



**NATIONAL COMMISSION
FOR
SCHEDULED TRIBES**

**SIXTH REPORT
FOR THE YEAR
2010-11**

डा. रामेश्वर उराँव
अध्यक्ष
(भूतपूर्व सांसद-लोकसभा)
(पूर्व जनजातीय कार्य राज्यमन्त्री)
Dr. RAMESHWAR ORAON
Chairperson
(Ex Member Parliament-LS)
(Former Minister of State for Tribal Affairs)



भारत सरकार
राष्ट्रीय अनुसूचित जनजाति आयोग
छठी मंजिल, लोकनायक भवन,
खान मार्केट, नई दिल्ली-110003
Government of India
National Commission for Scheduled Tribe
6th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi-110003
Tel. : 011-24635721
Telefax : 011-24624628

D.O. No. 4/3/13-Coord.

Dated: October, 2013

Respected Rashtrapati ji,

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

2. In pursuance to the above mentioned provision, the National Commission for Scheduled Tribes has so far submitted five Annual Reports and One Special Report on "Good Governance for Tribal Development and Administration". I have now the honour to submit to you the **Sixth Report** of the National Commission for Scheduled Tribes for the year 2010-11. During the period under review, the Members of the Commission interacted with senior officers and people's representatives at State, district and local levels. The Commission also held sittings with the senior officers of the State Governments, Central Ministries and Departments, Central Public Sector Enterprises and Financial Institutions. The Commission has also deliberated upon various policy measures contemplated by the Government. The experiences of the Commission have been included in this Report, which comprises seven Chapters (i) **Organisational Set-Up & Functioning of the Commission** (ii) **Service Safeguards** (iii) **Drinking Water in Tribal Areas** (iv) **Critical Issues Concerning Scheduled Tribes** (v) **Case Studies** (vi) **Consultation on Policy Related Issues** and (vii) **SUMMARY OF RECOMMENDATIONS**. The last Chapter collates containing the recommendations made in each Chapter of this Report.

3. The first Chapter on '**ORGANIZATIONAL SET-UP AND FUNCTIONING OF THE COMMISSION**' inter-alia, highlights (i) various aspects of the functioning of the Commission and the initiatives taken for improved performance, (ii) needs and constraints faced by the Commission and (iii) laying of the Commission's reports in Parliament. Regrettably, due to the continually worsening shortage of staff, the Commission has not been able to take up matters relating to all duties and functions assigned to it, the outcome of which reflects adversely on the efforts

made by the Commission. The Commission has, however, noted that while it submitted its 1st report to the Hon'ble President on 8 August 2006, the Report was laid in Rajya Sabha on 30.08.2012 and in Lok Sabha on 31.08.2012 only. The First Report was thus laid in Parliament six years after its submission. Similarly the Second Report submitted on 03.09.2008 has been laid in the Lok Sabha on 26.04.2013 and in Rajya Sabha on 2.05.2013, about five years after the submission of the Report. The Third, Fourth and Fifth Reports of the Commission were submitted on 29.03.2010, 27.08.2010 and 13.07.2011 respectively. None of these reports has been laid in Parliament so far. Besides, the Special Report which was submitted on 18.06.2012 with the request that the Report may be laid on priority in both Houses of Parliament in view of the urgency for submission of a Special Report, is also yet to be laid in Parliament. The directive given by the Prime Minister's Office to the Ministry of Tribal Affairs vide UO dated 24/05/10, for *inter-alia* strengthening the manpower of the Commission, has not yielded any result in more than three years since issue of the letter. The Commission has also no information whether any of its Reports has been laid in any State Legislature, as required under Clause (7) of Article 338A. The Commission, in this Report has, therefore, reiterated its recommendation made in all its earlier reports that Clause (6) and Clause (7) of Article 338A should be amended to provide that the President/ Governor shall cause all reports submitted by the Commission to him/ her to be laid before each House of Parliament and State Legislatures within three months of such submission and a memorandum of action taken shall be placed before each House of Parliament/ State Legislature within six months of such submission.

4. It would also be appropriate to mention that the Commission does not have adequate budget provision and requisite manpower to deal with even the original duties assigned to it. The Commission is, in fact, continuously battling against a heavy resource crunch as budget provisions have been continuously and sharply reduced by the Government over the last two years. Consequently, the activities of the National Commission for Scheduled Tribes have been greatly crippled both due to declining provisions of funds and consequent shortage of manpower. I, regretfully state that the Commission is not functioning effectively in assuring justice to the Ten Crore tribal population of the country due to non-cooperation and neglect by the Government of the Commission's responsibilities and needs closely related to its Constitutional mandate to investigate and monitor all matters relating to safeguards provided for Scheduled Tribes in the Constitution.

5. The Constitution of India has made specific provisions for upliftment of the Scheduled Tribes. These include provisions for reservation for Scheduled Castes and Scheduled Tribes in posts and services under the Government. There are several instructions and guidelines relating to implementation of policy of reservation to be implemented by Government Departments and Public Sector Enterprises under them, including Banks, Insurance Companies and Universities. **Chapter 2** on '**SERVICE SAFEGUARDS**' discusses some important aspects having vital bearing on the service safeguards available to the members of the Scheduled Tribes. An important issue relating to service safeguards for Scheduled Tribes requiring urgent attention relates to imposing ban on dereservation of posts reserved for Scheduled Tribes. The issue has been discussed at length with the recommendation for imposing the ban on dereservation in Direct Recruitment as well as in promotion.

6. As the tribal areas are isolated from other areas, special measures are required to be taken up to ensure that the benefits of various schemes, particularly the welfare schemes and those related to minimum needs reach the inaccessible tribal areas and the Scheduled Tribes living therein. During visits to various parts of the country, the Commission noticed that the tribal areas did not generally have access to safe drinking water. The Commission, therefore, decided to review the prevailing situation in the tribal areas and the proposals of the Ministry of Drinking Water to ensure coverage of all tribal habitations in the country. **Chapter 3 on “Drinking Water in Tribal Areas”** covers all these issues including the retrospective on the measures taken in the past and the future proposals of the Government.

7. While subject matters to be covered in the Sixth Report were originally decided keeping in view the subject matters already covered in the first five Reports, the Commission decided to submit on priority a Special Report on very important issues relating to Tribal Development and Administration which required the immediate attention of the Government. On the same lines, the Commission decided to highlight other important issues concerning development of Scheduled Tribes in a separate Chapter (**Chapter 4 on “Critical Issues Concerning Scheduled Tribes ”**) in the present (Sixth) Report. The issues covered in this Chapter are (a) Revision of lists of Scheduled Tribes, (b) Land acquisition, Land (Sub-Surface) Rights and Land Alienation, (c) Education among Scheduled Tribes in Scheduled Areas, (d) Health and Medical facilities in Scheduled Areas, (e) Tribal Sub Plan and (f) National Tribal Policy and (g) Mahatma Gandhi National Rural Employment Guarantee Scheme.

8. The Commission receives representations pertaining to grievances and violation of safeguards of Scheduled Tribes. These representations are referred to the concerned organizations of the Central Government or the State Governments by the Commission, requesting them to furnish full facts within a given time frame. The facts furnished by the concerned organization are examined by the Commission and in case, upon enquiry, the Commission feels that there has been violation of the safeguards provided to the members of Scheduled Tribes either in the Constitution or under any other law or order of the Government, it advises the concerned organization to take corrective measures within a given timeframe and apprise the Commission of the action taken. The Commission's intervention brought relief in many cases during the Report period 2010-11. A few representative cases have been discussed in **Chapter 5** titled **CASE STUDIES**.

9. Clause 9 of Article 338A of the Constitution provides that the Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Tribes. During the year 2010-11, the Commission communicated its views on several policy-related issues, the details of which have been presented in **Chapter 6 on CONSULTATION ON POLICY RELATED ISSUES**.

10. The recommendations of the Commission on various aspects as highlighted in the respective Chapters have been summarized in **Chapter 7 on SUMMARY OF RECOMMENDATIONS** to facilitate convenient identification for the purpose of taking up follow up action on them by the Government.

11. Despite increasing handicaps, the Commission has persevered to highlight in this Report, the basic problems of Scheduled Tribes and has made recommendations to improve the efficacy of existing measures to safeguard their rights and the problems being faced by the Commission in fulfilling the mandate assigned to it by the Constitution. **The Commission sincerely hopes that the recommendations and suggestions made in this Report will be given serious consideration in the overall interests of the Scheduled Tribes. However, the worsening shortage of manpower and infrastructure and budgetary support available with the Commission urgently call for issuing necessary directives to the Government.**

With kind regards.

Yours sincerely,

Rameshwar Oraon
(Rameshwar Oraon)

Shri Pranab Mukherjee,
Hon'ble President of India,
Rashtrapati Bhavan,
New Delhi.

CONTENTS

SIXTH REPORT (2010-11)

		Page. No.
	LETTER TO PRESIDENT	I-IV
	CHAPTERS	
1	ORGANISATIONAL SET-UP & FUNCTIONING OF THE COMMISSION	1-30
	1.1 Creation and composition of the National Commission for Scheduled Tribes	1
	1.2 National Commission for Scheduled Tribes Chairperson, Vice-Chairperson and Members (Conditions of Service and Tenure) Rules, 2004	1
	1.3 Functions and Duties of the National Commission for Scheduled Tribes	2
	1.4 Powers of the Commission	3
	1.5 Organizational setup of the Headquarter Office and Secretariat of the Commission	10
	1.6 Functional Activities of the Commission	15
	1.7 Meetings of the Commission	16
	1.8 Review Meetings	16
	1.9 Presentation of the Annual Reports to the President of India and laying of the Reports in Parliament	18
	1.10 Compliance of the RTI Act, 2005	20
	1.11 Representation in Court Cases	21
	1.12 Computerized Monitoring System	21
	1.13 Virtual Library of the Commission:	24
	1.14 Progress of disposal of receipts/ petitions/ cases in the Commission.	24
	1.15 Functioning of the Regional Offices of the Commission	25
2	SERVICE SAFEGUARDS	31-62
	2.1 Constitutional Provisions	31
	2.2 Constitutional validity of the amendments	32
	2.3 Own merit appointments	34
	2.4 Cadre strength- Direct Recruitment and Promotion-adjustments	34
	2.5 Reservation in promotion and Zone of Consideration	34
	2.6 Reservation in promotion – Treatment of SC/ ST candidates promoted on their own merit.	36

2.7	Grant of reservation to migrant SCs/ STs in civil posts under the Government of NCT of Delhi.	38
2.8	Reservation for SCs and STs beyond 15.11.1997 in financial institutions/ Banks consequent to judgement of Madras High Court dated 09.12.2009- DoPT O.M.No.36012/43/2008- Estt.(Res.) dated 14.01.2010	39
2.9	Representation of Scheduled Tribes in public services	40
2.10	Implementation of reservation policy for Scheduled Tribes in Central Public Sector Enterprises --Parliamentary Committee on Welfare of Scheduled Castes and Scheduled Tribes	49
2.11	The Scheduled Castes and the Scheduled Tribes (Reservation in Posts and Services) Bill 2008	52
2.12	Recognition of SCs and STs Employees Welfare Associations.	55
2.13	Dereservation of Posts Reserved for Scheduled Tribes	55
3	DRINKING WATER IN TRIBAL AREAS	63-82
3.1	Retrospective	63
3.2	National Water Policy	63
3.3	Rajiv Gandhi National Drinking Water Mission	65
3.4	New Guidelines under RGNDWM	66
3.5	Achievements	67
3.6	National Habitation Survey, 2003	69
3.7	Bharat Nirman: Rural Drinking Water Programme	69
3.8	Performance Audit by CAG	71
3.9	Tribal Sub-Plan for Scheduled Tribes and Drinking Water Supply	73
4	CRITICAL ISSUES CONCERNING SCHEDULED TRIBES	83-125
4.1	Revision of lists of Scheduled Tribes	84
	(A) Specification of Scheduled Tribes	84
	(B) Criteria for specification of a community as a Scheduled Tribe	84
	(C) Procedure for inclusion in or exclusion from the list of Scheduled Tribes	84
	(D) Functioning of Scrutiny Committee for verification of caste certificates	89
4.2	Land Acquisition, Land (Sub-Surface) Rights and Land Alienation	90
	(A) Types of displacement	92
	(B) Evolution of resettlement and rehabilitation policy	93
	(C) Land (Sub-Surface) rights	94

(D)	Role of the Governors in Scheduled Areas in the context of Land Acquisition, Rehabilitation and Resettlement	97
(E)	Displacement due to land alienation	100
4.3	Education among Scheduled Tribes in Scheduled Areas	101
(A)	Constitutional Safeguards and other Measures	102
(B)	Educational Schemes for STs taken up by the Government	103
(C)	Eklavya Model Residential Schools (EMRS)	105
4.4	Health and Medical facilities in Scheduled Areas	108
(A)	National Rural Health Mission	112
(B)	Reported Scams under National Rural Health Mission	114
(C)	National Rural Health Mission and consultation with the National Commission for Scheduled Tribes	115
4.5	Tribal Sub Plan	115
4.6	National Tribal Policy	120
4.7	Mahatma Gandhi National Rural Employment Guarantee Scheme	121
(A)	MANDATE	122
(B)	GOALS	122
(C)	PERFORMANCE- TSP FLOW	122
(D)	MGNREGS in Left Wing Extremism areas	123
5	CASE STUDIES	126-151
5.1	Approach and Methodology	126
5.2	Brief of selected Successful cases dealt during 2010 – 11	126
5.2.1	Service Matters	126
5.2.2	Development Matters	140
5.2.3	Atrocity Matters	145
6	CONSULTATION ON POLICY RELATED ISSUES	152-162
6.1	Constitutional provision	152
6.2	Procedure adopted by Commission in dealing with policy related issues	152
6.3	Views of the National Commission for Scheduled Tribes on policy- related issues/ proposals received from the Central and the State Governments pursuant to Clause 9 of Article 338A of the Constitution	154
6.4	Suo-motu recommendations made by the National Commission for Scheduled Tribes.	158

7	SUMMARY OF RECOMMENDATIONS	163-184
	Ch.1 Organizational Set-up & Functioning of the Commission	163
	Ch.2 Service Safeguards	165
	Ch.3 Drinking Water in Tribal Areas	172
	Ch.4 Critical Issues Concerning Scheduled Tribes	173
	Ch.6 Consultation on Policy Related Issues	183
	ANNEXURES	185-234

National Commission for Scheduled Tribes

6TH REPORT FOR 2010-11

LIST OF ANNEXURES

S.No.	INDEX	Para	Pages
1.I	Visits undertaken by Members during 2010-11	1.8.5	186 -186
1.II	Disposal of files as on 31.03.2011	1.12.6	187
1.III	Disposal of Receipts as on 31.03.2011	1.12.6	188
2.I	Letter No. 4/6/12-Coord dated 30.1.2013 to (DoPT)	2.6.7	189 -192
2.II	DoPT OM NO. 36070/12/2007-ESTT (Res) dated 7/12/2009	2.13.8	193 -200
2.III	Deservation Proposals dealt during 2010-11	2.13.8	201-208
2.IV	Salient Cases of Deservation received during 2010-11	2.13.8	209 -222
3.I	National Water Policy adopted in September, 1987	3.4	223 -224
3.II	Habitations fulfilling & non-fulfilling ARWSP.	3.21	225 -226
3.III	Secretary, Planning Commission DO letter dated 26/10/2009 regarding preparation of SCSP & TSP	3.40	227 -230
3.IV	Note on Rural Drinking Water Supply furnished by Minister of Drinking Water Supply	3.42	231-232
3.V	Status about ST habitation covered up to 29/10/10 as received from MDWS	3.42(viii) 3.43	233 -234

CHAPTER 1

ORGANIZATIONAL SET-UP AND FUNCTIONING OF THE COMMISSION

1.1 Creation and composition of the National Commission for Scheduled Tribes

1.1.1 The National Commission for Scheduled Tribes (NCST) was established by amending Article 338 and inserting a new Article 338A in the Constitution through the Constitution (89th Amendment) Act, 2003¹. By this amendment the erstwhile National Commission for Scheduled Castes and Scheduled Tribes was replaced by two separate Commissions namely- (i) the National Commission for Scheduled Castes (NCSC), and (ii) the National Commission for Scheduled Tribes (NCST) w.e.f. **19 February, 2004**. Detailed background information about the historical evolution of the National Commission has been given in Chapter-1 of the first Report of the Commission for the year 2004-05 and 2005-06.

1.1.2 The National Commission for Scheduled Tribes has a Chairperson, Vice-Chairperson and three other Members. Smt. Urmila Singh who was Chairperson of the Commission since 18/06/2007 demitted office on 24/01/2010 after her appointment as Governor of the State of Himachal Pradesh. Dr. Rameshwar Oraon, Ex-MP joined the Commission as Chairperson on 28.10.2010. Shri Maurice Kujur, who was Vice Chairperson from 25.04.2008, was Acting Chairperson from 25/01/2010 and continued his tenure during the report period. Shri Tsering Samphel and Shri Oris Syiem Myriaw, Members appointed from 14.06.2007 and 17.04.2008 respectively, continued until completion of their tenure i.e. 13.06.2010 and 16.04.2011. Smt. K. Kamla Kumari and Shri Bheru Lal Meena joined the Commission as Members on 21.07.2010 and 28.10.2010 respectively. The third post of Member, vacant since March 2007, remained vacant throughout the year under report.

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

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

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

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

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

1.2.2 The Chairperson, Vice Chairperson and other Members have also been entitled to receive salaries and allowances as admissible to a Secretary to the Govt. of India

1.3 Functions and Duties of the National Commission for Scheduled Tribes

1.3.1 The functions, duties and powers of the National Commission for Scheduled Tribes have been laid down in Clauses (5), (8) and (9) of the Article 338A of the Constitution, inserted by Constitution [Eighty-ninth Amendment] Act, 2003. Clause (5) states that it shall be the duty of the Commission:

- (a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Tribes under the Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;
- (b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Tribes;
- (c) to participate and advise on the planning process of socio-economic development of the Scheduled Tribes and to evaluate the progress of their development under the Union and any State;
- (d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;
- (e) to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Tribes; and
- (f) to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Tribes as the President may, subject to the provisions of any law made by Parliament, by rule, specify.

Expanded Terms of Reference of the Commission

1.3.2 The Ministry of Tribal Affairs *vide* Notification dated 23 August, 2005, vested the Commission to discharge the following additional functions in relation to the protection, welfare and development and advancement of the Scheduled Tribes. A copy of this notification is placed at **ANNEXURE-1.II**

- (i) Measures that need to be taken over conferring ownership rights in respect of minor forest produce to Scheduled Tribes living in forest areas;
- (ii) Measures to be taken to safeguard rights of the tribal communities over mineral resources, water resources etc. as per law;
- (iii) Measures to be taken for the development of tribals and to work for more viable livelihood strategies;
- (iv) Measures to be taken to improve the efficacy of relief and rehabilitation measures for tribal groups displaced by development projects;
- (v) Measures to be taken to prevent alienation of tribal people from land and to effectively rehabilitate such people in whose case alienation has already taken place;
- (vi) Measures to be taken to elicit maximum cooperation and involvement of tribal communities for protecting forests and undertaking social afforestation;
- (vii) Measures to be taken to ensure full implementation of the provisions of Panchayat (Extension to Scheduled Areas) Act, 1996 (40 of 1996);
- (viii) Measures to be taken to reduce and ultimately eliminate the practice of shifting cultivation by tribals that lead to their continuous disempowerment and degradation of land and the environment.

1.3.3 It would be appropriate to mention that the Commission does not have the requisite manpower to deal with even the original duties assigned to it. Besides, there is no budgetary head/ funds available in the National Commission for Scheduled Tribes under any Plan scheme to take up the original as well as additional functions through outsourcing. Consequently, this Commission has not been able to take up the matters/ issues mentioned in the Expanded Terms of Reference notified by the Govt. on 23/08/2005.

1.4. Powers of the Commission

(A) Procedural Autonomy

1.4.1 Clause (4) of Article 338A of the Constitution provides that the Commission shall have the power to regulate its own procedure. The Commission accordingly notified the Rules of Procedure for the first time on 17 September 2004. These Rules define the responsibilities of the Chairperson, Vice-Chairperson and Members, and Secretary to the Commission, and further

lay down that the Chairperson shall allocate subjects and responsibilities among the Members of the Commission. These Rules, inter-alia, also provide about

- (i) the procedure of investigation and enquiry by the Commission,
- (ii) frequency of meetings of the Commission,
- (iii) the duties of Regional Offices of the Commission,
- (iv) the advisory role of the Commission, and
- (v) monitoring functions of the Commission and its Regional Offices.

1.4.2 A copy of the Rules of Procedure is available² on the website of the Commission (<http://ncst.nic.in>). No changes were made to these Rules during the Report year 2010-11. It is, however, noteworthy that despite the constitutional provision empowering the Commission to regulate its own procedure in fulfilling the mandate assigned to it, the Commission has not been able to function smoothly and effectively due to various and persisting constraints as discussed in detail in the previous Reports of the Commission. This Commission is informed that, the Government has not taken any decision in this regard and therefore, the Commission continues to function with several handicaps. **The Commission therefore reiterates the following recommendations made in the previous two reports i.e. 4th Report for the period 2008-09 and 5th Report for the period 2009-10.**

- (i) **In court cases relating to the subject matters allotted to the Commission, where NCST is also a respondent and other authorities of the Central Government may be a petitioner party or a respondent, the Commission should file its reply independently through a separate Central Govt. Counsel, so that views of the Commission reach the Court without modifications or curtailments. To avoid delay, it may also be examined whether there is any real need for routing such requests for legal representation through the Administrative Ministry (MTA), as the Ministry has no oversight role to play regarding recommendations / views of the Commission on matters in relation to other Ministries/ Departments/ Organizations.**
- (ii) **The NCST, which is a Constitutional successor to the NCSCST, and has been vested with more duties and powers, should immediately be granted all the powers of the Department of the Central Government so that the Commission can function and perform as per its mandate.**

(B) Powers to act as a Civil Court

1.4.8 Clause (8) of Article 338A provides that the Commission shall, while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of Clause (5) have all the powers of a civil court trying a suit and in particular in respect of the following:

- (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath,
- (b) requiring the discovery and production of any documents,

² Copy of the Rules of Procedure is available under the link "**Commission and Related Activity**" on the website of the Commission (<http://ncst.nic.in>).

- (c) receiving evidence on affidavits,
- (d) requisitioning any public record or copy thereof from any court or office,
- (e) issuing commissions for the examination of witnesses and documents,
- (f) any other matter which the President may, by rule, determine.

1.4.9 The powers of the civil court are exercisable by all Members including Vice-Chairperson and Chairperson of the Commission. In matters where concerned authorities do not respond or furnish unsatisfactory reply, the Members invoke this power and hold a sitting/ hearing in the case, where issues are discussed in detail keeping in view the Rule position in the aggrieved matter. Detailed proceedings of the sitting/ hearing, also containing the advice/ recommendation of the Commission in the matter, are also issued and displayed³ on the Commission's website.

Supreme Court's interpretation regarding powers of the Commission

1.4.10 The interpretation regarding powers of the Commission have been discussed in the 5th Report of the Commission. For the sake of convenience, the position is recapitulated here. The Hon'ble Supreme Court vide their judgment dated 31 October, 1996 in Civil Appeal No.13700 of 1996, while upholding the order of the Hon'ble High Court of Delhi, held that all the procedural powers of a civil court given to the National Commission for Scheduled Castes and Scheduled Tribes by Article 338 (8) of the Constitution of India are for the limited purpose of investigating any matter under Article 338 (5) (a) or enquiring into any complaint under Article 338 (5) (b). Further, the powers of a civil court of granting injunctions, temporary or permanent, do not inhere in the Commission nor can such a power be inferred or derived from a reading of Clause (8) of Article 338 of the Constitution. The Hon'ble Supreme Court declared that the Commission has the power to summon and enforce the attendance of any person from any part of India and examine him on oath; it can require the discovery and production of documents and so on and so forth. All these powers are essential to facilitate an investigation or an enquiry, but such powers do not convert the Commission into a civil court. These observations of the Hon'ble Supreme Court were brought to the notice of all the Ministries and Departments of Govt. of India by the Department of Personnel & Training vide their O.M.No.36036/2/97- Estt. (Res.) dated 1 January, 1998, a copy of which is available on the website of the Commission.

1.4.11 The Parliamentary Committee on the Welfare of Scheduled Castes & Scheduled Tribes on the Ministry of Home Affairs, Ministry of Social Justice & Empowerment and Ministry of Tribal Affairs in its 14th Report-Action taken by the Government on the recommendations contained in the Fourth Report (14th Lok Sabha) of the Committee on the Welfare of Scheduled Castes and Scheduled Tribes – "Atrocities on Scheduled Castes and Scheduled Tribes and Pattern of Social Crimes towards them" made recommendations for empowerment of NCST. In agreeing with those recommendations, **the**

³ Copies of the proceedings are displayed under the link "**Hearings/ Proceedings**" on the website of the Commission (<http://ncst.nic.in>).

Commission observed that there was a justified need to empower the Commission through the following measures:-

- (i) **Clause 5 (b) of Article 338A should be suitably amended to provide that where the enquiry discloses clear violation in complying with the safeguards provided to the Scheduled Tribes in the Constitution or under any other order or law by a public servant, the Commission may advise/ recommend to the concerned organization for taking corrective remedial measures and that it should be mandatory for the concerned organization of the Central Govt. or the State Govt. to accept such advice/ recommendations.**
- (ii) **On the lines of the powers given to the Central Information Commission in the context of the implementation of the various provisions of the Right to Information Act, 2005, the National Commission for Scheduled Tribes should also be given power to impose fine on a public servant for wilful delay or negligence in the discharge of his duties in implementing the instructions of the Government relating to safeguards available to the members of Scheduled Tribes.**

1.4.12 The above observations of the Commission were sent to the Ministry of Tribal Affairs *vide* Commission's letter dated 2.1.2007. A detailed mention was also made in Para 1.6.7.1 of the 2nd Report of the Commission and again in para 1.4.11 of the 5th Report of the Commission. As there is no progress since then, **the Commission re-iterates that the Commission may be expeditiously empowered through the above-mentioned measures.**

(C) Advisory Role of the Commission

1.4.13 Clause (9) of Article 338A provides that the Union and every State Govt. shall consult the Commission on all major policy matters affecting Scheduled Tribes. The policy matters referred to the Commission are discussed in detail in the meetings of the Commission on the basis of the views expressed by the Members and the notes on the subject matter, indicating historical background, current status and relevant Rules etc., prepared by the Commission's Secretariat; and the views of the Commission⁴ are communicated in substantive fashion, also seeking feedback regarding the outcome of such consideration. This activity is set out in Chapter 5 of this Report.

1.4.14 All Ministries/ Departments and the State Governments did not refer the policy matters for advice of the Commission. Generally, matters for advice of the Commission are received through the Ministry of Tribal Affairs. The advice, wherever sought was sought at the initial stage of drafting the proposal. From the feedback received in the Commission, it was noted that the views of the Commission/ advice rendered by it was not placed by the Ministry of Tribal Affairs or the concerned Ministry before the Apex Committees considering the matter; and consequently the views of this Constitutional Commission vested with the duty to safeguard the rights of the Scheduled Tribes could not be reflected while finalising the views by the Apex Committees. Even in the matters, in which comments were sought from the NCST regarding problems being faced in relation to efficient functioning and performance of the

⁴ Proceedings of the meetings of the Commission, containing views of the Commission are available under the link " **Meetings of Commission** " on the website of the Commission (<http://ncst.nic.in>)

Commission, the views of the Commission were not placed before the Apex Committee *in-extenso*. Consequently, the factual position on the subject got suppressed and the concerned Apex Committee left to arrive at a decision on the basis of the perception of the Ministry of Tribal Affairs. Similar was the position with regard to process for drafting of legislative Bills by the Government. It is necessary to ensure that the views of this Constitutional Commission receive proper attention at the highest decision-making levels of the Govt. and are not neglected in the maelstrom of the Government's internal processes.

1.4.15 The Commission had also specifically recommended to the President that the Cabinet Secretariat and the Ministry of Law, Justice and Legal Affairs should be tasked with the responsibility of ensuring meaningful consultations with the Commission before legislative proposals are placed for consideration by the Council of Ministers. The matter was also specifically brought to kind attention of the Prime Minister. A detailed note on the subject matter was also forwarded to the Cabinet Secretary for a discussion regarding the action taken by the Government in the matter. The Commission was informed that after receipt of the NCST communication, the concern raised by the Commission were considered at the highest level in the Cabinet Secretariat and the lapse on the part of the Ministries by not consulting the Commission in policy matters including legislative matters affecting the Scheduled Tribes and the Scheduled Areas was viewed as a serious matter indicating violation of the provisions of Article 338A(9) of the Constitution and that in order to ensure that all Ministries strictly follow the provisions laid down in the said Article, the Cabinet Secretary, vide his D.O. letter No. 703/1/1/2011-CA.V dated 04/01/2012, addressed to the Secretaries of all the Ministries and Departments has requested them to strictly follow the provisions of Article 338A(9) of the Constitution.

1.4.16 The Commission observed that, past experience shows that instructions issued through letters do not have lasting effect unless these instructions are incorporated in the Handbook of Instructions of the Cabinet Secretariat through suitable amendments issued by the Cabinet Secretariat. The Commission, therefore, advised the Secretary (Coord.), Cabinet Secretariat to review the position in the matter and inform the Commission. The Secretary (Coord.) assured the Commission that action taken in the matter will be submitted shortly. Subsequently, the Cabinet Secretariat, vide D. O. letter No.703/1/1/ 2011-CA.V dated 10/02/2012 had reiterated the instructions contained in the D.O. letter dated 4th Jan., 2012. The letter, however, clarified that such consultations with the National Commission for Scheduled Castes and the National Commission for Scheduled Tribes in respect of major policies are to be carried out through the concerned administrative Ministries in respect of all major policy issues including those placed before the Cabinet/ Cabinet Committees as required under the Constitution. In follow up of this letter, the Cabinet Secretariat issued revised instructions vide OM dated 16/2/2012, according to which ***the sponsoring Ministries/ Departments were advised to ensure that the National Commission for the Scheduled Castes, and the National Commission for the Scheduled Tribes, as the case may be, shall mandatorily be consulted by them through the Ministry/Department administratively concerned with the Commission before finalization of such notes for consideration of the Cabinet/Cabinet Committees. In all***

such cases, the administrative Ministry/Department concerned will place the views of the concerned National Commission, as the case may be, as received by them, before the Minister-in-charge of the Ministry/ Department concerned before their final views/ comments on such issues were communicated to the sponsoring Ministry/ Department. Further, the unabridged/ unedited views of the concerned Commission along with the views of the Ministry/ Department administratively concerned with the Commission be included in/ enclosed with the note for consideration of the Cabinet/ Cabinet Committees along with responses thereon by the sponsoring Ministry/ Department. These instructions have since been incorporated in the Handbook of Instructions of the Cabinet Secretariat.

1.4.17 The Commission, however, pointed out to the Cabinet Secretariat that the revised procedure for consulting the Commission through the Ministry of Tribal Affairs creates a dilatory mechanism, which circumscribes and dilutes the responsibility of all Ministries of the Govt., under Article 338A of the Constitution, to ensure mandatory meaningful consultation with the Commission on policy related matters concerning STs. Further, none of the recent, major Bills viz. the (Integrated) Land Acquisition, Rehabilitation & Resettlement Bill, 2011, Mines and Minerals (Development and Regulation) Bill, 2011 were forwarded to this Commission either by the sponsoring Ministries or the Administrative Ministry, and the Commission had suo-motu advised these Ministries to seek consultation with the Commission. Yet, these Ministries resorted to seeking opinion of the Ministry of Law for seeking legal opinion in such matters deliberately thwarting the process of consultation specified in the Constitution and showed grave lack of sympathy for Scheduled Tribes. These cases clearly reflected (i) *lack of proper understanding of the Constitutional provisions – in particular, the obligation to consult the Commission in a meaningful manner as mandated under the Constitution, (ii) maintaining transparency of actions regarding implementation of Constitutional safeguards with respect to Scheduled Tribes and (iii) and lack of expected sensitivity of approach/ attitude towards weaker sections.* The Commission therefore emphasized that the revised instructions/ procedures are also fraught with risk of such failures as noticed in the past and therefore, a fool proof system should be designed to avoid recurrence of such cases in future. In this context the Commission invited the attention of the Cabinet Secretariat towards instructions No. 46 to 49 of the Handbook of instructions issued by the Cabinet Secretariat. These instructions read as follows:-

46. *National Manufacturing Competitiveness Council should be consulted in all cases relating to manufacturing sector.*
47. *All proposals concerning revival or restructuring of public sector undertakings should be first referred to BRPSE and thereafter brought up before the Cabinet/Cabinet Committees after necessary inter-ministerial consultations.*

1.4.18 Instructions no. 46 and 47 specifically require consultation with the NMCC and BRPSE respectively without mentioning that such consultations will be done through their administrative Ministry/ Department. In this context it is worth mentioning that the NMCC, which is to be consulted in all cases relating

to manufacturing sector, is an autonomous body set up in October 2004, by a Government Order, under the Department of Industrial Policy and Promotions in the Ministry of Commerce and Industry and similarly, BRPSE, to which proposals concerning revival or restructuring of public sector undertakings should be first referred to, is an Advisory Body set up in December, 2004, by a Resolution of the Government, under the Department of Public Enterprises in the Ministry of heavy Industries & Public Enterprises. In contrast, the National Commission for Scheduled Tribes is a Constitutional Commission, whose protective and safeguarding functions are derived from events well prior to independence and led to the recognition of such functions by the Constituent Assembly which drafted the Indian Constitution. Therefore, in view of the above, the Cabinet Secretariat should have no problems in issuing instructions directing all Ministries for meaningful consultation with the National Commission for Scheduled Tribes in all major policy matters (including Notes for Cabinet Committees and the Legislative proposals) affecting Scheduled Tribes. The sponsoring Ministries may also be required by modification of the related proforma, to specifically mention in their Note/ proposal that the National Commission for Scheduled Tribes have been consulted and the views/ comments furnished by the Commission were appended to the Note/ proposal. The Cabinet Secretariat assured the Commission that the revised instruction/procedures would be reviewed after sometime and requisite corrections, if necessary, will be issued and incorporated in the Handbook of Instructions.

1.4.19 The Commission regret to observe that since the obligations of the Government are now sought to be fastened to a (nodal) Administrative Ministry, such bureaucratic obfuscation of Constitutional responsibilities only bodes ill for further interaction between the Commission and other Ministries of the Government; who are seen from the experience, to be apathetic, recalcitrant, and even perfidious at times in the discharge of Constitutional obligations towards Scheduled Tribes; and resulting stand-offs may have to be arbitrated in the Courts – to the embarrassment and ridicule of all concerned. The matter has been discussed in detail in the Special Report of the Commission (May, 2012) submitted to the Hon'ble President on 18.06.2012.

1.4.20 The Commission has noted that after the issue of above instructions by the Cabinet Secretariat, draft proposals on policy issues/ legislative proposals/ Notes for the Cabinet and EFC Memorandum etc., sponsored by various Ministries/ Departments of the Government of India, are being received for comments/ advice in large number through Ministry of Tribal Affairs. However, the fears of the Commission detailed above had been proven true. The proposals received in the Ministry of Tribal Affairs are forwarded to National Commission Scheduled Tribes after much delay, and in many cases the proposals were forwarded after the date by which comments were sought by the sponsoring Ministry. In certain cases of urgency and high importance, the sponsoring Ministry had sought comments within a few days but the proposal was received in the Commission, through the Ministry of Tribal Affairs, after much delay and sufficient time was not given to the Commission for in-depth careful scrutiny of the proposal before furnishing comments. Consequently, the views of the Commission aimed at safeguarding the interests of the Scheduled

Tribes get diluted and became only a paper record as could be seen from revised drafts received in the Commission which indicated that the Commission's views had remained unutilized and unquoted because of undue delay in the process of consultation with the Commission. The Commission is of the view that provision of mandatory consultation with the National Commission for Scheduled Tribes by Union and State Governments can be implemented in letter and spirit if and only if direct consultation with the National Commission for Scheduled Tribes by the sponsoring Ministry/ Department of the Government is incorporated in the Handbook of Instructions of the Cabinet Secretariat, on the lines of the provision under Instructions No. 46 and 47 in the Handbook regarding consultation with the NMCC and BRPSE.

1.4.21 The Commission therefore reiterates its recommendation, made in the Special report that the instructions issued by the Cabinet Sect. vide OM dated 16/02/2012 should be amended, on the lines of directions contained in Instruction No. 46 and 47 of the Handbook of Instructions, with advise to the sponsoring Ministries, to provide for directly seeking the advice of the NCST on policy related matters/ legislative proposals under Article 338A(9) of the Constitution and not through the Administrative Ministry as that Ministry has a role different from that of the NCST and the Ministry cannot play an oversight role in edit the Commission's views or guide the Commission to making recommendations in a particular manner.

1.5 Organization of the Headquarters Office and Secretariat of the Commission

(A) Organizational set up of Headquarters Office

1.5.1 The National Commission for Scheduled Tribes functions from its Headquarters at New Delhi and from the Regional Offices of the Commission located in six States. There are following six Units at the Hqrs.:

1. Administration
2. Coordination Unit
3. Research Unit - I
4. Research Unit - II
5. Research Unit – III
6. Research Unit - IV

1.5.2 The main functional units are Research Unit-I, Research Unit-II, Research Unit-III, Research Unit-IV, which deal with all matters pertaining to socio-economic and educational development, service safeguards and atrocities in relation to STs as per distribution of the Ministries/ Departments (including CPSEs and other Organisations/ Offices under their administrative control) and the States and UTs among these four Research Units.

1.5.3 There are 6 Regional offices of the National Commission for Scheduled tribes which keep a watch on the formulation of policy and issue of guidelines

relating to the welfare of Scheduled Tribes in the States/UTs and keep the Commission's Headquarters informed about the developments periodically. Policy decisions taken by any State Government/ Union Territory Administration affecting the interests of the Scheduled Tribes are brought by the Regional Offices to the notice of the Commission for necessary action.

1.5.4 To facilitate smooth performance of various natures of duties assigned to the Commission, through the Members, the subject matters relating to safeguards provided for the Scheduled Tribes in relation to specific States/ UTs and Central Ministries/ Departments (and CPSEs under their administrative control) have been allotted to each Member of the Commission. Cases of investigations into specific complaints about discrimination with Scheduled Tribes or violation of safeguards provided for Scheduled Tribes/ holding of sittings in such matters, proposals for de-reservation of posts reserved for Scheduled Tribes and recommendations to various Organisations are finalized with the approval of the Member concerned.

(B) Appointment of Members of the Commission

1.5.5 As per provisions of Article 338A of the Constitution, National Commission for Scheduled Tribes has a Chairperson, Vice-Chairperson and three other Members. The Commission's efforts to fulfill its mandate are handicapped by inordinate delays in filling the vacancies of Members and staff.

1.5.6 Smt. Urmila Singh who was Chairperson of the Commission since 18/06/2007 demitted office on 24/01/2010 on her appointment as Governor of the State of Himachal Pradesh. Dr. Rameshwar Oraon, Ex-MP joined the Commission as Chairperson on 28.10.2010. Shri Maurice Kujur, who continued as Vice Chairperson since 25.04.2008, performed duty as Acting Chairperson also from 25/01/2010 and continued his tenure during the report period. Shri Tsering Samphel and Shri Oris Syiem Myriaw, Members appointed since 14.06.2007 and 17.04.2008 continued till completion of their tenure during the Report period i.e. upto 13.06.2010 and 16.04.2011 respectively. Smt. K. Kamla Kumari and Shri Bheru Lal Meena joined the Commission as Members on 21.07.2010 and 28.10.2010 respectively. However, office of the third Member, vacant since March 2007, remained vacant throughout the year under report also. As on date of finalisation of this report, one post of Vice-Chairperson is vacant since 25.04.2011 beside one post of Member which is vacant since March, 2007. This situation does not reflect appropriate on the part of the Government to keep the posts of Vice-Chairperson & Member(s) of the Constitution Commission vacant for years continuously. The Commission recommends that **the term of each Member being fixed, i.e. three years from the date of assuming the charge, the Government being fully aware about the date when the vacancy would be caused, the Government should initiate timely action for appointment of new Members against the likely vacancies.**

(C) Manpower support to the Commission

1.5.7 The total staff strength of the erstwhile National Commission for Scheduled Castes and Scheduled Tribes at its Hqrs. at New Delhi and the 18

State Offices at the time of its replacement by two Commissions was 340 (including the Joint Cadre and Ministerial posts in State Offices) out of which 113 posts were allotted to the National Commission for Scheduled Tribes, which included 27 posts which were vacant. A few posts were created vide Ministry of Tribal Affairs' Office Order No.17014/12/99-TDR dated 19 April, 2004 which, apart from the posts of 1 Chairperson, 1 Vice-Chairperson and 3 Members and their personal staff, include Secretary-1, Joint Secretary-1, Superintendent of Police-1, Principal Private Secretary-1, PS-1, Assistant Director (Programming)-1, Law Officer-1, Assistant Director (OL)-1, Sr. Hindi Translator-1, Librarian-cum-Documentation Assistant-1, Accountant-1, and Dispatch Rider-1.

1.5.8 The need for strengthening of the National Commission for Scheduled Tribes was mentioned in all the previous Reports of the National Commission for Scheduled Tribes. The Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes in para 1.21 of its 33rd Report (14th Lok Sabha) on the subject "NATIONAL COMMISSION FOR THE SCHEDULED TRIBES – ITS MANDATE AND ACHIEVEMENTS – A REVIEW OF ITS ORGANISATION AND WORKING" has also made important observations and recommendations in this matter.

1.5.9 In April 2009, Ministry of Tribal Affairs sought detailed proposals for strengthening of the Commission for consideration by the Government. Accordingly, a detailed proposal for strengthening the Headquarter office as well as Regional Offices of the National Commission for Scheduled Tribes and requirement for setting up four additional Regional Offices at Hyderabad (A.P.), Nagpur (Maharashtra), Shimla (H.P.) and Ahmedabad (Gujarat) was submitted to the Ministry of Tribal Affairs vide letter dated 21/10/2009. It was followed by several reminders. In response to this, the MTA vide their letter dated 24/05/2010 sought certain clarifications which were furnished by the NCST vide letter dated 26/06/2010. This has been followed up by detailed reminders including DO reminders from the Chairperson, NCST to the Union Minister for Tribal Affairs.

1.5.10 The above issue has also been highlighted time and again in the subsequent Reports of the National Commission for Scheduled Tribes submitted to the President and also brought to the notice of the Prime Minister. The Prime Minister's Office vide their UO No. 560/51/C/12/2010-ES.2 dated 24/05/2010 directed the Ministry of Tribal Affairs that "**the Commission be given adequate staff to discharge its duties effectively**". Despite the above directive from the PMO there is no further progress about the action taken by the Ministry of Tribal Affairs in this regard, as no new post has been sanctioned to enable the Commission to discharge its duties, while extent of vacant posts in the Commission has also increased from year to year. The matter was also discussed in detail in the Fifth Report of the Commission, yet there is no progress in sanctioning additional manpower required for the Commission and filling the existing vacancies which account for about 50% of the total existing sanctioned strength of the Commission.

1.5.11 **The Commission deeply regrets to report that notwithstanding the above recommendation of the Parliamentary Committee, and continuous follow up by this Commission, no additional post has been sanctioned for the Commission so far, which has negated all the efforts of the Commission to evolve into an effective guardian of the rights of Scheduled Tribes. The Commission strongly recommends the Government of India to promptly sanction the additional manpower sought by the Commission required to fulfill the mandate assigned to the Commission.**

(D) Cadre Management in respect of various posts sanctioned to NCST

1.5.12 The Headquarters of the Commission at New Delhi, comprises (a) Secretarial Staff belonging to the Central Secretariat Service and (b) joint cadre staff comprising posts of i) Director ii) Deputy Director iii) Assistant Director iv) Research Officer v) Sr. Investigator and vi) Investigators. The staff in respect of i), ii) & iii) above (which are Group 'A' posts of Joint Cadre, is provided by the Ministry of Social Justice & Empowerment, being the Main Cadre Controlling Authority and the staff in respect of posts at Sr. No. (iv), (v) and (vi) is provided by the National Commission for Scheduled Castes, which has been acting as the Cadre Controlling Authority for these posts after the predecessor NCSCST was dissolved. The Staff belonging to CSS, CSSS and CSCS is provided by the Department of Personnel & Training, through Ministry of Social Justice & Empowerment. The Secretarial Staff in the Regional Offices of the Commission is also appointed and provided by National Commission for Scheduled Castes. Some of the Group 'C' posts are filled up by the National Commission for Scheduled Tribes itself.

1.5.13 In the NCSC Office Order dated 15/12/2004, the total sanctioned strength of the staff of the Commission including various categories of posts in Group 'A', Group 'B', Group 'C' and Group 'D' remained at 124, out of which 56 are for the Headquarter and 68 for its six Regional Offices at Bhopal, Bhubaneswar, Jaipur, Raipur, Ranchi and Shillong. Out of 56 sanctioned posts at the Headquarter, 42 were filled and 14 posts were vacant on 31/03/2009. Similarly out of 68 sanctioned posts for Regional Offices, 33 were filled and 35 posts were vacant. The sanctioned strength of 124 is inclusive of the 35 posts to be filled from the Joint Cadre (referred to in the previous para), out of which 1 post each of the Director and Deputy Director, 6 posts of Sr. Investigator and 9 posts of Investigator (total 17 posts) were vacant as on 31/03/2010. In fact a total of about 50% of those sanctioned posts were still vacant as on 31/03/2011.

1.5.14 The Commission's functional problems on account of allotment of only one-third of the total staff strength of the erstwhile NCSCST are further compounded by the fact that the Commission has not been getting the support of various Cadre Controlling authorities to fill these posts. The Commission has expressed its unhappiness on such a large number of posts being vacant in the Commission. **The Commission is pained to observe that the Ministry of Social Justice & Empowerment, Ministry of Tribal Affairs, the National**

Commission for Scheduled Castes and the Department of Personnel and Training did not fully appreciate the problems and the severe constraints being faced by the Commission and failed to make concerted efforts to fill up these vacant posts to enable the Commission to discharge its constitutional obligations in an effective manner.

1.5.15 The Commission has repeatedly requested⁵ the Cadre Controlling authorities i.e. Ministry of Social Justice and Empowerment and National Commission for Scheduled Castes to fill up vacant posts. However, despite all efforts by the Commission to get these posts, particularly the posts belonging to Joint Cadre filled up, not much progress in this direction has taken place; and as a consequence thereof the sufferings of the Commission have increased with the passage of time. A study report on the performance of National Commission for Scheduled Tribes submitted by the Centre for Policy Research, entrusted by the Department of Administrative Reforms & Public Grievances, submitted in the year 2008, also identified this problem and strongly recommended strengthening the NCST. While discussing the report in the meeting of the Commission held on 07/11/2008, the issue of filling up of the Joint Cadre posts and other posts in the Commission was also discussed; and the Commission observed that NCST should function as Cadre Control Authority for all categories of various posts including already existing and new posts sanctioned for the Commission.

1.5.16 The matter again came up for discussion in the meeting of the Commission held on 22/01/2009 during the course of discussion on the 33rd Report (14th Lok Sabha) of the Committee on the Welfare of Scheduled Castes and Scheduled Tribes. The Commission desired that immediate action for framing the new recruitment rules for the posts of Sr. Investigator and Investigator should be taken up so that NCST should have its own cadre for these posts. It was further decided that the posts of Research Officer may, however, continue in the combined cadre, for the present, which may include the posts in Ministry of Tribal Affairs also and that the new recruitment rules for the post of Research Officer should also be prepared at the earliest. At its meeting held on 30.06.2009, the Commission reiterated its decision to have its own cadre of Investigators and Sr. Investigators and, if necessary for higher level posts also. The draft recruitment rules for the posts of Investigator and Sr. Investigator in the NCST were sent to Ministry of Tribal Affairs on 26/02/2009 for obtaining approval from DoPT. After replying to certain queries by DoPT, a detailed proposal dated 9th July 2009 has been submitted to the MTA for constitution of separate cadre for the posts of Investigator and Sr. Investigator, Research Officer, Assistant Director, Dy. Director and Director under NCST in order to have effective administrative control over the management and filling of these posts in the Commission. MTA was also requested to expedite the matter in the meeting held with the Joint Secretary, MTA on 8th March, 2010, followed by reminder dated 31/05/2010. This has again been followed up by reminders and meetings at official as well as Minister level, but there is no progress. The proposal is still under consideration by the Ministry of Tribal

⁵ Letter No. 1/9/NCST/2005-Admn dated 29/08/2005 addressed to MSJE and DO letter No. 1/9/NCST/2005-Admn. dated 15/02/2006 addressed to Secretary, NCSC followed by reminders

Affairs. In view of the foregoing, **the Commission reiterates its earlier recommendation contained in the third, fourth as well as Fifth Report that the Ministry of Tribal Affairs as well as Ministry of Social Justice & Empowerment should make coordinated efforts to find a solution, or alternatively, National Commission for Scheduled Tribes may be allowed to have independent cadre control over various posts belonging to the National Commission for Scheduled Tribes so that vacancies in various posts in the Commission do not remain unfilled for a long period at any point of time.**

1.6 Functional Activities of the Commission

1.6.1 The Commission receives a large number of petitions from all parts of the country about the grievances relating to (i) alleged violation of service safeguards, (ii) matters relating to alienation of land, admission in professional and technical institutions particularly in medical, engineering etc., and (iii) atrocities. These petitions are referred to the respective organization and the reply received from the organization is sent for information to the petitioner. In most of the cases the petitioners submit rejoinders to the Commission, which are examined in consultation with the concerned organization. Depending on the nature of the reply received from the respective organization, the Commission, with a view to expedite the disposal of the petition, organizes sittings in which the senior officers of the concerned organization are called to appear before it. After detailed interaction with them, the Commission issues the proceedings of the discussion, also requesting the organization concerned to take follow up action on its recommendations within a given timeframe. In the interest of disposal of the maximum number of petitions, the Commission clubs all the cases/ petitions pending in the Commission in relation to an organization in a single sittings. This change has led to reduction in the number of sittings and at the same time marked increase in the disposal of cases/ petitions. This also led to increased awareness in those organizations about implementation of the reservation policy in letter and in spirit. During 2010-11, the Chairperson held sittings in respect of 2 cases, Vice-Chairperson held sittings in respect of 2 cases relating to various Ministries/ Departments/ CPSUs while 7 sittings were held by other Members of the Commission. The proceedings⁶ of the discussions of these Sittings are also made available on the Website of the Commission in the interests of petitioners and to maintain transparency and good governance.

1.6.2 As mentioned in the previous Report, the three functional Wings namely (i) Economic and Social Development Wing, (ii) Service Safeguard Wing, and (iii) Atrocities Wing were restructured into four Research Units (RU-I, RU-II, RU-III and RU-IV) during 2006-07. The same Units continued to function with the same operational jurisdiction during the report period 2010-11. Each Research Unit deals with representations relating to the grievances and other matters relating to the States and Ministries/ Departments allotted to the Research Unit. As the monitoring of the receipts and files in the Commission is

⁶ See the link "**Hearings/ Proceedings**" on the web-site of the Commission (<http://ncst.nic.in>)

being done through computerised File Tracking System, the progress of disposal of receipts/ petitions/ cases dealt in the Commission during the Report period have been discussed later in this Chapter.

1.6.3 With a view to providing information about the functioning of the Commission to the tribal petitioners who visit to the Commission, an Information and Facilitation Centre (I&FC) has been set up at the entry point of the Headquarter office of the Commission. In order to enable the poor tribal people living in different parts of the country to contact the officers of this Commission and also to send their grievances/ complaints, a Toll Free telephone number **1 800 11 7777** has been commissioned on which the officers of this Commission can be contacted free of cost from BSNL/MTNL landline telephones from anywhere in the country. The petitioners/complainants can also know the position of the petitions already filed with the Commission by contacting the concerned Officer of the by dialing the above cited Toll Free number.

1.6.4 With a view to making the tribal people and other persons/ Associations/ Organisations (interested in tribal affairs) and such bodies which have been entrusted with duties to promote tribal development, aware about the role, responsibilities and functioning of the Commission, the website of the Commission **<http://ncst.nic.in>** was launched on 12.2.2007. In order to provide greater transparency about functioning and activities of the Commission many new links have been added on the Website of the Commission and the information available on the website of the Commission is updated from time to time.

1.7 Meetings of the Commission

1.7.1 During the report period 2010-11, SEVEN meetings of the Commission were held. The meetings were held on 06/05/2010, 11/06/2010, 2/09/2010, 26/11/2010, 16/12/2010, 31/01/2011 and 31/03/2011. The agenda items discussed in the meetings during 2010-11, and proceedings of the meetings are available on the website of the Commission in keeping with the spirit of the RTI Act, 2005. These may be seen under the main link "Meetings of Commission" on the Website of the Commission.

1.8 Review Meetings

1.8.1 In order to monitor and evaluate the implementation status of various development schemes and progress of investigation and disposal of the cases of atrocities on the members of Scheduled Tribes by the police authorities and the courts, the Commission interacts with the State/UT Governments by holding detailed State level review meetings with the Chief Secretaries and other senior officers, the salient points of which are also conveyed to the political executive in follow up interactions. These meetings are generally preceded with visits to the tribal bastis, hostels, Ashram Schools etc. and interactions with the tribals on the impact of the developmental projects. The Commission regards that these visits and meetings are useful in enhancing the interest and involvement of the State/UT Governments, in better understanding

of the genuine problems of the Scheduled Tribes and accordingly, in advising them to take suitable initiatives in working out remedial measures and adopting appropriate and relevant strategies.

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

1.8.3 The Commission also holds review meetings with the organizations/offices functioning under the administrative control of the Central Government, and the various Central Public Sector Undertakings including the financial institutions to ascertain the implementation of the reservation orders/instructions in appointment to different categories of posts and the benefits which should have accrued to the tribals through the schemes of those Organisations. These review meetings by the Commission are generally preceded by meetings with the representatives of SC/ST Employees' Welfare Associations operating in those organizations to understand the actual grievances of the ST employees working in those organizations.

1.8.4 The Commission has developed separate sets of Questionnaires for eliciting information from the (i) Central Ministries/ Departments (ii) Central Public Sector Undertakings, and (iii) State Govts./UT Administrations for the purpose of undertaking review meetings. The Commission generally undertakes the review after receipt of the detailed information in the respective Questionnaire⁷. There is a separate Questionnaire for undertaking review meetings at district level which are generally sent in advance to the District Authorities to facilitate review meetings with the district level officers by the Members of the Commission whenever they undertake such visits.

1.8.5 Information about visits undertaken by the Chairperson, the Vice-Chairperson and the Members of the Commission during 2010-11 is available on the website of the Commission. However, a statement indicating the particulars of the visits undertaken by the Chairperson, the Vice-Chairperson and each Member of the Commission during 2010-11 is placed at **ANNEXURE 1.1**.

⁷ The Questionnaire, information furnished to the Commission in reply to the questionnaire for these meetings and the Summary Record of the discussions is available under the link Hearings/ discussions on the NCST website i.e. <http://www.ncst.nic.in>

1.9 Presentation of the Annual Reports to the President of India and laying of the Reports in Parliament

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

1.9.2 The Commission has so far presented five Annual Reports and one Special Report to the President and this is the Sixth Report. First Report for the years 2004-05 and 2005-06 was presented on 8th August, 2006, 2nd Report for the year 2006-07 was presented on 3rd September 2008, while 3rd Report for the year 2007-08 was submitted on 29th March, 2010 and the 4th Report for the year 2008-09 was submitted on 27th August, 2010. Fifth Report for the period 2009-10 was submitted on 13th July, 2011 and the Special Report was submitted on 18th June, 2012. The Special Report covers the issues relating to **"Good Governance for Tribal Development and Administration."**

1.9.3 As the first two reports submitted in August, 2006 and September 2008 had not been laid in Parliament, the Vice-Chairperson, NCST vide D.O. letter dated 05/03/2010 addressed to the Union Minister for Tribal Affairs sought intervention of the Ministry for resolving certain critical problems pending with the Ministry of Tribal Affairs and also emphasized the need for timely consideration of the Annual Reports submitted by the Commission. The Commission highlighted that in view of the considerable delay in the consideration by Parliament of the Annual Report submitted by the Commission, the recommendations made by the Commission on various issues relating to the Scheduled Tribes and violation of rights and safeguards provided for the Scheduled Tribes under the Constitution are in danger of losing contextual importance. Vide the aforesaid D.O. letter the Commission has also suggested that the tabling of the Commission's report may precede submission of action taken Memorandum, which may be placed before Parliament subsequently. Response from the Ministry of Tribal Affairs in the matter is still awaited. In the meanwhile, Copies of the 3rd Report for 2007-08 and 4th Report for 2008-09 submitted to the President on 29th March, 2010 and 27th August, 2010 respectively were also subsequently submitted separately to the Prime Minister as well as Union Minister for Tribal Affairs; along with the request to de-link the submission of the Action Taken Memorandum on acceptance or reasons for non-acceptance of the recommendations made by the NCST in those Reports with the laying of the Reports in Parliament.

1.9.4 Simultaneously, as desired by the President in the discussion during submission of the 3rd Report, a detailed letter, highlighting the important issues raised in the Report and the problems encountering effective functioning of the Commission was sent to the President on 31/03/2010. A copy of the letter was also sent to the Prime Minister vide letter dated 7/04/2010. In response to this letter the Prime Minister's Office vide their UO No. 560/51/C/12/2010-ES.2

dated 24/05/2010 directed the Ministry of Tribal Affairs for taking inter-alia the following action relating to laying of the Reports of the Commission

- b) The Reports of the Commission, along with action taken memoranda, as envisaged in the sub-clause (6) of article 338A of the Constitution may be placed in Parliament as per the schedule below:
 - (i) First report in the Monsoon Session
 - (ii) Second report in the Winter Session
 - (iii) Third report in the next Budget Session

1.9.5 Keeping in view the above directive of PMO, and to enable the Ministry of Tribal Affairs to timely place the Reports of the Commission in Parliament, requisite no. of copies in English and Hindi of the 1st two Reports of the Commission were provided to the Ministry by this Commission. that Report has been laid in the Parliament so far, as required under Art. 338A(6) of the Constitution. There is also no information whether any of these Reports has been laid in any State Assembly, as required under Art. 338A(7) of the Constitution.

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

1.9.7 The Commission would once again like recall the suggestion of the erstwhile National Commission for Scheduled Castes and Scheduled Tribes made in its fourth Report for the year 1996-97 and 1997-98, that Clause (6) and Clause (7) of Article 338 of the Constitution should be amended to provide that the President/ Governor of a State shall cause all Reports submitted/ sent by the Commission or the Ministry of Tribal Affairs to him to be laid before each House of Parliament/ State Legislature within three months of such submissions and a memorandum of action taken or proposed to be taken on the recommendations relating to the Union/ State shall be placed before each House of Parliament/ State Legislature within six months of such submission. In its 1st as well as 2nd Report this Commission had also adverted to the action taken report submitted in the Parliament at the time of laying of the fourth Report of NCSCST, wherein the Ministry of Social Justice & Empowerment had stated as below:-

"It is not practical to expect a decision as well as action on the recommendations made by the Commission within a specified time of

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

1.9.8 The Commission also emphasized that, having focused only on consequential action, the Ministry of Social Justice & Empowerment did not fully appreciate the recommendation of the Commission which sought to de-link the laying of the Report in Parliament from the laying of the Action Taken Memorandum on the recommendations contained in the Report of the Commission. Moreover, as subsequent experience has shown, this has only encouraged the lassitude on the part of those responsible for laying the Report.

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

1.10. Compliance of the RTI Act, 2005

1.10.1 The Commission website contains information about the Commission, its functions and other information related to Schedule Tribes. On its website, the Commission has published up-to-date detailed information about pro-active disclosures under RTI Act and other information of public interest like record of hearings, meetings of the Commission, visits of the Commission; atrocity cases investigation reports, important communications, notices and circulars etc. The Website also provides useful links to several related websites. The website is being maintained by the Computer Cell of the Commission for uploading of contents and its customization.

1.10.2 During the Report period 2010-11, the National Commission for Scheduled Tribes received a total of 196 applications seeking information under the Right to Information Act, 2005. Information was furnished in all the 196 applications. 47 out of 196 applications were received and replied by the

Regional Offices of the Commission while others were replied by the concerned PIO of the headquarter Office of the Commission. List of the applications received and dealt during the Report period is available⁸ on the Website of the Commission. It will be noticed that information was furnished within specified time limit in 191 out of 196 applications while information could not be furnished in time in 5 applications only. The scrutiny of the replies reveal that in most of these cases information sought was voluminous and needed collection and compilation of information from various sources.

1.11. Representation in Court Cases

1.11.1. For proper implementation of the Constitutional safeguards provided for the Scheduled Tribes and to advise the Union and the State Governments on all major policy matters affecting the Scheduled Tribes, the Commission is on occasion required to file affidavits containing its views in cases relating to important issues concerning the Scheduled Tribes filed in various Courts by various parties, including the members of the Scheduled Tribe community and/or by their associations, involving National Commission for Scheduled Tribes as one of the respondents.

1.12. Computerized Monitoring System

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

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

⁸ Pl. see the Sub-link 'RTI Applications' under link 'RTI Disclosures' on the website of the Commission (<http://ncst.nic.in>)

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

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

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

- ◆ Generation of various statistical and generic reports of Files & Receipts for monitoring purposes

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

(A) Effectiveness of the Monitoring System

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

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

1.12.6 During the year, all pending receipts were registered in the FTS and merged with the concerned files. Similarly, pending files (including those which were inactive) were categorized as 'Inactive' if no action was necessary. This permitted greater attention to be paid to the live cases and attendance to fresh ones without undue delay. The status of disposal/pendency of files in relation to various subject heads (categories) opened up to 31.3.2011 has been given in **ANNEXURE-1.II** . Similarly, the status of disposal of receipts including fresh

petitions addressed to the Members of the Commission (including Chairperson & Vice-Chairperson), Senior Officers and the Sections/Units of the Commission is given in the **ANNEXURE 1.III** .

(B) Linking of Regional Offices with the Computerised Monitoring System

1.12.7 The **PGRMS** has already been implemented at the NCST Hqrs. The process of linking of the Regional Offices of the Commission has been started. The **PGRMS** has been implemented in two of the six regional offices located at Bhopal and Raipur and training has been imparted to the officials of the Regional offices. The linking of other Regional offices is under process. There are some technical difficulties in connecting other Regional Offices, which is being sorted out by NIC. In the next phase, it is planned to implement the System by hosting it on a Central Server in public domain after enhancing the existing system further. The planned centralization of the System will enhance its effectiveness for handling and monitoring of grievances. This will also enable the public to file their grievances on-line and also to check status of their applications on-line in the future. The upgradation, remote updating and maintenance of the System are planned to be carried out by the Computer Cell, NCST Hqrs.

1.12.8 It is also proposed to fully computerize the accounting system with supporting infrastructure and by providing training and technical assistance to the users in the Commission.

1.13. Virtual Library of the Commission:

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

1.14. Progress of disposal of receipts/ petitions/ cases in the Commission.

1.14.1 As mentioned earlier, the File Tracking System was introduced in the headquarter office since July, 2008. Centralized diarizing of the Papers/ letters/ representations etc. received in the Commission and opening and movement of files are parts of the FTS. In order to place complete information about current as well as already closed files, details about each file that was closed but not yet destroyed till July, 2008 were also entered in the FTS. Closed files are also re-opened (and subsequently closed again) on occasion. This is a continuous

process and therefore, the number of files, including case files relating to grievances, brought forward from previous year, as downloaded now from the FTS, may be different from the information about number of live cases at the end of the year 2009-10 as given in the 5th Report. As data in respect of the Regional offices is in progress of entry, the information in the following paras is restricted to the work handled in the Headquarter office of the Commission.

1.14.2 As per computerized FTS of this Commission, 114 receipts were pending for action, at various levels, on 01/04/2010 and 6572 receipts were received during the report period 2010-11 making a total of 6686 receipts for action during the year. Out of 6686 receipts, 6099 receipts were merged in the concerned files for appropriate action and 587 receipts only were pending for action at the end of the report period 2010-11.

1.14.3 A total of 2523 files were current as on 31/03/2010 in the Headquarter office of the Commission. 1211 new files were created during the year 2010-11 and 624 files from the previous years were also entered/ re-opened for necessary action during the report year 2010-11. These files had either been created earlier but closed at that time or their entry did not exist in the FTS, thus making a total of 4258 files for action during the report period. These files included all matters including administrative matters, RTI matters, court cases, General issues, Policy matters, Annual Plans and Tribal Sub-Plans, proposals for de-reservation of vacancies reserved for Scheduled Tribes and cases of various kinds of grievances etc. Out of these files, 1589 files were closed during the report period 2010-11 after completion of action. Remaining 2669 files were current as on 31/03/2011.

1.14.4 As regards grievances dealt in the Headquarter office of the Commission, a total of 1902 files were current for action as on 01/04/2010. The number of case files opened during the report period 2010-11 was 1077 making a total of 2979. Of these, 1056 case files were closed after completion of successful action during the year under report, and the remaining 1923 case files were still active as on 31/03/2011.

1.15. Functioning of the Regional Offices of the Commission

(A) Location, Jurisdiction and Duties

1.15.1 The National Commission for Scheduled Tribes has six Regional Offices located at Bhopal, Bhubaneswar, Jaipur, Raipur, Ranchi and Shillong. The location and jurisdiction of these Offices along with the name and designation of the Head of Regional Offices (as on 31 March, 2011) are given below:-

S.No	Location & Address of Regional Office	Name & Designation of the Officer Incharge	Jurisdiction of the Regional Office
(1)	(2)	(3)	(4)
1.	Room No.309, Nirman Sadan, CGO Complex, 52-A, Area Hills, Bhopal-462011	Shri R.K.Dubey, Assistant Director Ph: 0755 2576530 0755 2578272 (F)	M.P., Maharashtra, Karnataka, Kerala, Goa, and Union Territories of Dadra & Nagar Haveli and Lakshadweep.

