

CHAPTER-6

SERVICE SAFEGUARDS

6.1 Constitutional Provisions

6.1.1 After Independence, while framing the Constitution of India, it was felt that special provisions were required for Scheduled Castes and Scheduled Tribes to secure their adequate representation in public services. Accordingly, safeguards for ensuring adequate representation of the Scheduled Castes and Scheduled Tribes in the services and posts under the State have been provided in Articles 16(4), 16 (4A), 16(4B) and 335 of the Constitution.

6.1.2 Article 16(4) empowers the State for making any provision for the 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. Article 16(4) originally provided that:-

“Nothing in this Article shall prevent the State from making any provision for the reservation of 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.”

6.1.3 The Supreme Court in their judgement dated 16 November, 1992 in the case of Indira Sawhney vs. Union of India, inter alia, held that there shall be no reservation in promotion after five years from the date of the judgement i.e. 16 November, 1992. The Department of Personnel & Training accordingly, vide O.M. dated 19 August, 1993 clarified to all Ministries/Departments of Govt. of India that the Supreme Court had permitted reservation, for SCs and STs in promotion, to continue for a period of 5 years from 16.11.1992 i.e. the date of the judgment in Indira Sawhney case.

6.1.4 In order to undo the effect of the above-referred judgment of the Hon'ble Supreme Court, Article 16 (4) was amended vide the Constitution (Seventy-Seventh Amendment) Act, 1995 to add a new Article 16 (4A) to empower the State for making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and Scheduled Tribes who, in the opinion of the State, are not adequately represented in the services under the State.

6.1.5 The Department of Personnel & Training informed the Ministries/Departments of Govt. of India vide their O.M. dated 13.8.1997 that in pursuance of Article 16 (4A), it had been decided to continue the reservation in promotion for SCs and STs in services and posts under the Central Government beyond 15.11.1997.

6.1.6 The Hon'ble Supreme Court of India in their judgment dated 10.10.1995 in the case of Virpal Singh Chauhan & Ors. vs. Union of India held that if a candidate belonging to the Scheduled Castes/Scheduled Tribes was promoted to an immediate higher post/grade against a reserved vacancy earlier than his senior general/OBC candidate who was promoted later to the said immediate higher post/grade, the general/OBC candidate would regain his seniority over such earlier promoted candidate belonging to Scheduled Castes/Scheduled Tribe to the said immediate higher post/grade.

6.1.7 In order to nullify the adverse effect of the above-referred judgment of the Hon'ble Supreme Court dated 10.10.1995 and with a view to allowing the Government employees belonging to Scheduled Castes and Scheduled Tribes to retain their seniority in the event of their promotion by virtue of rule of reservation, Article 16 (4A) was further amended through Constitution (Eighty-fifth Amendment) Act, 2001 to substitute the words "in matter of promotion to any class" by the words "in matters of promotion, with consequential seniority, to any class". The amended Article 16 (4A) was made retrospectively operative from 17 June, 1995, i.e. the date of inclusion of this Article in the Constitution vide the Constitution (77th Amendment) Act, 1995. This amendment was necessary to enable the Government to determine the seniority of a person appointed to a post in accordance with the general principle that the persons promoted through an earlier selection would enbloc be senior to those promoted by subsequent selection.

6.1.8 In pursuance of the above-referred amendment in the Constitution, necessary instructions in this regard to all the Central Ministries/Departments of Govt. of India were issued by Department of Personnel & Training vide their O.M. No.20011/1/2001-Estt. (D) dated 21 January, 2002.

6.1.9 The Supreme Court in their judgment dated 16 November, 1992 in the case of **Indira Sawhney vs. Union of India**, inter-alia, held that the number of vacancies to be filled on the basis of reservation in a year including carry forward reservation should in no case exceed the 50% limit. In implementation of the directions of the Hon'ble Supreme Court in this judgment, the Department of Personnel & Training issued instructions to the Central Ministries/Departments vide their O.M. No.36012/5/97- Estt (Res.) dated 29 August 1997 imposing a limit of 50% on the current vacancies as well as the backlog vacancies.

6.1.10 In order to negate the effect of the above-referred judgment of the Hon'ble Supreme Court dated 16.11.1992, a new Article 16 (4B) was added to the Constitution vide the Constitution (81st Amendment) Act, 2000 to provide 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." In pursuance of this amendment, necessary instructions to Central Ministries/Departments of Govt. of India were issued by Department of Personnel & Training vide their O.M. No.36012/5/97-Estt. (Res.) Vol.II dated 20 July, 2000 providing that the unfilled vacancies of a year which are reserved for being filled up in that year will be treated as separate/distinct class of vacancies to be filled up in any subsequent year or years and such class of vacancies shall not be considered with the vacancies of the year in which they are being filled up, for determining the ceiling of 50% of reservation on total number of vacancies. In other words, the ceiling of 50% on filling up of reserved vacancies would apply only on the reserved vacancies which arise in the current year and the backlog/carry forward reserved vacancies for SC/ST of the earlier years would be treated as a separate and distinct group and would not be subject to 50% ceiling.

6.1.11 Article 335 provides that "The claims of the members of Scheduled Castes/Scheduled Tribes shall be taken into consideration, consistently 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 Hon'ble Supreme Court in their judgment in the case of S. Vinod Kumar vs. Union of India, held in 1996 that the provisions relating to lowering of the qualifying marks/lesser level of standards of evaluation in the

matter of promotion provided for candidates belonging to SCs/STs under the Government's instructions were not permissible under Article 16(4) in view of the command contained in Article 335 of the Constitution. In pursuance of this judgment, the Department of Personnel & Training vide their O.M. No.36012/23/96-Estt. (Res.) dated 22 July, 1997 withdrew the relaxations/concessions in the matter of qualifying marks/standards of evaluation of performance made available to the candidates belonging to the Scheduled Castes and Scheduled Tribes vide Department of Personnel's O.Ms. No.8/12/69-Estt. (SCT) dated 23.12.1970 and No.36021/10/76-Estt. (SCT) dated 21 January, 1977.

6.1.12 In order to nullify the effect of the above-referred judgment of the Hon'ble Supreme Court, the following proviso to Article 335 was added in the Constitution vide the Constitution (Eighty-second Amendment) Act, 2000:-

“ Nothing in this Article shall prevent the State in making of any provision in favour of the members of 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”.

6.1.13 In view of the above proviso added below Article 335, the instructions of the Department of Personnel and Training issued vide O.M. dated 22 July, 1997 were withdrawn and the concessions relating to lowering of qualifying marks/lesser standards of evaluation in matters of promotion for SCs and STs were restored vide their O.M. No.36012/23/96-Estt. (Res.)-Vol.II dated 3 October, 2000.

6.2 Reservation Profile

6.2.1 Reservation in direct recruitment on all-India basis through open competition in favour of Scheduled Castes for the first time was introduced in the year 1943. The percentage of reservation was 8.33%.

6.2.2 On attainment of Independence, instructions were issued on 21.9.1947 increasing the percentage of reservation for Scheduled Castes from 8.33% to 12.5% in respect of direct recruitment on all-India basis made by open competition. In case of recruitment otherwise than by open competition, the percentage was fixed at 16.66% (or 16-2/3%) for Scheduled Castes.

6.2.3 Reservation @ of 5% for the first time was provided for Scheduled Tribes in direct recruitment after the promulgation of the 230

6.2.4 Constitution vide MHA's Resolution dated 13.9.1950.

6.2.4 961 Census revealed that the SC and ST population in proportion to the population of the country stood at 14.64% and 6.80% respectively. Accordingly, the percentage of reservation for SCs and STs was increased from 12.5% and 5% to 15% and 7.5% respectively by MHA's Resolution dated 25 March, 1970.

6.2.5 As stated above, 7.5% reservation for members belonging to Scheduled Tribes was prescribed in 1970 on the basis of the population of Scheduled Tribes reflected in the 1961 Census. There has been no revision of this percentage so far. According to 1991 Census and 2001 Census, the population of Scheduled Tribes was 8.1% and 8.2% respectively of the total population of the country which is exclusive of the tribal

communities, which have been recognized as Scheduled Tribes subsequently in the year 2002. **The Commission, therefore, recommends the upward revision of the reservation percentage in services and posts for Scheduled Tribes from the existing 7.5% to 8.2% having regard to the increase in the total population of the Scheduled Tribes in the country.**

6.2.6 The reservation for SCs & STs in promotion was extended in stages from January, 1957 onwards. Reservations were first provided for SCs and STs in the Departmental Competitive Examinations in Class I, II, III & IV posts. Reservations in promotion by selection in Group 'C' and 'D' for the first time were provided in 1963 and in the same year, reservation in Departmental Competitive Examinations was discontinued in Class I posts and was limited to Class II, III and IV posts only (now Groups 'B' 'C' and 'D'). The position was slightly changed in 1968 when the reservation in Limited Departmental Examinations in Class II, III and IV posts and promotion by selection to Class III and IV was subjected to the condition that the element of direct recruitment did not exceed 50%.

6.2.7 Reservation in promotion by seniority-cum-fitness in Groups 'A' 'B' 'C' and 'D' was introduced for the first time in 1972 [Department of Personnel's O.M. No.27/2/71-Estt. (SCT) dated 27 November, 1972] subject to the condition that the element of direct recruitment, if any, did not exceed 50%. In 1974, reservation in promotion by selection from Group 'C' to Group 'B', within Group 'B' and from Group 'B' to the lowest rung of Group 'A' were introduced [DP &AR's O.M. No.10/41/73-Estt. (SCT) dated 20 July, 1974] subject to the condition that the element of direct recruitment, if any, did not exceed 50%. The limitation of the direct recruitment not exceeding 50% was raised to 66-2/3% in 1976 [DP &AR's O.M.No. 36021/7/75-Estt. dated 25 February, 1976] and was further raised to 75% in 1989 [DoPT O.M. No.36012/17/88-Estt. (SCT) dated 25.4.1989].

6.2.8 As on date there is a reservation of 15% for the members of the Scheduled Castes and 7.5% for the members of the Scheduled Tribes in the matter of appointment by promotion to the grades of civil posts and civil services in which element of direct recruitment, if any, does not exceed 75% and when posts are filled by promotion:

- (a) through Limited Departmental Competitive Examination in Group 'B', Group 'C' and Group 'D' posts;
- (b) by selection from Group 'B' post to Group 'A' post or in Group 'B', Group 'C' and Group 'D' posts; and
- (c) by non-selection in Group 'A', Group 'B', Group 'C' and Group 'D' posts.

6.2.9 The Article 16 (4A) enables the State to make provisions for reservations, with consequential seniority, to any class or classes of post in services under the State in favour of the SCs/STs, which are not adequately represented in services under the State. In terms of this new Article [i.e. 16 (4A)] it was expected that the government would extend the reservation in promotion by selection within Group 'A' posts also. This was, however, not done by the Government while issuing instructions vide DoPT's O.M. dated 13 August 1997 subsequent to the amendment carried out in Article 16 (4). **The Commission, therefore, recommends the extension of the rule of reservation in promotion by selection within Group 'A' posts for officers belonging to Scheduled Tribes in terms of the provisions of Article 16 (4A).**

6.2.10 Under the Constitution, all citizens of the country are eligible for consideration for appointments to posts and services in the various Central Services irrespective of their domicile or place of birth and accordingly there can be no recruitment to any Central Services, which is confined by rules to the inhabitants of any specified area. In practice, however, it has been observed that recruitment to Group 'A' and Group 'B' services and posts attracts candidates from all over India while recruitment to majority of Group 'C' and 'D' posts and services, filled other-wise than through the UPSC, attracts only those who reside in the area or locality in which the office is located. In the latter category of cases i.e. Group 'C' and Group 'D', the percentage of population of Scheduled Tribes as also of Scheduled Castes to the total population in that State/UT is, therefore, taken into account by the Government for the purpose of fixing the percentages of reservation for them.

6.3 Review of five OMs issued by DoPT

6.3.1 The Department of Personnel & Training had issued five OMs during the period from January to August, 1997 in implementation of the judgments of the Hon'ble Supreme Court in different cases. These instructions had adverse impact on the reservation policy of the Government for members of Scheduled Castes and Scheduled Tribes. These OMs have subsequently been reviewed and revised instructions issued by the Department of Personnel & Training in pursuance of amendments made in the relevant Articles of the Constitution of India in respect of 4 OMs. The detailed position with respect to each of these five OMs is as follows:

- (i) The first O.M. of DoPT No.20011/1/96-Estt (D) dated 30.1.1997 was issued in pursuance of the judgment of the Hon'ble Supreme Court in the case of Virpal Singh Chauhan & Ors. vs. Union of India in which it was held that if a candidate belonging to the Scheduled Castes/Scheduled Tribes was promoted to an immediate higher post/grade against a reserved vacancy earlier than his senior general/OBC candidate who was promoted later to the said immediate higher post/grade, the general/OBC candidate would regain his seniority over such promoted candidate of the Scheduled Castes/Scheduled Tribe in the immediate higher post/grade. This O.M., which had adverse effect on the seniority of SC/ST officers promoted earlier viz-a-viz general category candidate promoted later was withdrawn and revised instructions issued vide O.M. of even no. dated 21.1.2002 on the basis of suitable amendment carried out in Article 16 (4A) of the Constitution vide the Constitution (Eighty-fifth Amendment) Act, 2001. The revised instructions, inter-alia, provide that the candidates belonging to general/OBC category promoted later will be placed junior to SC/ST candidates promoted earlier by virtue of rule of reservation.
- (ii) The Hon'ble Supreme Court in their judgment in the case of S. Vinod Kumar vs. Union of India held in 1996 that the provision of lower qualifying marks/lesser level of evaluation, in the matter of promotion provided for candidates belonging to SCs/STs under the Government's instructions were not permissible under Article 16(4) in view of the command contained in Article 335 of the Constitution. In pursuance of this judgment, the Department of Personnel & Training vide their O.M. No.36012/23/96-Estt. (Res.) dated 22 July, 1997 withdrew the relaxations/concessions in the matter of lowering of qualifying marks/standards of evaluation of performance made available to the candidates belonging to the Scheduled Castes and Scheduled Tribes vide Department of Personnel's O.Ms. No.8/12/69-Estt. (SCT) dated 23.12.1970 and No.36021/10/76-Estt. (SCT) dated 21 January, 1977. The above-referred O.M. of DoPT (i.e. dated 22 July, 1997) has since been withdrawn and the concessions relating to lower qualifying marks/lesser standards of evaluation in

matters of promotion for Scheduled Castes and Scheduled Tribes restored vide DoPT's O.M. No.36012/23/96-Estt. (Res.)-Vol.II dated 3.10.2000 on the basis of proviso added below Article 335 of the Constitution vide Constitution (Eighty-second Amendment) Act, 2000.

- (iii) The Supreme Court in their judgment dated 16 November, 1992 in the case of *Indira Sawhney vs. Union of India* further held that there shall be no reservation in promotion after five years from the date of the judgment i.e. 16.11.1992. This judgment led to the amendment of Article 16(4) of the Constitution by the Constitution (Seventy-seventh Amendment) Act, 1995 and by the Constitution (Eighty-fifth Amendment) Act, 2001 by adding a new Article 16(4A). The new Article 16(4A), inter-alia, provides that nothing will prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of SCs and STs which, in the opinion of the State, are not adequately represented in the services under the State. It was represented by members belonging to SC/ST or their associations etc. that the intention of the new Article 16 (4A), inter-alia, was to provide for reservation for SCs and STs in promotion by selection within Group 'A' posts also, which so far was limited to the lowest rung of Group 'A'. As the DoPT's O.M. dated 13.8.1997, issued in pursuance of the amendments made in Article 16(4), decided to continue the reservation in promotion as at present and was silent about extending the reservation in promotion for SCs and STs within Group 'A' in selection posts, the erstwhile Commission took up the matter with Department of Personnel and Training to issue the revised instructions in this regard. The Department of Personnel & Training informed that the matter in which one party had challenged the validity of Article 16 (4A) and another prayed for reservation in promotion within Group 'A' posts was pending before the Constitution Bench of the Hon'ble Supreme Court.
- (iv) The Supreme Court in their judgment dated 16 November, 1992 in the case of *Indira Sawhney vs. Union of India* also held that the number of vacancies to be filled on the basis of reservation in a year including carry forward reservation should in no case exceed 50% limit. In implementation of the directions of the Hon'ble Supreme Court in this judgment, the Department of Personnel & Training issued instructions to the Central Ministries/Departments vide their O.M. No.36012/5/97- Estt (Res.) dated 29 August, 1997 imposing a limit of 50% on the current vacancies as well as the backlog vacancies. This O.M. has since been withdrawn by DoPT O.M. of even no. dated 20 July, 2000 on the basis of amendments made in Article 16 (4) of the Constitution by adding a new Article 16(4B) vide Constitution (Eighty-first Amendment) Act, 2000. The revised instructions provide that the unfilled vacancies of a year which are reserved for being filled up in that year will be treated as a separate/distinct class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered with the vacancies of the year in which they are being filled up, for determining the ceiling of 50% of reservation on total number of vacancies. In other words, the ceiling of 50% on filling up of reserved vacancies would apply only on the reserved vacancies which arise in the current year and the backlog/carry forward reserved vacancies for SC/ST of the earlier years would be treated as a separate and distinct group and would not be subject to any ceiling.
- (v) The Constitution bench of the Supreme Court, in the case of *R.K. Sabharwal vs. State of Punjab* as well as *J.C. Mallick vs. Ministry of Railways* held that the reservation of jobs for SCs/ STs/ OBCs should apply to posts and not to vacancies. The Court further held that the vacancy based roster could operate only till such time as the

representation of persons belonging to the reserved category in a cadre/ service reached the prescribed percentages of reservation and that thereafter the rosters could not be operated and the vacancies released by recruitment, resignation, promotion etc. of persons belonging to general category and the reserved categories were to be filled by appointment of persons from respective category so that prescribed percentage of reservation was maintained. The Court further held that the persons belonging to reserved categories who are appointed on the basis of merit and not on account of reservation were not to be counted towards the quota meant for reservation. It was in pursuance of these directions of the Hon'ble Supreme Court that the fifth O.M. of DoPT No.36012/2/96-Estt (Res.) dated 2.7.1997 was issued for switching over from vacancy-based roster to post-based roster. The new procedure was examined by the erstwhile NCSCST and it was observed that the Hon'ble Supreme Court in their judgment dated 10 February, 1995 in the case of R.K. Sabbarwal vs. State of Punjab had not given any direction regarding introduction of post-based roster and that the Court had only held that the vacancy-based roster could operate only till such time the representation of persons belonging to the reserved categories in a cadre reached the prescribed percentages of reservation. It was also observed that in the new post-based roster compared to the old vacancy-based roster, the reserved points had not been accorded due priority and that there was no reservation upto first six points in the new roster and as compared with the old roster, there was loss of one SC and one ST point upto the first thirteen points. The Commission also expressed a view that the Department of Personnel & Training before switching over to the post-based roster should have taken steps to ensure that the prescribed reservation levels of 15% of Scheduled Castes and 7.5% of Scheduled Tribes were achieved. DoPT was accordingly, requested by the erstwhile NCSCST to recall the O.M. dated 2.7.1997 and to continue the vacancy- based roster. The DoPT, in turn, decided to seek the opinion of the learned Attorney General of India in the matter. The advice given by the Attorney General of India on 9 April, 1999 was that the Government could not have continued the old vacancy- based roster and that it had no option but to switch over to post- based roster and further that the vacancy- based roster could not have continued after the Supreme Court judgment in the case of R.K. Sabbarwal vs. State of Punjab.

6.3.2 It will be seen from the above that out of the five O.Ms issued by DoPT in 1997, status quo ante in respect of four OMs has since been restored by issue of revised instructions. However, the matter regarding whether there should be reservation in promotion by selection within Group 'A' in favour of Scheduled Castes and Scheduled Tribes on the basis of the amendments made in Article 16(4) by adding a new Article 16(4A) (on which the DoPT's O.M.dated 13.8.1997 was silent) is presently sub judice before the Constitution bench of Hon'ble Supreme Court. Chairman, National Commission for Scheduled Tribes addressed a letter dated 10 August, 2005 to Minister of Law & Justice, New Delhi in which he drew his (i.e.Minister's) attention towards W.P. (C) No.61 of 2002 in M. Nagaraj and Ors. vs. Union of India and Ors. and connected Writ Petitions pending before the Constitution bench of the Hon'ble Supreme Court of India wherein the Constitution (77th Amendment) Act, 1995 and Constitution (81st Amendment) Act, 2000 under which Article 61(4A) and 16 (4B) of the Constitution were added were under challenge, and requested the Hon'ble Minister of Law & Justice to engage eminent jurists like Dr. K. Parasaran, former Attorney General of India who had argued in the Mandal Case in 1992 before the nine-judge bench of the Hon'ble Supreme Court of India, with a view to protect the interest of Scheduled Tribes. He further requested the Hon'ble Minister to ensure that the above case was presented and argued well before the Constitution bench to safeguards the Constitutional rights of ST/SC communities. **The Commission recommends**

that the Government should engage an eminent jurist well- conversant with the subject matter to ensure that the case was effectively presented and argued well before the Constitution bench with a view to protect the interests of Scheduled Tribes as also of Scheduled Castes.

6.4 SCs/STs selected/promoted on their own merit not to be counted against vacancies reserved for them

6.4.1 The Department of Personnel & Training vide their O.M. No.36028/17/2001-Estt (Res.) dated 11 July, 2002 has clarified to all the Ministries and Departments of the Govt. of India that it was clear from their O.M. dated 2 July, 1997 (referred to above) that SC/ST and OBC candidates appointed by direct recruitment on their own merit and not owing to reservation would be adjusted against unreserved points of the reservation rosters. It has further been clarified that:

- (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 there is any SC/ST candidate within the normal zone of consideration in the feeder grade, such SC/ST candidate cannot be denied promotion on the plea that the post is not reserved. Such a candidate will be considered for promotion along with 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.

6.5 Non-permissibility of Exchange of Reserved Points between SCs and STs, filling up of Backlog Vacancies & Non-lapsing of Reserved Points

6.5.1 By their O.M. No.36012/17/2002-Estt (Res.) dated 6 November, 2003, the Department of Personnel & Training have, inter-alia, issued the following instructions/clarifications to the Central Ministries/Departments on the non-permissibility of exchange of reserved points between SCs and STs and other related matters:

- (i) The basic principle of post-based reservation was that the number of posts filled by reservation by any category in a cadre should be equal to the quota prescribed for that category. If exchange of reservation between SCs and STs is permitted, the number of employees of one reserved category appointed by reservation will go beyond reservation prescribed for that category. It would be against the spirit of post-based reservation. Therefore, after introduction of post-based reservation, it is not permissible to fill up a post reserved for Scheduled Tribes by a Scheduled Caste candidate or vice-versa by exchange of reservation between SCs and STs in promotion as well as in direct recruitment.
- (ii) Where sufficient number of candidates belonging to SC/ST/OBC are not available to fill up the vacancy reserved for them in direct recruitment, the vacancies shall not be

filled by candidates not belonging to these communities. In other words, there is a ban of dereservation of vacancies reserved for SCs/STs and OBCs in direct recruitment. However, in exceptional cases in Group 'A' services where posts cannot be allowed to remain vacant in public interest, the concerned administrative Ministry/Department shall make a proposal for dereservation and consult the erstwhile NCSCST (now the NCSC and NCST). After obtaining the comments of NCSC or NCST, as the case may be, the concerned administrative Ministry/Department shall place the proposal of dereservation along with the NCSC or NCST's comments before a Committee comprising Secretary, DoPT, Secretary Ministry of Social Justice & Empowerment and the Secretary of the concerned administrative Ministry/Department. The recommendation of the Committee shall be placed before the Minister incharge of DoPT for a final decision. If dereservation of the vacancy is approved, this can be filled by the candidate of other community.

- (iii) If sufficient number of SC/ST/OBC candidates are not available to fill up vacancies reserved for them in the first attempt, a second attempt shall be made for recruiting suitable candidates of the concerned category in the same recruitment year. If the requisite candidates are not available even then, the unfilled reserved vacancies shall not be filled until the next recruitment year. These vacancies will be treated as "backlog vacancies".
- (iv) The current vacancies of a particular recruitment year and the backlog vacancies of SCs and STs (in respect of direct recruitment) will be treated as a separate and distinct group and the instructions that not more than 50% of the vacancies can be reserved in a year will be applicable only with reference to the current vacancies and all the backlog vacancies reserved for SCs and STs will be filled up by candidates belonging to the concerned category without any restriction whatsoever as they belong to a distinct group of backlog vacancies of SCs and STs.
- (v) The unfilled vacancies reserved for SCs/STs/OBCs in respect of direct recruitment will be carried forward as backlog vacancies for the subsequent recruitment year(s) as long as these are not filled by candidates of the category for which these are reserved.
- (vi) In cases of promotion including promotion by selection from Group 'C' to Group 'B', within Group 'B' and from Group 'B' to the lowest rung of Group 'A', if sufficient number of SC/ST candidates fit for promotion against reserved vacancies are not available, such vacancies may be dereserved as per prescribed procedure and filled by candidates of other communities.
- (vii) If sufficient number of SC/ST candidates fit for promotion against reserved vacancies are not available and such vacancies can also not be dereserved for reasons like non-availability of candidates of other categories to fill up the posts etc. the vacancies shall not be filled and will remain unfilled until the next recruitment year. These vacancies will be treated as "backlog vacancies".
- (viii) The position stated in sub-paras (iv) and (v) above will also be applicable in respect of vacancies required to be filled up by promotion.
- (ix) In cadres having more than 13 posts, number of posts filled by reservation by any category at any point of time should ideally be equal to the quota determined as per percentage of reservation prescribed for that category. Whenever the posts are filled, efforts have to be made to complete reservation quota for SCs/STs/OBCS in case of

direct recruitment and for SCs/STs in case of promotion so that the number of posts filled by reservation by SC/ST & OBC as the case may be, in the cadre is equal to the number of posts earmarked for them. It means that if reservation quota is not complete, efforts would be made to complete the reservation quota whenever the recruitments are made in the cadre. Thus reservation would not lapse in case of post based reservation for the reason that reserved posts could not be filled for a specified number of years.

- (x) In cadres having 13 or less number of posts where 14-point L-shaped rosters are applied, if the unfilled reserved vacancies are not filled by reservation in the third year of carry forward, reservation will be treated as lapsed and will be filled as an unreserved vacancy. The Commission is of the opinion that this decision of the Government is not in keeping with the general principles of the post-based roster which has been unequivocally stated in the preceding sub-para (ix) above. **The Commission, therefore, strongly recommends that the unfilled vacancies reserved for Scheduled Tribes in cadres having 13 or less number of posts should also be carry forward indefinitely till such times these posts are filled up by ST candidates as is the case in regard to cadres having more than 13 posts with respect to which there is no lapsing of reserved points.**

6.6 Dereservation of Posts

6.6.1 There is a ban on dereservation in posts filled by direct recruitment and the unfilled vacancies are required to be carried forward till such time a suitable SC/ST candidate become available. This ban was imposed vide DoPT's O.M. No.36012/6/88-Estt. (SCT) dated 25 April, 1989 and was made effective w.e.f. 1 April, 1989 in respect of all direct recruitment to be made to fill up the reserved vacancies in Group 'A', 'B', 'C' and 'D'. The purpose behind this decision was to protect the interests of SC/ST communities and to ensure that posts reserved for them were filled up only by candidates belonging to these communities. The present instructions of the Government, however, provide for dereservation of reserved posts which are filled up by promotion and, as per the existing instructions, the Ministries/Departments have been delegated the powers in certain selected categories of cases to accord dereservation. However, they are required to send the proposal in the prescribed proforma to the Department of Personnel & Training and the National Commission for Scheduled Tribes, and to wait for their comments for a period of 15 days before going for dereservation. In pursuance of these provisions, the Commission receives a large number of proposals for dereservation of reserved posts. During the scrutiny of those proposals, the Commission has observed that either the ST candidates were not at all available in the feeder grade or even if they were available, they were at the bottom of the seniority list and not likely to be covered in the normal zone or in the extended zone of consideration in near future. The Commission feels that allowing dereservation in such cases adversely affects the interests of ST candidates to the extent that the vacancies meant for them are filled up by general category candidates and even though the reserved points are carried forward, there are very little chances of their being considered for promotion for considerable period of time. The Commission would also like to make the following observations in this regard:

- (i) Prior to 6 November, 2003, the posts reserved for Scheduled Tribes were being given in exchange to SC candidates in the event of non-availability of ST candidates and now from 6.11.2003 onwards, ST posts are being filled up by general category candidates through the existing process of dereservation. The situation has not

undergone any change in favour of ST candidates even after 6.11.2003 and they continue to be deprived of their share in the services by way of reservation. This has, no doubt, created a deep sense of resentment among the ST communities and the only credible via media to deal with this situation is to stop forthwith the dereservation of posts reserved for Scheduled Tribes candidates in posts filled up by promotion.

- (ii) Consequent upon the introduction of post-based reservation roster w.e.f. 2 July, 1997, the reservation for SC/ST candidates at any point of time should not be less than the prescribed percentages earmarked for them and the moment there is a shortfall in any cadre of posts on account of retirement etc., it is required to be filled first to make up for the shortfall. This means that the present instructions of the Government to allow dereservation of reserved posts to be filled by promotion impinges upon the spirit of instructions on post-based reservation roster.
- (iii) The exchange of reserved points between SC and ST candidates has been discontinued w.e.f. 6 November, 2003 with a view to ensure that the posts reserved for ST communities are filled only by candidates belonging to ST category. The basic purpose of this decision of the Government is being defeated by allowing dereservation of reserved points in promotion which results in diverting their share in posts to general category candidates and this deprivation of their legitimate share in the governance in most of the cases is almost perpetual due to their non-availability in the feeder grade.

6.6.2 In view of the above, the Commission strongly recommends that on the line of the ban imposed on dereservation of reserved posts to be filled by direct recruitment, a ban should also be imposed on dereservation of reserved posts to be filled by promotion in view of the implementation of the post- based roster, with a view to protect the interests of ST candidates in promotions.

6.6.3 The existing instructions provide that where the 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 candidates belonging to SC or ST in accordance with the provisions relating to the direct recruitment contained in the RRs. These instructions further provide that in the subsequent year (s) when reserved vacancies in the direct recruitment quota become available, they 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 available/eligible in the feeder grade for promotion. The problem arises in cases where the RRs provide for filling the posts 100% by promotion and the candidates belonging to ST communities are not available in the feeder grade, even though the RRs for the feeder grade provide element of direct recruitment. The question arises as to how the posts reserved for ST communities will be filled in such cases in case the dereservation of such posts is banned. The solution lies in amending the Recruitment Rules to provide also for direct recruitment in order to ensure that in case the eligible ST candidates are not available in the feeder grade, the vacancies reserved for them, instead of being dereserved as per the present instructions, are filled through direct recruitment. **The Commission accordingly recommends that the Department of Personnel & Training should issue necessary instructions to all the cadre controlling authorities to amend their Recruitment Rules to suitably provide for the element of direct recruitment also so that the unfilled points**

reserved for STs are temporarily diverted from promotion to direct recruitment quota and the situation of dereservations of the reserve point is avoided.

6.7 Representation of SCs/STs in Departmental Promotion Committees

6.7.1 The following instructions are in place as on date in respect of representation of SC/ST officers on the Departmental Promotion Committees, Selection Boards or Recruiting Authorities:

- (i) Whenever a Selection Committee or Board exists or has to be constituted for making recruitment to 10 or more vacancies in Group 'C' or Group 'D' services/ posts, it shall be mandatory to have one member belonging to SC/ST/OBC and one member belonging to minority community in such Committee/Board. Further, one of the members of the Selection Committee/Board whether from the general category or from the minority community or from SC/ST/OBC should be a lady failing which a lady member should be co-opted on the Committee/Board [DoPT's O.M. No.39016/9 (5)/89-Estt (SCT) dated 16.8.1990 read with their O.M. No.42011/15/95-Estt (SCT) dated 11.7.1995].
- (ii) The Chairman of the DPC in respect of Group 'C' and Group 'D' posts should be an officer of a sufficiently high level and one of the members of the Committee should be an officer from a Department not connected with the one in which promotions are to be considered. In cases where an outside representative is inducted as a member of DPC, he should invariably be an officer belonging to SC/ST community and only where this is not possible, should an officer belonging to SC/ST from the same department be nominated to the DPC. In the event of an officer belonging to SC/ST not being available for nomination to the DPC either from other Department or from the same Department, an endorsement to this effect should be obtained before holding the meeting of the DPC from the Liaison Officer of the Ministry/Department/Office concerned to the effect that all efforts have been made to find a SC/ST officer for the DPC, but with no success. [DP & AR' s O.M. No.41013/16/81-Estt. (SCT) dated 10.8.1981 read with their subsequent O.M. No.36011/22/82-Estt. (SCT) dated 18.8.1983.]

6.7.2 The Commission has observed that in most of the cases it is only the representatives belonging to SC only who are associated with the DPCs/Selection Committees and to that extent the interests of ST candidates are not protected. **The Commission is, therefore, of the view that the above cited instructions should be revised to provide for association of separate representative belonging to Scheduled Tribe in all the Departmental Promotion Committees/Boards/Selection Committees to protect the interest of Scheduled Tribes in recruitment/ promotion.**

6.8 Reservation in Private Sector

6.8.1 Both the National Commission for Scheduled Castes and the National Commission for Scheduled Tribes (earlier the National Commission for Scheduled Castes and Scheduled Tribes) have expressed their considered view that in consonance with the Constitutional scheme, the principle of positive discrimination enshrined in the various articles of the Constitution governing reservation for SCs and STs should be extended to the private sector also to fulfill constitutional obligations of social equality. The DoPT with reference to a Private Member Bill had sought the opinion of the learned Attorney General of India who opined that Article 16 (4) of the Constitution enabled the State to provide reservation in appointments or posts in favour of any backward class of citizens in the services under the

State and that reservation in private sector would not be permissible under Article 16 (4) of the Constitution and will be violation of the equality provisions in the Constitution.

6.8.2 The Commission would like to reiterate the recommendations made by the erstwhile National Commission for Scheduled Castes and Scheduled Tribes in its Sixth Report (1999-2000 and 2000-2001) to the effect that the principle of positive discrimination should be extended to the private sector also to fulfill the constitutional obligations of bringing about social equality and that a beginning should be made with all those economic activities which are getting the benefit of institutional finance and/or being supported by the State in some other ways.

6.8.3 The Commission also reiterates the earlier recommendation of the erstwhile NCSCST in its Sixth Report (1999-2000 and 2000-2001) that the Government should lay down a binding clause at the time of disinvestments of PSEs that the new management shall observe and continue the reservation policy for appointment to various posts. The Commission further recommends that the Government should enact a legislation to that effect.

6.9 Reservation for Scheduled Tribes in Scientific and Technical Posts

6.9.1 Prior to June, 1975, scientific and technical posts required for conducting research or for organizing, guiding and directing research were exempted from the purview of orders relating to reservation for Scheduled Castes and Scheduled Tribes. In 1975, the orders were modified and it was decided that the scheme of reservations for Scheduled Castes and Scheduled Tribes shall also cover appointments made to scientific and technical posts upto and including the lowest grade of Class I (now Group 'A') in respective services wherever they were exempted from the purview of scheme of reservations [DP & AR's O.M. No.6/2/73-Estt. (SCT) dated 23 June, 1975].

6.9.2 The reserved vacancies in scientific and technical posts, which would be brought within the purview of the scheme of reservations for candidates from SCs/STs in pursuance of the decision indicated in para-5.9.1, need be advertised only once, instead of twice, as prescribed in MHA's O.M. No.1/1/70-Estt. (SCT), dated 31.7.1970. In the event of non- availability of candidates belonging to the reserved communities, the reserved vacancies may be treated as dereserved by the administrative Ministry/Department concerned without obtaining the approval of the Department of Personnel & Administrative Reforms (now DoPT).[DP & AR's O.M. No.6/2/73-Estt. (SCT) dated 23 June, 1975].

6.9.3 In terms of the instructions contained in DP & AR O.M. No.9/2/73-Estt.dated 23.6.1975, only such of the scientific and technical posts as satisfy all the following conditions are now required to be exempted from the purview of the reservation orders:-

- (i) The posts should be in grades above the lowest rung of Group 'A' of the Service concerned;
- (ii) They should be classified as "scientific and technical" in terms of Cabinet Secretariat (Department of Cabinet Affairs) O.M. No. 85/11/CF-61 (1), dated 28.12.1961;
- (iii) These posts should be for conducting research or for organizing, guiding and directing research.

6.9.4 These instructions (i.e. dated 23.6.1975) further lay down that orders of the Minister concerned should be obtained before exempting any posts satisfying the above conditions from the purview of the scheme of reservation.

6.9.5 The above decisions do not apply to posts in the Department of Space and in the Department of Electronics and in regard to the recruitment of trainees to the training school under the Department of Atomic Energy and, therefore, in these Departments, scientific and technical posts for research continue to be exempted from the purview of the orders regarding reservations for SCs/STs.

6.9.6 The Commission is of the opinion that there is a need to reconsider the earlier decision of the Government taken in the year 1975 [vide DP&AR's O.M. dated 23 June 1975] to restrict the reservation in scientific and technical posts including those intended for conducting research, or for organizing, guiding and directing research upto the lowest rung of Group 'A'. The position which existed in the year 1975 has undergone complete change, thanks to explosion in education including scientific and technical education and now a good number of qualified and experienced candidates belonging to SC/ST are available in these disciplines. **The Commission, therefore, recommends that the scheme of reservation for SCs and STs in scientific and technical posts should also be extended beyond the lowest rung of Group 'A' posts/ services (i.e. within Group 'A').**

6.10 Concessions to SC/ST Officers in posts filled by Direct Recruitment

6.10.1 The following relaxations/concessions are available in direct recruitment to the candidates belonging to Scheduled Castes and Scheduled Tribes:-

- (i) The maximum age-limit prescribed for direct recruitment to a post/service is relaxable by five years in the case of candidates belonging to SCs and STs.
- (ii) The candidates belonging to SCs and STs are not required to pay any fees for admission to any recruitment examination/selection.
- (iii) In direct recruitment whether by examination or otherwise, if sufficient number of SC/ST candidates are not available on the basis of the general standard to fill all the vacancies reserved for them, candidates belonging to these communities should be selected to fill up the remaining vacancies reserved for them by relaxing the standard to make up for the shortfall provided they are not found unfit for recruitment to post/posts in question.
- (iv) In addition to the concession referred to above against (iv), if the requisite number of SC and ST candidates fulfilling even the relaxed standards are not available to fill the vacancy reserved for them in non-technical and quasi-technical Group 'C' and 'D' services/posts to be filled by direct recruitment otherwise than by written examination, the selecting authorities are required to select the best available among the SC and ST candidates who fulfill the minimum educational qualifications with relaxed standards prescribed for the said service/post. Further, in order to bring such candidates to the minimum standard necessary for the post and for the maintenance of deficiency of administration, they should be provided in service training within their own offices.
- (v) The period of experience prescribed in the recruitment rules is relaxable at the discretion of the recruiting agency.
- (vi) For the vacancies reserved for Scheduled Castes and Scheduled Tribes, the interview of Scheduled Caste and Scheduled Tribe candidates should be held on a day or sitting

of the Selection Committees other than the day or sitting on which general candidates are to be interviewed so that the Scheduled Caste and Scheduled Tribe candidates are not judged in comparison with general candidates and the members of the interviewing authority/Selection Committee are prominently aware of the need for judging the Scheduled Caste and Scheduled Tribe candidates by relaxed standards.

- (vii) Scheduled Castes and Scheduled Tribe candidates recruited for Group 'C' and 'D' posts on regional basis are to be posted as far as possible near their native places.
- (viii) Pre-Examination Training Centres have been set up in various States to increase the employment potentialities of Scheduled Caste and Scheduled Tribe candidates for selection for various competitive examinations. The authorities holding such examinations are required to inform the Pre-Examination Training Centres well in advance of the actual date of examination, the probable number of reserved vacancies and the syllabus for and the standard of examination to enable the Centres to evolve the scheme of training.
- (ix) In posts filled otherwise than through examination normally six to seven candidates belonging to the community for which the post is reserved may be called for interview for each reserved vacancy, subject to availability of such candidates fulfilling the qualifications prescribed for the post. Where the response from the Scheduled Caste/Scheduled Tribe candidates is exceptionally good, the recruiting authority may, having regard to the merits of each case, call as many as 10 to 12 candidates of the respective category for each reserved vacancy for purpose of interview/selection.
- (x) The SC/ST candidates have been permitted to approach the National Commission for Scheduled Castes and the National Commission for Scheduled Tribes directly without routing their representation through proper channel in connection with redress of their service grievances. For this purpose they need not seek prior approval of their employers to approach the Commission.
- (xi) 25 per cent of the vacancies accruing in the grade of peons are required to be reserved for being filled by transfer of sweepers, farashes, chowkidars etc. as have put in a minimum of five years service even though they may not be possessing minimum educational qualifications prescribed for direct recruitment to the post. They should, however, possess elementary literacy and give proof of ability to read either English or Hindi or regional language.

6.11 Concessions to SC/ST Officers in posts filled by Promotion by Selection

(i) Within Group 'A'

5.11.1 The Ministry of Home Affairs' O.M. No.1/9/69-Estt. (SCT) dated 26.3.1970 as amended vide DP & AR's O.M. No. 1/10/74-Estt. (SCT) dated 23.12.1974 and DoPT's O.M. No.36012/12/88-Estt. (SCT) dated 21.9.1988 provides that in promotions by selection to posts within Group 'A' which carry an ultimate salary of Rs.5700/- per month or less, the SC/ST officers, who are senior enough in the zone of consideration for promotion so as to be within 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. Consequent upon the revision of scales of pay, inter-alia, of Group 'A' posts on the basis of the recommendations of the

Fifth Central Pay Commission, it has been decided that the order containing the aforesaid OMs would apply to promotions by selection to posts within Group 'A' carrying an ultimate salary of Rs.18,300/- or less in the revised scale of pay [DoPT's O.M. No.36028/21/2003-Estt. (Res.) dated 29.1.2004].

6.11.2 The Department of Public Enterprises have also issued similar instructions vide their O.M. No.6/11/2004-DPE (SC/ST Cell) dated 8 November, 2004 raising the ultimate salary for the purpose of giving concession/protection in posts filled by promotion by selection within Group 'A' from Rs.9100/-(which was effective from 1.1.1992) to Rs.20,800/- p.m. w.e.f. 1.1.1996 in respect of the SC/ST officers working in the Central Public Sector Undertakings consequent upon a revision of scales of pay from that date.

6.11.3 As regards the financial institutions, the Department of Economic Affairs (Banking Division) was contacted to ascertain the position as to whether they had issued any instructions on the lines of the instructions issued by the Department of Public Enterprises with reference to Central Public Sector Undertakings. The Commission was informed that the Banking Division was not in receipt of the O.M. issued by the Department of Personnel & Training dated 29.1.2004 (referred to in para 5.10.1). A copy each of the O.M. issued by DoPT and the Department of Public Enterprises was made available to the concerned officer of the Banking Division for taking necessary action to issue suitable instructions for deciding the level of the ultimate salary for availing of the concession/protection in posts filled by promotion by selection within Group 'A' in respect of SC/ST officers working in financial institutions. It is, however, found that no fresh instructions have been issued by the Department of Economic Affairs. It is further noticed that the Department of Economic Affairs vide their letter No.7/7/90-SCT (B) dated 20.2.1991 had advised the DGM (P), Oriental Bank of Commerce, Head Office New Delhi with copies to all other Public Sector Banks/Financial Institutions consequent upon the raising of the limit of ultimate salary from Rs.2250/- to Rs.5700/- in respect of officers working in the Govt. of India offices that since the pay revision in Govt. and Public Sector Banks took place at different points of time, it was found possible to equate the maximum of the scale of pay of Rs.5700/- with the pay scale in Public Sector Banks and, therefore, MMGS-III in Public Sector Banks will continue to be treated as equal to the post in Govt. of India, the maximum of which is Rs.5700/-

(ii) From Group 'C' to Group 'B' within Group 'B' and from Group 'B' to the lowest rung of Group 'A'

6.11.4 In case of promotion by selection, selection against vacancies reserved for Scheduled Castes and Scheduled Tribes should be made only from among those Scheduled Caste/Scheduled Tribe officers who are within the normal zone of consideration. Where adequate number of SC/ST candidates are not available within the normal field of choice, it may be extended to 5 times the number of vacancies and the SC/ST candidates (and not any other candidates) coming within the extended field of choice should also be considered against the vacancies reserved for them. The following instructions will apply to the filling of vacancies reserved for Scheduled Castes and Scheduled Tribes in such promotions:-

- (i) Scheduled Caste and Scheduled Tribe officers who are within the normal zone of consideration shall be considered for promotion along with 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. If some of the SC/ST candidates so selected have been selected on their own merit in all respect and are so placed in the select list that their names fall within the number

of unreserved vacancies, such candidates shall be adjusted against unreserved vacancies.

- (ii) If number of candidates from Scheduled Castes and Scheduled Tribes other than the candidates selected on their own merit who are adjusted against unreserved vacancies is less than the number of vacancies reserved for them, the difference should be made up by selecting candidates of these communities who are in the zone of consideration irrespective of merit 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 than the number of vacancies reserved for them, the difference should be made up by selecting candidates of these communities who are in the extended zone of consideration irrespective of merit but who are considered fit for promotion.
- (iv) A select list should be prepared in which the names of all the selected officers, general as well as those belonging to Scheduled Castes and Scheduled Tribes, are arranged in the order of merit and seniority according to the general principles for promotion to selection posts. However, such of the SC/ST candidates who are in the extended field of choice and get selected should en bloc be placed in the end by maintaining their inter se position in accordance with their gradation by the DPC. This select list should, thereafter, be followed for making promotions in vacancies as and when they arise during the year.

(iii) Promotion by selection in Group 'C' & 'D' Posts

- (i) In such posts (i.e. Group 'C' & 'D' posts), the Select List of SC/ ST officials is required to be drawn up separately to fill reserved vacancies. Officials belonging to these classes are required to be adjudged separately amongst themselves and not along with other officials and if they are found fit for promotion they are required to be included in the list irrespective of their merit as compared to other officers. The following instructions are applicable in such promotions.
 - (a) SC and ST officials who are within the normal zone of consideration should be considered for promotion along with others and adjudged on the same basis as others and those SCs and STs amongst them who are selected on that basis may be included in the general select list in addition to their being considered for separate select lists for SCs and STs respectively.
 - (b) If candidates from SCs and STs obtain on the basis of their positions in the aforesaid general select list, less vacancies than are reserved for them, the difference should be made up by selected candidates of these communities who are in the separate select lists for SCs and STs respectively.

6.12 Model Rosters for Reservation

6.12.1 In order to give effect to the reservation prescribed, every Ministry/Department is required to maintain a model roster to indicate the points in respect of reserved vacancies. It is clarified that roster is an aid to determine the number of vacancies reserved for SC/ST/OBC out total number of sanctioned posts in a particular cadre/service. It is further clarified that rosters are not meant to be used for determining the order of appointment or seniority.

