Accountant General (Audit), Patna.	Not agreed vide letter dated 21/01/2009 & 29/01/2009. Status not available.
38	De-res/CAG/VIP/00068/2009/RU-I	1 post of Audit Officer O/o The Principal Accountant General (CA) , Allahabad	Not agreed vide letter dated 21/01/2009 & 29/01/2009. Status not available.
39	De-res/CAG/VIP/00069/2009/RU-I	1 post of Audit Officer O/o The Accountant General (Audit), Chandigarh	Not agreed vide letter dated 21/01/2009 & 29/01/2009. Status not available.
40	De-res/CAG/VIP/00070/2009/RU-I	1 post of Divisional Accounts Officer, Gr-I O/o The Accountant General (A& E) , Chandigarh	Not agreed vide letter dated 21/01/2009 & 29/01/2009. Status not available.

41	De-res/CAG/VIP/ 00071/2009/RU-I	2 posts of Sr. Divisional Accounts Officer O/o The Accountant General (A & E), II , Nagpur	Not agreed vide letter dated 21/01/2009 & 29/01/2009. Status not available.
42	De-res/CAG/ VIP/ 00072/2009/ RU-I	1 post in the merged cadre of SO / AAO- O/o The Accountant General (A & E) Kolkata.	Not agreed vide letter dated 21/01/2009 & 29/01/2009. Status not available.
43	De-res/CAG/VIP/ 00073/2009/RU-I	1 post of Senior Audit Officer O/o The Pr. Accountant General (Audit), Patna	Not agreed vide letter dated 21/01/2009 & 29/01/2009. Status not available.
44	De-res/CAG/VIP/ 00074/2009/RU-I	1 post of Supervisor – The DGACR, New Delhi	Not agreed vide letter dated 21/01/2009, 29/01/2009 & 29/06/2009. Status not available.
45	De-res/CAG/VIP/ 00075/2009/RU-I	1 post of Divisional Accounts Officer, Grade II O/o The Accountant General (A & E) , Chandigarh	Not agreed vide letter dated 21/01/2009 & 24/7/2009. Status not available.
46	De-res/CAG/VIP/ 00076/2009/RU-I	1 post of Sr. Auditor Officer O/o the Pr. Director of Audit, Northern Railway, Baroda House, New Delhi	Not agreed vide letter dated 21/01/2009, 29/01/2009 and 16/06/2009. Status not available.
47	De-res/CAG/VIP/ 00079/2009/RU-I	1 post of Divisional Accounts Officer, Grade –I O/o the Accountant General (A&E), Chandigarh.	Not agreed vide letter dated 21/01/2009 & 24/7/2009. Status not available.
48	De-res/CAG/VIP/ 00078/2009/RU-I	2 posts of Audit Officer – O/o The Director General of Audit, Central Revenues, New Delhi.	Not agreed vide letter dated 21/01/2009 & 24/7/2009. Status not available.
49	Delhi-01/ST/Service/ 2008/RU-I	1 post of .Asstt. Accounts Officer -DDA, Delhi	Not agreed vide letter dated 4/02/2009. Status report asked vide letter dated 04/12/2009 not received.
50	De-res/NDMC/42/ 2008/Service/RU-I	35 posts of Senior Asstt. Group 'C' NDMC, New Delhi	Not agreed vide letter dated 1/7/2008. Status report asked vide letter dated 04/12/2009 not received.
51	De-reservation/CAG- 21/ST/Service/2008/ RU-I	1 post of Supervisor (Audit) Group 'B' The A.G. (Audit), Chandigarh	Document requested vide letter dt. 10/01/2008. CAG furnished information vide letter dtd 20/03/2008. Not agreed vide letter dated 03/12/2009 & 19/01/2010. Current status not available.
52	De-reservation/CAG- 32/2008/Service/ RU-I	1 post of Audit Officer O/o The Director General of Audit, Defence Service, New Delhi	Not agreed vide letter dated 19/05/2008. Status enquired vide letter 03/12/2009 and 19/01/2010. No reply received.
53	De-reserv/NDMC- 33/2008/Service/ RU-I	1 post of Deputy Director Group 'B' N.D.M.C, New Delhi	Not agreed vide letter dated 25/03/2008. Status report not available.
54	De-reserv/CAG- 18/ST/2008/Service/ RU-I	9 posts of Senior Officer Group 'B' – The Commercial Audit Wing of (IA&AD)	As document requested vide letter dtd. 10/01/2008 not received, proposal not agreed vide letter dtd 19/05/2008. Status reports enquired

			vide letter dtd 03/12/2009 and 19/01/2010. No reply received.
55	De-reserv/CAG-31/2008/Service/RU-I	1 post of Audit Officer O/o The Principal Director of Audit Eastern Railway, Kolkata	Not agreed vide letter dtd 21/01/2009 & 24/7/2009. Status report not available.
56	De-reservation/CAG/05/ST/Service/08/RU-I	1 post of Asst. Accountant Officer, Group 'B' – O/o The A.G. (A&E), Srinagar.	As documents requested vide letter dtd 11/01/2008. Not agreed vide letter dtd 19/05/2008. Status not available.
57	De-reservation/CAG-26/ST/Service/08/RU-I	1 post of Senior Audit officer, O/o The Accountant General Audit, Agartala	Not agreed vide letter dated 10/01/2008,19/05/2008. Status not available.
58	De-reservation/CAG-04/ST/Service/08/RU-I	2 posts of D.A.O Grade, O/o The Accountant General (A&E) Kolkata.	Not agreed vide letter dated 10/01/2008, 19/05/2008. Status enquired vide letter dtd 03/12/2009 &16/01/2010. No reply received.
59	De-reservation/CAG-13/ST/Service/08/RU-I	1 post of Senior Audit Officer, Group 'B' – O/o The Principal Accountant General (Audit), Mumbai	As documents requested received vide letter dt.11/01/2008. Not agreed vide letter dtd 19/05/2008. Status not available.
60	De-reservation/CAG-14/ST/Service/08/RU-I	3 posts of Sr. Audit Officer- O/o The Principal Accountant General Commercial & Receipt Audit) Ahmedabad	Not agreed vide letter dated 10/01/2008. Status enquired vide letter dtd 03/12/2009 & 16/01/2010. No reply received.
61	De-reservation/CAG-03/ST/Service/08/RU-I	2 posts of Audit Officer Group 'B' - O/o The Principal Accountant General (Audit), Patna	As documents requested vide letter dt.10/01/2008 & not agreed vide letter dtd 19/05/2008. Status not available.
62	De-reservation/CAG-10/ST/Service/08/RU-I	1 post of Audit Officer (Group 'B') – O/o The O.A.G (Audit), Srinagar	As documents requested vide letter dtd 10/01/2008. Not agreed vide letter dtd 19/05/2008. Status enquired vide letter dtd 03/12/2009 & 16/01/2010. No reply received.
63	De-reservation/CAG-16/ST/Service/08/RU-I	1 post of Sr. Audit Officer Gr. 'B' – The Principal Director of Audit Economic & Service, New Delhi	As documents requested vide letter dt.10/01/2008. Not agreed vide letter dtd 19/05/2008. Status enquired vide letter dtd 03/12/2009 & 16/01/2010. No reply received.
64	De-reservation/CAG-23/ST/Service/08/RU-I	2 posts of Divisional Accounts Officer, Gr-I O/o The Accountant General (A&E)-II, Allahabad	As documents requested vide letter dt.10/01/2008. Not agreed vide letter dtd 19/05/2008. Status enquired vide letter dtd 03/12/2009 & 16/01/2010. No reply received.
65	De-reservation/CAG-17/ST/Service/08/RU-I	1 post Asstt. Accounts Officer, Gr. 'B' The Accountant General (A&E) Tamilnadu, Chennai	As documents requested vide letter dt.10/01/2008. Not agreed vide letter dtd 19/05/2008. Status enquired vide letter dtd 03/12/2009 & 16/01/2010. No reply received.

66	De-reservation/CAG-20/ST/Service/08/RU-I	1 post, Account Officer, O/o The Accountant General (A&E), Chennai	As documents requested vide letter dt.10/01/2008. Not agreed vide letter dtd 19/05/2008. Status enquired vide letter dtd 03/12/2009 & 16/01/2010. No reply received.
67	De-reservation/CAG-25/ST/Service/08/RU-I	2 posts of Senior Audit Officer - The Director General of Audit Defence Service, New Delhi	As documents requested vide letter dtd 10/01/2008. Not agreed vide letter dtd 19/05/2008. Status enquired vide letter dtd 03/12/2009 & 16/01/2010. No reply received.
68	De-reservation/CAG-7/ST/Service/08/RU-I	1 post of Asstt. Audit Officer (Civil) Group 'B' T- O/o The Principal Accountant General (Audit), Trivandrum.	As documents requested vide letter dt.10/01/2008. Not agreed vide letter dtd 19/05/2008. Status enquired vide letter dtd 03/12/2009 & 16/01/2010 current status not available.
69	De-reservation/CAG-06/ST/Service/08/RU-I	3 posts of Audit Officer Group 'B', Accountant General(Civil Audit)- O/o The Accountant General Commercial receipt Audit) Chennai	As documents requested vide letter dt.10/01/2008. Not agreed vide letter dtd 19/05/2008. Status enquired vide letter dtd 03/12/2009 & 16/01/2010. No reply received.
70	De-reservation/CAG-31/08/Service/RU-I	1 post of Senior Auditor- O/o The Principal Director of Audit, Economic & Service, New Delhi	As documents requested vide letter dt.15/02/2008. Not agreed vide letter dtd 19/05/2008. Status enquired vide letter dtd 03/12/2009 & 16/01/2010. No reply received.
71	De-reservation/NDMC-41/2008/Service/RU-I	1 post of Private Secretary, Group 'B' NDMC, New Delhi	Not agreed vide letter dated 19/12/2008. Status report asked vide letter dated 04/12/2009. No reply received.
72	De-reservation/CAG/02/ST/Service/2008/RU-I	1 post of Audit Officer, Group 'B' – O/o The A.G.(Audit), Srinagar.	As documents requested vide letter dt.10/01/2008. Not agreed 19/05/2008. Status enquired vide letter dtd 03/12/2009 & 16/01/2010. No reply received.
73	De-reservation/CAG-11/ST/Service/2008/RU-I	3 posts of Audit Officer, Group 'B' O/o The Accountant General (Commercial) and Receipt Audit) Chennai.	As documents requested vide letter dtd 11/01/2008. Not agreed vide letter dtd 19/05/2008. Status enquired vide letter dtd 03/12/2009 & 10/02/2010. No reply received.
74	De-reservation/CAG-09/ST/Service/2008/RU-I	3 posts of Sr. Audit Officer, Group 'B', O/o Principal Accountant (Commercial & Receipt Audit), Ahmedabad	As documents requested vide letter dt.11/01/2008. Not agreed vide letter dtd 19/05/2008. Status enquired vide letter dtd 03/12/2009 & 19/01/2010. No reply received.
75	De-reservation/CAG-15/ST/Service/2008/RU-I	2 posts of Audit Officer Gr. 'B' – O/o The Principal Accountant General (Audit) Patna.	As documents requested vide letter dt.10/01/2008. Not agreed vide letter dtd 19/05/2008. Status enquired vide letter dtd 03/12/2009 & 16/01/2010. No reply received.
76	De-reservation/CAG-19/ST/Service/2008/RU-I	4 Posts of Asstt. Audit Officer- The Commercial Audit wing of (IA&AD)	As documents requested vide letter dt.10/01/2008. Not agreed vide letter dtd 19/05/2008. Status enquired vide letter dtd 13/12/2009 & 19/01/2010.

			No reply received.
77	De-reservation/CAG-39/Service/2008/RU-I	1 post of Supervisor – O/o The Principal Director of Audit Economic and Service Ministry, New Delhi	As documents requested vide letter dt. 25/04/2008. Not agreed vide letter dt 07/10/2008. Status not available.
78	De-reservation/CAG-40/Service/2008/RU-I	1 post of Supervisor The Principal Director of Audit Economic and Service, New Delhi	Not agreed vide NCST letter dated 25/04/2008. Status report not received.
79	De-reservation/CAG-43/Service/2008/RU-I	11 posts of Accounts Officer group 'B' O/o The Accountant (A&E) Kerala	Not agreed vide letter dated 22/12/2008 and 02/01/2009. Status not available.
80	De-reservation/CAG-08/ST/Service/2008/RU-I	1 post of Sr. Audit Officer Gr. (B) - O/o The Principal Accountant General (Audit), Mumbai	Not agreed vide letter dated 11/01/2008. 19/5/2008. Status enquired vide letter dtd 03/12/2009 and 19/01/2010. No reply received.
81	De-reservation/CAG-22/ST/Service/2008/RU-I	1 post of Accountant The Accountant General (A&E), Patna	As documents requested vide letter dt.10/01/2008. Not agreed vide letter dtd 19/05/2008. Status enquired vide letter dtd 03/12/2009 & 16/01/2010. No reply received.
82	De-reservation/CAG-24/ST/Service/2008/RU-I	2 posts of Audit Officer (Comm.) – The Commercial Audit wing of the IA&AD	As documents requested vide letter dt.11/01/2008. Not agreed vide letter dtd 19/05/2008. Status enquired vide letter dtd 03/12/2009 & 19/01/2010. No reply received.
83	De-reservation/CAG-27/ST/Service/2008/RU-I	2 posts of Audit Officer- O/o The Principal Accountant General (Audit) Thiruvananthapuram	As documents requested vide letter dt.10/01/2008. Not agreed vide letter dtd 19/05/2008. Status enquired vide letter dtd 13/12/2009 & 19/01/2010. No reply received.
84	De-reservation/NDMC-36/2008/Service/RU-I	3 posts of Section Officer group 'B' – N.D.M.C, New Delhi	Not agreed vide letter dated 16/5/2008. Status report asked vide letter dated 04/12/2009. No reply received.
85	De-reservation/CAG-38/Service/2008/RU-I	1 post of Asstt. Audit Office (Civil) – O/o The Principal Director of Audit Economic and Service, New Delhi	Not agreed vide letter dated 25/04/2008. Status report not available.
86	De-reservation/CAG - 37/Service/2008/RU-I	1 post of Section Officer O/o The Principal Director of Audit Economic and Service, New Delhi	Not agreed vide letter dated 25/04/2008. Status report not available.
87	De-res/CAG/ VIP/ 00080/2009/ RU-I	1 post of Divisional Accounts Officer,Gr-II O/o The Accountant General (A&E), Chandigarh	The proposal did not concern NCST hence returned in original to CAG vide letter dated 06/10/2009.
88	De-res/CAG/ VIP/ 00062/2009/RU-I	1 post of Supervisor- O/o The Principal Director of Accountant General (A & E)- I, Mumbai	Information required vide letter dated 20/01/2009. On examination rejected vide letter dated 29/01/2009. Status not available.

89	De-res/CAG/ VIP/ 00039/2009/ RU-I	2 posts of Audit Officer O/o The Pr Accountant General (Audit) -I, Mumbai	As documents required vide letter dated 21/01/2009 and not agreed vide letter dtd 19/05/2008. Status enquired vide letter dated 29/01/2009. Status not available.
90	De-res/CAG/ VIP/ 00040/2009/RU-I	1 post of Divisional Accounts Officer, Grade I - The Pr Accountant General (A& E), Chandigarh, Punjab.	As documents required vide letter dt.21/01/2009. Not agreed vide letter dt 29/01/2009. Status not available.
91	De-res/CAG/ VIP/ 00041/2009/RU-I	1 post of Sr. Divisional Accounts Officer O/oThe Accountant General (A&E), Chandigarh	As documents required vide letter dt.21/01/2009. Not agreed vide letter dtd 29/01/2009. Status not available.
92	De-res/CAG/VIP/ Ser/952/2008/RU-I	2 Posts of Sr, Audit Officer- O/o The Principal Director of Audit, North western Railway, Jaipur	As documents requested vide letter dt.24/12/2008. Not agreed due to non receipt of required As documents. Status not available.
93	De-res/CAG/ VIP / 978/2008/RU-I	1 post of Sr. Audit Officer O/oThe Pr,A.G.(Audit) North Western Railway, Jaipur	Requisitioned Seniority list / RR of the Post of Senior Audit Officer vide letter dated 08/12/2008 and not agreed vide letter dated 18/12/2008. Status not available.
94	De-res/CAG/ VIP/ 977/ 2008/RU-I	1 post of Divisional Accounts Officer, Grade I O/o The AG (A&E), CAG, Bhubaneshwar	As documents requested vide letter dt.11/12/2008 and not agreed vide letter dt 17/12/2008. Status not available.
95	De-res/CAG/ VIP/ 976/ 2008/RU-I	5 posts of Audit Officer O/o The Pr., AG (Audit), Thiruvananthapuram	As documents requested vide letter dt.11/12/2008 and not agreed vide letter dt 16/12/2008. Status not available.
96	De-res/CAG/VIP/ 975/ 2008/RU-I	1 post of Accounts Officer- O/oThe AG (A& E), Guhawati	As documents requested vide letter dt.11/12/2008 and not agreed vide letter dt 16/12/2008. Status not available.
97	De-res/CAG/VIP/ 973/ 2008/RU-I	1 post of Audit Officer O/o The AG A&E I , Gwailor	As documents requested vide letter dt.11/12/2008 and proposal not agreed vide NCST letter dt.16/12/2008. Status is not available.
98	De-res/CAG/ VIP/ 972/ 2008/RU-I	2 posts of Sr Audit Officer O/o The Pr. Accountant General.(CA) , CAG, Ahmedabad	As documents requested vide letter dt.11/12/2008 and not agreed vide letter dt 16/12/2008. Status not available.
99	De-res/CAG/ VIP/ 974/ 2008/RU-I	1 post of Accounts Officer- O/oThe AG (A& E)-I , Mumbai	As documents requested vide letter dt.11/12/2008 and not agreed vide letter dt 16/12/2008. Status not available.
100	De-res/CAG/ VIP/ 971/ 2008/RU-I	2 posts of Audit Officer O/o The Pr , AG (CA), Chennai	As documents requested vide letter dt.11/12/2008 and not agreed vide letter dt 16/12/2008. Status not available.
101	De-reservation/ NDMC/ Service/ 2008/486/RU-I	8 posts of Head Asstt. Group 'C' – NDMC, New Delhi	Not agreed vide letter dated 7/8/2008. Status report asked vide letter dated 04/12/2009. No reply received.

102	NS/De-reservation/ CAG/Service/486/ 2008/ RU-I	5 posts of Divisional Accounts Officer Gr II O/o The General (A&E), Patna.	Not agreed vide letter dated 08/05/2009 and 23/06/2009 not agreed. Status not available.
103	De-reservation/ CVC/ Service/N.D /557/ 2008/RU-I	1 post of Divisional Accounts Officer O/o The Accountant General (A&E), Patna	Information requested vide letter dated 06/08/2008. Vide letter dated 07/10/2008, advised to fill-up the post by extending the zone or to fill up through D/R on all India / Regional Basis. Status not available.
104	De-res/CAG/VIP/ 00077/2009/RU-I	1 post of Peon – DGACR, New Delhi	As documents requested vide letter dt.21/01/2009 and not agreed vide letter dt 29/01/2009. Status not available.
105	Dereservation/CAG/ Service/Other/343/R U-I	1 post of Astt. Audit Officer O/o The Director General of Audit, Defence Service, New Delhi.	Not agreed vide letter dated 29/01/2008. Status not available.
106	RN/De-res/CAG/ Service/Other/2008/4 60/RU-1	3 posts of non-Functional Grade of JAG (NFSG) O/o the IA & AS	As documents requested vide letter dt. 11/08/2008. Not agreed due to non receipt of supporting As documents. Status not available.
107	De-reservation/ NCT/ Service/ LJ&LA /556/2008/ RU-I	1 post of Delhi Higher Judicial Service Deptt. Of law & Justice Legislative Affairs Govt. of NCT of Delhi	Not agreed vide letter dated 30/09/2009. Status asked vide letter dated 04/12/2009. No reply received.
108	De-res/CAG/ Service/ 685/ 2008/RU-I	1 post of Audit Officer O/o The Pr. Accountant General (CA), Allahabad	Advised to fill-up the post within a period of one year. Not agreed vide letter dated 08/10/2008. Status not available.
109	De-reservation- 1/Ser/ Cabinate Sectt./2009/RU-II	4 posts of Sr. Field Officers - Tech. Cabinete Sectt. New Delhi.	Not agreed vide letter dated 06/03/2009. The Cabinet Sect. informed vide letter dated 22/05/2009 that as advised by the Commission proposed posts had not been de- reserved so far and action was being taken to fill up these posts by D/R.
110	De-reservation-2/ Power/ Service/ 2008/ RU-II	2 posts of Assistant Director/Asst. Executive Central Electricity Authority, New Delhi	Not agreed vide letter dated 08/12/2009 as advised by the Commission. M/o Power informed that proposed posts had not been de- reserved and efforts were made to filling-up these posts by D/R through UPSC (ESE-2009).
111	Dereservation/1/ Cabinet Sectt./Service/ 2008/RU-II	5 posts of Field officer Aviation Research Centre, Cabinet Secretariat, New Delhi.	Not agreed vide letter dated 03/12/2009. Status not available.
112	De-reservation/ Service/Cabinet Sectt./ 805/ 2008/RU-II	01 post of S.O. RC (Secretarial) Service of Cabinet Secretariat, New Delhi.	Agreed vide letter dated 29/10/2008 subject to condition that when ST candidate in the feeder grade will become eligible for promotion, the post should be filled by ST candidate.

			Status not available.
113	De-reservation-02/ Agriculture/ Service/08/RU-III	1 post of Data Entry Operator Grade 'D' – Dte. of Economics & Statistics Ministry of Agriculture.	Information required on examination rejected vide letter dated 18/02/2008. Status report asked vide letter dated 26/1/2009. No reply received.
114	De-reservation-1/ Atomic Energy/ 2008/RU-III	01 post of UDC – Department of Atomic Energy.	Vide letter dated 25/4/08 information was asked and not agreed. Status not available.
115	13/5/Labour/08RU-III	01 post of Assistant Director of Training – Dte. General of Employment & Training M/o Labour	Not agreed vide letter dated 02/12/2008. Status not available.
116	De-reservation-06/MHA/ Service/ 2008/ RU-III	1 post of Supervisor - Reception organization of Secretarial Security organization M/o Home Affairs.	Information required vide letter dated 26 /11/2009.No information received. Status not available.
117	De-reservation-01/ Envi.&Forest/ Service/ 2008/RU-III	1 post of Research Asstt. Grade II – Institutes of Forest General & Tree Breeding, Coimbatore under Indian Council for Forestry Research & Education, Dehradun.	Information required vide letter dated 7/2/2008 and advised to route the proposal through Nodal Ministry. Status not available.
118	De-reservation-04/ Agriculture/ Service/08/RU-III	1 post of Plant Protection officer (Chemistry) – Dte. of Plant Protection, Deptt. of Agriculture & Co-operation, M/o Agriculture.	Information required vide letter dated 26/11/2009 No reply received. Status not available.
119	De-reservation-03/ HRD/Service /2008/ RU-III	1 post of Upper Division Clerk – National Bal Bhawan, Deptt. of School Education & Literacy, M/o HRD.	Ex-post facto approval was requested by HRD that post has been filled presently by non-ST and the reserved vacancy will be filled treating the post as backlog in next recruitment year. Not agreed vide letter dated 18.2.2008.
120	De-reservation-7/ MHA/Service/767/20 08/RU-III	3 posts of Sub Inspector (Education) – ITB Police Force, New Delhi	Information requested vide letter dated 12/11/2008. It was later informed that Education cadre had been abolished and therefore no post of Education Cadre could be filled.
121	De-reservation-8/ A&N/ Service/ 769/2008/ RU-III	(i) 01 post of Office Supdt., (ii) 03 posts of Head Clerk, (iii) 01 post of Forest Ranger, (iv) 03 posts of Dy. Ranger - A&N Administration, dept. of Environment and Forest. Port Blair.	The proposal was not routed through the nodal Ministry and supported details were not received. The proposal was rejected vide letter dated 12/11/2008. Status not available.
122	13/12//HRD-1/2008/ RU-III	2 posts of APC in the pay scale of Rs. 6500-10500 - (Pre-revised) -	Advised to route the proposal through nodal Ministry vide letter 3/11/2008.

		NCERT, New Delhi.	Status not available.
123	De-reservation-11/ Service/ Agri/ VIP/08/RU-III	3 posts of UDC (Sub-Officer) DMI, M/o Agriculture	Information required vide letter dated 20/2/2009. No reply received. Status not available.
124	13/14/MHA/2008/ RU-III	1 post of LDC – Translation Bureau, M/o M/o Home Affairs.	Ex-post facto approval was rejected. Not agreed vide letter dated 06/01/2009 and advised to grant promotion on adhoc basis till regular ST candidate joins. MHA had informed that action to fill reserved post by D/R has been initiated.
125	13/15/Dev/2008/RU-III	1 pos of Inspector(PA) – DG, SSB, M/o Home Affairs.	Agreed vide letter dated 05.05.2009 with a advice to make amendment in R/Rs, to fill up the reserved post. Status not available.
126	De-res./Service/ AE/ 00802/RU-III	1 Post of Purchase Officer - the scale of pay of Rs. 10000-15200/- D/o Atomic Energy.	Agreed vide letter dated 05/01/2010.
127	13/13/MHA-3/RU-III	1 post of Assistant Director (Non-Police) DG SSB, M/o Home Affairs.	Adequate number of ST candidate was available within extended zone of consideration in revised seniority list of ATS. The proposal was rejected vide letter dated 3/12/2008. Status not available.
128	18/DR/Defence-1/ 2008/RU-IV	(i) 1 post of Wireman/HS (ii) 1 post of Carpenter/HS Explosive Factory Khadki, Pune, M/o Defence.	Information required vide letter dated 23-01-2008. A meeting was held in the Commission on 13.10.2008. Joint GM (HEF), Pune informed that the MoD had cleared the proposal on 26.08.2008. MoD confirmed vide letter dated 15.12.200-08 that posts were dereserved.
129	18/DR/Defence-2/ 2008/RU-IV	(i) 03 posts of Supervisor (NT/Stores) (ii) 01 post of CMD Gr-I (iii) 01 post of Fireman Gr.I Heavy Vechile Factory, Avadi, M/o Defence.	Meeting held in the Commission on 03.11.2008 with Jt. GM (HVF) and informed that MoD had allowed the De-reservation. MOD also confirmed the same vide their letter dated 15.12.2008.
130	18/Dereservation/Def ence-3/2008-RU-IV	(i) 01 post of Assistant (ii) 03 posts of UDC (iii) 01 post of Personal Assistant Gr.II (iv) 01 post of Supervisor NT (OTS) Heavy Vehicle Factory, Avadi, M/o Defence.	Information required vide letter dated 27.08.2008 Information not received. Status report not available.
131	No.18 Dereservation / Defence /4/2008- RU-IV	1 post of PA 'C' DRDO, D (R&D) M/o Defence.	Rejected letter vide dtd 25-2-09. Status report not available.

132	No.18/De-reservation/ Def-5/2008/RU-IV	1 post of Asst. Accounts Officer DRDO, M/o Defence.	Rejected vide letter dtd 25-2-2009. Status report asked vide letter dated 10-06-2010 not available.
133	No.18/Dereservation/ Defence-6/ 2008/ RU-IV	1 post of Technician 'A' (LDC) DLRL, Hyderabad, M/o Defence.	Information required vide letter dated 25.02.2009. No reply received. Status report not available.
134	No.18/Dereservation/ Def-7/2008/RU-IV	1 post of PA 'B' M/o Defence.	Rejected vide letter dtd 25-2-2009. Status report asked vide letter dated 10-06-2010 not available..
135	No.18/Dereservation/ Defence-8/2008/RU-IV	(i) 01 post of Assistant (ii) 03 post of UDC (iii) 01 post of PA Gr-II (iv) 01 post of Supervisor NT(OTS) Heavy Vehicle Factory, Avadi, M/o Defence.	Information required vide letter dtd 28.8.2008. Status reports not available.
136	No.18/Dereservation/ Def-10/2008/RU-IV	(i) 2 posts of Mechanist HS (ii) 1 post of Examiner (optical)/ HS (iii) 2 posts of Fitter (Ins)HS (iv) 01 post of Electro Plater HS (v) 01 post of Painter HS OEF Deharadun, M/o Defence.	Rejected vide letter dtd 04.05.2009. Status report not available.
137	No.18/Dereservation/ Defence-11/2008/ RU-IV	2 posts of Store Assistant 'C' DRDO , M/O Defence.	Rejected vide letter dated 25.02.2009. Status reports not available.
138	No.18/ Dereservation / Defence-12/2008/ RU-IV	1 post of Senior System Security Officer gr-I DRDO M/o Defence.	Rejected vide letter dtd 25.2.2009. Status report not available.
139	No.18/Dereservation/ Defence-13/2008/ RU-IV	1 post of Store Supdt. DRDO, M/o Defence.	Rejected vide letter dtd 25-2-2009 . Status report not available.
140	No.18/Dereservation/ Def-14/2008/RU-IV	1 post of Civilian Driver 'C' DRDO, M/o Defence.	Rejected vide letter dtd 25-2-2009. Action taken report not available. Status report not available.
141	No.18/ Dereservation / Def-15/2008/RU-IV	1 post of PA 'C', LRDE, M/o Defence.	Information required vide letter dated 28.08.2008. Status report not available.
142	No.18/ Dereservation / Def-16/2008/RU-IV	03 posts of JTS , IDAS, M/o Defence.	Advised MoD vide letter dated 06.04.2009. to review the RR for the posts of AAO, AO and SAO so as to make a provision for direct recruitment . Status report not available.

143	No.18/Dereservation/ Def-17/2008/RU-IV	3 posts of Foreman Heavy Vehicle Factory, Avadi, M/o Defence.	Information required vide letter dated 29.08.2008. No reply received. Rejected vide letter dtd 4-5-2009. Status report not available.
144	No.18/Derereseva- tion /Def-18/2008/ RU-IV	i) 1 posts of S&S Blaster HS, ii) 1 post of HTO HS iii) 2 posts of Rigger, HS iv) 1 post of OMHE,HS, v) 1 post of AEFV Mechanic Heavy Vehicle Factory, Avadi, M/o Defence.	Rejected vide letter dated 17.11.2008. Status report not available.
145	No.18/Dereservation/ Def-19/2008-RU-IV	(i) 06 posts Fitter AFV, HS (ii) 01 post of Fitter Instrument, HS (iii) 3 posts of Fitter Electronics HS (iv) 27 posts of Fitter HS (v) 4 posts of Examiner HS, Heavy Vehicle Factory, Avadi, M/o Defence.	Not agreed vide letter dated 04.11.2008. Status report not available.
146	No.18/Dereservation/ Def-20/2008/RU-IV	3 posts of PS 'A' DRDO, M/o Defence.	Rejected vide letter dtd 25-2-2009. Status report not available.
147	No.18/Dereservation/ Def-21/2008/RU-IV	1 post of Civilian Driver 'C' CCE(R&D), Secunderabad, M/o Defence.	Rejected vide letter 6-4-2009. Status report not available.
148	No.18/Dereservation/ Commerce-22/2008	2 Posts of Asst. Extension Officer Coffee Board, Bangalore, Ministry of Commerce & Industry.	The proposal was not routed through the nodal Ministry. Status report not available.
149	18/De-reservation/ Commu.&IT- 23/2008-RU-IV	03 post of PA 06 posts of SA Department of Posts , M/o Communication & IT.	Information required vide letter dated 17.09.2008. No reply was received. Status reports not available.
150	18/De-reservation/ Defence-24/2008- RU-IV	(i) 02 posts of Ch.I/T (Mech) (ii) 01 post of Office Superintendent (iii) 01 post of Supervisor/NT (Stores) (iv) 01 post of Supervisor (NT) (OTS) (v) 01 of UDC Machine Tool Prototype Factory, Ambarnath, M/o Defence.	Rejected vide letter dated 18.06.2009. Status report not available.

151	No.18/Dereservation/ Defence-25/2008- RU-IV	(i) 01 post of ST in the grade of office Supdt., (ii) 04 posts of Assistant Dep'tt of Defence Production, M/o Defence.	Rejected vide letter dated 04.05.2009 and 04.06.2009. Status report not available.
152	SS/1/2009/MDEF2/D ERES/RU-IV	4 posts of PS M/o Defence.	Rejected vide letter dated 16.03.2009 and 28.03.2009. Status report not available.
153	CAO/2/2009/MDEF2/ DERES/RU-IV	9 posts of ACSO (Now SO) M/o Defence.	Agreed vide letter dated 21.07.2009 with a condition to consider eligible ST candidate against shortfall. Status report not available.
154	US/3/2009/MDEF2/D ERES/RU-IV	(i) 1 post of Chargeman Gr-II(NT/OTS) (ii) 1 post of Asstt (iii) 1 post Chargeman Gr-II (NT/Stores) (iv) 1 post of Supervisor (NT/OTS) Ordnance Cable Factory, M/o Defence.	Rejected vide letter dated 18.03.2009 and 03.08.2009. Status report not available.

