



MOST  
IMMEDIATE

PARLIAMENTARY  
MATTER

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. 9/3/08-Coord.

दिनांक/ Date: 19.10.2009

To

The Secretary,  
Ministry of Tribal Affairs,  
Shastri Bhawan,  
New Delhi-110001

Sub: **Comments/ ATR on the conclusions/ recommendation contained, in the 33rd Report of the Committee on the Welfare of Scheduled Castes and Scheduled Tribes (14th Lok Sabha).**

Sir/ Madam,

I am directed to refer to your Office letter No. 18012/12/2008-C&LM-I dated 15th October, 2009 on the above subject and to enclose updated comments/ views/ ATR of the National Commission for Scheduled Tribes on the recommendations, contained in the 33rd Report of the Committee on the Welfare of Scheduled Castes and Scheduled Tribes (14th Lok Sabha) for necessary action.

Yours faithfully,

  
(R.C. Durga)  
Director

Encl. as above.

# NATIONAL COMMISSION FOR SCHEDULED TRIBES

## COMMENTS / ATR ON THE CONCLUSIONS/RECOMMENDATIONS CONTAINED IN THE 33<sup>rd</sup> REPORT OF THE COMMITTEE ON THE WELFARE OF SCHEDULED CASTES AND SCHEDULED TRIBES (14TH LOK SABHA)

S. No.	PARA NO.	CONCLUSIONS/ RECOMMENDATION / ATR
1.	1.12	The Committee note that as per the provision in the Constitution, a special officer known as Commissioner for SCs and STs had been appointed on 18th November, 1950 to investigate all matters relating to the safeguards provided for SCs/STs in various statutes. On persistent demand by MPs, the Government had also set up a multi-member Commission for SCs and STs in 1978. However, with the enactment of the Constitution (Sixty-fifth Amendment) Act, 1990, the first Constitutional Commission for Scheduled Castes and Scheduled Tribes was constituted in March, 1992 and the Office of the Commissioner for Scheduled Castes and Scheduled Tribes was abolished. The Committee further note that since the needs and problems of STs and solution thereto were different from those of SCs, it required special approach for development and independent machinery to safeguard their rights. Accordingly, a separate National Commission for Scheduled Tribes (NCST) has been set up by inserting a new Article 338A in the Constitution, through Constitution (Eighty-ninth Amendment) Act, 2003.

### COMMENTS

This para refers to the background relating to the establishment of National Commission for Scheduled Tribes. {It may be recalled that the objective of amendment of the Constitution vide the Constitution (65th) Amendment Act, 1990 was to replace the single member Commissioner (for Scheduled Castes & Scheduled Tribes) by a high power multi-member Commission (National Commission for Scheduled Castes and Scheduled Tribes) and merging the offices of the Commissioner for Scheduled Castes and Scheduled Tribes with the then existing National Commission for Scheduled Castes and Scheduled Tribes.} However, while implementing the Constitution (65th amendment) Act, 1990 the Government of India abolished all the posts in the office of the Commissioner for Scheduled Castes and Scheduled Tribes and also abolished 31 posts of the National Commission for Scheduled Castes and Scheduled Tribes, thereby causing a reduction of 117 posts and the personnel. Once again, while setting up the National Commission for Scheduled Tribes as per the provision of 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.

## RECOMMENDATION

2. 1.13 The Committee also note that the Commission has been given the power to regulate its own procedure. According to the National Commission for Scheduled Tribes Chairperson, the Vice Chairperson and Members (Conditions of Service and Tenure) Rules, 2004, the Chairperson and the Vice- Chairperson of the Commission have been conferred the rank of Union Cabinet Minister and Minister of State, respectively. The other Members of NCST have been given the rank of the Secretary to the Government of India. The Committee are of the view that functions and duties entrusted to the Commission under clauses (5), (8) and (9) of Article 338A are very vast and cover different problems and needs of tribal people. The Committee feel the Commission would not be able to accomplish its objective fully and effectively unless the present strength of the Commission is increased. The specific subjects like the conferring ownership rights in respect of minor forest produce over mineral resources and water resources, rehabilitation of tribal groups displaced by development projects, alienation of tribal people from land, etc. are important issues pending for lackadaisical attitude of the Government over the years. The NCST has now been assigned the role to oversee the measures that would be required to be taken to solve those long standing but very important issues concerning the tribals. These issues require judicious handling as the above subjects are very delicate affecting the very existence of tribals living in forest areas, mineral rich areas and those who have already been displaced and alienated from their lands and habitats. The Committee, therefore, strongly recommends that the present strength of the Commission should be increased with a view to assigning each member with a specific job so that he may give his undivided attention to find a favourable solution to the problems/difficulties being faced by the distressed tribal people.

## COMMENTS

Considering the objective of setting up a special constitutional Commission exclusively for Scheduled Tribes and the role, duties, functions and additional functions and powers assigned to the Commission, each Member of the Commission has been assigned specific subject matters to deal with in relation to various Ministries/ Departments and States and UTs. However, the existing sanctioned and available staff strength of the Commission is grossly inadequate to achieve the assigned objective. The Commission, also needs to be strengthened, with adequate functional units in the Hq. Office as well as its Regional Offices.

