

MOST
IMMEDIATE



भारत सरकार

राष्ट्रीय अनुसूचित जनजाति आयोग

GOVERNMENT OF INDIA

NATIONAL COMMISSION FOR SCHEDULED TRIBES

(A Constitutional Commission set up under Art. 338A of the Constitution to investigate and monitor all matters relating to violation of rights and safeguards provided for STs.)

संख्या/ No. 18/1/08-Coord.

दिनांक/ Date: 16.01.2009

To,

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

Sub: Comments of National Commission for Scheduled Tribes on Report on Study of performance of the National Commission for Scheduled Tribes conducted by Centre for Policy Research, New Delhi entrusted by Department of Administrative Reforms & Public Grievances, Government of India.

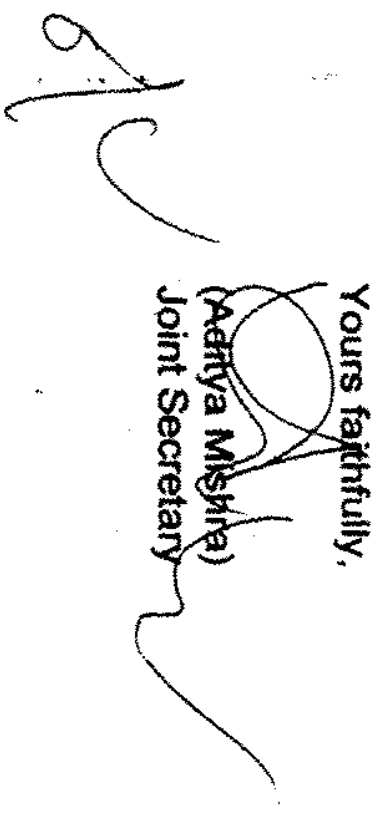
Sir

I am to refer to your letter No. 17014/03/05-C&LM 1 dated 02.01.2009

regarding comments of the National Commission for Scheduled Tribes on the Report on Study of performance of the National Commission for Scheduled Tribes conducted by Centre for Policy Research, New Delhi entrusted by Department of Administrative Reforms & Public Grievances, Government of India. Various observations and recommendations contained in the Report were discussed by the Commission in its 8th meeting. The observations of the Commission on the study Report are given in the statement annexed herewith. It is requested that the observations of the Commission are duly conveyed to the Department of Administrative Reforms & Public Grievances under intimation to this Commission.

Received
20/11/22

विभागाध्यक्ष, जनजात विभाग
Ministry of Tribal Affairs
भारत सरकार, नई दिल्ली
Government of India

Yours faithfully,

(Aditya Mishra)
Joint Secretary

उड़ी भवन, बी.पी.ओ., लोक नयाक बाजार, खान मार्केट, नई दिल्ली-110003. दूरभाष: 24620969 फ़ोन: 24604689, 24624191
6th Floor, B. P. O., Lok Nayak Bazaar, Khan Market, New Delhi - 110003. Ph. 24620969 FAX: 24604689, 24624191
Website: <http://ncsc.mca.gov.in>

**REPORT ON THE PERFORMANCE OF
NATIONAL COMMISSION FOR SCHEDULED TRIBES**
Comments of the National Commission for Scheduled Tribes
on the Observations made in the Report

Point No.	Issues & Comments of the National Commission for Scheduled Tribes
	GENERAL COMMENTS
	The study is incomplete as details about role, duty, functions and powers of the Commission, and its actual working and needs & problems have not been discussed by the Researcher before writing the Performance Report. Besides, the Report does not provide any information about working of the Regional Offices of the Commission having been reviewed or discussed with any officer of the Commission by the Researcher or the need to open more Regional Offices in the country to enable the Commission to reach the grass root level tribals and check violation of their rights under the Constitution, investigate and monitor matters relating to the safeguards and also evaluate the working of those safeguards as per constitutional provisions.
I.	ORGANISATION
i)	The running down of the regional offices is a trend that has continued till the present, when there are only six regional offices to deal with Scheduled Tribes across the country. <u>These are severely understaffed to deal with the areas they are meant to cover</u>
	<u>Comments</u>
	The Commission needs more Regional Offices to be opened in the country and more officers and staff to deal with various matters at Hqrs. as well as in the Regional Offices.
ii)	Appointments of Chairpersons and members have been political sinecures for those ST Representatives of the ruling party whom it needs to satisfy. They have displayed little vision or imagination in addressing the issues of Scheduled Tribes, and been unwilling to take up issues that are uncomfortable for their party.
	<u>Comments</u>
	Appointment of Members of the Commission, are made as per the prescribed conditions laid down in the National Commission for Scheduled Tribes, Chairperson, Vice-Chairperson and Members (Conditions of Service and Tenure) Rules, 2004. Those persons who fulfil the eligibility conditions prescribed in Section 3(i) of these Rules should be considered, irrespective of their political affiliation.
II.	FUNCTIONS AND POWERS
i)	In 2004, the Ministry of Tribal Affairs (MOTA) also assigned the NCST additional functions to carry out studies and hold workshops on specific subjects. It requested MTA to sanction additional funds under the head of 'Other Administrative Expenses' to meet the cost