6.12.2 Initially there were following three types of model rosters, which were being used in filling up of the vacancies and were called 'vacancy based rosters':

- (i) The first model rosters contained 40 points which was in used both for posts filled by direct recruitment on all India basis through open competition as well as by promotion in all categories. This roster was applicable for all India percentages of reservations i.e. 15% for Scheduled Castes and 7.5% for Scheduled Tribes. The reserved points for Scheduled Castes were 1,8,14,22,28 and 36 and those for Scheduled Tribes were 4,17 and 31.
- (ii) The second 40- point roster was being utilized for posts filled by direct recruitment on all India basis otherwise than by open competition for which the percentages of reservation for Scheduled Castes were 16.66% for Scheduled Castes and 7.5% for Scheduled Tribes. The reserved points for Scheduled Castes were 1,7,13,20,25,32 and 37 and for Scheduled Tribes were 4,17 and 29. In every third cycle of the roster, point No.37 reserved for Scheduled Castes was required to be treated as 'unreserved'.
- (iii) The third type of model roster containing 100 points was for filling up of posts to be filled by direct recruitment on local/regional basis for Group 'C' and 'D' posts and posts made otherwise than through UPSC except in Delhi where the percentage of reservation prescribed for recruitment on all India basis is required to be followed, the percentage of reservation is required to be based generally on the proportion of population of Scheduled Castes and Scheduled Tribes in the State. Where recruitment is made for circles or regions consisting in more than one State, the percentages will be fixed taking into account the proportion of the population of SCs and STs in the entire circle or region.

6.12.3 The instructions regarding maintenance of vacancy-based rosters were changed vide DoPT's O.M. No.36012/22/93-Estt. (SCT) dated 8 September, 1993 consequent upon the introduction of reservation in direct recruitment in favour of candidates belonging to Other Backward Classes (OBCs). The details of the modified instructions are as follows:-

- (i) (a) In respect of direct recruitment on all India basis by open competition where there is reservation for 15% for SCs and 7.5% for STs, the existing 40-point roster was revised into 200-point roster. The reservations which had to be carried forward in the previous roster were required to be carried forward to the new roster.
- (b) Out of 200 points of the new roster, 30- points were earmarked for Scheduled Castes, **15** for Scheduled Tribes and 54 for OBCs.
- (ii) As there is no reservation for OBCs in promotion, no change was effected in the existing roster for promotion and the existing 40-point roster.
- (iii) The 40-point roster in respect of posts filled on all India basis otherwise than by open competition for which the percentage of reservation is 16.66% for SCs and 7.5% for STs was changed into 120-point roster vide DoPT's O.M. dated 29 December, 1993 . The number of reserved points in the 120-point roster was **20** for Scheduled Castes, 9 for Scheduled Tribes and 31 for OBCs.

- (iv) The existing 100-point roster for direct recruitment in respect of Group 'C' and 'D' posts normally attracting candidates from a locality or region was also revised to provide representation to OBCs vide DoPT's O.M. dated 29 December, 1993. There was no change in the number of points in this roster, which remained 100 only.

6.12.4 The Constitution bench of the Supreme Court, in the case of R.K. Sabharwal vs. State of Punjab as well as J.C. Mallick vs. Ministry of Railways held that the reservation of jobs for SCs/ STs/ OBCs should apply to posts and not to vacancies. The Court further held that the vacancy based roster could operate only till such time as the representation of persons belonging to the reserved category in a cadre/ service reached the prescribed percentages of reservation and that thereafter the rosters could not be operated and the vacancies released by recruitment, resignation, promotion etc. of persons belonging to general category and the reserved categories were to be filled by appointment of persons from respective category so that prescribed percentage of reservation was maintained. The Court further held that the persons belonging to reserved categories who are appointed on the basis of merit and not on account of reservation were not to be counted towards the quota meant for reservation.

6.12.5 With a view to bring the policy of reservation in line with the law laid down by the Supreme Court, the vacancy- based reservation rosters were replaced by post-based rosters vide DoPT's O.M. dated 2 July, 1997:-

- (i) The existing model roster in respect of posts filled by direct recruitment on all India basis through open competition did not undergo any modification. This roster continued to contain 200-points giving 15% reservation for SCs, 7.5% reservation for STs and 27% reservation for OBCs. In this roster 30 points are reserved for SCs 15 for STs and 54 for OBCs.
- (ii) In the 120-point roster in respect of posts filled on all India basis otherwise than by open competition for which the percentage of reservation is 16.66% for SCs, 7.5% for STs and 25.84% for OBCs, the placement of reserved points was changed although there is no change in the total number of reserved points which remain the same i.e. 20 for SCs, 9 for STs and 31 for OBCs. In the earlier 120- point roster, which was introduced in 1993 on introduction of reservation for OBCs in direct recruitment, every alternate points were reserved. This position was changed.
- (iii) The vacancy based 40-point roster indicating 15% reservation for SCs and 7.5% for STs in matter of promotion which did not undergo any change in September 1993 while revising the rosters on account of introduction of reservation for OBCs, was replaced by a 200-point roster. The revised roster contains 30 points for SCs and 15-points for STs.

6.12.6 In small cadres having sanctioned posts of 13 or less, two separate rosters – one for direct recruitment in which reservation is applicable for OBCs also and the second one for promotions which is applicable only for SCs and STs and not to OBCs have been prescribed. This roster is also known as L-shaped roster. There is no point reserved for ST from S. No. 1 to 13 of the roster. Therefore, this roster is operated upto 14th point to cover the reserved point for ST. In reality, this is a 14-point roster.

6.13 Zone of Consideration

6.13.1 The size of zone of consideration for promotion by 'selection' as prescribed vide DoPT's O.M. No.22011/1/90-Estt. (D) dated 12 October, 1990 read with their O.M. of even number dated 22 April, 1992 is as under:-

No. of vacancies	Normal size of zone of consideration	Extended zone of consideration for SC/ST
1	5	5
2	8	10
3	10	15
4	12	20
5 and above	Twice the number of vacancies +4	5 times the number of vacancies.

6.13.2 The Department of Personnel and Training by their O.M. No.22011/2/2002-Estt. (D) dated 6 January, 2006 have modified the existing provisions relating to size of zone of consideration (mentioned above) as under:-

- (i) For vacancies upto [and including] 10, existing provisions relating to normal size of zone of consideration will continue to be applicable;
- (ii) For vacancies exceeding 10, the normal size of zone of consideration will now be one and a half times the number of vacancies, rounded off to next higher integer, plus three but shall not be less than the size of zone of consideration for ten vacancies;
- (iii) The existing size of extended zone of consideration for SC/ST officers, viz. five times the total number of vacancies, will continue to be applicable.

6.13.3 The Hon'ble Supreme Court in their judgment in Civil Appeal No.4026 of 1988 in U.P. Rajya Vidut Parishad SC/ST Karamchari Kalyan Sangh vs. U.P.State Electricity Board and Ors. dated 23 November, 1994 have already held that "we are prima facie in agreement with the contention of the learned counsel for the Appellant that there has to be a separate zone of consideration so far as SC/ST candidates are concerned. Clubbing the Scheduled Caste with general category in the same zone of consideration would defeat the very purpose of reservation". The Hon'ble Supreme Court in their judgment in Petitions for Special Leave to Appeal (Civil/CH) No.(s) 14568-69/95 in C.D. Bhatia and Ors. vs. Union of India & Ors. dated 31.10.1994/3.4.1995 clarified that "we are, however, of the view that the law laid down by this Court in U.P. Rajya Vidut Parishad case (referred to above) is binding on all authorities including the Union of India. **The Commission accordingly recommends that the existing system of drawal of a single zone of consideration for general as well as SC/ST officers should be dispensed with and a separate zone of consideration consisting exclusively of SC/ST officers in the feeder grade who have completed the minimum required years of service and are eligible for being considered for promotion should be drawn up irrespective of their position in the seniority list and thereafter separate select lists should be drawn up for SC/ST candidates.** The National Commission for Scheduled Tribes has, in fact, vide its letter No.Policy-1/2006/ST/SSW dated 24 January, 2006 has already requested the Secretary, Department of Personnel & Training to issue revised instructions for drawal of separate zone of consideration for SC/ST candidates in

matters of their promotion by selection from Group C to Group B, within Group B and from Group B to the lowest rung of Group 'A' in compliance with the principles laid down by the Supreme Court in their above-cited judgment.

6.14 Percentage of Reservation for Scheduled Tribes (as also SCs and OBCs) in Direct Recruitment to Group 'C' and Group 'D' Posts on Local and Regional basis

6.14.1 Reservation for Scheduled Tribes and Scheduled Castes in case of direct recruitment in Group 'C' and Group 'D' posts normally attracting candidates from a locality or a region is generally fixed in proportion to the population of the Scheduled Tribes and Scheduled Castes in the respective States. Percentage of reservation for SCs and STs in such cases was last fixed in 1985 on the basis of the 1981 Census. When reservation for OBCs in such cases was introduced in 1993, reservation for OBCs in such cases was also fixed keeping in view the proportion of their population in the respective States/UTs and the fact that it was not more than 27% and the total reservation for SCs, STs and OBCs did not exceed the limit of 50%.

6.14.2 The Department of Personnel & Training informed the National Commission for Scheduled Tribes vide their letter No. 36017/1/2004-Estt. (Res.) dated 12 January, 2005 that they proposed to revise the percentages of reservation for SCs, STs and OBCs on the basis of their population according to 2001 Census. It was indicated that as the Census figures did not show the proportion of OBCs in the population, it was proposed to fix the percentage of reservation for OBCs generally on the basis of reservation already available to them. It was further indicated that the population of SCs, STs and OBCs had materially changed in the States of Bihar, Jharkhand, Madhya Pradesh, Chhatisgarh, Uttar Pradesh, Uttaranchal, Goa and in the UT of Daman & Diu after re-organization of these States/UT.

6.14.3 DoPT had sought the comments of the National Commission for Scheduled Tribes on the proposed percentage of reservation for STs. In its comments dated 7.2.2005, the Commission stated that it did not have any comments to offer in general as the proposed re-fixation of the percentage of reservation in various States/UTs for recruitment of Group 'C' and 'D' posts on local/regional basis was an usual exercise which was carried out on availability of the changed population figures on the basis of fresh Census reports. The Commission had, however, noted that DoPT had, inter-alia, proposed that there would be no reservation for STs in Uttar Pradesh as the ST population in that State as per 2001 Census was 0.1%. The Commission, in this connection, noted that 10 additional communities from Uttar Pradesh had been included in the list of Scheduled Tribes in the Constitution (Scheduled Castes and Scheduled Tribes) Orders (Amendment) Act, 2002 and, therefore, it would not be in order to say that the percentage of population of STs in that State was 0.1%. In view of this position, the Department of Personnel & Training was requested to provide for 1% reservation for Scheduled Tribes in the State of U.P. in Group 'C' and 'D' posts normally attracting candidates from a locality or a region with a view to ensure that the members of the 12 communities (10 additional plus two already recognized as ST) are not deprived of the benefits of reservation in services and posts of the Central Govt.

6.14.4 The Department of Personnel & Training by their O.M. No. 36017/1/2004-Estt. (Res.) dated 5 July, 2005, circulated to all Ministries/Departments of Govt. of India, have revised the percentages of reservation for SCs/STs & OBCs in case of direct recruitment to Group 'C' and 'D' posts normally attracting candidates from a locality or a region, keeping in view the population figures of 2001 Census. The Commission is happy to note that the Department of Personnel & Training has accepted its recommendation to provide for 1% reservation for Scheduled Tribes in the State of U.P. in Group 'C' and 'D' posts normally

attracting candidates from a locality or a region. A copy of the Table giving the revised percentage of reservation for SCs/STs/OBCs in respect of Group 'C' and 'D' posts normally attracting candidates from a locality or region is placed at **Annex 6.I** to this Chapter.

6.14.5 The Commission is of the opinion that the percentage of reservation in respect of each State and UT may be fixed taking into consideration the population of the communities recognized as Scheduled Tribes vide Scheduled Castes and Scheduled Tribes Orders, (Amendment) Act, 2002 and other similar orders/amendments issued after completion of Census 2001 with a view to ensure that the persons belonging to these communities are not deprived of their constitutional rights. It has been brought to the notice of the Commission that the ST population in the State of Goa, which was shown as 0% on the basis of 2001 Census, has now increased to about 12% on account of recognition of three communities namely- Kunbi, Gawada and Velip as Scheduled Tribes vide the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 2002 which was notified on 07.01.2003. This Act provides for the inclusion in the list of Scheduled Tribes, of certain tribes or tribal communities or parts of or groups within tribes or tribal communities, equivalent names or synonyms of such tribes or communities, removal of area restrictions and bifurcation and clubbing of entries; imposition of area restriction in respect of certain castes in the lists of Scheduled Castes, and the exclusion of certain castes and tribes from the lists of Scheduled Castes and Scheduled Tribes, in relation to the States of Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Goa, Gujarat, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Mizoram, Orissa, Sikkim, Tamil Nadu, Tripura, Uttar Pradesh and West Bengal. **The Commission recommends that the Department of Personnel & Training should revise the percentage the reservation for recruitment to Group C and D posts on local/regional basis from 0% to 12% in the State of Goa having regard to the marked increase in the population of Scheduled Tribes after 2001 Census.**

6.14.6 The Hon'ble Supreme Court of India vide their judgment dated 11 February, 2005 in Civil Appeal Nos. 6-7 of 1998- S. Pushpa & Ors. (Appellants) vs. Sivachanmugavelu & Ors. (Respondents) has held that the Union Territory of Pondicherry having adopted the policy of Central Govt. whereunder all Scheduled Castes or Scheduled Tribes, irrespective of their State of origin are eligible for posts which are reserved for SC/ST candidates, no legal infirmity can be ascribed to such a policy and the same cannot be held to be contrary to any provision of law. On a reference from the Ministry of Home Affairs, the Ministry of Law & Justice (Department of Legal Affairs) had advised that the law declared by the Supreme Court of India in its above referred judgment applied to the Union Territory of Delhi also. The Department of Legal Affairs had also supported the opinion of MHA that in the matter of reservation for SCs/STs to the posts under any Union Territory administration, as was the policy of the Central Government, all members of SCs/STs irrespective of their nativity were eligible for reservation for posts which were reserved for them. Based on the above referred judgment of the Supreme Court and the clarifications given by the Department of Legal Affairs thereon, the Govt. of NCT of Delhi vide their letter No.F.16 (73)/97-S.III/710 dated 30.6.2005 have issued instructions that all the SC/ST candidates irrespective of their nativity are eligible for reservation to the civil posts under the Govt. of NCT of Delhi, which are reserved for SC/ST candidates [It may be recalled that the Hon'ble High Court of Delhi vide their judgment dated 5 July, 2004 in C.W. No.6546 of 2003 in Dr. B.R. Ambedkar Memorial Foundation (Regd.) & Ors. vs. Union of India & Ors. had held that in the absence of Presidential Notification declaring any tribe to be a Scheduled Tribe in the Union Territory of Delhi under Article 342 of the Constitution of India, no posts under the Govt. of NCT of Delhi, local bodies or statutory authorities under the Govt. of NCT of Delhi could be reserved for ST candidates].

6.14.7 The Ministry of Home Affairs had issued clarification to the Govt. of NCT of Delhi in August, 2003 that the instructions contained in the Ministry of Home Affairs' O.M. No. 7/2/55-SCT dated 14 October, 1955 in accordance with which the percentages of reservation for SC/ST candidates prescribed for recruitment on all India basis were required to be followed in Delhi, would continue to be in force and applicable in respect of civil posts under the Govt. of NCT of Delhi, which were later on challenged in the High Court of Delhi in C.W. No.6546 of 2003 (referred to in the previous para). The above referred instructions of the Ministry of Home Affairs dated 14 October, 1955 enabled the candidates belonging to Scheduled Castes/Scheduled Tribes to avail of the benefits of reservation in civil posts under the administrative control of Govt. of NCT of Delhi irrespective of their nativity in any State/UT. These instructions now need to be suitably modified in compliance with the directions of the Hon'ble Supreme Court. **The Commission, accordingly recommends that the Ministry of Home Affairs should issue instructions to all the Union Territories to the effect that the candidates belonging to Scheduled Castes and Scheduled Tribes irrespective of their State of origin will be eligible to apply for and being considered for appointment in civil posts/ services in those Union Territories or in offices/ organizations under their administrative control.**

6.15 Reservation in Adhoc Promotions

6.15.1 Department of Personnel & AR's O.M. No.36011/14/83-Estt. (SCT) dated 30 April, 1983, inter-alia, provides that since adhoc promotions are made on the basis of seniority-cum-fitness, all the SC/ST candidates covered in the relevant seniority list within the total number of such vacancies against which adhoc promotions are to be made, should be considered in order of their general seniority as per the gradation list, on the principle of seniority-cum-fitness and if they are not adjudged unfit, they should all be promoted on adhoc basis. These instructions further provide that if the number of SC/ST candidates found fit within the range of actual vacancies is less than the number of vacancies identified as falling to their share if the vacancies were filled up on regular basis, additional SC/ST candidates to the extent required should be located by going down the seniority list provided they are eligible and found fit for such adhoc appointment.

6.15.2 The above- referred instructions were modified by DP & AR vide their O.M. of even number dated 30 September, 1983 to provide that if the number of SC/ST candidates found fit within the range of actual vacancies was less than the number of vacancies identified as falling to their share, additional SC/ST candidates to the extend required should be located by going down the seniority list but within five times the number of vacancies being filled on a particular occasion subject to their eligibility and fitness.

6.15.3 The Hon'ble Supreme Court in its judgment dated 7 September, 2000 in the case of Union of India & Ors. vs. Shri Basudev & Ors. in Civil Appeal No.1194 of 1992 quashed the Department of Personnel & AR's O.M. dated 30 September, 1983 (referred to above) and, as a consequence thereof, the instructions issued by DP & AR vide their above referred O.M. dated 30 September, 1983 have since been withdrawn by the Department of Personnel & Training vide their O.M. No. 3601/27/2000-Estt.(Res.) dated 15 March, 2002, and the instructions issued by them (i.e. DP & AR) vide their O.M. dated 30 April, 1983 (referred to in para 5.17.1) revalidated.

6.16 Special Recruitment Drive to fill up Backlog Vacancies Reserved for SCs and STs

6.16.1 The Department of Personnel & Training by their O.M. No.36038/1/2004-Estt. (Res.) dated 5 August, 2004 requested all the Ministries/Departments to launch a **Special Recruitment Drive** for filling up the backlog reserved vacancies for SCs and STs in direct recruitment. The Ministries/Departments had been requested to send the following three reports to DoPT to enable them to assess the progress of the drive:-

Sl.No.	Details of reports	Date by which it should reach DoPT
1.	Progress Report I- Report about identification of backlog reserved vacancies	15.10.2004
2.	Progress Report II - Report about reporting of vacancies to Recruiting Agencies	15.11.2004
3.	Progress Report III - Report about filling up of the posts	30.6.2005

6.16.2 Attention of the Ministries/Departments in the DoPT's above- mentioned letter was drawn to their O.M. No.36012/5/97-Estt. (Res.) Vol.II dated 20 July, 2000 which provided that the ceiling of 50% on filling up of reserved vacancies would apply only to the reserved vacancies, which arose in the current year, and the backlog reserved vacancies for SCs and STs of earlier years were to be treated as a separate and distinct group, which would not be subject to any ceiling. It was also mentioned that the Common Minimum Programme of the Govt., inter-alia, contemplated that all reserved posts would be filled up in a time bound manner. Ministries/Departments were also requested to nominate an officer holding the post of Joint Secretary or equivalent as officer- in-charge of the Special Recruitment Drive to monitor and coordinate the special efforts made by the Ministries/Departments.

6.16.3 By their subsequent O.M. No.36038/2/2004-Estt.(Res.) dated 26 August, 2004, the Department of Personnel & Training requested all the Ministries/Departments to launch a special drive to fill backlog vacancies reserved for SCs and STs to be filled by promotion. It was mentioned in this O.M. that in case of promotion, there was a provision that if sufficient number of SC/ST candidates fit for promotion against reserved vacancies were not available, such vacancies might be dereserved and filled by candidates belonging to other communities. It was clarified that if sufficient number of SC/ST candidates fit for promotion against reserved vacancies were not available and such vacancies could also not be dereserved for reasons like non-availability of candidates of other category to fill the posts, these vacancies would remain unfilled until the next recruitment year and that such vacancies were to be treated as "backlog reserved vacancies" which were to be covered within the special drive. It was further mentioned that as in the case of direct recruitment, backlog reserved vacancies had to be determined as per post-based reservation rosters introduced vide DoPT's O.M. dated 2 July, 1997. Ministries/Departments were requested to send a report to DoPT by 31.12.2004. The Commission had continuously been in touch with the Department of Personnel & Training to ascertain about the outcome of the Special Recruitment Drive.

6.16.4 The Department of Personnel & Training vide their O.M. No.36038/1/2004-Estt. (Res.) dated 31 January, 2006 addressed, inter alia, to all Ministries/Departments of Govt. of India have informed that the Minister of State for Personnel had held a meeting with Secretaries of various Ministries/Departments in the last week of December, 2005 to review the progress of the Special Recruitment Drive to fill up backlog vacancies of SCs and STs.

The following problems were stated to be the main causes of non-filling of the reserved vacancies:-

- (i) SC/ST candidates were not available for some of the technical posts in case of backlog vacancies in direct recruitment;
- (ii) In some cases requisitions had been sent to the recruiting agencies but the recruiting agencies had not selected candidates so far;
- (iii) No recruitments were being undertaken in some of the public sector undertakings and It was, therefore, not possible to fill up backlog vacancies in such enterprises;

6.16.5 It was further stated in the above stated O.M. that in view of the difficulties in filling up the backlog vacancies, as stated above, the following decisions were taken:-

- (i) Where SC/ST candidates had not become available in first attempt of direct recruitment, the Ministries/Departments/Organizations may make another attempt to fill up the vacancies.
- (ii) Backlog vacancies in such of the sick PSUs where no recruitments were being made may be exempted from the purview of the drive.
- (iii) This Department would request the UPSC and the SSC to expedite the selection of candidates for which indents had been placed with them. Other Ministries/Departments might issue necessary instructions to the recruiting agencies under their administrative control for expediting the finalization of the selection of candidates under the drive.
- (iv) Precise information about the backlog vacancies in the promotion quota for which eligible SC/ST candidates were not available even in the extended zone of consideration may be furnished by each Ministry/Department to the Department of Personnel & Training.
- (v) All the backlog vacancies except vacancies referred to sub-para (ii) and (iv) above may be filled by 31.3.2006.

6.16.6 All the Ministries/Departments were accordingly requested vide the same O.M. to take necessary action and send a report in respect of backlog vacancies identified and filled during the recruitment drive to DoPT once by 15.2.2006 and finally by 15.4.2006. The position regarding the number of backlog vacancies identified and the number of vacancies filled in respect of STs during the Drive (as informed by DoPT vide their letter dated 7 June 2006) is as given below:

S. No.	Establishment	Direct Rectt.		Promotion		Total	
		Backlog	Filled	Backlog	Filled	Backlog	Filled
1.	Govt. Proper	11,263	7,474	24,585	10,980	35,848	18,454
	(i) Figures		66.36		44.66		51.48
	(ii)% Achievement						
2.	Autonomous Bodies	4,027	952	1411	190	5438	1142
	(i) Figures						

	(ii) % Achievement		26.34		13.47		21.00
3.	Total	15,290	8,426	25,996	11,170	41,246	19,596
	(i) Figures						
	(ii) % Achievement		55.11		42.97		47.46

6.16.7 It will be seen from the above table that as on 31 May 2006, a total of 41,286 backlog vacancies reserved for STs both in respect of direct recruitment and promotion were identified out of which 19,596 vacancies were filled, which comes to 47.46% of the total identified backlog vacancies.

6.17 Appointments on Compassionate Grounds

6.17.1 The existing instructions regarding appointment of dependents of the government servants dying in harness or retired on medical grounds, on compassionate grounds, inter-alia, provide that:-

- (i) These appointments are to be made on regular basis against regular vacancies.
- (ii) These appointments can be made upto a maximum of 5% of the vacancies falling under direct recruitment quota in any Group 'C' or 'D' posts. The appointing authorities are required to hold back 5% of vacancies in these categories to be filled up by direct recruitment through Staff Selection Commission or otherwise so as to fill such vacancies for appointments on compassionate grounds.
- (iii) Compassionate appointments are not confined to the Ministry/Department/Office in which the deceased/medically retired government servant had been working. Such appointments can be given anywhere under the Govt. of India depending upon availability of vacancies in Group 'C' and 'D' posts.
- (iv) For the purpose of calculation of vacancies for appointment on compassionate grounds, Group 'C' and 'D' posts in which there are less than 20 direct recruitment vacancies in a recruitment year are to be grouped together and out of the total number of vacancies, 5% are required to be filled on compassionate grounds subject to the condition that appointment on compassionate grounds in any such post should not exceed one post. Fraction of a vacancy either half or exceeding half but less than one is to be taken as one vacancy [DoPT's O.M. No.14014/24/99-Estt (D) dated 28.12.1999].
- (v) These appointments are required to be made within a time limit of one year from the date of death of the employee or retirement on medical grounds [DoPT's O.M. No.14014/19/2002-Estt.(D) dated 5.5.2003].
- (vi) The instructions on compassionate appointments further provide that an ST/SC/OBC person selected for appointment on compassionate grounds is to be adjusted against the posts reserved for the respective categories.

6.17.2 The National Commission for Scheduled Tribes as also the erstwhile National Commission for Scheduled Castes and Scheduled Tribes (NCSCST) has/had been receiving representations/applications from members of Scheduled Tribes/Scheduled Castes for

appointment on compassionate grounds and has/had been referring their requests to the respective Ministry/Department/Office for taking necessary action. In most of the cases, the Commission has been receiving replies that it was not possible for them to accommodate the requests of SC/ST persons as they had already exhausted the requisite quota of 5% for such appointments. **This Commission, therefore, strongly recommends that the Department of Personnel & Training may consider (i) removing the ceiling of 5% of direct recruitment quota for the purpose of compassionate appointment in respect of candidates belonging to Scheduled Tribes. The Commission feels that this relaxation will go a long way in mitigating the hardships and sufferings of the dependent family members belonging to Scheduled Tribes caused by the sudden demise of the government servant or retirement of the government servants on medical grounds.**

6.17.3 The earlier instructions issued by the Department of Personnel & Training regarding compassionate appointments prescribe a time limit of one year. The Department of Personnel & Training has informed vide their O.M. No. 14014/19/2002-Estt.(D) dated 5 May 2003 that this issue has been examined by the Govt. in the light of representation received stating that the one year time limit prescribed for grant of compassionate appointments has often been resulting in depriving genuine cases seeking compassionate appointments, on account of regular vacancies not being available, within the prescribed period of one year and within the prescribed ceiling of 5% of direct recruitment quota and it has now been decided to relax this limit up to 3 years. The O.M. dated 5 May 2003 provides that if compassionate appointment in genuine and deserving cases is not possible in the first year due to non availability of regular vacancy, the prescribed Committee may review such cases to evaluate the financial conditions of the family to arrive at a decision as to whether a particular case warrants extension for one more year, for consideration of compassionate appointment, subject to availability of a clear vacancy within the prescribed 5% quota. The revised instructions further provide that the maximum time a person's name can be kept under consideration for offering compassionate appointment will be 3 years subject to the condition that the prescribed Committee has reviewed and certified the penurious condition of the applicant at the end of the first and the second year. After 3 year, if compassionate appointment is not possible to be offered to the applicant, his case will be finally closed and will not be considered again.

6.18 **Relentless crusade by the Commission for Restoration of Reservation for STs in Govt. of NCT of Delhi**

6.18.1 The issue of reservation for members of Scheduled Tribes in posts and services in the Govt. of NCT of Delhi and offices/organizations under its administrative control was raised for the first time in August 2001 when the erstwhile National Commission for Scheduled Castes and Scheduled Tribes received a representation from Chairman, Akhil Bhartiya Meena Janjati Vikas Sangh with its registered office at Munirka, New Delhi. It was brought to the notice of the then Commission (i.e. NCSCST) that Delhi Subordinate Services Selection Board (DSSSB) had advertised 1674 posts of Assistant Teachers for MCD and NDMC in the scale of pay of Rs. 4500-7000/- in the Nav Bharat Times on 21.9.2000 and in the advertisement published on 21.9.2000 it was mentioned that 316 posts were reserved for candidates belonging to ST category. However, the results published in the Hindustan Times on 21.8.2001, did not carry a single ST candidate.

6.18.2 The matter was taken up by the then Commission with Secretary, Department of Education, Govt. of NCT of Delhi in August 2001 and he was requested to come for discussion with the Chairman of the erstwhile NCSCST on 23 August, 2001 regarding

withholding the results of ST candidates by Delhi Subordinate Services Selection Board (DSSSB) while declaring the list of successful candidates belonging to general category/OBC and SC on 12 August, 2001. This meeting could not take place. Another communication in this regard was sent to Chief Secretary, Govt. of NCT of Delhi who was requested to come for a meeting with the Chairman on 27 August, 2001 along with other officers. The attention of the Chief Secretary was, inter-alia, drawn to the DoPT's O.M. dated 24 May, 1985 which provided that except in Delhi where the percentage of reservation prescribed for recruitment on all India basis should be followed, the reservation will be based generally on the proportion of population of STs in the respective States and that the roster prescribed for All India basis will be followed in respect of appointments in Delhi. It was further stated that inspite of the above clarification from the Commission, the Services Department of Govt. of NCT of Delhi had issued a letter to Chairman, DSSSB stating that since no list of STs had been notified for Delhi under Article 342 (1) of the Constitution, a reference was made to the Union Ministry of Home Affairs seeking their advice for providing reservation for STs in the absence of any notified list of Scheduled Tribes for Delhi. The following facts were brought to the notice of the Chairman, DSSSB:

- (i) Only those persons belonging to the Castes mentioned in the list of SC and OBC notified for Delhi and whose State of origin was Delhi were entitled for the benefit of reservation in the jobs under Govt. of NCT of Delhi
- (ii) The instructions issued by the Govt. of India lay down that where a person migrates from one State to another, he can claim to belong to SC,ST or OBC only in relation to the State to which he originally belongs and not in respect of the State to which he migrates. The Supreme Court in the Action Committee vs. Union of India case, (1994) also upheld the validity of these instructions.

6.18.3 The above referred meeting of the Chairman, the erstwhile NCSCST with Chief Secretary, Govt. of NCT of Delhi took place on 29.8.2001. The meeting was also attended by Secretary, DoPT, Secretary, Department of Legal Affairs, Secretary, Ministry of Tribal Affairs, Special Secretary, MHA and Secretary, Social Welfare, Govt. of NCT of Delhi. The following observations were made in the said meeting:-

- (i) Chief Secretary, Delhi reiterated the decision of the Govt. of NCT of Delhi and stated that in view of the Supreme Court's decision in 1994 [referred to in para 5.13.2 (ii)] and the fact that there were no communities notified as STs in Delhi, it was not possible to operationalize the instructions of Govt. in regard to the reservation for STs in NCT of Delhi.
- (ii) Secretary, Department of Legal Affairs clarified that as long as there were no communities notified as STs in NCT of Delhi, all the communities in the country notified as STs in various States/UTs should be eligible for consideration against the posts reserved for STs in the NCT Govt. of Delhi.
- (iii) Secretary, Ministry of Tribal Affairs supported the views of Department of Legal Affairs and stated that the instructions regarding reservations to SCs and STs were being followed by Delhi Govt. till recently and, in the absence of any order of the Central Govt. modifying or withdrawing these instructions, there was no justification whatsoever for withdrawing the facilities to the STs.
- (iv) Secretary, DoPT stated that the DoPT was the nodal Ministry in the matter of laying down the policy for reservation to the SCs and STs and, therefore, the instructions

issued in 1955 (referred to above) for treating Delhi as a separate category for the purpose of giving reservations to SCs and STs had not been withdrawn or modified by them and, therefore, NCT of Delhi was obliged to follow these instructions.

- (v) Special Secretary, Ministry of Home Affairs stated that they had received a reference from NCT of Delhi on 23 August, 2001 seeking certain clarifications on the issue of reservation in NCT of Delhi and that the Ministry of Home Affairs, in consultation with DoPT, Ministry of Tribal Affairs and Ministry of Law would issue necessary clarification in due course of time.
- (vi) The Chairman, erstwhile NCSCST stated that in view of MHA's instructions issued in October, 1955 (referred to above), the NCT of Delhi should extend reservation to the STs not only in the case of appointment to the posts of Teachers (which was under consideration) but also in all other categories of posts and appointments.

6.18.4 Having regard to the clarifications given by the Secretary, Ministry of Law in the meeting held on 29.8.2001 (referred to above in the preceding para) supported by Secretary, Ministry of Tribal Affairs and DoPT, the Chairman, erstwhile NCSCST advised the NCT Govt. of Delhi in September, 2001 through a d.o. letter addressed to CM, Delhi to extend reservation facilities to the STs in all categories of posts and appointments in NCT of Delhi including appointments to the posts of Teacher.

6.18.5 Vide their letter dated 27 September, 2001 addressed to Joint Secretary (UT), MHA, the NCT Govt. of Delhi, inter-alia, drew the attention of MHA to certain instructions issued by them during 1975 and 1977 laying down that persons belonging to Scheduled Castes and Scheduled Tribes could get the reservation benefits in services only in the State of their origin and that the Supreme Court in the Action Committee vs. Union of India, 1994 (referred to above) case had also upheld the validity of these decisions. It was also mentioned in that letter that MHA had already been requested to enlighten the NCT Govt. of Delhi as to how the 7.5% posts reserved for STs in the Govt. of NCT of Delhi could be filled up till the process of identification of Scheduled Tribes and notification of the requisite list in respect of Delhi was completed.

6.18.6 Chief Minister, Delhi by her d.o. letter dated 19 October, 2001 addressed to Chairman, erstwhile NCSCST informed that she had since reviewed the position and her government had decided that the benefits of reservation to the STs in the Govt. of NCT of Delhi, as was being done earlier and as advised by the Commission (i.e. the erstwhile NCSCST) should continue. She also stated that she had instructed her officers to issue necessary instructions to DSSSB and other Departments with immediate effect. However, by her subsequent letter dated 5 December, 2001 addressed to Chairman, erstwhile NCSCST, the CM, Delhi informed that MHA had sent a communication dated 13 November, 2001 to the Chief Secretary, Govt. of NCT of Delhi stating that they had decided to refer the matter to the learned Attorney General of India for his advice and, pending the receipt of the advice, they had asked the government of NCT of Delhi to keep in abeyance the decision taken by them to continue the benefit of reservation to the Scheduled Tribes in the Govt. of NCT of Delhi, as communicated by CM, Delhi vide her d.o. letter dated 19 October, 2001 (referred to above).

6.18.7 The Ministry of Home Affairs in their above referred letter dated 13 November, 2001 had made the following points while advising the Govt. of NCT of Delhi to shelve their decision to continue the reservation in services of Govt. of NCT of Delhi for members of Scheduled Tribes:

- (i) In accordance with Article 342 of the Constitution, 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 or groups within tribal or tribal communities which shall for the purpose of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union Territory, as the case may be. It has been held by the Supreme Court of India in *Action Committee vs. Union of India* and another (referred to above) that castes or tribes have to be specified in relation to a given State or Union Territory and that the given caste or tribe can be a Scheduled Caste or a Scheduled Tribe in relation to the State or Union Territory for which it is specified.
- (ii) The Govt. of India have firmly held the view that a Scheduled Caste or a Scheduled Tribe person who migrates from the State of his origin to another State in search of employment or for educational purposes or the like, cannot be treated as a person belonging to the Scheduled Caste or Scheduled Tribe of the State to which he migrates and hence he cannot claim benefit as such in the latter State. This stand of the Government was challenged before the Supreme Court of India in *Acton Committee on issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and Another vs. Union of India and Another*. The apex Court upheld the validity of this position and held that a member of Scheduled Caste or Scheduled Tribe was not entitled to carry with him the privilege and benefit of being a Scheduled Caste or Scheduled Tribe to the State to which he might migrate.
- (iii) The reservation of posts under UT Administration of Andaman & Nicobar Islands for members of Scheduled Castes, in the absence of the Presidential Notification specifying the names of the Scheduled Castes in relation to the said Union Territory, was challenged in C.O. 39 (W) of 1992 in the case of *Local Body Administration vs. A & N Administration and Ors.* The single judge bench of the Kolkata High Court in the said case held that the reservation of the posts for SCs under A & N Administration was violative of the Constitution. The LPA filed by the Government against the said judgment before the Division bench of the Kolkata High Court was dismissed as the Hon'ble High Court held that, in the absence of Presidential Notification under article 341 (1) of the Constitution, no reservation in respect of any public service in A & N Islands could be made and all such reservations sought to have been made were rightly quashed by the learned trial Judge. The Special Leave Petition (SLP) filed against the said judgment before the Supreme Court of India was also dismissed. A review petition filed by MHA in the Supreme Court against the judgment of Division bench of Kolkata High Court was also dismissed by the Supreme Court

6.18.8 MHA in their above referred letter addressed to Chief Secretary, NCT Govt. of Delhi stated that in the absence of a Presidential Notification specifying the names of Scheduled Tribes in relation to the Union Territory of Delhi, it might not be legally and constitutionally permissible to make any reservation in respect of Scheduled Tribes for appointment to civil posts under the Govt. of NCT of Delhi. At the same time it was admitted by MHA in the said letter that the above-stated position was in conflict with the instructions issued by the Govt. of India in MHA's O.M. No.7/2/55-SCT dated 14 October, 1955 in accordance with which it had been provided that in respect of Delhi, the percentages of reservation prescribed for recruitment for all India basis (i.e. 15% for SCs and 7.5% for STs) should be followed.

5.18.9 The Ministry of Home Affairs finally issued the requisite clarification to the Govt. of NCT of Delhi on 21 August, 2003 in reply to their letter dated 22 August, 2001 stating that the instructions contained in the Ministry of Home Affairs' O.M. No. 7/2/55-SCT dated 14 October, 1955 in accordance with which the percentages of reservation prescribed for recruitment on all India basis were required to be followed in Delhi would continue to be in force and applicable in respect of civil posts under the Govt. of NCT of Delhi and, accordingly the civil posts under the Govt. of NCT of Delhi reserved for STs were required to be filled up from amongst ST candidates irrespective of their nativity. Based on the MHA's letter dated 21 August, 2003 (referred to above), Govt. of NCT of Delhi advised the Chairman DSSSB and all Heads of Departments/Local/Autonomous bodies/PSUs under its administrative control of Govt. of NCT of Delhi informing, inter-alia, that it had been decided that the Govt. of NCT of Delhi may continue to reserve the prescribed percentage of civil posts under the Govt. for appointments of STs as had been the practice in the past.

6.18.10 The above-referred decision of the Ministry of Home Affairs dated 21 August, 2003 and, based on that, the instructions issued by Govt. of NCT of Delhi by their letter dated 27 August, 2003, were challenged in the High Court of Delhi in CW No.6546 of 2003 in Dr. B.R. Ambedkar Memorial Foundation (Regd.) and Another vs. Union of India and Ors. The Hon'ble High Court of Delhi delivered its final judgment on 5 July, 2004. The Hon'ble Court held that in the absence of Presidential Notification declaring any community to be a Scheduled Tribe in the Union Territory of Delhi under Art.342 of the Constitution of India, no posts under the Govt. of NCT, Delhi, local bodies or statutory authorities under the Govt. of NCT of Delhi could be reserved for ST candidates. The Court also quashed the MHA's letter dated 21 August, 2003 (referred to above) and the Govt. of NCT, Delhi's letter dated 27 August, 2003 (referred to above) issued to all Heads of Departments etc. advising continuation for reservation of ST candidates in services and posts under it. The Ministry of Home Affairs filed an LPA (Letters Patent Appeal) in the High Court of Delhi against the Order dated 5 July, 2004 of Delhi High Court for review of its single Judge bench judgment dated 5 July, 2004.

6.18.11 The National Commission for Scheduled Tribes vide its letter dated 6 January, 2005 requested MHA to send a copy of the LPA filed by them in the High Court of Delhi for perusal of the Commission, which was supplied in February, 2005. In the meanwhile, the Commission came to know through print media that the Hon'ble Supreme Court of India in its judgment dated 11 February, 2005 passed by a three-Judge bench consisting of Chief Justice of India, Justice Shri R.C. Lahoti, Justice Shri. K.G. Balakrishnan and Justice Shri G.P. Mathur in the case of Smt. Pushpa & Ors. vs. Sivachanmugavelu & Ors. (Civil Appeal Nos.6-7 of 1998) had held that the Union Territory of Pondicherry having adopted a policy of Central Govt. whereunder all Scheduled Castes or Scheduled Tribes, irrespective of their State were eligible for posts which were reserved for SC/ST candidates, no legal infirmity could be ascribed to such a policy and the same could not be held to be contrary to any provision of law. MHA was requested to send to the Commission a copy of the said judgment of the Hon'ble Supreme Court. The Commission, in the meantime, obtained a copy of the Hon'ble Supreme Court's judgment dated 11 February, 2005 in March, 2005 from the Registrar, Supreme Court of India. MHA also sent a copy of the said judgment on 14 June, 2005 along with a copy of their letter No.14011/23/2005-Delhi -I dated 1 June, 2005 addressed to Secretary, (Services) Govt. of NCT of Delhi and a copy of the Note dated 24 May, 2005 received from the Ministry of Law & Justice (Department of Legal Affairs) containing their opinion about the applicability of the judgment of the Hon'ble Supreme Court dated 11 February, 2005 in the Union Territory of Delhi.

6.18.12 By its letter dated 1 June, 2005 MHA informed Secretary (Services) Govt. of NCT of Delhi that the Department of Legal Affairs had opined that the law declared by the Supreme Court of India in its judgment dated 11 February, 2005 applied to the National Capital Territory of Delhi also. A copy of the Department of Legal Affairs' Note (referred to above) dated 24 May, 2005 was also sent to Secretary (Services) Govt. of NCT of Delhi. MHA's letter dated 1 June, 2005 (referred to above) and the advice of the Department of Legal Affairs dated 24 May, 2005 were discussed in the Commission's meeting held on 15.6.2005. As desired by the Commission, the Govt. of NCT, Delhi was requested to apprise the Commission on the action taken by them for resumption of the reservation for members of Scheduled Tribes in the posts and services of the Govt. of NCT of Delhi in the light of the clarifications given by the Department of Legal Affairs regarding the applicability of the law declared by the Supreme Court of India in its judgment dated 11 February, 2005 to the Union Territory of Delhi also. In the meanwhile, MHA was also requested to inform the Commission of the present status of the LPA filed by them in the High Court of Delhi against their judgment dated 5 July, 2004 and also whether they (i.e. MHA), as advised by this Commission, had filed a supplementary affidavit/application with reference to the LPA already filed by them in the High Court of Delhi in the light of the ruling given by the Hon'ble Supreme Court of India in their judgment dated 11 February, 2005. The Commission did not receive any reply from MHA.

6.18.13 By his d.o. letter dated 28 June, 2005 addressed to Lieutenant Governor, Govt. of NCT of Delhi, Chairman, National Commission for Scheduled Tribes drew his attention to the MHA's letter dated 1 June, 2005 (referred to above) and the advice of the Department of Legal Affairs in respect of the Hon'ble Supreme Court's judgment dated 11 February, 2005 and impressed upon him to take urgent action to fill up shortfall/backlog of ST vacancies on priority in the Govt. of NCT of Delhi.

6.18.14 Finally there was light at the end of the tunnel. The Govt. of NCT, Delhi by its letter No.F-16(73)/97-S.III/710 dated 30 June, 2005 addressed to Chairman, DSSSB, Govt. of NCT, Delhi and all Heads of Departments /Local/Autonomous Bodies/PSUs under Govt. of NCT, Delhi wrote to inform them that in the light of the advice given by the Ministry of Law & Justice (Department of Legal Affairs) with reference to the judgment of the Hon'ble Supreme Court dated 11 February, 2005 (referred to above), all SC/ST candidates irrespective of their nativity are eligible for reservation to the civil posts under Govt. of NCT, Delhi, which are reserved for SC/ST candidates and that appropriate action for recruitment may be taken accordingly. The Commission also requested Chief Secretary, Govt. of NCT, Delhi on 14 July, 2005 to send an action taken report for filling up of backlog vacancies reserved for STs in pursuance of their letter dated 30 June, 2005 addressed to Chairman, DSSSB and others (referred to above). The Commission did not receive any communication from the NCT Govt. of Delhi regarding the filling up of the backlog vacancies reserved for STs in pursuance of resumption of reservation for Scheduled Tribes in the posts and services of NCT Govt. of Delhi. **The Commission recommends that the Govt. of NCT of Delhi should launch a special time- bound recruitment drive to fill up the backlog vacancies reserved for STs both in direct recruitment and promotion and send a detailed report to the Commission about the outcome of the drive.**

6.19 Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation in Posts and Services) Bill, 2004

6.19.1 The reservation policy has so far been implemented on the basis of the executive instructions issued by the Government of India from time to time. The erstwhile

National Commission for Scheduled Castes and Scheduled Tribes in its earlier reports had been emphasizing the need for early enactment of a Reservation Act, which would systematize the implementation of reservation policy. It was also mentioned in this regard in these reports that this Act should be kept in the Ninth Schedule of the Constitution so that it was not open to frequent judicial interpretations.

6.19.2 The Department of Personnel & Training by their letter No.41018/1/2004-Estt. (Res.) dated 7 December, 2004 addressed to the Chairman, National Commission for Scheduled Tribes informed that the scheme of reservation in Government services was governed by the executive instructions issued by the Department of Personnel & Training and that the Public Sector Undertakings including financial institutions like banks, insurance companies etc. under the Govt. of India followed the instructions issued by DoPT. It was further stated that the Supreme Court in the case of Indira Sawhney vs. Union of India had held that these instructions had the force of law and that, nevertheless, a demand for enacting a law on reservation for Scheduled Castes and Scheduled Tribes had been voiced from time to time by various organizations/associations. Further, the Common Minimum Programme also stipulated that a Reservation Act would be enacted to codify all reservation instructions. A copy of the draft Bill prepared by DoPT in consultation with the Department of Legal Affairs and the Legislative Department to cover reservation in services under the Govt. of India and all Public Sector Undertakings, Autonomous Bodies etc. under Govt. of India was also sent to the Commission requesting for its comments. The Commission sent its comments on the Bill in December, 2004. In February, 2005, the Rajya Sabha Secretariat informed this Commission that the said Bill as introduced and pending in Rajya Sabha, had been referred to Department related Parliamentary Standing Committee on Personnel, Public Grievances, Law & Justice for examination and report and that it had been decided to have the benefit of the views of the National Commission for Scheduled Tribes on the Bill. The gist of the comments of this Commission sent to DoPT and Rajya Sabha Secretariat in respect of certain aspects of reservation for SCs/STs in posts/ services are as follows:-

- (i) **The Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation in posts and services) Bill, 2004 may be included in the Ninth Schedule of the Constitution after entry No.284 as entry No.285 [new provision].**
- (ii) **Judiciary, Lok Sabha/ Rajya Sabha Secretariat and Armed Forces should also be brought within the purview of reservation for Scheduled Castes and Scheduled Tribes as per recommendations of the erstwhile National Commission for Scheduled Castes and Scheduled Tribes as contained in para 4.75 and 4.77 of their Seventh Annual Report for the year 2001-02.**
- (iii) **There should be reservation in appointments for work-charged posts as well as for appointments for a period of less than 45 days duration.**
- (iv) **The scope of reservation for SC/ST candidates should be extended above the lowest rung of Group 'A' in respect of scientific and technical posts which are required for conducting research or for organizing, guiding and directing research. [As per the existing instructions, the reservation for SC/ST candidates in such posts is available only upto the lowest rung of Group 'A' posts.]**
- (v) **The minimum experience required for promotion to a post may be relaxed in the case of members of Scheduled Tribes if at any stage of their consideration for such promotion, sufficient number of candidates from these communities possessing the requisite experience is not available to fill the posts.**

- (vi) **Section 13(3) of the proposed bill provides that where any case of negligence or lapse in relation to providing reservation for members of SC/ST/OBC comes to the notice of the Liaison Officer during the course of the inspection carried out by him, or otherwise, he will submit his report to the concerned Secretary to the Govt. or to the Head of the Department, as the case may be, and that Secretary or Head of the Department, will issue appropriate orders in the matter to the concerned appointing authority. In its comments, the Commission suggested the following addition to be made at the end of this Section:-**

“The Secretary or the Head of the Department will send a copy of the action taken report to the nodal department dealing with the reservation matters i.e. Department of Personnel & Training and the National Commission for Scheduled Castes or National Commission for Scheduled Tribes, as the case may be.”