2.	N-1/297, IRC Village, Bhubaneswar- 751015	Shri R.K. Mishra, Assistant Director Ph:0674 2551616 0674 2551818 (F)	Andhra Pradesh, Orissa, Tamil Nadu, West Bengal and Union Territories of Andaman & Nicobar Islands, and Pondicherry
3.	Room No.101 & 102, 1st Floor, Block-A, Kendriya Sadan Sector-10, Vidyadhar Nagar, Jaipur-302023	Dr. G.S. Somawat, Director Ph:0141 2236462 0141 2235488 (F)	Chandigarh, Gujarat, Haryana, HP, Jammu & Kashmir, Punjab, Rajasthan, Uttaranchal and Daman & Diu.
4.	R-26, Sector-2, Avanti Vihar, Post Office Ravigrame, Raipur-492006	Shri R.K.Dubey, Assistant Director (Addl. charge) Ph:0771 2443334 Ph:0771 2443335 (F)	Chhattisgarh
5.	14, New A.G. Co- operative Colony, Kadru, Ranchi-834002	Shri R.K. Mishra, Assistant Director (Addl. charge) Ph: 0651 2341677 0651 2340368 (F)	Bihar, Jharkhand, and Uttar Pradesh
6.	Rabekka Villa, Temple Road, Lower Lachumiere, Shillong-793001	Miss. P. Syiemlieh, Assistant Director Ph: 0364 2504202 0364 2221362 (F)	Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura,

1.15.2 All the six Regional Offices of the Commission continued to function with the same jurisdiction and administrative set-up as no new office could be set-up due to non-receipt of sanction for new Offices and for augmentation of the strength of the regional Offices, and continuing vacancies in various posts in the commission. Notwithstanding this fact the Regional Offices have endeavored to fulfill the allotted responsibilities. The various duties assigned to the Regional Offices *inter-alia* include:

(i) to maintain effective interaction and liaison with the State Govts./UT Administrations,

(ii) to provide information and documents about the policies and programmes of the Union Govt. for the welfare and advancement of Scheduled Tribes to the States, NGOs etc. in their respective jurisdiction and to obtain similar information and documentation from the State Government and to provide the same to the Headquarters of the Commission,

(iii) to conduct on-the-spot enquiries into the cases of atrocity on Scheduled Tribes either on their own or as entrusted to them by the Headquarters and to interact with the concerned administrative/Police authorities and to submit report to the Headquarters,

(iv) to deal with complaints/representations from members of Scheduled Tribes and their welfare associations etc. on various

matters, and (v) to accompany the Chairperson and Members of the Commission on their tours in the States/UTs under their jurisdiction.

(B) Performance and significant achievements in working of Regional Offices

1.15.3 The Regional offices of the National Commission for Scheduled tribes keep a watch on the formulation of policies and issue of guidelines relating to the welfare of Scheduled Tribes in the States/UTs and keep the Commission's Headquarters informed about the developments periodically. Policy decisions taken by any State Government/UT Administration affecting the interests of the Scheduled Tribes are brought to the notice of the concerned authorities for necessary action. Heads of the Regional Offices also represent the Commission in the following State level Committees and provide observations and feedback about working of the policies/ Schemes/ programmes for Scheduled Tribes in the State(s) under their jurisdiction

- i) State Level Monitoring Committee (headed by the Chief Minister of the State concerned) on implementation of the PoA Act, 1989.
- ii) High Power Caste Certificate Scrutiny Committee meetings as a special invitee member.
- iii) State level Bankers Committee meeting organized by the Nationalised Lead Bank in the State.
- iv) Nagar Rajbhasha Karyanvayan Samiti meetings.
- v) Central Govt. Employees welfare Co-ordination Committee meetings.

1.15.4 The Regional Offices of the Commission assist the Headquarter in collecting and compiling statistical and other forms of information from the State Governments/Union Territories under its jurisdiction in connection with the visits of the Commission, Review meetings taken by the Chairperson, Vice-Chairperson and/ or Members of the Commission and also for preparation of various chapters of the Annual Reports of the Commission.

1.15.5 The Regional Offices also receive a large number of receipts of various kinds including grievances and matters relating to Scheduled Tribes from the Scheduled Tribe individuals and their Associations. As most of the cases received in the Regional Offices relate to the offices located in the States, action on those receipts/ cases is taken by the concerned Regional Office. Existence of the Regional Offices in the States helps the local Scheduled Tribes and their well wishers to easily approach the Commission (through the concerned Regional Office). The presence of the Regional Office nearer to the local Government and their participation and contributions in various Committees fosters constructive relationship between the Regional Office and the Authorities concerned. Consequently, these Regional Offices play an important role in prompt disposal of the complaints of grievances or violation of safeguards for Scheduled Tribes in the States under the jurisdiction of the

Regional Offices. Cases wherein intervention by the Members of the Commission is necessary, the matters are referred by the Regional Office to the Headquarter Office for taking further necessary action.

1.15.6 The Regional Offices also maintain liaison with the State, Regional or other local offices under the Central Government and its Organisations. They play an important role during the visit of the Commission, its Members and Senior Officers to the respective States and their visits to the tribal areas, meetings with the local authorities and assisting the Commission and Members in conducting meetings to review the implementation of the safeguards for Scheduled Tribes. These visits create awareness about existence of the Commission and its role with respect to the Scheduled Tribes in those States. Details of the visits/ tours undertaken is also given in the Statement at **ANNEXURE 1.III** .

1.15.7 The financial budget of the Regional Offices is part of the overall Budget of the NCST, and allocation of funds to the Regional Offices is made keeping in view sanctioned staff strength and the jurisdiction of the Regional Office concerned and related requirements under each Sub-head of expenditure.

1.15.8 The disposal of various cases received by each Regional Office is briefly recapitulated below.

Regional Office BHOPAL

1.15.9 The Bhopal Regional Office received 2245 receipts of various kinds (including grievances and matters relating to Scheduled Tribes) from the Scheduled Tribe individuals and their Associations as fresh representations, reminders and rejoinders during the year 2010-11, while 11 receipts were pending for action from the previous year. All the 2256 receipts were disposed off during the year and no receipt remained pending for action at the end of the year 2010-11. As regards case files there were 541 active files in the Regional Office at the end of the year 2009-10. During the year 2010-11, another 286 files were opened which were related to the cases of atrocity, Service matters, Developmental matters and Caste Certificates making a total of 827 cases for action during the year under report. However, 204 case files were closed during the year, after grant of desired relief or determining inadmissibility of the claim made by the applicants in the light of the existing rules or orders. Out of these cases, 34 cases were recorded as successfully closed during the year. Remaining 623 case files were still active for further action at the end of the year.

Regional Office, BHUBANESWAR

1.15.10 The Bhubaneswar Regional Office received 630 receipts of various kinds (including grievances and matters relating to Scheduled Tribes) from the Scheduled Tribe individuals and their Associations, as fresh representations, reminders and rejoinders during the year 2010-11 while 15 receipts were pending for action at the end of the previous year making a total of 645 receipts

for action during the year. Action was taken on all the receipts and no receipt was pending for action at the end of the year. As regards file work, 90 files were still alive at the end of the year 2009-10 in the Regional Office. During the year 2010-11, another 57 files were opened which were related to the cases of atrocity, Service matters, Developmental matters and Caste Certificates making a total of 147 files for action during the year 2010-11. Out of these 147 files, 65 files were closed during the year 2010-11, after grant of desired relief or determining inadmissibility of the claim made by the applicants in the light of the existing rules or orders. Out of these cases, 10 cases were recorded as successfully closed during the year. 82 cases were still active for further action at the end of the year.

Regional Office, JAIPUR

1.15.11 The Jaipur Regional Office received 2152 receipts of various kinds (including grievances and matters relating to Scheduled Tribes) from the Scheduled Tribe individuals and their Associations, as fresh representations, reminders and rejoinders during the year 2010-11, while 59 receipts were brought forward for action from the previous year 2009-10. Out of all the 2211 receipts for action during 2010-11, 2142 receipts were disposed off during the year and only 69 receipts were left for action at the end of the report year 2010-11. There were 253 active files in the Regional Office at the end of the year 2009-10. During the year 2010-11, another 163 files were opened which were related to the cases of atrocity, Service matters, Developmental matters and Caste Certificates making a total of 416 files for action during the year 2010-11. Out of these 416 files, 121 files were closed during the year, after grant of desired relief or determining inadmissibility of the claim made by the applicants in the light of the existing rules or orders. Out of these cases, 25 cases were recorded as successfully closed during the year. 290 cases were still active for further action at the end of the year.

Regional Office, RAIPUR

1.15.12 The Regional Office, Raipur received 607 receipts of various kinds (including grievances and matters relating to Scheduled Tribes) from the Scheduled Tribe individuals and their Associations, as fresh representations, reminders and rejoinders during the year 2010-11. All these 607 receipts were disposed off during the year. There were 76 active files in the Regional Office at the end of the previous year 2009-10 and 246 new case files were opened during the year 2010-11 making a total of 322 cases for action during the year under report. However, 170 case files were closed during the year, after grant of desired relief or determining inadmissibility of the claim made by the applicants in the light of the existing rules or orders. Out of these cases, 12 cases were recorded as successfully closed during the year. Remaining 152 case files were still active for further action at the end of the year.

1.15.13 Looking at the disposal of work subject-wise by Raipur Regional Office during the year 2010-11, 52 cases relating to service safeguards were dealt in the office, and out of them, 5 cases were successfully redressed while 11 cases were closed as there was no merit in the complaints. In the remaining 36

cases, final reply was yet to be received from the concerned departments/ Organisations. 37 cases of atrocities on Scheduled Tribes were dealt in the Regional Office during the year of which 2 cases were successfully closed. Other 13 cases were closed, as the complaint could not be established. As far as developmental issues are concerned, the Office dealt 233 cases during the year 2010-11, out of which 5 cases were successfully closed while 134 cases were closed being inconsonant as per rules/ scheme. In all, 139 cases relating to development matters were closed after completion of action and 94 such cases were still active for further action at the end of the year.

Regional Office RANCHI

1.15.14 The Ranchi Regional Office received 47 receipts of various kinds (including grievances and matters relating to Scheduled Tribes) from the Scheduled Tribe individuals and their Associations as fresh representations, reminders and rejoinders during the year 2010-11. This also includes the News paper reports of atrocity and other development matters affecting the Scheduled Tribes on which the office had taken suo-motu action. Action was taken on all the receipts. As regards disposal of case files during the year 2010-11 there were 49 active files in the Regional Office at the end of the year 2009-10. During the year 2010-11 another 45 files were opened which related to the cases of atrocity, Service matters, Developmental matters and Caste Certificates making a total of 94 cases for action during the year under report. However, 16 case files were closed during the year, after grant of desired relief or determining inadmissibility of the claim made by the applicants in the light of the existing rules or orders. Out of these cases, 6 cases were recorded as successfully closed during the year. Remaining 78 case files were still active for further action at the end of the year 2010-11.

Regional Office SHILLONG

1.15.15 The Regional Office Shillong received 899 receipts of various kinds (including grievances and matters relating to Scheduled Tribes) from the Scheduled Tribe individuals and their Associations as fresh representations, reminders and rejoinders during the year 2010-11. This also includes the News paper reports of atrocity and other development matters affecting the Scheduled Tribes on which the office had taken suo-motu action. All the receipts have been suitably disposed off during the report year 2010-11. At the end of the year 2009-10 there were 39 active files in the Regional Office. During the year 2010-11, another 36 files were opened, which were related to the cases of atrocity, Service matters, Developmental matters and Caste Certificates making a total of 75 cases for action during the year under report. However, 29 case files were closed during the year, after grant of desired relief or determining inadmissibility of the claim made by the applicants in the light of the existing rules or orders. Out of these cases, 2 cases were recorded as successfully closed during the year. Remaining 46 case files were still active for further action at the end of the year.

CHAPTER 2

SERVICE SAFEGUARDS

2.1 Constitutional Provisions

2.1.1 The Scheduled Tribes have remained socially, educationally and economically backward due to isolation from the rest of the world. Due to this backwardness, the Scheduled Tribes were not able long reap the benefits of general development. In order to eliminate these handicaps, the framers of the Constitution of independent India advocated positive discrimination in favour of the ST communities in matter of education and employment. The Constitution of India provides for reservation for Scheduled Tribes in civil posts and services under the Government. The essence of relevant articles of the Constitution, pertaining to service safeguards, is summarized, as under:

(i) **Article 16(4)** : This Article provides that "Nothing in this Article shall prevent the State from making any provision for reservation in appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State".

(ii) **Article 16(4A)** : This Article was inserted vide the **Constitution (Seventy-seventh Amendment) Act, 1995** in the year 1995 with the provision: "Nothing in this Article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in this services under the State in favour of the Scheduled Castes & Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State".

Further amendment of Article 16(4A) : Article 16(4A), inserted by the Constitution (77th Amendment) Act, 1995, was further amended in the year 2001 to substitute the words " in matters of promotion to any class" by words "in matters of promotions, with consequential seniority, to any class" vide the **Constitution (Eighty-fifth Amendment) Act, 2001**. This amendment was made operative retrospectively from 17 June 1995, i.e. the date of addition of this Article vide the Constitution (Seventy- seventh Amendment) Act, 1995.

(iii) **Article 16(4B)**: This Article inserted vide the **Constitution (Eighty-first Amendment) Act, 2000**, provides that "Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty percent reservation on total number of vacancies of that year".

(iv) **Article 335**: This Article provides that "The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into

consideration, consistent with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State". The following proviso was added to this Article by the **Constitution (Eighty-second Amendment) Act, 2000-**

“Provided that nothing in this Article shall prevent in making of any provision in favour of the members of the Scheduled Castes and Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State”.

- (v) **Article 320 (4):** Clause (3) of Article 320 of the Constitution, inter alia, provides that the Union Public Service Commission or the State Service Public Commission, as the case may be, shall be consulted on all matters relating to methods of recruitment to civil services and for civil posts, and on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers. Clause (4) of this Article, however, provides that "Nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which any provision referred to in clause (4) of Article 16 may be made or as respects the manner in which effect may be given to the provisions of Article 335".

2.1.2 Pursuant thereto, the Govt have issued instructions from time to time providing for reservation in matters of employment under the Govt., public sector undertakings and other autonomous bodies under the control of the Govt. Compendium of instructions on this subject is available on the Department of Personnel and Training website¹.

2.2. Constitutional validity of the amendments

2.2.1 The constitutional validity of the above-mentioned amendments i.e. point number (ii), (iii), (iv) & (v) was challenged in the Hon'ble Supreme Court of India in Writ Petition (Civil) No.61 of 2002 in M. Nagaraj & Ors. vs. Union of India & Ors. The Hon'ble Supreme Court observed that the impugned constitutional amendments, by which Article 16(4A) and 16(4B) have been inserted, flow from Article 16(4) and do not alter the structure of Article 16(4). They retain the controlling factors or the compelling reasons, namely backwardness and inadequacy of representation, which enables the State to provide for reservation keeping in mind the overall efficiency of the State administration under Article 335. The Hon'ble Court further observed that the impugned amendments are confined only to SCs & STs and that they do not obliterate any of the constitutional requirements, namely ceiling-limit of 50% (quantitative limitation), and the concept of creamy layer (qualitative exclusion).

¹ <http://persmin.gov.in>. Copy Also available on the NCST website <http://ncst.nic.in> subheading 'RTI Disclosure' -> 'Important Circulars' -> 'DOPT Circulars'

Creamy layer among STs and SCs

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

Ceiling on filling of vacancies reserved for SCs, STs & OBCs

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

Relaxations and Concessions for Scheduled Tribes.

2.2.4 Concessions were admissible to SCs and STs in all types of direct recruitment and promotion, such as relaxation in the age limit, experience, qualification, permitted number of chances in written examination, extended zone of consideration (larger than what is provided for general category candidates) etc. However, DoPT vide OM No. 36012/23/96-Estt.(Res) dated 22.07.1997 issued instructions that henceforth there shall be no separate standards of evaluation for candidates of the SCs/STs for promotion, and assessment of all candidates for this purpose will be with reference to uniform standards, and any other instructions of the Government, which provide for lower qualifying marks / lesser standards of evaluation in matters of promotion for candidates belonging to SCs/STs, may also be treated as having been modified to this extent. In pursuance of the enabling proviso of Article 335 of the Constitution, it was decided to restore, with immediate effect, the relaxations/concessions in matters of promotion for candidates belonging to SCs/STs by way of lower qualifying marks,

lesser standards of evaluation that existed prior to 22.7.1997; and instructions to this effect were issued vide DoPT Om No. 36012/23/96-Estt.(Res.) Vol.II dated 03.10.2000.

2.3. Own merit appointments

2.3.1 DoPT clarified vide its OM No. 36011/1/98-Estt.(Res) dated 01.07.1998 that such SC/ST/OBC candidates who are selected on the same standard as applied to general candidates shall not be adjusted against reserved vacancies. In other words, the SC/ST/OBC candidates are to be counted against reserved vacancies only when a relaxed standard like relaxation is applied in selecting an SC/ST/OBC candidate, 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.,.

2.4. Cadre strength- Direct Recruitment and Promotion-adjustments

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

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

2.5. Reservation in promotion and Zone of Consideration

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

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

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

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

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

2.5.5 The Department of Personnel & Training vide their O.M. No.22011/2/2002-Estt.(D) dated 6 January, 2006 modified the existing provisions relating to the size of the zone of consideration. As per the O.M. the normal zone of consideration for one vacancy will be 5 and for vacancies more than one it will be twice the number of vacancies plus four. The extended zone of consideration for SC/ST will be five times the number of vacancies. As in the case of promotion by non-selection, there is no prescribed zone of consideration for making ad hoc promotions.

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

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

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

2.6. Reservation in promotion – Treatment of SC/ ST candidates promoted on their own merit.

2.6.1 The Supreme Court in the matter of R.K. Sabharwal v/s. State of Punjab has held that reserved category candidates who are appointed/promoted in Government jobs on their own merit shall be adjusted against unreserved quota and reservation quota vacancies shall be filled in addition to the above. Necessary instructions were issued *inter-alia* vide Department of Personnel and Training OM No. 36012/2/96-Estt. (Res) dated 02/07/1997. On receiving references from various Ministries etc. regarding adjustment of SC/ST Candidates promoted on their own merit in the Reservation Rosters, following clarifications were issued by the Department of Personnel and Training vide their OM No. 36028/17/2001-Estt. (Res) dated 11/07/2002:

- (i) The SC/ST candidates appointed by promotion on their own merit and not owing to reservation or relaxation of qualifications will not be adjusted against the reserved points of the reservation roster. They will be adjusted against unreserved points.
- (ii) If an unreserved vacancy arises in a cadre and here is any SC/ST candidate within the normal zone of consideration in the feeder grade, such SC/ST candidate cannot be denied promotion on plea that the post is not reserved. Such a candidate will be considered for promotion alongwith other candidates treating him as if he belongs to general category. In case he is selected, he will be appointed to the post and will be adjusted against the unreserved point.
- (iii) SC/ST candidates appointed on their own merit (by direct recruitment or promotion) and adjusted against unreserved points will retain their status of SC/ST and will be eligible to get benefit of reservation in future/further promotions, if any.
- (iv) 50% limit on reservation will be computed by excluding such reserved category candidates who are appointed/ promoted on their own merit.

2.6.2 On receipt of further references and queries seeking clarifications about the above OM, the Department of Personnel and Training vide their OM No. 36028/17/2001-Estt. (Res) dated 31/01/2005 issued the following clarifications:

- (i) It is clarified that the OM No. 36028/17/2001-Estt. (Res), dated 11/07/2002 takes effect from the date of its issue i.e. with effect from 11/07/2002. However, the

cases where SC/ST candidates promoted on their own merit before 11/07/2002 have been adjusted against unreserved points need not to be re-opened.

- (ii) It is also clarified that since in the case of promotions by non-selection, promotions are made on the basis of seniority-cum-fitness and the concept of merit is not involved in such promotions, the OM dated 11/07/2002 does not apply to the promotions made by non-selection method.

2.6.3 The Department of Personnel and Training vide their OM No. 36012/45/2005-Estt. (Res.) dated 10/08/2010, however, highlighted that Central Administration Tribunal, Madras Bench in O. A. No. 900/2005 [S. Kalugasalamoorthy v/s. Union of India & Others] has set aside the O.M. No. 36028/17/2001-Estt. (Res.) dated 31/01/2005 and held that when a person is selected on the basis of his own seniority, the scope of considering and counting him against quota reserved for SCs does not arise. The High Court of Judicature at Madras in the matter of UOI v/s. S. Kalugasalamoorthy [WP No. 15926/2007] has upheld the decision of the Central Administrative Tribunal.

2.6.4 After examining the position in the light of the above judgements, the Department of Personnel and Training decided to withdraw O.M. No. 36028/17/2001-Estt. (Res) dated 31/01/2005 referred to above clarified that SC/ST candidates appointed by promotion on their own merit and seniority and not owing to reservation or relaxation of qualifications will be adjusted against unreserved points of reservation roster, irrespective of the fact whether the promotion is made by selection method or non-selection method. The OM further clarified that the above orders will take effect from 02/07/1997, the date on which post based reservation was introduced.

2.6.5 While reviewing status of implementation of reservation policy in the Factories under Ordinance Factory Board – a departmental Undertaking under the Deptt. of Defence Production, the Commission was informed that some of the Factories, especially Engine Factory, Avadi (Tamil Nadu) have not been able to implement the OM dated 10/08/2010 as a result of the stay granted by the Central Administrative Tribunal, Chennai. The Commission was also informed that in other cases Hon'ble High Court of Punjab & Haryana in its Order dated 15/07/2011 has quashed the OM dated 10/08/2010, while the Hon'ble Bombay High Court in its Order dated 08/11/2011 has upheld the CAT's Order that directs implementation of the said DoPT OM dated 10/08/2010.

2.6.6 In view of above, the National Commission for Scheduled Tribes, vide its letter No. SD/2/2012/MDEF2/SEPROM/RU-IV dated 10/08/2010 requested the Department of Personnel and Training to take necessary action in the matter urgently to ensure implementation of the OM dated 11/07/2002. In reply to this, the Department of Personnel and Training, vide its letter No. 43011/153/2010-Estt. (Res) dated 16/08/2012 informed the Commission as given below:

- (a) The Hon'ble Punjab and Haryana High Court in the matter of Lachmi Narain Gupta & Ors. v/s. Jarnail Singh & Others has quashed this Department's OM dated 10/08/2010. A private party has filed an SLP in the Hon'ble Supreme Court against the judgement of the Hon'ble Punjab and Haryana High Court but no stay has been granted by the Hon'ble Supreme Court. The matter is sub-judice.

- (b) The Department of Revenue, M/o Finance has been asked to file an SLP in the matter. This Department is not in a position to offer any comments, as the matter is sub-judice.

2.6.7 The Commission feels that the judgement delivered by the Supreme Court in the matter of R. K. Sabharwal v/s. State of Punjab regarding "own merit appointments" cannot be overruled by any High Court and hence order DoPT OM dated 02/07/1997 and 11/07/2002 cannot be quashed. Therefore, statement made in DoPT letter No.43011/153/2010-Estt. (Res.) dated 16/08/2012 that the Punjab and Haryana High Court has quashed the DoPT OM dated 10/08/2010 is not clear. It is noted that vide OM dated 10/08/2010, DoPT had issued certain clarifications to OM dated 31/05/2005. It means that the original OM dated 02/07/1997 and 11/07/2002 continue to exist and therefore, "own merit appointments" should continue to be considered. Moreover, the context of the Punjab and Haryana High Court judgement relates to SC employees being in excess over the prescribed reservation. This situation has not reached in respect of Scheduled Tribes in any establishment. Therefore, the directions relating to "own merit appointments" by direct recruits and promotion modes have to be clarified, and w.r.t. appointment of ST Candidates also. Attention of Department of Personnel and Training was invited towards these views of the Commission vide letter No. 4/6/12-Coord. Dated 30.01.2013 (**ANNEXURE 2.I**) requesting the DoPT to issue clarification about the directions of the Court relating to "own merit appointments" by direct recruits and promotion modes, and its applicability w.r.t. appointment of ST Candidates on "OWN MERIT".

2.7 Grant of reservation to migrant SCs/ STs in civil posts under the Government of NCT of Delhi.

2.7.1 Even though only certain castes are notified as Scheduled Castes in respect of Delhi, (no Scheduled Tribes have been notified) the Government of NCT of Delhi has been following the all-India pattern for a long time now in respect of reservation to civil posts under that Government, thereby giving reservation to all categories of SCs and STs, irrespective of nativity. The Hon'ble Supreme Court of India in its judgment dated 04.08.2009 in SLP No. 24327/2005 titled 'Subhash Chandra & Anr. vs. Delhi Subordinate Service Selection Board & Ors' clubbed with WP (Civil) No. 507 of 2006 titled 'Sarv Rural & Urban Welfare Society vs. Union of India & Ors' in the matter of reservation to migrant Scheduled Castes and Scheduled Tribes in NCT of Delhi had held that reservation in State or UT under Article 15 (relating to education) and Article 16 (relating to employment) can be given only to those Scheduled Castes and Scheduled Tribes who figure in the notified list under Article 341 or 342 for the State or UT, as the case may be.

2.7.2 As the implementation of the said Supreme Court judgment involved a major shift in policy, the Ministry of Home Affairs decided to explore the scope for inclusion of migratory SCs and migratory STs in the lists notified under Article 341 and Article 342 and the possibilities of providing a common reservation policy in respect of migratory SCs and STs in respect of all UTs including Delhi, and thereafter, approach the Cabinet posing all options. Accordingly, the Ministry of Home Affairs vide letter dated 27.11.2009³ forwarded to the Commission for

³ Ministry of Home Affairs Letter No. U-13028/31/2006-Delhi-I dated 27.11.09

consideration, a proposal for inclusion of all Scheduled Caste & Scheduled Tribe communities in the list of Scheduled Castes and Scheduled Tribes, respectively, in relation to the NCT of Delhi and all other Union Territories.

2.7.3 The Commission discussed the proposal in its meeting held on 22/02/2010. The details of the discussion and views/comments of the Commission have been included in Chapter 7 of this Report. However, for the sake of the completeness of issues, the recommendations made by Commission in this matter are reproduced as under:

- (a) While refraining comment on the merit of the Hon'ble Supreme Court judgment since Commission does not have any legal expertise, a common list of ST communities may not be notified under Article 342 in respect of all UTs, as this may lead to marginalization of the original tribal inhabitants of the concerned UT beside compromising the sanctity of Article 342.
- (b) Keeping in view the unique status of the NCT of Delhi being the National Capital of the Country and existence of various offices of the Union Government in Delhi, and the fact that the employment opportunities and educational facilities of high order have been created in the NCT of Delhi through the use of central revenues, it is desirable to continue to extend the benefit of reservation, to the STs resident in Delhi irrespective of their nativity and period of residence while retaining the reservation level of 7.5% for Scheduled Tribes as admissible at National level.
- (c) A constitutionally valid scheme of reservation may, however, be evolved to extend benefits of reservation to migratory STs living outside their original place of nativity as indicated in para 41 of the judgment of the Hon'ble Supreme Court of India in SLP (C) 24327 of 2005 (WP (C) No. 507 of 2006).

2.8 Reservation for SCs and STs beyond 15.11.1997 in financial institutions/ Banks consequent to judgement of Madras High Court dated 09.12.2009- DoPT O.M.No.36012/43/2008-Estt.(Res.) dated 14.01.2010⁴:

2.8.1 DoP&T O.M No. 36012/18/95-Estt.(Res.) Pt II dated 13.08.1997 provides that reservation for SCs and STs in promotion, as applicable on the date of issue of the O.M., shall continue beyond 15.11.1997 till such time as the representation of each of the above two categories in each cadre reaches the prescribed percentages of reservation, where after, the reservation in promotion shall continue to maintain the representation to the extent of the prescribed percentages for respective categories. In their judgement dated 09.12.2009 the Madras High Court, in WA-304, 324 and 342/1998 and WP-4599 and 7031/1998 etc. has directed as given below:

" The respondent Banks are directed to implement O.M. dated 13.08.1997 issued by the Govt. of India within a period of eight weeks from the date of receipt of a copy of this order, keeping in view of the observations made by us supra."

⁴ Complete O.M. can be seen on the web site of Ministry of Personnel (<http://persmin.nic.in>).

2.8.2 In order to ensure implementation of the above directive of the Madras High Court the Department of Personnel and Training have issued the above OM directing the Department of Financial Services, Ministry of Finance which is the Nodal Department for framing and implementing the reservation policy in Financial institutions/ Banks for taking necessary action in the matter. **There is no information about the action taken by the Ministry of Finance and the Financial Institutions/ Banks on the above mentioned DoPT OM dated 14/01/2010 communicating the directives of the Madras High Court.**

2.9 Representation of Scheduled Tribes in public services

(A) Representation of Scheduled Tribes in Central Ministries/Departments

2.9.1 Representation of Scheduled Tribes in Central Govt services as on 01.01.2011 as per the information made available by the Department of Personnel and Training (Ministry of Personnel and Training) vide their letter No. 36036/10/2011-Estt. (Res.) dated 02.06.2011 is as given in the table below:

(As on 01.01.2011)

Group (1)	Total (2)	STs (3)	%age (4)
A	5117	295	5.8
B	6850	360	5.3
C	10972	784	7.1
D (Excl Sweepers)	3948	369	9.3
Total(Excluding Sweepers)	26887	1808	6.72
Total (Including Sweepers)	27241	1830	6.72

Note: The above figures do not include information in respect of Prime Minister Office, Cabinet Secretariat, Dept. of Atomic Energy, Dept. of Space, Ministry of Civil Aviation, Coal, Communication & IT, Corporate Affairs, Culture, Defence, Development of North Eastern Region, Earth Sciences, Environment & Forests, Food Processing Industries, Health & family Welfare, Home Affairs, Housing & Urban Poverty Alleviation, Information & Broadcasting, Labour & Employment, Law & Justice, Minority Affairs, Micro Small & Medium Enterprises, Panchayati Raj, Personnel Public Grievances & Pensions, Power, Rural Development, Shipping, Tribal Affairs, Youth Affairs & Sports, Railways, New & Renewable Energy, Statistics & Prog. Implementation, Textile, Urban Development and Water Resources.

2.9.2 From the above data it is clear that the representation of STs in posts is much less than the prescribed percentage of 7.5, not only in Group A and B categories of posts, but also in all the categories. Even in Group 'D' category, the representation of STs is not satisfactory. It is obvious that this situation has arisen on account of the continuing backlog vacancies in these Groups, which are not being filled up by the concerned Ministries/ Departments. **The Commission expresses its concern over this matter and re-iterates its earlier recommendation that the DOPT should take up the matter with all the Central Ministries/Departments, particularly those which are cadre controlling authorities, for appointment to various posts/ services and oblige them to fill up the backlog vacancies reserved for Scheduled Tribes by launching Special Recruitment Drives (SRDs). The Commission is also of the view that Special Recruitment Drive in promotion will not yield the**

desired result without drawing separate lists of eligible candidates among Scheduled Tribes, as directed by the Supreme Court of India in the Civil Appeal No.4026 of 1988. Commission is further of the view that Department of Personnel and Training OM No.36012/27/2000-Estt.(Res.) dated 15-03-2002, which was issued in part fulfillment of the Supreme Court of India judgement, should be suitably amended since the OM prescribed drawing separate eligibility lists in case of ad-hoc promotions only. Where the Recruitment Rules provide for 100% appointments by promotion, the cadre controlling authorities may also consider amending/relaxing Recruitment Rules to include an element of direct recruitment or a clause "failing which by Direct Recruitment" in each grade of posts in the case of Scheduled Tribes to increase their representation at various levels.

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

2.9.3 Based on information furnished by the Ministry of Heavy Industry and Public Enterprises (Department of Public Enterprises), the representation of Scheduled Tribes in CPSEs as on 1.1.2010 in various categories of posts i.e. Groups A,B,C and D is as given in the Table below:-

Group	Total No. of Employees(As on 01.01.2010)	No. of STs (As on 01.01.2010)	%age	Position as on 01.01.2009 (in %)
(1)	(2)	(3)	(4)	(5)
A	2,61,072	13,993	5.35	4.99
B	2,08,501	13,117	6.29	5.77
C	7,42,516	51,884	6.98	8.58
D (Excl. Safai Karamcharis)	2,21,159	27,546	12.45	11.85
Group D (Safai Karamcharis)	34,162	1,462	4.27	10.62
Grand Total	14,67,410	1,08,002	7.36	8.38

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

2.9.4 It is noted that there is a marginal improvement in the representation of STs in Group 'A', but in all other categories as well as in overall position, there is a reduction in representation of Scheduled Tribes. As compared to the position as on 01.01.2008, the representation of STs in Group 'A' and 'B' is less than the prescribed reservation of 7.5%. **The Commission re-iterates its earlier recommendation that the Department of Public Enterprises should emphasize upon the Central Public Sector undertakings to make concerted efforts to fill up the backlog vacancies reserved for Scheduled Tribes in Group A and B posts through SRDs to bring their representation to the prescribed level of 7.5%. DOPT and Department of Public Enterprises**

should formulate a time-bound Action Plan to fill up the vacant positions to meet the target.

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

2.9.5 The representation of Scheduled Tribes in the Public Sector Banks in respect of the cadre of (i) Officers, (ii) Clerks, and (iii) Sub-staff as on 01.01.2011 is given below:-

(As on 01.01.2011)

S. No	Name of the Bank	Officers Gp 'A' & 'B'			Clerks Gp 'C'			Sub-Staff Gp 'D'		
		Total	ST	%	Total	ST	%	Total	ST	%
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1	Allahabad Bank	8920	636	7.13	8465	422	4.99	2255	129	5.72
2	Andhra Bank	8216	556	6.77	3315	111	3.35	2766	198	7.16
3	Bank of Baroda	15817	1018	6.44	14786	819	5.54	5975	568	9.50
4	Bank of India	14299	1093	7.64	18266	1329	7.28	5119	468	9.14
5	Bank of Maharashtra	4723	317	6.71	5888	388	6.59	2647	231	8.73
6	Canara Bank	17543	1158	6.60	15346	825	5.38	7402	349	4.71
7	Central Bank of India	12093	759	6.27	12355	783	6.33	6706	511	7.62
8	Corporation Bank	5676	268	4.72	5017	272	5.42	2656	177	6.66
9	Dena Bank	4061	417	10.27	3990	492	12.33	2079	303	14.57
10	Indian Bank	8063	475	5.89	8398	226	2.69	2658	125	4.70
11	Indian Overseas Bank	9889	658	6.65	11748	610	5.19	4332	182	4.20
12	Oriental Bank of Commerce	8302	444	5.35	5596	238	4.25	2240	118	5.27
13	Punjab National Bank	20975	1258	5.99	22606	682	3.02	9171	580	6.32
14	Punjab & Sind Bank	5626	156	2.77	1494	29	1.94	1169	36	3.08
15	Syndicate Bank	10765	739	6.86	11079	632	5.70	3731	241	6.46
16	Union Bank of India	13542	808	5.97	9046	441	4.88	5180	402	7.76
17	United Bank of India	6054	443	7.31	5856	315	5.37	3343	123	3.67
18	UCO Bank	8450	563	6.66	9783	484	4.95	3413	170	4.98
19	Vijaya Bank	5047	269	5.33	4112	159	3.87	2076	149	7.18
20	State Bank of India	78447	5159	6.58	100279	7201	7.18	34962	2698	7.72
21	State Bank of Bikaner & Jaipur	4749	451	9.49	4442	308	6.93	2124	240	11.29
22	State Bank of Hyderabad	6194	363	5.86	5313	344	6.47	2351	144	6.13
23	State Bank of Mysore	3268	249	7.61	4584	212	4.62	1565	94	6.00
24	State Bank of Patiala	5106	185	3.62	5293	61	1.15	2381	63	2.64

25	State Bank of Travancore	4558	145	3.18	5479	172	3.14	1888	85	4.50
26	IDBI Bank	10857	336	3.09	1394	42	3.01	914	86	7.22
27	Reserve Bank of India	9427	658	7.00	3789	439	11.6	5811	590	10.2

2.9.6 It is seen from the above Table that the representation of Scheduled Tribes in the officers' cadres is less than the prescribed percentage of 7.5% except in Bank of India (7.63), Dena Bank (9.88%), State Bank of Bikaner & Jaipur (9.26%), State Bank of Indore (9.5%) and EXIM Bank (8.15%). The percentage of STs in the cadres of Clerks is above the prescribed level of 7.5 only in State Bank of Indore (18.1%), Dena Bank (11.92%), SIDBI (8.08%), RBI (11.6%) and NABARD (11.81). The representation of STs in the cadre of Clerks in many of banks is less than 6% and even 1.1% in State Bank of Patiala and 2.37% in Punjab & Sind Bank. As regards the cadre of Subordinate staff (Sub-staff) the percentage of representation for STs in some of the Banks is not satisfactory, for example Oriental Bank of Commerce (3.86%), Punjab & Sind Bank (2.90%), United Bank (3.71%), State Bank of Patiala (2.70%) and others. **Dena Bank is the only Bank which continues to maintain representation of STs in all the cadres at 7.5 % or above.**

2.9.7 Since the year 2001 each Bank is the recruiting agency for all the categories of posts in that Bank and, therefore, the Commission fails to understand the low representation of Scheduled Tribes in respect of each category of post in Officer Cadres, Clerk Cadres or even Sub-staff cadres. It appears that the banks have not taken effective steps to fill up the backlog vacancies reserved for Scheduled Tribes. **The Commission re-iterates its earlier recommendation that the Department of Financial Resources (Banking Division) should oblige the banks to devise a time bound programme to make up the shortfall / backlog of ST vacancies by launching Special Recruitment Drive or by deputing special recruiting teams in the tribal areas or both.**

(D) Representation of Scheduled Tribes as on 1.1.2011 in Public Sector Insurance Companies

2.9.8 The information relating to representation of STs in Public Insurance Companies as on 01.01.2011 was provided by the Ministry of Finance, Department of Financial services vide their letter No. 5/3/2011-SCT(B) dated 21.03.2011. The Group wise representation of STs in these Companies is as given in the table below:

(As on 01.01.2011)

S No.	Name of Insurance Company	Group	Total employees	ST employees	% age
(1)	(2)	(3)	(4)	(5)	(6)
1	Insurance Regulatory and Development Authority , Hyd.	Group A&B	89	1	1.12
		Group C	25	2	8.00
		Group D	01	0	0.00
		Total	115	3	2.61

2	Life Insurance Corporation of India, Mumbai	Group A&B	51710	3524	6.81
		Group C	62181	4889	7.86
		Group D	2454	217	8.84
		Total	116345	8630	7.41
3	General Insurance Corporation of India, Mumbai	Group A&B	287	13	4.53
		Group C	124	12	9.68
		Group D	33	1	3.03
		Total	444	26	5.85
4	National Insurance Company Ltd., Kolkatta	Group A&B	6746	300	4.45
		Group C	6960	469	6.74
		Group D	1988	149	7.50
		Total	15694	918	5.85
5	The New India Assurance Company, Mumbai	Group A&B	8372	406	4.85
		Group C	9032	704	7.79
		Group D	2438	193	7.92
		Total	19842	1303	6.57
6	Oriental Insurance Company Limited, New Delhi	Group A&B	6510	346	5.31
		Group C	6715	478	7.11
		Group D	2109	165	7.82
		Total	15334	989	6.45
7	United India insurance Company Limited, Chennai	Group A&B	7034	312	4.44
		Group C	7824	600	7.66
		Group D	2370	218	9.20
		Total	17228	1130	6.56
8	Agriculture Insurance Company Ltd., New Delhi	Group A&B	152	13	8.55
		Group C	29	4	13.79
		Group D	10	0	0.00
		Total	191	17	8.90
Total (All Companies)		Group A&B	80900	4915	6.08
		Group C	92890	7158	7.71
		Group D	11403	943	8.27
Grand Total (all Companies – all Groups)			185193	13016	7.03

2.9.9 It is observed that the actual representation in Groups A & B combined, Group C & Group D was 5.89%, 7.22 % & 8.37 % respectively. It is worth mentioning that the representation of STs in Group A&B is much less than the prescribed percentage of 7.5%. The representation of STs in Group A&B in the

United India Insurance Company is only 4.5 percent against the required percentage of 7.5.

2.9.10 However, it is appreciable that the overall representation of STs in Group C & D in Insurance Sector is satisfactory. **The Commission therefore, reiterates its earlier recommendation that in order to enhance the representation of STs in Group A & B, the Ministry of Finance should take special measures like SRD to achieve the required representation of 7.5 percent in the Insurance companies through a time bound action plan.**

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

2.9.11 The University Grant Commission provided statistical data in respect of Teaching & non-Teaching posts reserved for STs in respect of Central Universities vide their letter no. F .1-3/2011(SCT) dated 01.06.2011. The post-wise representation of STs in Teaching posts for the year 2010-11 are as given in table below:-

(i) Teaching posts

(for the year 2010-11)

S. NO.	Name of the University	Professor			Reader			Lecturer			Back-log(ST)
		Sanc-tioned	In Position		Sanc-tioned	In Position		Sanc-tioned	In Position		
(1)	(2)	(3)	Total	Sch edu led Tribes	(6)	Total	STs	(9)	Total	STs	
1	Hyderabad	106	84	0	221	162	0	215	150(215)	9	32
2	Delhi University	307	134	0	654	293	0	691	334(691)	16	108
3	Assam	32	27	0	94	85	1		189(199)	11	12
4	Tezpur	49	36	0	64	40	0		93(120)	6	12
5	Jamia Millia Islamia	116	90	0	811	162	0		404(453)	20	37
6	Jawaharlal Nehru University	165	101	3	287	195	2		189(271)	9	40
7	MG Antar Rashtriya Hindi Vishwavidyalaya	16	11	0	12	8	0		37(44)	1	4
8	Manipur University	35	7	0	81	55	0		116(141)	8	12
9	Mizoram University	43	20	0	67	41	0		165(228)	10	15
10	North Eastern Hill	87	60	1	133	96	5		145(186)	13	12
11	Babasaheb Bhimrao Ambedkar, Lucknow	22	11	0	43	19	0		45(65)	3	7
12	Banaras Hindu	345	171	0	682	408	0		929(1368)	26	154
13	Visva Bharti	128	110	1	359	304	17		142(159)	5	26
14	Pondicherry	65	36	0	139	104	0		212(256)	14	20
15	Dr Hari Singh Gaur	50	9	0	92	42	0		100(173)	3	21
16	Tripura	39	8	0	58	26	1		69(125)	11	6

2.9.12 It is observed from the above data that the representation of STs among the teaching staff is negligible in respect of Professors and Readers as against the required percentage of 7.5. Universities like Jamia Millia Islamia, JNU, Banaras Hindu University, Vishwabharti University, Hyderabad University, AMU having large number of posts in the cadre of Professors, are not having even a single Professor from the ST communities. The same position prevails in the cadre of Reader also, in these Universities. **The Commission, therefore, reiterate its recommendation contained in its earlier Reports that the Ministry of Human Resource Development (Department of Higher Education) and the University Grants Commission should issue strict instructions to all the Central Universities to ensure that 7.5% reservation is provided to the Scheduled Tribes in such posts of Professor and Reader, which are filled up, as per recruitment rules, by direct recruitment. These Universities should further be asked to work out the shortfall / backlog vacancies reserved for Scheduled Tribes in such posts of Professor, Reader and Lecturer which are filled up by direct recruitment, and to chalk out a time bound programme to fill up these vacancies.**

2.9.13 The Group-wise representation in non-Teaching posts for the year 2010-11 in various Central Universities are as given in table below:-

(ii) Non-Teaching posts

(for the Year 2010-11)

S. No.	Name of the University	Group `A`		Group `B`		Group `C`		Group `D`	
		In position (Sanctioned)	STs	In Position (Sanctioned)	STs	In position (Sanctioned)	STs	In position (Sanctioned)	STs
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1	Hyderabad	65(87)	4	175(195)	8	389(426)	16	397(559)	32
2	Delhi	114(191)	4	455(546)	4	647(1282)	9	681(1068)	16
3	Assam	22(26)	1	36(39)	0	149(154)	11	71(73)	5
4	Tezpur	34(43)	1	39(43)	1	85(106)	6	71(73)	3
5	Jamia Millia Islamia	61(65)	0	51(59)	2	590(645)	4	385(538)	2
6	Jawaharlal Nehru	67(107)	3	176(256)	7	456(560)	29	437(476)	17
7	MG Antar Rashtriya Hindi Vishwavidyalaya	9(13)	0	8(9)	0	37(45)	1	24(24)	0
8	Manipur University	23(34)	2	20(25)	2	186(236)	28	67(102)	12
9	Mizoram University	17(40)	0	36(81)	0	242(383)	100	0(0)	0
10	North Eastern Hill University	59(68)	0	150(183)	92	359(456)	248	241(318)	162
11	Babasaheb Bhimrao Ambedkar, Lucknow	11(17)	0	7(8)	0	47(53)	1	22(25)	0
12	Banaras Hindu	169(231)	3	203(297)	12	2098(3127)	48	2328(3021)	93
13	Visva Bharti	163(209)	6	0(0)	0	550(684)	21	460(827)	39
14	Pondicherry	45(60)	1	114(130)	4	201(251)	8	201(212)	13
15	Dr Hari Singh Gaur	26(46)	0	107(143)	1	282(458)	10	351(442)	26
16	Tripura	18(20)	5	17(24)	3	57(60)	15	41(45)	10

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

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

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

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

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

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

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

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

2.9.17 It was noticed that representation of STs in Aligarh Muslim University (AMU) and Jamia Milia Islamia (JMI), which are Central Universities, was still very low. It was understood in discussions with the UGC that the reservation policy of the Govt. of India is not binding on a minority institution like AMU. A clarification regarding the minority status of AMU and JMI was sought from the UGC. In the absence of any response from UGC, AMU and JMI were expedited for requisite clarification in the matter, and a discussion was held with the Department of Higher Education, Ministry of HRD, Chairman, UGC, VC, AMU and VC, Jamia Milia Islamia on 11.05.2010 in the Commission on this subject.

2.9.18 Govt. of India, Ministry of Human Resource Development (Dept. of Secondary & Higher Education), vide their Order No. F.No. 6-30/2005 U-5 dated 06.12.2005 have issued directions to the UGC that in exercise of the powers vested under Section 20(1) of the UGC Act, 1956, it has to ensure effective implementation of the reservation policy in the Central Universities and those of Institutions Deemed to be Universities receiving aid from the public funds **except in minority institutions** under Article 30(1) of the Constitution. JMI is not having

minority status and is currently following the guidelines pertaining to reservation for the SCs and STs in admission as well as in recruitment.

2.9.19 As per Section 2(L) and Section 5(2)(c) of the AMU Act, 1920 (as amended upto date), AMU is a Minority Institution. Aligarh Muslim University is the only Central University with minority status receiving grants from the UGC in addition to other institutions, viz. colleges etc., having minority status.

2.9.20 Hon'ble High Court of Allahabad in its Judgement dated 05.01.2006 in SA No 1324/2005 stated that AMU is not a minority institution within the meaning of Article 30 of the Constitution. Further Sections 2(l) and 5(2)c introduced in the Aligarh Muslim University Act 1920 by the 1981 Amendment Act are invalid. Those insertions were struck down and also the Muslim quota of 50% in post graduate course in Department of Medicine was invalidated. Subsequently, AMU approached the Hon'ble Supreme Court against the Judgement of the Hon'ble High Court of Allahabad. Hon'ble Supreme Court in its decision dated 24.04.2006, stated that status quo as on the filing of writ petition in High Court of Allahabad should be maintained in AMU. The Council for AMU also gave an undertaking that 50% reservation to Muslims will also not resorted to.

2.9.21 As there was no response from the Aligarh Muslim University and Jamia Milia Islamia as per the recommendations of the Commission in the discussion held on 11.05.2010, the Commission re-iterates its earlier recommendations that:-

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

2.9.22 A number of Minority Educational Institutions have come into existence in various parts of the country. It is difficult for the ST/SC students to get admission in these institutions as the policy of reservation for SCs/STs is not applicable to these institutions as per the provisions of the Central Educational Institutions (Reservation in Admission) Act, 2006. The difficulty is more pronounced in the case of ST students as most of them belong to remote areas and cannot afford to get quality coaching for securing admission to these institutes by competing with the students of more forward communities. There is, therefore, urgent need for review of the provisions of Central Educational Institutions (Reservation in Admission) Act, 2006. **Therefore, the Commission would like to reiterate its recommendation contained in its third Report for the year 2007-08 that the Ministry of HRD and the Ministry of Minority Affairs should consider suitable amendment in the Central Educational Institutions (Reservation in**

Admission) Act, 2006 to ensure that reservation for STs is made applicable in admissions to Govt. run educational institutions which have been granted minority status.

2.10 Implementation of reservation policy for Scheduled Tribes in Central Public Sector Enterprises --Parliamentary Committee on Welfare of Scheduled Castes and Scheduled Tribes

2.10.1 The Parliamentary Committee on Welfare of Scheduled Castes and Scheduled Tribes has examined the implementation of reservation policy for Scheduled Castes and Scheduled Tribes in various Public Sector Enterprises during the year 2010-11 and made certain recommendations in respect of service safeguards of these weaker sections of the Society. Observations and recommendations made by the Parliamentary Committee on Welfare of Scheduled Castes and Scheduled Tribes, in its 10th Report (Fifteenth Lok Sabha) on Ministry of Heavy Industries and Public Enterprises in respect of service safeguards in BHEL are highlighted below for ready reference.

2.10.2 The Committee noted that BHEL has filled some posts on deputation from other Government Departments as well as sent its own employees on deputation to other departments. However, not many employees have come on deputation after 2005 nor many have been sent on deputation to other departments. The number of SC/ST employees on deputation was negligible. The Committee opined that for the sake of career progression, SC/ST officers should be given opportunities in matter of deputation as it opens an avenue for them to get exposed to new work environment, improve upon their working skill and aptitude which eventually benefit the organisation. The Committee, therefore, recommended that **SC/ST officers should be encouraged to go on deputation or to come on deputation.**

2.10.3 The Committee noted that the procedure cited for selection of candidates for posting abroad was based on the specific requirement of the job at respective locations which is made with the approval of the CMD. The Committee also noted that the reservation orders do not apply to postings. However, the Committee desired that Management should give fair opportunity to SC/ST employees too, if they are qualified and eligible for posting abroad. The Committee, therefore, urged **the Management to endeavor to nominate adequate number of eligible SC/ST candidates for posting abroad.**

2.10.4 The Committee was distressed to note that not a single ST employee of BHEL was sent for training abroad during the years 2006 and 2007. However, during the years 2005 and 2008, there was representation of 3 ST employees in each year for training abroad. The Committee was informed that there was no reservation in nomination of employees for training abroad but employees were nominated based on the functional requirement and fulfilling other terms and conditions stipulated in the guidelines for regulation of training followed by the Company. Having noted that the company has a policy for regulation of nomination process for training abroad, the Committee stressed that those ST employees should not be ignored should they otherwise fulfill the eligibility criteria prescribed by the Company as foreign training is very important for employee's

confidence building and of great value for advancement of their career. No doubt, it is the aspiration and dream of every employee to avail foreign training in his career. The Committee, therefore, urged **to ensure that the nomination of candidates from the recommendation stage by the Head of the concerned Unit should be done in a very transparent and fair manner so that eligible SC and ST candidates get equal opportunity for getting nominated to these trainings.**

2.10.5 The Committee further noted that BHEL provides training to a large number of ITI students including adequate number of SC/ST candidates under the Apprenticeship Schemes every year, and thus help them to get familiar with the type of skills required for recruitment. The Committee emphasised that SC/ST candidates should be given preference in getting trained under the Apprenticeship Schemes so that there is good number of suitable SC/ST candidates for recruitment. The Committee further noted that BHEL provides in-service training in various functional areas as well as on subjects of general interest useful to all employees including SCs and STs. Other than functional requirements, BHEL impart training on general health, motivation, safety, IT awareness, Raj Bhasha, academic guidance for children of employees. While appreciating these initiatives undertaken by the Company for the welfare of its employees and their children, the Committee urged the Management to keep up the good work so that other organisations may also emulate these good works of the Company. The Committee also desired that **SC/ST employees should be given continuous training in different functional areas so that they can give their best service to the Company.**

2.10.6 The Committee also noted that apprentices are taken under Apprenticeship Act in various branches of BHEL. During the last 5 years (2005, 2006, 2007 2008 and 2009), a good number of apprentices were taken but comparatively the absorption of those apprentices in BHEL is very low. The Committee expressed that if the Company cannot absorb all the apprentices after they are trained, then why the Company is taking them under Apprenticeship Act in the first instance. The Committee are of strong opinion that shortfall of SC/ST at the lower level of posts can be made good by absorbing SC/ST apprentices in due course of time. The Committee, therefore, recommended that **it should be ensured that SC/ST candidates taken for apprenticeship are given preference for absorption so that shortfall of Scheduled Castes and Scheduled Tribes especially in the posts for which they are trained are always filled up.**

2.10.7 The Committee was of the view that the office of a Liaison Officer is a very important institution as far as the welfare and interest of the SCs and STs are concerned. The Liaison Officer is a link between the Management and the SC/ST employees of the organisation whose main function is to ensure that Presidential Directives on reservation of SCs and STs are implemented in letter and spirit. Therefore, it is important that Liaison Officer and his support staff are appointed from reserved communities, so that the SC/ST employees may able to convey their problem without fear. Moreover, SC/ST officer appointed as Liaison Officer may also give confidence to SC/ST employees and the Liaison Officer may in turn be able to do his job with more dedication and commitment. However, the

Committee note that in some units of BHEL, like Jhansi, Bhopal, Tiruchy, Rudrapur, Ranipet, Bangalore, Jagdishpur, Varanasi, NOIDA, Kolkata, Chennai, Nagpur, Mumbai, New Delhi the Liaison Officers do not belong to these communities. The Committee, therefore, urged the Management that **as far possible an officer of appropriate rank from the SC/ST community having a sound knowledge of reservation policies should be appointed as Liaison Officer of the respective units and he should be provided with sufficient number of support staff drawn from reserved communities.** The Committee further expressed that Liaison Officers out of fear and intimidation by others do not perform their assigned duties in a fair and transparent manner. Therefore, the Committee urged the Management that **the Liaison Officer should be allowed to work independently and without any interference from any side. The Liaison Officer should also not be overburdened with many assignments apart from his liaison duties. However, for any lapse, negligence and dereliction of duty on his part, appropriate action should be taken against him so as to ensure accountability in the office of the Liaison Officer.**

2.10.8 The Committee also noted that an officer of the rank of Deputy Secretary has been designated as Liaison Officer in the Ministry of Heavy Enterprises. The Committee urged the Liaison Officer to conduct periodic inspection of the undertakings including BHEL to check that rosters maintained by them and to ensure that Presidential Directives on reservation of SCs and STs are implemented in letter and spirit.

2.10.9 The Committee also stressed that rosters maintained at Head Office and also at regional offices were periodically inspected by respective Liaison Officers and necessary action as suggested by the Liaison Officers are taken. It was also informed that the representatives of the Ministry of Heavy Industry and Public Enterprises also visited the Head Office and regional/zonal/circle offices of BHEL to check the rosters. It has also been stated that no discrepancies were noticed during inspections. It appears that rosters maintained at various offices of BHEL are being properly maintained. It is, however reiterated that roster is a very important document as far as the welfare and interest of the SCs and STs are concerned. It is the only mechanism through which a watch is kept on the proper placement of SC/ST employees in their respective cadres against the vacancies reserved for them. In fact, the whole system of implementation of reservation orders rest on maintenance of rosters. It foretells the time by which the SC/ST employees become eligible for their next promotion by their placement in the roster. The Committee, therefore, urged the BHEL **to entrust the job of maintaining rosters to officers who are well versed and acquainted with recruitment rules and maintain them strictly in accordance with the instructions laid down for the purpose. Rosters should be inspected regularly by the Liaison Officers and after every inspection; he should put his signature and stamp as a token for having inspected. The Committee also recommended that the officers concerned for the maintenance of rosters as well as Liaison Officers should be made accountable for its proper maintenance.**

2.10.10 The Commission is of the view that the observations and recommendations made by the Parliamentary Committee in the context of BHEL are equally applicable to all Ministries/ Departments and the PSEs. The Commission, accordingly recommends as follows:

- (i) SC/ST officers should be encouraged to go on deputation or to come on deputation.
- (ii) It may be ensured that the nomination of candidates from the recommendation stage by the Head of the concerned Unit should be done in a very transparent and fair manner so that eligible SC and ST candidates get equal opportunity for getting nominated to these trainings.
- (iii) SC/ST employees should be given continuous training in different functional areas so that they can give their best service to the Company.
- (iv) it should be ensured that SC/ST candidates taken for apprenticeship are given preference for absorption so that shortfall of Scheduled Castes and Scheduled Tribes especially in the posts for which they are trained are always filled up.
- (v) as far possible an officer of appropriate rank from the SC/ST community having a sound knowledge of reservation policies should be appointed as Liaison Officer of the respective units and he should be provided with sufficient number of support staff drawn from reserved communities.
- (vi) the Liaison Officer should be allowed to work independently and without any interference from any side. The Liaison Officer should also not be overburdened with many assignments apart from his liaison duties. However, for any lapse, negligence and dereliction of duty on his part, appropriate action should be taken against him so as to ensure accountability in the office of the Liaison Officer.
- (vii) to entrust the job of maintaining rosters to officers who are well versed and acquainted with recruitment rules and maintain them strictly in accordance with the instructions laid down for the purpose.
- (viii) Rosters should be inspected regularly by the Liaison Officers and after every inspection; he should put his signature and stamp as a token for having inspected. The officers concerned for the maintenance of rosters as well as Liaison Officers should be made accountable for its proper maintenance.

2.11 The Scheduled Castes and the Scheduled Tribes (Reservation in Posts and Services) Bill 2008

2.11.1 The Commission had noted from the media reports that the Scheduled Castes and Scheduled Tribes (Reservation in Posts and Services) Bill 2008 (copy available on NCST website: <http://www.ncst.nic.in>) was being processed by the Department of Personnel and Training for presentation in the 14th Lok Sabha after it was passed by the Rajya Sabha on 23/12 /2008. The Commission observed that the Bill in its present form, varied in its contents from the earlier draft Bill viz; the SCs, STs and other Backward Classes (Reservation in Posts and Services) Bill, 2004 received from the DoPT for comments of the Commission, comments on which were furnished in December, 2004. The Commission deliberated on the SCs and STs (Reservation in Posts and Services) Bill 2008 in its meeting held on 22/02/2010 and noted that the views of the Commission have not been sought before introducing the SCs and the STs(Reservation in Posts and Services) Bill 2008 in Parliament. The, Commission, therefore, desired that the concern of the Commission in this regard may be communicated to the concerned Ministry/ Department; and it be suggested to them that the updated version of the

Bill should be referred to this Commission also for comments before it is introduced in the Lok Sabha.

2.11.2 The concerns of the Commission on the Reservation Bill 2008 were communicated⁵ to the DoPT vide letter dated 26/03/2010 with the request to intimate the final outcome of the Bill with reference to the recommendations of the Commission. The DoPT vide letter dated 12/05/2010 informed that the Bill was passed by the Rajya Sabha on 23.12.2008 and couldn't be discussed in the Lok Sabha and lapsed on the dissolution of the 14th Lok Sabha. The DoPT also informed that the issue of introduction of a fresh Bill regarding reservation for SCs and STs was under examination; and whenever, a decision is taken to introduce the Bill, the National Commission for Scheduled Castes and the National Commission for Scheduled Tribes will be consulted before such introduction.

2.11.3 In the last (5th) Report of the Commission it was mentioned that the following issues have been taken up with the Minister of State for Department of Personnel and Training vide D.O. No 4/3/08-Coord dated 30.06.2009 from the Chairperson, NCST.

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

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

⁵ NCST Letter no 13/1/NCST/2004-Admn/RU-I dated 26/03/2010

evolve an effective mechanism/ initiatives to ensure timely filling of posts under SRDs to fill up the backlog ST vacancies as well as those arising in the normal course.

(iii) The Commission is of the view that certain steps need to be taken to make SRDs really effective. These may include: (i) introduction of a computerized roster management system to introduce transparency and easier manpower planning and (ii) making enabling provisions in the Recruitment Rules (RRs) (a) to go for direct recruitment if an eligible ST candidate with required length of service is not likely to be available (in the feeder grade post) for promotion to the higher post and (b) temporarily downgrading the post to the feeder grade level and filling that downgraded post from amongst ST candidate(s). In the matter of computerization of implementation of reservation system, DoPT has since informed the Commission that the Government has not prescribed any format for maintenance of rosters; and, in the absence of a prescribed format for maintaining rosters/registers, it is not possible to develop computer software for this purpose- which seems rather odd, to say the least, since the Govt. is committed to spread of e-governance. (During the review meetings with various Organisations Commission has been informed that State Bank of India has computerised all the rosters while Cochin Port Trust and the Cochin Shipyard are in the process of computerization as part of HR Module. These Organisations were requested to confirm whether the computerization of rosters is logic driven or mere computation of data. The State Bank of India has confirmed that the computerisation of rosters is simply computerisation of data only.)

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

2.11.4 As reply from DoPT was still awaited DoPT vide letter dated 20/01/2013 was requested to furnish present status of each issue raised in the letter. The reply to this communication is also awaited from DoPT .

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

2.12 Recognition of SCs and STs Employees Welfare Associations.

2.12.1 The Commission had taken up the matter of recognition of ST welfare associations with the DoP&T *vide* DO letter No. 17/DoPT/1/2009/RU-I dated 27/07/2009. However, it was mentioned that it has not been found feasible to agree to the suggestion given by NCST regarding grant of recognition to SC/ST Welfare Service Associations under the CCS(RSA) Rules, 1993. Earlier O.M. dated 28.02.2006 from DoP&T mentioned that according to CCS(RSA) Rules, 1993 associations formed on the basis of caste can't be recognized.

2.12.2 These Welfare Associations are established for the benefit of all Scheduled Castes and/or Scheduled Tribes employees of the organization and not for a particular SC or ST community. If recognition can be granted to Associations of all Ex-servicemen, all women, all boys, all disabled persons then why Associations working for all SC/ST communities, irrespective of any specific SC/ST community, cannot be recognized. These Associations act as mediators and bring better coordination between the management and the SC/ST employees and resolving the issues concerning the problems of those employees and also implementing the Government policy relating to reservation for Scheduled Castes and Scheduled Tribes. Therefore, the Department of Personnel and Training may therefore reconsider the issue relating to recognition of the Welfare Service Associations.

2.13. DERESERVATION OF POSTS RESERVED FOR SCHEDULED TRIBES

(1). Existing instructions

2.13.1 Existing instructions relating to appointment to civil posts require that, the vacancies reserved for Scheduled Tribes are required to be filled from the candidates belonging to Scheduled Tribes only, both in respect of direct Recruitment and promotion⁶. In this connection, instructions have been issued from time to time for launching Special Recruitment Drive (s) for filling the reserved vacancies. However, some times, it is not possible to fill a vacancy reserved for ST candidates by promotion because of non-availability of eligible candidate in the prescribed zone of consideration in the seniority list of the feeder grade; and at the same time, it is administratively not possible to keep the post vacant indefinitely as it may adversely affect the performance of a Ministry/ Department/Organisation. Such situations arise because, very often, adequate efforts are not made while making appointment to the posts in the feeder grade (or its next below feeder grade) through direct recruitment from candidate(s) belonging to ST category.

(2). Ban on Dereservation in Direct Recruitment

2.13.2 In view of the alarming situation due to non-appointment of Scheduled Tribes in Direct Recruitment the Govt. of India imposed a ban on de-reserving the post(s) to be filled by direct recruitment⁷. The instructions relating to ban on

⁶ Ministry of Home Affairs Resolution No. 42/21/9/NGSad 13.9.1950

⁷ Department of Personnel & Training OM No. 16012/6/88-Estt.(SCT) dated 25.04.1989

dereservation in Direct Recruitment provide that in exceptional cases in Group 'A services where posts cannot be allowed to remain vacant in public interest, the administrative Ministry/Department under which the recruitment was being made shall make a proposal for dereservation giving full justification for such action and consult NCST / NCSC by obtaining comments and place the same for consideration before the Committee comprising the Secretaries in the (i) Ministry of Personnel & Training (ii) Ministry of Welfare (now the Ministry of Social Justice Empowerment or the Ministry of Tribal Affairs, as the case may be) and (iii) the administrative Ministry under which recruitment was being made. The recommendations of the Committee are required to be placed before the Minister in-charge of DoPT for a final decision.

(3). Procedure for Dereservation of posts to be filled by promotion

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

2.13.4 An elaborate procedure was prescribed by DoPT vide OM No. 36011/20/79-Estt.(SCT) dated 02/11/1979 for dereserving a reserved vacancy and filling the same by a candidate other than ST while making promotion, also ensuring that the rights of Scheduled Tribes, temporarily curtailed by the process of dereservation due to non-availability of eligible ST candidates in the feeder grade in a recruitment year, are restored to them in the next or subsequent recruitment year by carrying forward the reserved point for ST from the previous year. Thus, an additional vacancy out of the vacancies occurring in the next or subsequent recruitment year is reserved for the Scheduled Tribes and is filled by promotion from amongst eligible ST candidates. In case the eligible ST candidate is not available in the next recruitment year, the same procedure of dereservation and filling the carried forward reserved point in the next recruitment year has to be followed.

2.13.5 DoPT, vide OM No. 16/27/74-Estt. (SCT) dated 12/11/1975, *inter- alia*, provide that the Liaison Officers(SCs/STs) should ensure proper working of service safeguards for SCs/STs and that they should concur in the proposals of dereservation after carefully examining them with reference to the DoPT's instructions on dereservation. DoPT, vide OM No. 28/14/74/Estt. (SCT) dated 12/07/76, OM 36011/25/79-Estt (SCT) dated 16/11/79 and OM 36012/17/2002/Estt. (Res.) dated 06/11/2003 has streamlined the procedure for submission of proposals for dereservation. However, in view of a number of subsequent developments like replacement of vacancy-based rosters by post-based rosters, creation of separate Commissions viz; National Commissions for the Scheduled Castes and the National Commission for Scheduled Tribes respectively in place of erstwhile NCSCST, ban on exchange of reservation between SCs and STs have taken place, it became necessary to modify the preforma for seeking de-reservation. Department of Personnel and Training Vide OM No. No. 3602012/2007-Estt (Res) dated 7th December 2009 issued revised

instructions and revised Performa for sending the dereservation proposal. A copy of this OM is placed at **ANNEXURE 2.II.**

2.13.6 As per these instructions, the administrative Ministries and Deptts. have been delegated the power to accord approval to the dereservation of reserved vacancies subject to the following conditions:

- (i) There is no eligible SC/ST candidate available or likely to be shortly available for promotion in the feeder cadre;
- (ii) A copy of the proposal for dereservation in the appropriate prescribed Performa is sent immediately to (i) the Department of Personnel and Training and (ii) the National Commission for Scheduled Tribes in case of post reserved for ST or the National Commission for Scheduled Caste in respect of post reserved for SC as the case may be and thereafter the concerned Deptt. is required to wait for a period of 15 days before going for dereservation;
- (iii) The proposal for dereservation has been seen and concurred with by the Liaison Officer of the Ministry/Department concerned;
- (iv) The proposal for dereservation has been agreed to at a level not lower than that of the Joint Secretary to the Government of India in the administrative Ministry/ Department (Proper) concerned;
- (v) In the event of a disagreement between the appointing authority and the Liaison Officer, the advice of the DoPT has been obtained;
- (vi) The proposal contains a certificate that it is being made with the full knowledge and concurrence of the Liaison Officer of the Ministry/ Department concerned.

