



भारत सरकार/ Government of India
राष्ट्रीय अनुसूचित जनजाति आयोग

National Commission for Scheduled Tribes

(मध्यप्रदेश, महाराष्ट्र, कर्नाटक, केरल, गोवा, दादरा एवं नगर हवेली तथा लक्षद्वीप के लिये क्षेत्रीय कार्यालय)
(Regional Office for M. P., Maharashtra, Karnataka, Kerala, Goa, Dadra & Nagar Haveli and Lakshadweep)
कमरा सं. 309, निर्माण सदन, सीजीओ बिल्डिंग, 52 -ए, अरेरा हिल्स, भोपाल- 462011
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पत्र संख्या : 1607/1/09 आर. आर.

दिनांक: 07-01-2009

सेवा में

निदेशक, (समन्वय)

राष्ट्रीय अनुसूचित जनजाति आयोग,

छठी मंजिल, बी विंग,

लोक नायक भवन, खान मार्केट,

नई दिल्ली 11003

विषय :- राष्ट्रीय अनुसूचित जनजाति आयोग की दिनांक 17-12-2008 को सम्पन्न हुई नौवीं बैठक के कार्यवृत्त का प्रेषण।

महोदय,

आपके आदेशानुसार राष्ट्रीय अनुसूचित जनजाति आयोग की दिनांक 17-12-2008 को सम्पन्न हुई नौवीं बैठक के कार्यवृत्त की प्रति पर, माननीय अध्यक्ष महोदया के हस्ताक्षर करवाकर मूल प्रति संलग्न कर प्रेषित की जा रही है।

संलग्नक :- मूल प्रति के 5 पृष्ठ

भवदीय

(Signature)

(राकेश कुमार दुबे)
सहायक निदेशक

1/Coord
9/1/09

(Signature)
9/1/09
(सहायक)

NATIONAL COMMISSION FOR SCHEDULED TRIBES

Subject: Summary record of the 9th meeting of the National Commission for Scheduled Tribes held at 1200 hrs. on 17.12.2008.

The 9th meeting of the National Commission for Scheduled Tribes was held at 1200 hrs. on 17.12.2008 in the Conference room of the Commission in Lok Nayak Bhawan New Delhi. The meeting was presided over by Smt. Urmila Singh, Chairperson, National Commission for Scheduled Tribes. List of participants is enclosed at **ANNEXURE**.

2. Summary record of the discussions held in the meeting, **agenda item-wise**, is given below:

Agenda Item I Revised proforma for sending proposal for de-reservation of vacancies reserved for SCs and STs.

The Commission agreed with the proposal of Department of Personnel and Training 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/ amendment of RRs to provide for temporary diversion of unfilled vacancies from promotion quota to direct recruitment, the Commission was 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) Post-Based Rosters and updated seniority list of the officers holding the post for which dereservation is proposed
- (c) Recruitment Rules of the feeder post.
- (d) Post-Based Roster and updated seniority list of the feeder post
- (e) Reasons for non-availability of ST officers in feeder post
- (f) 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. HRD policy, if formulated, in this regard should also be quoted with extract thereof and status of its implementation.

Agenda Item II Note for the Cabinet for Amendment in Sec. 14 of the SCs & STs (PoA) Act, 1989.

The draft note for the Cabinet was discussed in detail and the suggestion made in the note for amendment of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was agreed to.

Agenda Item III Age relaxation for the SCs, STs, and OBCs in case of appointment against unreserved vacancies

It was 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. Since age relaxation, without grant of concession or relaxation in minimum educational and other qualifications for the post would not 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 recommended modification of DoPT's OM No 36011/1/98-Estt.(Res.) dated 1.7.1968 to this extent.

Agenda Item IV Recommendations of the Standing Committee on SJ&E on the Constitution (STs) (UTs) Order (Amendment) Bill, 2007 in relation to the UT of Lakshadweep

- (i) The Commission noted that Constitution (Scheduled Tribes) (Part C States) Order 1951 thus renamed and modified in the year 1956, as the Constitution (Scheduled Tribes) (Union Territories) Order 1951 specifying Scheduled Tribes in relation to the inhabitants of Lakshadweep for the first time, and after further amendments also, has the following entry:

Throughout the Union Territory:-

Inhabitants of Laccadive, Minicoy and Aminidivi Islands who, and both of whose parents were born in those Islands.

- (ii) The name of the Union Territory of Laccadive, Minicoy and Aminidivi Islands was substituted by the name Lakshadweep *vide* the Laccadive, Minicoy and Aminidivi Islands (Alteration of Name) Adaptation of Laws Order, 1974, for Part I- The Laccadive, Minicoy and Aminidivi Islands (w.e.f. 1.11.1973). 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 **viz;.....whowere born in those islands.**
- (iii) 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 in the latter case). The Commission, had also concurred with the proposed definition of the term "settle permanently"
- (iv) The Commission also noted that the currently proposed amendment to the aforesaid order (2007) would enable children born on the mainland to be treated as Scheduled Tribes, but appears to dilute the requirement of permanent residence in the islands as "inhabitants".
- (v) The Commission discussed the issue in detail and noted that modification suggested by the Standing Committee implies that children of the inhabitants born on the mainland will be required not only to be ordinarily resident of the island but also be in possession of a dwelling unit. This is 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 the same, including subsequent "Explanation" may be deleted from Clause 2 of the Bill.

- (vi) 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 mentioned above, 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 ~~not~~ be eligible to be treated as Scheduled Tribes in relation to the Union Territory of Lakshadweep.

Agenda Item V Decisions taken in the third meeting of National Tiger Conservation Authority held on 21/05/2008 on the issues concerning the Scheduled Tribes

There are 4 important issues concerning the Scheduled Tribes on which decision was taken in the third meeting of National Tiger Conservation Authority held on 21/05/2008. These decisions of NTCA were discussed in the meeting. The following decisions were taken in the meeting w.r.t. each issue:

Decision taken by NTCA

Views of the NCST

- (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 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.

- (ii) The provisions of the Scheduled Tribes and Other Traditional Forest 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.

- (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 Tiger Protection (Special Tiger Protection Force) should be implemented.

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 be made while raising the proposed Special Tiger Protection Force.

- (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 in monitoring the village relocation activities.

3. The meeting ended with vote of thanks to the Chairperson.

National Commission for Scheduled Tribes

Meeting of the Commission held on 17.12.2008 at 1200 hrs. in the Conference Room of the Commission- List of participants.

S.No. Name and Designation

1. Smt. Urmila Singh, Chairperson (In chair)
2. Shri Maurice Kujur, Vice-Chairperson
3. Shri Tsering Samphel, Member
4. Shri Oris Syiem Myriaw, Member
5. Shri R.S. Sirohi, Secretary
6. Shri Aditya Mishra, Joint Secretary
7. Shri R.C. Durga, Director
8. Shri Vinod Aggarwal, Director
9. Shri R.P.Vasishth, Deputy Secretary
10. Shri K.N. Singh, PS to Chairperson

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It was 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. Since age relaxation, without grant of concession or relaxation in minimum educational and other qualifications for the post would not be ^{con} ^A insistent 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 recommended modification of DoPT's OM No 36011/1/98-Estt.(Res.) dated 1.7.1968 to this extent.

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- (iii) On the earlier references, 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 in the latter case). The Commission, had also concurred with the proposed definition of the term "settle permanently"
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- (v) The Commission discussed the issue in detail and noted that modification suggested by the Standing Committee implies that children of the inhabitants born on the

mainland will be required not only to be ordinarily resident of the island but also be in possession of a dwelling unit. This is 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 Parliament Standing Committee) the Commission felt that there is ^{(ready) (imperative)} no 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 the same, including subsequent "Explanation", may be deleted from clause 2 of the Bill.

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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. This should be done after following the due consultation process with the Gram Sabha, in writing ~~on the preceding book of the Sabha~~, strictly as per provisions contained in the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2007 ~~and also The Panchayats (Extension to the Scheduled Areas) Act, 1996 (in relation to the areas falling under Scheduled Areas)~~ as the issue of livelihood of inhabitants of relocated villages has to be planned and implemented in advance before execution of the project.

(which has overriding effect over other provisions)

It should be ensured that relocation process is carried out peacefully and proper and effective

It may also be explored whether relocation can be possible outside the extremist-ridden areas.

measures are taken for 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.

~~A representative of the Ministry of Home Affairs should also be invariably associated with future meetings of NTCA.~~

- (ii) The provisions of the Scheduled Tribes and Other Traditional Forest 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 ~~and Section 38 O(2) of the amended Wildlife Protection Act, 1972~~, 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
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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) 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 Protection (Special Tiger Protection Force) should be implemented.

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 by, if necessary, relaxing the prescribed qualifications for such posts. Similar provisions should be made while raising the proposed Special Tiger Protection Force.

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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 in monitoring the village relocation activities.

3. The meeting ended with vote of thanks to the Chairperson.

ANNEX

National Commission for Scheduled Tribes

Meeting of the Commission held on 17.12.2008 at 1200 hrs. in the Conference Room of the Commission- List of participants.

<u>S.No.</u>	<u>Name and Designation</u>	<u>Signature</u>
1.	Smt. Urmila Singh, Chairperson	(In Chair)
2.	Shri Maurice Kujur, Vice-Chairperson	
3.	Shri Tsering Samphel, Member	
4.	Shri Oris Syiem Myriaw, Member	
5.	Shri R.S. Sirohi, Secretary	
6.	Shri Aditya Mishra, Joint Secretary	
7.	Shri R.C. Durga, Director	
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9.	Shri R.P.Vasishth, Deputy Secretary	
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2. Summary record of the discussions held in the meeting, agenda item-wise, is given below:

Agenda Item I Revised proforma for sending proposal for de-reservation of vacancies reserved for SCs and STs.

Commission agreed with the
The proposal of Department of Personnel and Training for revising the proforma for sending proposal for de-reservation of vacancies reserved for SCs and STs, ~~was agreed as referred~~ *re-iterating its earlier recommendations* ~~The Commission is however of the view~~ *white* that the de-reservation of vacancies reserved for Scheduled Tribes in the matter of promotion should also

Agenda Item II Note for the Cabinet for Amendment in Sec. 14 of the SCs & STs (PoA) Act, 1989.

The draft note for the Cabinet was discussed in detail and the suggestion made in the note for amendment of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ~~was~~ *has been* agreed to.

~~There appears to be typographic error in the last line of the proposed amendment.~~
~~This line may be re-written as:~~
~~take cognizance of such offence or offences, as the case may be, without the case being committed to it for trial.~~

Agenda Item III Age relaxation for the SCs, STs, and OBCs in case of appointment against unreserved vacancies *(generally)*

It was felt that Since Scheduled Tribe children join their Schools at very late stage, the grant of age relaxation is essential to make them eligible to compete with the general candidates on equal footing, *since age relaxation,* without grant of concession or relaxation in minimum educational and other qualifications for the post. Scheduled Tribe candidates thus selected ~~on~~ *ought to* unreserved vacancies on the basis of equal qualifications will thus be classified as having been selected on own merit, *and the Commission recommended modification of DoPT.*

Agenda Item IV Recommendations of the Standing Committee on SJ&E on the Constitution (STs) (UTs) Order (Amendment) Bill, 2007 in relation to the UT of Lakshadweep

The Commission discussed the issue in detail and noted that modification suggested by the Standing Committee implies that children of the inhabitants born on the mainland will be required not only to be ordinarily resident of the island but also be in possession of a dwelling unit. This is discriminatory in favour of the economically better off sections moving into the islands in the wake of employment.

Since geographical isolation of the "inhabitants" of the islands has been the criterion for Scheduled Tribes status to them, the Commission felt that there is no reason to add the words/qualifying phrase "if such children settle permanently in the islands" in the proviso to the order.

F/A

F/B

F/C

It would not be inconsistent with the maintenance of efficiency in administration.

F/D

white
recruitment,
the Commission was of the view that the following document should also be covered to proposal for de-reserve (as in item IV of agenda)

OM no. ... at 1.7.1968 to this effect

posting or business, while poor indigenous tribal family of Lakshadweep may not fulfill this criteria relating to possession of a dwelling unit. Therefore, it may not be prudent to consider the proposed modification.

(ii) The Commission further noted that the Constitution (Scheduled Tribes) Order 1950 specifying Scheduled Tribes in relation to then existing Part A and Part B States was notified on 06 September 1950. Similar Constitutional Order relating to then existing Part C States was notified as the Constitution (Scheduled Tribes) (Part C States) Order 1951 on 20.09.1951. This Order contained the names of then existing Part C States viz; Ajmer, Bhopal, Coorg, Himachal Pradesh, Kutch, Manipur, Tripura and Vindhya Pradesh. After re-organisation of the States in the year 1956, the Constitution (Scheduled Tribes) Orders were also re-notified as the Scheduled Castes and Scheduled Tribes Lists (Modification) Order, 1956. Vide Schedule IV of this Lists (Modification) Order the Constitution (Scheduled Tribes) (Part C States) Order 1951 was renamed as the Constitution (Scheduled Tribes) (Union Territories) Order 1951 and the name of the Union Territory Laccadive, Minicoy and Aminidivi Islands was notified for the first time as Part IV of Schedule to the Constitution Order. Paragraph 3 of the Constitution Order was also amended to mention that "Any reference in this order to Union Territory shall be construed as the reference to the territory constituted as a Union Territory as from the first day of November 1956." (The Union Territory of Laccadive, Minicoy and Aminidivi Islands was renamed as Lakshadweep w.e.f. 01.11.1973). Therefore, the reference date in relation to Lakshadweep would be 01.11.1956 when the specification of Scheduled Tribes in respect of Lakshadweep was notified for the first time and not 20.09.1951 which is the date of notification of the Constitution (Scheduled Tribes) (Part C States) Order 1951 which did not include Laccadive, Minicoy and Aminidivi Islands

F/I
F/II
B m
F/II
P m
F/III

(iii)

The Commission noted that the Constitution (Scheduled Tribes) (Part C States) Order 1951 thus renamed and modified in the year 1956, as the Constitution (Scheduled Tribes) (Union Territories) Order 1951 specifying Scheduled Tribes in relation to the inhabitants of Lakshadweep for the first time, and after further amendments also, has the following entry:

Throughout the Union Territory:-

Inhabitants of Laccadive, Minicoy and Aminidivi Islands who, and both of whose parents were born in those Islands.

(ii) The name of the Union Territory of Laccadive, Minicoy and Aminidivi Islands was substituted by the name Lakshadweep vide the Laccadive, Minicoy and Aminidivi Islands (Alteration of Name) Adaptation of Laws Order, 1974, for Part I- The Laccadive, Minicoy and Aminidivi Islands (w.e.f. 1.11.1973). 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 viz;whowere born in those Islands. Therefore, mere reason for place of birth being outside the Islands denied them the status of Scheduled Tribe, although their parents were treated as Scheduled Tribes of Lakshadweep. This is against the principle of natural justice and claims of a person belonging to and born to particular parents.

C'm
F/III
ad
Z'm
F/IV

(v)

Commission also noted that the place of birth of a person did not affect his/ her status in the context of Scheduled Tribes specified in relation to other States and UTs. The only condition in relation to other States is that the person or his/ her family should be ordinarily resident of the State/ UT or part of the State/ UT in respect of which his/ her community has been specified as Scheduled Tribes vide the Constitution Orders issued in relation to that State/ UT or part of the State/ UT. The Ministry of Home Affairs, then dealing with the subject matter of specification of Scheduled Tribes, had issued detailed clarifications regarding issue of SC and ST

The Commission also noted that the wrongly proposed amendment to the original order (2007) would enable children born on the islands to be treated as Scheduled Tribes, but it appears to dilute the requirement of permanent residence in the islands as 'inhabitants'.

certificates vide letter No. BC 12025/2/76-SCT-I dated 22 March 1977 circulated to Chief Secretaries of all State Govts., and UT Administrations. Relevant extracts from para 2 and para 3 of this letter, noted by the Commission are reproduced below:

1-18

(iii) On the earlier reference, 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 in the later case).

2..... it is possible that two persons belonging to the same caste but residing in different States/ UTs 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 Scheduled Tribe, as the case may be, if his caste/ tribe has been specified in that Order in relation to his State/ UT. 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.

X
on F/S

3..... 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 Tribe 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.

Y
on F/S

The Commission had also concurred with the proposal definition of the "settle permanently"

(vi) The above clarification in para 3 of the circular letter does not bind that the person should have been born in the same place which is permanent abode of his parents. In other words it does not make any distinction regarding SC/ ST status of a person w.r.t. his/ her place of birth. The above clarifications were not available when Presidential Order relating to Lakshadweep (previously Laccadive, Minicoy and Aminidivi Islands) was issued in the year 1951. These clarifications should be equally good in the case of children of the parents/ families who had permanent abode on the date of issue of the Presidential Order relating to the UT of Lakshadweep. This objective can very well be achieved if the entries after the words "throughout the Union Territory" are modified by removing the condition relating to the place of birth of the claimant.

(vii) The Commission felt that, for this purpose, 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.~~

(viii) vi 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 mentioned above, 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 dwell 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 not be eligible to be treated as Scheduled Tribes in relation to Union Territory of Lakshadweep.

Agenda Item V Decisions taken in the third meeting of National Tiger Conservation Authority held on 21/05/2008 on the issues concerning the Scheduled Tribes

F/E

There are 4 important issues concerning the Scheduled Tribes on which decision was taken in the third meeting of National Tiger Conservation Authority held on 21/05/2008. These decisions of NTCA were discussed in the meeting. The following decisions were taken in the meeting w.r.t. each issue:

Decision taken by NTCA

Views of the NCST

- (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. This should be done after following the due consultation process with the Gram Sabha, in writing on the proceeding book of the Sabha, strictly as per provisions contained in the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2007 and also The Panchayats (Extension to the Scheduled Areas) Act, 1996 (in relation to the areas falling under Scheduled Areas) as the issue of livelihood of inhabitants of relocated villages has to be planned and implemented in advance before execution of the project.

It should be ensured that relocation process is carried out peacefully and proper and effective measures are taken for 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.

A representative of the Ministry of Home Affairs should also be invariably associated with future meetings of NTCA.

- (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 and Section 38 O(2) of the amended Wildlife Protection Act, 1972, which lay emphasis on the protection of rights of local people, particularly Scheduled Tribes, while considering establishment of Tiger Reserves.

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 these Acts are not violated.

- (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 Protection (Special Tiger Protection Force) should be implemented. 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 by, if necessary, relaxing the prescribed qualifications for such posts. Similar provisions should be made while raising the proposed Special Tiger Protection Force.
- (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 in monitoring the village relocation activities.

3. The meeting ended with vote of thanks to the Chairperson.

National Commission for Scheduled Tribes

Meeting of the Commission held on 17.12.2008 at 1200 hrs. in the Conference Room of the Commission- List of participants.

<u>S.No.</u>	<u>Name and Designation</u>	<u>Signature</u>
1.	Smt. Urmila Singh, Chairperson	(In Chair)
2.	Shri Maurice Kujur, Vice-Chairperson	
3.	Shri Tsering Samphel, Member	
4.	Shri Oris Syiem Myriaw, Member	
5.	Shri R.S. Sirohi, Secretary	
6.	Shri Aditya Mishra, Joint Secretary	
7.	Shri R.C. Durga, Director	
8.	Shri Vinod Aggarwal, Director	
9.	Shri R.P.Vasishth, Deputy Secretary	
10.	Shri K.N. Singh, PS to Chairperson	

The Gazette  of India

EXTRAORDINARY
PART II-SECTION-3
PUBLISHED BY AUTHORITY

No. 143A] NEW DELHI, THURSDAY, SEPTEMBER 20, 1951

MINISTRY OF LAW
NOTIFICATIONS

New Delhi, the 20th September, 1951

S.R.O.1427A. – The following Order made by the President is published for general information.
C.O.33

THE CONSTITUTION (SCHEDULED TRIBES) (PARTS C STATES) ORDER, 1951

In exercise of the powers conferred by clause (1) of Article 342 of the Constitution of India, as amended by the Constitution (First Amendment) Act, 1951, the President is pleased to make the following Order, namely:-

1. This Order may be called the Constitution (Scheduled Tribes) (Part C States) Order, 1951.
2. The tribes or tribal communities or parts of or groups within, tribes or tribal communities, specified in Parts-I to VIII of the Schedule to this order shall in relation to the States to which those Parts respectively relate, be deemed to be Scheduled Tribes so far as regards members thereof resident in the localities specified in relation to them respectively in those Parts of that Schedule.
3. Any reference in the Schedule to this Order to a district or other territorial division of a State shall be construed as a reference to that district or other territorial division as existing on the 26th January, 1950.

THE SCHEDULE

Part I. – AJMER

Throughout the State:-

Bhil

Part II. – BHOPAL

Throughout the State:-

1. Bhil
2. Gond
3. Keer
4. Karku
5. Mogia
6. Pardhi
7. Saharia, Sosia or Sor.

Part III.- COORG

Throughout the State:-

1. Korama.
2. Kudiya.
3. Kuruba.
4. Maratha.
5. Meda.
6. Yerava.

Part IV. – HIMACHAL PRADESH

In Lahul in Chamba district and in Spiti in Mahasu district:-

Tibetan

Throughout the State:-

1. Bhills.
2. Dhodia.
3. Koli.
4. Paradhi.
5. Vaghri.

Part V.- KUTCH

Part VI. MANIPUR

Throughout the State:-

1. Any Kuki Tribe
2. Any Lushai Tribe
3. Any Naga Tribe

Part VII. – TRIPURA

Throughout the State:-

1. Lushai
2. Mag
3. Kuki
4. Chakma
5. Garoo
6. Chaimal
7. Halam
8. Khasia.
9. Bhutia
10. Munda including Kaur
11. Orang
12. Lepcha
13. Santal
14. Bhil
15. Tripura
16. Jamatia
17. Noatia
18. Riang

Part. VIII.- VINDHYA PRADESH

Throughout the State:-

1. Agariya.
2. Baiga
3. Bhumiya.
4. Gond.
5. Kamar
6. Khairwar
7. Majhi.
8. Mawasi
9. Panika
10. Pao.
11. Bhil
12. Bedia
13. Biar (Biyar)
14. Sonr.

RAJENDRA PRASAD
PRESIDENT

K.V.K. SUNDARAM,
SECRETARY

MINISTRY OF HOME AFFAIRS
NOTIFICATION
 New Delhi, the 29th October 1956

S.R.O. 2477A—The following Order made by the President is published for general information:--

THE SCHEDULED CASTES AND SCHEDULED TRIBES LISTS
MODIFICATION ORDER, 1956

In pursuance of section 41 of the States Reorganization Act, 1956 (37 of 1956), and section 14 of the Bihar and West Bengal (Transfer of Territories) Act, 1956 (40 of 1956), the President hereby makes the following Order namely:--

1. This Order may be called the Scheduled Castes and Scheduled Tribes Lists (Modification) Order, 1956
2. (1) The Constitution (Scheduled Castes) Order, 1950, is hereby modified in the manner and to the extent specified in Schedule I.
 (2) The Constitution (Scheduled Castes) (Part C States) Order, 1951, is hereby modified in the manner and to the extent specified in Schedule II.
3. (1) The Constitution (Scheduled Tribes) Order, 1950, is hereby modified in the manner and to the extent specified in Schedule III.
 (2) The Constitution (Scheduled Tribes) (Part C States) Order, 1951, is hereby modified in the manner and to the extent specified in Schedule IV.

[Note:- Schedule I and Schedule II to this Order relate to the list of Scheduled Castes and, therefore, the list of Scheduled Castes specified in these Schedules is not being given here.]

SCHEDULE III

[see paragraph 3(1)]

Modifications to the Constitution (Scheduled Tribes) Order, 1950.

1. In paragraph 2, for "Parts I to XIV", Substitute "Parts I to XII".
2. For paragraph 3, substitute:-
 "3. Any reference in this Order to a State or to a district or other territorial division thereof shall be, construed as a reference to the State, district or other territorial division constituted as from the 1st day of November, 1956."
3. For the Schedule substitute:-
 THE SCHEDULE

PART I- ANDHRA PRADESH

1. Throughout the State:-
 1. Chenchu or Chenchwar
 2. Koya or Goud with its sub-sects—Rajah or Rasha Koyas, Lingadhari Koyas (ordinary), Kottu Koyas, Bhine Koya and Rajkoya
2. Throughout the State except Hyderabad, Mahbubnagar, Adilabad, Nizamabad, Medak, Karimnagar, Warangal, Khammam and Nalgonda districts:-
 1. Bagata
 2. Gadabas

SCHEDULE IV
 [see paragraph 3 (2)]
Modifications to the Constitution (Scheduled Tribes) (Part C States)
Order, 1951.

1. In paragraph 1, for "part C States" substitute "Union Territories".
2. In paragraph 2, for "Parts I to VIII" and "States", substitute "Parts I to IV" and "Union Territories" respectively.
3. For paragraph 3, substitute:-
 "3. Any reference in this Order to a Union Territory shall be construed as a reference to the territory constituted as a Union Territory as from the 1st day of November 1956."
4. For the Schedule, substitute:-

THE SCHEDULE
PART I—HIMACHAL PRADESH

Throughout the Union Territory:-

- | | |
|--|-----------------------|
| 1. Gaddi | 4. Kanaura or Kinnara |
| 2. Gujjar | 5. Lahaula |
| 3. Jad, Lamba, Khampa and Bhot or Bodh | 6. Pangawala |

PART II—MANIPUR

Throughout the Union Territory:-

- | | |
|------------------------------|--------------|
| 1. Aimol | 16. Maring |
| 2. Anal | 17. Mao |
| 3. Angami | 18. Monsang |
| 4. Chiru | 19. Moyon' |
| 5. Chothe | 20. Paite |
| 6. Gangte | 21. Purum |
| 7. Hmar | 22. Ralte |
| 8. Kabui | 23. Sema |
| 9. Kacha Naga | 24. Simte |
| 10. Koirao | 25. Sahte |
| 11. Koireng | 26. Tangkhul |
| 12. Kom | 27. Thadou |
| 13. Lamgang | 28. Vaiphui |
| 14. Any Mizo (Lushai) tribes | 29. Zou |
| 15. Maram | |

PART III—TRIPURA

Throughout the Union Territory:-

- | | |
|--|--------------------|
| 1. Lushai | (viii) Khephong |
| 2. Mag | (ix) Kuntei |
| 3. Kuki, including the following sub-tribes :- | (x) Laifang |
| (i) Balte | (xi) Lentei |
| (ii) Belalhut | (xii) Mizel |
| (iii) Chhalya | (xiii) Namte |
| (iv) Fun | (xiv) Paitu, Paite |
| (v) Hajango | (xv) Rangchan |
| (vi) Jangtei | (xvi) Rangkhole |
| (vii) Khareng | (xvii) Thangluya |
| | 4. Chakma |

5. Garoo
6. Chaimal
7. Halam
8. Khasia
9. Bhutia
10. Munda including Kaur
11. Orang
12. Lepcha

13. Santal
14. Bhil
15. Tripura or Tripuri, Teppera
16. Jamatia
17. Noatia
18. Riang
19. Uchai

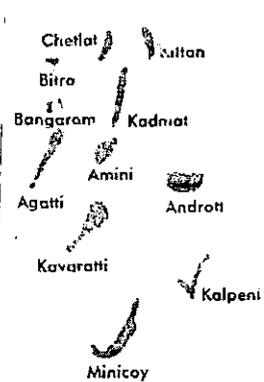
PART IV—THE LACCADIVE, MINICOY AND AMINDIVI ISLANDS

Throughout the Union Territory:-

Inhabitants of the Laccadive, Minicoy and Amindivi Islands who, and both of whose parents, were born in those islands.]

RAJENDRA PRASAD
[No. 19/20/56-Pub.II.]
A. V. PAI, Secretary.

Lakshadweep



□ Area	: 32 sq km	🌐 Union Territory Portal
♣ Population	: 60,650	🌐 District WebSite
⊙ Capital	: Kavaratti	
▣ Principal Languages	: Jeseri (Dweep Bhasha) and Mahal	

HISTORY AND GEOGRAPHY

Not much is known about the early history of these islands. The islands that were supposed to have been inhabited first are Amini, Andrott, Kavaratti, and Agatti. It was earlier believed that the islanders were originally Hindus, and later converted to Islam under the influence of Arab traders, sometime in the 14th century. But Archaeological evidences unearthed indicate that there were Buddhist settlements around the 6th or 7th century. Earliest Muslim converts or settlers pre-date the year 139 AH of the Hijra year (eighth century), of which period grave stones have recently been discovered in Agatti. This would tend to bear out the traditional belief that Islam was brought to the Island by Arab Saint, Ubaidulla in 41 AH.

Probably independent till 16th century, the Islands were driven to seek the assistance of Raja of Chirakal to help them avert establishment of Portuguese domination. This enabled him to establish his authority, and later, the islands were transferred in jaghir to Ali Raja, head of Moplah community in Cannanore, who later became an independent ruler himself. The Arakkal rule was not popular and in 1787, Tipu Sultan acceded to the petitions of the Northern islands to annex these islands. After the fall of Tipu Sultan, the Islands were passed to East India Company, but continued to be ruled *de facto* by the rulers of Cannanore, till their ultimate annexation by the British in the early 20th century. In 1956, the islands were constituted into a single territory, and since then, have been directly administered by the Union Government through an Administrator. The Laccadives, Minicoy and Amindivi group of islands were renamed as Lakshadweep in 1973. Lakshadweep, a group of coral islands consist of 12 atolls, three reefs and submerged sand banks. Of the 27 islands, only 11 are inhabited. These lie scattered in the Arabian Sea about 280 km to 480 km off Kerala coast between 8° and 12° N North Latitude and 71° and 74° East Longitude.

AGRICULTURE

Coconut is the only major crop with a production of 553 lakh nuts per year. The area under cultivation is about 2,669 hectares. Lakshadweep coconut is branded as an organic product. In India, Lakshadweep stands first in coconut production, and productivity per hecter is 19,667 per ha, and average yield per palm per year is 97 nuts. The Lakshadweep coconuts are the highest oil content nuts in the world (82 per cent).

FISHERIES

Fishing is another major activity. The sea around the island is highly productive. The islands stand first in the country in per capita availability of fish. During 2004, 10,300 tonnes of fish have been landed in this U.T.



Fisheries

View exhaustive collection of pictures on India at Photo Gallery section.

INDUSTRIES

Coconut fibre extraction and conversion of its fibre products is the main industry in the islands. Under Government Sector, there are seven coir fibre factories, seven coir production cum demonstration centers, and four fibre curing units, functioning under coir sector. These units produce coir fibre and coir yarn in addition to other coir products like curled fibre, corridor mat, mat and matting's. Small coir units are also functioning under private sector in different islands.

TRANSPORT

At present M.V. Sultan, M.V. Bharat Seema, M.V. Dweep Setu, M.V. Amindivi and M.V. Minicoy handles the passenger traffic in mainland-island and inter island sector. Two inter-island ferry vessels M.V. Khadzeja Beevi and M.V. Hanadath Bee provide connectivity between the Islands except Minicoy island with Kavaratti as base port. The cargo traffic in this sector are handled with four cargo barges namely M.V. Ubaidulla, M.V. Thinnakara, M.V. Laccadives and M.V. Cheriyan. Further one Oil Barge M.V. Suheli (60 MT) is being utilised for providing bunker to inter-island ferries. Besides, the Administration operates an ambulance helicopter service between the islands and to mainland and Indian Airlines connects Agatti island and Kochi daily except Sundays.

The 15 years Perspective Plan for shipping requirements in UTI approved by the Ministry of Shipping. Government of India has recommended for acquisition of 3x150 passenger high speed vessels, 250 passenger cum 100 Mt Cargo ships, one 100/150 MT Oil Barge, one LPG cylinder ship, eight Landing Barges, one 400 passenger ship and two Bullard Tugs. Further the Government of India has also sanctioned 3x50 passenger and one 15 passenger high speed inter-island ferries under PMGSY scheme. Out of the above Administration has placed construction orders for 3x150 passenger, 3x50 passenger and one 15 passenger high speed vessels and one 10T Bullard Tug. The Bullard Tug has been delivered on 9 May 2006 and will be put in operation shortly. The 15 passenger and 150 passenger vessels are to be delivered by June 2006, November 2006 and February 2007 respectively. As recommended in the Perspective Plan it is proposed to acquire 2x250 passenger vessels, six Landing barges, one 150 MT Oil barge, one Bullard Tug and one LPG cylinder ship during 2006-07 and 400 Passenger ship and two Landing Barges during 2007-08.

TOURIST CENTRES

Tourism in Lakshadweep is developing into an important industry. Important tourist places are Agatti, Bangaram, Kalpeni, Kadmat, Kavaratti and Minicoy, etc.

A Beach

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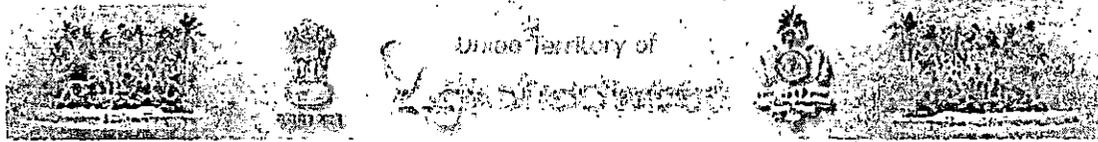
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Population(2001)	60,595
Density of Population:	500-2500 people/Kms
Administrative HQ	KAVARATTI.
Access by	Air and Sea from India, South-west coast.
Location	80° & 12°30' North Latitude and 71° and 74° East longitude
Total islands	36
Distance to Malabar coast	200-400 kms
Total geographical Area	32 sq.kms
Major islands	MINICOY, KALPENI, ANTHROTH, AGATTI, KAVARATTI, AMINI, KADMAT, KILTAN, CHETLAT, BITRA, BANGARAM & PITTI
Temperature	32°C (Max.) to 28°C (Min.)
Humidity	70-75%
Highest Rainfall	241.8 mm. recorded in 24 hours
Unique feature	The only coral reef island in India, rich flora and fauna. Great tourist destination for Watersports, Fishing etc. Virgin, Fragile eco-system. A unique and quiet getaway destinations

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History

Early history of Lakshadweep is unwritten. What now passes for history is based on various legends. Local traditions attribute the first settlement on these islands to the period of Cheraman Perumal the last king of Kerala. It is believed that after his conversion to Islam, at the behest of some Arab merchants, he slipped out of his capital Cranganore, the present day Kodungallur - an old harbour town Kochi, for Mecca. When his disappearance was discovered, search parties went after him in sailing boats and left for the shores of Mecca, in search of the king from different places. It is believed that one of these sailing boats of Raja of Cannanore was struck by a fierce storm and they were shipwrecked on the island now known as Bangaram. From there they went to the nearby island of Agatti. Finally the weather improved and they returned to the mainland sighting other islands on their way. It is said that after their return another party of sailors and soldiers discovered the island of Amini and started living there. It is believed that the people sent there were Hindus. Even now unmistakable Hindu Social stratification exists in these islands despite Islam. Legends say that small settlements started in the Islands of Amini, Kavaratti, Andrott and Kalpeni first and later people from these islands moved to the other islands of Agatti, Kiltan, Chetlat and Kadmat. This legend of Cheraman Perumal is not, however, substantiated.