6.19.3 The Commission reiterates the above recommendations for consideration of the Government as a part of this Report.

6.20 Consolidation of Instructions on Reservation

6.20.1 By their letter dated 26 July 2005, the Department of Personnel & Training requested this Commission to offer its comments on the contents of the draft O.M. proposed to be issued by them by way of consolidation of the instructions of reservation for SCs, STs and OBCs with modification wherever necessary. The Commission sent its comments to the Department of Personnel & Training on 29 August 2005. DoPT has, however, not issued the final O.M. in this regard so far. The comments given by the Commission included the following:

- (i) **The percentage of reservation for STs in case of direct recruitment to Group ‘C’ and Group ‘D’ posts normally attracting candidates from a locality or a region should be fixed taking into consideration the population of the communities/tribes recognized as STs vide Constitution (Scheduled Castes and Scheduled Tribes) order (Amendment) Act 2002 and other similar amendments issued after conclusion of Census 2001 with a view to ensure that the persons belonging to these communities are not deprived of their constitutional rights.**
- (ii) **The Commission has observed that one third of the cadre strength of all India services i.e. IAS, IPS and IFS were filled by nomination from amongst the State Civil Services officers. The Commission recommended that there should be reservation in such induction/ nomination for the candidates belonging to Scheduled Tribes.**
- (iii) **The ST officers who are senior enough in their respective organizations should also be given opportunity for being nominated as Liaison Officers and also to work in the SC/ST Cell.**

6.20.2 The Commission reiterates the above recommendations for consideration of the Government as a part of this Report.

6.21 Representation of Scheduled Tribes in Central Ministries/Departments, Central Public Sector Enterprises, Public Sector Banks and Central Universities

6.21.1 Representation of Scheduled Tribes in various categories of posts in Central Ministries/Departments

6.21.1.1 Representation of Scheduled Tribes in Central Govt. services as on 1.1.2003, as per the information made available by the Department of Personnel & Training, is given in the Table below:-

(As on 1.1.2003)

Group	Total	ST	% age
(1)	(2)	(3)	(4)
A	85938	3593	4.18
B	181905	7863	4.32
C	2121697	138685	6.54
D (Excl. Safai Karmacharis)	879805	61204	6.96
Safai Karamcharis	126131	5605	
Total including Safai Karamcharis	3395476	216950	6.39

6.21.1.2 It will be seen from the above Table that the representation of Scheduled Tribes is less than the required representation in Groups 'A', 'B', 'C' and 'D' posts and, therefore, **the Commission recommends that the Department of Personnel & Training should impress upon all the Central Ministries and the Departments particularly those which are the cadre controlling authorities for appointment to various posts/services to make special efforts to increase the representation of Scheduled Tribes in all these Groups, particularly in Group A and B by filling up the backlog of vacancies reserved for them.**

6.21.2 Representation of Scheduled Tribes in the Central Public Sector Enterprises

6.21.2.1 Department of Public Enterprises, Ministry of Heavy Industries & Public Enterprises have furnished information in regard to representation of Scheduled Tribes in the services of the Public Sector Enterprises as on 1.1.2003 based on information furnished by 218 Enterprises and as on 1.1.2004 based on information furnished by 189 Enterprises. The following Table gives information on the representation of Scheduled Tribes in the services of the Central PSEs as on 1.1.2003 and 1.1.2004:

(As on 1.1.2003)

Group	Total No. of employees	Representation of STs	
		STs. No.	Percentage
Group 'A'	1,88,846	6577	3.48
Group 'B'	1,81,088	9335	5.15
Group 'C'	9,32,261	86,105	9.24
Group 'D' (Excl. Safai Karamcharis)	3,30,803	36,487	11.03
Total	16,32,998	1,38,504	8.48
Safai Karamcharis	18,880	583	3.09
Grand Total	16,51,878	1,39,087	8.42

(As on 1.1.2004)

Group	Total No. of employees	Representation of STs	
		STs. No.	Percentage
Group 'A'	1,65,320	6,032	3.65
Group 'B'	1,56,822	8,980	5.73
Group 'C'	7,14,125	67,396	9.44
Group 'D' (Excl. Safai Karamcharis)	2,58,663	32,073	12.40
Total	12,94,930	1,14,481	8.84
Safai Karamcharis	17,778	568	3.19
Grand Total	13,12,708	1,15,049	8.76

6.21.2.2 The above Table as on 1.1.2004 indicates that the representation of Scheduled Tribes is about 4% less in Group 'A' and about 2% less in Group 'B' than the required representation of 7.5% in these two Groups. **The Commission recommends that the Department of Public Enterprises should take up the matter with the administrative Ministries/Departments which exercise control on Central Public Sector Enterprises and advise them (i.e. CPSEs) to make special efforts to increase the level of representation of Scheduled Tribes in these Groups to the desired level of 7.5%.**

6.21.3 Representation of Scheduled Tribes in different cadres of the Public Sector Banks

6.21.3.1 Banking Division of the Department of Economic Affairs has furnished the information regarding representation of Scheduled Tribes in different cadres of the Public Sector Banks as on 1.1.2003 for the year 2002, as on 31.3.2004 for the year 2003 and as on 31.12.2004 for the year 2004. The Table below gives the representation of Scheduled Tribes in cadres of Officers, Clerks and Sub-Staff:-

A. Representation of Scheduled Tribes in Officers Cadre

(As on 1.1.2003)

Sl.No.	Name of the Bank	Total Emp.	ST	% age
1.	Allahabad Bank	6731	436	6.48
2.	Andhra Bank	6451	434	6.73
3.	Bank of Baroda	11798	588	4.98
4.	Bank of India	10704	757	7.07
5.	Bank of Maharashtra	3731	222	5.95
6.	Canara Bank	13814	898	6.5
7.	Central Bank of India	11292	639	5.65
8.	Corporation Bank	3753	129	3.43
9.	Dena Bank	2906	220	7.57
10.	Indian Bank	7123	405	5.69
11.	Indian Overseas Bank	6910	406	5.87
12.	Oriental Bank of Commerce	5101	207	4.05
13.	Punjab National Bank	16111	702	4.32
14.	Punjab & Sind Bank	4223	106	2.51
15.	Syndicate Bank	7688	394	5.12
16.	Union Bank of India	7597	513	6.75

17.	United Bank of India	4502	299	6.64
18.	UCO Bank	6715	366	5.45
19.	Vijaya Bank	3596	176	4.89
20.	State Bank of India	53421	2484	4.65
21.	SB of Bikaner & Jaipur	3247	188	5.78
22.	SB of Hyderabad	4288	216	5.03
23.	SB of Indore	1854	104	5.61
24.	SB of Mysore	2379	154	6.47
25.	SB of Patiala	3461	62	2.36
26.	SB of Saurashtra	1944	101	5.19
27.	SB of Travanacore	2864	67	2.34
28.	Reserve Bank of India	-	-	-

(As on 31.3.2004)

Sl.No.	Name of the Bank	Total Emp.	ST	% age
1.	Allahabad Bank	6891	449	6.5
2.	Andhra Bank	7753	464	5.9
3.	Bank of Baroda	11928	675	5.6
4.	Bank of India	12058	880	7.2
5.	Bank of Maharashtra	4063	230	5.6
6.	Canara Bank	14480	946	6.5
7.	Central Bank of India	11508	658	5.7
8.	Corporation Bank	3811	143	3.7
9.	Dena Bank**	2906	220	7.5
10.	Indian Bank	7583	413	5.4
11.	Indian Overseas Bank	7453	408	5.4
12.	Oriental Bank of Commerce	5229	209	3.9
13.	Punjab National Bank	17716	814	4.5
14.	Punjab & Sind Bank	4183	106	2.5
15.	Syndicate Bank	8753	471	5.3
16.	Union Bank of India	8745	566	6.4
17.	United Bank of India	4755	307	6.4
18.	UCO Bank*	6715	366	5.4
19.	Vijaya Bank	3615	190	5.2
20.	State Bank of India	59447	3688	6.2
21.	SB of Bikaner & Jaipur	3659	221	6.0
22.	SB of Hyderabad	4607	231	5.0
23.	SB of Indore	1962	118	6.0
24.	SB of Mysore	2532	165	6.5
25.	SB of Patiala	3432	83	2.4
26.	SB of Saurashtra**	1944	101	5.1
27.	SB of Travanacore	3263	80	2.4
28.	Reserve Bank of India**	6128	305	4.9

* As on 30.6.2003

** As on 1.1.2003

(As on 31.12.2004)

Sl.No.	Name of the Bank	Total Emp.	ST	% age
1.	Allahabad Bank	7935	485	6.1
2.	Andhra Bank	8023	468	5.8
3.	Bank of Baroda	11779	667	5.6

4.	Bank of India	12010	886	7.3
5.	Bank of Maharashtra	4078	231	5.6
6.	Canara Bank	14974	978	6.5
7.	Central Bank of India	11508	658	5.7
8.	Corporation Bank	3985	149	3.7
9.	Dena Bank**	2968	238	8.0
10.	Indian Bank	7565	413	5.4
11.	Indian Overseas Bank	7547	408	5.4
12.	Oriental Bank of Commerce	5370	222	4.1
13.	Punjab National Bank	17729	863	4.8
14.	Punjab & Sind Bank	4425	107	2.4
15.	Syndicate Bank	8669	471	5.4
16.	Union Bank of India	8671	580	6.6
17.	United Bank of India	4691	302	6.4
18.	UCO Bank*	7223	428	5.9
19.	Vijaya Bank	3822	194	5.0
20.	State Bank of India	59447	3688	6.2
21.	SB of Bikaner & Jaipur	3828	245	6.4
22.	SB of Hyderabad	4784	236	4.9
23.	SB of Indore	2098	124	5.9
24.	SB of Mysore	2794	185	6.6
25.	SB of Patiala	3401	83	2.4
26.	SB of Saurashtra**	2308	117	5.0
27.	SB of Travancore	3241	450	13.8
28.	Reserve Bank of India**	6128	305	4.9

* As on 30.6.2003 ** As on 1.1.2003

6.21.3.2 The perusal of the above Table reveals that as on 31.12.2004, the representation of STs was very satisfactory in the officers' cadre in the State Bank of Travancore (13.8%), Dena Bank (8.0%) and satisfactory in the Bank of India (7.3%). As on 1.1.2003, the representation of Scheduled Tribes in this cadre was as low as 2.34% in State Bank of Travancore, 2.36% in State Bank of Patiala, 2.51% in Punjab & Sind Bank, 3.43% in Corporation Bank, 4.05% in Oriental Bank of Commerce and 4.32% in Punjab National Bank. As on 31.3.2004, the representation of Scheduled Tribes in the officers' cadre was 2.4% each in the State Bank of Travancore and State Bank of Patiala, 2.5% in Punjab & Sind Bank, 3.7% in Corporation Bank and 3.9% in Oriental Bank of Commerce which is also considered as very low. As on 31.12.2004, the representation of STs in the officers' cadre was 2.4% each in State Bank of Patiala and Punjab & Sind Bank and 3.7% in Corporation Bank which was very low as compared to the prescribed percentage of 7.5% for the Scheduled Tribes. In the remaining 22 Banks, their representation was between 4% to 6% which was also not upto the mark.

B. Representation of Scheduled Tribes in the Cadre of Clerks

(As on 1.1.2003)

Sl.No.	Name of the Bank	Total Emp.	ST	% age
1.	Allahabad Bank	8811	287	3.26
2.	Andhra Bank	4097	57	1.39
3.	Bank of Baroda	19512	1016	5.2
4.	Bank of India	22156	1371	6.19

5.	Bank of Maharashtra	7228	424	5.87
6.	Canara Bank	22393	1053	4.7
7.	Central Bank of India	18696	1015	5.42
8.	Corporation Bank	5213	214	4.1
9.	Dena Bank	4883	526	10.77
10.	Indian Bank	11430	324	2.83
11.	Indian Overseas Bank	12634	315	2.49
12.	Oriental Bank of Commerce	5550	214	4.03
13.	Punjab National Bank	30190	1101	3.64
14.	Punjab & Sind Bank	3795	54	1.42
15.	Syndicate Bank	13766	719	5.22
16.	Union Bank of India	12588	516	4.1
17.	United Bank of India	9123	292	3.2
18.	UCO Bank	12935	562	4.34
19.	Vijaya Bank	5553	189	3.4
20.	State Bank of India	102455	5851	5.71
21.	SB of Bikaner & Jaipur	6177	448	7.25
22.	SB of Hyderabad	6027	229	3.8
23.	SB of Indore	3335	382	11.45
24.	SB of Mysore	5426	237	4.36
25.	SB of Patiala	5883	35	5.94
26.	SB of Saurashtra	3600	391	10.86
27.	SB of Travancore	6301	205	3.25
28.	Reserve Bank of India	-	-	-

(As on 31.3.2004)

Sl.No.	Name of the Bank	Total Emp.	ST	% age
1.	Allahabad Bank	8732	301	3.4
2.	Andhra Bank	3124	51	1.6
3.	Bank of Baroda	18928	940	4.9
4.	Bank of India	20682	1267	6.1
5.	Bank of Maharashtra	7065	428	6.0
6.	Canara Bank	21819	1013	4.6
7.	Central Bank of India	18252	997	5.4
8.	Corporation Bank	5009	211	4.2
9.	Dena Bank**	4883	526	10.7
10.	Indian Bank	10871	309	2.8
11.	Indian Overseas Bank	12313	327	2.6
12.	Oriental Bank of Commerce	5479	216	3.9
13.	Punjab National Bank	29847	1056	3.5
14.	Punjab & Sind Bank	3802	53	1.3
15.	Syndicate Bank	12545	643	5.1
16.	Union Bank of India	11315	369	3.2
17.	United Bank of India	9099	258	2.8
18.	UCO Bank*	12935	562	4.3
19.	Vijaya Bank	5462	173	3.1
20.	State Bank of India	95582	5331	5.5
21.	SB of Bikaner & Jaipur	3659	221	6.0
22.	SB of Hyderabad	5837	235	4.0
23.	SB of Indore	3208	366	11.4

24.	SB of Mysore	5209	225	4.3
25.	SB of Patiala	5933	37	0.61
26.	SB of Saurashtra**	3600	391	10.8
27.	SB of Travancore	5896	196	3.3
28.	Reserve Bank of India**	10644	960	9.0

* As on 30.6.2003

** As on 1.1.2003

(As on 31.12.2004)

Sl.No.	Name of the Bank	Total Emp.	ST	% age
1.	Allahabad Bank	7630	266	3.4
2.	Andhra Bank	2893	48	1.6
3.	Bank of Baroda	18840	989	4.9
4.	Bank of India	20722	1254	6.0
5.	Bank of Maharashtra	7036	432	6.1
6.	Canara Bank	21545	1001	4.6
7.	Central Bank of India	18252	997	5.4
8.	Corporation Bank	4794	201	4.1
9.	Dena Bank**	4665	504	10.8
10.	Indian Bank	10743	305	2.8
11.	Indian Overseas Bank	12228	329	2.6
12.	Oriental Bank of Commerce	5437	217	3.9
13.	Punjab National Bank	29746	1057	3.5
14.	Punjab & Sind Bank	3559	52	1.4
15.	Syndicate Bank	12444	637	5.1
16.	Union Bank of India	11302	370	3.2
17.	United Bank of India	8884	263	2.9
18.	UCO Bank*	12557	539	4.4
19.	Vijaya Bank	5217	169	3.2
20.	State Bank of India	95582	5331	5.5
21.	SB of Bikaner & Jaipur	5611	364	6.4
22.	SB of Hyderabad	5576	226	4.0
23.	SB of Indore	3259	372	11.4
24.	SB of Mysore	4882	201	4.1
25.	SB of Patiala	5912	37	0.6
26.	SB of Saurashtra**	3456	381	11.0
27.	SB of Travancore	5865	738	12.5
28.	Reserve Bank of India**	10644	960	9.0

* As on 30.6.2003

** As on 1.1.2003

6.21.3.3 The Table above indicates that as on 1.1.2003, the representation of STs in Clerks' cadre was very satisfactory in the State Bank of Indore (11.45%), State Bank of Saurashtra (10.86%), Dena Bank (10.77%) and satisfactory in the State Bank of Bikaner & Jaipur (7.25%). Their representation was as low as 1.42% in Punjab & Sind Bank, 1.39% in Andhra Bank, 2.49% in Indian Overseas Bank, 2.83% in Indian Bank, 3.2% in United Bank of India, 3.4% in Vijaya Bank, 3.8% in State Bank of Hyderabad, 3.25% in State Bank of Travancore and 3.26% in Allahabad Bank in the cadre of Clerks. As on 31.3.2004, the representation of STs in the cadre of Clerks was as low as 0.61% in the State Bank of Patiala, 1.3% in Punjab & Sind Bank, 1.6% in Andhra Bank, 2.6% in Indian Overseas Bank, 2.8% in Indian Bank, 3.1% in Vijaya Bank, 3.2% in Union Bank of India, 3.4% in Allahabad Bank, 3.3% in State Bank of Travancore, 3.5% in Punjab National Bank and 3.9% in Oriental Bank of Commerce. While as on 31.12.2004, the representation of STs in the cadre

of Clerks was very much upto the mark in State Bank of Travancore (12.5%), State Bank of Indore (11.4%), State Bank of Saurashtra (11.0%), Dena Bank (10.8%) and Reserve Bank of India (9.0%), their representation was as low as 0.6% in State Bank of Patiala, 1.4% in Punjab & Sind Bank, 1.6% in Andhra Bank, 2.6% in Indian Overseas Bank, 2.8% in Indian Bank, 3.2% each in Vijaya Bank and Union Bank of India, 3.4% in Allahabad Bank and 3.5% in Punjab National Bank.

C. Representation of Scheduled Tribes in the cadre of Sub-staff (Excl. Safai Karamcharis)

(As on 1.1.2003)

Sl.No.	Name of the Bank	Total Emp.	ST	% age
1.	Allahabad Bank	3601	270	7.5
2.	Andhra Bank	2775	174	7.65
3.	Bank of Baroda	7521	661	8.78
4.	Bank of India	7381	609	8.25
5.	Bank of Maharashtra	3122	284	9.1
6.	Canara Bank	8866	424	4.78
7.	Central Bank of India	9437	638	6.76
8.	Corporation Bank	1371	67	4.88
9.	Dena Bank	2604	352	13.52
10.	Indian Bank	3567	159	4.46
11.	Indian Overseas Bank	3756	160	4.25
12.	Oriental Bank of Commerce	2785	154	5.52
13.	Punjab National Bank	11272	635	5.63
14.	Punjab & Sind Bank	1834	46	2.50
15.	Syndicate Bank	4062	291	7.16
16.	Union Bank of India	5131	289	5.63
17.	United Bank of India	4103	148	3.6
18.	UCO Bank	4372	239	5.46
19.	Vijaya Bank	1952	126	6.45
20.	State Bank of India	43049	2396	5.57
21.	SB of Bikaner & Jaipur	3008	277	9.21
22.	SB of Hyderabad	3083	150	4.86
23.	SB of Indore	1365	190	13.92
24.	SB of Mysore	1801	82	4.55
25.	SB of Patiala	2374	40	16.8
26.	SB of Saurashtra	1999	205	10.25
27.	SB of Travancore	2172	99	4.56
28.	Reserve Bank of India	-	-	-

(As on 31.3.2004)

Sl.No.	Name of the Bank	Total Emp.	ST	% age
1.	Allahabad Bank	3249	234	7.2
2.	Andhra Bank	2218	158	7.1
3.	Bank of Baroda	7209	656	9.0
4.	Bank of India	7260	646	8.8
5.	Bank of Maharashtra	3044	267	8.7

6.	Canara Bank	8725	412	4.7
7.	Central Bank of India	9173	649	7.0
8.	Corporation Bank	1356	69	5.0
9.	Dena Bank**	2604	352	13.5
10.	Indian Bank	3352	154	4.5
11.	Indian Overseas Bank	3454	139	4.0
12.	Oriental Bank of Commerce	2665	147	5.5
13.	Punjab National Bank	10813	645	5.9
14.	Punjab & Sind Bank	1793	44	2.4
15.	Syndicate Bank	3845	275	7.1
16.	Union Bank of India	5174	343	6.6
17.	United Bank of India	4033	159	3.9
18.	UCO Bank*	4372	239	5.4
19.	Vijaya Bank	1925	126	6.5
20.	State Bank of India	41738	2511	6.0
21.	SB of Bikaner & Jaipur	2923	268	9.1
22.	SB of Hyderabad	2834	139	4.9
23.	SB of Indore	1370	189	13.7
24.	SB of Mysore	1773	81	4.5
25.	SB of Patiala	2309	40	1.7
26.	SB of Saurashtra**	1999	205	10.2
27.	SB of Travancore	2152	98	4.5
28.	Reserve Bank of India**	8222	761	9.2

* As on 30.6.2003 ** As on 1.1.2003

(As on 31.12.2004)

Sl.No.	Name of the Bank	Total Emp.	ST	% age
1.	Allahabad Bank	3164	232	7.3
2.	Andhra Bank	2229	156	6.9
3.	Bank of Baroda	7143	656	9.1
4.	Bank of India	7068	639	9.0
5.	Bank of Maharashtra	3041	264	8.6
6.	Canara Bank	8340	382	4.5
7.	Central Bank of India	9173	649	7.0
8.	Corporation Bank	1389	68	4.8
9.	Dena Bank**	2539	350	13.7
10.	Indian Bank	3319	149	4.4
11.	Indian Overseas Bank	3480	140	4.0
12.	Oriental Bank of Commerce	2594	135	5.2
13.	Punjab National Bank	10607	636	5.9
14.	Punjab & Sind Bank	1699	43	2.5
15.	Syndicate Bank	3762	269	7.1
16.	Union Bank of India	5264	392	7.4
17.	United Bank of India	4015	140	3.4
18.	UCO Bank*	4217	227	5.3
19.	Vijaya Bank	1886	125	6.6
20.	State Bank of India	41738	2511	6.0

21.	SB of Bikaner & Jaipur	2734	270	9.8
22.	SB of Hyderabad	2777	139	5.0
23.	SB of Indore	1129	170	15.0
24.	SB of Mysore	1741	80	4.5
25.	SB of Patiala	2353	41	1.7
26.	SB of Saurashtra**	1812	205	11.3
27.	SB of Travancore	2133	614	28.7
28.	Reserve Bank of India**	8222	761	9.2

* As on 30.6.2003 ** As on 1.1.2003

6.21.3.4 As regards the cadre of Sub-staff, it is seen that the representation of Scheduled Tribes on all the three occasions i.e. as on 1.1.2003, 31.3.2004 and 31.12.2004 was satisfactory/very satisfactory in Allahabad Bank, Andhra Bank, Bank of Baroda, Bank of Maharashtra, Dena Bank, Syndicate Bank, SB of Bikaner & Jaipur, SB of Indore, and SB of Saurashtra. In the remaining 19 Banks, the representation of Scheduled Tribes in this cadre was poor/very poor.

6.21.3.5 It will be seen from the Tables and the analytical note added at the end of each Table that the representation of Scheduled Tribes in most of the Banks in respect of all the three categories of staff i.e. officers' cadre, Clerks' cadre and Sub-Staff cadre was consistently very low and this trend indicates that the respective Banks have not taken corrective steps in the subsequent years to improve the representation of Scheduled Tribes. The responsibility for low and poor representation of Scheduled Tribes in the Banks has to be laid at the doors of the respective Bank itself, as they are the recruiting agencies for all the three categories of staff consequent upon the dissolution of the Banking Services Recruitment Board in the year 2001. The Commission fails to understand the lack-lustre and irresponsible approach adopted by the Banks in implementing the reservation policy of the Govt. of India in letter and in spirit. What disturbs the Commission more is poor and very poor representation of Scheduled Tribes even in Clerks cadre and the Sub-Staff cadre for which it should not have been difficult for the respective Banks to locate the eligible ST candidates. There is nothing on record to show that the defaulter Banks have taken any special efforts for making up the huge shortfall of ST candidates. **The Commission recommends that the Banking Division of the Department of Economic Affairs (which exercises administrative control over these Banks), taking note of this grave situation in relation to poor and very poor representation of ST candidates in most of the Banks, should take stringent action against the Chief Executives of those Banks which have failed to discharge their constitutional obligations in the matter of implementing the reservation policy of the Government in respect of Scheduled Tribes. The Commission further recommends that the Banking Division should issue instructions to the defaulter Banks to fill up the backlog/shortfall of ST vacancies in a time bound manner. The Commission is further of the view that in case the response from the ST candidates to the press advertisements released by the Banks inviting applications from ST candidates to fill up the backlog is not good, the Banks should depute recruiting teams in the areas where there is high concentration of ST population in the country to locate the eligible candidates belonging to Scheduled Tribes for appointment to various posts.**

6.21.4 Representation of Scheduled Tribes in Central Universities

6.21.4.1 Based on the information furnished by the University Grants Commission vide their letter No.1-13/2005 (SCT) dated 20 June, 2005, the representation of Scheduled Tribes

in **Teaching posts** in Central Universities for the year 2003-04 is as given in the following Table:-

Sl.No.	Name of the University		Professor	Reader	Lecturer
1.	Aligarh Muslim University	Total	277	411	544
		ST	-	-	-
		% age	-	-	-
2.	Assam University	Total	24	47	89
		ST	-	-	04
		% age	-	-	04.49
3.	Banaras Hindu University	Total	414	365	315
		ST	-	-	07
		% age	-	-	2.2
4.	IGNOU	Total	33	67	103
		ST	-	-	04
		%age	-	-	3.88
5.	J.N.U.	Total	128	212	152
		ST	2	4	3
		% age	1.6	1.9	1.5
6.	Jamia Millia Islamia	Total	121	126	242
		ST	-	-	2
		% age	-	-	0.8
7.	Pondicherry University	Total	54	57	66
		ST	-	-	02
		% age	-	-	03
8.	Vishwa Bharati	Total	115	92	167
		ST	1	1	2
		% age	0.86	1.08	1.19
9.	Tezpur University	Total	20	30	54
		ST	-	1	3
		%age			5.55
10.	N.E. Hill University	Total	84	113	148
		ST	23	22	38
		%age			25.57
11.	BBA University Lucknow	Total	2	3	8
		ST	-	-	1
		% age	-	-	12.5
13.	MANU Hyderabad	Total	-	2	5
		ST	-	-	-
		% age	-	-	-
14.	Mizoram University	Total	24	41	145
		ST	2	5	51
		% age	8.33	12.2	35.17
15.	Hyderabad University	Total	96	74	63
		ST	-	4	3
		% age	-	5.4	4.8
16.	Nagaland University	Total	30	56	89
		ST	4	16	40
		% age	7.00	28.5	28.4

6.21.4.2 It is necessary to set out the current reservation profile in respect of Scheduled Tribes in the Central Universities in the posts of Professor, Reader and Lecturer. The post of Lecturer, which is equivalent to the lowest rung of Group 'A' post in Government of India, is filled up 100% by direct recruitment and, as per the Government of India's instructions, the reservation in this grade for Scheduled Tribes is applicable at the rate of 7.5%. The posts of Professor and Reader in the Central Universities are filled both by promotion and direct recruitment. Although the instructions of the Government of India provide for reservation for Scheduled Tribes @ 7.5% in all posts which are filled by direct recruitment, no reservation is being provided by the Central Universities in the posts of Reader and Professor in direct recruitment. It is obvious that the reservation policy of Govt. of India in the grade of Professor and Reader is being followed neither in letter nor in spirit by the Central Universities. There is no doubt that this practice is in violation of the instructions on reservation policy issued in pursuance of the provisions contained in Article 16(4) of the Constitution of India.

6.21.4.3 The perusal of the above Table indicates that the percentage of reservation in the grade of Lecturer for Scheduled Tribes during the year 2003-04 in NE Hill University, BBA University, Lucknow, Mizoram University and Nagaland University was 25.57%, 12.5%, 35.17% and 28.4% respectively, which is considered to be an excellent position. The percentage of reservation during this period in respect of Assam University, IGNOU, Tezpur University and Hyderabad University varied between 3% to 5.55%. As regards the remaining Universities, the percentage of reservation in this grade during the period in question was very poor. It was around 2 or less than 2 in respect of Banaras Hindu University (2.2), JNU (1.5), Jamia Millia Islamia (0.8) and Vishwa Bharati (1.19). The matter regarding reservation in the posts of Lecturer, as also of Reader and Professor was also discussed in the Sixth Report (1999-2000 and 2000-2001) of the erstwhile National Commission for Scheduled Castes and Scheduled Tribes and it was observed that the representation of SC/ST was far from satisfactory in most of the Universities.

6.21.4.4 The position of reservation with respect to Aligarh Muslim University is shockingly bad. There are 544 posts of Lecturer in this University, which is the largest number of all the Central Universities, and most surprisingly, there is not a single representative of Scheduled Tribe in this category. The implications of this scenario are too evident to need any elaboration. The Aligarh Muslim University has the dubious distinction of deliberately and willfully not implementing the reservation policy of the Govt. of India. This issue was also discussed in the Seventh Report (2001-2002) of the erstwhile National Commission for Scheduled Castes and Scheduled Tribes and it was observed that the University was not implementing the reservation policy and that, as a result thereof, the representation of SC/ST in this University was Nil in the grade of Lecturer in the teaching category.

6.21.4.5 It is manifestly clear that the Aligarh Muslim University is not following the reservation policy of the Govt. of India and all efforts to restrain them in the past has not brought about any change in their attitude and approach and they continue to indulge in flouting the reservation instructions with impunity. They need to be checked from pursuing a wrong policy in flagrant violation of the constitutional obligations. It would not be an overstatement to say that the non-cooperation by Aligarh Muslim University in not following the reservation policy amounts to dishonouring the Constitution of India and, therefore, they also need to be chastised for acting in defiance of the instructions of the Central Government. There can be no denying that their present action is not by default but by design and, therefore, it assumes critical dimensions. The magnitude of their offence becomes all the more serious because being the Central University, they receive grant from the Govt. of India

and it was their prime duty on this count to have ensured that they implement the reservation instructions in letter and in spirit. **The Commission, therefore, strongly recommends that:**

- (i) **The Ministry of Human Resource Development should either consider stopping the annual grants to the Aligarh Muslim University in toto or effecting a suitable cut in the quantum of the grant, as considered appropriate by them until such time they agree to implement the reservation policy of the Govt. of India in respect of Scheduled Tribes in appointment of Lecturers and initiate necessary action in this regard by appointing Lecturers belonging to Scheduled Tribes within a reasonable period of time.**
- (ii) **The Ministry of Human Resource Development should issue instructions to all the Central Universities to follow the reservation in appointment to such posts of Readers and Professors, which are filled up by direct recruitment in compliance with the reservation policy of the Govt. of India which, inter-alia, lays down that there will be reservation for Scheduled Castes and Scheduled Tribes in all posts filled by direct recruitment unless any post/posts is/are exempted by special or general instructions issued by the Government.**
- (iii) **As has been stated above, the percentage of reservation for STs in most of the Central Universities in the grade of Lecturer in teaching category is much below the prescribed percentage of 7.5% and, therefore, the Commission would like to advise the Ministry of Human Resource Development and University Grants Commission to take up the matter with the Central Universities and ask them to identify the backlog vacancies in the grade of Lecturer and to chalk out a time bound programme to fill up these backlog vacancies within a specified period of two years. In case the defaulter Universities fail to fill up the backlog vacancies reserved for STs within that period of two years, the Ministry of HRD/UGC while releasing the instalments of the grants should put a condition that unless they make up the shortfall of ST vacancies, the next instalment of the grant shall not be released.**

6.21.4.6 The representation of Scheduled Tribes in non-Teaching posts during the year 2003-04 in the Central Universities, as per information furnished by UGC vide their above mentioned letter, is as given in the following Table:-

Sl.No.	Name of the University		Group 'A'	Group 'B'	Group 'C'	Group 'D'
1.	Aligarh Muslim University	Total	170	220	2255	2855
		ST	-	-	4	7
		% age	-	-	0.18	0.25
2.	Assam University	Total	16	21	149	90
		ST	-	2	13	5
		% age	-	9.52	8.72	5.55
3.	Banaras Hindu University	Total	103	87	2135	3040
		ST	1	1	13	89
		% age	0.97	1.15	0.61	2.93

4.	IGNOU	Total	181	161	989	219
		ST	5	5	54	9
		% age	2.76	3.11	5.46	4.11
5.	J.N.U.	Total	101	230	490	674
		ST	1	3	15	10
		% age	1	1.30	3.06	1.48
6.	Jamia Millia Islamia	Total	46	55	464	401
		ST	-	-	2	-
		% age	-	-	0.43	-
7.	Pondicherry University	Total	45	24	267	301
		ST	1	-	-	1
		% age	2.22	-	-	0.33
8.	Vishwa Bharati	Total	69	88	555	697
		ST	1	3	16	79
		% age	1.44	3.40	2.88	11.33
9.	Tezpur University	Total	23	15	67	-
		ST	-	-	-	-
		% age	-	-	-	-
10.	NEHU	Total	61	167	484	350
		ST	25	62	231	259
		% age	40.98	37.12	47.72	74.00
11.	BBA Luknow	Total	8	-	36	26
		ST	-	-	-	-
		% age	-	-	-	-
12.	Delhi University	Total	133	515	1079	1068
		ST	3	1	8	16
		% age	2.26	0.19	0.74	1.50
13.	Maulana Azad National Urdu University	Total	7	3	27	10
		ST	-	-	1	-
		% age	-	-	3.70	-
14.	Mizoram University	Total	22	18	95	135
		ST	10	8	90	112
		% age	45.45	44.44	94.74	82.96
15.	Hyderabad University	Total	64	84	441	497
		ST	4	2	18	31
		% age	6.25	2.38	4.08	6.24
16.	Nagaland University	Total	24	30	140	157
		ST	17	12	124	137
		% age	70.83	40.00	88.53	87.26

6.21.4.7 It will be seen from the above Table that as in the case of the posts of Lecturer in the teaching category, the representation of Scheduled Tribes in the non-teaching category too is far from satisfactory in respect of almost all the Central Universities except three

North-East Universities namely- Universities of Assam, Nagaland and Mizoram The representation of Scheduled Tribes in Group 'A' and Group 'B' posts is Nil in respect of AMU, Assam University, Jamia Milia Islamia, Tezpur University, BBA, Lucknow and Maulana Azad National Urdu University, and in respect of the remaining Universities, the representation of Scheduled Tribes in these Groups was far below the prescribed percentage. By and large, the position with respect to Group 'C' and Group 'D' posts is identical except North-East Universities (referred to above) and IGNOU (5.46 % & 4.11% respectively), Hyderabad University (4.08% and 6.24% respectively) and Vishwa Bharti (2.88% and 11.33% respectively) where the representation of Scheduled Tribes is comparatively better, although it is less than the prescribed limit of 7.5%. As regards other Universities, the representation of Scheduled Tribes in these Groups is either 0% or less than 1% in AMU, Jamia Milia Islamia, Pondicherry University, Tezpur University and BBA, Lucknow. In BHU and in Delhi University, while the representation of STs in Group 'D' is slightly better (2.93% and 1.50% respectively), it is less than 1% in Group 'C'.

6.21.4.8 It will be seen from the position given in the above para that the representation of Scheduled Tribes in non-teaching posts too except North-East Universities (minus Tezpur University) and a few others is very poor. The message, which emerges from this depressing scenario, is very clear. Most of the Central Universities are consciously not implementing the reservation policy of the Government of India in non-teaching posts, as also in teaching posts. This position has been prevailing ever since the inception and nothing tangible has been done either by the University Grants Commission or by the Ministry of Human Resource Development to reverse the continuing trend and to ensure implementation of the reservation policy of the Government. The Commission cannot but feel concerned in this matter. **The Commission recommends that the Ministry of Human Resource Development should give serious attention to this problem and issue instructions to all defaulter Central Universities which are not implementing the reservation policy in the non-teaching posts in Group 'A', 'B', 'C' and 'D' to identify the backlog of the vacancies reserved for Scheduled Tribes and to chalk out a time bound programme to fill up these backlog vacancies within a specified period of one year. In case the defaulter Universities fail to fill up the backlog vacancies reserved for STs within that period of one year, the Ministry of HRD/UGC should take stringent action against them and while releasing the instalments of the grants should put a condition that unless they make up the shortfall of ST vacancies, the next instalment of the grant shall not be released.**

6.22 Special Concessions for Members of Primitive Tribal Groups (PTGs) in Direct Recruitment

The Govt. of Madhya Pradesh have made suitable amendments in the M.P. Public Service (Reservation for Scheduled Castes/Scheduled Tribes and Other Backward Classes) Act, 1994 to provide for special provisions in direct recruitment in favour of members of Primitive Tribal Groups (PTGs). The amended Act, inter alia, provides that the candidates belonging to Sahariya Tribe living in Sheopur, Morena, Datia, Gwalior, Bhind, Shivpuri and Guna districts, Baiga Tribe living in Mandala, Dindori, Shahdol, Umaria and Balaghat districts and Bharia Tribe living in Tamia Block of Chhindwara district will be appointed in the post of contract Teachers in Grade-I, II and III and for Group 'C' and 'D' posts without subjecting them to go through the recruitment process provided they possess the minimum qualification for these posts. **The Commission recommends that the Ministry of Tribal Affairs should advise the 15 other States/Union Territories (other than Madhya Pradesh) having PTGs to make similar provisions for recruitment of candidates**

belonging to PTGs in Group ‘C’ and Group ‘D’ posts and contract posts of Teaching category in various grades.

6.23 Recognition of Scheduled Castes and Scheduled Tribes Employees Welfare Associations

The erstwhile National Commission for Scheduled Castes and Scheduled Tribes had been receiving representations from various quarters for recognition of the Scheduled Castes and Scheduled Tribes Employees Welfare Associations and the Commission had been making recommendations to the Government for such recognition in its earlier Reports including the last Report (Seventh Report) of the Commission for the year 2001-2002. The Department of Personnel and Training vide their letter No. 2/10/2004-JCA dated 15 October, 2004 has informed that the issue in question had been examined by them in detail and it had not been found possible either to grant recognition or to extend the facilities which were available to the recognized Service Associations for the following reasons:-

- (i) The Service Associations formed by SC/ST employees do not fulfill the conditions prescribed in Rule 5(b), (c) and (f) of the CCS (RSA) Rules, 1993.
- (ii) The Recognition Rules have been framed after extensive consultations lasting over several years in which all major associations were involved and during the discussions there was no demand for a separate SC/ST association.
- (iii) Various provisions of CCS (RSA) Rules, 1993 came under scrutiny of the Supreme Court in 1996 (vide JT 1996(9) S.C. 456 D.K. Chhangani & Ors v. Nitya Ranjan Mukherjee & Ors.) and the Court did not find anything irregular or unconstitutional in the Rules.
- (iv) If the Service Associations of SC/ST employees are recognized by amending the Rules mentioned above, then various other similar groups of employees belonging to OBC, Minority, Lingual, Regional etc. would also demand the recognition of their Service Associations. This will not be in the interest of a unified Civil Service. This may lead to litigation and industrial unrest.
- (v) The existing institutional safeguards protect the interest of SC/ST employees through the appointment of Departmental Liaison Officers and other administrative instructions. The National Commission for Scheduled Castes and Scheduled Tribes (now the National Commission for Scheduled Castes, and the National Commission for Scheduled Tribes w.e.f. 19 February, 2004) is charged with the responsibility to investigate and monitor such matters. The Commission can also enquire into specific complaints.

6.24 Successful Cases dealt with by the Commission:

The Commission receives a large number of petitions from the Govt. servants belonging to Scheduled Tribes working in various Ministries/Departments of the Govt. of India, attached/sub-ordinate and autonomous organizations under their administrative control, public sector undertakings, financial institutions, central universities etc. These petitions/representations are examined in the Commission and para-wise comments of the concerned organization called for. The Commission takes a final view on the grievance of the petitioner on the basis of the points made in the petitions and the information furnished by

the concerned organizations and accordingly, advises them to take corrective action. In case the Commission is satisfied with the action taken by the concerned organization, a copy of the reply sent by it is forwarded to the petitioner for his information and thereafter the matter is closed unless the petitioner sends a rejoinder which is, if it contains additional material, examined further in consultation with the concerned organization. In case the Commission does not get a reply from the concerned organization on the points raised in the petition despite repeated reminders, the Commission invites the Head of the organization or any other senior officer of that organization to appear before the Commission for discussion with Chairman/Member, NCST. The decisions taken after the discussions are recorded on the same day and got signed by all concerned and thereafter the respective organization is requested by the Commission to take necessary action on its advice/recommendation within a specified period of time and inform the Commission about the outcome of the decision taken by them. The constraints of space do not permit making mention of all the cases/petitions and their final outcomes taken up by the Commission. However, some of the successful cases relating to redress of service grievances which were taken up by the Commission with the concerned organizations are as follows:-

- (1) One ST officer working as Deputy Manger in the New India Assurance Company Ltd. approached the Commission for his promotion to the post of Manager. He had stated that he was denied promotion against a vacancy reserved for Scheduled Tribe in violation of the rules/instructions relating to reservation in the matter of promotion. The Commission took up the matter with the Company and finally the ST officer was promoted to the post of Manger.
- (2) One lady belonging to ST from Mayurbhanj district (Orissa) represented that the Executive Engineer (Electrical), EHT Maintenance Division, GRIDCO, Balasore had harassed her in regard to payment of family pension to her on account of death of her husband who was working as SBO in Rairangpur, Electrical Division of GRIDCO. She had stated that the family pension was being paid to her from the year 2003 while she was entitled to get revised family pension w.e.f. 1.1.1996. Her grievance was taken up with the said organization and finally the matter was settled and a sum of Rs. 1.20 lakh was paid to her through cheque against balance arrears.
- (3) One ST person represented to the Commission that he was appointed as Assistant Teacher in English in Madhyamika Prasarak Samithi, Yadahalli. He had stated that at the time of appointment he had submitted his original mark-sheets. Later on he submitted his resignation and approached the Samithi for return of his original documents as he had been selected elsewhere. He complaint that the Samithi did not return his original papers to him. The Commission took up the matter with Director, Karnataka Secondary Education Board and District Social Welfare Officer, Uttar Kannada district (Karnataka). The Commission was informed that Madhyamika Prasarak Samithi had agreed to return the original documents to the petitioner and finally the petitioner got the desired relief.
- (4) One ST officer working as Principal Scientist (Agron), ICAR, Research Complex for North Eastern Hill Region, Umiam, Meghalaya approached this Commission on June, 2002 alleging that after his promotion from Senior Scientist to the grade of Principal Scientist (Agron) w.e.f.28.7.1998 he became senior in the Division of Agronomy but he was deprived of his legitimate right for being made incharge of that Division. The Commission took up this matter with the said Organization. The Director of the Institute had himself admitted that whatsoever the applicant stated in his complaint was true and informed the Commission that the grievances of the petitioner had been

redressed by way of issuing an order for allowing him to take over the charge of the Division of the Agronomy.

- (5) One lady belonging to Scheduled Tribe working as a Senior Assistant in the United India Insurance Company, Shillong approached the Commission during the year 2002 alleging that she had been denied promotion as Assistant Administrative Officer. She stated that she was working as a Senior Assistant since 1989 and that she had been superseded by 8 of her junior colleagues. The matter was taken up by the Commission with the Hqrs. Office of the Company at Kolkatta. The Regional Office of the Company at Guwahati informed the Commission in 2003 that the petitioner had been promoted to the post of Assistant Administrative Officer.
- (6) One Scheduled Tribe officer working as Assistant Administrative Officer in the Atomic Mineral Directorate for Exploration and Research, Department of Atomic Energy, Nongmynsong, Shillong approached the Commission in September, 2003 alleging harassment with respect to his promotion and transfer. He represented that he was promoted to the grade of Accounts Officer by an order of the Department of Atomic Energy dated 11.8.2003 and posted at the Hqrs. of Department of Atomic Energy at Mumbai . The order of promotion was to be affected within 15 days failing which the officer would stand debarred from promotion for a period of one year. The petitioner requested for being relived on 18.8.2003 as he had already booked his train ticket for 19.8.2003 as there was no ticket available prior to that date. The petitioner was informed that he would be relieved only after a substitute in his place reported for duty at Shillong. The petitioner requested the Department of Atomic Energy Membai and AMB Hyderabad for providing a substitute and also allowing him to take over the charge of Accounts Officer in Shillong till his substitute reported for duty. This was not accepted by AMB Hyderabad. The Commission took up the matter with the Department of Atomic Energy and impressed upon them to take steps to avoid harassment of the applicant and to ensure that he was given his due promotion. The Department of Atomic Energy, Mumbai informed the Commission that the applicant had joined a new assignment as Accounts Officer on 20.10.2003 after availing leave, LTC and joining time as admissible.
- (7) The North Eastern Power Corporation Ltd. (NEPCO) Tribal Employees Welfare Association submitted a representation to the Commission in August, 2003 regarding denial of promotion of a Scheduled Tribe officer working as a Deputy Manager (Finance) NEPCO to the post of Manager. It was stated that a general candidate junior to the ST officer had been given promotion on the plea that the recent promotion policy of the Corporation did not mention anything about the subordinate Account Service. The Commission took up the matter with the Corporation. The Commission was informed that the grievances of ST officer had been redressed by way of issuing promotion order on 5.9.2003 and that he had joined the promotion post accordingly.
- (8) One Scheduled Tribe officer working as Asstt. Research Officer in the Central Hindi Directorate, Ministry of Human Resource Development, New Delhi submitted a representation in the Commission in October, 2004 alleging denial of promotion for the post of Research Officer. The Commission took up the matter with the Department concerned, which intimated the Commission that the promotion order had been issued on 7.2.2005.