Once adequate number of Regional Offices and required working strength is available, the following alternative methods of disposal of work can be considered

- i) To have more members of the Commission and designate them with specific assignments. (For this purpose Members may be drawn from different specialties);
- ii) To assign Members jurisdiction over specific regions to provide concentrated attention to their needs, problems and issues areas; and
- iii) To establish working relationships with the State Level Commissions for Scheduled Tribes to make the Constitutional arrangement for safeguarding the rights of the Scheduled Tribes more effective.

It may be more advantageous to associate/ involve State Commissions in the monitoring of local grievances and implementation of development programmes.

## RECOMMENDATION

3. 1.14 The Committee note that at the time of evidence tendered before the Committee by the Secretary, Ministry of Tribal Affairs the post of Chairperson, Vice Chairperson and Members of the Commission were vacant which have since been filled up and notified on 31.7.2008. The Committee take serious note of this attitude of the Government and are of the opinion that by keeping these posts vacant for quite some time, the Commission was made handicapped and its functioning paralysed. The Committee urge the Government not to take the matter relating to welfare of STs lightly and in a casual manner and recommend to complete the process of filling up these important posts well in advance in future so as to maintain continuity in discharge of the functions of the Commission as directed by the Constitution.

## COMMENTS

The post of Vice-Chairperson of National Commission for Scheduled Tribes, which was initially filled along with other Members of the Commission in March 2004, was vacated due to resignation on 31/3/2004. Thereafter, the post remained vacant till 25 May, 2006. The post of VC again remained vacant for about a year after resignation by the then VC in May, 2007, as the present VC joined on 25/4/2008. The post of Chairperson, vacated in Feb 2007, also remained vacant for over five months till it was filled on 18 June, 2007. Similarly, one post of Member vacated in March, 2007 after completion of tenure of the Members, still continues to be vacant. The post of Chairperson will also become vacant on 18<sup>th</sup> June, 2010 while another post of the Member will become vacant on 14<sup>th</sup> June, 2010 , after the completion of the tenure of the current incumbents.

For a long time Commission could not function effectively as the quorum for the meeting of the Commission (3 out of 5) was not available. As the term of each Member is three years from the date of taking charge, the Govt. is fully aware about the date when the vacancy would be caused. Therefore, to avoid any void in the working of the Commission, Govt. should initiate action for appointment of the Members at least six months before completion of the tenure so that new appointments are made as soon as the tenure of the existing Members is over

## RECOMMENDATION

4. 1.15 The Committee also note that functions, duties and powers of the NCST inter-alia include investigating and monitoring of all matters relating to safeguards provided in Constitution, to enquire into specific complaints regarding deprivation of rights provided under the Constitution, to present to the President annual reports upon working of these safeguards, to make recommendations as to the measures that should be taken by the Union or any State for protection, welfare and socio-economic development of the STs as well as other functions as the President may by rule specify. The Committee also note a very important function in clause (9) of Article 338A which provides that the Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Tribes. **The Committee would, therefore, like to be apprised of the policy matters on which the Commission had been consulted by the Union and the State Governments and whether the same were actually concurred by them.**

## COMMENTS

A statement indicating matters on which National Commission for Scheduled Tribes was consulted since its inception in February, 2004 is enclosed at ANNEXURE-I. The National Commission for Scheduled Tribes has very little information about the action taken by the concerned Ministry/ department on the advice / views given by the Commission. The views of the Commission have not always been accepted by the Govt. (S.No. 25 in ANNEXURE-I).

## RECOMMENDATION

5. 1.16 The Committee also note that the National Commission for Scheduled Tribes has all the powers and functions that were assigned to the National Commission for Scheduled Castes and Scheduled Tribes (NCSCST). Besides, National Commission for Scheduled Tribes has been assigned with some additional functions as mentioned in para 1.10. The Committee also note that as per the decision of the Cabinet, DOP&T has entrusted a study to review the performance of National Commission for Scheduled Tribes and to suggest the remedies necessary for improvement in its performance and that the report is awaited. Keeping in view the enormous functions that have been assigned to the National Commission for Scheduled Tribes, the Committee are of the opinion that there is a need for further strengthening the National Commission for Scheduled Tribes and recommend that earnest and credible steps be taken by the Government to make National Commission for Scheduled Tribes more strong and effective. The Committee also recommend that DOP&T should also be asked to submit its study report on performance of National Commission for Scheduled Tribes immediately so that timely corrective action is taken.

## COMMENTS

In order to enable the National Commission for Scheduled Tribes to fulfill its enhanced duties and functions and to be stronger and effective, there is immediate need to strengthen it adequately in terms of manpower (and its Regional Offices too). The Commission, therefore, feels that a detailed management study is required to recommend an appropriate organizational structure/ manpower requirements.

As regards the report of the study to review the performance of the National Commission for Scheduled Tribes, entrusted by DARPG to Centre for Policy Research, a copy of the report has been received in this Commission, through the Ministry of Tribal Affairs, for comments. **The Report doesn't make any substantial recommendation on strengthening of the staff/offices of NCST.** The Comments of the Commission have since been sent to the Ministry of Tribal Affairs vide NCST letter dated 16/01/2009 (ANNEXURE-II).

