ANNEXURE 2.I
(Ref. Para 2.95__SR Ch 2)

Ministry/ Schemes-wise Proposed Earmarking of Plan Outlays under TSP for 2011-12		
S.No	**Ministries/ Department**	**Earmarking of Funds under TSP Recommend-ed for the Ministry (In %)**
1	**2**	**3**
Category I	**Ministries/ Departments with no obligation for Earning Funds under TSP**	0.0
Category II	**Ministries/ Departments required to do partial Earning (less than 7.5% of their Plan Outlays)**	
1	Department of Telecommunications	0.25
2	Ministry of Textiles	1.20
3	Ministry of Water Resources	1.30
4	Department of Food and public Distribution	1.40
5	Ministry of Culture	2.00
6	Department of AYUSH	2.00
7	Ministry of HUPA	2.40
8	Ministry of Tourism	2.50
9	Department of Science & Technology	2.50
10	Ministry of Road Transport & Highways	3.50
11	Department of Agriculture Research & Education	3.60
12	Ministry of Mines	4.00
13	Department of Information Technology	6.70
Category III	**Ministries/ Departments which will be required to Earmark between 7.5 to 8.2% of their Plan Outlays**	
1	Department of Higher Education	7.50
2	Department of Agriculture & Cooperation	8.00
3	Ministry of MSME	8.20
4	Ministry of Coal	8.20
5	Department of Youth Affairs	8.20
6	Ministry of Labor and Employment	8.20
7	Ministry of Panchayati Raj	8.20
8	Department of Sports	8.20
9	Ministry of Women & Child Development	8.20
10	Department of Health & family welfare	8.20
Category IV	**Ministries/ Departments which will be required to Earmark more than 8.2% of their Plan Outlays under TSP**	
1	Department of Land Resources	10.00
2	Department of Drinking water and Sanitation	10.00
3	Department of School Education & Literacy	10.70
4	Department of Rural Development	17.50
5	Ministry of Tribal Affairs	100.00
	Applying these percentages to respective Ministries/ Departments' BE- 2010-11, the average BE in percentage terms expected to be earmarked under TSP	8.26#
# Exclusive of SCA to TSP and Grants under Proviso to Article 275(1) of the constitution, as the outlays under these Heads are shown in Statement 16 of Expenditure Budget (Volume I), which provides Central Assistance to State Plans. Including SCA to TSP (Rs 960 crore), this figures increases to 8.6%		

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

सत्यमेव जयते

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

DO No.NCST/2008/REHAB/01

Dated the .17..th October, 2011

Respected Pradhan Mantri ji,

I seek to bring to your august attention a grave transgression of Constitutional safeguards affecting Scheduled Tribes, which requires your personal intervention for its rectification.

2. As you are aware, the Constitution of India enjoins upon the National Commission for Scheduled Tribes to monitor and evaluate all matters relating to the safeguards provided for the Scheduled Tribes under the Constitution, any law for the time being in force and under any order of the Government, and to participate and advise on the planning process of socio-economic development of the Scheduled Tribes. Clause (9) of Article 338A of the Constitution further provides that "The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Tribes". Under Clause 5(d) of the Article the Commission is required to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards.

3. For sometime the Commission has been rather perturbed by the cavalier disregard exhibited by some Ministries in respect of meaningful consultation with the Commission, while drafting legislation affecting the land rights of tribals, etc. which are specifically protected under the Constitution; and the issue was commented upon at length in the Annual Reports of the Commission for the years 2008-09 and 2009-10, which unfortunately have still to be placed in Parliament. The matter was also specifically brought to your kind attention after submitting these reports to the President (D.O. letters No 4/5/2010-Coord dated 9th September, 2010 and No 4/2/11/11-Coord dated 20th July, 2011 refer). However, we are not aware whether any action has subsequently been taken by the Cabinet Secretariat, or the Ministry of Law, in respect of the Commission's recommendations to ensure consultation with the Commission's during processing of legislative proposals before they are considered by the Council of Ministers.

4, Recently, the Land Acquisition, Rehabilitation & Resettlement Bill, 2011 has been introduced in the Lok Sabha on 7th September, 2011 while the Mines and Minerals (Development and Regulation) Bill, 2011 has been approved by the Cabinet on 30th September, 2011 for introduction in the ensuing session of the Parliament. Though both these Bills are important legislative proposals vitally affecting the Scheduled tribes and their land rights, the concerned Ministries viz. Ministry of Rural Development (MoRD) and Ministry of Mines, have processed these Bills wilfully ignoring this Commission and the Constitutional

Residence : 103, New Moti Bagh Complex, New Delhi - 110023

obligation under Article 338A. Not only this, these Ministries repeatedly disregarded the Commission's exhortations that, for meaningful consultation as envisaged under Article 338 A(9) of the Constitution, the draft Bills finalized by the Ministry should be referred to the Commission for advice before submission to the Cabinet - impudently suggesting that the Commission may proffer its views on the draft hosted for public comment on their websites; which demonstrates the scant regard in which they hold Constitutional bodies, as well as also the spirit underlying the important constitutional safeguards for Scheduled Tribes. I enclose 2 notices issued by the Commission to the Secretaries of these Ministries (Annexure-I/II) which are self explanatory. I may add that the Ministry of Law have also opined that Ministries are obligated by the Constitution to consult the Commission on the provision of the draft bill affecting Scheduled Tribes (Annexure-III). The Law Secretary has also written to the Cabinet Secretary requesting him to advise all Ministries/Departments to follow strictly the provision contained in the said Article (Annexure-IV).