- (9) One lady of Burdwan district (West Bengal) belonging to ST approached the Commission alleging that inspite of having qualified in the written test and interview of the West Bengal School Service Commission and impanelled in the select list she was not offered the appointment letter. The matter was taken up with WBSS Commission. The Commission was informed by the WBSS Commission that she had since been recommended for appointment to the post of Assistant Teacher at Uluberia Binapani Girls High School Uluberia, District Howrah. A similar complaint was received by the Commission in September 2003 from an ST girl complaining that though she had been selected for the post of Assistant Teacher after passing the WBSS Commission Examination 2001, she had not received the offer of appointment. The Commission took up the matter with the WBSS Commission, and, as a result of Commission's intervention she was offered appointment as Asstt. Teacher at Barakar Sri Marwari Vidyalaya, Barakar Burdwan.
- (10) One Assistant Manager in Haldia Duck Complex complained to the Commission in March, 2005 that he had been deprived of promotion and that his Organization had wilfully given promotion to one of his junior colleagues. On intervention of the Commission, the petitioner was promoted to the post of Deputy Manager (Rlys.) under Haldia Duck Complex w.e.f. 29.4.2005.
- (11) One Lower Division Clerk in the Customs and Excise Division, Ministry of Finance, Govt. of India at Kota (Rajasthan) belonging to Scheduled Tribes approached the Commission with the allegation that he appeared in the written test for the post of Tax Assistant and that he did not qualify in the Computer Practical paper and that he made a number of representations to the Commissioner, Customs & Excise, Jaipur to declare him qualified in the Computer Practical paper by extending to him concession/relaxation by virtue of belonging to Scheduled Tribes category. The matter was taken up by the Commission with the Commissioner, Customs & Excise, Jaipur. Petitioner's request was, however, not accepted and the proposed promotion was declined to him. The Commissioner, Customs & Excise Jaipur was against requested by the Commission to reconsider and provide relaxations to the petitioner in terms of amendments made in Article 335 of the Constitution by through 82nd Amendment Act. As a result of the intervention of the Commission, the petitioner was promoted to the post of Tax Assistant in the Customs & Excise Division, Kota in March, 2004.
- (12) One lady belonging to Scheduled Tribe approached the Commission to inform that her husband, who worked as a Work-charged employee in the Forest Department in district Pali (Rajasthan) died on 8.12.1994 and thereafter she applied for her appointment in that Office on compassionate grounds as per Govt's instructions. The matter was taken up by the Commission with the Chief Conservator of Forest and Principal Secretary, Department of Personnel, Govt. of Rajasthan. The Commission was informed that the Forest Department could not offer of appointment of compassionate grounds on account of non-availability of a vacant post and that the Forest department in turn requested the Department of Woman and Child Development, Govt. of Rajasthan to appoint her as a Group 'D' employee in their department. The Commission, accordingly, took up the matter with the Department of Woman and Child Development and finally she was appointed as a Group 'D' employee at Desuri, Pali (Rajasthan) and she joined duties w.e.f. 8.4.2003.
- (13) An Assistant General Manager belonging to ST category, SIDBI, Pondicherry Branch Office, Pondicherry sent representation to the Commission wherein it was alleged that

he was transferred to Hyderabad by way of harassing him. The Commission had taken up immediate action on the complaint and the matter was referred to the Chief General Manager, SIDBI, Chennai for his remarks. He was also called for discussion to sort out the issue. Due to the timely interaction and speedy action in the matter by the Commission, the Management of SIDBI had retained the candidate in his home town at Chennai.

- (14) During the course of the visit of a Member of the erstwhile NCSCST, a representation was submitted to him by a lady belonging to ST category. The lady was a handicapped and requested for employment. On the intervention of the Commission she was offered computer training from Canara Bank, but she could not joined the training course. However, Govt. of Kerala had assured the Commission to consider her request as per the rules enforce for suitable employment.
- (15) One Data Entry Operator Grade 'B', Directorate of Census Operations, Jaipur submitted a petition to the Commission in the month of August, 2003 for promotion to the post of Junior Supervisor which was taken up with the Registrar General of India, New Delhi and Directorate of Census Operations, Jaipur (Rajasthan). The later informed the Commission that:
- (i) There were only 12 Junior Supervisor posts and on introduction of post-based roster and reassessing of the representation of SCs/STs therein no post of Junior Supervisor was found to be reserved for ST category.
 - (ii) Four short-term vacancies arose in the year 2003 in the post of Senior Supervisors as a result of promotion of four Senior Supervisors to the post of Assistant Directors
 - (iii) The Directorate of Census Operations, Jaipur while filling the four posts of Sr. Supervisors did not promote any SC candidate despite the fact that one post was vacated by SC candidate on promotion to the post of Asstt. Director.
- (16) On intervention of the erstwhile NCSCST (now NCST) one SC candidate was promoted to the post of Sr. Supervisor. As regards the ST candidate (DEO, Gr. 'B') the Commission was informed that out of four vacancies in the post of Junior Supervisor, three vacancies were filled and the ST candidate in question was not promoted as he was not within the normal zone nor within the extended zone. He was at Sl. No.23 of the seniority list against the extended zone for four vacancies being upto the Sl.No.20 of the seniority list. Later on the case of promotion of another SC candidate was taken up and on intervention of the Commission a review DPC was held and on the recommendation of the DPC a general category candidate promoted earlier was reverted in July, 2003 and the SC candidate promoted and placed at Sl.No. 3 as per the instructions with respect to the replacement roster on the resulted vacancies due to the promotion of one SC candidate as Asstt. Director.

The above- referred decision to revert the general category candidate was later challenged by him (i.e. the general category candidate) in CAT, Jaipur Bench. The Hon'ble Tribunal upheld the decision of the promotion of the SC candidate and dismissed the petition of the general category candidate by their order dated 19.4.2004. Consequent upon the Hon'ble Tribunals judgment, the case of ST candidate (DEO Gr.'B') for promotion to the post of Junior Supervisor was again taken up with the Directorate of Census Operations, Jaipur with the requesting them to review and to provide reservation for ST category as one ST vacancies was lying

vacant in the DCO, Jaipur Office. Although the ST candidates appeared at Sl.No.20 of the seniority list and was not covered within the normal and the extended zone, the authorities considered and promoted the ST candidate to the post of Junior Supervisor vide order dated 11.5.2005 against the said ST vacancy.

- (17) One Scheduled Tribe Junior Engineer working in the Local self- government Department, Govt. of Rajasthan Jaipur represented to this Commission regarding his promotion to the post of Asstt. Engineer. The case was taken up with the Principal Secretary, Local Self- government Department, Govt. of Rajasthan, Jaipur. After issuing several reminders, the Commission was informed in August, 2004 that there were 7 posts of Asstt. Engineers vacant for promotion during the year 2002-2003 of which 50% posts were to be filled up by direct recruitment and 50% by promotion. When the correspondence with the concerned department did not yield any result, the Commission decided to discuss the case personally with the Secretary, Local Self- government Department, Govt. of Rajasthan, Jaipur. Accordingly he was called to appear before the Hon'ble Chairman on 8-11-2005. Dr. Manjit Singh, Secretary, who appeared before the Commission the above date was requested to take appropriate action in respect of promotion of the petitioner to the post of J.E. and informed the Commission by 28.12.2005. The Commission was informed by him vide his letter dated 21.12.2005 that the petitioner had been promoted to the post of Asstt. Engineer. The Commission noted that along with the petitioner, three other ST candidates, as also two SC candidates were promoted to the post of Asstt. Engineer.
- (18) One Junior Engineer belonging to Scheduled Tribe working in the Southern Railway Press, Chennai represented to this Commission in August, 2004 for his proforma promotion to the said post with effect from 4-1-1990. The matter was taken up with the General Manager, Southern Railway, Chennai on Ist September, 2004. After receiving several reminders from the Commission, the Railway authorities informed on 23-12-2004 that the petitioner had appeared in the selection test in the past but did not qualify for the same and, therefore, there was no question of his being given benefit of proforma promotion from 4-1-1990. The Commission was further informed that the petitioner could be promoted on proforma basis only after he had passed the fresh selection test held subsequently and that the proforma promotion to the petitioner had been given w.e.f. 12.8.03 after he qualified in the subsequent selection and it was not possible to ante-date his proforma promotion w.e.f.4.1.1990.

The case was further taken up by the Commission with the Southern Railway authorities and accordingly, the Chief Personnel Officer (Shri N. Swaminathan, Southern Railway, Chennai) appeared before the Commission on 4-8-2005 along with other officers. In the hearing it was impressed upon the Railway authorities that the petitioner should have been given proforma promotion w.e.f. 4-1-1990 when the ST reserved point was filled on regular basis with effect from 4-1-1990 and that in case he had been given the proforma promotion to the post of Junior Engineer Gr.II with effect from 4-1-1990 he would have subsequently become eligible for promotion to the higher grade in his cadre. The Railway authorities were also requested to take necessary action to send the petitioner and other ST employees for training with respect to such courses which were useful to them in performing their duties in different posts from time to time.

Southern Railway authorities informed the Commission vide their letter dated 22-11-2005 that the Ministry of Railways (Railway Board) had since communicated their approval to the proposal of the Southern Railway to allow proforma promotion

to the petitioner with effect from 4-1-1990, which was done as a special case to honour the commitment given to the Commission and with a view to closing the long pending issue. Revised orders for his proforma promotion with effect from 4-1-1990 were issued on 22.11.2005. Based on the proforma promotion given to the petitioner as J.E. (I) in the scale of pay of Rs.5000-9000 from retrospective effect i.e. 18.6.1992, he has further been promoted on proforma basis as Section Engineer in the scale of pay of Rs.6500-10500 against an ST point with effect from 17.5.1999.

- (19) One Asstt. Director belonging to Scheduled Tribe, working in the Horticulture Division of CPWD, New Delhi represented to this Commission in March, 2005 that out of the total 64 posts of Asstt. Directors in the organization, 4 posts should have been earmarked for ST candidates. He stated that in 1997 when he was promoted as Asstt. Director (Hort.) on ad-hoc basis, no other ST candidate was promoted on regular basis nor were there any other ST candidates already functioning as Asstt. Director (Hort.) and that, in such a situation, he ought to have been considered for regular promotion against the available ST vacancy from the day he became eligible for consideration on regular basis as Asstt. Director. He also represented that he was surprised to know that his promotion was regularized only with effect from 31-8-2001 and not from 27.1997. He stated that non-regularization of continuous ad-hoc service had adverse effect on his career in as much as he was denied his further promotion to the post of Deputy Director (Hort). The petitioner requested that the matter be considered for regularization of his ad-hoc service from June, 1997 to August, 2001 and his seniority re-fixed accordingly and on the basis of such seniority, against the ST vacancy, he may be considered for promotion to the post of Deputy Director (Hort.).

The matter was taken up by the Commission with the Director General, CPWD, New Delhi in April, 2005 who informed that the petitioner was promoted to the post of Asstt. Director (Hort.) on ad-hoc basis with effect from 27-6-1997 initially for six months but continued to work in the said post until he was regularized with effect from 31-8-2001 on the basis of approval of DPC and that he had been representing seeking his promotion on regular basis with effect from 27-6-1997 and not with effect from 31-8-2001. The Commission was further informed that his request was not agreed to as the vacancy against which his ad-hoc promotion was made belonged to direct recruitment quota whereas the petitioner was to be regularized against a slot of promotion quota.

Shri B. Majumdar, Director General, CPWD appeared before the Commission on 21-10-2005. After detailed discussions, he assured the Commission that the whole case would be re-examined in the light of the guidelines issued by the DOPT and action would be taken within 15 days. The Directorate General of CPWD informed the Commission on 5 December, 2005 that the promotion of the petitioner as Asstt. Director (Hort.) had since been regularized with effect from 27-6-1997.

- (20) One Scheduled Tribe lady working as Library Attendant in School of Open Learning, Delhi University represented to the Commission in August, 2005 through the General Secretary, Delhi University and Colleges SC/ST Employees Welfare Association, Delhi against denial of her promotion to the post of Semi-Professional Assistant (SPA) and non-implementation of reservation rules in the School of Open Learning. It was also represented that the post of Semi-Professional Assistant (SPA) in the School of Open Learning was meant for ST and was a backlog vacancy and had been filled

by a general category candidate and that no SC/ST representative was associated in the DPC as per rules.

The matter was taken up by the Commission with the Executive Director, School of Open Learning on 24-8-2005 who informed that there was no irregularity in the meeting of DPC. The SC/ST member was invited but he could not attend the meeting due to some preoccupations and that there was no deliberate attempt to exclude him from the DPC. However, the Liaison Officer of the School was present in the meeting of the DPC. The Commission was also informed that the School was following the promotion rules as prevalent in the Delhi University and there was no violation of reservation policy. The DPC had, however, observed that the petitioner did not possess the required experience as laid down by the University for promotion. The DPC was further of the view that the next post of SPA was likely to be vacant in 2005 and accordingly, her case for promotion would be considered by the DPC at that point of time. The petitioner completed the five years of service as Attendant on 18-9-2005 and even thereafter, he was not promoted to the post of SPA.

The matter was taken up with the Executive Director; School of Open Learning, Delhi and Prof. H.C. Pokhriyal appeared before the Commission on 22.11.2005 and he was advised to conduct a review DPC by including in its meeting a representative from SC/ST category and to consider the case of the petitioner. The Executive Director informed the Commission on 29-12-2005 that the petitioner had been promoted to the post of Semi-Professional Assistant against the post reserved for ST.

- (21) One Sr. Goods Guard, Western Railway, belonging to Scheduled Tribe, represented to the erstwhile National Commission for Scheduled Castes and Scheduled Tribes in February, 1999 for his promotion to the post of Passenger Guard and to the next higher post of Sr. Passenger Guard. His case was taken up with the Railway Board. The Railway authorities appeared before the erstwhile NCSCST on six occasions i.e. 18.1.2000, 26.7.2001, 25.7.2002, 31.12.2002, 24.4.2003 and 17.2.2004. However, the Railway authorities did not accede to his petition for promotion to the post of Passenger Guard and to Sr. Passenger Guard. The petitioner represented his case to the National Commission for Scheduled Tribes in October, 2004. It was decided to call Secretary, Railway Board to appear before the Commission to discuss the case. Accordingly, Secretary, Railway Board along with his Sr. officers appeared before the Commission on 25 January, 2005. Secretary, Railway Board assured the Commission that he would have a fresh look and would review the entire matter and apprise the Commission of the re-considered decision of the Railway Board. While the Railway Board supplied some information in February, 2005 regarding the eligibility list and list of 71 selected candidates for the post of Passenger Guards (in which the petitioner could not find a place because he could not obtain 60% marks in the selection test and that this being a safety category post, there was no relaxation of marks for SCs/STs) who were placed in the panel in the year 1998 etc., as desired by the Commission during the hearing, no action was taken by them to re-consider his case and apprise the Commission of the outcome thereof. In the meanwhile, the petitioner again approached this Commission with the request to impress upon the Railway Board to promote him to the post of Passenger Guard and Sr. Passenger Guard.

A detailed d.o. letter was sent by the Commission on 19.5.2005 to the Secretary, Railway Board requesting him to re-promote the petitioner as Sr. Passenger

Guard (with all monetary benefits including arrears of pay) from which posts he was reverted in May, 1998. The Commission noted that the petitioner had been promoted from the post of Sr. Goods Guard to the post of Passenger Guard in November, 1993. He was further promoted from the post of Passenger Guard to the post of Sr. Passenger Guard by Office Order dated 18.3.1996. Later on, the Railway authorities maintained that the promotion of the petitioner as Passenger Guard as well as Sr. Passenger Guard was on ad-hoc basis, although the word 'ad-hoc' did not appear in any of the Office Orders issued in relation to his promotion as Passenger Guard and Sr. Passenger Guard. The Railway authorities informed in August, 2005 that the word 'ad-hoc' was erroneously not mentioned in the promotion Order dated 3.11.1993 and that the administrative error had subsequently been set right. The Railway authorities further stated that there were 17 ad-hoc Passenger Guards who had failed to qualify the selection test and had to be reverted in 1998 to make room for those candidates who had qualified the selection and that accordingly, it had been decided by them that since the post of Passenger Guard was a safety category post and a selection post, the petitioner could not be given promotion as Passenger Guard without qualifying the test.

The Commission was not satisfied with the explanation given by the Railway authorities for not re-promoting the petitioner to the post of Sr. Passenger Guard and it was accordingly, decided to call the Chairman, Railway Board who appeared before the Commission on 9.1.2006. Chairman, Railway Board could not attend due to his pre-occupations elsewhere, and in his place Shri R.S. Varshneya, Member (Staff) accompanied with other Sr. officers appeared before the Commission on that date. The Railway authorities appreciated the stand taken by the Commission and stated that they had already discussed the matter with their officers to promote the petitioner as Passenger Guard on regular basis from the year 2000 provided the petitioner was willing to appear for viva-voce and passed that test, and also as Sr. Passenger Guard based on the seniority gained by him on account of his promotion as Passenger Guard with retrospective effect. The Commission was assured that the whole process would be completed within a week and final orders issued within a month. The Commission is very happy to note that its persistent efforts as also of the erstwhile NCSCST spanning over a period of over 8 years have finally borne fruit and the Western Railway have issued the requisite Order on 31.1.2006 re-promoting the petitioner as Passenger Guard from 15.9.2000 (in the scale of pay of Rs.5000-8000) and Sr. Passenger Guard with effect from 1.11.2003 (in the scale of pay of Rs.5500-9000/-).

- (22) One Assistant Engineer belonging to Scheduled Tribe working in New Delhi Municipal Council (NDMC), New Delhi represented to this Commission in December, 2005 regarding his promotion to the post of Executive Engineer (Civil) under ST quota. He stated that while a number of general category candidates had been promoted to the post of Executive Engineer on ad-hoc basis, he had not been considered for promotion on ad-hoc basis against vacancies reserved for ST candidates. He further stated that he had completed 8 years of regular service in the feeder grade i.e. Assistant Engineer on 8-10-2005 and was eligible to be considered for ad-hoc promotion for which there is no limit on the size of the zone of consideration so long as the person has completed the requisite years of service. The case was taken up by the Commission with NDMC, New Delhi on 14-12-2005. The Commission was informed on 30-1-2006 that the case of petitioner was considered and on the recommendation of DPC and further approval of the competent authority, he was promoted to the post of Executive Engineer (Civil) on ad-hoc basis vide order dated 30-1-2006.

- (23) One Junior Engineer belonging to Scheduled Tribe working in the New Delhi Municipal Council (NDMC), New Delhi represented to this Commission in February, 2002 regarding his promotion to the post of Assistant Engineer under ST quota. The matter was taken up with the Chairman, NDMC, New Delhi on 27-2-2002. Several letters were sent to the NDMC for getting a reply in this case but to no avail. Ultimately, the Commission decided to call the Chairperson of NDMC to discuss the matter personally. Accordingly, Smt. Sindhushree Khullar, Chairperson, NDMC appeared before the Commission on 15-7-2005. After discussions, it was decided that the case would be examined afresh by the NDMC in consultation with the Liaison Officer of the NDMC and officers of this Commission and the decision taken would be implemented. Later Secretary, NDMC informed the Commission on 29-12-2005 that the DPC had since been conducted and it had considered the representation of the petitioner for promotion to the post of Assistant Engineer (Civil) and he had been promoted to the post of Assistant Engineer (Civil) with effect from 29-12-2005. Another ST candidate was also promoted along with the petitioner to the post of A.E (Civil).
- (24) One lady belonging to Scheduled Tribe, working as Assistant in the Ministry of Information & Broadcasting, represented to this Commission in October, 2005 regarding harassment by way of non-disbursement of salary of August and September, 2005, non-fixation of pay and non-issuing of posting order. The case was taken up by this Commission with the Ministry of Information & Broadcasting on 17-10-2005 who informed on 13-12-2005 that the salary of the petitioner had been released/disbursed to her with effect from 2-8-2005 i.e. since the date of her joining as Assistant in the office of the Registrar of Newspapers for India and that her pay was fixed at the initial stage of Rs. 5500/- in the scale of Rs.5500-175-9000/- with effect from 2-8-2005. Her posting orders were also issued on 2-11-2005.
- (25) One Junior Engineer (Civil) I &FC, Govt. of NCT of Delhi belonging to Scheduled Tribe represented to this Commission in November, 2004 for promotion to the post of Asstt. Engineer against the backlog vacancies earmarked for Scheduled Tribes. His case was taken up with the Govt. of NCT of Delhi in January, 2005. The Commission was informed that the petitioner could not be considered for promotion to the post of Asstt. Engineer/Asstt. Surveyor of Works (Civil) against one of the 4 backlog vacancies earmarked for Scheduled Tribes as his name was not covered within the normal or extended zone of consideration. The case was discussed and the attention of the Organization was drawn to the instructions dated 15.3.2002 issued by DoPT which, inter-alia, provided that while the zone of consideration for regular promotion of SC/ST candidates against the reserved vacancies was required to be extended upto five times the number of vacancies, for the purpose of promotion of SC/ST candidates against reserved vacancies on ad-hoc basis, there was no restriction on the zone of consideration and a suitable SC/ST candidates could be picked up from the seniority list provided he had rendered the minimum required service and considered for promotion. In view of these instructions, the Commission has advised the organization in January, 2006 that the petitioner may be considered for ad-hoc promotion to the post Asstt. Engineer/Asstt. Surveyor of Works (Civil). The Commission has also advised the organization to consider promoting the petitioner on regular basis (after the Orders of his promotion on ad-hoc basis have been issued) by drawing a separate zone of consideration in respect of eligible ST candidates only in view of the judgments of Hon'ble Supreme Court (i) in Civil Appeal No.4026 of 1988 in U.P. Rajya Vidut Parishad SC/ST Karamchari Kalyan Sangh vs.U.P. State

Electricity Board and Ors. dated 23 November, 1994 and (ii) Petitions for Special Leave to Appeal (Civil/CH) No.(s) 14568-69/95 in C.D. Bhatia and Ors. vs. Union of India and Ors. dated 31.10.1994/3.4.1995. In their first-cited judgment dated 23 November, 1994, the Hon'ble Supreme Court had held that "we are prima facie in agreement with the contention of the learned counsel for the Appellant that there has to be a separate zone of consideration so far as SC/ST candidates are concerned. Clubbing the Scheduled Castes with general category in the same zone of consideration would defeat the very purpose of reservation". In their second-cited judgment dated 31.10.1994/3.4.1995, the Hon'ble Supreme Court clarified that "we are however, of the view that the law laid down by this Court in U.P. Rajya Vidut Parishad's case (referred to above) is binding on all the authorities including the Union of India."

Revised percentage of reservation for Scheduled Tribes in case of direct recruitment to Group 'C' and 'D' posts normally attracting candidates from a locality or a region, on the basis of Census-2001 circulated vide DoPT's O.M. No.36017/1/2004 –Estt. (Res.) dated 5 July, 2005

S.No.	Name of the State/UT	Percentage of Reservation		
		SCs	STs	OBCs
(1)	(2)	(3)	(4)	(5)
1.	Andhra Pradesh	16	7	27
2.	Arunachal Pradesh	1	45	0
3.	Assam	7	12	27
4.	Bihar	16	1	27
5.	Chhattisgarh	12	32	6
6.	Goa	2	0	18
7.	Gujarat	7	15	27
8.	Haryana	19	0	27
9.	Himachal Pradesh	25	4	20
10.	Jammu & Kashmir	8	11	27
11.	Jharkhand	12	26	12
12.	Karnataka	16	7	27
13.	Kerala	10	1	27
14.	Madhya Pradesh	15	20	15
15.	Maharashtra	10	9	27
16.	Manipur	3	34	13
17.	Meghalaya	1	44	5
18.	Mizoram	0	45	5
19.	Nagaland	0	45	0
20.	Orissa	16	22	12
21.	Punjab	29	0	21
22.	Rajasthan	17	13	20
23.	Sikkim	5	21	24
24.	Tamil Nadu	19	1	27
25.	Tripura	17	31	2
26.	Uttaranchal	18	3	13
27.	Uttar Pradesh	21	1	27
28.	West Bengal	23	5	22
29.	A& N Islands	0	8	27
30.	Chandigarh	18	0	27
31.	Dadra & Nagar Haveli	2	43	5
32.	Daman & Diu	3	9	27
33.	Delhi	15	7.5	27
34.	Lakshadweep	0	45	0
35.	Pondicherry	16	0	27

CHAPTER-7

ISSUANCE AND VERIFICATION OF SCHEDULED TRIBE CERTIFICATES

7.1 Competent Authorities to Issue Certificates

7.1.1 The instructions on the issue of community certificates provide that any person who claims to belong to a Scheduled Tribe or Scheduled Caste or OBC, he/she will produce a certificate to the Appointing Authority/Selection Committee/Board etc. in support of his/her claim so as to make him/her eligible for reservation and various other relaxations and concessions. The caste/tribe/community certificates issued by the following Authorities in a format prescribed by Department of Personnel & Training can alone be accepted as proof in support of a candidate's claim belonging to ST or SC or OBC:

- (i) District Magistrate/Additional District Magistrate/Collector Deputy Commissioner/Additional Deputy Commissioner/Deputy Collector/Ist Class Stipendary Magistrate/Sub Divisional Magistrate/Taluka Magistrate/Executive Magistrate/Extra Assistant Commissioner.
- (ii) Chief Presidency Magistrate/Additional Chief Presidency Magistrate/Presidency Magistrate
- (iii) Revenue Officer not below the rank of Tehsildar; and
- (iv) Sub-Divisional Officer of the area where the candidate and/or his family normally resides.

7.1.2 The format of the certificate prescribed by the Department of Personnel & Training does not lend itself to curbing the current practice of producing false community certificate, which, in the recent past, has been increasingly assuming disturbing dimensions. To avoid misuse of certificates and also to avoid issue of false community certificates, certain amendments are required to be made in the prescribed format. The existing format for issue of community certificates enjoins upon the issuing authorities to indicate in para 1 of the format the name of the Order or the Act under which the caste/tribe was recognized as Scheduled Tribe e.g. The Constitution (Scheduled Tribes) Order, 1950. The Commission has observed that the name of the relevant Order or Act is not correctly indicated by the issuing authorities, which creates problems at the time of verification of the genuineness of the community certificates. **The Commission recommends that the existing format prescribed for issue of the community certificates should be amended to list all the Orders/Acts relating to recognition of castes/tribes as Scheduled Castes/Scheduled Tribes on the back of the prescribed format to enable the issuing authorities to write the name of the relevant Order/Act in the caste/tribe certificate.** A copy of the amended format, which also contains certain other changes with a view to make it more clear and intelligible is placed at **Annex.7.I.**

7.1.3 The format in its original form as prescribed by DoPT or in its amended form as suggested by the Commission (Annex.6.I) is for those members of Scheduled Tribes/Scheduled Castes who will obtain the community certificate in the original form by virtue of belonging to the State of origin. The Commission has noted that the Govt. had earlier prescribed a second caste/tribe certificate format since 1982 for those SCs/STs who had migrated from their original State to another State and they could obtain a certificate from the State of migration on the basis of caste/tribe certificates issued to their father/mother. This was meant to avoid inconvenience and hardships to them to the extent that they were not required to go back to their State/UT of origin and to get the caste/tribe

certificate from the prescribed authority. **The Commission, therefore, recommends that the Department of Personnel & Training should re-introduce the second caste/tribe certificate format which was prescribed by them in the year 1982 for those SCs/STs who had migrated from original State to another State to enable them to obtain a certificate from the State of migration on the basis of caste/tribe certificate issued to their father/mother.** A copy of this format, with requisite modifications, is placed at **Annex.7.II.**

7.2 Duties of Appointing Authorities to verify the Certificates

7.2.1 The present instructions also require that the appointing authorities should include the following clause in the offer of appointment to the candidates belonging to Scheduled Tribes/Scheduled Castes:

“The appointment is provisional and is subject to the castes/tribe certificates being verified through the proper channels and if the verification reveals that the claim to belong to Scheduled Caste/Scheduled Tribe, as the case may be, is false, the services will be terminated forthwith without assigning any further reasons and without prejudice to such further action as may be taken under the provisions of the Indian Penal Code for production of false certificates.”

7.2.2 The issuing authorities at the time of issue of community certificates to the persons claiming to belong to Scheduled Tribes/Scheduled Castes and the appointing authorities at the time of verification of the authenticity of the community certificates are required to bear in mind the following instructions:

- (i) An appointing authority may, if it considers necessary for any reason, verify the claim of a candidate through the District Magistrate of the place where the candidate and/or his family ordinarily resides. If after appointment in any particular case, the verification reveals that the candidate's claim was false, his services may be terminated in accordance with the relevant rules/orders.
- (ii) The appointing authorities should verify the community status of a Scheduled Tribe/Scheduled Castes officer at the time of promotion against a vacancy reserved for Scheduled Tribes/Scheduled Castes. For this purpose, the community to which a ST/SC person belongs, his/her place of residence and the name of the State, should be pasted on the top of his service book, personal file or any other relevant document to facilitate such verification. It may be mentioned that a ST/SC person whose community/tribe has been descheduled after his initial appointment as an ST/SC candidate, is no longer entitled to enjoy the benefit of reservation in promotion. This verification of community status at every important up-turn of employee's career is necessary so that the benefit of reservation and other scheme of concessions etc. meant for STs/SCs go only to the rightful claimants and not to those who become disentitled to them. The Commission is not aware whether the reverification of the community status at the time of promotion of the ST/SC persons is being done by the administrative Ministries and Departments themselves or through District Collectors and, in case the latter practice is in vogue, the Commission has every reason to apprehend that the process of the said reverification must be taking a lot of time and, as a consequence thereof, resulting in undue delay of the promotion of the ST persons in question. **The Commission is of the view that this matter needs to be clarified to the administrative Ministries/Departments and accordingly, recommends that:**

- (a) **The Department of Personnel & Training should issue instructions to all the administrative Ministries/Departments that at the time of promotion**

of ST candidates they should themselves verify the community status of the ST candidates proposed to be promoted, from the records available with them and in case the upto-date records are not available with them, they should approach the Ministry of Tribal Affairs to ascertain whether the community of the said ST candidates continues to figure in the list of Scheduled Tribes at the time of promotion.

- (b) **The Ministry of Tribal Affairs, which is the nodal Ministry for the purpose of scheduling or descheduling of any community as Scheduled Tribe, should invariably make available a copy of the notification, which is issued under Article 342 to all the Central Ministries/Departments etc. for their information, record and use at appropriate time.**
- (iii) Cases in which a doubt arises about Scheduled Tribe status of a person or a community, a reference may be made to the Ministry of Tribal Affairs, Shastri Bhavan, New Delhi.
- (iv) When a person claims to belong to a Scheduled Tribe by birth it should be verified that:
- (a) The person and his parents actually belong to the community claimed;
 - (b) That the said community is included in the Presidential Orders specifying the Scheduled Tribes notified by the Ministry of Law & Justice (Legislative Deptt.), Govt. of India in relation to the concerned State;
 - (c) The person belongs to that State and to the area within that State in respect of which the community has been scheduled/notified;
 - (d) If the person belongs to a Scheduled Tribe, he may profess any religion.
- (v) Where a person migrates from the portion of the State in respect of which his community is scheduled/notified to another part of the same State in respect of which his community is not scheduled/notified, he will continue to be deemed to be a member of the Scheduled Tribe in relation to that State;
- (vi) Where a person migrates from one state to another he can claim to belong to a Scheduled Tribe only in relation to the State to which he originally belonged and not in respect of the State in which he has migrated.
- (vii) No person who was not a member of a Scheduled Tribe by birth will be deemed to be a member of Scheduled Tribe merely because he or she had married a person belonging to a Scheduled Tribe. On the other hand, a person who is a member of a Scheduled Tribe would continue to be a member of that Scheduled Tribe even after his or her marriage with a person who does not belong to a Scheduled Tribe.
- (viii) He or his parents/grandparents etc., should be permanent resident of the State/UT on the date of notification of the Presidential Order applicable in his/her case.
- (ix) A person who is temporarily away from his permanent place of residence at the time of the notification of the Presidential Order applicable in his case, say for example to earn a living or seek education, etc. can also be regarded as a Scheduled Tribe, if his

tribe has been specified in that Order in relation to his State/Union Territory. But he cannot be treated as such in relation to the place of his temporary residence notwithstanding the fact that the name of his tribe has been scheduled in respect of that State where he is temporarily settled, in any Presidential Order.

- (x) In the case of persons born after the date of notification of the relevant Presidential Order, the place of residence for the purpose of acquiring Scheduled Tribe status, is the place of permanent abode of their parents at the time of the notification of the Presidential Order under which they claim to belong to such a tribe.

7.2.3 In spite of the fact that the appointing authorities are required to verify the community status of Scheduled Tribe candidates at the time of their initial appointment and promotion against vacancies reserved for Scheduled Tribes and for this purpose the community to which ST candidates belong, their place of residence and the name of the State is required to be pasted on the top of the Service Book, Personal File or any other relevant documents to facilitate such verification, a large number of persons have been able to get employment under the Govt. of India and State Govts. and other facilities on the basis of false community certificates. The problem continues to assume alarming proportion and the Commission cannot but feel greatly concerned over the persistence of the large scale incidences of the cases of bogus or false community certificates. The Commission feels that the issue has not been given the attention it deserves and many false community certificate holders are taking undue advantage of the system, depriving thereby the genuine STs, of their due share in the government services. The erstwhile National Commission for Scheduled Castes and Scheduled Tribes had been drawing the attention of the concerned authorities through its recommendations made in its Annual Reports. The erstwhile NCSCST had also been addressing the concerned authorities at various levels. The Govt. of India has been issuing instructions from time to time regarding the precautions that need to be taken at the time of issue of SC/ST certificates and also about the action to be taken in cases where the certificates are found to be false. It was also found that in a fairly large number of cases including false caste/community certificates, the holders of such certificates had gone to Courts on some pretext or the other and got stay orders and thereby continued to be in service and enjoy all the benefits. The number of such cases was fairly large in the State of Tamil Nadu. The Commission has also observed that even where the false certificates are proved by the district and State authorities, no criminal cases are being registered against the guilty and no punishment is awarded to them. On the other hand, they are approaching the High Courts and receiving the protections in the form of stay orders and that the State Govts. do not make serious attempts to get these stay orders vacated and to see that the guilty are punished. The erstwhile National Commission for Scheduled Castes and Scheduled Tribes in its Third report (1994-95 & 1995-96) recommended that “In case the false SC/ST certificate holder takes the shelter of Court, the Hon’ble Court may be approached to vacate the stay order, if granted and to finalise the case on top priority to ensure that the person does not continue to avail the benefits meant for SCs/STs. This will ensure that the guilty persons are not only suitably punished but they also face departmental action.” This recommendation of the erstwhile NCSCST was accepted by the Govt. and all the Ministries/Departments were requested accordingly in January, 1999 to bring it to the notice of all concerned for strict compliance. It had also been observed by the Commission during the review meetings with the State authorities that while on the one hand, a large number of people on the basis of bogus Scheduled Castes/Scheduled Tribe certificates were availing of benefits meant for members of Scheduled Castes/Scheduled Tribes, genuine SC/ST persons had been suffering on account of undue delay in the issue of community certificates to them and, to that extent, were being deprived of their legitimate rights and privileges enshrined in the Constitution and from accessing the benefits under various welfare schemes. The Commission fails to appreciate this position in the backdrop of a clear-cut administrative mechanism being in

place for the purpose of verification as also of re-verification of the claims of belonging to a community recognized as Scheduled Tribe and issue of certificates to the applicants. **The Commission recommends that the Department of Personnel & Training should advise all the State Govts. that they should issue instructions to the district authorities (competent to issue certificates), to the effect that the community certificates should be issued to the applicants within maximum period of 30 days from the date of the receipt of the applications in their offices.**

7.3 Guidelines laid down by Supreme Court for Verification of Community Certificates

7.3.1 Instructions have also been issued for taking not only disciplinary departmental action against employees who are found to have secured employment on the basis of false caste/community certificates but also for taking penal action against them under the relevant provisions of IPC. The Hon'ble 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, Govt. of Maharashtra and Ors. observed that the admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine SC or ST or OBC candidates of the benefits conferred on them by the Constitution. The genuine candidates are also denied admission to the educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the enquiries by the Scrutiny Committees. The Hon'ble Supreme Court further observed that it was necessary that certificates issued were scrutinized at the earliest and with utmost expedition and promptitude and therefore, it was necessary to streamline the procedure for issuance of social status certificates, their scrutiny and their approval. The Hon'ble Court laid down the following guidelines for issuance and verification of the social status certificates:

- (i) The application for grant of social status certificate shall be made to the Revenue Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such officer rather than by the officer at Taluk or Mandal level.
- (ii) The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted or non-gazetted officer with particulars of castes and sub-castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the concerned Directorate.
- (iii) Application for verification of the castes certificate by the scrutiny committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.
- (iv) All the State Governments shall constitute a Caste Scrutiny Committee of three officers, namely, (i) an Additional or Joint Secretary or any officer higher in rank to the Director of the concerned department, (ii) the Director, Social Welfare/ Tribal Welfare/ Backward Class Welfare, as the case may be, and (iii) in the case of Scheduled Caste, another officer who has intimate knowledge in the verification and issuance of the social status certificate. In the case of Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, part of groups of tribes or tribal communities.

- (v) Each Directorate should constitute a vigilance cell consisting of senior Deputy Superintendent of Police in overall charge and such number of Police Inspectors to investigate into the social status claims:
- (a) The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from.
 - (b) The Vigilance Officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian as the case may be. He should examine the school record, birth registration, if any.
 - (c) The Vigilance Officer should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the proforma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the concerned castes or tribes or tribal communities etc.
- (v) (a) On receipt of the report from the Vigilance Officer, the Director concerned, if he finds the claim of social status to be 'not genuine' or 'doubtful' or 'spurious', or 'falsely or wrongly claimed' should issue show-cause notice supplying a copy of the report of the Vigilance Officer to the candidate by a registered post with acknowledgement due or through the head of the concerned educational institution in which the candidate is studying or employed.
- (b) The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case, on request, not more than 30 days from the date of the receipt of the notice.
 - (c) In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/ reply shall convene a meeting of the constituted committee i.e. Scrutiny Committee and the Joint/ Additional Secretary as Chairperson shall give reasonable opportunity to the candidate/ parent/ guardian to adduce all evidence in support of their claims.
 - (d) A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/ it.
 - (e) After giving such opportunity either in person or through counsel, the committee may make such inquiry as it deems expedient and consider the claims vis-à-vis the objection raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.
- (vi) In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are found to be false or fraudulently obtained.

- (vii) Notice contemplated in Para (v) above should be issued to the parents/ guardian also, in case the candidate is minor to appear before the committee with all evidence in his or their support of the claim for the social status certificates.
- (viii) The inquiry should be completed as expeditiously as possible preferably by holding day-to-day proceedings within a period not exceeding two months. If after inquiry, the Caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of conclusion of the proceeding the result of the inquiry to the parent/guardian and the applicant.
- (ix) In case of any delay in finalizing the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.
- (x) The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution (relating to power of the High Courts to issue certain writs). No suit or other proceedings before any other authority shall lie.
- (xi) The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the Writ Petition/Miscellaneous Petition/Matter is disposed of by a single Judge, then no further appeal would lie against that order to the Division bench but subject to special leave under Article 136 of the Constitution.
- (xii) In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/candidate should be prosecuted for making false claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or election to any local body, legislature or the Parliament.
- (xiii) As soon as the findings are recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the concerned educational institution or the appointing authority by Registered Post with acknowledgement due with a request to cancel the admission or the appointment. The principal etc. of the educational institution responsible for making the admission or the appointing authority as the case may be, should cancel the admission/appointment without any further notice to the candidate and debar the candidate from further study or continuance in office in a post.

7.3.2 In view of the increasing incidence of the cases of false community certificates and in pursuance of Government instructions and Supreme Court's directions, many States have initiated steps to set up Scrutiny Committees at District and State levels. Such Committees have been set up in Andhra Pradesh, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Tamil Nadu, Uttar Pradesh and UT of Chandigarh. **The Commission would like to advise the Ministry of Tribal Affairs/Department of Personnel & Training to**

take up the matter with the remaining States/UTs to impress upon them the need for putting in place similar mechanism for the purpose of verification of the community status of such employees claiming to belong to Scheduled Tribes.

7.4 Direction of Delhi High Court for Verification of Certificates

7.4.1 In Civil Writ Petition No.5976 of 2003 filed by Shri Chandreshwar Prasad before High Court of Delhi, the petitioner, inter-alia, alleged that a large number of candidates had obtained employment under Govt. of India and Govt. of NCT of Delhi or its agencies on forged/false Scheduled Tribe (ST) certificates thereby denying the genuine ST candidates of their rights. Preliminary sample verification by CBI revealed that more than 30% of ST certificates presented by candidates were either forged or false. The High Court of Delhi, vide its order dated 5 May, 2005 directed the Govt. of India to devise a credible mechanism to ensure that such people are detected and are dealt with in accordance with law. The Chief Vigilance Officers (CVOs) of Ministries/Departments of GOI have accordingly, been directed by the Department of Personnel & Training to collect ST certificates of all those who have been appointed in the Ministries/Departments or their agencies including CPSUs since 1995 on the strength of ST certificates. These certificates will be sent to the concerned District authorities. viz. District Collector, Deputy Commissioners, District Magistrates etc. for confirming the authenticity of the certificates or to certify that the Government employee actually belongs to a ST, in case records are not available for any reason. The Department of Personnel & Training vide their d.o.letter No.230/08/2005-AVD.II dated 16 June, 2005 have requested the Chief Secretaries of all the States to instruct all the concerned District authorities in their States to take prompt action, whenever they are approached by any Ministry/Department or its agencies including Central PSU regarding verification of ST certificates.

7.4.2 The CBI had taken a meeting on the issue of re-verification of ST certificates on 14 June, 2005 with all the CVOs of the Ministries/Departments of Govt. of India. The following decisions were taken at the meeting for strict compliance-

- (i) The CVOs of the administrative Ministries/Departments should be the nodal officers for their respective Ministries/Departments/PSUs/Banks/other establishments, etc.;
- (ii) The CVOs of the Ministries/Departments will coordinate with the CVOs of PSUs/Banks/establishments of their respective Ministries for verifying ST certificates. The CVO would, however, be free to decentralize their work.
- (iii) The verification shall be conducted by referring the photocopies of the ST certificates available in the files to the concerned issuing authorities like DMs/SDMs;
- (iv) In all those cases where the employees were appointed since 1.1.1995 and their ST certificates were verified as per instructions contained in the OM of Department of Personnel & Administrative Reforms No.36011/16/80-Estt. (SCT) dated 27.2.1981 and it was confirmed by the District authorities that the ST certificates produced were genuine one, there would be no need for re-verification as prescribed in the OM dated May 25, 2005;
- (v) If an ST employee employed on or after 1.1.1995 has left the organization for any reason, his ST certificate need not be subjected to re-verification as per OM of even number dated May 25, 2005;
- (vi) Original ST certificates only in suspect cases are to be seized/collected by the CVO/field units;

- (vii) CVOs of PSUs, Banks and other establishments shall send reports from time to time to the CVOs of their controlling Ministries with copies to the CBI;
- (viii) In cases where the certificates have been issued by the competent authority but the persons concerned do not belong to ST category, the cases would be referred to CBI for further verification/investigation;
- (ix) The CVOs of the Ministries/Departments were required to send an interim report to CBI by 10.7.2005 for filing a Status Report in the Hon'ble High Court.

7.4.3 In realization of the gravity of the matter, the Commission also addressed a letter on 6.7.2005 to all the Central Ministries/Departments referring therein about the inquiry into getting reservation benefits on the basis of bogus ST certificates during 1995-2000 by CBI and requesting them to apprise the Commission of the cases of bogus ST certificates brought to their notice along with action taken/proposed to be taken by them. By another d.o. letter dated 27.7.2005, the Ministries/Departments as also the Govt. of NCT of Delhi and the autonomous bodies in Delhi have been requested to send, inter-alia, the details of employees whose certificates or claims were found to be fake during verification on initial appointment or against whom complaints pertaining to their community certificates have been received as also the action taken by them in this regard.

7.5 Proposal for introducing a Bill to regulate the issue and verification of caste/tribe certificates

7.5.1 The Hon'ble Supreme Court in its judgment dated 18.4.1995 in the case of Director of Tribal Welfare, Govt. of Andhra Pradesh vs. Lavetti Giri & Ors. directed that "The Govt. of India would have the matter examined in greater detail and bring about a uniform legislation with necessary guidelines and rules prescribing penal consequences on persons who flout the Constitution and corner the benefits reserved for the real tribals etc. so that the menace of fabricating the false records and to gain unconstitutional advantages by fake/spurious persons could be prevented."

7.5.2 In view of the above judgment of the Supreme Court, the Govt. of India (Ministry of Social Justice & Empowerment) decided to enact an Act to regulate the issue of community certificates relating to persons belonging to the Scheduled Castes/Scheduled Tribes and Other Backward Classes. A bill seeking to give effect to this decision was drafted by the Ministry of Social Justice & Empowerment and sent to all the State Govts. for their views. The proposed bill seeks to lay down a well- defined procedure for issuing of community certificates for SCs/STs and OBCs, which would be applicable throughout the country. It seeks to provide for a competent authority that would issue the certificate suo moto or on a complaint filed by any person or a case referred to it by an employing authority or head of an educational institution. It also provides for stringent punishment for those who obtain false community certificates and for those responsible for issuing the same. Action for withdrawal of benefits and recovery of payments already made has also been provided for. A copy of the draft bill was also sent to the erstwhile National Commission for Scheduled Castes and Scheduled Tribes requesting for its comments. On detailed examination of the bill in its present form, the erstwhile National Commission for Scheduled Castes and Scheduled Tribes had suggested some amendments in the bill. The main observations and comments of the erstwhile Commission were that the punishment should be higher so as to act as an effective deterrent. The erstwhile Commission also expressed a view that even in the case of elective offices, the false certificate holders should be debarred from contesting for a period of six years apart from facing the punishment prescribed under the law.

7.6 Corrective Steps to be taken to curb Issuance of False/Bogus Community Certificates

7.6.1 In some States there is a practice of issuing temporary community certificates pending issue of permanent certificates for want of field verification. It is also noticed that persons already having ST certificates in the name of their father or grandfather or a family member are also issued temporary certificates. The validity of temporary certificates is generally six months. However, certificate issuing authorities take no step in initiating field inquiries during the validity period. Consequently, in the absence of regular certificates, many genuine ST candidates get debarred from admission in educational and professional institutions or in obtaining appointment in posts and services reserved for them. Through the same practice, some unscrupulous persons are able to grab the seats, reserved for STs, on the basis of temporary certificates. Once a seat is obtained on the basis of temporary certificate, the claimant, who actually does not belong to ST community, goes to the Court of law and obtains stay on cancellation of admission or termination of appointment availed of against ST quota. **The Commission, therefore, recommends that the Department of Personnel & Training may advise all the State Govts./UT administrations to stop forthwith the practice of issuing temporary caste/tribe certificates and that they should issue the community certificates only after full verification of the community status of the applicants within a period of 30 days from the receipt of the application.**

7.6.2 Standing instructions of Govt. of India relating to issue of community certificates and format of community certificates for SCs and STs provide that sons and daughters of a person already having community certificate duly issued by a competent authority and containing all relevant information about the status of the person and address of his ordinary residence should be issued community certificates without fresh inquiry unless there is a doubt about genuineness of that certificate. This is not being followed by the certificate issuing authorities resulting in hardships and harassment of the applicants for such certificates. **The Commission, therefore, recommends that the Department of Personnel & Training should issue necessary instructions to the certificate issuing authorities to carefully follow the instructions of the Govt. of India in the matter to ensure that sons and daughters of persons already having caste/tribe certificates duly issued by a competent authority are issued the community certificates without fresh inquiry. Attention in this, connection, is invited to the position stated in para 6.1.3 and Annex.6.II which is the format suggested to be introduced by DoPT for issuing community certificates in such cases.**

7.6.3 Govt. of India has been revising from time to time the formats for issuing community certificates for persons belonging to SCs/STs. However, all State Govts. are not issuing the community certificates in the prescribed format. For instance, the format for issuing community certificate prescribed by Govt. of Madhya Pradesh, is much different from the format prescribed by Govt. of India, although there are clear instructions issued by GOI that the district level authorities in each State are required to follow the format prescribed by GOI. **The Commission, accordingly, recommends that:**

- (i) **The Ministry of Tribal Affairs and Ministry of Personnel & Training should direct all the State Govts to review the instructions for issue of caste/tribe certificates, issued by them to the district or taluka level authorities and advise them to use standard format for issuing the community certificates as prescribed by GOI.**
- (ii) **The requests for issue of caste/tribe certificates should be entered in a register specifically maintained for the purpose at taluka/district level and that the**

certificate issuing authorities should ensure that the certificates issued by them contain the serial number or the registration number in the register recording requests for issue of caste/tribe certificate, Certificate Book No. & the Certificate No. on the face of the certificates which should bear the clear seal and stamp of the issuing authority.