## RECOMMENDATION

6. 1.21 The Committee note that after bifurcation of National Commission for Scheduled Castes and Scheduled Tribes (NCSCST) into National Commission for Scheduled Castes and National Commission for Scheduled Tribes, staff at headquarters office of NCSCST and its 18 regional offices were distributed between the two Commissions in the ratio of 2:1. The NCST is now left with headquarters as well as six regional offices located at Bhopal, Bhubaneshwar, Jaipur, Raipur, Ranchi and Shillong. The Committee also note that there are four wings at headquarters of NCST viz. Administration/ Establishment Wing; Economic and Social Development Wing; Service Safeguards & Coordination Wing; and Atrocities Wing. The Committee further note that regional offices of the Commission keep a watch on the formulation of policy and issue of guidelines relating to the Welfare of Scheduled Tribes in the respective States/UTs under their jurisdiction and inform the Headquarters about the developments periodically. They liaise with State/UT Administrations for evaluation and assessment of the working of various development programmes and their impact on ameliorating the socio-economic condition of STs and also bring to the notice of the concerned State Government for taking remedial measures. The Committee also note that NCST in their First Report (2004-05 and 2005-06) had recommended for upgradation of four regional offices, augmentation of the existing strength of supporting staff in six regional offices and creation of four more regional offices. The Committee do not agree with the reply of the Ministry that a formal proposal in this regard has not been submitted to them by the NCST. The Committee feel that instead of waiting for a formal proposal from the NCST for so long, the Ministry of Tribal Affairs should have taken the initiative after receiving the recommendation of the NCST. The Committee view that NCST has made a legitimate and genuine demand for upgradation and augmentation of its regional offices since the existing regional offices would not be in a position to handle the needs and problems of ST population spread all over the country in almost all the States/UTs. It would be naïve to think that merely setting up of a separate Commission without sufficient number of regional offices and staff is good enough to achieve the objective for which it has been constituted. The Committee, therefore, recommend that the Government should set up more regional offices according to the present need, upgrade the four regional offices and augment the existing staff strength of NCST accordingly on a priority basis. However, the Committee feel that to some extent it was also a lapse on the part of the Secretarial staff of the Commission who were supposed to send a formal proposal to the Ministry on a priority basis as it was an urgent need of the Commission.

## COMMENTS

It is a fact that while setting up the National Commission for Scheduled Tribes in Feb, 2004, the Govt. has not sanctioned the support/ working staff to deal with the matters, duties, functions and powers assigned to it and the National Commission for Scheduled Tribes is striving hard to perform with the skeleton staff transferred to it by the National Commission for Scheduled Castes. Since the staff working with this Commission is far short of requirement, the National Commission for Scheduled Tribes is not able to perform the constitutional obligations assigned to it in an effective manner. Current efforts are therefore, largely confined to dealing with the petitions relating to the grievances and other priority functions assigned to the Commission. The acute shortage of staff has also hampered the functioning of the Administration Wing of the Commission, which is also without staff support; and consequently the Commission has also not been in a position to follow up the matter vigorously with the Govt.

The National Commission for Scheduled Tribes, however, did request the Govt. for filling up large number of vacancies and sanctioning additional staff for opening its new Regional Offices in the Country. As there was no response to the request from the Govt. the same was again mentioned in the 1st Report of the Commission submitted about 3 years ago.

## RECOMMENDATION

7. 1.27 The Committee note that NCST functions under the administrative control of the Ministry of Tribal Affairs and the proposals involving financial implications are required to be referred to the Integrated Finance Division of the Ministry through the concerned Administrative Branch of the Ministry of Tribal Affairs. The Committee also note that the Commission has been conferred the powers of a Ministry/ Department of the Central Ministry as provided under the Delegation of Financial Power Rules, 1978 even though it has no say in creation of posts, re-appropriation of funds, purchase of vehicles and grant of permission to officers of the Commission to participate in seminars, conferences, etc. **It is sad that the Commission, which has been given statutory status, has to depend upon the Ministry for its day to day functioning. It has also to route its proposals on financial, administrative and legal matters through the Ministry. The Committee are surprised by the fact that although, Planning Commission had suggested that budget provisions for NCST should be shown under a separate Demand for Grants instead of being a part of the Demand for Grants of the Ministry of Tribal Affairs, the suggestion has not been agreed to by the Ministry of Finance. The Committee are distressed that even the status of statutory entity does not entitle NCST to have a separate entity. The Committee are of the firm opinion that when it was decided to create NCST, it was never envisaged that it would function as a part of the Ministry of Tribal Affairs. If it was so, there was no need to constitute the Commission as a statutory body and it could have continued to function as a non-statutory body as earlier. The NCST would not be able to work fearlessly and independently unless it is given independence in its day to day working by allowing it to decide on its own administrative, financial and legal matters. The Committee also fail to understand the logic as to why the Ministry of Finance have objected to the proposal of the Planning Commission for showing separate Demand for Grants for National Commission for Scheduled Tribes**

AND

8. 1.28 After having considered all the facts, the Committee are of the strong view that only limited administrative and financial powers have been given to the NCST by making it a part of Ministry of Tribal Affairs. **The Committee, therefore, recommend that full administrative and financial powers should be given to NCST so that it is not dependent on the administrative Ministry for every piece of proposal having financial implications. The Committee are of the view that NCST is an independent statutory body and it has every right to have a separate Budget Head to advance its Demand for Grants in a realistic manner. The Committee would like to be apprised of the reasons adduced by the Ministry of Finance for rejecting the proposal of the Planning Commission for separate Demand for Grants for NCST. Keeping in view the magnitude of the functions and duties assigned to NCST, the Committee also recommend that a fresh proposal should be sent to Ministry of Finance for creating a separate Demand for Grants for NCST on the lines of other constitutional bodies such as Election Commission, Union Public Service Commission, etc. as it is essential for the independent functioning of the Commission. The Committee may also be apprised of the outcome within three months.**

## COMMENTS

The recommendations made by the Committee in para 1.27 and 1.28 will pave the way for making the Commission more effective and result oriented.