ANNEXURE 3.I
(Ref: Para 3.11.3)

Draft suggestions of the National Conference on ‘Relief and Rehabilitation of Displaced Persons’ organised by the National Human Rights Commission in March, 2008, New Delhi

Recommendations on Development based Displacement

1	The basic principles in the National Relief and Rehabilitation Policy must be incorporated in the Rehabilitation and Resettlement Bill, 2007.
2	The resettlement provisions in the Relief and Resettlement Bill include "land-for-land, to the extent Government land would be available in the resettlement areas [S.49(2)(4)]; preference for employment in the project to at least one person from each nuclear family ... subject to the availability of vacancies and suitability of the affected person..[S.41(i)]. The above conditionalities dilute the protective provisions in such important areas as land and employment to displaced persons.
3	The Bill should be in line with other existing legislations such as that which prohibits acquisition of land for example in tribal areas.
4	There should be a mechanism to ensure equitable sharing of project benefits with the displaced people.
5	Time limit to be defined for acquisition of the land. Besides, where land has been acquired and has not been used for the intended purpose then instead of auctioning the land it should be reverted back to the original owner
6	The Rehabilitation and Resettlement Bill treats land as a mere tradable commodity whereas in practice people's attachment to land goes beyond its commercial value. There should be consideration about the emotional and psychological impact of displacement
7	There shall be no arbitrary displacement of individuals from their home or place of habitual residence by state authorities. Particularly, "compelling" and "overriding public interest" should justify any large-scale development project. In all cases of large-scale development projects, authorities shall seek the public consultations with people likely to be displaced
8	The concept of "eminent domain" should be in line with constitutional obligations and the proposed amendments to the land acquisition act and the relief and resettlement bill should provide for more scope for participation of people
9	Under the Rehabilitation and Resettlement Bill, 2007, a multiplicity of authorities are sought to be created. In several cases, modalities relating to their operation are "as may be prescribed" by the Government. It is imperative to define their roles so that it is complementary and there is synergy in their functions

10	This bill should be equally applicable to all acquisitions under other acts for acquiring properties and land. Central act will prevail on other acts
11	The guiding principle in cases of development related displacement should be minimal displacement
12	As in the case of forest land, where agricultural land is sought to be acquired, it should be mandatory that area of wasteland equal to double the area acquired will have to be acquired and reclaimed for public purpose or at least funds for the same should be deposited in a special fund to be created for the purpose
13	People who are displaced due to development projects include not only property owners but also others such as tenants, farm laborers or others whose livelihood may be dependent on the land even though they may not have legal title to it. Therefore their rights must be ensured
14	It shall be mandatory for all local bodies to formulate land use plans and building rules. No non-agricultural activity should be allowed in areas marked for agriculture
15	It has been the experience where infrastructure projects like highways, roads are planned, the land values of the adjoining areas go up. Laws should be formulated to charge additional duty/tax for such enhanced value, at least at the time of the next transfer
16	Social impact assessment and understanding local aspirations are best captured through continuous dialogue with local people who are affected and civil society groups
17	Norms of social Impact assessment should be laid down and at least three alternatives should be examined in the same area



साऊथ ईस्टर्न कोलफील्ड्स लिमिटेड

SOUTH EASTERN COALFIELDS LIMITED

(Govt. of India Undertaking)

Fax No. 07762-223152

पत्ता: कार्गो रोड, लेक पोस्ट, 60 नियासपुर - 495001 (M.P.)
Road: C/O Sanyal Road P.O. No. 60 Bhanpur 495001

dzekad & l-bZ-lh-y-@egk-iz-@jk:@ks-ifj-@1910

fnukWad% 08-01-2010

QUESTIONNAIRE

Name of the Project:	Chhal Open Cast Mine
Cost of the Project	Rs. 50.38 Cr.
Targeted time-frame for completion	8 Years
Actual date of completion	-
Total area acquired	360.3 Hectors
Number of families to be displaced	423 Families
Number of ST families to be displaced	254 Families out of 423 Families
Number of families yet to be displaced	315 Families out of 423 Families
No of villages/talukas/hamlets affected	One Village - Lat
Targeted time-frame for implementation of rehabilitation programme	2007 to 2010
Actual date of implementation of rehabilitation programme	2008
Rehabilitation and Resettlement Plan	
Whether all the technological/financial/displacement alternatives were explored at the project stage to ensure least displacement?	Clause 8.6 NTP Yes
Whether the initial survey in respect of socio-culture infrastructure and resource mapping was got conducted by an independent agency (other than government) If yes, Details thereof	Clause 4 (e) OR&RP 2006 CMPDI - Govt agency
Whether an exhaustive social impact assessment was conducted before initiating the project?	Clause 8.6 NTP Yes - By CMPDI
Whether it was ensured that the acquisition of land for the purpose of resettlement of the affected families didn't lead to another group of physically displaced families	Clause 6.12 NRRP 2007 Yes
Whether ST PAFs were resettled in the same State to protect their ST status?	Yes
Whether wide ranging consultations, as well as and mandatory consultations were held with all stake holders including local bodies, PAFs, TAC (wherever necessary)?	Clause 8.6 NTP Clause 6.14.1, 6.14.3 NRRP 2007 Yes
Whether public hearings were carried out to understand the problems and difficulties of the affected families? If yes, details thereof	Yes Enclosed Annexure I
Whether draft of the details of the conducted survey (including the affected families) was given wide publicity to solicit feed back?	Clause 6.6, 6.14.3 NRRP 2007 Yes - as per CG R&R Policy
Whether a comprehensive awareness plan (regarding Survey and identification of displaced families) was formulated and executed in the affected areas?	Clause 4 (f) OR&RP 2006 Yes - Consultation with State Govt officials (CG) as per

		MP/CG R&R Policy
	Benefits for the affected families	
1	Details of the benefits to the multiple displaced persons in addition to the normal compensation.	Clause 7 (iv) OR&RP 2006 N A
2	Was the compensation computed merely on the basis of replacement value of the individual land rights lost, or on the concept of nett present value(NPV) including loss of opportunity, community rights and livelihoods? If yes, details/norms thereof	Clause 8.2, 8.3, 8.6 NTP As per MP/CG Govt rules (30% solecism + 12% interest on the actual cost assessed by State Govt of land.) In addition to compensation and solecism permanent employment is given to eligible PAP's in the command areas of SECL which improves the living condition (livelihood)
3	What was the average time gap between the notification of the acquisition of land and payment of compensation and also maximum and minimum gap with details.	Notification of section 4(1) under L.A. Act 1894 on dated 25-09-2004 land accusation award 02-06-2005 & Compensation paid in the year 2006
4	Whether compensation award was determined as per the intended land use category ?	Clause 6.22(c) NRRP 2007 Yes, As per rules
5	Whether an ex-gratia payment was paid in case linear acquisition for projects relating to railway lines, highway, transmission lines, laying of pipelines and other such projects in addition to the compensation or any other benefits?	Clause-7.19 NRRP 2007 N A
6 (a)	Whether provision for land for land to the PAFS was applied? If yes, norms thereof	Clause 8.3 NTP Clause-7.4.2 NRRP 2007 N A Compensation was paid for Land as per CG Govt. Norms
6 (b)	Whether STs displaced from Schedules Areas were allotted alternative land in Scheduled Areas? If yes norms adopted thereof	Clause 8.6 NTP Yes Only allotted plot to 43. ST's families (out of 94 families) at rehabilitation site Gangadharpur. Those who wanted to shift elsewhere were given Rs-50,000/- for plot purchasing (plot allotted 300Sq.m, 450Sq.m, 600Sq.m)
7	Whether affected families owning agricultural land were provided agricultural or cultivable land? If yes, norms thereof.	Clause 7.4.1 NRRP 2007 Total Compensation was paid against acquisition of there land and other property on there
8	Whether one time financial assistance given for land development in case of allotment of wasteland or degraded land in lieu of acquired land, shifting of family and belongings?	Clause 7.9, 7.11 NRRP 2007 N A
9	Whether the unused land, if any, was handed back to the	Clause 8.6 NTP 2007

		are totally acclimatization of the resettled people and their cordial-social relationship with the host
21(b)	Whether the displaced persons included PTGs? If yes details of the specific assistance/plan drawn for their rehabilitation	Clause 12 OR&RP 2006. N.A.
22	Whether pension (for life) to the vulnerable affected persons such as disabled persons, widow etc. in lieu of livelihood who are not otherwise covered as part of a family, was provided? If yes, details thereof	Clause 7 17 NRRP 2007 N.A.
23	Whether any benefit to landless and homestead less encroachers was given? If yes details/norms thereof	Clause 9 OR&RP 2006 N.A.
24	Whether PAFs were given first right to get employment and training including for skill up gradation to improve employability before initiation of the project?	Clause 8.6 NTP, Clause 8 OR&RP 2006 Yes
25	How many PAFs were provided regular employment?	regular employment 81 Nos Proposed 245
26	Whether any training for self employment was given?	Clause.8 (b) OR&RP 2006 Yes on need basis
27	Whether any cash assistance in lieu of employment/self employment was given? If yes adopted norms thereof	Clause 8 OR&RP 2006 No persons has opted Rs 15 lakhs
28	In respect of industrial enterprises in the Scheduled areas, whether a partnership of the displaced or sharing a certain percentage of the profit being utilized for local area development were considered?	Clause 8.6 NTP 01. Under CSR and CD various works is being done. 02 PAFs have constituted a registered committee and taking up the contractual work in the company in the project
29	Whether cash compensation also included ventures to yield regular income?	Clause 8.6 NTP No.
D	Amenities and Infrastructural facilities at Resettlement Area.	
1	Was it ensured that the resettlement areas formed part of a Gram Panchayat or Municipality?	Clause 7.22.5 NRRP 2007 Yes - under Gram Panchayat
2	Whether community assets and community values and character were considered for protection/replacement? If yes, details/adopted norms thereof	Clause 8.3 NTP Yes basic facilities provided at Rehabilitation sites
3	Details of the amenities and infrastructural facilities like roads, sanitation, safe drinking water, plantation, FPS, Post Office, electricity, health center, community centre, school, places of worship, burial/cremation ground etc. provided to the resettlement areas vis-à-vis specified norms	Clause 7.22.1 & 7.22.2 NRRP 2007 Enclosed Ann 2
4	In case relocation took place in an existing settlement area, whether the same infrastructure was extended to the host community?	Clause 7.22.3 NRRP 2007 N.A.

	original owner or heirs in a condition fit for agriculture or other use?	N.A.
10	In case of compulsory acquisition of land for the requiring body, whether the land unutilized for 5 years from the date of taking over the possession, the appropriate Government without any compensation to the requiring body?	Clause 6 24 2 NRRP 2007 N.A.
11	In case of transfer of acquired land to an individual or organization, whether any share of any net unearned income accruing to the transferor, to the original owners Of the land or their heirs, was given? if yes quantum thereof.	Clause 6 25 NRRP 2007 N.A.
12	Whether any effected family below poverty line without home stead land in terms of provision of house or financial assistance ?if yes norms thereof .	Clause 7 2 NRRP 2007 N.A.
13	Details of special consideration, if any for effected families below poverty line with out homestead land in terms of provision of a house or financial assistance? If yes norms thereof	Clause 7 3 NRRP 2007 N.A.
14	Was preference given to affected families for fishing rights in the reservoirs, in case of irrigation/hydel projects?	Clause 7 5 (a) NRRP 2007 N.A.
15	Whether in respect of any affected families, lump-sum amount in lieu of one or more benefits was given?	Clause 7 20 NRRP 2007 Yes given Rs. 50000/- per family those who want to settle elsewhere i.e. 329 families
16	Whether any option for long term sharing of profit including issue of convertible preference share was given to the displaced families? If yes details thereof	Clause 8 (a) OR&RP 2006. Clause 6 23 NRRP 2007 N.A.
17(a)	Whether the rehabilitation plan was given affect from the date of actual vacation of land	Clause 7 (v) OR&RP 2006 N.A.
17(b)	Whether full payment of compensation as well as adequate progress in resettlement was ensured in advance of the actual displacement of the affected families	Clause 6 22(a) NRRP 2007 Yes
17(c)	Whether transit and temporary accominodation, pending rehabilitation and resettlement scheme in case of land acquired in cases of urgency, provided to the affected family?	Clause 7 18 NRRP 2007 N.A.
18	Whether any other assistance like maintenance allowance, assistance for temporary shed, transportation allowance, to the resettlement area was provided? To the affected family?	Clause 10 OR&RP 2006 - Yes transportation allowances given Rs.2500/- per family
19	Whether the rehabilitation grant was indexed with reference to the WPI or inflation?	Clause 13 OR&RP 2006 NA
20	Whether the displaced family having cattle, were given financial assistance for construction of cattle shed?	Clause 7 10 NRRP 2006 Yes compensation paid as per C.G Govt norms included with their house compensation
21(a)	Were measures taken for acclimatization of the resettled people and their cordial-social relationship with the host and improvement of their standard of living?	Clause 7 (ix) OR&RP 2006 Yes - Rehabilitation side is 8 km away from the Lat village so they

E	Grievance Redresser Mechanism	
	Details of the grievance redresser mechanism implemented may be furnished	Clause 8 NRRP 2007 As per CGRRP a committee Constituted at a district level to redress grievance Grievances are received at Area level and through SDO (Revenue).
F	Monitoring mechanism	
	Whether a ground level monitoring mechanism, involving reps of the PAFs and post implementation social audit was implemented?	Clause 8.6 NIP 1. All the information on displacement Rehabilitation and resettlement packages shared with the concerned Gram Sabha and Gram Panchayat by the project authority 2. There are two types of committee constituted under the CG R&RP 2005 one at district level and other at state level to monitoring the Rehabilitation and Resettlement of displaced families. 3. Meetings are conducted with the Village panchayat and villagers As and when required

Note : A copy of Rehabilitation and Resettlement Policy adopted / envisaged by the State Govt. has been furnished.

STAFF OFFICER (P&P)
SECL RAIGARH AREA

Questionnaire on Resettlement and Rehabilitation of displaced Tribals

QUESTIONNAIRE		
A	Name of Project	Dipka Expn. Project
	Cost of Project	Rs. 1843.48 Cr
	Targeted time-frame for completion	25 years Project life
	Actual date of completion	NA
	Total area acquired	1701.363 Hectare
	Number of families to be displaced	1690
	Number of ST families to be displaced	NA
	Number of families yet to be displaced	239
	No of villages/taluks/hamlets affected	08
	Targeted time frame for implementation of rehabilitation programme	2008-2012
B	Actual date of implementation of rehabilitation programme	2008
	Rehabilitation and Resettlement Plan	
	Whether all technologies/financial/displacement alternatives were explored at the project stage to ensure least displacement?	Yes
	Whether the initial survey in respect of socio-culture infrastructure and resource mapping was conducted by an independent agency (other than government). If yes, details thereof	CMPDIL-Govt Agency
	Whether an exhaustive social impact assessment was conducted before initiating the project?	Yes by CMPDIL
	Whether it was ensured that the acquisition of land for the purpose of resettlement of the affected families did not lead to another group of physically displaced families?	Yes
	Whether ST PAFs were resettled in the same state to protect their ST status?	Yes
	Whether wide ranging consultations, as well as mandatory consultations were held with all stake holders including local bodies, PAFs, TAC (wherever necessary)?	Yes
	Whether public hearing were carried out to understand the problems and difficulties of the affected families? If yes, details thereof	Yes On 5.9.2008 for 25 MI
	Whether draft of the details of the of the conducted survey (including the affected families) was given wide publicity to solicit feedback?	Yes, as per CG R&R Policy
C	Whether a comprehensive awareness plan (regarding survey and identification of displaced families) was formulated and executed in the affected areas?	Yes, in consultation with State Govt officials as per MP & CG R&R Policy
	Benefits for the affected families	
	Details of the benefits to the multiple displaced persons in addition to the normal compensation.	NA
D	Was the compensation computed merely on the basis of replacement value of the individual land rights lost, or on the concept of nett present value (NPV) including loss of opportunity, community rights and livelihoods? If yes, details/norms thereof.	NTP as per MP/C G Govt rules (30% solecism + 12% interest on the actual cost assessed by state govt land). In addition to compensation and solecium permanent employment is given to eligible PAPs in the

		command areas of SECL which improves the living condition (livelihood)
3	What was the average time gap between the notification of the acquisition of land and payment of compensation and also maximum and minimum gap with details.	
4	Whether compensation award was determined as per the intended land use category?	Yes, as per rules
5	Whether an ex-gratia payment was paid in case linear acquisition for projects relating to railway lines, highway transmission lines, laying of pipelines and other such projects in addition to the compensation or any other benefits?	NA
6(a)	Whether provision for land for land to the PAFs was applied? If yes, thereof	Compensation was paid for land as per C.G Govt. rules
6(b)	Whether STs displaced from Scheduled areas were allotted alternative land in Scheduled Areas? If yes norms adopted thereof	
7	Whether affected families owning agricultural land were provided agricultural or cultivable land? If yes, norms thereof	Total compensation was paid against acquisition of there land and other property on there
8	Whether one time financial assistance given for land development in case of allotment of wasteland or degraded land in lieu of acquired land, shifting of family and belongings?	NA
9	Whether the unused land, if any, was handed back to the original owner or heirs in a condition fit for agriculture or other use?	NA
10	In case of compulsory acquisition of land for the requiring body, whether the land unutilized for 5 years from the date of taking over the possession, the same was reverted to the possession and ownership of the appropriate Government without any compensation to the requiring body?	NA
11	In case of transfer of acquired land to an individual or organization, whether any share of any net unearned income accruing to the transferor, to the original owners of the land or their heirs, was given? If yes quantum thereof	NA
12	Whether any affected family owning house and whose house has been acquired or lost was allotted free of cost house site?	NA
13	Details of special consideration, if any, for affected family below poverty line without homestead land in terms of provision of a house or financial assistance? If yes, norms thereof	NA
14	Was preference given to the affected families for fishing rights in the reservoirs, in case of irrigation/hydel projects?	NA
15	Whether in respect of any affected families, lump-sum amount in lieu of one or more benefits was given?	Yes, Rs 50,000/- given to per family who want to settle elsewhere to 1086 families
16	Whether any option for long term sharing of profit including issue of convertible preference share was given to the displaced families? If yes, details thereof	NA
17(a)	Whether the rehabilitation plan was given affect from the date of actual vacation of land?	NA

17(b)	Whether full payment, of compensation as well as adequate progress in resettlement as ensured in advance of the actual displacement of the affected families?	Yes
17(c)	Whether transit and temporary accommodation, pending rehabilitation and resettlement scheme in case of land acquired in case of urgency, provided to the affected family?	NA
18	Whether any other assistance like maintenance allowance, assistance for temporary shed, transportation allowance, to the resettlement area was provided? If yes, details thereof	Yes, Transportation allowance given Rs. 2500/- per family
19	Whether the rehabilitation grant was indexed with reference to the WPI or inflation?	NA
20	Whether the displaced family having cattle, were given financial assistance for construction of cattle shed?	Yes, compensation paid as per C.G Govt. norms included with their house compensation
21(a)	Were measures taken for acclimatization of the resettled people and their cordial-social relationship with the host and improvement of their standard of living?	Yes
21(b)	Whether the displaced persons included PTGs? If yes details of the specific assistance/plan drawn for their rehabilitation	NA
22	Whether pension (for life) vulnerable affected persons such as disabled persons, widow etc, in lieu of livelihood who are not otherwise covered as part of a family, was provided? If yes details thereof	NA
23	Whether any benefit to the landless and homesteadless encroachers was given? If yes details/norms thereof	NA
24	Whether PAFs were given first right to get employment and training including for skill upgradation to improve employability before initiation of the project?	Yes
25	How many PAFs were provided regular employment?	33 persons from 1.7.06 from the date of formation of Dipka Area
26	Whether any training for self employment was given?	Yes, on need basis
27	Whether any cash assistance in lieu of employment/self employment was given? If yes adopted norms thereof	Clause 8 OR & RP 2006 Yes to 34 persons amounting to 60.3575 lacs (approx)
28	In respect of industrial enterprises in Scheduled Areas, whether a partnership of the displaced or sharing a certain percentage of the profit being utilized for local area development were considered?	1. Under CSR and CD various works is being done: 2. PAFs have constituted a registered committee and, taking up the contractual work in the company in the project
29	Whether cash compensation also included ventures to yield regular income?	NO
0	Amenities and infrastructural facilities at Resettlement Areas	
1	Was it ensured that the resettlement areas formed part of	Yes

	Gram Panchyat or Municipality?	
2	Whether community assets and community values and character were considered for protection/replacement? If yes, details/adopted norms thereof	Yes
3	Details of the amenities and infrastructural facilities, like roads, sanitation, safe drinking water, plantation, FPS, Post office, electricity, health centre, community centre, school, places of worship, burial/cremation ground etc. provided to the resettlement areas vis-à-vis specified norms.	
4	In case relocation took place in an existing settlement area, whether the same infrastructure was extended to the host community?	NA
1	Grievance Redressal Mechanism	As per CGRRP a committee constituted at a district level to redress grievance. Grievances received at area level and through SDO (Revenue)
	Details of the grievance redressal mechanism implemented may be furnishd	As Above
F	Monitoring Mechanism	
	Whether a ground level monitoring mechanism, involving reps of the PAFs and post implementation social audit was implemented?	1. All the information on displacement rehabilitation and resettlement packages shared with the concerned Gram Sabha and Gram panchyat by the project authority 2. There are two types of committee constituted under the CGRRP one at district level and other at state level for monitoring the rehabilitation and resettlement of displaced families 3. Meetings are conducted with the village panchayat and villagers. As and when required

Note : A copy of rehabilitation and resettlement policy adopted / envisaged by the State Govt. may also be furnished.

4TH REPORT_CH. 3_ANNEXURE 3.III

Tour report of Shri Oris Syiem Myriaw, Hon'ble Member from 08/03/2010 to 11/03/2010

Tour report of Shri Oris Syiem Myriaw, Hon'ble Member, National Commission for Scheduled Tribes, New Delhi to review the Relief and Rehabilitation measures for Scheduled Tribe people displaced by 'Chhal Open Cast Project', Raigarh and 'Dipka Expn Project', Korba of SECL, Bilaspur, Chhattisgarh. Shri Vinod Aggarwal, Director, NCST, New Delhi also accompanied the Hon'ble Member during the visit.

08/03/2010 (Monday) & 09/03/2010 (Tuesday)

Visit to Chhal OCP

2. Project site and 'Lat' village was visited, where the project is being going on. During the interaction with the villagers, they expressed their satisfaction with the actions of the officers of the SECL except for the following demands:-

- (i) The employment to the member of 12 families who were displaced by the project as these families were not holding any land in the village 'Lat'.
- (ii) The employment to the member of 9 families whose land was acquired, but employment is not yet provided.
- (iii) Water facility in the rehabilitation site is not there or not sufficient.

Action : Project Authorities.

3. The rehabilitation village i.e. Gangadharpur (Lat) was visited where about 10-15 families are already residing and about 12-15 houses were under construction. There was one dispensary, panchayat bhavan and electrification of the area was there. A primary school was also got inaugurated by the Hon'ble Member.

4. During discussion with the Project authorities (a list of officers present during the discussion is at Annexure -I), they informed that out of total 423 families 255 are Schedules tribes which are Project affected families. Out of these 47 STs and 47 other families have only opted to settle in the rehabilitation village i.e. Gangadharpur (Lat), balance families have taken compensation and opted to settle some where else as per their preference. A presentation was made by the officers of SECL about the functioning of the SECL and especially about the Chhal OCP. Following issues were discussed

- i) A wide ranging consultations, public hearings and comprehensive awareness plan about the survey conducted was done by the project authorities.
- ii) 30 % solecism and 12 % interest is paid by the SECL over and above the actual cost of land. Even if the delay in disbursing the compensation to the PAPs is on part of the State authorities after submission of compensation amount in the State Govt. fund by the SECL, additional interest is born by the SECL to be paid to the PAPs.

iii) On the issue of long term sharing of profit including issue of convertible preference share to the displaced families, Project Authorities informed that this aspect can be considered after listing of CIL during the next financial year.

Action : Project Authority

iv) Payment of compensation is done by SECL before the actual displacement of the affected families.

v) Officers of the Project are approaching the PAPs for redressing their grievances.

vi) On the issue of pension (for life) to the vulnerable affected persons, it was informed by the officers of SECL that there is no such provisions at present. At the same time it was explained that free medical consultation is provided to all residents and in addition free medicines are also provided to members of BPL families. In addition, company is bearing all medical expenses of all accidental and emergency cases.

vii) It was informed by the project authorities that PAFs have constituted a registered committee and taking up the contractual work in the company in the project.

viii) 20 % of the tendered work can be provided to the PAFs at the lowest quoted price.

ix) SECL have arranged 56 LCV on loan and provided to the PAFs, as a source of income generation for them. SECL is hiring these vehicles from these PAFs.

x) Commission suggested that 12 families who were without land in the Lat village, SECL should arrange some employment opportunity either with SECL or with some contractor, some income generation source or self employment for them.

Action : Project Authority

xi) It was informed by the project authorities that the case of providing employment to the member of 9 PAFs whose land was acquired, will be finalized by March, 2010.

xii) Regarding the problem of water in the Gangadharapur, SECL officers explained that there are 6 hand pumps, 2 open well, 2 ponds and dedicated water supply for dispensary and school. SECL have provided water supply in the Panchayat Bhawan also. In addition to this, 2 hand pumps and one pond have been provided by the Gram Panchayat.

5. Meeting ended with thanks to Hon'ble Member.

10/03/2010 (Wednesday) & 11/03/2010 (Thursday)

Visit to Dipka Expn. Project

6. Project site and 'Jhingatpur' village was visited, where the project is being going on and 61 families are yet to be displaced. It was informed that some families of only two villages Jhingatpur and Malgaon were left for displacement. At present 61 families in Jhingatpur and 91 families in Magaon are residing in

these villages. The Sarpanch of both the villages is common. During the interaction with the villagers, they expressed their satisfaction with the actions of the officers of the SECL except for the following demands:-

- a. Villagers expressed that they should be displaced at one place only as one group.
- b. The employment to the member of displaced families should be provided.
- c. Facility in the rehabilitation site should be provided.

Action : Project Authorities.

7. The rehabilitation village i.e. Gandhi Nagar was visited where about 136 families were rehabilitated. This site was developed about 15 years back. There was one dispensary, panchayat shaven, school and electrification of the area was there. Bhumi poojan was got done by Hon'ble member for installation of one bore well to feed 10 numbers of 1000 liter capacity tanks to be installed.

8. During discussion with the Project authorities (a list of officers present during the discussion is at Annexure –II), they informed that out of total 403 families 287 are Schedules tribes which are Project affected families. Out of these only 152 are left to be displaced in two villages of Jhingatpur and Malgaon, which are almost all Scheduled Tribes. Total number of PAPs with the Dipka Expansion Project are 1690 families; a number of families have taken compensation and settled else where without any intimation to the project authorities. A presentation was made by the officers of SECL about the Dipka Expansion Project . Following issues were discussed

- i) A wide ranging consultations, public hearings and comprehensive awareness plan about the survey conducted was done by the project authorities.
- ii) 30 % solecism and 12 % interest is paid by the SECL over and above the actual cost of land. Even if the delay in disbursing the compensation to the PAPs is on part of the State authorities after submission of compensation amount in the State Govt. fund by the SECL, additional interest is born by the SECL to be paid to the PAPs.
- iii) On the issue of long term sharing of profit including issue of convertible preference share to the displaced families, Project Authorities informed that this aspect can be considered after listing of CIL during the next financial year. The latest position in this regard that SEBI has already cleared listing of CIL.

Action : Project Authority

- iv) Payment of compensation is done by SECL before the actual displacement of the affected families.
- v) Officers of the Project are approaching the PAPs for redressing their grievances.
- vi) As per the policy of the CIL, land is not provided as compensation and only financial assistance is provided as compensation.

vii) On the issue of pension (for life) to the vulnerable affected persons, it was informed by the officers of SECL that there is no such provisions at present. At the same time it was explained that free medical consultation is provided to all residents and in addition free medicines are also provided to members of BPL families. In addition, company is bearing all medical expenses of all accidental and emergency cases.

viii) The affected families owning house and whose house has been acquired or lost were allotted free of cost house site in rehabilitation site in addition to financial assistance as per the norms.

ix) The BPL families who were having house in the displaced village and not having any homestead land were provided free house site in the rehabilitation village in addition to free medical facilities and medicines.

x) It was informed by the project authorities that PAFs have constituted a registered committee and taking up the contractual work in the company in the project.

xi) 20 % of the tendered work can be provided to the PAFs at the lowest quoted price.

xii) SECL have arranged 45 LCV on loan with its surety and provided to the PAFs, as a source of income generation for them. SECL is hiring these vehicles from these PAFs.

xiii) Commission recommended that SECL should arrange some employment opportunity either with SECL or with some contractor, some income generation source or self employment for them for the PAFs.

Action : Project Authority

9. A delegation of village Gandhi Nagar met the Hon'ble Member and submitted that there are three basic problems of water, dust and irrigation to their agriculture fields. SECL officers assured that Bhoomi Poojan has been performed by the Hon'ble Member, NCST and they will commission the borewell and water tanks to solve the problem of water . To solve the problem of dust, water sprinklers are already installed and more sprinklers are being installed near their residential area. The Project officers further informed that the problem of irrigation of villager's field is outside the rehabilitation site. However, they assured that whatever best can be done, will be ensured to solve their problem, either by putting some mud or putting some pipes.

Action : Project Authority

10. Meeting ended with thanks to Hon'ble Member.

Annexure – I

Following officers were present:-

1. Shri R. S. Singh, Director(P),
2. Shri Z. H. Khan, General Manager,
3. Shri H. R. Chouhan, Asstt. Comm, Tribal Welfare,
4. Shri U. K. Gupta, L.O. SC/ST SECL
5. Shri O. P. Singh, G.M. (Operations),
6. Shri D. H. Limsey,
7. Shri Uday Kumar, A.P.M.

Following officers were present:-

1. Shri R. S. Singh, Director(P),
2. Shri D. K. Ghose, CGM, Dipka Area,
3. Shri A. K. Udeniya, Sub Area Manager, DEP,
4. Shri U. K. Gupta, L.O. SC/ST SECL,
5. Shri R. P. Shah, So(Proj & Planning),
6. Shri R. Rajeshwar, A.P.M.,
7. Shri Prakash Chandra, SO(Mining),
8. G. K. Sharma, SO(Civil)



Common Property Resources

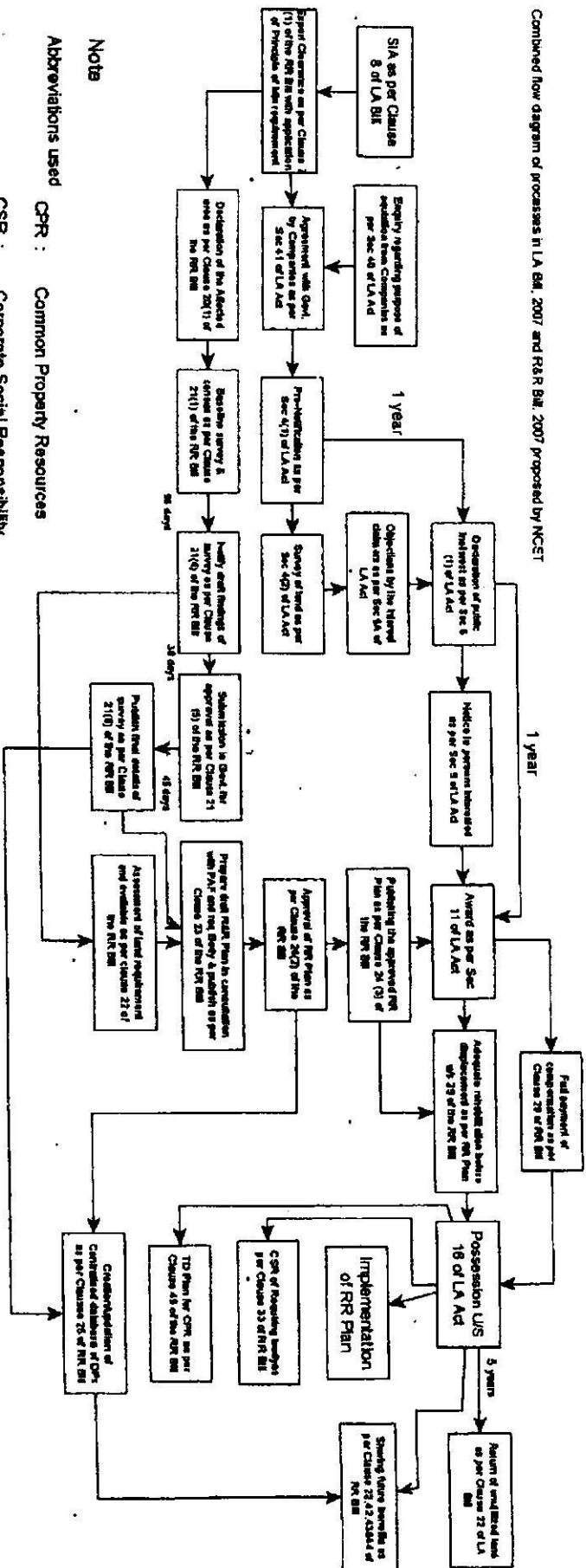
CSR : Corporate Social Responsibility

LA : Land Acquisition

RR Rehabilitation and Resettlement

S/A : Social Impact Assessment

1 year



Note

Abbreviations Used

OPR : Common Property Resources

CSR : Corporate Social Responsibility

LA : Land Acquisition

RR : Rehabilitation and Resettlement

SIA : Social Impact Assessment

**Extracts from 1st Report of the National Commission for Scheduled Tribes
relating to observations and comments on the Scheduled Tribes and Other
Forest Dwellers (Recognition of Forest Rights) Bill, 2005**

3.11 Scheduled Tribes (Recognition of Forest Rights) Bill, 2005

3.11.1 Forest dwelling tribal people and forests are inseparable. One cannot survive without the other. The conservation of ecological resources by forest dwelling tribal communities have been referred to in ancient manuscripts and scriptures. The colonial rule somehow ignored this reality for greater economic gains and probably for good reasons prevalent at that time. After independence, in our enthusiasm to protect natural resources, we continued with colonial legislation and adopted more internationally accepted notions of conservation rather than learning from the country's rich traditions where conservation is embedded in the ethos of tribal life. The reservation processes for creating wilderness and forest areas somehow ignored the bona fide interests of the tribal community in respect of the legislative framework in the regions where tribal communities primarily inhabit. The simplicity of tribals and their general ignorance of modern regulatory frameworks precluded them from asserting their genuine claims to resources in areas where they depended upon. The modern conservation approaches also advocate exclusion rather than integration. It is only recently that forest management regimes have in their policy processes realized that forests have the best chance to survive if the tribal communities living in them participate in its conservation and regeneration measures.

3.11.2 It is a well known fact that the forest dwelling scheduled tribes have been residing on their ancestral land from times immemorial and that there exists a symbiotic relationship between the forest dwelling scheduled tribes (FDSTs) and the biological resources in India. They are integral to the very survival and sustainability of the forest eco-systems, including wild life. The non-recognition of the rights of the FDSTs over the land on which they have been living in forests since ages has been attracting public attention since pre-Independence period. The non-recognition of their rights have come to be erroneously looked upon as encroachers of forest lands and the threat of eviction has always been looming large in their psyche. Insecurity of tenure and fear of eviction from these lands where they have lived and thrived for generations are perhaps the biggest reasons why tribal communities feel emotionally as well as physically alienated from forests and forest lands. All these factors have resulted in historical injustice to them.

3.11.3 Inadequate implementation of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996, by non-transfer of control/ownership over the natural resources, including the Minor Forest Produce to the local communities and by non-extension of PESA Act to the entire Scheduled Areas, including forest areas, have further compounded their miseries. Although the provisions of the Panchayats (Extension to Scheduled Areas) (PESA) Act, 1996 gives the rights of ownership of MFP to the respective local communities, the collection and trade of most of the high value MFP is largely monopolized by the

Corporations of the Forest Department of the States and poor FDSTs are just employed by the contractors only as wage earners.

3.11.4 The above-mentioned scenario relating to non-recognition of the rights of the scheduled tribes over the land on which they have been living for generations is in existence notwithstanding the Government taking a consistent view on the central theme of integrating FDSTs living in and around forests into every aspect of managing forest and all policy statements, including Forest Policy, 1988, circulars, guidelines and Govt. Orders issued by the Ministry of Environment and Forests have been espousing the cause of tribal communities and emphasizing the need for putting these communities at the centre of any conservation measures. It was in this background that the historical rights of the FDSTs have not been recognized despite all the legislative/policy framework of the Ministry of Environment and Forest, the Government (Ministry of Tribal Affairs) have decided to formulate a comprehensive Central legislation to redress the historical injustice done to the tribal communities and for clear assertion of their legal rights on the land. Accordingly, a Technical Support Group (TSG), comprising the representatives of the Ministries concerned and some reputed experts having rich experience and deep association with the cause of environmental protection and welfare of tribal people, was constituted, under the Chairmanship of Secretary (Tribal Affairs) to formulate the Scheduled Tribes and Forest Dwellers (Recognition of Forest Rights) Bill. Director General (Forests), Ministry of Environment & Forests was also one of the members of the Group. After a series of meetings of the TSG, a draft Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 was formulated by the Ministry of Tribal Affairs and circulated amongst the Ministries concerned for their comments. A copy of the proposed Bill was also put on the website of the Ministry of Tribal Affairs inviting suggestions from members of public, tribal associations, NGOs working in the area of tribal development etc. The Bill has since been introduced in Parliament and referred to the Joint Select Committee of Parliament for examination.

3.11.5 Section 2 of the Bill deals with definitions of the key words appearing in the different sections of the Bill such as 'forest land', 'forest villages', 'Scheduled Areas' etc. Section 2 (h) of the Bill defines "minor forest produce". It says that 'minor forest produce' includes all non-timber forest produce of plant origin including bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and the like.

3.11.6 The Bill in its present form in Section 4 seeks to recognize and vest Forest Rights to forest dwelling Scheduled Tribes, where they are scheduled. Such Forest Rights as defined in Section 3, are in respect of recognition of occupation of FDSTs on forest land and their habitat where they have been living for generations and include:

- (i) right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribes;
- (ii) rights such as nistar, by whatever name called, and used in erstwhile princely States, Zamindari or such intermediary regimes;
- (iii) right of access to, use or dispose of minor forest produce;

- (iv) other rights of uses or entitlements such as grazing (both settled and transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;
- (v) right of habitat and habitation for primitive tribal groups and pre-agricultural communities;
- (vi) rights for conversion of pattas or leases or grants issued by any local authority or any State Government on forest lands to titles;
- (vii) right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving;
- (viii) rights which are recognized under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribals under any traditional or customary law of any State;
- (ix) any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes which are not mentioned in clauses (a) to (l) of the Bill (Section 3) but excluding the right of hunting.

3.11.7 Section 4 (2) of the Bill provides that the recognition and vesting of forest rights under this Act to forest dwelling Scheduled Tribes in relation to any State or Union Territory in respect of forest land and their habitat shall be subject to the condition that such tribes or tribal communities had occupied forest land before the 25th day of October, 1980 or such other date as the Central Government may, by notification in the Official Gazette, specify. Certain other provisions of this Section are:

- (i) A right conferred by Section 4 (1) shall be heritable but not alienable or transferable [sub-section (3)].
- (ii) Save as otherwise provided, no member of a forest dwelling Scheduled Tribe shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is completed in such manner as may be prescribed [sub-section (4)].
- (iii) Where the forest rights recognized and vested under Section 4 (1) are in respect of land, such land in no case will exceed an area of 2.5 hectares per nuclear family of forest dwelling Scheduled Tribes [sub-section 5 (i)].
- (iv) The forest rights recognized and vested under sub-section (1) in the forest dwelling Scheduled Tribe shall (1) be exercised only for bonafide livelihood purposes and not for exclusive commercial purposes and, (2) include the responsibility of protection, conversion and regeneration of forests [sub-section (6)].

3.11.8 The duties of forest right holders have been defined in Section 5 of the Bill which include responsibility of not carrying out any activity that adversely affects the wild life, forests and biodiversity in the area including clearing of forest land or trees which have grown naturally on that land for any non-forestry purposes including re-afforestation. The forest right holders are also required to ensure that:

- (i) catchment areas, water sources and other ecologically sensitive areas are adequately protected;

- (ii) the habitat of forest dwelling Scheduled Tribe is preserved from any form of destructive practices affecting their cultural and natural heritage;
- (iii) any activity that adversely affects the wild life, forest and the biodiversity is intimated to the Gram Sabha and to the forest authorities;
- (iv) appropriate measures taken in the Gram Sabha to regulate access to community forest resource and stop any activity which adversely affects the wild life, forest and the biodiversity are complied with.

3.11.9 The authorities, including their functions, have been defined in Section 6 of the Bill. This Section, inter-alia, provides that:

- (i) The Gram Sabha shall be the authority to initiate any action for determining the extent of forest rights that may be given to the forest dwelling Scheduled Tribes within the local limits of its jurisdiction under this Act.
- (ii) A Sub-Divisional Level Committee shall examine the decision taken by the Gram Sabha.
- (iii) Any person aggrieved by the decision of the Gram Sabha may prefer an appeal to the Sub-Divisional Level Committee in such manner as may be prescribed and the Sub-Divisional Committee shall consider and dispose of such appeal.