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

(4). Examination of dereservation proposals

2.13.8 Since dereservation in promotion has not been banned, the National Commission for Scheduled Tribes receives a large number of proposals for dereservation in promotions. The National Commission for Scheduled Tribes received 87 proposals for dereservation of 282 posts reserved for Scheduled Tribes from various Ministries/ Departments during the year 2010-11. A list of such proposals is placed at **ANNEXURE 2.III.** A few salient cases received for dereservation are given at **ANNEXURE 2.IV.** As will be clear from these lists, only a few Ministries/ Departments have sent the proposals for de-reservation. Therefore, nothing can be said about other Ministries/Departments as to whether the reservation policy was being implemented in letter and spirit.

2.13.9 As mentioned earlier in the 3rd, 4th and 5th Reports of the National Commission for Scheduled Tribes, most of these proposals reflect one of the following two situations:-

- (i) The mode of filling a post or chain of posts in a cadre is 100% by promotion from the feeder grade post(s) and there is no ST candidate in the feeder grade and

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

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

2.13.10 Details of one proposal for the dereservation received from the Ministry of Home Affairs, mentioned in **ANNEXURE 2.IV** is recapitulated here for discussion purpose. A proposal dated 25/02/2011 for dereservation of 1 post of Assistant Director (Staff Officer) reserved for Scheduled Tribes to be filled by promotion in the Office of Intelligence Bureau was received from the Office of Intelligence Bureau. The post of AD (SO) is in Pay Band 3 with Grade Pay of Rs. 6600. The scale of the feeder post was not mentioned in the proposal. The proposal was not accompanied with the copies of the Recruitment Rules and other relevant documents. Moreover, the proposal was not routed through the Administrative Ministry i.e. Ministry of Home Affairs. The office of IB was therefore requested to route the proposal through the administrative Ministry as per the laid down procedure. The Ministry of Home Affairs forwarded the same proposal vide their letter dated 3/02/2012. Since the proposal, received on 7/02/2012 was not accompanied with requisite information/documents, the Commission vide letter 10/02/2012 requested the Ministry of Home Affairs to furnish the following information/ documents:

1. Copy of up-to-date Seniority List for the post.
2. Certified copy of Reservation Roster for the post.
3. Up-to-date and latest Recruitment Rules.
4. Reasons for non-availability of ST incumbents in the feeder grade and efforts made for filling up of ST vacancy so far.

2.13.11 As no response was received and the status of the post proposed for dereservation was to be incorporated in the Annual Report of the Commission, the Ministry was requested, vide letter dated 15/10/2012, to furnish the following information:

- (i) Whether the above mentioned post has been filled by promotion from amongst the ST candidates/non-ST candidates.
- (ii) A copy of the promotion order, if any, may be furnished
- (iii) In case subject post(s) was filled by non-ST candidate, (since a point dereserved in a particular year, has to be carried forward to the next

recruitment year and the carried forward reserved points has to be filled from amongst the candidates belonging to that particular reserved category), what steps have been taken to ensure that the point reserved for Scheduled Tribes, but presently filled from amongst non-scheduled may be filled from amongst Scheduled Tribes candidates in the next recruitment year.

- (iv) Whether steps have been taken to amend the Recruitment Rules for the above post, for making provision for including “falling which by Direct Recruitment for post reserved for ST” clause in the Recruitment Rules in case of non-availability of eligible ST candidates against reserved vacancy, if National Commission for Scheduled Tribes has recommended for the same while intimating its decision on the above proposal of the Ministry vide reference (ii) above.

2.13.12 The response from the Ministry of Home Affairs was received on 7/02/2013. It was noted that the posts reserved for ST category have been got dereserved and filled up by regular promotion of eligible general category officers during the DPC year 2011-12 & 2012-13. The Ministry is stated to have promoted the non-Scheduled Tribes candidates after following the prescribed procedure for dereservation laid down in DoPT OM No. AB-14017/30/89-Estt.(RR), dated 10/07/1990. Copy of the promotion order stated to have been enclosed was however, not received. The Commission noted that proper procedure for dereservation was not followed by the Ministry as information sought by the Commission was not furnished despite follow up by the Commission. Commission also noted that IB is a very old organization under the Ministry of Home Affairs. As per PBR of 47 posts of AD, there was no ST incumbent and all the three posts against ST roster points were filled by non-Scheduled Tribes by getting the points dereserved internally. **It indicates that no efforts were ever made by the Ministry of Home Affairs to increase the intake of ST candidates in the posts in various feeder cadres so that post of AD(SO) could be filled from among ST candidates. Ministry of Home Affairs being an important Ministry of the Government of India having sizeable staff strength and a number of attached and subordinate organisation including para-military organisations is not expected to ignore the steps required to ensure proper implementation of the Constitutional Safeguards provided for the Scheduled Tribes.**

2.13.13 From the perusal of the proposals for de-reservation received in the Commission, it is felt that the ban on dereservation in Direct Recruitment applied in the year 1989 has not been followed in letter and spirit by various Ministries and Departments as non-availability of ST candidates amongst a long seniority list of the feeder grade/initial grades of cadres continues to be the main reason for seeking de-reservation in promotion. On the one hand reservation has not been applied at Direct Recruitment stage in the initial/feeder grade; and on the other hand, there is no provision for Direct Recruitment, or transfer on deputation, in the method of promotion to the higher grade. **The National Commission for Scheduled Tribes is, therefore, of the view that de-reservation should be banned totally; and each cadre controlling/ recruiting authority should**

ensure the following for implementation of policy of reservation for Scheduled Tribes in posts/ services:

- (i) Recruitment Rules for each post must specifically mention about applicability of reservation for Scheduled Tribes, Scheduled Castes and OBCs (where admissible).**
- (ii) Recruitment Rules should provide elements of Direct Recruitment as well as deputation/transfer on deputation, beside promotion, instead of 100% by promotion (or, at least provision for relaxation of the same for filling up ST vacancies), so that deficiencies due to non-availability of reserved category candidate(s) in the seniority list of the feeder grade may be made up through Direct Recruitment or deputation/transfer on deputation as the case may be. As per DoPT O.M. No. AB.14017/30/89-Estt.RR dated 10.07.1990, reserved vacancy can be temporarily transferred from one mode of recruitment to other and this relaxation of RRs can be exercised by Ministries/ Departments themselves subject to approval of UPSC.**
- (iii) As per instructions of the Supreme Court of India separate list of eligible ST and SC candidates, fulfilling the prescribed conditions relating to educational and experience qualification may be prepared for filling the posts reserved for Scheduled Tribes and Scheduled Castes respectively.**
- (iv) No exchange of vacancies be permitted between ST, SC or OBC or vice-versa.**
- (v) In case of non-availability of ST/SC candidates in the feeder grade, in the near future, the post may be filled by deputation of ST candidates from other Organizations and the reserved point in promotion to be carried forward as shortfall/ backlog vacancy till such time the eligible ST/SC candidates becomes available for promotion.**
- (vi) In case of non-availability of ST/SC candidates, at all, in the feeder grade the post(s) could be filled by Direct Recruitment from the candidates belonging to the concerned reserved category to the extent of shortfall/backlog. This may be done by resorting to Special Recruitment Drive.**

RECOMMENDATIONS.

2.13.14 The National Commission for Scheduled Tribes made certain recommendations in its earlier Reports with regard to de-reservation. Since no information is available about action taken on those recommendations, by way of OMs issued by Department of Personnel and Training or any other reference from the DoPT or the Ministry of Tribal Affairs, and in view of the above observations of the Commission, the Commission makes the following recommendation (including reiteration of its earlier recommendations):-

- (i) There should be total ban on dereservation of posts reserved for Scheduled Tribes to be filled by any method i.e. whether Direct Recruitment or promotion in all Ministries/Depts./Organisations except those where reservation is exempted.**
- (ii) The ban on dereservation in Direct Recruitment should be monitored strictly as many Ministries/ Depts./ Organisations including DoPT have failed to appoint Scheduled Tribes candidates against Direct**

Recruitment posts/ grades of general nature, for which there should be no paucity of qualified/ eligible ST candidates.

- (iii) Recruitment Rules in r/o each post must specifically mention about applicability of reservation for Scheduled Tribes, Scheduled Castes and OBCs (where admissible).**
- (iv) There should be total ban on dereservation in general, excluding certain exceptional categories of posts. The exceptional posts should be decided in consultation with the Ministry of Tribal Affairs as well as National Commission for Scheduled Tribes also.**
- (v) No exchange of vacancies be permitted between ST, SC or OBC or vice-versa.**
- (vi) Instead of seeking dereservation of the post, provisions of the DoPT OM No. 36011/14/83-Estt.(ST) dated 30/04/1983 relating to consideration of cases of ad-hoc promotion of SC/ ST employees should be applied in the matter of promotion of ST candidates against reserved posts. The relaxation in period of ad-hoc appointments upto 3 years agreed in respect of Group 'C' and 'D' posts vide DoPT OM No. 28036/01/2007-Estt(D) dated 14/11/2007 may be allowed, with suitable amendments, in case of ad-hoc promotion of ST candidates appointed against all categories of posts reserved for Scheduled Tribes.**
- (vii) To check various issues and problems connected with de-reservation and to ensure accomplishment of the targets of achieving required percentage of reservation for Scheduled Tribes in all categories of posts, the DoPT OM No. 36011/14/83-Estt.(ST) dated 30/04/1983 may be revised to prescribe drawing of separate lists of eligible ST/ SC candidates in respect of all kinds of promotion on regular as well as ad-hoc basis in all categories of posts.**
- (viii) If no ST candidate is likely to become available for a long time, steps should be taken to fill the reserved post from ST candidates through direct recruitment by amending the RRs if the existing RRs do not provide for the same or relaxing them, instead of seeking de-reservation of the post.**
- (ix) Action should simultaneously be taken to amend the RRs for each post to provide for element of direct recruitment in all cases where appointment is being made 100% by promotion, by incorporation of 'failing which' clause, or, at least provision for relaxation of the same for filling up ST vacancies.**
- (x) In normal course Recruitment Rules should provide elements of Direct Recruitment as well as deputation/transfer on deputation, beside promotion, instead of 100% by promotion, so that deficiencies due to non-availability of reserved category candidate(s) in the seniority list of the feeder grade may be made up through Direct**

Recruitment or deputation/transfer on deputation as the case may be. In this connection, DoP&T O.M. No. AB.14017/30/89-Estt.RR dated 10.07.1990 also provide that reserved vacancy can be temporarily transferred from one mode of recruitment to other and this relaxation of RRs can be exercised by Ministries/Departments themselves subject to approval of UPSC.

- (x) As per instructions of the Supreme Court of India separate list of eligible ST and SC candidates, fulfilling the prescribed conditions relating to educational and experience qualification may be prepared for filling the posts reserved for Scheduled Tribes and Scheduled Castes respectively.**
- (xii) In case of non-availability of ST/SC candidates in the feeder grade, in the near future, the post may be filled by deputation and the reserved point to be carried forward as shortfall/ backlog vacancy till such time the eligible ST/SC candidates becomes available for promotion.**
- (xiii) In case of non-availability of ST/SC candidates, at all, in the feeder grade the post(s) could be filled by Direct Recruitment from the candidates belonging to the concerned reserved category to the extent of shortfall/backlog. This may be done by resorting to Special Recruitment Drive.**

CHAPTER 3

DRINKING WATER IN TRIBAL AREAS

3.1 Retrospective

3.1 Drinking water is an essential and vital need of human life. Tribal areas being located in remote areas, isolated from rest of the world, need to be accorded priority for ensuring potable drinking water. The National Commission for Scheduled Tribes, therefore, decided to address the problem of drinking water for Scheduled Tribes in the Tribal Sub-Plan areas of the country in its Sixth Report.

3.2 Historically, drinking water supply in the rural areas in India has been outside the government's sphere of influence. Community-managed open wells, private wells, ponds and small-scale irrigation reservoirs have often been the main traditional sources of rural drinking water. Scheduled Tribes by nature live in hilly, remote and isolated areas. They are close to the nature and in many cases close to the sources of water. These sources are rivers, rivulets, ponds, lakes and springs but all these sources do not ensure potable and safe drinking water to the people living in tribal areas.

3.3 Water is a State subject and as such State Governments are primarily responsible for providing safe and adequate drinking water to the rural habitations. Funds have been provided in the budgets of the States for the drinking water supply right from the commencement of the first Five Year Plan. To supplement the efforts of the State Governments in this direction, financial and technical support has been provided from time to time to the State Governments through the Centrally Sponsored Schemes of the Government of India. A national water supply and sanitation programme was introduced in the social welfare sector in the year 1954. The Government of India provided assistance to the States to establish special investigation divisions in the Fourth Five Year Plan to carry out identification of the problem villages. Taking into account the magnitude of the problem and to accelerate the pace of coverage of problem villages, the Central Government introduced the Accelerated Rural Water Supply Programme (ARWSP) in 1972-73 to assist the States and the Union Territories with 100% grants-in-aid to implement the schemes in such villages. This programme continued till 1973-74. But with the introduction of the Minimum Needs Programme (MNP) during the Fifth Five Year Plan (from 1974-75), it was withdrawn. The programme was, however, reintroduced in 1977-78 when the progress of supply of safe drinking water to the identified problem villages under the Minimum Needs Programme was not found to be satisfactory.

3.2 National Water Policy

3.4 During the period 1972-1986, major thrust of the ARWSP was to ensure provision of adequate drinking water supply to the rural community through the Public Health Engineering System. The second generation programme was started with the launching of Technology Mission in 1986-87 and adopting of **National Water Policy** in September 1987. A copy of the NWP 1987 is placed at **ANNEXURE3.1**.

- 3.5 The **National Water Policy** stipulates as given below:
- (a) Water allocation priorities broadly are
 - i) Drinking Water
 - ii) Irrigation
 - iii) Hydro-power
 - iv) Navigation
 - v) Industrial and other uses
 - (b) However, these priorities may be modified, if necessary, in particular regions with reference to area specific considerations.
 - (c) Water resource development projects should, as far as possible, be developed as multi-purpose projects. Provisions for drinking water should be a primary consideration.
 - (d) Improvements in existing strategies and the innovation of new techniques based on science and technology base will be needed to eliminate the pollution of surface and ground water resources, to improve water quality and to step up the recycling and re-use of water.
 - (e) There should be a periodical re-assessment on a scientific basis of ground water potential, taking into consideration the quality of the water available and economic viability. The exploitation of ground water resources should be so regulated as not to exceed the recharging possibilities, as also to ensure social equity , integrated and coordinated development of surface and ground water, and their conjunctive used should be envisaged right from the project planning stage and should form an essential part of the project. Over-exploitation of ground water should be avoided near the coast to prevent ingress of the seawater into sweet water aquifers.
 - (f) Irrigation and multi-purpose projects should invariably include drinking water component, wherever there is no alternative source of drinking water. Providing drinking water to all human beings and animals should be the first priority.
 - (g) Both surface and ground water should be regularly monitored for quality. A phased programme should be undertaken for improving water quality.
 - (h) The efficiency of utilisation in all the diverse use of water should be improved and awareness of water as a scarce resource should be fostered. Conservation consciousness should be promoted through education, regulation, incentives and disincentives.

3.6. The National Water Policy, 1987 is, however, silent about drinking water, irrigation and other related problems of the Scheduled Tribes and the tribal areas

and the steps to be taken for ensuring water for drinking other needs in those areas.

3.3 Rajiv Gandhi National Drinking Water Mission

3.7. The ARSWP was renamed in 1991-92 as Rajiv Gandhi National Drinking Water Mission. Under this programme, State Governments are competent to plan, sanction, implement and execute rural water supply schemes for the coverage of rural habitations and schools from funds provided under the NRDWP. Stress on water quality, appropriate technology intervention, human resource development support and other related activities were introduced in the Rural Water Supply sector. The third generation programme in this Sector was started in 1999-2000 when Sector Reform Projects were evolved to involve community in planning, implementation and management of drinking water related schemes. A Comprehensive Action Plan (CAP 99) was prepared in the year 1999 to identify and cover Not Covered (NC) Partially Covered (PC) habitations. The programme was launched on pilot basis in 1999-2000 in 67 districts of 26 States. This was then modified and launched as Swajaldhara in December, 2002, with two Dharas (streams). The first Dhara (Swajaldhara-I) was for a Gram Panchayat (GP) or a group of GPs or an Intermediate Panchayat level, and the second Dhara (Swajaldhara-II) with a District as the project area.

3.8. Practical bottlenecks faced during implementation of the guidelines, issued for implementation of the Centrally Sponsored ARWSP, incorporating the new initiatives and policy shifts during the 9th Five Year Plan, necessitated various amendments to the guidelines from time to time. It was also felt that the implementation of the sector reforms programme in the pilot districts should involve closer interlinking with the Panchayat Raj Institutions (PRIs) in consonance with the spirit of the 73rd Amendment to the Constitution so that the responsibility of the innovative projects in future can directly be discharged by PRIs.

3.9. Subsequently, Revised **Guidelines for implantation of Rural Water Supply Programmes** within the ambit of **Rajiv Gandhi National Drinking Water Mission** were issued in the year 2003. A copy of these Guidelines downloaded from the Website of the Ministry of Drinking Water Supply and Sanitation has been made available for convenience on the Website of the National Commission for Scheduled Tribes.

3.10. The Rural Water Supply (RWS) sector has now entered the fourth phase with major emphasis on ensuring sustainability of water availability in terms of potability, adequacy, convenience, affordability and equity while also adopting decentralized approach involving Panchayat Raj Institutions and community organizations. Adequate flexibility is afforded to the States/UTs to incorporate the principles of decentralized, demand driven, area specific strategy taking into account all aspects of the sustainability of the source, system, finance and management of the drinking water supply infrastructure. Adoption of appropriate technology, revival of traditional systems, conjunctive use of surface and ground water, conservation, rain water harvesting and recharging of drinking water sources have been emphasised in the new approach.

3.4 New Guidelines under RGNDWM

3.11. The background objectives and salient features of the New Guidelines adopted in the 11th Five Year Plan are highlighted below:

- (i) It was noted that water quality is impacted due to ground water table falling due to excessive draws. The levels of natural contaminants such as fluoride and arsenic and man-made chemical pollutants such as pesticides and insecticides are high in many areas. The biological contamination of large number of drinking water sources is a serious problem, primarily due to prevalent open defecation and insanitary conditions around the drinking water sources in rural India. With the basic sanitation programme being implemented in the villages, the prevalence of water borne diseases such as diarrhea, cholera, etc. was seen to have decreased, but the incidence was still relatively high in some parts of the country. It was, therefore, considered that Rural water supply programme must be integrated with sanitation and coordinated with primary health care and other related programmes. The new guidelines seek to promote this by formulating a coordinating mechanism that must also ensure convergence of related programmes such as NRHM, ICDS, SSA and Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS).
- (ii) From an institutional perspective, the modified policy recommends supporting the transfer of management and financial responsibility to the lowest level to the Panchayati Raj Institutions and, in particular the Village Water Supply and Sanitation Committees formed as Standing Committees of the Gram Panchayat. The transfer of responsibility would require provision of management and financial autonomy to the PRIs, VWSC, community organizations, as adequate and appropriate for their roles. This would enable the community to obtain a higher quality of services and minimize capital and maintenance cost, through competitive selection of service providers among existing public and private agencies and other organizations.
- (iii) In order to safeguard the availability and quality of rural drinking water in India, this sector must have effective priority over other uses. Therefore, protection of ground water sources from excessive abstraction must be addressed, otherwise the costs of providing safe drinking water will continue to escalate. These issues can only be addressed with a multi-sectoral approach and a broad resource management perspective. Formulation of District Water Security Plans is an imperative. This will require development of institutional capabilities at the District Planning Board/ZP and GP/village level for preparing holistic plans for which provision must be made through allocation of funds as well as defining the institutional mechanism for capacity building and management of the RWS sector.
- (iv) In rural India the spatial and social organization is such that the concept of a community can be interpreted synonymously with the concept of habitations. The rural habitation is often a unit of differentiation used to define a community based on caste and creed and also by members who by and large share common language and cultural characteristics. Often,

people from the socially backward classes living in a cluster are not able to access water from the common water supply schemes located in the main village. To ensure availability of potable drinking water on sustainable basis in SC/ST dominant habitations, the States and UTs are required to commit adequate funds for these habitations.

- (v) Women generally manage domestic water needs. They are the pivot around whom the entire sustainability paradigm is evolved. It is, therefore, of critical importance that women are involved at all the stages of planning, implementation and management of rural water supply schemes. Moreover, women's associations can provide a strong framework for community participation.
- (vi) The RWS norms and guidelines need to be flexible and broad-based for facilitating the community/VWSC for planning RWS projects based on the principle of demand responsive planning rather than adoption of universal norms and standards. Based on these considerations the ARWSP has been modified as National Rural Drinking Water Programme (NRDWP) for the Eleventh Plan period. It is sincerely hoped that the new regime will help in providing adequate and potable drinking water on a sustainable basis to all persons living in the rural areas of our country.

3.5 Achievements

3.12. The features in respect of each programme taken up at different point of time and achievements thereunder are described below for the purpose of recapitulation.

ARWSP

3.13. The prime objectives of ARWSP are to:

- (i) Ensure coverage of all rural habitations with access to safe drinking water;
- (ii) Ensure sustainability of drinking water systems and sources;
- (iii) Tackle the problem of quality in affected habitations; and
- (iv) Institutionalise the reform initiative in the rural drinking water supply sector.

Coverage Norms

3.14. The following norms have been adopted for providing potable drinking water supply to the population:

- a) 40 litres per capita per day (lpcd) for human beings;
- b) 30 lpcd of additional water for animals in areas under the Desert Development Programme (DDP); and
- c) One hand pump or stand post for every 250 persons.

CATEGORIZATION OF HABITATIONS

3.15. Habitations are categorized as follows:

- i) **Not Covered (NC)/ No Safe Source (NSS)** habitations, where a drinking water source/ point is not available within 1.6 km of the habitations in the

- plains or 100 meter elevation in hilly areas, or where the habitations have a water source which is affected by quality problems;
- ii) **Partially Covered (PC)** habitations, which have a safe drinking water source, but the capacity of the system ranges between 10 lpcd to 40 lpcd.
 - iii) **Fully Covered (FC)** habitations, which would cover all remaining habitations.

3.16. A **Dual Water Supply Policy** has been prescribed for rural habitations facing acute water quality problems. In such habitations, even if 10 lpcd of safe water, which would be sufficient for drinking and cooking purposes, is provided, the habitation would be considered to have a safe source, since water available from the unsafe sources can be used for other activities like washing, ablution etc.

ARWSP Components

3.17. An overview of the different components of ARWSP is as follows:

(I) ARWSP –	Normal
(II) Desert Development Programme (DDP) :	About 5 <i>per cent</i> of allocation
(III) Swajaldhara :	20 <i>per cent</i> of allocation
(IV) Sub-mission on Water Quality and Sustainability:	20 <i>per cent</i> of allocation
(V) Calamity relief :	Upto 5 <i>per cent</i> of allocation

Funding Pattern

3.18. The funding pattern for the programme is as follows:

- a) State Governments should match funds released by the Gol on a 1:1 basis; however, for projects under the Sub-Mission for water quality and sustainability, funding is in the ratio of 3:1 between the Gol and the State Governments, and allocation under DDP is funded 100 *per cent* by the Gol.
- b) Up to 20 *per cent* of the funds can be utilized by the State Governments (a) to take up projects under the Sub-Mission programme for tackling water quality problems like fluorosis, arsenic, brackishness, excess iron and nitrate (15 *per cent* of funds) and (b) to ensure source sustainability by conserving water, recharging aquifers etc. (5 *per cent* of funds).
- c) Up to 15 *per cent* of the funds can be utilized for Operation and Maintenance (O&M) of assets created.
- (d) At least 35 *per cent* of funds must be utilized for drinking water supply to SC/ST populations.
- (e) For projects under Sector Reform Programme and Swajaldhara, the funding pattern is 90 *per cent* from Gol and 10 *per cent* by way of community contribution.

Nodal Ministry for Drinking Water Supply

3.19. The Department of Drinking Water Supply (DDWS) in the Ministry of Rural Development is the nodal department in the Government of India for providing scientific, technical and financial assistance to the States in the drinking water and sanitation sector. ARWSP is executed in mission mode through the RGNDWM.

3.20. At the State level, the programme is executed by Public Health Engineering Departments/Water Boards/ Nigams/autonomous bodies/ authorities under the concerned State Government.

3.6 National Habitation Survey, 2003

3.21. As per National Habitation survey 2003, out of a total of 15,99,433 identified habitations, 9,16,382 habitations only were fully covered (FC), while 4,12,646 habitations were partially covered (PC) and 270405 habitations were in NC Category. A statement giving state-wise position of category-wise total habitations and those fulfilling ARWSP norms and other not fulfilling ARWSP norms, as per National Habitation Survey 2003, as received from the Ministry of Drinking Water Supply and Sanitation, is given at **ANNEXURE 3.II** It is noticed from the statement that there is no information about the no. of ST habitations within the habitations mentioned in the Statement, although footnote in the Statement mention that Habitations having 100% SC/ST population is considered as SC/ST Habitation and the funding pattern in the scheme also stipulates that “**at least 35 per cent of funds must be utilized for drinking water supply to SC/ST populations**”. Thus there is no information about the problem of drinking water supply in the villages in tribal areas or the so called ST habitations.

3.7 Bharat Nirman: Rural Drinking Water Programme

3.22. Bharat Nirman, a programme to build rural infrastructure, was launched by the Government of India in 2005. Phase I of the programme was implemented in the period 2005-06 to 2008-09. Phase II is being implemented from 2009-10 to 2011-12. Rural drinking water is one of the six components of Bharat Nirman. During the Bharat Nirman Phase-I period, 55067 un-covered and about 3.31 lakhs slipped back habitations were to be covered with provisions of drinking water facilities and 2.17 lakh quality-affected habitations were to be addressed for water quality problems.

3.23. While prioritizing the addressal of the water quality problem, arsenic and fluoride affected habitations have been accorded priority followed by iron, salinity, nitrate and other contaminants. To ensure that habitations once provided with drinking water supply infrastructure do not slip back and face drinking water problem, sustainability of drinking water sources and systems has been accorded high priority. To achieve drinking water security at village/ habitation level, conjunctive use of water i.e. judicious use of rainwater, surface water and ground water is promoted. To enable the rural community to shoulder responsibility in management, operation and maintenance of water supply systems at village level, decentralized, demand driven, community-managed approach has been adopted.

3.24. To further strengthen community participation in the drinking water sector the National Rural Drinking Water Quality Monitoring & Surveillance programme was launched in February, 2006 under which 5 persons in each Gram Panchayat are to be trained to carry out regular surveillance of drinking water sources for which 100% financial assistance including water testing kits, are provided.

Physical Progress:

3.25. As per information received from and that available on the website of the Ministry of Drinking Water, the progress regarding coverage of various categories of habitations under Bharat Nirman is given below.

- i) **Uncovered habitations:** Against 55,067 uncovered habitations to be covered during the Bharat Nirman period, 54,440 habitations have been covered during Phase-I. During 2009-10, 251 habitations out of 586 targeted habitations were covered. **In 2010-11, 366 habitations** including 25 uninhabited / unpopulated habitations in Rajasthan and 2 disputed in Uttarakhand, **have been reported as covered upto 31.03.2011 against the target of 376 habitations.** Only 22 habitations in Uttarakhand, 8 in A & N Islands and 10 in Lakshadweep (total 40 habitations) are left to be covered so far. The strategy adopted under the National Rural Drinking Water Programme (NRDWP) is to cover all uncovered habitations to ensure that the rural population gets atleast 40 lpcd (and additional 30 lpcd for cattle in DDP areas) of potable water from sources lying within the village or nearby.
- ii) **Quality-affected habitations:** More than 85% of the sources in rural drinking water supply schemes are ground water based. Under NRDWP, chemical contaminants which are sought to be tackled are excess arsenic, fluoride, iron, salinity and nitrate. Except for nitrate, all others occur naturally. Nitrate occurs in drinking water due to leaching of chemical fertilizers and sewerage. The strategy of the Department is to prioritize addressing the problems of arsenic and fluoride in drinking water through alternative surface water sources. The treatment technologies that are available for removal of excess arsenic and fluoride are still not foolproof in respect of reject management and operation & maintenance issues. Though a target of 2.17 lakh quality affected habitations was identified at the beginning of Bharat Nirman, the States submitted an action plan for covering only 1,95,813 such habitations. As on 1.04.2006, there were 7,067 habitations reported to be afflicted with arsenic and 29,070 habitations with fluoride contamination. Priority has been given to address the problems in these habitations. It must be admitted however, that due to expansion of testing, more areas are getting identified as having problems of quality.

3.26. At the beginning of Bharat Nirman period there were 1,04,437 rural habitations affected with excess iron in drinking water sources. The focus of the Department is to tackle excess iron problem through aeration based technology or low-cost terra-cotta based filtration technique. States such as Karnataka and Orissa have already taken up the challenge of tackling this contamination through low-cost terra-cotta based filtration technology.

3.27. In respect of salinity, 12,425 habitations were having a problem at the beginning of Bharat Nirman period. Although there are number of technologies like distillation, ion-exchange, reversible osmosis, electro-dialysis etc., these being expensive solutions the focus of the Department is tackling this problem through dilution of groundwater through artificial recharge of groundwater.

3.28. The strategy of the Department to tackle excess nitrate is by improving sanitary conditions. At the beginning of Bharat Nirman period, 19,387 habitations were afflicted with excess nitrate. As reported by the States, 3,10,698 quality affected habitations were addressed by sanctioned projects and of these 50,168 habitations have been fully covered with completed projects to provide safe water supply during Phase-I. As on 1.4.2009 at the beginning of Bharat Nirman phase-II States reported that 179,999 quality affected habitations were remaining to be covered. Of these habitations, 32,734 habitations during 2009-10, and 26,807 habitations upto 31.03.2011 during 2010-11, have been reported as covered as against the Outcome Budget target of 25,000 in 2010-11. Thus, in all during Bharat Nirman phase-I and II, 109,709 quality affected habitations have been fully covered with completed schemes. The goal of the Department is to cover all remaining water quality affected habitations with safe drinking water by the end of Phase-II.

Financial Progress:

3.29. For the rural water supply, component of Bharat Nirman, it was envisaged that Rs. 25,300 crores would be required as Central share during 4 years. Accordingly in 2005-06, Rs. 4098 crores and in 2006-07 Rs. 4560 Crores were utilised. In the 11th Plan period, Rs. 6442.76 Crores in 2007-08, Rs. 7298.79 Crores in 2008-09 and Rs. 7989.72 Crores during 2009-10 have been utilized. Rs 9000 Crores was the budget for rural drinking water for 2010-11 out of which Rs 8986.74 Crores have been utilized up to 31.03.2011.

3.30. It is noticed from above, which has been made publically available in the Reports and on the Website by the Ministry of Drinking Water Supply, that information in respect of physical and financial targets and achievements with regard to ST habitations and tribal areas, is missing notwithstanding the fact that the Ministry must have taken up the drinking water schemes in the tribal habitats and the TSP areas, as per basic strategy of allocating 35% of the funds for SC/ST habitations.

3.8 Performance Audit by CAG¹

3.31. Comptroller and Auditor General (CAG) conducted performance audit of the implementation of ARWSP in 26 States, covering the period from April 2002 to March 2007, between June and October 2007. According to the information available on the website of CAG, the draft performance audit report was issued to the Ministry, which sent its response, and also forwarded the comments of 24 states. The performance audit revealed as follows:

- i) Despite the investment of more than Rs. 66,000 Crores in the rural water supply sector since the I Five Year Plan, there remains considerable need for improvement in rural drinking water supply. Slip back of fully-covered habitations and re-emergence of problem habitations continued to be a major problem.

¹ See Website of Comptroller and Auditor General

- ii) Surveys of habitations at periodic intervals are important in assessing ground-level coverage of access to safe drinking water. However, there were significant deficiencies in the conduct of 2003 National Habitation Survey at the States, adversely affecting assurance regarding the quality and reliability of the survey data and its utility for planning purposes.
- iii) Annual Action Plans (AAPs) in many States were not based on a detailed and comprehensive habitation-wise analysis. Consequently, targets were fixed in an ad-hoc manner, which adversely impacted the coverage of problem; priority should have been accorded to completion of incomplete works as well as the habitations based on the extent of problem. Audit recommends that the Ministry should not only insist on timely preparation and submission of AAPs by the States, but also ensure that these plans are habitation-wise.
- iv) Further, details of schemes for SC/ST populations should be specifically indicated in these plans.
- v) There were several instances of deficient financial control, besides instances of inadmissible expenditure and diversion of ARWSP funds in several States. Audit recommends that the Ministry should take penal action against the State Governments in cases of diversion of ARWSP funds for non-approved purposes.
- vi) Audit scrutiny revealed numerous deficiencies in execution and implementation of works. These included cases of time and cost overrun, non-completion/ delayed completion of works, non-functional/ defunct works, incorrect prioritization of works, and other cases of wasteful and unfruitful expenditure.
- vii) States were not paying adequate attention to water quality, with inadequate infrastructure for testing at the district level, and non-compliance with the periodic testing requirements. Distribution and utilization of field testing kits at the village level was also poor, and projects under the Water Quality Sub-Mission were often delayed or non-functional. State Governments must ensure testing of water samples, including positive samples from the village level, at the stipulated periodicity. Further, requisite number of Field Testing Kits should be procured and distributed to village level functionaries, so that the objective of institutionalizing water quality testing at the grass root level is achieved.
- viii) Some States had initiated innovative practices for water sustainability, including implementation of a State-wide water transmission grid, use of IEC campaigns for promoting water conservation, and use of remote sensing technology for assessment of impact of recharge structures. However, many States did not take adequate measures for ensuring sustainability of water resources, especially ground water. The proportion of schemes relying on ground water sources was very high. The Ministry should ensure that States accord due importance to the sustainability component, as suited to their local environment. In the absence of adequate attention being paid to sustainability, the slip back of habitations may continue to remain major area of concern.
- ix) There were significant deficiencies in the implementation of the demand-driven, participatory approach of Swajaldhara. In many cases, the beneficiary contribution, which is at the core of Swajaldhara, had not been

fully received. Further, there were numerous cases of non-execution and delayed execution of Swajaldhara schemes.

- x) Department of Drinking Water Supply (DDWS) should not only insist on preparation and submission of Annual Action Plans (AAP) in time by the State Government, but also insist that these plans are habitation-wise. Details of schemes for SC/ST populations should be specifically indicated in the AAPs, and implemented as per the Plans.

3.32. The performance audit findings by CAG reflect that there is inadequate attention to the issues of (a) realistic identification of all problem habitation, (b) proper matching of execution of works with problem habitations, (c) quality of water and (d) sustainability of the resources and (e) coverage of SC/ST population. The CAG, in its Report has recommended that these areas need to be addressed with ground level approach as the efficacy of simply pouring money into schemes and achievement of some numbers (coverage of problem habitation & works executed) disregarding ground situation will remain questionable for addressing the drinking water needs of the problem habitations. For convenience sake, extracts from the above report, as downloaded from the Website of CAG, have been made available on the Website of National Commission for Scheduled Tribes² also.

3.9 Tribal Sub-Plan for Scheduled Tribes and Drinking Water Supply

Quantification of programmes and funds from the Sectoral programmes of the Central Ministries/ Departments to the TSP -- Tribal Sub-Plan Component of Central Ministries/Departments

3.33. Tribal areas needing special attention were initially identified under two categories. Scheduled Areas have been specified under Fifth Schedule to the Constitution and Tribal Areas have been specified under Sixth Schedule to the Constitution. Tribal Areas are mainly in the North-eastern States of Assam, Meghalaya, Mizoram and Tripura while Fifth Scheduled Areas have been specified in the States of Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Orissa and Rajasthan. With the acceptance of new approach for tribal development implemented since Fifth Five Year Plan, in the form of Tribal Sub-Plan, areas of tribal concentration were identified in all the States having Scheduled Tribes population. The Tribal Sub-Plan areas were made co-terminus with the Fifth Scheduled Areas in all the States having Fifth Scheduled Areas. Thus clearly identified list of areas predominantly inhabited by the Scheduled Tribes, known by whatever name, in each State is available and each State and Central Ministry/ Department is required to prepare the Tribal Sub-Plan for development of those areas, out of their general Plan prepared for each Annual Plan/ Five Year Plan.

3.34. The Central Government having a special constitutional responsibility towards the Scheduled Tribes and Scheduled Areas, the role of Central Ministries/ Departments assumes significance. The basic philosophy of Tribal Sub-Plan for

² See website of NCST :<http://ncst.nic.in>

tribal development adopted during Fifth FYP is applicable in respect of the Plans prepared by the States and UTs as also the Plans of the Central Ministries/ Departments. Therefore, the TSP strategy is expected to be followed in the Central Ministries/ Departments also. Hence, an adequate flow of funds to Tribal Sub-Plan in the Plans of all the Central Ministries/ Departments needs to be ensured. The Planning Commission and the Ministry of Tribal Affairs (then Ministry of Home Affairs and later Ministry of Welfare) have requested all the Central Ministries and Departments in the past to quantify the funds for the TSP in their Annual Plans in accordance with the population percentage of STs in the country, ie. 8.2%, as per 2001 census. It is important that the Ministries and Departments of the Central Government take an integrated view of the developmental programmes undertaken by them, simultaneously with an appreciation of the special needs of the tribal socio-economic situation, in order to be able to identify schemes of relevance to the tribal areas and tribal population and to formulate a clear idea of the problems of tribal people and tribal areas, to prepare specific programmes relating to their concerned sectors and adapt the programmes wherever necessary in consultation with the State Govt. It may also be recalled that in order to focus attention on tribal development, the Central Ministries were also called upon by the then Prime Minister in 1980 to take the following steps:

- i) quantification and earmarking of funds for tribal areas under the programmes of Central Ministries
- ii) formulation of appropriate need-based programmes for tribal areas
- iii) adaptation of the on-going programmes to meet the specific requirements of Scheduled Tribes
- iv) identification of a senior officer in a Ministry to monitor the progress of implementation of programmes for the welfare of Scheduled Tribes

3.35. The issue relating to quantification of funds for TSP by Central Ministries/ Departments was discussed in the first Report of the Commission for the period 2004-05 and 2005-06 and again in detail in the Fifth Report for the year 2009-10. It was pointed out that no Ministry was quantifying the funds while preparing the Plan document. The Annual Report of the Ministry of Tribal Affairs also mentioned that the Central Ministries/ Departments should have earmarked 8% of their budget for TSP of the Ministry/ Department. The 11th Five Year Plan document of the Planning Commission however, mentions that 17 Ministries/ Departments were preparing Special Component Plan for Scheduled Castes (now called SCSP) but there is no information about preparation of Tribal Sub-Plan by the Central Ministries. The Annual Reports of the Ministry of Tribal Affairs for 2008-09 as well as 2009-10 have reiterated the following position:

Many Ministries have reported difficulty in segregation of their TSP component citing indivisibility of projects, because their projects are applicable to all communities, including STs. The Ministry, taking this into account has approached Planning Commission for devising a different strategy for Central Ministries on TSP.

3.36. The same position has been repeated by the Ministry of Tribal Affairs in its Annual Report for the period 2010-11.

3.37. The Parliamentary Committee on Welfare of Scheduled Castes and Scheduled Tribes had observed that the quantification of benefits was not satisfactory. On occasions, the Committee has expressed unhappiness at the performance of the Ministries and urged them as well as the Planning Commission to ensure that the intended funds and benefits from the general sectors are actually availed of for the welfare of Scheduled Tribes. The Parliamentary Committee has also suggested evaluation, to be undertaken periodically, to assess the extent of flow of funds and benefits with a view to rectification of shortcomings and augmentation of the provisions.

3.38. The Ministry of Tribal Affairs in its Report for 2010-11 has reported that taking into consideration the above position, the Ministry had approached the Planning Commission for devising a different strategy for Central Ministries on Tribal Sub-Plan. The Planning Commission constituted a Task Force under the Chairmanship of Dr. Narendra Jadhav, Member, Planning Commission to:

- i) *to re-examine and revise the extant Guidelines issued by the Planning Commission for implementation of Scheduled Caste Sub-Plan and Tribal Sub-Plan*
- ii) *to understand the operational difficulties in consultation with implementing Ministries and suggest remedial action so that Scheduled Caste Sub-Plan and Tribal Sub-Plan can be implemented effectively.*

3.39. The Task Force has also made similar observations. The Task Force has recommended a classification of Ministries/ Departments according to their obligation towards earmarking Plan outlay for TSP. The Planning Commission has accepted the recommendations of the Task Force consisting, *inter-alia*, of earmarking of Plan funds under TSP by Central Ministries/ Departments. All Central Ministries/ Departments are expected to implement the recommendations of the Task Force commencing from the Annual Plan 2011-12 and ensure appropriate earmarking of funds under TSP in the Annual Plan proposals 2011-12.

3.40. Earlier, in the context of exercise for preparation of Annual Plan 2010-11, the Secretary, Planning Commission vide her D.O. letter dated 26/10/2009 (**ANNEXURE 3 .III**) addressed to Secretaries of Central Ministries/ Departments has again stressed in para 9 that the guidelines for formulation, implementation and monitoring of SCSP and TSP need to be followed and ensured that these are used for attaining the desired outcome. A copy of the guidelines for formulation, implementation and monitoring of Scheduled Caste Sub Plan (SCSP) for Scheduled Castes and TSP for Scheduled Tribes was also enclosed with the D.O. letter. It was impressed upon the Ministries that to facilitate proper monitoring of expenditure under SCSP and TSP, necessary information may be provided in formats at Appendix-9 (to the letter). The National Commission for Scheduled Tribes considers that in view of the above guidelines and DO letter from the Member Secretary, Planning Commission, the Planning Commission ought to have not accepted the Annual Plan proposals for the year 2010-11 and 2011-12

for discussion and consideration. The National Commission for Scheduled Tribes, however, has no information about preparation of Tribal Sub-Plan by Central Ministries for the Annual Plan 2011-12, although these Annual Plans have been discussed and finalized in the Planning Commission. The Task Force of the Planning Commission has recommended that Department of Drinking water and Sanitation should earmark at least 10% of their budget for Scheduled Tribes under Tribal Sub-Plan of the Ministry for each Annual Plan as well as FYP.

3.41. The CAG Report mentioned above highlighted absence of details about coverage of tribal villages or the villages in the well defined Tribal Sub-Plan areas and the areas notified as Scheduled Areas under Fifth Schedule of the Constitution (and Tribal areas under Sixth Schedule of the Constitution).

3.42. In view of the dismal information about the ST habitations having problems of drinking water and the benefits of various programmes for drinking water supply accrued to those habitations and the target for achieving 100% coverage, it was decided to call for the desired information from the Department of Drinking water and Sanitation, under Ministry of Rural Development. As no response was received from the Ministry/ Department of Drinking Water Supply and Sanitation, a meeting with the Secretary and other Officers of the Department of Drinking Water Supply under the Ministry of Rural Development was scheduled on 28/07/2011. In view of the scheduled meeting, the Department of Drinking Water Supply furnished a Note on Rural Drinking Water Supply in ST habitation, a copy of which is placed at **ANNEXURE 3 .IV** in this Report. Relevant extracts from the Note are given below :

- i) One of the objectives of the NRDWP is to ensure coverage of rural habitations with safe and adequate drinking water supply with special emphasis on SC and ST dominated habitations. The provisions regarding rural drinking water supply for SCs/ and STs under NRDWP are as follow:
- ii) To accelerate the assured availability of potable drinking water on a sustainable basis in SC and ST dominant habitations, the States/UTs are required to earmark at least 25% of the NRDWP funds for drinking water supply to the SC dominated habitations and a minimum of 10% for the ST dominated habitations. Habitations in which more than 40% of the population belongs to SCs are considered as SC dominated and with more than 40% STs are considered as ST dominated.
- iii) States that have achieved full coverage of SC/ST households with adequate safe drinking water as per the State norms may incur lower level of expenditure on SC/ST but not in any case below the percentage of SC and ST population in the State.
- iv) Where the percentage of SC or ST population in a particular State is high and warrants earmarking/utilization of more than the stipulated provisions, additional funds may be utilized
- v) The State Government/UT Administration may separately monitor the status of assured availability of potable drinking water in SC/ST habitations
- vi) The Department has already conveyed to the Ministry of Tribal Affairs and Planning Commission that from 2011-12 onwards it will allocate 10%

towards TSP out of its plan allocation under NRDWP and Total Sanitation Campaign (TSC)

- vii) Date regarding coverage of ST habitations and expenditure incurred are periodically entered by States in the on-line Integrated Management Information System of the Department.
- viii) Of a total number of 16.61 lakh rural habitations in the country, there are 3.76 lakhs ST concentrated habitations. Of these, so far 2,46,069 ST habitations have been covered with provision of safe and adequate drinking water. During 2010-11 the target is to cover 28,799 ST habitations. Against this 7,098 ST habitations have been covered as per IMIS Data as on 29.10.2010. It is expected that the targeted habitations will be covered by the end of the financial year. A state-wise information about ST habitats covered upto 29/10/2010 is placed at **ANNEXURE 3.V**.

3.43. It will be noticed from the above Statement at **ANNEXURE 3.V** that coverage of ST habitations upto is much below 50% in the States of AP, Ar.P., Assam, Chhattisgarh, J&K, Manipur, Orissa and Tripura in which the coverage of ST habitats is lowest, i.e. 28.72% only. The States which have covered nearly 50% of the ST habitations are Karnataka (54.19%), Meghalaya (53.15%) and MP (50.82%). On the other hand A & N Islands and Kerala have covered 100% of ST Habitations, followed by UP (98.10%), Jharkhand (98.08%), Tamilnadu (95.98%), Gujarat (95.66%), Uttarakhand (88.00%), Himachal Pradesh (86.07%), West Bengal (85.89%), Maharashtra (83.95%), Bihar (83.50%), Sikkim (74.80%), Nagaland (71.86%), Rajasthan (69.79%) and Mizoram (64.81%).

3.44. There are 25 States/UTs having Tribal Sub-Plan and out of these 9 States have predominant Scheduled Areas. Coverage of ST habitations in 3 Scheduled Areas States namely, Gujarat, Himachal Pradesh and Jharkhand is very encouraging but other Scheduled Areas States viz; A.P., Chhattisgarh, M.P., Orissa and Rajasthan need special efforts to achieve the target of 100% coverage of ST habitations. In terms of actual number of uncovered ST habitations also, the above mentioned Scheduled Areas States have very high backlog. **Central Government being specially vested with responsibility for raising the level of administration and good governance for development in the Scheduled Areas, MoDWS should lay special emphasis and earmark higher allocations in the next Plan as well as Strategic Plan (2011-2022) period in respect of the Scheduled Areas States and other Tribal Sub-Plan States which are way behind the set targets.**

3.45. In continuation of the above note some additional information was sought by the National Commission for Scheduled Tribes. The Ministry furnished the following additional information:

- i) Since 01/04/2009, this department has an online Integrated Management Information System (IMIS) in which all data on physical and financial progress of the implementation of the National Rural Drinking Water Programme (NRDWP), is entered in real time by implementing agencies at the District level. The Department has stopped receiving paper reports of progress of the progress in the field. It is, thus possible to monitor implementation, scheme-wise, up to the habitation level.
- ii) The Department has revised the erstwhile ARWSP and renamed it as the NRDWP,

with new guidelines from 01/04/2009. The new guidelines provide for expenditure of 10% of Programme fund allocated to States under TSP. To ensure this, the Department is earmarking 10% of allocation at the National level towards the TSP commencing from the Annual Plan Period 2011-12.

- iii) As per information provided by the States on the IMIS, as on 01/07/2011, the coverage of habitations (Total and ST) in the country is as below:

<u>Category</u>	<u>Total habitation</u>	<u>Fully Covered habitations</u>	<u>(%)</u>
All habitations	16.64 lakh	12.15	73.00
ST concentrated habitations	3.57 (21.45%)	2.27 lakh (18.68%)	63.63

- iv) The physical targets and achievements in terms of total as well as Tribal dominated habitations from 2006-07 to 2010-11 is:

Year	<u>Total Habitations</u>			<u>Under TSP</u>			
	Target	Achievement	% age Achievement	Target	Achievement	% age Achievement	
						Col. 6 to 5	Col. 6 to 3
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
2006-07	73120	107350	146.81	\$	\$		
2007-08	155499	105415	67.79	\$	\$		
2008-09	217898	152990	70.21	\$	\$		
2009-10	158589	148879	93.88	28906	22422	77.57	15.06
2010-11	121812	119383	98.01	31668	25219	79.64	21.12

\$ Specific data not available

- v) The financial targets and achievements in terms of total allocation/expenditure and Tribal allocation/expenditure is as below:

Year	<u>Total Allocation</u>			<u>Under TSP</u>			%age of TSP expr. to total expr.
	Allocation	Release	Expr.	Allocation	Release	Expr.	
2006-07	3539.00	3532.43	3816.56	-	-	511.23	13.39
2007-08	4757.01	4699.67	4762.96	-	-	677.63	14.22
2008-09	6896.72	7056.02	5998.27	-	-	819.55	13.66
2009-10	7986.43	7989.72	7205.43	-	-	898.30	12.47
2010-11	8550.00	8941.81	8227.72	-	-	1022.85	12.43

- vi) As is clear from the information presented above 1,29,981 tribal concentrated habitations (about 36%) are yet to get the Fully Covered status. These habitations are all Partially Covered. As a whole 449401 habitations (all categories) are still Partially Covered.
- vii) To prioritize the coverage of habitations, the Department holds Annual Action Plan (AAP) discussions every year in March with every State. While preparing these plans, States are asked to prioritize covering ST

concentrated habitations. Each habitation planned for in the beginning at the year is marked on the IMIS. States are not permitted to change the targeted habitations. This keeps the focus of the States on these habitations.

- viii) To focus of the Department is on States where the full coverage of ST concentrated habitations is lower than the national average. These include Andhra Pradesh, Arunachal Pradesh, Assam, Chhattisgarh, Madhya Pradesh, Orissa and Tripura (<50%). However amongst these Chhattisgarh, Orissa and Tripura have below 50% FC coverage for total habitations too, which for the rest it is just above 50%.
- ix) To accelerate focus on ST dominated habitations, the financial and physical target for 2011-12 has been kept as below:

Physical Target		Financial Target (Rs. In crore)	
Target Total	Target ST dominated habitations	Target Total	Target ST dominated habitations
145169 (115379 PC and 29790 Quality affected)	32095 (22.11%)	9350.00	935.00 (10%)

- x) The Department has recently prepared a 11 year Strategic Plan for 2011-12, in which full coverage of ST dominated habitations with improved service levels have been envisaged. To ensure identification of districts, block and habitations with high concentration of STs has been prioritized. No diversion of expenditure will be allowed and close monitoring of progress is envisaged.
- xi) Summaries of funding of two reviews of ARWSP carried out by the Planning Commission (PEO), and the Ministry of Rural Development (M&E) Unit are enclosed.
- xii) The working Group on Domestic Water and Sanitation for the 12th Five Year Plan is currently engaged in the task of preparing its Report and recommendations for the 12th Five Year Plan for submission to the Planning Commission. Special focus is being laid on coverage of ST and PTG concentrated habitations during the discussions in the Working Group.
- xiii) There are no uncovered habitations now. There are still 1,29,981 Tribal habitations which are partially covered. The total number of habitations in the country which are partially covered is 4,49,401. 32,095 tribal habitations have been targeted for coverage in 2011-12. It shall therefore not be possible to achieve full coverage of all habitations including ST habitations by 2012.
- xiv) While 27% of all habitations in the country are partially covered, in the case of ST habitations, 36.37% of habitations are partially covered. To prioritize coverage of remaining partially covered ST habitations, in the Annual Action Plans prepared by the States for rural drinking water supply, the States are being urged to ensure targeting ST habitations. They are to decide on these targets, and mark the habitations by name on the departmental Integrated Management Information Systems, which they cannot change subsequently

except with permission. The amount earmarked under TSP is proportionate to the ST population in the State and has to be utilized for the ST habitations.

- xv) Under ARWSP, prior to 1/4/2009, only habitations with population of 100 or more were considered for coverage. From 1/4/2009, under the NRWDP, all habitations, even those with less than 100 population, have to be covered with drinking water supply. This will ensure that remote and small tribal habitations are also covered with drinking water supply. Sustainability of drinking water supply schemes, including those in ST habitations is a major area of attention under the NRWDP as funds are provided for sustainability activities on an 100% central grants-in-aid basis. Further, this Department encourages the involvement of the local communities through the PRIs, i.e. Gram Panchayats, or the Village Water & Sanitation Committees, which is a sub committee of the Gram Panchayat, in the planning, implementation and Operation & Maintenance of the Water Supply Schemes. In fact, to ensure effective O&M, the States are encouraged to hand over such schemes to the GPs. States are incentivized for this, by providing in the allocation criteria of funds to the States, an 10% 'Incentive Fund', which are given to the States which have handed over the schemes to the GPs for O&M.
- xvi) The NRWDP guidelines fixes the norms for providing potable drinking water to the rural population based on basic minimum need, as 40 Litres per capita per day (lpcd). This norm can however be reassessed by State Governments and they may fix their own higher norms based on water availability, demand, capital cost involved, affordability etc. For areas with acute problems, 10 lpcd of potable water may be supplied and the balance. Domestic requirement can be met from other sources. The minimum quantity of water is to be made available within a distance of 500m from the household from either a public or community source. Habitations not getting this minimum quantity of potable water, is said to be partially covered.

3.46. The Commission was further apprised that draft proposal in respect of the Schemes for the 12th Five Year Plan was under preparation and that the physical target for provision of drinking water to ST habitats for the year 2011-12 was to cover 32,095 ST habitats (out of total 1,45,169 habitats), which constituted 22.11% of the total covered habitats, compared to 21% and 15% ST habitats in 2010-11 and 2009-10 respectively. In this context, it is noted from the data given in TABLES in sub-para (iv), (v) and (ix) above that the physical achievement is much higher in proportion to the expenditure made under TSP. For instance percentage achievement of TSP habitations out of total habitations covered during 2009-10 is stated to be 15% while the expenditure under TSP is 12.47% only of the total expenditure. Similarly, achievement under TSP during 2010-11 is 21.12% against an expenditure of 12.43% only. Again, the proposed flow of expenditure under TSP during 2011-12 is stated to be 10% only while the target is to cover 32095 ST habitats out of total of 145169 habitats. This clearly indicates that the targets in respect of TSP areas can never be achieved since required financial inputs in relation to the physical targets fixed for coverage in TSP areas has always been less and the same is the position for 2011-12. Commission feels that instead of making notional allocation of funds, the Ministry and concerned State Governments should allocate reasonably higher allocations than the percentage

of ST habitations out of total habitations proposed to be covered during each Plan Period.

3.47. It is also noted from the records/statements made available by the Ministry of Drinking Water Supply that a habitation with 100% SC/ST population is treated as SC/ST habitation. This criteria, aimed at ensuring benefit of the scheme to the Scheduled Tribes, needs correction. As mentioned earlier there is clearly accepted TSP approach, adopted since Fifth Five Year Plan, for development of Scheduled Tribes and the tribal areas. Under this approach TSP areas have been identified in each State/UT having ST population (except the States of Meghalaya, Mizoram and Tripura which have Tribal Areas specified under Sixth Schedule to the Constitution) and each Ministry is required to take up programmes under TSP of the Ministry in each State/UT having TSP. Therefore, under TSP approach, instead of identifying ST village/habitation which has 100% ST population, each village/ habitation, irrespective of percentage of ST population in the village/ habitation, within the well defined TSP Area should be covered under the Drinking Water Scheme.

3.48. Besides, a Strategic Plan (2011-2022) for ensuring drinking water security in rural India had been formulated. Three pilot studies were being conducted to measure the effectiveness of the Scheme and evaluation of impact of sustainability activities on the drinking water supply in the States of Orissa, Tamil Nadu and Meghalaya. Further, as a matter of policy, preference in respect of ST habitats having partial or no coverage of drinking water supply was being ensured. An Integrated Management Information System (IMIS) had also been established for effective monitoring of the Scheme. Operational maintenance of the pumps etc. in the remote areas was an area of concern which was proposed to be addressed by involving Self-Help Groups (SHG). Taking into consideration, the depleting level of ground water over a period in various regions, a significant allocation to the extent of 20% of the funds was being made for sustainability of sources.

3.49. For convenience purpose, a copy of the Strategic Plan (2011-2022), as downloaded from the Website of the M/o Drinking Water Supply is also available for future reference on the Website of the National Commission for Scheduled Tribes³. It is noticed from the Strategic Plan (2011-2022) that only a casual reference has been made about the Scheduled Tribes in the Plan. There is no mention about the goals and targets in respect of Scheduled Tribes in the Chapter 2 on "Aspirations and Goals". Chapter 3 relating to "Current Situations and challenges facing the Sector" makes a running reference alongwith poor and marginalised households and habitations. Since there is no detail about current situation in TSP areas and in respect of ST habitations/ households, no targets/ goals are likely to be fixed by the State Governments and the district and Panchayat authorities. Chapter 4 on "Strategy" about planning of the Scheme and their implementation is silent about the strategy for coverage of the Scheduled Tribes during the Strategic Plan Period 2011-2022.

³ See link "Significant Issues & Development Policies of Central Ministries/ Departments" on Website <http://ncst.nic.in>

Recommendations

3.50. The Commission, therefore, makes the following recommendations:-

- i) **The problem of drinking water in Tribal areas is more acute there is also a heavy backlog. Therefore, earmarking 10% of funds under Tribal Sub-Plan is not the need of the time. In order to ensure that the Scheme should provide accelerated coverage of drinking water to all habitats within the TSP Areas (not only those habitations which have 100% ST population) funds should be allocated according to "problem-share"; and "need-based" to make up the shortfall existing over the years in relation to ST habitats, compared to other habitats. Unless the earmarking of outlays exceeds the relative share of incidence of residual problems in the area of drinking water supply to ST habitats, the relative gap between ST and other habitats is likely to persist.**
- ii) **The Department of DWS should establish appropriate mechanism on the pattern of the MGNREGA for effective monitoring and implementation of the Scheme. The pilot studies should also be conducted in other States having Scheduled Areas viz. Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Orissa and Rajasthan. The TOR for engagement of consultancy organizations/research institutions for evaluation of IMIS of drinking water supply schemes and evaluation of impact of sustainability activities on the drinking water supply schemes should also be forwarded to the Commission separately for consideration and advice.**
- iii) **The quality of water should be periodically checked with proper maintenance and verification of records. Further, proper and timely maintenance of the water purification units, especially in remote areas should also be ensured.**
- iv) **Since Drinking Water is a vital need for survival of everyone including Scheduled Tribes, any programme and policy relating to Drinking Water Supply, and also sanitation in the country has important affect on the lives of Scheduled Tribes. In accordance with the mandatory provision under Article 338A(9) of the Constitution the Ministry of DWS should have consulted the National Commission for Scheduled Tribes before finalizing various policies and programmes/ Missions. The Ministry of Rural Development which was the Programme Administration Ministry till July, 2011, never consulted this Commission while formulating the Drinking Water Supply Schemes from time to time and accordingly there is no clearly identified strategy or programme for the Scheduled Tribes and the Tribal Sub Plan Areas in the country. The Ministry of Drinking Water Supply and Sanitation is advised that in future, while considering any change in the present/ existing programmes or formulation of new programme, the Ministry ought to have meaningful consultation with this Commission after undertaking consultations in public domain and the inter-Ministerial consultations and before submitting the final draft to the Cabinet for consideration/ approval of the Cabinet and the government. The advice /views given by this Constitutional Commission may also be placed, along with the proposal, before the Cabinet.**

CHAPTER 4

CRITICAL ISSUES CONCERNING SCHEDULED TRIBES

4.1 The National Commission for Scheduled Tribes was set up w.e.f. 19 February, 2004 by amending Article 338 of the Constitution and inserting a new Article 338A vide the Constitution (89th Amendment) Act, 2003. As mandated under Article 338A(5), the Commission has so far submitted to the President five Annual Reports upon the working of various safeguards available to the members of Scheduled Tribes along with the recommendations with regard to the measures that should be taken by the Union or any State for effective implementation of those safeguards and other measures for protection, welfare and socio-economic development of the Scheduled Tribes and one Special Report on “Good Governance for Tribal Development and Administration”.

4.2 Since all matters relating to safeguards provided for Scheduled Tribes cannot be covered every year, the issues to be covered in a Report are decided in advance and requisite information in relation to those issues is collected from the concerned authorities and analyzed data along with views and recommendations of the Commission is presented in the concerned Annual Report. While subject matters to be covered in the Sixth Report were originally decided keeping in view the subject matters already covered in the first five Reports, the Commission decided to submit on priority a Special Report on very important issues relating to Tribal Development and Administration which required immediate attention of the Government. On the same lines, the Commission decided to highlight Critical issues concerning development of Scheduled Tribes in one separate Chapter in this (Sixth) Report.

4.3 As mentioned in Chapter 1, the Members of the Commission interacted during the period under review, with senior officers and people’s representatives at State, district and local levels. The Commission also held sittings with the senior officers of the State Government, Central Ministries/ Departments, Central Public Sector Enterprises and financial institutions. The Commission has also deliberated upon various policy measures contemplated by the Government. Based on the experiences of the Commission, the other important issues which need immediate attention of the Government are mentioned below and discussed in seriatim:

- (a) Revision of lists of Scheduled Tribes
- (b) Land Acquisition, Land (sub-surface) Rights and Land Alienation
- (c) Education among Scheduled Tribes in Scheduled Areas
- (d) Health and Medical facilities in Scheduled Areas
- (e) Tribal Sub- Plan
- (f) National Tribal Policy
- (g) Mahatma Gandhi National Rural Employment Guarantee Scheme

4.1 Revision of lists of Scheduled Tribes

(A) Specification of Scheduled Tribes

4.4 Article 366 (25) of the Constitution of India refers to Scheduled Tribes as those communities, which are deemed under Article 342 of the Constitution to be Scheduled Tribes. The Constitutional provision under Article 342 is reproduced below:

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.

4.5 Article 342 thus provides that only those communities which have been declared as Scheduled Tribes by the President through an initial public notification or through a subsequent amending Act of Parliament which may relate to inclusion in or exclusion from the initial list of Scheduled Tribes in relation to State or UT will be considered to be a Scheduled Tribes.

(B) Criteria for specification of a community as a Scheduled Tribe

4.6 As per the provision under Article 342, the list of Scheduled Tribes is State/UT specific and a community declared as a Scheduled Tribe in a State need not be so in another State. The essential characteristics for a community to be identified as a Scheduled Tribe are (i) primitive way of life and habitation in remote and less easily accessible areas, (ii) distinctive culture, (iii) shyness of contact with the community at large, (iv) geographical isolation, and (v) general backwardness in all respects. The above criterion are not spelt out in the Constitution but has become well established. It takes into account the definitions in the 1931 Census, the Reports of the first Backward Classes Commission (Kaka Kalelkar Commission), 1955, the Advisory Committee on Revision of SC & ST lists (Lokur Committee), 1965 and the Joint Committee of Parliament on the Scheduled Castes and Scheduled Tribes Order (Amendment) Bill, 1967 (Chanda Committee).

(C) Procedure for inclusion in or exclusion from the list of Scheduled Tribes

4.7 The modalities laid down for deciding the claims for inclusion in or exclusion from the lists of Scheduled Tribes in June, 1999 were revised on 25/06/2002 and forwarded to the Commission vide the Ministry of Social Justice & Empowerment's letter No.12016/36/96-SCD (R.L. Cell)-Vol.III dated 30.7.2002. According to the revised modalities for deciding claims for inclusion in, exclusion from and other modifications in the Orders specifying Scheduled

Castes and Scheduled Tribes, the following procedure is required to be followed in such cases:-

- (a) Cases favoured by both the State Governments and the Registrar General of India (RGI) in their most recent reports would be referred to the National Commission for Scheduled Castes and Scheduled Tribes for their opinion. They would be forwarded to the Commission individually or in batches, as may be practicable, along with the comments of the State Governments and the RGI as well as any relevant material/ information furnished by them or by representations.
- (b) Some issues concern not one but several States i.e. the status of SC/ST migrants. These would also be referred to the National Commission if the RGI and majority of concerned States have supported modification.
- (c) It may be suggested to the Commission that, while examining the above cases, they should associate, through panels or other means, expert individuals, organizations and institutions in the fields of anthropology, ethnography and other social sciences, in addition to the State Governments, RGI and the Anthropological Survey of India, on a regional basis. They may also consider holding public hearings in areas relevant to the claims under examination. These guidelines cannot be binding on the Commission, but may be suggested in the interest of fuller examination of the cases. The Commission would also be requested to give priority to cases in which the Courts have given directives regarding decision within a stipulated time period. (In such cases, extension of time would be sought from the courts where necessary, citing these modalities for the determination of claims). Such cases would be separately processed and sent for earlier decision.
- (d) Amending legislation would be proposed to the Cabinet in all cases in which the National Commission, RGI as well as the State Governments have favoured modification. Those cases with which the State Governments and the RGI are in agreement, but which the Commission have not supported, would be rejected at the level of Minister for Social Justice and Empowerment.
- (e) Claims for inclusion, exclusion or other modifications that neither the RGI nor the concerned State Governments have supported would not be referred to the National Commission. These would be rejected at the level of the Minister for Social Justice and Empowerment.
- (f) "In the case of claims recommended by the concerned State Governments/ Union Territory Administrations, but not agreed to by the Registrar General of India, the concerned State Government/Union Territory Administration would be asked to review and further justify their recommendations in the light of RGI. On receipt of the further clarification from the State Government/Union Territory Administration, the proposal would be referred to the RGI for comments. In such cases, where the RGI does not agree to the point of view of the State Government/Union Territory Administration on a second reference, the Government of India consider rejection to the said proposal".
- (g) Claims in respect of which the comments of either the RGI or the State Governments or of both are awaited would remain under consideration until their views are received. Thereafter, they would be dealt with in accordance with the modalities at (a) to (f) above.
- (h) Claims recommended suo-motu by the National Commission would be referred to RGI and the State Governments. Depending on their responses, they would be disposed of in accordance with the modalities at (d) to (f) as may be applicable.

4.8 In pursuance of the above modalities proposals for revision of list of Scheduled Tribes and Scheduled Castes in respect of various States and UTs were received in the erstwhile National Commission for Scheduled Castes and Scheduled Tribes. After replacement of National Commission for Scheduled Castes and Scheduled Tribes by two separate Commissions viz; National Commission for Scheduled Castes and National Commission for Scheduled Tribes in Feb 2004, consequent to the amendment of Article 338 and insertion of new Article 338A in the Constitution vide the Constitution (89th) Amendment Act, 2003, the proposals relating to ST communities are being received in the National Commission for Scheduled Tribes, as per the above modalities. National Commission for Scheduled Tribes, since its inception, received several proposals for inclusion of communities in the lists of Scheduled Tribes in respect of various States/ Union Territories.

