

Agenda Note

Sub : Draft Bill to regulate the issue of community certificate to persons belonging to Scs/STs/OBCs – as per the direction of the Hon'ble Supreme Court in C.A. No. 4545 of 1994 (in the matter of Director of Tribal Welfare, Govt. of Andhra Pradesh V/s Lavette Giri and Anothers).

I Salient features of the Draft Bill in brief.

A Draft Bill to regulate the issue of community certificate to persons belonging to SCs/STs/OBCs was received from the Ministry of Tribal Affairs vide their letter dated 19.02.2009. The Draft Bill was received by the MTA from Ministry of Social Justice & Empowerment for obtaining comments / views of the NCST also in the matter.

Following are the salient features of the Draft Bill:

- i) Each State or UT shall constitute a Scrutiny Committee in every District to be headed by an officer to be decided by the State Govt; (Section – 8(A))
- ii) The Scrutiny Committee may, either suo moto or on a written complaint by any person, enquire into the correctness of such certificate; (Section – 9(1))
- iii) The burden of proof that the applicant belongs to such caste/tribe/class or not shall be on applicant or complainant as the case may be; (Section – 7)

- iv) Whoever obtains a community certificate by any fraudulent means be punishable, on conviction, with rigorous imprisonment for a term from two to five years and with fine of five thousand to ten thousand rupees; (Section – 10)
- v) After cancellation of a false community certificate by the competent authority, the benefits obtained based on the community certificate stands withdrawn such as Degree/Diploma, appointment in any Govt. post, any payment in terms of scholarship, grant etc., election to elective offices, any assets created with Govt. assistance shall be forfeited; (Section – 11,12)
- vi) The Committee may stay the execution of any such decision or order, which were made to satisfy themselves, pending exercise of their powers to enquire / examine; (Section – 9(2))

II Proposed Comments of the Commission on the matter.

Following issues may be considered for offering comments/views on the Draft Bill:

- a) Criteria / eligibility for issue of Community Certificate should also be included in the draft Bill so that the same is not

dependant on understanding of instructions issued from time to time/ legal pronouncements (Section- 4);

- b) In the interest of transparency and to facilitate verification of genuineness of certificates issued, some registration mechanism should also be conceived in collaboration with other citizens' identity – verification systems (Section – 4);
- c) As mentioned in the section 6 and 9(1) of the Draft Bill, the Scrutiny Committee may verify community certificates either suo moto or on application made to them within a prescribed period. It is not possible for any body to verify all issued certificates without inflicting harassment and delays; and thus no general revision exercise should be contemplated; and
- d) The power to grant stay should not be conferred to the Committee as it, very often leads to arbitrary actions and delay in disposal of cases, besides diluting the accountability of the concerned authorities to take timely and reasoned decision (Section – 9(2)).