7.6.4 The community certificates issued to persons are required to be produced for availing various benefits and services extended by State Govt. as well as Central Govt. The certificate issued in the regional language of a State/UT in most of the cases is not likely to be understood by the officials of Govt. of India. This hampers the selection process against reserved seat/vacancy. It may lead to harassment to a genuine tribal person. It may also lead to misuse, by way of wrong interpretation of the words mentioned in local or State language. **The Commission is, therefore, of the view that the Department of Personnel & Training should advise all the State Govts./UT Administrations to issue instructions to the district/taluk level authorities to ensure that the certificates are issued bilingually i.e. in regional language as well as in English or Hindi language with a view to avoid harassment to the certificate holders as also to check their misuse.**

7.6.5 The Constitution Order specifying tribes as Scheduled Tribes under Article 342 (1) of the Constitution in relation to certain States was issued in 1950. Another similar Order was issued in respect of the then Part 'C' States in 1951. For instance, Orders relating to U.P. were issued for the first time in 1967. The status of a person belonging to Scheduled Tribes in U.P. will be determined with reference to his place of ordinary residence as on date of issue of this particular Govt. Order. However, instructions are not clear about the status of persons belonging to a Scheduled Tribe community included for the first time in the list of STs in respect of his/her State/UT. Status of a person in respect of a community included for the first time in an order should be considered with reference to the date of inclusion and not with the date of original Order, which has subsequently been amended to include the said tribal community/communities. In absence of clarity in the amendment orders, tribals in almost all the States are facing difficulties in getting ST certificates after the amendments to original Orders issued in 1950, and 1951. **The Commission is accordingly, of the opinion that the amendments to original Presidential Orders issued under Article 342(1) of the Constitution should invariably include a clause clarifying that the place of ordinary residence in respect of persons belonging to the communities included in the Schedule for the first time or in cases where area restriction has been removed, the place of ordinary residence shall be determined with reference to the date of notification of the amendment to the original Order/Act.**

7.6.6 There can be no doubt that universal availability of all the original Constitution Orders specifying certain communities in respect of a State/UT or part thereof as Scheduled Tribes issued from time to time and the amendments thereto will go a long way not only in facilitating hassle-free issue of community certificates in a proper manner but will also be instrumental in checking issue of false certificates. **The Commission recommends that the Ministry of Tribal Affairs, Govt. of India should put all the original Orders along with the amendments made, on their website and also make available on their website an up-to-date State/UT-wise list of Scheduled Tribes.**

7.6.7 Prevention is always better than cure and if the Government has to effectively combat the menace of bogus/false community certificates, it has to evolve a credible mechanism for pre-appointment verification of the genuineness of the community certificates, in replacement of the existing procedure for post-appointment verification, with a view to strike at the root of the problem. As per the existing instructions and procedure, the candidates including the reserved category candidates recommended for appointment by

the various recruiting agencies are offered appointment by the concerned appointing authorities only after receipt of a satisfactory verification report from the police authorities of the respective State regarding their character and antecedents. **The Commission, therefore, recommends that:**

- (i) **The period during which the character and antecedents of the recommended candidates are got verified from police authorities should also be utilized for verification of the community certificates issued to the candidates claiming to belong to Scheduled Tribes/Scheduled Castes from the district authorities. The concerned appointing authorities which write to the police authorities of the respective State for verification of character and antecedents should also be advised to write simultaneously to the concerned district authorities viz. District Collectors, Deputy Commissioners, District Magistrates etc. for verifying the authenticity of the certificates or to certify that the candidate actually belongs to a Scheduled Tribe in case the records are not available for any reason.**
- (ii) **The appointing authorities should generally issue the offer of appointment on receipt of a satisfactory verification report with respect to the genuineness of the community certificates produced by them in support of their claim of belonging to Scheduled Tribes. However, in case the verification report from the District authorities regarding the authenticity (or otherwise) of the community certificates produced by the candidates along with their applications is not received within a maximum period of six months, offer of appointment on provisional basis may be given to the ST candidate subject to the condition that his probation should not be clear until receipt of verification report [Attention, in this regard is invited to the recommendation in Para 6.6.7 (iv)].**
- (iii) **Pending switch- over to the proposed system (mentioned in the preceding sub-para) of getting the community certificates verified by the issuing authorities prior to the appointment of the candidates, the existing instructions of verifying the community certificates through the issuing authorities after the candidate has been appointed on provisional basis must be completed within a period of six months after the appointment of the candidate and in the event of failure to complete the verification within the specified period, the appointing authority should fix the responsibility on the concerned officer for this failure and take necessary action against the officer/ official held responsible for this failure.**
- (iv) **The fresh candidates recommended for appointment by the recruiting agencies are generally appointed by the appointing authorities initially on a probation of one year or two year, and on satisfactory completion of the probation period, they are appointed on regular/substantive basis. The Commission recommends that in case a candidate belonging to ST category has been appointed against a vacancy reserved for ST quota on provisional basis pending verification of his/her community certificate, his probation should not be cleared until the process of verification of the genuineness of the community certificates produced by them is completed and a satisfactory report received in this regard from the concerned district authorities. This will help the Government to straightaway terminate the services of such candidate/candidates under Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 by giving one month's notice in writing to him/them, in case the community certificate(s) produced by him/them is/are found to be fake/bogus or false.**

- (v) **If the post-appointment verification by the appointing authority through the concerned District authorities/Scrutiny Committee reveals that the candidate had produced a fake/bogus or false certificate and he/she does not belong to a recognized Scheduled Tribe, his/her services (in case he has been appointed on regular/substantive basis), should be dispensed with straightaway without giving him/her any further notice in terms of the procedure laid down by Hon'ble Supreme Court in Civil Appeal No. 5834-Kumari Madhuri Patil, Vrs. Govt. of Maharashtra, 1994 [referred to in Para 7.3.1 (xiii)] The appointing authority should simultaneously also take up the matter with the CBI for the purpose of launching of criminal proceedings under IPC against the fake/false community certificate holders.** It has been generally found that while the services of the fake/false community certificate holders are terminated, no action is taken by the appointing authorities to launch criminal proceedings against them (i.e. false community certificate holders).

7.6.8 It has been found that in some cases the appointing authorities allow the false ST certificate holders to work as a general candidate. This is in violation of the instructions issued by the Government. **The Commission feels that in no case should the false ST certificate holders be allowed to work as a general candidate. The services of such a fake/false certificate holders should be terminated after following the due procedure and the posts/seats so vacated filled from ST for whom it was originally reserved. The Commission would like to advise the Department of Personnel & Training to reiterate these instructions to the appointing authorities to avoid repetition of this type of situations.**

7.6.9 The Ministry of Social Justice & Empowerment, as stated above, has already initiated action to enact an Act to regulate the issue of community certificates relating to persons belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes in pursuance of the observations of the Hon'ble Supreme Court in its judgment dated 18.4.1995 in the case of Director of Tribal Welfare, Govt. of Andhra Pradesh vs. Lavetti Giri & Ors. and, to give effect to this decision, a bill has already been drafted by that Ministry and forwarded to all the State Govts. for their comments. **The Commission recommends that the Ministry of Social Justice & Empowerment should expedite the process of consultation, finalize it and introduce it in the Parliament at an early date after consulting NCST and also advise the State/UT Govts. to initiate action to enact similar legislations to curb the growing menace of issuance of false community certificates.**

7.6.10 **The Commission further recommends that the Department of Personnel & Training should reiterate the instructions that the tribe/community status of a person is determined on the tribe/community status of his/her father and not mother and, therefore, the certificates to be issued to a female applicant are required to be verified with reference to (i) the tribe/community status of her father and not of her husband, and (ii) her place of ordinary residence or that of her father or grandfather and not that of her husband's family.** These instructions further imply that an ST woman marrying a non-ST person will continue to be an ST. Similarly, in case of inter-caste marriage, the children of that family would get the community/tribe status of their father.

7.6.11 National Commission for Scheduled Tribes being a Constitutional body to safeguard the rights and interests of Scheduled Tribes has to be up-to-date about the name of Scheduled Tribes included in or excluded from the list of STs in respect of States/UTs. The Commission, therefore, would like to request the Ministry of Tribal Affairs to ensure that copies of the amendments to the Scheduled Tribes Orders, 1950 specifying Scheduled Tribes

in relation to any State are invariably made available to the National Commission for Scheduled Tribes.

7.7 Hon'ble Supreme Court of India seeks the views of the Commission in Writ Petition (Civil) No.76 of 2003- A.S. Nagendra & Ors. vs. State of Karnataka & Ors. on whether the 'Maaleru' community is the same as 'Maleru' which (i.e. Maleru) finds place in the Constitution (Scheduled Tribes) Order, 1950 issued under Article 342 of the Constitution

7.7.1 In the above- mentioned Writ Petition, the Hon'ble Supreme Court gave the following direction to this Commission:

“According to the petitioners the decision has no bearing at all on the issue raised in this writ petition since the petitioners were not seeking any alteration or amendment of the Presidential order but merely an interpretation of the same”.

In our opinion the appropriate authority to decide this issue, namely, the interpretation of the Presidential Order of 1950, would be the National Commission for Scheduled Castes and Scheduled Tribes established under Art.338 of the Constitution. We may have considered referring the matter to the State Commission for Scheduled Castes and Scheduled Tribes as constituted by the Karnataka State Commission for the Scheduled Castes and Scheduled Tribes Act 2002, had the State Government shown any predisposition to determine the issue as directed by this court's order in the earlier writ proceedings.

We accordingly direct the National Commission to look into the matter and to submit a report before this Court after hearing all affected parties within a period of six months from the date of service of copy of this order. The parties are at liberty to place such material before the National Commission in addition to and over and above the material already referred to, as they may think fit, in order to enable the National Commission to determine the issue correctly.”

7.7.2 The above said Order of the Hon'ble Supreme Court was received in the erstwhile National Commission of Scheduled Castes and Scheduled Tribes on 23.11.2004. In the meanwhile, the erstwhile the National Commission for Scheduled Castes and Scheduled Tribes was bifurcated into two separate Commissions namely- National Commission for Scheduled Castes (NCSC) and National Commission for Scheduled Tribes (NCST) by an Office Order issued on 1.12.2004. The National Commission for Scheduled Tribes was, therefore, required to submit its report to the Hon'ble Supreme Court on or before 22 May, 2005.

7.7.3 In the Writ Petition (Civil) No.76 of 2003- A.S. Nagendra & Ors. vs. State of Karnataka & Ors. the petitioners have, inter-alia, claimed that:

- (i) They are persons who belong to Maleru community which figures in the Constitution (Scheduled Tribes) Order, 1950. They have stated that there is no difference between 'Maaleru' and 'Maleru' and both these represents the same community and both are different merely in respect of spellings and that due to rydhamic pronunciation because of the deerga used in vernacular, some authorities of the Govt. started to spell Maleru in English as Maaleru to denote the deerga by adding one more 'a' to the said word Maleru and that the difference in spellings has led to the prevailing confusion

and harassment on account of both these communities being treated as two separate communities.

- (ii) The Govt. of Karnataka by their order dated.23.1.1986 extended benefits of reservation in admission to educational institutions, and other educational concessions available to Scheduled Tribes to the members of the various communities including those belonging to Maaleru. It was indicated that no penal or disciplinary action shall be taken and prosecution, if any, launched, shall be kept in abeyance and shall not be pursued, inter-alia, against the persons belonging to Maaleru community for having obtained castes certificates as belonging to Maleru community and that suspension orders, if any, issued shall be revoked in such cases and persons retrenched shall be reinstated. It was further stated in that order that it had been decided to constitute a Committee to go into the issues relating to Maaleru and Maleru and certain other communities in order to enable the government to make suitable recommendations to the Govt. of India with regard to these communities.
- (iii) The Govt. of Karnataka's order dated.23.1.1986 (referred to above) granting benefits of reservations in admission to educational institutions and educational concessions was reviewed and withdrawn by the State Govt. of Karnataka vide their order dated.11 March, 2002 . The perusal of this order revealed that the Govt. of India vide their letters dated.10.6.1986 and 17.12.1993 had objected to having extended benefits which were meant for Scheduled Tribes to persons belonging to communities which were not included in the list of STs. It was, inter-alia, stated in these letters that the orders issued by the State Govt. were not in conformity with the provisions of Articles 341 and 342 of the Constitution of India and accordingly, the State Govt. felt the need to withdraw them immediately in the interest of and for the benefit of Scheduled Castes and Scheduled Tribes. It was further stated that it had been brought to the notice of the State Government that due to these orders, the Public Sector Undertakings, Banks, Corporations or Departments were facing difficulties in taking action against employees whose certificates had been proved to be false through verification by the Directorate of Civil Rights Enforcement and that the Hon'ble Supreme Court/High Courts had also granted relief to the Petitioners belonging to these communities on the basis of the said order. Further, it had been brought to the notice of the State Government that although only educational concessions and reservation in admission to educational institutions had been extended to persons of these communities, in actual fact they had obtained employment in Public Sector Undertakings, Banks or Departments etc. based on their ST certificates since the certificates did not make a distinction between education and employment.

7.7.4 The five petitioners in this Writ Petition have sought the following relieves from the Hon'ble Supreme Court of India:-

- (i) Issue a writ of certiorari or any other writ or order or direction quashing the order of the Govt. of Karnataka dated.11 March, 2002.
- (ii) Issue an order or direction or writ of Mandamus directing the Govt. of Karnataka to take immediate steps to comply with the directions of the Hon'ble Supreme Court of India contained in its order dated.6.9.1989 and to take a final decision after detailed examination on the issue of Maleru and Maaleru community or communities.
- (iii) Issue a direction or order or writ of mandamus directing the State Govt. of Karnataka to clarify that factually there is only one community called Maleru

and all other persons possessing the said caste certificates as Maleru or Maaleru should be treated as one and the same community.

- (iv) Grant such other and further relief as the Hon'ble Supreme Court thinks fit under the circumstances of the case.

7.7.5 This was a challenging assignment for the Commission. As the Commission was required to submit its views to the Supreme Court within a period of six months from the date of the service of the copy of the order i.e. 23.11.2004 out of which about a month had already elapsed without any action being taken on account of the exercise being carried out for bifurcation of the erstwhile National Commission for Scheduled Castes and Scheduled Tribes into two separate Commissions namely, the National Commission for Scheduled Castes (NCSC) and the National Commission for Scheduled Tribes (NCST) in regard to which the orders were issued on 1.12.2004. Thus the National Commission for Scheduled Tribes had only five months to complete the entire exercise of hearing all the affected parties and then submit its views to the Hon'ble Supreme Court on or prior to 22 May, 2005. The Commission rose to the demands of the challenge and took up the assignment in all earnestness. The following action was taken by the Commission to address the issue:-

- (i) The Commission requested the Deputy Commissioner, Shimoga District (Karnataka) on 24.12.2004 to send a detailed confidential report on the basis of documentary records available with him and also on the basis of local inquiries on whether the community Maleru which has been recognized as Scheduled Tribe in respect of the State of Karnataka and included in the Constitution (Scheduled Tribes) Order, 1950, and the community Maaleru were two different communities or the one and the same community. It was also indicated in the Commission's letter that if Maleru and Maaleru represented two different communities, the characteristics of the people belonging to Maaleru community including their social and religious habits/customs, language spoken, food habits, standard of living, primitive traits, the extent of isolation from the rest of the society etc. might also be included in the report. A similar letter was sent on the same date (i.e. 24.12.2004) to Deputy Commissioner, Chikmagalur District and Chief Secretary, Govt. of Karnataka. While the reports from DC, Chikmagalur and DC, Shimoga were received on 24 January, 2005 and 2 March, 2005 respectively, the report from the Govt. of Karnataka was received on 31 January, 2005.
- (ii) The Commission held the first hearing with the Petitioners and the Respondents in this case on 10 January, 2005, which was followed by second and third hearings on 9 March and 8 April, 2005 respectively. In all the three hearings, which were chaired by Shri Kunwar Singh, Chairman, National Commission for Scheduled Tribes, the Petitioners were represented through Shri G.V. Chandrashekhar, Advocate in the Supreme Court of India. While one of the Respondents namely, Sahitya Akadmi, Rabindra Bhavan, New Delhi (Respondent No.5) was represented through Sh. C. Jagdish, Advocate, the remaining Respondents appeared in the hearings either in person or through officers nominated by them.
- (iii) Shri Buduru Srinivasulu, Member of the Commission alongwith Shri R.C. Durga, Director, in the Regional Office of the Commission at Bhopal (having jurisdiction over Karnataka), Shri Sohan Lal, Asstt. Director, Commission's Hqrs. at New Delhi and Shri S.B. Muniraju, Investigator, National Commission for Scheduled Castes, State Office at Bangalore visited the Districts of Shimoga and Chikmagalur in Karnataka State to enquire into the ground realities on the basis of on- the- spot enquiries on the status of Maleru and Maaleru. This team spent four days in the two

districts from 22 to 25 January, 2005. This team was assisted by Shri K.S. Mruthyunjay, Deputy Director, Tribal Welfare Department, Govt. of Karnataka and Dr. K.M. Metry, Professor, Department of Tribal Studies, Kannada University, Hampi. The team submitted its report to the Commission on 10 March, 2005.

- (iv) The Registrar General and Census Commissioner of India was also requested by the Commission on the same date i.e. 24.12.2004 to send a detailed report on the moot issue on the basis of records available in his office. The report from RGI was received on 18 January, 2005
- (v) The Commission also requested Director-in-charge, Anthropological Survey of India on 22.12.2004 to send a report on the basis of records available in his office on the status of Maleru and Maaleru, which was received in this Commission on 2 February, 2005.

7.7.6 Based on the submissions made by the Petitioners and the Respondents and documents made available by them during the three hearings, the reports/findings of the State Govt. of Karnataka, Deputy Commissioners, Shimoga and Chikmagalur districts, Office of the Registrar General and Census Commissioner of India, Anthropological Survey of India, Kolkata and the Inquiry Report submitted by the team of the Commission headed by Shri Buduru Srinivasulu, Member, NCST the Commission submitted its 220-page report (including 25 Annexes) to the Hon'ble Supreme Court of India on 13 May, 2005.

FORM OF SCHEDULED CASTE/TRIBE CERTIFICATE

Book No.....Certificate No.....Regn. No. of the application.....

This is to certify that Shri/Smt. /Kumari son/ daughter of
 Shri..... presently r/o House
 No.....Village/town in
 District/ Division of the State/Union Territory of
 belongs to*..... recognized as Scheduled
 Caste/Scheduled Tribe as per the entry at Sl.No.....of the relevant Constitution
 Order and/or the Act** mentioned overleaf. He/She belongs
 to.....religion.

2. Shri/ Smt./ Kumariand/or his/her family
 Ordinarily resided in House No.....Village/town... in
District/ Division of the State/Union Territory of
on the date of issue of notification of the above-referred Order/Act.

Signature.....
 Designation.....
 (With seal of office)

(Signature of the certificate holder)

Place.....

Date.....

- * Indicate the name of the Caste/Tribe recognized as Scheduled Castes or Scheduled Tribes
 ** Write the name of the Constitution Order and/or the Act under which the Caste/Tribe was
 notified / added as Scheduled Caste/Tribe e.g. The Constitution (Scheduled Tribes) Order,
 1950. (Please see the list overleaf)

Note: The term “ Ordinarily resides “ used here will have the same meaning as in Section 20 of
 the Representation of the Peoples Act, 1950.

ANNEX-7.II

FORM OF SCHEDULED CASTE/TRIBE CERTIFICATE

[For those who have already certificate issued in the name of his/her fathers or in the name of his/her mother (in respect of communities which follow matriarchical system of family)]

Book No.....Certificate No.....Regn. No. of the application.....

This is to certify that Shri/Smt. /Kumari son/ daughter of
Shri..... presently r/o House
No..... Village/town in
District/ Division of the State/Union Territory of belongs to*.....
.....recognized as Scheduled Caste/Scheduled Tribe as per the entry at
Sl.No.....of the relevant Constitution Order and/or the Act** mentioned overleaf.
He/She belongs to.....religion.

2. This Certificate is issued on the basis of the Scheduled Caste/ Scheduled Tribe* Certificate, issued to Shri/Smt.(Father/ Mother * of Shri/Smt./ Kumari) r/o of House No.....in Village/Town in District/Division of the State/Union Territory of..... who belongs to*..... which is recognized as a Scheduled Caste/ Scheduled Tribe in relation to the State/Union Territoryvide the above-referred Order/Act issued by the***

3. Shri/ Smt./ Kumariand/or his/her family ordinarily resided in H.No.....in village/Town.....in
District/ Division of the State/Union Territory ofon the date of issue of Order/Act referred to above.

Signature.....
Designation.....
(With seal of office)

(Signature of the certificate holder)

Place.....

Date.....

* Indicate the name of the Scheduled Caste/Scheduled Tribe

** Write the name of the Constitution Order or the Act under which the Caste/Tribe was notified as Scheduled Caste/Tribe e.g. The Constitution (Scheduled Castes) Order, 1950. (Please see the list overleaf)

*** Write the name of the issuing authority

Note: The term “ Ordinarily resides “ used here will have the same meaning as in Section 20 of the Representation of the Peoples Act, 1950.

CHAPTER -8**CRIME AND ATROCITY ON THE SCHEDULED TRIBES****8.1 Introduction**

8.1.1 The Constitution of India seeks to secure for all its citizens, among other things, social justice, equality of status and opportunity and dignity of the individual. A segment of country's population belonging to Scheduled Tribes, who inhabit in remote areas, have not been able to take full advantage of the various development programmes and continue to live in economic backwardness and, on that count, subjected to exploitation by various unscrupulous elements. The strategy of the State is to secure distributive justice, allocation of specific and enhanced resources to support programmes for their social, economic and educational advancement to secure them justice and to protect them from exploitation. Article 46 of the Constitution lays down that the State shall protect the Scheduled Castes and the Scheduled Tribes from social injustice and all forms of exploitation. With a view to give statutory basis to social safeguards provided in the Constitution special laws have been enacted for giving protection to these weaker sections of the society and to protect them from all forms of atrocities and discrimination they have been traditionally subjected to.

8.1.2 In order to give effect to the provisions of Article 17, which abolishes the 'Untouchability' and in practice in any form, the Parliament enacted the 'Untouchability' (Offences) Act, 1955. The 'Untouchability' (Offences) Act, 1955 was amended in 1976 to make its provisions more stringent and was renamed as the Protection of Civil Rights Act (PCR Act), 1955. The Government of India also notified PCR Rules, 1977 to carry out the provisions of the PCR Act, 1955. It was, however, realized over a period of time that the deterrent penal provisions contained in the Protection of Civil Right Act, 1955 and the Indian Penal Code, proved inadequate in curbing the atrocity on the members of Scheduled Castes and Scheduled Tribes. It was observed that this scenario was mainly due to the fact that the cases of atrocities on members of Scheduled Castes and Scheduled Tribes were not specifically covered under the provisions of the PCR Act, 1955 as well as the Indian Penal Code. In order to overcome this deficiency, the Parliament passed another important Act in 1989 to empower the Government to take specific measures to prevent atrocities on SCs and STs. This Act is known as the Scheduled Castes and the Scheduled Tribes Prevention of Atrocities (PAO) Act, 1989. This Act came into force from 31 January, 1990. For carrying out the provisions of the SCs & STs (POA) Act, 1989, the SCs & STs (PAO) Rules were notified in 1995. The provisions of this Act and Rules have been referred in more details in the subsequent paragraphs.

8.1.3 The Commission has observed that despite special laws enacted to protect the members of Scheduled Tribes as also of Scheduled Castes, there is no substantial reduction in the number of incidences of atrocities on them. This is a matter of grave concern for the Commission. While analyzing the incidence of crime on the members of Scheduled Tribes under the existing system of criminal justice administration, one has to keep in mind that the number of incidences appearing in official reports represent only the tip of the iceberg and the reality is much vaster and more complex. Most Scheduled Tribes, even after 58 years of independence, are still residing in isolated pockets and are economically backward and illiterate and, as a result thereof, the incidences of crime against them are not being reported, the one which are reported are not always recorded, and those which are recorded are often minimized. It is also a truth that whenever they protest against the deprivation of their inherent rights and safeguards provided in the Constitution in respect of land, forest, water,

minimum wages, indebtedness etc., they are subjected to violence against their persons and the property.

8.1.4 Some of the major factors which contribute to commission of crime on Scheduled Tribes have been referred to in the following excerpts from the Dalit Manifesto, National Action Forum for Social Justice, New Delhi.

“STs, proud masters of their traditional territory, are being progressively deprived of their lands and have, in many cases, been reduced to minorities in their own homelands. This is a historical process that has been going on for centuries and has acquired greater momentum in the decades after Independence. The lands that still remain with them are poorly developed, are rarely irrigated and are unintegrated or poorly integrated with the market, leaving the field open to exploiters and middlemen from outside. Irrigation projects that have been undertaken by Governments in the tribal areas are programmes for creating dams in tribal areas, submerging tribal lands, scattering their settlements and people to the winds and taking water to non-tribals outside the tribal areas; the plan expenditure incurred on such projects are gratuitously and unabashedly shown as a part of the Tribal Sub-Plan, which has also been routinised and trivialized. No wonder an increasing number of STs are forced into agricultural wage labourers and the proportion of STs among agricultural wage labourers has increased in recent decades. Traditional tribal rights in forests which they have been enjoying through traditional symbiotic relationship between tribes and forests, were unilaterally abrogated and abridged by the colonial government, an abrogation and abridgement continuing even after Independence, making the STs dependent on others for their elementary requirements and for their very survival. In the trading of Minor Forest Produce (MFP) in the collection of which tribals are specialized, they are being exploited both by private trade as well as by cooperatives/corporations set up by Governments. Availability of MFP, which is the main or a substantial source of livelihood for a large percentage of STs is fast shrinking.”

8.2 Incidence of Crimes against Scheduled Tribes

8.2.1 As reported by States/UTs, and compiled and analyzed by National Crime Records Bureau, Government of India, Ministry of Home Affairs, the incidence of crimes including atrocities committed on the members of a Scheduled Tribe by non-Scheduled Castes and non-Scheduled Tribes during the year 2001 to 2003 at all India level is as follows:

S. No.	Year	Incidence of Crime
1.	2001	6,217
2.	2002	6,774
3.	2003	5,889
		Average No. 6,293

8.2.2 An analysis of the reported crimes including atrocities committed on the members of the Scheduled Tribe reflects minor fluctuations over the average of 6,293 every year which by itself is alarming and, therefore, there is a need to take effective measures to prevent the crime on these vulnerable sections of the society.

8.3 Classification of Crimes

8.3.1 The magnitude of crime including atrocities against the members of the Scheduled Tribe at all India level according to the nature of crimes committed on them is as given in the following Table:-

Year	Nature and number of crimes					
	Murder	Grievous Hurt	Rape	Arson	Other offences	Total
(1)	(2)	(3)	(4)	(5)	(6)	(7)
2001	167	756	573	108	4,613	6,217
2002	189	788	597	58	5,142	6,774
2003	185	790	551	38	4,325	5,889
Average	180	778	574	68	4,693	6,293

Source: Crime in India-2001, 2002 & 2003 National Crime Records Bureau, MHA, GOI.

8.3.2 The nature of crime-wise registered cases (given in the above Table) indicates that there is an urgent need to take immediate effective preventive measures to curb the increasing trend of the heinous offences of murder, grievous hurt and rape. Micro level study needs to be carried out by the law and order enforcing machinery about the causative factors followed with taking appropriate remedial measures to control and reduce the heinous offences against the members of the Scheduled Tribe.

8.4 State-wise incidence of Crimes on Scheduled Tribes

8.4.1 An in-depth analysis of the State-wise crimes committed against the members of Scheduled Tribe reveals that maximum number of the registered cases of crime are from the States under fifth Schedule. This phenomenon is particularly disturbing as these States have special responsibility to protect and regulate the tribal rights over land, forest, water and indebtedness etc. and take specific measures to bring the Scheduled Tribes at par with other sections of the society. A comparative statement of the number of crimes on the **members of Scheduled Tribes** between Fifth Schedule and non-Fifth Scheduled States is as given Table below:-

States/UTs	Year-wise incidence of crimes			% age to total number of crimes in the country		
	2001	2002	2003	2001	2002	2003
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Fifth Schedule States						
Andhra Pradesh	512	525	571	8.2	7.8	9.7
Himachal Pradesh	04	03	12	0.1	0.0	0.2
Gujarat	309	340	241	5.0	5.0	4.1
Orissa	734	480	484	11.8	7.1	8.2
Rajasthan	1023	930	912	16.5	13.7	15.5
Maharastra	238	271	217	3.8	4.0	3.7
Chhattishgarh	486	508	774	7.8	7.5	13.1
Jharkhand	282	124	108	4.5	1.8	1.8
Madhya Pradesh	1535	2504	1779	24.7	37.0	30.2
Sub-Total	5123	5685	5098	82.4	83.9	86.5
Non-Scheduled States/UTs	1094	1089	791	17.6	16.1	13.5
Grand Total	6217	6774	5889	100	100	100

Source: Crime in India-2001, 2002 & 2003 National Crime Records Bureau, MHA, GOI.

8.4.2 Similar pattern also emerges in **cases of murder** in which the victims were from the **Scheduled Tribes** as will be seen from the following Table:-

States/UTs	Year-wise incidence cases of murder			% age to the total number of murder cases in the country		
	2001	2002	2003	2001	2002	2003
(1)	(2)	(3)	(4)	(5)	(6)	(7)
5th Schedule States						
Andhra Pradesh	04	02	09	2.4	1.1	4.9
Himachal Pradesh	00	00	01	0.0	0.0	0.5
Gujarat	07	16	05	4.2	8.5	2.7
Orissa	04	10	10	2.4	5.3	5.4
Rajasthan	14	10	11	8.4	5.3	5.9
Maharastra	06	10	08	3.6	5.3	4.3
Chhattishgarh	18	12	13	10.8	6.3	7.0
Jharkhand	20	11	32	12.0	5.8	17.3
Madhya Pradesh	28	49	34	16.8	25.9	18.4
Sub-Total	101	120	123	60.6	63.5	66.4
Non- Fifth Scheduled States	66	69	62	39.4	36.5	33.6
Grand Total	167	189	185	100	100	100

Source: Crime in India-2001, 2002 & 2003 National Crime Records Bureau, MHA, GOI

8.4.3 It has been found that more than 90% of **rape cases** in which the victims were from the Scheduled Tribes are reported from the Fifth Schedule States. It is further seen that maximum cases of rape during this period (i.e.2001-2003) were reported from the States of Madhya Pradesh followed by Chhattishgarh and Maharastra. The incidence of rape cases in the Fifth Schedule States as compared to non-Fifth Scheduled States are as follows:-

States	Year-wise incidence of rape cases			% age to the total number of rape cases in the country		
	2001	2002	2003	2001	2002	2003
(1)	(2)	(3)	(4)	(5)	(6)	(7)
5th Schedule States						
Andhra Pradesh	21	24	32	3.7	4.0	5.8
Himachal Pradesh	00	01	02	0.0	0.2	0.4
Gujarat	23	18	20	4.0	3.0	3.6
Orissa	28	14	20	4.9	2.3	3.6
Rajasthan	45	39	26	7.9	6.5	4.7
Maharastra	60	48	34	10.5	8.0	6.2
Chhattishgarh	87	67	103	15.2	11.2	18.7
Jharkhand	22	13	14	3.8	2.2	2.5
Madhya Pradesh	238	312	263	41.5	52.3	47.7
Sub-Total	524	536	514	91.5	89.7	93.2
Non- Scheduled States	49	61	37	8.5	10.3	6.8
Grand Total	573	597	551	100	100	100

Source: Crime in India-2001, 2002 & 2003 National Crime Records Bureau, MHA, GOI

8.5 Disposal of Cases by the Police

8.5.1 Once a cognizable crime is committed on the members of Scheduled Tribe and reported to the Police Station, FIR is registered and the investigation starts. Police investigates and disposes of the cases as per the provisions laid down in Cr.P.C. It has, however, been noticed that the process of investigation takes unconscionably long time, which is generally attributable to all-out efforts being made by the accused and other

unscrupulous elements connected with them to derail it. There can be no denying that a prompt and quality investigation is the foundation of the effective Criminal Justice System as justice delayed is justice denied. The Commission, therefore, is of the considered view that it is essential that the investigative system is not only strengthened and streamlined but also sensitized to perceive the overriding need that the guilty is punished within a reasonable period of time especially when the victims belong to the most vulnerable sections of society such as Scheduled Tribes. The disposal of cases by the police relating to crimes committed against Scheduled Tribes during the period from 2001 to 2003 is as given in the following Table:-

Year	Total number of cases of crime	Number of cases investigated and ended in, with % ages in brackets to the total			Number of cases pending investigation
		Final Report	Chargesheet	Total	
(1)	(2)	(3)	(4)	(5)	(6)
2001	7246 (100)	1200 (16.6)	4925 (68.0)	6125 (84.6)	1121 (15.4)
2002	7842 (100)	1170 (14.9)	5527 (70.5)	6697 (85.4)	1145 (14.6)
2003	7120 (100)	998 (14.0)	4793 (67.3)	5791 (81.3)	1329 (18.7)
Average	7403 (100)	1123 (15.2)	5082 (68.6)	6205 (83.8)	1198 (16.2)

Source: Crime in India-2001, 2002 & 2003 National Crime Records Bureau, MHA, GOI.

Note: Final report in column (2) cases includes cases withdrawn and also the cases in which the charges were found false/based on wrong facts.

8.5.2 The disposal of crime cases by the police reveals that on an average in 83.8% cases, the police had completed the investigation and in 68.6% cases submitted the charge-sheets in the Courts. After investigation, around 15% cases were found false or could not be proved due to incorrect facts or lack of sufficient evidence.

8.6 Disposal of Cases by the Courts

8.6.1 As per the existing procedure, once the charge-sheet is submitted in the Court, the trial of the case begins. After the completion of the trial, the Court on the basis of evidences either convict the accused or acquit. The status of the disposal of cases by the Courts for the years 2001 to 2003 **in respect of members of Scheduled Tribes** is as given in the following Table:-

Year	Number of cases filed in the Courts	Number of cases compounded or withdrawn	Number of cases disposed of and ended in			Pending trial
			Acquittal	Conviction	Total	
(1)	(2)	(3)	(4)	(5)	(6)	(7)
2001	18896 (100)	275 (1.5)	2335 (12.4)	860 (4.6)	3195 (17.0)	15426 (81.5)
2002	20930 (100)	302 (1.4)	2316 (11.1)	1053 (5.0)	3369 (16.1)	17259 (82.5)

2003	21680 (100)	361 (1.7)	2640 (12.2)	1027 (4.7)	3667 (16.9)	17652 (81.4)
Average	20502 (100)	313 (1.5)	2430 (11.9)	980 (4.8)	3410 (16.7)	16779 (81.8)

Source: Crime in India-2001,2002 & 2003 National Crime Records Bureau, MHA, GOI

Note: Figures in parentheses indicate percentage to total number of cases of crimes

8.6.2 The above Tables which gives the number of cases disposed of by the Courts reveals that on an average of 16.7% cases were decided by the Courts in each year out of which 11.9% ended in acquittal whereas only 4.8% ended in conviction. It further shows that the conviction rate is very low. Comparative status of conviction rate based on the total number of cases decided by the Courts in respect of the cases in which the victims are/were from general categories on the one hand and Scheduled Castes and Scheduled Tribes on the other is as given the Table below:-

Year	Conviction Rate		
	General	Scheduled Caste	Scheduled Tribe
(1)	(2)	(3)	(4)
2001	40.8	34.1	26.9
2002	40.6	32.1	31.3
2003	40.1	28.5	28.0
Average	40.5	31.6	28.7

Source: Crime in India-2001,2002 & 2003,National Crime Records Bureau, MHA, GOI.

8.6.3 It is clear from the above Table that the conviction rate of the cases decided by the Courts in respect of the crimes committed against Scheduled Tribes is low as compared to the general as well as Scheduled Castes.

8.7 Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989

8.7.1 The term “**Atrocity**” was for the first time defined in Section 2(1)(a) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 as an offence punishable under Section 3 of the said Act. Section 3(1) says that whoever, not being a member of Scheduled Caste or Scheduled Tribe commits offences specified from Section 3(1) (i) to 3 (1)(xv) on the members of the Scheduled Castes or Scheduled Tribes shall be punishable with imprisonment for a term, which shall not be less than six months but which may extend upto five years and with fine. Similarly, Section 3(2) of the said Act specifies offences from sub-sections (i) to sub-section (vii) with varying degree of punishment and fine for different types of crimes committed by non-SC/ST persons over SCsSTs.

8.7.2 These offences which mainly relate to the patterns of behaviour and shatter the self-respect and self-esteem of the Scheduled Castes or the Scheduled Tribes broadly are denial of economic rights and democratic honour, assault and/ or sexual exploitation of women, damage and/or destruction of property and deliberate abuse of the legal and /or administrative processes. Heinous offences against person and property and willful negligence by public servants in performing their duties required to be performed under the Act are also covered. An offence likely to be committed under this Act by a person in any

area included in 'Scheduled Areas', or 'tribal areas', as referred to in Article 244 of the Constitution is also covered.

8.7.3 The offences under the Act are cognizable, non-bailable and non-compoundable. Provisions of Section 438 of the Criminal Procedure Code relating to anticipatory bail is not applicable in relation to any case involving the arrest of any person on an accusation of having committed an offence under the Act. Similarly, provisions of Section 360 of the Criminal Procedure Code relating to parole are also not applicable to any person above the age of eighteen years who is found guilty of having committed an offence under the Act. The normal punishment under the Act is imprisonment for a term, which shall not be less than six months and which may extend up to five years and with fine. Minimum punishment of imprisonment is for a term of one year for a person convicted of an offence for a second-time. The offences under Indian Penal Code punishable upto ten years of imprisonment are life imprisonment under the Act in addition to fine.

8.7.4 The SCs & STs (POA) Act, 1989 specifically provides for setting up of Special Courts for speedy trial, Special Public Prosecutors for the purpose of conducting cases in the Courts and, for an offence in the 'Scheduled Areas' or 'tribal areas', declaration of an area to be an area prone to atrocities, and for taking preventive and punitive action by the district administration in these areas. There are also provisions for providing legal aid, travelling and maintenance expenses to witnesses during investigation and trial, economic and social rehabilitation of the victims of the atrocities, appointment of officers for initiating or exercising supervision over prosecutions, setting up of committees, periodic survey and identification of the atrocities prone areas which are mandatory to be carried out by the States. Section 21 (4) provides that the Central Government shall place on the Table of each House of Parliament every year a report on the measures taken by itself and by the State Governments. Section 22 of the Act provides that no suit, prosecution or other legal proceedings shall lie against the central Government or against the State Government or any officer or authority of Government or any other person for anything which is in good faith done or intended to be done under this Act.

8.8 Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Rules, 1995

8.8.1 The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 assign certain duties to be performed by the State Government and certain duties to be performed by the District Administration. The duties assigned to the State Governments are:

- (i) to take precautionary and preventive measures such as identifying the atrocity prone areas, constituting a high level state committee, District & divisional committees for assisting the Govt. in implementation of the provision of the Act, setting up vigilance and monitoring committee and setting up awareness centres, organizing workshop in identifying the areas to educate the SC/ST persons about their rights etc.
- (ii) to prepare a panel of advocates on the recommendation of the District Magistrates for conducting cases in the Special Courts;
- (iii) to set up Scheduled Castes and Scheduled Tribes Protection Cell at the State Headquarters;
- (iv) to nominate a Nodal Officer of the level of Secretary for coordinating the functioning of the District Magistrates, Superintendents of Police and Scheduled Castes and Scheduled Tribes Protection Cell;

- (v) to make necessary provision in the Annual Budget for providing relief and rehabilitation facilities to the victims of atrocities;
- (vi) to prepare a model contingency plan for implementing the provisions;
- (vii) to set up a Vigilance and Monitoring Committee at State level under the chairmanship of the Chief Minister;
- (viii) to ensure that the officers appointed in atrocity prone areas have the right aptitude and understanding of the problems of SCs and STs; and
- (ix) to forward a report before 31 March to the Central Government about the measures taken for implementing provisions of this Act.

8.8.2 As stated above, the SCs & STs (POA) Rules, 1995 also assign certain duties to be performed by the District Administration. The duties assigned to the District Magistrate are:

- (i) to visit the place of occurrence and assess the extent of loss and damage to person and property;
- (ii) to ensure immediate relief and rehabilitation; to provide information in respect of relief and rehabilitation to the Special Court;
- (iii) to provide services of an eminent advocate to contest the case if desired by the victim; and
- (iv) to set up a Vigilance and Monitoring Committee in the District to review the implementation of the provision of the Act and Rules framed thereunder.

8.8.3 Similarly, the duties assigned to the District Superintendent of Police under the SCs & STs (POA) Rules, 1995 are:

- (i) to visit the place of occurrence;
- (ii) to deploy such police force in the area and take such other preventive measures as deemed necessary;
- (iii) to appoint an investigating officer not below the rank of Deputy Superintendent of Police after taking into account his/her past experience, sense of ability and justice; and
- (iv) to ensure the completion of investigation within 30 days etc.

8.9 State-wise number of Atrocities on STs

8.9.1 In pursuance of duties assigned under Clause (5) of the Article 338(A) of the Constitution, the National Commission for Scheduled Tribes, henceforth referred to as the Commission, monitors the working of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the Rules, 1995 in respect of the atrocities on the members of Scheduled Tribes. Accordingly, the Commission had addressed Home Secretaries and Directors General of Police of all the States/UTs to furnish details of the status of the atrocity cases registered and disposed of by Police and by the Courts for the years 2002 to 2004 in which the victims were Scheduled Tribes. The information furnished by the States/UTs is as given in the Table below:-

State/UT	Number & percentage of atrocity cases, 2002-2004					
	2002	% age	2003	% age	2004	% age
(1)	(2)	(3)	(4)	(5)	(6)	(7)
5th Schedule States						
Andhra Pradesh	279	7.1	348	9.5	299	7.9

Himachal Pradesh	01	0.0	02	0.1	02	0.1
Gujarat	160	4.1	136	3.7	149	3.9
Orissa	307	7.8	256	7.0	316	8.3
Rajasthan	930	23.4	912	24.8	1031	27.2
Maharashtra	252	6.4	223	6.1	233	6.1
Chhattishgarh	493	12.5	457	12.4	433	11.4
Madhya Pradesh	1424	36.1	1235	33.6	1191	31.4
Sub-Total	3846	97.4	3569	97.2	3654	96.3
Non-5th Schedule States/UTs						
Bihar	NA	0.0	NA	0.0	14	0.4
Kerala	67	1.2	57	1.6	83	2.2
Manipur	01	0.0	01	0.0	00	0.0
Tamilnadu	05	0.1	11	0.3	14	0.4
Uttaranchal	03	0.1	03	0.1	10	0.3
West Bengal	20	0.5	13	0.4	13	0.3
Delhi	05	0.1	08	0.2	05	0.1
A&N Islands	01	0.0	01	0.0	01	0.0
D&N Haveli	00	0.0	08	0.2	00	0.0
Daman & Diu	00	0.0	01	0.0	01	0.0
Sub-Total	102	2.6	103	2.8	141	3.7
Grand Total	3948	100	3672	100	3795	100

- Note:** (i) States/UTs of Arunachal Pradesh, Assam, Haryana, J&K, Goa, Meghalaya, Mizoram, Nagaland, Punjab, Sikkim, Tripura, Pondicherry and Lakshadweep have not reported any case of atrocity on the members of the Scheduled Tribe.
- (i) States of Jharkhand(Fifth Schedule State) and Karnataka(non-Fifth Schedule State) have not yet furnished the information.
- (ii) The percentage is to the total number of cases of atrocities in the country.

8.9.2 The atrocity cases reported by the States/UTs reveal that on an average 97% of the cases are related to Fifth Schedule States which is a matter of deep concern. In these States, the strategy of protection and all-round development of Scheduled Tribes is the special responsibility of the Central and the State Governments by virtue of being included in the Fifth Schedule. Paragraph 5(1) of the said Schedule authorizes the Governor to 'direct by public notification that any particular Act of Parliament or of the Legislature of the State shall not apply to Scheduled Area or any part thereof or shall apply to the said area subject to such exceptions and modifications as he may specify.' Paragraph 5(2) authorizes the Governor to 'make regulation for peace and good government in the Scheduled Area of the State and, in particular, in respect of matters specified therein.' The Governor's power of making Regulation under paragraph 5(2) is a plenary power of legislation and this power embraces the utmost power to make laws and to apply them. Under Article 339(ii) and the Fifth Schedule, the executive power of Union Government extends to giving of direction in relation to welfare programmes and administration of the Scheduled Areas. It is a very sad situation that in spite of the Constitutional protections, the Scheduled Tribes residing in Fifth Schedule States are being subjected to atrocities. It needs an indepth study to find out the causative factors responsible for the atrocities on the Scheduled Tribes in these Schedule States. The National Commission for Scheduled Tribes accordingly, proposes to undertake a socio-economic study of the Scheduled Tribes including causative factors responsible for

atrocities on them through eminent educational institutions located in the Fifth Schedule States, Tribal Research Institutes etc.