5. In view of the position explained above, the Commission is of the view that the concerned Ministries viz. Ministry of Rural Development (MoRD) and Ministry of Mines and their senior officials should be counselled suitably to adopt a more sensitive approach towards the problems of Scheduled Tribes/Scheduled Areas and respect for relevant Constitutional safeguards. The Commission also recommends that the Cabinet Secretariat and the Ministry of Law and Legal Affairs should be tasked with the responsibility of ensuring consultation with the National Commission for Scheduled Tribes before such proposals affecting Scheduled Tribes are placed for consideration before the Council of Ministers; and the Cabined Secretariat may issue appropriate instructions in this regard under the Rules of Business of the Government.

6. Notwithstanding this, the Commission has finalized detailed comments/views of the Commission on the Land Acquisition, Rehabilitation & Resettlement Bill, which has became available to the Commission only after its introduction in Lok Sabha (Annexure-V). I would request you to have the views of the Commission considered by the Government even while the matter is engaging the attention of the Standing Committee of the Parliament.

With esteemed regards,

Yours Sincerely,

Rameshwar Oraon

(Dr. Rameshwar Oraon)

Dr. Manmohan Singh,
Hon'ble Prime Minister of India,
South Block,
New Delhi- 110001.

Encl:

Annexure-I/II	:	Notices issued by the Commission to the Secretary, Ministry of Rural Development and Ministry of Mines
Annexure-III	:	Ministry of Law and Justice, Deptt. of Legal Affairs letter No. FTS/LS/11 dated 22/09/2011
Annexure-IV	:	Ministry of Law & Justice Letter dated 26/10/2007
Annexure-V		Comments/views of National Commission for Scheduled Tribes on the draft Land Acquisition, Rehabilitation & Resettlement Bill, 2011

ANNEXURE 3.II

(Ref. para 3.13 of NCST_CH3)

(Total 4 Pages)

NOTICE BY FAX/ SPEED POST

GOVERNMENT OF INDIA

NATIONAL COMMISSION FOR SCHEDULED TRIBES

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

No.12/2/2009-Coord

Date: 13th October, 2011

To

Shri S. Vijay Kumar,
Secretary,
Ministry of Mines, Room No. 320,'A' Wing,
Shastri Bhavan,
New Delhi

Sub: **Mandatory consultation with the National Commission for Scheduled Tribes under . Clause (9) of Article 338A by Ministry of Mines with reference to Mines and Mineral (Development & Regulation) Bill 2010**

Sir,

The Constitution of India enjoins upon the National Commission for Scheduled Tribes to monitor and evaluate all matters relating to the safeguards provided for the Scheduled Tribes under the Constitution, and any law for the time being in force and under any order of the Government, and to participate and advise on the planning process of socio-economic development of the Scheduled Tribes. Clause (9) of Article 338A of the Constitution further provides that "The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Tribes". Under Clause 5(d) of the Article the Commission is required to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards.

2. It was understood from news reports that the Government was contemplating the new Mines and Minerals (Development & Regulation) Bill, 2010. As mining affects tribals in a large measure, particularly their livelihood, settlements, environment and culture, the Commission was anxious that certain important concerns need to be adequately addressed in the Bill, and requested the Ministry of Mines, on several occasions, to submit the Draft MMDR Bill, as finalized, for obtaining the views/comments of the Commission under Article 338A(9) of the Constitution, as detailed below:

Reference No./Date	Contents in brief
NCST Letter 12/2/2009-Coord dt. 21/05/2010	Secretary, Mines apprised of the mandatory consultation on all major policy matters affecting Scheduled Tribes under Clause 9 of Article 338A and requested to forward the draft regulation as soon it is finalized.