4.9 During the process of examination of the proposals for amendment of the Scheduled Tribe received from the Ministry of Tribal Affairs, it was noted that the proposals generally lacked information/ documents required to consider whether the proposed community fulfilled the criterion laid down for the purpose. The proposals carried ethnographic and other information documented several decades ago based on Census or other studies. It was also noted that the proposals received in the Ministry from the persons claiming for ST status were not sent to the State Governments for their comments timely. Similarly, the proposals recommended/ supported by the State Governments had not been examined in the Ministry and/or sent to the RGI for comments. In several cases, proposals examined by the RGI were forwarded to the Commission after a gap of several years. This made it difficult for the Commission to arrive at a timely decision on the status of the community proposed for inclusion or exclusion. Delay in arriving at a decision on the proposals invited much criticism from the Parliamentary Committee etc. with regard to large pendency of the proposals in the matter, and particularly, non-inclusion of genuine STs in the list of STs and consequent denial of legitimate rights to them. Consequently, the Commission convened a meeting on 22/05/2013 to ascertain the status/position in respect of the pending proposals with MTA and RGI. Representative from Government of Odisha was also invited to the meeting, as Commission had been informed during a visit to the State that proposals for inclusion of over 150 communities in the list of Scheduled Tribes in respect of the Odisha State were pending with the Government of India.

4.10 RGI informed the Commission that recently, 19 proposals, after clearance by the RGI, had been forwarded to the Ministry of Tribal Affairs. However, these proposals had not been received in the Commission. List of these proposals was, however, not available with the officials of the Ministry of Tribal Affairs. Representative of Govt. of Odisha, mentioned that several proposals had been rejected on the pretext that the communities don't possess all the characteristics as recommended by the Lokur Committee way back in 1965 and accepted by the Government of India in 1999. It was also emphasized that all these characteristics were hardly found these days because of impact of modernization/ industrialization, exposure and accessibility etc. Further, there are many small and little known communities, for which there is no data or only scanty data was available from secondary

sources. It was also mentioned that RGI was also examining the ethnic status report on the basis of ethnographic information available from secondary sources, i.e. published literature etc. which have not been revised for a long time. RGI confirmed that the proposals of the State Governments are examined only with reference to the ethnographic studies, available literature etc. without conducting any fresh study and concurrence was granted in cases, where ethnographic studies and reports of the earlier censuses or published resources was available,. It was noted that in many cases, such ethnographic studies had not been done and therefore, there was a need to conduct such studies with reference to the proposals of the State Govt. This situation has led to delay in processing of the proposals, resulting in deserving communities being deprived of benefits due to them.

4.11 The Commission noted that a systematic approach was required to be exercised taking into account the category of cases which pertained to i) new entry in the ST List, ii) inclusion of synonymous/ sub-sections of the existing entries in the ST List, iii) re-submission of the cases with reference to queries raised by the RGI etc. In respect of cases at ii) regarding inclusion of synonymous/ sections of the existing entries in the ST list, the desk studies should be accepted by the RGI.

4.12 It is further observed that population of the tribal communities, for which proposals were pending was running into lakhs. The circumstances under which such cases were ignored initially and why they are now being proposed needs careful examination considering that these large groups carry greater weight in being able to influence local and State Govt. to support their claims, even if strictly ineligible.

4.13 The Commission had also noted with concern that few PVTGs, which were considered most backward from amongst Scheduled Tribes, were still not eligible for availing benefits as Scheduled Tribes because names of these communities were not specifically mentioned in the Constitution Orders and persons belonging to these PVTGs were not able to get ST certificates, although 75 communities were identified as PVTGs in 1970s by the Tribal Development Division of the then Ministry of Home Affairs. Ministry of Tribal Affairs was earlier requested by the Commission to moot suo-motu proposal in such cases instead of waiting for such a proposal from the State Governments since Ministry has been releasing funds for development of these PTGs. MTA informed the Commission that the matter was being examined by the MTA. The Commission emphasized that these cases needed to be processed on Top Priority basis for decision positively by September 2013. Joint Secretary, MTA assured that necessary action would be taken by the MTA in the matter.

4.14 Attention is also invited towards the draft National Tribal Policy 2006 which mentioned that “the criteria laid down by the Lokur Committee (in 1965) were hardly relevant today. For instance, very few tribes can today be said to possess ‘primitive traits’. Other more accurate criteria need to be fixed”. Therefore, prescribed modalities for deciding claims for inclusion in / exclusion from ST list were not supported with any guidelines containing test criterion with reference to the accepted criterion in relation to the Scheduled Tribes viz. way of living, social customs and religious practices, dialect, educational and economical status etc. and the methodology/ procedure for applying the tests.

Alongside, non-availability of scientific data pertaining to social, economical and ethnic status of STs is also resulting in delay in disposal of proposals. **However, if the community has been fairly mainstreamed, the question or need for granting ST status to that community would have to be seriously examined.**

4.15 The Commission is of the view that considering the huge pendency of the cases, the Ministry of Tribal Affairs needs to streamline the existing procedure with priority, also with reference to those communities which are ST in one State and non-ST in the neighbouring State for various reasons including re-organization of States and large scale displacements due to various projects and their consequential rehabilitation in a different area of the same State or in a different State etc. The Ministry of Tribal Affairs also need to forward proposal to the Commission along with detailed proposal of the State Govt. in accordance with prescribed modalities and fresh ethnographic studies relating to the community proposed for inclusion in or exclusion from the list of Scheduled Tribes specified with respect to the State, as absence of such information leads to delay in arriving at the decision by the Commission.

4.16 It may also be recalled that National Commission for Backward Classes Act 1993 provides for establishment of a Commission viz. National Commission for Backward Classes to examine requests for inclusion of any class of citizens as a backward class in the lists and hear complaints of over-inclusion or under-inclusion of any backward class in such lists and tender such advice to the Central Government as it deems appropriate. The Act also provides that the advice of the Commission shall ordinarily be binding upon the Central Government.

4.17 In view of above, the Commission makes the following recommendations on which the Ministry of Tribal Affairs should take necessary action in the matter urgently:

- (i) The Ministry of Tribal Affairs should immediately consider revising the existing acceptance criterion in relation to the Scheduled Tribes and finalize corresponding guidelines for examination of such cases with well-defined test criterion and the methodology/procedure for their application.**
- (ii) The State Government should formulate their proposal in a systematic manner according to the revised criterion and procedure to meet the laid down criteria/ requirements and avoid back references for clarification etc.**
- (iii) At the same time, it is necessary to create data-base on economic development, educational development and social development of the ST communities and for conducting ethnographic studies for STs.**
- (iv) Latest ethnographic study reports available with the Anthropological Services of India could also be used for this purpose.**
- (v) The National Commission for Scheduled Tribes may also be suitably provided with requisite research staff for conducting field**

studies, if necessary as per modalities, to verify the proposals of the State Governments.

- (vi) **A Commission for examination of the proposals for revision of the lists of Scheduled Tribes in respect of each State/ UT, should be set up on the lines of National Commission for Backward Classes.**

(D) Functioning of Scrutiny Committee for verification of caste certificates

4.18 Despite several instructions regarding issue of the caste certificates and verification of the caste certificates issued by the Ministry of Home Affairs (then Nodal Ministry), non-ST persons have been availing or trying to avail the benefits admissible to genuine Scheduled Tribes only. Similarly, there have been many instances where Scheduled Tribes migrated to other States and their children have been claiming the same status in the State of migration. These issues have been adjudicated in detail by the Supreme Court while considering a case relating to a false certificate in Civil Appeal No.5854 of 1994 in Kumari Madhuri Patil & Ors. vs. Additional Commissioner, Tribal Development, Government of Maharashtra and Ors. The Supreme Court observed that it was *necessary that the certificates issued are scrutinized at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for the issuance of social status certificates, their scrutiny and their approval and directed for Constituting a Caste Certificate Scrutiny Committee for this purpose. The Supreme Court also laid down guidelines for procedure and functioning of the Scrutiny Committee.*

4.19 As per the information received from various State Governments where Scrutiny Committee have been constituted, the Secretary-in-charge of Tribal Welfare Department in the State is the Chairperson of the Committee while a senior officer of the office of Commissioner (TD) or TW Department of the State is the Secretary or Convener of the Scrutiny Committee in most of the States. The Secretariat services to these Committees are provided by the Tribal Research Institutes of the concerned State. Most of the Tribal Research Institutes have skeleton staff and they are not able to timely validate even some of the Certificates received for validation. Members of the Scrutiny Committee are also awfully busy with their original duties assigned to the post held by them. Thousands of cases of caste verification and validation of the caste certificates were thus pending with the Scrutiny Committees in various States. Consequently, the decisions of the Committee were generally delayed, in some cases by even two to three years. This on the one hand helps non- Scheduled Tribe candidates to avail the undue benefits and on the other hand such late decisions are bound to put the genuine ST candidates into disadvantage as they could not get the opportunity due to selection of non-ST candidates. Even if non- ST candidate is terminated from the academic course or the service; the benefit cannot be restored for the Scheduled Tribes.

4.20 Similar situation occurs in the case of candidates belonging to ST families migrated to another State. In the case of admission to State run institutions, such ST migrants are generally not eligible for admission. If they are spontaneously informed about their ineligibility they would obviously take admission into some other institute where they are eligible. It is, however, noticed that certificates of such candidates are accepted and referred to the

State Level Scrutiny Committee for validation/ verification. After receipt of invalidation report from the Committee after two to three years, those ST candidates who are at the verge of completion of the study/ course are terminated in the mid-course. This spoils the career of those ST candidates for no fault of theirs.

4.21 It is noticed that the admission authorities handled these matters in haste and leave the same to the mercy of the Scrutiny Committee, which generally has no infrastructure and manpower to handle heavy load of such cases. Whether it may be the case of non-ST candidate trying to take the advantage fraudulently or the case of migrated ST candidate striving to take admission where his family is settled and has no scope for getting admission in the State of origin due to migration, the final result is that genuine ST candidates are denied the benefits which would have been available if such admissions were not approved by the Admission Committees.

4.22 It is therefore, recommended that (i) the State and District level Scrutiny Committees should be made functionally effective by providing adequate infrastructure and manpower to them so that validation exercise in each case may be completed within specified time, say three months, (ii) Clear instructions may be given in the admission brochure and also to the Members of the Admission Committee about the eligibility of the candidate against ST reserved seat and the contents of the ST certificates to be produced by the candidates, (iii) Migrant ST candidate, if prima facie not eligible, to be clearly advised to take admission in any other institute where migrant ST candidates were eligible. Similar instructions should also be issued/ re-iterated to the appointing authorities so that no fraudulent appointments against ST reserved posts take place and such authorities are not required subsequently to waste their time in unnecessary legal battles.

4.23 The Commission further recommends the Government to ensure that all States/ UTs, in relation to which ST communities have been specified, should set up the Scrutiny Committee for verification/ validation of ST caste certificates as per the directives of Hon'ble Supreme Court of India. The Ministry of Tribal Affairs should also take up the matter with all the States/UTs to impress upon them the need for putting in place an effective mechanism for the purpose of validation of the caste certificates and verification of the community status of such persons claiming to belong to Scheduled Tribes or scrutiny of complaints relating to availing benefits on the basis of ST certificates obtained fraudulently by non-Scheduled Tribes and the matters connected therewith.

4.2 Land Acquisition, Land (Sub-Surface) Rights and Land Alienation

4.24 Land is the primary means of production in the tribal society. Landlessness, therefore, is both socially and economically depriving¹. A

¹ National Workshop by Centre for Rural Studies, LBSNAA, Mussoorie. 'Background Papers & Sub-Themes on Land Acquisition for Development Projects in Scheduled Areas, Increasing Land Alienation among Tribals and PESA'. 3-4 March, 2008

landless tribal is not able to fulfill many of the social functions expected of him. A social stigma, therefore, sets in with landlessness. Higher the incidence of landlessness greater is the calumny in the tribal society. This is also because of the fact that the nature of the tribal economy is not accumulative and it uses little hired labour since the sharing of labour is still on 'cooperation' basis, the labour market within tribal communities is underdeveloped. The majority of the tribal people seeking employment do so outside their villages; and that too, mostly by migration.

4.25 As the need for accelerating the pace of planned development in various sectors of the economy started gaining momentum since independence, the pressure to divert forest / acquire private land at various places for construction of dams, hydel projects, industries, mines etc. also started building up. The tribal people had to vacate land for the major part, for the simple reason that, through a natural co-incidence, the tribal habitats contained reservoirs of mineral resources and the catchments of streams and rivers possessing enormous irrigation and power potential. It is estimated that more than 2 crore people² have so far been displaced on account of development projects in the country. Further, it has also been revealed that majority of the people displaced on account of development projects have invariably failed to restore and regain their former standards of livelihood. Development-induced displacement in the country has brought severe economic, social and environmental problems to the displaced people. Its most important serious consequence for the tribal people has been the dispossession of land, both agricultural and homestead, along with the loss of their traditional occupation, besides traumatic psychological and socio-cultural problems.

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

4.27 The Government provided some policy initiatives and institutional mechanisms to deal with displacement management, notably through the revised 'National Rehabilitation and Resettlement Policy', 2007, accompanied by some significant legislative measures, and the initiative to formulate a 'National Tribal Policy' (which is still at the draft stage). The provision for relief & rehabilitation measures in law will also help to avoid litigation and consequent delays and prevent cost overrun of the projects, beside uniformity in dealing with the cases by the Courts. The matter was discussed at length in the Fourth Report of the Commission submitted on 27/08/2010. However, certain related

² Development Induced Displacement and the Tribals by Prof. A. B. Ota, Walter Fernandes, Indian Social Institute, Delhi 'Displacement in the major States in the country'

issues which need to be highlighted at present are being taken up in this Chapter.

(A) Types of displacement

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

a. Disaster Related Displacement:

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

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

b. Development Related Displacement:

4.30 Mega development projects like construction of dams, industries, highways and roads and mining projects have resulted in forced displacement of the people in large numbers. Usually it is the poor people, especially Scheduled Tribes, who face the consequence of such projects because their livelihood, habitat and assets are affected. However, these industries on the tribal soil, with very few exceptions, have been largely unable to relate to the tribal problems. There has been little job diversification and industrial employment for the tribals, even where mammoth projects, like the Heavy Engineering Corporation, Ranchi, Jharkhand and the Bokaro Steel Plant, Jharkhand and industries of similar nature have been set up. The large population of tribals in Scheduled Areas of Andhra Pradesh, Chhattisgarh, Jharkhand and Orissa, all rich in natural resources, have suffered most due to development-related displacement.

c. Conflict Induced Displacement

4.31 According to non-governmental organizations, "There are over 6,00,000 conflict-induced IDPs [internally displaced persons] in India. This includes "33,362 displaced persons in Kokrajhar district and 74,123 in Gosaigaon district of Assam; 55,476 Kashmir Pandit families who were displaced due to the conflicts in Jammu and Kashmir since 1990; and about 35,000 Bru (also known as Reangs) from Mizoram who were displaced in October 1997 and took

shelter in Tripura. As of 31st December 2006, there were 43,740 displaced persons in the *Salwa Judum* camps in Chhattisgarh."³

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

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

(B) Evolution of resettlement and rehabilitation policy

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

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

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

4.36 The Common Property Resources (CPRs) form the basis of livelihood for tribal communities more than in the case of caste-based, settled agricultural societies. CPRs are generally community managed. Tribals, especially marginal farmers and landless, heavily depend on CPRs to enhance their household income and to meet their domestic and livestock needs. The loss of women's autonomy right over CPRs and, especially the conversion of collective rights of tribals over land to private property ownership during the process of resettlement, results in landlessness and deprivation. Resettlement does not ensure the continuation of the historical primacy of CPRs, particularly for tribals. This is all the more true in relation to the fact that resettlement generally takes place in non-forest areas and that too on a limited land-for-land basis.

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

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

(C) Land (Sub-surface) Rights

4.39 In large number of cases forest land is diversified for mining purposes. It will be apparent from above that the individual tribal rights as well as community rights over the forest land diversified for this purpose have to be

given due recognition. Similarly, rights of the individual tribal over his non-forest land acquired for mining purposes have also to be given due recognition. It may be recalled that in SLP (civil) 4601-02 of 1997, Samatha Vs. Govt. Of Andhra Pradesh and Ors, the Supreme Court had observed that Minerals in Scheduled Areas have to be exploited by the tribals or State instrumentalities alone. If mineral extraction is authorized by private entities in case of the Scheduled Areas, the Govt. should be willing to shoulder vicarious responsibility for providing habitat and livelihood security in such areas. The State is one of the principal beneficiaries of the mineral extraction projects, as the royalty levied by the State on minerals extracted far exceeds the rents paid by the lessee to the tribal owners. To ensure livelihood security to tribals, the State must ensure alternative land in case they will be substantially deprived of their holdings, and also to give them a due share of the profits to be derived from mining.

4.40 Since mineral extraction is generally destructive of soil surface, it can't usually be restored to original land use subsequently. An effective and equitable compensation arrangement should ensure lifelong annuities sufficient to substitute income deprivation for the land owners (adjusted for likely inflation), besides creating alternative vocations for them. **The Commission, therefore, recommends that land owners should also get a reasonable share in the profits distributed/ retained by the mining enterprise. Besides, annual compensation in lieu of land surface rights, future (and sometimes windfall) earnings from mining activity should also be shared with land rights holders in reasonable measure. If some land rights are being ceded in perpetuity, the retained earnings from the project activity should also be shared with the land owners in the forms of "sweat-equity" (beside compensation for denial of use of land surface). Share of earnings from alternative users of land should also be provided, if future land use is of a commercial nature. Benefits/privileges available to mineral right holders may also be accorded to ordinary landholders also in Scheduled areas.**

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

4.42 The detailed views of the National Commission for Scheduled Tribes on the Land Acquisition, Rehabilitation and Resettlement Bill, 2011, which was introduced in the Lok Sabha by the Ministry of Rural Development without seeking advice from the National Commission for Scheduled Tribes, as mandated under Article 338A(9) of the Constitution, were communicated to the Government for placing the same before the Standing Committee of the Parliament to which the Bill had been referred. The Commission noted that the

Government incorporated various amendments to the Bill and the revised Bill titled Land Acquisition, Rehabilitation and Resettlement Bill, 2013, as passed by the Lok Sabha on 29th August, 2013 contains Special Provisions for Scheduled Castes and Scheduled Tribes under Section 42 and 43 of the Bill. These provisions are reproduced below for information:

42. (1) As far as possible, no acquisition of land shall be made in the Scheduled Areas.
- (2) Where such acquisition does take place it shall be done only as a demonstrable last resort.
- (3) In case of acquisition or alienation of any land in the Scheduled Areas, the prior consent of the concerned Gram Sabha or the Panchayats or the autonomous District Councils, at the appropriate level in Scheduled Areas under the Fifth Schedule to the Constitution, as the case may be, shall be obtained, in all cases of land acquisition in such areas, including acquisition in case of urgency, before issue of a notification under this Act, or any other Central Act or a State Act for the time being in force:
- Provided that the consent of the Panchayats or the Autonomous Districts Councils shall be obtained in cases where the Gram Sabha does not exist or has not been constituted.
- (4) In case of a project involving land acquisition on behalf of a Requiring Body which involves involuntary displacement of the Scheduled Castes or the Scheduled Tribes families, a Development Plan shall be prepared, in such form as may be prescribed, laying down the details of procedure for settling land rights due, but not settled and restoring titles of the Scheduled Tribes as well as the Scheduled Castes on the alienated land by undertaking a special drive together with land acquisition.
- (5) The Development Plan shall also contain a programme for development of alternate fuel, fodder and, non-timber forest produce resources on non-forest lands within a period of five years, sufficient to meet the requirements of tribal communities as well as the Scheduled Castes.
- (6) In case of land being acquired from members of the Scheduled Castes or the Scheduled Tribes, at least one-third of the compensation amount due shall be paid to the affected families initially as first installment and the rest shall be paid after taking over of the possession of the land.
- (7) The affected families of the Scheduled Tribes shall be resettled preferably in the same Scheduled Area in a compact block so that they can retain their ethnic, linguistic and cultural identity.
- (8) The resettlement areas predominantly inhabited by the Scheduled Castes and the Scheduled Tribes shall get land, to such extent as may be decided by the appropriate Government free of cost for community and social gatherings.
- (9) Any alienation of tribal lands or lands belonging to members of the Scheduled Castes in disregard of the laws and regulations for the time being in force shall be treated as null and void, and in the case of acquisition of such lands, the rehabilitation and resettlement benefits shall be made available to the original tribal land owners or land owners belonging to the Scheduled Castes.
- (10) The affected Scheduled Tribes, other traditional forest dwellers and the Scheduled Castes having fishing rights in a river or pond or dam in the affected

area shall be given fishing rights in the reservoir area of the irrigation or hydel projects.

(11) Where the affected families belonging to the Scheduled Castes and the Scheduled Tribes are relocated outside of the district, then, they shall be paid an additional twenty-five per cent, rehabilitation and resettlement benefits to which they are entitled in monetary terms along with a one-time entitlement of fifty thousand rupees.

43. (1) All benefits, including the reservation benefits available to the Scheduled Tribes and the Scheduled Castes in the affected areas shall continue in the resettlement area.

(2) Whenever the affected families belonging to the Scheduled Tribes who are residing in the Scheduled Areas referred to in the Fifth Schedule or the tribal areas referred to in the Sixth Schedule to the Constitution are relocated outside those areas, then, all the statutory safeguards, entitlements and benefits being enjoyed by them under this Act shall be extended to the area to which they are resettled regardless of whether the resettlement area is a Scheduled Area referred to in the said Fifth Schedule, or a tribal area referred to in the said Sixth Schedule, or not.

(3) Where the community rights have been settled under the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, the same shall be quantified in monetary amount and be paid to the individual concerned who has been displaced due to the acquisition of land in proportion with his share in such community rights.

4.43 By the time of submission of this Report the above Bill has since been passed by both Houses of Parliament and the Bill after having been assented by the President, has become Act of Parliament. The Act notified on 26/09/2013 as Act No.30 of 2013 has been renamed as The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Sections 42 and 43 of the Bill have been retained as Sections 41 and 42 in the notified Act. It is now to be seen as to how the provisions contained in these Sections of the Act are implemented by the Central and the State Governments and how far the transparency objective of this Act is implemented in letter and spirit, specifically those States having Scheduled Areas.

(D) Role of the Governors in Scheduled Areas in the context of Land Acquisition, Rehabilitation and Resettlement

4.44 It may be recalled that in her address to the Conference of Governors of the States held in September, 2008 the President remarked that:-

“The Fifth Schedule of the Constitution dealing with the administration of Scheduled Areas and Scheduled tribes envisages a specific role for the Governors. It empowers the Governor to direct whether a particular enactment shall apply with or without modifications or be not applied to any scheduled area. It also empowers the Governor to make regulations for peace and good governance.

In view of these special provisions, there is a feeling in certain quarters that the Governor should play a pro-active role. On the other hand, it is understood that court

judgments and debates in the Constituent Assembly provide that the Governor is bound by the advice of the Council of Ministers in the exercise of his powers under the Fifth Schedule. This causes considerable uncertainty. The Government could seek authoritative legal opinion to set at rest this ambiguity. Annual Reports required to be submitted by the Governors under the Fifth Schedule requires streamlining. Further, the Tribes advisory Councils set up under this Schedule have not functioned with the vigour expected of them, thus warranting remedial action at your end. We would be keen to hear from you about your views and perception of making your role in this regard more meaningful.

I understand that "The Provisions of the Panchayats (Extension to Scheduled Areas) Act, 1996", (PESA) has extended Panchayati Raj to the nine States, namely, Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Orissa and Rajasthan under Fifth Schedule. However, they are yet to frame requisite local enactments to comply with the PESA Act. Since the quality of government-citizen interface at the grassroots level determines the quality of governance, you may urge the State Governments to have informed discussions on this matter and chart out the most optimal path for the good of the people.

4.45 Summing up the deliberations, the President observed that:

"Taking into cognizance the special requirements of the North-East, the framers of our Constitution under Article 371 and the Sixth Schedule had cast a special responsibility on the Governors for providing peace, good Government and promotion of the welfare and advancement of the people. I would, therefore, urge upon all the Governors of the North-East to individually introspect how far the governance mechanism in each State has fulfilled the aims and aspirations of the locals and what more needs to be done and submit their recommendations. I hope the Prime Minister will agree with me on that.

A prime prerequisite of good Government is to have in place an administrative structure and ethos which is within the comprehension of the people and is responsive to their needs. We are aware that the North-Eastern States have effective customary institutions of governance right down to the village level. Your study could reflect on how far the indigenous good governance practices and traditional institutional mechanisms have been harmoniously intertwined with modern system of administration. Your recommendations may also envisage how best the two administrative systems can supplement and complement each other to make the delivery mechanism more responsive, efficient, prompt and people-friendly.

Our Constitution devolves power upon the elected autonomous District Councils in Assam, Meghalaya, Tripura and Mizoram under paras three and four of the Sixth Schedule to make laws and administer justice.

The Governors are empowered to decide whether legislative enactments, Central or State, are to be applied or not or applied with modifications in the Autonomous Regions. Para 14 also envisages setting up of Commissions by the Governor to review the functioning of the Autonomous Councils. Para 2 makes room for further decentralization by creation of units at sub-district level through Subordinate Local Councils. It needs serious consideration as to how the institutions under the Sixth Schedule can be strengthened to effectively fulfill their expected role as vehicles of self-governance. Equally important are the provisions contained in para 2 of the Fifth Schedule which envisages a specific role for Governors for the peace and good government of the States having Scheduled Areas. I would urge upon the

Governors to ponder on these issues in consultation with their respective State Governments⁴.”

4.46 In the same Governor’s Conference, the Prime Minister made the following observations:

40 “It is not a coincidence that the areas affected by naxalite activity are also areas with a large representation of tribal communities. It was in recognition of this fact that many such States and areas were included in the Fifth Schedule of the Constitution. This provides for a special role for Governors. Our Government has enacted the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, which, I believe, is a path breaking initiative, which if implemented efficiently and honestly will empower tribal communities in a massive way. The efficient and effective implementation of the provisions made in this law needs close attention and monitoring. I urge Governors to take particular interest in the implementation of this law”⁵.

4.47 In view of the Special constitutional provisions relating to Scheduled Tribes and the Scheduled Areas under the Fifth and Sixth Schedules respectively to the Constitution and the roles urged in the Conference, by the President and the Prime Minister for the Governors of the States having Scheduled Areas, the Commission advised all the sponsoring Ministries/ Departments in policy matters including legislative proposals as follows:

Notwithstanding the specific provisions in the Fifth and the Sixth Schedule, the legislative proposals mooted by the Union and the State Governments especially those relating to Tribal Rights Charter should have a separate Chapter “Applicability to Scheduled Tribes and the Scheduled Areas (under Fifth and Sixth Schedule)” This would compulsorily require consultations with all the stake holders, including States having Scheduled Areas under Fifth and Sixth Schedule, Ministry of Tribal Affairs and the National Commission for Scheduled Tribes also and the question relating to adaptation of any Act to Scheduled Tribes and the Scheduled Areas may not be always necessary.

4.48 Due to continuous follow up with the Ministry of Rural Development on the advice of the National Commission for Scheduled Tribes on the above lines, Ministry of Rural Development included special provisions relating to the Scheduled Tribes and the Scheduled Castes in Sections 42 and 43 of the Land Acquisition, Rehabilitation and Resettlement Bill, 2013 which has now become an Act of Parliament. **Considering the special role assigned to the governors of the States, the Commission recommends that the Union Government and the Governments as well as Governors of the States having Scheduled Areas may take suitable steps for implementation of the Land Acquisition, Rehabilitation and Resettlement Act, particularly Sections 42 and 43 in letter and spirit so that no more Scheduled Tribes have to face the consequences of land acquisition and displacement. The Commission further recommends that special care be taken while acquiring land under “PUBLIC PURPOSE” and ‘EMERGENCY REQUIREMENT’ in Scheduled Areas under Fifth as well as Sixth**

⁴ Source: Record of deliberations page 155

⁵ Source: Record of deliberations- page 150

Schedule, and the forest lands so that rights of the Scheduled Tribes over land are fully safeguarded and their lands were not acquired until their rights were settled and the project for their resettlement and rehabilitation were finalized and approved by the appropriate competent authority.

(E) Displacement due to land alienation

4.49 There is one more situation relating to displacement of Scheduled Tribes due to alienation of land by transfer of land through direct private purchases by non-tribals. There are special provisions in Land Transfer Regulations framed by most of the States regarding protection of rights of Scheduled Tribes over the land in their possession. Yet large numbers of cases of land alienation through private sales have been reported since several decades. Even benami transfers are also taking place. Instance has also come to the notice of the Commission when lands held by several tribals in North-East were transferred to another person stating to be a tribal. As per information furnished to the Commission, he belonged to a ST community from another State (part of the country) and from the specific State. The land was transferred through a sale deed at a very small price and the same combined chunk of land was purchased by a Government Organisation, with the approval of the administrative Ministry (Ministry of Home Affairs), at a very high price. The investigation by the Commission revealed that at no stage any functionary at the District/ State and Central Government level examined the status and antecedents of the seller of the land to the Government and his ownership over that land. Investigation also revealed that the processes of transfer of lands from tribals to the Non-tribal (posing as tribal) and again from that person to the Government Organisation were completed in haste. The case, which is stated to be still under investigation, only highlights about the vested interests behind such transactions which aimed at earning profits without considering and protecting the rights of the Scheduled Tribes specifically provided under the Constitution and various local Land transfer Regulations/ Bylaws as well. Similar incident also came to the notice of the Commission when land belonging to the Scheduled Tribes was transferred to a Christian Organisation, by first transferring the lands from a number of Scheduled Tribes to a Christian tribal and thereafter from him to the Christian Organisation in Chhattisgarh State.

4.50 Several cases similar to those highlighted above are taking place in the country. Since these transactions do not fall within the purview of land acquisition, the original tribal land owners subsequently becomes landless as well as penniless, as they are not eligible for any rehabilitation and resettlement. **Once a land is alienated from the tribals, the purchaser exploits the deal and the land use in such a way that subsequently Government finds it very difficult to restore the land to the original tribal land owner. The best solution lies in proper implementation of the land transfer regulations by devising requisite and strict arrangements by the Government to monitor such transactions.**

4.51 The well known root cause for sale of land by tribal is his needs to meet economic compulsions due to education and marriage of his children and medical treatment of his family members. The Tribals mortgage their land to secure loan and when default, lose ownership. The problems of land alienation will not

arise if these needs of the poor tribals are met through various welfare and development schemes of the Government or through easy loans financed by Government or Government owned agencies without asking for mortgage of his land. Even in such cases where land of the loanee tribal is sought to be mortgaged as guarantee, situation may be averted if the State Government stands as a credit guarantor on behalf of that tribal. The Commission has raised this issue earlier also with the Government vide letter DO No.CP/NCST/2012/MTA/298 dated 31/10/2012 from Chairperson to the Union Minister for Tribal Affairs. Attention is invited to para 3 of the letter which made an important suggestion to the Government. Relevant extracts from the letter are reproduced below:

In order to ensure that public financial institutions do not lose their money and the STs also do not lose their ownership over land, the Commission has been suggesting that, on the lines of the Credit Guarantee fund set up for the comfort of the lenders under the Scheme of Ministry of Micro, small and Medium Enterprises, a scheme may also be considered for the benefit of the tribals. To safeguard the livelihood of tribal farmers, the Govt. could consider setting up Land Banks comprising lands resumed by the Govt. in cases of mortgage default; and such lands may be leased to the previous ST owners with the opportunity/right to re-purchase the same at any subsequent stage of time. Further, in the event of the acquisition of land, compensation for such cases need to be governed in accordance with the relevant Land Acquisition, Rehabilitation and Resettlement Act. Thus, the Government should step in as a purchaser of the last resort in these cases.

4.52 The Union Minister for Tribal Affairs was also requested to take up the proposal with the Ministry of Finance and also to have the Commission advised of the action taken by the MTA in the matter at the earliest. There is, however, no information about the action taken by either the Ministry of Tribal Affairs or the Ministry of Finance. **The Commission therefore, re-iterates that “In order to ensure that public financial institutions do not lose their money and the STs also do not lose their ownership over land, the Commission has been suggesting that, on the lines of the Credit Guarantee fund set up for the comfort of the lenders under the Scheme of Ministry of Micro, small and Medium Enterprises, a scheme may also be considered for the benefit of the tribals. To safeguard the livelihood of tribal farmers, the Govt. could consider setting up Land Banks comprising lands resumed by the Govt. in cases of mortgage default; and such lands may be leased to the previous ST owners with the opportunity/right to re-purchase the same at any subsequent stage of time. Further, in the event of the acquisition of land, compensation for such cases needs to be governed in accordance with the relevant Land Acquisition, Rehabilitation and Resettlement Act. Thus, the Government should step in as a purchaser of the last resort in these cases”.**

4.3 Education among Scheduled Tribes in Scheduled Areas/ Tribal Sub Plan areas

4.53 Education is an important instrument of social change and modernization. It is a historical fact that the destinies of individual nations are directly linked with the educational and skill advancement of its people. Systematic attention to the educational advancement has resulted in the rapid

development in countries like Japan, Germany and USA. In the present era of globalization, liberalization and privatization, education is viewed not only as an input to empowerment and social justice but also as fundamental to the very survival of individuals and nations. It is also the most important tool of empowering the underprivileged sections of society like the Scheduled Tribes in India who have been subjugated to deprivation of various forms over centuries. It is the primary vehicle for enabling the economically and socially marginalized sections of society to enjoy the civil, political, economic and social freedom as guaranteed in the Constitution of India. Education has been recognized as the basic human right in the modern world and the State is duty-bound to provide educational facilities for all. As Swami Vivekananda said, education is the manifestation of innate qualities of a person. Accordingly, education has been identified as the single most important element in the national development effort in India.

(A) Constitutional Safeguards and other Measures.

4.54 Being fully aware of the need of promoting education in India, particularly among the weaker sections of society, the framers of our Constitution ensured that special measures are taken for the educational development of these sections. Accordingly, special provisions/safeguards were laid down in the following Articles of the Constitution of India.

Article 15(4):- It empowers the State to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. This provision was added to the Constitution through the Constitution (First Amendment) Act, 1951, which amended several other articles. This has enabled the State to reserve seats for Scheduled Castes and the Scheduled Tribes in educational institutions including technical, engineering and medical colleges and in Scientific and Specialized Courses.

Article 21(A):- This article was inserted in the Constitution through the Constitutional (Eighty-Sixth) Amendment Act and lays down that "the State shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as the State may, by law, determine". The addition of this new article in the Constitution is very significant in the context of the educational development of Scheduled Tribes. The Parliament has passed the Right of Children to Free and Compulsory Education Act, 2009 on 4 August, 2009 which received the assent of the President on 26 August, 2009 and was notified on 3 September, 2009. The Act makes education a fundamental right of every child between the ages of 6 to 14 and specifies norms for ensuring the availability of a neighbourhood school within a specified area, provision of infrastructure including school building, teaching staff and equipment, monitoring of attendance of children, quality elementary education, etc.

Article 29(2):- It lays down that "no citizen shall be denied admission into any educational institution maintained by the State

or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them".

Article 46:- It is a comprehensive article comprising both developmental and regulatory aspects. It reads as follows:

"The state shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation."

Article 350A:- The article lays down that "It shall be the Endeavour of every State and of every local authority within the State to provide adequate facilities for instructions in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups, and the President may issue such directions to any State as he considers necessary or proper for securing the provisions of such facilities." This article recognizes the fact that most of the tribal communities have their own languages or dialects which usually belong to a different family of languages than the one to which the State's official language belongs.

(B) Educational Schemes for STs taken up by the Government

4.55 Education as a subject has been placed in the concurrent list of the Constitution of India since 1976. There are well defined constitutional provisions and mechanism of sharing of resources and responsibilities between the Centre and the State for harmonious exercise of their respective powers for the educational development in the country. At the central level, the Ministry of Human Resource Development and the Ministry of Tribal Affairs are the main Ministries concerned with the programmes/schemes aiming at the educational development of STs. The Education Division of the Ministry of Tribal Affairs makes all efforts to supplement the efforts of the Ministry of Human Resources Development, which is the line Ministry, and the State Governments/UT Administrations by administering various schemes with the objective of enhancing access to education through provision of infrastructure by way of construction of hostels for ST students, Establishment of Ashram Schools, Vocational Training Centre as well as to maximize retention of ST students within the various stages of school education and promoting higher learning by providing monetary incentives in the form of scholarships such as Pre-Matric Scholarship, Post-Matric Scholarship (PMS), Scholarship for Top Class Education, Rajiv Gandhi National Fellowship and National Overseas Scholarship for ST students and other supporting schemes for educational development of Scheduled Tribes. Residential schools and hostels at school, college and professional level play an important role in the life of Scheduled Tribes who have been living for centuries in isolated and remote areas where fruits of development of the society could not reach in the past.

4.56 It may be recalled that School facilities at pre-matric level were available in several tribal areas but after completing primary and pre-matric education, the tribal children were required to travel distances to join secondary and post matric courses. Daily travelling from residence to school and back in tribal areas puts the children into lots of inconvenience, particularly for girls. In many States cycles have been provided to girl students to enable them to attend the schools. However, in view of the long distances between residence and the school, the journey to and fro school has proved risky. Besides Ashram Shalas have been opened in Tribal areas, so that tribal children are not required to leave their village of habitations and parents are encouraged to send their wards for studies. To supplement these efforts the benefits of the Scheme of Pre-Matric Scholarship have been provided to ST children pursuing studies from class VI to class X. The Scheme is being implemented under Welfare of Backward Classes Sector of the State Plan of each State/ UT. This has helped increase literacy and education level among the Scheduled Tribes. However, the literacy level among Scheduled Tribes, particularly ST females, is still behind non-ST literacy level. Central Sector and Centrally Sponsored Schemes have been taken up by the Ministry of Tribal Affairs to supplement the efforts of the State Governments. The Ministry of Tribal Affairs has also introduced the Scheme of Pre-Metric Scholarship with the Objective (a) to support parents of ST children for education of their wards **studying in classes IX and X** so that the incidence of drop-out, especially in the transition from the elementary to the secondary stage is minimized, and (b) to improve participation of ST children in classes IX and X of the pre-metric stage, so that they perform better and have a better chance of progressing to the post-metric stage of education. Scholarship under the Scheme is available for studies in India only and will be awarded by the Government of the State/Union Territory to which the applicant belongs i.e. where she/he is domiciled

4.57 In addition to above, the Centrally Sponsored Scheme of Post-Metric Scholarship to Scheduled Tribes which was introduced during the year 1944-45, is in operation benefiting lakhs of tribal students every year. The scheme has since been revised from time to time. The Scheme provides financial assistance to the Scheduled Tribe students studying at post matriculation or post-secondary stage. The scheme covers professional, technical as well as non-professional and non-technical courses at various levels including correspondence courses covering distance and continuing education in India only. Under this scheme 100% Central assistance is provided by the Government of India to the State Governments/ UT Administration, over and above the committed liability of the States Governments/.UTs Administration. The last revision of the scheme has been made w.e.f. 01.04.2013. At Post Matric Stage of education also hostel is a must for educational upliftment of Scheduled Tribes as Institutions or College of higher studies are not opened in tribal areas. Therefore, under the Scheme of Post Matric Scholarship, separate rates of scholarship have been prescribed for students pursuing studies as day scholar or as hostler. Vulnerable conditions prevailing in the hostels have been observed by the Commission. Therefore, this chapter is devoted to working of hostels and residential schools only.

4.58 The Commission has observed that hostels and residential schools were in pitiable and unsafe conditions beside lacking several essential facilities. These include lack of security and check on entry of outsiders to the hostels.

Even the staff deployed in some of the hostels have been found involved in causing sexual harassment and atrocities on the female inmates in the hostels. **Therefore, beside providing security check on entrance to the hostels, there is an urgent need to ensure that the staff and the supervisor deployed in the hostels have integrity beyond doubt.**

4.59 An important step to improve security in the hostels is round the clock availability of electricity connection and light in all the rooms, corridors, kitchen, washrooms/ toilets etc. as well as open spaces in the hostels. Some hostels have already been provided the electric backup through diesel generators or solar battery backup. Government of India also has schemes to provide grants-in-aid for setting up diesel generator or solar battery backup in the hostels and residential schools. This facility, in addition to providing security, will also help children to do regular studies after school hours, which will help in improving quality of education among them.

4.60 Besides, there is a need to regularly monitor the functioning of the kitchens and dining halls in the hostels and quality and quantity of food being served to the children so that children remain healthy, they do not require frequent medical treatment and do not feel home sick. Maintenance of hygiene among the inmates is also essential for healthy living and good habits among them. Each hostel should have adequate number of toilets and bathrooms with overhead water tanks for regular supply of water in the toilets and bathrooms. To meet this requirement, the overhead water tanks should be connected with electrified water supply system. In addition to this all inmates should have habits of having bath and washing of their clothes regularly. This habit gets disturbed in winter when water remains chilled and everyone shirks for taking bath and washing clothes. It is, therefore, necessary that system of hot water supply may be provided in the hostel. This can be served by providing either electric water heaters or solar water heaters which help in conserving electricity also.

4.61 There is also an urgent need for providing facilities for play and games in the free time within the hostel premises for keeping them healthy and active, and particularly in view of the fact that tribals are very good in sports and many of them have earned name and fame for themselves as well as the nation and the State to which they belong. For this purpose services of Physical Education Teacher should be available within the hostel campus so that he/she can devote time in the early morning and in the evening hours with the hostel inmates and provide them necessary coaching.

4.62 Each hostel should have a library and a common room where Teachers, Wardens, Supervisors and other staff staying in the hostel should visit along with students and take up activities which will enhance the general knowledge and boost the morale of the students.

(C) Eklavya Model Residential Schools (EMRS)

4.63 Now we come to the residential schools set up under the Scheme of the Ministry of Tribal Affairs for grants –in-aid under Article 275(1) of the Constitution viz; **Eklavya Model Residential Schools (EMRS)**. With the objective of providing quality education to the tribal students, it was decided during

1997-98 to utilize a part of the grant under Article 275 (1) of the Constitution of India for setting up of 100 Model Residential Schools from Class VI to Class XII. Till the end of Xth Plan 100 schools were sanctioned to 22 States, of which 92 are reported to be functional.

4.64 The Eklavya Model Residential Schools were required to be operated in each State through an autonomous society formed for this purpose at State level in order to provide a uniform pattern of education in those schools and enable their students to compete effectively for higher education programmes (medical, technical etc.). These schools are mainly affiliated to State Boards. These Eklavya Model Residential Schools are envisaged to be set up and functional on the lines of Navodaya Vidyalayas but under management of the State.

4.65 The guidelines for setting up of EMRS have been further revised in June 2010. It is expected that the ST students in the country would benefit substantially through the new effort for setting up of more EMRS. Objective of EMRS is to provide **quality middle and higher secondary level education to Scheduled Tribe (ST)** students in remote areas; States have to apportion funds out of their grants under Article 275 (1) of the Constitution of India to construct and run these EMRS sanctioned by the Ministry. Ministry's support to the States for the EMRS programme and its expansion will be subject to the concerned State Government ensuring high quality of management. EMRSs may be affiliated either to the State or Central Boards of Secondary Education as deemed fit by the State Governments. Each State Government would be solely responsible for the management and effective functioning of the EMRS.

4.66 As per information available on the website of the Ministry of Tribal Affairs, the annual allocation and releases made to State Government during the X and XI Plan period are shown in Table below:

(Rs. In crore)

Year	Allocation	Grant-in-aid (released)
2002-03	300.00	300.00
2003-04	300.00	252.70
2004-05	330.00	330.00
2005-06	380.00	380.00
2006-07	400.00	400.00
2007-08	400.00	390.28
2008-09	416.00	339.78
2009-10	1000.00	399.10
2010-11	1046.00	999.88
2011-12	1197.00	1084.83
2012-13	1317.00	755.40(as on 31-12-2012)

4.67 The Commission has noted that in the context of the trend of establishing quality residential schools for the promotion of education in all areas and habitations in the country, the Eklavya Model Residential Schools (EMRS) for ST students take their place among the Jawahar Navodaya Vidyalayas, the Kasturba Gandhi Balika Vidyalayas and the Kendriya Vidyalayas. The scheme of EMRS envisages:

- a) Comprehensive physical, mental and socially relevant development of all students enrolled in each and every EMRS. Students will be

empowered to be change agent, beginning in their school, in their homes, in their village and finally in a larger context.

b) Focus differentially on the educational support to be made available to those in Standards XI and XII, and those in standards VI to X, so that their distinctive needs can be met.

c) Support the annual running expenses in a manner that offers reasonable remuneration to the staff and upkeep of the facilities.

d) Support the construction of infrastructure that provides education, physical, environmental and cultural needs of student life.

4.68 Admissions to the EMRS are made through selection/competition with suitable provision for preference to children belonging to Primitive Tribal Groups, first generation students, etc. The number of seats for boys and girls is equal. Education in these residential schools is entirely free. Every class can have maximum 60 students preferably in 2 sections of 30 students each and the total sanctioned strength of one school will be 480 students. The scheme further envisage that there will be three sections per class for the three streams in Science, Commerce & Humanities at the Higher Secondary level (class XI & XII). The maximum sanctioned strength of the each section may be 30 students. In case of short fall in a section, ST students from other schools may be admitted as per procedure.

4.69 It is noted that the set up and functioning of the Eklavya Model Residential Schools have been planned exactly on the lines of Navodaya Vidhyalayas set up in each District of the country under the scheme of Ministry of Human Resource Development. **On the basis of the experience gained through visits to the tribal areas and the review meetings held by the Commission, the Commission makes the following recommendations for effective functioning of the Eklavya Model Residential Schools in the country:**

- (i) **There should be an independent cadre of teaching and non-teaching staff for all EMRS in the State for which separate recruitment should be made. Each staff should be transferable from one EMRS in the State to another EMRS in the same State. No staff should however, be transferable to other establishments and schools of the State Governments.**
- (ii) **There should be stringent criteria for eligibility and recruitment procedure for appointment to those posts. Teachers from non-EMRS schools may be considered for appointment/ posting in EMRS only after their selection through a common competitive examination, which may be held throughout the State by State PSC. No staff should be appointed on any type of contract for whatsoever purpose**
- (iii) **Since these posts are meant for special schools for disadvantaged section of society and Government of India provides grants for establishments and maintenance of EMRS, staff in these schools be paid at Central Government rate and other allowances/ perks**

admissible for tribal area postings.

- (iv) All Scheduled Areas and Tribal Sub-Plan areas in all the States may be recognized as tribal areas for the purpose of additional allowances/ perks/ incentive facilities. All teaching as well as non-teaching staff posted in EMRS should be eligible for grant of those additional allowances/ perks/ incentive facilities.**
- (v) Power backup/ Solar lighting and water heating system need to be provided in all Eklavya Model Residential Schools as well as Residential Educational institutions located in Scheduled Areas, Tribal Sub Plan areas and other Tribal areas.**
- (vi) Government of India may also consider establishing and running of EMRS through Centrally Administered Societies like Kendriya Vidyalaya Sangathan for Central Schools and Navodaya Vidyalay Samiti for Navodaya Vidyalaya, with Regional Offices in selected States.**
- (vii) Recruitment to the teaching and non-teaching staff for EMRS may thus be made at Central level and each staff should be transferable from one EMRS in a State to another EMRS in the same or any other State.**

4.4 Health and Medical facilities in Scheduled Areas

4.70 The Right to Life in Article 21 of Fundamental Rights in Chapter IV of the Constitution has been extended to include the right to health and health care in its periphery in several judicial decisions. The recognition that the right to health is essential for human existence and is, therefore, an integral part of the right to life, is laid out clearly by the Supreme Court of India in the WP filed by Consumer Education and Resource Centre V/s Union of India. It is also held in the same judgment⁶ that humane working conditions, health services and medical care are an essential part of Article 21.

4.71 Scheduled Tribes are geographically isolated social groups and equity and social justice for these groups is far from being achieved. In the matter of healthcare, STs are at a disadvantage due to their physical isolation from the mainstream population, where principal health facilities and services are located. STs are sometimes not able to take advantage of health facilities and services due to their belief in traditional system of medicine. The physical and other barriers in access to healthcare by STs result in poorer health outcomes than other sections of population in terms of the prevalence of higher morbidity and mortality levels.

4.72 Health status is strongly influenced by household incomes and the educational levels prevalent in the community. Income level of the community has implications for nutrition, housing conditions and access to healthcare. Lack of education has adverse effects on hygiene and awareness and utilization of healthcare. There is a wide disparity in the health conditions, access to and utilization of healthcare services among STs and others. This is also true that these disparities too, may not be uniform throughout the country.

⁶ SC Judgement dated 27/01/1995, 1995 AIR 922, 1995 SCC (3) 42

4.73 As per information available on the website of the Ministry of Tribal Affairs about the Health Indices of STs versus Others the infant mortality rates (IMR), under-5 child mortality rate (U5MR) for STs as well as for total population for some of the states are shown in the Table given below:

TABLE

State- wise Child health indicators: Infant Mortality rate & under 5 Mortality rate

S.No.	State	Infant Mortality Rate (IMR)		Under 5 Mortality Rate	
		All	ST	All	ST
(1)	(2)	(3)	(4)	(5)	(6)
	All India	57.0	62.1	74.3	95.7
1	Andhra Pradesh	68.4	(94.1)	78.7	(112)
2	Arunachal Pradesh	60.7	67.6	87.7	100.9
3	Assam	66.1	59	85	83.2
5	Chhattisgarh*	80.8	90.6	105.5	128.5
7	Gujarat	62.8	(86.0)	77.0	(115.8)
10	J&K	45.5	(34.3)	53.8	*
11	Jharkhand*	76.6	93.0	112.4	138.5
12	Karnataka	53.0	(45.8)	66.2	(77.9)
14	Madhya Pradesh	81.9	95.6	108.2	140.7
15	Maharashtra	45.3	51.4	53.4	69.8
16	Manipur	29.7	51.2	41.9	71.4
17	Meghalaya	44.6	49.3	70.5	74
19	Nagaland	38.3	45.8	64.7	65.8
20	Orissa	67.7	78.7	94.7	136.3
22	Rajasthan	72.7	73.2	93.3	113.8
23	Sikkim	33.7	28.9	40.1	35.9

Source: NFHS-3, MoHFW

4.74 It is noticed from above that percentage difference in IMR for ST population is very high in Andhra Pradesh (25.7), Gujarat (23.2) and Manipur (21.5). Whereas, for the states of Assam, J&K, Karnataka and Sikkim the IMR for ST population is lower than the general population by 7.1, 11.2, 7.2 and 4.8 percentage points respectively. Likewise, Percentage difference in the U5MR for ST population is very high in Orissa (41.6), Gujarat (38.8) Andhra Pradesh (33.3), and Madhya Pradesh (32.5). For the states of Sikkim and Assam the U5MR for ST population is lower than the general population by 4.2 and 1.8 percentage points respectively.

4.75 Further, on the basis of the experience gained by the Commission from the cases brought before it in the form of representations and during the course of the visits by the Commission to various tribal areas in the country, the

Commission has come to the conclusion that the following issues need special attention with regard to health and nutrition of tribal people in the country:

- i) Most of the Health facilities are not approachable by the tribal people due to improper connectivity.
- ii) Growing shortage of key cadres - Specialists, Doctors, Para medicals, ANMs, Nurses, Lab Technicians and OT Assistants - in rural areas, especially far-flung, remote tribal areas.
- iii) Problems of absenteeism and irregular staff attendance.
- iv) Non- availability of drugs, diagnostic test and medical infrastructure leading to demotivation of doctors.
- v) Lack of motivation and inadequate incentives especially in difficult area postings.
- vi) Non- transparent transfer and posting policy.

4.76 The above situation is uniformly prevalent in non-tribal as well as tribal areas and tribal people are suffering more due to the mis-links in respect of medical facilities in those areas. One can imagine the health conditions of poor tribals who live in remote and inaccessible areas where the above mentioned condition is worse as compared to that in general areas. **The Commission, therefore, makes the following recommendations to overcome the difficulties to some extent:**

- i) **State-specific HR management policy and transparency in management of health cadres.**
- ii) **Training (and utilization) of local people.**
- iii) **Reintroduction of Licentiate course in Medicine.**
- iv) **Incentives for difficult areas and system for career progression.**
- v) **Priority for improving Communication and road linkages making the health facilities more accessible to the tribals.**
- vi) **Publicity, awareness and IEC programmes in local language.**
- vii) **Successful initiatives by some of the State Govt. must be shared with others like Health Melas in Assam, Tribal promoters in Kerala, Navsanjivani and Matrutva Anudan Yojana by Maharashtra Govt.**
- viii) **State Governments should not have an indifferent attitude towards the remote tribal areas. (For example in Tripura no CHC or PHC have any Specialist Doctor).**
- ix) **New medical, nursing and dental colleges should be established in the under-served tribal areas.**
- xi) **A synthesis of Indian systems of medicine like Ayurveda and Siddha with the tribal system and modern medicine should be promoted.**

4.77 As per the information received from the Ministry of Health & Family Welfare a number of steps/initiatives, as under, were being taken to ensure that medical help reaches the needy people, especially the people from the weaker section of the society within the shortest possible time:

- i) All districts of the country are sanctioned with a GPS enabled Mobile Medical Van. These are operational in 360 districts and soon will be operational in the remaining districts also;
- ii) Appointment of trained ANMs could not be done due to non - availability of trained manpower. There is a limitation of number of seats in the Govt. institutions. The Govt. of West Bengal have taken a very good initiative in this regard by imparting training to the local volunteers to become ANMs with the help of NGOs. This has solved the problem of non - availability of trained ANMs in a short duration. This system should be encouraged by the other State Govts. also;
- iii) Preference to local people is being accorded for appointment at any level in the healthcare system.
- iv) Most of the PHCs are made to operate on 24X7 basis and MoH&FW is supporting the State Govt. in this area;
- v) Higher payment is being given for appointment on contract basis to Specialists, Doctors and para-medical staff to be posted in remote tribal areas. A rate list has been worked out with the recommendation of the State Govts. Regular employees are also provided special incentives;
- vi) Ministry has started a program, under which Graduate doctors are given training in Family Medicine through distance education scheme. There are 100 seats for this 2-year Diploma course through CMC Vellore. 120 doctors are trained in one year program of PG in Public Health. This drive is started to compensate for the acute shortage of specialists, especially in remote tribal areas;
- vii) A six month training is imparted to the doctors in the field of epidemiology;
- viii) Criteria for opening of CHC, PHC and SHC has been relaxed for rural and remote / hilly areas. Criteria for setting up of health centre also includes consideration of load and distance in addition to population, which is already relaxed.
- ix) Ministry has directed for starting of a medical college, where health centre are big enough as per standards. The prescribed criteria of a chunk of land for opening of a medical college is also relaxed for these areas. This will facilitate training of local people and their availability for service in future;
- x) Ministry, in co-ordination with the State Govts, is trying to ensure that there is no shortage of medicines. To ensure this target, different state Govts. are taking various steps. At some places, a fund is generated and the accrued interest is utilized to arrange for medicines. Govt of Tamil Nadu has registered a remarkable progress in this area;

- xi) Co-location and integration of Ayush, Homeopathy and Indian system of medicine is being done at CHC and PHC;
- xii) Stress is being given for awareness programmes based on the inter-personnel communication; and
- xiii) The lower level of health workers are named in the local language, like an ASHA in Chhatisgarh is called 'Mitani', which means a co-worker. This generates a feeling of belongingness.

4.78 The Commission has also noted that although the Ministry of Health & Family Welfare have well structured schemes/programmes with ambitious targets, there is no specific Tribal Sub Plan (TSP) component in these schemes/ programmes. An adequate flow of funds in proportion to the ST population of a State/UT through TSP should be ensured by the Central Ministry / Department.

4.79 The Commission further recommends that specific Tribal Sub Plan (TSP) component in all the major missions/schemes/programmes of the Ministry of Health & Family Welfare is considered necessary to have a clear focus on formulation of schemes/programmes concerning the STs and their effective implementation and monitoring. Further, adequate support to ST dominated districts should be ensured both in terms of availability of funds and other resources to improve health and nutrition conditions upto acceptable/targeted standards.

(A) National Rural Health Mission

4.80 The Ministry of Health & Family Welfare had taken up National Rural Health Mission in 2005 with a view to taking care of the health requirements of the rural areas. As per the information available on the Website of the National Rural Health Mission, in the 12th Five Year Plan period, efforts will be made to consolidate the gains and build on the successes of the Mission to provide accessible, affordable and quality universal health care, both preventive and curative, which would include all aspects of a clearly defined set of healthcare entitlements including preventive, primary and secondary health services. At the national level, the targets would be as under:

- Reduction of MMR to < 100 per 100000 live births
- Reducing IMR to < 27 per 1000 live births
- Reduction in NMR to < 18 per 1000 live births
- Reducing TFR to 2.1
- Elimination of Filaria – in all 250 districts; Kala-azar in all 514 Blocks and Leprosy in all districts
- Reduction in TB prevalence and mortality by 50%
- Reduction in Annual Malaria incidence to <1/1000 pop.
- Reduction in JE mortality by 50%
- Sustaining case fatality rate of less than 1% for Dengue

Tribal Sub-Plan under National Rural Health Mission

4.81 It is noted from above that the vision and goal under NRHM has no consideration for the weakest section of the society viz; the Scheduled Tribes and the most backward isolated and remote areas which have separately been notified as Scheduled Areas under Fifth Schedule, Tribal Areas under the Sixth Schedule and other backward Hill Areas about which the Constitution also envisages special safeguards to be taken up by the Government. The Framework Document do highlights the existing constraints regarding Health Services at various levels and suggests measures to be taken under NRHM at State, District and Block Level but at the same time it ignores the concept and existence of Tribal Development Blocks in the country and the special steps that may be required to meet the needs of such areas. Moreover, same policy can't be uniformly extended to the whole country, as the requirements of different States are different. Even different districts in a State can have different health related problems as well as requirements. Therefore, a network is stated to have been set up and district-wise information is being received in the Ministry to take corrective steps as per the requirement. Keeping in view the absence of proper health care facilities in the tribal inhabited areas, providing only 7.5% share to STs, will be injustice to them and, therefore, corrective action and support has to be given to the districts based on the data collected. If the ST dominated districts require total support that should be extended. For the sake of the convenience of the Health planners data relating to the State wise no. of districts where the ST population is more than 50% and those between 25% to 50 percent as per Census 2011 is given in the following

TABLE:

TABLE
State wise population, ST population and no. of districts where the ST population is more than 50% and between 25% to 50 percent as per Census 2011

S.No.	Name of State/UT	Total Population	ST Population	Percent age of ST	No. of Districts having	
					more than 50% ST Popn.	Between 25% to 50% ST Popn.
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Scheduled Area States						
01	Andhra Pradesh	84580777	5918073	7.0	0	1
02	Chhattisgarh	25545198	7822902	30.6	7	6
03	Gujarat	60439692	8917174	14.8	5	4
04	Himachal Pradesh	6864602	392126	5.7	2	1
05	Jharkhand	32988134	8645042	26.2	5	8
06	Madhya Pradesh	72626809	15316784	21.1	6	13
07	Maharashtra	112374333	10510213	9.4	1	3
08	Odisha	41974218	9590756	22.8	8	6
09	Rajasthan	68548437	9238534	13.5	3	3
Total	Sch. Area States	<u>505942200</u>	<u>76351604</u>	<u>15.09</u>	<u>37</u>	<u>45</u>
Non-Scheduled Area States						
10	Jammu & Kashmir	12541302	1493299	11.9	2	3
11	Sikkim	610577	206360	33.8	1	3
12	Arunachal Pradesh	1383727	951821	68.8	13	3
13	Nagaland	1978502	1710973	86.5	11	0

14	MANIPUR (Excl. 3 Sub-Divisions of Senapati Distt.)	2570390	902740	35.1	5	0
15	Mizoram	1097206	1036115	94.4	8	0
16	Tripura	3673917	1166813	31.8	1	3
17	Meghalaya	2966889	2555861	86.1	7	0
18	Assam	31205576	3884371	12.4	2	5
20	Dadra & Nagar Haveli	343709	178564	52.0	1	0
21	Lakshadweep	64473	61120	94.8	1	0
22	Andaman & Nicobar Islands	380581	28530	7.5	1	0
	Total				90	62

Source: Ministry of Tribal Affairs Website

4.82 It will be noted from the above **TABLE** that there are 90 Districts in 22 States/ UTs of the Countries which have more than 50% ST population and 62 Districts which have less than 50% but more than 25% ST population. The NE States of Arunachal Pradesh, Meghalaya, Mizoram, Nagaland and Union Territories of Dadra & Nagar Haveli and Lakshadweep have more than 50% ST population and therefore, it can be deemed that the benefit of the programme launched in these States and UTs largely reaches the ST population. However, special Plan has to be prepared for ensuring that benefits of National Rural Health Mission reach the Tribal Concentrated Districts in all other States and UTs mentioned in the **TABLE** above. **The Commission recommends that support to ST dominated districts should be given on priority under NRHM.**

(B) Reported Scams under National Rural Health Mission

4.83 Reports about misuse of funds provided under National Rural Health Mission have come to light. Specific attention is invited towards the large scale scams which took place in the States of Uttar Pradesh, Jharkhand and Madhya Pradesh.

4.84 The NRHM scam in UP came to the limelight after two top health functionary were successively murdered in posh localities of the state capital, Lucknow. Another health functionary, who was alleged to have had a role in the murders, was arrested, but died mysteriously in prison. Subsequently, three other functionaries who were under investigation were also murdered or died under suspicious circumstances. Top politicians and bureaucrats are alleged to have siphoned off a massive sum. As per news reports, beside two cases registered in 2011, 18 cases of NRHM scam in UP were registered in 2012 and 23 fresh preliminary enquiries into alleged irregularities in the execution and implementation of NRHM schemes in various Districts of Uttar Pradesh State were registered by CBI in the beginning of 2013.

4.85 In Jharkhand State also on Friday former Jharkhand health secretary was arrested by the Central Bureau of Investigation (CBI) in a multi-crore rupee scam in the department. As per reports available in the press and media, an FIR was registered in 2009 against the former Health Secretary and two other senior officials of the department, they allegedly siphoned off crores of NRHM funds meant for providing better medicare to rural people in Jharkhand between 2008 and 2009. The CBI had also raided the residence of former

Jharkhand Health Minister in Palamu in connection with the case. Similarly, several officers including IAS Officers were arrested for alleged corruption under National Rural Health Mission in Madhya Pradesh State.

4.86 The above mentioned stories highlight about an alarming situation regarding a large scale misuse of funds in various States including the States having Scheduled Areas, thus affecting greatly the Scheduled Tribes also, who would have otherwise been the main targeted beneficiaries of the scheme in the States/ UTs and districts having large tribal concentration. National Rural Health Mission is a beneficiary oriented scheme launched by the Central Government taken up in a Mission mode. **The National Commission for Scheduled Tribes is of the view that these and many other incidents of misuse of National Rural Health Mission funds in various States/ UTs was the result of lack of checks/ controls and monitoring on the implementation of the scheme. The scheme initially launched in the year 2005, up to the year 2012 is continuing beyond 2012. It is high time that the Government of India evaluates the functioning and performance of the scheme and issue directions for effective implementation of the scheme with full transparency.**

(C)National Rural Health Mission and consultation with the National Commission for Scheduled Tribes

4.87 Article 338A(9) of the Constitution makes it mandatory for the Union and the State Governments to consult the National Commission for Scheduled Tribes on all major Policy Issues affecting Scheduled Tribes. The Commission has noted that the Union Government had not consulted the National Commission for Scheduled Tribes while framing and finalizing the National Rural Health Mission. The Commission considers that it was consequence of non-consultation that the important issues, problems, needs, goals and monitoring mechanism regarding Scheduled Tribes and Scheduled Areas / Tribal Areas in the country have not been examined and considered effectively under NRHM. As the National Rural Health Mission was launched in the year 2005, it is time that the effectiveness of the Mission may be evaluated. **The Commission, therefore recommends that MoHFW and the Programme Evaluation Organization (PEO) of Planning Commission should undertake evaluation and appraisal of the National Rural Health Mission and make amendment to the Mission in consultation with the National Commission for Scheduled Tribes, as per the instructions dated 16/02/2012 issued by the Cabinet Secretariat, which have been duly incorporated in the Handbook of Instructions for preparing Notes for consideration of the Cabinet on Policy matters including Legislative proposals and the Cabinet Notes.**

4.5 Tribal Sub-Plan

4.88 For integrated development of Scheduled Tribes and the tribal areas, a new strategy of Tribal Sub-Plan was initiated in the Fifth Five Year Plan. The Tribal Sub-Plan strategy comprised:

- (i) identification of development block in the State where tribal population was in majority and their constitution into ITDPs with a view to adopting therein an

integrated and project based approach for development,

- (ii) earmarking of funds for the Tribal Sub-Plan and ensuring flow of funds from the State and Central Plan sectoral outlays, Special Central Assistance and from Financial Institutions; and
- (iii) creation of appropriate administrative structure in tribal areas and adoption of appropriate personnel policy.
- (iv) the TSP funds, comprising the TSP component of various departments/ sectors of the States, have to be aggregated in a separate demand head in the budget of the Tribal Development Department of the State.

4.89 The Tribal development strategy now comprises the following multi-prong approach:

- (i) Integrated Tribal Development Project (ITDP) areas : These are generally contiguous areas of the size of a block or a tehsil or more within a district, in which the ST population is 50% or more of the total population.
- (ii) Modified Area Development Approach (MADA) pockets : These are identified pockets having 50% or more ST population of a total population of 10,000 or more.
- (iii) Clusters : These are identified clusters of villages, altogether having ST population of 5000 or more, which constitutes 50% or more of the total population of the cluster.
- (iv) Primitive Tribal Groups : These are characterized by a low rate of growth of population, pre-agricultural level of technology and extremely low level of literacy. Keeping in view the need for special attention towards these communities these Groups have been rechristened as Particularly Vulnerable Tribal Groups
- (v) Dispersed tribal population outside the categories at (i) to (iv) above

4.90 The TSP strategy has been in operation in 22 States and 2 UTs. There are 192 ITDPs, 259 MADA Pockets, 82 Clusters, and 75 PTGs in the country. The State Governments have to undertake an exercise to prepare a Tribal Sub-Plan along with the exercise for preparing the Annual/Five-Year Plan of the State. The Tribal Sub-Plan documents should be self-contained in respect of programmes and schemes to be taken up during the Plan period and the input of funds from various sources as indicated above. The States are expected to earmark TSP funds from the State Plan which are at least equal to the percentage of the tribal population to the total population in the State. Similarly, the Central Ministries/ Departments were also required to earmark funds in proportion to the population percentage of the Scheduled Tribes in the country, and release those funds for various schemes under the Tribal Sub-Plan.