8.10 Classification of Atrocities committed on Scheduled Tribes

8.10.1 While assessing the magnitude of atrocities on the members of the Scheduled Tribe, it is essential to examine the nature of atrocities committed on them by non-SCs and non-STs. The nature of atrocities committed on the members of the Scheduled Tribes during 2004 is given below:

States/UTs	Nature of atrocities and number of cases					
	Murder	Grievous Hurt	Rape	Arson	Others	Total
(1)	(2)	(3)	(4)	(5)	(6)	(7)
5th Schedule States						
Andhra Pradesh	03	32	23	03	130	191
Himachal Pradesh	00	00	01	00	01	02
Gujarat	06	14	28	02	99	149
Orissa	04	15	30	01	266	316
Rajasthan	15	36	25	08	947	1031
Maharashtra	06	08	39	10	170	233
Chhattishgarh	16	08	105	04	300	433
Madhya Pradesh	39	35	272	15	830	1191
Sub-Total	89(96.7)	148(95.5)	523(95.4)	43(95.6)	2743(96.3)	3546(96.2)
Non-Scheduled States/UTs						
Bihar	00	02	00	00	12	14
Kerala	02	02	18	02	59	83
Tamilnadu	00	00	02	00	12	14
Uttaranchal	00	03	00	00	07	10
West Bengal	01	00	04	00	08	13
Delhi	00	00	00	00	05	05
A&N Islands	00	00	00	00	01	01
Daman & Diu	00	00	01	00	00	01
Sub-Total	03(3.3)	07(4.5)	25(4.6)	02(4.4)	104(3.7)	141(3.8)
Grand Total	92(100)	155(100)	548(100)	45(100)	2847(100)	3687(100)

- Note:** (i) States/UTs of Arunachal Pradesh, Assam, J&K, Goa, Meghalaya, Mizoram, Nagaland, Punjab, Sikkim, Tripura, Pondicherry and Lakshadweep have not reported any case of atrocity on the members of the Scheduled Tribes;
- (ii) States of Jharkhand and Karnataka have not yet furnished the information;
- (iii) Figures in parentheses indicate percentage to total;
- (iv) The difference in the total number of atrocity cases for the year 2004 (i.e. 3546) in respect of 5th Schedule States compared to the figure given in the table below para 7.9.1 for the same year is on account of difference in the data furnished by the Govt. of Andhra Pradesh.

8.10.2 It will be seen from the above that as in the case of atrocities in general (paras 7.9.1 & 7.9.2), 96.7% of Murder cases, 95.5% of Grievous Hurt cases, 95.4% of rape cases in the year 2004, which are covered under POA Act, are reported from the Fifth Schedule States.

8.11 Disposal of Atrocity Cases by the Police

8.11.1 The number of atrocity cases registered and investigated by the Police during the years 2002 to 2004 is as follows:

Year	Number of atrocity cases				
	Number of cases Registered	Chargesheet submitted	Final Report (Closed)	Total (3+4)	Pending investigation
(1)	(2)	(3)	(4)	(5)	(6)
2002	3948 (100)	2952 (74.8)	816 (20.6)	3768 (95.4)	180 (4.6)
2003	3672 (100)	2802 (76.3)	696 (19.0)	3498 (95.3)	174 (4.7)
2004	3781 (100)	2523 (66.7)	694 (18.4)	3217 (85.1)	564 (14.9)

Note:

- (i) The States/UTs of Arunachal Pradesh, Assam, J&K, Goa, Meghalaya, Mizoram, Nagaland, Punjab, Sikkim, Tripura, Pondicherry and Lakshadweep have not reported any case of atrocity on the members of Scheduled Tribe.
- (ii) The States of Bihar, Jharkhand and Karnataka have not yet furnished the information.

8.11.2 An analysis of the cases with the Police for investigation reveals that on an average in 92% of the cases, the police completed investigation out of which in 73% of the cases, the chargesheet were issued and in 27% cases, the final reports had been submitted in the Court. The cases in which final report was submitted included the cases closed due to false reporting/wrong facts. Atrocity cases are being investigated by a Police Officer not below the rank of a Deputy Superintendent of Police and supervised by Addl. Superintendent of Police/ District Superintendent of Police. A Deputy Superintendent of Police is a supervisory officer of the cases investigated by the Police Station level officers as Circle Officers who also perform multifarious duties relating to law and order etc. and as a result quite often the important work of expeditious investigation gets relegated in priority. The erstwhile NCSCST had accordingly submitted a proposal to the Ministry of Social Justice & Empowerment for amending the SCs & STs (POA) Rules, 1995 so that the Police Inspectors apart from Deputy Supdts. of Police were also empowered to carry out the investigations. This proposal was also included in the Sixth Annual Report of the erstwhile NCSCST for the years 1999-2000 and 2000-2001. It was stated that during the conference of Home Secretaries and Senior Police Officers held in December 1996, the consensus was that in view of dearth of Dy. S.P. level officers in most of the States, it was difficult to entrust the investigation to only Dy. S.P. level officers. The Ministry of Social Justice & Empowerment was requested to expedite their decision on this issue. However, as on date, no action seems to have been taken by the Ministry of Social Justice & Empowerment on the erstwhile Commission's proposal. **The National Commission for Scheduled Tribes accordingly reiterates the earlier recommendation of the erstwhile NCSCST that suitable amendments may be carried out in Rule 7 (1) and also Rule 5 (3) of the SCs and STs (POA) Rules, 1995 to empower, apart from the Deputy Supdts. of Police, the Police Inspectors also to expedite the investigations of atrocity cases/complaints.**

8.11.3 The National Commission for Scheduled Tribes during its visits to the States/UTs has observed that there is need to sensitize the police machinery from the level of

in-charge of Police Station to the District Superintendent of Police towards the socio-economic background of the Scheduled Tribe victims of atrocities and also towards the provisions of the SCs & STs (POA) Act, 1989 and Rules, 1995 at a regular interval. All the States/UTs have accordingly, been requested to organize well-structured professional training programmes/ workshops for the Police Officers at regular intervals.

8.12 Disposal of Atrocity Cases by the Special Courts

8.12.1 The Preamble of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, inter alia, provides for a Special Court for speedy trial of the offences of the atrocities, the objective being to get justice to the victims of the atrocities within a shortest period of trial. The status of disposal of cases by the Special Courts designated/set up under the Act is as follows:

Year	Number of atrocity cases				Pending investigation
	With the Courts	Decided by the Courts and ended in			
		Conviction	Acquittal	Total	
(1)	(2)	(3)	(4)	(5)	(6)
2002	9086 (100)	517 (18.9)	2218 (81.1)	2735 (30.1)	6351 (69.9)
2003	8762 (100)	416 (17.2)	2001 (82.8)	2417 (27.6)	6345 (72.4)
2004	8712 (100)	397 (14.7)	2297 (85.3)	2694 (30.9)	6018 (69.1)
Average	8853 (100)	443 (16.9)	2172 (83.1)	2615 (29.54)	6238 (70.46)

Note:

- (i) States/UTs of Arunachal Pradesh, Assam, Chandigarh, Goa, J&K, Lakshadweep, Meghalaya, Mizoram, Nagaland, Punjab, Pondicherry, Sikkim and Tripura have not reported any case of atrocity on the members of the Scheduled Tribe.
- (ii) Variation in the information furnished by the States of Andhra Pradesh, Kerala and Maharastra needs to be reconciled.
- (iii) States of Bihar, Jharkhand and Karnataka have not yet furnished the information.
- (iv) Figures in brackets indicate the percentage to the total number of atrocity cases on Scheduled Tribes in the country.

8.12.2 The success of working of the SCs and the STs (POA) Act, 1989 and Rules, 1995, inter alia, depends on the success of conviction of the offenders who have committed atrocity on the Scheduled Tribes. The conviction rate, however, at all India level on an average is only 17% of the atrocity cases decided by the Special Courts. The acquittal rate is, on an average, is 83%, which is very high. This is in spite of the specific provisions for Special Investigating Officer, Special Public Prosecutor, Special Court and special amount of TA & DA to the witnesses including victim during investigation and trial. This disturbing trend of high level of acquittal is a sad commentary on Criminal Justice System. This trend, on one side, erodes the credibility in enforcement of the Act and the Rules in the eyes of the

Scheduled Tribes and, on the other side, it encourages the tendency on the part of potential non-SC/ST offenders to take law in their hands. This trend needs to be checked.

8.12.3 The factors for high rate of acquittal may be either due to human error or systemic deficiencies or both. Human error may be rectified by intensive training and feedback service to the investigating officers and Special Public Prosecutors at a regular interval. Systemic deficiencies will have to be identified through an in-depth study of the present system wherever it hampers the smooth and effective implementation and enforcement of the provisions of the Act and Rules. **The Commission is of the view that in all the districts of the Fifth Schedule States, Special Courts may be exclusively set up instead of designating Additional Session Court or Session Court as a Special Court. The Special Public Prosecutors should be exclusively appointed for these Courts as per provisions of the Rules.** District Magistrates, in accordance with the provisions of the Rules, should review the performance of the Special Public Prosecutors and submit a report to the State Government. If the State Government is satisfied that a Special Public Prosecutor has not conducted the cases to the best of his ability and with due care and caution, his name may be, for the reasons to be recorded in writing, de-notified.

8.12.4 The National Commission for Scheduled Tribes during its visits to the various States/UTs has observed that there is strong need to sensitize not only the police machinery (as has been stated in para 7.11.3), but also the prosecuting agencies about the socio-economic and psychological status of the Scheduled Tribe victims and the aims and objectives of the SCs and the STs (POA) Act and Rules and their responsibilities towards the implementation of the Act. The Commission has accordingly, taken up the matter with State Govts. and UT Administration and requested them for arranging well-structured professional training programmes/ workshops for the Special Public Prosecutors with the objective to sensitize them for qualitative prosecution and also to enable them to share their field based practical experiences among themselves and to find out the remedial measures to enhance the rate of conviction.

8.13 Special Arrangements made by State Govts. under the SCs & STs (POA) Act, 1989 and the Rules, 1995 made thereunder

8.13.1 As has been mentioned earlier, under the SCs & STs (POA) Act, 1989 (hereinafter referred to as the Act) and the SCs/STs (POA) Rules, 1995 (hereinafter referred to as the Rules) it is mandatory for all the State Governments and UTs to set up Special Courts for speedy trial, to notify a Public Prosecutor, to provide adequate facilities including legal aid, ensure economic and social rehabilitation of the victims of atrocities, to appoint Officers for exercising supervision over prosecutions, to set up Committees at appropriate level, to conduct periodic survey of the working of the provisions of this Act and identify atrocity prone areas, set up Vigilance and Monitoring Committee at State level, to prepare model contingency plans for implementing the provisions of the Act etc. As per information available in the nineteenth Report of the Ministry of Social Justice & Empowerment on the SCs & STs (POA) Act, 1989 for the year 2002 prepared during 2004, steps taken by the nine 5th Schedule States and a few other States are as under:-

(a) Andhra Pradesh

- (i) At present 12 Deputy Superintendents of Police (DSPs) have been appointed exclusively for investigation of cases of atrocities and the DSP, CID in the remaining districts investigates the cases of atrocities.

- (ii) State level Review Committee and District level Vigilance and Monitoring Committees have been constituted. While the former reviews the atrocity cases every six months, the latter review such cases once in three months.
- (iii) The Government has declared 8 districts of the State as atrocity prone districts in which there is past history of large scale atrocities against Scheduled Castes and Scheduled Tribes. These districts are Guntur, Chittoor, Secunderabad, Prakasam, Nellore, Kurnool, Mahaboobnagar and Medak.
- (iv) Eight Special Session Courts have been set up exclusively for SCs and STs for speedy disposal of the cases in the atrocity prone areas. The State Government has also sanctioned another 4 Session Courts in the Districts of Cuddapah, Nizamabad, Krishna and Karimnagar.

(b) Himachal Pradesh

- (i) Free legal aid is provided to persons belonging to the SC/ST which includes the expenses towards TA/DA and court fees. No income limit has been fixed for SC/ST women and children.
- (ii) Financial assistance is provided to the victims of atrocities as per the norms prescribed under Rule 12(4) of the Rules.
- (iii) Officers of the rank of Additional District Magistrate have been designated as Special Officers and the Dy. Superintendent of Police has been appointed as Investigating Officer in each district.
- (iv) At State level, a Vigilance and Grievance Redressal Committee is in position which is chaired by the C.M. The District level Committee in each district functions under the Chairpersonship of District Magistrate.
- (v) A Special Cell in Police Headquarters supervises the progress of registration of cases under the Act. As per Rule 8 of the Rules, a Scheduled Castes and Scheduled Tribes Protection Cell under the Chairpersonship of Director General of Police has also been set up.
- (vi) No specific area has been identified as atrocity prone area in Himachal Pradesh.

(c) Gujarat

- (i) Legal aid is being provided to the members of SCs and STs for which income limit is of Rs.12,000/-p.a. The present rate of financial assistance is of Rs.3,000/- for a criminal case.
- (i) The expenses incurred by victims and witnesses for attending Court proceedings are being reimbursed to them at the rate of Rs.10/- per day if the person is from same Taluka, Rs.15/- per day if the person is from another Taluka in the same District and Rs.20/- per day if the person is from another district. Rs.15/- per day is also paid as expenses to each such person.

- (iii) The State Government provides financial assistance to the victims of atrocity as per scale prescribed under Rule 12(4) of the Rules.
 - (iv) At the Secretariat level, Principal Secretary, Deputy Secretary and Under Secretary of the Social Justice and Empowerment Department are looking after the work, while at Directorate level, the Director looks after the work. A Special Cell called the 'Nagrik Cell' is also in existence in the Directorate. Three Regional Vigilance Officers are working at Vadodara, Ahmedabad and Rajkot for looking after incidents of atrocities within their jurisdiction who have been nominated as Special Officers under Rule 10 of the Rules.
 - (v) A high level Committee has been constituted under the Chairmanship of the Chief Minister for effective implementation of the Act which includes the Finance Minister, Members of Parliament & State Legislature.
 - (vi) A State level Committee is working under the Chairmanship of the Secretary in charge of Social Justice and Empowerment Department, for reviewing the reports of the Vigilance Officers of the three Vigilance Squads. The Committee consists of Home Secretary, Law Secretary, Special Inspector General of Police etc. The Committee reviews the cases of atrocities and other aspects regarding trial of cases and rehabilitation of victims under the State Contingency Plan.
 - (vii) At district level, a District Vigilance Committee under the Chairmanship of District Collector of respective district is in position, which consists of District Panchayat President, Chairperson of District Social Justice Committee, District Development Officer, District Superintendent of Police, District Government Pleader, Public Prosecutor, MPs/MLAs of the respective Districts
 - (viii) Eleven districts namely Mehsana, Ahmedabad, Junagadh, Sabarkantha, Kheda, Rajkot(Rural), Amreli, Kutch, Surendranagar, Vadodara(Rural) and Bharuch have been identified as sensitive from the point of occurrence of offences of atrocities.
 - (ix) The State Government has notified all Session Courts in all districts to be designated as Special Courts, under Section 14 of the Act. The State Government has also set up 10 exclusive Special Courts in State by creating the post of Assistant Session Judge along with subordinate staff in 10 districts.
- (d) **Orissa**
- (i) The travelling and maintenance expenses to witnesses including the victims of atrocities are covered within the provisions for legal aid along with the pleader's fees, court fees, processing fees etc.
 - (ii) Monetary relief is provided to the victims of atrocities belonging to Scheduled Castes and Scheduled Tribes as per the scale of relief prescribed by the State Government.
 - (iii) District Human Rights Protection Cells deal with atrocities on Scheduled Castes and Scheduled Tribes as per the provisions of the Act.

- (iv) The State Government has set up Committees at various levels to address the problems of atrocities against the SCs & STs. The State level Scheduled Castes Welfare and Advisory Board under the Chairmanship of the Chief Minister includes Scheduled Caste/ Scheduled Tribe MLAs and non-official members.
- (v) A review meeting on incidents of atrocities is also held regularly once in every quarter under the Chairmanship of the Principal Secretary, Home Department and other agencies of the State Government.
- (vi) District Level Vigilance and Monitoring Committees as required under Rule 17 of the Rules, have been constituted in all the Districts. The quarterly meetings of the Committees are being held regularly to review incidents of atrocities.
- (vii) Periodic survey is being conducted by the Special Officers in respect of atrocity prone areas of their respective districts.
- (viii) The State Government has prepared a consolidated list of atrocity prone areas. The State has also appointed Additional District Magistrates of Districts as Special Officers in respective Districts to perform the duties and functions of Special Officer under Rule 10 of the Rules.
- (ix) The Courts of all Districts and Session Judge and Additional District and Session Judge have been notified as Special Courts for trial of offences under the Act.

(e) Rajasthan

- (i) The legal services are provided under the Legal Services Authorities Act, 1987 and Rajasthan State Legal Service Authority Rules, 1995 to the persons entitled under the above referred Act and the Rules.
- (ii) A State level Committee under the Chairmanship of the Chief Minister has been constituted.
- (ii) District Vigilance and Monitoring Committees at district level have also been formed under the charge of District Magistrate. The Committee has power to take immediate action in cases of negligence of duty by the public servants as per the provisions of the Act.
- (iv) A Civil Rights Cell has been formed in the Police Headquarters under the supervision of Inspector General of Police CID (H.A.). 21 Scheduled Castes and the Scheduled Tribes Cells have also been set up in 18 Districts.
- (v) Special Courts have been set up at Jaipur, Ajmer, Kota, Jodhpur, Udaipur, Bikaner, Pali, Medta(Nagore), Alwar, Pratapgarh(Chittorgarh), Dausa, Ganganagar, Jhalawad, Sawai Madhopur, Baran, Tonk and Bhilwara. In the remaining districts, Courts of District Session Judge have been specified as Special Courts to try offences under the Act. Special Public Prosecutors have also been appointed for this purpose.

- (vi) The State Government has authorized the District Collectors to appoint the Additional District Magistrate and Superintendent of Police of the District as Special Officer in their districts.

(f) **Maharashtra**

- (i) Legal Aid Committees have been set up in every district and Taluka to help the persons from the categories of economically weaker section of the society by providing free legal aid. Those having annual income below Rs.6,000/- are entitled to get the benefit of legal aid.
- (ii) The Government of Maharashtra have specified, for each district, the Court of Sessions to be the Special Court to try the offences under the Act.
- (iii) The effective implementation of the Act is being done jointly by the Departments of Social Justice, Home and Land Revenue.
- (iv) There are arrangements for payment of the maintenance and travelling allowances to the victims in cases where they are called to Police Stations or the office of the District Magistrate during the process of investigation and during trial in the Courts.
- (v) At District level, Vigilance Committee is headed by District Magistrate. The Committee meets once in a month and reviews the offences, investigation & sanctioning of monetary relief to victims.
- (vi) At Division level, the Vigilance Committee is headed by Divisional Revenue Commissioner. All District Collectors & District Superintendents of Police of all districts of Division are the Members of the Committee. The Committee meets on quarterly basis and takes stock of occurrences of various offences in various districts, provision and distribution of financial aid to the victims.
- (vii) At State level, a High Power Committee is headed by Chief Minister and the Director, Social Welfare Department is its Member Secretary. All Secretaries concerned with implementation of the Act are members of the Committee.
- (viii) The State has notified partially sensitive, less sensitive and high sensitive villages in all the six Divisions.
- (ix) The Principal Secretary, Transport and Excise Department, has been nominated as Nodal Officer.

(g) **Chhatisgarh**

- (i) Free legal aid is provided to the members of SC/ST in rural areas in the cases which are related to atrocities cases and where the trial is pending in the Session Courts.
- (ii) The State Government provides second class rail fare to and fro or actual taxi fare to the victims of atrocities/their dependents and witnesses during the investigation before the inquiry officer and for attending the trial in the Court. The State Government also provides maintenance expenses to the victims of

atrocities or his/her dependent and attendant for the days when they are away from the place of residence for investigation, hearing and trial of cases.

- (iii) No atrocity prone area has been specifically identified.
- (iv) Out of 16 districts, Special Police Stations(AJK) have been set up in the eight districts of Raipur, Durg, Rajnandgaon, Jagadalpur, Dantewada, Bilaspur, Raigarh and Surguja. The State Government has also set up Special Police Cells in seven districts to review the cases registered under the Act.
- (v) Special Courts have been set up under the Act in the districts of Raipur, Durg, Rajnandgaon, Bilaspur, Raigarh, Surguja & Bastar (Jagadalpur).
- (vi) The Contingency Plan has been formulated in accordance with the provisions under the Rules.
- (vii) Vigilance and Monitoring Committee at State level, Divisional level and District level are in position to review implementation of various provisions of the Act.

(h) **Jharkhand**

- (i) There is a provision of giving legal aid upto Rs.1,000/- to the members of SCs/STs by the Deputy Commissioners of the districts.
- (ii) There is a provision of giving daily allowance to persons affected by atrocities, their dependants and witnesses, which will not be less than the minimum wages fixed for agricultural labourers. Moreover, there is also a provision of reimbursement of travelling charges by the District Magistrates.
- (iii) There is a provision of sanctioning amounts ranging between Rs.10,000/- to Rs.2,00,000/- as relief amount to persons/families affected by atrocities. There is also a provision of giving relief upto Rs.2.00 lakhs to families of earning persons in the event of their death due to atrocity, or a relief upto Rs.1.00 lakhs on their becoming permanently disabled as a result of atrocity.
- (iv) A State level, Vigilance and Monitoring Committee has been set up under the Chairmanship of the Chief Minister.
- (v) District level Vigilance and Monitoring Committees are already functioning under the Act.
- (vi) The Designated Special Courts have been set up in all the districts of Jharkhand under the Additional District and Sessions Judges.
- (vii) The Special Secretary, Home Department has been declared as Nodal Officer for overseeing implementation of the Act.
- (viii) Special Officers have been nominated in 17 districts of the State under Rule 10 of the Rules.

- (ix) Special Public Prosecutors have been appointed in all districts of the State except East Singhbhum, Jamtara and Lohardaga.
- (x) Hazaribagh district has been identified as the prime atrocity prone area.
- (xi) A Crime Investigation Wing has also been set up under the Home Department and entrusted with the task of expediting investigation of cases filed under the Act. A Special Police Station for SCs & STs is functioning in Ranchi district with jurisdiction to the entire Jharkhand State.

(i) Madhya Pradesh

- (i) The State Government has notified a panel of senior advocates and Public Prosecutors for all the districts in the State.
- (ii) For speedy trial of cases under the Act, the State Government has set up 29 Special Courts at Dhar, Shajapur, Morena, Shahdol, Damoh, Raisen, Mandia, Sehore, Bhind, Tikamgarh, Mandaleshwar, Dewas, Mandsaur, Indore, Hoshangabad, Jabalpur, Vidisha, Panna, Chhatarpur, Ujjan, Guna, Satna, Rewa, Narsinghpur, Sagar, Gwalior, Rajgarh, Bhopal and Jhabua.
- (iii) Dy. Superintendents of Police in all districts have been specified as Investigation Officers under Rule 7 of the Rules.
- (iv) A Scheduled Castes and Scheduled Tribes Protection Cell under the charge of Additional Director General of Police has been set up at State level. Under the Cell, 38 Special Police Thanas have also been set up in District Headquarters.
- (v) The State Government has also notified Commissioner, Scheduled Castes Development as Nodal Officer under the Act.
- (vi) At district level, an officer of the rank of Addl. District Magistrate has been declared as Special Officer under the Act.
- (vii) Monitoring and Evaluation Committee has been constituted at State level under the Chairmanship of the Chief Minister. Members of Legislative Assembly belonging to Scheduled Castes and Scheduled Tribes are also members of the Committee.
- (viii) At district level, a District Vigilance & Monitoring Committee has also been formed which meets every quarter for review of the progress of atrocities cases.
- (ix) In the State, every District where atrocity cases are high has identified as atrocity Prone Area.

(j) Bihar

- (i) Secretary, Home Department, has been designated as Nodal Officer who from time to time convenes meetings to review implementation of the provisions of the Act.

- (ii) At State Level, a Scheduled Castes and Scheduled Tribes Cell has been formed under the overall charge of Director General, CID. This Cell works under the charge of Inspector General of Police (Weaker Sections).
- (iii) A Committee under the Chairmanship of the Chief Minister has been constituted at State level to review the action taken in implementation of various provisions of the Act. Likewise, a Committee has also been set up at district level under the Chairmanship of District Collector, which conducts a review once in three months.
- (iv) At the State level, a Police Station for Scheduled Castes and Scheduled Tribes has been established in the CID Headquarters. In addition, 9 Police Stations have also been set up in the District Headquarters of Nalanda, Bhojpur, Rohtas, Gaya, Vaishali, Samastipur, Begusarai, Bhagalpur, and Munger with specified jurisdictions.
- (v) Out of total 38 districts of Bihar, 33 districts have been identified as sensitive from the point of view of atrocities.
- (vi) A Court of First Class Additional Sessions Judge has been specified as Special Court in each District. In addition, exclusive Special Courts have also been set up at 9 Divisional headquarters and also at East Champaran (Motihari) and Bhojpur Districts. The State Government has also approved creation of six posts of Additional Session Judge for Nawada, Samastipur, Vaishali, Nalanda, Madhubani and Siwan Districts.
- (vii) Special Public Prosecutors have been appointed in the Special Courts for taking up cases of atrocities.
- (viii) The State Government is in process of preparing a contingency plan in accordance with the provisions of the Rules. The following steps have been taken so far in this regard:
 - a) In case of demise of SC/ST person due to occurrence of atrocity, the dependents of the affected family would be provided employment as Class-IV employee in Government service.
 - b) Where livestock has been affected due to atrocity, the doctors of the Animal Husbandry Department on priority will provide required assistance.
 - c) The Government has also decided to provide pension to the affected widow within fifteen days under Social Defense Pension Scheme.
 - d) The Government has also issued instructions to Civil surgeons of the Health Department to provide immediate medical assistance to victims/affected family members due to occurrence or atrocity.

(k) Karnataka

- (i) The Dy. Superintendents of Police working in each Sub-Division have been appointed as Investigating Officers under Rule-7 of the Rules.
- (ii) The Addl. Director General of Police, (Law & Order) has been nominated as Nodal Officer as required under Rule 9 of the Rules.

- (iii) In all atrocity cases, the District Administration takes immediate measures for payment of relief to the victims and rehabilitation measures etc. as required under Rule 12(4) of the Rules.
- (iv) The State Government has constituted a High Power Vigilance and Monitoring Committee as required under Rule 16 of the Rules.
- (v) A High Power State Level Committee has also been constituted under the Chairmanship of the Home Minister which meets periodically and monitors the implementation of the Act and Rules. In accordance with Rule 17 of the Rules, the District Level Vigilance and Monitoring Committees are in position under the Chairmanship of the District Magistrate.
- (vi) The State Government has also constituted “The Karnataka State Legislative Committee for SCs & STs Welfare” for the purpose of monitoring the implementation of the Act and the Rules. This Committee is chaired by an MLA who belongs to Scheduled Caste/Scheduled Tribe.
- (vii) The State Government has prepared a model contingency plan for the purpose of implementation of the Act.
- (viii) The State Government has also established seven exclusive Special Courts to try the offences under the Act at Belgaum, Mysore, Kolar, Raichur, Bijapur, Gulbarga and Tumkur Districts. Further, the Courts of Additional District Session Judges in the remaining districts of the State have been specified as Special Courts under the Act.
- (ix) The Public Prosecutors working in the Special Courts have been designated as Special Public Prosecutor for the purpose of the Act.

(I) Kerala

- (i) The Special Cell at State Police Headquarters keeps a watch over the handling of matters relating to atrocity cases. The Special Cell also monitors criminal cases registered in the State and petitions presented by the members of SCs/STs.
- (ii) Government has constituted an Advisory Committee at the State and District levels for dealing with matter relating to members of Scheduled Castes and Scheduled Tribes. All SC/ST MPs, MLAs, District Officers and non-officials nominated by the State Government are members of the Committee. The Committee monitors implementation of various schemes intended to safeguard the interests of SCs and STs.
- (iii) District Level Committee has been constituted in each district under the Chairmanship of District Collectors, and District Superintendents of Police/Commissioners of Police as members for the review and effective implementation of the provisions of the Act.
- (iv) The District Courts of Kerala have been specified as Special Courts to try the offences under the Act and the Public Prosecutors of all Districts have been

nominated as Special Prosecutors for conducting the cases in the District Courts.

- (v) The District level Committee has been constituted in each District under the Chairmanship of the District Collector. The Committee sanctions travelling and maintenance expenses and compensation to the witnesses as well as to the victims of atrocities.

(m) Uttarakhand

- (i) The district authorities provide free legal aid in all districts of the State. The travelling and maintenance expenses to the victims of the atrocities and the witnesses under the Act is also provided by the State Government.
- (iii) Additional Secretary, Social Welfare Department has been nominated as Special Officer to coordinate with District Magistrate and Superintendent of Police or other officers responsible for implementing the provisions of Act and various Committees constituted under the Act.
- (iv) A Special Police Cell has been set up in each district in Police Department. These Cells monitor investigation of cases of atrocities on SCs & STs.
- (iv) Committees have also been set up under the Chairmanship of the District Collector. These Committees look into the issues concerning provisions of economic assistance and rehabilitation to affected persons.
- (v) A Special Court has been set up in Nainital District. In rest of districts, the District & Session Courts have been designated as Special Courts for trial of cases under the Act.
- (vi) No specific area has been identified as atrocity prone area in Uttarakhand.

(n) National Capital Territory of Delhi

- (i) Necessary provision for paying travelling and maintenance expenses have been made in budget.
- (ii) The Secretary (Scheduled Castes/Scheduled Tribes) has been nominated as nodal officer.
- (iii) The Additional District Magistrates have been nominated to function as Special Officers in their respective jurisdiction.
- (iv) A Permanent Standing Committee has been formed for examination and consideration of cases for providing relief and rehabilitation of Scheduled Castes/Scheduled Tribes victims of atrocities in Territory of Delhi.
- (v) The Court of Addl. District and Session Judge has been designated as Special Court in the National Capital Territory of Delhi.
- (vi) The Additional Public Prosecutor/Special Public Prosecutor has been nominated as Special Public Prosecutor for cases under the Act.

- (vii) No any area has been identified under this Act so far in the NCT of Delhi.

8.13.2 The State Govts. are required to prepare a model Contingency Plan for implementing the provisions of the Act and notifying the same in their Official Gazette, specifying the role and responsibilities of various departments and their officers at different levels etc. The Contingency Plan is required to contain, inter-alia, a package of relief measures including the following:-

- (a) scheme to provide immediate relief in cash or in kind or both;
- (b) allotment of agricultural land and house sites;
- (c) the rehabilitation packages;
- (d) scheme for offering employment in Government or Government undertaking to the dependant or one of the family members of the victim;
- (e) pension scheme for widows, dependant children of the deceased, handicapped or old age victims of atrocity.
- (f) mandatory compensation for the victims;
- (g) scheme for strengthening the socio-economic condition of the victim;
- (h) provisions for providing brick/stone masonry house to the victims;
- (i) such other elements as health care, supply of essential commodities, electrification, adequate drinking water facility, burial/cremation ground and link roads to the Scheduled Castes and the Scheduled Tribes habitats.

8.13.3 The details of the action taken by the States/UTs on the various measures taken under the provisions of the SCs and STs (POA) Act, 1989 and Rules, 1995 reveal that only a few States/UTs have notified Contingency Plan as required under Rule 15 of the Rules. The Contingency Plan is the lifeline for prevention of atrocities on the members of the Scheduled Tribes. This plan inter-alia contains a package of relief measures including (i) immediate relief in cash or in kind or both, (ii) allotment of agricultural land and house sites, (iii) employment in Govt. or Govt. undertaking to the dependent or one of the family members of the victim and (iv) pension for widows, dependent children of the deceased etc. **The Commission accordingly recommends that the Chief Secretaries of the Nine 5th Schedule States may be requested to take necessary action to prepare and notify the Contingency plans to deal with the atrocity cases in an effective manner in terms of Rule 15 of the Rules.**

8.14 Some of the Atrocity Cases dealt with in the Commission

8.14.1 The mandate provided to the Commission under Article 338A(5)(a)&(b) of the Constitution is to investigate, monitor and inquire into specific complaints with respect to the deprivation of rights and safeguards provided to the Scheduled Tribes under various laws. As has been mentioned earlier, one of such laws is the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Rules, 1995 framed thereunder. The Commission took cognizance of the complaints received from the Scheduled Tribe persons, Associations, NGOs and also suo moto on the Press news related to the atrocities on the members of Scheduled Tribes. The cases of atrocities were got inquired into through the District Superintendents of Police and the cases involving economic relief and rehabilitation, were referred to the District Magistrates. Gist of some of the cases dealt with in the Commission during 2004-2005 and 2005-2006 are as follows:

- (1) It was brought to the notice of the Commission by a retired Professor of Dibrugarh University that a Scheduled Tribe woman employee of a Government of India

Organization at Dibrugarh, Assam was molested and sexually exploited by one of her colleagues. The Commission took up the matter with the District Superintendent of Police, who informed that a case u/s 354, 324, 325, 606, 376(B) and 511 IPC had been registered and chargesheet submitted in the Court. The Commission advised the Superintendent of Police to take cognizance of Section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 along with the sections of IPC and accordingly submit the supplementary charge-sheet in the Court. As per the advice of the Commission, a supplementary charge-sheet was submitted by the Police adding Section 3(1)(xi) of the Act. The Dy. Commissioner, Dibrugarh has also been requested by the Commission to provide financial assistance to the victim as per Rule 12(4) of the Rules.

- (2) A case of arrest, custodial torture and death of one ST person by officials of Excise Department in Wayanad District of Kerala came to the notice of the Commission through a tribal association at Thiruvananthapuram in August, 2004. The case was taken up with the Superintendent of Police, Wayanad who informed that the body of the ST person had been found hanging on a neem tree at Anchukannu and the post mortem report stated that the death was due to hanging and there was no symptom of torture on the body. The Commission however, found that the materials on record created a doubt on the reported death of the ST person by hanging. The Commission, therefore, referred the matter to the Home Secretary, Government of Kerala for ordering an inquiry by State, CB,CID. In response to the Commission's advice, the Home Secretary, Government of Kerala, Thiruvananthapuram intimated that the Director General of Police, Kerala had been directed to get an investigation conducted by the State CB,CID into the death of ST person. The report is awaited from the State Govt.
- (3) A case of abduction and gang rape of a Scheduled Tribe woman in Chindwada, Madhya Pradesh was reported in the newspaper 'Dainik Bhaskar' dated 21.8.04. The Commission suo moto took up the case with the District Superintendent of Police, Chindwada. The Superintendent of Police reported that a case under Sections 366, 376(2) and 506-B IPC and Section 3(1)(xii) of the SCs and the STs(POA) Act, 1989 had been registered and chargesheet submitted in the Court and that an interim relief of financial assistance of Rs.25,000/- had been paid to the victim as per the SCs and the STs (POA) Rules, 1995. Since an offence under Section 376(2) of IPC is punishable with an imprisonment for a term of 10 years or more, the Dist. Superintendent of Police, Chindwada has been advised by the Commission to submit supplementary chargesheet taking cognizance of Section 3(2)(v) of the SCs/STs (POA)Act, 1989 in place of Section 3(1)(xii).
- (4) A case of gang rape of a ST girl at Hoshangabad in Madhya Pradesh was reported in the newspaper 'The Indian Express' dated 14.7.04. The Commission suo moto took up the case with the Dist. Superintendent of Police, Hosangabad. The Superintendent of Police, Hosangabad reported that a case under section 363, 366, 376 IPC and Section 3(2)(v) and 3(1)(xii) of the SC/ST (POA)Act, 1989 had been registered and after almost three months, the chargesheet had been submitted in the Court. He further stated that an interim relief of financial assistance of Rs.25,000/- had been paid to the victim as per the SCs/STs (POA) Rules,1995. The Commission took up the issue of delay in submission of chargesheet in the Court and accordingly requested the Dist.Superintendent of Police, Hosangabad to instruct all the Investigating Officers to complete the investigation within the stipulated time of 30 days positively as per Rule 7(2) the SCs & the STs (POA) Rules, 1995.

- (5) It was brought to the notice of the Commission by a tribal organization at Bageswar (Uttaranchal) in August, 2004 that one ST woman was molested by a non-ST in the Dist. of Bageswar, Uttranchal. The case was taken up with the Dist. Collector, Bageswar who informed that a case under Section 354 of IPC and Section 3(1)(x) of SCs/STs (POA) Act, 1989 had been registered, the accused arrested and subsequently, chargesheet submitted in the Court. The Commission advised the Dist. Collector to consider for submission of supplementary chargesheet, taking cognizance of Section 3(1)(xi) of the SCs & the STs(POA) Act, 1989 in place Section 3(1) (x). The Dist. Collector had informed that the advice of the Commission had been complied with and that the victim in the case had been paid Rs.25,000/- as financial assistant as per the SCs & STs (POA) Rules, 1995.
- (6) Custodial death of an ST youth in district Raipur, Chhattishgarh was reported in the newspaper 'Dainik Baskar' dated 14.8.2004. The Commission took up the matter with the Dist. Superintendent of Police and Dist. Magistrate, Raipur. The Dist. Superintendent of Police, Raipur informed that a case under section 306, 330, 343, 201, 34 of IPC and Section 3(2)(v) of the SCs & STs(POA) Act, 1989 had been registered and the accused officials had been arrested. The Dist. Magistrate, Raipur informed that an amount of Rs.5.00 lakhs was paid to the deceased family by the State over and above an interim relief of Rs.25,000/-. In addition, 5.0 acres of land was also allotted to the deceased family by the Dist. Administration. The Commission found that the chargesheet had been issued after three months and accordingly, the Commission took up the issue of delay in submission of chargesheet and advised the District Superintendent of Police to instruct all the Investigation Officers to complete the investigation with the stipulated time of 30 days positively as per Rule 7(2) of the SCs & the STs (POA) Rules, 1995.
- (7) A Scheduled Tribe organization at Chennai brought to the notice of the Commission in October, 2004 that three ST girls of a tribal Residential School had been sexually harassed in Villuppuram Dist. of Tamil Nadu. The matter was taken up with the Superintendent of Police, Villuppuram Dist. Who reported that 3 ST minor girls studying in Std.V were sexually harassed under threat by four College students of same area for five days from 15.10.2004 to 19.10.2004 and that after investigation, a case under Section 4 of TN Prohibition of Harassment of Women Act, 2002 read with Section 506(ii) of IPC had been registered and all the four accused had been arrested. Investigations by the police further revealed that three of the four accused persons who belonged to SC community were charged with offences under sections 456, 506(ii), 511 r/w Section 376 of IPC and Section 4 of TN Prohibition of Harassment of Women Act, 2002 and in the case of fourth accused, who was a non-ST/SC, Section 3(1)(xii) of SC/ST (POA) Act, 1989 had been added. It was further reported that the chargesheet had been submitted in the Court and financial assistance had been paid to the victims @ Rs.25,000/- each under the SCs and the STs(POA) Rules, 1995.
- (8) A case of gang rape of a ST minor girl in the Dist. of Damoh, Madhya Pradesh was reported in the newspaper 'Nai Duniya' dated 20.8.2004. The Commission suo-moto took up the matter with the Superintendent of Police, Damoh. The Superintendent of Police intimated that a case under sections 363, 366, 376(2) of IPC and Section 3(2)(v) of SC/ST(POA) Act, 1989 had been registered and accused persons arrested, and that the chargesheet had also been submitted in the Court. The Commission further took up the case with the Dist. Collector, Chatarpur as the victim was the

resident of Dist. Chatarpur for the purpose of providing financial assistance under Rule 12(4) of the SCs/STs(POA) Rules, 1995 immediately. The Collector, Chatarpur intimated that an amount of Rs.50,000/- had been paid to the victim by depositing the same in her A/c in the State Bank of India.

- (9) A case of sexual harassment of Scheduled Tribe woman in Wayanad District, Kerala was reported to the Commission. The case has been taken up with the Superintendent of Police, Wayanad. Due to the intervention of the Commission, a case has been registered by the Police taking cognizance of Section 3(2)(v) of the SCs and the STs(POA) Act, 1989 along with relevant sections of IPC. The Commission has taken up with the District authorities for providing economic assistance as per the SCs and the STs (POA) Rules, 1995.
- (10) Harassment and danger to life and property of a tribal family due to illegal mining in the District of Ranchi, Jharkhand was reported to the Commission. The alleged person was not granted any licence to use the explosive for mining stones next to the house of the affected ST family but the mining activities were started by them. The Police and Mines Departments had not taken any action. The Commission took up the case with the Deputy Commissioner, District Ranchi to ensure stoppage of the illegal stone mining in the residential area. Based on the advice of the Commission, the Dy.Commissioner, Ranchi instructed to stop the ongoing mining and accordingly the stone mining was stopped.
- (11) A rape case of ST woman in Bardwan District, West Bengal was reported in the newspaper 'The Statesman'. The case was taken up with the District Superintendent of Police, Bardwan by the Commission. The Superintendent of Police, Bardwan reported that a case under section 376 of IPC had been registered and accused arrested. Subsequently, relevant section of SCs/STs(POA)Act, 1989 was also added and chargesheet submitted in the Court. The Commission has also taken up the matter with the State Administration for providing financial assistance to the victim as per the SCs & STs (POA) Rules, 1995.
- (12) A case of abduction and rape of a ST woman in Chickmagalur District of Karnataka was reported to the Commission. The Commission immediately took up the case with the Dist. Collector, Chikmagalur who intimated that the accused had been arrested and chargesheet submitted in the Court and that the victim had been paid Rs.50,000/- as financial assistance.
- (13) A case of setting fire by an unlawful group to maize field of a ST farmer in Haveri district of Karnataka was reported to the Commission. The Commission took up the case with the Superintendent of Police, Haveri district, who intimated that the accused had been arrested and the chargesheet submitted in the Court and that the victim of the arson had been paid economic assistance as per the SC/ST (POA) Rules, 1995.
- (14) A case of group clash which took place at Davangere district, Karnataka in which 21 ST persons had been injured and one had died during treatment in Hospital was reported to the Commission. The Commission took up the case with the Collector and Superintendent of Police, Davangere district. It was intimated by the Dist. Administration that 49 accused persons had been arrested and chargesheet submitted against them in the Court and that in total, a sum of Rs.2,08,000/- had been paid to the victims of atrocity as economic assistance under the provisions of the SCs & the STs (POA) Rules, 1995.

- (15) It was reported in a local newspaper that one ST person was tied to a telephone pole and assaulted by a group of non-SC/ST persons at Gadag district in Karnataka. The Commission took up the case with the District Collector, Gadag district who intimated that a case had been registered and chargesheet submitted in the Court. Due to the Commission's intervention, Rs.25,000/- was paid to the victim as economic assistance.
- (16) A case of gang rape of one ST girl in Warangal Dist. Andhra Pradesh was reported in a newspaper. The Commission took up the case with the district authorities. During the enquiry by the police it was found that the ST girl was raped by a SC person. The accused was arrested by the Police. Since the perpetrator of crime was a SC person, no action could be taken under the SCs and the STs (POA) Act, 1989 and Rules, 1955 and as a result she was deprived of the economic assistance as an immediate relief.
- (17) A case of disappearance of a tribal youth in Nalgonda Dist., Andhra Pradesh was reported in the newspaper 'The Hindu'. The Commission took up the case with the district authorities. Police enquiries revealed that the ST person was murdered by his business rivals in a planned manner. The accused was arrested. Due to the interference of the Commission, relevant sections of the SCs & the STs (POA) Act, 1989 were added in the case and the victim's family was paid monetary relief as per the SCs & the STs(POA) Rules, 1995.
- (18) A case of custodial death of one ST person in the District of Barwani, Madhya Pradesh was reported in the newspaper 'The Dainik Bhaskar'. The Commission suo moto took up the case with the Dist.Superintendent of Police, Barwani, who informed that a case under Section 302, 323, 34 of IPC and Section 3(2)(v) and 3(2)(vii) of the SCs and the STs (POA)Act, 1989 had been registered against the officials and investigation had been completed. A sum of Rs.1.50 lakh was paid to the deceased family. In addition, a sum of Rs.25,000/- was also provided to them under the Social Security and Welfare Scheme.
- (19) An incident of rape and murder of a minor tribal girl in Bhopal district, Madhya Pradesh was reported to the Commission. The Commission took up the case with the Inspector General of Police(SC/ST Cell), Bhopal, who informed that a case under Section 302, 376, 311 of IPC had been registered and the accused arrested. Due to the intervention of the Commission, Section 3(2)(v) of the SCs and the STs(POA) Act, 1989 was added and the chargesheet submitted in the Court. Since the victim belonged to the Raigarh district, the Commission has referred the case to the Collector, District Raigarh, Chhattishgarh for providing economic assistance as per the SCs/STs (POA)Rules, 1995.
- (20) A minor ST girl was raped in district Shivpuri, Madhya Pradesh, as per the report appeared in 'The Hindustan Times'. The Commission suo moto took up the case with the Dist.Superintendent of Police, Shivpuri. The Superintendent of Police reported that a case under Section 376(G), 506(B), 313, 201 IPC and 3(1)(xii) and 3(2)(v) of the SCs and the STs (POA)Act, 1989 had been registered and three of the four accused arrested and chargesheet submitted in the Court and that economic relief of Rs.25,000/- had been provided to the rape victim as per the SCs & the STs(POA) Act, 1989.

- (21) Forcible occupation of land and attack on an ST family in the district Dindori, Madhya Pradesh was reported to the Commission. The case was taken up with the Dist. Superintendent of Police, Dindori, who informed that a case under Section 447, 294, 506, 34 of IPC and Section 3(1)(iv) and 3(1)(x) of the SCs and the STs (POA) Act, 1989 had registered and accused persons arrested and that a sum of Rs.25,000/- had been paid as economic assistance to the victim as per the SCs and the STs (POA) Rules, 1995.
- (22) A press news appeared in Danik Bhaskar dated 7.8.2003 that persons from non-ST community had attacked and burnt the house of a Scheduled Tribe person in district Bhilwara (Rajasthan). The Commission took up the matter with the District Supdt. of Police who informed that a case u/s 458, 354, 323, 436, 34 IPC and 3(1) (v) (x)(xi) and 3 (2) (iv) of the SC/ST (POA) Act had been registered and charge-sheet submitted in the Court and that under Rule 12(4) of the SCs & STs (POA) Rules, the economic assistance had been provided to the victim's family.
- (23) An ST woman residing at Rohini, Delhi represented to the Commission that she had been attacked/ threatened by one non-SC/ ST person. The case was taken up with the Deputy Commissioner of Police, West District, Delhi, who reported that a case was registered under section 325/34/342 and 354 IPC and charge sheet had been submitted in the court. Due to the Commission's timely intervention, Section 3(1) (xi) of the SCs and the STs (POA) Act, 1989 was added in the case by submitting a supplementary charge sheet in the court.
- (24) It is brought to the notice of the Commission by Asia Pacific Forum on Women, Law and Development, Thailand that an ST woman had allegedly been raped and sold in a public auction on 20 August, 2005 along with her baby in Chirgaon village, Latehar district Jharkhand for six rupees in District Latehar, Jharkhand. This serious criminal offence was immediately taken up by the Commission with the Superintendent of Police, District Latehar. The Commission was informed that a case had been registered under Section 376(G) IPC and Section 3(1) (xii) of the SCs and the STs (POA) Act, 1989 had been added. And that the economic assistance of Rs.25,000/- in terms of Rule 12 (4) of SC & ST (PAO) Rules, 1995 had been provided to the victim. The matter is under further investigation by the police authorities.
- (25) One ST Officer working in a Govt. of India organization at Visakhapatnam, Andhra Pradesh represented to the Commission in August, 2005 to have allegedly been abused by another Officer of the same organization. The case was immediately taken up by the Commissioner of Police, Visakhapatnam. The Commission was informed in September, 2005 that a case under Section 506 IPC and Sec. 3(1) (x) of the SCs and the STs (POA) Act, 1989 had been registered and charge sheet submitted in the court. The Commission further took up the matter with the Commissioner of Police, Visakhapatnam regarding grant of economic assistance to the victim in response to which the police authorities informed in January, 2006 that a monetary relief of Rs.6250/- had been paid to the victim as per Rule 12 (4) of the SCs/STs (POA) Rules,1995
- (26) It was brought to the notice of the Commission by the press news in October, 2005 that one ST person had allegedly been burnt alive in Katni District, Madhya Pradesh. The Commission took up the matter with the Superintendent of Police, Katni, who in turn reported in November, 2005 that a case under Sections 302, 307, 147, 140, 364 and 120-B of IPC and under Section 3(2)(v) of the SCs and the STs (POA) Act, 1989 had

been registered and charge sheet submitted in the court. The Commission was further informed in reply to its subsequent letter written in December, 2005 that an immediate relief of Rs.10,000/- had been provided to the minor children of the deceased and that Rs.1,50,000/- had been deposited in the bank in the name of the children out of which certain amount will be given to the children every month. This economic assistance has been given under Rule 12(4) of the SCs/STs (POA) Rules, 1995.