MTA letter 20025/19/2009-P&M dt.02/06/2010	As a follow up to National Commission for Scheduled Tribes letter dated 21/05/2011, Ministry of Tribal Affairs requested the Ministry of Mines to send the draft legislation, as and when finalized, to the Commission.
Min. of Mines 16/83/2009-M-VI(Pt.-IX) dt. 08/06/2010	Ministry of Mines communicated that new Draft MMDR Act has not been finalized, also informing that the latest version of the draft MMDR Act had been uploaded on 3rd June, 2010 on website of the Ministry of Mines.
NCST Letter 12/2/2009-Coord dt.28/06/2010	Secretary, Ministry of Mines again requested (with reference to their letter dated 08/06/2010) to forward the new Draft MMDR Act, as soon as it is finalized for comments/views of the Commission.
NCST /2008/ REHAB/01 dt. 06/08/2010	Minister of Mines apprised of mandatory consultation with the Commission under Clause 9 of Article 338A of the Constitution and the Commission's concern in critical areas which require urgent attention.
NCST Letter 12/2/2009-Coord dt. 25/08/2010	Minister of Mines requested to forward the final version of the Draft MMDR Act for the views of the Commission as required under Article 338A of the Constitution at an early date.
NCST Letter 12/2/2009-Coord dt 11/10/2010	Minister of Mines apprised of Commission's concern on certain important issues affecting Scheduled Tribes.
NCST Letter 12/2/2009-Coord dt.13/07/2011	Minister of Mines was informed that no response from the Ministry of Mines had been received in response to D.O. letter dated 11/10/2010 with the request to have views of the Commission considered by the Council of Ministers.
Minutes of the Meeting on held on 25/07/2011,circulated vide NCST Letter 12/2/2009-Coord dt.27/07/2011	Meeting taken by the Hon'ble Chairperson with the Secretary, Ministry of Mines. From the position submitted by the Ministry of Mines in the meeting, the Commission observed that its recommendations being important, required consideration of the Government; and in case it was not found to be feasible to incorporate Commission's recommendations for general adoption, these may be incorporated as special provisions, applicable to the Vth Scheduled Areas. The Commission also observed that since the draft MMDR Bill, as finalized and being processed had not been referred for comments by the Ministry of Mines, the Commission was not in a position to date, to discharge its mandated function. Representative of the Ministry of Mines stated that the draft MMDR Bill was formulated in terms of the National Mineral Policy, 2008, which had been approved by the Government in March, 2008. Further, since the present proposal pertained to legislation and not policy matter, the draft MMDR Bill was not referred to National Commission for Scheduled Tribes.

NCST Letter 12/2/2009-Coord dt 27/07/2011	Secretary, Ministry of Mines requested to forward the Draft MMDR Bill 2010, as finalized by the Group of Ministers for Commission's views/suggestions to enable the Commission discharge its mandate in the spirit of the Constitution.
NCST Letter 12/2/2009-Coord dt 10/08/2011	Secretary Ministry of Mines was informed that the Commission was not agreeable to the contention of the Secretary, Ministry of Mines that legislation was not a policy matter within the ambit of Article 338A (9) of the Constitution, Ministry of Mines was also apprised of the concern of the Commission regarding non-furnishing of the Draft MMDR Bill, 2010 inspite of the letter dated 27.07.2011 for Commission's views/suggestions in the matter. Secretary, Ministry of Mines also requested to produce copy of the draft MMDR Bill, 2010 in the meeting scheduled to be held on 17/8/2011.
Min. of Mines Letter 16/83/2009-MVI)Part v) dt. 11/08/2011	Ministry of Mines informed that views of the Deptt. of Legal Affairs, Ministry of Law have been sought inter-alia, on the need to consult the Commission on the MMDR Bill, 2010 legislation
Min. of Mines Letter 16/83/2009-MVI (part v) dt.17/08/2011	Ministry of Mines informed vide letter dated 17/08/2011 that recommendations of the GOM on the draft MMDR Bill 2010 were awaiting Cabinet approval. Since GOM and Cabinet procedures are by their nature secret, it is not possible to share the contents of the discussions of the GOM with the Commission at this stage.
NCST Letter 12/2/2009-Coord dt 09/09/2011	Secretary, Ministry of Mines apprised of the need to forward the draft Bill finalized in the Ministry to the Commission and also expedite views of the Ministry of Law in the matter.
Minutes of the Meeting on held on 15/09/2011,circulated vide NCST Letter 12/2/2009-Coord dt.20/09/2011	In the meeting taken by the Chairperson, National Commission for Scheduled Tribes representative of Deptt. of Legal Affairs stated that the opinion of the Ministry of Law would be communicated shortly.
Min. of Law & Justice Letter FTS.2878/LS/11 dt. 22/09/2011	Ministry of Law and Justice have opined that the Ministry of Mines were under constitutional obligation to consult the Commission. Further, there may no legal or constitutional objection in sharing the draft Bill with the Commission before its submission to the Cabinet.

3. It is evident from the above that the Ministry of Mines have faulted in lack of proper understanding of the Constitutional provisions - in particular, the obligation to consult the Commission in a meaningful manner as mandated under the Constitution, maintaining transparency of actions regarding implementation of Constitutional safeguards with respect to STs and failed to exhibit expected sensitivity of approach/attitude towards weaker sections.