The advent of Islam dates back to the 7th century around the year 41 Hijra. It is universally believed that one St. Ubaidullah(r) while praying at Mecca fell asleep. He dreamt that Prophet Mohammed(s) wanted him to go to Jeddah and take a ship from there to go to distant places. Thus, he left Jeddah but after sailing for months, a storm wrecked his ship near these small islands. Floating on a plank he was swept ashore on the island of Amini. He fell asleep there but again dreamt of the Prophet asking him to propagate Islam in that island. Ubaidullah started doing so. But this enraged the headman of the island and he ordered his exit at once. St. Ubaidullah(r) stood firm. Meanwhile, a young woman fell in love with him. He gave her the name Hameedaat Beebi and married her. This further offended the headman and he decided to kill him. It is said that the headman and his henchmen surrounded Ubaidullah(r) and his wife to kill them. At once St. Ubaidullah(r) called up on the Almighty and the people were struck blind. At this time St. Ubaidullah(r) and his wife disappeared and as soon as they left the island people regained their eye sight. From Amini St. Ubaidullah(r) arrived at Andrott where he met with similar opposition but he succeeded finally in converting the people to Islam. He next went to other islands and successfully propagated Islam and returned to Andrott where he died, and was buried. The grave of St. Ubaidullah(r) is today a sacred place. Preachers from Andrott are respected deeply in far off lands like Sri Lanka, Malaysia, Burma etc. It is a marabout or Mukbara.

The Arrival of the Portuguese in India again made Laccadives an important place for seafarers. It was also the beginning of years of plunder for the islands. The finely spun coir was much sought after for ships. So the Portuguese started looting island vessels. They forcibly landed at Amini to procure coir sometime in the early 16th century, but it is said that the people killed all the invaders by poisoning, ending the Portuguese invasion.

Even after the conversion of the entire islands to Islam, sovereignty remained in the hands of the Hindu Rajah of Chirakkal for some years. From the hands of the Chirakkal Raja, the Administration of the island passed on to the Muslim house of Arakkal of Cannanore around the middle of the 16th century. The Arakkal rule was oppressive and unbearable. So sometime in the year 1783 some islanders from Amini took courage and went to Tipu Sultan at Mangalore and requested him to take over the Administration of Amini group of islands. Tipu Sultan at that time was on friendly terms with Beebi of Arakkal and after deliberations, the islands of Amini group were handed over to him. Thus the islands suzerainty came to be divided as five came under the rule of Tipu Sultan and the rest continued under Arakkal house. After the battle of Seringapatnam in 1799 the islands were annexed to the British East India Company and were administered from Mangalore. In 1847, a severe cyclone hit the island of Andrott and Raja of Chirakkal decided to visit the island in order to assess the damages and for distributing relief. An officer of the East India Company Sir William Robinson volunteered to accompany him. On reaching Andrott, the Rajah found it difficult to meet all the demands of the people. Sir William then offered the Rajah help in the form of a loan. This was accepted. This arrangement continued for about four years but when the interest started mounting, the English asked the Rajah to repay them which he could not. In 1854 all the remaining islands were handed over to the East India Company for Administration, so, came the British rule.

The sequestration of the islands is a clear example of the political manipulations and methods adopted by the British for establishing their supremacy in India. Its traditional system of administration was treated by the English as something of misgovernment. But they were more interested in their own political and economic interests than the good government of the islands. Their policy was to exploit the profits from the islands through the Beebi without taking responsibility of its administration. The British later brought the Lakshadweep Regulation 1912, which confers limited power of judicial and magisterial status to Aminis/Karanis of the islands. A reasonable restriction of outsiders were also brought into force by the above regulation. Nine Primary Schools and few dispensaries were started during the colonial rule in the islands.

The Union Territory was formed in 1956 and it was named Lakshadweep in 1973.

1 THE CONSTITUTION (SCHEDULED TRIBES)
2 [(UNION TERRITORIES)] ORDER, 1951

(C.O. 33)

As amended
upto date

In exercise of the powers conferred by clause (1) of article 342 of the Constitution of India, as amended by the Constitution (First Amendment) Act, 1951, the President is pleased to make the following Order, namely:--

1. This Order may be called the Constitution (Scheduled Tribes) 2 [(Union Territories)] Order, 1951.

2. The tribes or tribal communities, or parts of, or groups within, tribes or tribal communities, specified in 3 [Parts I and II] of the Schedule to this Order, shall, in relation to the 2 [Union territories] to which those parts respectively relate, be deemed to be Scheduled Tribes so far as regards members thereof resident in the localities specified in relation to them respectively in those parts of that Schedule.

3 [3. Any reference in this Order to a Union territory in Part I of the Schedule shall be construed as a reference to that territory constituted as a Union territory as from the 1st day of November, 1956 4 [and any reference to a Union territory in Part II of the Schedule shall be construed as a reference to the territory constituted as a Union territory as from the day appointed under clause (b) of section 2 of the Goa, Daman and Diu Reorganisation Act, 1987].]

2 [THE SCHEDULE]

5* * * * *

6* * * * *

7 [PART I.--Lakshadweep]

Throughout the Union territory:--

Inhabitants of the Laccadive, Minicoy and Amindivi Islands who, and both of whose parents, were born in those islands.

4 [PART II.--Daman and Diu]

Throughout the Union territory:--

1. Dhodia
2. Dubla (Halpati)
3. Naikda (Talavia)
4. Siddi (Nayaka)
5. Varli.]

1. Published with the Ministry of Law, Notifn. No. S.R.O. 1427B, dated the 20th September, 1951, Gazette of India, Extraordinary, 1951, Part II, Section 3, page 1198G.

2. Subs. by the Scheduled Castes and Scheduled Tribes List

dification) Order, 1956.

Subs. by Act 18 of 1987, s. 19 and the Second Sch. (w.e.f. 30-5-1987).

4. Ins. *ibid.* (w.e.f. 30-5-1987).

5. Entry relating to Himachal Pradesh omitted by Act 53 of 1970, s. 20 and the Fourth Sch. (w.e.f. 21-1-1971).

6. Parts II and III relating to Manipur and Tripura respectively omitted by Act 81 of 1971, s. 26(2) and Sch. V (w.e.f. 21-1-1972).

7. Subs. by the Laccadive, Minicoy and Amindivi Islands (Alteration of Name) Adaptation of Laws Order, 1974, for "PART I - The Laccadive, Minicoy and Amindivi Island" (w.e.f. 1.11.1973)

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 Scheduled
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 ever Revenue Authorities issue certificates on the basis of the certificates issued by Gazetted Officers, M.Ps. 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. 381843

No. BC. 12025|2|76-SCT.1

March, 1977

Phalguna, 1898.

Copy to:—

1. The Department of Personnel and Administrative Reforms, Government of India, with reference to their U.O. No. D.2014|76-Est. (SCT), dated the 8th 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-Est. (SCT)

Government of India|Bharat Sarkar
Cabinet Secretariat|Mantrimandal
Sachivalay

Department of Personnel and Administrative Reforms

(Karmik Aur Prasashanik Sudhar Vildang)

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



सत्यमेव जयते

उप सचिव

Deputy Secretary

C. Gosakan
Telefax : 2618 2814

S/No 1 (R)
~~SECRET~~



POST IMMEDIATE/By Special Messenger
भारत सरकार

Government of India
जनजातीय कार्य मंत्रालय
Ministry of Tribal Affairs
August Kranti Bhawan

अगस्त क्रान्ति भवन,
Bhikaji Cama Place, New Delhi-110 066
भीकाजी कामा प्लेस, नई दिल्ली-110066
Date : 07.11.2008

VIP
Categorization

D.O. No. 16/9/2008-CP&R

Dear Sir,

26/JS/2008
07/11/08

1. I am forwarding herewith a copy of the D.O. letter No. 11012/1/2002-PC.R (IDSK); dated the 05th November, 2008 (alongwith its enclosure) received from Ms. Sangita Gairola, Additional Secretary, Ministry Social Justice & Empowerment, addressed to Secretary (TA).

2. The D.O. letter relates to the Draft "Note for Cabinet" prepared by that Ministry for amending Section 14 of the *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989*. That Ministry proposes to introduce the amendment Bill for this purpose during the Monsoon Session of the Parliament.

3. That Ministry has sought the comments of the Ministry of Tribal Affairs and the National Commission for Scheduled Tribes within 15 days on the Draft Cabinet Note.

4. NCST are therefore requested to kindly make available their comments on the draft Cabinet Note to this Ministry (MoTA) by 12.11.2008 at the latest.

With regards,

Yours sincerely,

C. Gosakan
(C. Gosakan)

Secretary

May
Kindly
see
for inf.

Sh. Aditya Mishra,
Joint Secretary,
National Commission for Scheduled Tribes,
6th Floor, B-Wing, Lok Nayak Bhawan,
Khan Market,
New Delhi - 110 003.

P. circulate to Members immediately.
2. We have considered suggestions for amendment earlier of which is no material change we could re-test the Commission's earlier

*By No 264/DF (2008)
7/11/08*

~~SECRET~~

*A copy has been retained in
Cord for circulation. May
Please see for further necessary action
for circulation.*

7/11/08
7/11

DRP/ED

DR (V)

7/11/08
AD (Cand)

MOST IMMEDIATE/SECRET



सत्यमेव जयते

संगीता गैरोला

SANGITA GAIROLA

Tel. : 23384259

E-mail : as-sje@njc.in

Dear Sir,

D.O.NO.11012/1/2002PCR(DESK) ②

अपर सचिव

भारत सरकार

सामाजिक न्याय और अधिकारिता मंत्रालय

शास्त्री भवन, नई दिल्ली-110115

ADDITIONAL SECRETARY

GOVERNMENT OF INDIA

MINISTRY OF SOCIAL JUSTICE & EMPOWERMENT

SHASTRI BHAWAN, NEW DELHI-110115

November 5, 2008

Kindly refer to this Ministry's D.O. letter of even number, dated 11.07.2008, seeking comments of your Ministry, in regard to proposed amendments in Section 14 and 21 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, and the comments received thereon, vide your Ministry's D.O. No. 16/9/2008-CP & R, dated 16.9.2008.

2. The matter was subsequently reconsidered and decided to amend Section 14 of the POA Act. In this regard, I am enclosing herewith a copy of the draft Note for Cabinet, regarding, "Amendments in Section 14 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, so as to do away with committal proceedings, u/s 193, Cr PC, in the case of offences of atrocities (and concomitant offences under the IPC etc.)".

3. It is intended to introduce a Bill in Parliament, during Monsoon Session, 2008, and as such this has been included in the list of Legislative Business for the Session.

4. I would, thus, request that comments of your Ministry along with the comments of the National Commission for Scheduled Tribes on it, are sent to us within **fifteen days**.

With regards,

Yours sincerely,

Sangita Gairola
(Sangita Gairola)

Shri.G.B. Mukherji,
Secretary,
Ministry of Tribal Affairs,
Shastri Bhavan,
New Delhi.

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नं० सं०...../सचिव (ज. जा.)/...
6/4/08.....

1149/D.S.C.9/
07/11/2008

200 on tour

25 (G)

11/1/08

To me

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Secret

No. 11012/1/2002-PCR (Desk)
Government of India
Ministry of Social Justice & Empowerment

Copy No.

New Delhi, November, 2008.

Note for the Cabinet

Subject: - Amendments in Sections 14 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, so as to do away with committal proceedings, u/s 193, Cr PC, in the case of offences of atrocities (and concomitant offences under the IPC, etc.)

Background

Article 17 of the Constitution of India reads as follows:-

“17. Abolition of Untouchability.

“Untouchability” is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of “Untouchability” shall be an offence punishable in accordance with law.”

In pursuance of the above Article 17, Parliament had enacted the Untouchability (Offences) Act, 1955, which came into force on 01.06.1955. This Act was subsequently amended and renamed in 1977 as the **Protection of Civil Rights Act, 1955** (hereafter, the “PCR Act”).

2. The PCR Act covered offences of untouchability, but not of atrocities against the Scheduled Castes (SCs) and the Scheduled Tribes (STs). Therefore, another Act called, the **Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989**, (hereafter, the “PoA Act”) was enacted and brought into force on 31.01.1990, with a view to preventing “atrocities against members of SCs and STs, to provide for Special Courts for the trial of such offences, and for

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relief and rehabilitation of the victims" of atrocities. The PoA Act extends to the whole of India except Jammu & Kashmir, and responsibility for its implementation rests with State Governments. Rules under the Act were notified in March, 1995, which, among other things, prescribe minimum scale of relief and rehabilitation for the affected persons.

3. During the three calendar years 2004, 2005 and 2006, an average of about 32,000 cases were registered by the Police in the country as a whole under the PoA Act. About 82.5% of these pertained to atrocities against SCs, and the rest to STs. Year-wise, category-wise details are as follows:-

Year	Number of cases registered by the Police under the PoA Act relating to atrocities against:		
	SC	ST	Total
2004	26523	5524	32047
2005	25836	5551	31387
2006	26665	5742	32407

{Source: National Crime Records Bureau, MHA}.

State-wise details of the above figures are given in Annexure-I.

Provisions in the PoA Act meant to facilitate speedy trial of cases

4. A summary of the main provisions of the PoA Act and the PoA Rules is given in Annexure-II. In particular, their following provisions are aimed at ensuring speedy investigation and trial of offences under the Act:-

(i) Rule 7(2) of the PoA Rules provides that the investigating officer shall complete the investigation on top priority within thirty days.

(ii) Sections 14 and 15 of the PoA Act provide for setting up Special Courts and

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specification of a Special Public Prosecutor for every Special Court, respectively so as to facilitate speedy trial of cases.

Sections 14 and 15 are reproduced below:-

"14. Special Court.

For the purpose of providing for speedy trial, the State Government 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.

15. Special Public Prosecutor.

For every Special Court, the State Government shall, by notification in the Official Gazette, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court."

Rule 4(5) of the PoA Rules also provides that the District Magistrate or the Sub-Divisional Magistrate may, if deemed necessary or if so desired by the victim of atrocity, engage an eminent Senior Advocate, for conducting cases in a Special Court on such payment of fee as he may consider appropriate.

Status of Establishment of Special Courts etc.

5. In accordance with Section 14 above, 25 State Governments (i.e. all except Arunachal Pradesh, Mizoram and Nagaland, which are predominantly tribal States) have notified existing Courts of Sessions as Special Courts for the trial of offences under the PoA Act. Ten of the 25 States have also established exclusive Special Courts numbering 137 in all. Besides, four States have also established

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Special Police Stations (numbering 66, in all) for registering cases lodged by SC/ST victims. Central assistance is also given by this Ministry to the extent of 50% of the expenditure incurred by States, over and above their committed liability, on enforcement and judicial machinery created for the Act, such as Special Police Stations and exclusive Special Courts. The Ministry has also been urging State Governments to set up more exclusive Special Courts and strengthen the institution of Special Public Prosecutors in all districts, for trial of offences under the PoA Act. The Minister for Social Justice & Empowerment, had addressed a letter dated 28.12.2004 in this regard to the Chief Ministers and this was followed by another letter dated 14.3.2006 from this Ministry. Copies of these letters are enclosed as **Annexure-III**. Paras (x) and (vi), respectively, of the two letters were about exclusive special courts.

6. State-wise number of Special Police Stations and exclusive Special Courts are shown in the table below:-

Sl.No.	State	Number of Special Police Stations	Number of Exclusive Special Courts
1	Uttar Pradesh	Nil	40
2	Uttarakhand	Nil	01
3	Madhya Pradesh	48	29
4	Chhattisgarh	8	07
5	Rajasthan	Nil	17
6	Andhra Pradesh	Nil	12
7	Bihar	9	11
8	Jharkhand	1	Nil
9	Gujarat	Nil	10
10	Karnataka	Nil	06
11	Tamil Nadu	Nil	04
	Total	66	137

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Need for amendment of the PoA Act

7. Year-wise and category-wise pendency and disposal of cases by Special Courts under the PoA Act for the last three, for which data is available, is given in the table below:-

Year		No. of cases pending in Courts at the beginning of the year.	No. of cases registered in Courts during the year.	Total no. of cases in Courts. (incl. brought forward cases)	No. of cases disposed of by Courts.			Total	No. of cases pending with the courts at the end of the year (and its % to the figure in col. 5).
					Convicted (with %)	Acquitted (with %)	Compounded or withdrawn (with %)		
(1)	(2)	(3)	(4)	(5=3+4)	(6)	(7)	(8)	(9)	(10)
2004	SC	89,124	19,415	1,08,539	5,887 (25.3%)	1,5519 (66.6%)	1,904 (8.1%)	23,310	85,229 (78.5%)
	ST	17,446	4,432	21,878	1,578 (29.2%)	2,961 (54.8%)	863 (16%)	5,402	16,476 (75.3%)
	Total	1,06,570	23,847	1,30,417	7,465 (26%)	18,480 (64.4%)	2,767 (9.6%)	28,712	1,01,705 (78%)
2005	SC	85,229	20,712	1,05,941	6,047 (28.6%)	14,119 (66.8%)	962 (4.6%)	21,128	84,813 (80.1%)
	ST	16,476	4,444	20,920	1,063 (22.9%)	3,289 (70.7%)	300 (6.4%)	4,652	16,268 (77.8%)
	Total	1,01,705	25,156	1,26,861	7,110 (27.6%)	17,408 (67.5%)	1,262 (4.9%)	25,780	1,01,081 (79.7%)
2006	SC	84,813	18,966	1,03,779	5,575 (26.4%)	14,360 (67.9%)	992 (4.7%)	21,197	82,582 (79.6%)
	ST	16,268	4,170	20,438	1,207 (26.5%)	3,038 (66.7%)	312 (6.8%)	4,557	15,881 (77.7%)
	Total	1,01,081	23,136	1,24,217	6,782 (26.6%)	17,398 (68.3%)	1,304 (5.1%)	25,484	98,733 (79.5%)

{Source: National Crime Records Bureau, MHA}.

to
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Ministry of Social Justice & Empowerment

As the above table shows, total pendency of cases in courts under the PoA Act has been around a lakh, for the last three years for which data is available. This is about four times the number of new cases registered each year with the Courts under the Act. Thus, it may be inferred that it takes, on an average, about four years for a special court to dispose of a case under the Act, which is a very long duration. Thus, despite provisions of Section 14 and 15 of the Act, relating to Special Courts and Special Public Prosecutors, respectively, trial of cases under the Act is taking unduly long.

8. One of the main reasons why Special Courts have not been able to dispose of cases under the PoA Act quickly, is that they are not Courts of original jurisdiction, and a case under the Act has to be committed to them by a Magistrate, as per Section 193 Cr PC, which reads as follows:-

" 193. Cognizance of offences by Courts of Session.

Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of an offence as a Court of original jurisdiction unless the case been committed to it by a Magistrate under this Code".

9. A two- judge bench of the Supreme Court, in a judgment in January, 2000, in the case of **Gangula Ashok v. State of Andhra Pradesh** (AIR 2000 Supreme Court 740) also held that, in the absence of a specific provision to the contrary, special courts cannot take cognizance of a case under the PoA Act, without the case having been committed to it under section 193, Cr PC. Relevant extract of the Supreme Court Order is as follows:-

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Government of India
Ministry of Social Justice & Empowerment

“A Special Court under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is essentially a Court of Session and it can take cognizance of the offence when the case is committed to it by the magistrate in accordance with the provisions Criminal Procedure Code.... Neither in the Code nor in the Act, there is any provision whatsoever, not even by implication, that the specified Court of Session (Special Court) can take cognizance of the offence under the Act as a Court of original jurisdiction without the case being committed to it by a Magistrate.....Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of an offence as a Court of original jurisdiction unless the case been committed to it by a Magistrate under this Code.... It is contextually relevant to notice that Special Courts created under certain other enactments have been specially empowered to take cognizance of the offence without the accused being committed to it for trial,(e.g. Section 36-A(1)(d) of the Narcotics Drugs Psychotropic Substances Act). It is significant that there is no similar provision in the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.”

Extract of Section 36 A(1), NDPS Act, is at **Annexure-IV**.

10. The committal process required by Section 193, Cr PC, is one reason why trial of offences under the PoA Act becomes lengthy and time- consuming. The slow pace of disposal also adversely affects the conviction rate, as during the long- drawn trials, several witnesses do not turn up every time required, and also turn hostile.

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Ministry of Social Justice & Empowerment

11. In the context of the Supreme Court judgement mentioned in para 8 above, the Committee on the Welfare of Scheduled Castes and Scheduled Tribes (14th Lok Sabha) in its fourth report on the subject of "Atrocities on Scheduled Castes and Scheduled Tribes and pattern of social crimes towards them", submitted in April, 2005, had recommended as under:-

"3.31 The Committee are deeply concerned to note that the Supreme Court in its judgement in Gangula Ashok and another V/s State of Andhra Pradesh during 2000 has held that the Special Courts designated under Section 14 of the Prevention of Atrocities Act, 1989 cannot take cognizance of the offences directly without the case being committed to them by a Magistrate in view of interdict imposed by Section 193 of the Cr. P.C. The Committee are of the opinion that **since under Section 14 of the Prevention of Atrocities Act the existing Courts of Sessions are notified as Special Courts for the main reason of providing speedy justice and if Special Courts are not allowed to directly hear cases the goal visualized will be totally lost.** The Committee feel that the Ministry should immediately seek views of the Attorney-General for India and the Ministry of Law and Justice over the Supreme Court's Judgement. **The Committee would also like to advise the Ministry to move a Bill affecting suitable changes in the relevant laws so as to empower Special Courts to take cognizance of the offences directly.**" (emphasis added).

12. As mentioned in para 5 above, States have been requested to set up more exclusive Special Courts and strengthen the institution of Special Public

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Prosecutors in all districts where a substantial number of cases under the Act occur. However, in addition to that, it also seems necessary, in the light of paras 8-12 above, to introduce a provision in the PoA Act, on the lines of sub-section (1)(d) of the NDPS Act, so as to speed up trial of offences of atrocities.

“Proposal to amend Section 14 of the POA Act

13. In the light of the above, it is proposed that the text of existing Section 14 of the PoA Act, which is quoted in para 4 above, may be re-numbered as its sub-section (1), and the following new sub-section(2) may be added thereafter, on the lines of sub-section (1)(d) of Section 36 of the NDPS 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 constituting:

- (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.”

The above new sub-section(2) has been drafted so as to cover within its ambit, besides offences under the PoA Act itself, concomitant offences under

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any other law also. This is being proposed since an act constituting an offence under the PoA Act almost invariably constitutes an offence under the IPC also, and it is therefore necessary to empower Special Courts to directly take cognizance not merely of an offence under the POA Act, but also of such concomitant offences under any other law (notably, the IPC).

Accordingly, a preliminary draft of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) (Amendment) Bill, 2008, is enclosed at **Annexure -V**, subject to vetting by the Legislative Department in due course.

Inter-Ministerial Consultation on the draft Note for the Cabinet

14. This draft Note for the Cabinet is being circulated to the Ministries of Home Affairs, Tribal Affairs, and Law & Justice. The National Commission for Scheduled Castes is also being consulted on the proposal, while Ministry of Tribal Affairs is being requested to obtain views of the National Commission for Scheduled Tribes, also.

Views of the above Ministries and Commissions, along with response of the Administrative Ministry, will be incorporated in the final version of the Note for the Cabinet.

Approval of the Cabinet

15. Approval of the Cabinet is solicited to introduce the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) (Amendment) Bill, 2008 in Parliament on the lines mentioned in para 13 above, and to take consequential action.

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16. The Statement of Implementation Schedule in respect of the above proposal has been given in the Appendix.

17. This Note has been seen and approved by the Minister, Social Justice & Empowerment.

(D.V.S. Ranga)
Joint Secretary to the Govt. of India

New Delhi, dated November, 2008

To

The Cabinet Secretariat,
Rashtrapati Bhavan,
New Delhi.

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Appendix

Statement of Implementation Schedule

Subject: - Amendments in Sections 14 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

<u>Gist of decisions sought</u>	<u>Likely benefits arising out of the decision.</u>	<u>Time frame and manner of implementation of the decision and its reporting to the Cabinet Secretariat.</u>
Approval of the proposed amendments in the PoA Act, as contained in Para 15 of the Note and its incorporation in the Bill to be introduced in Parliament	The proposed amendments in Section 14 of the PoA Act will facilitate speedy trial of cases, as the Special Courts would become courts of original jurisdiction.	After the Cabinet has approved the proposal, a Bill will be introduced in Parliament for consideration and passing. The PoA Act will be amended by an Act of Parliament, after the Bill as passed by the Parliament, has been assented by the President.

(D.V.S. Ranga)
Joint Secretary to the Govt. of India

New Delhi, dated November, 2008

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Annexure-I

1. Salient Provisions of the PoA Act

- (i) Defines offences of atrocities and prescribes punishment therefor, (Section 3).
- (ii) Punishment for wilful neglect of duties by non-SC/ST public servants (Section 4).
- (iii) Designating for each District a Court of Session as a Special Court for speedy trial of offences under the Act (Section 14).
- (iv) Powers of Special Court to inter -alia, extern persons likely to commit an offence under Chapter-III (Section 10).
- (v) Appointment of Public Prosecutors/Special Public Prosecutors for conducting cases in special courts (Section 15).
- (vi) Preventive action to be taken by the law and order machinery (Section 17).
- (vii) Measures to be taken by State Governments for effective implementation of the Act, including: -
 - (a) Economic and social rehabilitation of victims of the atrocities;
 - (b) Setting up of Committees at appropriate levels;
 - (c) Identification of atrocity prone areas;
 - (d) Legal aid to the persons subjected to atrocities to enable them to avail themselves of justice;
 - (e) Appointment of officers for initiating or exercising supervision over prosecution for contravention of the provisions of the Act; and
 - (f) Periodic survey of the working of the provisions of the Act (Section 21 (2)).

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2. Salient Provisions of the PoA Rules

- (i) Precautionary and Preventive Measures to be taken by the State Governments regarding offences of atrocities (Rule 3).
- (ii) Investigation of offences under the Act to be done by a DSP level Officer (Rule 7 (1)).
- (iii) Investigation to be completed within 30 days and report forwarded to Director General of Police of the State (Rule 7 (2)).
- (iv) Setting up of the Scheduled Castes and the Scheduled Tribes Protection Cell at State headquarters under the charge of Director General of Police/IG Police (Rule 8).
- (v) Nomination of a Nodal Officer at the State level (not below the rank of a Secretary to the State Government) and a Special Officer at the district level (not below the rank of an Additional District Magistrate) for districts with identified atrocity prone areas.(Rule 9 and 10).
- (vi) Prescribed norms for relief (Rule 12 (4) and Schedule).
- (vii) Constitution of State Level Vigilance and Monitoring Committee (Rule 16).
- (viii) Constitution of District Level Vigilance and Monitoring Committees (Rule 17).

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Annexure-II

State/UT wise number of cases registered by the Police under the PoA Act during 2004-06.

S. No.	States/UT	Cases registered by the Police under the PoA Act.								
		2004			2005			2006		
		SC	ST	Total	SC	ST	Total	SC	ST	Total
1	2	3	4	5	6	7	8	9	10	11
1.	Andhra Pradesh	3187	562	3749	3056	515	3571	3798	781	4579
2.	Arunachal Pradesh	0	75	75	2	54	56	0	27	27
3.	Assam	20	12	32	282	216	498	282	244	526
4.	Bihar	2553	40	2593	1729	82	1811	2041	56	2097
5.	Chhattisgarh	698	676	1374	453	497	950	444	583	1027
6.	Goa	0	0	0	2	1	3	4	0	4
7.	Gujarat	1304	241	1545	1301	237	1538	991	164	1155
8.	Haryana	217	0	217	288	0	288	283	0	283
9.	Himachal Pradesh	87	11	98	52	8	60	92	15	107
10.	Jammu & Kashmir	1	1	2	0	0	0	0	0	0
11.	Jharkhand	126	123	249	269	323	592	322	298	620
12.	Karnataka	1605	172	1777	1752	161	1913	1705	213	1918
13.	Kerala	435	82	517	345	82	427	364	75	439
14.	Madhya Pradesh	4698	1667	6365	4355	1615	5970	4213	1498	5711

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15.	Maharashtra	689	231	920	833	224	1057	1017	267	1284
16.	Manipur	0	0	0	0	0	0	0	26	26
17.	Meghalaya	0	0	0	0	0	0	0	0	0
18.	Mizoram	0	0	0	0	0	0	0	0	0
19.	Nagaland	0	0	0	0	0	0	5	109	114
20.	Orissa	1398	519	1917	1439	602	2041	1153	349	1502
21.	Punjab	134	0	134	139	0	139	184	0	184
22.	Rajasthan	4360	1031	5391	3794	863	4657	3910	967	4877
23.	Sikkim	16	32	48	7	22	29	2	0	2
24.	Tamil Nadu	1086	26	1112	1194	13	1207	907	24	931
25.	Tripura	1	0	1	38	12	50	14	9	23
26.	Uttar Pradesh	3750	5	3755	4369	6	4375	4827	11	4838
27.	Uttarakhand	137	3	140	99	1	100	68	1	69
28.	West Bengal	14	9	23	12	12	24	13	7	20
29.	A & N Islands	0	1	1	0	2	2	0	17	17
30.	Chandigarh	0	0	0	0	0	0	2	0	2
31.	Dadra & Nagar Haveli	0	4	4	2	2	4	2	1	3
32.	Daman & Diu	0	1	1	2	0	2	1	0	1
33.	Delhi	4	0	4	20	1	21	21	0	21
34.	Lakshadweep	0	0	0	0	0	0	0	0	0
35.	Puducherry	3	0	3	2	0	2	1	0	1
	Total	26523	5524	32047	25836	5551	31387	26665	5742	32407

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मीरा कुमार
MIRA KUMAR



सामाजिक न्याय और
अधिकारिता मंत्री
भारत सरकार

शास्त्री भवन, नई दिल्ली-११०००१
MINISTER OF SOCIAL
JUSTICE & EMPOWERMENT
GOVERNMENT OF INDIA
SHASTRI BHAWAN, NEW DELHI-110001

28 December, 2004

Dear Shri

As you are aware, the Protection of Civil Rights Act, 1955 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 prescribe punishment for the offences of untouchability and atrocities. I am sure that you would be taking the necessary steps for the effective implementation of these Acts. I would appreciate if you consider the following suggestions, which, in our view, would be instrumental in achieving the effective implementation of these Acts.

- (i) Ensuring that meticulously documented First Information Report (FIR) is invariably registered by the Police Station and an effective charge sheet is filed in the court at the earliest. In case the registration of FIR is denied by the Police Officer on duty, such an Officer, if not being a member of a Scheduled Caste or a Scheduled Tribe, can be prosecuted under Section 4 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, for willful neglect of duties required to be performed by that Officer under the Act.
- (ii) Deploying female police personnel in police stations, especially in atrocity prone areas, to record complaint of women victims of offences of atrocities under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.
- (iii) Ensuring the visit of District Magistrate/District Collector and the District Superintendent of Police to each place of occurrence of atrocity, reviewing police protection arrangements for the atrocity victims and their family/families and prompt payment of relief to the victims of offences of atrocities, and quarterly reviewing implementation of the Act by the Nodal Officer with District Magistrates and Superintendents of Police in accordance with Rule 9 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995.
- (iv) Deploying police force in the identified atrocity prone areas to protect the life and property of Scheduled Castes and the Scheduled Tribes and to take preventive measures for checking such offences.
- (v) Timely handling of prosecution of cases by Special Public Prosecutors and strengthening of the institution of Special Public Prosecutors with appropriate remuneration/fees paid to them, so that they are motivated to take up

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मीरा कुमर
MEIRA KUMAR

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Government of India
Ministry of Social Justice and Empowerment

अनुवर्ती कागज.....
CONTINUATION SHEET

cases effectively and review to assess the legal and administrative aspects responsible for high level of acquittals under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

(vi) Sensitizing Police Officers in regard to the implementation of the Acts and to impart regular and effective training to the Police Officers, Special Public Prosecutors and the concerned District Administration officers.

(vii) Displaying the salient features of the Acts on the billboards/hoardings in all the police stations, especially in the rural areas and at other places frequently visited by the public.

(viii) Identifying atrocity prone areas and appointing Special Officers in such identified areas in accordance with Rule 10 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995.

(ix) Preparing Contingency Plan for implementing the provisions of the Act, in accordance with Rule 15 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995.

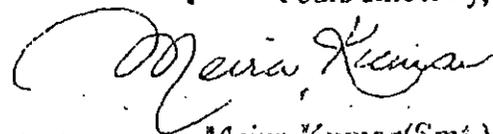
(x) Setting up of exclusive Special Courts in all Districts for trial of offences under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

(xi) Ensuring holding of periodic meetings of the High Power State Level Vigilance and Monitoring Committees under the Chairpersonship of Chief Minister and likewise such District Level Committees under the Chairpersonship of the District Magistrate/District Collector, with adequate representation of Non-Governmental Organisations working for the cause of Scheduled Castes and Scheduled Tribes.

(xii) Launching awareness generation campaign and organizing seminars on the provisions of the Protection of Civil Rights Act, 1955 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 with participation of Panchayat Raj Institutions and Non-Governmental Organisations (NGOs).

With regards,

Yours sincerely,


Meira Kumar (Smt.)

To, The Chief Ministers of Assam, Bihar, Chhattisgarh, Gujarat, Goa, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Nagaland, Orissa, Punjab, Rajasthan, Sikkim, West Bengal, Mizoram, Tripura, Uttaranchal Pradesh and Delhi.

M. 11012/1/2002 - P.C. (C.C. 11)

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Government of India
Ministry of Social Justice & Empowerment

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No. 11011/8/2006-PCR (Desk)
Government of India
Ministry of Social Justice and Empowerment

New Delhi, dated 14th March 2006

The Chief Secretaries,
All State Governments/Union Territory Administrations.

Subject: - Effective implementation of the Protection of Civil Rights Act, 1955 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.....regarding.

Sir/Madam,

I am directed to refer to subject noted above and to say that this Ministry from time to time has been requesting the State Governments and Union Territory Administrations to implement the Protection of Civil Rights Act, 1955, the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 in letter and spirit. Nevertheless, it is requested that the following suggestions may kindly be considered, which would be instrumental towards effective implementation of the Acts.

(i) It may be ensured that in accordance with Rule 7(2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995, the investigation of offences of atrocities on top priority should be completed within 30 days and the report submitted to the Superintendent of Police for immediate onward transmission to the Director General of Police.