- (27) It was reported in a section of the press (Dainik Bhaskar) on 8 May, 2005 that two persons belonging to ST had been made to sit on a hot iron by the Manager and the security personnel of a steel plant under construction in District Raigarh, Chhattisgarh, which caused severe burn injuries in the lower part of their body. The Commission immediately took up the matter with the Superintendent of Police, District Raigarh. The Superintendent of Police, Raigarh reported in June, 2005 that a case under Sections 342, 294, 323, 34 IPC and Section 3(1)(x) of the SCs and the STs (POA) Act, 1989 had been registered and charge sheet submitted in the court. In reply to a subsequent letter of the Commission in August, 2005, the District Magistrate, District Raigarh informed the Commission in September, 2005 that an economic assistance of Rs.25,000/- had been sanctioned to the victims.
- (28) An ST woman reported to the Commission in March, 2005 that she had been raped by non-SC/ ST at District Sivpuri in Madhya Pradesh. The case was taken up by the Commission with the Superintendent of Police, District Sivpuri in April, 2005. The Commission was informed by the police authorities in May, 2005 that a criminal case had been registered under Sections 354, 323 and 506 B IPC and Sections 3(1) (xi) of the SCs/STs (POA) Act, 1989. During investigations, the cognizance of Section 376 IPC and 3(2)(v) of the SCs and the STs (POA) Act, 1989 had also been taken and the charge sheet submitted in the court. The Commission further took up the matter in June, 2005 with the District Magistrate, Sivpuri regarding economic assistance to the victim in reply to which it was informed an economic assistance of Rs.25,000/- had been provided to the victim as per Rule 12(4) of the SCs and the STs (POA) Rule, 1995.
- (29) One ST woman from District Chhindwada, Madhya Pradesh wrote to the Commission on 18 January, 2005 that she had been assaulted and abused by one non SC/ ST person. The Commission took up the matter with the Superintendent of Police, Chhindawada on 19 January, 2005 requesting him to inquire into the incident and send a detailed report to the Commission with 15 days. The Superintendent of Police, Chhindwada reported that a case under Sections 294, 509, 506, 34 IPC and Section 3(1)(x) of the SCs and the STs (POA) Act, 1989 had been registered and charge sheet submitted in the court. The Commission again wrote to the District Magistrate, Chhindwada on 12 August, 2005 to apprise the Commission about the economic assistance given to the victim in response to which the Commission was informed in December, 2005 that an amount of Rs.25,000/- had been sanctioned out of which Rs.6250/- had been paid to the victim by way of first instalment.
- (30) It was reported in a section of the press (The Times of India, New Delhi dated 3 August, 2005) that an Scheduled Tribe woman had been raped repeatedly by Police officers of the rank of DIG and IG at Ranchi and Palamu. The Commission took up the matter on 5 August, 2005 with the Director General of Police, Jharkhand requesting him to get the allegations inquired into and send a detailed report to the Commission. As no reply was received, he was reminded on 31.8.2005 to expedite the inquiry. Even the reminder from the Commission did not yield any response from the DGP and it was decided to call the DGP to appear before the Commission on 21.10.2005, which on the request of

the DGP, was shifted to 20 October, 2005. The DGP, however, could not appear before the Commission even on 28.10.2005 due to his pre-occupations. Now he was requested to appear before the Commission on 3.11.2005. DGP along with his officers finally appeared before the Commission on that date i.e. 3.11.2005. The Commission expressed its unhappiness and anguish over inordinate delay in responding to the Commission's letters in such a case of heinous offence of rape alleged to be committed by the senior police officers and cautioned them against recurrence of such irresponsiveness in future. The Commission asked the DGP (i) to submit full facts of the case to the Commission within a week, (ii) to personally see the Home Secretary and Chief Secretary, Govt. of Jharkhand to ensure that the necessary sanction was accorded to him by the State Government for prosecuting the accused in a court of law and, (iii) to initiate immediate action for the grant of economic assistance to the victim under Rule 12(4) of the SCs/STs (POA) Rules, 1995. The DGP informed the Commission on 14.11.2005 that two criminal cases viz. (i) FIR No. 304/05 dated 03-08-2005 under Sections 376/ 376(2)(9)(i)/506 and 3(1) of (xii) the SCs and the STs (POA) Act, 1989 registered at P.S. Palamu Sadar (Town) and (ii) FIR No. 142/05 dated 02-08-2005 under Sections 376/ 109 IPC and 3(1) (xii) of the SCs and the STs (POA) Act, 1989 at P.S. Lower Bazar, Ranchi had been registered. As a consequence of continuous intervention and constant follow-up by the Commission, the State Govt. has informed the Commission on 6 February, 2006 that they have accorded sanction for prosecution of one of the two accused Police officers i.e. IG in the said case. The Commission has been perusing with the State Govt. for according sanction for prosecution of the second accused Police officer i.e. DIG in this case.

- (31) An ST person from District Palli, Rajasthan reported to the Commission in May, 2005 that an attempt to murder him was made by a non-SC/ST person. The matter was taken up by the Commission with the Senior Superintendent of Police, District Palli on 31.5.2005. The Commission was informed in June, 2005 that a case under Sections 307, 323, 325, IPC read with section 3(1) (x) and 3(2)(v) of the SCs and the STs (POA) Act, 1989 had been registered and charge sheet submitted in the court. District Collector, Palli was subsequently requested in August, 2005 regarding grant of economic assistance to the victim in reply to which the Commission was informed in September, 2005 that an amount of Rs.50,000/- had been sanctioned to the victim by way of economic assistance under Rule 12(4) the SCs/STs (POA) Rules, 1995.
- (32) SAKSHI, an NGO in Sicunderabad, Andhra Pradesh, wrote to this Commission in July, 2005 to inform about the rape of a pregnant tribal woman of Nallore District, by a non-SC/ST person. It was also reported that while the police personnel at Naidupet Police Station had registered a case against the accused under Sections 376, 313 of IPC and 3 (2) (v) the SCs/STs (POA) Act, 1989, no monetary relief had been sanctioned to her. The matter was taken up by the Commission with the District Superintendent of Police Nallore District on 10.8.2005. The Commission was informed in September, 2005 that a case had been made out against the accused under the above mentioned Sections of IPC and the SCs/STs (POA) Act, 1989 and that the accused has been arrested and sent for remand and further that the charge sheet had been submitted in the court. In reply to this Commission's letter dated 14.10.2005, the District Collector and Magistrate, Nallore District informed the Commission in November, 2005 that an amount of Rs.50,000/- had already been sanctioned and disbursed to the victim by way of monetary relief on 9.1.2005.
- (33) Hon'ble Member of the Commission Shri Buduru Srinivasulu brought to the notice of the Commission in November, 2005 that a local news paper had reported (in its edition

dated 31.10.2005) that a tribal girl student from Nalgonda District, Andhra Pradesh had been sexually abused by a non-SC/ST person. The Commission took up the matter with the Director General of Police, Andhra Pradesh in November, 2005. The Govt. of Andhra Pradesh informed in December, 2005 that a case had been registered under Sections 342, 376(g), 506, 109 IPC read with Section 3(1) (xii) of the SCs and the STs (POA) Act, 1989. The Commission has subsequently advised the DGP, Andhra Pradesh, Hyderabad for taking cognizance of Section 3(2)(v) of the SCs and the STs (POA) Act, 1989 and also to provide economic assistance to the victim as per Rule 12 (4) of SCs/STs (POA) Act, 1989.

- (34) One ST officer working in BHEL and residing in the residential quarters at Ramachandra Puram in Medak District, Andhra Pradesh reported to the Commission that he had been abused on caste ground by a non-SC/ ST person. The case was taken up with the Superintendent of Police, Medak District, who in turn reported that a case under Section 3(1) (x) of the SCs and the STs (POA) Act, 1989 had been registered and charge sheet submitted in the court. The Commission has also requested the police authorities to apprise it of the action taken by district administration to provide economic assistance to the victim in terms of the SCs/STs (POA) Rule, 1995.
- (35) It was brought to the notice of the Commission by a report published in Dainik Bhaskar dated 12 December, 2005 that one ST woman of District Raisen, Madhya Pradesh was raped and thereafter her right hand was chopped off and her house was set on fire. The Commission took up the matter with the DGP, Bhopal in December, 2005 itself. The Commission was informed that the Police had registered two cases (i) under Sections 376(2) (G), 341, 506, 34 IPC along with Sections 3(1) (xii) and 3(2) (v) of the SCs and the STs (POA) Act, 1989 and (ii) under Sections 326, 436, 147, 148, IPC and Section 3(2)(i) of the SCs and the STs (POA) Act, 1989. Further, the victim had been sanctioned economic assistance of Rs.80,000/- in the two cases out of which Rs.42,000/- had been provided to her in terms of Rule 12(4) of the SCs/STs (POA) Rules, 1995. The remaining amount will be paid to the victim on conviction of the accused by the court. Investigations in both the cases are in progress. The Commission has been vigorously following up the case with the DGP, Bhopal to expedite the completion of investigation.
- (36) A case of gang rape of one ST girl by non-SC/ST persons in Mayurbhanj District, Orissa was reported in a newspaper (Pioneer dated 5.5.2005). The Commission took up the case with the Superintendent of Police, Mayurbhanj District, who informed the Commission on 26.6.2005 that a case had been registered under Sections 366, 376(2) IPC and Section 3(2) (v) of the SCs and the STs (POA) Act, 1989 and that an interim monetary relief of Rs.2000/- had been given to the victim. The Commission has further requested the SP, Mayurbhanj in August, 2005 to expedite the investigation and also apprise the Commission of the status of economic assistance to the victim in terms of Rule 12(4) of SCs/STs (POA) Rules, 1995. The matter is being pursued with the Commission by police authorities.
- (37) It was brought to the notice of the Commission through a report published in the Hindu dated 20 June, 2005 that a tribal woman in Palakkad District, Kerala had been raped and murdered. The matter was immediately taken up by the Commission with the Superintendent of Police, Palakkad District. The Superintendent of Police, Palakkad reported in January, 2006 that a case under Sections 376 and 302, IPC and Section 3(2) (v) of the SCs and the STs (POA) Act, 1989 had been registered against the two accused who have also been arrested and kept under judicial custody. The Commission

has further requested the SP, Palakkad District in February, 2006 to inform the Commission of the latest position of the investigation and about providing economic assistance to the victim's family.

8.14.2 It has been felt during disposal of petitions in the Commission that, in general, the Investigating Officers are not completing the investigation on top priority within 30 days as per the provisions contained in Rule 7(2) of the SCs & the STs (POA) Rules, 1995. Similarly, the district authorities are also take considerable time in providing economic assistance after the occurrence of the atrocities to the victims as per the norms fixed under Rule 12(4) of the Rules, 1995. **The Commission recommends that the State/UT Govt. may be requested to make necessary arrangements to ensure that the investigation process is completed within the prescribed period of 30 days and that the victims/their dependents are provided economic assistance immediately after the incident.**

8.14.3 **The Commission further recommends that:**

- (i) **In case the ST victim is not satisfied with the performance of the Public Prosecutor (PP), he/she should be allowed to change the P.P. and engage a private layer/advocate and the expenses for engaging private layer should be borne by the State Govt.**
- (ii) **Legal aid, for which there is provision in the SCs and STs (POA) 1989, should be disbursed to the ST victim as early as possible. Awareness programme about grant of legal aid should be launched in tribal areas so that the victims could come to know about availability of free legal aids.**
- (iii) **The amount of financial relief under Rule 12(4) of the SCs & STs (POA) Rules, 1995 is required to be provided to the victim immediately after the incident. However, it has been noticed that some of the district authorities are not providing the relief particularly in cases of murder, grievous hurt, rape and arson immediately after the incident. Necessary orders should be issued to all the District Magistrates to ensure immediate payment of financial relief especially in heinous offences and in other offences of atrocity as per provision of these Rules**
- (iv) **The amount of financial relief to the victims of the atrocities under Rule 12(4) of the SCs & STs (POA) Rules, 1995 should be reviewed and suitably increased in recognition of the hard fact that the cost of living over the past one decade, starting from 1995 has enormously gone up.**

CHAPTER - 9

SUMMARY OF RECOMMENDATIONS

Details recommendations on various aspects in relation to development of Scheduled Tribes have been made in different Chapters. These recommendations have been highlighted to facilitate convenient identification for the purpose of taking follow up action on them. A summary of these recommendations (Chapter-wise) is given below.

Chapter-1: Organizational Set up and Functioning of the Commission

1. The Commission has been experiencing severe functional problems on account of a large number of vacant posts. The Ministry of Social Justice & Empowerment and the National Commission for Scheduled Castes who are the cadre controlling authority with respect to Joint Cadre posts and cadre authority with respect to Secretariat posts are advised to make concerted efforts to fill up these vacant posts to enable the Commission to discharge its constitutional obligations in an effective manner. **The Commission also requests the Ministry of Tribal Affairs to take necessary steps to provide additional staff to enable the Commission to effectively deal with the expanded terms of reference of the Commission.** [Para:1.9.4]
2. There is an urgent need to upgrade the level of Heads of Offices of the four Regional Offices of the Commission at Bhubaneswar, Raipur, Ranchi and Shillong to the level of Director by creating four additional posts of Director. [Para:1.13.1(i)]
3. There is also an urgent need to augment the existing strength of the supporting staff (other than the Heads of Offices) in the six Regional Offices of the Commission as given in **column 4 of the Table below** [Para:1.13.1(ii)].
4. The existing jurisdiction of the five Regional Offices (out of six) of the Commission is so large that the Commission has been finding it impossible to properly monitor the implementation of various programmes for socio-economic and educational development of Scheduled Tribes, the reservation policy of the Government and making spot visits for enquiring into atrocity cases on Scheduled Tribes, in the States falling within their jurisdiction. There is, therefore, urgent and genuine need for creation of four additional Regional Offices of the Commission, one each at Hyderabad (Andhra Pradesh), Nagpur (Maharashtra), Shimla (Himachal Pradesh) and Ahmedabad (Gujarat) with a view to ensure the presence of the Commission in the Fifth Schedule Area States with the minimum complement of staff as given below [Para 1.13.1 (iii)].

Chapter-2 Constitutional Provisions for Protection and Development of Scheduled Tribes

1. Proviso to Article 164 (1) of the Constitution may be suitably amended to make its provisions applicable for newly formed States of Jharkhand and Chhatisgarh and all other States, which have the fifth Schedule Areas to provide that each of these States shall also have a Minister in charge of tribal welfare who may, in addition, be in charge of the welfare of the Scheduled Castes and backward classes or any other such work. [Para 2.2.4 (i)]

- 2(a) Clauses (6) of Article 338A of the Constitution should be amended to provide that the Report (s) submitted by the Commission shall be laid before each House of Parliament within three months of such submission and a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non- acceptance, if any, of any of such recommendations shall be placed before each House of the Parliament within six months of such submission. [Column 3 of the Table below para 2.3.2 against Sl.No.1]
- (b) Clause (7) of Article 338A of the Constitution should also be amended to provide that where any such report, or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the Governor of the State who shall cause it to be laid before the Legislature of the State within three months and a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non- acceptance, if any, of any of such recommendations shall be laid before the Legislature within six months of such submission. [Column 3 of the Table below para 2.3.2 against Sl.No.2]

Chapter-3: Socio-economic Development of Scheduled Tribes

1. The Ministry of Home Affairs should advise the Registrar General and the Census Commissioner of India to commission a special study to find out the reasons for steep increase in the population of Scheduled Tribes in respect of the State of Karnataka (80.82%) and Nagaland (67.23%) during the decade from 1991 to 2001.[Para: 3.2.1]
2. Now when the Govt. of NCT of Delhi have decided to restore the benefits of reservation to ST candidates irrespective of their nativity in civil posts under them, the Ministry of Home Affairs should advise the Registrar General and Census Commissioner of India to enumerate in the next Census of 2011 the migrant population of Scheduled Tribes residing in the National Capital Territory of Delhi and other UTs. [Para: 3.2.3]
- 3(a) The Ministry of Tribal Affairs should prescribe a uniform format for preparation and submission of the reports by the Governors in respect of 5th Schedule States with particular reference to its contents. The Ministry of Tribal Affairs should also issue the following instructions to the State Governments to the effect that: [Para:3.3.5(i)]
 - (i) The reports should reach the Govt. of India (Ministry of Tribal Affairs) within a period of six months of closing of the financial year and .
 - (ii) The States, which have TACs, should ensure that TACs are constituted/reconstituted timely and that their meetings are held regularly as per Constitutional provisions.
 - (iii) The reports should contain a detailed note on the implementation of the constitutional safeguards for promotion of educational and socio-economic development of the Scheduled Tribes. These reports should also contain a brief on problems relating to law and order, naxal movements and tribal unrest. The reports should also make a mention about Central and State laws enacted in the State during the report period and

extension/applicability of those laws to Scheduled Areas in the light of the powers of the Governor under Fifth Schedule. Working of PESA Act in the State should also be integral part of the Governor's report.

- (b) In case the reports do not contain the observations of TAC, they may be sent back to the State Governments advising them to apprise the Central Government of the observations of the TACs and action taken on the observations of TAC. **[Para:3.3.5(ii)]**
 - (c) The reports should be thoroughly examined in the Ministry of Tribal Affairs on the basis of the material contained in them and the State Governments should be apprised of the assessment to enable them to take necessary follow-up action. **[Para:3.3.5 (iii)]**
 - (d) A copy of the Governor's Report should be made available to the National Commission for Scheduled Tribes immediately after receipt of the Report in the Ministry to enable the Commission to examine the same and offer its comments thereon. **[Para:3.3.5 (iv)]**
- 4 (a) All the areas covered under Integrated Tribal Development Projects (ITDPs), Modified Area Development Approach (MADA) Pockets and Clusters included in Tribal-Sub-Plan of the States should be made co-terminus with the Scheduled Areas of the respective State. **[Para:3.3.6(i)]**
- (b) It has been brought to the notice of the Commission that in certain cases ITDP was functioning in one single district and subsequently a new district was created out of the that district. It may be ensured that the ITDP areas covering these two districts do not face any problem in the matter of release of funds.
 - (c) All such revenue villages having 50% or more tribal population as per 2001 Census but presently not included in Scheduled Areas of the State concerned, may be included in Scheduled Areas or MADA or Clusters, as the case may be, of the respective State. **[Para:3.3.6(ii)]**
5. The State Govts. may be advised to take necessary action in terms of Section 4(n) of the PESA Act, 1996 to equip Panchayats with requisite powers and authority to enable them to function as institution of self-government. **[Para:3.5.4]**
6. There is a need to devise a mechanism, which would enable the field formations to receive funds directly instead of being routed through State Hqrs. by enforcing on them a system of accountability for proper utilization of those funds. **[Para:3.5.6]**
- 7 (a) The Ministry of Rural Development may be advised to make suitable amendments in the Land Acquisition Act, 1894 to make it conform to the provisions of PESA Act, 1996 in respect of endowing the Panchayats at the appropriate level and the Gram Sabhas with necessary powers for making any acquisition of land for resettlement and rehabilitation of displaced persons **[Para:3.5.7 (i)]**
- (b) The Ministry of Environment & Forests may be advised to make suitable amendments in the Indian Forest Act, 1927 to make its provision consistent with the provisions of PESA Act, 1996 in respect of endowing Panchayats at the appropriate

level and the Gram Sabhas with necessary powers with respect to conferring ownership of minor forest produce. [Para:3.5.7 (ii)]

- 8 There is a need to advise the State Govts. to ensure that the State legislations on Panchayats should conform with the customary law, social and religious practices and traditional management practices of community resources and where the State Govts. have enacted legislations which do not conform with the customary law, social religious practices and traditional management practices, they should initiate corrective action to make suitable amendments in the State legislations. [Para:3.5.8 (i)]
- 9 The Ministry of Tribal Affairs should make all possible efforts to expedite the passing of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 which has already been introduced in Parliament and referred to the Joint Parliamentary Committee (JPC) for further examination which, inter alia, addresses the problems of the tribals relating to grant of pattas in respect of the forest land on which they have been cultivating/living for generations.[Para:3.5.8(ii)]
- 10(a) The Commission has observed that necessary steps are not being taken by the State Govts. to preserve the tribal heritage particularly their art and crafts, places of worship, historical museums, historical monuments etc. The State Govts., therefore, may be advised:
- (i) To take necessary steps to preserve the cultural heritage of the tribal people with particular reference to (i) places of worship, (ii) historical museums,(iii) historical monuments and (iv) tribal art and crafts.[Para:3.5.9(i)]
 - (ii) To create a Tribal Cell within the Tribal Welfare Department of each State to monitor the activities being taken by the State Govts. with respect to item No.(i) and to advise the State Govts. regarding additional measures to be taken to maintain and preserve the tribal culture and heritage. [Para:3.5.9(ii)]
- (b) The Archeological Survey of India, (Govt. of India) and its counterparts in the States should also be advised to pay special attention to preserve the rich tribal culture and heritage.[Para:3.5.10]
- 11 (a) The Planning Commission should make the release of Plan funds to the Central Ministries/Departments conditional to the earmarking of requisite 8.2% of these funds to the TSP in proportion to the ST population of the country (which is 8.2% of the total population). Alternatively, the Planning Commission itself while approving the Plan outlays of the various Ministries/Departments should earmark 8.2% of these outlays to be spent exclusively on activities relating to welfare of Scheduled Tribes under TSP.[Para:3.6.4.5 (i)]
- (b) The Planning Commission in consultation with Ministry of Tribal Affairs should also review their decision whether some of the Ministries/Departments can be exempted from apportioning 8.2% of their Plan outlays for being spent on activities relating to tribal development in relation to the subjects being handled by them. [Para:3.6.4.5 (ii)]
 - (c) The Ministry of Tribal Affairs should issue instructions to all the Ministries dealing with development programmes that they must indicate in their Annual Reports the specific percentage of their plan budget earmarked for Tribal Sub-Plan and the

activities undertaken by them under the TSP budget for tribal development in the country.[Para:3.6.4.5 (iii)]

- (d) The funds allocated under TSP which are not spent at the end of the financial year by the States/UTs or Central Ministries should be made non-lapsable as in the case of the grants-in-aid to the State Govts. and UT Administrations under SCA to TSP and Article 275(1) of the Constitution. [Para:3.6.4.5(iv)]
 - (e) The Ministry of Tribal Affairs should constitute a Committee consisting of representatives from Ministries/Departments concerned with developmental work etc. and representatives of Planning Commission and National Commission for Scheduled Tribes to consider proposals received from State Govts. both under the scheme of Special Central Assistance (SCA) to Tribal Sub-Plan (TSP), and the scheme of giving grants under First Proviso to Article 275(1).[Para:3.6.6.2]
 - (f) The State Govts./UT Administrations should be advised to make 100% utilization of these grants under SCA to TSP and under First Proviso to Article 275(1) by the end of the concerned financial year and in case the State Govts. fail to utilize these grants by the mid of the next financial year, the Ministry of Tribal Affairs should fix up the responsibility for non-utilization of the grants and advise the concerned State Govts. to make full utilization of the grants on tribal development programmes in the next financial year. [Para:3.6.6.5(i)]
 - (g) The State Govts. should be advised to ensure that the funds available under the grants given under SCA to TSP and First Proviso to Article 275(1) are not diverted under any circumstance to any other area not connected with tribal development. The State Govts. should also be advised to submit to the Ministry of Tribal Affairs a statement of details of actual expenditure of these grants on various tribal development programmes within three months of the close of the concerned financial year with a view to exercise check both on timely utilization of the money on tribal welfare schemes as well as on non-diversion of these grants to other areas. [Para:3.6.6.5(ii)]
 - (h) The details of the grants received under SCA to TSP and Article 275 (1) and the expenditure incurred by the State Govts. on various schemes/programmes for socio-economic development of Scheduled Tribes should also form part of the report of the Governor which is required to be annually submitted to the Central Government in terms of para 5 (1) of the Fifth Schedule to the Constitution of India.[Para:3.6.6.5(ii)]
12. On the lines of the procedure adopted by the Ministry of Rural Development which makes direct releases to DRDAs, the Ministry of Tribal Affairs as also other Ministries should consider opening direct channels to the implementing agencies at the district levels and ensure direct flow of funds to the ITDPs or the District Panchayats.[Para:3.6.6.6]
- 13 (a) There is a need to review the functioning of the projects undertaken for the development of PTGs under the centrally sponsored scheme, which was launched seven years ago (i.e. 1998-99). This will also give an opportunity to the Government to find out whether NGOs have given better results than the Government agencies in

the matter of development of PTGs and, if so, such NGOs need to be encouraged by entrusting them projects in respect of other PTGs under the scheme. [Para:3.7.3]

- (b) The projects/schemes relating to development of PTGs should be given, amongst others, only to such NGOs which have a established reputation of working for PTGs with full involvement and a high sense of commitment for more than 15-20 years. [Para:3.7.3]
- (c) The Ministry of Tribal Affairs should ensure that the grants are released to the concerned States (having PTGs) in the first quarter of the financial year to allow them maximum time to spend the money on the development of PTGs. The Ministry of Tribal Affairs should also assess the reasons for non-utilization of funds sanctioned by the Ministry for development of PTGs and also fix accountability for non-utilization of these grants. The Ministry of Tribal Affairs should also advise the State Govt:
 - (i) To make all out efforts to ensure that the grants released by the Central Government is spent on the developmental programmes of PTGs by the end of the relevant financial year. [Para:3.7.7(i)]
 - (ii) To submit to the Ministry of Tribal Affairs a detailed statements of utilization of the grants on various tribal development programmes within two months of the expiry of the concerned financial year. [Para:3.7.7 (ii)]
 - (iii) That the benefits of programmes/schemes for the development of the PTGs should also be made available on similar lines to the PTGs living outside the PTGs project areas. [Para:3.7.7 (iii)]
- (d) In view of the low level of literacy, extreme economic backwardness, pre-agricultural level of technology, stagnant & diminishing population, and primitive characteristics, Maleru community, already recognized as a Scheduled Tribe should also be included in the list of Primitive Tribal Groups (PTGs). [Para:3.8.2]
- 14(a) There is a need to advise the State Govts. for early distribution of the ceiling surplus land to the landless tribals and also for early restoration of the lands which are in litigation in the courts by setting up Fast Track courts at district level and Mobile courts upto Tehsil levels.[Para:3.9.5 (i)]
 - (b) The State Govts. should also be advised to ensure that:-
 - (i) suitable entries about allotment of ceiling surplus lands to the tribals are made in the land records and that the actual possession has been given to the tribal allottees.[Para:3.9.5 (ii)]
 - (ii) The pattas of the land are granted to the tribals who have been assigned lands by the Government or who have been cultivating the lands for years together say, for more than 10 years.[Para:3.9.6(i)]
 - (iii) A copy of Khasra Khatauni along with a map of the holdings should, on demand, be made available to every tribal family without charging any fee.[Para:3.9.6(ii)]

- (iv) The revenue records of the holdings i.e. the Khasra Khatauni and map etc. along with the details containing the names of the owners and number and area of holdings should be kept in the custody of Gram Panchayats to save the tribals from the exploitation by Patwaris by denying correct information to the tribals. **[Para:3.9.6(iii)]**
 - (v) Any entry in the Khasra Khatauni by way of mutation of land records should be made by the Patwaris with the approval of the Gram Panchayat, as is being done in the State of Madhya Pradesh. **[Para:3.9.6(iv)]**
 - (vi) The small holdings of the tribals should be brought at one place on a high priority basis to make them viable and economical for cultivation by making intensive application of various inputs. **[Para:3.9.7]**
- 15(i) The Ministry of Tribal Affairs may advise the State Govt. of Uttranchal to take necessary action at an early date restore the lands illegally transferred to the non-tribals in 77 villages of the Tehsil Khatima alone and other villages (Udhamsingh Nagar) to the tribals in exercise of the powers conferred by Section 211 of Uttar Pradesh Land Laws (Amendment) Act, 1982 (which was enacted to amend the Uttar Pradesh Jamindari Abolition and Land Reforms Act, 1950) which provides for suo-moto action by the Assistant Collector for forcible eviction for non-accrual of tenurial rights due to adverse possession of tribal land. **[Para:3.10.7]**
- (ii) The Ministry of Tribal Affairs may advise the State Govt. of Uttranchal to consider registering suo-moto cases against those non-tribals who are in illegal possession of the tribal land (as referred to above), in terms of Section 3(1) (iv) and (v) of the SCs and the STs (Prevention of Atrocities) Act, 1989 and granting suitable compensation/relief to the tribals as per the scale as in the schedule referred to in Rule 12(4) of the SCs & STs (PAO) Rules, 1995. **[Para:3.10.8]**
16. Most of the anti-land alienation laws, have certain loopholes which help the unscrupulous and scheming non-tribals in getting the tribal land transferred to them against the spirit of these laws. All the State Govts. may be advised to undertake a thorough review of these laws with a view to plug the loopholes to ensure that the tribal lands are not transferred to the non-tribals without observing the procedure laid down in the anti-alienation Acts. **[Para:3.10.10 (i)]**
17. The State Govts. need to be advised to harmonize the provisions of the State laws in relation to alienation of tribal land with the provisions of the Section 4(m)(iii) of the PESA Act, 1996 under which Gram Sabhas are endowed with the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe. **[Para:3.10.10 (ii)]**
- 18(a). The State Govts. which have enacted anti-alienation laws in respect of transfer of tribal land may be advised to make suitable amendments in their laws/Acts on the line of the amendments carried out in the Himachal Pradesh (Transfer of Land Regulation) Act, 1968 in January, 2003 making it mandatory to obtain the previous written permission of the respective State Govt. for transferring of any tribal land to a non-tribal. **[Para:3.10.10 (iii)]**
- (b) Pending suitable amendments in the respective Acts (as stated above), the State Govts. should be further advised to issue suitable instructions to the District Collectors/Deputy Commissioners to ensure that the power of granting permission of transfer of a tribal land to non-tribal (in case it has been vested in them) should in no

situation be delegated by them (i.e. District Collectors/Deputy Commissioners) to the lower functionaries of the district.[Para:3.10.10 (iii)]

- (c) There is also a need to advise the State Govts. to consider extending the special concessions given to members of Scheduled Tribes under PESA Act to the Scheduled Tribes residing outside the Scheduled Areas..[Para:3.10.10 (iv)]
 - (d) The State Govts. should be advised to prescribe a reasonable timeframe within which the land should be handed over to the ST land owner in cases where the court judgments are in favour of STs.[Para:3.10.10 (v)]
 - (e) There should be a bar against suits or applications against any order made by a Deputy Commissioner or a Collector in favour of tribals in respect of alienation of tribal land. The law made by the Govt. of Orissa provides for appeal only to one revenue court. There is a need for incorporation of similar provisions in other State laws if no such provisions already exist. [Para:3.10.10 (vi)]
 - (f) The State Govts. need to be advised to register suo-moto cases against those who are found guilty of alienating the tribal land in their names in an illegal/fraudulent manner in terms of Section 3 (1) (iv) & (v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and, thereafter to grant a suitable relief in cash to the tribals (whose land was alienated) in terms of Rule 12 (4) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995. [Para:3.10.10 (vii)]
- 21(a) The Ministry of Tribal Affairs is advised to take the under-mentioned steps to rejuvenate the TRIFED concerned with the collection of MFP from the tribals: [Para: 3.12.3(i-iii)]
- (i) TRIFED should purchase MFP through MFP Cooperative Societies and, under no circumstances, from the contractors/middlemen with a view to ensure fair and reasonable price to the tribals.
 - (ii) TRIFED should continue to focus its activities on direct procurement of MFP and AP (Agricultural Produce) from the tribals and their sale and the marketing development of the tribal products should be left to the other agencies which are working in this field.
 - (iii) Appropriate steps should be taken to enhance the efficiency of TRIFED by periodic review of its performance, physical as well as financial to strengthen it to perform the basic duties assigned to it.
- (b) The State Govts. where the Scheduled Tribes are sizeable in number may be advised to fix the minimum support price of all the MFP items to ensure that the tribals get fair price for those items and are saved from the exploitation by the middlemen. In case the TRIFED suffer losses in the procurement of MFP items on account of their fixed minimum support price, these losses should be compensated by the Central Govt. (Ministry of Tribal Affairs) in the larger interest of the tribals. [Para: 3.12.4]

- (c) The Fifth Schedule States may be advised to make legal provisions in their respective State Acts relating to Panchayats regarding conferring of ownership of MFP on the tribals in conformity with the provisions, both in letter and in spirit, of Panchayats (Extension to Scheduled Areas) Act, 1996. [Para: 3.12.6]
- (d) The tribals should be allowed to collect the minor forest produce from such forests also, which have been declared 'protected'. [Para:3.12.8(i)]
- (e) The tribals should also be allowed to collect the fuel wood (i.e. dry wood) from the protected forests/wild life sanctuaries, as has been allowed by the Govt. of Madhya Pradesh. [Para:3.12.8(ii)]
- 22(a) There is need to issue clear guidelines for giving preference to Scheduled Tribes in the grant of mining concessions in Scheduled Areas. [Para: 3.13.2]
- (b) The Deptt. of Mines should introduce a bill to give effect to the recommendations of the Bhuria Committee 1995 to the effect that in all industrial enterprises set up in the Scheduled Areas (other than small ventures), the community should be deemed to be the owner with 50% shares in its favour by virtue of its allowing the industry to use local resources and getting established. [Para: 3.13.3]
- (c) There is need to issue instructions to the State Govts.:-
- (i) To comply with the judgement of the Hon'ble Supreme Court dated 11.07.1997 in Samatha vs. State of Andhra Pradesh and Others (CA No. 4601-02/1996) not to transfer by way of mining lease etc. the government land in Scheduled Areas to a non-tribal and that all such mining leases should be given to the tribals only. [Para: 3.13.4(i)]
- (ii) The tribals should be given vocational training and financial assistance to enable them to be in a position to run the mining operations. [Para: 3.13.4(ii)]
- (iii) To make specific legal provisions in their Acts relating to mines and minerals making it mandatory for them to consult Gram Sabhas before grant of any lease about minor minerals. [Para: 3.13.4(iii)]
23. There is need to issue the guidelines to all the State Governments about safeguarding the rights of the tribal people over water and other resources in the Scheduled Areas. [Para:3.13.6]
24. The population coverage norms for setting up Sub-centres, Primary Health Centres and Community Health Centres may be relaxed in respect of the hilly/tribal areas as follows: [Para:3.14.5]

S.No.	Name of the Centre	Existing Population Norms		Relaxed Norms for Plain Tribal Areas	Relaxed Norms for Hilly Tribal Areas
		Hilly Areas	Plain Areas		
1.	Sub-centre/Multipurpose workers	3,000	5,000	3,000	1,000

2.	Primary Health Centre	20,000	30,000	20,000	10,000
3.	Community Health Centre	80,000	1,20 000	80,000	25,000

25. The State Govts. may be advised to take the following steps to ensure availability of proper medical facilities in tribal areas:-
- (i) A Health Guide should be made available for each village with a view to educate the tribals to avail of the modern system of medicine for treatment of such diseases for which their traditional system based on herbal medicines is not sufficient. **[Para:3.14.8(i)]**
 - (ii) Each village should have at least one trained birth attendant (i.e. dai) equipped with a delivery kit, aseptic liquid and scissors for cutting cords. She should be paid a fixed remuneration say Rs.250 per delivery attended by her plus Rs.100 towards the cost of the consumable materials used during the delivery. **[Para:3.14.8(ii)]**
 - (iii) There is a need to devise a very credible and effective system of giving incentives to the doctors and the paramedical staff in the form of good accommodation, facilities for their children's education, out of turn promotions etc. to overcome their reluctance to work in the tribal areas. **[Para:3.14.8(iii)]**
 - (iv) Awareness programmes about the benefits of family planning and information about various communicable diseases and genetic disorders should be launched through documentaries, advertisements, posters and lectures at regular intervals. **[Para:3.14.8(iv)]**
 - (v) All the sub-centres should be located in Government buildings with residential accommodation for female/male health workers. These buildings should also have laboratory facilities for urine, albumin and sugar tests. **[Para:3.14.8(v)]**
 - (vi) Local ST girls and boys should be trained and given priority in appointment as multi-purpose male/female health workers. **[Para:3.14.8(vi)]**
 - (vii) All CHCs should have operational theatres well equipped with requisite facilities. **[Para:3.14.8(vii)]**
 - (viii) Arrangements should also be made to provide one ambulance vehicle in each CHC. **[Para:3.14.8(viii)]**
 - (ix) The Primary Health Centre and the Community Health Centres should be delegated financial powers to purchase essential medicines in emergency cases. **[Para:3.14.8(ix)]**
 - (x) On account of superstitious beliefs, ignorance and illiteracy, the tribals do not make use of the campaigns launched by the Government from time to time for polio vaccination of the infants as also of chicken-pox inoculations. There is, therefore, an urgent need to educate the tribals about the vital utilities of the programmes through block and district authorities with the help of the tribal leaders. **[Para:3.14.8(x)]**

- (xi) To set up more Medical Colleges and Hospitals in tribal areas in which at least 50% of the seats should be filled from amongst candidates belonging to STs only, [Para:3.14.8(xi)]
 - (xii) To make it mandatory for each doctor in tribal areas (on completion of the course), to serve initially for a minimum period of three years in the tribal areas of the country. [Para:3.14.8(xii)]
 - (xiii) To provide concessions/ weightage/ incentives in the matter of promotion to such doctors and para-medical staff who have served in tribal areas for a minimum period of three years. These doctors should also be given monetary incentives. [Para:3.14.8(xiii)]
26. The Ministry of Rural Development is advised to enhance the amount of construction assistance per dwelling unit under Indira Awas Yojana from Rs.25,000/- to Rs.50,000/- per unit for plain areas and from Rs.30,000/- to Rs.75,000/- for hilly/difficult areas to offset the effect of escalation in the cost of construction materials during the last two years.[Para:3.15.12]
27. The Ministry of Rural Development is advised:-
- (i) To prepare a detailed data State-wise about the tribal habitations which have not been so far provided with road connectivity and launch a time-bound programme for providing road connectivity in all the tribal areas by the end of the Tenth Plan period i.e. 2007 through intensive involvement of Town Area Committees, Panchayats, Municipalities, NGOs etc.[Para:3.16.7 (i)]
 - (ii) To ensure that all approach roads to the tribal areas are converted into metalled roads and the interior Kutcha roads into CC roads and connected with the metalled approach roads by the end of the Tenth Five Year Plan i.e. 2007 to facilitate easy approach in these areas even during the rainy seasons. [Para:3.16.7(ii)]
28. There is a need to devise effective ways and means to prevent black marketing of the PDS items of food grains to ensure adequate supply to the poor families. It would be appropriate if Panchayati Raj Institutions are involved in the supervision of fare price shops and also in identification of persons below the poverty line for entitlement of subsidized grains.[Para:3.17.8]
- 29(a) The Hon'ble Prime Minister in his Independence Day Address on 15.8.2002 had announced three programmes viz. (i) installation of one lakh Hand Pumps, (ii) providing drinking water facilities to one lakh Primary schools and (iii) revival of one lakh traditional sources of water. The guidelines for implementation of the programmes had been prepared and circulated to all the States. The programmes were to be completed in two years i.e. 2003-2004 and 2004-2005. The Department of Drinking Water Supply is advised to ascertain the status of implementation of these programmes with specific reference to the areas covered by the tribal population. [Para:3.18.10]
- (b) The Department of Drinking Water Supply is advised to get a survey conducted through the State Govts. regarding the tribal habitations in respect of the Scheduled

Areas States and other States where tribal population is in large numbers, which have not yet been provided with drinking water and accordingly a chalk out a time-bound programme to provide safe drinking water in all these areas by the end of Tenth Plan period. [Para:3.18.11]

- (c) The Department of Drinking Water Supply may advise the State Govts. to make the following arrangements with respect to supplying safe drinking water to the tribal habitations by the end of 2007: [Para:3.18.12]
- (i) All the tribal population in the plain areas should be provided the facility of hand pumps.[Para:3.18.12 (i)]
- (ii) Where it is not possible to install hand pumps for any reason, arrangements for making safe drinking water supply to the tribals living in those areas should be made by providing drinking water wells.[Para:3.18.12 (ii)]
- (iii) Where it is not possible either to install hand pumps or dig wells, and where the natural sources of water like streams etc. are available, adequate steps should be taken to protect these water sources from pollution.[Para:3.18.12 (iii)]
- 30(a) The Commission has observed that the programme of constructing of sanitary latrines in the rural areas are not being implemented in a meaningful manner. The latrines which have been constructed are of very poor quality and in most cases are not usable as they are not equipped with the basic minimum facilities and as a result most of them have been abandoned. It is, therefore, necessary that a system of rigorous inspection of the work carried out by the NGOs or other bodies is evolved to ensure that the grants to them are released by the State Govts. on complete satisfaction about the availability of the basic minimum facilities in these latrines like water, doors, etc. at the time of releasing the grants to the NGOs or other bodies entrusted with the work.[Para:3.20.2]
- (b) The programme of constructing sanitary latrines in the rural areas should be given higher priority with focused attention on construction of sanitary latrines in the isolated tribal belts/pockets. There is also need for increased financial allocation to complete the programme in a time-bound manner by involving NGOs and local bodies. [Para:3.20.2]
31. The Ministry of Rural Development, the nodal Ministry for monitoring the implementation of the Rural Employment Guarantee Scheme (REGS) should advise the State Govts. to maintain separate data regarding the beneficiaries of the Scheme belonging to STs and that Ministry in its Annual Report on the status of implementation of the scheme, as required under the Act/scheme should also make a mention of the data of the ST beneficiaries (State-wise) along with other beneficiaries in the following format [Para:3.21.3.4] :

S.No.	Name of the State	No.of districts covered under the Scheme	Population of STs in these districts	Total no. of beneficiaries under the Scheme in the State	No. & %age of ST beneficiaries under the Scheme	Total no. of mandays put in by ST beneficiaries
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- 32(a) The Govt. of Madhya Pradesh is implementing a scheme for providing financial assistance @ Rs.1,000 in each case to the ST parents for conducting group marriages of their daughters in which at least five pairs should have agreed for marriages. The income limit of the ST parents is Rs.12,000 per annum. A similar scheme is being implemented by the State Govt. for marriages of the daughters of the parents belonging to SCs in which there is no restriction of group marriages and the amount of financial assistance per case is Rs.5,000. Ministry of Tribal Affairs should advise the State Govt. of Madhya Pradesh: [Para:3.22.3]
- (i) To have only one scheme which should provide for an equal amount of financial assistance both to the parents of SCs as well as STs. The existing quantum of financial assistance which is Rs.1,000 for ST parents and Rs.5,000 for SC parents should be increased to a minimum of Rs.10,000 both for SC and ST parents having regard to the existing cost of living. [Para:3.22.3 (i)]
 - (ii) To do away with the existing restriction of group marriages in the case of Scheduled Tribes and the financial assistance should be made available on case to case basis and not on the basis of group marriages as in the case of Scheduled Castes. [Para:3.22.3 (ii)]
 - (iii) To increase the income limit under the scheme from Rs.12,000 per annum to double the amount of the annual income under BPL family.[Para:3.22.3 (iii)]
- (b) The Ministry of Tribals Affairs should advise the States and UTs, (which do not have any such scheme) to introduce a scheme for providing financial assistance of at least Rs. 10, 000 in each individual case to the parents of ST brides, whose (i.e. parents') annual income is double the amount of the annual income under BPL family. The States/UTs which have already such schemes in position may be advised to modify the schemes to increase the amount of financial assistance to a minimum of Rs. 10, 000 in each case to the parents of ST brides (in case the existing amount is less than Rs. 10, 000) and also to increase the income limit to double the amount of annual income under BPL family (again in case the existing income limit is less than that). [3.22.4]
- 33(a) Shri Buduru Srinivasulu, Member, National Commission for Scheduled Tribes had a review meeting with the Girijan Cooperative Corporation in the State of Andhra Pradesh at Vishakhapatnam on 12 August, 2005. The Hon'ble Member was given to understand that in order to ensure food security to tribals, the Girijan Cooperative Corporation (GCC) had submitted a proposal to the Ministry of Tribal Affairs, Govt. of India for fixing a minimum Support Price for Minor Forest Produce to the tribals on par with agricultural farmers with a view to enable the Corporation to pay better prices to tribals even during adverse market conditions. The Commission feels that there is merit in the proposal and it deserves to be considered favourably to protect the interest of Scheduled Tribes in adverse market conditions . The Ministry of Tribal Affairs may expedite their decision in this regard with respect to GCC in particular as well as other STDCCs in general.[Para:3.23.4 (i)]
- (b) Minor Forest Produce is the only source of income to many tribals and they depend on this activity for their sustenance. However, procurement of MFP is not a continuous activity since the period from July to October is a lean period during which only meagre MFP can be harvested. It is suggested that one of the thrust areas

to get some employment for the tribals in the lean period could be value addition to MFP by establishing insitu Processing Centres for conversion of MFP into process products in all the divisional areas wherever MFP for conversion is freely available. The Ministry of Tribal Affairs may advise the concerned State Govts. to consider feasibility of this proposal. [Para:3.23.4(ii)]

- (c) DR supply points may be set up at more number of places, at least, within a radius of 5 to 6 kms. from the important tribal habitats. The Commission has observed that the DR depots are not adequately equipped. Some of the depot buildings are in thatched sheds without electrification. There is need to strengthen these depots in phased manner by taking up construction of pucca buildings. The State Govts. need to be suitably advised to take necessary action in this regard.[Para:3.23.4(iii)]
- 34(a) The Ministry of Tribal Affairs should advise the State Govts. to ensure that the State Channelizing Agencies (SCAs) under their control should examine the loan proposals to ensure the genuineness and viability of the schemes within reasonable period of time and forward the same to the National Scheduled Tribes Finance Development Corporation (NSTFDC) for timely release of the loan. SCAs should also devise ways and means to find out whether the loans sanctioned and released have been utilized by the beneficiaries for the purpose for which loan was sanctioned. [Para:3.25.7]
- (b) The NSTFDC should devise suitable ways and means to give adequate publicity in the tribal States about the schemes being implemented by them and also about the procedure to enable them to avail of the benefits under these schemes. [Para:3.25.9 (i)]
- (c) The NSTFDC should also examine the possibilities of allowing the tribals to obtain the loans directly from the Banks at the rate of interest being charged by NSTFDC and providing interest subsidy to the concerned Banks to meet the gap in the rates of interest between NSTFDC and the Bank. In case the NSTFDC do not have funds to provide the said interest subsidy, the Ministry of Tribal Affairs should provide necessary funds to the NSTFDC. [Para:3.25.9(ii)]
- (d) The income eligibility criteria for availing of the loans under various schemes with respect to the family of the beneficiary should be raised to Rs. 1.5 lakh per annum for urban areas against the existing income limit of Rs. 54,500/- and to Rs. 1.00 lakh per annum for rural areas against the existing income ceiling of Rs. 39,500/-. [Para:3.25.10]
35. NSTFDC as well as concerned SCA should carefully verify the genuineness of the tribal status of the loanees before sanctioning and releasing the loans to ensure that the benefits of the scheme reaches the real STs only and that the actual user of the scheme is a tribal only.[Para:3.25.11]
36. The Ministry of Tribal Affairs should evolve a monitoring mechanism to ensure proper utilization of the money given to the various State Tribal Development Cooperative Corporations for economic advancement of Scheduled Tribes. [Para:3.26.8]
37. The Ministry of Tribal Affairs should initiate action at an early date to draft a suitable bill for introduction in Parliament for making an enabling provision in the