	<p><u>of workshops and studies on these issues. ... This manner of handing over responsibility for such studies to the NCST and the list of issues themselves betray government's attitude towards the rights of Scheduled Tribes. First, MTA seems to be assuming the right to give instructions to the NCST, thus establishing a relation of superiority over NCST.</u></p>
	<p><u>Comments</u></p>
	<p>There is a need to strengthen the Commission with certain powers as mentioned below, to enhance its autonomy, efficiency and effectiveness;</p> <p>(i) The National Commission for Scheduled Tribes is not able to exercise financial autonomy since formal order(s) relating to financial powers delegated to National Commission for Scheduled Tribes as a Ministry/ Department of Central Govt. under Delegation of Financial Powers Rules 1978 have not been issued by the Administrative Ministry. Ministry of Tribal Affairs may issue necessary orders without further delay.</p> <p>(ii) Under Art. 338(A) (4) of the Constitution the Commission has been given powers to regulate its own procedure and it should be allowed to create infrastructure according to its needs. Funds should also be made available as per need.</p>
ii)	<p><u>While Article 338A (9) clearly states that "the Union and every state government shall consult the Commission on all major policy matters affecting Scheduled Tribes", this does not seem to be happening. that it appears to be MTA which controls NCST because it controls funding, infrastructure and the ATR, rather than the other way around</u></p>
	<p><u>Comments</u></p>
	<p>Since Ministry of Tribal Affairs is presently the nodal (administrative) Ministry for all matters relating to Tribal Development, this Ministry should issue instructions to other Central Ministries and Departments and the State Govts. for seeking the advice of NCST on policy matters affecting STs, directly or indirectly.</p>
iii)	<p><u>Annual Report of the NCSCST and first report of this Commission have not been tabled in Parliament.</u></p>
	<p><u>Comments</u></p>
	<p>The Commission is of the opinion that its Annual Report should be immediately placed before the Parliament. As per the existing procedure, these Reports are tabled along with the ATR by the Ministry of Tribal Affairs on the recommendations contained in the Report. This has resulted abnormal delay in tabling of the Annual Reports; Report pertaining to the year 2004-05 and 2005-06 submitted in August 2006 has not been tabled till date. The delay in this regard has been adversely commented upon by various agencies. The Commission is of the view that the Constitutional provision about laying of the report does not prohibit the government in placing the reports before Parliament immediately, even if complete ATRs can not be submitted simultaneously. The Commission, therefore, impresses upon the Govt. that there should be no hesitation in placing the report before Parliament without undue delay as this will lead to timely awareness of the</p>