(ii) It may be ensured that while registering First Information Report (FIR), the concerned Police Officer should not insist for production of the caste certificate by the victim of an offence of atrocity.

(iii) Suitable Departmental action may be initiated against a Police Officer in case he or she does not register the FIR. Further, in case the Police Officer does not belong to Scheduled Castes/Scheduled Tribes, appropriate action may be initiated under Section 4 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, for his/her willful neglect of duties.

(iv) The prosecution of cases should be taken up effectively and as provided under Rule (4) (2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995, the District Magistrate and the Director of the Prosecution is required to review at least twice in a calendar year, the performance of the Special Public Prosecutor and report thereof be sent to the State Government.

(v) The disbursement of relief and rehabilitation as prescribed under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995, should be provided to the victims without any delay. Rule 12(7) also provides that a report of the

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relief and re-habilitation facilities provided to the victims is required to be forwarded to the Special Court by the District Magistrate or Sub-divisional Magistrate or Executive Magistrate or the Superintendent of Police.

(vi) For speedy disposal of cases, it may be considered to set up Exclusive Special Courts, especially in such Districts where the number of cases of offences of atrocity are significant in number.

(vii) The Senior Police Officers and the Director of Prosecution may collectively review such cases which ended in acquittal and take appropriate decision for filing appeals for review, where ever necessary.

(viii) As per under Section 15(A)(2)(i) of the Protection of Civil Rights Act, 1955 and Section 21(2)(i) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, it may be ensured that the legal aid is provided to the affected persons.

(ix) The conducting of survey to identify untouchability as well as atrocity prone areas should be made an going process and the existing list of such areas be updated from time to time, depending upon the propensity of offences of untouchability and atrocity.

(x) As provided under Rules 7(1) of the Prevention of Atrocities Rules, 1955, offences of atrocity registered under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, should be investigated by a Police Officer not below the rank of Deputy Superintendent of Police.

(xi) It may be ensured that the prominent features of the Protection of Civil Rights Act, 1955, the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 are displayed by installing hoardings at such places which are frequently visited by the citizens, like Post Offices, Banks, Railway Stations, Bus Stops, Public Health Centres, Dispensaries, Hospitals, Fair Price Shops, Police Stations, Offices of Tehsildar, District Collector/District Magistrate etc.

(xii) As provided under Rule 17 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995, it may be ensured that the State as well as District Level Vigilant and Monitoring Committees are constituted and that they conduct meetings regularly in accordance with the provisions of the Rules.

(xiii) Adequate incentive for inter-marriages be provided to such couples which contract marriages, where one of the spouse belongs to Scheduled Caste.

2. It is accordingly requested that the Secretary concerned with the Scheduled Caste Development Division in the States/Union Territory Administrations be accordingly instructed to act upon the aforesaid suggestions towards effective implementation of the Act.

Yours faithfully,

(Sewa Ram)

Joint Secretary to the Government of India

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Annexure-IV

Extract of Section 36-A of the Narcotics Drugs Psychotropic Substances Act, 1985.

“ 36 A. Offences triable by Special Courts.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973(2 of 1974), ----

(a) all offences under this Act which are punishable with imprisonment for a term of more than three years shall be triable only by the Special Courts constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the Government;

(b) where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), such Magistrate may authorize the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate:

Provided that in cases which are triable by the Special Court where such Magistrate considers ----

(i) when such person is forwarded to him as aforesaid; or

(ii) upon or at any time before the expiry of the period of detention authorized by him,

that the detention of such person is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction;

(c) the Special Courts may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may

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Government of India
Ministry of Social Justice & Empowerment

exercise under section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), in relation to an accused person in such case who has been forwarded to him under that section;

(d) a Special Court may, upon perusal of police report of the facts constituting an offence under this Act or upon complaint made by an officer of the Central Government or a State Government authorised in his behalf, take cognizance of that offence without the accused being committed to it for trial.

(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

(3) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 (2 of 1974), and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section included also a reference to a "Special Court" constituted under section 36.

(4) In respect of persons accused of an offence punishable under section 19 or section 24 or section 27A or for offences involving commercial quantity the references in sub-section (2) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), thereof to "ninety days", where they occur, shall be construed as reference to "one hundred and eighty days."

Provided that, if it is not possible to complete the investigation within the said period of one hundred and eight days, the Special Court may extend the said period up to one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days."

(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offences punishable under this Act with imprisonment for a term of not more than three years may be tried summarily.

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Ministry of Social Justice & Empowerment

Annexure-V

DRAFT

TO BE INTRODUCED IN RAJYA SABHA

**THE SCHEDULED CASTES AND THE SCHEDULED TRIBES
(PREVENTION OF ATROCITIES) (AMENDMENT) BILL, 2008**

A

BILL

*further to amend the Scheduled Castes and the Scheduled Tribes
(Prevention of Atrocities) Act, 1989.*

Be it enacted by Parliament in the Fifty Eighth Year of the Republic of India
as follows: -

1. (1) This Act may be called the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities (Amendment) Act, 2008. Short title & Commencement.

(2) It shall come into force on the date of its notification in the Gazette of India.

2. Section 14 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, 1950 shall be replaced by the following Section 14, namely:

Amend
ment
of Act

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SECRET

"14. Special Court

(1) For the purpose of providing for speedy trial, the State Government 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.

(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 constituting:

- (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."

Secret

Sl.No. 2 (T)

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भारत सरकार

राष्ट्रीय अनुसूचित जनजाति आयोग
GOVERNMENT OF INDIA

NATIONAL COMMISSION FOR SCHEDULED TRIBES

संख्या/ No. 1/11/08-Coord.

दिनांक/ Date: .10.11.2008

To

- 1) Smt. Urmila Singh, Chairperson
- 2) Shri Maurice Kujur, Vice-Chairperson
- 3) Shri Tsering Samphel, Member
- 4) Shri Oris Syiem Myriaw, Member
- 5) Shri Raghuvendra Singh Sirohi, Secretary

Sub: 9th meeting of the National Commission for Scheduled Tribes.

Sir/ Madam,

A meeting of the Commission will be held shortly to discuss the following agenda:

Agenda Item Proposal of Ministry of Social Justice & Empowerment received through Ministry of Tribal Affairs for Amendment in the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

2. This Commission has received a D.O. letter No. 16/9/2008-CP&R dated 07.11.2008 of Ministry of Tribal Affairs enclosing a copy of letter D.O. No. 11012/1/2002-PCR (DESK) dated 05.11.2008 of the Joint Secretary, Ministry of Social Justice & Empowerment forwarding a Draft **Note for the Cabinet** regarding draft Bill to be introduced in Parliament for " Amendment in Section 14 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, so as to do away with committal proceedings, u/s 193, Cr PC, in the case of offences of atrocities (and concomitant offences under the IPC etc.)". As directed by Secretary, National Commission for Scheduled Tribes. A copy of the letter alongwith its enclosures including Draft **Note for the Cabinet** is enclosed for information and comments of the Chairperson, Vice-Chairperson and Members of the Commission. The proposal is likely to be discussed in the urgent meeting of the Commission to be held as per convenience of Hon'ble Chairperson.

2. Since Ministry of Tribal Affairs has requested for forwarding comments of the National Commission for Scheduled Tribes on the Draft Cabinet Note by 12.11.2008, it is requested that the comments may be forwarded to Coordination Unit latest by 11.11.2008 (FN).

Yours faithfully,

(Aditya Mishra)
Joint Secretary

Copy with copy of enclosure for information to:

- (i) Joint Secretary
- (ii) Director (RU -I & RU -II)
- (iii) Director (RU - IV & Cord.)
- (iv) DS (RU-IV & Admn.)
- (v) PS to Chairperson



भारत सरकार

राष्ट्रीय अनुसूचित जनजाति आयोग

GOVERNMENT OF INDIA

NATIONAL COMMISSION FOR SCHEDULED TRIBES

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संख्या/ No. 1/11/08-Coord.

दिनांक/ Date: 10.11.2008

To

- 1) Smt. Urmila Singh, Chairperson
- 2) Shri Maurice Kujur, Vice-Chairperson
- 3) Shri Tsering Samphel, Member
- 4) Shri Oris Syiem Myriaw, Member
- 5) Shri Raghuvendra Singh Sirohi, Secretary

Sub: 9th meeting of the National Commission for Scheduled Tribes.

Sir/ Madam,

A meeting of the Commission will be held shortly to discuss the following agenda:

Agenda Item Proposal of Ministry of Social Justice & Empowerment received through Ministry of Tribal Affairs for Amendment in the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

2. This Commission has received a D.O. letter No. 16/9/2008-CP&R dated 07.11.2008 of Ministry of Tribal Affairs enclosing a copy of letter D.O. No. 11012/1/2002-PCR (DESK) dated 05.11.2008 of the Joint Secretary, Ministry of Social Justice & Empowerment forwarding a Draft Note for the Cabinet regarding draft Bill to be introduced in Parliament for "Amendment in Section 14 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, so as to do away with committal proceedings, u/s 193, Cr PC, in the case of offences of atrocities (and concomitant offences under the IPC etc.)". As directed by Secretary, National Commission for Scheduled Tribes. A copy of the letter alongwith its enclosures including Draft Note for the Cabinet is enclosed for information and comments of the Chairperson, Vice-Chairperson and Members of the Commission. The proposal is likely to be discussed in the urgent meeting of the Commission to be held as per convenience of Hon'ble Chairperson.

2. Since Ministry of Tribal Affairs has requested for forwarding comments of the National Commission for Scheduled Tribes on the Draft Cabinet Note by 12.11.2008, it is requested that the comments may be forwarded to Coordination Unit latest by 11.11.2008 (FN).

Yours faithfully,

(Aditya Mishra)
Joint Secretary

Copy with copy of enclosure for information to:

- (i) Joint Secretary
- (ii) Director (RU - I & RU - II)
- (iii) Director (RU - IV & Cord.)
- (iv) DS (RU-IV & Admn.)

(v) PS to Chairperson

(vi) PS to VC

(vii) PS to TS

(viii) PS to ASM

o/c

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20/12/08 (D)

BY
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भारत सरकार
राष्ट्रीय अनुसूचित जनजाति आयोग
GOVERNMENT OF INDIA
NATIONAL COMMISSION FOR SCHEDULED TRIBES

संख्या/ **No. 1/12/08-Coord.**

दिनांक/ Date: **12.12.2008**

To

- 1) Smt. Urmila Singh, Chairperson
- 2) Shri Maurice Kujur, Vice-Chairperson
- 3) Shri Tsering Samphel, Member
- 4) Shri Oris Syiem Myriaw, Member

Sub: 9th meeting of the National Commission for Scheduled Tribes to be held on 17.12.2008

Sir/ Madam,

A meeting of National Commission for Scheduled Tribes has been scheduled to be held at 12:00 Hrs. on 17.12.2008 in the Conference Room of the Commission to discuss the following Agenda for which Agenda material is also enclosed as mentioned against each agenda item.

Agenda Item No.	Subject	Received from	Member concerned	Agenda Material	REMARKS
(i)	Revised proforma for sending proposal for de-reservation of vacancies reserved for SCs and STs.	Department of Personnel and Training	Member (OSM)	ANNEXURE A	(in continuation of earlier discussion in meeting held on 3/10/08) pp 30-46
(ii)	Note for the Cabinet for Amendment in Sec. 14 of the SCs & STs (PoA) Act, 1989	Ministry of SJ&E received through Ministry of Tribal Affairs	Vice-Chairman	ANNEXURE B	(in continuation of earlier discussion in meeting held on 29/07/08) pp 47-77
(iii)	Age relaxation for the SCs, STs, and OBCs in case of appointment against unreserved vacancies	Ministry of Tribal Affairs (Originally referred by DoPT)	Vice-Chairman	ANNEXURE C	78-80
(iv)	Recommendations of the Standing Committee on SJ&E on the Constitution (STs) (UTs) Order (Amendment) Bill, 2007 in relation to the UT of Lakshadweep	Ministry of Tribal Affairs	Vice-Chairman		Circulated separately vide RU-IV/ Policy-1/ Incl./ Lakshadweep-1/ 2007 dated 10/12/2008 pp 81-122
(v)	Decisions taken in the third meeting of National Tiger Conservation Authority held on 21/05/2008 on the issues concerning the Scheduled Tribes	Ministry of Environment and Forests	Vice-Chairman	ANNEXURE D	pp 123-150
(vi)	Any other Agenda with the permission of Hon'ble Chairperson.				

2. You are requested to kindly make it convenient to attend the meeting.

Yours faithfully,

(A. Mishra)
Joint Secretary

Copy with copy of enclosure for information to:

- (i) Secretary
- (ii) Joint Secretary
- (iii) Director (RU - I & RU - II)
- (iv) Director (RU - III & Cord.)
- (v) DS (RU-IV & Admn.)
- (vi) PS to Chairperson

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AGENDA NOTE

Subject : Comments of NCST required by DoPT on draft O.M. to revise the proforma for sending proposal for de-reservation of vacancies reserved for SCs and STs.

I. Proposal in brief.

1. The Department of Personnel and Training has sent a proposal for seeking comments of NCST on issue of a draft O.M. in the matter of revised proforma for sending proposal for de-reservation of vacancies reserved for Scheduled Caste and Scheduled Tribes. In this regard, the DoPT have reiterated that a ban on de-reservation of reserved vacancies of SCs, STs and OBCs in case of posts filled by direct recruitment exists. However, in case of promotion as provided in DoPT OM No. 36012/17/2002-Estt(Res.) dated 06.11.2003, 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.

2. 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.

- 31
- 90
- 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. It is only in cadres having 13 or less number of posts where 14 point L-shaped roster is followed, reserved post is forwarded for three subsequent years.
 - e) SC/ST candidates promoted on their own merit are not adjusted against quota reserved for them.

Keeping in view the changes that have taken place, DoPT have proposed to revise the proforma for sending proposals for de-reservation of reserved vacancies of SC and ST to the NCSC / NCST and DoPT. The DoPT has, therefore, sought comments of the Commission on the proposed OM.

II. Past Recommendations of the Commission.

3. The Commission had made following recommendations on dereservation in its first Report for 2004-05 & 2005-06:
 - i) On the line of the ban imposed on dereservation of reserved posts to be filled by direct recruitment, a ban should also be imposed on dereservation of reserved posts to be filled by promotion in view of

the implementation of the post – based roster, with a view to protect the interest of ST candidates in promotion.

- ii) The DoPT should issue necessary instructions to all the cadre controlling authorities to amend their Recruitment Rules to suitably provide for the element of direct recruitment also so that the unfilled points reserved for STs are temporarily diverted from promotion to direct recruitment quota and the situation of dereservation of the reserved point is avoided.

III. Proposed recommendations of the Commission on the draft OM.

4. The Commission may like to consider:

- i) Paragraph no. 2 of the draft OM. The Committee of Secretaries may also include Secretary, Ministry of Tribal Affairs.
- ii) Paragraph no. 5 of the draft OM. It is mentioned that after sending the proposal, the concerned Ministry/Department shall wait for a period of at-least two weeks for comments of DoPT and NCST. In the event of any subsequent clarification(s)/detail(s) are sought by the Commission on the proposal, the time limit of 2 weeks for furnishing response of the Commission will be reckoned from the date of furnishing of such clarification(s)/detail(s).
- iii) Only in rare and exceptional cases, proposals for de-reservation of promotion vacancies, may be put up (as in case of direct

recruitment), if temporary diversion of vacancies in favour of direct recruitment is not feasible.

- iv) The proposal for de-reservation of post to be filled by promotion, to be sent in the prescribed proforma as mentioned in para 5 of draft OM should also, inter-alia, include following documents:
- (a) Recruitment Rules of the post for which de-reservation has been sought.
 - (b) Post Based Rosters and updated seniority list of the officers holding the posts for which de-reservation is proposed.
 - (c) Recruitment Rules of the feeder post.
 - (d) Post Based Roster and updated seniority list of the feeder post.
 - (e) Reasons for non-availability of ST Officers in feeder post.
 - (f) 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 promotion vacancies to direct recruitment quota. HRD policy, if formulated, in this regard should also be quoted with extract thereof and status of its implementation.

S.No.1 (R)

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No.36020/2/2007-Estt(Res)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

New Delhi, dated the 27th November, 2007.

To

The Chairman
National Commission for Scheduled Castes
Lok Nayak Bhawan, Khan Market
New Delhi

The Chairman
National Commission for Scheduled Tribes
Lok Nayak Bhawan, Khan Market
New Delhi

Subject: Revised proforma for sending proposal for dereservation of vacancies reserved for Scheduled Castes and Scheduled Tribes.

Sir,

I am directed to say that there is a ban on deservation of reserved vacancies of SCs, STs and OBCs in case of posts filled by direct recruitment. However, in case of promotion as provided in this Department's O.M. NO. 36012/17/2002-Estt(Res) dated 6.11.2003, if sufficient number of SC/ST candidates fit for promotion against reserved vacancies do not become available, such vacancies may be dereserved and filled by candidates of other communities.

2. Reservation in services for the SCs, STs and OBCs was implemented by way of vacancy based rosters till 1.7.1997. In compliance of the Supreme Court judgement in the matter of R.K. Sabharwal V/s. State of Punjab, the vacancy based rosters were replaced by the Post Based Rosters by this Department's O.M. 36012/2/96-Estt(SCT) dated 2.7.1997. After introduction of the

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Order circulated
in the meeting
3-12-07
Director

Pl. put up in the file
under priority Head
7/12/07
AD (P-3)

7.12.07
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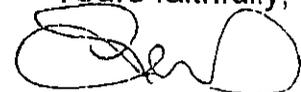
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post-based reservation, there have been some modifications in the instructions about implementation of reservation. Some of the important modifications are:

- (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. It is only in cadres having 13 or less number of posts where 14 point L-shaped rosters are applied, reservation, is treated as lapsed after carry forward of the reservation for three subsequent years.
- (e) SC/ST candidates promoted on their own merit are not adjusted against quota reserved for them.

3. Keeping in view the changes that have taken place, this Department proposes to revise the proforma for sending proposals for dereservation of reserved vacancies of Scheduled Castes and Scheduled Tribes to the National Commission for Scheduled Castes / the National Commission for Scheduled Tribes and this Department. A copy of the draft OM in the matter is enclosed with the request that the National Commissions may offer their comments on the proposed O.M. Comments of the Commission may be sent within 15 days of receipt of this letter.

Yours faithfully,



(K.G. Verma)

Deputy Secretary to the Govt. of India

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No. 36020/2/2007-Estt(Res)
Government of India
Ministry of Personnel, P.G. & Pensions
Department of Personnel & Training

New Delhi, Dated the November, 2007

OFFICE MEMORANDUM

Sub: 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 prescribing four proformae for sending proposals for dereservation of vacancies reserved for the Scheduled Castes and the Scheduled Tribes to the then National Commission for Scheduled Castes and Scheduled Tribes and to this Department. A number of developments have taken place since then, for instance, there are separate National Commissions for the Scheduled Castes and the Scheduled Tribes, the vacancy based rosters have been replaced by the post based rosters, exchange of reservation between SCs and STs is no more permissible etc. In the circumstances it has become necessary to modify the existing proformae.

2. There is a general ban on dereservation of reserved vacancies in case of direct recruitment. It is only in rare and exceptional cases in Group 'A' services, when a vacancy may be dereserved and that too if it may not be allowed to remain vacant in public interest. In such situations, the administrative Ministry/Department under which the recruitment is to be made shall make a proposal for dereservation of the vacancy giving full justification for such action, and 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, and obtain the comments of the concerned Commission on the proposal. After obtaining the comments of the concerned Commission, the administrative Ministry/Department shall place the proposal of dereservation of the vacancy alongwith the Commission's comments before a Committee comprising the Secretaries in the Department of Personnel and Training, in the Ministry of Social Justice and Empowerment, ^{Ministry of Tribal Affairs.} and in 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 a final decision. If dereservation of the vacancy is approved, it can be filled by a candidate of other community.

3. There is no prescribed proforma for sending proposal for dereservation of vacancies in cases referred to in para 2 above. However, the proposal should contain full justification for dereservation of the vacancy alongwith the following details:-

- (i) Designation of the posts;
- (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; and
- (viii) Any other relevant information.

Earlier recommendation:

PAR of post.

So list of feeder

RR of feeder.

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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;
- (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 send a copy of the proposal in the proforma enclosed as **Annexure** to the Department of Personnel & Training and a copy to 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 concerned shall wait for a period of at least two weeks for the comments of the Department of Personnel & Training and the National Commission concerned. 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 National Commission concerned, as the case may be, do not

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have any comments and may take a decision regarding dereservation of the vacancy.

6. Following points should be kept in view while sending the copy of the proposal of dereservation 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 kept reserved in a preceding recruitment year but could not be filled by a reserved category candidate or a candidate of other category and remained vacant.
- (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. Proposals for dereservation of reserved vacancies in respect of posts under Attached / Subordinate Offices etc. should not be sent to the Department of Personnel and Training or to the concerned National Commission by the Attached / Subordinate Offices direct. Such proposals should be sent by the Attached / Subordinate Offices to the administrative Ministry / Department who will examine the proposal and send it to the Department of Personnel and Training and to the concerned Commission under the signature of an officer not below the rank of Under Secretary to the Government of India.

8. All proformae prescribed earlier for sending proposals for dereservation of reserved vacancies to this Department and the National Commission for Scheduled Castes and Scheduled Tribes may be treated as withdrawn.

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9. All the Ministries / Departments etc. are requested to bring these instructions to the notice of all concerned.

(K.G.Verma)
Director

To

- (i) All Ministries/Departments of the Govt. of India.
- (ii) Department of Financial Services (Banking Division), New Delhi
- (iii) Department of Financial Services (Insurance Division), New Delhi .
- (iv) Department of Public Enterprises, New Delhi
- (v) Railway Board.
- (vi) 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.
- (vii) Staff Selection Commission, CGO Complex, Lodi Road, New Delhi
- (viii) Office of the Chief Commissioner for Disabilities, Sarojini House, 6, Bhagwan Das Road, New Delhi – 110 001
- (ix) Office of the Comptroller & Auditor General of India, 10, Bahadurshah Zafar Marg, New Delhi.
- (x) All Officers and Sections in the Ministry of Personnel, Public Grievances and Pensions and all attached/subordinate offices of this Ministry.
- (xi) Information and Facilitation Centre, DOPT, North Block, New Delhi.

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ANNEXURE

No.
Ministry / Department of

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 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	SCs..... STs..... Total.....

<p>of promotion.</p> <p>(e) Total number of vacancies to be filled (current vacancies + backlog vacancies) by the given mode of promotion.</p> <p>(f) Total number of posts in the given mode of promotion (b+e)</p>	
<p>4. No. of posts already held by the candidates appointed by reservation in the cadre:</p>	<p>SCs..... STs.....</p>
<p>5. If cadre strength is less than 14 and reservation to a category or both the categories is given by rotation, cycle no. and point no. of the roster on which the vacancy falls:</p>	<p>Cycle No..... Point No.....</p>
<p>6. Number of vacancies earmarked reserved</p> <p>(a) Out of the current vacancies:</p> <p>(b) Backlog reserved vacancies:</p> <p>(c) Total reserved vacancies (a+b):</p>	<p>SCs..... STs.....</p> <p>SCs..... STs.....</p> <p>SCs..... STs.....</p>
<p>7. Number of vacancies proposed to be dereserved:</p>	<p>SCs..... STs.....</p>
<p>8. <u>If promotion is by non-selection,</u></p> <p>(a) Whether the SC/ST candidates in the feeder grade who are eligible for promotion including those holding lower positions in the general seniority list were considered for promotion:</p>	

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<p>(b) Total number of SC/ST candidates in the feeder grade:</p> <p>(c) No. of eligible SC/ST candidates in the feeder grade:</p> <p>(d) Number of SC/ST candidates considered fit for promotion:</p> <p>(e) Number of SC/ST candidates considered not fit for promotion:</p> <p>(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:</p>	<p>SCs.....STs.....</p> <p>SCs..... STs.....</p> <p>SCs..... STs.....</p> <p>SCs.....STs.....</p> <p>SC.....ST.....</p>
<p>9. <u>If promotion is by selection,</u></p> <p>(a) Size of the normal zone of consideration:</p> <p>(b) Size of the extended zone of consideration for SCs/STs (5 times the total number of vacancies):</p> <p>(c) Number of eligible SC/ST candidates in the extended zone of consideration:</p> <p>(d) Number of SC/ST candidates found fit for promotion:</p> <p>(e) Number of SC/ST candidates considered not fit for promotion:</p>	<p>SCs.....STs.....</p> <p>SCs.....STs.....</p> <p>SCs.....STs.....</p>

(103)
45 (25)

<p>(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:</p>	<p>SCs.....STs.....</p>
<p>10. If promotion is through Departmental Qualifying or Departmental Competitive Examination, the number of SC/ST candidates who qualified in the examination.</p>	<p>SCs.....STs.....</p>
<p>11. Whether approved other category candidates are available in the Select List for appointment to vacancies sought to be dereserved:</p>	
<p>12(a) Whether SC/ST candidates considered unfit had any adverse entries in their A.C.Rs considered by the DPC:</p> <p>(b) If yes, whether such adverse entries were communicated in time to the SC/ST officer (s) concerned:</p> <p>(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:</p>	
<p>13. Where interviews are prescribed, whether SC/ST</p>	

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<p>candidates were interviewed on a day or sitting of the Selection Committee other than the day / sitting on / in which general candidates were interviewed:</p>	
<p>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:</p> <p>(b) The level at which it was decided to fill the reserved vacancies by other category candidate (s) without prior dereservation:</p>	

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.**

Agenda Note

Agenda Item No. Draft Cabinet Note of Ministry of Social Justice & Empowerment received through Ministry of Tribal Affairs for Amendments in the Section 14 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

A. Proposal

Ministry of Tribal Affairs vide their D.O. No.16/9/2008-CP&R. dated 07.11.08 have forwarded a Draft Cabinet Note from Ministry of Social Justice & Empowerment on the Agenda Item and requested comments from NCST on the same.

Ministry of SJ&E have proposed following amendments in the SC & ST POA Act 1989:-

(ii) **Proposed Amendment in Section 14 of the Act**

The existing Section 14 of the POA Act, whose text is reproduced below, may be re-numbered 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."

The following new sub-section(2) may be added thereafter, on the lines of sub-section(1)(d) of Section 36 of the NDPS 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."

13. Earlier Recommendations of the Commission:

Erstwhile National Commission for SCs and STs and National Commission for STs have made recommendations on this subject from time to time as follows:-

(i) First Report of NCST 2004-05 and 2005-06

In all the districts of the Fifth Schedule States, Special Courts may be exclusively set up instead of designating Additional Session Courts or Session Courts as a Special Courts. There is also need to appoint Special Public Prosecutors.

(ii) First Report of NCSCST 1992-93

Special courts as provided in the SC and the ST (Prevention of Atrocities) Act, 1989, should be set up in all the concerned States as quickly as possible.

(iii) Third Report of NCSCST 1994-96

The Commission recommends that the State Govts. who have not established exclusive Special Courts may establish the same for speedy trial of cases under the Act especially where the number of cases or level of pendency is high.

(iv) Fourth Report of NCSCST 1996-98

- (i) The Central & State Govts. should monitor and review the working of these Acts & Rules as provided for, and send the necessary returns & reports required to be tabled in the Parliament. It is seen that so far only one report regarding SC/ST (POA) Act, 1989 has been submitted by the Ministry of Welfare.
- (ii) State/UT Govts. should ensure that timely information regarding major incidents of atrocities & crimes against SC/ST reach the National Commission for Scheduled Castes and Scheduled Tribes within 24 hours of occurrence of the incident through NIC-NET.

(v) Fifth Report of NCSCST 1998-99

- (i) The Special Enquiry Cell set up under the provision of Rule 8 of the Rules 1995 should be given special powers to register the FIR, investigate and submit charge sheet/final report before the Special Court. The cell should be providing at least primary requirements like sufficient stationery, typewriter, telephone and vehicles etc.
- (ii) For better performance of the Special Courts, and to improved the rate of conviction, as per the Rule, the Chief Justice of M.P. High Court should depute a justice of the High Court to review the working of the Special Courts and judgements delivered by these Courts, at least once in a year. The judicial review would ultimately highlight all those legal and administrative aspects/facts responsible for acquittal of accused, weak prosecution and the quality of judgements.

C. Proposed recommendation of the Commission on the proposal in the Draft Cabinet Note.

The Commission discussed the proposal for amendment to the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 in its meeting on 29.07.2008 and unanimously agreed to give consent to the proposed amendments. The Commission also desired that 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 Commission noted that information about registration of cases of atrocities on Scheduled Tribes is regularly collected and compiled by National Crime Records Bureau. 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

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Ministry of Tribal Affairs 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.

Keeping in view the previous recommendations and the recommendation of the Commission on the subject in its meeting on 29.07.2008, the proposed amendment as per Draft Cabinet Note may be supported by the Commission along with related amendment in the Scs and STs(POA) Rules, 1995.



C. Gosakan
Telefax : 2618 2814

उप सचिव
Deputy Secretary

D.G. No. 16/9/2008-CP&R

Dear Sir,

I am forwarding herewith a copy of the D.O. letter No. 11012/1/2002-PCR (DESK); dated the 05th November, 2008 (alongwith its enclosure) received from Ms. Sangita Gairola, Additional Secretary, Ministry Social Justice & Empowerment, addressed to Secretary (TA).

2. The D.O. letter relates to the Draft "Note for Cabinet" prepared by that Ministry for amending Section 14 of the *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989*. That Ministry proposes to introduce the amendment Bill for this purpose during the Monsoon Session of the Parliament.

3. That Ministry has sought the comments of the Ministry of Tribal Affairs and the National Commission for Scheduled Tribes within 15 days on the Draft Cabinet Note.

4. NCST are therefore requested to kindly make available their comments on the draft Cabinet Note to this Ministry (MoTA) by 12.11.2008 at the latest.

With regards,

Yours sincerely,

C. Gosakan
(C. Gosakan)

Secretary

Sh. Aditya Mishra,
Joint Secretary,
National Commission for Scheduled Tribes,
6th Floor, B-Wing, Lok Nayak Bhawan,
Khan Market,
New Delhi - 110 003.

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Pl. circulate to Members immediately.
2. be long considered suggestions for amendment as they are not material change we will re-iterate the Commission's advice
Date: 20/11/08
7/11/08

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A copy has been retained in Comd. for circulation may please see for further necessary action
For circulation
7/11/08

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SECRET



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भारत सरकार

Government of India
जनजातीय कार्य मंत्रालय
Ministry of Tribal Affairs
August Kranti Bhawan
अगस्त क्रान्ति भवन.

Bhikaji Cama Place, New Delhi-110 066

भीकाजी कामा प्लेस, नई दिल्ली-110066
Date : 07.11.2008

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सत्यमेव जयते

संगीता गैरोला
SANGITA GAIROLA

Tel. : 23384259

E-mail : as-sje@njc.in

Dear Sir,

D.O.NO.11012/1/2002PCR(DESK) (2)

अपर सचिव

भारत सरकार

सामाजिक न्याय और अधिकारिता मंत्रालय

शास्त्री भवन, नई दिल्ली-110115

ADDITIONAL SECRETARY

GOVERNMENT OF INDIA

MINISTRY OF SOCIAL JUSTICE & EMPOWERMENT

SHASTRI BHAWAN, NEW DELHI-110115

November 5, 2008

Kindly refer to this Ministry's D.O. letter of even number, dated 11.07.2008, seeking comments of your Ministry, in regard to proposed amendments in Section 14 and 21 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, and the comments received thereon, vide your Ministry's D.O. No. 16/9/2008-CP & R, dated 16.9.2008.

2. The matter was subsequently reconsidered and decided to amend Section 14 of the POA Act. In this regard, I am enclosing herewith a copy of the draft Note for Cabinet, regarding, "Amendments in Section 14 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, so as to do away with committal proceedings, u/s 193, Cr PC, in the case of offences of atrocities (and concomitant offences under the IPC etc.)".

3. It is intended to introduce a Bill in Parliament, during Monsoon Session, 2008, and as such this has been included in the list of Legislative Business for the Session.

4. I would, thus, request that comments of your Ministry along with the comments of the National Commission for Scheduled Tribes on it, are sent to us within **fifteen days**.

With regards,

Yours sincerely,

Sangita Gairola
(Sangita Gairola)

Shri.G.B. Mukherji,
Secretary,
Ministry of Tribal Affairs,
Shastri Bhavan,
New Delhi.

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To Mr

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Secret

No. 11012/1/2002-PCR (Desk)
Government of India
Ministry of Social Justice & Empowerment

Copy No.

New Delhi, November, 2008.

Note for the Cabinet

Subject: - Amendments in Sections 14 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, so as to do away with committal proceedings, u/s 193, Cr PC, in the case of offences of atrocities (and concomitant offences under the IPC, etc.)

Background

Article 17 of the Constitution of India reads as follows:-

"17. Abolition of Untouchability.

"Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law."

In pursuance of the above Article 17, Parliament had enacted the Untouchability (Offences) Act, 1955, which came into force on 01.06.1955. This Act was subsequently amended and renamed in 1977 as the **Protection of Civil Rights Act, 1955** (hereafter, the "PCR Act").

2. The PCR Act covered offences of untouchability, but not of atrocities against the Scheduled Castes (SCs) and the Scheduled Tribes (STs). Therefore, another Act called, the **Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989**, (hereafter, the "PoA Act") was enacted and brought into force on 31.01.1990, with a view to preventing "atrocities against members of SCs and STs, to provide for Special Courts for the trial of such offences, and for

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relief and rehabilitation of the victims” of atrocities. The PoA Act extends to the whole of India except Jammu & Kashmir, and responsibility for its implementation rests with State Governments. Rules under the Act were notified in March, 1995, which, among other things, prescribe minimum scale of relief and rehabilitation for the affected persons.

3. During the three calendar years 2004, 2005 and 2006, an average of about 32,000 cases were registered by the Police in the country as a whole under the PoA Act. About 82.5% of these pertained to atrocities against SCs, and the rest to STs. Year-wise, category-wise details are as follows:-

Year	Number of cases registered by the Police under the PoA Act relating to atrocities against:		
	SC	ST	Total
2004	26523	5524	32047
2005	25836	5551	31387
2006	26665	5742	32407

{Source: National Crime Records Bureau, MHA}.

State-wise details of the above figures are given in Annexure-I.

Provisions in the PoA Act meant to facilitate speedy trial of cases

4. A summary of the main provisions of the PoA Act and the PoA Rules is given in Annexure-II. In particular, their following provisions are aimed at ensuring speedy investigation and trial of offences under the Act:-

(i) Rule 7(2) of the PoA Rules provides that the investigating officer shall complete the investigation on top priority within thirty days.

(ii) Sections 14 and 15 of the PoA Act provide for setting up Special Courts and

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specification of a Special Public Prosecutor for every Special Court, respectively
so as to facilitate speedy trial of cases.