Provided that no such appeal shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to represent his case.

- (iv) There shall be constituted a District Level Committee with such composition and functions as may be prescribed to consider the record of forest rights prepared by the Sub-Divisional Level Committee for its final approval.
- (v) Any person aggrieved by the decision of the Sub-Divisional Committee may prefer an appeal to the District Level Committee in such manner as may be prescribed and the District Level Committee shall consider and dispose of such appeal. Provided that no such appeal shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to represent his case.

3.11.10 Section 8 of the Bill provides for penalty for contravention of the provisions of the Act and also for the offences by Government authorities under this Act. It provides for a fine which may extend to one thousand rupees if any holder of any forest right conferred by or under the proposed Act or any other person (i) contravenes or abets the contravention of any of its provisions or, (ii) commits a breach of any of the conditions of the forest right vested or recognized under the Act, or (iii) engages in unsustainable use of forest or forest produce; or (iv) destroys wildlife, forests or any other aspect of biodiversity; or (v) fells trees for any commercial purpose. The Bill also provides for derecognition of the forest rights in case the offence is committed more than once. The Bill further provides that where any authority or member of such authority contravenes any provisions of this Act or any rule made thereunder shall be deemed to be guilty of an offence under

this Act and shall be liable to be proceeded against and punished with imprisonment which may extend to thirty days or with fine which may extend to five thousand rupees, or with both. The penalties provided under other legislations including Indian Forest Act, 1927, the Forest Conservation Act, 1980 are not barred by this Act.

3.11.11 The National Commission for Scheduled Tribes welcomes the proposal of the Government to formulate a legislation to recognize the rights to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe and several other rights connected therewith. The Commission feels that the proposed Bill is a step in the right direction as it addresses the long standing and genuinely felt need of granting a secure and inalienable right to those communities whose right to life depends on right to forests. It is learnt that the Bill has since been introduced in the Parliament and referred to the Joint Parliamentary Committee (JPC) for further examination. The Commission is, however, pained to note that no formal consultation on such a major issue affecting the interests of Scheduled Tribes was made with it by the Ministry of Tribal Affairs in terms of Clause 9 of Article 338A of the Constitution.

ANNEXURE 4.II
(Ref: Para 4.10.4)

**Implementation of the Scheduled Tribes and Other Forest Dwellers
(Recognition of Forest Rights) Act, 2006 – Clarifications issued by Ministry of
Tribal Affairs**

S.No.	Issue	Clarification
(i)	Implications of the phrase “primarily reside in and who depend on the forests or forest lands for bona fide livelihood needs” appearing in Section 2© and 2(o) of the Act.	The implication of using the word ‘primarily’ is to include the Scheduled Tribes and other Traditional Forest Dwellers who have either habitation, or patches of and for self-cultivation for livelihood, and would, therefore, be primarily spending most of their time either in temporary make shift structures or working on patches of land in such areas irrespective of whether their dwelling houses are outside the forest or forest land. Therefore, such Scheduled Tribes and other traditional forest dwellers who are not necessarily residing inside the forest but are depending on the forest for their bona fide livelihood needs would be covered under the definition of “forest dwelling Scheduled Tribes” and ‘other traditional forest dweller’ as given in Sections 2(c) and Section 2(o) of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006
(ii)	Constitution of various Committees under the Act in Jharkhand where the Panchayat elections had not been held.	In the absence of Panchayat Raj Institution in the State of Jharkhand, the State Govt. was directed to arrange meetings of the Gram Sabhas and ensure representation in the Sub-divisional Level Committees, District Level Committees and the State Level Committees in consultation with the Department of Panchayat Raj and the Nodal Department of State Govt. of Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.
(iii)	Consideration of the revenue land under the occupation of forest dwelling Scheduled Tribes and other forest dwellers for determining the limit of an area of 4 hectares of forest land for habitation or for self cultivation	The term “forest land” is defined in section 2 (d) of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and the said definition does not include revenue land. Therefore, the revenue land under the occupation of forest dwelling Scheduled Tribes and other forest dwellers is not to be taken into account for determining the limit of an area of 4 hectares of forest land for habitation or for self-cultivation, referred to in Section 4(6) of the Act. The area of encroachment of forest land shall, however, be included in the limit of 4 hectares, prescribed in section 4(6) of the Act. However, section 3(1) (a) of the Act refers to “the right to hold and live in the forest land under the individual

	referred to in 4 (c) of the Act.	or common occupation for habitation or for self-cultivation for livelihood” while rule 2(1) (b) of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2008 notified on 1.1.2008 defines “bona fide livelihood needs” as “fulfillment of sustenance need of self and family”. As the basic objective of the Act is to provide livelihood means to forest dwelling Scheduled Tribes and other Traditional Forest Dwellers, the livelihood aspect also needs to be kept in view, while considering the maximum limit of an area of 4 hectares of forest land for recognition and vesting of forest rights. If the forest dwellers do not primarily reside on the forest land in their occupation and depend on the revenue land or the area of regularized encroachment of forest land for their bona fide livelihood needs, then they should not get title to the forest land in occupation.
(iv)	Whether the Principal Secretary of the Autonomous Councils in certain districts in the States Govt. under the provisions of the Sixth Schedule to the Constitution of India can be made the Chairperson of the SDLCs and DLCs under the Act.	The Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Rules, 2008, Sub-Divisional Level Committees and the District Level Committees are to be headed by Sub-Divisional Level Officers or equivalent officers and District Collector or Dy. Commissioner respectively. During the review meeting of the State Secretaries/ Commissioners for Tribal Welfare held on 11.11.2008, it was informed that SDOs and District Magistrates were available in the six districts of the State, which were under the Sixth Schedule provision. Therefore, the District Level Committee and Sub-Divisional Level Committees have to be constituted as per the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Rules, 2008 even if the forest and land revenue matters are managed by the Councils authorities. These Rules do not provide for making the Principal Secretary of the Autonomous Councils as the Chairperson of these Committees.
(v)	Relaxation of the quorum of two-thirds of all members of the Gram Sabha for the meeting of the Gram Sabha in Rule 4(2) of the Scheduled Tribes and Other Forest Dwellers (Recognition of	The provision for the quorum of two-thirds of all members of the Gram Sabha for the meeting of the Gram Sabha in Rule 4(2) of the the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Rules, 2008 has been made with a view to ensure true representation of all the members of the Gram Sabha in such meetings so that the decisions taken therein are impartial and cater to the real objective of the meetings. These Rules do not permit relaxation of this requirement of quorum.

	Forest Rights) Act, 2006	
(vi)	Definition of the term "State Government" in relation to the Union Territories with reference to the Act.	The expression the "State Government" has not been defined either in the Act or in the Rules Section 3 of the General Clauses Act, 1897 provides that the definitions given therein shall apply to this Act, and in all Central Acts and Regulations made after the commencement of this Act. These definitions are intended for a proper interpretation of all Central Acts made after the commencement of this Act and are subject to any context being repugnant. Clause (60) of section 3 defines the "State Government" as under:
		(a) as respects anything done before the commencement of the Constitution shall mean, in a Part A State, the Provincial Government of the corresponding Province in a Part B State, the authority or person authorized at the relevant date to exercise executive Government in the corresponding acceding State and in a Part C State, the Central Government;
		(b) as respects anything done after the commencement of the Constitution and before the commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean, in a Part A State, the Governor in a Part B State, the Rajpramukh, and in a Part C State, the Central Government;
		(c) as respects anything done or to be done after commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean, in a State, the Governor, and in a Union Territory, the Central Government; and shall, in relation to functions entrusted under Article 258-A of the Constitution of the Government of India, include the Central Government acting within the scope of the authority given to it under the Article.
		In the light of the above legal position, the expression the "State Government" used in Act and the Rules shall mean the "Central Government" in so far as the Union Territory of Daman & Diu is concerned. Therefore, the functions and powers of the State Government under the Act may be validity exercised by the Central Government in this Union Territory.
(vii)	Processing of the claims of the occupants of forest land in Muncipal and Panchayat Areas	The Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006 prescribes the Gram Sabha as the authority to initiate the process of determining the nature and extent of forest rights which are to be given to the forest dwelling Scheduled Tribes and other traditional forest dwellers. The term

	of Korba district of Chhattisgarh	'Gram Sabha' is defined in Section 2(g) of the Act and the term 'village', referred to in Section 29G0, is also defined in Section 2(p) of the Act. In case, the Municipal and Panchayat areas of Korba district of Chhattisgarh, which are having forest land, have Gram Sabhas within the meaning of Section 2(g) read with Section 2(p) of the Act, then the claims of the occupants of forest land in such areas for recognition and vesting of forest rights over the forest land under their occupation can be considered as per the procedure laid down in the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Rules, 2008. In case these areas do not have Gram Sabhas within the meaning of Section 2(g) read with Section 2(p) of the Act, then the occupants of forest land in those areas would not be eligible for recognition and vesting of forest rights under the Act.

Speech of Prime Minister at the Chief Minister Conference 4th Nov 2009

Speech of the Prime Minister at the inaugural Session of the Conference of Chief Ministers, State Ministers(Tribal Development/Social Welfare Departments) and State Minister (Forest Departments) New Delhi

November 4, 2009

"I am happy to inaugurate this important conference of Chief Ministers and State Ministers of Tribal Affairs, Social Welfare and Forest Departments. It was my desire to come to this conference much earlier but circumstances prevented and I could not make it. I thank my colleagues, Shri Kanti Lal Bhuria and Dr. Tushar A. Chaudhary for having convened this Conference on the rights and welfare of the Scheduled Tribes and other traditional forest dwellers of our country.

The development of our tribal areas and improvement in the economic and social condition of our tribal populations is fundamentally linked to our concept of inclusive growth. We cannot have equitable growth without guaranteeing the legitimate rights of these eventually marginalized and isolated sections of our society. In a broader sense we need to empower our tribal communities with the means to determine their own destinies, their livelihood, their security and above all their dignity and self-respect as equal citizens of our country, as equal participants in the processes of social and economic development.

The Scheduled Tribe and Other Traditional Forest Dwellers (Recognition of Rights) Act, 2006, has been rightly hailed as landmark legislation. It has provided for a legally enforceable way of guaranteeing rights to forest dwelling Scheduled Tribes and others who have lived in our forests for centuries, but whose contribution to their protection was not acknowledged or recognized earlier. It also lays down duties for conservation and protection of biodiversity, ecological balance and our precious wildlife resource.

The Honourable President of India in her address to Parliament earlier this year laid down before us the task of completing the process of distribution of title deeds under the Forest Rights Act by 2009. I have written to all Chief Ministers on two occasions on this subject urging them to speed up the process so that it could be completed in time. While some States have achieved remarkable progress in the distribution of titles, others are lagging behind. In a few States, even the process of receiving claims is yet to commence. This cannot be considered as an acceptable situation.

I would therefore urge all the Honourable Chief Ministers and their colleagues to spare no effort to ensure effective implementation of the Act and expeditious distribution of titles well within the given timeframe.

The distribution of titles is but an important and necessary first step. The Act recognizes the symbiotic relationship between the forest and the forest dweller. It attempts to deal holistically with the issue in terms not only of the recognition of rights but of livelihood opportunities and environmental protection and conservation. If implemented in its true spirit this Act will provide significant multipliers in the processes of economic development in some of our critical habitats.

Those whose lives are dependent on the forests should be made essential partners in the processes of natural resource planning, conservation and protection. It is in this context, I would like to emphasise the importance of implementing in letter and in spirit the Panchayat Extension to Scheduled Areas known as PESA Act.

The livelihood concerns of the forest dwellers should be central to the development agenda in these areas. We have therefore to work on many fronts simultaneously. It is important to dovetail all development and welfare programmes in tribal areas so that our strategy is coherent, all embracing and there is a coordinated approach involving all departments of the Government. Education and health need priority attention. It is equally important to pay adequate attention to improve agricultural productivity of tribal lands.

The lack of quality education and vocational opportunities for tribals need immediate attention. The infrastructure in the residential schools for tribal children and the hostels thereof is mostly inadequate. Scholarships are also given piecemeal and do not enable a student to complete his or her education in time. I would urge the Ministry to come forward with concrete proposals that address these concerns.

I believe the Skill Development Mission needs to take a special look at how we can enhance the skill development training in all tribal areas of our country. Resources will have to be found and it is indeed small recompense for the neglect of the past. We must change our ways of dealing with the tribal affairs.

There are a host of issues related to the losses suffered by tribals displaced as a result of acquisition of land for various purposes. It cannot be said that we have dealt sensitively and with concern with these issues in the past. It is not just the displacement and disorientation caused by separation from the land that is at issue. One can only imagine the psychological impact of seeing the cutting down of the vast very forests that have nurtured the existence of these communities for centuries.

It is clear that we need to reflect on how to improve the laws and mechanisms through which we provide compensation to displaced tribal persons. More could be done, more should be done. The tribals must benefit from the projects for which they have been displaced. But resettlement and rehabilitation raise serious issues not just of monetary compensation. We have to address issues relating to creating sustainable livelihoods, preserving the traditional sense of community and helping the tribals cope with the trauma of dislocation and alienation.

The Mungekar Committee on Inter-Sectoral Issues relating to Tribal Development has made several important recommendations pertaining to standards of public administration and governance in Scheduled tribal areas. I would like the Ministry of Tribal Affairs to examine these recommendations with speed.

The administrative machinery in some of our tribal areas is either very weak or virtually non-existent. Creating the right infrastructure is a key issue. But I would like to emphasise the importance of posting committed and competent officers in tribal areas. The States should consider offering strong incentives like hardship allowances, special housing and educational facilities or grants for officers who stay in tribal areas. Perhaps we could draw upon the experience of administering the KBK programme over a fairly long period of time.

Over the years a large number of cases have been registered against the tribals, giving rise to good deal of harassment to those whose traditional rights were not recognized by earlier forest laws. The heavy hand of the criminal justice system has become a source of harassment and exploitation. Therefore, we need to take a more enlightened approach in line with current thinking on how to deal with such issues. I believe that the Government of Jharkhand has recently withdrawn over one lakh such cases. The Government of Madhya Pradesh had also done something similar in the past. I believe that States need to review such cases urgently and take similar action as appropriate. We need to make clearly a fresh start in this area.

I am happy that efforts are being made by the Ministry of Tribal Affairs towards evolving a consensus on a National Tribal Policy. The problems faced by our tribal communities are complex and they require sympathetic and systematic understanding. The policy should factor in the different nuances of tribal life as they exist in several parts of our great country. I would suggest that the Ministry of Tribal Affairs engage in wide public consultation so that the document that emerges after a meaningful debate on the many issues involved would be broadly acceptable to the people at large.

There has been a systemic failure in giving the tribals a stake in the modern economic processes that inexorably intrude into their living spaces. The alienation built over decades is now taking a dangerous turn in some parts of our country. The systematic exploitation and social and economic abuse of our tribal communities can no longer be tolerated. But the fact is that no sustained activity is possible under the shadow of the gun. Nor have those who claim to speak for the tribals offered an alternate economic or social path that is viable. The cult of violence will only bring greater misery to the common people. We have to counter this threat with determination. While violence cannot be tolerated, the tribals must be the primary beneficiaries of the development process. We have to win the battle for their hearts and their minds.

Therefore, I would like to conclude by saying that the discussions in this conference have great importance for the future of our country. The issues that you are going to examine can no longer be relegated to the margins of our policy debate. They have to be the very centre of our attention. The State should endeavour to give a healing touch to the tribal communities. Their integration into the development processes is highly important. But this should not become a means of exploitation or be at the cost of their unique identity and their culture.

With these words, I wish your deliberations all success, and I sincerely hope that they will result in concrete action programme towards the empowerment and well being of our tribal brothers and sisters."

**Government of India
Ministry of Tribal Affairs**

Procedure for seeking prior approval for diversion of forest land for non-forest purposes for facilities managed by the Government under Section 3(2) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

- - -

Sub-section (2) of Section 3 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 provides that notwithstanding anything contained in the Forest (Conservation) Act, 1980, the Central Government shall provide for diversion of forest land for certain facilities managed by the Government, as specified in that Section, which involve felling of trees not exceeding seventy-five trees per hectare, provided that such diversion of forest land shall be allowed only if, -

- (i) the forest land to be diverted for the purposes mentioned in the said sub-section is less than one hectare in each case; and
- (ii) the clearance of such developmental projects shall be subject to the condition that the same is recommended by the Gram Sabha.

2. For implementation of the provisions of sub-section (2) of Section 3 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, the Central Government hereby lays down the following procedure:-

2.1 **Definitions.-** In the procedure, unless the context otherwise requires:-

- (a) “Act” means the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007);
- (b) “District Level Committee” shall mean the Committee constituted under Rule 7 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights), Rules, 2008;
- (c) “Forest Land” shall have the same meaning as defined in Section 2(d) of the Act;
- (d) “Gram Sabha” shall have the same meaning as defined in Section 2(g) of the Act;

- (e) “Nodal Officer” means any officer not below the rank of Conservator of Forests, authorized by the State Government to deal with matters relating to diversion of forest land under the Act;
- (f) “Section” means a section of the Act;
- (g) “User Agency” means a Department of the Central or State Government or a District Panchayat making a request for diversion of forest land for developmental projects managed by the Government as specified in sub-section (2) of Section 3 of the Act;
- (h) “Village” shall have the same meaning as defined in Section 2(p) of the Act.

2.2 Submission of the proposals seeking approval for diversion of the forest land under sub-section (2) of Section 3 of the Act.-

- (i) Every User Agency, that wants to use any forest land for any developmental project, specified in Section 3(2) of the Act, shall make a proposal in the appropriate Form appended, i.e. Form ‘A’, and place it before the general assembly of the concerned Gram Sabha for adopting a resolution to that effect.
- (ii) A quorum of atleast half the members of the Gram Sabha should be present for adopting a resolution recommending the diversion of forest land.
- (iii) On receipt of a recommendation of the proposal by the Gram Sabha, the User Agency will submit the proposal to the concerned Range Forest Officer (RFO) of the area, along with the resolution adopted by the Gram Sabha.
- (iv) The Range Forest Officer (RFO) concerned will carry out site inspection of the proposed area to opine on the acceptance of the proposal.
- (v) The Range Forest Officer (RFO) concerned will submit the proposal and his recommendation to the concerned Divisional Forest Officer (DFO) in Form ‘B’ appended, along with his site inspection report and his opinion within three weeks from the date of receipt of complete proposal from the User Agency.
- (vi) The Divisional Forest Officer (DFO) concerned will consider the proposal, and if he agrees, he will accord his approval and communicate his decision to the Range Forest Officer (RFO) concerned with a copy to the

Chairperson of the District Level Committee, within four weeks from the date of receipt of the proposal from the RFO.

- (vii) After receipt of the approval from the concerned DFO, the RFO will demarcate the area of the forest land approved for diversion and hand over the same to the User Agency under the supervision of the Gram Sabha.
- (viii) If the Divisional Forest Officer (DFO) concerned does not approve the proposal submitted by the User Agency through the Range Forest Officer (RFO), he shall forward the proposal to the District Level Committee for a final decision.
- (ix) The District Level Committee will meet and take a final decision, with at least 1/3 quorum, and convey the decision to the DFO for implementation and correction of records and map if the proposal is accepted.
- (x) The approval for diversion of the forest land by the Divisional Forest Officer (DFO) or by the District Level Committee, as the case may be, shall be accorded subject to the condition that the land diverted for a specific purpose shall not be allowed to be used for any other purpose and the diverted land would be appropriated by the Forest Department if the activity for which the land was diverted is not started within one year of handing over the land to the User Agency.
- (xi) The DFO concerned will submit a quarterly report of the approvals accorded for diversion of forest land under Section 3(2) of the Act to the Nodal Officer of the State who, in turn, will furnish the consolidated information quarterly to the Secretary, Tribal Welfare Department who will, in turn send the consolidated report to the Ministries of Tribal Affairs and Environment & Forests.
- (xii) The Nodal Officer will also monitor the progress.

APPENDIX

Form for seeking prior approval for diversion of forest land for non-forest purposes for the facilities managed by the Government under sub-section (2) of Section 3 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

FORM-A

[See para 2.2(i)]

(To be filled up by the User Agency)

1. Project details:
- (i) Short narrative of the proposed project / scheme for which the forest land is required.

(ii) Details of the forest land required (two options to be indicated)

a. Location – Survey No./ Compartment No.

b. Extent of the area (in hectare)

c. Forest Division

d. Map showing the required forest land, boundary of adjoining forest on a 1:50,000 scale map.

(iii) Justification for locating the project in proposed forest land(s)

(iv) Number of trees to be felled (per hectare) and number that will be kept standing
2. Detailed, purpose-wise break-up of the total forest land required with proposed building/activity area map.
3. Confirmation that User Agency will plant at least twice the number of trees to be felled, in the project or adjacent area and the amount to be provided annually for protection and maintenance of these plants for at least five years (Details to be enclosed).
4. Recommendation of the Gram Sabha – Accepted/Rejected
- [Please tick (√), as the case may be]. [Copy of the Gram Sabha resolution to be attached.]

Signature of the authorized person for the User

Agency

(Name in Block letters)

Address

Date:

Place:

Serial No. of proposal

(To be filled up by the Range Forest Officer with date of receipt)

FORM-B

[See para 2.2(iv)]

(To be filled by the concerned Range Forest Officer)

Serial No. of proposal _____

1. Location of the project / Scheme:
 - (i) State / Union Territory
 - (ii) District.
 - (iii) Forest Division
 - (iv) Proposed forest land(s) (two options to be indicated)
 - i. Location – Survey No./ Compartment No.
 - ii. Extent of the area (in hectare)
 - (v) Whether part of biosphere reserve, tiger reserve, elephant corridor, etc.
2. Site inspection report (to be attached), containing the date of visit, and justified opinion on the acceptability of the proposal (separately for the two options).
3. Specific recommendation of the Range Forest Officer for acceptance or otherwise of the proposal and the better option.

Signature of the RFO

Name

Official Seal

Date: _____

Place: _____

Accepted / Not accepted
with reasons to be recorded

Signature of the DFO

Name _____

Official Seal

Date: _____

Place: _____

Action taken position on the actionable points for the Central Ministries and State Govts. for implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (as on 07/05/2008)

- - -

Ministry of Tribal Affairs

1. States/UTs have been addressed on 25.2.2008 to furnish State-wise information/data, such as, status of formation of various Committees, translation of the Act and the rules into regional languages and arrangements made for their distribution to Gram Sabhas, Forest Rights Committees, steps taken for creation of awareness about the objectives, provisions and procedures under the Act and the Rules, arrangements made for the training of PRI officials, SDLC/DLC members by the State Nodal Agency at State, District and Sub-Divisional levels, etc.
2. NIC has been entrusted the job relating to preparation of a comprehensive web-based information system for implementation and monitoring of the Act. The said system is likely to be finalised and put in place shortly.
3. Action is being taken for setting up an Implementation and Coordination Cell in the Ministry.
4. A pamphlet (in English and Hindi) on the Act in a reader-friendly format for wide circulation to the States and other stakeholders has been prepared and sent to PIB, DAVP, AIR, Doordarshan and DFP for organizing publicity campaign.
5. A meeting of Secretaries of Tribal Development/Welfare Departments of the States was organized by the Ministry on 18-19 February 2008 on the implementation of the Forest Rights Act. In the said meeting, the progress of implementation of the Act as also the issues raised by the States were discussed.
6. A number of writ petitions have been filed in different High Courts/Supreme Court against the Act. Necessary action to defend these cases is being taken.
7. The States/UTs have been addressed on 25.2.2008 to initiate necessary action for conversion of all forest villages into revenue villages in a time bound manner and to keep the Ministry informed of the progress made in this regard. Simultaneously, the Ministry of Environment & Forests have also been requested to initiate action, after individual rights have been vested, for conversion of 2474 forest villages/habitations in 12 States into revenue villages and any other such habitations as per provisions of Section 3(1)(h) of the Forest Rights Act, 2006.
8. A Core Group consisting of representatives of Ministries of Panchayati Raj, Law & Justice and Environment & Forests as Members has been formed under

the Chairmanship of Secretary (Tribal Affairs) for taking a view on queries and references from State Governments.

Ministry of Environment & Forests

The Ministry of Environment & Forests, vide their O.M. dated 14.3.2008, has suggested to this Ministry a procedure to be followed for seeking prior approval for diversion of forest land for non-forest purposes for facilities managed by the Government under Section 3(2) of the Act. The same is under examination by the Ministry.

Ministry of Panchayati Raj

The Ministry of Panchayati Raj has addressed the Chief Secretaries/Administrators of all States/UTs on 15.2.2008, suggesting that all the States may organize Gram Sabhas on 28.2.2006 during which the provisions of the Act and the rules and the roles and responsibilities of PRIs, Gram Sabhas and FRCs be explained.

Ministry of Information & Broadcasting

Ministry of I&B had requested this Ministry on 24.1.2008 to provide software/publicity content to PIB, DAVP, AIR and Doordarshan for providing media support to the implementation of the Act. The same was provided to these media units on 8.2.2008. Subsequently the said publicity material was also provided to the Directorate of Field Publicity on 7.4.2008.

States/UTs

The action taken by the States/UTs is indicated in the statement given below:

Statement showing State-wise status of implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

(As on 7.5.2008)

Name of the State/UT	Status
Andhra Pradesh	1. Constituted State Level Monitoring Committee vide G.O.Ms.No.4 dated 21.1.2008.
Arunachal Pradesh	
Assam	1. State Government has constituted various Committees at State level, District level and Sub-Divisional level. 2. A State level Committee for identification/declaration of critical wildlife habitats is also in the process of being notified

	soon by the Environment & Forest Department of the State Government. 3. Shri L. Phangcho, IAS, Secretary to the Government of Assam in-charge of Tribal Welfare in the State has been nominated as nodal agency under Section 11 of the Act.	
Bihar		
Chhattisgarh	The State Government has intimated an activity chart with a time schedule as under:	
	i) Constitution of Forest Rights Committee, Sub-Divisional Level Committee and District Level Committee. ii) State Level Monitoring Committee iii) Awareness about the Act and the Rules and training iv) Calling of claims by Forest Rights Committee v) Verification of claims at the level of Forest Rights Committee vi) Verification of claims at the level of SDLC vii) Sending of claims to District Level Committee by SDLC viii) Approval of claims by DLC ix) Distribution/Award of Forest Rights	25-28 February 7 February 12-29 February 1 March 7 March 30 June 1 April – 30 June 15 April – 30 June 1 May onwards
Goa		
Gujarat	1. Various Committees have been formed vide resolution dated 5.3.2008. 2. Programme for holding Gram Sabhas in the scheduled areas of the State was issued and the Gram Sabha have started meeting from 28.2.2008. So far, out of 6024 villages in the scheduled areas, FRCs have been formed in 4403 villages. 3. Panchayat Department has requested the Gram Sabhas to meet around 25th March, 2008 to issue calls for acceptance of claims. 4. Master Trainers for training the members of FRC have been identified and Tribal Research and Training Institute (TRTI) has started training the Master Trainers. 5. One lakh claim forms have been printed by the Government Press and are being sent to FRCs. 6. Awareness generation material along with a small booklet	

	having frequently asked questions are being developed for free distribution in the villages. 7. Guidelines, templates, formats and checklists are being developed in consultation with few experienced collectors. 8. A sensitization workshop was held on 24.2.2008, wherein Act and Rules were discussed clause-wise and clarifications offered. 9. Concerned Departments have been instructed to identify their nodal officer at District level for providing information and documents to the FRCs and for accepting notices from them. 10. A Core Committee at the level of the State Government has been formed to coordinate the operational part of the Act.
Haryana	There are no Scheduled Tribes and traditional forest dwellers living in the forests of Haryana. Therefore, the question of the forest rights of such communities on forest lands does not arise. The constitution of various Committees from State Level Monitoring Committee to District Level and below District level are not required in Haryana.
Himachal Pradesh	
Jharkhand	
Karnataka	Constituted State Level Monitoring Committee, District Level Committee and Sub Divisional Level Committee, vide orders dated 2.4.2008.
Kerala	
Madhya Pradesh	1. The Chief Minister took a meeting of the Senior Officers of the Tribal Welfare and Forest Departments on 2.1.2008 and instructed that the Act must be implemented at the earliest. 2. Chief Secretary has also written to all the Collectors asking them to implement the Act and the Rules on priority. 3. Detailed instructions have been issued to all the Collectors (i) asking them send Master Trainers for training at regional places for training nodal officers of the Gram Sabhas, (ii) ensure Gram Sabhas were organized in all villages from 26.1.2008 onwards and Forest Rights Committees were elected, (iii) ensure that copies of electoral rolls, revenue and forest department records and maps are being made available to the Gram Sabhas, and (iv) to organize survey team and assist the Gram Sabhas in verification of claims and preparation of maps. 4. A legal interpretation cell is being constituted at the State level to deal with the queries and questions related to the Act and the Rules. 5. State Level Monitoring Committee has been constituted

	and notified on 1.2.2008. 6. Awareness training for Gram Sabhas of sensitive districts has been carried out in October, 2007. The trainings of district-level Master Trainers were carried out at Divisional Headquarters at Bhopal on 11.1.2008, Jabalpur on 16.1.2008, Indore on 17.1.2008 and Gwalior on 18.1.2008. 7. Gram Sabhas were organized in all 55000 villages from 26th January onwards. 8. Sufficient copies of the Act and the Rules have been printed and sent to the district and villages. The Act and the Rules have also been translated and printed in the tribal dialects of Korku, Bhili and Gondi. An awareness campaign about the Act and the Rules has also been launched. 9. A software has been developed with the help of NIC to monitor the progress of the constitution of Committees at District and Sub-Divisional level, formation of the Forest Rights Committees at the Gram Sabha level and their meetings, etc.
Maharashtra	
Manipur	
Meghalaya	
Mizoram	
Nagaland	Government of Nagaland has informed that the land holding system and the village system of the Naga people is peculiar in that the people are the land owners. There are no tribes or group of people or forest dwellers in the State of Nagaland . Hence, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 per se may not be applicable to the State of Nagaland .
Orissa	1. Committee at the Sub Divisional, District and State levels have been constituted, vide resolutions dated 1.2.08. 2. The Act and the Rules have been translated in Oriya language and 30000 copies in Oriya and 5000 copies in English have been printed and distributed among the stakeholders. 3. The State Government organized a day-long trainers' training workshop on 2.2.2008 in which legal problems and logistics were discussed at length. Similar exercises at district levels and below are being made.

	4. Detailed instructions have been issued to Collectors to activate the Gram Sabha including the Forest Rights Committee, Sub-division and District level Committees. Formats have been prescribed for submission of monthly progress reports.
Rajasthan	The Government of Rajasthan, vide its orders dated 14.3.2008, has constituted District Level and Sub-Divisional Level Committee under the Act.
Sikkim	The Government of Sikkim has issued a notification dated 28.1.2008 regarding constitution of an Expert Committee for identification of Critical Wildlife habitats in Protected Areas (PAs).
Tamil Nadu	The Government of Tamil Nadu, vide G.O.(Ms)No.19 dated 19.2.2008, has constituted a State Level Monitoring Committee.
Tripura	Government of Tripura, vide letter dated 27.2.2008, has intimated that General Elections to the State Legislative Assembly is under process. Hence, action on formation of various Committees under the Act, training at State level, District level, Sub-Divisional level shall be taken in the 3 rd week of March on completion of election process.
Uttar Pradesh	
Uttaranchal	
West Bengal	The Government of West Bengal, vide letter dated 10.3.2008, has informed that the State Level Committee has already been constituted and the process of formation of rest of the Committees will be completed by 31.3.2008. Master training and other training programmes in District Levels, Sub-Divisional Levels and Gram Sanshad levels will be completed on or before 31.3.2008.
A & N Islands	
Daman & Diu	
Dadra & Nagar Haveli	
Lakshadweep	The UT Administration has intimated, vide letter dated 6.2.2008, that there are no terrestrial forests and no forest tribes or traditional forest dwellers in Lakshadweep. Therefore, it may not be necessary to prepare the operational schedules under the Act with reference to the Union Territory of Lakshadweep.

**Government of India
Ministry of Tribal Affairs**

Status report on implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 [for the period ending 30th November, 2009]

- - -

1. Readiness of the States in the implementation of the Act :

- (i) An updated status of State-wise implementation of the Act is given in **Annexure-I**. As per the information collected till 30th November, 2009, **more than 25 lakh claims have been filed and more than 5.73 lakh titles have been distributed. More than 43 thousand titles were ready for distribution.**

State-wise synopsis of claims approved by DLCs and titles distributed, as on 30.11.09, with respect to the status on May 09, the month of announcement of special drive, is as below:

State	No. of claims approved by DLC		No. of titles distributed		Increase (% increase)	
	May 09	November 09	May 09	November 09	Claims ready for distribution	Titles Distributed
Andhra Pradesh	128,948	1,80,074	330	1,73,052	51,126 (39.46%)	1,72,722 (52340%)
Chhattisgarh	109,711	1,92,088*	102,800	1,92,088	82,377*. (75.00%)	89,288 (46.48%)
Gujarat	2,023	7,584	-	7,584	5,561 (274.88%)	7,584 (Very High)
Jharkhand	Not available	Not available	-	72 distributed including 2 community rights	N.A. (N.A)	72 (Very High)
Kerala	-	118	-	23	118 (Very High)	23 (Very High)
Madhya Pradesh	43,292	3,15,223	24,571	47,460	2,71,931 (628.13%)	22,889 (93.15%)
Maharashtra	1,365	4,568	-	2,453	3,203 (70.11%)	2,453 (Very High)
Orissa	29,816	58,163	-	50,190	28,347 (95.07%)	50,190

Rajasthan	2,023	10,912	1,778	6,454	8,889 (439.39%)	4,676 (263%)
Tripura	29,507	87,212	29,507	82,741	57,705 (195.56%)	53,234 (180.41%)
West Bengal	7,545	17,070	5,249	11,110	9,525 (126.24%)	5,861 (111.66%)
Total	3,54,230	8,73,012* (246.45%)	1,64,235	5,73,227 (349.00%)	5,18,782* (146.45%)	4,08,992 (249.00%)

*Government of Chhattisgarh has not given the figure of number of claims approved by DLC; hence number of titles distributed has been taken as the number of claims approved by DLC.

Pending population of the web-site (www.forestrights.gov.in), a statement on claims received and distribution of title deeds in various states, as in **Annexure-II**, is being maintained.

- (ii) A list of States/UTs that are not uploading the website is at **Annexure-III**. A list of States/UTs that have not distributed any title so far, is also given in Annexure-III. Annexures I, II & III are being put up on the Ministry's web-site.

2. Clarifications sought by the States, if any :

No State has asked for any fresh clarification.

3. Matters relating to the Act pending at the level of Government of India:

- NIL -

4. Monitoring of the implementation of the Act:

As informed earlier, the Ministry convened a two-day Conference of Chief Ministers, State Ministers (Tribal Development / Social Welfare Departments) and State Ministers (Forest Departments) on 4th and 5th November, 2009, which was inaugurated by Hon'ble Prime Minister on 4th November, 2009, to take stock of the status of implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, the preparedness of States to adhere to the December 2009 deadline and a few major tribal development / welfare programmes in the States.

In his speech at the inaugural session of the Conference, the Hon'ble Prime Minister observed that while some States had achieved remarkable progress in the distribution of titles, others were lagging behind. In a few States, even the process of receiving claims was yet to commence. He urged all the Chief Ministers and their colleagues to spare no effort to ensure effective implementation of the Act and expeditious disposal of titles well within the given time frame. He emphasized the need for implementing the Provisions of Panchayats (Extension to Scheduled Areas) Act, in letter and spirit, dovetailing development and welfare programmes in tribal areas, giving priority attention to education, health, improvement of agricultural productivity, skill development training in tribal areas, besides improvement of the laws and mechanism for providing compensation to displaced tribals and creation of sustainable livelihoods, etc. He also emphasized the importance of posting of committed officers in tribal areas for strengthening the administrative machinery in those areas and suggested review and withdrawal of cases registered against the tribals related to forest laws as had been done by the Government of Jharkhand recently and by the Government of Madhya Pradesh in the past.

The Hon'ble Minister of Tribal Affairs, vide his letter dated 19.11.2009, has brought the observations of the Hon'ble Prime Minister to the notice of the State Chief Ministers for necessary follow up.