	recommendations in general public as well as in various Govt. Deptts., State Govts. and other agencies for effecting timely corrective action.
iv)	While Article 338A of the Constitution envisages the Commission as an independent body empowered to give advice to the government, the Government and the Ministry of Tribal Affairs treat the NCST as an appendage of its normal activities. Thus it is unable to play the balancing, watchdog function it is meant to. The fact that it has no independent powers to sanction officials who have committed atrocities against Scheduled Tribes makes it somewhat of a paper tiger.
	<u>Comments</u>
	<p>While the Commission may not be assigned the role of adjudication, yet the Commission should be conferred powers to impose sanctions on defaulting officials to enable the Commission to effectively discharge its functions relating to safeguards of the Scheduled Tribes.</p> <p>In accordance with Clause (5) and (9) of Article 338A of the Constitution the National Commission for Scheduled Tribes is vested with duty to monitor and evaluate the working of the safeguards provided for the Scheduled Tribes, participate in the planning process and advise the Union and the State govt. on major policy matters affecting the Scheduled Tribes and make recommendations. These recommendations urge the Union and State Govts. to initiate or modify programmes and schemes for welfare, development and protection of Scheduled Tribes and prepare the grounds for protective and legal enactments. Axiomatically, therefore, the views of the Commission in various issues and advice offered by the Commission in legal and other important matters is likely to be at variance with extant views of the Govt. and the executive agencies. In such matters, the Ministry of Tribal Affairs has no oversight role to play regarding recommendations / views of the Commission on matters in relation to other Ministries/ Departments/ Organizations. The expectations aroused by this role of a constitutional body like the National Commission for Scheduled Tribes also result in the Commission being made a respondent in various Court cases. In all such cases, if the views and recommendations of the NCST do not reach the Courts or authorities considering the issues, the outcome of the considerations may be totally against the interest of the Scheduled Tribes; and also unconstitutional in certain cases. It has, however, been noticed that the views expressed/ conveyed by the National Commission for Scheduled Tribes to Ministry of Tribal Affairs, Ministry of Social Justice & Empowerment, Ministry of Panchayati Raj and other Ministries in various Court cases were not incorporated in the Affidavits filed by them or even referred to in the Affidavits filed by the concerned Ministry. For instance in a recent case pertaining to the Writ Petition (WP) No. 4860 of 2008 filed in the High Court of Judicature of Bombay bench at Aurangabad [in the matter of Vikramsing and Another (Petitioners) vs the State of Maharashtra and Ors. regarding non-implementation of the provisions of the Panchayats (Extension to Scheduled Areas) Act 1996 in elections to Zilla Parishads and Panchayats in Scheduled Areas of the State of Maharashtra] in which Ministry of Panchayati Raj, Ministry of</p>

		<p>Tribal Affairs and the National Commission for Scheduled Tribes were also respondents. The judgement reveal that the stand of NCST on the subject, indicated in the communication sent by this Commission to the State Government (which was also annexed with the WP), has been vindicated by the Court, although Ministry of Panchayati Raj and Ministry of Tribal Affairs did not take cognizance of the Commission's views in the affidavit filed on behalf of the respondents in the High Court.</p> <p>Similar is the situation w.r.t. the policy matters and legal amendments concerning wider interest of Scheduled Tribes in which advice of the Commission are (required to be) sought.</p> <p>The Commission, therefore feels that, keeping in view the mandate, duties and responsibilities of the Commission, it is necessary that whenever matters are referred to this Commission for advice or comments, the views expressed by this Commission should invariably be placed, without any oversight or modification, before the concerned authorities for their consideration, as the final decision on the issue rests with the concerned authority. Similarly, in court cases on the subject matters allotted to the Commission, where NCST is also a party and other authorities of the Central Government may be a petitioner party or a respondent party, the Commission should file its reply (if necessary..... independently through a separate Central Govt. Counsel) without routing the matter through the Ministry of Tribal Affairs so that views of the Commission reach the Court without modifications and without delay and for this purpose the Ministry of Law & Justice should directly provide adequate legal support to the Commission for contesting the petition.</p>
III.		ACTUAL FUNCTIONING
	i)	Some members tend to tour their own areas, whereas others tour more widely.
		<u>Comments</u>
		The Members of the Commission are expected to visit the tribal areas of the State under their jurisdiction and get acquainted with their problems and needs. The Members of the Commission, give more weightage to the State to which they belong. This is a natural phenomenon in respect of every public figure and Members of the Commission cannot be exception to it.
	ii)	<u>One Chairman is said to have spent the last few months of his tenure visiting all the swamis and peeths in the country.</u>
		<u>Comments</u>
		There is no such information with this Commission. It is not understood as to what is the basis of this report.
	iii)	Principle Investigators assigned to each research unit: It is this level which is most crucial for the bulk of cases handled by the Commission, and the impact felt by the public in everyday matters