Sections 14 and 15 are reproduced below:-

"14. Special Court.

For the purpose of providing for speedy trial, the State Government 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.

15. Special Public Prosecutor.

For every Special Court, the State Government shall, by notification in the Official Gazette, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court."

Rule 4(5) of the PoA Rules also provides that the District Magistrate or the Sub-Divisional Magistrate may, if deemed necessary or if so desired by the victim of atrocity, engage an eminent Senior Advocate, for conducting cases in a Special Court on such payment of fee as he may consider appropriate.

Status of Establishment of Special Courts etc.

5. In accordance with Section 14 above, 25 State Governments (i.e. all except Arunachal Pradesh, Mizoram and Nagaland, which are predominantly tribal States) have notified existing Courts of Sessions as Special Courts for the trial of offences under the PoA Act. Ten of the 25 States have also established exclusive Special Courts numbering 137 in all. Besides, four States have also established

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Special Police Stations (numbering 66, in all) for registering cases lodged by SC/ST victims. Central assistance is also given by this Ministry to the extent of 50% of the expenditure incurred by States, over and above their committed liability, on enforcement and judicial machinery created for the Act, such as Special Police Stations and exclusive Special Courts. The Ministry has also been urging State Governments to set up more exclusive Special Courts and strengthen the institution of Special Public Prosecutors in all districts, for trial of offences under the PoA Act. The Minister for Social Justice & Empowerment, had addressed a letter dated 28.12.2004 in this regard to the Chief Ministers and this was followed by another letter dated 14.3.2006 from this Ministry. Copies of these letters are enclosed as **Annexure-III**. Paras (x) and (vi), respectively, of the two letters were about exclusive special courts.

6. State-wise number of Special Police Stations and exclusive Special Courts are shown in the table below:-

Sl.No.	State	Number of Special Police Stations	Number of Exclusive Special Courts
1	Uttar Pradesh	Nil	40
2	Uttrakhand	Nil	01
3	Madhya Pradesh	48	29
4	Chhattisgarh	8	07
5	Rajasthan	Nil	17
6	Andhra Pradesh	Nil	12
7	Bihar	9	11
8	Jharkhand	1	Nil
9	Gujarat	Nil	10
10	Karnataka	Nil	06
11	Tamil Nadu	Nil	04
	Total	66	137

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Need for amendment of the PoA Act

7. Year-wise and category-wise pendency and disposal of cases by Special Courts under the PoA Act for the last three, for which data is available, is given in the table below:-

Year	No. of cases pending in Courts at the beginning of the year.	No. of cases registered in Courts during the year.	Total no. of cases in Courts (incl. brought forward cases)	No. of cases disposed of by Courts.				No. of cases pending with the courts at the end of the year (and its % to the figure in col. 5).	
				Convicted (with %)	Acquitted (with %)	Compounded or withdrawn (with %)	Total		
(1)	(2)	(3)	(4)	(5=3+4)	(6)	(7)	(8)	(9)	(10)
2004	SC	89,124	19,415	1,08,539	5,887 (25.3%)	1,5519 (66.6%)	1,904 (8.1%)	23,310	85,229 (78.5%)
	ST	17,446	4,432	21,878	1,578 (29.2%)	2,961 (54.8%)	863 (16%)	5,402	16,476 (75.3%)
	Total	1,06,570	23,847	1,30,417	7,465 (26%)	18,480 (64.4%)	2,767 (9.6%)	28,712	1,01,705 (78%)
2005	SC	85,229	20,712	1,05,941	6,047 (28.6%)	14,119 (66.8%)	962 (4.6%)	21,128	84,813 (80.1%)
	ST	16,476	4,444	20,920	1,063 (22.9%)	3,289 (70.7%)	300 (6.4%)	4,652	16,268 (77.8%)
	Total	1,01,705	25,156	1,26,861	7,110 (27.6%)	17,408 (67.5%)	1,262 (4.9%)	25,780	1,01,081 (79.7%)
2006	SC	84,813	18,966	1,03,779	5,575 (26.4%)	14,360 (67.9%)	992 (4.7%)	21,197	82,582 (79.6%)
	ST	16,268	4,170	20,438	1,207 (26.5%)	3,038 (66.7%)	312 (6.8%)	4,557	15,881 (77.7%)
	Total	1,01,081	23,136	1,24,217	6,782 (26.6%)	17,398 (68.3%)	1,304 (5.1%)	25,484	98,733 (79.5%)

{Source: National Crime Records Bureau, MHA}

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As the above table shows, total pendency of cases in courts under the PoA Act has been around a lakh, for the last three years for which data is available. This is about four times the number of new cases registered each year with the Courts under the Act. Thus, it may be inferred that it takes, on an average, about four years for a special court to dispose of a case under the Act, which is a very long duration. Thus, despite provisions of Section 14 and 15 of the Act, relating to Special Courts and Special Public Prosecutors, respectively, trial of cases under the Act is taking unduly long.

8. One of the main reasons why Special Courts have not been able to dispose of cases under the PoA Act quickly, is that they are not Courts of original jurisdiction, and a case under the Act has to be committed to them by a Magistrate, as per Section 193 Cr PC, which reads as follows:-

" 193. Cognizance of offences by Courts of Session.

Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of an offence as a Court of original jurisdiction unless the case been committed to it by a Magistrate under this Code".

9. A two-judge bench of the Supreme Court, in a judgment in January, 2000, in the case of **Gangula Ashok v. State of Andhra Pradesh** (AIR 2000 Supreme Court 740) also held that, in the absence of a specific provision to the contrary, special courts cannot take cognizance of a case under the PoA Act, without the case having been committed to it under section 193, Cr PC. Relevant extract of the Supreme Court Order is as follows:-

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"A Special Court under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is essentially a Court of Session and it can take cognizance of the offence when the case is committed to it by the magistrate in accordance with the provisions Criminal Procedure Code.... Neither in the Code nor in the Act, there is any provision whatsoever, not even by implication, that the specified Court of Session (Special Court) can take cognizance of the offence under the Act as a Court of original jurisdiction without the case being committed to it by a Magistrate.....Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of an offence as a Court of original jurisdiction unless the case been committed to it by a Magistrate under this Code.... It is contextually relevant to notice that Special Courts created under certain other enactments have been specially empowered to take cognizance of the offence without the accused being committed to it for trial,(e.g. Section 36-A(1)(d) of the Narcotics Drugs Psychotropic Substances Act). It is significant that there is no similar provision in the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act."

Extract of Section 36 A(1), NDPS Act, is at **Annexure-IV**.

10. The committal process required by Section 193, Cr PC, is one reason why trial of offences under the PoA Act becomes lengthy and time- consuming. The slow pace of disposal also adversely affects the conviction rate, as during the long- drawn trials, several witnesses do not turn up every time required, and also turn hostile.

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11. In the context of the Supreme Court judgement mentioned in para 8 above, the Committee on the Welfare of Scheduled Castes and Scheduled Tribes (14th Lok Sabha) in its fourth report on the subject of "Atrocities on Scheduled Castes and Scheduled Tribes and pattern of social crimes towards them", submitted in April, 2005, had recommended as under:-

"3.31 The Committee are deeply concerned to note that the Supreme Court in its judgement in Gangula Ashok and another V/s State of Andhra Pradesh during 2000 has held that the Special Courts designated under Section 14 of the Prevention of Atrocities Act, 1989 cannot take cognizance of the offences directly without the case being committed to them by a Magistrate in view of interdict imposed by Section 193 of the Cr. P.C. The Committee are of the opinion that **since under Section 14 of the Prevention of Atrocities Act the existing Courts of Sessions are notified as Special Courts for the main reason of providing speedy justice and if Special Courts are not allowed to directly hear cases the goal visualized will be totally lost.** The Committee feel that the Ministry should immediately seek views of the Attorney-General for India and the Ministry of Law and Justice over the Supreme Court's Judgement. **The Committee would also like to advise the Ministry to move a Bill affecting suitable changes in the relevant laws so as to empower Special Courts to take cognizance of the offences directly.**" (emphasis added).

12. As mentioned in para 5 above, States have been requested to set up more exclusive Special Courts and strengthen the institution of Special Public

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Prosecutors in all districts where a substantial number of cases under the Act occur. However, in addition to that, it also seems necessary, in the light of paras 8-12 above, to introduce a provision in the PoA Act, on the lines of sub-section (1)(d) of the NDPS Act, so as to speed up trial of offences of atrocities.

“Proposal to amend Section 14 of the POA Act

13. In the light of the above, it is proposed that the text of existing Section 14 of the PoA Act, which is quoted in para 4 above, may be re-numbered as its sub-section (1), and the following new sub-section(2) may be added thereafter, on the lines of sub-section (1)(d) of Section 36 of the NDPS 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 constituting:

- (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.”

The above new sub-section(2) has been drafted so as to cover within its ambit, besides offences under the PoA Act itself, concomitant offences under

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any other law also. This is being proposed since an act constituting an offence under the PoA Act almost invariably constitutes an offence under the IPC also, and it is therefore necessary to empower Special Courts to directly take cognizance not merely of an offence under the POA Act, but also of such concomitant offences under any other law (notably, the IPC).

Accordingly, a preliminary draft of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) (Amendment) Bill, 2008, is enclosed at **Annexure -V**, subject to vetting by the Legislative Department in due course.

Inter-Ministerial Consultation on the draft Note for the Cabinet

14. This draft Note for the Cabinet is being circulated to the Ministries of Home Affairs, Tribal Affairs, and Law & Justice. The National Commission for Scheduled Castes is also being consulted on the proposal, while Ministry of Tribal Affairs is being requested to obtain views of the National Commission for Scheduled Tribes, also.

Views of the above Ministries and Commissions, along with response of the Administrative Ministry, will be incorporated in the final version of the Note for the Cabinet.

Approval of the Cabinet

15. Approval of the Cabinet is solicited to introduce the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) (Amendment) Bill, 2008 in Parliament on the lines mentioned in para 13 above, and to take consequential action.

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16. The Statement of Implementation Schedule in respect of the above proposal has been given in the Appendix.

17. This Note has been seen and approved by the Minister, Social Justice & Empowerment.

(D.V.S. Ranga)
Joint Secretary to the Govt. of India

New Delhi, dated November, 2008

To

The Cabinet Secretariat,
Rashtrapati Bhavan,
New Delhi.

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Appendix

Statement of Implementation Schedule

Subject: - Amendments in Sections 14 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

<u>Gist of decisions sought</u>	<u>Likely benefits arising out of the decision.</u>	<u>Time frame and manner of implementation of the decision and its reporting to the Cabinet Secretariat.</u>
Approval of the proposed amendments in the PoA Act, as contained in Para 15 of the Note and its incorporation in the Bill to be introduced in Parliament	The proposed amendments in Section 14 of the PoA Act will facilitate speedy trial of cases, as the Special Courts would become courts of original jurisdiction.	After the Cabinet has approved the proposal, a Bill will be introduced in Parliament for consideration and passing. The PoA Act will be amended by an Act of Parliament, after the Bill as passed by the Parliament, has been assented by the President.

(D.V.S. Ranga)
Joint Secretary to the Govt. of India

New Delhi, dated November, 2008

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Annexure-I

1. Salient Provisions of the PoA Act

- (i) Defines offences of atrocities and prescribes punishment therefor, (Section 3).
- (ii) Punishment for wilful neglect of duties by non-SC/ST public servants (Section 4).
- (iii) Designating for each District a Court of Session as a Special Court for speedy trial of offences under the Act (Section 14).
- (iv) Powers of Special Court to inter-alia, examine persons likely to commit an offence under Chapter-III (Section 10).
- (v) Appointment of Public Prosecutors/Special Public Prosecutors for conducting cases in special courts (Section 15).
- (vi) Preventive action to be taken by the law and order machinery (Section 17).
- (vii) Measures to be taken by State Governments for effective implementation of the Act, including: -
 - (a) Economic and social rehabilitation of victims of the atrocities;
 - (b) Setting up of Committees at appropriate levels;
 - (c) Identification of atrocity prone areas;
 - (d) Legal aid to the persons subjected to atrocities to enable them to avail themselves of justice;
 - (e) Appointment of officers for initiating or exercising supervision over prosecution for contravention of the provisions of the Act; and
 - (f) Periodic survey of the working of the provisions of the Act (Section 21 (2)).

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2. Salient Provisions of the PoA Rules

- (i) Precautionary and Preventive Measures to be taken by the State Governments regarding offences of atrocities (Rule 3).
- (ii) Investigation of offences under the Act to be done by a DSP level Officer (Rule 7 (1)).
- (iii) Investigation to be completed within 30 days and report forwarded to Director General of Police of the State (Rule 7 (2)).
- (iv) Setting up of the Scheduled Castes and the Scheduled Tribes Protection Cell at State headquarters under the charge of Director General of Police/IG Police (Rule 8).
- (v) Nomination of a Nodal Officer at the State level (not below the rank of a Secretary to the State Government) and a Special Officer at the district level (not below the rank of an Additional District Magistrate) for districts with identified atrocity prone areas.(Rule 9 and 10).
- (vi) Prescribed norms for relief (Rule 12 (4) and Schedule).
- (vii) Constitution of State Level Vigilance and Monitoring Committee (Rule 16).
- (viii) Constitution of District Level Vigilance and Monitoring Committees (Rule 17).

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Annexure-II

State/UT wise number of cases registered by the Police under the PoA Act during 2004-06.

S. No.	States/UT	Cases registered by the Police under the PoA Act.								
		2004			2005			2006		
		SC	ST	Total	SC	ST	Total	SC	ST	Total
1	2	3	4	5	6	7	8	9	10	11
1.	Andhra Pradesh	3187	562	3749	3056	515	3571	3798	781	4579
2.	Arunachal Pradesh	0	75	75	2	54	56	0	27	27
3.	Assam	20	12	32	282	216	498	282	244	526
4.	Bihar	2553	40	2593	1729	82	1811	2041	56	2097
5.	Chhattisgarh	698	676	1374	453	497	950	444	583	1027
6.	Goa	0	0	0	2	1	3	4	0	4
7.	Gujarat	1304	241	1545	1301	237	1538	991	164	1155
8.	Haryana	217	0	217	288	0	288	283	0	283
9.	Himachal Pradesh	87	11	98	52	8	60	92	15	107
10.	Jammu & Kashmir	1	1	2	0	0	0	0	0	0
11.	Jharkhand	126	123	249	269	323	592	322	298	620
12.	Karnataka	1605	172	1777	1752	161	1913	1705	213	1918
13.	Kerala	435	82	517	345	82	427	364	75	439
14.	Madhya Pradesh	4698	1667	6365	4355	1615	5970	4213	1498	5711

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15.	Maharashtra	689	231	920	833	224	1057	1017	267	1284
16.	Manipur	0	0	0	0	0	0	0	26	26
17.	Meghalaya	0	0	0	0	0	0	0	0	0
18.	Mizoram	0	0	0	0	0	0	0	0	0
19.	Nagaland	0	0	0	0	0	0	5	109	114
20.	Orissa	1398	519	1917	1439	602	2041	1153	349	1502
21.	Punjab	134	0	134	139	0	139	184	0	184
22.	Rajasthan	4360	1031	5391	3794	863	4657	3910	967	4877
23.	Sikkim	16	32	48	7	22	29	2	0	2
24.	Tamil Nadu	1086	26	1112	1194	13	1207	907	24	931
25.	Tripura	1	0	1	38	12	50	14	9	23
26.	Uttar Pradesh	3750	5	3755	4369	6	4375	4827	11	4838
27.	Uttarakhand	137	3	140	99	1	100	68	1	69
28.	West Bengal	14	9	23	12	12	24	13	7	20
29.	A & N Islands	0	1	1	0	2	2	0	17	17
30.	Chandigarh	0	0	0	0	0	0	2	0	2
31.	Dadra & Nagar Haveli	0	4	4	2	2	4	2	1	3
32.	Daman & Diu	0	1	1	2	0	2	1	0	1
33.	Delhi	4	0	4	20	1	21	21	0	21
34.	Lakshadweep	0	0	0	0	0	0	0	0	0
35.	Puducherry	3	0	3	2	0	2	1	0	1
	Total	26523	5524	32047	25836	5551	31387	26665	5742	32407

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श्री कृष्ण कुमार
SHRI KUMAR

Government of India
Ministry of Social Justice & Empowerment No. 11012/3/2004-P&E (Task)



सामाजिक न्याय और
अधिकारिता मंत्री
भारत सरकार

शास्त्री भवन, नई दिल्ली-110001
MINISTER OF SOCIAL
JUSTICE & EMPOWERMENT
GOVERNMENT OF INDIA
SHASTRI BHAWAN, NEW DELHI-110001

28 December, 2004

Dear Shri

As you are aware, the Protection of Civil Rights Act, 1955 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 prescribe punishment for the offences of untouchability and atrocities. I am sure that you would be taking the necessary steps for the effective implementation of these Acts. I would appreciate if you consider the following suggestions, which, in our view, would be instrumental in achieving the effective implementation of these Acts.

- (i) Ensuring that meticulously documented First Information Report (FIR) is invariably registered by the Police Station and an effective charge sheet is filed in the court at the earliest. In case the registration of FIR is denied by the Police Officer on duty, such an Officer, if not being a member of a Scheduled Caste or a Scheduled Tribe, can be prosecuted under Section 4 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, for willful neglect of duties required to be performed by that Officer under the Act.
- (ii) Deploying female police personnel in police stations, especially in atrocity prone areas, to record complaint of women victims of offences of atrocities under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.
- (iii) Ensuring the visit of District Magistrate/District Collector and the District Superintendent of Police to each place of occurrence of atrocity, reviewing police protection arrangements for the atrocity victims and their family/families and prompt payment of relief to the victims of offences of atrocities, and quarterly reviewing implementation of the Act by the Nodal Officer with District Magistrates and Superintendents of Police in accordance with Rule 9 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995.
- (iv) Deploying police force in the identified atrocity prone areas to protect the life and property of Scheduled Castes and the Scheduled Tribes and to take preventive measures for checking such offences.
- (v) Timely handling of prosecution of cases by Special Public Prosecutors and strengthening of the institution of Special Public Prosecutors with appropriate remuneration/fees paid to them, so that they are motivated to take up

Contd./- 2

No. 11012/3/2004-P&E (Task)

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मीरा कुमार
MEIRA KUMAR

11.11.2002 - PCL (Gest)
Government of India
Ministry of Social Justice & Empowerment

अनुवर्ती कागज़.....
CONTINUATION SHEET

cases effectively and review to assess the legal and administrative aspects responsible for high level of acquittals under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

(vi) Sensitizing Police Officers in regard to the implementation of the Acts and to impart regular and effective training to the Police Officers, Special Public Prosecutors and the concerned District Administration officers.

(vii) Displaying the salient features of the Acts on the billboards/hoardings in all the police stations, especially in the rural areas and at other places frequently visited by the public.

(viii) Identifying atrocity prone areas and appointing Special Officers in such identified areas in accordance with Rule 10 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995.

(ix) Preparing Contingency Plan for implementing the provisions of the Act, in accordance with Rule 15 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995.

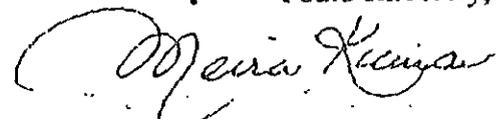
(x) Setting up of exclusive Special Courts in all Districts for trial of offences under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

(xi) Ensuring holding of periodic meetings of the High Power State Level Vigilance and Monitoring Committees under the Chairpersonship of Chief Minister and likewise such District Level Committees under the Chairpersonship of the District Magistrate/District Collector, with adequate representation of Non-Governmental Organisations working for the cause of Scheduled Castes and Scheduled Tribes.

(xii) Launching awareness generation campaign and organizing seminars on the provisions of the Protection of Civil Rights Act, 1955 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 with participation of Panchayat Raj Institutions and Non-Governmental Organisations (NGOs).

With regards,

Yours sincerely,



Meira Kumar (Smt.)

To, The Chief Ministers of Andhra Pradesh, Assam, Bihar, Chhattisgarh, Gujarat, Goa, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Nagaland, Orissa, Rajasthan, Sikkim, West Bengal, Mizoram, Tripura, Uttar Pradesh and Delhi.

11.11.2002 - PCL (Gest)

Secret

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Government of India
Ministry of Social Justice & Empowerment

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No. 11011/8/2006-PCR (Desk)
Government of India
Ministry of Social Justice and Empowerment

New Delhi, dated 14th March 2006

The Chief Secretaries,
All State Governments/Union Territory Administrations.

Subject: - Effective implementation of the Protection of Civil Rights Act, 1955 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.....regarding.

Sir/Madam,

I am directed to refer to subject noted above and to say that this Ministry from time to time has been requesting the State Governments and Union Territory Administrations to implement the Protection of Civil Rights Act, 1955, the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 in letter and spirit. Nevertheless, it is requested that the following suggestions may kindly be considered, which would be instrumental towards effective implementation of the Acts.

(i) It may be ensured that in accordance with Rule 7(2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995, the investigation of offences of atrocities on top priority should be completed within 30 days and the report submitted to the Superintendent of Police for immediate onward transmission to the Director General of Police.

(ii) It may be ensured that while registering First Information Report (FIR), the concerned Police Officer should not insist for production of the caste certificate by the victim of an offence of atrocity.

(iii) Suitable Departmental action may be initiated against a Police Officer in case he or she does not register the FIR. Further, in case the Police Officer does not belong to Scheduled Castes/Scheduled Tribes, appropriate action may be initiated under Section 4 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, for his/her willful neglect of duties.

(iv) The prosecution of cases should be taken up effectively and as provided under Rule (4) (2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995, the District Magistrate and the Director of the Prosecution is required to review at least twice in a calendar year, the performance of the Special Public Prosecutor and report thereof be sent to the State Government.

(v) The disbursement of relief and rehabilitation as prescribed under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995, should be provided to the victims without any delay. Rule 12(7) also provides that a report of the

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Ministry of Social Justice & Empowerment

relief and re-habilitation facilities provided to the victims is required to be forwarded to the Special Court by the District Magistrate or Sub-divisional Magistrate or Executive Magistrate or the Superintendent of Police.

(vi) For speedy disposal of cases, it may be considered to set up Exclusive Special Courts, especially in such Districts where the number of cases of offences of atrocity are significant in number.

(vii) The Senior Police Officers and the Director of Prosecution may collectively review such cases which ended in acquittal and take appropriate decision for filing appeals for review, where ever necessary.

(viii) As per under Section 15(A)(2)((i) of the Protection of Civil Rights Act, 1955 and Section 21(2)(i) of the Scheduled Castes and the Scheduled Tribes(Prevention of Atrocities) Act, 1989; it may be ensured that the legal aid is provided to the affected persons.

(ix) The conducting of survey to identify untouchability as well as atrocity prone areas should be made an going process and the existing list of such areas be updated from time to time, depending upon the propensity of offences of untouchability and atrocity.

(x) As provided under Rules 7(1) of the Prevention of Atrocities Rules, 1955, offences of atrocity registered under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, should be investigated by a Police Officer not below the rank of Deputy Superintendent of Police.

(xi) It may be ensured that the prominent features of the Protection of Civil Rights Act, 1955, the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 are displayed by installing hoardings at such places which are frequently visited by the citizens, like Post Offices, Banks, Railway Stations, Bus Stops, Public Health Centres, Dispensaries, Hospitals, Fair Price Shops, Police Stations, Offices of Tehsildar, District Collector/District Magistrate etc.

(xii) As provided under Rule 17 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995, it may be ensured that the State as well as District Level Vigilant and Monitoring Committees are constituted and that they conduct meetings regularly in accordance with the provisions of the Rules.

(xiii) Adequate incentive for inter-marriages be provided to such couples which contract marriages, where one of the spouse belongs to Scheduled Caste.

2. It is accordingly requested that the Secretary concerned with the Scheduled Caste Development Division in the States/Union Territory Administrations be accordingly instructed to act upon the aforesaid suggestions towards effective implementation of the Act.

Yours faithfully

(Sewa Ram)

Joint Secretary to the Government of India

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Annexure-IV

Extract of Section 36-A of the Narcotics Drugs Psychotropic Substances Act, 1985.

" 36 A. Offences triable by Special Courts.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973(2 of 1974), ----

(a) all offences under this Act which are punishable with imprisonment for a term of more than three years shall be triable only by the Special Courts constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the Government;

(b) where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), such Magistrate may authorize the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate:

Provided that in cases which are triable by the Special Court where such Magistrate considers ----

- (i) when such person is forwarded to him as aforesaid; or
- (ii) upon or at any time before the expiry of the period of detention authorized by him,

that the detention of such person is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction;

(c) the Special Courts may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may

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Ministry of Social Justice & Empowerment

exercise under section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), in relation to an accused person in such case who has been forwarded to him under that section;

(d) a Special Court may, upon perusal of police report of the facts constituting an offence under this Act or upon complaint made by an officer of the Central Government or a State Government authorised in his behalf, take cognizance of that offence without the accused being committed to it for trial.

(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

(3) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 (2 of 1974), and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section included also a reference to a "Special Court" constituted under section 36.

(4) In respect of persons accused of an offence punishable under section 19 or section 24 or section 27A or for offences involving commercial quantity the references in sub-section (2) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), thereof to "ninety days", where they occur, shall be construed as reference to "one hundred and eighty days."

Provided that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may extend the said period up to one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days."

(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offences punishable under this Act with imprisonment for a term of not more than three years may be tried summarily.

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No. 11012/1/2002-PCR (Desk)
Government of India
Ministry of Social Justice & Empowerment

Annexure-V

DRAFT

TO BE INTRODUCED IN RAJYA SABHA

**THE SCHEDULED CASTES AND THE SCHEDULED TRIBES
(PREVENTION OF ATROCITIES) (AMENDMENT) BILL, 2008**

A

BILL

*further to amend the Scheduled Castes and the Scheduled Tribes
(Prevention of Atrocities) Act, 1989.*

Be it enacted by Parliament in the Fifty Eighth Year of the Republic of India
as follows: -

1. (1) This Act may be called the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities (Amendment) Act, 2008. Short title & Commencement.

(2) It shall come into force on the date of its notification in the Gazette of India.

2. Section 14 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, 1950 shall be replaced by the following Section 14, namely:

Amend
ment
of Act

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Government of India
Ministry of Social Justice & Empowerment

SECRET

"14. Special Court

(1) For the purpose of providing for speedy trial, the State Government 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.

(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 constituting:

- (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."

Secret



भारत सरकार

राष्ट्रीय अनुसूचित जनजाति आयोग

GOVERNMENT OF INDIA

NATIONAL COMMISSION FOR SCHEDULED TRIBES

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संख्या/ No. 1/11/08-Coord.

दिनांक/ Date: 10.11.2008

To

- 1) Smt. Urmila Singh, Chairperson
- 2) Shri Maurice Kujur, Vice-Chairperson
- 3) Shri Tsering Samphel, Member
- 4) Shri Oris Sylem Myriaw, Member
- 5) Shri Raghuvendra Singh Sirphi, Secretary

Sub: 9th meeting of the National Commission for Scheduled Tribes.

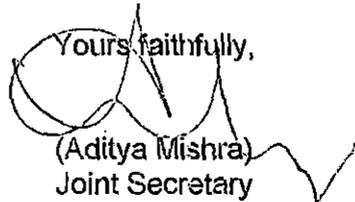
Sir/ Madam,

A meeting of the Commission will be held shortly to discuss the following agenda:

Agenda Item Proposal of Ministry of Social Justice & Empowerment received through Ministry of Tribal Affairs for Amendment in the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. This Commission has received a D.O. letter No. 16/9/2008-CP&R dated 07.11.2008 of Ministry of Tribal Affairs enclosing a copy of letter D.O. No. 11012/1/2002-PCR (DESK) dated 05.11.2008 of the Joint Secretary, Ministry of Social Justice & Empowerment forwarding a Draft **Note for the Cabinet** regarding draft Bill to be introduced in Parliament for " Amendment in Section 14 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, so as to do away with committal proceedings, u/s 193, Cr PC, in the case of offences of atrocities (and concomitant offences under the IPC etc.)". As directed by Secretary, National Commission for Scheduled Tribes. A copy of the letter alongwith its enclosures including Draft **Note for the Cabinet** is enclosed for information and comments of the Chairperson, Vice-Chairperson and Members of the Commission. The proposal is likely to be discussed in the urgent meeting of the Commission to be held as per convenience of Hon'ble Chairperson.

2. Since Ministry of Tribal Affairs has requested for forwarding comments of the National Commission for Scheduled Tribes on the Draft Cabinet Note by 12.11.2008, it is requested that the comments may be forwarded to Coordination Unit latest by 11.11.2008 (FN).

Yours faithfully,

(Aditya Mishra)
Joint Secretary

Copy with copy of enclosure for information to:

- (i) Joint Secretary
- (ii) Director (RU -I & RU -II)
- (iii) Director (RU - IV & Cord.)
- (iv) DS (RU-IV & Admn.)
- (v) PS to Chairperson

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Agenda Note

Sub : Comments of NCST requested by DoPT on the issue of age relaxation for the SCs, STs and OBCs in case of appointment against unreserved vacancies.

I Proposal in brief

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 compete for unreserved vacancies who are within the age limit prescribed for general category candidates.

DoPT is examining the proposal that the SC/ST/OBC candidates should be given benefit of age relaxation in the matter of appointment to a post irrespective of the fact whether the post is reserved or unreserved. Therefore, DoPT has requested comments of NCST on this issue.

II Implications

The candidates from these communities will have more chances of selection to an unreserved post.

A demand for considering other relaxations to SC/ST/OBC candidates while selection to unreserved post will come.

III Proposed Recommendations of the Commission on the matter.

Since age relaxation is unlikely to render applicants unsuitable for appointments, the Commission may consider to comment in favour of the proposal as it will result in more chances of selection of ST candidates to unreserved posts.

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Most Immediate

No.42011/10/2008-Estt.(Res.)

Government of India

Ministry of Personnel, Public Grievances and Pensions

Department of Personnel & Training

New Delhi, Dated the 4th, November, 2008.

1098990
6/11/08
To

(1) The Chairman,
National Commission for Scheduled Castes,
5th Floor, Lok Nayak Bhawan,
Khan Market,
New Delhi-110 003.

(2) The Chairman,
National Commission for Scheduled Tribes,
6th Floor, Lok Nayak Bhawan,
Khan Market,
New Delhi-110 003.

Director (V.A)

Subject:-Age relaxation for the Scheduled Castes, Scheduled Tribes and Other Backward Classes in case of appointment against unreserved vacancies.

D(RU-F)
11/08

Sir,

I am directed to say that SC/ST/OBC candidates selected on their own merit are adjusted against unreserved vacancies. This Department vide 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, 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. It means that such candidates would be deemed as unavailable for consideration against unreserved vacancies. In other words an SC or ST or OBC candidates shall not

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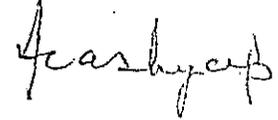
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get any relaxation including relaxation in age limit for appointment against an unreserved vacancy and only such SC/ST/OBC candidates would be able to compete for unreserved vacancies who are within the age limit prescribed for general category candidates.

2. This Department is examining a proposal that the SC/ST/OBC candidates should be given benefit of age relaxation in the matter of appointment to a post irrespective of the fact whether the post is reserved or unreserved.

3. The National Commission for Scheduled Castes/National Commission for Scheduled Tribes are requested to give their comments on the issue.

Yours faithfully,



(A.K. Cashyap)

Under Secretary to the Government of India

Tele No.23092110

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AGENDA NOTE (ITEM-IV)

Subject: Comments of National Commission for Scheduled Tribes requested by Ministry of Tribal Affairs on the suggestions/recommendations contained in the 36th Report of the Standing Committee on Social Justice and Empowerment in regard to explanation of the term "settle permanently" appearing under clause 2 of the Constitution (Scheduled Tribes) (Union Territory) Order (Amendment) Bill, 2007.

Proposal in Brief

The term "**settle permanently**" appearing in the Explanation under clause 2 of the abovesaid Bill has been defined as under:-

"a person shall be deemed to be 'ordinary 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"

2. The Bill was introduced in Rajya Sabha on 27-11-2007 and then referred to the Standing Committee on Social Justice & Empowerment. While agreeing with the proposed amendment in the Bill, the Standing Committee recommended in its 36th Report that:-

- (i) The terms "**settle permanently**" should be clarified/defined under 'Explanation' of clause 2 of the proposed Constitution (Scheduled Tribes) (Union Territory) 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 in possession of a dwelling house therein.**"
- (ii) The suggestions/views expressed before the Committee by the individuals/groups/representatives of tribal community of Lakshadweep may also be considered before finalizing the proposed amendment in the Bill.

Earlier Recommendation of the Commission

(A) On the basis of the discussions held in the Commission on 01-03-2005, the following comments on the definition of the expression "**settle permanently**" were furnished to the Ministry of Tribal Affairs:-

- (i) The cases of children born on mainland on account of labour/delivery cases being referred by the competent medical authorities of Union Territory for safe delivery of children by inhabitants of the Union Territories should be treated on a different footing and not at par with non-medical cases i.e. not on account of labour cases being referred by the competent medical authorities.

- (ii) In view of (i) above, 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.
- (iii) 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 such children who are born on mainland not on account of labour cases being referred by the competent medical authorities but due to certain other circumstances/grounds.
- (iv) It should be ensured that such children who are born on the mainland on account of circumstances not related to labour cases being referred by the competent medical authorities and who return to the islands soon after their birth on the mainland are provided with all concessions (including reservation if any) 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 are born in the islands.

(B) On a further reference to the Commission, the issue was again examined by the Commission and the definition of the term "**settle permanently**" as incorporated in the aforesaid Bill was agreed to by the Commission vide d.o. letter, dated 20-07-2008 addressed to Ministry of Tribal Affairs.

Proposed Comments of National Commission for Scheduled Tribes

Since they are separated by 'or' the definition proposed in the Bill actually incorporates 2 independent criterion of (a) those ordinarily residing and (b) in possession of a dwelling house therein.

Possession of a dwelling house cannot be the criterion of geographical isolation of the community or its tribal character. The modification suggested by the Standing Committee would actually be further discriminatory in favour of economically better off sections. Therefore, it may be more prudent to delete the phrase "**or is in possession of dwelling house therein ready for occupation**" altogether from the definition of "**settle permanently**" in Clause 2 of the Bill.