ANNEXURE 4. VII
(W.r.t para 4.10.29)

Implementation of the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006 – State wise progress

(As on 30.11.2009)

S. No.	State	No. of claim applications received (Upto Nov. 2009)	No. of claim applications disposed	%age of disposal	No. of claims approved for title	%age of claims approved out of total claims	No. of titles distributed	%age of titles distributed to No. of claims approved	No. of claims rejected	%age of claims rejected to total claims filed	%age of the titles distributed upto 30.11.2009 w.r.t. No. of claim applications received upto Nov.2009 Col. 8/3
(1)	(2)	(3)	(4)	Col.4/3 (5)	(6)	col.6/3 (7)	(8)	Col.8/6 (9)	(10)	Col.10/4 (11)	(12)
1	Andhra Pradesh	3,25,105	304332	93.61	180074	55.38	173052	96.10	131480	40.4	53.23
2	Assam	66,546	NA	NIL	NIL	NIL	NA	NA	NA	NA	
3	Bihar	788	NA	NIL	NIL	NIL	NA	NA	NA	NA	
4	Chhattisgarh	4,57,857	393991	86.05	192088	NIL	192088	100	201903	62.10	41.95
5	Gujarat	1,85,222	9272	5.00	7584	2.33	7584	100	1688	0.51	0.04
6	Jharkhand	4,539	NA	NA	NA	NA	70		NA	NA	1.58
7	Karnataka	45,801	NA	NA	NA	NA	NIL	NA	NA	NA	
8	Kerala	36,448	129	0.35	118	0.03	23	19.49	11	NA	0.06
9	Madhya Pradesh	3,71,993	543187	146.02	315223	96.9	47460+ 39799 ready	27.68	227964	70.12	12.75
10	Maharashtra	2,79,540	4807	1.71	4568	1.40	2453	53.69	239	0.07	0.87
11	Orissa	3,06,034	58277	19.04	Ind= 58098 Com= 179	17.92	50190	86.13	NIL	NA	16.40

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
12	Rajasthan	59,557	32987	55.38	10912	18.32	6454	59.12	21875	36.72	10.83
13	Tamil Nadu*	8,502	NA	NA	765	0.23	NIL	NA	NA	NA	
14	Tripura	1,62,186	NA	NA	87212	26.82	43836	50.26	NIL	NA	
15	Uttar Pradesh	52,736	NA	NA	NIL	NIL	NIL	NA	26	0.00	
16	Uttarakhand	-	NA	NA	NA	NIL	NA	NA	NA	NA	
17	West Bengal	1, 41,783	37926	26.74	17070	5.25	11110 + 3894 ready	65.08	20856	54.99	7.83
	Total	2504637	1384908		681803		578013		636042		

* In the State of Tamil Nadu, title could not be distributed due to restriction by the High Court

NA: Not Available

Source : Information available on the website of the Ministry of Tribal Affairs

ANNEXURE 4. VIII
(W.r.t para 4.10.29)

Disposal of claims for settlement under the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006

(As on 30/11/2009)

S. No.	State	No. of claims received at Gram Sabha			No. of claims disposed of by 30.11.2009								
		(Upto Nov.2009)			No. of claims disposed of		No. of claims approved for title	No. of titles distributed		No. of claims rejected		%age of the claims disposed off upto 30.11.2009 w.r.t. claims received upto Nov.2009	
		Individual	Comm-unity	Total	Individual	Comm-unity		Individual	Comm-unity	Individual	Comm-unity	Individual	Comm-unity
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)
1	Andhra Pradesh	3,18,037	7,068	3,25,105	304332	NA	180074	173052	NA	131480	NA	53.23	
2	Assam	63,448	3098	66,546	NA	NA	NIL	NA	NA	NA	NA		
3	Bihar			788	NA	NA	NIL	NA	NA	NA	NA		
4	Chhattisgarh			4,57,857	393991	NA	192088	192088	NA	201903	NA	41.95	
5	Gujarat	1,77,055	8,167	1,85,222	9272	NA	7584	7584	NA	1688	NA	0.04	
6	Jharkhand			4,539	NA	NA	NA	70	2	NA	NA	1.58	
7	Karnataka			45,801	NA	NA	NA	NIL	NA	NA	NA		
8	Kerala	35,310	1138	36,448	129	NA	118	23	NA	11	NA	0.06	
9	Madhya Pradesh			3,71,993	543187	NA	315223	47460+ 39799 ready		227964	NA	12.75	

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)
10	Maharashtra			2,79,540	4807	NA	4568	2453	NA	239	NA	0.87	
11	Orissa	3,04,336	1,698	3,06,034	58277	NA	Ind= 58098 Com= 179	50190	NA	NIL	NA	16.40	
12	Rajasthan	59,239	318	59,557	32987	NA	10912	6454	NA	21875	NA	10.83	
13	Tamil Nadu*	NA	NA	8,502	NA	NA	765	NIL	NA	NA	NA		
14	Tripura			1,62,186	NA	NA	87212	43836	NA	NIL	NA		
15	Uttar Pradesh			52,736	NA	NA	NIL	NIL	NA	26	NA		
16	Uttarakhand			-	NA	NA	NA	NA	NA	NA	NA		
17	West Bengal	1,31,664	10,119	1, 41,783	37926	NA	17070	11110 + 3894 ready	NA	20856	NA	7.83	
18	Total	157997	31,606	274917	1384908		623526	475750	2	606042			

* In the State of Tamil Nadu, title could not be distributed due to restriction by the High Court

NA: Not Available

Source : Information available on the website of the Ministry of Tribal Affairs

ANNEXURE 5.1A

(Ref. Para 5.2.13)

IMMEDIATE

NO.BC. 12016/37/76-SCT.V
GOVERNMENT OF INDIA|BIHARAT SARKAR
MINISTRY OF HOME AFFAIRS/GRH
MANTRALAYA

New Delhi, the 5th Oct, 1979.

To

The Secretary to the
Government of Andhra Pradesh,
Social Welfare Department,
Secretariat Building,
Hyderabad.

Subject:—Specification of equivalent names and name
of synonyms and sub-castes/tribes of the
existing Scheduled Castes and Scheduled
Tribes in Andhra Pradesh State.

Sir,

I am directed to refer to the correspondence re-
sisting with your letter No. 2595/F2/78-I dated 15-12-

1978 on the above subject, and to say that in the
light of the Supreme Court's ruling in the case of
Bhaiya Ram Munda Vs. Anirudh Patar (A.I.R. 1971
S.C. 2533) the Government of India has, in consul-
tation with the Registrar General of India, decided
that the entries in column (3) of the table below may
be treated as equivalent names or names of synonyms
and sub-castes/tribes of the Scheduled Castes and
Scheduled Tribes entered in column (2) of the table
for the State of Andhra Pradesh.

S.No. in the SC/ST Schedule	Names of the community as given in the SC/ST Schedule	Equivalent names or names of synonyms and sub-castes/tribes
1	2	3
(a) List of Scheduled Castes		
1. Byagari	Byagari.	
14. Chamar, Mochi, Mochi	Chamar-Ravidas, Chamar-Rohidas.	
15. Mala	Mala Ayswari.	
(b) List of Scheduled Tribes		
1. Andh.	Sadhu Andh.	
5. Gadabas	Dodo Gadaba, Gutob Gadaba, Gadaba, Yarn- gi Gadaba, Kathera Gadaba, Kappu Gadaba.	
6. Gond, Naikpod, Rajgond	Koitur.	
12. Kolant, Mannerevlu	Kolawar.	
13. Konda Dhoras	Kubi.	
16. Kondhs, Kodli, Kodko, Desaya-Kondhs, Dongria Kondhs, Kutliya Kondhs, Tikiria Kondhs, Yecity Kondhs.	Kuvinga.	
16. Koya, Goud, Rajah, Rasha Koya, Lingadbari Koya (ordinary), Kottu Koya, Bhine Koya, Raj Koya.	Doli Koya, Gutta Koya, Kammara Koya, Kuma- ra Koya, Odli Koya, Patildi Koya.	
20. Sogalia, Lambaria	Baujara.	
22. Yenadi	Chella Yenadi, Kappala Yenadi, Mauchi Yenadi, Reddi Yenadi.	
23. Yerukula	Koracha, Dabba Yerukula, Kunchapuri Yerukula, Uppu Yerukula.	

2. The above list of equivalent names and names of synonyms or sub-castes/tribes has been prepared by taking into account the ethnographic and other facts relating to the community referred to above and may be used only for the purpose of verification of claims of the members of the relevant community, calling themselves by the names given in column (3) of the table above, to belong to the community given in column (2) of the table.

3. The above list is not intended or shall not be treated as an alteration or amendments of the Schedules to the Presidential Orders specifying Scheduled Castes and Scheduled Tribes in relation to the Andhra Pradesh State, as any alterations or amendments of the lists of Scheduled Castes and Scheduled Tribes contained in the Presidential Orders can be made only by Parliamentary legislation.

4. The Scheduled Castes and Scheduled Tribes certificates to the eligible persons will be valid only if they are issued in the relevant name of the community entered in the Presidential Order, i.e., those in column (2) of the table and not in the names given in column (3) thereof. Before issuing such certificate, it has also to be verified that they fulfil all other conditions of eligibility set out in the Presidential Orders e.g., that the person should be a resident of the locality specified in relation to the respective Scheduled Caste/Tribe from the date of notification of the Presidential Order, etc.

5. It is further clarified that as the listed synonyms/sub-castes/sub-tribes would not form part of the Presidential Order, it would be open for any affected person to contend that the particular synonyms/sub-cas-

tes/sub-tribes is not, in fact, a part of or identical with the respective scheduled Caste/Tribe.

6. The State Government are requested to bring the contents of this letter to the notice of all concerned authorities in the State for compliance. Copy of those instructions may also be sent to this Ministry for information and record.

Yours faithfully,
(P. S. Krishnan)
Joint Secretary to the
Government of India
Tele. No. 381652

No. BC. 12016/37/76-SCT.V. New Delhi, dated the 25th Oct. 1979

Copy forwarded for information to:—

1. The Registrar General of India, Social Studies Unit, West Block., R. K. Puram, New Delhi—110023.
2. The Commissioner for Scheduled Castes and Scheduled Tribes, West Block-1, R. K. Puram, New Delhi—110023
3. The Commission for Scheduled Castes and Scheduled Tribes, Lok Nayak Bhavan, New Delhi-110003.
4. All Ministries of the Government of India.

(P. S. Krishnan)
Joint Secretary to the
Government of India
Tele. No. 381652

No.42011/22/2006-Estt.(Res)
Ministry of Personnel, P.G & Pensions
Department of Personnel & Training
Government of India

New Delhi, Dated: the 29th March, 2007

OFFICE MEMORANDUM

Subject: Action against Government servants who get appointment on the basis of false SC/ST/OBC certificates.

Respondent no.1 in Civil Appeal No. 2294/1986 [State of Maharashtra Vs Milind & Ors] before the Supreme Court had got admission as a Scheduled Tribe candidate to MBBS degree course for the year 1985-86 on the strength of a Scheduled Tribe Certificate issued to him by the competent authority. The Supreme Court held him not to belong to a Scheduled Tribe but did not annul his admission or affected his degree. The Hon'ble Court observed that about 15 years had passed since he took admission and had already completed the course. At that length of time it was for nobody's benefit to annul his admission inasmuch as any action against the candidate might lead to depriving the society of the service of a doctor on whom public money had already been spent. The Court in that case also held that the admissions and appointments that had become final would remain unaffected by the judgement.

2. A question has been raised whether in view of the above referred judgement, the appointments made against the vacancies reserved for SCs/STs/OBCs on the basis of false SC/ST/OBC certificates shall not be disturbed if such appointments have been made final or are continuing for a long time.

3. The matter has been examined in consultation with the Department of Legal Affairs and it has been found that admissions and appointments of some candidates in the case of Milind and in some other similar cases were not annulled by the Supreme Court as a special case keeping in view the special circumstances of those cases. The relief accorded by the Supreme Court was specific relief provided only to the candidates who were party in those cases. The cases other than those protected by the specific order of the Apex Court should be dealt with in

accordance with the instructions contained in this Department's OM No.11012/7/91-Estt(A) dated 19.5.1993 which provides as follows:

“Wherever it is found that a Government servant, who was not qualified or eligible in terms of the recruitment rules etc, for initial recruitment in service or had furnished false information or produced a false certificate in order to secure appointment, he should not be retained in service. If, he is a probationer or a temporary Government servant, he should be discharged or his services should be terminated. If he has become a permanent Government servant, an inquiry as prescribed in Rule 14 of CCS(CCA) Rules, 1965 may be held and if the charges are proved, the Government servant should be removed or dismissed from service. In no circumstances should any other penalty be imposed”.

4. The above referred instructions are strengthened by the observations of the Supreme Court in Milind Kumar's case (SUPRA) to the effect that if the benefits of reservation are taken away by those for whom they are not meant, the people for whom they are really meant or intended will be deprived of the same and their suffering will continue. Allowing the candidates not belonging to the reserved categories to have the benefit of reservation either in admissions or appointments would lead to making mockery of the very reservation against the mandate and scheme of Constitution.

5. Contents of this OM may be brought to the notice of all concerned.



(K.G. Verma)
Director

1. All Ministries/Departments of the Government of India.
2. All Officers and Sections in the Ministry of Personnel, Public Grievances and Pensions and all attached/subordinate offices of the Ministry.
3. Department of Economic Affairs (Banking Division), New Delhi.
4. Department of Economic Affairs (Insurance Division), New Delhi.
5. Department of Public Enterprises, New Delhi.
6. Railway Board.
7. Union Public Service Commission/Supreme Court of India/Election Commission/Lok Sabha Secretariat/Rajya Sabha Secretariat/Cabinet

Secretariat/Central Vigilance Commission/President's Secretariat/Prime Minister's Office/Planning Commission.

8. Staff Selection Commission, CGO Complex, Lodi Road, New Delhi.
9. Ministry of Social Justice and Empowerment, Shastri Bhavan, New Delhi.
10. National Commission for SCs, Lok Nayak Bhavan, New Delhi.
11. National Commission for STs, Lok Nayak Bhavan, New Delhi.
12. National Commission for Backward Classes, Trikot-I, Bhikaji Cama Place, R.K. Puram, New Delhi.
13. Office of the Comptroller and Auditor General of India, 10, Bahadur Street, Zafar Marg, New Delhi – 110002.
14. CBI, LBSNAA, ISTM, PESB, Central Sectt. Library, MHA Library.
15. Information and Facilitation Centre, DOPT, North Block, New Delhi.

Copy to:

The Chief Secretaries of all States/UTs.

No.36022/1/2007-Estt.(Res)

Government of India

Ministry of Personnel, Public Grievances & Pensions

Department of Personnel & Training

New Delhi, dated: the 26th March, 2007

To

The Chief Secretaries of all
States/Union Territories

Subject: Verification of claims of candidates to belong to
Scheduled Castes, Scheduled Tribes and Other
Backward Classes.

Sir,

It has been brought to the notice of this Department that some candidates manage to secure employment under the Government against the vacancies reserved for SCs/STs/OBCs on the basis of false/forged caste/ community certificates. It is a serious matter which can only be tackled with the cooperation of the State Governments.

2. Instructions issued by this Department require the appointing authorities to verify the caste status of SC/ST/OBC candidates at the time of initial appointment. Accordingly, the concerned appointing authorities, at the time of initial appointment of SC/ST/OBC candidates against vacancies reserved for them, make a request to the concerned district authorities to certify the veracity of caste/community certificate produced by the candidate. Many a time, the district authorities take unduly long time to respond. Where verification is not completed in time, the candidates are given appointment on provisional basis pending verification of their caste status. Some candidates continue to hold the post on the basis of false/forged certificates in the absence of proper response from district authorities. Chances of collusion of the candidate with some unscrupulous employee(s) at the district level cannot also be ruled out.

3. I am directed to request you to streamline the system so that the unscrupulous non-SC/ST/OBC persons are prevented from securing jobs meant for SCs/STs/OBCs by producing false certificates. It would be appreciated if you could issue instructions to the District Magistrates/District Collectors/Deputy Commissioners of the districts to the effect that they should ensure at their own level that veracity of the caste/community certificate referred to the district authorities, as stated above, is verified and reported to the appointing authority within one month of receipt of request from such authority. In order to rule out collusion between candidates holding false/forged certificate and employees at the district level or sub-district level, disciplinary proceedings may be initiated against officers who default in timely verification of caste status in such cases or issue false certificates.

Yours faithfully



(R. Ramanujam)
Joint Secretary

No.36011/3/2005-Estt.(Res.)
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training

New Delhi, the 9th September, 2005.

OFFICE MEMORANDUM

Subject: Verification of caste status of Scheduled Caste, Scheduled Tribe and Other Backward Class candidates at the time of initial appointment/promotion.

Attention is invited to Department of Personnel and Administrative Reforms (now Department of Personnel & Training) O.M. No.36011/16/80-Estt.(SCT) dated 27th February, 1981 which provides that the appointing authorities should verify the caste status of a Scheduled Caste/Tribe candidate at the time of initial appointment and promotion against a vacancy reserved for Scheduled Castes/Tribes. The O.M. clarifies that a candidate who entered into service as an SC/ST candidate may discontinue to be so if the caste/community to which he belongs is descheduled subsequently. A Scheduled Caste candidate also loses his status of Scheduled Caste if he embraces a religion other than Hinduism, Sikhism or Buddhism. Though such officers who lose the status of SC or ST after entering into service are required to inform the Government about it, many of them do not do so. In the absence of necessary vigil, there are possibilities of non-SC/ST candidates getting benefit of reservation and various concessions in the matter of promotion. Therefore, verification of caste status at every important upturn of employee's career is necessary so that the benefit of reservation and other schemes of concessions, etc. meant for SCs/STs go only to the rightful claimants and not those who become disentitled to them. With a view to facilitating such verification, the caste/community to which the SC/ST person belongs, his place of residence and the name of the State should be pasted on the top of the Service Book, personal file and other relevant documents relating to the employee. Attention is also invited to this Department's O.M. No.36033/4/97-Estt.(Res.) dated 25th July, 2003 which provides that caste/community status and creamy layer status of OBC candidates should be verified at the time of initial appointment.

2. This Department's O.M. No.36012/6/88-Estt.(SCT) dated 24th April, 1990 provides that the appointing authorities should, in the offer of appointment to the candidates claiming to be belonging to Scheduled Castes/Scheduled Tribes, include a clause as follows:

..... 2/-

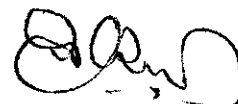
"The appointment is provisional and is subject to the caste/tribe certificate being verified through the proper channels and if the verification reveals that the claim to belong to Scheduled Caste/Scheduled Tribe, as the case may be, is false, the services will be terminated forthwith without assigning any further reasons and without prejudice to such further action as may be taken under the provisions of the Indian Panel Code for production of false certificates."

Likewise this Department's O.M. No.36033/4/97-Estt.(Res.) dated 25th July, 2003 provides that in case of the offer of appointment to the candidates claiming to belong to Other Backward Classes, a clause as follows should be included:

"The appointment is provisional and is subject to the community certificate being verified through the proper channels. If the verification reveals that the claim of the candidate to belong to Other Backward Classes or not to belong to creamy layer is false, his/her services will be terminated forthwith without assigning any further reasons and without prejudice to such further action as may be taken under the provisions of Indian Panel Code for production of false certificates."

3. It has been brought to the notice of the Government that some candidates manage to secure employment under the Government against the vacancies reserved for SCs/STs/OBCs by producing false caste/community certificates and some candidates continue to get the benefits available to the Scheduled Castes/Scheduled Tribes even after losing the status of SC/ST. The undersigned is directed to say that instructions referred to above should be scrupulously followed so that it may not be possible for any non-SC/ST/OBC candidate to secure employment or get benefit of promotion or concessions on the basis of a false claim to belong to these categories and if any person gets an appointment on the basis of such false claim, his services may be terminated as per conditions contained in the offer of appointment.

4. Contents of this O.M. may be brought to the notice of all concerned.



(K.G. Verma)

Deputy Secretary to the Government of India
Tele: 23092797

To

1. All Ministries/Departments of the Government of India.

..... 3/-

2. All Officers and Sections in the Ministry of Personnel, Public Grievances and Pensions and all attached/subordinate offices of this Ministry.
3. Department of Economic Affairs (Banking Division), New Delhi.
4. Department of Economic Affairs (Insurance Division), New Delhi.
5. Department of Public Enterprises, New Delhi.
6. Railway Board.
7. Union Public Service Commission/Supreme Court of India/Election Commission/Lok Sabha Secretariat/Rajya Sabha Secretariat/Cabinet Secretariat/Central Vigilance Commission/President's Secretariat/Prime Minister's Office/Planning Commission.
8. Staff Selection Commission, CGO Complex, Lodi Road, New Delhi.
9. Ministry of Social Justice and Empowerment, Shastri Bhavan, New Delhi.
10. National Commission for SCs, Lok Nayak Bhavan, New Delhi.
11. National Commission for STs, Lok Nayak Bhavan, New Delhi.
12. National Commission for Backward Classes, Trikot-I, Bhikaji Cama Place, R.K. Puram, New Delhi.
13. Office of the Comptroller and Auditor General of India, 10, Bahadurshah Zafar Marg, New Delhi – 110002.
14. CBI, LBSNAA, ISTM, PESB, Central Sectt. Library, MHA Library.
15. Information and Facilitation Centre, DOPT, North Block, New Delhi.
16. 200 spare copies for Estt.(Res.) Section.

Department of Personnel & A.R. No. 36011/16/80-Estt. (SCT) dated 27-2-81

Subject :—Descheduling of caste of Scheduled Caste person after his initial appointment—Question of verification of caste at the time of making subsequent promotions.

With reference to the above subject, the undersigned is directed to say that instances have come to the notice of the Government where a Scheduled Caste person whose caste has been de-scheduled long ago was promoted against a reserved vacancy though he no longer was a member of the Scheduled Caste. Instances have also come to the notice of the Government where a person professing a religion other than the Hindus and Sikhs, was appointed against a Scheduled Castes vacancy though the fact of his belonging to any other religion other than the Hindus and Sikhs did not entitle him to claim the benefits of being Scheduled Castes. Obviously, these have occurred due to the appointing authorities not scrutinising the caste certificate of the person to be appointed or promoted.

It has now been decided that the appointing authorities should verify the caste status of a Scheduled Castes/Tribes officer at the time of initial appointment and promotion against a vacancy reserved for Scheduled Caste/Tribe. For this purpose, the caste and the community to which a SC/ST person belongs, his place of residence and the name of the State, should be pasted on the top of the service book, personal file or any other relevant document covering its employee to facilitate such verification. It may be mentioned that a Scheduled Caste person, whose caste been descheduled after his initial appointment as Scheduled Caste, is no longer entitled to enjoy the benefit of reservation in promotions. This verification of caste status at every important up-turn of employee's career is necessary so that the benefit of reservation and other scheme of concessions etc. meant for SC/ST should go only to the rightful claimants and not those who become dis-entitled to them.

3. M/O. Finance etc. are requested to bring the above position to the notice of all attached and subordinate offices under them.

Disposal of cases by Scrutiny Committee during 2008-09

S.No.	State	Number of cases pending at the beginning of the year (as on 31/03/2008)	Number of cases received during the year	Number of cases disposed off during the year	Number of cases in which claims were rejected during the year	Number of cases pending at the end of the year	Number of cases in which validation were issued during the year
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1.	Bihar		3	0	0	3	
2.	Chhattisgarh	103	69	39	26	148	13
3.	Goa	108	1278	1136			
4.	H.P.	0	0	0	0	0	0
5.	Kerala	59	-	21	21	35	-
6.	Maharashtra	25948	65059	39173	1591	24400	37244
7.	Tripura	43	3	8	38		-

Information not received from other States

Disposal of cases by Scrutiny Committee during 2007-08

S.No.	State	Number of cases pending at the beginning of the year (as on 31/03/2008)	Number of cases received during the year	Number of cases disposed off during the year	Number of cases in which claims were rejected during the year	Number of cases pending at the end of the year	Number of cases in which validation were issued during the year
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1.	Chhattisgarh	118	26	41	30	103	11
2.	Goa	34	589	553	02	0	0
3.	H.P.	0	0	0	0	0	0
4.	Kerala	-	-	2	2	-	-
5.	Maharashtra	27335	67414	34820	1160	25928	33575
6.	Sikkim	-	-	-	-	-	-
7.	Tripura	73	-	30	43		-

Information not received from other States

D.O.No. INC/EXE/01/ST-2005/SSW



भारत सरकार

राष्ट्रीय अनुसूचित जनजाति आयोग

GOVERNMENT OF INDIA

NATIONAL COMMISSION FOR SCHEDULED TRIBES

(A Constitutional Commission set up under Art. 338A of the Constitution to investigate and monitor all matters relating to violation of rights and safeguards provided for STs.)

K.N. Singh

Joint Secretary,

Ph: 24603669

Dated: 14.10.2005

Dear Sir,

This Commission has been receiving representations from individuals and associations for inclusion of certain communities in the list of Scheduled Tribes under Article 342(1) of Constitution of India and, as per the procedure, this Commission has been forwarding those representations to the Ministry of Tribal Affairs to consider them in consultation with the concerned State Govt. or UT administration and the office of Registrar General of India and, thereafter to send a proposal to this Commission for placing the matter before the Commission for its consideration and advice on the recommendations/ views of the State Govt. and RGI. Chairman, NCST has desired that the Ministry of Tribal Affairs may be informed that such representation sent by the Commission to the Ministry should not be treated as recommended by the Commission and that each such representation is to be considered carefully on its merits. Chairman has further observed that the representations for inclusion of communities in the list of Scheduled Tribes after 50 years of independence are not justified at this stage and that those belonging to SC or OBC and already included in their respective Scheduled lists are trying to get included in the list of Scheduled Tribes. This is for your information and necessary action as considered appropriate.

With regards,

Yours sincerely

Sd/-
(K.N. Singh)

Shri Rajiv Kumar,

Joint Secretary,

Ministry of Tribal Affairs,

Shastri Bhawan,

New Delhi.

No. 39/37/73-SCT. I
Government of India|Bharat Sarkar
Ministry of Home Affairs|Grih Mantralaya

To

The Chief Secretaries of all State
Governments & Union Territory
Administrations.

New Delhi-110001, the 21 May, 1977|31 Vaisakha,
1899

SUBJECT:—*Caste status of the offsprings of inter-
caste married couples.*

Sir,

I am directed to say that enquires about the caste status of the offsprings of the inter-caste married couples, have been sought from this Ministry by various State Governments|Union Territory Administrations from time to time. Accordingly this question has been receiving the attention of this Ministry for quite some time. A set of legal views on the caste status of such offsprings was already brought out vide this Ministry's letter of even number dated the 4th March, 1975. The matter has, however, been further examined and the comprehensive legal position about the status of the offsprings born to couples where one or both of the spouses is/are member(s) of Scheduled Castes and or Scheduled Tribes, is given in the enclosed Annexures (A to D).

2. It is requested that these instructions may be circulated among all the authorities empowered to

issue Scheduled Caste and Scheduled Tribe certificates.

Yours faithfully,

(O. R. SRINIVASAN)

UNDER SECRETARY TO THE GOVT. OF
INDIA

No. 39/37/73-SCT.I, Dated the 21 May, 1977

31 Vaisakha, 1899

Copy to :—

1. All Ministry's|Departments of the Government of India.
2. All attached and subordinate offices of the Ministry of Home Affairs.
3. The Union Public Service Commission, Dholpur House, New Delhi-110011.
4. The Subordinate Services Commission, R. K. Puram, New Delhi-110022.

(O. R. SRINIVASAN)

UNDER SECRETARY TO THE GOVT. OF
INDIA

ANNEXURE—A

Legal views on the status of the offspring of a couple where one of the spouses is a member of a Schedule Caste

The general position of Law as to that effect of marriage between parties who are Hindus and one of whom belongs to the Scheduled Castes in that under the ancient Hindu law, generally, inter-caste marriage was looked down upon by the propounders and commentators. Some of the authorities, however, reluctantly permitted marriage between a male caste Hindu with a Shudra female and included it in the list of Anuloma marriages although it was stated that in the wedding with a Shudra wife, the ceremony should be performed without Mantras. The children born out of such marriage by a caste Hindu with a woman of an inferior caste had neither the caste of the father nor the status of his Savarna Anuloma—meaning the son born of a caste Hindu wife. They were termed as Anulomaja and belonged to an intermediate caste higher than that of their mother and lower than that of their father. Yajnavalkya omits the son of Brahmin by a Shudra wife from the list of sons mentioned by Manu. Pratiloma marriages, i.e. marriages between woman of a superior caste with a man of an inferior caste, were altogether forbidden and no rites were prescribed for them in Grihya Sutra and persons entering into such marriages were degraded from the caste.

2. After the passing of the various statutory enactments relating to the Hindu law, such as, the Hindu Marriages Act, 1955, the Hindu Succession Act, 1956 and the Hindu Minority & Guardianship Act, 1956, customary ban on inter-caste marriages in either way, has been lifted by the statutory enactments. Under the Hindu Marriage Act, any two Hindus of different sex, irrespective of their caste may enter into a valid marriage unless such marriage is prohibited by the Statute itself. According to the above three Statutes, all children either legitimate, or illegitimate, one of whose parents is a Hindu, a Buddhist, a Jain or a Sikh by religion and who are brought up as members of the tribe, community, group or family to which their parents belong or belonged, are to be treated as Hindus. In view of the above, the off-springs of marriage between the caste Hindu and a member of the Schedu-

led Caste community, are Hindus and like the offspring of marriage in the same caste, are entitled to succeed to the properties of their parents. But the status of his or her parent belonging to the higher caste or a question arises as to whether such a child will acquire the property that of the parent belonging to the Scheduled Caste. On this point, we have not come across any direct case law. But we feel that the ratio of the decision in *Wilson Read Vs. C. S. Booth* reported in AIR 1958 Assam 128 would apply to such cases. It is stated at page 182.

"The test which will determine the membership of the individual will not be the purity of blood, but his own conduct in following the customs and the way of life of the tribe; the way in which he was treated by the community and the practice amongst the tribal people in the matter of dealing with the tribal people in the matter of dealing with persons whose mother was a Khasi and father was a European".

Similarly, in the case of *Muthuswamy Mudaliar Vs. Masilman Mudaliar*, reported in ILR 33, Madras, 342, the Court held:—

"It is not uncommon process for a class or tribe outside the pale of caste to another pale and if other communities recognised their claim, they are treated as of that class or hastes. The process of adoption into the Hindu hierarchy through caste is common both in the North and in the South India. As we have already pointed out, in the past there have been cases where people who judge from the purity of blood could not be Khasis, were taken into their fold or the orthodoxy did not stand in the way of their assimilation into the Khasi community".

3. The Supreme Court in *V. V. Giri Vs. D. S. Dora* reported in AIR 1959 S. C. 1318 (1327) held,—

"... The caste—status of a person in the context would necessarily have to be determined in the light of the recognition received by him from the members of the caste into which he seeks an entry.

There is no evidence on this point at all. Besides the evidence produced by the appellant merely shows some acts by respondent 1 which no doubt were intended to assert a higher status; but unilateral acts of this character cannot be easily taken to prove that the claim for the higher status which the said acts purport to make is established. That is the view which the High Court has taken and in our opinion the High Court is absolutely right."

In view of the above observations by superior Courts, it can safely be concluded that the crucial test to determine is whether a child born out of such a wedlock has been accepted by the Scheduled Caste community as a member of their community and has been brought up in that surrounding and in that community or not. The nexus between the child and the community or class or caste is a real test irrespective of the fact whether the accommodating class or caste or community is Scheduled Caste community or a caste Hindu community. Even if the mother of the child is a member of the Scheduled Caste community, it is possible that the child is accepted by the community of his father and brought up in the surroundings of his father's relations. In that case, such a child cannot be treated as a member of the Scheduled Caste community and cannot get any benefit as such. Similarly, when the mother belongs to a higher caste and the father is a Scheduled Caste, the father may remain away from the Scheduled Caste Community and the child may be brought up in a different surrounding under the influence of his mother's relations and her community members. In such cases also, the child cannot be said to be a member of the Scheduled Caste community. In the alternative, where the child irrespective of the fact whether the father or the mother is a member of Scheduled Caste community, is brought up on the Scheduled Caste community as a member of such community, then he has to be treated as a member of the Scheduled Caste community and would be entitled to receive benefits as such.

4 As regards the marriages not registered and marriages not legally valid, it may be pointed out that registration is not mandatory for marriages un-

der the Hindu law. Even under the Hindu Marriage Act, 1955, registration under Section 8 is optional and sub-section (5) provides that the validity of any Hindu marriage shall, in no way, be affected by the omission to make entry in the Marriages Register maintained under this Section. Section 7 provides that Hindu marriage may be solemnised in accordance with the customary rites and the ceremonies of either party thereto and, if such ceremony includes the Saptapadi, the marriage becomes complete and binding when the seventh step is taken. In view thereof, all those marriages though not registered but which have been solemnised in accordance with the procedure mentioned in this Section, are to be treated as valid marriages and our opinion mentioned in para 3 above will apply to the children born out of such valid but undersigned marriages.

5. As regards marriages which are not legally valid, it is clear that such children are illegitimate unless invalidity of marriage is due to grant of a decree of nullity by a Court in which case, provisions of Section 16 of the Hindu Marriage Act, 1955, will apply. Under Section 6(b) of the Hindu Minority and Guardianship Act, 1956, the natural guardian of a Hindu minor has been stated to be—

"in case of an illegitimate boy or an illegitimate girl—the mother and after her the father"

6. It can be derived from this that the illegitimate children are generally brought up by the mother and in her own surroundings. Therefore, if the mother belongs to the Scheduled Caste and brings up the child within a Scheduled Caste community, the child can be taken as a member of the Scheduled Caste community. But in this case also the major factor for consideration is whether the child has been accepted by the Scheduled Caste community as a member of their community and he has been brought up as such.

7. The above are the general observations, however, each case has to be examined in the light of the circumstances prevalent in that case and final decision has to be taken thereof.

ANNEXURE—B

Legal views on the status of the offsprings of a couple where one of the spouses is a member of a Scheduled Tribe

The question has arisen whether the Off-spring born out of wedlock between a couple one of whom is a member of Scheduled Tribe and other is not, should be treated as a Scheduled Tribe or not.

2. It may be stated at the outset that unlike members of Scheduled Castes the members of Scheduled Tribes continues as such even after their conversion to other religion. This is because while Constitution (Scheduled Castes) Order, 1950 provides in clause 3 that only a member of Hindu or Sikh religion shall be deemed to be a member of Scheduled Caste, the Constitution (Scheduled Tribes Order, 1950)) does not provide any such condition. This view has been upheld by the Supreme Court in the case reported in AIR 1964 S.C. at p. 201.

3. It may be stated that unlike members of Scheduled Castes, members of Scheduled Tribes remain in homogenous groups and quite distinct from any other group of Scheduled Tribes. Each Tribe live in a compact group under the care and supervision of the elders of the Society whose words are obeyed in all social matters. A member committing breach of any prescribed conduct is liable to be excommunicated. The social custom has a greater binding force in their day to day life.

4. In the case of marriage between a tribal with a non-tribal, the main factor or consideration is whether the couple were accepted by the tribal society to which the tribal spouse belongs. If he or she, as the case may be, is accepted by the Society then their children shall be deemed to be Scheduled Tribes. But this situation can normally happen when the husband is a member of the Scheduled Tribe. However, a circumstances may be there when a Scheduled Tribe women may have children from marriage with a non-Scheduled Tribe man. In that event the children may be treated as Scheduled Tribes only if the members of the Scheduled Tribe Community accept them and treat them as

members of their own community. This view has been held by the Assam High Court in *Wilson Read v. C. S. Booth* reported in AIR 1958 Assam at p. 128, where it has been held—

"The test which will determine the membership of the individual will not be the purity of blood, but his own conduct in following the customs and the way of life of the tribe; the way in which he has been treated by the Community and the practice amongst the tribal people in the matter of dealing with persons whose mother was a Khasi and father was a European".

Similarly, in the case of *Muthusamy Mudaliar v. Masilamun Mudaliar*, reported in ILR 33, Madras. 342, the court held—

"It is not uncommon process for a class or tribe outside the pale of caste to another pale and if other communities recognised their claim they are treated as of that class or caste".

Similarly, in *V. V. Giri v. D. S. Dora*, reported in AIR 1959 S. C. 1318 (1327), the Court held—

"The caste-status of a person in the context would necessarily have to be determined in the light of the recognition received by him from the members of the caste into which he seeks an entry".

5. As mentioned above, it is the recognition and acceptance by the society of the children born out of a marriage between a member of Scheduled Tribe with an outsider, which is the main determining factor irrespective of whether the Tribe is matriarchal or patriarchal. The final result will always depend on whether the child was accepted as a member of the Scheduled Tribe or not.

6. The general position of law has been stated above. However, each individual case will have to be examined in the light of existing facts and circumstances in such cases.

ANNEXURE—C

Legal views on the status of the offsprings of a couple where both the spouses are members of Scheduled Caste/Scheduled Tribes but each belongs to a different sub-caste/sub-tribe.

1. Under the Constitution (Scheduled Castes) Order, 1950 and the Constitution (Scheduled Tribes) Order, 1950, what is material is residence of the member of the caste, race or tribe in the localities specified in the respective schedule. In the case of a minor child the question arises whether his residence will go along with that of his father. Under the principles of prevailing International Law, the domicile of a minor child follows that of his father, and in certain cases of his mother and the minor child is incapable of changing his domicile by any voluntary act. This rule by no means is absolute. Suppose, for instance, a father deserts his son or he is divorced and the custody of his son is given to his wife. In such a case, the court may consider that the minor's domicile will be that of the mother.

2. Under Section 3 of the Hindu Minority and Guardianship Act, 1956 the natural guardian in the case of a minor boy or an unmarried girl is father and after him his mother. In the case of an illegi-

timate boy or an illegitimate unmarried girl, the natural guardian will be the mother and after her, the father.