		<u>(which do not require major policy or political interventions). These units are severely understaffed, and fresh recruitment appears to be a serious problem.</u>
		AND
	iv)	<p>Unfortunately, even all the petitions that the Commission gets are not recorded. I am personally aware of petitions submitted to the Commission following a meeting with the Chairperson, but which do not figure in the records of the relevant research unit. The mismatch between the atrocities that take place and the cases that the Commission deals with could be due to at least three reasons:</p> <p>1.) not all cases which are registered require the intervention of the Commission,</p> <p>2.) lack of staff to deal with the volume of cases that come in (each research unit gets about 4-500 letters on average per month)</p> <p>3.) a tendency among staff to concentrate on the more easily manageable service cases where the petitioners are more organised and hence more vocal, and thus neglect the atrocities cases.</p> <p><u>The shortage of staff is quite severe, and appears to be half of the sanctioned strength.</u></p>
		<u>Comments (iii) and (iv)</u>
		<p>Keeping in view the role, duties, functions and power assigned to the Commission, this Commission is very much understaffed and the sanctioned staff needs to be positioned for effective functioning of the Commission. As per rules for appointment of Members of the Commission, the Chairperson has the status of Union Cabinet Minister while Vice-Chairperson has the status of Minister of State in the Union Cabinet while Members of the Commission are having the status of Secretary to the Govt. of India. The post of Secretary, NCST is also in the rank of Secretary to the Govt. of India. However, the Ministry of Tribal Affairs, which is the administrative Ministry of this Commission, while setting up the Commission and making appointments of the Members of the Commission did not sanction required number of staff in the personal sections of the Chairperson, Vice-Chairperson, Members and Secretary and Joint Secretary of the Commission. <u>The Ministry also did not sanction any working staff to assist the senior level Officers of the Commission.</u> However, meagre staff, along with a few vacant posts, was transferred to this Commission by the National Commission for Scheduled Castes and a large number of these vacancies still continue to exist in this Commission because there are different Cadre Controlling Authorities for each category of posts in the Commission, and NCST does not have control over any post. There is a Joint Cadre of the specialised categories of posts in NCST, NCSC, Ministry of Tribal Affairs and MSJE and some of the Joint Cadre posts (Group 'A') and all secretariat posts are filled by the Ministry of Social Justice & Empowerment. Junior level Joint Cadre posts are controlled by the National Commission for Scheduled Castes. The problem can be resolved only if the Recruitment Rules are amended and the National Commission for Scheduled Tribes is declared as Cadre Controlling Authority in respect of some categories of the posts in the Commission,</p>

	<p>as outside authorities are not likely to take requisite interest in providing requisite staff to NCST. Besides, to enable this Commission to reach grass root tribals and check violation of the rights provided to them under the Constitution, investigate and monitor matters relating to the safeguards and also evaluate the working of those safeguards as per constitutional provisions, the National Commission for Scheduled Tribes needs additional posts</p> <p>(a) to look after increasing workload in the Hq. Office and the Regional Offices and</p> <p>(b) for opening new Regional Offices in the country.</p> <p>As already mentioned with regard to filling the vacancies and posting of officers in various categories of posts in the National Commission for Scheduled Tribes, several posts continue to remain vacant in the National Commission for Scheduled Tribes inspite of DPC for various posts having met in the matter of promotion. Therefore, till such time an independent NCST cadres are formed, Ministry of Social Justice & Empowerment should constitute a Coordination Committee with representation from each participating organisation to consider postings and transfers within MSJE, MTA, NCST, and NCSC for smooth functioning of each Commission (Such a Committee is stated to be in existence at the time of erstwhile Offices of the Commissioner for Scheduled Castes and Scheduled Tribes and the National Commission for Scheduled Castes and Scheduled Tribes).</p> <p>As regards timely action on fresh cases of grievances relating to Scheduled Tribes, a computerized Grievance Management and File Management System has been introduced recently for proper processing and monitoring of grievances/ complaints. Guidelines are also being developed for prompt handling of different kinds of petitions/ grievances within the Commission, but this can not be achieved without adequate staff at each level.</p>
iv)	<p>The usual procedure is for the Commission to write letters to the concerned Secretary/ Chairperson of the organisation from which the complaint originated, or with which the complaint is concerned and ask for an explanation. In cases where they do not get an answer they can issue summons to the officer to appear in person before the Commission and explain. However, this is rare, and from March 2004-2007, summonses have been issued in only two cases.</p>
	<u>Comments</u>
	<p>The provision for issue of SUMMONS should not be seen as the only tool for settlement of grievances. Through initial letters calling for facts in each case, Authorities are also made aware about the power of the Commission to issue SUMMONS. Therefore, many cases have been resolved by holding hearings/ meetings without issuing SUMMONS.</p>
v)	<p>"Where rules are knowingly violated by the administration, the tendency is to cover up the matter." In such cases, the Commission is helpless. This procedure is especially problematic for STs, since a large number of the atrocities committed on them are by agencies of the government like the police and the forest staff.</p> <p>The point, however, is that while not every case can be</p>