सत्यमेव जयते

भारत सरकार

राष्ट्रीय अनुसूचित जनजाति आयोग

GOVERNMENT OF INDIA

NATIONAL COMMISSION FOR SCHEDULED TRIBES

No. RU-4/Policy-1/Incl./Lakshadweep-1/2007

छठी मंजिल, 'बी' विंग, लोक नायक भवन
खान मार्किट, नई दिल्ली-1100036th Floor, 'B' Wing, Lok Nayak Bhawan
Khan Market, New Delhi - 110 003

Dated 20.11.2008

To,

- 1) Smt. Urmila Singh, Chairperson,
- 2) Shri Maurice Kujur, Vice-Chairperson
- 3) Shri Tsering Samphel, Member
- 4) Shri Oris Syiem-Myriaw, Member
- 5) Shri Raghuvendra Singh Sirohi, Secretary

Sub: Comments on the recommendations of the Standing Committee on Social Justice & Empowerment on the Constitution (Scheduled Tribes) (Union Territories) Order (Amendment) Bill, 2007 in relation to the UT of Lakshadweep.

Sir/Madam,

The Commission has received a D.O. letter No. 12016/11/2001-C&LM-I, dated 14.11.2008 from the Ministry of Tribal Affairs enclosing therewith a copy of (i) the Constitution (Scheduled Tribes) (Union Territories) Order (Amendment) Bill, 2007 introduced in Rajya Sabha on 27.11.2007, (ii) MHA's D.O. letter No. U-14011/2/2001-ANL, dated November, 2008 addressed to Ministry of Tribal Affairs, and (iii) 36th Report of the Standing Committee on Social Justice & Empowerment requesting for the comments of the Commission on the suggestions and recommendations of the Standing Committee (particularly with reference to paras 1.18 and 1.19 of the Report) in regard to the explanation of the term "settle permanently" appearing under clause 2 of the aforesaid Bill. A copy of the D.O. letter of Ministry of Tribal Affairs alongwith its endorsers is enclosed for information and comments on the recommendations of the Standing Committee. The issue is likely to be discussed in an urgent meeting of the Commission urgently as per the convenience of Hon'ble Chairperson, NCST.

It is requested that the comments in the matter may be forwarded to the undersigned by 21.11.2008 as the Ministry of Tribal Affairs has requested for the comments of the Commission within this week.

Yours faithfully,

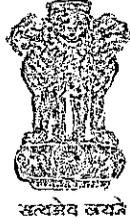

(Aditya Mishra)
Joint Secretary

PA
Commission
Sir. file. Pls give the file
to me on 21/11/08 at 4 P.M.

Copy with copy of enclosure for information to:

- 1: Shri Aditya Mishra, Joint Secretary
- 2: Shri Vinod Aggarwal, Director,
- 3: Shri R.C. Durga, Director,
- 4: Shri R.P. Vasishtha, Deputy Secretary (Admn.), - given by me (Admn.)
- 5: Shri K.N. Singh, PS to Chairperson

रुचिरा पन्त
RUCHIRA PANT
संयुक्त सचिव
JOINT SECRETARY



भारत सरकार
GOVERNMENT OF INDIA
जनजातीय कार्य मंत्रालय
MINISTRY OF TRIBAL AFFAIRS
शास्त्री भवन, नई दिल्ली-110001
SHASTRI BHAWAN, NEW DELHI-110001

Tele./दूरभाष : 23383622

Fax/फैक्स : 23073607

D.O. No. 12016/11/2001-C&LM-I
14th November, 2008

Dear Shri Mishra,

Please refer to DO No. RU-IV/Policy-1/Incl./Lakshadweep-1/2007 dated 20/07/2007 regarding amendment in Part-I of the Schedule to the Constitution (Scheduled Tribes) (Union Territories) Order, 1951 in relation to the list of Scheduled Tribes in Union Territories of Lakshadweep.

2. As you would be aware, after following the modalities approved by the Government on 15/06/1999 including the required recommendations/justification from the Office of the Registrar General of India and the National Commission for Scheduled Tribes, the Ministry of Tribal Affairs had introduced a revised Bill namely "the Constitution (Scheduled Tribes) (Union Territories) Order (Amendment) Bill, 2007" (copy enclosed) in Rajya Sabha on 27.11.2007. The Bill had been referred to the Standing Committee on Social Justice & Empowerment on 14.12.2007. The Standing Committee in its 36th Report (copy enclosed) has now stated that **"while agreeing with the proposed amendment in the Bill, the Committee recommend that the terms 'Settle Permanently' should be clarified/defined under 'Explanation' of clause 2 of the proposed Constitution (Scheduled Tribe) (Union Territory) 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 in possession of a dwelling house therein".

ii). In addition the Committee has desired that the suggestions/views expressed before the Committee by the individuals/groups/representatives of tribal community of Lakshadweep may also be considered before finalizing the proposed amendment in the Bill.

3. The Ministry of Home Affairs being the nodal Ministry for the Union Territories vide its DO dated November, 2008 (copy enclosed) has reiterated its earlier comments/views stating that the definition of the term "Settle Permanently" as proposed in the Bill may be retained.

1. Pl. put up
in VI P Cell.
PA

DIR/CD
for your please
Re. put up
15/11

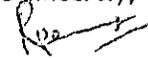
85

-: 2 :-

4. In view of the above, I request you to furnish the comments/views of the NCST on the suggestions as well as recommendations of the Standing Committee with particular reference to para 1.18 and 1.19 immediately within this week, so as to enable us to seek the direction of the Cabinet in this regard before the Parliament reopens on 10th December.

With regards,

Yours sincerely,



(RUCHIRA PANT)

Shri Aditya Mishra
Joint Secretary, National Commission for Scheduled Tribes,
Lok Nayak Bhavan, New Delhi

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Annexure VII
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D.O. No.U-14011/2/2001-ANL

J P MISRA
DIRECTOR (ANL)
TELE/FAX : 23094376



गृह मंत्रालय

भारत सरकार

नार्थ ब्लॉक, नई दिल्ली - 110001

MINISTRY OF HOME AFFAIRS

GOVERNMENT OF INDIA

NORTH BLOCK, NEW DELHI - 110001

New Delhi, dated the November, 2008

Dear Dr. Singhji,

Please refer to Ministry of Tribal Affairs' OM No.12016/11/2001-C&LM-I dated the 3rd October, 2008 forwarding therewith a copy of the 36th Report of the Standing Committee on Social Justice & Empowerment on 'Constitution [Scheduled Tribes (Union Territories)] Order (Amendment) Bill, 2007 and subsequent d.o reminder dated 16th October, 2008 on the same subject.

2. In this connection, I would like to inform you that the decision to define the term 'ordinarily resident' as per para 3 (1) (d) of Panchayat Regulation has been arrived at after detailed discussions this Ministry had with Ministry of Tribal Affairs. The definition, as per the above mentioned Regulation reads as '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'.

3. The suggestion of the Standing Committee on Social Justice & Empowerment, as communicated vide the above mentioned reference, has been further examined. It is felt that introduction of the word 'and' in place of 'or' would mean that in addition to being ordinary resident, the person should also be in possession of a dwelling house to be eligible for issue of ST certificate. This could be discriminatory as children of persons not owning house property, and who migrate to mainland for employment/service but who are otherwise ordinary residents may become ineligible for ST certificate. On the other hand, the use of the word 'or' means that a person being ordinarily resident of Lakshadweep or possessing a dwelling house in the Islands will be eligible for the status of Scheduled Tribes. Therefore, the definition as suggested in para 3(1)(d) of the Regulation may be retained.

With regards.

Yours sincerely,

(J P Misra)

Dr. Bachittar Singh
Joint Secretary,
Ministry of Tribal Affairs,
Shanti Bhavan, New Delhi.

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STANDING COMMITTEE ON
SOCIAL JUSTICE AND
EMPOWERMENT
(2007-2008)

FOURTEENTH LOK SABHA

MINISTRY OF TRIBAL AFFAIRS

THE CONSTITUTION (SCHEDULED TRIBES) (UNION
TERRITORIES) ORDER (AMENDMENT) BILL, 2007

THIRTY SIXTH REPORT



LOK SABHA SECRETARIAT
NEW DELHI

July, 2008/Asadha, 1930 (Saka)

41

STANDING COMMITTEE ON SOCIAL
JUSTICE AND EMPOWERMENT
(2007-2008)

(FOURTEENTH LOK SABHA)

MINISTRY OF TRIBAL AFFAIRS
THE CONSTITUTION (SCHEDULED TRIBES) (UNION
TERRITORIES) ORDER (AMENDMENT) BILL, 2007

THIRTY SIXTH REPORT

Presented to Hon'ble Speaker, Lok Sabha on 18.9.2008

Presented to Lok Sabha on

Laid in Rajya Sabha on

18 OCT 2008



LOK SABHA SECRETARIAT
NEW DELHI

July, 2008/Asadha, 1930 (Saka)

5

89

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COMPOSITION OF THE STANDING COMMITTEE ON SOCIAL JUSTICE AND EMPOWERMENT (2007-2008)

Smt. Sumitra Mahajan – Chairperson

MEMBERS

Lok Sabha

- #2. Shri Mohd. Shahid Akhlaque
- 3. Shri Mahaveer Bhagora
- 4. Shri Eknath M. Gaikwad
- 5. Shri Loganathan Ganesan
- *6. Shri Syed Shah Nawaz Hussain
- 7. Shri Haribhau Jawale
- 8. Shri Tek Lal Mahato
- 9. Shri Bhai Lal
- 10. Dr. Babu Rao Mediyam
- 11. Shri Kailash Meghwal
- ***12. Shri Vasantao J. More
- 13. Shri Rupchand Murmu
- 14. Shri Jual Oram
- 15. Shri Ram Chandra Paswan
- 16. Shri Rabindar Kumar Rana
- *17. Shri P. A. Sangma
- 18. Dr. R. Senthil
- 19. Smt. Pratibha Singh
- 20. Shri Lalit Mohan Suklabaidya
- 21. Smt. Krishna Tirath
- 22. Smt. Usha Verma

* Shri Syed Shah Nawaz Hussain ceased to be a Member of the Committee *w.e.f.* August 30, 2007.

* Shri Mohd. Shahid Akhlaque ceased to be a Member of the Committee consequent to his disqualification from the Membership of the 14th Lok Sabha by Hon'ble Speaker *w.e.f.* January 27, 2008.

* Shri P.A. Sangma ceased to be a Member of the Committee consequent to his resignation from the 14th Lok Sabha *w.e.f.* March 20, 2008.

(iv)

Rajya Sabha

- '23. Shri Urkhao Gwra Brahma
24. Shri Silvius Condpan
25. Shri Mahmood A. Madani
- **26. Shri Ahmad Sayeed Malihabadi
27. Dr. Narayan Singh Manaklao
28. Dr. Radhakant Nayak
29. Shri Abdul Wahab Peevee
30. Shri Dharam Pal Sabharwal
31. Shri Veer Singh
32. Ms. Anusuiya Uikey
33. Shri Nand Kishore Yadav

SECRETARIAT

1. Dr. (Smt.) P.K. Sandhu — *Additional Secretary*
2. Shri Ashok Sarin — *Joint Secretary*
3. Shri R.K. Saxena — *Director*
4. Shri Bhupesh Kumar — *Deputy Secretary*
5. Shri Yash Pal Sharma — *Executive Assistant*

⁵ Shri Urkhao Gwra Brahma ceased to be a Member of the Committee consequent to his retirement from the Rajya Sabha *w.e.f.* April 9, 2008.

** Nominated *w.e.f.* 22 May, 2008.

*** Nominated *w.e.f.* 13 June, 2008.

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INTRODUCTION

I, the Chairperson of the Standing Committee on Social Justice and Empowerment having been authorized by the Committee to submit the Report on their behalf present the Thirty-sixth Report of the Committee on 'The Constitution (Scheduled Tribes) (Union Territories) Order (Amendment) Bill, 2007' of the Ministry of Tribal Affairs.

2. The Bill was introduced in Rajya Sabha on 27 November, 2007 and was referred to the Committee by the Hon'ble Speaker, Lok Sabha on 14 December, 2007 under Rule 331E (b) of the Rules of Procedure and Conduct of Business in Lok Sabha for examination and report.

3. The Committee wish to express their thanks to the representatives of the Ministry of Tribal Affairs, representatives of Ministry of Law and Justice (*Legislative Department*), representatives of Ministry of Home Affairs, Registrar General of India for tendering evidence and placing their considered views before the Committee and also for furnishing written notes and information as desired by the Committee in connection with the examination of the Bills.

4. The Committee considered and adopted the report on the Bill at their sitting held on 15th July, 2008.

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

NEW DELHI;
15 July, 2008

24 Asadha, 1930 (*Saka*)

SUMITRA MAHAJAN,
Chairperson,
Standing Committee on Social Justice
and Empowerment.

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REPORT

1.1 The Ministry of Tribal Affairs have intimated that according to the Constitution (Scheduled Tribes) (Union Territories) Order, 1951, the inhabitants of the Laccadive, Minicoy and Amindivi islands who, and both of whose parents were born in the Union Territory are deemed to be the Scheduled Tribes. The Constitution (Scheduled Tribes) (Union Territories) Order (Amendment) Bill, 2007 seeks to further amend the 1951 Order. In the Schedule to the Constitution (Scheduled Tribes) (Union Territories) Order, 1951, in Part I- Lakshadweep, the following proviso and Explanation are proposed to be inserted at the end of the proposed Bill, 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.

Explanation :- The term "settle permanently" shall have the same meaning as defined under clause 3 (I)(d) of the Lakshadweep Panchayats Regulation, 1994."

Background and reasons for the revision of the list of Scheduled Tribes in Union Territory of Lakshadweep.

1.2 The Ministry of Tribal Affairs in their note have stated that the Scheduled Tribes are notified by the Presidential Order under article 342 (1) of the Constitution. Subsequently, an Act of Parliament can only modify such an Order. Article 342 prescribes the procedure to be followed in the matter of specification of Scheduled Tribes.

"342. Scheduled Tribes:

(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 tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled 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 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."

(ii) The list of Scheduled Tribes is State/Union Territory specific and also community specific. The persons belonging to the notified Scheduled Tribes are eligible to get the benefit meant for such Tribes only in the State/Union Territory in respect of which the community has been notified.

1.3 Further, according to the Ministry, the list of Scheduled Tribes of Lakshadweep is contained in Part-I of the Schedule to the Constitution (Scheduled Tribes) (Union Territories) Order, 1951 as amended to date and all the inhabitants of Lakshadweep, who and both of whose parents were born in Lakshadweep have been given Scheduled Tribe status based on the principle of geographic isolation without reference to any community (A copy of the 1951 order is appended in Annexure-I). The entry is as under :

"Throughout the Union territory :-

Inhabitants of Laccadive, Minicoy and Amindivi Islands who, and both of whose parents, were born in those islands".

Need for Legislation

1.4 At the instance of the Committee the Ministry of Tribal Affairs have explained that they had received several representations from the Union Territory that Part I of the Schedule to the Constitution (Scheduled Tribes) (Union Territories) Order, 1951 was creating difficulties for certain islanders who were born on the mainland on account of non-availability of adequate health services in the Islands.

1.5 Seeing the genuine difficulties faced by the islanders, since the aforesaid Order provides that the person has necessarily to be born in the islands apart from his/her parents also having been born in the Islands for being considered as a member of the Scheduled Tribe community of Lakshadweep, such persons who are born outside the islands even to the inhabitants of the islands, were not treated as belonging to a Scheduled Tribe, the Ministry of Tribal Affairs introduced a bill namely "the Constitution (Scheduled Tribes) (Union Territories) Order (Amendment) Bill, 2003" to amend the list of Scheduled Tribes in relation to Lakshadweep in the Rajya Sabha on 5th March, 2003 (Annexure-II) with the following proviso:-

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"Throughout the Union Territory:-

Inhabitants of Laccadive, Minicoy and Amindivi Islands who, and both of whose parents, were born in those islands".

"Provided that the children who are born to inhabitants in any other place in the mainland of India on account of cases referred by the competent medical authority for safe delivery of the children by such inhabitants shall be deemed to be inhabitants born in the Islands if such children are brought to the Islands for inhabitation soon after their birth.

Provided further that the President may, by order, notify any authority as competent medical authority for the purposes of this part".

1.6 Explaining further in this regard, the Ministry have stated that the consideration of the above Bill was deferred on 9-4-2003 since the Ministry of Home Affairs was pressing for a more open ended amendment so as to include cases other than the medical ground cases covered by the afore-cited amendment Bill of 2003. Thereafter, the Ministry of Home Affairs also proposed the following amendment:-

"Throughout the Union Territory-

Inhabitants of Lakshadweep who, and both of whose parents, were born in those Islands".

"Provided 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 suggested the following definition of the expression "settle permanently".

"Settle permanently. means a minimum period of stay of 10 years either for education or otherwise in the Island of Lakshadweep".

1.7, According to the Ministry the definition of the term 'settle permanently' was deliberated upon in a meeting taken by Secretary (TA) on 6-4-2005 with the representatives of Ministry of Law & Justice, Ministry of Home Affairs, Registrar General of India (RGI), National Commission for Scheduled Tribes (NCST), and the UT Admn. of Lakshadweep with the limited agenda of defining "settle permanently"

as suggested by the Ministry of Home Affairs. After deliberations, the following formulation proposed by the Ministry of Home Affairs was agreed to:-

"Throughout the Union Territory:-

Inhabitants of Laccadive, Minicoy and Amindivi Islands who, and both of whose parents, were born in those islands.

Provided that if the 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".

(N.B.* Settle per permanently means a minimum period of 10 year's stay immediately after birth for education or otherwise in the islands of Lakshadweep).

Subsequently, the Ministry of Home Affairs, *vide* their letter dated 21.4.2005 intimated that the definition of "settle permanently" given by them may not be proceeded with and to await their revised comments. The Ministry of Home Affairs *vide* their OM number U-14011/2/2001-ANE dated 9.9.05 furnished the following definition:-

"Settle permanently would mean those who are ordinarily residents as defined under Clause 3(I)(d) of the Lakshadweep Panchayat Regulation, 1994", which is explained as under :-

3(I) 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 Panchayat):

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 purposes 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".

1.8 The Ministry of Tribal Affairs have added that the suggestion of the Ministry of Home Affairs regarding the definition of "settle permanently" was examined by them but 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. The Ministry of Home Affairs, however, did not accept this view and reiterated that the formulated and suggested by it be adopted.

1.9 The matter was discussed in many meetings and then finally, in a meeting between Hon'ble Minister of Home Affairs and Minister of Tribal Affairs on 23/05/2007, it was ordered that necessary action be initiated to bring in an amendment to the Bill already introduced in Rajya Sabha in 2003 incorporating the afore-cited formulation suggested by the Ministry of Home Affairs read with the definition of term 'settle permanently'.

1.10 The formulation suggested by the Ministry of Home Affairs has been considered and in consultation with the Ministry of Law & Justice (Legislative Department), it is proposed that 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.

Explanation : The term "settle permanently" shall have the same meaning as defined under Clause 3(I)(d) of Lakshadweep Panchayat Regulation, 1994".

Clause 3(I)(d) of the Lakshadweep Panchayat Regulation, 1994 reads as follows:-

"3(I) 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 Panchayat):

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 purposes 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."

1.11 Taking into account the above said facts, the proposals in the Bill introduced in 2003 have been revised and revised Bill namely "the Constitution (Scheduled Tribes) (Union Territories) Order (Amendment) Bill, 2007" has been introduced in the Rajya Sabha on 27/11/2007 so as to include case of inhabitants of the islands, who have been residing away from Lakshdweep due to educational or job requirements, etc., resulting in their children having been born in the mainland of India.

1.12 During interaction with the representatives of the Ministries of Tribal Affairs, Home Affairs, Law and Justice (Legislative Department) and Registrar General of India, Hon'ble Chairperson pointed out that in case of parents either of whom is born in and is inhabitant of the island but marries in other part of the country and settle permanently in the islands after marriage and desired to know whether their children would be conferred the status of Scheduled Tribe in the islands. She stated that she was asking that question because it had been agreed to that that was a geographical isolated area.

1.13 The Secretary, Ministry of Tribal Affairs replied that :-

"Madam, I would like to tell you that this community is tribal. There is a Supreme Court order that if a member of the family is tribal, and if he/she gets married to a person residing at some other place, in that case in which category their children will be treated, the order of the Supreme Court is quite clear in this regard, it says that it depends upon the children in which category he wants to be treated after his birth. If he wants to be treated as tribal, he will be regarded as tribal. If he does not want to be treated as tribal, he will be regarded as a non-tribal. But it has not been the case with regard to Lakshadweep*. The decision of the Apex Court, the Supreme Court, is very clear. In the case of Lakshadweep, geographical isolation is paramount. In the definition, the first part of the clause is that both parents must have been born to show that they are the inhabitants of Lakshadweep from the beginning."

* Originally spoken in Hindi.

1.14 In this context Registrar General of India also stated that:—

“I would like to add this thing as the Registrar General of India because we are only handling these cases. The geographical isolation is at the core of deciding that saying all right, we will give the benefit of Scheduled Tribe status to those who stay there. But, I think, the Entry is very carefully and wisely written that they must be born there so that the other communities do not take undue advantage of it; they do not go there, settle there and become the Scheduled Tribes. The benefit has to be given to the local community which is there and to those who are born there. I think this is a principle which holds good for most of the tribal areas. If I am born in Rajasthan as a tribe, then I am a tribal of that area. If I go from outside, settle down and marry somebody - I think Mr. Mukherjee has clarified what the Supreme Court's decision is - then, I get the benefit only under certain conditions. But here in the case of Lakshadweep, to see that nobody goes from outside and takes undue benefit of the geographical isolation, they have said that both the parents must be born there. I think this is a protection given to the local people of it.”

1.15 The Secretary, Ministry of Tribal Affairs added that :-

“We are not making changes in the fundamental and only doing minor modifications for convenience.”

1.16 In this connection, the Committee undertook a study visit to Lakshadweep from 21st to 23rd May, 2008 and interacted with individuals/groups/representatives etc. of Tribal Communities of Lakshadweep and heard their views on the proposed Bill. Divergent views were expressed by them before the Committee on the proposed amendment in the Bill which are as follows :-

- (i) Inhabitants of Lakshadweep islands do not want to lose their Scheduled Tribes status because of any reason whatsoever. However, children of the inhabitants of islands born in mainland due to reasons like medical, employment, education etc. should be given ST status.
- (ii) The main criteria of inclusion in the list of STs of Lakshadweep should be the status of residence i.e. ordinarily resident and permanent and continuous stay in Lakshadweep for the first fifteen years of one's life or before he attains the age of eighteen years.

- (iii) If an inhabitant of Lakshadweep marries a boy or girl from the mainland, their children should be given ST status.. However, in this connection it was also expressed by some that in case the parents are inhabitants of islands, only then their children should be given ST status. If either of them are not from islands, their children should not be given ST status. Another view that was put forth was that in case one of the parents marries in mainland, as a special category they may be classified as OBC and may be given consideration in proportion to their population in Lakshadweep.
- (iv) Non resident Lakshadweewians, who on their own preferred to settle in mainland to overcome the remoteness and backwardness arising out of it, should never be given the status of ST of Lakshadweep. Those born and brought up in mainland and residing in mainland and owning properties and business interest should not be considered for issue of ST certificates due to their current status and circumstances in mainland. Ownership of a piece of ancestral property or ancestral house should not be accepted as a ground for ST certificate.

1.17 The Committee observe that no particular community is listed as Scheduled Tribe in Lakshadawweep and all the inhabitants of the Union Territory irrespective of the community or religious affiliation are being treated as Scheduled Tribe in view of their socio-economic backwardness arising out of geographical isolation from the mainland. The Constitution (Scheduled Tribes) (Union Territories) Order 1951 provides that throughout the Union Territory, inhabitants of Laccadive, Minicoy and Amindivi islands who and both of whose parents were born in those islands are deemed to be the Scheduled Tribe. It is based on the principle of geographical isolation without reference to any community. However, the children of islanders who were born in the mainland on account of non-availability of adequate health services in the island or due to educational or job requirements etc., were not conferred the status of Scheduled Tribe in the island. Keeping such difficulties faced by the inhabitants of Lakshadweep the present Bill envisages to insert a proviso wherein 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 island.

1.18 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 (Scheduled Tribe) (Union Territory) 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 in possession of a dwelling house therein'.

1.19 The Committee further desire that the suggestions/views expressed before the Committee by the individuals/groups/representatives of tribal community of Lakshadweep may also be considered before finalizing the proposed amendment in the Bill.

NEW DELHI;
15 July, 2008

24 Asadha, 1930 (Saka)

SUMITRA MAHAJAN,
Chairperson,
Standing Committee on Social Justice
and Empowerment.

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ANNEXURE I

THE CONSTITUTION (SCHEDULED TRIBES) ² [(UNION TERRITORIES)] ORDER, 1951

(C.O.33)

In exercise of the powers conferred by clause (1) of article 342 of the Constitution of India, as amended by the Constitution (First Amendment) Act, 1951, the President is pleased to make the following Order namely: -

1. This Order may be called the Constitution (Scheduled Tribes) ² [(Union Territories)] Order, 1951
2. The tribes or tribal communities, or parts of, or groups within, tribes or tribal communities specified in ³ [Parts I and II] of the schedule to this order, shall, in relation to the ² [Union territories] to which those parts respectively relate, be deemed to be Scheduled Tribes so far as regards members thereof resident in the localities specified in relation to them respectively in those parts of that Schedule.

³ [3. Any reference in this Order to a Union territory in Part I of the Schedule shall be construed as a reference to that territory constituted as a Union territory as from the 1st day of November 1956 ⁴ [and any reference to a Union territory in Part II of the Schedule shall be construed as a reference to the territory constituted as a Union territory as from the day appointed under clause (b) of section 2 of the Goa, Daman and Diu Reorganization Act, 1987].

² [THE SCHEDULE]

**	**	**	**
**	**	**	**

⁷ [Part I-Lakshadweep]

Throughout the Union territory: -

Inhabitants of the Laccadive, Minicoy and Aminidivi islands who, and both of whose parents, were born in those islands.

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[Part II-Daman and Diu]

Throughout the Union territory: -

1. Dhodia
2. Dubla (Halpati)
3. Naikda (Talavia)
4. Siddi (Nayaka)
5. Varli.]

-
1. Published with the Ministry of Law Notifn. No. S.R.O. 1427E, dated the 20th September, 1951, Gazette of India, Extraordinary, 1951, Part II, Section 3, page 11980.
 2. Subs. by the Scheduled Castes and Scheduled Tribes List (Modification) Order 1956.
 3. Subs. by Act 18 of 1987, 19 and Second Sch. (w.e.f. 30.5.1987).
 4. Ins. by *ibidi*. (w.e.f. 30.5.1987).
 5. Entry relating to Himachal Pradesh omitted by Act 53 of 1970, 20 and the Fourth Sch. (w.e.f. 21.1.1971).
 6. Parts II and III relating to Manipur and Tripura respectively omitted by Act 81 of 1971, s 26 (2) and Sch. V (w.e.f. 21.1.1972).
 7. Subs. by the Laccadive, Minicoy and Aminidivi Islands (Alteration of Name) Adaptation of laws Order, 1974, for "Part I - The Laccadive, Minicoy and Amindivi Island" (w.e.f. 1.11.1973).

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ANNEXURE II

As introduced in Rajya Sabha on 5th March, 2003

Bill No. XVIII of 2003

THE CONSTITUTION (SCHEDULED TRIBES) (UNION TERRITORIES) ORDER (AMENDMENT) BILL, 2003

A

BILL

further to amend the Constitution (Scheduled Tribes) (Union Territories) Order, 1951.

Be it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

1. This Act may be called the Short Title. Constitution (Scheduled Tribes) (Union Territories) Order (Amendment) Act, 2003.

2. In the Schedule to the Constitution (Scheduled Tribes) (Union Territories) Order, 1951, in Part I—Lakshadweep, the following provisos shall be inserted at the end, namely:—

Amendment of Part I of Constitution (Scheduled Tribes) (Union Territories) Order, 1951.
"Provided that the children who are born to inhabitants in any other place in the mainland of India on account of cases referred by the competent medical authority for safe delivery of the children by such inhabitants shall be deemed to be inhabitants born in the islands if such children are brought to the islands for inhabitation soon after their birth:

Provided further that the President may, by order, notify any authority as competent medical authority for the purposes of this Part."

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AS INTRODUCED IN RAJYA SABHA

27 NOV 2007

Bill No. LXXX of 2007

THE CONSTITUTION (SCHEDULED TRIBES) (UNION TERRITORIES)
ORDER (AMENDMENT) BILL, 2007.

A
BILL

to amend the Constitution (Scheduled Tribes) (Union Territories) Order, 1951.

BE it enacted by Parliament in the Fifty-eighth Year of the Republic of India as follows:—

1. This Act may be called the Constitution (Schedule Tribes) (Union Territories) Order (Amendment) Act, 2007. Short title.

2. In the Schedule to the Constitution (Schedule Tribes) (Union Territories) Order, 1951, in Part I.—Lakshadweep, the following proviso and Explanation shall be inserted at the end, namely:— Amendment of Part I of Constitution (Scheduled Tribes) (Union territories) Order, 1951.

“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.”

Explanation.— The term “settle permanently” shall have the same meaning as defined under clause 3(1)(d) of the Lakshadweep Panchayats Regulation, 1994.”

F.No.12016/11/2001- C&LM-1
 Government of India
 Ministry of Tribal Affairs

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Sec. 11

THE GAZETTE OF INDIA EXTRAORDINARY

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(ii) the drains attached to any such street or road and the land which lies on either side of the roadway upto the boundaries of the adjacent property;

(iv) "tax" means a ~~levy~~ cess, rate or other impost leviable under this Regulation but does not include a fee;

(v) "Union territory" means the Union territory of Lakshadweep.

CHAPTER II

GRAM SABHA

3. (1) 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 Panchayat):

Membership of Gram Sabha.

Provided that a person shall be disqualified for being a member of the Gram Sabha if he—

(a) is less than 18 years of age;

(b) is not a citizen of India;

(c) is of unsound mind and stand so declared by a competent court; and

(d) is not ordinarily a resident within the Island for which the Gram Sabha is established. Explanation.— For the purposes 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.

4. (1) A member of a Gram Sabha shall cease to be a member, if—

(a) he is disqualified under section 12; or

(b) the area where he resides has been excluded from the jurisdiction of the Gram Sabha; or

(c) he ceases to be ordinarily resident within the jurisdiction of the Gram Sabha.

Cessation of membership.

(2) Where any person ceases to be a member of a Gram Sabha under sub-section (1), he shall also cease to hold any office to which he may have been elected or appointed by reason of his being a member thereof.

5. The prescribed authority under the superintendence, direction and control of the Election Commission shall cause to be prepared an electoral roll in the prescribed manner. Such electoral roll shall, among other things, contain the names of all persons entitled under section 3 to be the members of the Gram Sabha and such electoral roll shall be revised at least once in a financial year in the prescribed manner.

Electoral roll of members of Gram Sabha.

6. (1) Every Gram Sabha shall hold general meetings in each financial year, one before the harvesting of the crop and the other after the harvesting of the crop:

Meetings of Gram Sabha.

Provided that the Pradhan shall, upon a requisition in writing by not less than one-fifth of the numbers of members of the Gram Sabha, within thirty days of the receipt of such requisition, call an extra-ordinary general meeting of the Gram Sabha.

(2) The Pradhan or in his absence, the Up-Pradhan or in the absence of both, any person chosen by the Gram Sabha shall preside at such meeting.

(3) The times of the time and place of all meetings of the Gram Sabha shall



सत्यमेव जयते

भारत सरकार

राष्ट्रीय अनुसूचित जनजाति आयोग

GOVERNMENT OF INDIA

NATIONAL COMMISSION FOR SCHEDULED TRIBES

No. RU-4/Policy-1/Incl./Lakshadweep-1/2007

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उत्ती 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 10.12.2008

To,

- 1) Smt. Urmila Singh, Chairperson,
- 2) Shri Maurice Kujur, Vice-Chairperson
- 3) Shri Tsering Samphel, Member
- 4) Shri Oris Syiem Myriaw, Member

Sub: Comments on the recommendations of the Standing Committee on Social Justice & Empowerment on the Constitution (Scheduled Tribes) (Union Territories) Order (Amendment) Bill, 2007 in relation to the UT of Lakshadweep.

Sir/Madam,

In continuation of this Commission's letter of even number, dated 20.11.2008 circulating therewith the papers received from the Ministry of Tribal Affairs on the subject mentioned above, I am to circulate herewith a copy of letter No. 12016/11/2001-C&LM-1, dated 02.12.2008 alongwith copies of that Ministry's letter No. 12026/6/2006-C&LM-1, dated 03.10.2008 and the copies of the judgments of the Hon'ble Supreme Court referred to in para 1.13 of the 36th Report of the Standing Committee on Social Justice & Empowerment. The Report of the Standing Committee contains its recommendations/suggestions in regard to the explanation of the term "settle permanently" appearing under clause 2 of the Constitution (Scheduled Tribes) (Union Territories) Order (Amendment) Bill, 2007.

It is requested that the comments in the matter may be forwarded to the undersigned urgently.

Yours faithfully,

(Aditya Mishra)
Joint Secretary

Copy with copy of enclosure for information to:

1. Secretary, NCST
2. Joint Secretary, NCST
3. Director (VA)
4. Director (RCD)
5. Deputy Secretary (RU-IV)
6. PS to Chairperson

S.No. 10

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F. No. 12016/11/2001-C&LM-I
Government of India
Ministry of Tribal Affairs

Shastri Bhawan, New Delhi-115
Dated: 2nd December, 2008

To,

The Joint Secretary,
National Commissioner for Scheduled Tribes,
Lok Nayak Bhavan,
New Delhi.

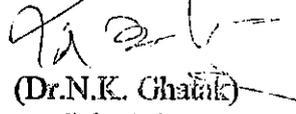
**Sub: Comments on Amendment in Part I of the Schedule to the Constitution (STs)
(UTs) Order 1951, in relation to the list of Scheduled Tribes in UT of Lakshadweep**

Sir,

I am directed to refer to the National Commission for Scheduled Tribes letter No. RU-
Policy-1/Inclusion/Lakshadweep-1/2007 dated 27.11.08 on the subject cited above and to inform
that the guidelines on legal views on the caste status of the offsprings where one spouse is a non
Scheduled Tribe has been sent to the all State Governments/UT Admn., Central
Ministries/Departments and other related agencies including National Commission for Scheduled
Tribes vide this Ministry's letter No.12026/6/2006-C&LM.I dated 3.10.08 wherein the related
judgements of the Hon'ble Supreme Court have been cited.(copy enclosed).

It is, therefore, requested that the comments of the Commission on the above subject may
kindly be furnished to this Ministry at the earliest so as to enable this Ministry to submit the proposal
to the Cabinet for approval.

Yours faithfully,



(Dr.N.K. Ghatak)

Joint Director

Telefax No.23383965

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F.No.12026/6/2006-C&LM.I
Government of India
Ministry of Tribal Affairs
(C&LM Division)

Shastri Bhavan, New Delhi-1.
Dated the 3rd October 2008

To,
The Secretary,
National Commission for Scheduled Tribes,
Lok Nayak Bhavan, New Delhi.