4.91 The Planning Commission issued revised consolidated guidelines to all State Governments/UTs vide D.O. No. 13011/3/2005-SP-Co dated 31/10/2005. The consolidated revised guidelines issued for Tribal Sub-Plan of States and UTs vide above mentioned DO letter are given below:

- (i) *Earmarking of funds for (SCSP and) TSP from the total State Plan outlay should at least be proportionate to the (SC and) ST population of the State/UT.*

- (ii) *Making the Social Welfare/Tribal Welfare Department—which are concerned with the well-being and development of (SCs and) STs—the nodal department for formulation and implementation of (SCSP and) TSP.*
- (iii) *Placing the funds earmarked for (SCSP and) TSP at the disposal of the Principal Secretary/Secretary, Social Welfare/Tribal Welfare, who will work as Planning Secretary and have exclusive authority for the reallocation of funds to other line departments in respect of (SC and) ST development schemes.*
- (iv) *Placing the funds earmarked for (SCSP and) TSP under separate budget head/sub-head for each development department.*
- (v) *Backing the (SCSP and) TSP earmarked funds by 100% budget provision, sanctions and timely release of funds to the line departments and implementing agencies.*
- (vi) *Including only those schemes under (SCSP and) TSP that ensure direct benefits to individuals or families belonging to (Scheduled Castes or) Scheduled Tribes.*
- (vii) *Preparing a detailed (SCSP and) TSP document with physical and financial targets against each Scheme with the objective of bridging the gap between the rest of the population and the (SCs and) STs within 10 years.*
- (viii) *Ensuring that the other line departments cooperate in the proper implementation of the (SCSP and) TSP schemes allocated to them and put up the schemes to the nodal departments for sanction and release of funds.*
- (ix) *To circumvent the problem of non-divisible nature of funds for certain sectors like major irrigation, power, roads, and so on, (SCSP and) TSP funds may be accounted only to the extent of about 5% or the actual area (belonging to STs) being covered or benefited by the projects and not the population percentage. The percentage of (SC and) ST beneficiaries and the area being covered/ benefited is always less than the population percentage of the (SC and) ST population in the State/UT.*
- (x) *Preventing the diversion and lapse of funds allocated to (SCSP and) TSP in the Annual Plans. (SCSP and) TSP should not be allowed to be changed at revised estimate (RE) stage by the Planning Commission.*
- (xi) *Carrying forward the lapsed/unutilized (SCSP and) TSP amount to the next Annual Plan of the State/UT as an additional fund for SCSP and TSP.*
- (xii) *All the CSS and SCA Schemes of the Centre necessarily should have a (SCSP and) TSP component in them as per the proportion of (SCs and) STs in the States/UTs.*

4.92 On 04/06/2010, the Planning Commission had set up a Task Force under the Chairmanship of Dr. Narendra Jadhav, Member, Planning Commission:

- i) *to re-examine and revise the extant Guidelines issued by the Planning Commission for implementation of Scheduled Caste Sub-Plan and Tribal Sub-Plan ;*
- ii) *to understand the operational difficulties in consultation with implementing Ministries and suggest remedial action so that Scheduled Caste Sub-Plan and Tribal Sub-Plan can be implemented effectively.*

4.93 The Task Force examined the situation in relation to implementation of Tribal Sub-Plan and Scheduled Caste Sub-Plan in the States and UTs and preparation of the Sub-Plans by the State Govts./ UT Admns. as well as Central Ministries / Departments. The Task Force has submitted the recommendations in respect of the Central Ministries/ Departments on 25/11/2010. However, Report of the Task Force to revise the TSP and SCSP guidelines pertaining to State Governments and UT Administrations is still awaited. As a result, Planning Commission has not yet issued the requisite Guidelines for Tribal Sub-Plan to the States and UTs.

4.94 As already mentioned in the Fifth Report, several States are not preparing the Tribal Sub-Plan of the States Annual Plans as well as the 12th Five Year Plan. As per information available with the National Commission for Scheduled Tribes, the Maharashtra Government, whose Tribal Sub-Plan model was recommended to be followed to all States and UTs having Tribal Sub-Plan, has not prepared the Tribal Sub-Plan for several years. Consequently, monitoring of the Tribal Sub-Plan programmes cannot be monitored in those States/UTs which have not been preparing the Tribal Sub-Plan for last several years. This is because of the reason that examination of and, discussion on the Tribal Sub-Plan proposals, are not being held in either Ministry of Tribal Affairs or the Planning Commission and therefore, there is no pressure on the State Governments and UT Administration to prepare the Tribal Sub-Plan documents. Further, criterion for release of Special Central Assistance to Tribal Sub-Plan has a component based on the Flow from State Plan to Tribal Sub-Plan and the level of expenditure incurred there from. Since Special Central Assistance to Tribal Sub-Plan is a grant to the States as supplement to their efforts under State Plan and to be used as a "Gap filler" of the State Resources, Planning Commission and the Ministry of Tribal Affairs should take necessary steps to ensure that each State and the UT having Tribal Sub-Plan do prepare the Tribal Sub-Plan documents along with the annual Plans and the Five Year Plans and the same is finalized after discussion with the Ministry of Tribal Affairs and the Planning Commission as in the past.

4.95 The Commission, during the meetings with the State Governments to review the Tribal Sub-Plan programmes and visits to the tribal areas in various States has noticed the following:

- (i) TSP funds were not earmarked for each specific Sector/ Sub-sector/Scheme of development

- (ii) Funds, wherever earmarked, were not fully utilized or were utilized on other programmes indicating misuse or diversion of fund
- (iii) There was no linkage between Special Central Assistance to TSP as **Gap Filler** to Tribal Sub-Plan funds
- (iv) There were complaints of late release of Special Central Assistance to Tribal Sub-Plan from Ministry of Tribal Affairs to the State Government and also from State Government to the District/ Integrated Tribal Development Project level authorities. Consequently, Special Central Assistance could not be utilized for the purpose for which it was earmarked/ required

4.96 In view of above, Commission makes the following recommendations regarding formulation and implementation of Tribal Sub-Plan in States/UTs.

- (i) The Task Force constituted by the Planning Commission to examine and revise the guidelines for Tribal Sub Plan may be asked to submit the Report relating to revised guidelines for preparation of Tribal Sub Plan of States/ UTs at the earliest, as the matter is pending for more than three years.
- (ii) As soon as the revised guidelines for preparation of Tribal Sub Plan of States/ UTs are received from the Task Force, the Planning Commission may issue necessary guidelines/ instructions to the State Governments/ UT Administrations for compliance.
- (iii) Specific Tribal Sub-Plan (TSP) component in all the major missions/ schemes/ programmes of all Ministries/ Departments should have a clear focus on Scheduled Tribes.
- (iv) The Strategy for all development, programmes, particularly the major missions/ schemes of the State Government that have direct impact on the life of Scheduled Tribes, should comprise sub-Chapter for accelerated development of the Tribal Areas. In particular, it is necessary to have specific Tribal Sub- Plan (TSP) component in all the major missions/schemes/ programmes of all Departments to have a clear focus on formulation of schemes/ programmes concerning the STs and their effective implementation and monitoring. The TSP component should not be per population share but according to "problem-share", and "need-based" taking into account the extent of deprivation, or even more than that to make up the backwardness/ negligence experienced over the years. Unless the earmaking of TSP outlays exceeds the relative share of incidence of residual problems eg. drinking water, primary health care and education, nutritional support unemployment etc., the relative gap in physical quality of life is likely to persist.
- (v) The Planning Commission and the Ministry of Tribal Affairs may advise the State Governments/ UT Administrations as well as Central Ministries and Departments to submit Annual/ Five year Tribal Sub Plan along with general Annual/ Five Year Plan of the State/ UT/ Central Ministry/ Department.

- (vi) **Release of SCA to Tribal Sub Plan may be made to the States only after receipt of the Tribal Sub Plan documents and after holding discussions on the Tribal Sub Plan proposals. As in the past, some fraction of SCA to Tribal Sub Plan of the State/ UT may be linked with the level of utilization of Tribal Sub Plan funds under State Plan in the previous year(s).**
- (vii) **The Ministry of Tribal Affairs may re-iterate the instructions to the State Governments/ UT Administrations for maintaining accounting procedure and control over the Tribal Sub Plan funds from State Plan as well as SCA, in order to ensure full utilization of the TSP funds earmarked under each head of development/ scheme.**
- (viii) **State Government should earmark TSP funds under a single budget demand head under the control of the State Tribal Welfare/ Development Department of the State, (as envisaged in the Maharashtra Model and advocated by Planning Commission as well as Ministry of Tribal Affairs from time to time).**
- (ix) **Each department of the State Government should set up TSP Cell. The TSP Cell will monitor implementation of TSP schemes of the Ministry and by using the inputs received through monitoring, prepare the TSP component, of Annual Plan and Five Year Plan of the Department in terms of financial and physical aspects. The TSP Cells should be manned by personnel having, special background and expertise in various fields of Tribal Development and Administration. In order to ensure continuous monitoring of TSP, the posts in TSP Cell should not be allowed to remain unfilled. This will be possible only if the personnel for these Cells belong to an organized cadre of specialized experts.**
- (x) **The State Governments may be advised to consider enactment of a legislation on the lines of the Andhra Pradesh Scheduled Castes Sub-Plan and Tribal Sub-Plan (Planning Allocation and Utilization of Financial Resources) Act 2013, mandating allocation of funds for Scheduled Tribes and their proper utilization.**
- (xi) **Approach to development of Particularly Vulnerable Tribal Groups should consider for having modern look to PVTGs, while simultaneously protecting them from cross infection and exploitation by the outside world.**

4.6 National Tribal Policy

4.97 In the above context, it may be recalled that the Government of India in the Ministry of Tribal Affairs had drafted a National Tribal Policy in the year 2006 and the same was also placed in public domain, through the Website of the Ministry of Tribal Affairs for seeking opinion from the concerned stake holders and public at large. The Ministry of Tribal Affairs had formulated the draft National Tribal Policy in order to address the issues concerning tribals viz. lower Human Development Index, poor infrastructure, diminishing control over the natural resource base, persistent threats of eviction from their natural habitat, exclusion from mainstream society, inequality in distribution of wealth and opportunities, non-empowerment, and inadequate implementation of

Constitutional provisions, and to ensure their active and informed participation in development. After extensive consultation with various stakeholders, the final draft of Policy was placed before the Union Cabinet for approval on 31st May 2007. The Union Cabinet referred it to a Group of Ministers for harmonization with the National Rehabilitation Policy. It may also be recalled that based on the National Rehabilitation Policy, draft Land Acquisition, Rehabilitation and Resettlement Bill 2011 was introduced in Parliament and the same has since become an Act of Parliament, viz; Land Acquisition, Rehabilitation and Resettlement Act 2013. As per information available with the Commission the draft National Tribal Policy is still in the process of finalization in the Ministry of Tribal Affairs. In the mean while, various Ministries of the Government of India have already setup National Missions on the subject of the Ministry, for instance National Literacy Mission, NRHM, National Drinking Water Mission etc. All these Missions have not taken care of the problems and needs of Scheduled Tribes and the Scheduled Areas. Consequently, benefits targeted under these Missions have not reached the tribals and the Scheduled Areas.

4.98 In view of above the National Commission for Scheduled Tribes recommends that the following points may also be considered by the Government while finalizing the National Tribal Policy and also while taking action independently on these points;

- (i) TAC for all States with Scheduled Areas as well as tribal areas may be headed by the Governor as Chairperson of the Council, while the Chief Minister of the State may act as Vice Chairperson of the TAC. At least two meeting in a year. The agenda of the TAC should inevitably include the subject of adaptation of Central or State laws enacted during the interregnum of its meeting so that the same are not routinely extended to Scheduled Areas / Tribes. A similar mechanism (like TAC) should be established for Scheduled VI States also.**
- (ii) Constitution of a Scheduled Areas & Scheduled Tribes Commission to review the list of Scheduled Areas / Scheduled Tribes objectively every 10 years.**

4.99 The Commission further recommends that immediately after finalization and notification of the National Tribal Policy, the Ministry of Tribal Affairs should hold consultations with each central Ministry for harmonizing the concerned National Mission with the National Tribal Policy.

4.7 Mahatma Gandhi National Rural Employment Guarantee Scheme

4.100 The Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (Mahatma Gandhi NREGA) was notified by the Ministry of Rural Development on September 7, 2005. The Act was notified in 200 districts in the first phase with effect from February 2nd 2006 and then extended to an additional 130 districts in the financial year 2007-2008 (113 districts were notified with effect from April 1st 2007, and 17 districts in UP were notified with effect from May 15th 2007). The remaining districts have been notified under Mahatma Gandhi NREGA with effect from April 1, 2008. Thus, the Mahatma Gandhi NREGA

covers the entire country with the exception of districts that have a hundred percent urban population.

(A) MANDATE

4.101 The mandate of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 is to provide 100 days of guaranteed wage employment in a financial year to every household whose adult members volunteer to do unskilled manual work.

(B) GOALS

- i) social protection for the most vulnerable people living in rural India
- ii) livelihood security for the poor through creation of durable assets, improved water security, soil conservation and higher land productivity
- iii) drought-proofing and flood management in rural India
- iv) empowerment of the socially disadvantaged, especially women, scheduled castes and scheduled tribes, through the processes of a rights-based legislation
- v) strengthening decentralised, participatory planning through convergence of various anti-poverty and livelihoods initiatives
- vi) deepening democracy at the grass-roots by strengthening Panchayati Raj Institutions
- vii) effecting greater transparency and accountability in governance

(C) PERFORMANCE- TSP FLOW

4.102 Regarding performance of the MGNREGS and flow of benefits from the scheme to the Scheduled Tribes and the tribal areas, attention is invited to various news reports publishing articles and features on the subject. According to a News Report published in the Times of India dated 3rd February 2013, a Report presented in the Government conference held on 2nd February 2013, revealed a picture of declining employment generation under the scheme. The startling revelations were that the jobs created for the most marginalized sections i.e. Scheduled Castes and Scheduled Tribes have suffered the biggest decline. According to the Report, the total work generated by this flagship scheme declined from 284crore persondays to 211crore persondays between 2009-10 and 2011-12, showing a reduction of about 25% in persondays generation. The work given to Scheduled Tribes decreased from 59 crore persondays to 38 crore persondays during the above period.

4.103 According to another report, about 55 per cent of those employed under MGNREGA in 2008-09 were SC/ST. But over the period, their percentage of participation in the scheme as well as the number of days for which they are provided employment has decreased. The decline was steep in last two years. In 2008-09, STs accounted for close to 26 per cent of the total labour participation in MGNREGA. Their participation was barely 16 per cent by the end of 2012.

4.104 It was also revealed during the visit of the Commission to the tribal areas that delay in payment of wages under MGNREGA was distracting the Scheduled Tribes from their engagement under the scheme as they were found diverting to other alternatives occupations and preferring migration to other areas in search of jobs. In certain cases, the programmes planning under the Scheme have also been found to be clashing with the agriculture season which is a cause for their lower participation under the scheme. The Commission has been empathizing that as agriculture work in tribal areas is available for a period of 2 to 3 months only during a year and sources of other engagements are also limited, the existing limits of providing maximum 100 days employment to a household in a given financial year under the scheme should be removed in respect of tribal areas at least, as wages for 100 days of employment for a five member family do not economically support the family.

4.105 A serious consequence of non-availability of the needful employment to the household members within the village is the exodus of tribal girls and women into urban areas and large metropolitan cities to work as domestic help with the help of agents of the placement agencies. The Placement agencies have mushroomed in urban areas. The agents of these agencies lure the tribal girls and women for assured gainful employment, but these agencies and their agents play a vital role in the process of exploitation of those tribal girls and women. Cases of trafficking of these girls/ women by these agencies have also been reported. In turn, the employers, treating them as purchased item commit various types of atrocities on them, including their sexual exploitation. Another type of atrocity relates to less payment by the placement agency to the girl/ woman or her family, than the amount collected from the family, as wages for the period of her service as domestic help. Most of such domestic maids being illiterate do not understand the nature of exploitation by the agent and the placement agency. The investigation into such cases by the Commission has revealed the need for developing appropriate policies and enforcement mechanism for the protection of domestic servant, especially tribal girls. Attraction under MGNREGS would discourage the tribal as well as other poor families to send their daughters and family members away in search of job or as domestic help, and thus minimize their exploitation.

(D) MGNREGS in Left Wing Extremism areas

4.106 Large parts of Tribal Areas falling under Scheduled Areas in the country are heavily affected by the left wing extremism. These areas face serious problems in terms of limited access to economic opportunities and internal securities. MGNREGA Sameeksha, 2012 a publication of the Ministry of Rural Development reviews the performance of the Mahatma Gandhi National Rural Employment Guarantee Scheme during 2006-12. As per MGNREGA Sameeksha, the MGNREGA was initially launched in some of the most backward Districts in the country. These included Left-Wing Extremism (LWE)-affected districts. The Sameeksha refers to a study conducted in six LWE districts (12 blocks) of Chhattisgarh, Jharkhand and Odisha. The main findings of the study, as reported were:

Employment and Work Participation:

With limited employment opportunities, outside MGNREGA, all three States have low average annual days of employment; in Odisha average days of

employment were 35–40 days, in Chhattisgarh 60–70 days and in Jharkhand 150 days. Thus, MGNREGA provides additional employment days and is an important source of supplementary income. The average days of employment under MGNREGA ranged from seven in Malkangiri (Odisha), to 55 person days in Bastar (Chhattisgarh). Noticeably, in all the blocks surveyed, women participation was above the statutory minimum of 33 per cent.

Wages:

Wages in different agriculture operations have gone up following the introduction of MGNREGA. Pre-MGNREGA (agriculture wage in 2005–06) wages for women were in the range of Rs 20/day (in Bastar, Chhattisgarh) to around Rs 55/day (in Khunti, Jharkhand). Wages for men were in the range of Rs 37/day (in Gumla, Jharkhand) to Rs 75/day (in Khunti, Jharkhand). Post MGNREGA in FY 2009–10, the wages for women were in the range of Rs 80/day (in Bastar, Chhattisgarh) to Rs 105/day (in Dhamtari, Chhattisgarh). For men, the wages were Rs 45 (in Gumla, Jharkhand) to Rs 70/day (Dhenkanal, Odisha). *The study suggests that the increase in female wages was greater than for men.*

Household Income:

The increase in overall employment and wages also resulted in an increase in household income. In Chhattisgarh, the increase in household income ranged from 23 per cent–160 per cent (as compared to 2005–06), in Jharkhand it ranged from 60 per cent–70 per cent and in Odisha it ranged from 30 per cent–40 per cent.

Other Specific Issues:

The study also highlighted some area specific issues such as, problem in wage payments through banks (due to limited bank branches and distance), execution of road work (which is often blocked by Naxals to prevent access to military and police). To respond to the problem of payment through banks, the Government of India has allowed payment in cash.

4.107 The study revealed that Mahatma Gandhi National Rural Employment Guarantee Scheme did make impact on the household incomes of the households studied. It also revealed that wages in different agricultural operations have gone up following the introduction of MGNREGS. However, the work participation under this scheme was low in all the three States. One of the reasons could be actual difficulties faced by the local administration in taking up developmental activities due to obstructions created by the left wing extremism activities. Consequently, the benefits of the scheme which aim at guaranteeing employment through local civic works are not reaching the Scheduled Areas affected by Left Wing Extremism.

4.108 In view of above, the Commission makes the following recommendations:

- (i) An investigation into the dwindling participation of Scheduled Tribes under the Mahatma Gandhi National Rural Employment Guarantee Scheme should be got conducted by the ministry of Rural Development and corrective action taken to arrest the trend and enhance their participations.**

- (ii) Ministry of Rural Development should consider removing the limit of 100 days of engagement per family per year under the Scheme in tribal areas and ensure timely planning and payment of wages to the workers.**
- (iii) State Governments should also formulate other schemes to generate employment for implementation in tribal areas to curb migration of male as well as female tribals in search of job.**
- (iv) The Government should immediately formulate regulation to control engagement of domestic servants.**
- (v) The Government may initially consider for extension of the ‘The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, to the placement agencies engaged in procuring/ alluring the tribal as well as other poor persons from tribal areas for supply as domestic workers in the urban areas and cities.**
- (vi) The Government may formulate ways and means to ensure that the benefits of Mahatma Gandhi National Rural Employment Guarantee Scheme reach the people of the Scheduled Areas and also make an impact on the development of those areas, which only can help check left wing extremism activities in those areas.**

CHAPTER 5

CASE STUDIES

5.1. Approach and Methodology

5.1.1 The Commission receives representations from individual members of Scheduled Tribes, or their associations, etc. These representations/ petitions pertain to (i) the violation of the instructions for reservation in services/ posts, (ii) problems relating to the socio-economic development of Scheduled Tribes such as admission in educational institutions, land alienation, rehabilitation and displacement as a result of setting up of projects etc., and (iii) atrocities on members of Scheduled Tribes by non-Scheduled Tribe persons. These representations are referred to the concerned organizations of the Central Govt. or the State Govts. by the Commission, requesting them to furnish full facts within a given timeframe. The facts furnished by the concerned organization are examined by the Commission; and in case, on examination, the Commission finds that there has been violation of the safeguards of the members of Scheduled Tribes, provided under the Constitution or under any other law or order of the Government, it advises the concerned organization to take corrective measures within a given timeframe and apprise the Commission of the action taken.

5.1.2 A copy of the reply sent by the concerned organization is forwarded to the petitioner for his/her information and in case the petitioner submits a rejoinder containing additional material, the same is further examined in consultation with the concerned organization. If the Commission does not get a reply from the concerned organization on the points raised in the petition/ rejoinder despite repeated reminders, the Commission holds a sitting in the case and invites the Head of the organization and/ or any other senior officer of that organization to appear before the Commission for discussion. The petitioner is also permitted to be present during the hearing. The recommendation made after the discussions are recorded and sent to the respective organization for taking necessary action on the Commission's advice/recommendation within a specified period of time. The Commission also held 11 sittings during the year.

5.1.3 The Commission's intervention brought relief to a number of petitioners. A few representative cases dealt with at the Headquarters office at New Delhi and at the Regional Offices of the Commission are discussed below:

5.2. Brief of selected Successful cases draft during year 2010 – 11

5.2.1 Service Matters

5.2.1.1 **Shri M.G.Yellewad, Pune** sent a representation to the Commission alleging that he had submitted applications alongwith all the documents to Dy. Collector, District Collector Office, Nanded for issuance of caste certificates to his cousins but the concerned officer was not issuing caste certificates and he has returned the applications demanding caste validity of father and mother of the

applicants. The petitioner stated that father of the applicants was illiterate and the mother had died. He requested the Commission to help him in the matter. The Commission took up the matter with District Collector, Nanded who directed the concerned officer to resolve the issue. As a result of the intervention of the Commission, both the relatives of the applicant were issued caste certificates by the issuing authority.

5.2.1.2 Shri Ambalal Verma, Chowkidar, District Public Relations Office, Mandsaur, M.P. sent a representation to the Commission alleging denial of promotion and ACP to him. He informed the Commission that he was serving in the department for last 20 years but he had not been given the above benefits admissible under the rules. The Commission took up the matter with the Commissioner, Directorate of Public Relations, Bhopal who informed the Commission vide his letter dated 12-8-2010 that the name of the applicant was not considered for ACP due to the error in the seniority list of the grade where his appointment was shown as casual worker. It was also informed that after detailed examination, it has been found that his first appointment as Chowkidar in the month of May 1987 was on a regular establishment. The department has issued orders for regularization of his services. The Commission was also informed that the employees who were senior to the applicant had since been promoted to the post of Daftary/Jamadar, his name will be considered as and when his name comes within the zone of consideration for promotion.

5.2.1.3 Smt. Chhotti Bai w/o late Shri Jamna Prasad Kol, who had worked as Semi-skilled labour in **Gun Carriage Factory (GCF), Jabalpur, Madhya Pradesh** sent a representation to the Commission alleging that she had been discriminated by denying compassionate appointment by the authorities of Gun Carriage Factory, Jabalpur. She informed that the GCF Jabalpur authorities carried out survey of her social and economic condition through labour welfare officer in December 2000, conducted examination for appointment as un-skilled labour and got verification of her antecedents done through District authorities but she was not given appointment by the management. The complaint was referred to the General Manager, GCF, Jabalpur by the Commission for furnishing a detailed report to the Commission in the matter. The Commission was informed that the case of the complainant for compassionate appointment was considered by the GCF authorities as per rules, but the appointment could not be given to her due to the reason that only five percent of posts available for direct recruitment in Group C and D posts in a year are earmarked for compassionate appointments and more deserving candidates only were given appointment. A copy of the reply was sent to the applicant for information who sent a rejoinder to the Commission informing that she had secured 68 points in the 100 point grading scale and candidates having much less numbers had been given appointment by the GCF administration and reiterated that she had been discriminated in the matter of compassionate appointment. A team of officers of the Commission's Regional office, Bhopal investigated the complaint and examined the relevant files/records of GCF, Jabalpur. It was observed that the compassionate appointments were made in arbitrary manner by the GCF authority during 1998 and 2002 and many candidates having fewer marks were given appointment ignoring the claim of the complainant. Thus, it was recommended that necessary corrective measures

should be taken to provide justice to her. On the basis of the recommendations of the Commission, Smt. Chhotti Bai was given appointment in the GCF, Jabalpur.

5.2.1.4 Shri Beni Prasad, Peon, PWD, Panna Division, Panna (MP) sent a representation to the Commission regarding denial of promotion to the post of Assistant Grade-III in the department. The Commission took up the matter with the Secretary, Govt. of M.P., PWD, Bhopal. After constant follow up in the matter, Under Secretary, Govt. of M.P., PWD, Bhopal informed the Commission vide his letter dated 23-10-2010, that Shri Beni Prasad, Adivasi has been promoted to the post of Assistant, Gr. III. (F.No. BP/3403/Panna/MP/3/10-GR)

5.2.1.5 Shri B.C.Uikey, Assistant, National Power Training Institute, Nagpur sent a representation to the Commission regarding his promotion. He informed the Commission that he has been working on the post of Assistant for the last 14 years but he has not been promoted so far. The benefits admissible under the ACP scheme have also not been provided to him. He requested the Commission to take necessary action on the complaint. The Commission referred the matter to the Director General, NPTI, Faridabad for taking necessary action and furnishing a report to the Commission. After constant follow up, the Commission was informed vide letter dated 22-10-2010 that Shri B.C.Uikey, Assistant has been promoted to the Grade of Sr. Assistant vide order dated 13-10-2010.

5.2.1.6 Shri S.B.Balwatkar, Supdt., Central Excise and Customs, Pune sent a representation to the Commission alleging his unjust transfer. He stated in the complaint that he had completed only two years in Pune III Commissionerate while the normal tenure for posting in a Commissionerate was six years as per the existing transfer policy. The Commission took up the matter with the Chief Commissioner of Central Excise, Pune who informed the Commission that the transfer of Shri Balwatkar had been cancelled.

5.2.1.7 Shri Vijay Tirky, Driver, Narmada Control Authority (NCA) sent a representation to the Commission alleging non payment of salary for the month of July 2010 by the administration of Narmada Control Authority, Indore. The Commission referred the matter to Director (Civil), NCA, Indore for necessary action and sending a detailed report to the Commission. In the meantime the applicant sent another representation to the Commission and informed that his officers are pressurizing and harassing him on the matter of sanctioning of commuted leave on medical grounds. The Commission forwarded this complaint also to the above-mentioned authority of NCA, Indore for redressal of the complaint. After follow up with the NCA, the Commission was informed vide letter dated 15-12-10 that salary for the month of July 2010 had been paid to the applicant and commuted leave had also been sanctioned to him.

5.2.1.8 Shri Keshlal Baiga and several other employees working in Hamidia Hospital, Bhopal on contract basis against Group D posts sent a representation to the Commission alleging discrimination by the hospital authorities in regularization of their services. They also complained that the hospital administration was not implementing the orders of Medical Education Department, Govt. of M.P. for regularization of their services. The Commission took up the matter with Dean, Gandhi Medical College, Bhopal who further referred the matter

to Joint Director and Supdt., Hamidia Hospital, Bhopal for sending comments on the subject. In spite of several reminders, no reply was received in the Commission from the Dean, GMC, Bhopal as well as Hamidia Hospital. To resolve the issue, a meeting was held in the Regional office of the Commission on 24-1-2011 with Dean, GMC, Bhopal wherein the matter was examined in detail. It was found that the medical colleges at Indore and Jabalpur had regularized the services of the employees working on contract basis against Group D posts on the basis of direction of Medical Education Department, Govt. of M.P. but this had not been followed by the GMC, Bhopal which resulted into the complaint by the applicants. In view of the above, the Dean, GMC, Bhopal was requested to issue orders regularizing the services of the applicants from the date of issue of Government order. Dean, GMC, Bhopal issued orders for regularization of services of the applicants accordingly.

5.2.1.9 Shri Mahendra Sonune, Under Secretary, Parliamentary Affairs Department, Government of Madhya Pradesh, Bhopal sent a representation to the Commission stating that he had been deprived in the matter of promotion and the department had promoted a person from unreserved category to the reserved post of Under Secretary. He requested that the promotion given to him from a later date should actually be given w.e.f. 1-1-05, the date on which he became eligible for promotion. The Commission took up the matter with the Secretary, Parliamentary Affairs Department, Government of M.P. Bhopal who informed the Commission that the request of the applicant had been acceded by the department. It was also informed that necessary corrections in the roster had been carried out.

5.2.1.10 Zonal Secretary, All India Bank of India SC/ST/OBC Employees Association, Bhopal (Madhya Pradesh) sent a representation to the Commission stating that Shri Poonam Chand, Safai Karmachari in Jaitpur Kalan Branch of the Bank was being paid consolidated salary of Rs. 1050/- only whereas he should have been paid salary @ 1/3 of the pay scale. He requested the Commission to help in the matter. The Commission took up the matter with Regional Manager, Bank of India, Bhopal region, Bhopal who informed the Commission that the matter had been referred to the Head Office of the Bank for favourable consideration. Later the bank authorities informed the Commission that the concerned employee was now being paid salary @ 1/3 of the pay scale.

5.2.1.11 Shri Atmaram Samora, Teacher in Govt. Middle School, Shadipura, District Shajapur, Madhya Pradesh sent a representation to the Commission alleging that he had not been paid salary for 13 months by his senior officers and he was being harassed by them. The Commission took up the matter with District Collector, Shajapur who inquired into the complaint and informed the Commission that an amount of Rs. 45,163 has been paid to the applicant as salary of duty period by the Principal of the School concerned.

5.2.1.12 Shri Kadvaji Mandaloi, Helper, Gandhi Medical College, Bhopal sent a representation to the Commission complaining that he was appointed to the post of Pump helper in GMC against a regular post but the appointment was given on contract basis with a fixed pay of Rs. 3595/- p.m. He informed the Commission that the post of Pump operator was vacant and he was performing the duty of that

post also on the order of GMC administration. As per the order of Govt. of Madhya Pradesh, his services should have been regularized but the administration of GMC, Bhopal was not regularizing his services in spite of several requests made by him. The Commission took up the matter with Dean, GMC, Bhopal who informed the Commission that advice had been sought from the Director, Medical Education, Govt. of M.P., Bhopal and further action could be taken on receipt of order from the Government. Thereafter the Commission referred the matter to Principal Secretary, Govt. of M.P., Medical Education and Ayush Department, Bhopal for a report in the matter. As no reply was received from him inspite of many reminders, a meeting was called on 24-1-11 with Dean, GMC, Bhopal in the Regional office, Bhopal to discuss the matter. In the meeting, it was observed by the Commission that the Govt. of M.P. had already issued instructions stating that the Dean, Gandhi Medical College Bhopal himself was competent to take decision on regularization of the services of Group D employees, including applicant and other similarly situated persons. The Dean, GMC, Bhopal was requested to take further action to resolve the issue. The Dean, GMC, Bhopal, thereafter issued orders regularizing the services of the applicant and others w.e.f. 8-3-2007.

5.2.1.13 Smt. Reshmi Shukla (Toppo), Museum Associate, Indira Gandhi Rashtriya Manav Sanghralaya, Bhopal (Madhya Pradesh) sent a representation to the Commission alleging irregularities in making appointments resulting in deprivation in the matter of genuine seniority. The Commission referred the matter to Director, IGRMS, Bhopal with the request to inquire into the complaint and send a detailed report to the Commission. Director, IGRMS, Bhopal sent a report to the Commission on the complaint. The reply of the Director, IGRMS, Bhopal was not found convincing and satisfactory. Therefore, a meeting was held in the Regional office of the Commission on 11-2-2011 with Director, IGRMS, Bhopal wherein all the records relating to the issues raised in the complaint were seen. It was observed that the complaint of the applicant was having substance and the IGRMS authorities have worked arbitrarily in taking decisions, which went against the safeguard of the ST applicant. After detailed discussion, Director, IGRMS, Bhopal agreed to take corrective measures and undo the loss suffered by the applicant. The Director, IGRMS, Bhopal responded positively and issued orders of promotion of the applicant w.e.f. 3-3-2000 fixing her seniority from that date and providing financial benefits admissible to her under the rules.

5.2.1.14 Shri B.Chinnappa Naik, Dy. Station Superintendent, South Central Railway, Dharmavaram, Andhra Pradesh submitted a representation to the Commission, regarding harassment in the matter of his transfer on promotion as Station Manager. As alleged by Shri Naik, his immediate Boss was not carrying out his promotional transfer order and was not relieving him to enable him to join at his new place of posting. It was found that there was miscarriage of justice and harassment to Shri Naik. Hence, the matter was taken up with the Divisional Railway Manager, South Central Railway, Guntakal, Andhra Pradesh vide letter dated 20.07.2010 for issuing necessary instructions to the Station Manager, Dharmavaram for relieving Shri Naik immediately so as to enable him to join as Station Manager at his new place of posting. As per the information received from Shri S.Subbarayudu, Sr.DPO, Guntakal vide his letter No.G/P.171/ SC/ST/NC/Vol.

dated 02.08.2010 Shri Naik was relieved and allowed to join at Kalikiri Station as Station Manager on 02.07.2010.

5.2.1.15 Shri V.P.Arunagiri, Chief Manager (Credit), United Bank of India, Southern Regional Office, Chennai submitted a representation regarding harassment in service in several ways. As alleged by Shri Arunagiri, although he was selected for the post of Dy.General Manager (TMS) in Bharat Sanchar Nigam Limited, NOC was not issued to him, as required by the BSNL, for joining in the said post. On examination of the representation, it was felt that the Bank authorities had discriminated with the ST employee and tried to put hindrance in the career growth of Shri Arunagiri by not issuing him NOC. The matter was taken up with the Chairman and Managing Director, United Bank of India, Kolkata (West Bengal) vide letter dated 28.07.2010 with the request for issuing NOC to Shri Arunagiri immediately. As per the information received from the General Manager (Resources Management), United Bank of India, Kolkata vide letter No.PA(AS)/NCST/4722/2010 dated 10th August,2010, the requisite NOC was issued to Shri Arunagiri on 09.08.2010.

5.2.1.16 A representation dated 30.08.2010 was received from **Smt. Sanjukta Sahar, Ward No.8 & 11 of Karanjia NAC, Baripada, Dist:Mayurbhanj of Orissa** wherein it was alleged that the concerned authorities were willfully delaying the appointment of Anganwadi Worker in Ward No.8 & 11 of Karanjia NAC, although there was direction from the Apex Court to operationalising all AWCs/Mini AWCs sanctioned under 3rd Phase expansion of ICDS latest by 31st July,2010. She was one of the candidate for the said post reserved for ST. Immediately the matter was taken up with the Collector and District Magistrate, Mayurbhanj as well as with the District Social Welfare Officer, Mayurbhanj vide letter dated 02.09.2010 followed by reminder dated 28.09.2010 for early appointment of Anganwadi Worker against the reserved quota. In response to the letter of the Commission, the District authorities completed the selection process on 23.09.2010 and Smt. Sanjukta Sahar, the petitioner, was given appointment as Anganwadi Worker in Ward No.11 of Karanjia NAC and she had joined the duty on 29.09.2010 as intimated by the District Social Welfare Officer, Mayurbhanj vide letter dated 06.10.2010.

5.2.1.17 Shri Supei Majhi, Junior Typist, Directorate of Employment, Orissa submitted a representation regarding regularization of his service in the post of Junior Typist on the basis of the Judgment of the Hon'ble High Court, Orissa. Although the Hon'ble High Court passed order on 13.12.2001 in OJC No.14849/1999 for regularization of his services in the post of Junior Typist w.e.f. 19.11.1990, the actual date of his joining in the said post on ad-hoc basis, with all service benefits, the order of the Hon'ble High Court was not carried out by the Directorate of Employment, Government of Orissa, Bhubaneswar and Shri Majhi was harassed. The matter was taken up with the Commissioner-cum-Secretary, Labour and Employment Department, Government of Orissa as well as with the Director of Employment, Bhubaneswar vide letter dated 21.04.2009 followed by reminders dated 25.05.2009, 30.06.2009, 03.08.2009 & 29.03.2010. As there was no response from them inspite of so many reminders, the matter was taken up with the Chief Secretary, Government of Orissa, Bhubaneswar vide letter dated 10.05.2010. Immediately, a reply was received from the Commissioner-cum-

Secretary, Labour and Employment Department vide letter No.4595 dated 02.06.2010 wherein it was stated that Government initiated steps for regularization of services of Shri Majhi. Subsequently the matter was pursued with the Commissioner-cum-Secretary, Labour and Employment Department vide letter dated 15.09.2010 and 03.02.2011 for early settlement of the case of Shri Majhi. Finally, on the intervention of the Commission, the orders of the Hon'ble High Court mentioned above, which was lying pending for a long time was implemented and the services of Shri Majhi was regularized in the post of Junior Typist w.e.f. 19.11.1990, the date he actually joined in the post of Junior Grade Typist, with all service benefits vide Office Order No.662 dated 27.01.2011 of the Directorate of Employment, Government of Orissa and the same was intimated to the Regional Office of the Commission by the Deputy Director of Employment vide their letter dated 11.02.2011.

5.2.1.18 A representation was received from **Shri Haladhar Sethy, President, Orissa State SC/ST Youth and Students Council, Bhubaneswar** regarding harassment in service to Shri A.Dungdung, Dy.Manager, Balimela Generation Division, Malkangiri of Orissa Hydro Power Corporation Ltd. Bhubaneswar. Shri Dungdung was placed under suspension from 23.03.2009 to 26.07.2009 and the salary for the said period was not paid to him. Minor penalty i.e. "Censure" was also imposed on him inspite of the fact that charges leveled against him could not be proved by the Inquiry Officer. By examining the whole matter, it was found that there was miscarriage of justice and harassment to Shri Dungdung. The matter was, therefore, immediately taken up with the Chairman-cum-Managing Director, Orissa Hydro Power Corporation Ltd. Bhubaneswar vide letter dated 19.01.2011 and an interim reply was received from the Manager(HRD), OHPCL wherein they prayed for three weeks time to re-examine the whole matter and to dispose of the case of Shri Dungdung. As no reply was received within the permitted time limit, the matter was again taken up with the Chairman-cum-Managing Director, OHPC vide letter dated 11.03.2011 and a final reply was received from the Asst. General Manager(HRD), OHPC wherein it was stated that the Appellate Authority exonerated Shri Dungdung from the charges and minor penalty i.e. Censure. His period of suspension from 23.03.2009 to 26.07.2009 was also treated as 'duty' and he was paid his salary for the said period.

5.2.1.19 **Shri I.Narayana Rao, Deputy General Manager(Admn.& CM), O/o the General Manager Telecom District, BSNL, Kadapa** submitted a representation dated 30.07.2010 to the Commission, requesting intervention of the Commission for his transfer to his home town i.e. Tirupati (Chittor SSA) as he was in the verge of retirement. He had also some genuine family problems which needed his presence at his native place. The matter was taken up with the Chief General Manager(Telecom), BSNL AP Circle, Andhra Pradesh vide letter dated 04.08.2010 followed by reminder dated 28.09.2010 to consider his case taking into account his genuine personal problems and short period of service remaining before retirement. Accordingly, Shri Rao was transferred and posted to Tirupati SSA vide order dated 03.11.2010.

5.2.1.20 **Department of Atomic Energy, Scheduled Castes and Scheduled Tribes employees welfare association, Rawat Bhata** submitted a petition dated 10.5.2010 to the Regional Office of the Commission, and requested for

intervention and help in providing required information relating to verification of caste 'Rathva' as Scheduled Tribe of Shri Sanjay Bhai Rathwa S/o Bachu Bhai R/o Village – Motibej, Tehsil – Jetpur Pari, District Vadodra (Guj) through district authority. It was stated that Shri Sanjay Bhai Rathwa was appointed as 'Scientific Assistant – B' in Heavy Water Plant, Kota but at the instance of non – satisfactory response from the district collector, Vadodara and from the executive magistrate, Jetpur Pari, the Competent Authority in the Department had issued his dismissal order from the government service. The collector, Vadodara was requested by the Commission, vide letter dated 15.6.2010 and 1.2.2011, to verify the caste certificate issued to him urgently. The matter was also taken up with the Department concerned for consideration as delay in response from the Vadodara District Authorities was beyond the control of the petitioner. On the intervention of the Commission the department authorities at Central Office agreed to restore his appointment. An appreciation letter has been received in the Commission from the Association vide letter dated 18.9.2010 for kind intervention in the matter and desired relief to Scheduled Tribe person.

5.2.1.21 The National Thermal Power Corporation Ltd., Kawas Gas Project, Surat (Gujrat) had requested the district authority to verify the Scheduled Tribe certificate of Shri Jayesh Shanti Lal Chaudhari R/o Village Ukai, Tehsil Songadh, District Surat (now district - Tapi) who is an employee in NTPC, but district authority did not respond. The NTPC had sought intervention of the Commission in the matter and assistance of the National Commission for Scheduled Tribes Regional Office, Jaipur in getting the verification of caste status. The District Collector, Surat (Gujarat) was accordingly requested vide Commission's Regional Office letter dated – 29.6.09 and 25.11.09 for verification of caste certificate of employee concerned as early as possible. The District Magistrate, Surat informed to the Regional Office of the Commission vide his letter dated 4.12.2009 that employee's caste certificate has been verified from Mamlatdar, Sonagadh and found correct. This office informed the NTPC accordingly.

5.2.1.22 Shri Sajan Lal Meena, Manager, Rajasthan State Cooperative Land Development Bank Ltd., Jaipur (Rajasthan) in his representation received on 13.10.06 mentioned that out of 25 sanctioned posts of Senior Manager in the Bank there was no representation of Scheduled Tribes. He further added that DPC for the above post was to be convened very soon. He requested the Commission for taking up the matter of his promotion to the post of Senior Manager with the Bank authorities. The matter was taken up with the Secretary and Registrar, Cooperatives as well as Administrator of the Bank vide letter dated 17.10.06 followed up by several reminders. The matter was finally taken up with the Chief Secretary, Government of Rajasthan and the last letter was followed up on 22.01.2010. Finally, the petitioner along with another Scheduled Caste Manager also got orders for promotion to the post of Senior Manager due to persistent correspondence by the Commission with the authorities concerned.

5.2.1.23 A joint representation from **Junior Engineers of CPWD** belonging to Scheduled Tribes Category was received on 10.6.2010 seeking intervention of the Commission for their promotions to the post of Assistant Engineer. A detailed letter dated 14.6.2010 was sent to the Secretary, Ministry of Urban Development, Government of India, Director General of works CPWD asking them to take action

for filling the backlog vacancies as per the provisions of Department of Personnel and Training Office Memorandum – AB-14017/12/87-Estt.(RR) dated – 18.3.88 and subsequent Amendments by extending relaxation and concessions in service experience and submit reply within 15 days time. The matter was regularly followed up by the Regional Office, Jaipur with the Department vide reminder dated –6.7.2010, 21.10.2010 and 16.12.2010. The O/o Directorate General of Works CPWD, New Delhi intimated to the commission vide letter dated 14.12.2010 that the Scheduled Tribe Junior Engineers have been promoted as Assistant Engineer after allowing concessions. The petitioners also conformed about the promotions to the Commission while extending thanks in writing for the needful interventions by the Commission in getting their promotion.

5.2.1.24 All India State Bank of Bikaner and Jaipur SC/ST Employees Welfare Association, Jaipur submitted a representation in respect of Shri B.L. Meena, Manager for his non – promotion from MMGS – III to SMGS – IV. He was working in Scale – III since the Year 2002. The matter was pursued with the SBBJ Bank management vide letter dated 25.2.2009 and subsequently in a discussion with the General Manager on 4.3.2010 it was informed that the candidate has been promoted as Chief Manager during promotion exercise 2009-10.

5.2.1.25 Shri Ram Singh Meena, Assistant Manager, State Bank of Bikaner and Jaipur was transferred from Jaipur to Bharatpur on his promotion under Junior Scale – I. Consequent upon his transfer he approached the commission's Regional Office, Jaipur for retention in Jaipur under relaxation provided to sports person. On taking up the matter with the Bank Management vide letter dated 13.1.2010 and 23.2.10, 20.4.10, 2.11.10 and also discussion held with the Bank Management at the Regional Office of the Commission on the 4.3.2010 the Bank vide its letter dated 25.11.2010 informed that the transfer on promotion of Shri Meena and others out side present District place was done as per Bank Policy. Shri Meena had pointed out that the other officer appointed on Sports Quota were not transferred, retaining him at Jaipur. The bank management later on transferred him also outside Jaipur district. However taking into consideration the discussion held with the Commission on 4.3.2010 with the bank authorities the transfer order was issued for SBBJ main Branch, Dausa (Rajasthan) in place of earlier transfer order for Bharatpur. The petitioner joined the duty at Dausa Branch(F. No. 5/3/Raj/2/2010 – R.U.)

5.2.1.26 National Thermal Power Corporation, Kawas Gas Power project, Surat vide their letter dated 29.10.2009 requested commission's Jaipur Regional Office to get expedited the matter of verification of caste status of Mrs. Reena Kumari, Engineer (IT) R/o District Bharatpur from the District Magistrate as considerable period of time had elapsed but no communication was received to the company from District Administration. The matter was taken up with the Collector, District Bharatpur on 23.12.09, followed with reminders dated 25.01.10 and 18.03.2010. The Sub Divisional Magistrate, Bayana district, Bharatpur (Raj.) vide his letter dated 25.03.2010 confirmed the Scheduled Tribe status of the lady officer. National Thermal Power Corporation was informed accordingly.

5.2.1.27 Shri Mool Chand Meena, Manager, Dena Bank requested in his representation dated 13.01.2010 for his transfer from Jaipur to Kishangarh

(District Ajmer, Rajasthan) in place of Bharatpur due to his family circumstances. The matter was taken up with the Chief Managing Director and General Manager (Personnel) of Dena Bank Head Office, Mumbai for sympathetic consideration of the petitioner request and on the intervention of the Commission his request was acceded by the Management. The petitioner informed in writing for the redressal of his grievance and extended thanks.

5.2.1.28 A representation dated 2.4.2010 was received from **Shri Shyam Sundar verma, Head Booking Clerk, Alwar Junction, Jaipur Division, North-Western Railway** regarding physical assault by fellow employee. The matter was taken up with the Superintendent of Police, District Alwar (Rajasthan) vide letter dated 22.4.2010 seeking comments along with action taken report on the representation. The matter was followed up by a reminder dated 14.5.2010. Deputy Chief Personnel Officer, North – Western Railway replied that on enquiring into the witnesses and evidences as well as documents made available, the charges of physical assault were not proved. However, as an administrative measure, the person accused in the complaint by the petitioner was transferred from Alwar. The Complainant expressed his satisfaction over the prompt action in the complaint by the Commission.

5.2.1.29 A representation dated 19.1.2010 was received from **Smt. Reena Meena W/o Late Dr. Brij Gopal Meena, Kota** regarding non-payment of leave encashment of earned leave by Government of Rajasthan even after lapse of one year after the death of her husband who had died in a road accident on 26.12.2008. The matter was taken up with the Secretary and Director, Medical and Health Department, Government of Rajasthan, Jaipur vide letter dated 26.3.2010 for necessary action. The petitioner informed to the Commission that on the intervention of Commission's office, the Department had released the leave encashment amount.

5.2.1.30 **Smt. Shanti Devi Meena W/o Shri P.D. Meena, Village & Post Bhadra, Tehsil Bassi, Jaipur (Rajasthan)** in her representation dated 22.10.2009 requested transfer of her husband, Shri P.D. Meena, Manager, Vijya Bank from Udaipur to Jaipur due to family circumstances. A letter dated 17.2.2010 was sent to Chief Managing Director, Vijya Bank, Head Office, Bangalore and General Manager, Regional Office at New Delhi for considering the request sympathetically keeping in view the family condition. The General Manager (Personnel) of the Bank vide letter dated 31.1.2011 informed the Commission that request for transfer of Shri P.D. Meena had been considered favourably and he had been transferred from Udaipur Branch to Nahari-Ka-Naka, Jaipur Branch as requested.

5.2.1.31 **Smt. Reena Meena W/o Late Dr. B.G. Meena, Kota (Rajasthan)** stated in her representation dated 18.1.2010 that her husband Dr. Brij Gopal Meena had died in a road accident on 26.12.2008 but even after lapse of more than one year period after his death she has not been paid the New Contributory Pension Scheme amount of her late Husband by the State Insurance and Provident Fund Department, Government of Rajasthan, Jaipur. The matter was taken up with the Secretary and Director, State Insurance and Provident Fund Department, Government of Rajasthan, Jaipur vide letter dated 10.3.2010 with the request to

furnish action taken report in the case. Due to commission intervention the matter was expedited and ultimately she got the pending payment under New Contributory Pension Scheme. She expressed thanks in writing for helping her in resolving the matter.

5.2.1.32 Shri Nathela Ram Thakur, Group-D Employee working in Industrial Training Institute, Suregaon, Distt. Durg (Chhattisgarh) sent a representation to the Commission alleging that the Directorate of Employment and Training, Govt. of Chhattisgarh was not issuing order for regularization of his services of period of suspension and payment of salary and allowances for that period, as a result of which he was facing financial hardship. He also informed that this is adversely affecting education and marriages of his children. He requested the Commission to help in the matter. The Commission took up the matter with the Director, Directorate of Employment and Training, Govt. of Chhattisgarh, Raipur. After constant follow up, Director, Directorate of Employment and Training, Govt. of Chhattisgarh, Raipur informed the Commission vide his letter dated 23/04/2010 that the period of suspension of the employee from 25/08/06 to 05/06/07 (during which he was detained in the jail) has been declared working days under FR 54(b) as he was acquitted by the court giving him benefit of doubt. The Commission was also informed that orders have been issued for payment of pay and allowances for the above.

5.2.1.33 Shri Tain Singh Dhruv, Secretary, Akhil Bhartiya Adiwasi Vikas Parishad, Dhamtari (Chhattisgarh) forwarded a representation of Shri R.K.Dhruv, retired Accounts officer, R/o Bathena ward, Dhamtari in which it was stated that he had retired from Chhattisgarh State Electricity Board and his department had issued him a notice for making recovery of reimbursed tuition fee amounting to Rs. 10,000/- from his pension which is against the rules as he was entitled to get the reimbursement of tuition fee of his son under the rules who was studying in GS Institute of Technology, Indore from the year 1999 to 2004 . He also argued that the distribution of officers and staff of Madhya Pradesh State Electricity Board to MPSEB and Chhattisgarh State Electricity Board after the reorganization of Madhya Pradesh and creation of Chhattisgarh State will not make any affect on his above entitlement. The Commission took up the matter with Chairman, Chhattisgarh State Electricity Board, Raipur. After constant follow up, the Commission was informed vide letter dated 17/09/2010 that the matter has been examined and it has been found that the applicant was entitled for reimbursement of 50% tuition fee for education of his son at that point of time and necessary direction has been issued to the concerned authority for not making any recovery from the pension of Shri R.K.Dhruv.

5.2.1.34 Shri Sanjay Thul, President, Customs and Central Excise SC, ST & OBC Employees Welfare Association, Raipur (Chhattisgarh) sent a representation dated 21/10/2010 to the Commission stating that **Shri Vijay Kakotiya, Havaldar in Central Excise & Customs, Raipur** had died on 24/02/2010 after prolonged illness. His wife Smt. Sunita Kakotiya lost all her money in treatment of her ailing husband. There was no leave at credit of the deceased employee due to his illness. Daughter and son of the deceased employee were studying in class XI and middle school respectively. He also informed the Commission that even after a lapse of 8 months, family pension has

not been provided by the department to Smt. Sunita Kakotiya. He requested the Commission to intervene in the matter so that she could get family pension urgently. The Commission took up the matter with the Commissioner, Central Excise and Customs, Raipur vide letter dated 26/10/2010 who informed the Commission vide letter dated 08/12/2010 that the delay had occurred due to late submission of papers by the applicant. The Commission was informed that now family pension had been released, and Gratuity, GPF balance and CGEGIS have been paid to her.

5.2.1.35 Shri Sanjay Thul, President, Customs and Central Excise SC/ST & OBC Employees Welfare Association, Raipur (Chhattisgarh) sent a representation dated 17/07/2009 to the Commission and informed that **Shri R.D. Tekam had joined Department of Customs and Central Excise** in the year 1996 as Lower Division Clerk but on 31.03.1999, without any reasonable and valid ground, he had been issued charge sheet by his department. The department had taken more than three years to conclude the inquiry. In outcome of the enquiry report, the allegation against Shri R.D.Tekam was found baseless and fabricated. But due to the above charge sheet, his promotional avenues were held-up and his juniors had superseded him. Shri Tekam was promoted as UDC in the year 2004 whereas his juniors were promoted much earlier. Due to above Charge sheet he was not allowed to attend the departmental examination for the post of Inspector which was attended by number of his juniors who were promoted as Inspector vide order no 15/2006 and 16/2006 dated 10.07.2006. Thus, his carrier has been spoiled by the department. The Commission took up the matter with the Chief Commissioner, Office of the Central Excise, Bhopal & the Chairman, Central Board of Excise and Customs, New Delhi vide letter dated 20.07.2009 & continued to follow up the case with the above authorities. Shri Sanjay Thul, President, Customs and Central Excise SC/ST & OBC Employees welfare Association, Raipur informed and thanked the Commission vide letter dated 25.03.2011 that due to timely intervention by the Commission, Shri Tekam had been promoted to the post of Inspector, Central Excise on 24.03.2011.

5.2.1.36 Shri Biswanath Singh Munda. Ex. Sr. Manager, Indian Bank, Ranchi (Jharkhand) vide his representation dated 28.08.2010 to this Commission stated that he was handed over Charge Sheet dated 26.06.2010 on 29.06.2010 one day before his retirement on 30.06.2010. On the basis of Disciplinary action by circle office, Patna Head office ceased his service from Bank vide letter dated 30.06.2010 and with held payment of all retirement benefits, even the contribution of CPF has not been paid to him. He has submitted his reply on the Charge Sheet to the Disciplinary authority vide his letter dated 14.07.2010, but till date no payment had been made. The matter was taken up with the CMD Indian Bank vide letter dated 01.09.10. In response to this letter, the Assistant General Manager (HRM) vide his letter dated 30.09.2010 intimated that consequent to the completion of the Departmental action the following has been settled/ordered:

- i) He was allowed deemed retirement with effect from 30.06.2010
- ii) On 29.09.20210 an amount of Rs. 8,96,087.01p was settled to him as Employee's Contribution towards PF.
- iii) On 29.09.2010 an amount of Rs. 7,25,938/- was settled to him towards Gratuity.

- iv) Mr. B.S. Munda was also paid an amount of Rs. 8,17,820.99p towards the Bank's Contribution towards PF.

5.2.1.37 Shri Korliyus Marandi, Junior Electrical Engineer, PTPS, Patratu, Jharkhand vide his representation dated 01.11.2010 stated that he was working as a Junior Engineer from 13.12.2000 and as per the Board OM no. 632 dated 23.12.1981 he has completed the requisite period of service to be promoted to the post of Assistant Executive Engineer 3 years for General Caste candidates while requirement for SC/ST candidates was 2 years only. As per the Board OM no 740 dated 11.01.1991 the only reserved candidates are to be promoted because one year relaxation has been provided to the reserved category candidates. 19 other candidates had already been promoted vide office order no. 218 and 236 dated 10.01.09. He has submitted that he be promoted to the post of Assistant Executive Engineer. The matter was taken up with the Secretary, JSEB, Ranchi vide letter dated 08.11.2010. The Joint Secretary, JSEB, Ranchi vide letter dated 30.12.2010 intimated that Shri K. Marandi had been promoted to the post of Assistant Executive Engineer.

5.2.1.38 Shri Anthony Topno, Allahabad Bank, Matihani, Distt. Begusarai, Bihar vide his representation dated 23.11.2010 stated that he had been transferred on promotion on 23.04.2007 to the Matihani Branch, Distt. Begusarai Bihar, which is under Bhagalpur Division. As per the Banks policy the Bank employees are required to be transferred back after completion of 3 years. In this regard a meeting was held on 28.04.2010 at Deoghar where five Zonal Heads held meeting and a circular no. ZOP/ADMN/PA/4209 dated 30.04.2010 was issued wherein it was stated that Anthony Topno will be transferred to Ranchi division and Shri Shalkan Hembrom will be sent to Bhagalpur Division from Ranchi. But due to anti Adivasi attitude of the AGM Bhagalpur Division and DGM of Ranchi Division he was not being relieved from Matihani Branch. The matter was taken up with the CMD, Allahabad Bank vide letter dated 08.12.2010 and in response to this letter the GM (HR) Allahabad Bank vide his letter dated 28.12.10 informed that Shi Topno had been relieved to report at Ranchi Zonal Office.

5.2.1.39 Shri Peter Murmu, Upper Division Assistant, LIC of India, Dalsihсарay, Branch, Distt. Samastipur vide his representation dated nil alleged that he was misbehaved and threatened to kill during office hours. The matter was taken up with the Regional Divisional Manager, LIC of India, Patna vide letter dated 24.02.2011 and in response the Secretary, (P&IR) LIC, Patna vide his letter dated 04.03.2011 informed the Commission that the SDM, Begusarai was asked to get the matter investigated by a SC/ST category officer & send the same along with his observation. As per the enquiry conducted and received the matter has been compromised by both the parties without any further disagreement.

5.2.1.40 Smt. Laxmi Devi W/o Jawahar Dev, Sch. Tribe of vill. Dudhaila P.O. Enaitpur P.S. Dandpur Distt. Chapra, Bihar vide her representation dated 03.09.2010 alleged that approach road leading to her house and land had been encroached upon by Heera Lal Mahato S/o Lutan Mahato of the same village. Shri Heera Lal and his two sons were threatening to murder her husband and involve him in false criminal case. The matter was taken up with the DM and SP, Chapra

vide letter dated 10.09.2010. The Superintendent of Police, Saran vide his letter dated 15.12.10 intimated that the matter was enquired by the Office-in-charge (OIC), Daudpur, who had visited the disputed land at Dudhaila and enquired from the villagers and the applicant Smt. Laxmi Devi and the opposite party Shri Heera Lal s/o Lutan Mahato were also present. It was reported to the OIC that the matter had been amicably settled and agreement paper was also submitted to the OIC in this regard and the applicant also requested for closure of the case.

5.2.1.41 The Scheduled Tribe **Teachers of the Bokaro District** vide their representation dated 7-8-2009, addressed to the Commission, sought intervention of the Commission in for payment of salary as per the pay Commission's recommendations. In the petition, it was inter- alia, alleged that they had been deprived of raise in salary including payment of arrears consequently to implementation of the 6th pay Commission's recommendations. It has represented that the authorities concerned were demanding 50% of arrears in lieu of revised salaries and payment of arrears. The revised salaries of arrears have been retained by DDO the concerned unauthorizedly and they were also demanding money for taking action in the matter. The Regional Office, NCST, Ranchi took up the matter with the Secretary HRD Dept. Govt. of Jharkhand vide letter dated 27-8-2009, followed by subsequent reminders dated 07-10-2009 and 10-11-2009 respectively. The matter was also taken up with the DC, Bokaro and Distt. Education Officer vide letter dated 10.11.2009, followed by reminders dated 15.03.10 and 07.07.2010 respectively.¹ The Distt. Education Officer, Bokaro vide letter dated 03.08.10 intimated that pay fixation has been done as per the VI pay Commission's recommendations and arrears and salary had also been paid to the teachers accordingly.

5.2.1.42 **Shri P.Pookunhi, Sea Cunny Police Boat, Police Headquarter, Kavaratti, UT of Lakshadweep** in his representation to the Commission informed that he had worked in the Central Excise and Customs Department, Kochi from November 1976 to January 1994 and had saved Rs. 39,510/- in his GPF account. Later on, he got a job in the Police Department in Lakshadweep and requested for transfer of the amount in his new GPF account at Lakshadweep. The Central Excise & Customs Department transferred the amount by cheque but it was not credited in his GPF a/c due to the incorrect account number. Sh. Pookunhi represented that he had been continuously writing to the Central Excise & Customs Department, State Bank of India, Treasury Branch, Ernakulam and the concerned PAO for the settlement but it could not be settled even after a lapse of 16 years. He requested the Commission to intervene in the matter so as to stop the harassment by the concerned officials and help him in getting the balance amount of GPF credited in his account. The Commission took up the matter with all the concerned authorities and after constant follow up, the Accounts Officer, Principle Pay & Accounts Office, UT of Lakshadweep, Kavaratti informed the Commission vide letter dated 12.8.2010 that an amount of Rs. 98,882/- (Principle: Rs. 39,510/- Interest Rs. 59,372/-) had been credited in the account of the applicant.

5.2.2 Development Matters

5.2.2.1 Shri Gordhan Sindhi Bhil r/o village Gulamnagar, Tah.Bhanpura, District Mandsaur sent a representation to the Commission stating that he and his community persons had been residing in the village for the last 60 years. His father Kasturaji was rehabilitated in the village in 1953-54 and 5 acres of land was allotted to him by the State Government but the District administration was treating the land under his constant possession for the last 60 years as encroachment on the Government land. He requested the Commission to help in the matter. The Commission referred the matter to the District Collector, Mandsaur for necessary action and furnishing a report to the Commission, The District Collector, Mandsaur vide letter dated 5-4-2010 informed that necessary corrections had been made by the Revenue authorities and the name of the applicant had been entered in the revenue records and therefore, his possession of the land will not be treated as encroachment.

5.2.2.2 Shri Vijaykumar Singh, r/o Khadkya Ghat, District Khargone sent a representation to the Commission and informed that he was an agricultural labour with a responsibility of 5 children. His wife had died after serious illness at the age of 28 years and he had lost all his belongings in the treatment of his wife. He requested for Government assistance to enable him to face the situation. The Commission took up the matter with the District Collector, Khargone who, after inquiry, referred the matter to the Secretary, Chief Minister's Office, Bhopal for assistance from CM Relief Fund with the recommendation for payment of Rs. 30,000/- to the family. Thereafter, the Commission requested the Secretary, CM Office, Bhopal for necessary action in the matter who vide letter dated 6.5.2010 informed the Commission that Hon'ble Chief Minister had sanctioned an amount of Rs. 10,000/- to the applicant as assistance.

5.2.2.3 Ms. Karishma Remesh Bhai Patel, r/o Govt. Bahumali complex, Silvassa, UT of Dadar and Nagar Haveli sent a representation to the Commission stating that she had been given admission in the Raisony Engineering and Information Technology College, Pune and had deposited a tuition of Rs. 65,000/-. Subsequently the college cancelled her admission disputing her caste certificate as her caste was enlisted as ST in the list of UT of D&NH but it was not enlisted in the ST list of Maharashtra State She requested for refund of the tuition fee but the college authorities were not refunding the same in spite of several repeated requests. Ms. Patil requested the Commission for getting refund of the tuition fee. The Commission took up the matter with Principal of the College concerned. Consequently an amount of Rs. 65,000/- was refunded to her by the College. The Petitioner later confirmed receipt of the refunded amount.

5.2.2.4 Smt. Kamla Bai and some other women r/o village Lonara, Tah. and District Khargone in their representation informed the Commission that they were old ladies who were getting old age pension earlier but they were not being paid old age pension for the last 4 months. They further stated that whenever they approached the Gram Panchayat officials, they were harassed as a result of which they were living hand to mouth. They requested the Commission to intervene in the matter. The Commission took up the matter with the District Collector, Khargone who vide letter dated 15-6-2010 informed the Commission

that payment of old age pension had been made into the accounts of the applicants.

5.2.2.5 Shri Rama Kakodia r/o village and post Bhimpur, District Betul through his representation, informed the Commission that the District Collector, Betul had issued license to him for cutting of teak trees up to the value of Rs. 1 lakh under *Lok Vaniki Adhinyam*, 2002 and seven teak trees standing in his field were cut under the supervision of the Forest Department officials. This wood was carried in the Government wood center, Betul. Even after a lapse of one year, his due amount was not being paid by the Forest Department officers as a result of which he was suffering financially as well as mentally. He requested the Commission to help in the matter. The Commission took up the matter with the District Collector, Betul and PCCF, Forest Department; Govt. of M.P. Bhopal who informed that the delay had occurred due to the reason that one tree was cut illegally. Finally Shri Rama Kakodiya was paid an amount of Rs. 55,235/- after deducting a penalty of Rs. 20,000/- imposed by the Sub-divisional officer (Revenue) Bhainsdehi, Betul.

5.2.2.6 Shri Teta Rupchand Bagul and many other ST individuals of village Hanumantpara, District Dhule sent a complaint to the Commission informing that Shri Sukhlal Kharba Kokadi, owner of the ration shop had not been distributing the ration to the poor residents of the village. He was selling the ration in the open market during night. They requested from inquiry into the complaint and cancellation of the license of the shop. The Commission referred the matter to the Collector, Dhule who informed the Commission that the license of the ration shop had been cancelled and his security deposit had been forfeited.

5.2.2.7 Shri Gordhan r/o Gulabnagar, village Bhimpura, Mandasaur (Madhya Pradesh) submitted a representation to the Regional Office, NCST, Bhopal informing that the Scheduled Tribe residents of his village were not getting any benefits and facilities like widow pension, Indira Awas, education to children, old age pension, self employment scheme etc. Shri Gordhan informed that most of the villagers are BPL cardholders. He sought the Commission's help in the matter. The Regional Office, NCST, Bhopal took up the matter with the District Collector, Mandasaur who informed the confirmed that these benefits were being given to the eligible villagers.

5.2.2.8 Shri P.S.Karma, Dy. Collector, Ratlam (Madhya Pradesh), through a representation on behalf of the residents of the forest village Doglapani, Tahsil Kannor, District Dewas, informed the Commission that residents of the village had been deprived of basic amenities like house, education, electricity, drinking water, medical facilities, roads, bridges, ration cards etc. The Commission was also informed that Korku Scheduled Tribes predominantly inhabited the village. Sh. Karma requested the Commission to take up the matter with the concerned authorities for providing basic amenities in the village. The Commission took up the matter with the District Collector, Dewas who informed the Commission that five Indira Awas had been built in the village by the Gram Panchayat and four hand pumps had also been commissioned to provide drinking water. There are two wells in the village, which are being used for drinking water. There was also a

primary school in the village for the students of the village. The students were being provided school uniforms and mid-day meal. Ration was also being distributed in the village. The villagers were being given work under the MGNAREGA scheme. There was no electricity supply in the village, but the Gram Panchayat was working on getting the village electrified.