As regards the functioning of the Commission, the constraint is not merely the availability of funds but also the lack of independent financial authority over use of the funds. Art. 338A (4) of the Constitution authorizes the NCST to regulate its own procedure but this Constitutional power cannot be construed to mean that the Commission is not obliged to



follow other rules or procedures and obligations prescribed for Govt. authorities or organizations, e.g. Recruitment of personnel, reservation of posts, delegation of financial powers, preparation and drawal of bills, accounting and audit etc., because these requirements also flow from various Articles of the Constitution. Dependency on the administrative Ministry, i.e. routing of every proposal through the administrative Ministry to other Ministries/ authorities, for approval seriously hampers the functioning of the Commission and defeats the objective of creating a constitutional Watch Dog Machinery for the Scheduled Tribes. Therefore, necessary delegation of powers has to be made in favour of the Commission in such areas as mentioned above, in order to facilitate greater autonomy of purpose.

It may be recalled that the Commissioner for Scheduled Castes and Scheduled Tribes, which was the first constitutional body set up under Art 338 of the Constitution in the year 1950, to act as a WATCH DOG MACHINERY in all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes, was given the power of the Head of Department of the Government of India vide (S.No. 15 under Ministry of Home Affairs in the Schedule I of the DFP Rules, 1978). The Art. 338 has been amended by the Govt. twice and the Office of Commissioner has been first replaced by the NCSCST in the year 1992 and then by the NCST in the year 2004. But the Orders relating to delegation of powers of the Department of Government of India to the National Commission for Scheduled Tribes have not been issued, notwithstanding the fact that the NCST has been empowered to regulate its own procedure.

While the Election Commission and UPSC are constitutional bodies, the Planning Commission (which is not a constitutional Commission) also functions independently as Department of the Central Govt. (ANNEXURE-III). The National Commission for Scheduled Tribes has also been set up to meet an important objective laid down in the Constitution; and, from this point of view, its functions do not warrant any interference of the Govt.

Keeping in view the constitutional status of the Commission the National Commission for Scheduled Tribes should be declared as Department of the Central Govt. and given autonomy so that it does not have to depend upon the administrative Ministry for its day-to-day functioning as well as all administrative, financial matters and legal representations. This Commission has already addressed the Govt. in this regard (ANNEXURE-IV).

## RECOMMENDATION

9. 1.37 The Committee note with concern that the procedure for appointment and regulation of staff of the Secretariat of NCST is quite complicated. The Committee note that some secretarial staff at the headquarters of NCST belongs to CSS, CSSS and CSCS cadre and as such, staff of this cadre are provided by the DOP&T through the Ministry of Social Justice & Empowerment. In case of Group 'A' posts namely, Director, Deputy Director and Assistant Director, which are joint cadre posts, the Ministry of Social Justice & Empowerment being the cadre controlling authority, provide the staff for these posts, whereas the staff for the posts of Research Officer, Senior Investigator and Investigator are provided by the National Commission for Scheduled Castes being the cadre controlling authority for such posts. The Committee also note that the National Commission for Scheduled Castes is the cadre controlling authority for appointment and provision for secretarial staff of regional offices of NCST. The Committee, however note that only Group 'D' staff and some of the Group 'C' posts are appointed by the National Commission for Scheduled Tribes itself. It has also been stated that a few isolated posts have been created by Ministry of Tribal Affairs which do not belong to any organised cadre. The Committee are distressed by the multiplicity of cadre controlling authorities and for delay in filling up of vacancies that have existed since 1.12.2004. Even for posts created for National Commission for Scheduled Tribes, Recruitment Rules are being processed. The Committee wonders as to when all the sanctioned vacant posts will be filled up.

AND

## RECOMMENDATION

10. 1.38 The Committee observe that out of the sanctioned strength of 125 in Group 'A', 'B', 'C' and 'D' posts, 43 vacancies in these groups had not been filled up till 1.1.2007 even though the Commission claims to have been in continuous correspondence with the Ministry of Social Justice and Empowerment and NCSC to fill up these posts. The Committee do not concur with the view of the representative of the Ministry of Tribal Affairs that if NCST will become cadre controlling authority then a peculiar situation will be created and there will be limited opportunities and no career movement for the staff. The Committee insist that since NCST has been constitutionally given an independent mandate to safeguard the interest of Scheduled Tribes, it should no longer be tagged along with the Ministry of Social Justice & Empowerment or to the National Commission for Scheduled Castes for provision of its staff. It does not seem logical to be attached with the Ministry of Social Justice and Empowerment any longer. Unless the people have a sense of belonging to a particular institution they will never give their best to work for it. While deposing before the Committee, the Secretary had also agreed with the members for NCST to have a separate structure saying that it was a very logical view and had promised to consult the DOP&T or to prepare a paper for the Cabinet. The Committee, therefore, impress upon the Government to initiate action to create a separate cadre for NCST and its all Regional Offices at the earliest in consultation with DOP&T so that objective of NCST is achieved through the staff working therein. The Committee would like to be apprised of the action taken in this regard within three months of the presentation of this report to Parliament

## COMMENTS

In view of the above recommendations, the Commission has decided to have separate cadres for the post of Investigators and Sr. Investigators of National Commission for Scheduled Tribes; and, if necessary, for higher level posts also. Pursuant thereto, the Commission has proposed revised rules of recruitment for these posts (ANNEXURE V).