4. In view of the obdurate avoidance manifest by the Ministry of Mines in respect of the obligation to consult the Commission on the draft MMDR Bill, 2010, as mandated under the Constitution, the Chairperson, NCST has called the Secretary, Ministry of Mines **on 3rd November, 2011 at 12 00 hours** at the Conference Room of the Commission to:

(a) Produce a chronological record of the action taken on the requests made by the Commission regarding the MMDR Bill, 2010.

(b) Explain the reasons for avoiding meaningful consultation with the Commission on this important legislation concerning the STs; and

(c) Explain why legal action should not be instituted against the Secretary, Ministry of Mines, for repeated disregard of the Commission's requests to provide a copy of the draft legislation to the Commission to ensure meaningful consultation before submission of these Bills to the Cabinet.

5. Secretary, Ministry of Mines, is requested to attend **in person.**

Yours faithfully,

(**Aditya Mishra**)
Joint Secretary

Statement of Shri S. Vijay Kumar, Secretary, Rural Development dated 13.2.2012 in the National Commission for Scheduled Tribes

As requested by the National Commission for Scheduled Tribes (NCST) vide their Letter No. 12/2/2009/Coord dated 3rd February 2012, the detailed position has been given in my response vide letter no. Secy(RD)/Misc/2012(NCST) dated 9.2.2012, which may be taken on record. In response to queries of the Chairman, NCST, it was further clarified that:-

(i) all letters/requests of the NCST regarding consultation with NCST in terms of clause (9) of Article 338A of the Constitution have been promptly responded from the Ministry of Mines (reference letters dated 11.8.2011, 17.8.2011, 13.9.2011, 30.9.2011, 24.10.2011, 3.11.2011 and 21.11.2011). In addition Hon'ble Minister of Mines has also written to NCST on 27.9.2010;

(ii) all meetings of the NCST have been attended by me as requested (meetings dated 25.7.2011, 17.8.2011, 15.9.2011 and 3.11.2011);

(iii) In the meeting with the Commission on 3.11.2011, in my then capacity as Secretary, Ministry of Mines, I explained the entire matter in detail and also left a written copy of my statement vide letter no. 16/83/2009-M(VI)(Part V) dated 3.11.2011 which may be taken on record;

(iv) Based on the minutes of the meeting held on 3.11.2011, a further response was given vide Ministry of Mines OM No. 16/83/2009-MVI (Part V) dated 21.11.2011;

(v) It has been reiterated in the letters and meetings that there was no intention of disregarding obligations under the Transaction of Business Rules, and that due diligence was observed at all times in terms of the instructions on a subject referred for Cabinet process, as is evident from the chronology provided in response to the requests of the NCST.

(vi) The matter relates to Clause (9) of Article 338A of the Constitution of India which enjoins mandatory consultation of Government of India with the NCST on matters of policy. Since all proceedings of the Commission in this matter have been under Clause (9) of the Article, any further requests in the matter need to be made to the Ministry of Mines, Government of India. In case the NCST requires any specific document pursuant to Clause (9) of Article 338A of the Constitution, they may make a specific request to the Ministry of Mines. I am no longer in the Ministry of Mines and am therefore not in a position to assist the NCST in the matter.

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ANNEXURE 3.IV
(Ref. para 3.20, SR_Ch 3)

BY FAX/ SPEED POST

GOVERNMENT OF INDIA
NATIONAL COMMISSION FOR SCHEDULED TRIBES
(A Constitutional Commission set up under Art. 338A of the Constitution to investigate and monitor all matters relating to violation of rights and safeguards provided for STs.)

No.12/2/2009-Coord Date: 06 March , 2012

To

Shri S. Vijay Kumar,
Secretary,
Ministry of Rural Development,
Ground Floor, 'G' Wing, NBO Building,
Nirman Bhawan, New Delhi. - 110011

Sub: Mandatory consultation with the National Commission for Scheduled Tribes under Clause (9) of Article 338A by Ministry of Mines with reference to Mines and Mineral (Development & Regulation) Bill 2011

Sir,

I am to refer to your letter No.Secy (RD)/Misc/2012(NCST) dated 15/02/2012, submitting your statement in pursuance of the position explained by the Commission to you in the Sitting taken by the Chairperson on 13/02/2012 with reference to NCST letter of even number dated 03.02.2012 and accompanying brief.

2. The statement has been examined. The Commission has noted that despite repeated exhortations, the draft Mines and Mineral (Development & Regulation Bill) 2011, as finalized by the Ministry of Mines, was withheld from the Commission till after consideration was completed by the Council of Ministers on 30/09/2011; and, its directions mentioned in the NCST communication dated 13/10/2011 to produce documents/ a chronological record of the action taken on the request of the Commission to forward the draft Bill for its views/ comments, and in the Sitting taken on 3/11/2011 to submit comments in the matter with documentary evidence within a fortnight have not been complied. Further, instead of responding substantively to the issues raised by the Commission, extraneous and illusory questions of procedure have been urged. The Commission has, therefore, viewed these transgressions as a flagrant disregard of the authority vested with the Commission under Clause (8) (b) of Article 338 A, whereby the Commission, while investigating any matter, inter- alia, referred to in sub-clause (a) has all the powers of a Civil Court in regard to production of documents.