5.2.2.9 A News appeared in Bhopal edition of the Nai Dunia News paper on 7-10-09 in which it was informed that girls, after completing middle school in the girls middle school which was running in Nanpur village of Alirajpur District for the last 39 years, could not get further education, as there was no high school in the nearby areas. The District had 25.5 percent female literacy only and the girls had to go to Jobat or Alirajpur which were 20- 22 kms away for high school education. Considering the need to boost efforts to improve level of education among ST girls in the District, the Commission requested the Commissioner, Tribal Development Department, Govt. of M.P. Bhopal and the concerned District Collector to take necessary steps for up gradation of the girls middle school, Nanpur to high school or higher secondary school. As a result of Commission's intervention the girls middle school, Nanpur was upgraded as high school.

5.2.2.10 Shri M.S.Dhurve, District President, Akhil Bharatiya Adivasi Vikas Parishad, Betul forwarded a representation to the Commission stating that Shri Sahablal s/o Shri Dalat Uikey r/o village Mathani, District Betul had submitted a complaint to his organization regarding forceful encroachment of his land by one Makhan Pradhan who had also constructed a hut on his land. Sh.Dhurve sought Commission's intervention in the matter. The Commission took up the matter with the Superintendent. of Police, Betul who, after inquiry, furnished a report to the Commission. As per the report, it was found that Makhan Pradhan and Savitri had encroached upon the land of the applicant and had also illegally constructed a hut on it. It was further informed that the hut had been removed from the land of the applicant. The applicant also informed the Commission that he was satisfied with the action taken in the matter.

5.2.2.11 Shri R.A.Choudhary, r/o Karanji Khurd , District Nandurbar (Maharashtra) submitted a complaint against the fair price ration shop holder of the village Vakipada, taluka Navapur alleging that the shop keeper was not providing food grains and kerosene to the ration card holders. Sh. Choudhary also informed that the gram sabha had passed a resolution against the shop holder but the concerned authorities had taken no action. He requested the Commission to do the needful in the matter. The Commission took up the matter with the District Collector, Nandurbar who inquired into the complaint through tahsildar of the area. Based on his report, the District Supply Officer had cancelled the license of the shop and forfeited the security deposit. The shop holder had challenged the Order before the Dy. Commissioner, Supply who ordered to forfeit 100% security deposit of the fair price shop. The Commission was also informed that the District administration was taking care to provide ration to the cardholders at the rates given and the quantum fixed by the Government.

5.2.2.12 Shri K.A.Davis, r/o Pazhavallam tribal colony, Thrissur (Kerala), represented to the Commission that he required wood for periodical work of his old residential house and he had approached the forest department officials of the

District to allot the required wood for the purpose. Sh. Davis had also submitted the requisite documents to the concerned authorities but the matter could not be settled. He requested the Commission to help in the matter. The Commission took up the matter with the District Collector, Thrissur who informed that the Conservator of Forests, Central Circle, Thrissur had been requested to furnish a detailed report in the matter. Subsequently, the District Collector, Thrissur, vide letter dated 28-2-2011 informed the Commission that the applicant has been sanctioned free timber upto maximum of one cubic meter on 10-2-2011 by the Chief Conservator of Forest, Central Circle, Thrissur.

5.2.2.13 District President, West Nimar SC/ST Development Council, Khargone (Madhya Pradesh) sent a news paper clipping to the Commission in which it was reported that a Peon of the tahsil office, Bhagwanpura was taking bribe of Rs. 50 to Rs. 100/- for preparing caste certificates and income certificates from the students and other persons. The newspaper also published photographs of the concerned employee indulged in the act. The Commission took up the matter with the District Collector, Khargone who informed that the peon had been suspended with immediate effect and a departmental inquiry had also been constituted against him.

5.2.2.14 Shri M.S.Dhurve, District President, Akhil Bharatiya Adivasi Vikas Parishad , Betul (M.P.) forwarded a joint representation of five girls who passed out class XII from Shri Shivaji Higher Secondary School, Badgaon, Betul. In their complaint, the girls had alleged that they had not been paid 'Kanya Saksharata Protsahan Rashi' provided for education of girls who take admission in class XI. The organization requested Commission's assistance in the matter. The Commission referred the complaint to the District Collector, Betul. The Assistant Commissioner, Tribal Development Department, Betul informed the Commission vide letter dated 26-2-2011 that all the Scheduled Tribe girls, who had represented have been paid Rs. 3000/- each under the scheme.

5.2.2.15 Shri M.S.Dhurve, District President, Akhil Bharatiya Adivasi Vikas Parishad , Betul (MP) sent a representation to the Commission, alleging that the quality of education was deteriorating every year in government primary school Renukakhapa, under Athner Development Block of the District. He requested the Commission to do the needful in the matter. The Commission took up the matter with the District Collector, Betul who inquired into the complaint through Assistant Commissioner, Tribal Welfare Department of the District and furnished a report to the Commission. As per the report, it was found that the school was being run properly and the examination results were also found satisfactory. It was however, mentioned that there was deterioration in the performance of students; the result of class V was 100% in the year 2006-07 which came down to 76% in the year 2007-08 and further reduced to 50% in the academic year 2008-09. Thus, there was an imperative need to take effective measures to improve the result of the school where mostly tribal students used to study. The Commission requested the District Collector to take suitable steps in this regard. Later, Asstt. Commissioner, Tribal Development Department, Betul, vide letter dated 10.2.2011, informed the Commission that the result of Class V of the school had improved to 100% during the year 2009-10 and the teachers of the school had also been directed to make efforts so that the improving trend continues during the year 2010-11 also.

5.2.2.16 **Shri Khana Meena and his wife Smt. Chagni Meena of Village Balapura, Tehsil Kotri, District Bhilwara (Rajasthan)** in their representation dated 20.3.2010 mentioned that they were receiving old Age Pension which was discontinued for the last one year. They were from BPL families belonging to Scheduled Tribe category and they did not have any other source of livelihood except old age pension. The matter was taken up with the District Collector, Bhilwara for taking necessary action. The Deputy Director, Department of Social Justice and Empowerment, Bhilwara vide their letter dated 16.8.2010 informed that old age pension to both Shri Khana Meena and his wife, which were withheld earlier for want of some essential formalities to be made by the beneficiaries, had been recommenced from March, 2010.

5.2.2.17 **A News report appeared in the Daily Haribhumi News paper, Raipur (Chhattisgarh)** edition on 13.07.2007 regarding a tribal school of the Gahnasiyar village, in Gram Panchayat Nava Goan under the Nagri block, District-Dhamtari, (Chhattisgarh) which was being run by only one teacher. It was also reported that in case the above teacher leaves the School due to some official work or personal work, the School remained closed or the Cook of the school who was appointed for preparing mid-day meal for children, took classes of the school. Thus, the future of the students of the school was likely to be jeopardized. The Commission took up the matter with the District Collector, Dhamtari vide letter dated 16.07.2010, who informed the Commission vide letter dated nil that Shri Naval Kishor Kasyap, Shikshakarmi Grade-3, had been posted vide Chief Executive Officer, Janpad Panchayat Nagri, Dhamtari's Order dated 1019/Establish/Sma/J.P/ dated 11.08.2010 in the village of Gahnasiyar, Block-Nagri. The Commission was informed thereafter that the school was now running smoothly without any problem.

5.2.2.18 **A News report appeared in the Daily Haribhumi news paper, Raipur (Chhattisgarh)** edition on 10.07.2010 mentioning that employees of the Forest Department, Jagdalpur District-Bastar were going to resort on strike with demand of immediate action against the corrupt Accountant in the Forest Circle Office Jagdalpur, Bastar. The Commission took-up the matter with the Chief Conservator of Forest, Government of Chhattisgarh vide letter dated 16.07.2010, The Government of Chhattisgarh informed the Commission vide letter dated 22.12.2010 that action had been taken against the Accountant by the department and he had been transferred to another Forest Circle vide Order dated 26.09.2010.

5.2.2.19 **A News report appeared in the Daily Haribhumi, Newspaper, Raipur (Chhattisgarh)** edition on 9.08.2010 highlighting the spread of diarrhea in the Rajnandgaon District and fear among tribals due to the spread of this disease. The Commission sought a detailed report in the matter from the District Collector and District Chief Medical & Health officer, Rajnandgaon (CG) vide letter dated 11.08.2010. The District Chief Medical & Health officer, Rajnandgaon (CG) vide his office letter dated 26.08.2010 informed that there were 12 villages effected by Diarrhea in Rajnandgaon District between April 2010 to August 2010. When the News of spread of Diarrhea came to their notice, Medical teams were sent to diarrhea affected areas for immediate treatment of the patients and Medical

camps were also set-up in diarrhea affected villages. The Commission was also informed that critical type of patients were referred to primary health centres, the Community Health Centres and the District Hospital. Some of the patients were also referred to the Private Nursing Home and a detailed status report was sought from every Block level Hospital through Email. The Commission was further informed that other preventive measures were also being taken by the district administration and the Health Department to prevent the spread of the disease, as a result the disease was under control.

5.2.2.20 Ms. Renuka d/o Shri Ramesh Kumar, r/o Ward no. 10, Ramnagar, Old Market, Veer Naryan Chowk, Dalli Rajhara, Dist- Durg (Chhattisgarh) submitted a representation dated 1.02.2011 to the Commission stating that she had taken admission in the RSR Rungta College of Engineering & Technology, Kohka, Bhilai, District-Durg (CG) in BE 1st Semester in Information Technology Branch in the year 2010-2011. At the time of admission, as per instructions of the college, she had submitted original mark sheets of 10th and 12th classes, original transfer certificate, character certificate and an amount of Rs. 1500/- towards caution money. She also mentioned that due to her health problems, she could not continue her further study in the above course. When she informed the reason behind her dropping from the above BE course to the college administration and requested for return of her original certificates kept in the college, the college administration did not return the certificates to her. The Commission took up the matter with the Director, RSR Rungta College of Engineering & Technology, Kohka road, Bhilai, District- Durg (CG) vide letter dated 1.12.2010, who informed the Commission vide letter dated 27.12.2010 that the College has returned all the original documents to Ms. Renuka on 23.12.2010. A copy of the acknowledgement of the petitioner was also enclosed with the above mentioned letter.

5.2.2.21 A News report appeared in the Daily Haribhumi news paper, Raipur (Chhattisgarh) edition on 12.01.2010 highlighting the death of an old couple belonging to Pahadi Korba Primitive Tribe due to burning of their hut while they were sleeping in the hut in the Sarguja District of Chhattisgarh. The News paper further reported that due to poor economic condition, the couple was forced to live in a small hut which was made of grass only. The Commission vide letter dated 16.02.2010 sought a detailed report from the District Collector, Sarguja and also advised for providing the financial support to the family of deceased. The Deputy Collector, District Sarguja informed the Commission that the matter was investigated through the Sub- Divisional Officer and as per the enquiry report, the news published in the News papers was found correct. He further informed that the district administration had provided compensation of Rs. 1,00,000 to the heirs of the deceased.

5.2.3. Atrocity Matters

5.2.3.1 A news report appeared in Bhopal (MP) edition of the Dainik Bhaskar news paper on 17.4.2010 in which it was reported that a Scheduled Tribe youth of the Ganeshpura chak under Bahadurpur police station of the District Ashoknagar was burnt by some non tribals after a monetary dispute. As per the report, the victim had 80% burn and was referred to the District hospital for treatment. The

Commission sought a factual report from the District Collector as well as the Superintendent of Police, Ashoknagar in the matter. The S.P. and the District Collector informed the Commission vide fax dated 28.4.2010 that a case no. 87/10 under section 302, 323, 436, 34 IPC and 3(2)(v) of SC and ST (POA) Act 1989 had been registered at the Bahadurpur police station against the accused. It was also informed that Section 302 of IPC had also been added due to the death of the victim in the hospital at Guna. Two accused persons had been arrested and one accused was absconding. As there was no information regarding monetary assistance to the family of the victim and that one accused was not arrested, the Commission sought further action taken report from the District authorities in the matter. The District Collector, Ashoknagar informed the Commission that an amount of Rs. 2,00,000/- had been sanctioned to the wife of the deceased. Superintendent of Police, Ashoknagar also informed the Commission that the third accused had also been arrested.

5.2.3.2 A News report appeared in Bhopal (MP) edition of the Raj Express Newspaper highlighting murder of a young tribal lady after gang rape by some non-SC/ST persons. The Commission took up the matter with the IG, Balaghat zone to furnish a detailed report to the Commission on the subject. As per the report, Shri Kandhi Lal s/o Sumat Lal Parte, r/o Udaipur under the Bijadandi Police Station had lodged a report in the police station on 24.6.09 that when he returned to his home around 7 p.m. his grand daughter Leelabai was not found in the house. When he asked his grand son Jitendra about her, he informed that one Shamshad musalman and his three brothers had arrived at their residence and alleged her as bad character lady. They had asked Leelabai that it was better for her to die. Leelabai became very sad and started crying. Thereafter she had gone towards the house of Abbas but she did not return. Later on her chunari was found near a well. She had committed suicide due to the allegation made by the above mentioned persons. In view of the above, a case no. 99/09 under section 452, 306, 34 IPC and 3(1)(x) of the SC and ST (POA) Act 1989 was registered in the Bijadandi police station. The report also revealed that the tribal community of the village made a demonstration on 25-8-09 to pressurize the administration for arresting the above mentioned persons. In the mean time post mortum of the dead body was conducted which revealed that the victim had died due to drowning in water. However, the Doctor has not given any clear opinion about the incident of alleged rape. Vaginal slides had been sent for bio-chemical examination. An amount of Rs. 5,000/- was given to the family of the deceased as an immediate relief. The report of the IG also revealed that section 302, 540, 364 and 34 of IPC and 3(2)(v) of (POA) Act 1989 had been inserted in the case. All the accused had been arrested. As there was no information regarding payment of monetary relief on account of atrocity in the report, the Commission requested the Superintendent of Police concerned to furnish requisite information. The Commission was Subsequently informed that an amount of Rs. 1 lakh had been sanctioned to Shri Kandhi Lal, grand father of the deceased. Further, the charges of gang rape were found to be incorrect in the bio-chemical report.

5.2.3.3 A News report appeared in Loksatta, a Marathi daily published from Mumbai (Maharashtra) on 9-2-2010 in which it was reported that blue films of tribal girls was being sold at a cost of Rs. 100/- in the city. The Commission referred the matter to the S.P. Thane (Rural) Maharashtra for taking necessary

action and for furnishing a report to the Commission. Additional S.P. (Rural), Thane informed the Commission that a case no. 7/2010 under section 376, 292, 293, 417, 34 IPC and 3(1)(x), 3(1)(xi), 3(1)(xii) of SC and ST (POA) Act 1989 had been registered against four accused persons who had also been arrested. As there was no information regarding monetary assistance to the victims, the Commission sought further information in their regard from the concerned authorities. The District Administration subsequently informed the Commission vide letter dated 24.9.10 that an amount of Rs. 25,000/- had been sanctioned to each of the victims as monetary relief.

5.2.3.4 A News report appeared in Bhopal (MP) edition of the Patrika newspaper on 16-9-2010 regarding burning of huts of tribals by the musclemen in Silarpur village under Teonda police station of the Vidisha District. The Commission immediately took up the matter with the District Collector and S.P. Vidisha. The District Collector and Superintendent of police Vidisha furnished a detailed report to the Commission on the incident. As per the report, the village was dominated by the Gujar community and some Saharia tribal families (PTG) had been residing in the village for last 3 years. They had constructed their huts and worked in the fields of the Gujar villagers for their livelihood. As they were not being paid sufficient wages, they started working in the fields of villagers of nearby village. In this background, the 27 accused persons had attacked on the Saharia families and assaulted them. They also set on fire 19 huts of the Saharias, as a result of which Saharia families lost all their belongings. The SDOP, Sub-Divisional Officer (Revenue) and Tahsildar of the area visited the village and made arrangement of treatment of the injured tribals and provided them food and shelter. The S.P. and Additional District Collector also visited the site of the incident. A case number 207/10 under section 147, 148, 149, 323, 324, 294, 427, 436, 506 IPC and section 3(2)(v) of SC and ST (POA) Act, 1989 had been registered against the accused persons. 17 accused persons had also been arrested and the police was searching others. 25 Saharia families were provided immediate monetary relief of Rs. 2,000/- per family and later on 19 persons were sanctioned monetary relief @ Rs. 50,000/- each, out of which Rs. 10,000/- had been given as cash and remaining 40,000/- deposited in their bank account as fix deposit. The huts were also being rebuilt at the site.

5.2.3.5 A News report appeared in Bhopal (MP) edition of Nai Dunia newspaper on 26.4.2010 regarding incident of burning a tribal youth alive in village Dhadav under Bankhedi police station of Hoshangabad district. The Commission took up the matter with the District Collector and S.P. of Hoshangabad. The report furnished by the Superintendent of Police Hoshangabad revealed that a case number 82/10 under section 450, 307, 302 IPC and 3(2)(v) of SC and ST (POA) Act, 1989 was registered against an accused who was arrested on 3-5-2010. As per the report, the accused had been sent in the judicial custody and an amount of Rs. 75,000/- was sanctioned as relief to the family of the deceased.

5.2.3.6 A News report appeared in Bhopal (MP) edition of Dainik Bhaskar newspaper on 14-6-2010 regarding the arrest of 5 persons carrying 10 tribal girls to Goa in the name of providing domestic job there. The Commission took up the matter with the District Collector and S.P. Mandla. The S.P. Mandla furnished a

detailed report to the Commission which revealed that a case no. 93/2010 under section 363, 366 (a) and 371 of IPC and 3(2)(v) of SC and ST (POA) Act, 1989 was registered in Bichhia Police Station of the District against the accused persons. The tribal girls were reported to be 7 only. All the accused had been arrested and the girls had been handed over to their guardians. As there was no information in the report regarding monetary relief to the victims, the Commission sought further information from the district authorities in this regard. The Commission was subsequently informed that an amount of Rs. 50,000/- each has been sanctioned to 7 tribal girls.

5.2.3.7 A representation from **Shri Rekha Ram Bhil, Village & Post – Bayatu Bhopaji, Tehsil – Bayatu, District – Barmer (Rajasthan)** regarding illegal transfer of tribal's land and harassment was received in the Commission. The matter was taken up with the Collector and Superintendent of Police, District Barmer (Rajasthan.) vide letter dated 30.6.2010. The Superintendent of Police District – Barmer vide letter dated 29.7.10 intimated that after investigation of the case, challan and charge sheet had been produced against the accused under Section – 465, 466, 468, 474, 471, 420, 120(B) IPC and 3(1)(X) of SC and ST (PoA) Act, 1989. After hearing in the District and Session Court, Balotra, the accused in the matter had been sentenced for 3years jail with fine.

5.2.3.8 **A press clipping, appeared in daily Newspaper Punjab Kesri', 'Rajasthan Patrika' and 'Dainik Bhaskar'** dated 21.9.2010 in which an incident of death of 3 persons due to police firing was highlighted. The firing had taken place due to the agitation by a group of tribals in Manoharthana, District Jhalawar (Rajasthan.) on account of alleged rape and abduction of a women belonging to Bhil(ST) Community. The Collector and Superintendent of Police, District Jhalawar were requested vide letter dated 22.9.2010 to finish detailed report in the matter. As per the reports, furnished by the Collector of the Superintendent of Police, Jhalawar, a case no. 226/10 under Section – 363, 36 IPC and 3(1)(ii) of SC and ST (PoA) Act, 1989 had been registered at the police station Manoharthana, under – Jhalawar District of Rajasthan State. On the basis of medical examination report of Smt. Barfi bai W/o Shri Ratan Lal Bhil R/o Junapari, Section – 376 IPC was further added in the charge sheet. Police have arrested all three accused and challan was produced in the court which is under trial. All three persons who died in police firing belongs to Scheduled Tribe Category. Financial assistance of Rs. 5lakh to the family of each deceased and Rs. 25,000 to each 6 injured persons have been granted by the State Government. Victim Smt. Barfi Bai was also given financial assistance of Rs. 50,000.

5.2.3.9 **A press clipping appeared in the 'Punjab Kesari'** dated 18.8.2009 reporting a clash between two families in village Palwas, District Sikar (Rajasthan.) over the issue of cutting down trees, a leading person belonging to Scheduled Tribe (Mina) community getting seriously injured and resulting in death. Four other members of the family were also injured. The Commission took up the matter with the Collector and Superintendent of Police, District Sikar vide letter dated 10.9.2009 followed by reminders dated 19.1.20010, 29.3.2010 and 5.5.2010. The Superintendent of Police, Sikar vide letter dated 12.5.2010 informed the Commission that the accused had been arrested, charge sheeted under Sections 147, 148, 149, 323, 447,307, 302 IPC and 3(2)(V) of the SCs and

STs (POA) Act,1989 and subsequently produced in the Court. As a result of the intervention of the Commission, a financial assistance of Rs. 1,50,000/- was sanctioned to the deceased family on 10.5.2010.

5.2.3.10 A representation was received from **A tribal women r/o Dubbi, Tehsil Sikri, District Dausa (Rajasthan)**, alleging that a man belonging to the Gurjar Community had attempted to rape and abused her leading to a seriously injuries. The District Administration was requested by the Commission vide letter dated 8.10.2009 to furnish a factual report along with action taken in the case. The District Administration informed the Commission that a FIR No. 279/09 was registered in the case at Police Station Sikrai and after investigation, crime under Section 447, 341, 323, 325, 354 IPC and 3(1)(5)(ii) SC and ST (PoA) Act,1989 was found to be committed. The accused was produced before the Court for trial. Subsequently, the District Collector and the District Social Welfare Officer District Dausa were advised vide letter dated 10.11.09, followed by reminders dated 2.12.2009, 18.1.2010, 24.3.2010, 3.5.2010 and 31.5.2010 to sanction financial relief to the victim as per provisions under SC and ST (PoA) Rules, 1955. The District Probation and Social Welfare Officer, District Dausa vide letter dated 25.5.10 informed the Commission that financial assistance had been given to the ST victim.

5.2.3.11 **Sarv Samaj Jan Kalyan Samittee, New Delhi** submitted a representation dated 28.10.09 to the Commission for financial assistance to the families of 4 Scheduled Tribe persons of village Khirni, Tehsil Malarana Dungar, District Sawai Madhopur (Rajasthan) who died as a result of turning down of tractor trolley loaded with electricity pole issued by Jaipur Vidhyut Vitran Nigam Ltd. The matter was taken up with the District authorities, Sawai Madhopur and the Chief Managing Director, Jaipur Vidhyut Vitran Nigam Ltd. The Collector, Sawai Madhopur vide letter dated 19.11.09 informed that Rs. 20,000/- as financial assistance to the families of each of the deceased had been sanctioned and disbursed in the presence of the Sarpanch of the Gram Panchayat Khirni.

5.2.3.12 **Smt. Bhagwati w/o Shri Ram Prasad Meena r/o Kacchpura, Tehsil Basedi, District Dhaulpur (Rajasthan)** submitted a representation to the Commission on 3.09.2009 stating that her husband was shot dead in a clash between persons belonging to Gurjar community and her husband over the issue of theft of buffalos. Smt. Bhagwati requested financial relief for the survival of the family. The matter was taken up with the District Collector, Dhaulpur and District Probation and Social Welfare Officer, Dhaulpur vide letter dated 22.12.09 followed by reminders dated 21.1.2010, 23.3.2010 and 13.4.2010 for a factual report and action taken in the matter along with financial assistance provided in the case. The District probation and Social Welfare Officer – Dhaulpur vide letter dated 16.12.2010 informed the Commission that case no. 24/2008 ? under Section 143, 323, 326, 307, 302 IPC and 3-1(x), 3-2(V) of the Scheduled Castes and Scheduled Tribes (PoA) Act, 1989 had been registered and financial assistance of Rs.1.50 lakh out of sanctioned amount of Rs. 2 lakh had been paid to the family of the deceased.

5.2.3.13 **A news report appeared in the Daily Nai Dunia news paper, Raipur (Chhattisgarh)** edition on 01.01.2010 highlighting an incident relating the brutal

assault on Pahari Korba family member by the non-tribal people inside police lock-up (The Pahadi Korba is notified as a primitive Tribe in the Chhattisgarh State).The Commission called a detailed enquiry report along with action taken report in the matter from the Superintendent of Police and the District Collector, Jashpur, (CG). The Superintendent of Police, Jashpur Nagar (Chhattisgarh) vide letter, dated 24.04.2010 informed the Commission that on the basis of the news paper clipping, the matter was investigated by Shri M.L. Shandilya, Additional Superintendent of Police, Jashpur. It was found in the enquiry that there was a love affair between Shri Kondu Ram Korba, Tribal Boy & Kum. Phulwan d/o Shri Ramchand r/o village Gaybuda, District Jashpur and the couple had made an affidavit from notary in consultation with the family of Shri Kondu Ram and kept it in Kondu Ram's house. When the matter came to the notice of the family members of the girl, they made a conspiracy and called Kondu Ram and his family members to their house for a meeting. When Kondu Ram and his family members namely Shri Kaluwa, Putua, Singhu, Shri Ramsai and others reached the house of the girl, accused Sh. Rameshwar, Sh. Ganesh, Sh. Tapeswar and others started beating them brutally with strict hand and shoes and took them to Police Station, Bagicha under Jashpur District. At the Police Station, after discussion with the Assistant Sub Inspector Shri L.R. Chouhan, the accused Sh. Tapeswar, Sh. Ganesh and Sh. Kapil Yadav naked Shri Kondu Ram in Police lock-up and beat him brutally. It was also reported that the accused had also beaten Shri Shobhlal Mochi and Shri Dayaram Korba inside the Police Station. The report also revealed that Shri L.R. Chouhan, ASI had asked for a bribe of Rs. 15,000/- for releasing Shri Kondu Ram Korba and Shobhlal Mochi from the police custody. After paying a bribe of Rs. 9000/- to Shri L.R. Chouhan, ASI, the victims were released from the Police Station. Thereafter, when on 24.12.2009, Smt. Fulwanti alongwith Kondu Ram Korba and his wife Smt. Sonmati reached the Police Station Bagicha, District Jashpur, the accused also reached there and at 11PM, Shri Gopal Vaishya, In-charge & Inspector of the Police Station, Bagicha called Shri Kondu Ram Korba, Smt. Fulwanti & Smt. Sonwanti in his chamber and asked them to compromise in the matter with the accused. Shri Kondu Ram and others complained the above matter in the Office of the Superintendent of Police, and a complaint was registered on 31.12.2009 at city Kotwali Police Station as Crime No 0/9 under IPC 294, 506B, 323, 34 and 3 (1) (x) of SCs and STs (PoA) Act, 1989. The matter was handed over to Shri M.L. Shandilya, Additional SP, Jashpur who conducted the inquiry and additional sections 147,149,120 B of IPC was also included in the case. It was further informed that Shri L.R. Chauhan, ASI was suspended due to irresponsible and corrupt nature and a departmental inquiry was being conducted against him. The report further revealed that a penalty of Rs. 500/- was imposed by the Inspector General of Police, Sarguja Zone against Shri Gopal Viashya, Inspector for not handling the matter properly and asking the victims to compromise in the matter. The report further revealed that the Inquiry Officer had completed the inquiry on 11.01.2010 and charge sheet had also been filed accordingly. The Commission was further informed that an amount of Rs, 25000/- has been sanctioned on 23.10.10 as financial assistance to victim Shri Kondu Ram.

5.2.3.14 A News report appeared in the Daily Nai Dunia news paper, Raipur (Chhattisgarh) edition on 09.08.2010 regarding molestation and abuse on caste ground to a 22 years old tribal girl r/o Village- Mongragahan under the Arjuni

Police Station, District- Dhamtari (Chhattisgarh). It was reported that when she went for registering FIR in the Police Station, FIR was not registered at the Police Station, Arjuni and also at Special Police Station for SCs and STs at Dhamtari. The Commission called a detailed report from the Superintendent of Police, Collector, Dhamtari and DGP, Chhattisgarh State, Raipur vide letter dated 11.08.2010. The Superintendent of Police, Dhamtari sent a report to the Commission vide letter dated 9.09.2010 and informed that on the basis of victim's complaint, a case had been registered as crime no 269/10 under sections 451,354 of IPC and Section 3(1)(x) of SCs and STs (PoA) Act, 1989 against the accused. The Commission further requested Superintendent of Police, Dhamtari vide letter dated 29.10.2010 for furnishing detailed inquiry report, copy of the FIR, copy of the Charge sheet and information regarding arrest of culprit. The Deputy Superintendent of Police, In-charge of SC/ST Police Station, Dhamtari vide letter dated 25.11.2010 informed the Commission that the accused Bhagwat s/o Shri Umashankar Verma aged 23 r/o Viilage Mongragahan, Police Station- Arjuni, was arrested on 14.09.2010 and produced before CJM Court, Dhamtari vide Diary no 446/10. He further informed that on 15.09.2010, a detailed case report along with supporting documents had been sent to the Collector, Dhamtari for extending financial assistance to the victim, as admissible under the SCs and STs (PoA) Rules, 1995. Thereafter, the Commission requested the Collector, Dhamtari for releasing financial relief to the victim vide letter dated 29.10.2010 under the provisions of the SCs and STs (PoA) Rules, 1995. The Deputy Collector, Dhamtari informed the Commission vide letter dated 26.11.2010 that an amount of Rs. 25000/- was sanctioned as financial assistance to the victim.

CHAPTER 6

CONSULTATION ON POLICY RELATED ISSUES

6.1 Constitutional provision

6.1.1 Clause 9 of Article 338A of the Constitution provides that the Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Tribes.

6.1.2 The views proffered by the Commission on policy-related issues fall in 3 categories as under:

- i Proposals received from the Central and the State Governments/UT Administrations pursuant to Clause 9 of Article 338A of the Constitution.
- ii Suo-motu recommendations by the Commission on various tribal concerns.
- iii Submissions made in Court cases in which the Commission is one of the Respondents.

6.2 Procedure adopted by the Commission in dealing with policy related issues

6.2.1 The Commission has formulated standard guidelines¹ for dealing with policy related issues in a time-bound manner. The guidelines detail the procedure for selection and approval of agenda item, content and format of the agenda note, presentation of agenda note and preparation/issue of minutes. The policy-related issues referred by any Ministry for comments/ views/ advice of the Commission, or any Court case having policy implications in which NCST, is one of the respondents is brought to the notice of the Secretary, NCST to decide whether the matter needs immediate attention of the Chairperson or that of the Vice-Chairperson (in case the Chairperson is unavailable) and whether the matter requires discussion in the meeting of the Commission. On approval by the Secretary, the material received from Ministry/ Deptt. is circulated by the Unit concerned for comments amongst all Members and Senior Officers of the Commission. Keeping in view the suggestions received, an Agenda Note on the issue is prepared for consideration in the meeting of the Commission.

6.2.3 The agenda note, *inter-alia*, examines conceivable effects of the proposed policy on scheduled tribes, earlier recommendations of the NCST or the erstwhile NCSCST, if any, and present status of implementation and relevance of the earlier recommendation(s) of the Commission(s) along with suggestions for fresh opinion and draft comments/views/advice for consideration of the Commission. If the matter had been received earlier also, then the purpose of referring the matter again by the Government is also brought out in the agenda note.

¹ Copy of the Guidelines may be seen at the website of the Commission i.e. <http://ncst.nic.in>

6.2.4 The Commission endeavors to communicate the views/comments/ advice on policy related issues in a time-bound manner and also solicits feedback/outcome regarding acceptance or non-acceptance of the comments/ views/advice tendered by the Commission from the concerned Ministry/ Department for inclusion in its Annual Report .

6.3 Views of the National Commission for Scheduled Tribes on policy-related issues/ proposals received from the Central and the State Governments pursuant to Clause 9 of Article 338A of the Constitution

6.3.1 During the year 2010-11, the National Commission for Scheduled Tribes discussed several policy-related issues sponsored by various Ministries and departments, received either directly from the sponsoring Ministry/ Department or through the Ministry of Tribal Affairs and communicated its views to the concerned/ sponsoring Ministries for necessary action. List of issues received and discussed in the Commission are available on the Website of the Commission. However, details of all those issues are discussed in the following para.

Proposal for inclusion of 'MEDARA' community as a synonyms of 'MEDA' ST of Karnataka – reconsideration

6.3.2 The proposal of the State Govt. of Karnataka for inclusion of '**Medara**' community as a synonym of '**Meda**' community in the ST list of Karnataka was earlier received from the Ministry of Tribal Affairs and the same was discussed in the Commission's meeting on 12.05.2008 when it was decided to call for certain additional information from the Govt. of Karnataka and the Ministry of Tribal Affairs. On receipt of the requisite information, the issue was again discussed in the meeting of the Commission on 22.01.2009 when it was decided that the case need further consideration.

6.3.3 The proposal was discussed at length in the Commission's meeting held on 02.09.2009. Taking into consideration the documents/inputs in support regarding social customs, dialects, way of living, occupation, religious practices and practice of inter-marriage among the people belonging to MEDA and MEDARA communities, the Commission expressed its agreement with the proposal for inclusion of 'MEDARA' community as a synonym of 'MEDA' community in the ST list of Karnataka. The comments/views of the Commission in the matter were communicated to the Ministry of Tribal Affairs vide letter dated 11/09/2009².

Action Taken Status

6.3.4 Though the Commission's letter clearly concluded that the Commission had expressed its agreement to the proposal for inclusion of **MEDARA** community as synonym of **MEDA** community in the ST list of Karnataka the MTA vide letter dated 30.11.2009³ had sought certain clarifications regarding views of the Commission. The Commission promptly clarified to the Ministry vide letter dated 14.12.2009 that the views of the Commission were finalized after taking into account all relevant aspects. The copies of the Agenda Note circulated for the

² NCST Letter No. RU-IV/Service/Karnataka-2/2007 dated 11/09/2009. Copy available on the Commission's website i.e. <http://ncst.nic.in>

³ MTA letter No. 12016/12/01-TA(RL)/C&LM-I(Part) dated 30.11.2009

meeting held on 02.09.2009, along with the tour report of the Member (TS), and other relevant papers were also sent to the MTA for information in this regard. However, the MTA, vide their letter, dated 15.03.2010 again requested for the specific views/ comments of the Commission on the proposal for inclusion of **Medara** as synonym of **Meda** in the ST list of Karnataka. The matter was again discussed in the meeting of the Commission held on 11/06/10 and the Commission made it clear that the Commission had recommended inclusion of '**MEDARA**' community as synonym of '**MEDA**' in the ST list of Karnataka. These views of the Commission were again communicated to the Ministry of Tribal Affairs vide letter No. RU-IV/Service/Karnataka-2/2007 dated 19.07.2010. Ministry of Tribal Affairs has forwarded a copy of the Gazette Notification of the Constitutions (Scheduled Tribes) Order (Amendment) Act, 2012 (No.24 of 2012) by which "MEDARA" has been inserted after "MEDA" in entry 37 in the list of Scheduled Tribes in respect of the State of Karnataka.

Comments on the 3rd Report titled "Standards of Administration and Governance in the Scheduled Areas" by the Standing Committee on Inter-Sectoral Issues relating to Tribal Development

6.3.5 Ministry of Home Affairs had sought comments of the Commission on the recommendations made in the 3rd Report titled "Standards of Administration and Governance in the Scheduled Areas" by the Standing Committee on Inter-Sectoral Issues relating to Tribal Development. Secretary, NCST mentioned that the Governor's role in administration of Tribal Areas and effective implementation of Tribal Sub Plan (TSP) were two major areas in the Report. In this connection, Secretary, NCST referred to the media reports quoting the views of the Attorney General regarding the powers of the Governor to act independently in the matter of administration in Tribal Areas, covered under Schedule 5 of the Constitution, and an exercise being taken by the MHA to review the role and powers of the Governors to strengthen administration and boost development of the Scheduled Areas. The Commission was apprised that the Ministry of Home Affairs had been requested to forward the reported views of the Attorney General and the details of the review being taken by the MHA in the matter, which were awaited.

6.3.6 The Commission also noted that a Task Force, under the Chairmanship of Dr. Narendra Jadhav, Hon.ble Member-in-Charge in the Planning Commission with representatives of various, Departments, agencies and stakeholders, as Members had been constituted in the Planning Commission to revise the guidelines of SCSP and TSP. The Task Force was yet to submit its report. Meanwhile, the Planning Commission circulated the recommendations drafted by the Ministry of Social Justice & Empowerment and the Ministry of Tribal affairs to revise the guidelines for implementation of SCSP and TSP respectively by the Central Ministries/ Departments.

6.3.7 After detailed discussion, the Commission decided that the draft comments on the Report may be discussed in the next meeting of the Commission, taking into consideration, inter-alia, the reported views of the Attorney General and the MHA regarding Governor's role in Tribal areas (if these were available from MHA) and the draft guidelines circulated by the Planning Commission for implementation of TSP by the Central Ministries/Departments.

6.3.8 The matter came up for further discussion in the 23rd meeting of the Commission held on 16/12/2010. The Commission noted that main issues enumerated in the Summary of Recommendations in the Executive Summary of the Report included in the Report pertained to (a) displacement of tribals (S. No. 5 (iv)), (b) effective delivery mechanism (S. No. 6), (c) implementation of the STs and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (S. No. 12), (d) shortage of staff in the NCST (S. No. 15 (i)), (e) consultation with the Commission on policy related issues (S. No. 15 (iii)) and (f) SCs & STs (PoA) Act, 1989 (S. No. 20). The Commission noted that these issues were based, inter-alia, on the views/ recommendations of the Commission contained in its earlier Annual Reports on the related issues in the past. The Commission endorsed the comments suggested in the revised Agenda note but also observed on following issues as under:

S. No. 1 : Scheduled Areas

In the context of continuing demand for inclusion of new areas/ communities, the Commission observed that there was a need to review the list of Scheduled Areas/ Tribes objectively in a time-bound manner. Appropriately, therefore, the Scheduled Area and Scheduled Tribes Commission should be constituted every 10 years to look into such demands.

Further, the Commission noted that the Ministry of Home Affairs (MHA) had informed that there was no proposal under consideration for review of the role and powers of the Governor in respect of the Scheduled Areas. The MHA had also not sought views of the Commission on the reported opinion of the Attorney General on the powers conferred upon the Governor under Article 244 read with the Fifth Schedule. Therefore, the Commission needs not to comment on the issue at this stage.

S. No. 6: Effective Delivery Mechanism: A comprehensive Frame-The ITDPs

There was a need to strengthen democratic institutions of administration, as envisaged under PESA. Multiplicity of agencies should be avoided in order to provide sustained co-ordinate emphasis to the problems of Scheduled Tribes/Areas. After detailed discussion, the Commission recommended that ITDPs may be merged with ZPs.

S. No. 8: The Tribal Sub-Plan (TSP)- Shift from notional to reality

Some of the Ministries/Departments which have been listed by the task force in 'No Obligation' category for the Tribal Sub-Plan are responsible for infrastructure development and services in critical areas. The Commission, therefore, recommended that appropriate outlays for TSP should also be earmarked in respect of these Ministries/Departments, to ensure that Scheduled Areas don't continue to be hamstrung by poor infrastructure/services.

S.No.15(iii): Expansion of the expertise base of the NCST to induct renowned persons in addition to political representation

6.3.9 The Gazette Notification dated 19.02.2004 relating to appointments of Chairperson and Members of the NCST stipulates that the Chairperson, the Vice-Chairperson and the Members shall be appointed from amongst persons of ability, integrity and standing who have had a record of selfless service to the cause of justice for the Scheduled Tribes. After detailed discussion, the Commission opined that these qualifications were adequate for selection of the Chairperson, Vice-Chairperson and Members having experience in diverse fields and that the Govt.

is always at liberty to review the criteria for selection of the Chairperson, Vice-Chairperson and Members, as and when necessary.

6.3.10 Detailed comments of the National Commission Scheduled Tribes communicated to the Ministry of Tribal Affairs vide NCST letter No. PDM/Development/MTA/ (Policy)/ 2010/RU-II dated 17.01.2011 along with the request to intimate the outcome of the report of the Standing Committee w.r.t. the comments of the Commission at the earliest.

Action Taken Status

6.3.11 As no information about final outcome of the Report of the Standing Committee was received from the Ministry of Tribal Affairs, a reminder was sent on 4.02.2011 followed by a DO letter dated 12.07.2011 from the Chairperson, NCST addressed to the then Union Minister of Tribal Affairs. However, no information about the action taken on the views of the Commission on the subject matter has been received so far.

Strengthening of Central Zoo Authority-Reference from the Ministry of Environment & Forests –comments

6.3.12 Ministry of Environment and Forests had sought comments of the Commission on their proposal of strengthening of the Central Zoo Authority (CZA), which envisaged increase in its existing strength from 11 to 36 posts towards augmentation of the existing strength at the Hqrs. and creation of four Regional Offices at Jaipur, Nagpur, Guwahati and Hyderabad. The proposal, which was mainly for appointments/recruitments at regional level, didn't include any specific provision regarding implementation of reservation policy in this regard. After detailed discussion, the Commission decided to recommend that the Ministry of Environment and Forests should be advised to include specific provision regarding implementation of the stipulated reservation policy while issuing Govt. sanction for additional posts for the CZA.

6.3.13 The above views of the Commission of the National Commission Scheduled Tribes were forwarded to the Ministry of Environment and Forest vide the Commissions letter No.RU-IV/Policy-1/MEF/2010 dated 29.12.2010.

Action Taken Status

6.3.14 As no information about the action taken on the views/comments of the Commission was received from the Ministry of Environment and Forests, the requisite information was sought vide DO letter dated 23.02.2011 from the Chairperson, NCST addressed to the then Minister of State (Independent Charge) Ministry of Environment of Forests. However, no information about the action taken on the views of the Commission on the subject matter has been received so far.

Consultation paper-cum-Questionnaire on undercover/ sting operations.

6.3.15 The Commission noted that the Constitutional safeguards for Scheduled Tribes do not bar applicability of the rules/laws which are framed for self-defence, social service and control over the agencies and in framing the regulatory law in

the best interest of public and the law. Accordingly, Commission decided to communicate its no objection to the Ministry of Law & Justice to the proposed regulatory law to control the misuse of sting operations. Regarding comments of the Commission on the Questionnaire, framed by the Ministry of Law & Justice with certain norms under the proposed law, the experience within the Commission is not adequate for informed comment.

6.3.16 The above views of the Commission of the National Commission Scheduled Tribes were forwarded to the Ministry of Law & Justice, Department of Legal Affairs vide Commission's letter No.11/2/2010/Circular/RU-III dated 31.12.2010.

Action Taken Status

6.3.17 As the Commission was not concerned with the subject matter, action taken information was not sought from the sponsoring Ministry.

To establish an independent Regulatory Authority for the Broadcasting Sector - Draft Broadcasting Service Regulation Bill in 2007– formulated by the Ministry of Information and Broadcasting.

6.3.18 The proposal of the Ministry of I & B for drafting the Broadcasting Service Regulation Bill which was aimed at establishing an independent Regulatory Authority for the Broadcasting Sector came up for discussion in the 25th meeting of the Commission held on 31/03/2011. The Commission noted that the Indian Broadcasting Foundation, an industry body has envisaged setting up a self-regulatory frame work for the general entertainment TV channels, in the form of 13-Member Broadcasting Content Complaints Council (BCCC). The National Commission for Women, National Commission for Protection of Child Rights and National Commission for Scheduled Castes will be mandatory Members of the Council while National Commission for Scheduled Tribes, National Human Rights Commission and National Commission for Backward Classes will be selected on a rotational basis.

6.3.19 The Commission noted that the NCST is mandated by the Constitution to function as a watchdog in respect of all authorities, including regulatory bodies and to safeguard the rights of Scheduled Tribes and render consultations/ suggestions/ recommendations in the framing of regulatory laws concerning the issues pertaining to Scheduled Tribes, but is not expected to be part of any regulatory mechanism. The Commission, therefore, appreciated the apprehension that participation of the Commission in the BCCC, where general decision is taken by majority, may create a conflict of interest, as other Members (at times forming majority in the BCCC) may not always share the concern of NCST, which will also belittle the standing of the Commission under the Constitution. After detailed discussion, the Commission decided that the request of Ministry of Information and Broadcasting for nomination of the Chairperson or a Member of the NCST in the BCCC in their particular meeting dealing with complaints, involving interest of Scheduled Tribes may not be agreed as it was not quite consistent with the Constitutional role and mandate of the Commission.

6.3.20 The above views of the Commission were forwarded to the Ministry of Information and Broadcasting vide Commission's letter No. AK/2011/MINB1/DEOTH/RU-III dated 8/04/2011.

Action Taken Status

6.3.21 As the Commission had not considered its participation as Member of the proposed Broadcasting Content Complaints Council (BCCC), action taken information was not sought from the sponsoring Ministry.

6.4 Suo-motu recommendations made by the National Commission for Scheduled Tribes.

Land Acquisition (Amendment) Bill, 2007

And

Rehabilitation and Resettlement Bill, 2007

6.4.1 The Commission learnt from the news reports that the Government had formulated/ introduced the new Land Acquisition (Amendment) Bill, 2007 and Rehabilitation and Resettlement Bill, 2007 in Parliament in December, 2007. These Bills were passed by the Lok Sabha, but could not be tabled in the Rajya Sabha. The Commission noted that the Ministry of Rural Development did not consult the National Commission for Scheduled Tribes before introducing the Bill in the Parliament. However, considering the imperative need for normative definition/ implementation of rehabilitation and resettlement measures through law, the Commission decided to examine the proposals contained in the Bills and forward the recommendations to the Government for necessary action while re-introduction of the Bills in Parliament. The matter was discussed in the 20th meeting of the Commission held on 11/06/2010.

6.4.2 The Commission noted that there was no connectivity between two Bills, especially with regard to commencement of the rehabilitation programme and its completion. The Commission also noted certain deficiencies in the draft LA Bill like absence of linkage of (a) Social Impact Assessment with other activities, (b) Enquiry regarding purpose of acquisition, clearance of expert committee and the agreement with the National Commission for Scheduled Tribes by the Companies as per Sec 41 of the Act. (c) Full payment of compensation and adequate rehabilitation with displacement/ possession. Secretary, National Commission for Scheduled Tribes emphasized that it was necessary to harmonize key stages of the processes involved to ensure successful implementation of both the Bills in letter as well as spirit.

6.4.3 With regard to the issue of delay in payment after declaration of the award, it was felt that interest @ 9% per annum should be paid during the first year of interval between taking possession and making payment, which should be enhanced to 15% after a year. In the event of delay in payment up to three years after taking possession, beside the interest payable @15%, a penal interest of similar order should also be levied; and a new award as per prevailing market rate should be made in case payment is delayed beyond 5 years.

6.4.4 The Commission also felt that the definition of public purpose was very wide to cover all sorts of infrastructure project, which may not necessarily serve public interest. Under the Public Private Partnership (PPP), surrogate acquisition by the Government on behalf of industries/ developers, etc. has assumed larger dimension in recent times. These have resulted in the problems, arising out of acquisition of land by the Government for being transferred to requiring body having no responsibility in this regard. In this context, the Commission expressed that the public purpose should be restricted for acquisitions for re-development only.

6.4.5 A suggestion was made that a new provision laying down the process to be followed by any requiring body seeking involuntary acquisition of land should be inserted into the Bill. The provision should, inter-alia, require that the body should justify the minimum total area required for the project, to establish the need for acquisition, before any purchase of land is contracted. This land requirement should be made known through public hearings before tribal land transfers are permitted by concerned authorities respecting the same considerations which would govern determination of public purpose. Considering the involuntary nature of the transaction, only limited rights of usage for the intended purpose should be acquired (as in a lease), especially in the case of ancestral tribal lands. In case of mining projects, a sum equal to royalty be paid on behalf of the land owners into the fund proposed to be constituted under Cl.22; for the duration of mineral extraction and land returned to the owners thereafter or future earnings shared if non-agricultural use is considered in another form. After detailed deliberations on the Amendment Bills, the Commission agreed to the above suggestions. Detailed comments of the Commission on the proposed legislation were conveyed to the Ministry of Rural Development and Ministry of Tribal Affairs vide d.o. letter dated 6/08/2010 and 25/8/2010 respectively from Shri Maurice Kujur, Vice-Chairperson, and acting Chairperson, National Commission for Scheduled Tribes.

Action Taken Status

6.4.6 As there was no communication from the MoRD, the Chairperson, NCST again addressed the Union Minister of Rural Development vide letter dated 20/05/2011. Since it elicited no response from the MoRD, the Chairperson, NCST vide his letter dated 13/07/2011 again invited the attention of the new Union Minister for Rural Development towards the concern of the NCST regarding the draft Bills of 2007. The Union Minister for Rural Development vide his letter dated 15/07/2011 assured the Chairperson that the views of the NCST would be fully considered before finalizing a new legislation on Land Acquisition. The Ministry of Rural Development vide letter dated 19/08/2011 informed the Commission that a draft Land Acquisition, Rehabilitation & Resettlement Bill, 2011 has been prepared and put in the public domain. Further details about progress in the matter have been furnished in Chapter 3 of the Commission's Special Report on **Good Governance for Tribal Development and Administration** submitted to the President in June 2012.

Mines and Minerals (Development and Regulation) Bill, 2010

6.4.7 The NCST came to know from the media reports that the Ministry of Mines was preparing a new Mines and Minerals (Development and Regulation) Bill, 2010 (MMDRB) to replace its earlier version of 1957. The Bill had not been referred to National Commission for Scheduled Tribes for comments as required under Article 338(A) of the Constitution. As mining affects tribals in large measure, particularly their livelihood, settlements, environment and culture, the Commission decided to examine the proposals contained in the Bill and forward the recommendations to the Government for necessary action. The matter was discussed in the 21st meeting of the Commission held on 21/09/2010. The Commission noted that certain important provisions concerning these areas, as under, need to be adequately addressed in the proposed new Bill.

- (i) Indian land laws, in general, do not confer ownership rights on the tenure holders, though tenures are held in perpetuity (subject to conditions) besides being heritable and transferable. Ownership is generally vested in the State (except in NE) which also retains the right to sub-soil resources. Exploitation of mineral resources by the Govt. is generally through grant of mining leases awarded with the consent of the land rights holders, but with no provision for grant of substitute land, profit-sharing & alternative vocations for loss of livelihood. These features are perceived as counter-intuitive and grossly inequitable by tribal communities, who nurture memories of ancestral ownership for generations preceding the imposition of current land laws.
- (ii) Land is the primary means of production and represents the greater asset in the tribal society. The expropriation of tribal lands, whether by collision or by ill-informed consent, is the cause of widespread impoverishment and latent resentment in tribal areas. As per the Judgement of the Supreme Court in SLP(C) No. 17080-81/95, in Scheduled areas, minerals are to be exploited by tribals themselves with financial assistance of the State, or the State itself. If mineral extraction is authorized in such areas to private entities for techno-economic reasons, the Govt. should be willing to shoulder vicarious responsibility for ensuring habitat and livelihood security for affected tribals.
- (iii) In order to identify the gamut of repercussions on tribal habitat, population and livelihood, a comprehensive SIA should be conducted by a competent agency before awarding the lease for mining of any mineral in Scheduled Areas, in consultation with Gram Sabha and District Councils and forest rights holders in case of mining leases in forest areas. Comprehensive impact assessment, appropriate compensation, suitable R&R practices and efficacious restoration of habitat should form an important aspect of the proposed National Sustainable Development Framework, along with explicit guidelines for rehabilitation and resettlement of displaced/project-affected persons.
- (iv) As, mineral extraction is generally destructive of soil surface, it may be more helpful if damage compensation, or a part thereof, is paid at the outset to supplement livelihood security/change efforts. To ensure livelihood security to tribals, the Govt. must ensure alternative land in case they will be substantially deprived of the use of their holdings since it is one of the principal beneficiaries of mineral extraction through royalty payment. Besides, free skill training etc the mining enterprise must ensure that at least one person of each tribal household is given a suitable regular job in the mining project. The compensation and source of livelihood should be adequate to assure living standards comparable with the surrounding community, or even better.
- (v) Besides annual compensation in lieu of land surface rights, further (and sometimes windfall) earnings from mining activity should also be shared with land rights holders in reasonable measure. The draft Bill provides 26% (sweat) equity to the land rights holders, which has created apprehensions amongst the industry. Moreover, it may not assure minimum regular income to the land losers. Redesigned sweat equity including arrangements to pay a sum equal to royalty to the land rights holders for the duration of mineral extraction and redemption of equity holdings by the lessee to purchase lifelong annuity payments after mining operations have ceased in a particular location may be more useful for affected land rights holders.
- (vi) Obligations/responsibilities of the lessee towards the project-affected/displaced persons should be specifically delineated under the lease. R&R plan and Mine closure plans should be linked to the Mining Plan so that R&R activities are satisfactorily complete before the lessee ceases operations

in a specified area. A standard rehabilitation procedure should be drawn and incorporated in the MMDRB, 2010 for the displaced tribals and the same should be made applicable to diversion of forest land. All forest rights must be settled as per the Scheduled Tribes and other Traditional Forest dwellers (Recognition of Forest Rights) Act, 2006 before grant of lease; and, these must not be resumed/diverted except in the case of emergencies or strategic necessity, in which case equivalent forest land should be allotted with similar rights besides other compensation admissible.

- (vii) Mines and Minerals (Development and Regulation) Bill, 2011 legislation should also create a meaningful CSR model incorporating a significant part of retained profits, comparable with the returns provided to shareholders, and a participative mechanism to monitor its implementation. Socio-economic initiatives should be taken by the mining enterprise as per the requirements of the local displaced/affected people.

6.4.8 The Commission further noted the Draft MMDRB, 2010 had already been referred to the Group of Ministers (GOM) for consideration. The Commission agreed with the concerns expressed regarding the draft bill, and decided to forward the views, as mentioned above, to the Hon'ble Prime Minister for the consideration by the Group of Ministers with a copy to the Minister of Mines.

Action Taken Status

6.4.9 The comments of the Commission, regarding safeguards of the Scheduled Tribes, on the MMDR Bill, 2010 were communicated to Hon'ble Prime Minister and the Union Minister for Mines vide DO letter No.12/2/2009-Coord dated 11/10/2010. The Ministry, however, did not inform the Commission regarding the action taken on the comments/ suggestions made by the Commission.

6.4.10 Further details about progress in the matter have been furnished in Chapter 3 of the Commission's Special Report on **Good Governance for Tribal Development and Administration** submitted to the President in June 2012.

6.5 A review of the above position reflects that the concerned Ministries/ Departments have not been very forthcoming in seeking advice of the National Commission for Scheduled Tribes on Policy and Legislative matters concerning Scheduled Tribes and in furnishing the status with regard to acceptance/non-acceptance of recommendations/ the comments/ views /advice of the Commission on various policy related issues. The Commission would like to mention that the feedback from the Government not only enlightens the Commission with the final views of the Govt. on such policy related issues and the wider perspective of the related issues that are considered by the Government while taking final decisions in these matters, but also enables the Commission to report the effectiveness of its recommendations and refine its recommendations in similar cases in future. **The Commission, therefore, re-iterates its earlier recommendations contained in para 8.7 of its 4th Report for the Year 2008-09, submitted to the Hon'ble President of India on 27 August 2010, that all the concerned Ministries/ Deptts. of the Central Govt. and State Governments should communicate action taken on the comments/views/advice rendered by the Commission at the earliest so that the same can be highlighted in the reports submitted by the Commission. To enable meaningful consultation with the Constitutional**

Commissions like National Commission for Scheduled Tribes, the Cabinet Secretariat should issue further instructions to all Central Ministries/ Departments and State Governments that they should furnish an Action Taken Report in a time-bound manner on the comments/views/ advice received from them on policy matters.

6.6 In its 4th Report as well as Special Report, the Commission had also highlighted the fact that the Commission had not been consulted while enacting important legislations of vital significance to the wellbeing and existence of tribal people, viz; Reservation Bill, the Bill relating to Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006, the Land Acquisition (Amendment) Bill, 2007 the Rehabilitation and Resettlement Bill, 2007 and Wild Life Protection (Amendment) Act, 2006, the Scheduled Castes and the Scheduled Tribes (Reservation in Posts and Services) Bill 2008. Since legislation is the most pristine articulation of the policy of the State and, it being mandatory, under Clause 9 of the Article 338A, to consult the Commission in respect of those legislative proposals which may affect Scheduled Tribes, **the National Commission for Scheduled Tribes re-iterates its earlier recommendations that the Cabinet Secretariat may issues instructions for direct and timely consultation with the National Commission for Scheduled Tribes by the sponsoring Ministries/ Departments for ensuring meaningful consultations with the National Commission for Scheduled Tribes before such legislative proposals are placed for consideration before the Council of Ministers.**

CHAPTER 7

SUMMARY OF RECOMMENDATIONS

The recommendations of the Commission on various aspects have been highlighted in the respective Chapters to facilitate convenient identification for the purpose of taking up follow up action on them. A summary of these recommendations is given as below:-

CHAPTER-1: ORGANIZATIONAL SET-UP AND FUNCTIONING OF THE COMMISSION.

- (1) The Commission therefore reiterates the following recommendations made in the previous two reports i.e. 4th Report for the period 2008-09 and 5th Report for the period 2009-10.
 - (i) In court cases relating to the subject matters allotted to the Commission, where NCST is also a respondent and other authorities of the Central Government may be a petitioner party or a respondent, the Commission should file its reply independently through a separate Central Govt. Counsel, so that views of the Commission reach the Court without modifications or curtailments. To avoid delay, it may also be examined whether there is any real need for routing such requests for legal representation through the Administrative Ministry (MTA), as the Ministry has no oversight role to play regarding recommendations / views of the Commission on matters in relation to other Ministries/ Departments/ Organizations.
 - (ii) The NCST, which is a Constitutional successor to the NCSCST, and has been vested with more duties and powers, should immediately be granted with all the powers of the Department of the Central Government so that the Commission can function and perform as per its mandate.

[Ref Para 1.4.2]

- (2) The Commission observed that there was a justified need to empower the Commission through the following measures:-
 - (i) Clause 5 (b) of Article 338A should be suitably amended to provide that where the enquiry discloses clear violation in complying with the safeguards provided to the Scheduled Tribes in the Constitution or under any other order or law by a public servant, the Commission may advise/ recommend to the concerned organization for taking corrective remedial measures and that it should be mandatory for the concerned organization of the Central Govt. or the State Govt. to accept such advice/ recommendations.
 - (ii) On the lines of the powers given to the Central Information Commission in the context of the implementation of the various provisions of the Right to Information Act, 2005, the National Commission for Scheduled Tribes should also be given power to impose fine on a public servant for wilful delay or negligence in the discharge of his duties in implementing the instructions of the Government relating to safeguards available to the members of Scheduled Tribes.

As there is no progress since then, the Commission re-iterates that the

Commission may be expeditiously empowered through the above-mentioned measures.

[Ref Para 1.4.11 and 1.4.12]

- (3) The Commission therefore reiterates its recommendation, made in the Special report that the instructions issued by the Cabinet Sect. vide OM dated 16/02/2012 should be amended, on the lines of directions contained in Instruction No. 46 and 47 of the Handbook of Instructions, with advise to the sponsoring Ministries, to provide for directly seeking the advice of the NCST on policy related matters/ legislative proposals under Article 338A(9) of the Constitution and not through the Administrative Ministry as that Ministry has a role different from that of the NCST and the Ministry cannot play an oversight role in edit the Commission's views or guide the Commission to making recommendations in a particular manner.

[Ref Para 1.4.21]

- (4) The Commission recommends that the term of each Member being fixed, i.e. three years from the date of assuming the charge, the Government being fully aware about the date when the vacancy would be caused, the Government should initiate timely action for appointment of new Members against the likely vacancies.

[Ref Para 1.5.6]

- (5) The Commission deeply regrets to report that notwithstanding the above recommendation of the Parliamentary Committee, and continuous follow up by this Commission, no additional post has been sanctioned for the Commission so far, which has negated all the efforts of the Commission to evolve into an effective guardian of the rights of Scheduled Tribes. The Commission strongly recommends the Government of India to promptly sanction the additional manpower sought by the Commission required to fulfill the mandate assigned to the Commission.

[Ref Para 1.5.11]

- (6) The Commission's functional problems on account of allotment of only one-third of the total staff strength of the erstwhile NCSCST are further compounded by the fact that the Commission has not been getting the support of various Cadre Controlling authorities to fill these posts. The Commission has expressed its unhappiness on such a large number of posts being vacant in the Commission. The Commission is pained to observe that the Ministry of Social Justice & Empowerment, Ministry of Tribal Affairs, the National Commission for Scheduled Castes and the Department of Personnel and Training did not fully appreciate the problems and the severe constraints being faced by the Commission and failed to make concerted efforts to fill up these vacant posts to enable the Commission to discharge its constitutional obligations in an effective manner.

[Ref Para 1.5.14]

- (7) The Commission reiterates its earlier recommendation contained in the third, fourth as well as Fifth Report that the Ministry of Tribal Affairs as well as Ministry of Social Justice & Empowerment should make coordinated

efforts to find a solution, or alternatively, National Commission for Scheduled Tribes may be allowed to have independent cadre control over various posts belonging to the National Commission for Scheduled Tribes so that vacancies in various posts in the Commission do not remain unfilled for a long period at any point of time.

[Ref Para 1.5.16]

- (8) The Commission, however, remains firmly of the view that it is very important that Reports of the Commission are laid in Parliament and the State Legislatures, as the case may be, within a reasonable period of time i.e. not exceeding three months, and memorandum of action taken/proposed to be taken on its recommendations by the Ministry of Tribal Affairs/ the respective State Government are separately laid in the Parliament/ State Legislature within six months of such submission of the report. The Commission hopes that the Government will appreciate the concern of the Commission for timely submission of the reports in the Parliament and initiate expeditious action to amend the above-mentioned Clause of Article 338A of the Constitution on the above lines.

[Ref Para 1.9.9]

CHAPTER-2: SERVICE SAFEGUARDS.

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

[Ref Para 2.5.7]

- (2) From the above data it is clear that the representation of STs in posts is much less than the prescribed percentage of 7.5, not only in Group A and B categories of posts, but also in all the categories. Even in Group 'D' category, the representation of STs is not satisfactory. It is obvious that this situation has arisen on account of the continuing backlog vacancies in these Groups, which are not being filled up by the concerned Ministries/ Departments. The Commission expresses its concern over this matter and re-iterates its earlier recommendation that the DOPT should take up the matter with all the Central Ministries/Departments, particularly those which are cadre controlling authorities, for appointment to various posts/ services and oblige them to fill up the backlog vacancies reserved for Scheduled Tribes by launching Special Recruitment Drives (SRDs). The Commission is also of the view that Special Recruitment Drive in promotion will not yield the desired result without drawing separate lists of eligible candidates among Scheduled Tribes, as directed by the Supreme Court of India in the Civil Appeal No.4026 of 1988. Commission is further of the view that Department of Personnel and Training OM No.36012/27/2000-Estt.(Res.)

dated 15-03-2002, which was issued in part fulfillment of the Supreme Court of India judgement, should be suitably amended since the OM prescribed drawing separate eligibility lists in case of ad-hoc promotions only. Where the Recruitment Rules provide for 100% appointments by promotion, the cadre controlling authorities may also consider amending/relaxing Recruitment Rules to include an element of direct recruitment or a clause "failing which by Direct Recruitment" in each grade of posts in the case of Scheduled Tribes to increase their representation at various levels.

[Ref Para 2.9.2]

- (3) It is noted that there is a marginal improvement in the representation of STs in Group 'A', but in all other categories as well as in overall position, there is a reduction in representation of Scheduled Tribes. As compared to the position as on 01.01.2008, the representation of STs in Group 'A' and 'B' is less than the prescribed reservation of 7.5%. The Commission reiterates its earlier recommendation that the Department of Public Enterprises should emphasize upon the Central Public Sector undertakings to make concerted efforts to fill up the backlog vacancies reserved for Scheduled Tribes in Group A and B posts through SRDs to bring their representation to the prescribed level of 7.5%. DOPT and Deptt. of Public Enterprises should formulate a time-bound Action Plan to fill up the vacant positions to meet the target.

[Ref Para 2.9.4]

- (4) Since the year 2001 each Bank is the recruiting agency for all the categories of posts in that Bank and, therefore, the Commission fails to understand the low representation of Scheduled Tribes in respect of each category of post in Officer Cadres, Clerk Cadres or even Sub-staff cadres. It appears that the banks have not taken effective steps to fill up the backlog vacancies reserved for Scheduled Tribes. The Commission reiterates its earlier recommendation that the Department of Economic Affairs (Banking division) should oblige the banks to devise a time bound programme to make up the shortfall / backlog of ST vacancies by launching Special Recruitment Drive or by deputing special recruiting teams in the tribal areas or both.

[Ref Para 2.9.7]

- (5) However, it is appreciable that the overall representation of STs in Group C & D in Insurance Sector is satisfactory. The Commission therefore, reiterates its earlier recommendation that in order to enhance the representation of STs in Group A & B, the Ministry of Finance should take special measures like SRD to achieve the required representation of 7.5 percent in the Insurance companies through a time bound action plan.

[Ref Para 2.9.10]

- (6) It is observed from the above data that the representation of STs among the teaching staff is negligible in respect of Professors and Readers as against the required percentage of 7.5. Universities like Jamia Millia Islamia, JNU*, Banaras Hindu University, Vishwabharti University, Hyderabad University, AMU having large number of posts in the cadre of

Professors, are not having even a single Professor from the ST communities. The same position prevails in the cadre of Reader also, in these Universities. The Commission, therefore, reiterate its recommendation contained in its earlier Reports that the Ministry of Human Resource Development (Department of Higher Education) and the University Grants Commission should issue strict instructions to all the Central Universities to ensure that 7.5% reservation is provided to the Scheduled Tribes in such posts of Professor and Reader, which are filled up, as per recruitment rules, by direct recruitment. These Universities should further be asked to work out the shortfall / backlog vacancies reserved for Scheduled Tribes in such posts of Professor, Reader and Lecturer which are filled up by direct recruitment, and to chalk out a time bound programme to fill up these vacancies.

[Ref Para 2.9.12]

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

[Ref Para 2.9.15]

- (8) As there was no response from the Aligarh Muslim University and Jamia Milia Islamia as per the recommendations of the Commission in the discussion held on 11.05.2010, the Commission re-iterates its earlier recommendations that:-
 - (i) Jamia Milia Islamia should take necessary steps to fill up the backlog ST vacancies both in teaching and non-teaching category within a period of three months. Vacant posts of Professor and Reader identified for STs should also be filled up by adopting the correct procedure as per reservation policy. They should also arrange training of their officials regarding operation of Post Based Rosters.
 - (ii) UGC should amend the guidelines so that ST reserved vacancies are not lapsed as expressed by the Registrar, JMI.
 - (iii) UGC should amend the guidelines so that ST reserved vacancies are not lapsed as expressed by the Registrar, JMI.