Subject: Legal views on the status of the offsprings of a couple where one of the spouses is a member of a Scheduled Tribe

Sir/Madam,

I am directed to say that a set of legal views on the caste status of such offsprings where one spouse is a non-Scheduled Tribe was already brought out, vide the then Ministry of Home Affairs' letter No.39/37/73-SCT.I, dated 4th March, 1975 and 21st May, 1977 (copy enclosed for ready reference). The matter has, however, been further examined in view of a recent judgment of Supreme Court involving the offspring of a couple where the mother belonged to a Scheduled Tribe and the father was a non Scheduled Tribe (belonging to a forward community), in the case of titled Anjan Kumar Vs. Union of India reported in (2006) 3SCC 257 wherein the Supreme Court has, after discussing earlier decisions of the Court on this issue, said that in view of the catena of decisions of the Supreme Court, the questions raised are no more res integra. The Court has further stated that 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.(para 14)

Furthermore, the Supreme Court has stated that 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 (para 15).

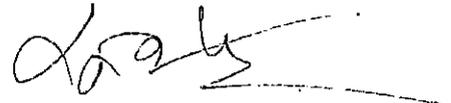
It is significant to note that Supreme Court in the said case has also remarked that the women (if she belongs to a Forward Class) cannot attain the status of tribal unless she has been accepted by the community as one of them.....(para 6) and that by no stretch of imagination, a casual visit to the relative in other village would provide the status of a permanent resident of the village or acceptance by the village community as a member of the tribal community" (para 7).

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In view of the above, the caste certificate issuing authorities may ensure that each individual case is examined in the light of existing facts and circumstances of such cases, keeping in mind the instructions of MHA cited above and the Supreme Court's observations in the case referred above. A copy of the Supreme Court decision in the said case of Shri Anjan Kumar Vs. Union of India and others is enclosed for ready reference.

It is requested that these instructions may be circulated among all the authorities empowered to issue Scheduled Tribe certificates.

Yours faithfully,



(Dr.N.K. Ghatak)
Joint Director
Telefax No.23383965

o/c

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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

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ANNEXURE—A

Legal views on the status of the offspring of a couple where one of the spouses is a member of a Scheduled 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 Savarn Aurasas—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 Keed 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 castes. 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 I 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.

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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 conversation 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 Road 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. Masilamam 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.

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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.

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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.

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ANIAN KUMAR

Appellant;

Versus

UNION OF INDIA AND OTHERS

Respondents.

Civil Appeal No. 6445 of 2000[†], decided on February 14, 2006

- b A. Constitution of India — Arts. 342, 16 and 13 — Scheduled Tribe (ST) — Grant of tribe certificate — Claim in respect of, made by offshoot of wedlock between a tribal woman and a non-tribal man — Maintainability — Held, condition precedent for granting tribe certificate is that one must suffer disabilities wherefrom one belongs — Hence, offshoot of the aforesaid wedlock cannot claim status of ST — However, offshoots of wedlock between a tribal man and a non-tribal woman would attain the tribal status
- c — Circular issued by Govt. holding that children born out of marriage between a Scheduled Tribe woman and non-Scheduled Tribe man would be treated as members of ST community if the marriage is accepted by the community and children are treated as members of their own community, held, was of no assistance in the face of the constitutional provisions as well as on the facts of the case, namely, that the parents underwent a court marriage, petitioner was brought up in the city in the environment of forward community — Casual visit to village, held, did not amount to acceptance by the tribal community — Cordial relationship with tribal community not enough — Scheduled Castes and Tribes — Constitution (Scheduled Tribes) Order, 1950 — Scheduled Castes and Tribes — Caste certificate

- e B. Constitution of India — Arts. 342, 16 and 13 — Scheduled Tribe — Acquisition of status of — Claim in respect of, based on circular issued by Govt. in relation thereto — Maintainability — Held, such circulars not law within the meaning of Art. 13 — Hence, could be of no assistance to the appellant in the face of the constitutional provisions — Administrative Law — Subordinate/Delegated legislation — Circular — Status of — Held, is not law — Also cannot operate if contrary to constitutional provisions — Administrative Law — Ultra vires — Circular contrary to constitutional provisions — Can be of assistance — Scheduled Castes and Tribes — Status as a Scheduled Tribe

f C. Constitution of India — Arts. 341, 342, 15(4), 16(4) and 16(4-A) — Object of, restated

The sole question involved in the present appeal was whether the offshoot of the wedlock between a tribal woman and a non-tribal man could claim status of Scheduled Tribe and get the Scheduled Tribe certificate.

- g The appellant was the offshoot of the wedlock between L and K. Husband L belonged to a Forward Class whereas wife K belonged to a Scheduled Tribe. By an order dated 7-8-1992 a Scheduled Tribe certificate was issued to the appellant by SDM on the ground that the mother of the appellant belonged to Oraon Tribe which was recognised as a Scheduled Tribe in the State concerned. The appellant appeared for the Civil Service Examination conducted by the Union Public Service Commission claiming himself to be a Scheduled Tribe candidate. He was

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[†] From the Judgment and Order dated 3-12-1999 of the Madhya Pradesh High Court in LPA No. 138 of 1999

finally selected in the said examination. He was also allotted Indian Information Service Grade A. However, the appellant did not receive any final posting order, which resulted in filing of many representations to the Union of India.

Dismissing the appeal with costs, the Supreme Court

Held:

The appellant is not entitled to get the Scheduled Tribe certificate. (Para 16)

The condition precedent for granting tribe certificate is 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 that such offshoot was brought up in the atmosphere of Forward Class and he is not subjected to any disability. However, the situation will be different in a case where a tribal man marries a non-tribal woman. In that case the offshoots of such wedlock would obviously attain the tribal status. (Paras 14 and 6)

Valsamma Paul v. Cochin University, (1996) 3 SCC 545 : 1996 SCC (L&S) 772 : (1996) 33 ATC 713, *relied on*

Muridhar Dayandeo Kesekar v. Vishwanath Pandu Barde, 1995 Supp (2) SCC 549; *R. Chandevaramappa v. State of Karnataka*, (1995) 6 SCC 309, *cited*

The object of Articles 341, 342, 15(4), 16(4) and 16(4-A) is to provide preferential treatment for the Scheduled Castes and Scheduled Tribes having regard to the economic and educational backwardness and other disabilities wherefrom they suffer. So also, considering the typical characteristic of the tribal including a common name, a contiguous territory, a relatively uniform culture, simplistic way of life and a tradition of common descent, the transplantation of the outsiders as members of the tribe or community may dilute their way of life apart from the fact that such persons do not suffer any disabilities. (Para 9)

The appellant has referred to a circular dated 4-3-1975 issued by the Government of India, Ministry of Home Affairs on the subject "Status of children belonging to the couple one of whom belongs to Scheduled Castes/Scheduled Tribes". He particularly referred to the portion when a Scheduled Tribe woman marries a non-Scheduled Tribe man, the children from such marriage may be treated as members of the Scheduled Tribe community, if the marriage is accepted by the community and the children are treated as members of their own community. Such circulars issued from time to time, not being law within the meaning of Article 13 of the Constitution, it would be of no assistance to the appellant on the face of the constitutional provisions. Further, the facts of this case are however different with the facts in which the circular was sought to be clarified. (Para 5)

The marriage of the appellant's mother a tribal woman to a Forward Class husband was a court marriage performed outside the village. Ordinarily, the court marriage is performed when either of the parents of bride or bridegroom or the community of the village objects to such marriage. In such a situation, the bride or the bridegroom suffers the wrath of the community of the village and runs the risk of being ostracised or excommunicated from the village community. Further, the couple settled down in a city and their son, the appellant was also born and brought up in the environment of forward community. As such, the appellant did not suffer any disability from the society to which he belonged. The visits of the appellant to the village during recess/holidays and cordial relationship between the appellant and the village community would not amount to acceptance of the appellant by the village community. By no stretch of imagination, a casual visit



to the relative in a village would provide the status of permanent resident of the village or acceptance by the village community as a member of the tribal community. (Paras 6 and 7)

D. Constitution of India — Arts. 342, 341, 16, 15(4), 14 and 21 — Scheduled Castes/Scheduled Tribes — Claim of status of, by procuring fake/bogus caste/tribe certificate — Held, is a fraud under the Constitution — If one obtains appointment/admission from reserved quota on the basis of such bogus certificate, a meritorious reserved candidate may be deprived of reserved category for whom the post is reserved. This would lead to violation of Arts. 14 and 21 — SC/ST 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 — Therefore, before issuing the caste/tribe certificate, the authority concerned is duty-bound to satisfy itself that the applicant suffered the aforesaid disabilities — Authority issuing such certificates in a routine manner would be committing a dereliction of constitutional duty — Fraud — Scheduled Castes and Tribes — Caste certificate (Paras 14 and 15)

Kumari Madhuri Patil v. Addl. Commr., Tribal Development, (1994) 6 SCC 241 : 1994 SCC (L&S) 1349 : (1994) 28 ATC 259; *Director of Tribal Welfare, Govt. of A.P. v. Laveti Giri*, (1995) 4 SCC 32 : 1995 SCC (L&S) 914 : (1995) 30 ATC 166; *Punit Rai v. Dinesh Chaudhary*, (2003) 8 SCC 204; *Valsamma Paul v. Cochin University*, (1996) 3 SCC 545 : 1996 SCC (L&S) 772 : (1996) 33 ATC 713, *relied on*

E. Constitution of India — Arts. 342 and 16 — Scheduled Tribe — Reservation for — Woman of Forward Class marrying a tribal man — Status of — If could be treated as tribal — If entitled for appointment to post reserved for ST — Held, such woman cannot automatically attain the status of tribal unless accepted by the community concerned — Mode of the said acceptance, indicated — Mere acceptance of the marriage by the community itself would not entitle such woman to claim the appointment to the post reserved for ST — Service Law — Reservation — Scheduled Castes and Tribes — Reservation (Para 6)

F. Words and Phrases — "Tribe" — Meaning of — Earlier decision of Supreme Court and certain books referred to in this regard — Constitution of India, Arts. 342, 15(4), 16(4) and (4-A) — Scheduled Castes and Tribes — Tribe — Meaning of (Para 8)

State of Kerala v. Chandramohanam, (2004) 3 SCC 429 : 2004 SCC (Cri) 818, *referred to*
Dr. Jai Prakash Gupta: The Customary Laws of the Munda and the Oraon; *Bhowmik, K.L.: Tribal India: A Profile in Indian Ethnology*, *referred to*

W-M/ATZ/33838/CL

Advocates who appeared in this case :

M.N. Krishnamani, Senior Advocate (Rana Ranjit Singh and Samyjit Pani, Advocates, with him) for the Appellant;
Vikas Singh, Additional Solicitor General (Ashish Kumar, V.K. Verma and P. Parameswaran, Advocates, with him) for the Respondents;
Atul Jha, Nirmal Mittal, D.K. Sinha, Rajesh Srivastava and B.S. Banthia, Advocates, for the State of Chhattisgarh.

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2. (2003) 8 SCC 204, <i>Punit Rai v. Dinesh Chaudhary</i>		263f, 263g
3. (1996) 3 SCC 545 : 1996 SCC (L&S) 772 : (1996) 33 ATC 713, <i>Valsamma Paul v. Cochin University</i>		264a

4. (1995) 6 SCC 309, *R. Chandevorappa v. State of Karnataka* 264g
 5. (1995) 4 SCC 32 : 1995 SCC (L&S) 914 : (1995) 30 ATC 166, *Director of Tribal Welfare, Govt. of A.P. v. Laveti Giri* 263f a
 6. 1995 Supp (2) SCC 549, *Murlidhar Dayandeo Kesekar v. Vishwanath Pandu Barde* 264f-g
 7. (1994) 6 SCC 241 : 1994 SCC (L&S) 1349 : (1994) 28 ATC 259, *Kumari Madhuri Patil v. Addl. Commr., Tribal Development* 263c

The Judgment of the Court was delivered by

H.K. SEMA, J.— The appellant Shri Anjan Kumar is the offshoot of the wedlock between Shri Lakshmi Kant Sahay, District Gaya in the State of Bihar and Smt Angela Tigga who belongs to Scheduled Tribe community of Oraon Tribe, Village Pondi Potkona, Distt./Division Raigarh, State of Madhya Pradesh. By an order dated 7-8-1992 Scheduled Tribe certificate was issued to the appellant by SDM, Gaya on the ground that the mother of the appellant Smt Angela Tigga belongs to Oraon Tribe which is recognised as a Scheduled Tribe in the State of Madhya Pradesh. The appellant appeared for the Civil Service Examination in 1991 conducted by the Union Public Service Commission claiming himself to be a Scheduled Tribe candidate. In the said examination he had passed the written test but could not qualify in the interview. He again appeared in the Civil Service Examination conducted by the Union Public Service Commission in the year 1992 and passed the written examination. In 1993 he was called for interview. The result of the successful candidates was published and he stood at 759th rank in order of merit. He was also allotted Indian Information Service Grade A. However, the appellant did not receive any final posting order, which had resulted in filing many representations to the Union of India. In one of the representations dated 14-9-1994 the appellant also stated that he belongs to Scheduled Tribe category and his sub-caste is Oraon.

2. Having failed to receive any positive response from the respondents, he filed an original application before the Central Administrative Tribunal, Principal Bench, New Delhi being OA No. 2291 of 1994, inter alia, seeking direction to the Union of India to allow the appellant to join training. In response to the notice issued by the Tribunal, the Union of India, by its letter dated 9-11-1994, conveyed to the Tribunal that the appellant has not been brought up in tribal environment and that his father is a non-tribal and, therefore, he cannot be treated as a Scheduled Tribe. Further, the Union of India, as directed by the Tribunal, conducted the enquiry into the question whether the appellant belongs to Scheduled Tribe community and the enquiry was conducted by the Additional District Collector, Jaispurnagar, District Raigarh, Madhya Pradesh and the report was submitted on 26-6-1995. The enquiry report obviously was against the appellant. After examining the enquiry report submitted as aforesaid, the Tribunal ultimately dismissed the Original Application No. 2291 of 1994 by order dated 12-12-1995. Aggrieved thereby the appellant filed a writ petition being CWP No. 647 of 1997 before the High Court of Madhya Pradesh at Jabalpur, inter alia, challenging the enquiry report submitted by the enquiry officer on the allegation of violation of the principles of natural justice inasmuch as no opportunity of hearing had been accorded to the appellant. The learned

Single Judge of the High Court examining the records and the enquiry report, submitted by the enquiry officer, dismissed the writ petition by order dated 22-1-1999. The appellant thereafter carried an unsuccessful appeal before the Division Bench in LPA No. 138 of 1999, which was dismissed by the LPA Bench on 3-12-1999. Hence, the present appeal by special leave.

3. We have heard the parties at length.

4. The sole question which calls for determination in this appeal is, as to whether the offshoot of the tribal woman married to non-tribal husband could claim status of Scheduled Tribe and on the basis of which the Scheduled Tribe certificate could be given.

5. It is contended by Mr M.N. Krishnamani, learned Senior Counsel that the enquiry officer conducted the enquiry behind the back of the appellant and therefore, the learned Single Judge as well as the Division Bench erred in law dismissing the petition/appeal by placing reliance on the enquiry report and the material collected during the course of the enquiry. He further contended that the marriage of mother of the appellant (Scheduled Tribe) and the father of the appellant (Kayastha) has been approved and accepted by the community of the village and the appellant has been transplanted into the Tribal community and therefore, he was entitled to the Scheduled Tribe certificate which was correctly granted. In this connection, he has referred to a circular dated 4-3-1975 issued by the Government of India, Ministry of Home Affairs on the subject "Status of children belonging to the couple one of whom belongs to Scheduled Castes/Scheduled Tribes". He particularly referred to the portion when a Scheduled Tribe woman marries a non-Scheduled Tribe man, the children from such marriage may be treated as members of the Scheduled Tribe community, if the marriage is accepted by the community and the children are treated as members of their own community. Such circulars issued from time to time, being not law within the meaning of Article 13 of the Constitution, it would be of no assistance to the appellant on the face of the constitutional provisions. Further, the facts of this case are however different with the facts in which the circular was sought to be clarified.

6. Undisputedly, the marriage of the appellant's mother (tribal woman) to one Lakshmi Kant Sahay (Kayastha) was a court marriage performed outside the village. Ordinarily, the court marriage is performed when either of the parents of bride or bridegroom or the community of the village objects to such marriage. In such a situation, the bride or the bridegroom suffers the wrath of the community of the village and runs the risk of being ostracised or excommunicated from the village community. Therefore, there is no question of such marriage being accepted by the village community. The situation will, however, stand on different footing in a case where a tribal man marries a non-tribal woman (Forward Class) then the offshoots of such wedlock would obviously attain the tribal status. However, the woman (if she belongs to a Forward Class) cannot automatically attain the status of tribal unless she has been accepted by the community as one of them, observed all rituals, customs and traditions which have been practised by the tribals from time immemorial and accepted by the community of the village as a member of





tribal society for the purpose of social relations with the village community. Such acceptance must be by the village community by a resolution and such resolution must be entered in the Village Register kept for the purpose. Often than not, such acceptance is preceded by feast/rituals performed by the parties where the elders of the village community participated. However, acceptance of the marriage by the community itself would not entitle the woman (Forward Class) to claim the appointment to the post reserved for the reserved category. It would be incongruous to suggest that the tribal woman, who suffered disabilities, would be able to compete with the woman (Forward Class) who does not suffer disabilities wherefrom she belongs but by reason of marriage to tribal husband and such marriage is accepted by the community would entitle her for appointment to the post reserved for the Scheduled Castes and Scheduled Tribes. It would be a negation of constitutional goal.

7. It is not disputed that the couple performed court marriage outside the village; settled down in Gaya and their son, the appellant also born and brought up in the environment of forward community did not suffer any disability from the society to which he belonged. Mr Krishnamani, learned Senior Counsel contended that the appellant used to visit the village during recess/holidays and there was cordial relationship between the appellant and the village community, which would amount to the acceptance of the appellant by the village community. By no stretch of imagination, a casual visit to the relative in other village would provide the status of permanent resident of the village or acceptance by the village community as a member of the tribal community.

8. The "tribe" has been characterised by Dr. Jai Prakash Gupta in *The Customary Laws of the Munda and the Oraon* quoted by this Court in *State of Kerala v. Chandramohanani*¹, (SCC at p. 432, para 4) as under:

"Tribe has been defined as a social group of a simple kind, the members of which speak common dialect, have a single Government and act together for such common purposes as warfare. Other typical characteristics include a common name, a contiguous territory, a relatively uniform culture or way of life and a tradition of common descent. Tribes are usually composed of a number of local communities e.g. bands, villages or neighbourhoods and are often aggregated in clusters of a higher order called nations. The term is seldom applied to societies that have achieved a strictly territorial organisation in large States but is usually confined to groups whose unity is based primarily upon a sense of extended kinship ties though it is no longer used for kin groups in the strict sense, such as clans."

9. Swamik, K.L. in *Tribal India: A Profile in Indian Ethnology* observed:

"Tribe in the *Dictionary of Anthropology* is defined as 'a social group, usually with a definite area, dialect, cultural homogeneity, and unitary social organisation. It may include several subgroups, such as hamlets or villages. A tribe ordinarily has a leader and may have a common

ancestor, as well as patron deity. The families or small communities making up the tribe are linked through economic, social, religious, family, or blood ties."

(SCC pp. 432-33, para 4)

9. The object of Articles 341, 342, 15(4), 16(4) and 16(4-A) is to provide preferential treatment for the Scheduled Castes and Scheduled Tribes having regard to the economic and educational backwardness and other disabilities wherefrom they suffer. So also considering the typical characteristic of the tribal including a common name, a contiguous territory, a relatively uniform culture, simplistic way of life and a tradition of common descent, the transplantation of the outsiders as members of the tribe or community may dilute their way of life apart from such persons do not suffer any disabilities. Therefore, the condition precedent for a person to be brought within the purview of the Constitution (Scheduled Tribes) Order, 1950, one must belong to a tribe and suffer disabilities wherefrom they belong.

10. In *Kumari Madhuri Patil v. Addl. Commr., Tribal Development*² this Court denounced the practice of persons claiming benefits conferred on STs by producing fake, false and fraudulent certificates: (SCC p. 254, para 13)

"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."

11. Similar view was reiterated in *Director of Tribal Welfare, Govt. of A.P. v. Laveti Giri*³. In the case of *Punit Rai v. Dinesh Chaudhary*⁴ this Court at p. 221 in para 39 observed as under:

"39. A person in fact not belonging to the Scheduled Caste, if claims himself to be a member thereof by procuring a bogus caste certificate, would be committing fraud on the Constitution. No court of law can encourage commission of such fraud."

12. Further in *Punit Rai case*⁴ in para 27, this Court observed that: (SCC p. 219)

"27. The caste system in India is ingrained in the 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 intercaste marriage."

² (1994) 6 SCC 241 : 1994 SCC (L&S) 1349 : (1994) 28 ATC 259
³ (1995) 4 SCC 32 : 1995 SCC (L&S) 914 : (1995) 30 ATC 166

13. In the case of *Valsamma Paul v. Cochin University*⁵ this Court again examined the entire gamut and came to the conclusion that the condition precedent for acquiring Scheduled Tribes certificate one must suffer the disabilities—socially, economically and educationally. The facts of that case are important and may be recited in a nutshell. Two posts of Lecturers in Law Department of Cochin University were notified for recruitment, one of which was reserved for Latin Catholics (Backward Class Fishermen). The appellant was a Syrian Catholic (a Forward Class). She married a Latin Catholic (Backward Class Fishermen) and had applied for selection as a reserved candidate. The University selected her on that basis and accordingly appointed her against the reserved post. Her appointment was questioned by another candidate by filing a writ petition praying for a direction to the University to appoint the petitioner in place of the appellant. The learned Single Judge allowed the writ petition. On appeal being filed before the Division Bench concerning the important question of law a reference was made to the Full Bench. The Full Bench held that though the appellant was married according to the Canon Law, the appellant being a Syrian Catholic by birth (Forward Class), by marriage with the Latin Catholic (Backward Class Fishermen) is not member of that class nor can she claim the status as a Backward Class by marriage. On an appeal being preferred before this Court against the decision of the Full Bench this Court after referring to various decisions of this Court upheld the judgment of the Full Bench. This Court held in paras 33 and 34 as under: (SCC pp. 565-66)

"33. However, the question is: Whether a lady marrying a Scheduled Caste, Scheduled Tribe or OBC citizen, or one transplanted by adoption or any other voluntary act, ipso facto, becomes entitled to claim reservation under Article 15(4) or 16(4), as the case may be? It is seen that Dalits and Tribes suffered social and economic disabilities recognised by Articles 17 and 15(2). Consequently, they became socially, culturally and educationally backward; the OBCs also suffered social and educational backwardness. The object of reservation is to remove these handicaps, disadvantages, sufferings and restrictions to which the members of the Dalits or Tribes or OBCs were subjected and was sought to bring them in the mainstream of the nation's life by providing them opportunities and facilities.

34. In *Murlidhar Dayandeo Kesekar v. Vishwanath Pandu Barde*⁶ and *R. Chandevaramappa v. State of Karnataka*⁷ this Court had held that economic empowerment is a fundamental right to the poor and the State is enjoined under Articles 15(3), 46 and 39 to provide them opportunities. Thus, education, employment and economic empowerment are some of the programmes the State has evolved and also provided reservation in admission into educational institutions, or in case of other economic

⁵ 1996) 3 SCC 545 : 1996 SCC (L&S) 772 : (1996) 33 ATC 713

⁶ 1995 Supp (2) SCC 549

⁷ (1995) 6 SCC 309

benefits under Articles 15(4) and 46, or in appointment to an office or a post under the State under Article 16(4). Therefore, when a member is transplanted into the Dalits, Tribes and OBCs, he/she must of necessity also have had undergone the same handicaps, and must have been subjected to the same disabilities, disadvantages, indignities or sufferings so as to entitle the candidate to avail the facility of reservation. A candidate who had the advantageous start in life being born in Forward Caste and had march of advantageous life but is transplanted in Backward Caste by adoption or marriage of 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 Articles 15(4) and 16(4) of the Constitution."

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 Castes or Scheduled Tribes 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.

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 dereliction of constitutional duty.

16. In the result, there is no merit in this appeal and it deserves to be dismissed with costs. The tribe certificate dated 7-8-1992 procured by the appellant by misrepresentation of the facts is quashed and set aside.

17. The appeal is dismissed with costs.

Revised

Comments the NCST on the decisions taken in the third meeting of NTCA held on 21-05-2008 on the issues concerning the Scheduled Tribes.

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Sl. No.	Decision of NTCA	Comments
1.	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 to be relocated from tiger reserves and protected areas should be identified on a priority basis. This should be done by following the due consultation process as the issue of livelihood of habitants of relocated villages has to be addressed simultaneously. It should be ensured that relocation process is carried out peacefully and proper and effective measures are taken for 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. A representative of the Ministry of Home Affairs should invariably be associated with future meetings of NTCA.
2.	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.	The Commission may agree with the decision to ensure that the provisions of the STs and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (Annexure-IV) are given due importance in carrying out the process of relocation

	<p>of villages to ensure that there is no forceful relocation. Provisions contained in clause 4(2) of this Act and 38 O(2) of the Wildlife Protection (Amendment) Act, 2006 lay emphasis on the protection of rights of local people, particularly Scheduled Tribes, while considering establishment of Tiger Reserves. The Ministry of Tribal Affairs and Ministry of Environment & Forests should keep a close watch on the relocation process to see that the provisions of these Acts are not violated.</p>
<p>3.</p>	<p>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 Protection (Special Tiger Protection Force) should be implemented.</p>
<p>As decided in the 1st meeting of NTCA, the local workforce comprising of local people should be deployed for protection of tiger reserves. In view of the paucity of frontline staff in many tiger reserves, States should launch a Special Recruitment Drive for filling up frontline field staff vacancies. Preference should be given to local forest dwelling people by, if necessary, relaxing the prescribed qualifications for such posts. Similar provisions should be made while raising the proposed Special Tiger Protection Force.</p>	
<p>4.</p>	<p>Technical Committee of NTCA will monitor the village relocation activities.</p>
<p>A representative of the concerned Regional Office of NCST should be associated with the Technical Committee of NTCA in monitoring the village relocation activities.</p>	



सत्यमेव जयते

भारत सरकार

राष्ट्रीय अनुसूचित जनजाति आयोग

GOVERNMENT OF INDIA

NATIONAL COMMISSION FOR SCHEDULED TRIBES

No.RU-IV/Forest/Policy-1/2006

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

Dated03-12-2008.....

To

- 1) Smt. Urmila Singh, Chairperson
- 2) Shri Maurice Kujur, Vice-Chairperson
- 3) Shri Tsering Samphel, Member
- 4) Shri Oris Syiem Myriaw, Member

Subject: Discussions in the meetings of National Tiger Conservation Authority (NTCA) on issues concerning Scheduled Tribes.

Sir/Madam,

I am directed to say that the National Tiger Conservation Authority (NTCA) has been constituted under the provisions of the Wildlife (Protection) Amendment Act, 2006 vide Notification dated 04-09-2006 issued by the Ministry of Environment & Forests Annexure-I. A copy of the above Act is enclosed as Annexure-II. The Minister-in-charge of the Ministry of Environment & Forests is the Chairperson of the Authority whereas Minister of State in that Ministry is its Vice-Chairperson. Chairperson, NCST was initially included as a Member of the Authority. Subsequently, on being pointed out by the Commission that the Chairperson, NCST is in the rank of Union Cabinet Minister, an amendment in the relevant Section (Section 38L) of the Act was agreed in the second meeting of NTCA. The amendment provides for authorizing an officer by the Chairperson of NCST to represent the Commission as a Member of NTCA.

2. NTCA has been created with a view to improving the institutional systems of governance to strengthen tiger conservation in the country. It not only aims at taking care of ecological and administrative concerns for conserving tigers but also addresses the livelihood concerns as well as man-wild animal conflicts in the fringe areas of tiger reserves. Main functions of NTCA have been detailed in Section 38(O) (1) of the abovesaid Act.

3. Three meetings of NTCA have so far been held. Some of the issues discussed in these meetings relate to the concerns of this Commission. Decisions taken in the third meeting of NTCA on such issues and the draft comments of the Commission thereon are given in Annexure-III for consideration in the meeting of the Commission as per the convenience of Hon'ble Chairperson.

Yours faithfully,

(Aditya Mishra)
Joint Secretary

Copy with copy of enclosures for information to:

- 1) Secretary
- 2) Joint Secretary
- 3) Director (RU-I & RU-II)
- 4) Director (RU-III & Coord.)
- 5) DS (RU-IV & Admn.)
- 6) PS to Chairperson



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं. 986
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नई दिल्ली, सोमवार, सितम्बर 4, 2006/भाद्र 13, 1928
NEW DELHI, MONDAY, SEPTEMBER 4, 2006/BHADRA 13, 1928

पर्यावरण और वन मंत्रालय

अधिसूचना

नई दिल्ली, 4 सितम्बर, 2006

का.आ. 1402(अ).—केंद्रीय सरकार, वन्य जीव (संरक्षण) संशोधन अधिनियम, 2006 (2006 का 39) की धारा 1 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, 4 सितम्बर, 2006 उस तारीख के रूप में नियत करती है जिसको उक्त अधिनियम के उपबंध प्रवृत्त होंगे।

[फा. सं. 6(4)/2005-पी.टी.]

सुधीर मिट्टल, संयुक्त सचिव

MINISTRY OF ENVIRONMENT AND FORESTS

NOTIFICATION

New Delhi, the 4th September, 2006

S.O. 1402(E).—In exercise of the powers conferred by Sub-section (2) of Section 1 of the Wild Life (Protection) Amendment Act, 2006 (39 of 2006), the Central Government hereby appoints the 4th day of September, 2006 as the date on which the provisions of the said Act shall come into force.

[F. No. 6(4)/2005-PT]

SUDHIR MITAL, Jt. Secy.

अधिसूचना

नई दिल्ली, 4 सितम्बर, 2006

का.आ. 1403(अ).—केंद्रीय सरकार, वन्य जीव (संरक्षण) अधिनियम, 1972 (1972 का 53) की धारा 38ट की उप-धारा (1) और उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, राष्ट्रीय व्याघ्र संरक्षण प्राधिकरण का गठन उक्त अधिनियम के अधीन उसे प्रदत्त शक्तियों का प्रयोग करने और सौंपे गए कृत्यों का पालन करने के लिए करती है, जिसमें निम्नलिखित सदस्य होंगे जो राजपत्र में इस अधिसूचना की प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए प्रभावी होंगे, अर्थात् :-

1.	पर्यावरण और वन मंत्रालय का भारसाधक मंत्री	—	अध्यक्ष
2.	पर्यावरण और वन मंत्रालय का राज्यमंत्री मंत्री	—	उपाध्यक्ष
3.	रिक्त	—	सदस्य
से			
10.			
11.	सचिव, पर्यावरण और वन मंत्रालय	—	सदस्य
12.	वन महानिदेशक और विशेष सचिव, पर्यावरण और वन मंत्रालय	—	सदस्य
13.	सचिव, जनजाति मामले मंत्रालय	—	सदस्य
14.	सचिव, सामाजिक न्याय और अधिकारिता मंत्रालय	—	सदस्य
15.	अध्यक्ष, राष्ट्रीय अनुसूचित जनजाति आयोग	—	सदस्य
16.	अध्यक्ष, राष्ट्रीय अनुसूचित जाति आयोग	—	सदस्य
17.	सचिव, पंचायती राज मंत्रालय	—	सदस्य
18.	निदेशक, वन्य जीव परिरक्षण, पर्यावरण और वन मंत्रालय	—	सदस्य
19.	मुख्य वन्य जीव वार्डन, अरुणाचल प्रदेश	—	सदस्य
20.	मुख्य वन्य जीव वार्डन, मध्य प्रदेश	—	सदस्य
21.	मुख्य वन्य जीव वार्डन, उड़ीसा	—	सदस्य
22.	मुख्य वन्य जीव वार्डन, राजस्थान	—	सदस्य
23.	मुख्य वन्य जीव वार्डन, तमिलनाडु	—	सदस्य
24.	मुख्य वन्य जीव वार्डन, उत्तरांचल	—	सदस्य
25.	रिक्त	—	सदस्य
26.	वन्य महानिरीक्षक (व्याघ्र परियोजना) पर्यावरण और वन मंत्रालय	—	सदस्य-सचिव

2. व्याघ्र परियोजना निदेशालय के अधीन व्याघ्र परियोजना का भारसाधक वन्य महानिरीक्षक, सदस्य सचिव होगा और उस अधिसूचना को तारीख से छह मास की अवधि समाप्त होने के पश्चात् भी उक्त पद को सतत् रूप से धारण करता रहेगा जब तक कि वह उक्त अधि नियम की धारा 38B की उप-धारा (1) के परंतुक के निबंधनों के अधीन अन्यथा विकल्प नहीं देता है।

[फा. सं. 6(4)/2005-पी.टी.]

सुधीर मिश्रा, संयुक्त सचिव

NOTIFICATION

New Delhi, the 4th September, 2006

S.O. 1403(E).—In exercise of the powers conferred by Sub-sections (1) and (2) of Section 38L of the Wild Life (Protection) Act, 1972 (53 of 1972), the Central Government hereby constitutes the National Tiger Conservation Authority to exercise the powers conferred on, and to perform the functions assigned to it under the said Act, consisting of the following members, for a period of three years with effect from the date of publication of this notification in the Official Gazette, namely :—

1.	The Minister in charge of the Ministry of Environment and Forests	—	Chairperson
2.	The Minister of State for Environment and Forests	—	Vice-Chairperson
3.	Vacant	—	Members
to			
10.			
11.	Secretary, Ministry of Environment and Forests	—	Member
12.	Director General of Forests and Special Secretary, Ministry of Environment and Forests	—	Member

- | | |
|---|--------------------|
| 13. Secretary, Ministry of Tribal Affairs | — Member |
| 14. Secretary, Ministry of Social Justice and Empowerment | — Member |
| 15. Chairperson, National Commission for the Scheduled Tribes | — Member |
| 16. Chairperson, National Commission for the Scheduled Castes | — Member |
| 17. Secretary, Ministry of Panchayati Raj | — Member |
| 18. Director, Wildlife Preservation Ministry of Environment and Forests | — Member |
| 19. Chief Wildlife Warden, Arunachal Pradesh | — Member |
| 20. Chief Wildlife Warden, Madhya Pradesh | — Member |
| 21. Chief Wildlife Warden, Orissa | — Member |
| 22. Chief Wildlife Warden, Rajasthan | — Member |
| 23. Chief Wildlife Warden, Tamil Nadu | — Member |
| 24. Chief Wildlife Warden, Uttaranchal | — Member |
| 25. Vacant | — Member |
| 26. Inspector General of Forests (Project Tiger)
Ministry of Environment and Forests | — Member-Secretary |

2. The Inspector General of Forests incharge of Project Tiger under the Directorate of Project Tiger shall be the Member Secretary and shall continue to hold that office beyond the period of six months from the date of this notification, unless he opts otherwise in terms of the proviso contained in Sub-section (1) of Section 38N of the said Act.