As recommended by the Committee, the Commission also considers that the powers of the Department of the Government of India and Cadre Control over all the posts

sanctioned for the NCST should be delegated to the Commission. The present system of Joint Cadre of NCST, NCSC, MSJE and MTA may continue till additional staff is sanctioned to the NCST. As an interim measure, NCST may exercise independent control over the Joint cadre posts up to research Officer (Group B) level and the control of common cadre of all other Group A posts may continue with the MSJE. A Committee of Officers of Joint Secretary level from all the cadre units may be formed for monitoring the process of filling up of posts in the grade of Research Officers and above to ensure timely action in this regard. The Committee may also decide the posting and transfer of the officers in these grades so as to avoid unnecessary wrangling in deployment of officers (ANNEXURE-VI).

## RECOMMENDATION

### 11. 2.6

The Committee note that the erstwhile National Commission for Scheduled Castes and Scheduled Tribes, which was set up on 12<sup>th</sup> March, 1992 and ceased to exist on 19<sup>th</sup> February, 2004, had submitted seven regular and three special reports to the President during the period of about 12 years. The Committee note that the NCST which came into existence on 19<sup>th</sup> February, 2004 has submitted its first report (2004-05 and 2005-06) to the President of India on 8<sup>th</sup> August, 2006. The Committee, further note that the report is required to be laid in Parliament as provided in clause 6 of Article 338A of the Constitution which states that the President shall cause all such reports to be laid before each House of the Parliament along with Memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for non-acceptance. The Committee note that the first report of NCST has not been laid before each House of the Parliament as yet as the Ministry of Tribal Affairs, after examining the report presented to the President, had to circulate the same to obtain comments/views on the recommendations contained in the report as well as ATR for further necessary action in the matter from various States/UTs as well as the Central Ministries/Departments. As per provision of clause 7 of Article 338A of the Constitution, the report relating to the State Government are forwarded to the Governor of the States for similar action to be taken at State level. The Committee are dismayed to note that considerable time has been taken by the Ministry to circulate the report and the reason adduced by them for such a delay is that the report was bulky covering a period of two years and containing 9 chapters and so on. In this era of rapid information technology the reasoning is not at all convincing. The Committee are concerned that in the absence of a time limit fixed for the submission of reports by the Government to the Parliament

other Ministries/ Departments to expedite views/opinion alongwith memoranda of action taken on the recommendations on the report or otherwise. The Committee are of the view that unless timely action is taken on the recommendations made in the report, the purpose for which the recommendations were made may lose their relevance. The Committee, therefore, strongly feel that the NCST not only submit its report annually but the Ministry should also take timely action to get the reports presented in the Parliament so that problems of the STs are taken care of assiduously. The Committee, therefore, concur with the views expressed by NCST in their first report for fixing a time limit for submission of report to Parliament by making necessary amendment in clause (6) and (7) of Article 338A of the Constitution. The Committee, therefore, strongly recommend that necessary amendment in the clause (6) and (7) of Article 338A of the Constitution may be made so that target to lay reports of NCST within a prescribed time limit in the Parliament is fixed and adhered to.

#### COMMENTS

The Commission has also submitted its Annual Report for the period 2006-07 to the Hon'ble President of India on 3rd September, 2008 and there is no information in the Commission about any action taken by the Govt. towards laying the report in Parliament. Annual report for the year 2007-08 is being compiled. In this connection, copy of NCST letter dated 15/04/2009 alongwith previous reference dated 24/11/2008 sent to MTA are placed at (ANNEXURE-VIII)

The Commission agrees with the observations and commendation made in the above para and is hopeful that the Govt. will take immediate steps to amend the Constitution for providing timely laying of the report in the Parliament followed with the presentation of Memorandum containing the action taken on the recommendations and explaining the reasons for non-acceptance of the recommendations within the prescribed time limit. In the meanwhile Govt. may place the 1st as well as 2nd report in Parliament along with an Interim ATR containing the action taken so far, and detailed ATR may be placed subsequently as per the Rules of Procedure of Parliament.

## RECOMMENDATION

12. 2.11 The Committee note that the National Commission for Scheduled Tribes has been vested with the duty to inter alia investigate all matters relating to the safeguards provided to STs and to enquire into specific complaints with respect to the deprivation of rights and safeguards of the STs. The Committee further note that while investigating such matters, or making inquiry in specific complaints, powers of a civil court, trying a suit, have been given to NCST under clause (8) of the Article 338A of the Constitution. The Committee, however, note that the role of NCST as a civil court is limited to that of summoning and enforcing attendance of any person including examination of witnesses and documents and has no judicial power as other civil courts. The limited role of NCST as civil court has also been observed by the Apex Court of India in the case of All India Overseas Bank SC and ST Employees Welfare Association and others Vs. Union of India & others that the powers of a civil court for 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 338A of the Constitution. The Committee also note that the recommendations of NCST are of advisory nature, which are sent to the Government for appropriate action. In such a situation, the Committee are of the view that the Commission has been placed in a peculiar position as on the one hand the Commission has been given powers to investigate matters as a civil court but on the other hand its recommendations are treated as advisory in nature. The Committee feel that if the recommendations are advisory and not mandatory and acceptance of the same depends on the sole discretion of the concerned organisation/the Central Government or the State Governments then the very purpose for the existence of a Constitutional body becomes meaningless. The Committee feel that NCST has not been treated as a separate entity but has been made to function as an appendage of the Ministry of Tribal Affairs. The Committee, therefore, recommend that the Constitution should be amended in such a manner that recommendations of the NCST may be taken by concerned authorities as mandatory and it functions with greater judicial powers on the lines of the powers of a civil court so that it is empowered to act as an effective and independent organisation.