3. In the above background it has to be seen as to which sub-caste or sub-tribe the offspring would belong in case the parents belonging to two distinct communities within the same Scheduled Castes or Scheduled Tribes as the case may be. *Prima facie* it would appear that in such cases the children born of such parents could be treated as members of the Scheduled Castes or Scheduled Tribes, as the case may be. The *prima facie* presumption is also in favour of the child possessing the sub-caste or sub-tribe of the father in the large majority of cases, having regard to the concept of domicile mentioned above. Apart from this, it has to be seen whether the child has also been accepted and assimilated in the sub-caste or sub-tribe in that community. Each case has to be examined in the light of the circumstances pertaining to it.

ANNEXURE—D

Legal views on the status of the offsprings of a couple where one of the spouses is a member of a Scheduled Caste and the other that of a Scheduled Tribe.

As regards the status of the offspring whose father is a member of Scheduled Caste and mother of a Scheduled Tribe, the prima-facie presumption is in favour of the child possessing the caste of the father in the large majority of cases, having regard to the concept of domicile explained in para 1 of Annexure C. Apart from this, it may also be a relevant criterion to see whether the child has been accepted and assimilated in the Scheduled Caste community to which the father belongs.

2. The principle mentioned above would also apply to the case of an offspring whose mother is a member of a Scheduled Caste and father of a Scheduled Tribe.

3. This is the general position of law. Each case, however, has to be examined in the light of the attendant facts and circumstances.



GOVERNMENT OF KERALA

Abstract

CLASSIFICATION OF COMMUNITIES—CASTE STATUS OF CHILDREN OF PARENTS
CONTRACTED INTER CASTE MARRIAGE—MODIFICATION—
ORDERS ISSUED

SCHEDULED CASTES/SCHEDULED TRIBES DEVELOPMENT (G) DEPARTMENT
G.O.(Ms.) No. 109/2008/SCSTDD.

Dated, Thiruvananthapuram, 20th November, 2008.

- Read: -1. G.O. (Ms.) No. 298/61/RD dated 23-3-1961.
2. G.O. (Ms.) No. 256/75/PD dated 1-11-1975.
3. G.O. (Ms.) No. 11/77/DD dated 25-1-1977.
4. Government letter No. 3424/E2/84/HWD dated 12-7-1984 issued to the Secretary, Board of Revenue, Thiruvananthapuram.
5. Judgment dated 19-8-2003 of the Hon'ble Supreme Court in Civil Appeal No. 659 of 2003 (Punit Rai Vs Dinesh Chaudhary).
6. Judgment dated 28-1-2005 of the Hon'ble Supreme Court of India in Civil Appeals Nos. 4413, 4414 of 2003 (Sobha Hymavathi Devi Vs Setty Gangadhara Swamy and others).
7. G.O. (Ms.) No. 11/2005/SCSTDD dated 22-3-2005.
8. G.O. (Ms.) No. 25/05/SCSTDD dated 20-6-2005.
9. Judgment dated 10-8-2005 of the Full Bench of the High Court of Kerala in WP (C) Nos. 2483, 7039, 17317 of 2005 and connected cases (Indira Vs State of Kerala).
10. Judgment dated 7-11-2005 and 3-3-2008 of the Hon'ble Supreme Court of India in SLP (C) No. 21472-73/2005 filed by Dr. Anoop.
11. Letter No. F/12026/6/06-C&LM.I dated 3-10-2008 from Ministry of Tribal Affairs, Government of India.

GCPT 3/432/2008/DTT

ORDER

As per G. O. read as 8th paper above, Government have issued Orders stating that the Competent Authorities shall issue Scheduled Caste/Scheduled Tribe Community Certificates to the children born out of inter caste married couple only as per the caste/community of his/her father subject to the conditions of acceptance, customary traits and tenets, stipulated in the Judgments of Supreme Court of India read as 5 and 6 above.

As per Judgment read as 9 above, the Full Bench of the Hon'ble High Court of Kerala in *Indira Vs State of Kerala*, the children born out of inter caste married couple of which one of the parents is Scheduled Caste/Scheduled Tribe can claim the status of the Scheduled Caste/Scheduled Tribe on proof of the conditions of the acceptance, customary traits and tenets under which such children are brought up.

In view of the above observations of the High Court of Kerala Government have examined the matter in detail and are pleased to order that the Competent Authority who has to issue Scheduled Caste/Scheduled Tribe Community Certificate to the children born out of inter caste married couple of which one of the parents is Scheduled Caste/Scheduled Tribe should ensure that the claimant is subjected to same social disabilities and also following the same customs and traditions and community has accepted that person to its fold as such. The Authority to issue the Caste Certificate should also ensure that:

- (i) each case shall be examined individually in the light of the existing facts and circumstances;
- (ii) the claimant has suffered disabilities—socially, economically and educationally;
- (iii) the society has accepted the claimant to their original fold as one among them and is living in the same social tenet.

The G. O. read as 8th paper above stands modified to this extent.

By order of the Governor,

J. SUDHAKARAN,
Principal Secretary to Government.

All Heads of Departments.

All District Collectors.

All Sub Collectors/Revenue Divisional Officers/Deputy Collectors (through District Collectors).

All Talasiklars (through District Collectors)

All District Scheduled Caste Development Officers.

All Tribal Extension Officers.

The Secretary, Kerala Public Service Commission (with C. L.).

The Registrar, High Court of Kerala, Ernakulam (with C. L.).

The Advocate General, Ernakulam (with C. L.).

The Registrar of all Universities in Kerala (with C. L.).

The Commissioner for Entrance Examinations, Thiruvananthapuram.

All Departments (All Sections) of the Secretariat.

The Law Department.

The Finance Department

Director, Information and Public Relations Department (for press release).

Stock file/Office Copy.

Copy to:

Private Secretary to the Chief Minister.

Private Secretary to the Minister for the Welfare of Scheduled and Backward Communities and Electricity.

ANNEXURE 5.VI
(Ref: Para 5.8.17)

Comments of State Governments on the proposal of Government of Kerala for amendment of Kerala (SCs and STs) Regulation of issue of Community Certificates Act, 1996.

S. No.	State	Reply	Remarks
(1)	(2)	(4)	(5)
1.	Chhattisgarh	As per the caste system prevalent in the Indian society (except some tribal communities in Meghalaya), a child inherits his caste from his father. The State Government of Chhattisgarh holds this criteria as correct.	Not agreed with the proposal of the Government of Kerala
2.	Nagaland	In Nagaland, the tribe of a person is taken from the father only. Hence a person borne out of inter-marriage between a Naga tribe and any non-Naga tribe/person will be treated as scheduled tribe only if the father is a Naga tribe, and if the father belongs to another tribe (non-Naga tribe) or community, the child shall not be treated as a Naga tribe.	Not agreed with the proposal of the Government of Kerala
3.	Madhya Pradesh	The determination of the case of a person should not be solely governed by the customary laws under which a person, in the absence of any statutory law, would inherit his caste from his father and not his mother even in a case of inter-caste marriage. In the case of marriage between a tribal with a non-tribal, the main issue for consideration should be whether the couple were accepted by the tribal society to which the tribal spouse belongs. If he or she, as the case may be, is accepted by the society then their children shall be deemed to be scheduled tribes. This situation would normally happen when the husband is a member of the scheduled tribe. However, in a circumstance where	Generally agree with the proposal of Government of Kerala

scheduled tribe women have children from marriage with a non-scheduled tribe man, the children may be treated as scheduled tribe, if the members of the scheduled tribe community accept them and treat them as members of their own community. Thus the recognition and acceptance by the society of the children born out of a marriage between a member of Scheduled Tribe with an outsider, should be the main determining factor irrespective of whether, the tribe is matriarchal or patriarchal. The final decision should depend on whether the off-springs have been subjected to socially, economically and educationally to the same handicaps, sufferings or disadvantages attached to scheduled tribes in general.

4.	Himachal Pradesh	The determination of caste of a person was governed by the customary laws under which a person in the absence of any standing law would inherit his/her caste from his/her father and not from his/her mother in a case of inter-caste marriage. The State Government agrees with the observations of Hon'ble Supreme Court and National Commission for Scheduled Tribes and does not agree with the Kerala Government's proposal to grant Scheduled Tribes status to offspring of Non-ST father and married to Scheduled Tribe mother. If the amendment of Kerala Government is accepted the very purpose of reservation policy will be defeated and it would lead to deprivation of the genuine rights of Scheduled Tribes and the reservation policy will be diluted. In case the offspring of Non-Tribal father is given the status of Tribe as proposed, it would be very difficult to identify the genuine	Not agreed with the proposal of the Government of Kerala

Tribes.

5.	Andhra Pradesh	<u>Views of SW Deptt</u> (p215/c.) if either of the members of an Inter Caste marriage is belonging to SC/ST community then the child can be given SC/ST status provided that the child is accepted by the SC/ST community and has been brought up in the surroundings as per Govt. of India guidelines in this regard. <u>Views of TW Deptt.</u> For all the situations whether it is an inter-caste marriage of tribal man or woman with an outsider, the acceptance and recognition of the marriage by the tribal society and bringing up of the children in tribal atmosphere as mentioned in the Government of India guidelines, are more rational for determining the tribal status of off-springs of inter-caste marriage.	Generally follows the norms as proposed by the Govt. of Kerala.
6.	Maharashtra	The State Government has adopted policy enumerated in judgment of the Hon'ble Supreme Court, in the case of Valsama Paul against Cochi University (CSR 1996) and issued necessary orders vide Government Resolution No.CBC 1097/CR 151/MVK-5/, dated 7th May, 1999.	Not agreed with the proposal of the Government of Kerala
7.	Assam	The State Govt. is following the verdict of the Supreme Court judgement.	Not agreed with the proposal of the Government of Kerala

No. 35/1/72-R.U. (SCT.V)

Government of India|Bharat Sarkar
Ministry of Home Affairs|Grih Mantralaya

To

The Chief Secretaries of all State Governments
and Union Territory Administration.

New Delhi-110001, Dated the 2 May, 1975/

12 Vaisakha, 1897.

Subject: Issue of Scheduled Castes and Scheduled
Tribe certificates.

Sir,

I am directed to state that complaints are often received that Scheduled Caste and Scheduled Tribe certificates are given to persons who do not in fact belong to a Scheduled Caste or Scheduled Tribes. It is necessary, therefore, that the Certificate issuing authorities should make a proper verification before they actually issue such a certificate.

2. In this connection a set of points which should be taken into account are enclosed for the guidance of those empowered to issue Scheduled Caste and Scheduled Tribe certificates. It is requested that these instructions may be circulated amongst them.

Yours faithfully,
(O. K. MOORTHY)

Director General, BCW

No. 35/1/72|R.U. (SCT.V). New Delhi-110001
dated the 2 May, 1975/12 Vaisakha, 1897

Copy forwarded for necessary action to:—

1. All Ministries|Deptts. of the Govt. of India.
2. All attached and subordinate offices of M.H.A.
3. The Union Public Service Commission, Dholpur House, New Delhi-110011.
4. The Deptt. of Personnel and Administrative Reforms, Estt. (SCT) Section, New Delhi.
5. The Commissioner for Scheduled Caste and Scheduled Tribe, Ramakrishnapuram New Delhi.

(O. K. MOORTHY)
Director General BCW.

Government of India|Bharat Sarkar

Ministry of Home Affairs|Grih Mantralaya

Enclosure to circular letter No. 35/1/72-R.U. (SCT.V)
dated the April, 1975|Vaisakha, 1897

Issue of Scheduled Caste and Tribe Certificate-Points
to be observed.

1. General: (Applicable in all cases)

Where a person claims to belong to a Scheduled Caste or a Scheduled Tribe by birth it should be verified:—

- (i) that the person and his parents actually belong to the community claimed;
- (ii) that this community is included in the Presidential Orders specifying the Scheduled Castes and Scheduled Tribes in relation to the concerned State.
- (iii) that the person belongs to that State and to the area within that State in respect of which the community has been scheduled;
- (iv) if the person claims to be a Scheduled Caste, he should profess either the Hindu or the Sikh religion;
- (v) if the person claims to be a Scheduled Tribe, he may profess any religion.

2. Cases of migration:

- (i) where a person migrates from the portion of the State in respect of which his community is scheduled to another part of the same State in respect of which his community is not scheduled, he will continue to be deemed to be a member of the Scheduled Caste or the Scheduled Tribe, as the case may be, in relation to that State;
- (ii) where a person migrates from one state to another, he can claim to belong to a Scheduled Caste or a Scheduled Tribe only in relation to the State to which he originally belonged and not in respect of the State to which he has migrated.

3. Claims through marriage:

The guiding principle is that no person who was not a Scheduled Caste or a Scheduled Tribe by birth will be deemed to be a member of a Scheduled Caste or a Scheduled Tribe merely because he or she had married a person belonging to a Scheduled Caste or a Scheduled Tribe.

Similarly a person who is a member of a Scheduled Caste or a Scheduled Tribe would continue to be a member of that Scheduled Caste or Scheduled Tribe as the case may be, even after his or her marriage with a person who does not belong to a Scheduled Caste or a Scheduled Tribe.

4. Cases of conversion and reconversion:

- (i) Where a Scheduled Caste person gets converted to a religion other than Hinduism or Sikhism and then reconverts himself back to Hinduism or Sikhism, he will be deemed to have reverted to his original Scheduled Caste, if he is accepted by the members of that particular caste as one among them.
- (ii) In the case of a descendant of a Scheduled Caste convert, the mere fact of conversion to Hinduism or Sikhism will not be sufficient to entitle him to be regarded as a member of the Scheduled Caste to which his forefathers belonged. It will have to be established that such a convert has been accepted by the members of the caste claimed as one among themselves and has thus become a member of that caste.

5. Cases of adoption:

Great care has to be exercised in dealing with cases where a person claims to be Scheduled Caste on the ground that he has been adopted by a Scheduled Caste person. The validity of the adoption has to be clearly established before any caste certificate can be given. It is for the party to prove his claim by cogent and reliable evidence.

- (i) The requirements of valid adoption are given in sections 6 to 11 of the Hindu Adoptions and Maintenance Act, 1956 (relevant extracts of which are attached). The actual

giving and taking of the child in adoption is a mandatory requirement and thereafter the adopted child is deemed to be the child of his or her adoptive father or mother for all purposes and the child severs all ties with the family of his or her birth. Ordinarily, no child who has attained the age of 15 years or who is married can be given in adoption unless there is a custom or usage applicable to the parties.

- (ii) In deciding whether an adoption is valid, the certificate issuing authority should satisfy himself that all the requirements of Law have been complied with. He should also take into account the ~~position~~ of the child after adoption whether he physically lives with and is supported by his adoptive parents and receives no financial help from his original parents. In case these conditions are not satisfied, the certificate should be refused.
- (iii) Where the case relates to an adoption of a married person or of a person of the age of 15 years and above, the certificate shall be required to be given by the Distt. Magistrate who shall, after making due enquiries as to the validity of the adoption and as to whether such adoption is permitted by a custom or usage applicable to the parties, make an endorsement to that effect on the certificate. Such custom or usage should have been continuously and uniformly observed for a long time and obtained the force of law among the Hindus of that particular area, or that community, group or family provided that the custom or usage is certain and not unreasonable or apposed to public policy and in the case of custom or usage in respect of a particular family, that the custom or usage has not been discontinued. In addition it should be verified that all other conditions for a valid adoption, including the physical transfer of the adopted person to the family of the adoptive parents and that he has severed all ties with the original parents are fulfilled.

Extracts from 'The Hindu Adoptions and Maintenance Act, 1956'

(78 of 1956)

CHAPTER II—Adoption

Requisites if a valid adoption

6. No adoption shall be valid unless—

- (i) The person adopting has the capacity, and also the right, to take in adoption;
- (ii) the person giving in adoption has the capacity to do so,
- (iii) the person adopted is capable of being taken in adoption; and
- (iv) the adoption is made in compliance with the other conditions mentioned in this chapter.

Capacity of a male Hindu to take in adoption

7. Any male Hindu who is of sound mind and is not a minor has the capacity to take a son or a daughter in adoption:

Provided that, if he has a wife living, he shall not adopt except with the consent of his wife unless the wife has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

EXPLANATION: If a person has more than one wife living at the time of adoption, the consent of all the wives is necessary unless the consent of any one of them is unnecessary for any of the reasons specified in the preceding proviso.

Capacity of a female Hindu to take in adoption

8. Any female Hindu—

- (a) who is of sound mind,
- (b) who is not a minor, and
- (c) who is not married or if married, whose marriage has been dissolved or whose husband is dead or has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind, has the capacity to take a son or daughter in adoption.

Persons capable of giving in adoption

9. (1) No person except the father or mother or the guardian of a child shall have the capacity to give the child in adoption.

(2) Subject to the provisions of sub-section (3) and sub-section (4), the father, if alive, shall alone have the right to give in adoption, but such right shall not be exercised save with the consent of the mother unless the mother has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

(3) The mother may give the child in adoption if the father is dead or has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of a competent jurisdiction to be of unsound mind.

(4) Where both the father and mother are dead or have completely and finally renounced the world or have abandoned the child or have been declared by a court of competent jurisdiction to be of unsound mind or where the parentage of the child is not known, the guardian of the child may give the child in adoption with the previous permission of the court to any person including the guardian himself.

(5) Before granting permission to a guardian under sub-section (4), the court shall be satisfied that the adoption will be for the welfare of the child, due consideration being for this purpose given to the wishes of the child having regard to the age and understanding of the child and that the applicant for permission has not received or agreed to receive and that no person had made or given or agreed to make or give to the applicant any payment or reward in consideration of the adoption except such as the court may sanction.

Explanation—For the purposes of this section—

- (i) the expression "father" and "mother" do not include an adoptive father and an adoptive mother.

(ia) "guardian" means a person having the care of the person of a child or both his person and property and includes—

(a) a guardian appointed by the will of the child's father or mother, and

(b) a guardian appointed or declared by a court;

(ii) "court" means the city civil court or a district court within the local limits of whose jurisdiction the child to be adopted ordinarily resides.

Persons who may be adopted.

10. No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely:—

(i) he or she is a Hindu;

(ii) he or she has not already been adopted;

(iii) he or she has not been married, unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption;

(iv) he or she has not completed the age of fifteen years, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption.

Other complied Conditions for a valid adoption

11. In every adoption, the following conditions must be complied with:—

(i) if the adoption is of a son, the adoptive father or mother by whom the adoption

is made must not have a Hindu son, son's son or son's son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption;

(ii) if the adoption is of a daughter, the adoptive father or mother by whom the adoption is made must not have a Hindu daughter or son's daughter (whether by legitimate blood relationship or by adoption) living at the time of adoption;

(iii) if the adoption is by a male and the person to be adopted is a female, the adoptive father is at least twenty-one years older than the person to be adopted;

(iv) if the adoption is by a female and the person to be adopted is a male, the adoptive mother is at least twentyone years older than the person to be adopted.

(v) the same child may not be adopted simultaneously by two or more persons;

(vi) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth or in the case of an abandoned child or a child whose parentage is not known, from the place or family where it has been brought up to the family of its adoption:

Provided that the performance of *datta homam* shall not be essential to the validity of an adoption.

No. BC-16014/1/82-SC&BCD-I
Government of India/Bharat Sarkar
Ministry of Home Affairs/Grih Mantralaya
New Delhi, the 6th August, 1984

To

The Chief Secretaries of All State Govts and UT Administrations.

SUBJECT:—*Verification of claim of candidates belonging to Scheduled Castes and Scheduled Tribes and migrants from other States/Union Territories—Form of certificate—Amendment to.*

Sir,

I am directed to refer to this Ministry's letter of even number dated the 18-11-1982 and the Department of Personnel and Administrative Reforms letter No. 36012/6/76/Est. (SCT) dated the 29-10-1977 on the above subject and to say that the form of Scheduled Caste/Scheduled Tribe certificate enclosed with the aforesaid letters has been further revised consequent upon coming into force of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 and keeping in view the difficulty being experienced by the persons belonging to the Scheduled Castes and Scheduled Tribes in obtaining community certificates on migration from their States of origin to another for the purpose of employment, education etc. The revised caste/tribe form of certificate is enclosed herewith. It is requested that a copy of the revised form of certificate may please be brought to the notice of all the competent authorities who have been empowered to issue such certificates. The list of competent authorities who have been empowered to issue the Scheduled Caste/Scheduled Tribe certificates circulated by the Department of Personnel and Administrative Reforms in their letter No. 13/2/74-Est. (SCT) dated the 5-8-1975 has also been incorporated in the enclosed revised form.

2. The instructions issued in this Ministry's letter of even number dated the 18-11-1982 will continue. It is however, clarified that the Scheduled Caste/Scheduled Tribe person on migration from the State of his origin to another State will not lose his status as Scheduled Caste/Scheduled Tribes but he will be

entitled to the concessions/benefits admissible to the Scheduled Castes/Scheduled Tribes from the State of his origin and not from the State where he has migrated. All competent authorities may be advised under intimation to this Ministry to issue the Scheduled Caste/Scheduled Tribe certificates on the revised form of certificate henceforth after satisfying themselves of correctness of the certificate after proper verification based on the revenue records through reliable enquires. The list of the competent authorities empowered and incorporated in the form may please be followed strictly. No other authority may be authorised to issue the Scheduled Caste/Scheduled Tribe certificates.

Yours faithfully,

(B. K. SARKAR)

Joint Secy. to the Govt. of India

No. BC-16014/1/82-SC&BCD-I dated the 6th August, 1984 copy to:—

1. Secretary, Union Public Service Commission, Dholpur House, New Delhi (with 15 S/cs.).
2. Secretary, Staff Selection Commission, CGO Complex, Block No 12, Lodi Road, New Delhi (with 15 spare copies).
3. All Ministries/Departments of the Government of India.
4. Secretary, Commission for Scheduled Castes/Scheduled Tribes, Lok Nayak Bhavan, New Delhi.
5. Commissioner for Scheduled Castes and Scheduled Tribes, R. K. Pram, New Delhi.
6. All Directors/Deputy Directors for Scheduled Castes and Scheduled Tribes.
7. Comptroller and Auditor General of India.
8. Election Commission of India.
9. Lok Sabha Secretariat (SC/ST Branch) with spare copies)

10. Lok Sabha Secretariat (Administration Branch).

11. Ministry of Defence (D-FS).

12. Bureau of Public Enterprises (Management Divn).

13. Ministry of Home Affairs (Planning Cell) for taking necessary action so far as Union Territories are concerned.

14. Department of personnel and Administrative Reforms Estt. SCT, Administration I, II, AIS (I), (II), (IV), CS (I), (II), (III), Estt. (B), (C).

(D), IES, ISS, AVD (II), CD (IV), EO (MM), and Welfare Sections.

15. All attached and subordinate offices of the Department of Personnel and A.Rs.

16. All Section in SC&BCD, ~~Division~~ T.D. Division, Administration I(A), (B), II Sections in the Ministry of Home Affairs.

17. One copy to be retained in F. No. BC-12025/2/76-SCT.I.

(B. K. SARKAR)
Joint Secy. to the Govt. of India.

Form of certificate to be produced by a candidate belonging to a Scheduled Caste or Scheduled Tribe in support of his claim

FORM OF CASTE CERTIFICATE

This is to certify that Shri/Shrimati*/Kumari* son/daughter* of
..... of village* / town* in district/Division*
..... of the State/Union Territory*
belongs to the Caste/Tribe* which is recognised as a Scheduled Caste
Scheduled Tribe *

Under:

- @ The Constitution (Scheduled Castes) Order, 1930.
- @ The Constitution (Scheduled Tribes) Order, 1950.
- @ The Constitution (Scheduled Caste) (Union Territories) Order, 1951.
- @ The Constitution (Scheduled Tribes) (Union Territories) Order, 1951.
- [as amended by the Scheduled Castes and Scheduled Tribes Lists (Modification) Order, 1956, the Bombay Reorganisation Act, 1960, the Punjab Reorganisation Act, 1966, the State of Himachal Pradesh Act, 1970, the North Eastern Areas (Reorganisation) Act, 1971 and the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976]
- @ The Constitution (Jammu and Kashmir) Scheduled Castes Order, 1956.
- @ The Constitution (Andaman and Nicobar Islands) Scheduled Tribes Order, 1959.
- @ The Constitution (Dadra and Nagar Haveli) Scheduled Castes Order 1962
- @ The Constitution (Dadra and Nagar Haveli) Scheduled Tribes Order, 1962.
- @ The Constitution (Pondicherry) Scheduled Castes Order, 1964.
- @ The Constitution (Scheduled Tribes (Uttar Pradesh) Order, 1967.
- @ The Constitution (Goa, Daman & Diu) Scheduled Castes, Order, 1968.
- @ The Constitution (Goa, Daman & Diu) Scheduled Tribes Order, 1968.
- @ The Constitution (Nagaland) Scheduled Tribes Order, 1970.
- @ The Constitution (Sikkim) Scheduled Castes Order, 1978.
- @ The Constitution (Sikkim) Scheduled Tribes Order, 1978.
- %2. Application in the case of Scheduled Castes/ Scheduled Tribes persons who have migrated from one State/Union Territory Administration:

This certificate is issued on the basis of the Scheduled Caste/Scheduled Tribe certificate issued to Shri/Shrimati*
..... father/mother of Shri/Shrimati/Kumari*
..... of village/town in District/Division
of the State/Union Territory* who belongs to the caste/
tribe* which is recognised as a Scheduled Caste
Scheduled Tribe *

in the State/Union Territory* issued by the
(name of prescribed authority) vide their No. dated

%3. Shri*/Shrimati*/Kumari* and/or his/her* family ordinarily reside(s)
in village/town* of
District/Division of the State/Union Territory of

Signature

**Designation
(with seal of Office)

Place, ... State
Union Territory

Date, ...

*Please delete the words which are not applicable.

@Please quote specific Presidential Order.

%Delete the paragraph which is not applicable.

NOTE: The term "Ordinarily reside(s)" used here will have the same meaning as in Section 20 of the Representation of the Peoples Act, 1950.

* List of authorities empowered to issue Scheduled Caste/Scheduled Tribe certificates:—

1. District Magistrate/Additional District Magistrate/Collector/Deputy Commissioner/Additional Deputy Commissioner/Deputy Collector/1st Class Stipendary Magistrate/ City Magistrate /Sub-Divisional Magistrate/Taluka Magistrate/Executive Magistrate/Extra Assistant Commissioner.
(not below the rank of 1st class Stipendary Magistrate).
2. Chief Presidency Magistrate/Additional Chief Presidency Magistrate/Presidency Magistrate.
3. Revenue Officers not below the rank of Tehsildar.
4. Sub-Divisional Officer of the area where the candidate and/or his family normally resides.
5. Administrator/Secretary to Administrator/Development Officer (Lakshadweep Islands).

No. BC. 12025/2/76-SCT-I

Government of India|Bharat Sarkar .

Ministry of Home Affairs|Grih Mantralaya

To

The Chief Secretaries to

All State Governments|Union Territory
Administrations.

New Delhi-110001, the 22 March, 1977
Chaitra, 1898

SUBJECT:--*Issue of Scheduled Caste and Schedul-
ed Tribe certificates—Clarifications re-
garding.*

Sir,

I am directed to say that many instances have come to the notice of this Ministry wherein certificates of belonging to a particular Scheduled Caste|Tribe have not been issued strictly in accordance with the principles governing the issue of such certificates. This is presumably due to inadequate appreciation of the legal position regarding the concept of the term "residence" on the part of the authorities empowered to issue such certificates.

2. As required under Articles 341 and 342 of the Constitution, the President has, with respect to every State and Union Territory and where it is State after consultation with the Governor of the concerned State, issued orders notifying various Castes and Tribes as Scheduled Castes and Scheduled Tribes in relation to that State or Union Territory from time to time. The inter-state area restrictions have been deliberately imposed so that the people belonging to the specific community residing in a specific area, which has been assessed to qualify for the Scheduled Caste or Scheduled Tribe status, only benefit from the facilities provided for them. Since the people belonging to the same caste but living in different State|Union Territories may not necessarily suffer from the same disabilities, it is possible that two persons belonging to the same caste but residing in different States|U.Ts may not both be treated to belong to

Scheduled Caste|Tribe or vice-versa. Thus the residence of a particular person in a particular locality assumes a special significance. This residence has not to be understood in the literal or ordinary sense of the word. On the other hand it connotes the permanent residence of a person on the date of the notification of the Presidential Order scheduling his caste|tribe in relation to that locality. Thus a person who is temporarily away from his permanent place of abode at the time of the notification of the Presidential Order applicable in his case, say, for example, to earn a living or seek education; etc., can also be regarded as a Scheduled Caste or a Scheduled Tribe, as the case may be, if his caste|tribe has been specified in that Order in relation to his State|U.T. But he cannot be treated as such in relation to the place of his temporary residence notwithstanding the fact that the name of his caste|tribe has been scheduled in respect of that area in any Presidential Order.

3. It is to ensure the veracity of this permanent residence of a person and that of the caste|tribe to which he claims to belong that the Government of India has made a special provision in the proforma prescribed for the issue of such certificate. In order that the certificates are issued to the deserving persons it is necessary that proper verification based primarily on revenue records and if need be, through reliable enquiries, is made before such certificates are issued. As it is only the Revenue Authorities who, besides having access to the relevant revenue records are in a position to make reliable enquiries, Government of India insists upon the production of certificates from such authorities only. In order to be competent to issue such certificates, therefore, the authority mentioned in the Government of India (Department of Personnel and Administrative Reforms) letter No. 13/2/74-Est (SCT) dated the 5th August, 1975, (copy enclosed) should be the one concerned with the locality in which the person applying for the certificate and his place of permanent abode at the time of the notification of the relevant Presidential Order. Thus the Revenue

Authority of one District would not be competent to issue such a certificate in respect of persons belonging to another district. Nor can such an authority of one State/UT issue such certificates in respect of persons whose place of permanent residence at the time of the notification of a particular Presidential Order, has been in a different State/Union Territory. In the case of persons born after the date of notification of the relevant Presidential Order, the place of residence for the purpose of acquiring Scheduled Caste or Scheduled Tribes status, is the place of permanent abode of their parents at the time of the notification of the Presidential Order under which they claim to belong to such a caste/tribe.

4. It is understood that some State Governments/Union Territory Administrations have empowered all their Gazetted Officers to issue such certificates and even Revenue Authorities issue certificates on the basis of the certificates issued by Gazetted Officers, M.P.s. and M.L.As, etc. If such a practice is followed, there is a clear danger of wrong certificates being issued, because in the absence of proper means of verification such authorities can hardly assure the intrinsic correctness of the facts stated in such certificates. In order to check the issuance of false certificates, the question of verification assumes all the more importance.

5. All the State Governments/Union Territory Administrations are, therefore, requested to streamline their respective procedures for issuing such certificates so as to conform to the above instructions as well as to those issued from time to time. Where Revenue Authorities have been empowered to issue certificates on the basis of a certificate issued by an M.P., M.L.A., Gazetted Officer, etc., they would do so only after having made proper verifications and after having satisfied themselves of the correctness of such certificates.

Yours faithfully,

(O. R. SRINIVASAN)

Under Secretary to the Government of India

Tel. No. 38184

No. B.C. 12025/76-SC/PT

March, 1977

Photocopy, 1898

Copy to:-

1. The Department of Personnel and Administrative Reforms, Government of India, with reference to their D.O. No. D2014/76-Ext (SCT), dated the 28th July 1976. They are requested to

make necessary amendments to the Brochure on the reservation for Scheduled Castes and Scheduled Tribes by incorporating, where necessary, the position stated in the foregoing paragraphs.

2. Director, Institute of Sectt. Training and Management, West Block No. 1, Wing No. 6, Ramakrishnapuram, New Delhi-110022 with reference to his letter No. 12/4/76-ARRNG, dated the 21st February, 1976.

3. Secretary, Union Public Service Commission, New Delhi.

4. All Ministries/Departments of the Govt. of India.

5. All Zonal Directors/Deputy Directors.

6. Commissioner for Scheduled Castes and Scheduled Tribes, Ramakrishnapuram, New Delhi.

(O. R. SRINIVASAN)

Under Secretary to the Govt. of India

Tel. No. 381843

COPY

Letter No. 13/2/74-Ext. (SCT)

Government of India/Bharat Sarkar
Cabinet Secretariat/Mantrimandal
Sachivalay

Department of Personnel and Administrative Reforms

(Karmik Aur Prasashanik Sudhar Vibhag)

New Delhi-110001, the 5th August, 1975

To

The Chief Secretaries of
All State Governments and Union Territory Administrations.

SUBJECT:—Verification of claims of candidates belonging to Scheduled Castes and Scheduled Tribes—Form of caste certificate—Amendments to.

Sir,

I am directed to say that candidates belonging to Scheduled Castes and Scheduled Tribes seeking employment to posts/services under the Central Government are required to produce a certificate in the prescribed form from one of the prescribed authorities in support of their claim. A list of the prescribed authorities in this regard is enclosed for information. The form of caste certificate has now been slightly revised. The revised form of caste

certificate is enclosed. I am to request that the revised form of caste certificate may please be brought to the notice of the authorities under the State Government who are empowered to issue such certificates.

Sd.- J. S. AHLUWALIA
Under Secy. to the Govt. of India

No. 13/2/74-Est.(SCT) New Delhi-110001,

5th August, 1975

Copy forwarded to U.P.S.C. for information with ref. to their letter No. 26/43/74-EI(B) dated 28-1-1975.

List of authorities empowered to issue certificates of verification.

1. District Magistrate|Additional District Magistrate|Collector|Deputy Commissioner|Additional De-

puty Commissioner|Deputy Collector|1st Class Stipendary Magistrate|City Magistrate|*Sub-Divisional Magistrate|Taluka Magistrate|Executive Magistrate|Extra Assistant Commissioner.

(*not below the rank of 1st Class stipendary Magistrate)

2. Chief Presidency Magistrate|Additional Chief Presidency Magistrate|Presidency Magistrate.

3. Revenue Officers not below the rank of Tehsildar.

4. Sub-Divisional Officer of the area where the candidate and/or his family normally resides.

5. Administrator|Secretary to Administrators|Development Officer (Lakshadweep Islands)

Form of certificate to be produced by a candidate belonging to a Scheduled Caste or Scheduled Tribe in support of his claim.

Form of caste certificate

This is to certify that Shri/Shrimati*/Kumari* son/daughter* of
..... of village/town in District/Division*
belongs to the of the State/Union Territory*
Caste/Tribe* which is recognised as Scheduled Caste*
Scheduled Tribe*

under:—

The Constitution (Scheduled Castes) Order, 1950;

The Constitution (Scheduled Tribes) Order, 1950;

The Constitution (Scheduled Castes) (Union Territories) Order, 1951;

[as amended by the Scheduled Castes and Scheduled Tribes Lists (Modification) Order, 1956, the Bombay Reorganisation Act) 1960, the Punjab Reorganisation Act, 1966, the State of Himachal Pradesh Act, 1970 and the North Eastern Areas (Reorganisation Act, 1971]

The Constitution (Jammu and Kashmir) Scheduled Castes *Order, 1956;

The Constitution (Andaman and Nicobar Islands) Scheduled Tribes *Order, 1959;

The Constitution, (Dadra and Nagar Haveli) Scheduled Castes *Order, 1962,

The Constitution (Dadra and Nagar Haveli) Sch. Tribes *Order, 1962

The Constitution (Pondicherry) Scheduled Castes *Order, 1964;

The Constitution (Scheduled Tribes) (Uttar Pradesh) *Order, 1967;

The Constitution (Goa, Daman and Diu) Scheduled Caste *Order, 1968;

The Constitution (Goa, Daman and Diu) Scheduled Tribes *Order, 1968.

The Constitution (Nagaland) Scheduled Tribes *Order, 1970.

2. Shri/Shrimati /Kumari* and his/her* family ordinarily
reside(s) in village/town of District/Division* of the
State/Union Territory* of

Signature

Designation
(with seal of Office)

Place State
Union Territory*

Date

*Please delete the words which are not applicable.

Notes:—The term "Ordinarily resides" used here will have the same meaning as in Section 20 of the Representation of the Peoples Act, 1950.

No. 12016/36/96-SCD (R.L.Cell)-Vol.III
Government of India
Ministry of Social Justice and Empowerment

Shastri Bhawan, New Delhi
Dated : 30-7-2002

To,
The Secretary,
National Commission for Scheduled Castes
and Scheduled Tribes,
Lok Nayak Bhawan, Vth Floor,
Khan Market,
New Delhi

Subject:- Modalities for deciding claims for inclusion in, exclusion from and other modifications in the orders specifying Scheduled Castes and Scheduled Tribes list.

Sir,

I am directed to refer to this Ministry's letter of even number dated 03-04-2000 on the above mentioned subject and to say that existing modalities in respect of clause (f) for deciding claims for inclusion in, exclusion from and other modifications in the orders specifying Scheduled Castes and Scheduled Tribes list have been revised on 25-06-2002. A copy of the revised modalities is enclosed.

Yours faithfully,

(V.R. Malhotra
Director
Tel. 3387073

Revised Modalities for deciding claims for inclusion in, exclusion from and other modifications in the Orders specifying Scheduled Castes and Scheduled Tribes lists

(Revised on 25-6-2002)

Modalities for deciding claims for inclusion in, exclusion from and other modifications in the Orders specifying Scheduled Castes and Scheduled Tribes have been notified. Such proposals are required to be processed as indicated below :-

(a) Cases favoured by both the State Governments and the Registrar General of India (RGI) in their most recent reports would be referred to the National Commission for Scheduled Castes and Scheduled Tribes for their opinion. They would be forwarded to the Commission individually or in batches, as may be practicable, alongwith with the comments of the State Governments and the RGI as well as any relevant material/ information furnished by them or by representations.