[Ref Para 2.9.21]

- (9) A number of Minority Educational Institutions have come into existence in various parts of the country. It is difficult for the ST/SC students to get admission in these institutions as the policy of reservation for SCs/STs is not applicable to these institutions as per the provisions of the Central Educational Institutions (Reservation in Admission) Act, 2006. The difficulty is more pronounced in the case of ST students as most of them belong to remote areas and cannot afford to get quality coaching for securing admission to these institutes by competing with the students of more forward communities. There is, therefore, urgent need for review of the

provisions of Central Educational Institutions (Reservation in Admission) Act, 2006. Therefore, the Commission would like to reiterate its recommendation contained in its third Report for the year 2007-08 that the Ministry of HRD and the Ministry of Minority Affairs should consider suitable amendment in the Central Educational Institutions (Reservation in Admission) Act, 2006 to ensure that reservation for STs is made applicable in admissions to Govt. run educational institutions which have been granted minority status.

[Ref Para 2.9.22]

- (10) The Committee was distressed to note that not a single ST employee of BHEL was sent for training abroad during the years 2006 and 2007. However, during the years 2005 and 2008, there was representation of 3 ST employees in each year for training abroad. The Committee was informed that there was no reservation in nomination of employees for training abroad but employees were nominated based on the functional requirement and fulfilling other terms and conditions stipulated in the guidelines for regulation of training followed by the Company. Having noted that the company has a policy for regulation of nomination process for training abroad, the Committee stressed that those ST employees should not be ignored should they otherwise fulfill the eligibility criteria prescribed by the Company as foreign training is very important for employee's confidence building and of great value for advancement of their career. No doubt, it is the aspiration and dream of every employee to avail foreign training in his career. The Committee, therefore, urged to ensure that the nomination of candidates from the recommendation stage by the Head of the concerned Unit should be done in a very transparent and fair manner so that eligible SC and ST candidates get equal opportunity for getting nominated to these trainings.

[Ref Para 2.10.4]

- (11) The Committee also noted that apprentices are taken under Apprenticeship Act in various branches of BHEL. During the last 5 years (2005, 2006, 2007 2008 and 2009), a good number of apprentices were taken but comparatively the absorption of those apprentices in BHEL is very low. The Committee expressed that if the Company cannot absorb all the apprentices after they are trained, then why the Company is taking them under Apprenticeship Act in the first instance. The Committee are of strong opinion that shortfall of SC/ST at the lower level of posts can be made good by absorbing SC/ST apprentices in due course of time. The Committee, therefore, recommended that it should be ensured that SC/ST candidates taken for apprenticeship are given preference for absorption so that shortfall of Scheduled Castes and Scheduled Tribes especially in the posts for which they are trained are always filled up.

[Ref Para 2.10.6]

- (12) The Commission is of the view that the observations and recommendations made by the Parliamentary Committee in the context of BHEL are equally applicable to all Ministries/ Departments and the PSEs. The Commission,

accordingly recommends as follows:

- (i) SC/ST officers should be encouraged to go on deputation or come on deputation.
- (ii) SC/ST officers should be encouraged to go on deputation or come on deputation
- (iii) It may be ensured that the nomination of candidates from the recommendation stage by the Head of the concerned Unit should be done in a very transparent and fair manner so that eligible SC and ST candidates get equal opportunity for getting nominated to these trainings.
- (iv) SC/ST employees should be given continuous training in different functional areas so that they can give their best service to the Company.
- (v) it should be ensured that SC/ST candidates taken for apprenticeship are given preference for absorption so that shortfall of Scheduled Castes and Scheduled Tribes especially in the posts for which they are trained are always filled up.
- (vi) as far possible an officer of appropriate rank from the SC/ST community having a sound knowledge of reservation policies should be appointed as Liaison Officer of the respective units and he should be provided with sufficient number of support staff drawn from reserved communities.
- (vii) the Liaison Officer should be allowed to work independently and without any interference from any side. The Liaison Officer should also not be overburdened with many assignments apart from his liaison duties. However, for any lapse, negligence and dereliction of duty on his part, appropriate action should be taken against him so as to ensure accountability in the office of the Liaison Officer.
- (viii) to entrust the job of maintaining rosters to officers who are well versed and acquainted with recruitment rules and maintain them strictly in accordance with the instructions laid down for the purpose.
- (ix) Rosters should be inspected regularly by the Liaison Officers and after every inspection; he should put his signature and stamp as a token for having inspected. The officers concerned for the maintenance of rosters as well as Liaison Officers should be made accountable for its proper maintenance.

[Ref Para 2.10.10]

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

[Ref Para 2.11.5]

- (14) These Welfare Associations are established for the benefit of all Scheduled Castes and/or Scheduled Tribes employees of the organization and not for a particular SC or ST community. If recognition can be granted to Associations of all Ex-servicemen, all women, all boys, all disabled persons then why Associations working for all SC/ST communities, irrespective of any specific SC/ST community, cannot be recognized. These Associations act as mediators and bring better coordination between the management

and the SC/ST employees and resolving the issues concerning the problems of those employees and also implementing the Government policy relating to reservation for Scheduled Castes and Scheduled Tribes. Therefore, the Department of Personnel and Training may therefore reconsider the issue relating to recognition of the Welfare Service Associations.

[Ref Para 2.12.2]

- (15) From the perusal of the proposals for de-reservation received in the Commission, it is felt that the ban on dereservation in Direct Recruitment applied in the year 1989 has not been followed in letter and spirit by various Ministries and Departments as non-availability of ST candidates amongst a long seniority list of the feeder grade/initial grades of cadres continues to be the main reason for seeking de-reservation in promotion. On the one hand reservation has not been applied at Direct Recruitment stage in the initial/feeder grade; and on the other hand, there is no provision for Direct Recruitment, or transfer on deputation, in the method of promotion to the higher grade. The National Commission for Scheduled Tribes is, therefore, of the view that de-reservation should be banned totally; and each cadre controlling/ recruiting authority should ensure the following for implementation of policy of reservation for Scheduled Tribes in posts/ services.
- (i) There is no eligible SC/ST candidate available or likely to be shortly available for promotion in the feeder cadre;
 - (ii) A copy of the proposal for dereservation in the appropriate prescribed Performa is sent immediately to (i) the Department of Personnel and Training and (ii) the National Commission for Scheduled Tribes in case of post reserved for ST or the National Commission for Scheduled Caste in respect of post reserved for SC as the case may be and thereafter the concerned Deptt. is required to wait for a period of 15 days before going for dereservation;
 - (iii) The proposal for dereservation has been seen and concurred with by the Liaison Officer of the Ministry/Department concerned;
 - (iv) The proposal for dereservation has been agreed to at a level not lower than that of the Joint Secretary to the Government of India in the administrative Ministry/ Department (Proper) concerned;
 - (v) In the event of a disagreement between the appointing authority and the Liaison Officer, the advice of the DoPT has been obtained;
 - (vi) The proposal contains a certificate that it is being made with the full knowledge and concurrence of the Liaison Officer of the Ministry/ Department concerned.

[Ref Para 2.13.10]

- (16) The National Commission for Scheduled Tribes made certain recommendations in its earlier Reports with regard to de-reservation. Since no information is available about action taken on those recommendations, by way of OMs issued by Department of Personnel and Training or any other reference from the DoPT or the Ministry of Tribal Affairs, and in view of the above observations of the Commission, the Commission makes the

following recommendation (including re-iteration of its earlier recommendations):-

- (i) There should be total ban on dereservation of posts reserved for Scheduled Tribes to be filled by any method i.e. whether Direct Recruitment or promotion in all Ministries/Depts./Organisations except those where reservation is exempted.
- (ii) The ban on dereservation in Direct Recruitment should be monitored strictly as many Ministries/Depts./Organisations including DoPT have failed to appoint Scheduled Tribes candidates against Direct Recruitment posts/ grades of general nature, for which there should be no paucity of qualified/ eligible ST candidates.
- (iii) Recruitment Rules in r/o each post must specifically mention about applicability of reservation for Scheduled Tribes, Scheduled Castes and OBCs (where admissible).
- (iv) There should be total ban on dereservation in general, excluding certain exceptional categories of posts. The exceptional posts should be decided in consultation with the Ministry of Tribal Affairs as well as National Commission for Scheduled Tribes.
- (v) No exchange of vacancies be permitted between ST, SC or OBC or vice-versa.
- (vi) Instead of seeking dereservation of the post, provisions of the DoPT OM No. 36011/14/83-Estt.(ST) dated 30/04/1983 relating to consideration of cases of ad-hoc promotion of SC/ ST employees should be applied in the matter of promotion of ST candidates against reserved posts. The relaxation in period of ad-hoc appointments upto 3 years agreed in respect of Group 'C' and 'D' posts vide DoPT OM No. 28036/01/2007-Estt(D) dated 14/11/2007 may be allowed, with suitable amendments, in case of ad-hoc promotion of ST candidates appointed against all categories of posts reserved for Scheduled Tribes.
- (vii) To check various issues and problems connected with de-reservation and to ensure accomplishment of the targets of achieving required percentage of reservation for Scheduled Tribes in all categories of posts, the DoPT OM No. 36011/14/83-Estt.(ST) dated 30/04/1983 may be revised to prescribe drawing of separate lists of eligible ST/ SC candidates in respect of all kinds of promotion on regular as well as ad-hoc basis in all categories of posts.
- (viii) If no ST candidate is likely to become available for a long time, steps should be taken to fill the reserved post from ST candidates through direct recruitment by amending the RRs if the existing RRs do not provide for the same or relaxing them, instead of seeking de-reservation of the post.
- (ix) Action should simultaneously be taken to amend the RRs for each post to provide for element of direct recruitment in all cases where appointment is being made 100% by promotion, by incorporation of 'failing which' clause, or, at least provision for relaxation of the same for filling up ST vacancies.
- (x) In normal course Recruitment Rules should provide elements of Direct Recruitment as well as deputation/transfer on deputation, beside promotion, instead of 100% by promotion, so that deficiencies due to non-availability of reserved category candidate(s) in the seniority list of the feeder grade may be made up through Direct Recruitment or deputation/transfer on deputation as the case may be. In this connection,

DoP&T O.M. No. AB.14017/30/89-Estt.RR dated 10.07.1990 also provide that reserved vacancy can be temporarily transferred from one mode of recruitment to other and this relaxation of RRs can be exercised by Ministries/Departments themselves subject to approval of UPSC.

- (x) As per instructions of the Supreme Court of India separate list of eligible ST and SC candidates, fulfilling the prescribed conditions relating to educational and experience qualification may be prepared for filling the posts reserved for Scheduled Tribes and Scheduled Castes respectively.
- (xii) In case of non-availability of ST/SC candidates in the feeder grade, in the near future, the post may be filled by deputation and the reserved point to be carried forward as shortfall/ backlog vacancy till such time the eligible ST/SC candidates becomes available for promotion.
- (xiii) In case of non-availability of ST/SC candidates, at all, in the feeder grade the post(s) could be filled by Direct Recruitment from the candidates belonging to the concerned reserved category to the extent of shortfall/backlog. This may be done by resorting to Special Recruitment Drive.

[Ref Para 2.13.11]

CHAPTER-3 DRINKING WATER IN TRIBAL AREAS

- (1) There are 25 States/UTs having Tribal Sub-Plan and out of these 9 States have predominant Scheduled Areas. Coverage of ST habitations in 3 Scheduled Areas States namely, Gujarat, Himachal Pradesh and Jharkhand is very encouraging but other Scheduled Areas States viz; A.P., Chhattisgarh, M.P., Orissa and Rajasthan need special efforts to achieve the target of 100% coverage of ST habitations. In terms of actual number of uncovered ST habitations also, the above mentioned Scheduled Areas States have very high backlog. The National Commission for Scheduled Tribes is of the view that the Central Government being specially vested with responsibility for raising the level of administration and good governance for development in the Scheduled Areas, MoDWS should lay special emphasis and earmark higher allocations in the next Plan as well as Strategic Plan (2011-2022) period in respect of the Scheduled Areas States and other Tribal Sub-Plan States which are way behind the set targets.

[Ref Para 3.44]

- (2) The problem of drinking water in Tribal areas is more acute there is also a heavy backlog. Therefore, earmarking 10% of funds under Tribal Sub-Plan is not the need of the time. In order to ensure that the Scheme should provide accelerated coverage of drinking water to all habitats within the TSP Areas (not only those habitations which have 100% ST population) funds should be allocated according to "problem-share"; and "need-based" to make up the shortfall existing over the years in relation to ST habitats, compared to other habitats. Unless the earmarking of outlays exceeds the relative share of incidence of residual problems in the area of drinking water supply to ST habitats, the relative gap between ST and other

habitats is likely to persist.

[Ref Para 3.50 (i)]

- (3) The Deptt. of DWS should establish appropriate mechanism on the pattern of the MGNREGA for effective monitoring and implementation of the Scheme. The pilot studies should also be conducted in other States having Scheduled Areas viz. Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Orissa and Rajasthan. The TOR for engagement of consultancy organizations/ research institutions for evaluation of IMIS of drinking water supply schemes and evaluation of impact of sustainability activities on the drinking water supply schemes should also be forwarded to the Commission separately for consideration and advice.

[Ref Para 3.50 (ii)]

- (4) The quality of water should be periodically checked with proper maintenance and verification of records. Further, proper and timely maintenance of the water purification units, especially in remote areas should also be ensured.

[Ref Para 3.50 (iii)]

- (5) Since Drinking Water is a vital need for survival of everyone including Scheduled Tribes, any programme and policy relating to Drinking Water Supply, and also sanitation in the country has important affect on the lives of Scheduled Tribes. In accordance with the mandatory provision under Article 338A(9) of the Constitution the Ministry of DWS should have consulted the National Commission for Scheduled Tribes before finalising various policies and programmes/ Missions. The Ministry of Rural Development which was the Programme Administration Ministry till July, 2011, never consulted this Commission while formulating the Drinking Water Supply Schemes from time to time and accordingly there is no clearly identified strategy or programme for the Scheduled Tribes and the Tribal Sub Plan Areas in the country. The Ministry of Drinking Water Supply and Sanitation is advised that in future, while considering any change in the present/ existing programmes or formulation of new programme, the Ministry ought to have meaningful consultation with this Commission after undertaking consultations in public domain and the inter-Ministerial consultations and before submitting the final draft to the Cabinet for consideration/ approval of the Cabinet and the government. The advice /views given by this Constitutional Commission may also be placed, along with the proposal, before the Cabinet.

[Ref Para 3.50 (iv)]

CHAPTER- 4: CRITICAL ISSUES CONCERNING SCHEDULED TRIBES

- (1) Therefore, prescribed modalities for deciding claims for inclusion in / exclusion from ST list were not supported with any guidelines containing test criterion with reference to the accepted criterion in relation to the Scheduled Tribes viz. way of living, social customs and religious practices,

dialect, educational and economical status etc. and the methodology/ procedure for applying the tests. Alongside, non-availability of scientific data pertaining to social, economical and ethnic status of STs is also resulting in delay in disposal of proposals. However, if the community has been fairly mainstreamed, the question or need for granting ST status to that community would have to be seriously examined.

[Ref Para 4.14]

- (2) The Commission is of the view that considering the huge pendency of the cases, the Ministry of Tribal Affairs needs to streamline the existing procedure with priority, also with reference to those communities which are ST in one State and non-ST in the neighbouring State for various reasons including re-organization of States and large scale displacements due to various projects and their consequential rehabilitation in a different area of the same State or in a different State etc. The Ministry of Tribal Affairs also need to forward proposal to the Commission along with detailed proposal of the State Govt. in accordance with prescribed modalities, as absence of such information leads to delay in arriving at the decision by the Commission.

[Ref Para 4.15]

- (3) In view of above, the Commission makes the following recommendations on which the Ministry of Tribal Affairs should take necessary action in the matter urgently:
 - (i) The Ministry of Tribal Affairs should immediately consider revising the existing acceptance criterion in relation to the Scheduled Tribes and finalize corresponding guidelines for examination of such cases with well-defined test criterion and the methodology/ procedure for their application.
 - (ii) The State Government should formulate their proposal in a systematic manner according to the revised criterion and procedure to meet the laid down criteria/ requirements and avoid back references for clarification etc.
 - (iii) At the same time, it is necessary to create data-base on economic development, educational development and social development of the ST communities and for conducting ethnographic studies for STs.
 - (iv) Latest ethnographic study reports available with the Anthropological Services of India could also be used for this purpose.
 - (v) The National Commission for Scheduled Tribes may also be suitably provided with requisite research staff for conducting field studies, if necessary as per modalities, to verify the proposals of the State Governments.
 - (vi) A Commission for examination of the proposals for revision of the lists of Scheduled Tribes in respect of each State/ UT, should be set up on the lines of National Commission for Backward Classes.

[Ref Para 4.17]

- (4) It is therefore, recommended that (i) the State and District level Scrutiny Committees should be made functionally effective by providing adequate infrastructure and manpower to them so that validation exercise in each case may be completed within specified time, say three months, (ii) Clear

instructions may be given in the admission brochure and also to the Members of the Admission Committee about the eligibility of the candidate against ST reserved seat and the contents of the ST certificates to be produced by the candidates, (iii) Migrant ST candidate, if prima facie not eligible, to be clearly advised to take admission in any other institute where migrant ST candidates were eligible. Similar instructions should also be issued/ re-iterated to the appointing authorities so that no fraudulent appointments against ST reserved posts take place and such authorities are not required subsequently to waste their time in unnecessary legal battles.

[Ref Para 4.22]

- (5) The Commission further recommends the Government to ensure that all States/ UTs, in relation to which ST communities have been specified, should set up the Scrutiny Committee for verification/ validation of ST caste certificates as per the directives of Hon'ble Supreme Court of India. The Ministry of Tribal Affairs should also take up the matter with all the States/UTs to impress upon them the need for putting in place an effective mechanism for the purpose of validation of the caste certificates and verification of the community status of such persons claiming to belong to Scheduled Tribes or scrutiny of complaints relating to availing benefits on the basis of ST certificates obtained fraudulently by non-Scheduled Tribes and the matters connected therewith.

[Ref Para 4.23]

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

[Ref Para 4.37]

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

[Ref Para 4.38]

- (8) Since mineral extraction is generally destructive of soil surface, it can't usually be restored to original land use subsequently. An effective and equitable compensation arrangement should ensure lifelong annuities sufficient to substitute income deprivation for the land owners (adjusted for likely inflation), besides creating alternative vocations for them. The Commission, therefore, recommends that land owners should also get a reasonable share in the profits distributed/ retained by the mining enterprise. Besides, annual compensation in lieu of land surface rights, future (and sometimes windfall) earnings from mining activity should also be shared with land rights holders in reasonable measure. If some land rights are being ceded in perpetuity, the retained earnings from the project activity should also be shared with the land owners in the forms of "sweat-equity" (beside compensation for denial of use of land surface). Share of earnings from alternative users of land should also be provided, if future land use is of a commercial nature. Benefits/privileges available to mineral right holders may also be accorded to ordinary landholders also in Scheduled areas.

[Ref Para 4. 40]

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

[Ref Para 4. 41]

- (10) Due to continuous follow up with the Ministry of Rural Development on the advice of the National Commission for Scheduled Tribes on the above lines, Ministry of Rural Development included special provisions relating to the Scheduled Tribes and the Scheduled Castes in Sections 42 and 43 of

the Land Acquisition, Rehabilitation and Resettlement Bill, 2013 which has now become an Act of Parliament. Considering the special role assigned to the governors of the States, the Commission recommends that the Union Government and the Governments as well as Governors of the States having Scheduled Areas may take suitable steps for implementation of the Land Acquisition, Rehabilitation and Resettlement Act, particularly Sections 42 and 43 in letter and spirit so that no more Scheduled Tribes have to face the consequences of land acquisition and displacement. The Commission further recommends that special care be taken while acquiring land under "PUBLIC PURPOSE" and 'EMERGENCY REQUIREMENT' in Scheduled Areas under Fifth as well as Sixth Schedule, and the forest lands so that rights of the Scheduled Tribes over land are fully safeguarded and their lands were not acquired until their rights were settled and the project for their resettlement and rehabilitation were finalized and approved by the appropriate competent authority.

[Ref Para 4.48]

- (11) Several cases similar to those highlighted above are taking place in the country. Since these transactions do not fall within the purview of land acquisition, the original tribal land owners subsequently becomes landless as well as penniless, as they are not eligible for any rehabilitation and resettlement. Once a land is alienated from the tribals, the purchaser exploits the deal and the land use in such a way that subsequently Government finds it very difficult to restore the land to the original tribal land owner. The best solution lies in proper implementation of the land transfer regulations by devising requisite and strict arrangements by the Government to monitor such transactions.

[Ref Para 4.50]

- (12) The Union Minister for Tribal Affairs was also requested to take up the proposal with the Ministry of Finance and also to have the Commission advised of the action taken by the MTA in the matter at the earliest. There is, however, no information about the action taken by either the Ministry of Tribal Affairs or the Ministry of Finance. The Commission therefore, reiterates that "In order to ensure that public financial institutions do not lose their money and the STs also do not lose their ownership over land, the Commission has been suggesting that, on the lines of the Credit Guarantee fund set up for the comfort of the lenders under the Scheme of Ministry of Micro, small and Medium Enterprises, a scheme may also be considered for the benefit of the tribals. To safeguards the livelihood of tribal farmers, the Govt. could consider setting up Land Banks comprising lands resumed by the Govt. in cases of mortgage default; and such lands may be leased to the previous ST owners with the opportunity/right to re-purchase the same at any subsequent stage of time. Further, in the event of the acquisition of land, compensation for such cases needs to be governed in accordance with the relevant Land Acquisition, Rehabilitation and Resettlement Act. Thus, the Government should step in as a purchaser of the last resort in these cases".

[Ref Para 4. 52]

- (13) The Commission has observed that hostels and residential schools were in pitiable and unsafe conditions beside lacking several essential facilities. These include lack of security and check on entry of outsiders to the hostels. Even the staff deployed in some of the hostels have been found involved in causing sexual harassment and atrocities on the female inmates in the hostels. Therefore, beside providing security check on entrance to the hostels, there is an urgent need to ensure that the staff and the supervisor deployed in the hostels have integrity beyond doubt.

[Ref Para 4. 58]

- (14) It is noted that the set up and functioning of the Eklavya Model Residential Schools have been planned exactly on the lines of Navodaya Vidhyalayas set up in each District of the country under the scheme of Ministry of Human Resource Development. On the basis of the experience gained through visits to the tribal areas and the review meetings held by the Commission, the Commission makes the following recommendations for effective functioning of the Eklavya Model Residential Schools in the country:

- (i) There should be an independent cadre of teaching and non-teaching staff for all EMRS in the State for which separate recruitment should be made. Each staff should be transferable from one EMRS in the State to another EMRS in the same State. No staff should however, be transferable to other establishments and schools of the State Governments.
- (ii) There should be stringent criteria for eligibility and recruitment procedure for appointment to those posts. Teachers from non-EMRS schools may be considered for appointment/ posting in EMRS only after their selection through a common competitive examination, which may be held throughout the State by State PSC. No staff should be appointed on any type of contract for whatsoever purpose
- (iii) Since these posts are meant for special schools for disadvantaged section of society and Government of India provides grants for establishments and maintenance of EMRS, staff in these schools be paid at Central Government rate and other allowances/ perks admissible for tribal area postings.
- (iv) All Scheduled Areas and Tribal Sub-Plan areas in all the States may be recognized as tribal areas for the purpose of additional allowances/ perks/ incentive facilities. All teaching as well as non-teaching staff posted in EMRS should be eligible for grant of those additional allowances/ perks/ incentive facilities.
- (v) Power backup/ Solar lighting and water heating system need to be provided in all Eklavya Model Residential Schools as well as Residential Educational institutions located in Scheduled Areas, Tribal Sub Plan areas and other Tribal areas.
- (vi) Government of India may also consider establishing and running of EMRS through Centrally Administered Societies like Kendriya Vidyalaya Sangathan for Central Schools and Navodaya Vidyalay Samiti for Navodaya Vidyalaya, with Regional Offices in selected States.

- (vii) Recruitment to the teaching and non-teaching staff for EMRS may thus be made at Central level and each staff should be transferable from one EMRS in a State to another EMRS in the same or any other State.

[Ref Para 4. 69]

- (15) The above situation is uniformly prevalent in non-tribal as well as tribal areas and tribal people are suffering more due to the mis-links in respect of medical facilities in those areas. One can imagine the health conditions of poor tribals who live in remote and inaccessible areas where the above mentioned condition is worse as compared to that in general areas. The Commission, therefore, makes the following recommendations to overcome the difficulties to some extent:

- i) State-specific HR management policy and transparency in management of health cadres.
- ii) Training (and utilization) of local people.
- iii) Reintroduction of Licentiate course in Medicine.
- iv Incentives for difficult areas and system for career progression.
- v) Priority for improving Communication and road linkages making the health facilities more accessible to the tribals.
- vi Publicity, awareness and IEC programmes in local language.
- vii) Successful initiatives by some of the State Govt. must be shared with others like Health Melas in Assam, Tribal promoters in Kerala, Navsanjivani and Matrutva Anudan Yojana by Maharashtra Govt.
- viii) State Governments should not have an indifferent attitude towards the remote tribal areas. (For example in Tripura no CHC or PHC have any Specialist Doctor).
- ix) New medical, nursing and dental colleges should be established in the under-served tribal areas.
- xi) A synthesis of Indian systems of medicine like Ayurveda and Siddha with the tribal system and modern medicine should be promoted.

[Ref Para 4. 76]

- (16) The Commission has also noted that although the Ministry of Health & Family Welfare have well structured schemes/programmes with ambitious targets, there is no specific Tribal Sub Plan (TSP) component in these schemes/ programmes. An adequate flow of funds in proportion to the ST population of a State/UT through TSP should be ensured by the Central Ministry / Department.

[Ref Para 4. 78]

- (17) The Commission further recommends that specific Tribal Sub Plan (TSP) component in all the major missions/schemes/ programmes of the Ministry of Health & Family Welfare is considered necessary to have a clear focus on formulation of schemes/ programmes concerning the STs and their effective implementation and monitoring. Further, adequate support to ST dominated districts should be ensured both in terms of availability of funds

and other resources to improve health and nutrition conditions upto acceptable/targeted standards.

[Ref Para 4.79]

- (18) It will be noted from the above TABLE that there are 90 Districts in 22 States/ UTs of the Countries which have more than 50% ST population and 62 Districts which have less than 50% but more than 25% ST population. The NE States of Arunachal Pradesh, Meghalaya, Mizoram, Nagaland and Union Territories of Dadra & Nagar Haveli and Lakshadweep have more than 50% ST population and therefore, it can be deemed that the benefit of the programme launched in these States and UTs largely reaches the ST population. However, special Plan has to be prepared for ensuring that benefits of National Rural Health Mission reach the Tribal Concentrated Districts in all other States and UTs mentioned in the TABLE above. The Commission recommends that support to ST dominated districts should be given on priority under NRHM.

[Ref Para 4. 82]

- (19) The above mentioned stories highlight about an alarming situation regarding a large scale misuse of funds in various States including the States having Scheduled Areas, thus affecting greatly the Scheduled Tribes also, who would have otherwise been the main targeted beneficiaries of the scheme in the States/ UTs and districts having large tribal concentration. National Rural Health Mission is a beneficiary oriented scheme launched by the Central Government taken up in a Mission mode. The National Commission for Scheduled Tribes is of the view that these and many other incidents of misuse of National Rural Health Mission funds in various States/ UTs was the result of lack of checks/ controls and monitoring on the implementation of the scheme. The scheme initially launched in the year 2005, up to the year 2012 is continuing beyond 2012. It is high time that the Government of India evaluates the functioning and performance of the scheme and issue directions for effective implementation of the scheme with full transparency.

[Ref Para 4. 86]

- (20) Article 338A(9) of the Constitution makes it mandatory for the Union and the State Governments to consult the National Commission for Scheduled Tribes on all major Policy Issues affecting Scheduled Tribes. The Commission has noted that the Union Government had not consulted the National Commission for Scheduled Tribes while framing and finalizing the National Rural Health Mission. The Commission considers that it was consequence of non-consultation that the important issues, problems, needs, goals and monitoring mechanism regarding Scheduled Tribes and Scheduled Areas / Tribal Areas in the country have not been examined and considered effectively under NRHM. As the National Rural Health Mission was launched in the year 2005, it is time that the effectiveness of the Mission may be evaluated. The Commission, therefore recommends that MoHFW and the Programme Evaluation Organization (PEO) of Planning Commission should undertake evaluation and appraisal of the National Rural Health Mission and make amendment to the Mission in consultation

with the National Commission for Scheduled Tribes, as per the instructions dated 16/02/2012 issued by the Cabinet Secretariat, which have been duly incorporated in the Handbook of Instructions for preparing Notes for consideration of the Cabinet on Policy matters including Legislative proposals and the Cabinet Notes.

[Ref Para 4. 87]

- (21) In view of above, Commission makes the following recommendations regarding formulation and implementation of Tribal Sub-Plan in States/UTs.
- (i) The Task Force constituted by the Planning Commission to examine and revise the guidelines for Tribal Sub Plan may be asked to submit the Report relating to revised guidelines for preparation of Tribal Sub Plan of States/ UTs at the earliest, as the matter is pending for more than three years.
 - (ii) As soon as the revised guidelines for preparation of Tribal Sub Plan of States/ UTs are received from the Task Force, the Planning Commission may issue necessary guidelines/ instructions to the State Governments/ UT Administrations for compliance.
 - (iii) Specific Tribal Sub-Plan (TSP) component in all the major missions/ schemes/ programmes of all Ministries/ Departments should have a clear focus on Scheduled Tribes.
 - (iv) The Strategy for all development, programmes, particularly the major missions/ schemes of the State Government that have direct impact on the life of Scheduled Tribes, should comprise sub-Chapter for accelerated development of the Tribal Areas. In particular, it is necessary to have specific Tribal Sub- Plan (TSP) component in all the major missions/schemes/ programmes of all Departments to have a clear focus on formulation of schemes/ programmes concerning the STs and their effective implementation and monitoring. The TSP component should not be per population share but according to "problem-share", and "need-based" taking into account the extent of deprivation, or even more than that to make up the backwardness/ negligence experienced over the years. Unless the earmaking of TSP outlays exceeds the relative share of incidence of residual problems eg. drinking water, primary health care and education, nutritional support unemployment etc., the relative gap in physical quality of life is likely to persist.
 - (v) The Planning Commission and the Ministry of Tribal Affairs may advise the State Governments/ UT Administrations as well as Central Ministries and Departments to submit Annual/ Five year Tribal Sub Plan along with general Annual/ Five Year Plan of the State/ UT/ Central Ministry/ Department.
 - (vi) Release of SCA to Tribal Sub Plan may be made to the States only after receipt of the Tribal Sub Plan documents and after holding discussions on the Tribal Sub Plan proposals. As in the past, some fraction of SCA to Tribal Sub Plan of the State/ UT may be linked with the level of utilization of Tribal Sub Plan funds under State Plan in the previous year(s).

- (vii) The Ministry of Tribal Affairs may re-iterate the instructions to the State Governments/ UT Administrations for maintaining accounting procedure and control over the Tribal Sub Plan funds from State Plan as well as SCA, in order to ensure full utilization of the TSP funds earmarked under each head of development/ scheme.
- (viii) State Government should earmark TSP funds under a single budget demand head under the control of the State Tribal Welfare/ Development Department of the State, (as envisaged in the Maharashtra Model and advocated by Planning Commission as well as Ministry of Tribal Affairs from time to time).
- (ix) Each department of the State Government should set up TSP Cell. The TSP Cell will monitor implementation of TSP schemes of the Ministry and by using the inputs received through monitoring, prepare the TSP component, of Annual Plan and Five Year Plan of the Department in terms of financial and physical aspects. The TSP Cells should be manned by personnel having, special background and expertise in various fields of Tribal Development and Administration. In order to ensure continuous monitoring of TSP, the posts in TSP Cell should not be allowed to remain unfilled. This will be possible only if the personnel for these Cells belong to an organized cadre of specialized experts.
- (x) The State Governments may be advised to consider enactment of a legislation on the lines of the Andhra Pradesh Scheduled Castes Sub-Plan and Tribal Sub-Plan (Planning Allocation and Utilization of Financial Resources) Act 2013, mandating allocation of funds for Scheduled Tribes and their proper utilization.
- (xi) Approach to development of Particularly Vulnerable Tribal Groups should consider for having modern look to PVTGs, while simultaneously protecting them from cross infection and exploitation by the outside world.

[Ref Para 4.96]

- (22) In view of above the National Commission for Scheduled Tribes recommends that the following points may also be considered by the Government while finalizing the National Tribal Policy and also while taking action independently on these points;
 - (i) TAC for all States with Scheduled Areas as well as tribal areas may be headed by the Governor as Chairperson of the Council, while the Chief Minister of the State may act as Vice Chairperson of the TAC. At least two meeting in a year. The agenda of the TAC should inevitably include the subject of adaptation of Central or State laws enacted during the interregnum of its meeting so that the same are not routinely extended to Scheduled Areas / Tribes. A similar mechanism (like TAC) should be established for Scheduled VI States also.
 - (ii) Constitution of a Scheduled Areas & Scheduled Tribes Commission to review the list of Scheduled Areas / Scheduled Tribes objectively every 10 years.

[Ref Para 4. 98]

- (23) The Commission further recommends that immediately after finalization and notification of the National Tribal Policy, the Ministry of Tribal Affairs should hold consultations with each central Ministry for harmonizing the concerned National Mission with the National Tribal Policy.

[Ref Para 4. 99]

- (24) In view of above, the Commission makes the following recommendations:
- (i) An investigation into the dwindling participation of Scheduled Tribes under the Mahatma Gandhi National Rural Employment Guarantee Scheme should be got conducted by the ministry of Rural Development and corrective action taken to arrest the trend and enhance their participations.
 - (ii) Ministry of Rural Development should consider removing the limit of 100 days of engagement per family per year under the Scheme in tribal areas and ensure timely planning and payment of wages to the workers.
 - (iii) State Governments should also formulate other schemes to generate employment for implementation in tribal areas to curb migration of male as well as female tribals in search of job.
 - (iv) The Government should immediately formulate regulation to control engagement of domestic servants.
 - (v) The Government may initially consider for extension of the 'The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, to the placement agencies engaged in procuring/ alluring the tribal as well as other poor persons from tribal areas for supply as domestic workers in the urban areas and cities.
 - (vi) The Government may formulate ways and means to ensure that the benefits of Mahatma Gandhi National Rural Employment Guarantee Scheme reach the people of the Scheduled Areas and also make an impact on the development of those areas, which only can help check left wing extremism activities in those areas.

[Ref Para 4.108]

CHAPTER- 6: CONSULTATION ON POLICY RELATED ISSUES

- (1) The Commission, therefore, re-iterates its earlier recommendations contained in para 8.7 of its 4th Report for the Year 2008-09, submitted to the Hon'ble President of India on 27 August 2010, that all the concerned Ministries/ Deptts. of the Central Govt. and State Governments should communicate action taken on the comments/views/advice rendered by the Commission at the earliest so that the same can be highlighted in the reports submitted by the Commission. To enable meaningful consultation with the Constitutional Commissions like National Commission for Scheduled Tribes, the Cabinet Secretariat should issue further instructions to all Central Ministries/ Departments and State Governments that they should furnish an Action Taken Report in a time-bound manner on the comments/views/ advice received from them on policy matters.

[Ref Para 6.5]

- (2) Since legislation is the most pristine articulation of the policy of the State and, it being mandatory, under Clause 9 of the Article 338A, to consult the Commission in respect of those legislative proposals which may affect Scheduled Tribes, the National Commission for Scheduled Tribes reiterates its earlier recommendations that the Cabinet Secretariat may issue instructions for direct and timely consultation with the National Commission for Scheduled Tribes by the sponsoring Ministries/ Departments for ensuring meaningful consultations with the National Commission for Scheduled Tribes before such legislative proposals are placed for consideration before the Council of Ministers.

[Ref Para 6.6]

National Commission Scheduled Tribes

Tour/Visits by Chairperson, Vice- Chairperson and Members during 2010_11

Tour/Visits by Chairperson during 2010_11

S. No.	Duration of visit	State/Places visited
1	08/12/2010 to 12/12/2010	Udaipur (Rajasthan)
2	27/02/2011 to 06/03/2011	Ranchi (Jharkhand)
3	26/03/2011 to 28/03/2011	Bhubaneswar (Odissa)

Tour/Visits by Vice-Chairperson during 2010_11

S. No.	Duration of visit	State/Places visited
1	23/04/2010 to 25/04/2010	Raipur (Chhattisgarh)
2	15/06/2010 to 25/06/2010	Orissa
3	21/07/2010 to 23/07/2010	Agartala (Tripura)
4	08/08/2010 to 12/08/2010	Bhopal & Jabalpur (MP)
5	30/12/2010 to 05/01/2011	Orissa
6	28/02/2011 to 04/03/2011	Orissa

Tour/Visits by Member (OSM) during 2010_11

S. No.	Duration of visit	State/Places visited
1	19/04/2010 to 27/04/2010	Assam & Meghalaya
2	05/06/2010 to 09/06/2010	Assam & Meghalaya
3	22/09/2010 to 26/09/2010	Guwahati (Assam) & Shillong (Meghalaya)
4	03/11/2010 to 10/11/2010	Assam & Meghalaya
5	05/12/2010 to 15/12/2010	Kolkata (W.B.), Guwahati (Assam) & Shillong (Meghalaya)
6	09/02/2011 to 15/02/2011	Meghalaya
7	09/02/2011 to 15/02/2011	Assam & Meghalaya
8	09/03/2011 to 16/03/2011	Assam & Meghalaya
9	26/03/2011 to 29/03/2011	Gangtok (Sikkim)

Tour/Visits by Member (KKK) during 2010_11

S. No.	Duration of visit	State/Places visited
1	19/08/2010 to 31/08/2010	Hyderabad (A.P.)
2	02/09/2010 to 05/09/2010	Hyderabad (A.P.)
3	23/09/2010 to 02/10/2010	Hyderabad & Guntur (A.P.)
4	29/10/2010 to 06/11/2010	Hyderabad (A.P.)
5	16/11/2010 to 24/11/2010	Hyderabad & Vizag (A.P.)

6	16/12/2010 to 18/12/2010	Hyderabad (A.P.)
7	08/01/2011 to 16/01/2011	Hyderabad (A.P.)
8	15/01/2011 to 17/01/2011	Sholapur (Maharashtra)
9	25/03/2011 to 29/03/2011	Hyderabad (A.P.) & Pune (Maharashtra)

Tour/Visits by Member (BLM) during 2010_11

S. No.	Duration of visit	State/Places visited
1	29/10/2010 to 01/11/2010	Udaipur (Rajasthan)
2	03/11/2010 to 15/11/2010	Rajasthan & Gujarat
3	19/11/2010 to 24/11/2010	Udaipur (Rajasthan)
4	02/12/2010 to 13/12/2010	Udaipur (Rajasthan)
5	20/01/2011 to 30/01/2011	Udaipur (Rajasthan)
6	04/02/2011 to 09/02/2011	Rajasthan
7	26/02/2011 to 06/03/2011	Udaipur (Rajasthan)
8	08/03/2011 to 15/03/2011	Udaipur (Rajasthan)
9	16/03/2011 to 22/03/2011	Udaipur (Rajasthan)
10	24/03/2011 to 28/03/2011	Rajasthan

NATIONAL COMMISSION FOR SCHEDULED TRIBES
Disposal of Case Files at Headquarter Office AND THE Regional Offices
during 2010-11

Category	Current Files as on 31/03/2010	Files opened during 01/04/2010 to 31/03/2011	Total Files for action during 2010-11	Files closed during 10-11	Current Files as on 31/03/2011
(1)	(2)	(3)	(4)	(5)	(6)
HO, Delhi	2523	1735	4258	1589	2669
Regional Offices					
Bhopal	541	286	827	204	623
Bhubaneswar	90	57	147	65	82
Jaipur	253	163	416	126	290
Raipur	76	246	322	170	152
Ranchi	49	45	94	16	78
Shillong	39	36	75	29	46
Sub-Total (ROs)	1048	834	1882	605	1277
GRAND TOTAL	3571	2569	6140	2194	3946

ANNEXURE 1.III
(Ref. Para 1.12.6_6R)

NATIONAL COMMISSION FOR SCHEDULED TRIBES
Disposal of Receipts at Headquarter Office during 2010-11

Category	Receipts brought forward from the year 2009-10	Fresh receipts created/ received during 01/04/2010 to 31/03/2011	Total receipts for action during 2010-11	Receipts on which action was taken during 10-11	Receipts pending for action as on 31/03/2011
(1)	(2)	(3)	(4)	(5)	(6)
Headquarters	128	6572	6700	6113	587
Regional Offices					
Bhopal	11	2245	2256	2256	0
Bhubaneswar					
Jaipur	59	2152	2211	2142	69
Raipur	0	607	607	607	0
Ranchi	0	47	47	47	0
Shillong	0	899	899	899	0
Sub-Total (ROs)	70	5950	6020	5951	69
GRAND TOTAL	198	12522	12720	12064	656



भारत सरकार

राष्ट्रीय अनुसूचित जनजाति आयोग

GOVERNMENT OF INDIA
NATIONAL COMMISSION FOR SCHEDULED TRIBES

संख्या / **No: 4/6/12-Coord.**

दिनांक / **Date: 30/01/2013**

To The Secretary,
Department of Personnel and Training,
Ministry of Personnel and Training, Pensioners and Public Grievances,
North Block;
New Delhi-110001.

Sub: Issues relating to service safeguards of Scheduled Castes and Scheduled Tribes.
Ref: (i) DoPT OM No. 43011/153/2010-EStt.(Res.) dt. 16/08/2012 w.r.t. NCST letter No. SD/2/2012/MDEF2/SEPROM/RU-IV dt 18/07/2012

(ii) DoPT OM No. 36020/2/2012-Estt. (Res.) dated 21/08/2012 w.r.t NCST letter No. SD/2/2012/MDEF2/SEPROM/RU-IV dt 16/07/2012

Sir,

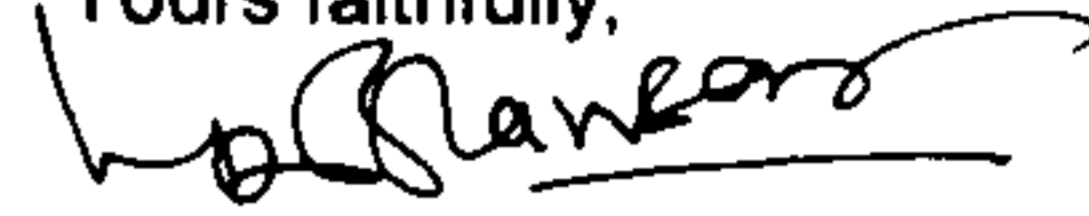
I am directed to refer to the correspondence mentioned at (i) above regarding certain issues relating to reservation for Scheduled Castes and Scheduled Tribes and to say that the Commission is of the view that the judgement delivered by the Supreme Court in the matter of R. K. Sabharwal v/s. State of Punjab regarding "own merit appointments" cannot be overruled by any High Court and hence DoPT OM dated 02/07/1997 and 11/07/2002 cannot be deemed to be quashed. Therefore, statement made in DoPT letter No.43011/153/2010-Estt. (Res.) dated 16/08/2012 that the Punjab and Haryana High Court has quashed the DoPT OM dated 10/08/2010 is not clear. It is noted that vide OM dated 10/08/2010, DoPT had issued certain clarifications to OM dated 31/05/2005. Quashing the OM would mean quashing the clarifications. It means that the original OM dated 02/07/1997 and 11/07/2002 continue to exist and therefore, "own merit appointments" should continue to be considered. Moreover, the context of the Punjab and Haryana High Court judgement relates to SC employees being in excess over the prescribed reservation in a particular Organisation mentioned in the WP. This situation has neither reached in respect of Scheduled Tribes in any establishment nor was it highlighted in the Judgment. Therefore, the directions relating to "own merit appointments" by direct recruits and promotion modes have to be clarified, and its applicability w.r.t. appointment of ST Candidates on "OWN MERIT".

2. Regarding comments offered by DoPT in para (ii) of its letter cited at (ii) above, the main issue relates to the problem in fulfilling 7.5% reservation in promotion in cases where Direct Recruitment to Gp C and D posts are made on local basis having reservation quota of less than 7.5%. Since recruitment in feeder grades is made on the basis of local population percentages (less than 7.5%), candidates are not available for fulfilling promotion quota of 7.5% for Scheduled Tribes. Similar anomaly exists in respect of Scheduled Castes in States having low level of SC population. It needs evolving a formula wherein a balance of implementing reservation policy upto Group A level could be achieved without hassle.

3. I am also directed to invite your attention to certain issues which were taken up with the Minister of State for Department of Personnel and Training vide D.O. No 4/3/08-Coord dated

50.06.2009 from the Chairperson, National Commission for Scheduled Tribes and to request you to furnish present status of each issue raised in the letter, a copy of which is enclosed for ready reference.

4. As the position on the above mentioned issues is required to be reflected in the forthcoming Annual Report of the Commission, which is likely to be submitted to the Hon'ble President by March, 2013, it is requested that views of the Department of Personnel and Training on the above mentioned issues may please be got forwarded to this Commission by 20/02/2013 positively. The views may also be forwarded by E-mail at ID: dircood@ncst.nic.in by this date

of
Yours faithfully,

(Mrs. K.D. Bhansor)
Deputy Director

उर्मिला सिंह
अध्यक्ष

URMILA SINGH
CHAIRPERSON



भारत सरकार
राष्ट्रीय अनुसूचित जनजाति आयोग
GOVERNMENT OF INDIA
NATIONAL COMMISSION FOR
SCHEDULED TRIBES
छठी मंजिल, लोकनायक भवन,
खान मार्केट, नई दिल्ली-110003
6TH FLOOR, LOK NAYAK BHAWAN,
KHAN MARKET, NEW DELHI - 110003
Tel. : 24635721 Tel/Fax : 24624628

DO No. 42/08-Coord

Dated the 30th June, 2009

Dear Shri Chauhanji,

As you are aware, the Constitution of India enjoins upon this Commission to monitor all matters relating to the safeguards provided for the Scheduled Tribes, and to participate and advise on the planning process of socio-economic development of the Scheduled Tribes. Clause (9) of Article 338A of the Constitution also provides that "The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Tribes. Clause 5(d) further provides that the Commission shall present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards. While reviewing the status of implementation of reservation policy, the Commission has noted the following areas, which require urgent attention.

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

3. As you are aware, Rajya Sabha has already passed the SCs and STs (Reservation in Posts and Services) Bill 2008 which, inter-alia, provides for ban on de-reservation in posts to be filled up by direct recruitment as well as by promotion (so far the de-reservation was banned only in respect of direct recruitment posts). This means that the vacancies reserved for members of SCs/STs shall be filled respectively by members of the SCs/STs only. However, a large number of vacancies, reserved for STs, have been lying vacant in most of the Ministries/Departments for a considerable period, in spite of various instructions issued by DoPT from time to time for launching of Special Recruitment Drives (SRDs) in direct recruitment as well as in promotion to fill up the backlog vacancies reserved for STs. This indicates imperative need for immediate review to evolve an

3410
11/7/09

निवास : सी-1-5, लोधी गार्डन, नई दिल्ली-110 003 दूरभाष : 24649495
Residence : C-1-5, Lodhi Garden, New Delhi - 110 003 Tel. : 24649495

effective mechanism/ initiatives to ensure timely filling of posts under SRDs to fill up the backlog ST vacancies as well as those arising in the normal course.

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


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

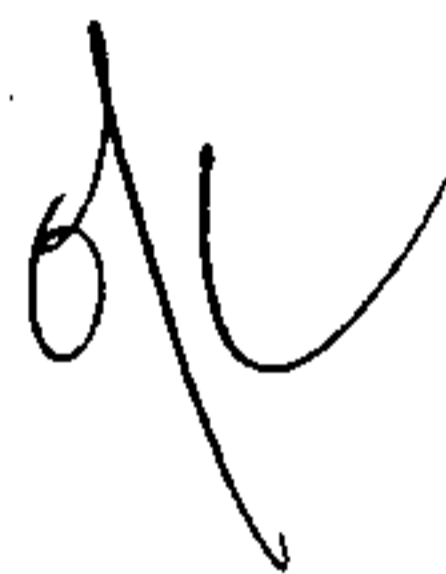
6. I would request you to kindly look into the above issues and initiate action with a view to evolve an effective mechanism for implementation of reservation policy for STs. We would appreciate if the instructions to be issued by DoPT are referred to NCST at the draft stage.

With regards,

Shri Prithviraj Chauhan,
Minister of State,
Department of Personnel & Training,
North Block,
New Delhi

Yours sincerely,


(Urmila Singh)



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

New Delhi, Dated the 7th December, 2009

OFFICE MEMORANDUM

Subject :- Revision of the proforma for sending dereservation proposals.

The undersigned is directed to invite attention to this Department's O M. No. 36011/20/79-Estt(SCT) dated 2.11.1979 whereby proformae for sending proposals for dereservation of reserved vacancies were prescribed. In view of the fact that a number of developments like creation of separate National Commissions for the Scheduled Castes and the Scheduled Tribes, replacement of vacancy based rosters by post based rosters, ban on exchange of reservation between SCs and STs have taken place, it has become necessary to modify the said proformae.

2. There is a general ban on dereservation of reserved vacancies in case of direct recruitment. However, in rare and exceptional cases when a vacancy in a Group 'A' service cannot be allowed to remain vacant in public interest, the administrative Ministry/Department may prepare a proposal for dereservation of the vacancy giving following information:

- (i) Designation of the post;
- (ii) Pay scale of the post;
- (iii) Name of the service to which the post belongs;
- (iv) Duties and responsibilities attached to the post;
- (v) Educational and other qualifications prescribed for the post;
- (vi) Efforts made to fill up the post;
- (vii) Reasons why it cannot be allowed to remain vacant;
- (viii) Justification for dereservation; and
- (ix) Any other relevant information.

3. The administrative Ministry shall consult the National Commission for Scheduled Castes in respect of vacancy reserved for SCs, the National Commission for Scheduled Tribes in respect of vacancy reserved for STs and the National Commission for Backward Classes in respect of vacancy reserved for OBCs. After obtaining the comments of the concerned Commission, the administrative Ministry/Department shall place the proposal alongwith the Commission's comments before a Committee comprising of the Secretaries in the Department of Personnel and Training, the Ministry of Social Justice and Empowerment, and the Ministry/Department under which the recruitment is to be made for consideration and recommendation. The recommendation of the Committee shall be placed before the Minister in charge of the Department of Personnel and Training for taking a final decision. If dereservation of the vacancy is approved, it can be filled as an unreserved vacancy.

4. In case of promotion, if sufficient number of SC/ST candidates fit for promotion against reserved vacancies are not available, such vacancies may be dereserved and filled by the candidates of other communities. The power to accord approval to dereservation of the reserved vacancies in such cases is delegated to the administrative Ministries and Departments subject to the following conditions:

- (i) no candidate belonging to the category for which the vacancy is reserved is available within the zone of consideration or extended zone of consideration or eligible for promotion in the feeder cadre(s) specified in the relevant service / recruitment rules / orders;
- (ii) the proposal for dereservation has been seen and concurred in by the Liaison Officer of the Ministry / Department;
- (iii) the proposal for dereservation is agreed to at a level not lower than that of Joint Secretary to the Government of India, in the administrative Ministry / Department (proper) concerned; and
- (iv) in the event of disagreement between the appointing authority and the Liaison Officer, the advice of the Department of Personnel & Training is obtained.

5. Before taking a decision to dereserve a vacancy under the delegated powers, the administrative Ministry / Department shall prepare a proposal in the proforma given in the Annexure and send one copy thereof each to the Department of Personnel & Training and the National Commission for Scheduled Castes in respect of vacancies reserved for SCs and to the National Commission for Scheduled Tribes in respect of vacancies reserved for STs. After sending the proposal, the Ministry / Department shall wait for a period of atleast two weeks for the comments of the Department of Personnel & Training and the concerned National Commission. If no comments are received from this Department or the concerned Commission within two weeks, the administrative Ministry / Department may presume that this Department or the concerned National Commission, as the case may be, do not have any comments to offer and may take a decision regarding dereservation of the vacancy. In case the Ministry / Department receives comments from this Department or the concerned Commission within two weeks, the comments so received shall be considered while taking a decision in the matter.

6. Following points should be kept in view while sending the copy of the proposal to the Commissions / Department of Personnel & Training:

- (i) 'cadre strength' with reference to reservation means the number of posts in the grade which are to be filled by a particular mode of recruitment in terms of the recruitment rules. If in a grade having 200 posts, 40 per cent posts are filled by promotion by selection, cadre strength for promotion by selection in that grade will be 80;
- (ii) 'backlog reserved vacancy' means a vacancy which was earmarked reserved in a previous recruitment year and an effort was made to fill up the same but could not be filled and is still vacant; and

- (iii) the proposal / proforma duly filled in should be signed by an officer of the rank of Under Secretary or above in the administrative Ministry / Department.

7. The Attached / Subordinate Offices etc. should not send the proposal direct to the Department of Personnel and Training or to the concerned National Commission. They should send the proposal to the administrative Ministry/ Department who will examine the proposal and send it to the Department of Personnel and Training and to the concerned National Commission.

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

9. Hindi version will follow.



(K.G.Verma)
Director
Tel. No.23092158

To

1. Secretaries of all the Ministries/Departments.
2. Liaison Officers for SCs / STs in all the Ministries / Departments.
3. All Officers and Sections in the Ministry of Personnel, Public Grievances and Pensions and all attached/subordinate offices of this Ministry.
4. Department of Economic Affairs, New Delhi.
5. Department of Financial Services, New Delhi.
6. Department of Public Enterprises, New Delhi.
7. Railway Board.
8. Union Public Service Commission/Supreme Court of India/Election Commission/Lok Sabha Secretariat/Rajya Sabha Secretariat/Cabinet Secretariat/Central Vigilance Commission/President's Secretariat/Prime Minister's Office/Planning Commission/Staff Selection Commission
9. Information Centre, DOPT, New Delhi

ANNEXURE

Reference No.
Name of the Ministry / Department

Dated.....

PROPOSAL FOR DERESERVATION OF VACANCIES RESERVED FOR SCHEDULED CASTES AND SCHEDULED TRIBES IN POSTS FILLED BY PROMOTION.

1. Name of the Office/Organisation to which the post (s) relate	
2. Particulars of the post in which vacancies are proposed to be dereserved (a) Name of the post (b) Group (Class) (c) Scale of Pay	
3. Information about posts in the promotion quota (a) Mode of promotion viz by Selection or Non-Selection or by Departmental Examination etc. (b) No. of posts already filled by the given mode of promotion (c) Number of backlog reserved vacancies in respect of the given mode of promotion (d) Number of current vacancies to be filled by the given mode of promotion (e) Total number of vacancies to be filled (current vacancies + backlog vacancies) by the given mode of promotion (f) Total number of posts in the given mode of promotion (b+e)	SCs..... STs..... Total.....

4. No. of posts already held by the candidates appointed by reservation in the cadre	SCs..... STs.....
5. If cadre strength is less than 14 and reservation is given by rotation, cycle no. and point no. of the roster on which the vacancy falls	Cycle No..... Point No.....
6. Number of vacancies earmarked reserved (a) Out of the current vacancies (b) Backlog reserved vacancies (c) Total reserved vacancies (a+b)	SCs..... STs..... SCs..... STs..... SCs..... STs.....
7. Number of vacancies proposed to be dereserved	SCs..... STs.....
8. <u>If promotion is by non-selection</u> (a) Whether the SC/ST candidates who are eligible for promotion including those holding lower positions in the general seniority list were considered for promotion (b) Total number of SC/ST candidates in the feeder grade (c) No. of eligible SC/ST candidates in the feeder grade (d) Number of SC/ST candidates considered fit for promotion (e) Number of SC/ST candidates considered not fit for promotion	 SCs..... STs..... SCs..... STs..... SCs..... STs..... SCs..... STs.....

<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>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>(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>SCs.....STs.....</p> <p>SCs.....STs.....</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 the examination</p>	<p>SCs.....STs.....</p>
<p>11. Whether other category candidates are available in the Select List for appointment to the vacancies sought to be dereserved</p>	
<p>12(a) Whether SC/ST candidates considered unfit had any adverse entries in their C.R.s 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 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.

**NATIONAL COMMISSION FOR SCHEDULED TRIBES
LIST OF DERESERVATION CASES RECEIVED DURING 2010-11**

RESEARCH UNIT – I

S. No.	File No.	Subject	Status
1.	De-reservation/ Water Resources/ 808/ 2008/ RU-I	23 Posts - Extra Assistant Director/ Assistant (2) Engineer (Civil/Mech) Central Water Commission.	Not agreed vide letter dated 11/01/2011 .Action taken status enquired vide letter dated 05/07/2011 and 8/10/2012 but reply not received.
2.	15/38/2010/MWTR1/ DERES/RU-I	2 Posts – Assistant Research Officer(Engg.) in Central Water and Power Research Station, Pune	Not agreed vide letter dated 5/07/2011. Action taken status enquired vide letter dated 8/10/2012. As per reply dated 12/12/2012 received from Ministry, both the posts have not yet been filled and steps were been taken to amend the RRs.
3.	15/37/2010/MWTR1/D ERES/RU-I	2 Posts – Assistant Engineer, Group-B, National Water Development Agency.	Not agreed vide letter dated 21/09/2010 .Action taken status enquired vide NCST letter dated 05/07/2011 and 8/10/2012. but reply not received.
4.	15/36/2010/STGDH/ DERES/RU-I	43 Posts – UDC's, Delhi Jal Board, Govt. of NCT of Delhi	Not agreed vide NCST letter dated 30/07/2010. Action taken status, enquired vide letter dated 05/07/2011 and 8/10/2012, but reply not received.
5.	15/35/2010/MWTR1/ DERES/RU-I	7 Posts – UDC's, Ministry of Water Resources, Govt. of India	Not agreed vide NCST letter dated 04/08/2010. Action taken status enquired vide letters dated 05/07/2011 and 8/10/2012. As per reply dated 31/10/2012 received from Ministry, 4 posts have been filled from ST candidates while remaining 3 will be filled from ST candidates when available.
6.	15/34/2010/ECOI1/ DERES/RU-I	1 Post – Under Secretary, Election Commission of India, New Delhi	Not agreed vide NCST letter dated 15/06/2010. Action taken status enquired vide letter dated 05/07/2011 and 8/10/2012, but reply not received.
7.	15/34/2010/MPPP1 /DERES/RU-I	1 Post – Principal Private Secretary, Group-A, O/o of the Central Administrative Tribunal, Department of Personnel & Training, New Delhi	Not agreed vide letter dated 17/06/201. Action taken status enquired vide letter dated 05/07/2011 and 8/10/2012 but reply not received.
8.	15/33/2010/MPPP1/ DERES/RU-I	2 Posts – Deputy Registrar, Central Administrative Tribunal, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, New Delhi	Not agreed vide letter dated 17/06/2010. Action taken status enquired vide letter dated 05/07/2011 and 8/10/2012 but reply not received.
9.	15/32/1/2010/STGDH /DERES/RU-I	1 Post of Account Officer, Group-B, New Delhi Municipal Council	Not agreed vide letter dated 16/06/2010 . Action taken status enquired vide letter dated 05/07/2011 and 8/10/2012. As per reply dated 23/10/2012 received from Ministry, the post will be filled when ST candidate is available.
10.	15/1/1/2011/STGDH /DERES/RU-I	17 Posts of Senior Personnel Assistant (Sr.PA), and 36 Posts of Stenographer Grade-III, Govt. of National Capital Territory of Delhi, New Delhi	Requisite information / documents sought on 7/03/2011. Action taken status enquired vide letters dated 11/07/2011 and 8/10/2012. Government of NCT of Delhi informed vide letter dated 18/10/2012 that all the reserved posts will be filled from ST candidates when available.

RESEARCH UNIT – II

S.No	FILE NUMBER	SUBJECT	STATUS
1.	De-reservation-3/Services/CAG/2010/RU-II	01 Post – Supervisor, The Principal Accountant General (A&E)-I, Maharashtra, Mumbai	Not agreed vide letter dated 30/07/2011. Action taken status enquired vide letter dated 05/07/2011. Reply not received.
2.	De-reservation-4/Services/CAG/2010RU-II	01 Post – Divisional Accountant Officer Grade – II, The Accountant General (A&E), Punjab, Chandigarh.	Not agreed vide letter dated 05/08/2010. Action taken status enquired vide letter dated 05/07/2011. Reply not received.
3.	De-reservation-5/Services/CAG/2010/RU-II	01 Post – Supervisor, The Principal Accountant General (Audit), Bihar, Patna.	Not agreed vide letter dated 19/7/2011. Action taken status enquired vide letter dated 05/07/2011. Reply not received.
4.	De-reservation-5/Services/JD/2010/RU-II	01 Post – Superintendent Group – C, The Land & Development, New Delhi.	Not agreed vide letter dated 30/07/2010. Action taken status enquired vide letter dated 05/07/2011. Reply not received.
5.	De-reservation-7/Services/CAG/2010/RU-II	06 Posts – Divisional Accountant Officer Grade – II, The Principal Accountant General (A&E), Kolkata, West Bengal.	Not agreed vide letter dated 09/08/2010. Action taken status enquired vide letter dated 05/07/2011. Reply not received.
6.	De-reservation-8/Services/CAG/2010/RU-II	01 Post – Supervisor (Audit), The Principal Accountant General (Audit), Haryana Chandigarh.	Not agreed vide letter dated 09/08/2010. Action taken status enquired vide letter dated 05/07/2011. Reply not received.
7.	De-reservation-9/Services/CAG/2010/RU-II	01 Post – Sr. Accountant, The A.G.(A&E)-I, UP, Allahbad.	Not agreed vide letter dated 09/08/2010. Action taken status enquired vide letter dated 05/07/2011. Reply not received.
8.	De-reservation-10/Services/CAG/2010/RU-II	01 Post – Assistant Technical Officer (ATO Engine) promotion of Junior Technical Officer in ARC	Not agreed vide letter dated 09/08/2010. Action taken status enquired vide letter dated 06/07/2011. Reply not received.
9.	De-reservation-11/Services/Cabinet Sectt./2010/RU-II	01 Post – Supervisor, The Principal Accountant General (Civil Audit), UP, Allahabad.	Not agreed vide letter dated 30/07/2010. Action taken status enquired vide letter dated 05/07/2011. Reply not received.
10.	De-reservation-12/Services/CAG/2010/RU-II	01 Post – Supervisor, The Principal Director of Audit, Eastern Railway, Kolkata.	Not agreed vide letter dated 18/03/2011. Action taken status enquired vide letter dated 05/07/2011. Reply not received.
11.	De-reservation-13/Services/CAG/2010/RU-II	01 Post – Sr. HVD-B, VSSC, Dept. of Space, Thiruvananthapuram.	Not agreed vide letter dated 24/11/2010. Deptt. of Space intimated decision not to de-reserve the post vide letter dated 09/02/2011.
12.	De-reservation-14/Services/Cabinet Sectt./2010/RU-II	01 Post – Field Officer (Stores) for Promotion of Deputy Field Officer (Stores) in Aviation Research Centre (ARC).	Not agreed vide letter dated 18/03/2011. Action taken status enquired vide letter dated 05/07/2011 Reply not received.
13.	De-reservation-15/ Services/CAG/2010/RU-II	01 Post of Sr. Audit Officer in the O/o Pr.. AG (Audit), Bihar Patna	Proposal not agreed and advisory issued. Action taken status sought vide letter dated 8/10/2012. Reply not received.
14.	De-reservation-16/ Services/CAG/2010/RU-II	04 Posts – Promotion to the Senior Time Scale of IA&AS.	Not agreed vide letter dated 05/01/2011. Action taken status enquired vide letter dated 05/07/2011.

			Reply not received.
15.	De-reservation-17/ Services/CAG/2010/RU-II	01 Post – Audit Officer, The Principal Accountant General (audit), Jharkhand, Ranchi.	Not agreed vide letter dated 18/03/2011. Action taken status enquired vide letter dated 05/07/2011. Reply not received.
16.	De-reservation-18/ Services/CAG/2010/RU-II	01 Post – Asstt. Accountants Officer, The Accountant General (A&E), Himachal Pradesh.	Proposal not agreed vide letter dated 18/03/2011. Action taken status enquired vide letter dated 05/07/2011. Reply not received.
17.	De-reservation-19/ Services/CAG/2010/RU-II	01 Post – Accountant Officer, The Principal Accountant General (A&E), Rajasthan, Jaipur.	Not agreed vide letter dated 18/03/2011. Action taken status enquired vide letter dated 05/07/2011. Reply not received.
18.	De-reservation-20/ Services/CAG/2010RU-II	02 Posts of Audit Officer in O/o Pr.. AG (Audit), Punjab & UT of Chandigarh	Proposal received on 28/12/2010. RRs and other documents sought on 29/12/2010. Reply received on 1/02/2011. Proposal not agreed. Action taken status enquired vide letter dated 05/07/2011. Reply not received.
19.	De-reservation-21/ Services/CAG/2010/RU-II	01 Post – Accountants Officer, The Pr. Accountant General (A&E), Karnataka, Bangalore.	Not agreed vide letter dated 18/03/2011. Action taken status enquired vide letter dated 05/07/2011. Reply not received.
20.	De-reservation-22/ Services/CAG/2010/RU-II	01 Post – Sr. Accounts Officer, The Accountant General (A&E), Karnataka, Bangalore.	Not agreed vide letter dated 18/03/2011. Action taken status enquired vide letter dated 05/07/2011. Reply not received.
21.	De-reservation-23/ Services/CAG/2010/RU-II	01 Post – Sr. Accounts Officer, The Pr. Accountant General (A&E), Haryana, Chandigarh.	Not agreed vide letter dated 18/03/2011. Action taken status enquired vide letter dated 05/07/2011. Reply not received.
22.	De-reservation-24/ Services/CAG/2010/RU-II	01 Post – Audit Officer, The Pr. Accountant General (Audi), Chandigarh, Haryana.	Not agreed vide letter dated 07/07/2011. Action taken status enquired but reply not received.
23.	De-reservation-25/ Services/CAG/2010/RU-II	01 Post – Accounts Officer, The Accountant General (A&E), Punjab, Chandigarh.	Not agreed vide letter dated 05/04/2011. Action taken status enquired vide letter dated 05/07/2011. Reply not received.
24.	De-reservation-26/ Services/CAG/2010/RU-II	01 Post – Accounts Officer, The Accountant General (A&E), Assam, Guwahati	Not agreed vide letter dated 18/03/2011. Action taken status enquired vide letter dated 05/07/2011. Reply not received.
25.	De-reservation-27/ Services/CAG/2010/RU-II	01 Post – Sr. Audit Officer, The Pr. Director of Audit, South Central Railway, Secunderabad.	Not agreed vide letter dated 04/04/2011. Action taken status enquired vide letter dated 05/07/2011. Reply not received.
26.	De-reservation-28/ Services/CAG/2010/RU-II	03 Posts – Accounts Office, The Accountant General (A&E), Kerala, Thiruvananthouram	Not agreed vide letter dated 18/03/2011. Action taken status enquired vide letter dated 05/07/2011. Reply not received.
27.	De-reservation-29/ Services/CAG/2010/RU-II	01 Post – Asstt. Accounts Officer, The Accountant General (A&E), Punjab & U.T., Chandigarh.	Not agreed vide letter dated 04/04/2011. Action taken status enquired vide letter dated 05/07/2011. Reply not received.
28.	De-reservation-30/ Services/CAG/2010/RU-II	01 Post – Sr. Audit Officer, The Principal Accountant General (Civil and Commercial Audit), Kerala, Thiruvananthapuram.	Not agreed vide letter dated 18/03/2011. Action taken status enquired vide letter dated 05/07/2011.