## COMMENTS

It may be recalled that Comments of this Commission were sought by Ministry of Tribal Affairs on the 14th Report of the Committee on the Welfare of Scheduled Castes and Scheduled Tribes on "Action Taken by the Government on the recommendations contained in the Fourth Report (14th Lok Sabha) - Atrocities on Scheduled Castes and Scheduled Tribes and pattern of social crimes towards them". The matter was considered by the Commission at its meeting held on 20.12.2006. The Commission agreed that there was a justified need to empower the National Commission for Scheduled Tribes through measures including mandatory provisions to accept its recommendations where the investigation by the Commission discloses any violation of safeguards of the STs or negligence in the prevention of violation of these safeguards by a public servant, and for taking corrective remedial measures against the erring officials.

The above comments/ views of the Commission were communicated to the Ministry of Tribal Affairs vide D.O. No. 4/4/2006-C.Cell dated 2/1/2007 (ANNEXURE-VIII). However, Commission is not aware of the decision taken by the Government on the above views of the Commission.

## RECOMMENDATION

13. 3.6 The Committee note that it is the duty of the NCST to investigate and monitor all matters relating to the safeguards provided for STs under the 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. The Committee note that as per the Rules of Procedure of the National Commission for Scheduled Tribes, the Commission may investigate or inquire into matters falling within its authority either directly or through an Investigating Team constituted at the Headquarters or through its State Offices. **The Committee are happy that NCST has a sound investigating methodology in place. The Committee strongly recommend that there should not be any laxity in investigation relating to safeguards provided to STs.**

## COMMENTS

The National Commission for Scheduled Tribes is committed to follow the Rules of Procedure adopted by it and draft guidelines for dealing with various matters effectively and promptly are also under consideration of the Commission. A computerized software for processing of the complaints received in the Commission is also under trial for monitoring the progress in each case. But this also needs requisite qualified manpower. Acute shortage of staff at various levels hampers the functioning of the Commission including investigation relating to safeguards provided for Scheduled Tribes. This problem will ease only when additional staff is in position and the Commission is granted powers of the Department of the Central Govt. in dealing with all administrative, financial and legal matters relating to its functioning.

## RECOMMENDATION

14. 3.7 The Committee also note that the Commission holds review meetings with various organisations of the Central Government and with State Governments to monitor and evaluate the working of safeguards provided to STs. Before holding such review meetings, the Commission collects detailed data relating to various aspects of tribal development through questionnaire. The Commission also obtains data on the representation of STs in services/posts in Central Ministries/Departments, Public Sectors, Banks, Insurance Companies, Financial Institutions and Central Universities and based on this data, the Commission advises these organisations to take corrective steps. The Committee has been informed that the Commission has generally observed a very encouraging response of the authorities/ organisations for taking such necessary corrective steps. The Committee would like to know the facts on the basis of which the Commission has arrived at such a conclusion.

## COMMENTS

Every Govt. Department/ Organisation is required to implement the safeguards including reservation policy provided for the Scheduled Tribes. The personnel responsible for implementing the safeguards may not be up-to-date about the safeguards, policies and the Rules and procedures laid down for the purpose. While analyzing the data received from the authorities, or during the discussions in various meetings including the review meetings, the Commission highlights the shortcomings in the implementation noticed by it and requests them to take corrective steps. Positive response is fostered by the impressions gained from the cases in which hearings have been held in the Commission and the petitioners have got their due from the authorities after the intervention by the Commission. The details of some important cases/ success stories have been included in the 1<sup>st</sup> as well as 2<sup>nd</sup> Report of the Commission, though no empirical data is currently available in this respect. The Commission is trying to develop a system to collect and present data in its Annual Reports regarding the recommendations which have not been accepted by the concerned organisations.



## RECOMMENDATION

15. 3.11 The Committee note that the Ministry of Personnel, Public Grievances and Pensions (Department of Administrative Reforms and Public Grievances) has commissioned a study on NCST by Centre for Policy Research, New Delhi on 29.12.2005. The Committee also note that the terms of the reference of such study have many aspects for the Centre to examine. The Committee also observe that the study had been

commissioned within 2 years of the constitution of the Commission and hope that while evaluating the performance of the Commission, the initial teething problems, particularly with regard to its basic need i.e. staff are taken into account. The Committee recommend that the Centre for Policy Research, New Delhi which has already taken more than 2 years for this study should be advised to complete its study expeditiously so that corrective measures can be taken to enhance the service and service delivery system. The Committee may be furnished with a copy of the study report alongwith action taken report of the Government in this regard.

#### COMMENTS

As mentioned in reply to para 1.16 above, a copy of the Study Report has been received and considered by the Commission and comments have been furnished to the Ministry.