(b) Some issues concern not one but several States i.e. the status of SC/ST migrants. These would also be referred to the National Commission if the RGI and majority of concerned States have supported modification.

(c) It may be suggested to the Commission that, while examining the above cases, they should associate, through panels or other means, expert individuals, organizations and institutions in the fields of anthropology, ethnography and other social sciences, in addition to the State Governments, RGI and the Anthropological Survey of India, on a regional basis. They may also consider holding public hearings in areas relevant to the claims under examination. These guidelines cannot be binding on the Commission, but may be suggested in the interest of fuller examination of the cases. The Commission would also be requested to give priority to cases in which the Courts have given directives regarding decision within a stipulated time period. (In such cases, extension of time would be sought from the courts where necessary, citing these modalities for the determination of claims). Such cases would be separately processed and sent for earlier decision.

(d) Amending legislation would be proposed to the Cabinet in all cases in which the National Commission, RGI as well as the State Governments have favoured modification. Those cases with which the State Governments and the RGI are in agreement, but which the Commission have not supported, would be rejected at the level of Minister for Social Justice and Empowerment.

(e) Claims for inclusion, exclusion or other modifications that neither the RGI nor the concerned State Governments have supported would not be referred to the National Commission. These would be rejected at the level of the Minister for Social Justice and Empowerment.

(f) "In the case of claims recommended by the concerned State Governments/ Union Territory Administrations, but not agreed to by the Registrar General of India, the concerned State Government/Union Territory Administration would be asked to review and further justify their recommendations in the light of RGI. On receipt of the further clarification from the State Government/Union Territory Administration, the proposal would be referred to the RGI for comments. In such cases, where the RGI does not

agree to the point of view of the State Government/Union Territory Administration on a second reference, the Government of India consider rejection to the said proposal".

(g) Claims in respect of which the comments of either the RGI or the State Governments or of both are awaited would remain under consideration until their views are received. Thereafter, they would be dealt with in accordance with the modalities at (a) to (f) above.

(h) Claims recommended suo-moto by the National Commission would be referred to RGI and the State Governments. Depending on their responses, they would be disposed of in accordance with the modalities at (d) to (f) as may be applicable.

TABLE-7.11
Disposal Of Cases By Police For Crimes Committed Against Scheduled Tribes During 2007

Sl. No.	Crime Head	Total No. Of Cases For Investigation Including Pending Cases from previous year	Cases Withdrawn By Govt.	No. Of Cases In Which					No. Of Cases Pending Investigation at the end of the year
				Investigation Refused	Investigation Completed				
					Charge Found False / Mistake Of Fact Or Law Etc.	Final Report True Submitted	Charge Sheets Submitted	Total {(6) + (7) + (8)}	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1	MURDER (Sec. 302,303 IPC)	216	0	0	30	4	140	174	42
2	RAPE (Sec.376 IPC)	807	0	0	49	13	587	649	158
3	KIDNAPPING & ABDUCTION (Sec. 363-369, 371-373 IPC)	133	0	0	11	10	69	90	43
4	DACOITY (Sec.395-398 IPC)	20	0	0	5	1	6	12	8
5	ROBBERY (392-394, 397,398 IPC)	39	0	0	5	5	20	30	9
6	ARSON (Sec.435, 436, 438 IPC)	70	0	0	21	13	26	60	10
7	HURT (Sec.323-333, 335-338 IPC)	1011	0	2	108	30	647	785	224
8	PCR ACT, 1955 FOR STs	37	0	0	20	4	2	26	11
9	SC/ST PREV. OF ATROCITIES ACT, 1989 FOR STs	1717	0	1	247	21	855	1123	593
10	OTHER CRIMES AGAINST STs	3161	0	0	709	52	1877	2638	523
11	TOTAL	7211	0	3	1205	153	4229	5587	1621

TABLE-7.12
Disposal Of Cases By Police For Crimes Committed Against Scheduled Tribes During 2007
(State & UT Wise)

Sl. No.	State/UT	Total No. Of Cases For Investigation Including Pending Cases from previous year	Cases With-drawn By Govt.	No. Of Cases In Which					No. Of Cases Pending Investigation at the end of the year	Pendency Percentage	Percentage Of Pendency To All India Total	Charge Sheetting Rate ((Col.8) / Col7+8) × 100)
				Investig-ation Refused	Investigation Completed							
					Charge Found False / Mistake Of Fact Or Law Etc.	Final Report True Submitted	Charge Sheets Submitted	Total {(6) + (7) + (8)}				
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
STATES:												
1	ANDHRA PRADESH	1081	0	0	296	1	521	818	263	24.3	16.2	99.8
2	ARUNACHAL PRADESH	34	0	0	0	14	19	33	1	2.9	0.1	57.6
3	ASSAM	220	0	0	0	35	91	126	94	42.7	5.8	72.2
4	BIHAR	218	0	0	17	17	46	80	138	63.3	8.5	73.0
5	CHHATTISGARH	703	0	0	24	6	584	614	89	12.7	5.5	99.0
6	GOA	0	0	0	0	0	0	0	0	0.0	0.0	0.0
7	GUJARAT	164	0	0	7	3	139	149	15	9.1	0.9	97.9
8	HARYANA	0	0	0	0	0	0	0	0	0.0	0.0	0.0
9	HIMACHAL PRADESH	4	0	0	1	0	2	3	1	25.0	0.1	100.0
10	JAMMU & KASHMIR	0	0	0	0	0	0	0	0	0.0	0.0	0.0
11	JHARKHAND	465	0	0	25	15	191	231	234	50.3	14.4	92.7
12	KARNATAKA	254	0	1	62	7	140	209	44	17.3	2.7	95.2
13	KERALA	138	0	0	14	12	59	85	53	38.4	3.3	83.1
14	MADHYA PRADESH	1604	0	0	21	22	1455	1498	106	6.6	6.5	98.5
15	MAHARASHTRA	317	0	0	16	4	203	223	94	29.7	5.8	98.1
16	MANIPUR	29	0	0	0	0	0	0	29	100.0	1.8	0.0
17	MEGHALAYA	1	0	0	0	0	0	0	1	100.0	0.1	0.0
18	MIZORAM	0	0	0	0	0	0	0	0	0.0	0.0	0.0
19	NAGALAND	72	0	0	72	0	0	72	0	0.0	0.0	0.0
20	ORISSA	639	0	2	40	12	264	316	321	50.2	19.8	95.7
21	PUNJAB	0	0	0	0	0	0	0	0	0.0	0.0	0.0
22	RAJASTHAN	1177	0	0	598	4	470	1072	105	8.9	6.5	99.2
23	SIKKIM	22	0	0	0	1	17	18	4	18.2	0.2	94.4
24	TAMIL NADU	29	0	0	12	0	11	23	6	20.7	0.4	100.0
25	TRIPURA	9	0	0	0	0	8	8	1	11.1	0.1	100.0
26	UTTAR PRADESH	4	0	0	0	0	4	4	0	0.0	0.0	100.0
27	UTTARAKHAND	1	0	0	0	0	1	1	0	0.0	0.0	100.0
28	WEST BENGAL	16	0	0	0	0	0	0	16	100.0	1.0	0.0
	TOTAL (STATES)	7201	0	3	1205	153	4225	5583	1615	22.4	99.6	96.5
ON TERRITORIES:												
29	A & N ISLANDS	2	0	0	0	0	0	0	2	100.0	0.1	0.0
30	CHANDIGARH	0	0	0	0	0	0	0	0	0.0	0.0	0.0
31	D & N HAVELI	4	0	0	0	0	2	2	2	50.0	0.1	100.0
32	DAMAN & DIU	3	0	0	0	0	1	1	2	66.7	0.1	100.0
33	DELHI	0	0	0	0	0	0	0	0	0.0	0.0	0.0
34	LAKSHADWEEP	1	0	0	0	0	1	1	0	0.0	0.0	100.0
35	PUDUCHERRY	0	0	0	0	0	0	0	0	0.0	0.0	0.0
	TOTAL (UTs)	10	0	0	0	0	4	4	6	60.0	0.4	100.0
	TOTAL (ALL-INDIA)	7211	0	3	1205	153	4229	5587	1621	22.5	100.0	96.5

TABLE-7.13
Percentage Disposal Of By Police Cases For Crimes Committed Against Scheduled Tribes During 2007

Sl.No.	Crime Head	Cases With- drawn By Govt.	Percentage Of Cases To Total Cases For Investigation In Which					No. Of Cases Pending Investigation at the end of the year	Charge- sheeting Rate (7 / 6 + 7 × 100)
			Investig- ation Refused	Investigation Completed					
				Charge Found False / Mistake Of Fact Or Law Etc.	Final Report True Submi- tted	Charge Sheets Submi- tted	Total {(5) + (6) + (7)}		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1	MURDER (Sec. 302,303 IPC)	0.0	0.0	13.9	1.9	64.8	80.6	19.4	97.2
2	RAPE (Sec.376 IPC)	0.0	0.0	6.1	1.6	72.7	80.4	19.6	97.8
3	KIDNAPPING & ABDUCTION (Sec. 363-369, 371-373 IPC)	0.0	0.0	8.3	7.5	51.9	67.7	32.3	87.3
4	DACOITY (Sec.395-398 IPC)	0.0	0.0	25.0	5.0	30.0	60.0	40.0	85.7
5	ROBBERY (392-394, 397,398 IPC)	0.0	0.0	12.8	12.8	51.3	76.9	23.1	80.0
6	ARSON (Sec.435, 436, 438 IPC)	0.0	0.0	30.0	18.6	37.1	85.7	14.3	66.7
7	HURT (Sec.323-333, 335-338 IPC)	0.0	0.2	10.7	3.0	64.0	77.6	22.2	95.6
8	PCR ACT, 1955 FOR STs	0.0	0.0	54.1	10.8	5.4	70.3	29.7	33.3
9	SC/ST PREV. OF ATROCITIES ACT, 1989 FOR STs	0.0	0.1	14.4	1.2	49.8	65.4	34.5	97.6
10	OTHER CRIMES AGAINST STs	0.0	0.0	22.4	1.6	59.4	83.5	16.5	97.3
11	TOTAL	0.0	0.0	16.7	2.1	58.6	77.5	22.5	96.5

TABLE-7.15
Disposal Of Cases By Courts For Crimes Committed Against Scheduled Tribes During 2007

Sl. No.	Crime Head	Total No. Of Cases For Trial Including Pending Cases from previous year	Cases With-drawn By Govt.	No. Of Cases					Pendency Percentage	Percentage Of Pendency To All India Total	Conviction Rate ((Col6) / (Col8) × 100)
				Compounded Or Withdrawn	In Which Trials Completed			Pending Trial at the end of the year			
					Convicted	Acquitted Or Discharged	Total {(6) + (7)}				
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
STATES:											
1	ANDHRA PRADESH	1321	0	1	53	344	397	923	69.9	6.0	13.4
2	ARUNACHAL PRADESH	166	0	0	0	0	0	166	100.0	1.1	0.0
3	ASSAM	197	0	0	31	50	81	116	58.9	0.8	38.3
4	BIHAR	162	0	0	2	33	35	127	78.4	0.8	5.7
5	CHHATTISGARH	1818	0	28	137	192	329	1461	80.4	9.5	41.6
6	GOA	1	0	0	0	0	0	1	100.0	0.0	0.0
7	GUJARAT	1761	0	0	6	133	139	1622	92.1	10.5	4.3
8	HARYANA	0	0	0	0	0	0	0	0.0	0.0	0.0
9	HIMACHAL PRADESH	17	0	0	0	4	4	13	76.5	0.1	0.0
10	JAMMU & KASHMIR	0	0	0	0	0	0	0	0.0	0.0	0.0
11	JHARKHAND	755	0	7	56	201	257	491	65.0	3.2	21.8
12	KARNATAKA	847	0	4	4	219	223	620	73.2	4.0	1.8
13	KERALA	290	0	1	12	95	107	182	62.8	1.2	11.2
14	MADHYA PRADESH	5711	0	153	714	982	1696	3862	67.6	25.0	42.1
15	MAHARASHTRA	2230	0	10	7	393	400	1820	81.6	11.8	1.8
16	MANIPUR	0	0	0	0	0	0	0	0.0	0.0	0.0
17	MEGHALAYA	1	0	0	0	0	0	1	100.0	0.0	0.0
18	MIZORAM	0	0	0	0	0	0	0	0.0	0.0	0.0
19	NAGALAND	17	0	0	17	0	17	0	0.0	0.0	100.0
20	ORISSA	2259	0	0	37	194	231	2028	89.8	13.1	16.0
21	PUNJAB	0	0	0	0	0	0	0	0.0	0.0	0.0
22	RAJASTHAN	2325	0	30	195	323	518	1777	76.4	11.5	37.6
23	SIKKIM	28	0	0	10	9	19	9	32.1	0.1	52.6
24	TAMIL NADU	56	0	0	1	5	6	50	89.3	0.3	16.7
25	TRIPURA	23	0	0	2	2	4	19	82.6	0.1	50.0
26	UTTAR PRADESH	121	0	0	15	10	25	96	79.3	0.6	60.0
27	UTTARAKHAND	20	0	0	3	2	5	15	75.0	0.1	60.0
28	WEST BENGAL	18	0	0	0	0	0	18	100.0	0.1	0.0
TOTAL(STATES)		20144	0	234	1302	3191	4493	15417	76.5	99.7	29.0
UNION TERRITORIES:											
29	A & N ISLANDS	21	0	0	0	0	0	21	100.0	0.1	0.0
30	CHANDIGARH	0	0	0	0	0	0	0	0.0	0.0	0.0
31	D & N HAVELI	16	0	0	0	2	2	14	87.5	0.1	0.0
32	DAMAN & DIU	2	0	0	0	0	0	2	100.0	0.0	0.0
33	DELHI	1	0	0	0	0	0	1	100.0	0.0	0.0
34	LAKSHADWEEP	1	0	0	0	0	0	1	100.0	0.0	0.0
35	PUDUCHERRY	0	0	0	0	0	0	0	0.0	0.0	0.0
TOTAL (UTs)		41	0	0	0	2	2	39	95.1	0.3	0.0
TOTAL (ALL-INDIA)		20185	0	234	1302	3193	4495	15456	76.6	100.0	29.0

TABLE-7.14
Disposal Of Cases By Courts For Crimes Committed Against Scheduled Tribes During 2007

Sl. No.	Crime Head	Total No. For Cases For Trial Including Pending Cases from previous year	Cases Withdrawn By Govt.	No. Of Cases				Pending Trial at the end of the year
				Compounded Or Withdrawn	In Which Trials Completed		Total {(6) + (7)}	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	MURDER (Sec. 302,303 IPC)	635	0	0	55	69	124	511
2	RAPE (Sec.376 IPC)	2190	0	22	176	404	580	1588
3	KIDNAPPING & ABDUCTION (Sec. 363-369, 371-373 IPC)	270	0	0	17	35	52	218
4	DACOITY (Sec..395-398 IPC)	25	0	0	0	3	3	22
5	ROBBERY (Sec. 392-394, 397,398 IPC)	70	0	0	9	11	20	50
6	ARSON (Sec.435, 436, 438 IPC)	162	0	0	12	23	35	127
7	HURT (Sec.323-333, 335-338 IPC)	2804	0	59	158	492	650	2095
8	PCR ACT, 1955 FOR STs	147	0	0	7	31	38	109
9	SC/ST PREV. OF ATROCITIES ACT, 1989 FOR STs	5420	0	19	290	828	1118	4283
10	OTHER CRIMES AGAINST STs	8462	0	134	578	1297	1875	6453
11	TOTAL	20185	0	234	1302	3193	4495	15456

TABLE-7.16
Percentage Disposal of By Courts Cases For Crimes Committed Against Scheduled Tribes During 2007

Sl. No.	Crime Head	Cases With-Drawn By Govt.	No. Of Cases					Conviction Rate (5 / 7 × 100)
			Compounded Or Withdrawn	In Which Trials Completed			Pending Trial at the end of the year	
				Convicted	Acquitted Or Discharged	Total {(5) + (6)}		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	MURDER (Sec. 302,303 IPC)	0.0	0.0	8.7	10.9	19.5	80.5	44.4
2	RAPE (Sec.376 IPC)	0.0	1.0	8.0	18.4	26.5	72.5	30.3
3	KIDNAPPING & ABDUCTION (Sec. 363-369, 371-373 IPC)	0.0	0.0	6.3	13.0	19.3	80.7	32.7
4	DACOITY (Sec.395-398 IPC)	0.0	0.0	0.0	12.0	12.0	88.0	0.0
5	ROBBERY (392-394, 397,398 IPC)	0.0	0.0	12.9	15.7	28.6	71.4	45.0
6	ARSON (Sec.435, 436, 438 IPC)	0.0	0.0	7.4	14.2	21.6	78.4	34.3
7	HURT (Sec.323-333, 335-338 IPC)	0.0	2.1	5.6	17.5	23.2	74.7	24.3
8	PCR ACT, 1955 FOR STs	0.0	0.0	4.8	21.1	25.9	74.1	18.4
9	SC/ST PREV. OF ATROCITIES ACT, 1989 FOR STs	0.0	0.4	5.4	15.3	20.6	79.0	25.9
10	OTHER CRIMES AGAINST STs	0.0	1.6	6.8	15.3	22.2	76.3	30.8
11	TOTAL	0.0	1.2	6.5	15.8	22.3	76.6	29.0

TABLE-7.21
Disposal Of Persons By Police Arrested For Committing Crimes Against Scheduled Tribes During 2007

Sl. No.	Crime Head	Total No. Persons Under Arrest Including Those From Previous Year	Persons Released Before Trial		Persons Charge Sheeted		Persons Under Investigation At The End Of The Year	
			No.	Percentage To total	No.	Percentage To total	No.	Percentage To total
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	MURDER (Sec. 302,303 IPC)	370	1	0.3	315	85.1	54	14.6
2	RAPE (Sec.376 IPC)	937	4	0.4	859	91.7	74	7.9
3	KIDNAPPING & ABDUCTION (Sec. 363-369, 371-373 IPC)	122	9	7.4	86	70.5	27	22.1
4	DACOITY (Sec.395-398 IPC)	29	2	6.9	10	34.5	17	58.6
5	ROBBERY (392-394, 397,398 IPC)	41	4	9.8	28	68.3	9	22
6	ARSON (Sec.435, 436, 438 IPC)	107	4	3.7	71	66.4	32	29.9
7	HURT (Sec.323-333, 335-338 IPC)	1437	27	1.9	1184	82.4	226	15.7
8	PCR ACT, 1955 FOR STs	22	7	31.8	7	31.8	8	36.4
9	SC/ST PREV. OF ATROCITIES ACT, 1989 FOR STs	2112	58	2.7	1753	83	301	14.3
10	OTHER CRIMES AGAINST STs	4306	35	0.8	3915	90.9	356	8.3
11	TOTAL	9483	151	1.6	8228	86.8	1104	11.6

TABLE-7.22
Disposal Of Persons By Police Arrested For Committing Crimes Against Scheduled Tribes During 2007
(State & UT-Wise)

Sl. No.	State/UT	Total No. Of Persons Under Arrest Including Those From Previous Year	Number Of			Pendency Percentage	Percentage Of Pendency To All-India Total
			Persons Released Before Trial	Person Charge Sheeted	Persons Under Investigation At The End Of The Year		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
STATES:							
1	ANDHRA PRADESH	1242	23	867	352	28.3	31.9
2	ARUNACHAL PRADESH	26	8	17	1	3.8	0.1
3	ASSAM	290	56	110	124	42.8	11.2
4	BIHAR	220	24	110	86	39.1	7.8
5	CHHATTISGARH	834	9	823	2	0.2	0.2
6	GOA	0	0	0	0	0.0	0.0
7	GUJARAT	412	2	389	21	5.1	1.9
8	HARYANA	0	0	0	0	0.0	0.0
9	HIMACHAL PRADESH	25	0	16	9	36.0	0.8
10	JAMMU & KASHMIR	0	0	0	0	0.0	0.0
11	JHARKHAND	295	0	218	77	26.1	7.0
12	KARNATAKA	379	12	333	34	9.0	3.1
13	KERALA	176	6	81	89	50.6	8.1
14	MADHYA PRADESH	2870	0	2833	37	1.3	3.4
15	MAHARASHTRA	886	9	708	169	19.1	15.3
16	MANIPUR	4	0	0	4	100.0	0.4
17	MEGHALAYA	0	0	0	0	0.0	0.0
18	MIZORAM	0	0	0	0	0.0	0.0
19	NAGALAND	0	0	0	0	0.0	0.0
20	ORISSA	765	0	716	49	6.4	4.4
21	PUNJAB	0	0	0	0	0.0	0.0
22	RAJASTHAN	938	0	934	4	0.4	0.4
23	SIKKIM	30	0	28	2	6.7	0.2
24	TAMIL NADU	43	0	15	28	65.1	2.5
25	TRIPURA	11	1	8	2	18.2	0.2
26	UTTAR PRADESH	6	0	6	0	0.0	0.0
27	UTTARAKHAND	8	0	8	0	0.0	0.0
28	WEST BENGAL	13	1	0	12	92.3	1.1
	TOTAL (STATES)	9473	151	8220	1102	11.6	99.8
UNION TERRITORIES:							
29	A & N ISLANDS	2	0	0	2	100.0	0.2
30	CHANDIGARH	0	0	0	0	0.0	0.0
31	D & N HAVELI	5	0	5	0	0.0	0.0
32	DAMAN & DIU	2	0	2	0	0.0	0.0
33	DELHI	0	0	0	0	0.0	0.0
34	LAKSHADWEEP	1	0	1	0	0.0	0.0
35	PUDUCHERRY	0	0	0	0	0.0	0.0
	TOTAL (UTs)	10	0	8	2	20.0	0.2
	TOTAL(ALL-INDIA)	9483	151	8228	1104	11.6	100.0

TABLE-7.23

Disposal Of Persons By Courts Arrested For Committing Crimes Against Scheduled Tribes During 2007

Sl. No.	Crime Head	Total No. Persons Under Trial Including Those From Previous Year	No. Of Persons Whose			No. Of Persons Convicted	Percentage Of Persons	
			Cases Compounded Or Withdrawn	Trial Completed	Trial Remained Pending at the end of the year		Whose Trials Remained Pending (Col 6 × 100 / Col 3)	Convicted To Trials Completed (Col 7 × 100 / Col 5)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	MURDER (Sec. 302,303 IPC)	1378	3	280	1095	109	79.5	38.9
2	RAPE (Sec.376 IPC)	3017	45	799	2173	238	72.0	29.8
3	KIDNAPPING & ABDUCTION (Sec. 363-369, 371-373 IPC)	411	0	70	341	19	83.0	27.1
4	DACOITY (Sec.395-398 IPC)	100	0	16	84	0	84.0	0.0
5	ROBBERY (392-394, 397,398 IPC)	122	0	27	95	17	77.9	63.0
6	ARSON (Sec.435, 436, 438 IPC)	511	0	69	442	20	86.5	29.0
7	HURT (Sec.323-333, 335-338 IPC)	5615	122	1235	4258	333	75.8	27.0
8	PCR ACT, 1955 FOR STs	112	0	26	86	5	76.8	19.2
9	SC/ST PREV. OF ATROCITIES ACT, 1989 FOR STs	9828	29	1888	7911	410	80.5	21.7
10	OTHER CRIMES AGAINST STs	15266	224	3663	11379	1032	74.5	28.2
11	TOTAL	36360	423	8073	27864	2183	76.6	27.0

TABLE-7.24

**Disposal Of Persons By Courts Arrested For Committing Crime Against Scheduled Tribes During 2007
(State & UT Wise)**

Sl. No.	State/UT	Total No. Of Persons Undertrial Including Those From Previous Year	Total No. Of Persons Whose			No. Of Persons Convicted	Pendency Percentage	Percentage Of Pendency To All-India Total
			Cases Compounded Or Withdrawn	Trial Completed	Trial Remained Pending at the end of the year			
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
STATES:								
1	ANDHRA PRADESH	2333	1	758	1574	77	67.5	5.6
2	ARUNACHAL PRADESH	95	0	0	95	0	100.0	0.3
3	ASSAM	244	0	103	141	48	57.8	0.5
4	BIHAR	433	0	94	339	4	78.3	1.2
5	CHHATTISGARH	2845	47	614	2184	285	76.8	7.8
6	GOA	1	0	0	1	0	100.0	0.0
7	GUJARAT	4312	0	345	3967	12	92.0	14.2
8	HARYANA	0	0	0	0	0	0.0	0.0
9	HIMACHAL PRADESH	40	0	6	34	0	85.0	0.1
10	JAMMU & KASHMIR	0	0	0	0	0	0.0	0.0
11	JHARKHAND	688	4	126	558	35	81.1	2.0
12	KARNATAKA	1644	16	496	1132	5	68.9	4.1
13	KERALA	535	0	212	323	28	60.4	1.2
14	MADHYA PRADESH	10310	270	3032	7008	1205	68.0	25.2
15	MAHARASHTRA	5129	12	802	4315	13	84.1	15.5
16	MANIPUR	0	0	0	0	0	0.0	0.0
17	MEGHALAYA	0	0	0	0	0	0.0	0.0
18	MIZORAM	0	0	0	0	0	0.0	0.0
19	NAGALAND	26	0	26	0	26	0.0	0.0
20	ORISSA	3253	0	388	2865	41	88.1	10.3
21	PUNJAB	0	0	0	0	0	0.0	0.0
22	RAJASTHAN	3869	73	965	2831	355	73.2	10.2
23	SIKKIM	32	0	17	15	10	46.9	0.1
24	TAMIL NADU	157	0	24	133	3	84.7	0.5
25	TRIPURA	27	0	4	23	2	85.2	0.1
26	UTTAR PRADESH	208	0	49	159	31	76.4	0.6
27	UTTARAKHAND	46	0	8	38	3	82.6	0.1
28	WEST BENGAL	29	0	0	29	0	100.0	0.1
	TOTAL (STATES)	36256	423	8069	27764	2183	76.6	99.6
UNION TERRITORIES:								
29	A & N ISLANDS	63	0	0	63	0	100.0	0.2
30	CHANDIGARH	0	0	0	0	0	0.0	0.0
31	D & N HAVELI	35	0	4	31	0	88.6	0.1
32	DAMAN & DIU	4	0	0	4	0	100.0	0.0
33	DELHI	1	0	0	1	0	100.0	0.0
34	LAKSHADWEEP	1	0	0	1	0	100.0	0.0
35	PUDUCHERRY	0	0	0	0	0	0.0	0.0
	TOTAL (UTs)	104	0	4	100	0	96.2	0.4
	TOTAL (ALL-INDIA)	36360	423	8073	27864	2183	76.6	100.0

ANNEXURE 6.XI
(Ref. Para 6.7.1)

No.11012/ 11 /2005-PCR (Desk)
Government of India
Ministry of Social Justice & Empowerment

Shastri Bhawan, New Delhi;
Dated: 29th March, 2006.

OFFICE MEMORANDUM

Subject:- Constitution of a Committee to review and monitor cases under the Protection of Civil Rights Act, 1955 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

A Committee under the Chairmanship of the Hon'ble Minister of Social Justice & Empowerment is hereby constituted for effective coordination to devise ways and means [to curb offences of untouchability and atrocities against Scheduled Castes and the Scheduled Tribes and effective administration/implementation of the Protection of Civil Rights Act, 1955 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.] The Members of the Committee will be as follows:-

1.	Minister, Ministry of Social Justice & Empowerment	Chairperson
2.	Minister, Ministry of Tribal Affairs	Special Invitee
3.	Secretary, Ministry of Social Justice & Empowerment	Member
4.	Secretary, Ministry of Home Affairs	Member
5.	Secretary, Department of Justice, Ministry of Law and Justice	Member
6.	Secretary, Ministry of Tribal Affairs	Member
7.	Secretary, National Commission for Scheduled Castes	Member
8.	Secretary, National Commission for Scheduled Tribes	Member
9.	Joint Secretary (In charge of National Crime Records Bureau), Ministry of Home Affairs	Member
10.	Two non-official representatives from amongst Scheduled Castes	Members
11.	One non-official representative from amongst Schedule Tribes	Member
12.	Joint Secretary (SCD), Ministry of Social Justice & Empowerment	Member-Secretary

2. Non-official Members would be paid Traveling Allowance and Daily Allowance as admissible to the Joint Secretary to the Government of India. In case of travel by air, entitlement would be restricted to travel only by 'Economy Class' of Indian Airlines.

3. The Committee would meet twice in a year.

(Sewa Ram)
Joint Secretary to the Government of India
Ph. 23387269

1. The Secretary, Ministry of Social Justice & Empowerment, New Delhi.
2. The Secretary, Ministry of Home Affairs, North Block, New Delhi.
3. The Secretary, Department of Justice, Ministry of Law and Justice, Shastri Bhawan, New Delhi.



सत्यमेव जयते

भारत सरकार

राष्ट्रीय अनुसूचित जनजाति आयोग

GOVERNMENT OF INDIA
NATIONAL COMMISSION FOR SCHEDULED TRIBES

K. K. GUPTA
SECRETARY

6TH FLOOR, LOK NAYAK BHAWAN,
KHAN MARKET, NEW DELHI - 110002
Tel. : 24635625 Fax : 24624190

D.O.No.6/3/2006-Atrocity

January 5, 2007.

Dear Dr. Khanna,

With reference to your D.O. No.11012/11/2005-PCR (Desk) dated 13th December, 2006 and letter No.11012/11/2005-PCR (Desk) dated 26.12.2006, I enclose herewith a list of Agenda Items (along with explanatory notes on each) proposed for discussion in the 2nd Meeting of the Committee scheduled to be held at Jaipur on 15th January, 2007.

With regards,

Encl: As stated above

Yours sincerely,

(K.K. GUPTA)

Dr. Sundeep Khanna
Additional Secretary
Government of India
Ministry of Social Justice
and Empowerment
Shastri Bhawan, New Delhi-1.

S.No. 43 (I)



सत्यमेव जयते

भारत सरकार
राष्ट्रीय अनुसूचित जनजाति आयोग
GOVERNMENT OF INDIA
NATIONAL COMMISSION FOR SCHEDULED TRIBES

छठी मंजिल, 'बी' विंग, लोक नायक भवन
खान मार्केट, नई दिल्ली-110003
6th Floor, 'B' Wing, Lok Nayak Bhawan
Khan Market, New Delhi - 110 003
Dated 09.06.08

F.No.6/3/06-Atrocity/RU-II

To

The Secretary,
M/o Social Justice & Empowerment,
Shastri Bhawan,
New Delhi.

(Kind Attention: Shri D.V.S. Ranga, Jt.Secretary).

Sub: Recommendation of NCST as discussed in meeting on 30.05.08 at Agartala.

Sir,

I am directed to refer to the discussion held during the meeting on 30.05.08 at Agartala in which Secretary, NCST had made the following suggestions:-

- i) Exclusive Courts and public prosecutors should be set up for speedy disposal of atrocity cases.
- ii) Rules under POA Act may be amended to empower the Inspectors of Police to investigate the cases registered under POA Act.
- iii) If the victim is not satisfied with the public prosecutor, he/she should be authorized to hire a private lawyer and the expenses of hiring should be reimbursed.
- iv) The quantum of financial assistance under rules as per POA Act needs to be reviewed.
- v) A system of reporting cases of atrocities to various authorities/Commissions should be developed under POA Rules.

2. You are requested to kindly incorporate the same in the minutes of the meeting suitably.

Yours faithfully,

(Vinod Aggarwal)
Director

5/85
9/6/08
जारी किया
ISSUED

NATIONAL COMMISSION FOR SCHEDULED TRIBES

S. No.	State/UT	Brief details of the case	Date of incident	Date of receipt of complaint	Date of NCST 's initial reference to concerned authority, reminder and communication(s) for further details, if any	Date of Reply/ Report	Date of FIR (whether PoA Act also invoked)	Date of completion of Investigation by Police	Date of filing of chargesheet (whether PoA Act also invoked)	Amount & date of payment of monetary relief	Further Status/ Remarks
1	2	3	4	5	6	7	8	9	10	11	12
1.	Andhra Pradesh	Abuse and assault on a ST person of Dhuttalur Village, Distt. Nellore	10-04-2006	26-04-2006	15-05-2006 26-06-2006	11-06-2006	14-04-2006 (PoA Act invoked)	NA	28-07-2006 PoA Act later deleted while filing Charge Sheet	NA	-
2.	-do-	Rape of ST women of Mallapalli (v) Konizarla, Distt. Khammam.	17-12-2006	29-02-2008	03-03-08, 03-04-08, 15-04-09, 11-01-10, 13-03-10	24-11-2008 19-03-2010 14-04-2010	18-12-2006 (PoA Act invoked)	NA	05-03-2007 (PoA Act invoked)	Rs.25000/- in August, 2009	Pending in Court
3.	-do-	Physical assault and abuse by caste name to a ST woman r/o Pandikunta Thanda Village, Vajarakarur Mandal, Distt. Anantapur.	06-12-2007	22-04-2008	22-04-2008	07-05-2008	10-12-2007 (PoA Act invoked)	NA	Chargesheet filed/Date not furnished.	Rs.6250/- paid on 17-03-2008	Accused persons arrested.
4.	-do-	Harassment of a ST woman in Chintapalli.	03-02-2009	19-02-2009	25-02-2009	18-06-2009	04-02-2009 (PoA Act invoked)	NA	30-04-2009 (PoA Act invoked)	NA	Pending in Court
5.	Chhattisgarh	Rape of minor ST girls in Village Pattakela	06-06-2007	05-07-2007	09-07-07, 11-07-07	22-02-2008	09-06-2007 (PoA Act	NA	Charge Sheet submitted to court	Rs.50,000/- sanctioned. First	Pending in Court.

		Distt. Jaspur.			17-10-07, 22-11-07 27-12-07, 10-01-08		invoked)		but submission date not furnished. (PoA Act invoked)	installment Rs.25,000/-paid (Date not given)	

S. No.	State/UT	Brief details of the case	Date of incident	Date of receipt of complaint	Date of NCST 's initial reference to concerned authority, reminder and communication(s) for further details, if any	Date of Reply/ Report	Date of FIR (whether PoA Act also invoked)	Date of completion of Investigation by Police	Date of filing of chargesheet (whether PoA Act also invoked)	Amount & date of payment of monetary relief	Further Status/ Remarks
1	2	3	4	5	6	7	8	9	10	11	12
6.	Chhattisgarh	Keeping hostage and raping of a minor ST girl by a civil contractor in Distt. Raipur and subsequently imposition of a penalty of Rs.50,000/- on the victim's family by Tribal Community as a condition for readmission of the family in Tribal Community .	01-02-2009	03-02-2009 Press Report	05-02-2009 06-02-2010	03-03-2009 06-03-2009, 30/31-07-09.	02-02-2009 (PoA Act invoked)	NA	19-02-2009 (PoA Act invoked)	Rs.25,000/- on 30-03-2009	Further status not available
7.	Gujarat	Rape of a ST girl (belonging to Rajasthan) in Village Khatasana, Distt. Mehasana.	March, 2007	16-04-2008	16-04-2008, 11-08-2008 04-11-2008 31-01-2009	26-12-2008 19-01-2009	09-04-2008 (PoA Act invoked)	NA	28-06-2008 (PoA Act not invoked)	NA	Supdt. of Police, Mehsana dropped Sections of PoA Act from the Chargesheet as the victim belongs to ST of Rajasthan and not to Gujarat. As per the clarification received from Ministry of Tribal Affairs, PoA Act is required to be invoked by Govt. of Gujarat in this case.

8.	Jharkhand	Physical assault on a ST person r/o Kokar Khoda Tola, District Ranchi.	04-01-07	01-02-2007	19-02-2007	29-06-09	04-01-2007 (PoA Act not invoked)	NA	30-04-2007 (PoA Act not invoked)	NA	Pending in Court.