3. The Commission has further noted that the treatment of the case in your capacity as the Secretary of the Ministry of Mines, reflects lack of proper understanding of Constitutional provisions – in particular, the obligation to consult the Commission in a meaningful manner as mandated under the Constitution; and, in the context of non-production of documents, has been viewed by the Commission as deliberate attempt to evade repeated persuasions by the Commission to submit the draft Bill for Commission's views/comments. The Commission is distressed to observe that inspite of receiving Ministry of Law's unambiguous advice on the subject; the Bill was forwarded to the NCST only on the day it was considered by the Cabinet,

effectively forestalling the consideration of NCST's comments by the Council of Ministers. The Commission has viewed that such perfidious actions on the part of a very senior officer of the level of Secretary to the Government are to be deprecated as deliberate failure to maintain transparency of actions regarding implementation of Constitutional safeguards with respect to Scheduled Tribes; and the same do not exhibit the expected sensitivity of approach/attitude towards weaker sections.

4. However, taking a lenient view of the matter, the Commission has, therefore, decided to advise the DoPT, which is the Cadre Controlling Authority for the All India Services (IAS), as well as the Cabinet Secretariat, to take appropriate action in the matter; and also take requisite measures to avoid recurrence of such cases in future keeping in view the instructions contained/ in the DoPT O.M. No.36036/2/97-Estt (Res) dated 01/01/1998 and 30/11/1998.

Yours faithfully,

(Aditya Mishra)
Joint Secretary

Encl: As above.

Copy to:

The Secretary,
Deptt. of Personnel & Training,
North Block, New Delhi.

For further action keeping in view the instructions contained/ in the DoPT O.M. No.36036/2/97-Estt (Res) dated 30/11/1998. The action taken in the matter may please be advised urgently, positively by 12/03/2012

Copy also forwarded to:
The Cabinet Secretary,
Cabinet Secretariat,
Rashtrapati Bhavan,
New Delhi.

In continuation of NCST letter No. 12/04/11-Coord. dt. 29/02/2012, forwarding proceedings of the Sitting taken by the Chairman, NCST on 21/02/2012.

It is requested that appropriate action on the subject may please be taken with requisite measures to avoid recurrence of such cases, keeping in view the instructions contained/ in the DoPT O.M. No.36036/2/97-Estt (Res) dated 01/01/1998 and 30/11/1998. The action taken in the matter may please be communicated urgently, positively by 12/03/2012.

(Aditya Mishra)
Joint Secretary

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ISSUED

ANNEXURE 3.V

F. No. 210111/04/2011-LRD (Ref. para 3.30, SR_Ch 3)

Government of India
Ministry of Rural Development
Department of Land Resources

'G' Wing, N.B.O Building
Nirman Bhawan, New Delhi
Dated: 21.11. 2011

To

Shri Aditya Mishra,
Joint Secretary,
National Commission for Scheduled Tribes,
6th Floor, B-wing, Lok Nayak Bhawan,
Khan Market, New Delhi-110003.

Subject: Mandatory consultation with the National Commission for Scheduled Tribes under Clause (9) of Article 338A by the Deptt. Of Land Resources, MoRD with reference to (i) Land Acquisition (Amendment) Bill, 2007, (ii) Rehabilitation and Resettlement Bill, 2007 and, (iii) Land Acquisition and Rehabilitation and Resettlement Bill, 2011 – regarding.

Sir,

Please refer to your letter No. NCST/2008/REHAB/01 dated 14th October, 2011 addressed to Secretary, DoLR on the subject cited above.

2. As per directions of the Commission Sh. B.K. Sinha, Secretary (LR) along with Additional Secretary (LR), Joint Secretary (LR) and Deputy Secretary (LR) appeared before the Commission on 03.11.2011 and apprised/stated the position of the Department in the matter.

3. It is submitted that there was no intention of the Department to avoid meaningful consultation with the Commission and the Department has followed the guidelines/instructions of the Cabinet Secretariat regarding inter-ministerial consultations. The Department feels that the views of the Commission are of paramount importance. Special provisions for Schedule Castes and Schedule Tribes have already been made in the Second Schedule of the Land Acquisition, Rehabilitation and Resettlement Bill, 2011. Further, as desired details of chronological consultation/action taken by the Department in the matter is enclosed herewith.

AD| Coord
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Yours faithfully,

(Surendra Kumar)
Joint Secretary (LR)

Encl: As above.