## RECOMMENDATION

16. 4.4 The Committee note that National Commission for Scheduled Tribes through publication and free distribution of booklets, pamphlets etc. disseminates information on objectives, functions and procedure of its working for creating awareness among STs. The Committee further note that the information/material about Commission has been prepared in English as well as in Hindi and on the direction of the Headquarters, some Regional Offices have got the pamphlet translated into the regional language of the State in which they are located for distribution among the local tribal population of the State. The Committee also note that other regional offices have also been advised to get the pamphlets translated into regional languages of other States falling within their jurisdiction. The Committee are, however, aware that there are many tribal people living in remote areas who cannot read or write and are still in dark about their rights and the safeguards available to them. **The Committee would, therefore, recommend that National Commission for Scheduled Tribes should send teams to remote tribal areas not only to monitor and evaluate the working of safeguard physically but also to create an increased level of awareness among STs. The Committee would also like all regional offices to make every effort to see that all tribals living in their regions are aware that National Commission for Scheduled Tribes is the custodian of their rights and could be approached for safeguarding their rights and interests. The Committee also recommend that working of National Commission for Scheduled Tribes should also be publicized through Doordarshan and All India Radio.**

## COMMENTS

The recommendation made by the Committee is very important and useful. The Commission has already provided useful information on its Website <http://ncst.nic.in>. Publicity in the shape of advertisements/ fillers/ features or dramatic serials on Doordarshan and All India Radio would also bring the grass root tribals closer to the National Commission for Scheduled Tribes. However, these activities will also require additional staff/ expertise and adequate funds.

## RECOMMENDATION

17. 4.9 The Committee note that funds are being provided by the Ministry of Tribal Affairs to Non-Governmental Organisations (NGOs)/Voluntary Organisations working for the welfare of STs under different schemes including providing coaching, running educational complex in low literacy pockets for development of women literacy in tribal areas, vocational training centre and development of Primitive Tribal Groups. In this connection, details of funds released to various NGOs in different States during the years 2004-05, 2005-06 and 2006-07 have been provided. While going through the list of NGOs which have been granted aid, the Committee observe that there are certain NGOs having addresses in Delhi but which have been given grants for different purposes for working in different States. When asked whether the credibility of NGOs is verified, before releasing fund. The Committee have been informed that the procedure for release of grants-in-aid to NGOs has been decentralized since the year 2005-06. There is a multi-disciplinary State Level Committee in each State which scrutinises and recommends the most essential projects in service deficient tribal areas in order of priority. The proposals are recommended by the State Committees of the State Government and that the Ministry then considers only such recommended proposals on merits and funds are released to the NGOs only on receipt of satisfactory inspection reports from District Collector/Deputy Commissioner and audited accounts. The Committee desire that utmost care should be taken to choose only those NGOs which are genuinely working for the welfare of tribal people. The Committee recommend that NCST should also examine whether the funds granted to NGOs during the last 3 years have actually been incurred for the purpose for which it had been granted and whether it has resulted in improvement in the lives of tribal people.

## COMMENTS

The Headquarter Office as well as Regional Offices of National Commission for Scheduled Tribes are, at present, poorly equipped to examine whether the funds granted to NGOs have actually been incurred for the purpose for which it had been granted and whether it has resulted in improvement in the lives of tribal people. The job requires the services of Programme Monitors or Quality supervisors. Ministry of Tribal Affairs may consider appointing Programme Monitors as is being done for assessing progress of rural roads under Bharat Nirman Programme.

## RECOMMENDATION

18. 4.16 The Committee note that Ministry of Tribal Affairs in their First Annual Report had suggested a number of measures to control the problem of alienation of tribal land and to ensure their proper rehabilitation in the event of acquisition of their land for development projects. According to the reply of the Ministry of Tribal Affairs, neither the Ministry of Tribal Affairs nor Ministry of Tribal Affairs has undertaken any study in regard to displacement and rehabilitation of tribals in different parts of the country. The Committee, however, note that the Ministry had commissioned an "Evaluation Study on Resettlement and Rehabilitation" by National Institute of Rural Development, Hyderabad. It has also been informed that the Ministry of Rural Development had notified the "National Policy on Resettlement and Rehabilitation, 2003". However, to ensure justice and better compensation package for the STs being displaced due to construction of development projects, the Ministry of Tribal Affairs have taken up the matter with the Ministry of Rural Development and also proposed suitable provisions and safeguards in the draft of the National Tribal Policy, 2007. The Committee may be apprised whether the measures suggested by the Ministry of Tribal Affairs in their report to control the problems of alienation of tribal land and proper rehabilitation of tribals on acquisition of their land as also the study undertaken by the National Institute of Rural Development, Hyderabad have been taken into consideration while preparing the National Tribal Policy 2007.

## COMMENTS

The subject matter concerns the Ministry of Tribal Affairs.

## RECOMMENDATION

19. 4.17 The Committee are concerned that a number of tribals migrate from their villages in search of employment. The Committee recommends that the Ministry of Tribal Affairs should take up this matter with the concerned authorities to ensure that tribals who migrate to work elsewhere for a limited period of time in a year, should be covered under Rural Employment Guarantee Schemes, so that the migrant tribals do not have to leave their homes for seeking employment elsewhere. The Committee also recommend that the Ministry of Tribal Affairs should also take up the matter with the concerned authorities for provision of residential schools for children of migrant tribals who leave their villages for employment.