S. No.	State/UT	Brief details of the case	Date of incident	Date of receipt of complaint	Date of NCST 's initial reference to concerned authority, reminder and communication(s) for further details, if any	Date of Reply/ Report	Date of FIR (whether PoA Act also invoked)	Date of completion of Investigation by Police	Date of filing of chargesheet (whether PoA Act also invoked)	Amount & date of payment of monetary relief	Further Status/ Remarks
1	2	3	4	5	6	7	8	9	10	11	12
9.	Kerala	Brutal beating and torturing of a ST person r/o Anjillickal House, Kattappna P.O., Distt. Idukki.	23-12-06	31-01-07	7-2-07, 15-3-07, 11-5-07, 18-6-07, 17-11-07, 28-2-08, 14-5-08, 11-2-10	28-3-07 20-6-08 24-3-10	25-12-06 (PoA Act not invoked)	NA	31-12-06 (PoA Act not invoked)	NA	Case under trial.
10.	Madhya Pradesh	Violence after rape with a minor ST girl in Village Junapani, Distt. Rajgarh	20-09-06	5-10-06	6-10-06, 1-11-06, 8-12-06, 17-3-07, 23-5-07, 12-12-07, 3-4-08, 14-5-08, 13-7-08, 21-10-08	9-10-06 17-10-08	27-9-06 3-10-06 (PoA Act invoked)	NA	13-11-06 (PoA Act not invoked)	NA	It has been reported that the victim is not eligible for monetary relief under PoA Rules. Case subjudice as per the last report.
11.	-do-	Murder of a ST person by giving him poison in Ojhar Village, Tehsil Rajpur, Distt. Barwani..	15-05-06	08-01-07	10-1-07, 6-3-07	29-01-07 15-03-2007	09-06-06 (PoA Act invoked)	NA	09-11-06 (PoA Act invoked)	Rs.1,50,000/- on 27-11-06	Case under trial.
12.	-do-	Rape of a minor tribal girl of Village-Bajjarwada, Tehsil Babai, District Hoshangabad by a minor non-SC/ST.	05-03-07	26-03-07	26-3-07, 21-5-07, 11-6-07, 9-8-07	03-09-2007 18-02-2008	07-03-07 (PoA Act invoked)	NA	04-05-07 (PoA Act invoked)	Rs.25,000/ 25-05-07	Case under trial.
13.	-do-	Making a tribal lady forcefully naked and insulting her by shoe-garlanding in Village Dedgaon, PS-Chhipabad,	28-09-06	05-10-06 Press Report	6-10-06, 23-10-06, 23-11-06	07-10-06 05-12-06	03-10-06 (PoA Act invoked)	NA	14-10-06 (PoA Act invoked)	Rs.25,000+ Rs.6,250 (Date not available)	Police officials posted in the Chhipabad PS have been punished for their Inaction on the complaint. Case

		District Harda.									under trial.
S. No.	State/UT	Brief details of the case	Date of incident	Date of receipt of complaint	Date of NCST 's initial reference to concerned authority, reminder and communication(s) for further details, if any	Date of Reply/ Report	Date of FIR (whether PoA Act also invoked)	Date of completion of Investigation by Police	Date of filing of chargesheet (whether PoA Act also invoked)	Amount & date of payment of monetary relief	Further Status/ Remarks
1	2	3	4	5	6	7	8	9	10	11	12
14.	Madhya Pradesh	Beating and abusing of a ST person r/o Balwadi, PS-Warla, Distt-Barwani in full public view.	26-01-07	12-02-07	6-3-07, 14-6-07, 03-10-07	24-06-2007 25-10-2007	07-02-07 (PoA Act invoked)	NA	23-05-07 (PoA Act invoked)	Rs.5,000/ 13-07-07	Case under trial.
15.	-do-	Beating, abusing and threatening of murder to a ST person R/o Gerugati, PS-Warla, Distt-Barwani	06-08-07	09-08-07	10-8-07	22-10-2007	8-8-07 (PoA Act invoked)	NA	29-09-07 (PoA Act invoked)	Rs.6,250/ 12-10-07	Pending in Court.
16.	-do-	PRJ/3102/Badwani/4/07 Attempt rape to a ST woman r/o Village-Jharar, PS-Pati, Distt- Barwani.	16-02-07	02-03-07	27-3-07, 25-05-07	05-05-2007 13-07-2007	20-02-07 (PoA Act invoked)	NA	28-03-07 (PoA Act invoked)	Rs.25,000/ 12-06-07	Pending in Court.
17.	-do-	Attempt to rape of an tribal girl in Village-Avalda, PS and District-Barwani by a minor.	23-10-06	30-10-06	06-11-06, 02-01-07	02-12-2006 26-02-2007	24-10-06 (PoA Act invoked)	NA	29-11-06 (PoA Act invoked)	Rs.25,000/- 26-02-07	Case under trial in Juvenile Court.
18.	-do-	Rape of a minor tribal girl r/o Village-Mudla, PS-Theekari, Distt-Barwani.	16-10-06	23-10-06	03-11-06, 21-12-06	22-11-2006 02-03-2007	16-10-06 (PoA Act invoked)	NA	19-11-06 (PoA Act invoked)	Rs.25,000/ 19-12-06	Case under trial.

19.	Madhya Pradesh	Dispute of land/violence with ST family r/o Gandhi Nagar, Tehsil Silwani, Distt.-Raisen.	Dispute of land 25 year ago 3-1-07 (violence)	04-10-06 (land dispute) Then there was violence.	11-10-06, 03-01-07, 26-9-07	15-11-06 04-12-06 09-07-07 11-05-07 18-10-07 13-06-07 20-11-07	05-01-07 (PoA Act invoked)	NA	23-12-06 (PoA Act invoked)	Rs.25,000/ 28-05-07	Case under trial.

S. No.	State/UT	Brief details of the case	Date of incident	Date of receipt of complaint	Date of NCST 's initial reference to concerned authority, reminder and communication(s) for further details, if any	Date of Reply/ Report	Date of FIR (whether PoA Act also invoked)	Date of completion of Investigation by Police	Date of filing of chargesheet (whether PoA Act also invoked)	Amount & date of payment of monetary relief	Further Status/ Remarks
1	2	3	4	5	6	7	8	9	10	11	12
20.	-do-	Rape of a ST woman r/o Village-Mahodia, Distt. Sehore.	19-12-06	2-1-07	08-01-07, 12-02-07, 13-03-07, 12-12-07 28-2-08	22-1-07 07-03-07	20-12-06 (PoA Act invoked)	NA	12-01-07 (PoA Act invoked)	Rs.25,000/ 27-03-08	Case under trial.
21.	-do-	Burning alive of a tribal person in Purai Police Station Area Distt. Sioni.	16-12-2006	18-12-2006	19-12-2006	06-01-2007	16-12-06 (PoA Act invoked)	NA	02-02-2007 (PoA Act invoked)	Rs.1,50,000/- (Date not furnished)	Pending in Court.
22.	-do-	Rape of a ST woman r/o Village Bhitara, Police Station Rampur, Baghelan Distt. Satna.	26-12-2006	08-01-2007	10-01-2007 04-05-2010	09-03-2007	27-12-06 (PoA Act invoked)	NA	10-01-2007 (PoA Act invoked)	NA	Pending in Court.
23.	-do-	Rape of a ST woman r/o of Village-Pandrapani, PS-Lalbarra, Distt. Balaghat.	10-03-07	09-04-07	23-4-07, 24-5-07, 6-8-07	28-05-2007 29-08-2007	11-3-07 (PoA Act invoked)	NA	06-04-07 (PoA Act invoked)	Rs.25,000/ 27-07-07	Case under trial.
24.	-do-	Gang-rape of four minor tribal girls of Village-Pipla in Distt. Betul	20-10-07	22-10-07 Press Report	22-10-07, 01-11-07, 17-12-07	10-03-2008	20-10-07 (PoA Act invoked)	NA	31-10-07 (PoA Act invoked)	Rs.25,000/- on 11-12-07 to each victim	Case under trial.
25.	Madhya Pradesh	Domestic violence of a married couple (Husband	1998 to 26-08-07	29-08-07	10-09-07, 09-10-07	19-09-2007 26-05-2008	26-08-07	NA	13-09-07	No	Case under trial.

		from non -SC/ST community) Abusing, beating, threatening and leaving wife (an ST) idle.	(The date of FIR)			20-03-2009	(PoA Act invoked)		(PoA Act invoked)		

S. No.	State/UT	Brief details of the case	Date of incident	Date of receipt of complaint	Date of NCST 's initial reference to concerned authority, reminder and communication(s) for further details, if any	Date of Reply/ Report	Date of FIR (whether PoA Act also invoked)	Date of completion of Investigation by Police	Date of filing of chargesheet (whether PoA Act also invoked)	Amount & date of payment of monetary relief	Further Status/ Remarks
1	2	3	4	5	6	7	8	9	10	11	12
26.	-do-	Murder of a ST person r/o Badpura, PS-Pansemal, Distt. Badwani.	20-06-07	05-07-07	22-08-07 26-11-07	07-12-2007	23-06-07 (PoA Act invoked)	NA	31-07-07 (PoA Act invoked)	Rs.1,50,000/ 07-08-07	Case under trial.
27.	-do-	Attempt of rape of a minor tribal girl by a minor boy r/o Abhinav Colony, Sendhwa, Distt. Badwani.	10-03-07	15-03-07	21-03-07, 25-05-07	05-05-2007 13-07-2007	10-03-07 (PoA Act invoked)	NA	28-03-07 (PoA Act invoked)	Rs.25,000/- 12-06-07	Case under trial in Juvenile Court.
28.	-do-	Attempt of rape against 6 Tribal women by a Deputy Collector in his Govt. residence in Sidhi Distt.	02-08-07	01-11-07 Press Report	05-11-07, 12-12-07, 07-03-08, 13-05-08, 28-7-08 22-10-08	14-11-2007	12-08-07 (PoA Act invoked)	NA	31-10-07 (PoA Act invoked)	NA	Case under trial.
29.	-do-	Molestation of a ST woman r/o Julwania Road, Sendhwa, Distt. Badwani.	26-07-07	06-08-07	10-8-07, 17-12-07, 03-04-08, 19-05-08, 05-11-09	29-11-2007 16-11-2009	29-07-07 (PoA Act invoked)	NA	20-11-07 (PoA Act invoked)	No	Victim was not medically examined as a result of which monetary relief could not be sanctioned
30.	Madhya Pradesh	Death of a Tribal person in police firing near Pipdipada Village in Distt. Jhabua.	02-07-07	04-07-07	11-07-07, 03-08-07, 18-10-07, 20-03-08, 15-05-08, 30-07-08, 21-10-08, 09-02-09, 19-05-09, 19-08-09	29-07-2007 29-10-2009	02-07-07 (PoA Act not invoked)	NA	23-08-07 (PoA Act not invoked)	NA	Pending in court. Accused has not been arrested as per the last report.

31.	-do-	Consumption of poison by a ST person r/o of Village Gheghana, PS-Warla, Distt. Barwani due to not fulfilling the commitment of selling land to him by the Non-SC/ST persons after taking money from him.	31-07-07	09-08-07	10-08-07	22-10-2007	8-8-07 (PoA Act invoked)	NA	19-9-07 (PoA Act invoked)	Rs.50,000/ 12-10-07	Case under trial.

S. No.	State/UT	Brief details of the case	Date of incident	Date of receipt of complaint	Date of NCST 's initial reference to concerned authority, reminder and communication(s) for further details, if any	Date of Reply/ Report	Date of FIR (whether PoA Act also invoked)	Date of completion of Investigation by Police	Date of filing of chargesheet (whether PoA Act also invoked)	Amount & date of payment of monetary relief	Further Status/ Remarks
1	2	3	4	5	6	7	8	9	10	11	12
32.	-do-	Assault on a Tribal man r/o of Village-Budra, PS-Rajpur, Distt. Barwani.	29-05-07	05-06-07	02-08-07	10-08-2007	29-05-07 (PoA Act invoked)	NA	19-07-07 (PoA Act invoked)	Rs.6,250/ 07-08-07	Case under trial.
33.	-do-	Assault on a ST Teacher in middle school Talwada Dev under Anjad PS of Distt. Barwani.	23-09-07	01-10-07	18-10-07, 12-03-08, 15-05-08	05-11-2007 24-05-2008	24-9-07 (PoA Act invoked)	NA	22-10-07 (PoA Act invoked)	Rs.5,000/ 23-11-07	Case under trial.
34.	-do-	Death of an innocent Tribal person in police firing in Jamna Village under Kanhiwada PS of Distt. Seoni.	02-03-07	01-01-08	21-1-08, 19-03-08	27-03-2008	02-03-07 (PoA Act invoked)	NA	31-05-07 (PoA Act invoked)	Rs.10,000+ Rs.100000+ Rs.5000+ Rs.5000+ Rs.6250/- to Wife of deceased and to some other injured persons. Date of disbursement is not mentioned in the report.	Case under trial.
35.	Madhya Pradesh	Rape of a ST woman r/o Talwada Bujurg, PS-Anjad, District-Barwani.	11-04-07	19-04-07	01-05-07, 30-07-07	19-05-2007 01-10-2007	12-04-07 (PoA Act invoked)	NA	14-05-07 (PoA Act invoked)	Rs.25,000/ 14-06-07	Case under trial.
36.	-do-	Molestation of a ST girl r/o Village-Shahpura, PS-Sendhwa Rural, Distt.	17-06-07	05-07-07	10-9-07	19-09-2007	19-06-07 (PoA Act	NA	30-06-07 (PoA Act	No	Victim was not medically examined as

		Barwani,					invoked)		invoked)		a result of which monetary relief could not be sanctioned

S. No.	State/UT	Brief details of the case	Date of incident	Date of receipt of complaint	Date of NCST 's initial reference to concerned authority, reminder and communication(s) for further details, if any	Date of Reply/ Report	Date of FIR (whether PoA Act also invoked)	Date of completion of Investigation by Police	Date of filing of chargesheet (whether PoA Act also invoked)	Amount & date of payment of monetary relief	Further Status/ Remarks
1	2	3	4	5	6	7	8	9	10	11	12
37.	-do-	Molestation of a ST woman r/o Village-Sangwi, PS-Theekari, Distt. Barwani	10-06-07	14-06-07	2-8-07, 9-10-07	10-08-2007 31-10-2007	11-6-07 (PoA Act invoked)	NA	30-06-07 (PoA Act invoked)	No	Victim was not medically examined as a result of which monetary relief could not be sanctioned
38.	-do-	Beating, abusing & threatening of a ST person r/o Village-Narwala, PS-Rajpur, District Barwani.	19-10-06	24-03-07	23-04-07, 06-08-07	19-05-2007 01-10-2007	21-03-07 (PoA Act invoked)	NA	16-05-07 (PoA Act invoked)	Rs.6250/ 14-06-07	Case under trial.
39.	-do-	Attack on a ST Inspector and Head Constable in Warla Police Station in Badwani District.	15-08-07	20-8-07	10-9-07	22-10-2007	16-08-2007 (PoA Act invoked)	NA	22-09-2007 (PoA Act invoked)	Rs.6250/ + 6250/ (for 2 victim) 08-10-07	Case under trial.
40.	-do-	Attack on a ST Naib Tehsildar, Anjad, District- Badwani and also abusing and threatening by non-SC/ST persons while on duty.	16-10-07	22-10-07	02-11-07, 20-12-07	11-01-2008	17-10-2007 (PoA Act invoked)	NA	16-11-2007 (PoA Act invoked)	Rs.6250/ 17-11-07	Case under trial.
41.	Madhya Pradesh	Assault on a ST woman r/o Anand Nagar, Distt. Barwani.	08-03-07	20-03-07	23-04-07, 25-05-07	06-05-2007 13-07-2007	08-03-2007 (PoA Act invoked)	NA	17-04-2007 (PoA Act invoked)	Rs.6250/ 12-06-07	Case under trial.
42.	-do-	Assault on ST persons R/o Mortalai, PS-Khetia, Distt.	14-02-07	20-03-07	23-4-07, 24-5-07	06-05-2007 13-07-2007	15-2-07	NA	30-4-07	Rs.50,000/+ Rs.6250 +	Case under trial.

		Barwani					(PoA Act invoked)		(PoA Act invoked)	Rs.6250/ 31-05-07	
43.	-do-	Forcible encroachment of agricultural land, abusing and threatening of ST women in Village Khamha, PS-Jaisingh Nagar, Distt. Shahdol.	03-08-07	01-10-07	16-10-07, 03-04-08, 19-05-08, 11-11-08, 09-01-09, 11-08-09	27-09-2008 31-08-2009 01-10-2009	1-7-08 (PoA Act invoked)	NA	5-12-08 (PoA Act invoked)	NA	Case under trial.

S. No.	State/UT	Brief details of the case	Date of incident	Date of receipt of complaint	Date of NCST 's initial reference to concerned authority, reminder and communication(s) for further details, if any	Date of Reply/ Report	Date of FIR (whether PoA Act also invoked)	Date of completion of Investigation by Police	Date of filing of chargesheet (whether PoA Act also invoked)	Amount & date of payment of monetary relief	Further Status/ Remarks
1	2	3	4	5	6	7	8	9	10	11	12
44.	-do-	Abusing, defaming, damaging house hold goods and throwing out of her house of a ST woman r/o Balwadi, PS-Warla, Distt. Barwani.	14-09-07	18-10-07	26-11-07, 13-03-08, 15-05-08, 25-02-09	07-12-2007 19-03-2009	13-10-07 (PoA Act invoked)	NA	29-10-07 (PoA Act invoked)	Rs.25,000/- 14-11-07	Penalty of Rs. 2200/- & 6 months imprisonment to the accused
45.	-do-	Rape of a ST girl r/o Village-Sangoda, PS-Rajpur, Distt. Barwani.	31-07-07	03-08-07	09-08-07	26-05-2008	31-07-07 (PoA Act invoked)	NA	26-09-07 (PoA Act invoked)	Rs.25,000/- 08-10-07	Accused persons have been acquitted by the Special Court due to contradictory evidences.
46.	Madhya Pradesh	Attack with country made pistol on a ST person r/o Balkuan, PS-AJK, Distt. Barwani.	29-7-07	03-08-07	09-08-07, 10-12-07	16-12-2007	30-07-07 (PoA Act invoked)	NA	29-8-07 (PoA Act invoked)	Rs.50,000/ 06-09-07	Special Court, Barwani has acquitted the accused as the charges could not be proved.
47.	-do-	Attempted rape of a ST woman r/o Village Dhanora, PS-Anjad, Distt. Barwani.	21-07-08	05-08-08	15-09-08	07-10-2008	22-07-07 (PoA Act invoked)	NA	19-08-08 (PoA Act invoked)	Rs.25,000/- 5-9-08	Case under trial.
48.	-do-	Rape of ST Women in Village, Vikhnya, Tehsil & Distt. Datiya.	19-09-2007	03-10-07	08-10-2007 05-05-2010	07-03-2008	19-09-2007 (PoA Act invoked)	NA	01-11-07 (PoA Act invoked)	NA	Pending in Court.

49.	-do-	Abduction of a ST woman r/o Bidinia, PS-Dehat, Distt. Datia for an pressurizing her husband for an agreement in an old case of raping the woman.	27-06-08	17-09-08	26-11-08, 29-1-09	12-03-2009	19-09-07 (PoA Act invoked)	NA	19-11-07 (PoA Act invoked)	No	The complaint was found to be false. The applicant who is habitual of wine and beating his wife was harassing her himself and his wife has left him idle.

S. No.	State/UT	Brief details of the case	Date of incident	Date of receipt of complaint	Date of NCST 's initial reference to concerned authority, reminder and communication(s) for further details, if any	Date of Reply/ Report	Date of FIR (whether PoA Act also invoked)	Date of completion of Investigation by Police	Date of filing of chargesheet (whether PoA Act also invoked)	Amount & date of payment of monetary relief	Further Status/ Remarks
1	2	3	4	5	6	7	8	9	10	11	12
50.	-do-	Attempted rape of a ST woman r/o Village-Jalgone, PS-Rajpur, Distt. Barwani.	22-04-08	25-04-08	12-5-08, 23-10-08, 26-05-09	26-05-2008 05-06-2009	23-04-08 (PoA Act invoked)	NA	26-5-08 (PoA Act invoked)	Rs.25,000/ 11-08-08	Case under trial.
51.	-do-	Attempted rape of two tribal girls r/o Gholanya Bedipura, PS-Theekari, Distt. Barwani.	30-10-08	05-11-08	03-12-08, 24-04-09	23-12-2008 18-05-2009	30-10-08 (PoA Act invoked)	NA	20-12-08 (PoA Act invoked)	Rs.25,000/- to each victim on 27-01-09	Case under trial.
52.	Madhya Pradesh	Damaging the harvest and abusing and threatening of a ST person r/o Salkheda, PS-Rajpur, Distt. Barwani.	08-06-2008	20-06-08	30-06-08, 16-10-08, 01-06-09	05-11-2008 18-06-2009	13-06-08 (PoA Act invoked)	NA	22-12-08 (PoA Act invoked)	Rs.5,000/- on 31-12-08	Case under trial.
53.	-do-	Attempted rape of a ST woman and threatening to her r/o Village-Kervon, PS-Rajpur, Distt. Barwani.	13-11-2008	17-11-08	01-12-08, 12-01-09	22-01-2009	13-11-08 (PoA Act invoked)	NA	20-12-08 (PoA Act invoked)	Rs.25,000/ 3-12-08	Case under trial.
54.	-do-	Rape of a ST girl r/o Jatachhapar Basti, PS-Chandameta, Distt. Chhindwara.	27-09-2007	02-04-08	29-04-08, 11-4-08, 27-6-08	14-08-2008	27-09-07 (PoA Act invoked)	NA	5-10-07 (PoA Act invoked)	Rs.25,000/ 27-10-07	Case under trial.
55.	-do-	Harassment of Tribals in	17-12-2008	19-01-2009	21-01-2009	26-06-2009	19-12-2008	NA	25-03-2009	NA	Pending in

		Dharampuri Vidhan Sabha Chhetra of Distt. Dhar.			06-05-2009	08-11-2009	(PoA Act invoked)		(PoA Act invoked)		Court.

S. No.	State/UT	Brief details of the case	Date of incident	Date of receipt of complaint	Date of NCST 's initial reference to concerned authority, reminder and communication(s) for further details, if any	Date of Reply/ Report	Date of FIR (whether PoA Act also invoked)	Date of completion of Investigation by Police	Date of filing of chargesheet (whether PoA Act also invoked)	Amount & date of payment of monetary relief	Further Status/ Remarks
1	2	3	4	5	6	7	8	9	10	11	12
56.	-do-	Custodial death of a ST person in Distt. Raisen	27-07-2008	01-08-2008	04-08-08, 13-08-08 11-11-08, 29-11-08	13-08-08	27-07-2008 (PoA Act invoked)	NA	Charges against police officials were prima-facie found to be true. They were suspended and judicial inquiry was stated to be in progress. (PoA Act not invoked)	Rs.1,50,000/- to be given to victim family. Rs.20,000/- cash already paid by Collector, Raisen and Rs.13000/- proposed to be given from CM relief fund. Rs.35,000/- proposed to be paid under Indira Awas Yajana.	On the spot inquiry was also conducted by the then Hon'ble Member (Shri Tsering Samphel), NCST on 08-08-2008. The Hon'ble Member, inter-alia, recommended thorough inquiry in the matter.
57.	Maharashtra	Abuse and insult by Police officials on ST persons r/o Villlage-Khairpara, Tehsil-Wasai, Distt-Thane	28-10-05	7-2-07	26-2-07	08-6-07	24-11-05 (PoA Act not invoked)	NA	Date of chargesheet not available	NA	Case under trial. Action was also initiated against an Assistant Sub-Inspector of Manikpur PS for negligence and delay in registration of offence.

58.	-do-	Harassment of Tribals on caste ground by police officials in Manmad.	15-6-07	17-01-08	31-01-08, 03-04-08, 13-05-08	24-04-08	15-6-07 (PoA Act invoked)	NA	16-6-07 (PoA Act invoked)	No	The complaint was false and fabricated as per the report of SP Nasik (Rural)

S. No.	State/UT	Brief details of the case	Date of incident	Date of receipt of complaint	Date of NCST 's initial reference to concerned authority, reminder and communication(s) for further details, if any	Date of Reply/ Report	Date of FIR (whether PoA Act also invoked)	Date of completion of Investigation by Police	Date of filing of chargesheet (whether PoA Act also invoked)	Amount & date of payment of monetary relief	Further Status/ Remarks
1	2	3	4	5	6	7	8	9	10	11	12
59.	Rajasthan	Theft of agriculture machinery of a ST person, PS Samod District Jaipur (Rural)	06-04-2004	06-06-2005	13-06-2005	11-07-2005 21-07-2005	2004 (Date not available) (PoA Act not invoked)	NA	20-06-2005	NA	Accused arrested and released on bail by Session Court.
60.	Manipur	Molestation and gang rape of 25 ST girls in Distt. Churachandpur.	16-01-2006	14-08-2007	11-04-08, 09-06-08, 25-07-09, 01-04-09	01-08-2009	25 FIRs lodged soon after the incident	Not yet complete	NA	Monetary relief of Rs.1,00,000 each to rape victims and Rs.50,000/- each to victim of molestation sanctioned on 19-04-2008.	Accused belong to UNLF and KCP and could not be traced so far.
61.	Rajasthan	Rape of a tribal girl of Village Jhotra, Tehsil – Sanchaur, Distt. Jalore.	03-03-2006	25-05-2006 Press Report	25-05-2006	31-05-2006 28-02-2008 05-09-2008 22-01-2009 16-03-2009 24-06-2009 15-07-2009	9/3/2006 (PAO Act Invoked)	NA	Final Report submitted in the Court on 9/11/2006	NA	Decision of the Court is pending.
62.	-do-	Abusing on caste basis and attack on a ST person r/o Village –	14-01-2007	22-01-2007	22-01-2007, 19-03-2007, 10-10-2007, 31-12-2007, 11-02-2008,	24-03-2007 16-11-2009	15-01-2007	NA	22/3/2007 (PoA Act not	No	Further status not available.

		Swaaun, Police Station – Govindgarh, Distt. Jaipur.			04-04-2008, 18-05-2008, 13-08-2008, 02-12-2008		(PoA Act Invoked)		invoked)		
63.	-do-	Physical assault on a ST family in Village Charniya Tehsil Sanchor Distt. Jalore.	19-05-2007	15-06-2007	02-04-2008 07-06-2008	09-05-2008 26-05-2008 27-07-2008	19-05-2007 (PoA Act invoked)	NA	FR dated 14-06-2007 filed in Court.	NA	Matter also found false on review by IG, Jodhpur report dated 02-09-2007.

S. No.	State/UT	Brief details of the case	Date of incident	Date of receipt of complaint	Date of NCST 's initial reference to concerned authority, reminder and communication(s) for further details, if any	Date of Reply/ Report	Date of FIR (whether PoA Act also invoked)	Date of completion of Investigation by Police	Date of filing of chargesheet (whether PoA Act also invoked)	Amount & date of payment of monetary relief	Further Status/ Remarks
1	2	3	4	5	6	7	8	9	10	11	12
64.	-do-	Encroachment of agricultural land of a ST person r/o Post Thoi, Distt. Sikar.	21-05-2007	05-07-2007	13-08-2007	23-08-2007	21-05-2007	N.A.	Case has been mutually settled	No	-
65.	-do-	Grievous hurt to a ST person, District Banswara.	13-03-2008	31-03-2008	07-04-2008	27-05-2008	13-03-2008 (PoA Act invoked)	NA	22-05-2008 (PoA Act dropped by SP)	NA	Pending in Court.
66.	-do-	Harassment of a ST person r/o Bhatwara, Police Station – Mangrol, Distt.– Banra.	26-12-2007	30-04-2008	11-06-2008, 13-08-2008, 19-09-2008	20-10-2008	02-01-2008 POA Act not invoked	N.A.	08-02-2008 POA Act not invoked	Nil	Further status not available.
67.	Rajasthan	Harassment and obtaining bribe by Police Authorities from a ST person r/o Doda Dungar, Tehsil – Jamwaramgarh, Distt.– Jaipur	03-08-2006	04-02-2008	25-03-2008 28-04-2008	25-04-2008	12-08-2006 POA Act not invoked	N.A.	31-12-2007 POA Act not invoked	Nil	Further status not available.
68.	Tamil Nadu	Outrage of modesty of ST women by police personnel at Kariyalur Police Station of Pattivalavu Village,	18-10-2005	20-07-2007	29-09-07, 23-02-10 28-04-2010	10-05-2010	09-11-2005 (PoA Act invoked)	NA	Chargesheet filed (date not furnished)	NA	Pending in the Court. Concerned Police Officials transferred as Departmental

		Distt. Villupuram.									action.
69.	-do-	Rape of a ST girl near Bodinayakanur in Distt. Madurai	06-05-2008	04-07-2008	07-07-08, 25-09-09 24-10-09	15-08-2008 10-05-2010	31-05-2008 (PoA Act invoked)	NA	01-09-2008 (PoA Act invoked)	Rs.5000/- to the victim on 19-02-2010	Case pending in Court. Fine Rs.1000+Rs.1500 & RI for 42 days by Juvenile Justice Court, Madurai.

S. No.	State/UT	Brief details of the case	Date of incident	Date of receipt of complaint	Date of NCST 's initial reference to concerned authority, reminder and communication(s) for further details, if any	Date of Reply/ Report	Date of FIR (whether PoA Act also invoked)	Date of completion of Investigation by Police	Date of filing of chargesheet (whether PoA Act also invoked)	Amount & date of payment of monetary relief	Further Status/ Remarks
1	2	3	4	5	6	7	8	9	10	11	12
70.	-do-	Molestation of a ST woman in Pilikun Village, Distt. Villupuram	17-02-2008	10-10-2008	11-10-08, 16-11-09 05-01-10	08-01-2010 21-01-2010 10-05-2010	18-02-2008 (PoA Act invoked)	NA	17-08-2008 (PoA Act invoked)	Rs.25000/- paid to the victim on 28-02-2009 and Rs.6250/- paid to her husband.	Pending in the court.
71.	-do-	Molestation of a minor ST girl r/o Poontheru Village, Distt. Villupuram	27-07-2008	13-01-2009	05-02-09, 16-03-09 05-01-10	21-01-2010 15-03-2010 10-05-2010	29-07-2008 (PoA Act invoked)	NA	27-09-2008 (PoA Act invoked)	Rs.25000/- on 28-02-2009	Case pending in court.
72.	Uttar Pradesh	Kidnapping of a ST boy r/o Village Khatriali Bazar, PS Kuber, Distt. Kushinagar.	19-03-2006	19-05-2006	02-06-2006	24-06-2006	26-03-2006 (PoA Act invoked)	NA	01-05-2006 (PoA Act invoked)	Monetary relief recommended on 30-05-2006	Case pending in Court
73.	-do-	Rape of a ST girl r/o Village Maharania, PS Kotwali, District Mau.	25-11-2005	30-04-2007	17-07-2007	29-07-2007	25-11-2005 (PoA Act invoked)	NA	26-04-2006 (PoA Act invoked)	Rs.25000/- on 16-02-2006	Case pending in court.
74.	Delhi	Physical assault, rape and denial of wages to a ST woman of Orissa by a Placement Agency in Delhi.	28-01-2005	26-03-2007	29-03-2007 27-07-2007	27-07-2007 30-08-2007 04-04-2008	05-05-2007 (PoA Act not invoked)	NA	10-01-2008 (PoA Act not invoked)	NA	Pending in court.

75.	Dadra & Nagar Haveli	Grievous hurt and abuse by caste of a ST person in Silvassa.	02-04-2008	19-04-2008	08-05-2008 19-10-2009	12-11-2009	02-04-2008 (PoA Act not invoked)	NA	09-04-2008 (PoA Act not invoked)	NA	Cross FIR No.96/2008 on 02-04-2008 and Chargesheet filed on 22-04-2008. Matter pending in Court.

NA: Not Available

ANNEXURE 7.I

(Ref: Para 7.1.2)

Details of cases in which recommendations of the Commission were not implemented

S. NO.	Date of Sitting	Gist of complaint	Gist of recommendations	Status of implementation of recommendations of the Commission
1.	07.04.2008 Member(TS)	Assault and mishandling of Jr. Resident belonging to ST in AIIMS	Internal inquiry by a Committee to be conducted at the earliest and action taken report to be furnished to the Commission	Report not received
2.	02.05.2008 Chairperson	Denial of appointment to the post of Lecturer reserved for ST in Shaheed Bhagat Singh College. Delhi	To review the process of selection and inform the position to the Commission	Reply dated 14/07/2008 revealed that the post was actually reserved for SC candidate but the Selection Committee had inadvertently selected a ST candidate.
3.	27.05.2008 Member(TS)	ST AEs of CPWD Non- promotion as EEs	There are number of grounds on which ST AEs should be promoted as EE without further delay.	Not yet implemented.
4.	04.06.2009 Member(TS)	Sh R. Pal Promotion and discrimination	The training charges (Rs 2.9 Lakh), incurred at IGRUA should not be recovered. He should be promoted w.e.f. 2002. The request of Shri Pal for Hobby Flying may be favorably considered.	Not implemented
5.	01.09.2008 Member(TS)	Sh Kuldeep Meena Admission to MBBS in GGSIP Universtiy	Matter to be taken up with the Ministry of the H&FW	GGSSIP informed that ST seat was diverted to the General category as per instructions from the MoH&FW.
6.	11.09.2008 Member(TS)	Sh R. Pal Promotion and discrimination	Sh Rebat Pal should be rehabilitated as per his seniority and status. Discussion with IGRUA and DGCA to be done to settle the flying charges of Rs 2.9 lakh during CPL training at IGRUA.	Not implemented
7.	22.10.2008 Vice Chairperson	Compassionate appointment: third son of Smt. Annapurnabai M. Donikar, Nagpur	(i) the Chief Commissioner of Income Tax , Nagpur should forward the request of Smt. A.M. Donikar to the Secretary, Ministry of Finance, Department of Revenue for sympathetic consideration of the compassionate appointment of her third son; and	Not implemented (Ministry of Finance vide letter dated 20/11/2009 intimated that her two sons were already employed and there was no record to show that the employed sons were not supporting to Smt. Donikar or her third son

			(ii) CCIT, Nagpur should help the son of Smt. Donikar in getting some part time/full time job in the Department and apprise the Commission of the position in this regard within a month.	
8.	23.10.2008 Vice Chairperson	Promotion: Shri Jaimal Meena, OICL from Branch Manage Scale-II to Dy. Manager/Divisional Manager (Scale-III)	Recommended for promotion	OICL in August 2009 informed that the matter had been referred to their Administrative Ministry for their valuable advice. Further position awaited in spite of d.o. letter dated 29.07.2009 to the Secy. Ministry of Finance.
9.	24.10.2008 Vice Chairperson	Denial of promotion to various posts of Engineering cadre and denial of appointment against reserved posts of Accounts Officer in Madhya Pradesh State Electricity Board	The posts of Jr. Engineers were available in various Departments and there is also heavy shortfall/ backlog for Scheduled Tribes in each Deptt. while the eligible ST employees, who are available in the feeder grade for promotion to the post of Jr. Engineers, may be promoted.	Not-implemented
10.	08.12.2008 Chairperson	Shri B.P. Barua, Consultant and Head Radiology and Imaging Department, Dr. RLM Hospital, New Delhi.	Dr. Baruah claimed that he had submitted, several times, his credentials for his appointment as Professor but his name was not sponsored for the same. As details about his qualifications & experiences were available with the Hospital Administration, the Medical Superintendent may consider forwarding his name on priority for Professorship on the basis of the details available in the Department and, additional information	Not implemented
11	10.12.2008 Chairperson	Sh K. L.. Meena, AD, DGCA Transfer	Secretary, MoCA may order an enquiry to find the facts and senior most Dy Dir to be transferred to Hyderabad.	Not implemented
12	19.12.2008 Member(TS)	Sh J. R. Meena, AD/ISS Promotion	Seniority of ISS cadre in JTS as on 2002 will be prepared and as per vacancy and zone of consideration action to promote will be taken.	As per seniority, claim of Sh Meena is correct. Case is in favourable direction; Sh Meena yet to be promoted.
13	09.01.2009 Member(TS)	Sh Rood Mal Meena, PGT(History), suspension by DD/Ed. Delhi.	Sh Meena to explain his position in writing to DD/Ed. DD to consider settlement of Memorandums in favour of Sh Meena.	No response from either side.

ANNEXURE 7.II

(Ref: Para 7.1.3)

Details of cases dealt during the year 2008-09 in which required relief was provided to the petitioners/ aggrieved persons**I. SERVICE MATTERS**

S. No.	File No.	Subject	Complainant/ Source
(1)	(2)	(3)	(4)
1.	TN/10/B/18/ 2008-GEN	Promotion	Sh. K.Kubendriran, General Secretary, All India ST Employees Welfare Association, Salem, Tamil Nad
2.	DSM/Rly/Service/844/ 2008-RU-I	Relaxation in medical standard	Sh. Dara Singh Meena, Law Assistant, Northern Railway, Baroda House, New Delhi.
3	MY/Service/Ors/DSS SB/081/RU-I	Appointment	Mohd. Yusuf, Okhla, New Delhi
4	SM/ Service/ Defence/ 2008/ 252/ RU-IV	Compassionate Appointment	Smt. Sofia Minz, Kolkata, West Bengal
5	T-05/ I & B/ 07/ Services/ 07/ RU-III	Promotion	Sh. Thakur Hansada, Joint Director, DG, Doordarshan, New Delhi
6	H-01/Labour/02/ Services/07/RU-III	Promotion	Sh. Heera Singh, General Secretary, ESIC SC/ST Officer & Employees Welfare Association, New Delhi
7	P-04/MP-02/ Service/07/RU-III	Promotion	Sh. Prem Singh Bhalavi, LDC, Madhya Pradesh Hindi Granth Academy, Bhopal, MP
8	HRM/Service/Fin (Ins)/ 733/ 2008/ RU- IV	Transfer	Sh. Hariram Meena, Administrative Officer, National Insurance Co. Ltd., Ludhiana, Punjab.
9	6/2/2007-J	Reinstatement	Sh. Anuranjan Toppo, Divisional Accountant, AG (A&E) Ranchi ,Jharkhand
10	S-7/Labour/05/ Services/07/RU-III	Promotion	Shri Sirajbhai Sadal, President, SC/ST and Muslim Grievances Forum, Nagpur
11	SKR/Ser/Rly/ND/690/ 2008/RU-1	Promotion and Transfer	Sh. J Meghanath, Dy. FA&CAO(W&S), SEC Rly, Bilaspur, Chhattisgarh.