			Reply not received.
29.	De-reservation-31/ Services/CAG/2010/RU-II	01 Post – Audit Officer, The Pr. Accountant General (Civil Audit), Andhra Pradesh, Hyderabad.	Not agreed vide letter dated 18/03/2011. Action taken status enquired vide letter dated 05/07/2011. Reply not received.
30.	De-reservation-32/ Services/CAG/2010/RU-II	01 Post – Divisional Accounts Officer – I, The Accountant General (A&E), Punjab, Chandigarh.	Not agreed vide letter dated 18/03/2011. Action taken status enquired vide letter dated 06/07/2011. Reply not received.
31.	De-reservation-33/ Services/CAG/2010/RU-II	01 Post – Accounts Officer, The Pr. Accountant General (A&E)-I, Uttar Pradesh, Allahbad.	Not agreed vide letter dated 18/03/2011. Action taken status enquired vide letter dated 06/07/2011. Reply not received.
32.	De-reservation-34/ Services/CAG/2010/RU-II	01 Post – Accounts Officer, The Pr. Accountant General (A&E), Haryana, Chandigarh.	Not agreed vide letter dated 18/03/2011. Action taken status enquired vide letter dated 06/07/2011. Reply not received.
33.	De-reservation-35/ Services/CAG/2010/RU-II	04 Post – Sr. Audit Officer, The Pr. Accountant General (Civil Audit), Andhra Pradesh, Hyderabad.	Not agreed vide letter dated 18/03/2011. Action taken status enquired vide letter dated 06/07/2011. Reply not received.
34.	De-reservation-36/ Services/CAG/2010/RU-II	01 Post of Sr. Divisional Accounts Officer in O/o Pr. AG (A&E) West Bengal Kalcutta	Proposal not agreed vide letter dated 24/01/2011. Action taken status enquired vide letter dated 11/07/2011 & 8/10/2012 Reply not received.
35.	De-reservation-37/ Services/CAG/2010/RU-II	01 Post – Audit Officer, The Pr. Accountant General (Audit), Assam, Guwahati.	Not agreed vide letter dated 18/03/2011. Action taken status enquired vide letter dated 06/07/2011. Reply not received.
36.	De-reservation-38/ Services/CAG/2010/RU-II	01 Post – Accounts Officer, The Accountant General (A&E), Gujarat, Rajkot.	Not agreed vide letter dated 18/03/2011. Action taken status enquired vide letter dated 06/07/2011. Reply not received.
37.	De-reservation-39/ Services/CAG/2010/RU-II	01 Post – Audit Officer, The Pr. Accountant General (Civil Audit), Tamil Nadu, Chennai.	Not agreed vide letter dated 01/03/2011. Action taken status enquired vide letter dated 06/07/2011. Reply not received.
38.	De-reservation-40/ Services/CAG/2010/RU-II	05 Posts – Audit Officer (Commercial), Commercial Audit, CAG.	Not agreed vide letter dated 18/03/2011. Action taken status enquired vide letter dated 06/07/2011. Reply not received.
39.	De-reservation-41/ Services/CAG/2010/RU-II	01 Post – Sr. Audit Officer, The Pr. Accountant General (Civil Audit), Tamil Nadu, Chennai.	Not agreed vide letter dated 18/03/2011. Action taken status enquired vide letter dated 06/07/2011. Reply not received.
40.	De-reservation-01/ Services/CAG/2011/RU-II	01 Post – Sr. Accounts Officer, Sr. Deputy Accountant General (A&E), J&K, Srinagar.	Not agreed vide letter dated 18/03/2011. Action taken status enquired vide letter dated 06/07/2011. Reply not received.
41.	De-reservation-2/ Services/CAG/2011/RU-II	01 Post – Audi Officer, The Pr. Accountant (Audit), J&K, Srinagar.	Not agreed vide letter dated 18/03/2011. Action taken status enquired vide letter dated 06/07/2011. Reply not received.
42.	De-reservation-3/ Services/CAG/2011/RU-II	01 Post – Sr. Audit Officer, The Pr. Director of Audit, Economic and Service Ministries, New Delhi.	Not agreed vide letter dated 18/03/2011. Action taken status enquired vide letter dated 06/07/2011. Reply not received.

43.	De-reservation-4/Services/CAG/2011/RU-II	01 Post – Sr. Accounts Officer, The Pr. Accountant General (A&E), Tamil Nadu, Chennai.	Not agreed vide letter dated 18/03/2011. Action taken status enquired vide letter dated 06/07/2011. Reply not received.
44.	De-reservation-5/Services/CAG/2011/RU-II	02 Posts – Sr. Audit Officer, The Pr. Accountant General (Audit), J&K, Srinagar.	Not agreed vide letter dated 18/03/2011. Action taken status enquired vide letter dated 06/07/2011. Reply not received.
45.	De-reservation-6/Services/CAG/2011/RU-II	01 Post – Supervisor, The Pr. Director of Audit, Economic and Service Ministers, New Delhi.	Not agreed vide letter dated 18/03/2011. Action taken status enquired vide letter dated 06/07/2011. Reply not received.
46.	De-reservation-7/Services/CAG/2011/RU-II	01 Post – Supervisor, The Accountant General (A&E)-I, Madhya Pradesh, Gwalior.	Not agreed vide letter dated 18/03/2011. Action taken status enquired vide letter dated 06/07/2011. Reply not received.
47.	De-reservation-8/Services/CAG/2011/RU-II	01 Post – Supervisor, The Pr. Accountant (A&E), Rajasthan, Jaipur.	Not agreed vide letter dated 18/03/2011. Action taken status enquired vide letter dated 06/07/2011. Reply not received.
48.	De-reservation-9/Services/CAG/2011/RU-II	01 Post – Divisional Accounts Officer Grade – I, The Pr. Accountant General (A&E), West Bengal, Kolkata.	Not agreed vide letter dated 18/3/2011. Action taken status enquired vide letter dated 06/07/2011. Reply not received.
49.	De-reservation-10/Services/CAG/2011/RU-II	02 Posts – Divisional Accounts Officer Grade – I, The Accountant General (A&E), Bihar, Patna.	Not agreed vide letter dated 18/03/2011. Action taken status enquired vide letter dated 06/07/2011. Reply not received.
50.	De-reservation-11/Services/CAG/2011/RU-II	01 Post – Sr. Audit Officer, The Pr. Director of Audit, North Central Railway, Allahbad.	Not agreed vide letter dated 18/03/2011. Action taken status enquired vide letter dated 05/07/2011. Reply not received.
51.	De-reservation-12/Services/CAG/2011/RU-II	01 Post – Audit Officer, The Principal Director of Audit, North Central Railway, Allahbad.	Not agreed vide letter dated 18/03/2011. Action taken status enquired vide letter dated 05/07/2011. Reply not received.
52.	De-reservation-13/Services/ Urban Devl./2011/RU-II	02 Posts – Superintendent, The Govt. of India Stationery Officer, Kolkata	Not agreed vide letter dated 04/04/2011. Action taken status enquired vide letter dated 05/07/2011 . Reply not received.
53.	De-reservation-14/Services/CAG/2011/RU-II	01 Post – Accountant, The Principal Accountant General (A&E), Assam, Guwahati.	Not agreed vide letter dated 06/04/2011. Action taken status enquired vide letter dated 05/07/2011 . Reply not received.
54.	De-reservation-15/Services/CAG/2011/RU-II	01 Post – Divisional Accounts Officer-I, The Accountant General (A&E)-II, Uttar Pradesh, Allahabad.	Not agreed vide letter dated 18/03/2011. Action taken status enquired vide letter dated 05/07/2011. Reply not received.
55.	De-reservation-16/Services/CAG/2011/RU-II	03 Posts – Sr. Divisional Accounts Officer, The Accountant General (A&E)-II, Uttar Pradesh, Allahbad	Not agreed vide letter dated 25/02/2011. Action taken status enquired vide letter dated 06/07/2011. Reply not received.
56.	De-reservation-17/Services/CAG/2011/RU-II	01 Post – Supervisor, Director General of Audit, Central Expenditure, New Delhi.	Not agreed vide letter dated 18/03/2011. Action taken status enquired vide letter dated 05/07/2011. Reply not received.
57.	De-reservation-18/Services/CAG/2011/RU-II	01 Post – Audit Officer, The Pr. Accountant General (Civil Audit), Uttar Pradesh, Allahbad.	Not agreed vide letter dated 04/03/2011. Action taken status enquired vide letter dated 05/07/2011

			Reply not received.
58.	De-reservation-19/ Services/CAG/2011/RU-II	02 Posts – Sr. Audit Officer, The Pr. Accountant General (Civil Audit0, Uttar Pradesh, Allahabad.	Not agreed vide letter dated 04/03/2011. Action taken status enquired vide letter dated 05/07/2011. Reply not received.
59.	De-reservation-20/ Services/CAG/2011/RU-II	01 Post – Supervisor, The Pr. Accountant General (A&E), Karnataka, Bangalore.	Not agreed vide letter dated 09/03/2011. Action taken status enquired vide letter dated 05/07/2011. Reply not received.
60.	De-reservation-21/ Services/CAG/2011/RU-II	01 Post – Audit Officer, The Principal Director of Audit, Eastern Railway, Kolkata.	Not agreed vide letter dated 10/03/2011. Action taken status enquired vide letter dated 05/07/2011. Reply not received.
61.	De-reservation-22/ Services/ Cab.Sectt./2011/RU-II	01 Post – Private Secretary in DG (S) Stenography Service.	Not agreed vide letter dated 30/06/2011. Action taken status enquired vide letter dated 05/07/2011. Reply not received.
62.	De-reservation-23/ MSME/Services/2011/RU-II	01 Post – UDC, The Micro Small Medium Enterprises Development Industries (MSME), Chennai.	Not agreed vide letter dated 18/03/2011. Action taken status enquired vide letter dated 05/07/2011. Reply not received.

RESEARCH UNIT-III

S. No.	File No.	Subject	Status
1	13/5/Service/2010/RU-III	01 post Senior Court Clerk Ministry of Law & Justice Department of Legal Affairs	Not agreed vide letter dated 02/11/2010 with advise to fill up the vacancy through direct recruitment by making amendment in the recruitment rules for availability of ST candidates. With reference to enquiry regarding action taken status sought vide letter dated 07/07/2011, the Ministry of Law and Justice, Deptt. of Legal Affairs has informed that the Deptt. is making efforts to make ST Candidates available in the feeder grade. It has also been decided by the Competent Authority not to fill up one post of Senior Court Clerk Grade-II meant for ST till ST category Court Clerk in the feeder grade becomes eligible.
2	13/1/2011/Service/RU-III	01 post Assistant Director (Staff Officer) (Group A) Ministry of Home Affairs Department of Intelligence Bureau	Proposal returned vide letter dated 11/3/2011 for routing proposal through administrative Ministry (MHA). The proposal forwarded by the MHA was received without requisite documents on 7/02/2012, reminder for which was sent on 10/02/2012. The response from MHA received on 7/02/2013 indicated that the post was filled by regular promotion from non-ST candidate treating the post as dereserved.
3	13/3/Service/2010/RU-III	02 post Peon Ministry of Home Affairs	Vide letter dated 20/09/2010 documents requisitioned which were not received in stipulated time. Proposal rejected. Action taken status enquired vide letter dated 07/07/2011. Reply awaited even after last reminder sent on 15/10/2012.
4	13/4/Service/2010/RU-III	01 post Sr. Court Clerk Grade – I Ministry of Law & Justice	Vide letter dated 24/09/2010 documents requisitioned which were not received within stipulated time frame. Proposal rejected vide letter dated 04/10/2010. Action taken status enquired vide letter dated 07/07/2011. Reply awaited even after last reminder sent on 15/10/2012.

RESEARCH UNIT-IV

S. No	File Number	Subject	STATUS
1	<u>DR/9/2010/MDEF2/DERES/RU-IV</u>	11 posts of Accounts Officer in the O/o Controller General of Defence Accounts, Delhi	Documents, requisitioned vide letter dated 11/08/2010, were not received within the stipulated time. Proposal rejected vide letter dated 18/08/2010. Action taken status enquired vide letter dated 08/07/2011.
2	<u>US/6/2010/MDEF2/DERES/RU-IV</u>	01 post –Civilian Driver 'C', DRDO Secunderabad.	Documents, requisitioned vide letter dated 05/05/2010 and 06/05/2010, were not received within the stipulated time. Proposal rejected. Action taken status enquired vide letter dated. Reply not received.
3	<u>US/5/2010/MDEF2/DERES/RU-IV</u>	01 post- Senior Technical Assistant B, CVRDE, DRDO, Avadi, Chennai.	Documents, requisitioned vide letter dated 06/05/2010, were not received within the stipulated time. Proposal rejected. Action taken status enquired vide letter dated 08/07/2011. Reply not received.
4	<u>US/4/2010/MDEF2/DERES/RU-IV</u>	01 post –Technician DEAL, DRDO Dehradun.	Documents, requisitioned vide letter dated 05/05/2010, were not received within the stipulated time. Proposal rejected. Action taken status enquired vide letter dated 08/07/2011. Reply not received.
5	<u>DR/1/2011/MTUR1/DERES/RU-IV</u>	01 post – UDC Indira Gandhi National Center for the Arts, New Delhi	Proposal returned vide letters dated 30.03.2011 & 20.06.2011 to submit through Administrative Ministry. Action taken status enquired vide letter dated 08/07/2011. Reply not received.
6	<u>US/2/2010/MDEF2/DERES/RU-IV</u>	01 post - Civilian Driver 'C' IRDE, Dehradun.	Documents, requisitioned vide letter dated 16/04/2010, were not received within the stipulated time. Proposal rejected vide letter dated 26.04.2010.. Action taken status enquired vide letter dated 08/07/2011. Reply not received.
7	<u>US/7/2010/MDEF2/DERES/RU-IV</u>	01 post – Senior Admin Assistant NPOL, DRDO, Kochi.	Documents, requisitioned vide letter dated 02/07/2010, were not received within the stipulated time. Proposal rejected vide letter dated 12/07/2010. Further information received from Ministry of Defence on 13/08/2010. Proposal rejected on 03/11/2010. Action taken status enquired vide letter dated 08/07/2011 Reply not received.
	<u>US/3/2010/MDEF2/DERES/RU-IV</u>	01 post - Store Assistant 'B' IRDE, DRDO, Dehradun.	Documents, requisitioned vide letter dated 16/04/2010, were not received within the stipulated time. Proposal rejected vide letter dated 07/05/2010. Action taken status enquired vide letter dated 08/07/2011. Reply not received.
9	<u>US/1/2010/MDEF2/DERES/RU-IV</u>	01 post - Store Assistant 'C' IRDE, DRDO, Dehradun.	Documents, requisitioned vide letter dated 16/04/2010, were not received within the stipulated time. Proposal rejected vide letter dated 07/05/2010. Action taken status enquired vide letter dated 08/07/2011. Reply not received.
10	<u>DR/10/2010/MPNT2/DERES/RU-IV</u>	72 posts– TM Cadre BSNL Madurai	Proposal returned vide letter dated 02/12/2010 to submit through Administrative Ministry. Action taken status enquired vide letter dated 08/07/2011. Reply not received.
11	<u>18/25/2010/MSTR3/DERES/RU-IV</u>	01 post- Labor Inspector Gr. II Mumbi Port Trust	Proposal returned vide letter dated 02/08/2010 and 29/12/2010 to submit through Administrative Ministry. Action taken status enquired vide letter dated 08/07/2011. Reply not received.

National Commission for Scheduled Tribes
**Summary of select proposals for dereservation received during the year
2010-11**

(1) Dereservation of two posts of Deputy Registrar reserved for Scheduled Tribes in the Central Administrative Tribunal

1.1 A proposal for de-reservation of two posts of Deputy Registrar reserved for Scheduled Tribes in the Central Administrative Tribunal was received from the Ministry Personnel, Public Grievances and Pension vide dated 29th April, 2010. The NCST vide letter dated 29.3.2010 returned the proposal to DoPT for submitting the proposal in the prescribed Performa along with certain documents like Recruitment Rules , Rosters, Seniority list etc.

1.2 The DoPT vide letter dated April 2010 furnished the proposal on prescribed Performa with requisite details i.e. R/Rs, Post based rosters and updated seniority list of the feeder grade for reconsideration. It was stated in the proposal that initially when the Central Administrative Tribunal was set up, officers in the feeder grade were appointed on deputation basis, where there was no requirement of reservation. It was on this ground that the officers from the SC/ST category were not available for consideration of promotion in the higher grade. It was further mentioned that the CAT had made all possible efforts to fill the vacancies, meant for SC/Scheduled Tribes but no one was available even in the extended zone of consideration who could be considered for the purpose. There was no provision of direct recruitment on the post of Deputy Registrar in terms of the Rules notified by the Government of India and therefore no diversion of reserved vacancies from promotion to direct recruitment quota was possible or permissible. It was certified that no SC/ST candidate in the feeder grade was available in the Central Administrative Tribunal on All India Basis in the extended zone of consideration.

1.3 The Commission vide letter dated 20.5.2010 informed the DoPT that the proposal was considered and advised the DoPT that :

- (i) Promotion of the two ST candidates in the feeder grade be made by the special relaxation in the residency period : or
- (ii) Promotion of two ST candidates in the feeder grade be made on ad-hoc basis till such time they become eligible.

1.4 Subsequently action taken on the advice of Commission was enquired vide letter dated 17.6.2010. The DOPT vide letter 26.6.2010 intimated that CAT has been requested to consider filling up the posts of ST by promotion of ST candidates in the feeder grade on ad-hoc basis till they become eligible. Commission vide letter dated 5.7.2011 enquired the status on the advise tendered to DoPT.

(2) Dereservation of forty-three three posts of ST category in the cadre of Upper Division Clerk (UDC) in Delhi Jal Board, Government of NCT of Delhi.

2.1 A proposal for dereservation was received in the Commission from Delhi Jal Board, Government of NCT of Delhi. It was mentioned in the proposal that forty-three three posts reserved for Scheduled Tribes against promotion quota (seniority-cum-fitness basis) had been lying vacant for the last 10 years in the cadre of Upper Division Clerk (UDC) in the pay scale of Rs.4000-100-6000 (Pre-revised)- now in the Pay Band of Rs.5200-20200 with grade pay of Rs.2400/-. There was no ST candidate in the feeder grade even in extended Zone of Consideration. The senior-most LDC belonging to ST category in the feeder grade would acquire the eligibility on 12/04/2014. It was further stated that the mode of recruitment for filling up the post of UDC was By Promotion through two components-(a) 75% on the basis of seniority-cum-fitness from amongst LDCs with (08) eight years regular service in the grade and (b) 25% by selection on the basis of Limited Departmental Competitive Examination from amongst LDCs with (05) five years regular service in the grade. Further, it was also stated that the DSSSB was taking a lot of time in sending the list of suitable candidates for the post of LDCs, as a result of which functional problems were being experienced in various departments of DJB due to acute shortage of manpower in the cadre of LDC.

2.2 National Commission for Scheduled Tribes vide letter 21.7.2010 requisitioned the following information for further examination of the proposal:

- (i) Recruitment Rules of the Post of Upper Division Clerk and Seniority list of UDC
- (ii) Recruitment Rules and Seniority list/Roster of the post of LDC
- (iii) Reasons for non-availability of ST Officials in feeder post.
- (iv) Efforts made by the department in the past to fill the vacancies reserved for ST in the feeder grade post as well as post to fill the vacancies reserved for ST in the feeder grade post as well as the post proposed for De-reservation.
- (v) Whether LDC's belonging to Scheduled Tribes were considered for ad-hoc promotion till they become eligible for regular promotion to the grade of UDC

2.3 Subsequently, reminders dated 30/07/2010 and 5.7.2011 were also sent for enquiring the status of the proposal. No reply has been received. The Delhi Jal Board has not intimated about the action taken to fill a large number (43) of vacancies reserved for Scheduled Tribes in the post of UDC.

(3) Dereservation of 6 posts of Divisional Accounts Officer Gr.II in the Office of Directorate General of Accounts (A&E), Kolkatta, West Bengal

3.1 A proposal for Dereservation of 6 posts of Divisional Accounts Officer Gr.II reserved for Scheduled Tribes in the Office of Directorate General of Accounts (A&E), Kolkatta, West Bengal was received in the Commission vide letter dated

24.05.2010. The Commission requisitioned the following information for examination of the proposal:

- (i) Recruitment Rules of feeder grade Po9st of Divisional Accountant.
- (ii) ST Officials in Feeder Cadre (All India) who can be promoted against the post proposed to be de-reserved.
- (iii) Updated Seniority List of the feeder post.
- (iv) Reasons for non-availability of ST officers in feeder post.
- (v) 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.

3.2 The Comptroller and Auditor General of India vide letter dt.15.7.2010 responded that Commission's letter dated 24.06,2010 had been received in their office on 2.7.2010. NCST vide letter dt. 26.7.2010 again requested to furnish the required information within stipulated time vide letter dt.9.8.2010, Commission informed the office of the CAG that the proposal could not be examined in absence of the required information and thus Dereservation proposal was not agreed. The status of the 6 posts was enquired vide letter dated 5.7.2011. The reply has not been received.

(4) Dereservation of 5 posts in the cadre of Audit Officer (Commercial) in Commercial Audit Wing

4.1 A proposal for dereservation for 5 posts in the cadre of Audit Officer (Commercial) reserved for Scheduled Tribes in Commercial Audit Wing, CAG vide their letter dated 9th December 2010 was received in the Commission. The proposal contained that the post of Audit Officer (Commercial) was Group 'B' in the pay scale of Gr. Pay Rs.5400 in PB II. The mode of promotion was 100% by selection and 155 posts had already been filled by promotion mode and 64 vacancies were to be filled by the given mode of promotion and the total number of vacancies proposed for de-reservation were five vide letter dated 05.01.2011. The proposal supported neither Roster Register nor Recruitment Rules etc.

4.2 The Commission vide letter 5.1.2011 requisitioned the following documents for examinational of the proposal:

- (i) Recruitment Rules of feeder grade of Senior Accounts Officer
- (ii) Updated Seniority list of Accounts Officer.
- (iii) Reasons for non-availability of ST officers in feeder post.
- (iv) Efforts made by the department in the past to fill up 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.

4.3 Office of the CAG vide letter dated 31.1.2011 submitted the point-wise reply to the above queries stating that the dereservation proposal was for the

post of Audit Officer. It was mentioned that the post of Audit Officer was a promotional post and there was no provision for appointment by Direct Recruitment for the post as per the Recruitment Rules. For appointment in the feeder cadre, special consideration, such as, grace marks, promotion on consideration etc. were adopted. As soon as any ST candidate, who fulfill the minimum (i.e. relaxed) eligibility criteria was available, he was promoted to next higher cadre. Utmost care was taken to protect the interest of the ST candidates in promotions.

4.4 The Commission did not agree to the proposal and advised to take into consideration the following:

- (i) If no ST candidate is likely to become available for a long time, steps should be taken to fill the reserved post from ST candidates through direct recruitment by amending the RRs if the existing RRs. Do not provide for the same instead of seeking de-reservation of the post
- (ii) Action should simultaneously be taken to amend the RRs for each post to provide for element of direct recruitment in all cases where appointment is being made 100% by promotion, by incorporating "failing which" clause
- (iii) In normal course Recruitment Rules should provide elements of Direct Recruitment as well as deputation/transfer on deputation, beside promotion, instead of 100% by promotion, so that deficiencies due to non-availability of reserved category candidate(s) in the seniority list of the feeder grade may be made up through Director Recruitment or deputation/transfer on deputation as the case may be

(5) Dereservation of one post in the cadre of Sr. Accounts Officer in the office of Accountant General (A&E), Karnataka,

5.1 A proposal for de-reservation of one post in the cadre of Sr. Accounts Officer reserved for Scheduled Tribes in the office of Accountant General (A&E), Karnataka, Bangalore was received from the office of the Controller of Auditor General, New Delhi vide their letter dated 27.12.2010. In the proposal it was mentioned that the post is to be filled 100% by promotion in the cadre of Senior Accounts Officer. The proposal was supported along with copies of Recruitment Rules etc.

5.2 The Commission requisitioned the following information from CAG.

- (i) Recruitment Rules of feeder grade Post of Divisional Accountant.
- (ii) ST Officials in Feeder Cadre (All India) who can be promoted against the post proposed to be de-reserved.
- (iii) Updated Seniority List of the feeder post.
- (iv) Reasons for non-availability of ST officers in feeder post.
- (v) 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.

5.3 It was mentioned in the above letter that if the required information was not received within 4 days, it would be presumed that CAG was not interested in pursuing the case of dereservation. The CAG, vide letter dated 31.1.2011 furnished the following information:

- (i) The dereservation proposal is for the post of Sr. Accounts Officer. The Copy of Recruitment Rules of Audit Officer had been enclosed with this office letter dated 27.12.2010.
- (ii) The feeder cadre for promotion as Sr. Accounts Officer is Accounts Officer. An updated seniority list of Asstt. Audit Officer's cadre was enclosed with this office letter dated 27.12.2010.
- (iii) Passing the SOG examination is a pre-requisite qualification for promotion to the cadre of AAO/A.O./Sr.A.O. Grace marks are also allowed to the SC/ST candidates to qualify them in the SOG examination. Since all the eligible ST candidates, who fulfill the minimum criteria in the extended panel, are promoted in due time, there is no ST candidate available in the feeder cadre.
- (iv) The post of audit officer is a promotional post and there is no provision of Direct Recruitment for the post as per the Recruitment Rules (copy enclosed with letter dated 27.12.2010) approved by DOPT. For appointment in the feeder cadre, special consideration, such as, grace marks, promotion on consideration etc. are adopted. As soon as any ST candidate is available who fulfill the minimum (i.e. relaxed) eligibility criteria, he is promoted to next higher cadre. Utmost care is taken to protect the interest of the ST candidates in promotions.

5.4 The NCST on examination of proposal informed the CAG vide letter dated 18.8.2011, that the proposal of dereservation was not agreed by the Commission and advised to resort to the following steps to fill the posts reserved for Scheduled Tribe candidates.

- (i) If no ST candidate is likely to become available for a long time, steps should be taken to fill the reserved post from ST candidates through direct recruitment by amending the RRs if the existing RRs do not provide for the same, instead of seeking de-reservation of the post.
- (ii) Action should simultaneously be taken to amend the RRs for each post to provide for element of direct recruitment in all cases where appointment is being made 100% by promotion, by incorporating 'failing which clause.
- (iii) In normal course, Recruitment Rules should provide elements of Direct Recruitment as well as deputation/ transfer on deputation, beside promotion, instead of 100% by promotion, so that deficiencies due to non-availability of reserved category candidates(s) in the seniority list of the feeder grade may be made up through Direct Recruitment or deputation/ transfer on deputation as the case may be.

5.5 The status of the proposal about filling or non-filling of the above mentioned posts was enquired for incorporating the same in the Annual Report of the Commission. The reply in the matter was still awaited.

(6) Dereservation of four posts reserved for Scheduled Tribes in the cadre of Sr. Audit Officer in the office of the Principal Accountant General (Civil Audit) Andhra Pradesh Hyderabad

6.1 A proposal for dereservation of four posts reserved for Scheduled Tribe candidates in the cadre of Sr. Audit Officer in the office of the Principal Accountant General (Civil Audit) Andhra Pradesh Hyderabad was received from office of the Comptroller and Auditor General of India vide letter dated 27.12.2010. It was explained in the note that, 26 vacant posts (21 UR, 04 SC and 01 ST) in the cadre of Sr. Audit Officer (Civil) were proposed to be filled up in the panel year 2011. There was a shortfall of 08 ST category officials in the cadre. As there was one eligible Audit Officer in the feeder cadre belonging to ST category for promotion as Sr. Audit Officer the net short fall would be 07 ST category officials for the year 2011. Four ST points (Point No.69, 80, 95 & 108) were proposed for dereservation for accommodating two UR & two SC category candidates.

6.2 The National Commission for Scheduled Tribes vide letter dated 30.12.2010 called the following information:

- (i) Recruitment Rules of feeder grade Post of Divisional Accountant.
- (ii) ST Officials in Feeder Cadre (All India) who can be promoted against the post proposed to be de-reserved
- (iii) Updated Seniority List of the feeder post.
- (iv) Reasons for non-availability of ST officers in feeder post
- (v) 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.

6.3 The CAG was advised to furnish the information within four days failing which it would be presumed that the organization was not interested in pursuing the case of dereservation. CAG vide letter dt. 31.1.2011, much after the stipulated timeframe stating that passing the SOG examination was a pre-requisite qualification for promotion to the cadre of AAO/A.O./Sr.A.O. Grace marks have also allowed to the SC/ST candidates to qualify them in the SOG examination. Since all the eligible ST candidates, who fulfill the minimum criteria in the extended panel, were promoted in due time, there was no ST candidate available in the feeder cadre. The post of Sr. Audit Officer is a promotional post and there was no provision of Direct Recruitment for the post as per the Recruitment Rules approved by DOPT. For appointment in the feeder cadre, special consideration, such as, grace marks, promotion on consideration etc. are adopted. As soon as any ST candidate is available who fulfill the minimum (i.e. relaxed) eligibility criteria, he is promoted to next higher cadre. Utmost care is taken to protect the interests of the ST candidates in promotions.

6.4 The Commission informed the CAG that the proposal for dereservation was not agreed by the Commission and advised them to take following steps to fill up the reserved post suggested/advised.

- (i) If no ST candidate is likely to become available for a long time, steps should be taken to fill the reserved post from ST candidates through direct recruitment by amending the RRs if the existing RRs do not provide for the same, instead of seeking de-reservation of the post.
- (ii) Action should simultaneously be taken to amend the RRs for each post to provide for element of direct recruitment in all cases where appointment is being made 100% by promotion, by incorporating "failing which" clause.
- (ii) In normal course, Recruitment Rules should provide elements of Direct Recruitment as well as deputation/transfer on deputation, beside promotion instead of 100% by promotion, so that deficiencies due to non-availability of reserved category candidates(s) in the seniority list of the feeder grade may be made up through Direct Recruitment or deputation/transfer on deputation as the case may be.

6.5 The status of the proposal was enquired vide letter dt.5.7.2011. The CAG vide letter 15.07.2011 informed that

- (i) Since the Commission has not agreed to de-reserve the said reserved post and no eligible ST candidate was available within the extended zone of consideration, neither ST nor non-ST candidate has been promoted against the reserved post.
- (ii) The Recruitment Rule for the said post has been framed based on the model Recruitment Rules as prescribed by the DoPT and therefore, no deviation from the same is feasible.

6.6 In the same letter the Office of CAG assured the Commission that the interests of ST candidates were given prime importance in IA&AD. As soon as a ST candidate fulfilling the minimum eligible criteria for promotion was available, he was promoted to next higher post in due time. If no eligible ST candidate was available with minimum prescribed eligibility criteria, the Commission is requested to de-reserve the post can be filled up by a non-ST candidate. It was also mentioned that due to non de-reservation of the reserved post by the Commission, the concerned office was facing administrative inconvenience. In view of the above, the Commission was requested to de-reserve 'four' posts of ST reserved vacancies in the cadre of Sr. Audit Officer in the office of the Pr. Accountant General (Civi Audit), Andhra Pradesh.

6.7 The Commission vide letter dated 1.8.2011 categorically informed CAG that proposal was not agreed upon and invited the attention of the CAG to follow the advice given vide Commission's letter dated 18.3.2011.

(7) Dereservation of three posts reserved for Scheduled Tribes in the cadre of Accounts Officer in the office of CAG, (A&E), Kerala

7.1 A proposal for dereservation of three posts reserved for Scheduled Tribes in the cadre of Accounts Officer in the office of CAG, (A&E), Kerala was received from the office of CAG, New Delhi on 27.12.2010 in the explanatory note

it has been stated that the sanctioned strength for the combined cadre of Sr. Accounts Officer and Accounts Officer was 62 posts out of which the sanctioned strength for the cadre of Accounts Officer was 13 posts and men in position were 33 as on date. This was due to the carrying down of unutilized vacancies in Sr. Accounts Officer to Accounts Officer cadre. Out of the total 33 vacancies anticipated in the cadre of Sr. Accounts Officer during the panel year 2011, 28 unutilized vacancies have been carried down to the lower cadre of Accounts Officer for utilization during the panel year 2011. Thus in terms of the instructions contained in the Department of Personnel and Training O.M.No.36012.2.96-Estt. (Res.) dated 2.7.97 and keeping in view the subsequent clarifications communicated vide Headquarters Circulars No.108/NGE(App)/3-97 dated 23.1.98 and No.1143-NGE ((App)/3-2001 dated 18.10.2011, the number of operated posts in the cadre of Accounts Officer for the panel year 2011 would be 41. For the strength of 41 posts, the required representation would be SC-6 and ST-3 whereas the representation available was SC-5 and ST-Nil. No SC/ST Accounts Officer was due to retire during panel year 2009. As one SC Asstt. Accounts Officer was due to retire during panel year 2009, one SC Asstt. Accounts Officer had been empanelled for promotion as Accounts Officer during the panel year 2011. Thus there would be shortfall of 3 ST in the cadre. No ST officer was available in the merged cadre of Section Officer/ Assistant Accounts Officer. The DPC, therefore, empanelled 16 eligible general category candidates and one SC candidate to fill the vacancies in point Nos. 5,24,25,26,30,31,32,34,36,37,38 & 39 earmarked for UR, point No.41 earmarked for SC and point Nos.14,28 & 40 earmarked for ST, subject to the condition that approval for dereservation of ST point nos.14, 28 & 40 would be obtained. CAG enclosed the proposal supported with Roster Register/ RRs. Seniority list. The Commission vide letter 29.12.2010 called for the following additional information

- (i) Recruitment Rules of feeder grade of Senior Accounts Officer,
- (ii) Updated Seniority list of Accounts Officer
- (iii) Reasons for non-availability of ST officers in feeder post.
- (iv) Efforts made by the Department in the past to fill up 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.

7.2 The CAG was also informed that the requisite information was required to be sent within four days otherwise it would be presumed that CAG was not interested in pursuing the case of dereservation. However, the CAG, vide letter dated 31.1.2011, furnished the details requisitioned and stated that :

- (i) The dereservation proposal was for the post of Accounts Officer. The Copy of Recruitment Rules of Audit Officer were enclosed with this office letter dated 27.12.2010.
- (ii) The feeder cadre for promotion as Accounts Officer was Asstt. Accounts Officer.
- (iii) An updated seniority list of Asstt. Audit Officer's cadre was enclosed with this office letter dated 27.12.2010

- (iv) Passing the SOG examination was a pre-requisite qualification for promotion to the cadre of AAO/A.O./Sr.A.O. Grace marks are also allowed to the SC/ST candidates to qualify them in the SOG examination. Since all the eligible ST candidates, who fulfill the minimum criteria in the extended panel, were promoted in due time, there is no ST candidate available in the feeder cadre.
- (v) The post of Accounts Officer was a promotional post and there was no provision of Direct Recruitment for the post as per the Recruitment Rules approved by DOPT. For appointment in the feeder cadre, special consideration, such as, grace marks, promotion on consideration etc. area adopted. As soon as any ST candidate was available who fulfill the minimum (i.e. relaxed) eligibility criteria, was promoted to next higher cadre. Utmost care was taken to protect the interest of the ST candidates in promotions.

7.3 On examination of the response received from CAG, the Commission vide letter dated 18.3.2011 intimated the CAG that the proposal for three ST posts in the cadre of Accounts Officer was not agreed and it was advised to resort to the following to fill up the posts reserved for Scheduled Tribes:

- (i) If no candidate is likely to become available for a long time, steps should be taken to fill the reserved post from ST candidates through direct recruitment by amending the RRs if the existing RRs do not provide for the same, instead of seeking de-reservation of the post.
- (ii) Action should simultaneously be taken to amend the RRs for each post to provide for element of direct recruitment in all cases where appointment is being made 100% by promotion, by incorporating 'failing which' clause.
- (iii) In normal course, Recruitment Rules should provide elements of Direct Recruitment as well as deputation/transfer on deputation, beside promotion instead of 100% by promotion, so that deficiencies due to non-availability of reserved category candidates(s) in the seniority list of the feeder grade may be made up through Direct Recruitment or deputation/transfer on deputation as the case may be.

7.4 The status of the proposal was enquired vide letter dt.5.7.2011 on the following points, but the requisite information has not been received.

- (i) Whether the above mentioned post has been filled by promotion from amongst the ST candidates/non-ST candidates.
- (ii) A copy of the promotion order, if any, may be furnished
- (iii) In case subject post(s) was filled by non-ST candidate, (since a point dereserved in a particular year, has to be carried forward to the next recruitment year and the carried forward reserved points has to be filled from amongst the candidates belonging to that particular reserved category), what steps have been taken to ensure that the point reserved for Scheduled Tribes, but presently filled from amongst non-scheduled may be filled from amongst Scheduled Tribes candidates in the next recruitment year.

- (iv) Whether steps have been taken to amend the Recruitment Rules for the above post, for making provision for including “falling which by Direct Recruitment for post reserved for ST” clause in the Recruitment Rules in case of non-availability of eligible ST candidates against reserved vacancy, if National Commission for Scheduled Tribes has recommended for the same while intimating its decision on the above proposal of the Ministry vide reference (ii) above.

(8) Proposal for dereservation of 1 post of Sr. Court Clerk, reserved for ST in the Ministry of Legal Affairs

8.1 A proposal for dereservation of 1 post of Sr. Court Clerk, reserved for ST was received from Ministry of Legal Affairs vide letter dated 16/09/2010. It was mentioned in the proposal that the post of Sr. Court Clerk, Grade-II was a Group-C Non-Gazetted (Ministerial), Non-selection post in Pay Band-I (Rs. 5200-202200) with Grade pay of Rs. 2400. As per Recruitment Rules the post was to be filled up 100 % by promotion. Qualifying service of Eight years in the grade of Court-Clerks was required for promotion in the grade of Senior Court Clerk, Grade-II. The crucial date for determining the eligibility for promotion in the grade of Court-Clerk, Grade-II against the vacancy for the Recruitment year 2010-2011 was 01-01-2010. As per Seniority list 25 Court Clerks were available in feeder grade. However, none of the said officials had requisite qualifying service of 08 years as on 01-01-2010. A relaxation in his qualifying service of 08 years was also being sought.

8.2 It was stated that the zone of consideration for the aforesaid promotion was 26 (2X+4). Due to non availability of ST officials in the feeder grade extended upto available eligible officials, it had been decided to dereserve the said vacancy. The said proposal of dereservation had been concurred in by the Liaison Officer and also agreed to by the Joint Secretary & Legal Adviser (Admn) in pursuance of the of the DOPT's O.M. No. 36020/2/2007-Estt (Res) dated 7th December, 2009 All the said conditions stipulated in aforesaid DoPT's O.M. had since been fulfilled.

8.3 The Commission vide letter dated 02/11/2010 informed the Ministry of Law and Justice that on examination of the proposal it was found the Roster Register of Senior Court Clerk, Grade-II was not operated in accordance with DoPT OM dated 02/07/1997 as was evident from the fact that there was no Scheduled Tribe candidate in the seniority list of Court Clerks-I and that no efforts appeared to have been made to fill up the post in the past. The proposal was not agreed and the Ministry of Law & Justice was advised to fill up the post through direct recruitment by making amendment in the recruitment rules for availability for the ST candidates. Subsequently, the Ministry of Law & Justice vide letter dated 15/02/2011 explained that 02 vacancy in the feeder grade i.e. Court-Clerk had been earmarked to ST category. Therefore, the efforts were being made to make available ST category candidate in the feeder grade. It was further mentioned that the sanctioned strength of Senior Court-Clerk, Grade-II is 23 and as per the existing rules, it was to be filled up 100% by promotion. The following exigencies were likely to arise on introduction of the Direct Recruitment component:-

- (i) Court-Clerk is a specialized posts exclusively designed for the Ministry of Law. The desirable qualifications for the said post is as follows:-
- Experience for at least two years in the office of advocate practicing before a High Court or the Supreme Court.
 - Acquaintance with the matters relating to litigation before a High Court or the Supreme Court particularly in matters relating to limitation and general assistance required by an Advocate for appearing in the court of Law.
 - A degree in Law of a recognized University.
- (ii) Further, a Court-Clerk with 8 years of qualifying service in the grade is eligible for promotion as Court-Clerk, Grade-II, Therefore, a higher eligibility criterion for direct recruitment to the grade of Court-Clerk, Grade-II is required to be set up.
- (iii) It will hamper the promotional avenue of Court-Clerks.
- (iv) If DR component is restricted to 25%, than only 06 posts out of 23 would be available for DR. It may be quite possible that for any recruitment year only 01 vacancy meant for DR would be available. Therefore, it will put great burden to Recruiting Agency (Staff Selection Commission) for recruiting only 01 person with liability to serve any where in India, since this Department has its Branch Secretariats at Mumbai, Kolkata, Chennai & Bangalore besides Main Secretariat at New Delhi.

8.4 The Ministry of Law further stated that it did not appear feasible to introduce Direct Recruitment component in Court-Clerks, Grade-II. It was also clarified that one post of Senior Court-Clerk, Grade-II shall not be filled up till a Court-Clerk to be appointed against ST vacancy becomes eligible for promotion. It was requested that commission may appreciate from the aforesaid that this Department is making efforts to make ST candidates available in he feeder grade. This Department is also facing shortage of officials; therefore, it is once again requested to accord its approval for dereservation of 01 vacancy meant for ST.

8.5 The Commission vide letter dated 02/07/2011 reiterated the earlier advice rendered to the Ministry of Law & Justice. The Commission vide letter dated 02/11/2011 enquired about the status of the dereservation proposal and about filling or non-filling of the above mention posts for incorporating the same in the Annual Report of the Commission. Last reminder for furnishing action taken status was sent on 15/10/2012. There was, however, no response from the Ministry of Law.

(9) Dereservation of 72 posts reserved for Scheduled Tribes in the cadre of TM in the O/o General Manager, BSNL, Madurai SSA, Madurai

9.1 A proposal for dereservation of 72 posts reserved for Scheduled Tribes in the cadre of TM was received in the Commission vide Bharat Sanchar Nigam Limited, O/o General Manager, BSNL, Madurai SSA, Madurai dated 15.11.2010. In was mentioned in the proposal that in Madurai SSA, 58 TM trained officials in RM/Gr D cadre are still waiting for promotion as TM. No ST candidate was available in these 58 RM/Gr D – TM trained officials. As such out of the total resultant vacancies in TM cadre as on 31.03.2010, 72 vacancies pertaining to ST category were kept vacant for want of ST candidates.

9.2 The break up of vacancies shown as on 31.03.2010 in Madurai SSA

	SC	ST	UR	TOTAL-
TM Sanctioned Strength DUE	161	80	837	1078
TM Working Strength as on 31.03.2010	282	8	697	987
Vacancies available as on 31.03.2010	(-)121	72	140	91*

9.3 Since the proposal was not routed through the administrative Ministry and was directly sent to the Commission, the NCST vide letter dated 02.12.2010 informed the Asst. General Manager (HR) of O/o G.M. BSNL, Madurai SSA, Madurai to submit the proposal for dereservation of TM cadre through their Administrative Ministry for taking further action in the matter.

9.4 On non-receipt of the proposal through Administrative Ministry of BSNL the Commission enquired into the status of the proposal vide letter dated 07.03.2011. BSNL Asst. General Manager (HR), Madurai vide letter dated 09.08.2011 intimated that since there were more vacancies available in respect of OC category and there were no candidates waiting for TM promotion in this category the necessity for conversion of ST posts to other category was therefore not needed. Hence the dereservation proposal in respect of Madurai SSA was withdrawn.

9.5 A letter in this regard was sent to Chairman cum Managing Director, BSNL to send his comments on the proposal of Madurai SSA dereservation of 72 vacancies reserved for STs and its withdrawal and the present status about filling or non-filling of the above mention posts was enquired for incorporating the same in the Annual Report of the Commission. There is however, no information.

(10) Dereservation of 11 posts of Account Officer in the Office of the Controller General of Defence Accounts, Delhi Cant.

10.1 A proposal was received in the Commission from the Office of the Controller General of Defence Accounts, Delhi Cant. for Dereservation of 11 posts of Account Officer vide letter dated 28.07.2010. The NCST vide letter dated 11.08.2010 asked for the copy of the reservation roster maintained and the total number of posts as on day of proposal submitted and the number of resultant posts likely to arise in the year 2010-11 for Accounts Officers. On non-receipt of information the NCST vide letter dated 18.08.2010 rejected the proposal as per guidelines of the Commission.

10.2 Status about filling or non-filling of the above mention post of Account Officer was enquired vide letter dated 08.07.2011 for incorporating the same in the Annual Report of the Commission. Reply in the matter is still awaited.

(11) Dereservation of 1 post of Assistant Director (Staff Officer) in the Office of the Intelligence Bureau under Ministry of Home Affairs

11.1 A proposal dated 25/02/2011 for dereservation of 1 post of Assistant Director (Staff Officer) reserved for Scheduled Tribes to be filled by promotion in the Office of Intelligence Bureau was received from the Office of Intelligence

Bureau. The post of AD (SO) is in Pay Band 3 with Grade Pay of Rs. 6600. The scale of the feeder post was not mentioned in the proposal. The proposal was not accompanied with the copies of the Recruitment Rules and other relevant documents. Moreover, the proposal was not routed through the Administrative Ministry i.e. Ministry of Home Affairs. The office of IB was therefore requested to route the proposal through the administrative Ministry as per the laid down procedure. The Ministry of Home Affairs forwarded the same proposal vide their letter dated 3/02/2012. Since the proposal, received on 7/02/2012 was not accompanied with requisite information/documents, the Commission vide letter 10/02/2012 requested the Ministry of Home Affairs to furnish the following information/ documents:

1. Copy of up-to-date Seniority List for the post.
2. Certified copy of Reservation Roster for the post.
3. Up-to-date and latest Recruitment Rules.
4. Reasons for non-availability of ST incumbents in the feeder grade and efforts made for filling up of ST vacancy so far.

11.2 As no response was received and the status of the post proposed for dereservation was to be incorporated in the Annual Report of the Commission, the Ministry was requested, vide letter dated 15/10/2012, to furnish the information on the following points:

- (i) Whether the above mentioned post has been filled by promotion from amongst the ST candidates/non-ST candidates.
- (ii) A copy of the promotion order, if any, may be furnished
- (iii) In case subject post(s) was filled by non-ST candidate, (since a point dereserved in a particular year, has to be carried forward to the next recruitment year and the carried forward reserved points has to be filled from amongst the candidates belonging to that particular reserved category), what steps have been taken to ensure that the point reserved for Scheduled Tribes, but presently filled from amongst non-scheduled may be filled from amongst Scheduled Tribes candidates in the next recruitment year.
- (iv) Whether steps have been taken to amend the Recruitment Rules for the above post, for making provision for including "falling which by Direct Recruitment for post reserved for ST" clause in the Recruitment Rules in case of non-availability of eligible ST candidates against reserved vacancy, if National Commission for Scheduled Tribes has recommended for the same while intimating its decision on the above proposal of the Ministry vide reference (ii) above.

11.3 The response from the Ministry of Home Affairs was received on 7/02/2013. It was noted that the posts reserved for ST category have been got dereserved and filled up by regular promotion of eligible general category officers during the DPC year 2011-12 & 2012-13. The Ministry is stated to have promoted the non-Scheduled Tribes candidates after following the prescribed procedure for dereservation laid down in DoP&T OM No. AB-14017/30/89-Estt.(RR), dated 10/07/1990. Copy of the promotion order stated to have been enclosed was

however, not received. The Commission noted that proper procedure for dereservation was not followed by the Ministry as information sought by the Commission was not furnished despite follow up by the Commission. Commission also noted that IB is a very old organization under the Ministry of Home Affairs. As per PBR of 47 posts of AD, there was no ST incumbent and all the three posts against ST roster points were filled by non-Scheduled Tribes by getting the points dereserved internally. **It indicates that no efforts were ever made by the Ministry of Home Affairs to increase the intake of ST candidates in the posts in various feeder cadres so that post of AD(SO) could be filled from among ST candidates. Ministry of Home Affairs being an important Ministry of the Government of India having sizeable staff strength and a number of attached and subordinate organisation including para-military organisations is not expected to ignore the steps required to ensure proper implementation of the Constitutional Safeguards provided for the Scheduled Tribes.**

NATIONAL WATER POLICY (SEPTEMBER, 1987)

The National Water Policy stipulates water allocation priorities broadly as follows:-

Drinking Water

- Irrigation
- Hydro-power
- Navigation
- Industrial and other uses

However, these priorities may be modified, if necessary, in particular regions with reference to area specific considerations.

- Water resource development projects should, as far as possible, be developed as multi purpose projects. Provision for drinking water should be a primary consideration.
- Improvements in existing strategies and the innovation of new techniques based on science and technology base will be needed to eliminate the pollution of surface and ground water resources, to improve water quality and to step up the recycling and re-use of water.
- There should be a periodical re-assessment on a scientific basis of ground water potential, taking into consideration the quality of the water available and economic viability. The exploitation of ground water resources should be so regulated as not to exceed the recharging possibilities, as also to ensure social equity, integrated and coordinated development of surface and ground water, and their conjunctive use should be envisaged right from the project planning stage and should form an essential part of the project. Over-exploitation of ground water should be avoided near the coast to prevent ingress of the seawater into sweet water aquifers.
- Irrigation and multi-purpose projects should invariably include drinking water component, wherever there is no alternative source of drinking water. Providing drinking water to all human beings and animals should be the first priority.
- Both surface and ground water should be regularly monitored for quality. A phased programme should be undertaken for improving water quality.
- The efficiency of utilisation in all the diverse use of water should be improved and awareness of water as a scarce resource should be & fostered. Conservation consciousness should be promoted through education, regulation, incentives and disincentives.

The guidelines issued by the Ministry of Water Resources, Government of India, stipulate that irrigation and multi-purpose projects should invariably include a minimum of 15% of water towards drinking water component and wherever there is no alternative source, drinking water needs of all human beings and animals should be the first charge on any available source of water. The requirement of drinking water should be projected at the time of designing the irrigation projects.

Ministry of Water resources is about to bring out a new National Water Policy. However, drinking water would remain on top priority in the new policy also.

ANNEXURE 3.II
(Ref. Para 3.21_6R)

National Habitation Survey 2003
STATE-WISE NUMBER OF HABITATIONS

S No.	State	Total habitations reported by states	Habitations as per ARWSP Norms			Habitations not as per ARWSP Norms							
			NC	PC	FC	NC	PC	FC					
		TOTAL	NC	PC	FC	TOTAL	NC	PC	FC	TOTAL	NC	PC	FC
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)
1	ANDHRA PRADESH	64547	3579	34229	26739	61496	3402	33550	24544	3051	177	679	2195
2	ARUNACHAL PRADESH	5228	2067	2183	978	5215	2062	2178	975	13	5	5	3
3	ASSAM	80468	29355	23813	27300	75734	26981	23766	24987	4734	2374	47	2313
4	BIHAR	107642	28712	45242	33688	105205	27440	44892	32873	2437	1272	350	815
5	CHANDIGARH	18	0	0	18	18	0	0	18	0	0	0	0
6	CHATTISGARH	72724	15398	13300	44026	70820	14599	13237	42984	1904	799	63	1042
7	DADRA & NAGAR HAVELI	70	0	19	51	70	0	19	51	0	0	0	0
8	DAMAN & DIU	21	0	0	21	21	0	0	21	0	0	0	0
9	GOA	348	0	6	342	331	0	5	326	17	0	1	16
10	GUJARAT	34642	1401	9306	23935	34584	1396	9302	23886	58	5	4	49
11	HARYANA	6605	53	3357	3195	6528	50	3315	3163	77	3	42	32
12	HIMACHAL PRADESH	51848	9868	22797	19183	28215	4929	13040	10246	23633	4939	9757	8937
13	JAMMU AND KASHMIR	12394	2177	4627	5590	12393	2177	4626	5590	1	0	1	0
14	JHARKHAND	120473	15346	5555	99572	120010	15217	5555	99238	463	129	0	334
15	KARNATAKA	51543	80	24442	27021	42183	70	21073	21040	9360	10	3369	5981
16	KERALA	12165	366	9457	2342	12165	366	9457	2342	0	0	0	0
17	LAKSHADWEEP	9	0	9	0	9	0	9	0	0	0	0	0
18	MADHYA PRADESH	127397	20176	31888	75333	127036	20091	31834	75111	361	85	54	222
19	MAHARASHTRA	77651	2505	40493	34653	77466	2498	40406	34562	185	7	87	91
20	MEGHALAYA	9326	2285	2849	4192	9326	2285	2849	4192	0	0	0	0
21	MIZORAM	775	187	430	158	766	179	430	157	9	8	0	1

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)
22	NAGALAND	1377	72	1043	262	1377	72	1043	262	0	0	0	0
23	ORISSA	139338	35784	15177	88377	133697	33534	15166	84997	5641	2250	11	3380
24	PONDICHERY	248	0	107	141	248	0	107	141	0	0	0	0
25	PUNJAB	13724	4461	5450	3813	13703	4447	5443	3813	21	14	7	0
26	RAJASTHAN	121133	61995	18796	40342	107768	55934	17168	34666	13365	6061	1628	5676
27	SIKKIM	2498	0	1053	1445	2498	0	1053	1445	0	0	0	0
28	TAMIL NADU	81787	11799	40926	29062	81787	11799	40926	29062	0	0	0	0
29	TRIPURA	7940	1050	2779	4111	7940	1050	2779	4111	0	0	0	0
30	UTTAR PRADESH	260110	7993	18776	233341	260081	7992	18775	233314	29	1	1	27
31	UTTRANCHAL	39142	4784	14040	20318	18311	1311	6921	10079	20831	3473	7119	10239
32	WEST BENGAL	96242	8912	20497	66833	90348	8062	20485	61801	5894	850	12	5032
	Total	1599433	270405	412646	916382	1507349	247943	389409	869997	92084	22462	23237	46385

REMARK : NC: Not Covered PC: Partially Covered FC: Fully Covered

ARWSP Norms : 1.Population has to be >= 100 for Non SC/ST and Non DDP habitations.
2.Habitations having 100% SC/ST population is considered as SC/ST habitation.

Source: Ministry of Rural Development, Dept. of Drinking Water Supply

**ANNEXURE 3 .III
(Ref. Para 3.40_6R)**

**Government of India
Planning Commission
Yojana Bhavan, Parliament Street
New Delhi-110001
Tel:23096574 Fax: 23096575
E-mail: secypc@nic.in
26th October, 2009**

**SUDHA PILLAI, I.A.S
Secretary, Planning Commission
D.O. No. N-11016/12(1)/2009-PC**

As you are aware that we need to initiate the proceedings for preparation of Annual Plan 2010-11, which happens to be the fourth year of the Eleventh Five year plan. Discussions on the Annual Plan 2010-11 are proposed to be held in the month(s) of December, 2009 January 2010 and would be presided over by the Member concerned. It is, therefore, requested that the Annual Plan proposals pertaining to your Ministry/Department may please be forwarded to the Planning Commission not later than 15th November, 2009.

2. You appreciate that Eleventh Five Year Plan aims not only at accelerated growth process but also to make it socially and regionally more inclusive and equitable. The commitment of the Plan towards inclusiveness is reflected in the 26 other monitorable targets adopted at the national level relating to (i) Income and poverty (ii) Education (iii) Health (iv) Women and children (v) Infrastructure and (vi) Environment. A list of monitorable targets is enclosed at Appendix-I.

3. There is an urgent need to use the available resources in most judicious and efficient manner by prioritizing various plan schemes/ programmes. This necessitates outlining the "Core Plan" of the Ministry/ Department clearly projecting sectoral priorities and programme for public action. Planning Commission has been vigorously pursuing ZBB exercise for convergence/weeding out and transfer of Central Sector/ Centrally Sponsored Schemes. However, it is important that the decisions of the Planning Commission emerging from ZBB exercise, communicated earlier, are incorporated in Annual Plan 2010-11 proposals, it not already done in earlier plans.

4. The detailed guidelines for the classification of the Plan and Non-Plan expenditure (Appendix-2) and the formats for presenting the proposals (Appendix-3) are enclosed. Keeping in mind the emphasis of the Government on prudent fiscal management, it would be necessary to classify the Plan expenditure into the revenue and the capital component as stipulated in the enclosed formats.

5. For improving the efficiency of the budgetary allocations, it is necessary to have well defined quarterly measurable and monitorable tasks reflected in Outcome budgets which Ministries/ Departments have been preparing since

2005-06. Further, by now you would be having the details of actual performance of Annual Plan 2008-09 and a part of 2009-10. The comparison between the actual achievements and the quantifiable deliverables, as laid down in the respective Outcome Budgets for the Annual Plans 2008-09 and 2009-10, may please be provided in the formats at Appendix 4. Similarly, a statement of outlays and outcomes/ targets for the Annual Plan 2010-11 may be provided as per the format enclosed at Appendix 5.

6. There has been a steady increase in the outlays for the Centrally Sponsored Schemes (CSS) and scheme-based ACAs. States have to make appropriate provision in their budgets and sectoral outlays as per their share of funding in these schemes. Accordingly, it would be desirable to indicate these amounts to the States well before the finalization of their budgets. The format for indicating state-wise allocation of proposed CSS/ACA outlays is enclosed at Appendix 6. The criteria and the calculation/ formula for allocation among the States may also be provided. It is also to be indicated as to whether any unallocated provision is meant for the Centre or for allocation to the States at a later date. The SBEs will not be approved and countersigned by Planning Commission without the details of State wise allocations.

7. It is necessary that we adhere to the deadline (indicated at para 1) for meaningful plan discussions that reflect your plan priorities for the Annual Plan 2010-11 and its approval prior to the Union Budget 2010-11. Your Nodal Advisor in the Planning Commission would shortly be in touch with you on this issue. Kindly appreciate that Member/ Advisor-level meetings/ discussions on Annual Plan (2010-11) proposals can be scheduled by the Planning Commission only on receipt of complete details from you in good time.

8. In view of the Prime Minister's initiative, I would request you to earmark at least 10 percent of the gross budgetary support for the North-Eastern States (except those Ministries/ Departments which are specifically exempted as listed at (Appendix 7.). E-governance and IT applications should also be given the necessary importance and 2-3 per cent of the budget be earmarked for this purpose.

9. Gender Budgeting has become an integral part of the Union Budget since 2005-06. Accordingly, women's interest should be kept in mind during design as well as the implementation phase of the programmes pertaining to your Ministry/ Department. Further, the Guidelines for formulation, implementation and monitoring of Scheduled Caste Sub Plan (SCSP) for Scheduled Caste and Tribal Sub Plan for Scheduled Tribes (Appendix 8.) need to be followed and ensured that these are used for attaining the desired outcomes. To facilitate proper monitoring of expenditure under SCSP and TSP, necessary information may be provided in formats at Appendix 9.

10. Planning Commission has set up a web based facility for enabling direct uploading of the information required in Appendix 1 to 9. This can be accessed at <http://pcserver.nic.in/cplan>. All Ministries/ Department are requested to use the facility to provide the information required for Annual Plan 2010-11. Hard copies may also be sent as a back up; however, web based data entry have to be

compulsorily followed. Shri A.K Chanana, Sr. Technical Director, NIC, Planning Commission may please be contacted at telephone no. 011-23096556 and e-mail address- chanana.ak@nic.in

Tentative Size of Annual Plan 2010-11

11. A clearer picture on the gross budgetary support available to the Central Plan and the Central Assistance to the State Plans is expected to be available in due course. In the meantime, you may like to initiate the formulation of your Ministry's/ Department's proposals for the Annual Plan 2010-11 in the following three scenarios:

- (i) Based on 5% increase (at current prices) over the approved allocation for your Ministry/ Department for Annual Plan 2009-10;
- (ii) Based on 10% increase, similarly computed;
- (iii) Based on 15% increase, similarly computed.

It may please be noted that all critical components including flagship schemes should have priority in all the three scenarios to realize the commitment of consolidation of these programmes made in the President's Address to the Parliament.

12. Any proposal for higher level of allocation for a particular scheme or programme, and especially flagship programmes, may be proposed only with full justification giving complete details of the status of preparedness and the trend of expenditure in the first three years of the Eleventh Five Year Plan.

13. While taking up Annual Plan proposal for 2010-11, we would like to have a clear idea about progress made in operationalising schemes and projects included in the approved Eleventh Five Year Plan of the Ministries/ Departments. The status of approval of the competent authority at the level of SFC/EFC/CCEA, issue of the guidelines, availability of comprehensive MIS for the programme and progress during the first three years will be taken into account. Steps taken for the approval of the other remaining schemes may be indicated and expected date of operationalisation of such schemes with all the necessary approvals and guidelines etc may also be indicated, if any fund allocation is proposed for such new schemes for the year 2010-11. It may be noted that this aspect will be reviewed in detail for final GBS allocation for 2010-11.

14. You may send five copies of Plan proposals to your subject (Nodal) Division in Planning Commission and another two copies to the Plan Coordination Division. You may also add any further information in your proposals that you feel are required to facilitate discussions. The subject Division Adviser in Planning Commission may also contact you for further information/ clarifications.

15. Smt. Sunita Sanghi, Advisor (Plan Coordination) Telephone No. 011-23096541 would be the Coordinating Officer in the Planning Commission. The

name and telephone number of the Coordinating Officer in respect of your Ministry/ Department may be intimated for facilitating liaison.

16. I look forward to your cooperation in completing this exercise meaningfully and as per the schedule. This letter may please be acknowledged.

With warm regards,

Yours sincerely

**sd/-
(Sudha Pillai)**

Secretaries of Ministries/ Departments (as per list)

**Ministry of Rural Development
Department of Drinking Water Supply**

Note on Rural Drinking Water Supply in ST habitation.

Water is a State subject and as such State Governments are primarily responsible for providing safe and adequate drinking water to the rural habitations. To supplement the efforts of the State Governments in this direction, financial and technical support is provided to the State Governments through the Centrally Sponsored Scheme. National Drinking Water Programme (NRDWP) (erstwhile Accelerated Rural Water Supply Programme (ARWSP)). Under this programme, State Governments are competent to plan, sanction, implement and execute rural water supply schemes for the coverage of rural habitations and schools from funds provided under the NRDWP>

One of the objectives of the NRDWP is to ensure coverage of rural habitations with safe and adequate drinking water supply with special emphasis on SC and ST dominated habitations. The provisions SC and ST dominated habitations. The provisions regarding rural drinking water supply for SCs/ and STs under NRDWP are as follow:

To Accelerate the assured availability of potable drinking water on a sustainable basis in SC and ST dominant habitations, the States/UTs are required to earmark at least 25% of the NRDWP funds for drinking water supply to the SC dominated habitations and a minimum of 10% for the ST dominated habitations. Habitations in which more than 40% of the population belongs to SCs are considered as SC dominated and with more than 40% STs are considered as ST dominated and with more than 40% STs are considered as ST dominated.

States that have achieved full coverage of SC/ST households with adequate safe drinking water as per the State norms may incur lower level of expenditure on SC/ST but not in any case below the percentage of SC and ST population in the State.

Where the percentage of SC or ST population in a particular State is high and warrants earmarking/utilization of more than the stipulated provisions, additional funds may be utilized

The State Government/UT Administration may separately monitor the status of assured availability of potable drinking water in SC/ST habitations

The Department has already conveyed to the Ministry of Tribal Affairs and Planning Commission that from 2011-12 onwards it will allocate 10% towards TSP out of its plan allocation under NRDWP and Total Sanitation Campaign (TSC)

Data regarding coverage of ST habitations and expenditure incurred are periodically entered by States in the on-line Integrated Management Information System of the Department.

Of a total number of 16.61 lakh rural habitations in the country, there are 3.76 lakh ST concentrated habitations. Of these, so far 2,46,069 ST habitations have been covered with provision of safe and adequate drinking water. During 2010-11 the target is to cover 28,799 ST habitations. Against this 7,098 ST habitations have been covered as per IMIS Data as on 29.10.2010. It is expected that the targeted habitations will be covered by the end of the financial year.

ANNEXURE 3.V

(Ref Para 3.42(iii) and 3.43_ 6R)

**Coverage of ST dominated Habitations State-wise
(As per IMIS on 29.10.2010)**

S. No.	State-wise	Total Habitation	Number of ST Dominated Habs	Coverage of ST Dominated Habs Upto the end of September 2010 (Cumulative)	% age of ST Dominated Habs covered during 2010-2011, Upto the end of September, 2010.
1.	2.	3.	4.	5.	6.
1.	ANDHRA PRADESH	72108	18280	8342	45.63
2.	ARUNACHAL PRADESH	5612	5248	2262	43.10
3.	ASSAM	86976	17412	8493	48.78
4.	BIHAR	107642	1952	1630	83.50
5.	CHHATTISGARH	72329	46780	22140	47.33
6.	GOA	347	0	0	
7.	GUJARAT	34415	14290	13670	95.66
8.	HARYANA	7385	1	1	
9.	HIMACHAL PRADESH	53205	3087	2657	86.07
10.	JAMMU AND KASHMIR	12826	2074	856	41.27
11.	JHARKHAND	120061	65487	64231	98.08
12.	KARNATAKA	59203	2746	1488	54.19
13.	KERALA	11883	108	108	100.00
14.	MADHYA PRADESH	127197	56803	28869	50.82
15.	MAHARASHTRA	98098	17837	14975	83.95
16.	MANIPUR	2870	2320	979	42.20
17.	MEGHALAYA	9326	9108	4841	53.15
18.	MIZORAM	777	770	499	64.81
19.	NAGALAND	1386	1368	983	71.86
20.	ORISSA	141928	49242	22956	46.62
21.	PUNJAB	14519	2	0	
22.	RAJASTHAN	121133	22920	15997	69.79
23.	SIKKIM	2498	381	285	74.80
24.	TAMIL NADU	93699	2414	2317	95.98
25.	TRIPURA	8132	4480	1287	28.72
26.	UTTAR PRADESH	260110	211	207	98.10

27	UTTARAKHAND	39142	1459	1284	88.00
28	WEST BENGAL	95394	28611	24574	85.89
	UNION TERRITORIES				
1.	2.	3.	4.	5.	6.
1	ANDAMAN AND NICOBAR	491	138	138	100
2	CHANDIGARH	18	0	0	
3	DADRA & NAGAR HAVELI	70	66	0	
4	DAMAN & DIU	21	6	0	
5	DELHI	0	0	0	
6	LAKSHADWEEP	9	9	0	0
7	PUDUCHERRY	248	0	0	
	Total	1661058	375610	246069	65.51