## COMMENTS

The subject matter concerns the Ministry of Tribal Affairs.

## RECOMMENDATION

20. 4.18 The Committee observe that a Working Group on "Migration of Tribal Girls" was constituted on 25.7.2006 under the Chairmanship of Secretary (TA) with the objective to assess the magnitude of migration of tribal girls, its possible causes and consequences and measures to check migration. **The Committee would like to know whether the report by the working Group has been completed and presented to the Ministry. The Committee strongly recommend that proactive action should be taken expeditiously so that young tribal girls who migrate to cities are not exploited for want of proper shelter and opportunity.**

## COMMENTS

The subject matter concerns the Ministry of Tribal Affairs.

## RECOMMENDATION

21. 4.19 The Committee are distressed by the fact that tribals are agitating in Meghalaya as mining of uranium is being carried out. The Committee should also be apprised of the response of the State Government and the Department of Atomic Energy in regard to reported mining of uranium in Meghalaya. The Committee strongly feel that tribals should not suffer in the name of development by way of displacement or alienation. The Committee recommend that the Ministry of Tribal Affairs should take immediate suo-moto action whenever it is reported that tribal people are agitating against displacement and endangerment to their lives. The Committee should also be apprised of provision/safeguards suggested by the Ministry of Tribal Affairs to be included in the draft of National Tribal Policy, 2007 and detailed role played by the Ministry of Tribal Affairs in framing this policy.

## COMMENTS

The subject matter concerns the Ministry of Tribal Affairs.



## RECOMMENDATION

22. 4.24 The Committee note that the Planning Commission has issued guidelines for adoption of Tribal Sub Plan (TSP) strategy which inter-alia includes allocation of funds for schemes/programmes meant for STs atleast in proportion to their population. The Committee, however, note that the Ministry do not have any power to enforce these guidelines. The Committee also note that to encourage States to adopt TSP strategy, the Ministry provide incentive grants under Special Central Assistance (SCA) to TSP and innovative grants under Article 275(1) of the Constitution as per guidelines. The Committee are distressed by the fact that despite the guidelines issued by the Planning Commission, the Ministries of the Central Government and State Governments are not adhering to the guidelines. The Committee would like to know the names of defaulting Ministries and States. The Committee are also disturbed by the submission made during evidence that the budget allocation, which is to be made for the development of tribals at 8.2 percent, is actually a notional projection and this fact has been brought to the notice of the Planning Commission by the NCST and that they are seized of the matter. The Committee sincerely hope that the Government would give top priority to the matter and give clearance to the proposal to park 8.2 percent of budget amount at the disposal of the Ministry of Tribal Affairs for funding project based on tribal oriented schemes. The Committee recommend to the Planning Commission to ensure that just as States plans are not approved unless TSP/SCP are not provided in their plans, this principle should be applied in respect of the Central Ministries as well. The Committee are also concerned that there is lack of mechanism as mentioned by the Secretary, Ministry of Tribal Affairs to see that the amount allocated goes in the effective programme or not. The Committee, therefore, recommend that the Ministry should evolve an effective and credible system of mechanism regarding utilisation of funds under TSP. The Committee also recommend that apart from the Ministry, NCST should also regularly monitor utilisation of funds under TSP.

## COMMENTS

The National Commission for Scheduled Tribes fully endorses the recommendation of the Committee. In order to implement these recommendations, a non-lapsable pool of funds may be created under the MTA out of the un-spent TSP outlays of various Ministries (as for the North-East development) for up-gradation of administration and infrastructure in the Fifth Schedule Areas.

As regards monitoring the utilisation of the funds under TSP by the National Commission for Scheduled Tribes, monitoring would be undertaken as soon as requisite personnel are made available to the Commission.

## RECOMMENDATION

23. 4.27 The Committee observe that Banks do not lend money to tribal people even if they are prepared to mortgage their land and hence, they are unable to raise money for business purposes. The Committee also note that under the land laws/land revenue codes, the land belonging to STs in the scheduled areas/tribal areas is not transferable or alienable to a non-tribal without the permission of the District Collector or any other authority specified in these laws. Consequently, the papers produced by the tribal applicants in respect of land owned by them are not accepted by the Bank authorities for the purpose of mortgage as they cannot attach the land, in the event of default in repayment of amount. The Committee are pained to observe that this is a peculiar situation for which no concrete solution has been explored by the Government so far. The suggestion of the Ministry of Tribal Affairs that state level ST Development and Finance Corporations and the National Scheduled Tribes Finance and Development Corporation should be asked to play more active role in extending loan to tribal entrepreneurs may serve to limited extent. **The Committee are of the view that the role as well as the extant of loan amount sanctioned by the State level ST Development and Finance Corporation is often not sufficient to meet the requirement of a borrower because of increased need of funds for business in present times. The Committee, therefore, recommend that to cope up with this problem, a proposal may be sent to the Ministry of Finance for examination so that they may be able to issue necessary guidelines to Banks/ Financial Institutions to lend money to ST people.**

## COMMENTS

The National Commission for Scheduled Tribes fully endorses the recommendation of the Committee and hope that the Ministry of Tribal Affairs, which is primarily concerned with the subject matter, would take immediate steps to explore the setting up of a Credit Guarantee Fund in consultation with the Ministry of Finance.