Delimitation Act, 2002 for taking into account for the purpose of delimitation of the constituencies with respect to Lok Sabha, State Assemblies and Panchayats such tribal communities which were recognized as Scheduled Tribes after 2001 Census and such other tribes which might be recognized in future subsequent to the submission of Census report(s) by the Registrar General and Census Commissioner of India. [Para:3.27.2]

Chaper-4 Resettlement and Rehabilitation of Displaced Tribals

- 19(a) There is a need to formulate a suitable central legislation on resettlement and rehabilitation of the persons likely to be displaced due to acquisition of their lands for various development projects, either separately or as a part of the Land Acquisition Act, 1894 and to advise the State Govts. to enact similar legislations to ensure adoption of a uniform resettlement and rehabilitation packages by all of them. [Para: 4.1.2]
- (b) Pending enactment of the central legislation and similar legislations by the State Govts., there is need to advise the State Govts. to the effect that the resettlement and the rehabilitation packages should, inter alia, provide that [Para:4.1.3]:
- (i) The displaced persons are given land for land, which is of the similar quality and of equal legal status as that of the land previously occupied by them with a view to enable them to take care of their present needs and future development, and in case the affected persons express desire for compensation in cash or kind, they should be so compensated under appropriate guarantees.
- (ii) To ensure stable livelihood to all members of displaced tribal families, each adult person of that family should be allotted 5 acres of irrigated land in the new place of settlement, while also ensuring that all allottees from one family are given land at one place.
- (c) The State Govts. should also be advised to ensure that:
- (i) The resettlement and rehabilitation of the tribals likely to be displaced from their lands should be finalized to their satisfaction before the process of acquisition of their lands is initiated. [Para: 4.1.4 (i)]
- (ii) The rate of compensation for the land to acquire should be determined on the basis of the market value of the land prevailing at the time of acquisition and not on the basis of transaction rates of the old registries of the lands in the area, which may have occurred several years ago. Another component which should go into the determination of rates of compensation is the fact that the agricultural land was being acquired for setting up industrial projects and therefore, the cost of the land will be much more and therefore, this increased value of the land should also be taken into account to determine the rates of compensation. [Para: 4.1.4(ii)]
- (iii) While acquiring the tribal lands for industrial purposes, steps should be taken to ensure that the likely displacement of the tribal families is minimal and where such displacement is unavoidable, the State Governments should also ensure while framing the resettlement and rehabilitation policies that the displaced tribal families are

resettled in tribal belts where other tribal communities are residing with view to protect their cultural heritage. [Para: 4.1.4(iii)]

- (iv) To issue suitable instructions to the effect that the owners of the industries shall give preference to the members of the affected tribal families (i.e. whose lands were acquired) for running tea shops, snack bars, giving licenses for operating canteens in the premises of the industrial plants etc. [Para: 4.1.4(iv)]
 - (v) To make it mandatory for the upcoming industries in newly acquired areas to ensure that, over and above the compensation and the allotment of replacement land, at least one person of each displaced tribal family is given a suitable job in the industrial/mining etc. project within a reasonable period of time.[Para: 4.1.4(v)]
 - (vi) In case the displaced tribal family had land in more than one village before acquisition, suitable job should be given to one person each against acquisition of their land in each village. [Para: 4.1.4(vi)]
 - (d) The State Govts. may also be advised to ensure that the tribal families which have been assigned lands by the Government and which is being cultivated by them for the past many years say, for 10 years or more and for which those tribal families have not been granted pattas should also be treated on par with the holders of pattas or those who are having ancestral landed properties for the purposes of payment of compensation for their lands proposed to be acquired for development purposes. [Para: 4.1.5]
- 20(a). The Ministry of Water Resources have informed that out of a total of 51,447 Project Affected Families in respect of the three States (i.e. Madhya Pradesh, Gujarat and Maharashtra) 33,153 families have already been resettled and 18,294 families are yet to be settled (As on 31.1.2006). The Commission cannot but concern over the slow process of resettlement of the Project Affected Families having regard to the fact that 75% of the Project Affected Families are Scheduled Tribes. The Commission, therefore, notes with grave concern that 18,294 Project Affected Families are yet to be resettled. It is, therefore, necessary that the entire matter relating to the resettlement and rehabilitation of the tribals displaced by Sardar Sarovar Project in respect of the State of Madhya Pradesh is placed before the Tribal Advisory Council and the Commission apprised of the Council's views as also the action taken thereon.[Paras:4.3.6 & 4.3.8]
- (b) The State Govts. of Gujarat, Madhya Pradesh and Maharashtra may be advised:
 - (i) To take urgent action on the early resettlement of the balance of 18,294 (as informed by the Ministry of Water Resources) Project Affected Families of the Sardar Sarovar (Narmada) Project. They may be also advised to prepare a time bound programme for their resettlement and rehabilitation. [Para: 4.3.9]
 - (ii) To identify the number of tribal families out of the balance families of 18,294 (i.e.the Project Affected Families of Sardar Sarovar Project) which are yet to be resettled and rehabilitated and also about the action taken by the respective State Govts. for their (i.e. tribals) early settlement in realization of the hard fact that the Scheduled Tribes belong to the most vulnerable section of the society and any further delay to resettle

the displaced/ affected tribal families will aggravate their livelihood problems.
[Para: 4.3.9]

Chapter-5: Educational Development of Scheduled Tribes

- 1(a) The State Govts. may be advised to launch awareness programmes in the tribal areas, through NGOs and social activists, to inform the tribal parents about the importance of education and the benefits which flows out of it to induce them to send their children to schools.[Para:5.2.3(ii)]
- (b) Most of primary schools in tribal areas are run by a single teacher. In case he/ she takes leave due to illness or for any other domestic reason, there is no teacher left in the school with the result the education of the children suffers. There is therefore, an urgent need to post one more teacher in all the single teacher schools in tribal areas. [Para: 5.2.3 (iii)]
- (c) It has been observed that the major part of the funds relating to educational development of Scheduled Tribes, as also other areas are not released or utilized to the implementing agencies by the State Govts. There is also a tendency on the part of the State Govts. to divert the funds to other areas. It is, therefore, necessary that the State Govts. are advised to ensure the release of funds to the implementing agencies for activities identified for socio-economic development of Scheduled Tribes including the imparting of education to tribal children and also to avoid diversion of funds meant for education to other areas. [Para: 5.2.4(i)]
- (d) The State Govts. may be advised:
 - (i) to open more and more primary schools in tribal areas with a view to arrest the dropout among ST children and also to open more girls hostels in low female literacy pockets. [Para: 5.2.4 (ii)]
 - (ii) To open atleast one school of excellence such as Kendriya Vidyalaya or Navodya Vidyalaya or Eklavya Model Residential School etc. in each block of a district.[Para:5.2.4(iii)]
 - (iii) To appoint teachers in schools in tribal areas from the tribal communities itself having knowledge of local dialect or to create a separate cadre of teachers for tribal areas with some incentives. As there is already shortage of teachers in the schools in tribal areas, the teachers in these schools should be exempted not only from the enumeration duties at the time of Census operations but also from other survey duties.[Para:5.2.4(iv)]
- (e) To ensure that the residential schools and hostels for ST students are properly maintained and the basic minimum facilities like drinking water, sanitation, toilets and bathrooms are made available and also further to improve the quality of food as also its quantity being served to the children in the residential schools and hostels. [Para: 5.2.4(v)]
- (f) There is a need to provide attractive incentives to the parents of the girls for sending them to the schools, apart from the existing incentives which are being given to the

ST children in the form of free textbooks, uniforms, stationery, school bags, cooked food through mid-day-meal Scheme etc. [Para: 5.2.4(vi)]

2. Keeping in view the successful functioning of the Shiksha Karmi Project in Rajasthan, other educationally backward States where the education level among the ST is still poor may be advised to start similar Project for benefit of children belonging Scheduled Tribes. [Para: 5.5.3]
3. The Commissions has observed that the National Policy on Education 1986, as amended in 1992, inter alia, provides for opening of a primary school within 1 k.m. walking distance from the SC/ST habitations up to 200 population . No norms have been fixed for opening of middle and higher secondary schools. The Commission recommends that there should be at least one middle school in tribal areas within a radius of three kilometers and at least one higher secondary school within a radius of five kilometers in tribal areas. [Para: 5.7.6]
4. The objective of SSA is to make all the children educated throughout the country. However, the existing two tier system of education in the country through CBSE and through State Boards of Education is not aimed at giving them uniform quality of education. Each State Board has its own syllabus, books, course contents educational infrastructure and standard of examination. Most of the ST students do not have access to schools affiliated to CBSE. Students pursuing CBSE pattern are in advantage for taking admissions in institutes of higher studies and for joining organized services. Therefore, the Commission is of the view that educational pattern and pattern of examination should be same throughout the country so that ST students who generally join Govt. schools in the local areas are not put to disadvantage and are able to compete for admissions in institutes for higher studies. [Para: 5.7.7]
5. The Ministry of Human Resource Development should advise the Govt. NCT of Delhi and Delhi University to modify their existing policy/ instructions to provide for: [Para: 5.9.2]
 - (i) To fill up the vacant seats in B Pharma/ D Pharma courses or other course reserved for ST candidates for the Delhi region from amongst the ST candidates belonging to non-Delhi region in the event of sufficient number of ST candidates in Delhi region being not available. [Para: 5.9.2(i)]
 - (ii) The existing arrangement of filling the vacant seat reserved for ST candidates from SC candidates from Delhi region should be stopped forthwith. [Para: 5.9.2(ii)]
- 6(a) The conditions of the ST hostels in various States have not been found to be satisfactory. It has been noticed that even the basic facilities like drinking water, sanitation, light, cooking gas etc. are not available in adequate quantities. It is, therefore, necessary that the Ministry of Tribal Affairs should advise the State Govts. to take up corrective steps to provide the basic facilities in the ST hostels to ensure retention of students at the Middle and Higher Secondary levels of school education. [Para: 5.10.4 (i)]
- (b) It has been observed that a considerable number of hostels are functioning in the rented buildings, which do not have basic facilities. The Commission has also noticed

during the field visits in tribal areas that the seat capacity of hostels for ST girls as also of boys is much less than the demand. The Commission, therefore, is of the opinion that the Ministry of Tribal Affairs should advise the State Govts. to frame a time-bound programme to construct more hostel buildings with all the requisite facilities of light, water, electricity, kitchen, library etc. under the Centrally Sponsored Scheme for Construction of Hostels for ST Girls and Boys to attract students belonging to ST communities and to ensure their retention in the schools. [Para: 5.10.4 (ii)]

- (c) There is need to make the learning a joyous experience and in order to do this, it is essential to take help of the Distance Education System through visual media i.e. T.V. films etc. specially in the schools in rural far flung tribal areas. [Para: 5.10.4 (iii)]
- (d) The basic reason behind the drop out of ST students can be attributed to the poor economic condition of the family and this situation compels the tribals to utilize their children as an economic unit to bring some income to the family. It is also necessary that some economic incentives are given to such parents of the children whose income is below the poverty line with a view to wean them away from the compulsion of using their children as economic units instead of sending them to schools. [Para: 5.10.4 (iv)]
- (e) There is a need to launch awareness programme to inform the ST parents, particularly the mothers about the importance of education in making their children self-dependent and also in improving their economic condition. These programme can be undertaken in tribal areas through NGOs etc. [Para: 5.10.4 (v)]
- (f) The Ministry of Tribal Affairs should advise all the concerned State Govts./UT Administrations to fill up the vacancies of teachers by evolving schemes of giving various incentives such as descent accommodation, medical facilities etc. to teachers and also by ensuring that the posts of teachers in schools in tribal areas are filled, as far as possible, by appointing teachers from amongst local tribal candidates. [Para: 5.10.4 (vi)]
- (g) In most of the cases one of the reasons for dropouts is the repeated failure of tribal children in a class. This can be cured by identifying weak and below average tribal students and making arrangements for providing them extra coaching at no cost to them either on the holidays or at night. The Ministry of Tribal Affairs may be advised to write to concerned State Govts. to make the necessary arrangements in this regard by providing some cash incentives to the teachers. [Para: 5.10.4 (vii)]
- (h) One of the major constraints in the dissemination of education among STs is that their parents resort to seasonal migration to other places in search of livelihood during the period from April to middle of June and this is the period for the examination of the children. When the parents move out of their habitations to other places, they have to take their studying children along with them as they can't leave them back. This necessitates the dropout of the children. This seasonal migration problem is particularly prevalent of the States of Orissa, Madhya Pradesh, Rajasthan, Andhra Pradesh and Chhattisgarh which have sizeable number of ST population (all these States being the Scheduled Area States). The respective State Govts. may be advised to formulate suitable schemes for board and lodging of the studying children of those ST families who decide to temporarily migrate to other places in search of their livelihood and who agree to leave their children back to enable them to continue their

studies and complete their examinations. Alternatively, these State Govts. may be advised to make special arrangements for conducting special examinations of the ST children when they return to their original habitations from the places of their temporary migration. This will help the successful ST children to be promoted to the next higher classes. [Para: 5.10.4 (viii)]

- (i) The dropout among the tribal boys is particularly high at middle and secondary level of education. The enrolment and retention of ST girls upto secondary level is very essential for uplifting the economic status of tribal families, but due to poverty, parents are reluctant to send their children, particularly girls, to schools. The following measures are suggested to increase enrolment and retention of ST boys and girls in schools: [Para: 5.10.4 (ix)]
 - (a) Financial assistance should be provided right at the time of the admission itself towards admission fees, books, copies and stationery material, school dress and washing expenses/ material for the dress. For this purpose, State Govts. should make necessary arrangements much before the start of academic session.
 - (b) Pre-matric stipend should be disbursed regularly, keeping in view the daily requirement of the students- day scholars or hostellers, as the case may be, so that the children feel encouraged to attend school on regular basis.
 - (c) Additional incentives in the form of cash award should also be granted to each student having more than 75% attendance plus the work done in the school note books. Besides, those students who secure 60% or above marks in the examinations should also be given cash awards.
 - (d) Scheme of Mid -day meals should be extended up to matric level for at least ST girl students. This will provide huge relief to the family of the ST girl students and it will improve enrolment of ST girl students and also reduce their dropouts.
 - (e) Special coaching in English, Math, Physics, Chemistry, Biology, Commerce and Economics should also be imparted to students in XI and XII classes. This will help them in taking admission in the colleges of general as well as professional courses.
- 7(a) The income ceiling in respect of the parents of the students for the purpose of grant of the Post-Matric Scholarship may be raised from Rs.1 lakh to 2.5 lakh per annum and the amount of scholarship may be upgraded from Rs.235 to Rs.500 and from Rs.740 to Rs.1000 in respect of students residing in hostels and from Rs.140 to Rs.500 and from Rs.330 to Rs.750 in respect of day scholars. [Para:5.11.1.2(i)]
- (b) The tribal students who are day scholars but who reside in rented accommodation should be treated on par with hostellers and the amount of scholarship in their case also should be equal to that of hostellers. [Para:5.11.1.2(ii)]
- (c) The Commission has observed that the State Govts. have also schemes for providing scholarships to tribal students at pre-matric levels and that some of the State Govts. (such as the State Govt. of Uttranchal) have kept an income ceiling of Rs. 2,500/- per month in respect of the parents of the tribal children studying in Class IX and X. The Ministry of Tribal Affairs should, therefore, advise all the State Govts./ UT Administrations which are operating such schemes to abolish the income ceiling in

respect of the parents of all the tribal children studying in Classes from I to X. [Para:5.11.1.3]

- (d) The Commission has observed that most of the tribal parents are not aware of this Scheme and therefore, there is a need to give wide publicity about this Scheme in the tribal areas of the country to ensure that more and more ST students will come forward to pursue higher and technical courses. Ministry of Tribal Affairs may also advise all the States which have sizeable number of tribals that each Tribal Welfare Deptt. of these States should develop their own website to disseminate information about various schemes for tribal development including the Post-Matric Scholarship Scheme. These websites should also provide link with the website of the Ministry of Tribal Affairs. [Para: 5.11.1.7]
- (e) It has been brought to the notice of the Commission that the disbursement of Post-Matric Scholarship in most of the States is being delayed due to non release of funds both from the Govt. of India (i.e. over and above the committed liability of the State Govts.) and the State Govts. The Commission, therefore, recommends that the Ministry of Tribal Affairs should ensure the timely release of the funds to the State Govts. over and above States' committed liability. The Ministry should also issue instructions to the State Govts. that requisite funds to the district authorities up to the committed liability is released in time to ensure timely disbursement of these scholarships to the ST students. The State Govts. may be also advised to explore the possibilities of disbursing the scholarship money to the students through their Bank Accounts. [Para: 5.11.1.8]
8. On the lines of the Scheme for providing free coaching facilities to ST students to enable them to compete in various civil service examinations, the Ministry of Tribal Affairs should also consider providing financial assistance to ST students for providing pre-admission coaching in various disciplines relating to Management and Technical courses. On similar lines, the State Govts. may be advised to provide pre-admission coaching to tribal students for taking admission in various professional courses. [Para: 5.11.1.9]
9. The scheme of Book Banks in its present form permits giving one set of books for two students in all degree level professional courses and one set per student in case of Post- Graduate Courses in Medical, Engineering, Business Management, Law and Bio-Sciences and Chartered Accountancy. The former position inhibits carrying on of independent studies by the students. This handicap needs to be addressed to and removed. Each student in respect of Post-Graduate professional courses also should be provided one set of books as in the case of Degree Courses. [Para: 5.11.1.13]
- 10(a) In the Annual Reports of the Ministry of Tribal Affairs, no information is available about the total number of hostels for girls ever since the inception of this Scheme in the Third Plan period (which was later on merged with the Scheme for construction of hostels for ST boys). Similarly, no information is available about the total number of hostels constructed for ST boys since 1989-90 when the Scheme was started. The Ministry of Tribal Affairs is accordingly advised to furnish in their next Annual Reports State-wise information about the total number of hostels constructed under the Scheme separately for boys and girls alongwith sanctioned seat capacity of each hostel. The Commission further recommends that the norms for admission into the

hostels should be suitably relaxed in case all the seats are not utilized with reference to the normal eligibility requirements. [Para:5.11.1.19]

- (b) The Commission has observed during its field visits in tribal areas that the seats capacity of hostels particularly for ST girls is much less than the requirement and this is one of the major reasons for less enrolment and increased dropout of girl students, finally leading to low female literacy among STs. The Commission, therefore, recommends that there is an urgent need of construction of more hostels for ST girls. [Para: 5.11.1.20]
- 11(a) The Ministry of Tribal Affairs is advised to furnish information about the total number of Ashram schools (State-wise) in the next Annual Reports (2006-07 onwards) functioning in the 21 TSP States and 2 Union Territories. [Para: 5.11.1.24]
- (b) As on date, no information is available about the functioning of the Ashram schools, the facilities available in them and the quality of the teaching, mess facilities etc. The Ministry of Tribal Affairs should, therefore, get a suitable evaluation study conducted regarding the functioning of the Ashram schools in the 21 TSP States and 2 Union Territories through the Tribal Research Institutes.. [Para: 4.11.1.24]
12. The existing income ceiling of Rs. 44, 500/- per annum from all sources in respect of the candidates (if in employment) or their parents income is not realistic having regard to the increase in the cost of living over the last couple of years and, therefore, the Ministry of Tribal Affairs to raise this income ceiling at least to Rs.1.00 lakh per annum. [Para: 5.11.2.6]
- 13.(i) Only such NGOs which have considerable experience and good reputation should be given grants for running the pre-examination centres in the tribal areas for providing free coaching facilities to ST candidates to help them compete in various competitive examinations for recruitment to various posts held by UPSC, State Public Service Commissions, SSC etc.(wherever such Centres are being run by NGOs). [Para: 5.11.2.8 (i)]
- (ii) As far as possible, these NGOs (referred to above) which are given grants for running the pre-examination coaching centres should be located in the tribal areas. [Para: 5.11.2.8 (ii)]
- (iii) It has been brought to the notice of the Commission that an NGO is given grant under the scheme and with the help of the grant, the concerned NGO creates an infrastructure for running the pre-examination centres and the next year that NGO is not given grant. This results in the total wastage of the grants given in the previous year. It has also come to the notice of the Commission that such infrastructure/buildings are utilized by these NGOs for residential purposes. The Ministry of Tribal Affairs, therefore, should ensure that the selection of NGOs at the initial stage itself is made very carefully and judicially and once an NGO with established reputation is selected, further grants should not be stopped to that NGO unless non-satisfactory performance or any other complaint is received by the Ministry about that NGO. The Ministry of Tribal Affairs should also take steps to take over the infrastructure/building created by an NGO with the help of grants given by the Ministry in case the grant to that NGO is stopped by the Ministry in the subsequent year/years on account of bad performance or any other complaint. [Para: 5.11.2.8 (iii)]

14. Against an allocation of Rs. 30.25 crore in the Ninth Plan, Rs.18.45 crore were released by the Ministry of Tribal Affairs to the State Governments and NGOs implementing the scheme. Similarly, out of the allocation of Rs. 5.40 crore for the year 2005-06, an amount of Rs.2.47 crore was released to State Governments. The Commission fails to understand the reasons for release of only 40-50 percent of the actual allocations to the State Govts. This scenario, in the opinion of the Commission, might be due to lack of adequate awareness about this scheme among the ST population. The Ministry of Tribal Affairs should, therefore, advise the State Govts. and the NGOs to make intensive and wide publicity of this Scheme through mass media and other channels to inform the tribal people throughout the country about the benefits under the scheme so that the tribals living in the remote and isolated pockets could also avail of the benefits of the scheme. **[Para: 5.11.2.16]**
- 15(a) The Commission has observed that one of the major constraints in successful implementation of this Scheme is that the State Govts. often do not release the funds in time to the implementing agencies. The Ministry of Tribal Affairs should take up the matter with the respective State Govts. and impress upon them the need to release the funds to the implementing agencies in time to ensure that the various components of scheme do not suffer in any way on account of delay in release of funds. **[Para: 5.13.5]**
- (b) There is a genuine need to increase the number of Eklavaya Modal Residential Schools in States/UTs which have sizeable number of ST population and that the 32 Residential Schools under the Scheme (out of the total of 100 sanctioned for various States) which are not yet functional, should be made functional at an early date. **[Para: 5.13.6]**
- (c) There is a need to open more and more Govt. Schools of Excellence and Central Schools in tribal areas to ensure that all meritorious ST students are accommodated/ admitted in these schools. **[Para: 5.13.7]**
16. The scope of reservation should also be extended to such public schools and other schools, and institutions such as hospitals etc. which though not funded by the Government had received/continue to receive concessions from the Government in respect of acquisition of lands, buildings or other concessions respecting recognition/affiliation in regard to running of those institutions like electricity, water, provision of public transport etc. **[Para: 5.14.2(i)]**
17. There should be 8.2% (i.e. in proportion to the population of STs to the total population of the country as per 2001 Census) reservation for Scheduled Tribes in awarding fellowships and/or in granting scholarships in the schools, colleges, Universities, Educational and Technical Institutions etc. **[Para: 5.14.2(ii)]**
18. 8.2% of seats in the hostels attached to schools, colleges, educational and technical institutions should be reserved in favour of Scheduled Tribes. **[Para: 5.10.2(iii)]**

Chapter-6: Service Safeguards

1. There should be upward revision of the reservation percentage in services and posts for Scheduled Tribes from the existing 7.5% to 8.2% having regard to the increase in the total population of the Scheduled Tribes to the total population of the country on the basis of 2001 Census (i.e. 8.2%) [Para 6.2.5]
2. The rule of reservation should be extended in promotion by selection within Group 'A' posts in terms of the Constitution (77th Amendment) Act, 1995 and the Constitution (85th Amendment) Act, 2001, which amended Article 16 (4) to provide inter alia for making reservation in matters of promotion, with consequential seniority, to any class or classes of posts in services under the State in favour of SCs and STs. [Para 6.2.9]
3. The matter regarding whether there should be reservation in promotion by selection within Group A in favour of Scheduled Castes and Scheduled Tribes on the basis of the amendments made in Article 16(4) of the Constitution by adding a new Article 16 (4A) is presently sub judice before the Constitution bench of the Hon'ble Supreme Court. The Government should engage an eminent jurist well- conversant with the subject matter to ensure that the case was effectively presented and argued well before the Constitution bench with a view to protect the interests of Scheduled Tribes as also of Scheduled Castes. [Para:6.3.2]
4. The unfilled vacancies reserved for Scheduled Tribes in cadres having 13 or less number of posts should be carried forward indefinitely as in the case of cadres having more than 13 posts with respect to which there is no lapsing of reserved points. [Para 6.5.1(x)]
5. As per the existing instructions, there is a ban on dereservation of reserved posts in direct recruitment. A similar ban should be imposed on dereservation of posts to be filled by promotion in view of the implementation of the post- based roster, with a view to protect the interests of candidates belonging to Scheduled Tribes in the matter of their promotions. [Para 6.6.2]
6. Where the existing Recruitment Rules provide for filling up of the vacant posts 100% by promotion, the Recruitment Rules should be suitably amended to provide for the element of direct recruitment to ensure that in case the eligible ST candidates are not available in the feeder grade for promotion to the next higher post, the ST reserved points can be temporarily diverted to DR quota and dereservation avoided. [Para 6.6.3]
7. A separate representative belonging to Scheduled Tribes should be associated in all the Departmental Promotion Committees/Boards/Selection Committees to protect the interest of ST candidates. [Para 6.7.2]
8. The principle of positive discrimination i.e. the rule of reservation should be extended to private sector also to fulfill the constitutional obligations of bringing about social equality. [Para 6.8.2]
9. There should be a binding clause at the time of disinvestments of PSEs that the new management shall observe and continue the reservation policy for appointment to

various posts. The Govt. should also consider enacting a legislation to that effect. **[Para 6.8.3]**

10. The scientific and technical posts including those intended for conducting research, or for organizing, guiding and directing research were brought for the first time within the scheme of reservation for SCs and STs up to the lowest rung of Group 'A' vide DP&AR's O.M. dated 23 June 1975. The Commission recommends that the scheme of reservation for SCs and STs in scientific and technical posts should also be extended beyond the lowest rung of Group 'A' posts/ services (i.e. within Group 'A'). **[Para 6.9.6]**
11. A separate zone of consideration for eligible ST and SC officers in the feeder grade should be drawn up in replacement of the existing system of drawal of a single zone of consideration for general as well as ST/ SC officers for the purpose of their promotion by selection from Group 'C' to Group 'B', within Grpoup 'B' and from Group 'B' to the lowest rung of Group 'A', in compliance of the directions of the Hon'ble Supreme Court which has inter-alia held that clubbing the STs/SCs with general category in the same zone of consideration would defeat the very purpose of reservation. **[Para 6.13.3]**
12. The percentage of reservation for recruitment of Group 'C' and 'D' posts in the Central Govt. offices where recruitment is made on local/ regional basis should be increased from the existing 0% to 12% in the State of Goa having regard to marked increase in the ST population after 2001 Census on account of inclusion of certain communities in the list of Scheduled Tribes of the State in the year 2002. **[Para 6.14.5]**
13. The Ministry of Home Affairs should issue instructions to all the Union Territories to the effect that the candidates belonging to Scheduled Castes and Scheduled Tribes irrespective of their State of origin will be eligible to apply for and being considered for appointment in civil posts/ services in those Union Territories or in offices/ organizations under their administrative control, in compliance with the directions of the Hon'ble Supreme Court in its judgment dated 11.02.2005. **[Para 6.14.7]**
14. The Department of Personnel & Training may consider (i) removing the ceiling of 5% of direct recruitment quota for the purpose of compassionate appointments in respect of candidates belonging to Scheduled Tribes. **[Para: 6.17.2]**
15. Consequent upon the decision of the Govt. of NCT of Delhi to provide reservation to candidates belonging to Scheduled Tribes irrespective of their nativity communicated to Chairman, DSSSB and all Heads of Departments vide their letter dated 30 June, 2005, the Govt. of NCT of Delhi should launch a special time-bound recruitment drive to fill up the backlog vacancies reserved for STs both in direct recruitment and in promotion. The Commission vide its letter dated 14 July 2005 has already requested the Chief Secretary, Govt. of NCT of Delhi to send an action taken report for filling up of back log vacancies reserved for STs. **[Para 6.18.14]**
16. The SCs, STs and OBCs (Reservation in Posts and Services) Bill, 2004 should be included in the Ninth Schedule of the Constitution after it is passed by the Parliament and becomes an Act. **[Para:6.19.2 (i)]**

17. Judiciary, Lok Sabha/Rajya Sabha Secretariat and Armed Forces should also be brought within the purview of reservation for Scheduled Castes and Scheduled Tribes as per recommendations of the erstwhile National Commission for Scheduled Castes and Scheduled Tribes as contained in para 4.75 and 4.77 of its Seventh Annual Report for the year 2001-02. [Para:6.19.2 (ii)]
18. There should be reservation in appointments for work-charged posts as well as for appointments for a period of less than 45 days duration.[Para 6.19.2 (iii)]
19. The scope of reservation for SC/ST candidates should be extended above the lowest rung of Group 'A' in respect of scientific and technical posts which are required for conducting research or for organizing, guiding and directing research. [As per the existing instructions, the reservation for SC/ST candidates in such posts is available only upto the lowest rung of Group 'A' posts.] [Para 6.19.2 (iv)]
20. The minimum experience required for promotion to a post may be relaxed in the case of members of Scheduled Tribes if at any stage of their consideration for such promotion, sufficient number of candidates belonging to these communities possessing the requisite experience is not available to fill the reserved posts. [Para 6.19.2 (v)]
21. Section 13(3) of the proposed bill provides that where any case of negligence or lapse in relation to providing reservation for members of SC/ST/OBC comes to the notice of the Liaison Officer during the course of the inspection carried out by him, or otherwise, he will submit his report to the concerned Secretary to the Govt. or to the Head of the Department, as the case may be, and that Secretary or Head of the Department, will issue appropriate orders in the matter to the concerned appointing authority. In its comments, the Commission suggested the following addition to be made at the end of this Section:- [Para 6.19.2 (vi)]

“The Secretary or the Head of the Department will send a copy of the action taken report to the nodal department dealing with the reservation matters i.e. Department of Personnel & Training and the National Commission for Scheduled Castes or National Commission for Scheduled Tribes, as the case may be.”
- 22(i) The percentage of reservation for STs in case of direct recruitment to Group 'C' and Group 'D' posts normally attracting candidates from a locality or a region should be fixed taking into consideration the population of the communities/ tribes recognized as STs vide Constitution (Scheduled Castes and Scheduled Tribes) order (Amendment) Act 2002 and other similar amendments issued after conclusion of Census 2001 with a view to ensure that the persons belonging to these communities are not deprived of their constitutional rights. [Para 6.20.1(i)]
- (ii) The Commission has observed that one third of the cadre strength of all India services i.e. IAS, IPS and IFS are filled by nomination from amongst the State Civil Services officers. There should be reservation in such induction/ nomination for the candidates belonging to Scheduled Tribes. [Para 6.20.1(ii)]

- (iii) The ST officers who are senior enough in their respective organizations should also be given opportunity for being nominated as Liaison Officers and also to work in the SC/ST Cell. [Para 6.20.1(iii)]
- 23.(a) The Department of Personnel & Training should impress upon all the Central Ministries/Departments particularly those which are the cadre controlling authorities with respect to various posts/services to make special efforts to increase the representation of Scheduled Tribes in all the Groups of services, particularly in Group A and B by filling up backlog of vacancies reserved for them. [Para: 6.21.1.2]
- (b) The representation of Scheduled Tribes in Group A and B posts is far below the prescribed percentage of 7.5 in the Central Public Sector Enterprises. The Department of Public Enterprises should impress upon all the administrative Ministries/Departments which exercise control over these Enterprises to make concerted efforts to achieve the prescribed level of representation of Scheduled Tribes in these Groups.[Para:6.21.2.2]
- 24(i) The representation of Scheduled Tribes in all the three cadres i.e. officers, clerical and sub-staff is very poor in most of the public sector Banks. This situation has arisen mainly because the Chief Executives of these Banks who are the cadre controlling authorities as well as appointing authorities in respect of all posts, have failed to discharge their constitutional obligations in implementing the reservation policy of the Govt. of India in respect of Scheduled Tribes. This grave situation calls for taking stringent action against the Chief Executives of these Banks for their failure in proper implementation of the reservation policy. Apart from this, the Banking Division of the Department of Economic Affairs (Ministry of Finance) should also issue instructions to the defaulter Banks to fill up the backlog/shortfall of ST vacancies in a time-bound manner. [Para:6.21.3.5]
- (ii) In case the response from ST candidates to the press advertisement released by the Banks inviting application from ST candidates to fill up the backlog is not good, the Banking Division should advise the Banks to depute recruiting teams in the areas where there is high concentration of ST population in the country to locate eligible candidates for various posts.[Para:6.21.3.5]
- 25(i) The Ministry of Human Resource Development should either consider stopping the annual grants to the Aligarh Muslim University in toto or effecting a suitable cut in the quantum of the grant, as considered appropriate by them until such time this University agrees to implement the reservation policy of the Govt. of India in respect of Scheduled Tribes in appointment of Lecturers and initiate necessary action in this regard by appointing Lecturers belonging to Scheduled Tribes within a reasonable period of time. [Para:6.21.4.5(i)]
- (ii) The Ministry of Human Resource Development should issue instructions to all the Central Universities to follow the reservation in appointment to the posts of Readers and Professors, which are filled up by direct recruitment in compliance with the reservation policy of the Govt. of India. [Para:6.21.4.5 (ii)]

- (iii) The representation of Scheduled Tribes in most of the Central Universities in the Grade of Lecturers is very low. The Ministry of HRD (Department of Secondary and Higher Education) and the University Grants Commission should advise the Central Ministries to identify the backlog vacancies of Lecturers and to chalk out a time-bound programme to fill them up within a specified period of two years.[Para:6.21.4.5(iii)]
 - (iv) In case the defaulter Central Universities fail to fill up the backlog vacancies reserved for Scheduled Tribes within two years period, the Ministry of HRD/ UGC while releasing the instalments of grants should put a condition that unless they make up the shortfall of posts reserved for STs, the next instalments shall not be released. [Para 6.21.4.5 (iii)]
 - (v) The representation of Scheduled Tribes in non-teaching category posts is negligible in all the Central Universities barring a few. The Ministry of HRD should advise all defaulter Central Universities to identify the backlog of the vacancies reserved for Scheduled Tribes in non-teaching category posts and to chalk out a time-bound programme to fill up these vacancies within a specified period of one year.[Para:5.21.4.8]
 - (vi) In case the defaulter Universities fail to fill up the backlog vacancies reserved for STs within that period of one year, the Ministry of HRD/UGC while releasing the instalments of the grants should put a condition that unless they make up the shortfall of ST vacancies, the next instalment of the grant shall not be released. [Para:6.21.4.8]
26. The Ministry of Tribal Affairs should advise the 15 States/Union Territories (other than Madhya Pradesh) having Primitive Tribal Groups (PTGs) to make provisions for recruitment of candidates belonging to PTGs in Group C and D posts etc. without subjecting them to go through the recruitment process provided they possess the minimum qualification for these posts on the lines of a similar scheme introduced by the Govt. of Madhya Pradesh. [Para:6.22]

Chapter: 7 Issuance and Verification of Scheduled Tribe Certificates

- 1(a) The existing format prescribed for issue of the community certificates should be amended to list all the Orders/Acts relating to recognition of castes/tribes as STs on the back of the format to enable the issuing authorities to write the name of the relevant Orders/Act in the certificate. A copy of the amended format, which also contains certain other changes to make it more clear and intelligible is placed at Annex.6.1.[Para:7.1.2]
 - (b) There is a need to reintroduce the second caste/tribe certificate format, which was prescribed by DoPT in the year 1982 for those SCs/STs who had migrated from original State to another State to enable them to obtain a certificate from the State of migration on the basis of caste/tribe certificate issued to their father/mother. A copy of this format, with requisite modifications, is placed at Annex.7.II. [Para:7.1.3]
2. The administrative Ministries/Departments should be advised that at the time of promotion of ST candidates they should themselves verify the community status of the ST candidates proposed to be promoted, from the records available with them and in case the upto-date records are not available with them, they should approach the

Ministry of Tribal Affairs to ascertain whether the community of the said ST candidates continues to figure in the list of Scheduled Tribes at the time of promotion or not. [Para:7.2.2(a)]

3. The Ministry of Tribal Affairs, which is the nodal Ministry for the purpose of scheduling or descheduling of any community as Scheduled Tribe, should invariably make available a copy of the notification, which is issued under Article 342 to all the Central Ministries/Departments etc. for their information, record and use at appropriate time. [Para:7.2.2 (b)]
4. The State Govts. should issue instructions to the district level authorities (competent to issue certificates) to the effect that the community certificates should be issued to the applicants within a maximum period of 30 days from the date of receipt of the applications. [Para:7.2.3]
5. In pursuance of Govt. instructions and Supreme Court's directions some States have set up Scrutiny Committees at district and State levels for verification of the community status of certificate holders belonging to SC/ST. Such Committees have been set up in Andhra Pradesh, Karnataka, Kerala, M.P., Maharashtra, Tamil Nadu, Uttar Pradesh and UT of Chandigarh. The Ministry of Tribal Affairs/DoPT may advise the remaining States/UTs to put in place similar mechanisms for the purpose of verification of community status of such employees who claim to belong to Scheduled Castes/ Scheduled Tribes. [Para:7.3.2]
6. The Department of Personnel & Training may advise all the State Govts./UT Administrations to stop forthwith the practice of issuing temporary caste/tribe certificates valid for a period of six months and that community certificates should be issued after full verification of the community status of the applicant, within a period of 30 days (as stated above).[Para:7.6.1]
7. The certificate issuing authorities need to be advised that the sons and daughters of persons already having caste/tribe certificates duly issued by a competent authority are issued community certificates without fresh inquiry in a separate format placed at Annex.7.II.[Para:7.6.2]
8. The Ministry of Tribal Affairs and Ministry of Personnel & Training should direct all the State Govts to review the instructions for issue of caste/tribe certificates, issued by them to the district or taluka level authorities and advise them to use standard format for issuing the community certificates as prescribed by GOI.[Para:7.6.3 (i)]
9. The requests for issue of caste/tribe certificates should be entered in a register specifically maintained for the purpose at taluka/district level and that the certificate issuing authorities should ensure that the certificates issued by them contain the serial number or the registration number in the register recording requests for issue of caste/tribe certificate, Certificate Book No. & the Certificate No. on the face of the certificates which should bear the clear seal and stamp of the issuing authority.[Para:7.6.3 (ii)]
10. The Department of Personnel & Training should advise all the State Govts./UT Administrations to issue instructions to the district/taluk level authorities to ensure that the certificates are issued bilingually i.e. in regional language as well as in

English or Hindi language with a view to avoid harassment to the certificate holders as also to check their misuse. [Para: 7.6.4]

11. The amendments to original Presidential Orders issued under Article 342(1) of the Constitution should invariably include a clause clarifying that the place of ordinary residence in respect of persons belonging to the communities included in the Schedule for the first time or in cases where area restriction has been removed, the place of ordinary residence shall be determined with reference to the date of notification of the amendment to the original Order/Act. [Para:7.6.5]
12. All the original orders along with the amendments made therein regarding inclusion in or exclusion from the list of Scheduled Tribes should be made available on the website of the Ministry of Tribal Affairs. A State/UT-wise up to date list of Scheduled Tribes should also be put on the website of the Ministry of Tribal Affairs. [Para:7.6.6]
13. The existing procedure of post appointment verification of the genuineness of the community certificates should be replaced by a mechanism for pre-appointment verification with a view to effectively curb the increasing practice of getting appointments on the basis of false community certificates. The period during which the character and antecedents of the recommended candidates are got verified from police authorities should also be utilized for verification of the genuineness of the community certificates issued to the candidates claiming to belong to Scheduled Tribes/Scheduled Castes from the district authorities. The concerned appointing authorities which write to the police authorities of the respective State for verification of character and antecedents should also be advised to write simultaneously to the concerned district authorities viz. District Collectors, Deputy Commissioners, District Magistrates etc. for verifying the authenticity of the certificates or to certify that the candidate actually belongs to a Scheduled Tribe in case the records are not available for any reason. [Para: 7.6.7. (i)]
14. The appointing authorities should generally issue the offer of appointment on receipt of a satisfactory verification report with respect to the genuineness of the community certificates produced by them in support of their claim of belonging to Scheduled Tribes. However, in case the verification report from the District authorities regarding the authenticity (or otherwise) of the community certificates produced by the candidates along with their applications is not received within a maximum period of six months, offer of appointment on provisional basis may be given to the ST candidate subject to the condition that his probation should not be clear until receipt of verification report (Attention, in this regard is invited to the recommendation at S. No. 16). [Para: 7.6.7 (ii)]
15. Pending switch- over to the proposed system of pre-appointment verification of the genuineness of the community certificates, (as mentioned against serial number 13) of getting the community certificates verified by the issuing authorities prior to the appointment of the candidates, the existing instructions of verifying the community certificates through the issuing authorities after the candidate has been appointed on provisional basis must be completed within a period of six months after the appointment of the candidate and in the event of failure to complete the verification within the specified period, the appointing authority should fix the responsibility on the concerned officer for this failure and take necessary action against the officer/ official held responsible for this failure. [Para: 7.6.7 (iii)]

16. In case a candidate belonging to ST category has been appointed against a vacancy reserved for ST quota on provisional basis pending verification of his/her community certificate, his probation should not be cleared until the process of verification of the genuineness of the community certificates produced by him is completed and a satisfactory report received in this regard from the concerned district authorities. This will help the Government to straightaway terminate the services of such candidate/candidates under Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 by giving one month's notice in writing to him/them, in case the community certificate produced by him/them is/are found to be fake/bogus or false. **[Para:7.6.7 (iv)]**
17. If the post-appointment verification by the appointing authority through the concerned District authorities/Scrutiny Committee reveals that the candidate had produced a fake/bogus or false certificate and he/she does not belong to a recognized Scheduled Tribe, his/her services (in case he has been appointed on regular/substantive basis), should be dispensed with straightaway without giving him/her any further notice in terms of the procedure laid down by Hon'ble Supreme Court in Civil Appeal No. 5834-Kumari Madhuri Patil, Vrs. Govt. of Maharashtra, 1994 [referred to in Para 7.3.1 (xiii)]. The appointing authority should simultaneously also take up the matter with the CBI for the purpose of launching of criminal proceedings under IPC against the fake/false community certificate holders. **[Para: 7.6.7 (v)]**
18. In no case should the false ST certificate holders be allowed to work as a general candidate. The services of such fake/false certificate holders should be terminated after following the due procedure and the posts/seats so vacated filled from ST for whom it was originally reserved. **[Para: 7.6.8]**
19. The Ministry of Social Justice & Empowerment should expedite the process of finalizing the Bill already drafted by them to regulate the issue of community certificate relating to SCs/STs/OBCs and introduce it in the Parliament at an early date after consulting NCST. The Ministry should also advise the State/UT Govts. to enact similar legislations to curb the growing menace of issuance of false community certificate. **[Para: 7.6.9]**
20. There is a need to reiterate the instructions that the tribe/community status of a person is determined on the tribe/community status of his/her father and not mother and, therefore, the certificates to be issued to a female applicant are required to be verified with reference to (i) the tribe/community status of her father and not of her husband, and (ii) her place of ordinary residence with reference to the place of residence of her father or grandfather and not that of her husband's family. In case the matriarchal system is in vogue, the tribe status of the person will be determined on the tribe status of his/her mother and not father and in this case the certificates to be issued to a female applicant are required to be verified with reference to the community status of her mother and not of her husband and her place of ordinary residence with reference to the place of residence of her mother or grandmother and not that of her husband's family. These instructions further imply that an ST woman marrying a non-ST person will continue to be an ST. Similarly, in case of inter-caste marriage, the children of that family would get the community/tribe status of their father. **[Para: 7.6.10]**

Chapter 8: Crime and Atrocity on the Scheduled Tribes

1. Suitable amendments need to be carried out in Rule 7 (1) and also Rule 5 (3) of the SCs and STs (POA) Rules, 1995 to empower, apart from the Deputy Supdts. of Police, the Police Inspectors also with a view to expedite the investigation of cases of atrocity on members of Scheduled Tribes.. [Para: 8.11.2]
2. In all the districts of the Fifth Schedule States, Special Courts may be exclusively set up instead of designating Additional Session Courts or Session Courts as a Special Courts. There is also need to appoint Special Public Prosecutors.[Para:8.12.3]
3. Chief Secretaries of the nine 5th Schedule States which have not yet prepared and notified the Contingency Plans in terms of Rule 15 of the SCs and STs (POA) Rules, 1995 may be requested to the needful. [Para: 8.13.3]
4. State/UT Govts. may be requested to make necessary arrangements to ensure that the investigation process is completed within the prescribed period of 30 days and that the victims/their dependents are provided economic assistance immediately after the incident. [Para: 8.14.2]
5. In case the ST victim is not satisfied with the performance of the Public Prosecutor (PP), he/she should be allowed to change the P.P. and engage a private layer/advocate and the expenses for engaging private layer should be borne by the State Govt. [Para: 8.14.3 (i)]
6. Legal aid, for which there is provision in the SCs and STs (POA) 1989, should be disbursed to the ST victim as early as possible. Awareness programme about grant of legal aid should be launched in tribal areas so that the victims could come to know about availability of free legal aids. [Para: 8.14.3 (ii)]
7. The amount of financial relief under Rule 12(4) of the SCs & STs (POA) Rules, 1995 is required to be provided to the victim immediately after the incident. However, it has been noticed that some of the district authorities are not providing the relief particularly in cases of murder, grievous hurt, rape and arson immediately after the incident. Necessary orders should be issued to all the District Magistrates to ensure immediate payment of financial relief especially in heinous offences and in other offences of atrocity as per provision of these Rules. [Para: 8.14.3 (iii)]
8. The amount of financial relief to the victims of the atrocities under Rule 12(4) of the SCs & STs (POA) Rules, 1995 should be reviewed and suitably increased in recognition of the hard fact that the cost of living over the past one decade, starting from 1995 has enormously gone up. [Para: 8.14.3 (iv)]