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"A **note on the chronological consultation with NCST by the Department of Land Resources"**

Reference No./Date	Contents in Brief
Letter No. NCST/2008/REHAB/01 dated 6.08.2010	This Department had requested the Chairman, National Commission for Scheduled Tribes vide letter dated 18.7.2011(copy enclosed) for sending a copy of the comments of the Commission on both the Bills, i.e., Rehabilitation and Resettlement Bill, 2007 and land Acquisition (Amendment) Bill, 2007 as stated to have been enclosed along with the D.O. letter dated 6.8.2010 as the comments were not received in this Department.
Letter No. NCST/2008/REHAB/01 dated 20.5.2011	This Department had received a D.O. letter No. NCST/2008/REHAB/01 dated 20.5.2011 addressed to the Hon'ble Minister of MoRD regarding consideration of views of National Commission for Scheduled Tribes on R&R Bill and Land Acquisition (Amendment) Bill, before introducing in the Parliament. The reply of this Department with reference to the NCST's letter dated 20.5.2011 was sent vide this Department letter No. 21011/04/2011-LRD dated 18.7.2011 (copy enclosed).
Letter No. NCST/2008/REHAB/01 dated 13.07.2011	This Department had received the letter No. NCST/2008/REHAB/01 dated 14.07.2011 and not 13.7.2011. The reply to the NCST was sent vide this Department's letter No. 21011/04/2011-LRD dated 21st July, 20 11 (copy enclosed).
Letter No. NCST/2008/REHAB/01 dated 10.08.2011	NCST had sent a brief for discussion with Secretary DoLR vide their letter No. NCST/2008/REHAB/01 dated 19.7.2011. The meeting of the Secretary (LR) with Dr. Rameshwar Oraon Hon'ble Chairperson NCST to consider the views of the Commission on the Draft Land Acquisition (Amendment) Bill, 2007 and Rehabilitation and Resettlement Bill, 2007 was held on 29.07.2011 at 1130 hours in the Commission. During meeting it was brought to the notice of NCST that this Department is in the midst of redrafting the Land Acquisition, Rehabilitation and Resettlement Bill, 2011. A copy of the proceeding of the meetings was received from NCST vide their letter dated 10.08.2011. The Draft LARR Bill, 2011, was sent to Secretary (NCST) for comments vide D.O. letter dated 19.8.2011 of this Department (copy enclosed).
Letter No. NCST/2008/REHAB/01 dated 30.08.2011	This Department had informed Shri Aditya Mishra, Joint Secretary (NCST) with reference to their D.O. letter dated 30st August, 2011 vide D.O. letter dated 13.9.2011 (copy enclosed) that this Department had drafted the Land Acquisition, Rehabilitation & Resettlement Bill, 2011, which was put in the public domain for inviting suggestions/comments from the all stake-holders and public" at large on 29th July, 2011. Comments were invited up to 31st August, 2011. The Cabinet Note for the Land

	Acquisition, Rehabilitation & Resettlement (LARR) Bill, 2011 has been considered and approved by the Cabinet on 5th September, 2011. The aforesaid Bill has been introduced in the Lok Sabha on 7th July, 2011. The Bill is available on web-site of this Department i.e. dolr.nic.in
Letter No. NCST/2008/REHAB/01 dated 09.09.2011	The matter related to consultation process with NCST was not referred to the Ministry of Law and Justice. However, a reference has been made to the Cabinet Secretariat vide this Department's O.M. No P-II015/10/2010-LRD dated 30.08.2011 seeking their clarification with regard to consultation with statutory Commissions in the Govt. of India. (Copy enclosed). A reminder to the Cabinet secretariat has been sent vide O.M. dated 20.10.2011. (Copy enclosed). The Cabinet Secretariat vide its letter dated 21.10.2011 has informed that "**the sponsoring ministry/department may consult the concerned administrative Ministry/Department dealing with the relevant Constitutional body/Commission/Statutory body etc. except in cases where there is no administrative Ministry/Department specified for such bodies/Commissions etc.**"

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Immediate

No. 21011/04/2011-LRD
Government of India
Ministry of Rural Development
Department of Land Resources

'G-Wing', NBO Building,
Nirman Bhawan,
New Delhi-110011.
Dated the 18th July,2011.

To,

The Chairman,
National Commission for Scheduled Tribes
6th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi 110003.

Subject: Consideration of views of National Commission for Scheduled Tribes on the R&R Bill and Land Acquisition(Amendment)Bill, before introducing in the Parliament.

Sir,

I am directed to refer to your D.O. letter No. NCST/2008/REHAB/01 dated 20.5.2011 addressed to the Hon'ble Minister of Rural Development on the subject mentioned above and to say that a copy of the comments of the Commission on both the Bills .i.e. Rehabilitation and Resettlement Bill, 2007 and Land Acquisition (Amendment)Bill,2007 as stated to have been enclosed along-with the said D.O. letter dated 6.8.2010 does not seem to have been received in this Department.

It is , therefore, requested that a copy of the same may kindly be sent , so that the further action in the matter could be taken by this Department.