[F. No. 6(4)/2005-PT]

SUDHIR MITAL, Jt. Secy.

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असाधारण

EXTRAORDINARY

भाग II — खण्ड I

PART II — Section I

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं 45]

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No. 45]

NEW DELHI, MONDAY, SEPTEMBER 4, 2006 / BHADRA 13, 1928

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन 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 4th September, 2006/Bhadra 13, 1928 (Saka)

The following Act of Parliament received the assent of the President on the 3rd September, 2006, and is hereby published for general information:—

THE WILD LIFE (PROTECTION) AMENDMENT ACT, 2006

No. 39 of 2006

[3rd September, 2006.]

An Act further to amend the Wild Life (Protection) Act, 1972.

BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:—

1. (1) This Act may be called the Wild Life (Protection) Amendment Act, 2006.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

53 of 1972.

2. After Chapter IVA of the Wild Life (Protection) Act, 1972 (hereinafter referred to as the principal Act), the following Chapters shall be inserted, namely:—

Insertion of new Chapters IVB and IVC.

CHAPTER IVB

NATIONAL TIGER CONSERVATION AUTHORITY

38K. In this Chapter,—

Definitions.

(a) "National Tiger Conservation Authority" means the Tiger Conservation Authority constituted under section 38L;

(b) "Steering Committee" means the Committee constituted under section 38U;

(c) "Tiger Conservation Foundation" means the foundation established under section 38X;

(d) "tiger reserve State" means a State having tiger reserve;

(e) "tiger reserve" means the areas notified as such under section 38V.

Constitution
of National
Tiger
Conservation
Authority.

38L. (1) The Central Government shall constitute a body to be known as the National Tiger Conservation Authority (hereinafter in this Chapter referred to as the Tiger Conservation Authority), to exercise the powers conferred on, and to perform the functions assigned to it under this Act.

(2) The Tiger Conservation Authority shall consist of the following members, namely:—

(a) the Minister in charge of the Ministry of Environment and Forests—Chairperson;

(b) the Minister of State in the Ministry of Environment and Forests—Vice-Chairperson;

(c) three members of Parliament of whom two shall be elected by the House of the People and one by the Council of States;

(d) eight experts or professionals having prescribed qualifications and experience in conservation of wild life and welfare of people living in tiger reserve out of which at least two shall be from the field of tribal development;

(e) Secretary, Ministry of Environment and Forests;

(f) Director General of Forests and Special Secretary, Ministry of Environment and Forests;

(g) Director, Wild Life Preservation, Ministry of Environment and Forests;

(h) six Chief Wild Life Wardens from the tiger reserve States in rotation for three years;

(i) an officer not below the rank of Joint Secretary and Legislative Counsel from the Ministry of Law and Justice;

(j) Secretary, Ministry of Tribal Affairs;

(k) Secretary, Ministry of Social Justice and Empowerment;

(l) Chairperson, National Commission for the Scheduled Tribes;

(m) Chairperson, National Commission for the Scheduled Castes;

(n) Secretary, Ministry of Panchayati Raj;

(o) Inspector-General of Forests or an officer of the equivalent rank having at least ten years experience in a tiger reserve or wildlife management, who shall be the Member-Secretary,

to be notified by the Central Government, in the Official Gazette.

(3) It is hereby declared that the office of member of the Tiger Conservation Authority shall not disqualify its holder for being chosen as, or for being, a member of either House of Parliament.

Term of office
and conditions
of service of
members.

38M. (1) A member nominated under clause (d) of sub-section (2) of section 38L shall hold office for such period not exceeding three years:

Provided that a member may, by writing under his hand addressed to the Central Government, resign from his office.

(2) The Central Government shall remove a member referred to in clause (d) of sub-section (2) of section 38L, from office if he—

(a) is, or at any time has been, adjudicated as insolvent;

(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude;

(c) is of unsound mind and stands so declared by a competent court;

(d) refuses to act or becomes incapable of acting;

(e) is, without obtaining leave of absence from the Tiger Conservation Authority, absent from three consecutive meetings of the said Authority; or

(f) has, in the opinion of the Central Government, so abused his position as to render his continuation in office detrimental to the public interest:

Provided that no member shall be removed under this sub-section unless he has been given a reasonable opportunity of being heard in the matter.

(3) Any vacancy in the office of a member shall be filled by fresh appointment and such member shall continue for the remainder of the term of the member in whose place he is appointed.

(4) The salaries and allowances and other conditions of appointment of the members of the Tiger Conservation Authority shall be such as may be prescribed.

(5) No act or proceeding of the Tiger Conservation Authority shall be questioned or shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the Tiger Conservation Authority.

38N. (1) The Tiger Conservation Authority may, with the previous sanction of the Central Government, appoint such other officers and employees as it considers necessary for the efficient discharge of its functions under this Act:

Provided that the officers and employees holding office under the Directorate of Project Tiger and dealing with Project Tiger immediately before the date of constitution of the Tiger Conservation Authority shall continue to hold office in the said Authority by the same tenure and upon the same terms and conditions of service or until the expiry of the period of six months from that date if such employee opts not to be the employee of that Authority.

(2) The terms and conditions of service of the officers and other employees of the Tiger Conservation Authority shall be such as may be prescribed.

38O. (1) The Tiger Conservation Authority shall have the following powers and perform the following functions, namely:—

(a) to approve the Tiger Conservation Plan prepared by the State Government under sub-section (3) of section 38V of this Act;

(b) evaluate and assess various aspects of sustainable ecology and disallow any ecologically unsustainable land use such as, mining, industry and other projects within the tiger reserves;

(c) lay down normative standards for tourism activities and guidelines for project tiger from time to time for tiger conservation in the buffer and core area of tiger reserves and ensure their due compliance;

(d) provide for management focus and measures for addressing conflicts of men and wild animals and to emphasise on co-existence in forest areas outside the National Parks, sanctuaries or tiger reserve, in the working plan code;

(e) provide information on protection measures including future conservation plan, estimation of population of tiger and its natural prey species,

Officers and employees of Tiger Conservation Authority.

Powers and functions of Tiger Conservation Authority.

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status of habitats, disease surveillance, mortality survey, patrolling, reports on untoward happenings and such other management aspects as it may deem fit including future plan conservation;

(f) approve, co-ordinate research and monitoring on tiger, co-predators, prey, habitat, related ecological and socio-economic parameters and their evaluation;

(g) ensure that the tiger reserves and areas linking one protected area or tiger reserve with another protected area or tiger reserve are not diverted for ecologically unsustainable uses, except in public interest and with the approval of the National Board for Wild Life and on the advice of the Tiger Conservation Authority;

(h) facilitate and support the tiger reserve management in the State for biodiversity conservation initiatives through eco-development and people's participation as per approved management plans and to support similar initiatives in adjoining areas consistent with the Central and State laws;

(i) ensure critical support including scientific, information technology and legal support for better implementation of the tiger conservation plan;

(j) facilitate ongoing capacity building programme for skill development of officers and staff of tiger reserves; and

(k) perform such other functions as may be necessary to carry out the purposes of this Act with regard to conservation of tigers and their habitat.

(2) The Tiger Conservation Authority may, in the exercise of its powers and performance of its functions under this Chapter, issue directions in writing to any person, officer or authority for the protection of tiger or tiger reserves and such person, officer or authority shall be bound to comply with the directions:

Provided that no such direction shall interfere with or affect the rights of local people particularly the Scheduled Tribes.

38P. (1) The Tiger Conservation Authority shall meet at such time and at such place as the Chairperson may think fit.

(2) The Chairperson or in his absence the Vice-Chairperson shall preside over the meetings of the Tiger Conservation Authority.

(3) The Tiger Conservation Authority shall regulate its own procedure.

(4) All orders and decisions of the Tiger Conservation Authority shall be authenticated by the Member-Secretary or any other officer of the said Authority duly authorised by the Member-Secretary in this behalf.

38Q. (1) The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Tiger Conservation Authority grants and loans of such sums of money as that Government may consider necessary.

(2) There shall be constituted a Fund to be called the Tiger Conservation Authority Fund and there shall be credited thereto—

(i) any grants and loans made to the Tiger Conservation Authority by the Central Government;

(ii) all fees and charges received by the Tiger Conservation Authority under this Act; and

(iii) all sums received by the Authority from such other sources as may be decided upon by the Central Government.

(3) The Fund referred to in sub-section (2) shall be applied for meeting salary, allowances and other remuneration of the members, officers and other employees of the Tiger Conservation Authority and the expenses of the Tiger Conservation Authority incurred in the discharge of its functions under this Chapter.

Procedure to be regulated by Tiger Conservation Authority.

Grants and loans to Tiger Conservation Authority and Constitution of Fund.

38R. (1) The Tiger Conservation Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

Accounts and
audit of Tiger
Conservation
Authority.

(2) The accounts of the Tiger Conservation Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Tiger Conservation Authority to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Tiger Conservation Authority shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect the office of the Tiger Conservation Authority.

(4) The accounts of the Tiger Conservation Authority as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon, shall be forwarded annually to the Central Government by the Tiger Conservation Authority.

38S. The Tiger Conservation Authority shall prepare in such form and at such time, for each financial year, as may be prescribed, its annual report, giving a full account of its activities during the previous financial year and forward a copy thereof to the Central Government.

Annual report
of Tiger
Conservation
Authority.

38T. The Central Government shall cause the annual report together with a memorandum of action taken on the recommendations contained therein, insofar as they relate to the Central Government, and the reasons for the non-acceptance, if any, of any of such recommendations, and the audit report to be laid, as soon as may be after the reports are received, before each House of Parliament.

Annual report
and audit
report to be
laid before
Parliament.

38U. (1) The State Government may constitute a Steering Committee for ensuring co-ordination, monitoring, protection and conservation of tiger, co-predators and prey animals within the tiger range States.

Constitution
of Steering
Committee.

(2) The Steering Committee shall consist of—

- (a) the Chief Minister — Chairperson;
- (b) the Minister in-charge of Wild Life — Vice-Chairperson;
- (c) such number of official members not exceeding five including at least two Field Directors of tiger reserve or Director of National Park and one from the State Government's Departments dealing with tribal affairs;
- (d) three experts or professionals having qualifications and experience in conservation of wild life of which at least one shall be from the field of tribal development;
- (e) two members from the State's Tribal Advisory Council;
- (f) one representative each from State Government's Departments dealing with Panchayat Raj and Social Justice and Empowerment;
- (g) Chief Wild Life Warden of the State shall be the Member-Secretary, *ex officio*,

to be notified by the State Government, in the Official Gazette.

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Tiger
Conservation
Plan.

~~38V (1)~~ The State Government shall, on the recommendation of the Tiger Conservation Authority, notify an area as a tiger reserve.

(2) The provisions of sub-section (2) of section 18, sub-sections (2), (3) and (4) of section 27, sections 30, 32 and clauses (b) and (c) of section 33 of this Act shall, as far as may be, apply in relation to a tiger reserve as they apply in relation to a sanctuary.

(3) The State Government shall prepare a Tiger Conservation Plan including staff development and deployment plan for the proper management of each area referred to in sub-section (1), so as to ensure—

(a) protection of tiger reserve and providing site specific habitat inputs for a viable population of tigers, co-predators and prey animals without distorting the natural prey-predator ecological cycle in the habitat;

(b) ecologically compatible land uses in the tiger reserves and areas linking one protected area or tiger reserve with another for addressing the livelihood concerns of local people, so as to provide dispersal habitats and corridor for spill over population of wild animals from the designated core areas of tiger reserves or from tiger breeding habitats within other protected areas;

(c) the forestry operations of regular forest divisions and those adjoining tiger reserves are not incompatible with the needs of tiger conservation.

(4) Subject to the provisions contained in this Act, the State Government shall, while preparing a Tiger Conservation Plan, ensure the agricultural, livelihood, developmental and other interests of the people living in tiger bearing forests or a tiger reserve.

Explanation.— For the purposes of this section, the expression "tiger reserve" includes—

(i) core or critical tiger habitat areas of National Parks and sanctuaries, where it has been established, on the basis of scientific and objective criteria, that such areas are required to be kept as inviolate for the purposes of tiger conservation, without affecting the rights of the Scheduled Tribes or such other forest dwellers, and notified as such by the State Government in consultation with an Expert Committee constituted for the purpose;

(ii) buffer or peripheral area consisting of the area peripheral to critical tiger habitat or core area, identified and established in accordance with the provisions contained in *Explanation (i)* above, where a lesser degree of habitat protection is required to ensure the integrity of the critical tiger habitat with adequate dispersal for tiger species, and which aim at promoting co-existence between wildlife and human activity with due recognition of the livelihood, developmental, social and cultural rights of the local people, wherein the limits of such areas are determined on the basis of scientific and objective criteria in consultation with the concerned Gram Sabha and an Expert Committee constituted for the purpose.

(5) Save as for voluntary relocation on mutually agreed terms and conditions, provided that such terms and conditions satisfy the requirements laid down in this sub-section, no Scheduled Tribes or other forest dwellers shall be resettled or have their rights adversely affected for the purpose of creating inviolate areas for tiger conservation unless—

(i) the process of recognition and determination of rights and acquisition of land or forest rights of the Scheduled Tribes and such other forest dwelling persons is complete;

Gram Sabha

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(ii) the concerned agencies of the State Government, in exercise of their powers under this Act, establishes with the consent of the Scheduled Tribes and such other forest dwellers in the area, and in consultation with an ecological and social scientist familiar with the area, that the activities of the Scheduled Tribes and other forest dwellers or the impact of their presence upon wild animals is sufficient to cause irreversible damage and shall threaten the existence of tigers and their habitat;

(iii) the State Government, after obtaining the consent of the Scheduled Tribes and other forest dwellers inhabiting the area, and in consultation with an independent ecological and social scientist familiar with the area, has come to a conclusion that other reasonable options of co-existence, are not available;

(iv) resettlement or alternative package has been prepared providing for livelihood for the affected individuals and communities and fulfils the requirements given in the National Relief and Rehabilitation Policy;

(v) the informed consent of the Gram Sabha concerned, and of the persons affected, to the resettlement programme has been obtained; and

(vi) the facilities and land allocation at the resettlement location are provided under the said programme, otherwise their existing rights shall not be interfered with.

38W. (1) No alteration in the boundaries of a tiger reserve shall be made except on a recommendation of the Tiger Conservation Authority and the approval of the National Board for Wild Life.

Alteration and de-notification of tiger reserves.

(2) No State Government shall do-notify a tiger reserve, except in public interest with the approval of the Tiger Conservation Authority and the National Board for Wild Life.

38X. (1) The State Government shall establish a Tiger Conservation Foundation for tiger reserves within the State in order to facilitate and support their management for conservation of tiger and biodiversity and, to take initiatives in eco-development by involvement of people in such development process.

Establishment of Tiger Conservation Foundation.

(2) The Tiger Conservation Foundation shall, *inter alia*, have the following objectives:—

(a) to facilitate ecological, economic, social and cultural development in the tiger reserves;

(b) to promote eco-tourism with the involvement of local stake-holder communities and provide support to safeguard the natural environment in the tiger reserves;

(c) to facilitate the creation of, and or maintenance of, such assets as may be necessary for fulfilling the above said objectives;

(d) to solicit technical, financial, social, legal and other support required for the activities of the Foundation for achieving the above said objectives;

(e) to augment and mobilise financial resources including recycling of entry and such other fees received in a tiger reserve, to foster stake-holder development and eco-tourism;

(f) to support research, environmental education and training in the above related fields.

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CHAPTER IV C

TIGER AND OTHER ENDANGERED SPECIES CRIME CONTROL BUREAU

Constitution of Tiger and other Endangered Species Crime Control Bureau

38Y. The Central Government may, for the purposes of this Act, by order published in the Official Gazette, constitute a Tiger and other Endangered Species Crime Control Bureau to be known as the Wildlife Crime Control Bureau consisting of—

- (a) the Director of Wildlife Preservation—Director *ex-officio*;
- (b) the Inspector-General of Police—Additional Director;
- (c) the Deputy Inspector-General of Police—Joint Director;
- (d) the Deputy Inspector-General of Forests—Joint Director;
- (e) the Additional Commissioner (Customs and Central Excise)—Joint Director;

and

(f) such other officers as may be appointed from amongst the officers covered under sections 3 and 4 of this Act.

Powers and functions of the Wildlife Crime Control Bureau

38Z. (1) Subject to the provisions of this Act, the Wildlife Crime Control Bureau shall take measures with respect to—

- (i) collect and collate intelligence related to organized wildlife crime activities and to disseminate the same to State and other enforcement agencies for immediate action so as to apprehend the criminals and to establish a centralised wildlife crime data bank;
- (ii) co-ordination of actions by various officers, State Governments and other authorities in connection with the enforcement of the provisions of this Act, either directly or through regional and border units set up by the Bureau;
- (iii) implementation of obligations under the various international Conventions and protocols that are in force at present or which may be ratified or acceded to by India in future;
- (iv) assistance to concerned authorities in foreign countries and concerned international organisations to facilitate co-ordination and universal action for wildlife crime control;
- (v) develop infrastructure and capacity building for scientific and professional investigation into wildlife crimes and assist State Governments to ensure success in prosecutions related to wildlife crimes;
- (vi) advice the Government of India on issues relating to wildlife crimes having national and international ramifications, and suggest changes required in relevant policy and laws from time to time.

(2) The Wildlife Crime Control Bureau shall exercise—

“(1) such powers as may be delegated to it under sub-section (1) of section 5, sub-sections (1) and (2) of section 50 and section 55 of this Act; and

(ii) such other powers as may be prescribed.”

Amendment of section 51.

3. In section 51 of the principal Act, after sub-section (1B), the following sub-sections shall be inserted, namely:—

“(1C) Any person, who commits an offence in relation to the core area of a tiger reserve or where the offence relate to hunting in the tiger reserve or altering the boundaries of the tiger reserve, such offence shall be punishable on first conviction with imprisonment for a term which shall not be less than three years but may extend to

seven years, and also with fine which shall not be less than fifty thousand rupees but may extend to two lakh rupees; and in the event of a second or subsequent conviction with imprisonment for a term of not less than seven years and also with fine which shall not be less than five lakh rupees but may extend to fifty lakh rupees.

(1D) Whoever, abets any offence punishable under sub-section (1C) shall, if the act abetted is committed in consequence of the abetment, be punishable with the punishment provided for that offence."

4. In section 55 of the principal Act, after clause (aa), the following clauses shall be inserted, namely:—

Amendment
of section 55.

"(ab) Member-Secretary, Tiger Conservation Authority; or

(ac) Director of the concerned tiger reserve; or"

5. In section 59 of the principal Act, after the word, figures and letter "Chapter IVA", the word, figures and letter "Chapter IVB" shall be inserted.

Amendment
of section 59.

6. In section 60 of the principal Act, in sub-section (J), after the word, figures and letter "Chapter IVA", the word, figures and letter "Chapter IVB" shall be inserted.

Amendment
of section 60.

7. In section 63 of the principal Act, in sub-section (1), after clause (g), the following clauses shall be inserted, namely:—

Amendment
of section 63.

(gf) qualifications and experience of experts or professionals under clause (d) of sub-section (2) of section 38-I;

(gI) the salaries and allowances and other conditions of appointment of the members under sub-section (4) of section 38M;

(gII) the terms and conditions of service of the officers and other employees of the Tiger Conservation Authority under sub-section (2) of section 38N;

(gIV) the form in which the annual statement of accounts of Tiger Conservation Authority shall be prepared under sub-section (1) of section 38R;

(gV) the form in which and the time at which the annual report of Tiger Conservation Authority shall be prepared under section 38S;

(gVI) other powers of the Wild Life Crime Control Bureau under clause (II) of sub-section (2) of section 38Z."

K. N. CHATURVEDI,
Secy. to the Govt. of India.

Comments the NCST on the decisions taken in the third meeting of NTCA held on 21-05-2008 on the issues concerning the Scheduled Tribes.

Sl. No.	Decision of NTCA	Comments
1.	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.	The matter relating to conservation of tigers in the forest cannot be seen while ignoring 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. The villages to be relocated from tiger reserves and protected areas should be identified on a priority basis. This should be done by following the due consultation process as the issue of livelihood of habitants of relocated villages has to be addressed. It should be ensured that relocation process is carried out peacefully and proper and effective measures are taken for rehabilitation of the people of relocated villages. Adequate security measures should also be essentially taken in the extremist ridden areas. A representative of the Ministry of Home Affairs should invariably be associated with future meetings of NTCA.
2.	The provisions of the Scheduled Tribes and Other Traditional Forest 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.	The Commission may agree with the decision to ensure that the provisions of the STs and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (Annexure-IV) are given due importance in carrying out the process of relocation

<p>114 139</p>		<p>of villages to ensure that there is forceful relocation. Provisions contained in clause 4(2) of this Act and 38 O(2) of the Wildlife Protection (Amendment) Act, 2006 lay emphasis on the protection of rights of local people, particularly Scheduled Tribes, while considering establishment of Tiger Reserves. The Ministry of Tribal Affairs and Ministry of Environment & Forests should keep a close watch on the relocation process to see that the provisions of these Acts are not violated.</p>
<p>3.</p>	<p>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 Protection (Special Tiger Protection Force) should be implemented.</p>	<p>As decided in the 1st meeting of NTCA, the local workforce comprising of local people should be deployed for protection of tiger reserves. In view of the paucity of frontline staff in many tiger reserves, States should launch a Special Recruitment Drive for filling up frontline field staff vacancies. Preference should be given to local forest dwelling people by, if necessary, relaxing the prescribed qualifications for such posts. Similar provisions should be made while raising the proposed Special Tiger Protection Force.</p>
<p>4.</p>	<p>Technical Committee of NTCA will monitor the village relocation activities.</p>	<p>A representative of the concerned Regional Office of NCST should be associated with the Technical Committee of NTCA in monitoring the village relocation activities.</p>

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भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड I

PART II — Section 1

प्रधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

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इस भाग में बिना पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन 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 2nd January, 2007/Pausa 12, 1928 (Saka)

The following Act of Parliament received the assent of the President on the 29th December, 2006, and is hereby published for general information:—

THE SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS) ACT, 2006

No. 2 of 2007

[29th December, 2006]

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; to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land.

WHEREAS the recognised rights of the forest dwelling Scheduled Tribes and other traditional forest dwellers include the responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance and thereby strengthening the conservation regime of the forests while ensuring livelihood and food security of the forest dwelling Scheduled Tribes and other traditional forest dwellers;

AND WHEREAS the forest rights on ancestral lands and their habitat were not adequately recognised in the consolidation of State forests during the colonial period as well as in independent India resulting in historical injustice to the forest dwelling Scheduled Tribes and other traditional forest dwellers who are integral to the very survival and sustainability of the forest ecosystem;

AND WHEREAS it has become necessary to address the long standing insecurity of territorial and access rights of forest dwelling Scheduled Tribes and other traditional forest dwellers including those who were forced to relocate their dwelling due to State development interventions.

Be it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title and commencement.

1. (1) This Act may be called the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "community forest resource" means customary common forest land within the traditional or customary boundaries of the village or seasonal use of landscape in the case of pastoral communities, including reserved forests, protected forests and protected areas such as Sanctuaries and National Parks to which the community had traditional access;

(b) "critical wildlife habitat" means such areas of National Parks and Sanctuaries where it has been specifically and clearly established, case by case, on the basis of scientific and objective criteria, that such areas are required to be kept as inviolate for the purposes of wildlife conservation as may be determined and notified by the Central Government in the Ministry of Environment and Forests after open process of consultation by an Expert Committee, which includes experts from the locality appointed by that Government wherein a representative of the Ministry of Tribal Affairs shall also be included, in determining such areas according to the procedural requirements arising from sub-sections (1) and (2) of section 4;

(c) "forest dwelling Scheduled Tribes" means the members or community of the Scheduled Tribes who primarily reside in and who depend on the forests or forest lands for *bona fide* livelihood needs and includes the Scheduled Tribe pastoralist communities;

(d) "forest land" means land of any description falling within any forest area and includes unclassified forests, undemarcated forests, existing or deemed forests, protected forests, reserved forests, Sanctuaries and National Parks;

(e) "forest rights" means the forest rights referred to in section 3;

(f) "forest villages" means the settlements which have been established inside the forests by the forest department of any State Government for forestry operations or which were converted into forest villages through the forest reservation process and includes forest settlement villages, fixed demand holdings, all types of *tanjya* settlements, by whatever name called, for such villages and includes lands for cultivation and other uses permitted by the Government;

(g) "Gram Sabha" means a village assembly which shall consist of all adult members of a village and in case of States having no Panchayats, Padas, Tolas and other traditional village institutions and elected village committees, with full and unrestricted participation of women;

(h) "habitat" includes the area comprising the customary habitat and such other habitats in reserved forests and protected forests of primitive tribal groups and pre-agricultural communities and other forest dwelling Scheduled Tribes;

(i) "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;

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(j) "nodal agency" means the nodal agency specified in section 11;

(k) "notification" means a notification published in the Official Gazette;

(l) "prescribed" means prescribed by rules made under this Act;

(m) "Scheduled Areas" means the Scheduled Areas referred to in clause (1) of article 244 of the Constitution;

18 of 2003. (n) "sustainable use" shall have the same meaning as assigned to it in clause (o) of section 2 of the Biological Diversity Act, 2002;

(o) "other traditional forest dweller" means any member or community who has for at least three generations prior to the 13th day of December, 2005 primarily resided in and who depend on the forest or forests land for bona fide livelihood needs.

Explanation.—For the purpose of this clause, "generation" means a period comprising of twenty-five years;

(p) "village" means—

40 of 1996. (i) a village referred to in clause (b) of section 4 of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996; or

(ii) any area referred to as a village in any State law relating to Panchayats other than the Scheduled Areas; or

(iii) forest villages, old habitation or settlements and unsurveyed villages, whether notified as village or not; or

(iv) in the case of States where there are no Panchayats, the traditional village, by whatever name called;

53 of 1972. (q) "wild animal" means any species of animal specified in Schedules I to IV of the Wild Life (Protection) Act, 1972 and found wild in nature.

CHAPTER II

FOREST RIGHTS

3. (1) For the purposes of this Act, the following rights, which secure individual or community tenure or both, shall be the forest rights of forest dwelling Scheduled Tribes and other traditional forest dwellers on all forest lands, namely:—

Forest rights of
Forest dwelling
Scheduled
Tribes and
other traditional
forest dwellers.

(a) 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 Tribe or other traditional forest dwellers;

(b) community rights such as *nistar*, by whatever name called, including those used in erstwhile Princely States, Zamindari or such intermediary regimes;

(c) right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries;

(d) other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;

(e) rights including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities;

(f) rights in or over disputed lands under any nomenclature in any State where claims are disputed;

(g) rights for conversion of *Pattas* or leases or grants issued by any local authority or any State Government on forest lands to titles;

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(h) rights of settlement and conversion of all forest villages, old habitations, unincorporated villages and other villages in forests, whether recorded, notified or not into revenue villages;

(i) right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use;

(j) rights which are recognised 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 the concerned tribes of any State;

(k) right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity;

(l) any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers, as the case may be, which are not mentioned in clauses (a) to (k) but excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wild animal;

(m) right to *in situ* rehabilitation including alternative land in cases where the Scheduled Tribes and other traditional forest dwellers have been illegally evicted or displaced from forest land of any description without receiving their legal entitlement to rehabilitation prior to the 13th day of December, 2001;

(2) Notwithstanding anything contained in the Forest (Conservation) Act, 1980, the Central Government shall provide for diversion of forest land for the following facilities managed by the Government which involve felling of trees not exceeding seventy-five trees per hectare, namely:—

- (a) schools;
- (b) dispensary or hospital;
- (c) anganwadis;
- (d) fair price shops;
- (e) electric and telecommunication lines;
- (f) tanks and other minor water bodies;
- (g) drinking water supply and water pipelines;
- (h) water or rain water harvesting structures;
- (i) minor irrigation canals;
- (j) non-conventional sources of energy;
- (k) skill upgradation or vocational training centres;
- (l) roads, and
- (m) community centres.

Provided that such diversion of forest land shall be allowed only if—

(i) the forest land to be diverted for the purposes mentioned in this subsection 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.

CHAPTER III

RECOGNITION, RESTORATION AND VESTING OF FOREST RIGHTS AND RELATED MATTERS

4. (1) Notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Act, the Central Government hereby recognises and vests forest rights in—

(a) the forest dwelling Scheduled Tribes in States or areas in States where they are declared as Scheduled Tribes in respect of all forest rights mentioned in section 3;

(b) the other traditional forest dwellers in respect of all forest rights mentioned in section 3.

(2) The forest rights recognised under this Act in critical wildlife habitats of National Parks and Sanctuaries may subsequently be modified or resettled, provided that no forest rights holders shall be resettled or have their rights in any manner affected for the purposes of creating inviolate areas for wildlife conservation except in case all the following conditions are satisfied, namely:—

(a) the process of recognition and vesting of rights as specified in section 6 is complete in all the areas under consideration;

(b) it has been established by the concerned agencies of the State Government, in exercise of their powers 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 provides a secure livelihood for the affected individuals and communities and fulfils the requirements of such affected individuals 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;

Provided that the critical wildlife habitats from which rights holders are thus relocated for purposes of wildlife conservation shall not be subsequently diverted by the State Government or the Central Government or any other entity for other uses.

(3) The recognition and vesting of forest rights under this Act to the forest dwelling Scheduled Tribes and to other traditional forest dwellers in relation to any State or Union territory in respect of forest land and their habitat shall be subject to the condition that such Scheduled Tribes or tribal communities or other traditional forest dwellers had occupied forest land before the 13th day of December, 2005.

(4) A right conferred by sub-section (1) shall be heritable but not alienable or transferable and shall be registered jointly in the name of both the spouses in case of married persons and in the name of the single head in the case of a household headed by a single person and in the absence of a direct heir, the heritable right shall pass on to the next-of-kin.

(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.

Recognition of, and vesting of, forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers.

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(6) Where the forest rights recognised and vested by sub-section (1) are in respect of land mentioned in clause (a) of sub-section (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.

(7) The forest rights shall be conferred free of all encumbrances and procedural requirements, including clearance under the Forest (Conservation) Act, 1980, requirement of paying the 'net present value' and 'compensatory afforestation' for diversion of forest land, except those specified in this Act.

69 of 1980.

(8) The forest rights recognised and vested under this Act shall include the right of land to forest dwelling Scheduled Tribes and other traditional forest dwellers who can establish that they were displaced from their dwelling and cultivation without land compensation due to State development interventions, and where the land has not been used for the purpose for which it was acquired within five years of the said acquisition.

5. The holders of any forest right, Gram Sabha and village level institutions in areas where there are holders of any forest right under this Act are empowered to—

Duties of holders of forest rights.

(a) protect the wild life, forest and biodiversity;

(b) ensure that adjoining catchments area, water sources and other ecological sensitive areas are adequately protected;

(c) ensure that the habitat of forest dwelling Scheduled Tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage;

(d) ensure that the decisions taken in the Gram Sabha to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity are complied with.

CHAPTER IV

AUTHORITIES AND PROCEDURE FOR VESTING OF FOREST RIGHTS

Authorities to vest forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers and procedure thereof.

6. (1) The Gram Sabha shall be the authority to initiate the process for determining the nature and extent of individual or community forest rights or both that may be given to the forest dwelling Scheduled Tribes and other traditional forest dwellers within the local limits of its jurisdiction under this Act by receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim in such manner as may be prescribed for exercise of such rights and the Gram Sabha shall, then, pass a resolution to that effect and thereafter forward a copy of the same to the Sub-Divisional Level Committee.

(2) Any person aggrieved by the resolution of the Gram Sabha may prefer a petition to the Sub-Divisional Level Committee constituted under sub-section (3) and the Sub-Divisional Level Committee shall consider and dispose of such petition:

Provided that every such petition shall be preferred within sixty days from the date of passing of the resolution by the Gram Sabha:

Provided further that no such petition shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to present his case.

(3) The State Government shall constitute a Sub-Divisional Level Committee to examine the resolution passed by the Gram Sabha and prepare the record of forest rights and forward it through the Sub-Divisional Officer to the District Level Committee for a final decision.

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(4) Any person aggrieved by the decision of the Sub-Divisional Level Committee may prefer a petition to the District Level Committee within sixty days from the date of decision of the Sub-Divisional Level Committee and the District Level Committee shall consider and dispose of such petition:

Provided that no petition shall be preferred directly before the District Level Committee against the resolution of the Gram Sabha unless the same has been preferred before and considered by the Sub-Divisional Level Committee:

Provided further that no such petition shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to present his case.

(5) The State Government shall constitute a District Level Committee to consider and finally approve the record of forest rights prepared by the Sub-Divisional Level Committee.

(6) The decision of the District Level Committee on the record of forest rights shall be final and binding.

(7) The State Government shall constitute a State Level Monitoring Committee to monitor the process of recognition and vesting of forest rights and to submit to the nodal agency such returns and reports as may be called for by that agency.

(8) The Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee shall consist of officers of the departments of Revenue, Forest and Tribal Affairs of the State Government and three members of the Panchayati Raj Institutions at the appropriate level, appointed by the respective Panchayati Raj Institutions, of whom two shall be the Scheduled Tribe members and at least one shall be a woman, as may be prescribed.

(9) The composition and functions of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee and the procedure to be followed by them in the discharge of their functions shall be such as may be prescribed.

CHAPTER V

OFFENCES AND PENALTIES

7. Where any authority or Committee or officer or member of such authority or Committee contravenes any provision of this Act or any rule made thereunder concerning recognition of forest rights, it, or they, shall be deemed to be guilty of an offence under this Act and shall be liable to be proceeded against and punished with fine which may extend to one thousand rupees:

Offences by members or officers of authorities and Committees under this Act.

Provided that nothing contained in this sub-section shall render any member of the authority or Committee or head of the department or any person referred to in this section liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

8. No court shall take cognizance of any offence under section 7 unless any forest dwelling Scheduled Tribe in case of a dispute relating to a resolution of a Gram Sabha or the Gram Sabha through a resolution against any higher authority gives a notice of not less than sixty days to the State Level Monitoring Committee and the State Level Monitoring Committee has not proceeded against such authority.

Cognizance of offences.

CHAPTER VI

MISCELLANEOUS

9. Every member of the authorities referred to in Chapter IV and every other officer exercising any of the powers conferred by or under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Members of authorities, etc., to be public servants.

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Protection of action taken in good faith

10. (1) No suit, prosecution or other legal proceeding shall lie against any officer or other employee of the Central Government or the State Government for anything which is in good faith done or intended to be done by or under this Act.