		independently investigated by the Commission and letters asking for an explanation do constitute some form of pressure, this mode of functioning as the dominant norm needs to be seriously rethought. Apart from visits by the members, the existing independent investigating machinery in the Commission needs to be strengthened.
		<u>Comments</u>
		<p>It is a fact that a large number of grievances relating to violation of rights of Scheduled Tribes is because of discrimination by Govt. Officials/ Agencies against members of Scheduled Tribes. The Scheduled Tribe beneficiary is innocent, unaware of the rules and schemes of the Govt. for their welfare and development and the Govt. Agencies/ employees either show lethargy in extending flow of benefits to them or do not intend to ensure adequate consideration of their rights. Field Investigation by a team of Officers from the NCST is not required in each case. To formulate an independent view of events, a large contingent of Investigators and Officers would have to be provided to the Commission.</p> <p>It is practically not possible for the Commission to do all policing, investigation and monitoring of each case received in the Commission, otherwise the Commission will become another State or District level implementing, investigative and monitoring body. However, in order to effectively deal with the matter relating to violation of rights of Scheduled Tribes, the Commission should be conferred powers to impose sanctions on defaulting officials to enable the Commission to effectively discharge its functions relating to safeguards of the Scheduled Tribes.</p>
	vi)	In effect however, the Service Safeguards wing acts as an internal branch of the government, ensuring better service conditions for the scheduled tribe employees of the government.
		<u>Comments</u>
		Service matters normally do not require field visits and therefore more number of such cases can be dealt in limited time. Moreover, it is the constitutional duty of the Commission to monitor the implementation of safeguards and rights of the Scheduled Tribes.
	vii)	Moreover, all these cases are of individual atrocities and the Commission seems unwilling to take up the widespread atrocities on adivasis that are going on in the name of militarization and internal security, both in the north-east and central India, including the gang rapes and widespread murders by the Salwa Judum in Chhattisgarh, or by the armed forces in the north-east despite these having been brought to its notice.
		<u>Comments</u>
		This is not correct. As reported by the Researcher herself, the commission is not able to take up many cases due to acute shortage of staff in the Headquarter as well as Regional Offices of the Commission. The issues have been taken up by the Commission with the concerned authorities. However, the NCST has a limited role in such matters as the Commission cannot assume the responsibilities assigned to other Govt. Agencies set up to take such issues, beside the fact that the Commission

		is not empowered to take direct or indirect action against the involved parties or impose sanctions on them.
IV		OVERALL IMPACT OF THE COMMISSION
	i)	Certain issues have not been taken up by the Commission at all despite petitions – e.g. militarization.
		<u>Comments</u>
		The position is well clarified while making comments on III (vii) above. As mentioned earlier, Commission needs more Regional Offices to be opened in the country and more Officers and staff to deal with various matters at Hq as well as in the Regional Offices.
V.		<u>RECOMMENDATIONS</u>
	i)	The primary recommendation in this report is that the Government follow the Constitution in the spirit it was envisaged, among other things, by strengthening the role of the Commission as a truly independent watchdog body with punitive powers.
	ii)	The composition of the Commission needs to be examined, in particular, the implications of a commission composed entirely of political appointments by the ruling party. The qualifications of the Chairperson and Members should be publicly available, and there should be an effort to involve people from different professions concerned with Scheduled Tribes.
	iii)	The overlap with the Ministry of Tribal Affairs needs to be examined, and the independence of the Commission vis-à-vis MOTA asserted.
	iv)	The Commission is short staffed, as well as under funded and therefore unable to deal satisfactorily with the volume of cases. The Regional offices need to be strengthened, along with an independent investigating mechanism. This should replace the standard procedure of asking for clarification as the dominant mode of functioning.
		<u>Comments V (i) to (iv)</u>
		<p>The recommendations (i, ii, iii & iv) are worthy of consideration since they may enhance the autonomy, efficiency and effectiveness of the Commission. However, the comment regarding overlap probably emanates from the fact that the MoTA and NCST share a common functional area though with different roles assigned to each.</p> <p>Commission needs more Regional Offices to be opened in the country and more Officers and staff to deal with various matters at Hq as well as in the Regional Offices.</p> <p>The National Commission for Scheduled Tribes has been given power to regulate its own procedure and it should be allowed to create infrastructure according to its needs. Funds should also be made available as per the needs of the Commission keeping in view the role, duty, functions and power assigned to the Commission under the Constitution. Please also see the comments w.r.t. III (v) above.</p>