12.	VNK/Ser/Rly/Fcs/T.n./2008/303/RU-I	Complaint false community certificate.	Sh. V.N.K Kumarasamy, President, Tamil Nadu Scheduled Tribe (Maliyali) ST Peravali, Chennai, TN
13.	R-13/Rly/28/2007/Ser/RU-I	House Allotment	Sh. Ravindra Kumar Bhagat , Sr. Section Officer South Western Railway, Yadavganj, Mysore.
14.	SE/Delhi/Service/029/2009/RU-I	Payment of HRA	Smt. Sushila Ekka, Lok Nayak Jaiprakash Hospital, Delhi
15.	NTB/Service/Transfer /UD/352/2008/RU-II S-3/UD-3/Service/2008/RU-II	Transfer/Promotion	Sh. S.R. Bodra Manager, Govt. of India Press, New Delhi
16.	RKB/Services/Promotion/Petroleum/666/2008/RU-II	Promotion	Sh. Ratan Kumar Brahma, Deptt Corporate Affairs & Technical, Distt. Chirang, Assam
17.	M-10/UD-5/06/ST/Service/RU-II	Transfer	Sh. Mahaveer Ekka, UDC, Delhi Central Electrical Circle, Delhi
18	IK/Service/Transfer/Petroleum/2008/155/RU-II	Transfer	Sh. Ignace Kujur, Manager (T.) IOCL, Orissa.
19	S-11/MHA-06/Service/ 07/RU-III	Promotion	Sh. Shyam Singh, Joint Area Organiser, SSB, Tuglakabad, Delhi
20	L-01/Agriculture-01 /2007/Service/RU-III	Appointment	Sh. Laxman Meena, Delhi Milk Scheme, Delhi
21	RS/Service/Fin(Ins)/110/2009/RU-IV	Posting	Sh. R. Sundararaju, General Secretary, C/o UIICL, Malleswaram, Karnataka.
22	RT/Service/Fin (Bank)/ 007/ 2009/ RU-IV	Transfer	Sh Ratan Tirkey, President, Jharkhand Janadhik Party, Ranchi.
23	DR/1/2009/MFIN9/SE TRAN/RU-IV	Transfer	Sh. Dhorje Ram, State Bank of Indore, Bind, MP
24	DM/Service/Fin (Bank)/ 849/ 2008/ RU-IV	Harassment	Sh. Dulla Mardi, Purnia, Bihar
25.	RU-IV/Service/ Pondicherry/1/2008	Promotion	Sh. K. Ram Kumar, State President, Pondicherry Scheduled Tribes Peoples Federation, Pondicherry

26	JM/Service/ Commu &IT (Post)/ 883/ 2008/ RU-IV	Harassment	Sh. J. Majhi, Koraput, Orissa
27	MB/Service/Commu (BSNL)/1018/2008/R U-IV	Promotion	Smt. Meera Barfal, Bharat Sanchar Nigam Ltd., Dehradun, UP
28	CMK/Service/Fin (Bank) /108/2009/RU- IV	Transfer	Sh. Charles Manoj Kujur, Indian Bank, Ranchi, Jharkhand
29	EA/3403/ Bangalore/ Karnataka/1/ 07-Gr	Promotion	S/Sh. Ashok & K.T. Mahantappa, Chief Engineer, Karnataka, Power Transmission Companies Ltd., Bangalore, Karnataka
30	RB/3407/Bhopal/ MP/ 4/08-Gr	Transfer	Sh. Rajesh Batham Superintendent, Central Warehousing Corporation, Bhopal, MP
31	KD/3400/Sagar/MP/3/ 08-Gr	Entry in service book.	Smt. Kranti Dhurve, Primary Teacher, Govt. School, Sagar, MP
32	MG/3405/Sidhi/ MP/ 5/08-Gr	Appointment	Sh. Munna Ram Gond NCL Singrauli, MP
33	PD/3400/Indore/ MP/1/08-Gr	Allotment of quarter	Sh. Prakash Dhurve Vaishnav Polytechnic College Indore, MP
34	BK/3401/Bangalore/ Karnataka/3/08-Gr	Promotion and seniority	Sh. Basavaraj R. Kabade Executive Engineers, Mahanagar Palike, Bangalore, Karnataka.
35	IJ/3402/Goa/2/08-Gr	Appointment	Ku. Iriya, LDC, Directorate of Women and Child Development, Goa.
36	VS/3403/Nagpur/ Maharastra/1/08-Gr	Promotion and Additional charge	Sh. V.S. Mourya, Additional Director, Industrial Safety and Health, Nagpur, Maharashtra
37	KR/3407/Devas/ MP/5/08-Gr	Transfer	Smt. Radhika Rajesh Rangshai Computer Operator, State Bank of Indore, Dewas, MP
38	SN/3409/Rewa/MP/4/ 08-Gr	Pension	Sh. Surendra Nath Manjhi, Asstt. Jailer , Central Jail, Rewa, MP
39	GJ/3400/Pune/ Maharastra/1/08-Gr	Harassment	Sh. Ghan Shyam Janku Supe, Peon, Asst. Registrar of Firms, Pune, Maharashtra
40	VIVID/2009	SC/ST Welfare Association	SC/ST Cell, 506 Army Base Work Shop, Jabalpur, MP

41	ORI/10/D/02/2008-GEN.	Promotion	Sh. B.C.Majhi, Sr. Accountant, Orissa Construction Corporation Limited, Lower Indra Spillway Project, Distt. Nuapara, Orissa
42	AP/10/D/03/2008-GEN.	Promotion	Sh.N.Narasimhulu, Divisional Engineer, APSPDCL, Tirupati, AP
43	5/2/Punjab/1/2008-R.U.	Retention of Quarter	Sh.Pooranmal Meena , Jaipur, Rajasthan
44	5/2/Punjab/1/2007-R.U.	Promotion	Sh Jagdish Chand , LDC , O/o Accountant General, Punjab &UT
45	5/2/Raj/6/2008-R.U.	Pension	Smt. Dali Bai, Balabh Nagar District Udaipur, Rajasthan
46	5/2/Raj/4/2007-R.U.	Payment of Transfer Allowance	Sh. Ram Phool Meena, LIC Sangthan, Jodhpur, Rajasthan
47	5/4/ST/1/2004-R.U.	Promotion	Sh. Nand Lal Meena, Varisth Lipik Agriculutre Department, Jaipur, Rajasthan
48	5/3/Raj/10/2007-R.U.	Promotion	Sh. Mangi Lal Meena, UDC , LIC , Jaipur, Rajasthan
49	5/3/Raj/15/2007-R.U.	Appointment	Sh. Babu Lal Meena , Tehsil Jhazpur, Bhilwara, Rajasthan.
50	5/3/Raj/11/2008-R.U.	Appointment	Ku. Alkesh , Tonk Colony , Jaipur, Rajasthan
51	5/3/Raj/1/2008-R.U.	Quarterly Meeting	SC/ST Employees Wel.Society Jaipur, Rajasthan
52	5/2/Raj/6/2006-R.U.	Appointment	Naveen SC/ST Dev. & Welfare Samiti , Mansrovar, Jaipur, Rajasthan
53	5/4/Raj/1/2007-R.U.	Appointment	Ku. Sunita Meena , Sanjay Colony , Bhilwara. Rajasthan
54	21/15/2007-Service	Appointment	Sh. Bihari Netam, Gondwana Gantantra Parishad, Char Bhata (Lohara), Distt- Kabir Dham, Chhattisgarh
55	5/5/2007-J	Transfer	Sh. Sadhu Charan Buriuly, Assistant, Gamaharia Distt. Saraikela-Kharsuan, Jharkhand
56	8/6/2007-B	Caste Certificate	Sh. Banshi Ram Gond, Distt. Kaimur, Bihar

57	JHK-10-B/1/2008-Gen.	Transfer	Sh. Sambhunath Munda, Branch Manager, Jharkhand Gramin Bank, Tikar, Saraikela-Karsawa, Jharkhand
58	JHK-10-B/11/2008-Gen.	Appointment	Sh. Romel Bhengra, Jharkhand Electricity Board, Ranchi, Jharkhand
59	UP-10-A/3/2009-Gen.	Harassment	Smt. F. Xess, Sr. A/C Officer, O/O the Accountant General (A&E)- II, UP
60	22/2/08-Res	Caste Certificate	Sh. Ratan Kumar Laskar Rubber Board, Kottayam, Kerela
61	22/17/08-Res	Caste Certificate	Sh. Krisna Mani Singha(Deb Barma) ONGC (HR), Tripura
62	29/8/08-Res	Transfer	Sh. Pabinch Boro. Asst Teacher, Railway DTP School, Maligaon, Guwahati, Assam

II. DEVELOPMENT MATTERS

S. No.	File No.	Subject	Complainant/ Source
(1)	(2)	(3)	(4)
1	MN/Atrocity/TN/80 9/2008/RU-IV	Non-payment of wages	Sh. M. Narayanan, Manager, Indian Rare Earths Ltd., Nanavalakurichi, TN
2	PC/3600/BARWAN I/MP/1/08-GR	Rehabilitation	Sh. Poonamchand, Distt. Badwani, MP
3	B-1/Delhi- 01/20008/Dev/RU-I	House Allotment (DDA)	Sh. Bimal Kumar Minz, Mayur Vihar, Delhi
4	JRM/Development/ Education/Textile/6 25/2008/RU-II	Admission	Ms. Rebeca Mardi, Kolkata, West Bengal.
5	M-6/Petroleum- 4/Development/20 08/RU-II	Distributorship Retail Outlet	General Secretary, Akhil Bhartiya Advasi Vikas Parishad, Srikakulam District Branch, A.P
6	24/07/2008- Development	Admission	Sh. Keshav Chandra Oraon, Village-Khokra, Tehsil & Distt. Raigarh, Chhattisgarh
7	24/16/2008- Development	Loan	Sh. Santosh Kumar Dhruv Village- Tora, Post-Andhiyar Khor, Tehsil- Navagarh, Distt. Durg, Chhattisgarh
8	22/23/2007-RU	Health	Sh. R.H. Bansal, Chief Editor, Human Rights Observer, New Delhi

9	22/13/2008-RU	Loan	Sh. Amar Singh Chauhan, Rajiv Gandhi Nagar (Dipa Para), Raigarh, Chhattisgarh
10	AP/13/01/2008- GEN	Pension	Smt.B.Sumitra, Ekalavyanagar, Hyderabad, AP
11	AP/13/02/2008- GEN.	Settlement of her insurance	Smt.B.Sumitra, Ekalavyanagar, Hyderabad, AP
12	2/4/Raj/3/2008- R.U.	Scholarship	Smt. Galli Bai Meena , Distt. Dousa, Jaipur, Rajasthan
13	RL/Development/H RD/2008/437/RU- III	Admission	Sh. R.Sunil, Student, Preparatory Course, IIT, Madras, TN
14	Orissa-11/2006/ ESDW/RU-III	Protection of Tribal land	Sh. Guna Oraon, District Sundergarh (Orissa).
15	P/3203/WAYANAD /KERALA/2/07-GR	Scholarship	Ku. Persis T.J. Leela, Rathika Mahatma Hindi Vidhya- layam, Distt. Wayanad, Kerala.
16	M/3608/PALLAKK AD/KERALA/1/08- GR	Land	Sh. Veerappan, Village Agali, Distt. Palakkad, Kerala
17	KM/3305/JABALP UR/MP/1/08-GR	Land	Smt. Kusum Vinsent, Jabalpur Distt., MP
18	SL/3300/HOSANG ABAD/MP/9/07-GR	Issue of Ration Card	Sh. Shankar Lal Singh, Village Baggarwara, Distt. Hoshngabad, MP
19	JA/3300/CHATAR PUR/MP/1/08-GR	Pension	Village Bakwaha, Distt. Chhatarpur, MP
20	RP/3300/INDORE /MP/1/07-GR	Compensation	Sh. Ram Krishan Pawar, Village Mahu, Distt. Indore, MP
21	S/3508/NANDED/ MAHARASTRA/1/0 9-GR	Liquor shop	Smt. Siyata, Member of Zilla Panchayat, Distt. Nanded, Maharashtra
22	WB/04/02/ 2008- GEN.	Scholarship	Ku. Reena S.Ekka Jogendra Garden, Kolkata, WB

III. ATROCITY MATTERS

S. No.	File No.	Subject	Complainant/ Source
(1)	(2)	(3)	(4)
1	Meghalaya/ST- 1/2006/Atrocity	Bonded Labour	Sh. P. Narayana Swami, President, Palamoori Contract Labour Union, Mehbubnagar (AP).
2	J-01/MP- 03/Atrocity/ 605/2008/RU-III	Death in Police custody	Shri Papu Thakur, Raisen District, Madhya Pradesh
3	PRR/3102/SEHOR E/MP/2/07-GR	Rape	A tribal lady, Village-Mahodia, Distt. Sehore, MP

4	NPC/3102/SHAHDOL/MP/9/08-GR	Rape by Police Constable	A tribal girl in Shahdol Distt. (MP) Press Clipping 'Dainik Bhaskar' , Bhopal Edition dt. 27/10/2008
5	BB/3104/SHAHDO L/MP/12/07-GR	Land and violence	Ku. Budhan Bai, Village-Khamha, Distt. Shahdol, MP
6	TT/3104/KOTTYA M/ KERLA/1/07-GR	Land	Sh. T. Thilkan, Koottikal, Distt. Kuttagaon
7	PRN/3101/BARWANI/MP/4/07-GR	Physical Assault	Sh. Narendra Singh, R/o Balkuan, Distt. Barwani, MP
8	US/3103/BARWANI/MP/2-08-GR	Physical Assault	Sh. Umrao Singh Barela, Village-Rosmal, Distt. Barwani, MP
9	PRC/3102/BARWANI/MP/7/07-GR	Kidnap	Smt. Sona Bai , Khargone Distt, MP.
10	EB/3101/CHHIDWADA/MP/7/08-GR	Wages	Smt. Imal Bai, R/o Gobari, Badhona, Tehsil-Saunsar, Distt. Chindwara, MP
11	KB/3102/BARWANI/MP/8/08-GR	Rape	A tribal lady, Village-Dhanora, Barwani Distt., MP
12	PRS/3103/BARWANI/MP/12/07-GR	Abuse	Smt. Sevanti Bai, Village-Balwadi, Distt. Barwani, MP
13	3/11/Raj/2/2008-R.U.	Relief under POA Rules.	Smt. Bhagwati Meena , Tehsil Basedi, Distt. Dholpur, Rajasthan
14	3/30/Raj/1/2008-R.U.	Rape	Press Clipping , Punjab Kesari , dt. 26/6/2008
15	3/28/Raj/2/2007-R.U.	Relief under POA Rules.	Sh. Prem Narayan Meena Distt. Bara, Rajasthan
16	22/24/2008-Atrocity	Assault	Press Clipping 'Haribhumi' dated 01/07/2008, Raipur, Chhattisgarh
17	Bihar-1/31/2008-Gen.	Theft and attack	Sh. Umesh Saha Gond , Murarpur P.S. Janta Bazar Distt. Chapra, Bihar
18	Bihar-1/33/2008-Gen	Arrest	Sh. Misri Saha Gond Vill.- Bandi P.S. Dewariya, Distt. Muzaparpur, Bihar
19	Bihar-1/39/2008-Gen.	Assault	Smt. Hamanti Devi, Vill. Nuwa, P.S. Krishnabramah, Distt. Baxar, Bihar
20	RU-IV/Atrocity/AP-1/2008	Murder	Sh. V. Nanda Gopal, Director, Sakshi Human Right Watch, AP
21	PRR/3102/BARWANI/MP/9/07-GR	Rape	A tribal girl, Village-Sangoda, Barwani Distt., MP
22	PJ/3103/IDUKKI/KERLA/1/07-GR	Assault	Sh. Jayesh Chandran, R/o Anjilickal, Kattappano, Iddukki Distt. Kerala.

23	SB/3101/DHAR/M P/6/08-GR	Death	Smt. Sarjaben Solanki, Chairperson, Janparishad, Distt. Dhar, MP
24	NCST/3102/CHHI NDWADA/MP/3/08 -GR	Rape/ Compensation	A tribal lady, R/o Gobari, Badhona, Tehsil-Saunsar, Chindwara Distt., MP.
25	RD/3101/UJJAIN/ MP/8/08-GR	Assault	Sh. Rajendra Kuwal, R/o Narayanpura, Distt. Ujjain, MP
26	AD/3100/SIDHI/MP /8/08-GR	Fraud	Smt. Ajnasia Devi, Village Sarpanchi, Distt. Sidhi, MP
27	PRS/3102/MP/BA RWANI/10/08-GR	Atrocity	A tribal girl, Village Karha, Thekasi, MP
28	3/20/Raj/2/2008- R.U.	Relief under POA Rules..	Ku. Saranti bai Meena , Distt. Kota, Rajasthan
29	3/14/Raj/5/2005- R.U.	Medical Assistance.	Sh. Harcharan Meena , Malviya Nagar, Jaipur, Rajasthan
30	22/02/2008- Atrocity	Murder,	Press Clipping 'Nav Bharat', dt 27/03/2008, Raipur, Chhattisgarh
31	22/21/2008- Atrocity & 22/06/2008- Atrocity	Abuse	Sh. Prabhat Pattavi, Shankar Nagar, Raipur, Chhattisgarh
32	JHK-2/28/2008- Gen	Land	Sh. Jeevan Kispotta, Gwala Toli Road, Ranchi, Jharkhand
33	Bihar-1/38/2008- Gen.	Assault	Sh. Bangali Saha Gond Vill. Konwa PS/ Distt. Gopalganj, Bihar
34	Bihar-2/1/2009- Gen.	Land	Sh Haridowar Gond , Mohala-Bind toli Akhada, Arrha P.S. Nagar Arrha Distt. Bojpur, Bihar
35	JHK-2/7/2008-Gen	Displacement and compensation	Bisthapit Samiti, Urimari Pariyojana, Hazaribagh, Jharkhand
36	31/3/08-Res	Assault	Sh. DK. Koch and other SC/ST Students of JNV, Mahendraganj, Garo Hills, Meghalaya

No. 36020/2/2007-Estt(Res)
Government of India
Ministry of Personnel, P.G. & Pensions
Department of Personnel & Training

New Delhi, Dated the 7th December, 2009

OFFICE MEMORANDUM

Subject :- Revision of the proforma for sending dereservation proposals.

The undersigned is directed to invite attention to this Department's O.M. No. 36011/20/79-Estt(SCT) dated 2.11.1979 whereby proformae for sending proposals for dereservation of reserved vacancies were prescribed. In view of the fact that a number of developments like creation of separate National Commissions for the Scheduled Castes and the Scheduled Tribes, replacement of vacancy based rosters by post based rosters, ban on exchange of reservation between SCs and STs have taken place, it has become necessary to modify the said proformae.

2. There is a general ban on dereservation of reserved vacancies in case of direct recruitment. However, in rare and exceptional cases when a vacancy in a Group 'A' service cannot be allowed to remain vacant in public interest, the administrative Ministry/Department may prepare a proposal for dereservation of the vacancy giving following information:

- (i) Designation of the post;
- (ii) Pay scale of the post;
- (iii) Name of the service to which the post belongs;
- (iv) Duties and responsibilities attached to the post;
- (v) Educational and other qualifications prescribed for the post;
- (vi) Efforts made to fill up the post;
- (vii) Reasons why it cannot be allowed to remain vacant;
- (viii) Justification for dereservation; and
- (ix) Any other relevant information.

3. The administrative Ministry shall consult the National Commission for Scheduled Castes in respect of vacancy reserved for SCs, the National Commission for Scheduled Tribes in respect of vacancy reserved for STs and the National Commission for Backward Classes in respect of vacancy reserved for OBCs. After obtaining the comments of the concerned Commission, the administrative Ministry/Department shall place the proposal alongwith the Commission's comments before a Committee comprising of the Secretaries in the Department of Personnel and Training, the Ministry of Social Justice and Empowerment, and the Ministry/Department under which the recruitment is to be made for consideration and recommendation. The recommendation of the Committee shall be placed before the Minister in charge of the Department of Personnel and Training for taking a final decision. If dereservation of the vacancy is approved, it can be filled as an unreserved vacancy.



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

प्रधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं. 3] नई दिल्ली, शुक्रवार, जनवरी 9, 2009/पौष 19, 1930
No. 3] NEW DELHI, FRIDAY, JANUARY 9, 2009 / PAUSA 19, 1930

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग सकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 9th January, 2009/Pausa 19, 1930 (Saka)

The following Act of Parliament received the assent of the President on the 7th January, 2009, and is hereby published for general information.—

THE CONSTITUTION (SCHEDULED TRIBES) (UNION TERRITORIES) ORDER (AMENDMENT) ACT, 2008

No. 2 of 2009

[7th January, 2009.]

An Act further to amend the Constitution (Scheduled Tribes) (Union Territories) Order, 1951.

Be it enacted by Parliament in the Fifty-ninth Year of the Republic of India as follows:—

1. This Act may be called the Constitution (Scheduled Tribes) (Union Territories) Order (Amendment) Act, 2008

2. In the Schedule to the Constitution (Scheduled Tribes) (Union Territories) Order, 1951, in Part I—*Lakshadweep*, the following proviso and *Explanation* shall be inserted at the end, namely:—

"Provided that the children who are born to inhabitants of Lakshadweep in any other place in the mainland of India shall be deemed to be inhabitants born in the islands if such children settle permanently in the islands

Short title
Amendment
of Part I of
Constitution
(Scheduled
Tribes)
Territories
Order, 1951

4TH REPORT_CH 8_ANNEXURE 8.11

Explanation.— The term “settle permanently” shall have the same meaning as defined under clause 3(1)(d) of the Lakshadweep Panchayats Regulation, 1994. Reg. 4 of 1994.

T.K. VISWANATHAN,
Secy. to the Govt. of India.

4. In case of promotion, if sufficient number of SC/ST candidates fit for promotion against reserved vacancies are not available, such vacancies may be dereserved and filled by the candidates of other communities. The power to accord approval to dereservation of the reserved vacancies in such cases is delegated to the administrative Ministries and Departments subject to the following conditions:

- (i) no candidate belonging to the category for which the vacancy is reserved is available within the zone of consideration or extended zone of consideration or eligible for promotion in the feeder cadre(s) specified in the relevant service / recruitment rules / orders;
- (ii) the proposal for dereservation has been seen and concurred in by the Liaison Officer of the Ministry / Department;
- (iii) the proposal for dereservation is agreed to at a level not lower than that of Joint Secretary to the Government of India, in the administrative Ministry / Department (proper) concerned; and
- (iv) in the event of disagreement between the appointing authority and the Liaison Officer, the advice of the Department of Personnel & Training is obtained.

5. Before taking a decision to dereserve a vacancy under the delegated powers, the administrative Ministry / Department shall prepare a proposal in the proforma given in the **Annexure** and send one copy thereof each to the Department of Personnel & Training and the National Commission for Scheduled Castes in respect of vacancies reserved for SCs and to the National Commission for Scheduled Tribes in respect of vacancies reserved for STs. After sending the proposal, the Ministry / Department shall wait for a period of atleast two weeks for the comments of the Department of Personnel & Training and the concerned National Commission. If no comments are received from this Department or the concerned Commission within two weeks, the administrative Ministry / Department may presume that this Department or the concerned National Commission, as the case may be, do not have any comments to offer and may take a decision regarding dereservation of the vacancy. In case the Ministry / Department receives comments from this Department or the concerned Commission within two weeks, the comments so received shall be considered while taking a decision in the matter.

6. Following points should be kept in view while sending the copy of the proposal to the Commissions / Department of Personnel & Training:

- (i) 'cadre strength' with reference to reservation means the number of posts in the grade which are to be filled by a particular mode of recruitment in terms of the recruitment rules. If in a grade having 200 posts, 40 per cent posts are filled by promotion by selection, cadre strength for promotion by selection in that grade will be 80;
- (ii) 'backlog reserved vacancy' means a vacancy which was earmarked reserved in a previous recruitment year and an effort was made to fill up the same but could not be filled and is still vacant; and

- (iii) the proposal / proforma duly filled in should be signed by an officer of the rank of Under Secretary or above in the administrative Ministry / Department.

7. The Attached / Subordinate Offices etc. should not send the proposal direct to the Department of Personnel and Training or to the concerned National Commission. They should send the proposal to the administrative Ministry/ Department who will examine the proposal and send it to the Department of Personnel and Training and to the concerned National Commission.

8. All the Ministries / Departments etc. are requested to bring these instructions to the notice of all concerned.

9. Hindi version will follow.



(K.G.Verma)
Director

Tel. No.23092158

To

1. Secretaries of all the Ministries/Departments.
2. Liaison Officers for SCs / STs in all the Ministries / Departments.
3. All Officers and Sections in the Ministry of Personnel, Public Grievances and Pensions and all attached/subordinate offices of this Ministry.
4. Department of Economic Affairs, New Delhi.
5. Department of Financial Services, New Delhi.
6. Department of Public Enterprises, New Delhi.
7. Railway Board.
8. Union Public Service Commission/Supreme Court of India/Election Commission/Lok Sabha Secretariat/Rajya Sabha Secretariat/Cabinet Secretariat/Central Vigilance Commission/President's Secretariat/Prime Minister's Office/Planning Commission/Staff Selection Commission
9. Information Centre, DOPT, New Delhi

Reference No.
Name of the Ministry / Department

Dated.....

**PROPOSAL FOR DERESERVATION OF VACANCIES RESERVED FOR
SCHEDULED CASTES AND SCHEDULED TRIBES IN POSTS FILLED BY
PROMOTION.**

1. Name of the Office/Organisation to which the post (s) relate	
2. Particulars of the post in which vacancies are proposed to be dereserved (a) Name of the post (b) Group (Class) (c) Scale of Pay	
3. Information about posts in the promotion quota (a) Mode of promotion viz by Selection or Non-Selection or by Departmental Examination etc. (b) No. of posts already filled by the given mode of promotion (c) Number of backlog reserved vacancies in respect of the given mode of promotion (d) Number of current vacancies to be filled by the given mode of promotion (e) Total number of vacancies to be filled (current vacancies + backlog vacancies) by the given mode of promotion (f) Total number of posts in the given mode of promotion (b+e)	SCs..... STs.....Total.....

4. No. of posts already held by the candidates appointed by reservation in the cadre	SCs..... STs.....
5. If cadre strength is less than 14 and reservation is given by rotation, cycle no. and point no. of the roster on which the vacancy falls	Cycle No.....Point No.....
6. Number of vacancies earmarked reserved (a) Out of the current vacancies (b) Backlog reserved vacancies (c) Total reserved vacancies (a+b)	 SCs..... STs..... SCs..... STs..... SCs..... STs.....
7. Number of vacancies proposed to be dereserved	SCs..... STs.....
8. <u>If promotion is by non-selection</u> (a) Whether the SC/ST candidates who are eligible for promotion including those holding lower positions in the general seniority list were considered for promotion (b) Total number of SC/ST candidates in the feeder grade (c) No. of eligible SC/ST candidates in the feeder grade (d) Number of SC/ST candidates considered fit for promotion (e) Number of SC/ST candidates considered not fit for promotion	 SCs..... STs..... SCs.....STs..... SCs.....STs..... SCs.....STs.....

(f) If sufficient number of SC/ST candidates are not eligible for promotion on the crucial date, the date on which the senior most SC/ST candidate in the grade will become eligible for promotion	SCs.....STs.....
9. <u>If promotion is by selection</u> (a) Size of the normal zone of consideration (b) Size of the extended zone of consideration for SCs/STs (5 times the total number of vacancies) (c) Number of eligible SC/ST candidates in the extended zone of consideration (d) Number of SC/ST candidates found fit for promotion (e) Number of SC/ST candidates considered not fit for promotion (f) If sufficient number of SC/ST candidates are not eligible for promotion on the crucial date, the date on which the senior-most SC/ST candidate will become eligible for promotion and his place in the seniority list	SCs.....STs..... SCs.....STs..... SCs.....STs..... SCs.....STs.....

10. If promotion is through Departmental Qualifying or Departmental Competitive Examination, the number of SC/ST candidates who qualified the examination	SCs.....STs.....
11. Whether other category candidates are available in the Select List for appointment to the vacancies sought to be dereserved	
12(a)Whether SC/ST candidates considered unfit had any adverse entries in their C.R.s considered by the DPC (b) If yes, whether such adverse entries were communicated in time to the SC/ST officer (s) concerned (c) Whether the cases of the eligible SC/ST candidates not found fit for promotion were submitted / reported to the Minister / Minister of State / Deputy Minister / Secretary / Head of the Department, as the case may be	
13. Where interviews are prescribed, whether SC/ST candidates were interviewed on a day or sitting of the Selection Committee other than the day / sitting on / in which general candidates were interviewed	
14(a) If ex-post-facto approval is sought to the dereservation of vacancies, the reasons why proposal for prior dereservation was not made, and what steps have been taken to prevent its recurrence	

(b)The level at which it was decided to fill the reserved vacancies by other category candidate (s) without prior dereservation	

It is certified

- (1) that the proposal for dereservation is agreed to at the level of Joint Secretary to the Government of India in the administrative Ministry / Department.
- (2) that the proposal has been seen and concurred in by the Liaison Officer of the Ministry / Department.
- (3) that copies of this proposal are simultaneously being sent to the National Commission for Scheduled Castes / National Commission for Scheduled Tribes and the Department of Personnel & Training.

Signature.....

Name of the Signing Officer.....

Designation.....

Tele. No.....

To

- (1) Department of Personnel & Training, New Delhi.
- (2) National Commission for Scheduled Castes / National Commission for Scheduled Tribes.

National Commission for Scheduled Tribes

**MINUTES OF THE MEETING WITH THE REGISTRAR GENERAL OF INDIA, EX-OFFICIO
CENSUS COMMISSIONER OF INDIA HELD ON 8.4.2008 IN THE COMMISSION FOR
ENUMERATION OF POPULATION OF MIGRANT ST POPULATION INCENSUS 2011**

List of those present in the meeting is annexed.

The meeting was held with Shri D.K. Sikri, the Registrar General of India, ex-officio Census Commissioner of India and other senior officers of the Registrar General of India to discuss the adequacy of the existing formats for census 2001 for collecting requisite information, relating to Scheduled Tribes in the forthcoming Census 2011 in the context of exploring the possibility of enumerating the population of migrant ST population in each State and for estimating the population of communities which are included in the list of Scheduled Tribes during inter-Census period.

2. Explaining the existing methodology of enumeration, the RGI informed that under the Census Act, Census Commissioner is required to collect de-facto information and not de-jure information. In accordance with the mandate of the RGI, as approved by MHA, caste-based demographic information is not to be collected/ produced. As regards collection of data regarding Scheduled Tribes, (and Scheduled Castes) the Household Schedule seeks information whether a person belongs to a Scheduled Tribe; and if so, the status (as belonging to ST) will be entered if he/she belongs to a community which is included in the list of Scheduled Tribes in relation to the State in which this enumeration is being conducted. For this purpose, the Enumerator is provided with a list of Scheduled Tribes specified in relation to that State. It was informed that if a person declares that he or she belongs to ST but his/her community is not found in the list of ST specified in relation to that State, the Enumerator has to make a record of it. Such data is later refined in consultation with experts to substitute the name of the ST Community as listed in the Constitutional Orders as far as possible. Persisting errors (quantum unspecified) are finally discarded from the data tabulation. RGI further informed that the Part II of the Household Schedule seeks information whether the person has migrated to the present place of residence and if so, the details thereof. Hand held Computers were proposed to be used by enumerators in urban areas only in the next Census for want of trained personnel, logistic problems, etc.

3. Secretary, NCST observed that enumeration of migrant STs in a State is desirable to avoid their undercounting, to ensure convergence of programmes for their benefits in the State to which they have migrated, and also to study demographic changes. In fact, their enumeration in the State to which they have migrated, reflects de-facto position. Deputy Director (Census) mentioned that the filled-in Schedules are transferred to a computerized data base through OCR for generating requisite Tables and Reports. Secretary, NCST observed that since the list of Scheduled Tribes in relation to each State is available with the Registrar General of India, and the information furnished by the person is checked up with the list at the time of computation, it may not be infeasible/ difficult to co-relate the data furnished in response to column No. 9 with that in column No. 22 and to tabulate the data in respect of migrant ST population separately to avoid under count of ST population in the country. He therefore, emphasized that the present mandate of the RGI including the methodology to enumerate STs only in their state of original residence as followed in the Household schedule for Census 2001, needs to be re-looked/ unmodified during the next Census (2011).

4. RGI, informed that the NPR data format had still to be finalized and may be circulated alongwith the agenda papers for the Data Users' conference. It was not proposed to enumerate/ record the caste of individual as per current Census mandate practice. As regards estimation of population of communities included as ST during inter-census period, the system will require information about the community/caste to which each person belong so that population of that caste/community, which is included after a census, could be estimated by re-tabulation of available data.

5. Attention of RGI was drawn to the recommendation made by this Commission in para 3.2.3 of its first Report wherein it was mentioned that "Now when the Govt. of NCT of Delhi have decided to restore the benefits of reservation to SC/ST candidates irrespective of their nativity in civil posts under them, the Commission recommends that the Ministry of Home Affairs should advise the Registrar General and Census Commissioner of India to enumerate in the next Census of 2011 the migrant population of Scheduled Tribes residing in the National Capital Territory of Delhi and other UTs." RGI stated that his office is not aware of such recommendation. It was indicated by the Commission that, after receipt of Report of the Commission in the Ministry of Tribal Affairs (MTA), MTA was expected to forward these to RGI, through Ministry of Home Affairs, and there was no information as to whether this was forwarded by MTA.

4TH REPORT_CH..8_ANNEXURE 8.III

6. Secretary, NCST enquired about the methodology for up-dation of the National Population Register in conjunction with the Register of Births & Deaths. He also suggested that the possibility of recording the communities of persons in the proposed NPR should also be explored in order to facilitate correct counting of STs and issue of community certificates in future.

7. The RGI informed that the arrangements for creation/ management of the NPR was still under consideration, along with the issue as to which agency will be responsible for its maintenance. Secretary, NCST opined that since the RGI maintains the data base on registration of births and deaths, it was better equipped for maintenance of NPR also. Once the NPR is compiled along with Census 2011 and changes are regularly updated by RGI, it will be possible to estimate the population of STs at any point of time.

8. Secretary, NCST desired that the Commission should hold a detailed meeting with the RGI, MHA and MTA on the subject of enumeration of STs and compilation of NPR in order to facilitate counting of STs and issue of community certificate, after the Data Users' Conference convened by the RGI on 24-25 April, 2008.

MEETING WITH THE REGISTRAR GENERAL OF INDIA, EX-OFFICIO CENSUS COMMISSIONER OF INDIA HELD ON 8.4.2008 IN THE COMMISSION FOR ENUMERATION OF POPULATION OF MIGRANT ST POPULATION IN CENSUS 2011- LIST OF PARTICIPANTS

National Commission for Scheduled Tribes		Registrar General of India	
1	Shri T. Samphel, Member	1	Shri D.K. Sikri, RGI and ex-officio Census Commissioner of India
2	Shri R.S. Sirohi, Secretary	2	Shri Sethi, Addt. RGI
3	Shri Aditya Mishra, Jt. Secretary,	3	Shri S.S. Saha, Dy. Director (Census Oper.)
4	Shri R. C. Durga, Director	4	Dr. I.C. Aggarwal, Asstt. RGI
5	Shri Vinod Agarwal, Director		
6	Shri K. N. Singh, PS to Chairperson		

**MAURICE KUJUR,
VICE-CHAIRPERSON,
PH. 24657272**

D.O. No.27/6/NCST/2009-Admn.

Dated: 5 March, 2010

Dear Shri Bhuria,

I would like to invite your attention towards the constraints which are hampering the smooth functioning of this Commission. Through its Annual Reports, as well as on specific occasions, the Commission has brought its operational problems to the notice of the Ministry of Tribal Affairs requesting sanction of additional manpower and grant of financial autonomy. The Parliamentary Committee on the Welfare of SCs & STs after extensive study and analysis also recommended the grant of additional manpower and financial autonomy to the Commission. Accordingly, a detailed proposal for sanction of 481 additional posts and setting up of 4 additional Regional Offices for the Commission was sent to the Ministry of Tribal Affairs on 21-10-2009 (copy enclosed). A proposal of grant of financial autonomy to the Commission by notifying it as a Department of the Central Government was also sent to the Ministry of Tribal Affairs by the Commission on 23-03-2009 (copy enclosed). The above proposals are pending with the Ministry, despite several reminders from the Commission.

2. The above problems are being further compounded because a large number of posts in the grades of Under Secretary, Dy. Director, Director, and some ministerial posts in the Regional Offices of the Commission are not being filled up in time by the concerned authorities, viz., Ministry of Personnel, Ministry of Social Justice & Empowerment and National Commission for Scheduled Castes who are the cadre controlling authorities for these posts. The Commission has also sought the Ministry's intervention in this behalf.

3. I shall, therefore, be grateful if you could kindly have the matter looked into to ensure urgent clearance of the pending proposals of the Commission and expeditious filling up of the vacant posts of some for the smooth functioning of the Commission.

With regards,

Yours sincerely,

Sd/-
(Maurice Kujur)