(2) No suit or other legal proceeding shall lie against the Central Government or the State Government or any of its officers or other employees for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.

(3) No suit or other legal proceeding shall lie against any authority as referred to in Chapter IV including its Chairperson, members, member-secretary, officers and other employees for anything which is in good faith done or intended to be done under this Act.

Nodal agency.

11. The Ministry of the Central Government dealing with Tribal Affairs or any officer or authority authorised by the Central Government in this behalf shall be the nodal agency for the implementation of the provisions of this Act.

Power of Central Government to issue directions.

12. In the performance of its duties and exercise of its powers by or under this Act, every authority referred to in Chapter IV shall be subject to such general or special directions, as the Central Government may, from time to time, give in writing.

Act not in derogation of any other law.

13. Save as otherwise provided in this Act and the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996, the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

40 of 1996.

Power to make rules.

14. (1) The Central Government may, by notification, and subject to the condition of previous publication, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(a) procedural details for implementation of the procedure specified in section 6;

(b) the procedure for receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim for exercise of forest rights under sub-section (1) of section 6 and the manner of preferring a petition to the Sub-Divisional Committee under sub-section (2) of that section;

(c) the level of officers of the departments of Revenue, Forest and Tribal Affairs of the State Government to be appointed as members of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee under sub-section (8) of section 6;

(d) the composition and functions of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee and the procedure to be followed by them in the discharge of their functions under sub-section (9) of section 6;

(e) any other matter which is required to be, or may be, prescribed.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive

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sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

K. N. CHATURVEDI,
Secy. to the Govt. of India.

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F. No. 17014/02/2007-PC&V
Government of India
Ministry of Tribal Affairs

Shastri Bhavan, New Delhi-110001
Dated, the 12th February 2007

ORDER

Sub: Constitution of a Technical Support Group for framing Rules under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

Consequent on the enactment of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, published in the Gazette of India, Extraordinary, Part II - Section 1 on January 2, 2007, the Central Government hereby constitutes a Technical Support Group under the convenorship of the Ministry of Tribal Affairs, for framing Rules under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 for carrying out the provisions of the Act. The composition of the Technical Support Group shall be as under:

Non-official

- | | | | |
|-----|------------------------|-----|----------|
| 1. | Shri S.R. Sankaran, | ... | Chairman |
| 2. | Prof. Madhav Gadgil, | ... | Member |
| 3. | Shri Raman Sukumar, | ... | Member |
| 4. | Shri Ram Dayal Munda, | ... | Member |
| 5. | Prof. K.C. Malhotra, | ... | Member |
| 6. | Shri Sanjay Upadhyaya, | ... | Member |
| 7. | Shri Rangan Dutta, | ... | Member |
| 8. | Prof. Nandini Sundar | ... | Member |
| 9. | Shri D. Bandopadhyay | ... | Member |
| 10. | Smt. Smita Gupta | ... | Member |
| 11. | Shri Kumar Shiralkar | ... | Member |

Official

- | | | | |
|-----|--|-----|--------|
| 12. | Director General, ICFRE, Dehradun | ... | Member |
| 13. | Representative of Ministry of Environment & Forests (not below the rank of Joint Secretary)... | ... | Member |
| 14. | Representative of Department of Land Resources (not below the rank of Joint Secretary)... | ... | Member |
| 15. | Representative of Ministry of Law & Justice (Legislative Department) (not below the rank of Joint Secretary) | ... | Member |
| 16. | Representative of Ministry of Panchayati Raj (not below the rank of Joint Secretary) | ... | Member |
| 17. | Shri Serjius Minz, Principal Secretary, Forest, Government of Chhattisgarh | ... | Member |
| 18. | Shri S.C. Negi, Secretary, Tribal Development, Government of Himachal Pradesh | ... | Member |

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150
19. Commissioner & Secretary, Welfare of Plain Tribes and Backward Classes, Government Asom, Guwahati ... Member
 20. Commissioner & Secretary, Hill Areas Department, Government of Asom, Dispur, Guwahati ... Member
 21. Joint Secretary, Ministry of Tribal Affairs ... Member-Convenor

2. The Technical Support Group shall prepare the draft Rules for carrying out the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 within a period of 3 months from the date of constitution of the Group and submit the same to the Government.

3. The Technical Support Group shall meet and work out its action plan for drafting the proposed Rules. For this purpose, the Technical Support Group may hold consultations with the State Governments/ Union Territory Administrations individually to take care of State specific differences. The Technical Support Group may also hold regional conferences with experts to finalise the draft rules.

4. For the purposes of TA/ DA, the non-official Members of the Technical Support Group will be treated as equivalent to Grade-I officers of the Central Government entitled to travel by air.

(Dr. Bachittar Singh)
Joint Secretary to the Government of India
Tele 011-2307 3817

Copy to:

All Official and Non-Official Members of the Technical Support Group.

Copy for information to:

1. Prime Minister's Office (Shri R. Gopalakrishnan, JS to PM), South Block, New Delhi;
2. Cabinet Secretariat (Shri Vijai Sharma, Additional Secretary), Rashtrapati Bhavan, New Delhi
3. Secretary, Ministry of Environment & Forests, Paryavaran Bhavan, CGO Complex, New Delhi
4. Secretary, Ministry of Panchayati Raj, Krishi Bhavan, New Delhi
5. Secretary, Ministry of Rural Development (Department of Land Reforms), Krishi Bhavan, New Delhi
6. Secretary, Ministry of Law & Justice (Legislative Department), Shastri Bhavan, New Delhi
7. Chief Secretary, Government of Chhattisgarh, Raipur
8. Chief Secretary, Government of Himachal Pradesh, Shimla
9. Chief Secretary, Government of Asom, Dispur, Guwahati.

(Dr. Bachittar Singh)
Joint Secretary to the Government of India

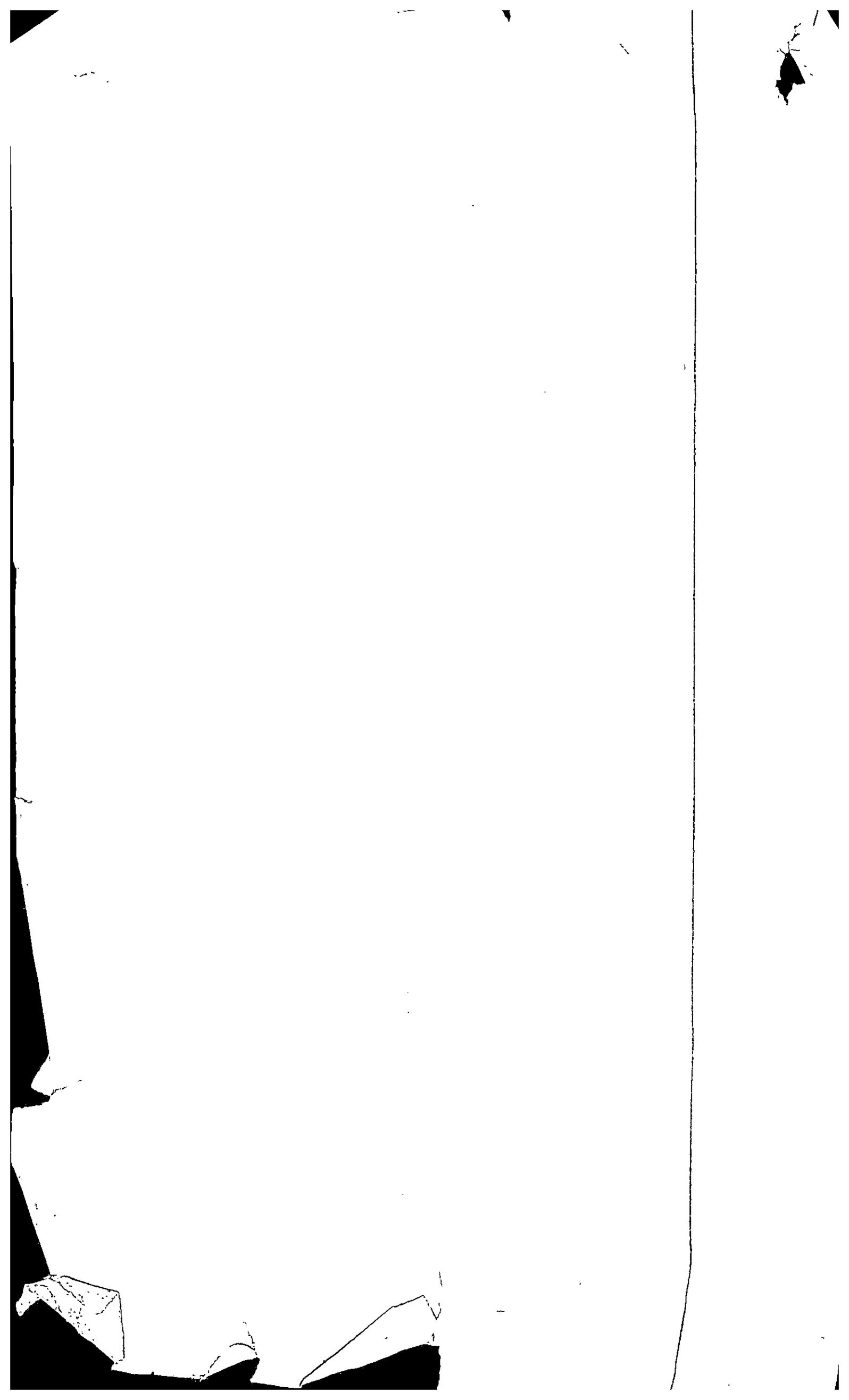
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Attendance Sheet
National Commission for Scheduled Tribes

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157

Sub: 9th Meeting of National Commission for Scheduled held on
17.12.2008 at 1200 Hrs.- Attendance

<u>S.No.</u>	<u>Name and Designation</u>	<u>Signature</u>
1.	Smt. Urmila Singh, Chairperson	(In chair)
2.	Shri Maurice Kujur, Vice-Chairperson	Maurice Kujur
3.	Shri Tsering Samphel, Member	J. J. Samphel
4.	Shri Oris Syiem Myriaw, Member	Oris Syiem Myriaw
5.	Shri R.S. Sirohi, Secretary	R.S. Sirohi
6.	Shri Aditya Mishra, Joint Secretary	Aditya Mishra
7.	Shri R.C. Durga, Director	R.C. Durga
8.	Shri Vinod Aggarwal, Director	Vinod Aggarwal 17/12/08
9.	Shri R.P. Vashistha, Deputy Secretary	—
10.	Shri T.S. Negi, Under Secretary	—
11.	Shri K.N. Singh, PS to Chairperson	K.N. Singh
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F.No. 1/11/08-Coord.

NATIONAL COMMISSION FOR SCHEDULED TRIBES

Subject: Summary record of the 9th meeting of the National Commission for Scheduled Tribes held at 1200 hrs. on 17.12.2008.

The 9th meeting of the National Commission for Scheduled Tribes was held at 1200 hrs. on 17.12.2008 in the Conference room of the Commission in Lok Nayak Bhawan New Delhi. The meeting was presided over by Smt. Urmila Singh, Chairperson, National Commission for Scheduled Tribes. List of participants is enclosed at ANNEXURE.

2. Summary record of the discussions held in the meeting, agenda item-wise, is given below:

Agenda Item I Revised proforma for sending proposal for de-reservation of vacancies reserved for SCs and STs.

The Commission agreed with the proposal of Department of Personnel and Training 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/ amendment of RRs to provide for temporary diversion of unfilled vacancies from promotion quota to direct recruitment, the Commission was 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) Post-Based Rosters and updated seniority list of the officers holding the post for which dereservation is proposed
- (c) Recruitment Rules of the feeder post.
- (d) Post-Based Roster and updated seniority list of the feeder post
- (e) Reasons for non-availability of ST officers in feeder post
- (f) 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. HRD policy, if formulated, in this regard should also be quoted with extract thereof and status of its implementation.

Agenda Item II Note for the Cabinet for Amendment in Sec. 14 of the SCs & STs (PoA) Act, 1989.

The draft note for the Cabinet was discussed in detail and the suggestion made in the note for amendment of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was agreed to.

Agenda Item III Age relaxation for the SCs, STs, and OBCs in case of appointment against unreserved vacancies

It was 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

F.No. 1/11/98 Coord

with the general candidates on an equal footing. Since age relaxation, without grant of concession or relaxation in minimum educational and other qualifications for the post would not 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 recommended modification of DoPT's OM No 36011/1/98-Estt.(Res.) dated 1.7.1968 to this extent.

Agenda Item IV Recommendations of the Standing Committee on SJ&E on the Constitution (STs) (UTs) Order (Amendment) Bill, 2007 in relation to the UT of Lakshadweep

- (i) The Commission noted that Constitution (Scheduled Tribes) (Part C States) Order 1951 thus renamed and modified in the year 1956, as the Constitution (Scheduled Tribes) (Union Territories) Order 1951 specifying Scheduled Tribes in relation to the inhabitants of Lakshadweep for the first time, and after further amendments also, has the following entry:

Throughout the Union Territory:-

Inhabitants of Laccadive, Minicoy and Aminidivi Islands who, and both of whose parents were born in those Islands.

- (ii) The name of the Union Territory of Laccadive, Minicoy and Aminidivi Islands was substituted by the name Lakshadweep *viz* the Laccadive, Minicoy and Aminidivi Islands (Alteration of Name) Adaptation of Laws Order, 1974, for Part I- The Laccadive, Minicoy and Aminidivi Islands (w.e.f. 1.11.1973). 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 viz;.....whowere born in those Islands.
- (iii) 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 in the latter case). The Commission, had also concurred with the proposed definition of the term "settle permanently"
- (iv) The Commission also noted that the currently proposed amendment to the aforesaid order (2007) would enable children born on the mainland to be treated as Scheduled Tribes, but appears to dilute the requirement of permanent residence in the islands as "inhabitants".
- (v) The Commission discussed the issue in detail and noted that modification suggested by the Standing Committee implies that children of the inhabitants born on the mainland will be required not only to be ordinarily resident of the island but also be in possession of a dwelling unit. This is discriminatory in favour of the economically better-off sections. Since socio-economic backwardness arising from geographical isolation of the "inhabitants" of the

Urmila Singh
 उर्मिला सिंग/URMILA SINGH
 अध्यक्ष/Chairperson
 राष्ट्रीय अनुसूचित जंगल आयोग
 National Commission for Scheduled Tribes
 भारत सरकार/Govt. of India,
 नई दिल्ली/New Delhi

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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 the same, including subsequent "Explanation" may be deleted from Clause 2 of the Bill.

- (vi) 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 mentioned above, 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

Agenda Item V Decisions taken in the third meeting of National Tiger Conservation Authority held on 21/05/2008 on the issues concerning the Scheduled Tribes

There are 4 important issues concerning the Scheduled Tribes on which decision was taken in the third meeting of National Tiger Conservation Authority held on 21/05/2008. These decisions of NTCA were discussed in the meeting. The following decisions were taken in the meeting w.r.t. each issue.

Decision taken by NTCA

Views of the NCST

- (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 rehabilitation of the people of relocated villages. Adequate security measures should also be essentially taken in

उर्मिला सिंह/URMILA SINGH
आयुक्त/Chairperson
राष्ट्रीय अनुसूचित जनजाति आयोग
National Commission for Scheduled Tribes
भारत सरकार/Govt. of India,
नई दिल्ली/New Delhi

F.No. 1/11/08-Coord.

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) The provisions of the Scheduled Tribes and Other Traditional Forest 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.

- (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 Protection (Special Tiger Protection Force) should be implemented.
- 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 be made while raising the proposed Special Tiger Protection Force.
- (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 NCSI, should be associated with the Technical Committee of NTCA in monitoring the village relocation activities.

3. The meeting ended with vote of thanks to the Chairperson.

Urmila Singh

उर्मिला सिंह/URMILA SINGH
अध्यक्ष/Chairperson
राष्ट्रीय अनुसूचित जनजाति आयोग
National Commission for Scheduled Tribes
भारत सरकार/Govt. of India,
नई दिल्ली/New Delhi

National Commission for Scheduled Tribes

Meeting of the Commission held on 17.12.2008 at 1200 hrs. in the Conference Room of the Commission- List of participants.

<u>S.No.</u>	<u>Name and Designation</u>	
1.	Smt. Urmila Singh, Chairperson	(In chair)
2.	Shri Maurice Kujur, Vice-Chairperson	
3.	Shri Tsering Samphel, Member	
4.	Shri Oris Syiem Myriaw, Member	
5.	Shri R.S. Sirohi, Secretary	
6.	Shri Aditya Mishra, Joint Secretary	
7.	Shri R.C. Durga, Director	
8.	Shri Vinod Aggarwal, Director	
9.	Shri R.P.Vasishth, Deputy Secretary	
10.	Shri K.N. Singh, PS to Chairperson	



भारत सरकार

राष्ट्रीय अनुसूचित जनजाति आयोग

GOVERNMENT OF INDIA

NATIONAL COMMISSION FOR SCHEDULED TRIBES

संख्या/ No.- No. 1/11/08-Coord

दिनांक/ Date: 09/01/2009

To

- 1) Smt. Urmila Singh, Chairperson
- 2) Shri Maurice Kujur, Vice-Chairperson
- 3) Shri Tsering Samphel, Member
- 4) Shri Oris Syiem Myriaw, Member

Sub: **Summary record of the 9th meeting of the National Commission for Scheduled Tribes held on 17.12.2008.**

Sir,

I am to refer to the above subject and to say that 9th meeting of the Commission was held at 11:30 P.M. on 17.12.2008 in the Conference Room of the Commission as scheduled. The meeting was presided over by Smt. Urmila Singh, Chairperson, National Commission for Scheduled Tribes. A copy of the Summary Record of the meeting is enclosed for information and record.

(R.C. Durga)
Director (Coord.)

Copy with copy of Summary Record of the meeting forwarded to the following officers with the request that information about action taken on the decision taken in the meeting concerning each Unit/ Office may be furnished to Coordination Unit by 30.01.2009 positively:

- (i) Director (RU-I & RU-II)
- (ii) Director (RU-III & Coord.)
- (iii) Dy. Secretary (RU-IV & Admn.)
- (iv) US (Admn.)
- (v) AD/ RO Incharge-RU-I/ RU-II/ RU-III/ RU-IV/ Coord/ SO (Admn.)/ AD(OL).

Copy with copy of Summary Record of the meeting forwarded for information to:

1. PS to Chairperson/ PPS to Secretary/ PS to Joint Secretary.
2. Director/ Assistant Director/ Research Officer in Regional Offices of National Commission for Scheduled Tribes at Bhopal/ Bhubaneswar/ Jaipur/ Raipur/ Ranchi/Shillong.

(R.C. Durga)

27883
9/1/09
भारत सरकार
ISSUED

(संशोधन विभाग)

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1. अध्यक्ष महादेवा के निजी सचिव/सचिव सचिव के निजी सचिव।
 2. राष्ट्रीय अनुसूचित जनजाति आयोग के भाषा/ अनुसूचित/ जयपुर/ जयपुर/ राजपुर/राजी/ विभाग स्थित क्षेत्रीय कार्यालयों में निदेशक/सहायक निदेशक/अनुसूचित अधिकारी।

प्रतिनिधि सूचना हेतु अधिसूचित:

- (i) निदेशक (आर०यू०-1 और आर०यू०-11)
- (ii) निदेशक (आर०यू०-III और समन्वय एकक)
- (iii) उप सचिव (आर०यू०-IV और प्रशासन)
- (iv) अवर सचिव (प्रशासन)
- (v) सहायक निदेशक/अनुसूचित अधिकारी प्रमाणी - आर०यू०-1/आर०यू०-II/आर०यू०-III/ आर०यू०-IV/समन्वय/अनुसूचित अधिकारी (प्रशासन)/सहायक निदेशक (राजभाषा)।

प्रतिनिधि, बैठक के संक्षिप्त अभिलेख की एक प्रति सहित, निम्नलिखित अधिकारियों को इस अनुसूचि के साथ अधिसूचित कि बैठक में लिए गए निर्णयों पर की गई कार्रवाई के बारे में सूचना प्रत्येक संश्लेषण एकक/कार्यालय द्वारा दिनांक 30-01-2009 तक अवश्य ही समन्वय एकक को प्रेषित की जाए।

निदेशक (समन्वय)

(संशोधन विभाग)

(Handwritten signature)

महोदय/महादेवा,
 मुझे उपर्युक्त विषय का उल्लेख करते हुए यह कहना है कि आयोग की 9वीं बैठक आयोग के सम्मेलन कक्ष में दिनांक 17.12.2008 को 11:30 बजे अपराह्न निर्धारित समय के अनुसार हुई थी। बैठक की अध्यक्षता श्रीमती जर्मला सिंह, अध्यक्ष, राष्ट्रीय अनुसूचित जनजाति द्वारा की गई। बैठक के संक्षिप्त अभिलेख की एक प्रति सूचना एवं अभिलेख हेतु संलग्न है।

अभिलेख।

विषय: राष्ट्रीय अनुसूचित जनजाति आयोग की दिनांक 17-12-2008 को हुई 9वीं बैठक का संक्षिप्त

- 1) श्रीमती जर्मला सिंह, अध्यक्ष
- 2) श्री मोरिस कर्पूर, उपअध्यक्ष
- 3) श्री हरिग सन्कल, सदस्य
- 4) श्री वरीश शीख मरीयात, सदस्य

To

दिनांक/ Date: 09/01/2009

संख्या/ No.- 1/11/08-Coord

NATIONAL COMMISSION FOR SCHEDULED TRIBES

GOVERNMENT OF INDIA

राष्ट्रीय अनुसूचित जनजाति आयोग

भारत सरकार



NATIONAL COMMISSION FOR SCHEDULED TRIBES

Subject: Summary record of the 9th meeting of the National Commission for Scheduled Tribes held at 1200 hrs. on 17.12.2008.

The 9th meeting of the National Commission for Scheduled Tribes was held at 1200 hrs. on 17.12.2008 in the Conference room of the Commission in Lok Nayak Bhawan New Delhi. The meeting was presided over by Smt. Urmila Singh, Chairperson, National Commission for Scheduled Tribes. List of participants is enclosed at ANNEXURE.

2. Summary record of the discussions held in the meeting, agenda item-wise, is given below:

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Urmila Singh
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with the general candidates on an equal footing. Since age relaxation, without grant of concession or relaxation in minimum educational and other qualifications for the post would not be inconsistent with the maintenance of efficiency in administration, Outlets for candidates thus selected ought to be classified as having been selected on own merit; and the Commission recommended modification of DoPT's OM No 36011/1/98-Estt.(Res.) dated 1.7.1988 to this extent.

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- (iv) The Commission also noted that the currently proposed amendment to the aforesaid order (2007) would enable children born on the mainland to be treated as Scheduled Tribes, but appears to dilute the requirement of permanent residence in the islands as "inhabitants".
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U. S. Singh
Member, Commission for Scheduled Tribes
Chairperson
Commission for Scheduled Tribes
Ministry of Tribal Affairs, Govt. of India,
New Delhi

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- (vi) 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 mentioned above, 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

Agenda Item V Decisions taken in the third meeting of National Tiger Conservation Authority held on 21/05/2008 on the issues concerning the Scheduled Tribes

There are 4 important issues concerning the Scheduled Tribes on which decision was taken in the third meeting of National Tiger Conservation Authority held on 21/05/2008. These decisions of NTCA were discussed in the meeting. The following decisions were taken in the meeting w.r.t each issue.

Decision taken by NTCA

Views of the NCST

- (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 rehabilitation of the people of relocated villages. Adequate security measures should also be essentially taken in

115/08/2008
Smt. RIMILA SINGH
Chairperson
National Commission for Scheduled Tribes
Ministry of Home Affairs, Govt. of India,
New Delhi

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) The provisions of the Scheduled Tribes and Other Traditional Forest 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.

- (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 Protection (Special Tiger Protection Force) should be implemented.
- 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 be made while raising the proposed Special Tiger Protection Force.
- (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 NCSI, should be associated with the Technical Committee of NTCA in monitoring the village relocation activities.

3. The meeting ended with vote of thanks to the Chairperson.

Urmila Singh
Urmila Singh
Chairperson
राष्ट्रीय अनुसूचित जनजाति आयोग
National Commission for Scheduled Tribes
भारत सरकार/Govt. of India,
New Delhi

National Commission for Scheduled Tribes

Meeting of the Commission held on 17.12.2008 at 1200 hrs. in the Conference Room of the Commission- List of participants.

S.No. Name and Designation

1. Smt. Urmila Singh, Chairperson (In chair)
2. Shri Maurice Kujur, Vice-Chairperson
3. Shri Tsering Samphel, Member
4. Shri Oris Syiem Myriaw, Member
5. Shri R.S. Sirohi, Secretary
6. Shri Aditya Mishra, Joint Secretary
7. Shri R.C. Durga, Director
8. Shri Vinod Aggarwal, Director
9. Shri R.P.Vasishth, Deputy Secretary
10. Shri K.N. Singh, PS to Chairperson



भारत सरकार/ Government of India
राष्ट्रीय अनुसूचित जनजाति आयोग

National Commission for Scheduled Tribes

(मध्यप्रदेश, महाराष्ट्र, कर्नाटक, केरल, गोवा, दादरा एवं नगर हवेली तथा लक्षद्वीप के लिये क्षेत्रीय कार्यालय)

(Regional Office for M. P., Maharashtra, Karnataka, Kerala, Goa, Dadra & Nagar Haveli and Lakshadweep)

कमरा सं. 309, निर्माण सदन, सीजीओ बिल्डिंग, 52 -ए, अरेरा हिल्स, भोपाल- 462011

Room No.309, Nirman Sadan C.G.O. Bldg., 52-A, Arera Hills, Bhopal, 462011

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टेलीफैक्स/ Telefax:
0755 2576530
0755 2578272

पत्र संख्या : 1607/1/09 आर. आर.

दिनांक: 07-01-2009

सेवा में

निदेशक, (समन्वय)

राष्ट्रीय अनुसूचित जनजाति आयोग,

छठी मंजिल, बी विंग,

लोक नायक भवन, खान मार्केट,

नई दिल्ली 11003

विषय :- राष्ट्रीय अनुसूचित जनजाति आयोग की दिनांक 17-12-2008 को सम्पन्न हुई नौवीं बैठक के कार्यवृत्त का प्रेषण।

महोदय,

आपके आदेशानुसार राष्ट्रीय अनुसूचित जनजाति आयोग की दिनांक 17-12-2008 को सम्पन्न हुई नौवीं बैठक के कार्यवृत्त की प्रति पर माननीय अध्यक्ष महोदया के हस्ताक्षर करवाकर मूल प्रति संलग्न कर प्रेषित की जा रही है।

संलग्नक :- मूल प्रति के 5 पृष्ठ

भवदीय

(राकेश कुमार दुबे)
सहायक निदेशक

9/1/09
सहायक निदेशक

NATIONAL COMMISSION FOR SCHEDULED TRIBES

Subject: Summary record of the 9th meeting of the National Commission for Scheduled Tribes held at 1200 hrs. on 17.12.2008.

The 9th meeting of the National Commission for Scheduled Tribes was held at 1200 hrs. on 17.12.2008 in the Conference room of the Commission in Lok Nayak Bhawan New Delhi. The meeting was presided over by Smt. Urmila Singh, Chairperson, National Commission for Scheduled Tribes. List of participants is enclosed at **ANNEXURE**.

2. Summary record of the discussions held in the meeting, **agenda item-wise**, is given below:

Agenda Item I Revised proforma for sending proposal for de-reservation of vacancies reserved for SCs and STs.

The Commission agreed with the proposal of Department of Personnel and Training 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/ amendment of RRs to provide for temporary diversion of unfilled vacancies from promotion quota to direct recruitment, the Commission was 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) Post-Based Rosters and updated seniority list of the officers holding the post for which dereservation is proposed
- (c) Recruitment Rules of the feeder post.
- (d) Post-Based Roster and updated seniority list of the feeder post
- (e) Reasons for non-availability of ST officers in feeder post
- (f) 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. HRD policy, if formulated, in this regard should also be quoted with extract thereof and status of its implementation.

Agenda Item II Note for the Cabinet for Amendment in Sec. 14 of the SCs & STs (PoA) Act, 1989.

The draft note for the Cabinet was discussed in detail and the suggestion made in the note for amendment of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was agreed to.

Agenda Item III Age relaxation for the SCs, STs, and OBCs in case of appointment against unreserved vacancies

It was 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. Since age relaxation, without grant of concession or relaxation in minimum educational and other qualifications for the post would not 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 recommended modification of DoPT's OM No 36011/1/98-Estt.(Res.) dated 1.7.1968 to this extent.

Agenda Item IV Recommendations of the Standing Committee on SJ&E on the Constitution (STs) (UTs) Order (Amendment) Bill, 2007 in relation to the UT of Lakshadweep

- (i) The Commission noted that Constitution (Scheduled Tribes) (Part C States) Order 1951 thus renamed and modified in the year 1956, as the Constitution (Scheduled Tribes) (Union Territories) Order 1951 specifying Scheduled Tribes in relation to the inhabitants of Lakshadweep for the first time, and after further amendments also, has the following entry:

Throughout the Union Territory:-

Inhabitants of Laccadive, Minicoy and Aminidivi Islands who, and both of whose parents were born in those Islands.

- (ii) The name of the Union Territory of Laccadive, Minicoy and Aminidivi Islands was substituted by the name Lakshadweep *vide* the Laccadive, Minicoy and Aminidivi Islands (Alteration of Name) Adaptation of Laws Order, 1974, for Part I- The Laccadive, Minicoy and Aminidivi Islands (w.e.f. 1.11.1973). 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 **viz;.....whowere born in those islands.**
- (iii) 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 in the latter case). The Commission, had also concurred with the proposed definition of the term "settle permanently"
- (iv) The Commission also noted that the currently proposed amendment to the aforesaid order (2007) would enable children born on the mainland to be treated as Scheduled Tribes, but appears to dilute the requirement of permanent residence in the islands as "inhabitants".
- (v) The Commission discussed the issue in detail and noted that modification suggested by the Standing Committee implies that children of the inhabitants born on the mainland will be required not only to be ordinarily resident of the island but also be in possession of a dwelling unit. This is 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 the same, including subsequent "Explanation" may be deleted from Clause 2 of the Bill.

- (vi) 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 mentioned above, 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.

Agenda Item V Decisions taken in the third meeting of National Tiger Conservation Authority held on 21/05/2008 on the issues concerning the Scheduled Tribes

There are 4 important issues concerning the Scheduled Tribes on which decision was taken in the third meeting of National Tiger Conservation Authority held on 21/05/2008. These decisions of NTCA were discussed in the meeting. The following decisions were taken in the meeting w.r.t. each issue:

Decision taken by NTCA

Views of the NCST

- (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 rehabilitation of the people of relocated villages. Adequate security measures should also be essentially taken in

Urmila Singh

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) The provisions of the Scheduled Tribes and Other Traditional Forest 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
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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.

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- (iv) Technical Committee of NTCA will monitor the village relocation activities.

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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 in monitoring the village relocation activities.

3. The meeting ended with vote of thanks to the Chairperson.



भारत सरकार

राष्ट्रीय अनुसूचित जनजाति आयोग

GOVERNMENT OF INDIA

NATIONAL COMMISSION FOR SCHEDULED TRIBES

संख्या/ No.- No. 1/11/08-Coord

दिनांक/ Date: 09/01/2009

To

- 1) Smt. Urmila Singh, Chairperson
- 2) Shri Maurice Kujur, Vice-Chairperson
- 3) Shri Tsering Samphel, Member
- 4) Shri Oris Syiem Myriaw, Member

Sub: **Summary record of the 9th meeting of the National Commission for Scheduled Tribes held on 17.12.2008.**

Sir,

I am to refer to the above subject and to say that 9th meeting of the Commission was held at 11:30 P.M. on 17.12.2008 in the Conference Room of the Commission as scheduled. The meeting was presided over by Smt. Urmila Singh, Chairperson, National Commission for Scheduled Tribes. A copy of the Summary Record of the meeting is enclosed for information and record.


(R.C. Durga)
Director (Coord.)

Copy with copy of Summary Record of the meeting forwarded to the following officers with the request that information about action taken on the decision taken in the meeting concerning each Unit/ Office may be furnished to Coordination Unit by 30.01.2009 positively:

- (i) Director (RU-I & RU-II)
- (ii) Director (RU-III & Coord.)
- (iii) Dy. Secretary (RU-IV & Admn.)
- (iv) US (Admn.)
- (v) AD/ RO Incharge-RU-I/ RU-II/ RU-III/ RU-IV/ Coord/ SO (Admn.)/ AD(OL).

Copy with copy of Summary Record of the meeting forwarded for information to:

1. PS to Chairperson/ PPS to Secretary/ PS to Joint Secretary.
2. Director/ Assistant Director/ Research Officer in Regional Offices of National Commission for Scheduled Tribes at Bhopal/ Bhubaneswar/ Jaipur/ Raipur/ Ranchi/Shillong.


(R.C. Durga)

NATIONAL COMMISSION FOR SCHEDULED TRIBES

Subject: Summary record of the 9th meeting of the National Commission for Scheduled Tribes held at 1200 hrs. on 17.12.2008.

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with the general candidates on an equal footing. Since age relaxation, without grant of concession or relaxation in minimum educational and other qualifications for the post would not be inconsistent with the maintenance of efficiency in administration, Scheduled Tribes candidates thus selected ought to be classified as having been selected on own merit; and the Commission recommended modification of DoPT's OM No 36011/1/98-Est.(Res.) dated 1.7.1988 to this extent.

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Chairman
National Commission for Scheduled Tribes
Ministry of Welfare and Social Justice
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- 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)

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In order to ensure that

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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.

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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 be made while raising the proposed Special Tiger Protection Force.

- (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 NCSI, should be associated with the Technical Committee of NTCA in monitoring the village relocation activities.

3. The meeting ended with vote of thanks to the Chairperson.

Urmila Singh
 उर्मिला सिंग/URMILA SINGH
 अध्यक्ष/Chairperson
 राष्ट्रीय आनुवंशिक जनजाति आयोग
 National Commission for Scheduled Tribes
 नई दिल्ली/Govt. of India,
 नई दिल्ली/New Delhi

National Commission for Scheduled Tribes

Meeting of the Commission held on 17.12.2008 at 1200 hrs. in the Conference Room of the Commission- List of participants.

S.No. Name and Designation

1. Smt. Urmila Singh, Chairperson (In chair)
2. Shri Maurice Kujur, Vice-Chairperson
3. Shri Tsering Samphel, Member
4. Shri Oris Syiem Myriaw, Member
5. Shri R.S. Sirohi, Secretary
6. Shri Aditya Mishra, Joint Secretary
7. Shri R.C. Durga, Director
8. Shri Vinod Aggarwal, Director
9. Shri R.P.Vasishth, Deputy Secretary
10. Shri K.N. Singh, PS to Chairperson