Yours faithfully,

(Harpartap Singh)
Deputy Secretary to the Govt. of India.

S.No. 4(I)

51

Immediate 386

No. 21011/04/2011-LRD
Government of India
Ministry of Rural Development
Department of Land Resources

'G-Wing', NBO Building,
Nirman Bhawan,
New Delhi-110011.
Dated the 21st July,2011.

Shri Aditya Mishra,
Joint Secretary,
National Commission for Scheduled Tribes
Lok Nayak Bhawan,
Khan Market, New Delhi 110003.

Subject: Consideration of comments/views of the Commission on the draft Land Acquisition (Amendment)Bill, 2007 and Rehabilitation and Resettlement Bill,2007.

Sir,

I am directed to refer to the Commission's letter No. NCST/2008/REHAB/01 dated 14.7.2011 on the subject mentioned above and to say that Secretary (LR) has already spoken on this matter to you and brought to your notice that this Department is in the midst of re-drafting the Land Acquisition and Rehabilitation & Resettlement Bill,2011. Further, this Department is organizing a workshop on "Best Practices on Land Reforms on 25th July, 2011.

In view of above, I request you to give an alternate date for the meeting of Secretary (LR) with the Chairperson, NCST.

D/C

Yours faithfully,

(Surendra Kumar)
Joint Secretary to the Govt. of India

Issued
22/7/2011

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प्रभुदयाल मीना, आई.ए.एस
अपर सचिव
PRABHUDAYAL MEENA, I.A.S.
ADDITIONAL SECRETARY

सत्यमेव जयते

भारत सरकार
ग्रामीण विकास मंत्रालय
भूमि संसाधन विभाग
Government of India
Ministry of Rural Development
Department of Land Resources

D.O. No. P. 11015/10/2010-LRD

Dated the 19th August, 2011

Dear Sir

You may be aware that a draft Land Acquisition and Rehabilitation and Resettlement Bill, 2011 has been prepared and put in the public domain (www.dolr.nic.in) on July 29th, 2011 for discussion.

2. I shall be grateful if you could kindly send your comments and suggestions on the above mentioned draft Bill to this Department latest by August 31st, 2011.

With regard

Yours sincerely,

o/c

(Prabhudayal Meena)

Shri R.S. Sirohi,
Secretary,
National Commission for Scheduled Tribes,
6th Floor, B- Wing,
Lok Nayak Bhawan, Khan Market,
New Delhi.

19/8/11

सुरेन्द्र कुमार
संयुक्त सचिव
SURENDRA KUMAR
JOINT SECRETARY

ग्रामीण विकास मंत्रालय
भूमि संसाधन विभाग
Government of India
Ministry of Rural Development
Department of Land Resources

D.O. No. 11015/10/2010-LRD

Dated the 13/09/2011

Dear Shri

Please refer to your D.O. letter No. NCST/2008/REHAB/01 dated 30th August, 2011 addressed to the Additional Secretary, Department of Land Resources regarding seeking comments on the Draft Land Acquisition and Rehabilitation & Resettlement Bill, 2011 under Article 338 A(9) of the Commission.

I would like to submit that this Department had drafted the Land Acquisition, Rehabilitation and Resettlement Bill, 2011, which was put in the public domain for inviting suggestions/comments from the all stake-holders and public at large on 29th July, 2011. Comments were invited up-to 31st August, 2011. The Cabinet Note for the aforesaid Bill had been circulated to Department/Ministries in the Govt. of India for comments/suggestions. The Cabinet Note for the Land Acquisition, Rehabilitation & Resettlement Bill, 2011 has been considered and approved by the Cabinet on 5th September,2011.The aforesaid Bill has been introduced in the Lok Sabha on 7th July,2011.The Bill is available on web-site of the Department, i.e., dolr.nic.in.

With regards

o/c

15/9/11

Yours sincerely

(Surendra Kumar)

Shri Aditya Mishra,
Joint Secretary,
National Commission for Scheduled Tribes,
6th Floor, B-wing,
Lok Nayak Bhawan, Kahn Market ,
New Delhi

जी-विंग, एन.बी.ओ. बिल्डिंग, निर्माण भवन, नई दिल्ली-110 108 फोन : 23062454
B-Wing, N.B.O. Building, Nirman Bhawan, New Delhi-110 108 Tel.: 23062454

IMMEDIATE

No.P-11015/10/2010-LRD
Government of India
Ministry of Rural Development
Department of Land Resources
(Land Reforms Division)

'G' Wing, NBO Building
Nirman Bhavan, New Delhi
Dated: 30.08.2011

OFFICE MEMORANDUM

Subject: Inter-Ministerial Consultations. Regarding- Clarification.

The undersigned is directed to say that a draft Land Acquisition and Rehabilitation and Resettlement Bill, 2011 has been prepared and put in the public domain (www.dolr.nic.in) on July 29th, 2011 for comments from the stakeholders. Comments/views have been requested from all the stakeholders up to 31st August,2011.

As per the Instructions of the Cabinet Secretariat regarding Inter-Ministerial Consultations, this Department has prepared and circulated the Draft Cabinet note on the Land Acquisition and Rehabilitation & Resettlement Bill,2011 to the various Ministries/Departments of the Government of India for their comments/views. In the said instructions, no mention has been made regarding the process of consultations with various Commissions of the Government of India i.e SC Commission & ST Commission. The Constitution of India enjoins upon the National Commissions to monitor all matters relating to the safeguards provided for the SCs &STs. Clause (9) of Article 338 &338A of the Constitution also provides that "The Union and every State Government shall consult the Commission on all major policy matters affecting SCs/STs. etc. There may be other commissions also in the Government of India.

It is therefore, requested to clarify whether consultations is mandatory separately with these Commissions or the Administrative Ministry/Department under which these Commissions function should consult their respective Commissions

d/c

(Surendra Kumar)
Joint Secretary to the Govt. of India

Cabinet Secretariat, Government of India,
(Shri Rajive Kumar , Joint Secretary)
Rashtrapathi Bhawan, New Delhi.

1/9/11

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Reminder

No.P-11015/10/2010-LRD
Government of India
Ministry of Rural Development
Department of Land Resources
(Land Reforms Division)

'G' Wing, NBO Building
Nirman Bhavan, New Delhi
Dated: 20.10.2011

OFFICE MEMORANDUM

Subject: Inter-Ministerial Consultations. Regarding- Clarification.

The undersigned is directed to refer to this Department's O.M. of even number dated the 30.8.2011 (copy enclosed for ready reference) on the subject mentioned above and to say that the clarification sought by this Department has not been received so far.

It is therefore, requested to expedite the clarification at the earliest.

Enal:As above.

o/c

(Surendra Kumar)
Joint Secretary to the Govt. of India

Cabinet Secretariat, Government of India,
(Shri Rajive Kumar , Joint Secretary)
Rashtrapathi Bhawan, New Delhi.

24/10/11

IMMEDIATE

No.P-11015/10/2010-LRD
Government of India
Ministry of Rural Development
Department of Land Resources
(Land Reforms Division)

'G' Wing, NBO Building
Nirman Bhavan, New Delhi
Dated: 30.08.2011

OFFICE MEMORANDUM

Subject: Inter-Ministerial Consultations. Regarding- Clarification.

The undersigned is directed to say that a draft Land Acquisition and Rehabilitation and Resettlement Bill, 2011 has been prepared and put in the public domain (www.dolr.nic.in) on July 29th, 2011 for comments from the stakeholders. Comments/views have been requested from all the stakeholders up to 31st August,2011.

As per the Instructions of the Cabinet Secretariat regarding Inter-Ministerial Consultations, this Department has prepared and circulated the Draft Cabinet note on the Land Acquisition and Rehabilitation & Resettlement Bill,2011 to the various Ministries/Departments of the Government of India for their comments/views. In the said instructions, no mention has been made regarding the process of consultations with various Commissions of the Government of India i.e SC Commission & ST Commission. The Constitution of India enjoins upon the National Commissions to monitor all matters relating to the safeguards provided for the SCs &STs. Clause (9) of Article 338 &338A of the Constitution also provides that "The Union and every State Government shall consult the Commission on all major policy matters affecting SCs/STs. etc." There may be other commissions also in the Government of India.

It is therefore, requested to clarify whether consultations is mandatory separately with these Commissions or the Administrative Ministry/Department under which these Commissions function should consult their respective Commissions

d/c

(Surendra Kumar)
Joint Secretary to the Govt. of India

Cabinet Secretariat, Government of India,
(Shri Rajive Kumar , Joint Secretary)
Rashtrapathi Bhawan, New Delhi.

1/9/11

ANNEXURE 3.VI
(Ref. para 3.31, SR_Ch 3)

टी. के. विश्वानाथन
विधि सचिव
T.K. VISWANATHAN
Law Secretary

भारत सरकार
विधि और न्याय मंत्रालय
विधि कार्य विभाग
नई दिल्ली-110115
GOVERNMENT OF INDIA
MINISTRY OF LAW & JUSTICE
DEPARTMENT OF LEGAL AFFAIRS
SHASTRI BHAWAN
NEW DELHI-110115

D.O. No. 11051/07/Advice-A

26th October 2007

My Dear Cabinet Secretary

The National Commission for Scheduled Castes called me on 7th August 2007 to discuss the issue relating to non-consultation of the Commission while making various substantive legislations and rules affecting the interests of the Scheduled Castes in the country.

2. During the discussion Dr. Buta Singh, the Chairman of the Commission expressed his serious concern by observing in no uncertain terms that the Commission is not being consulted by the Government while taking various decisions /measures affecting the rights of the Scheduled Castes in the country and that such non-consultation violates the provisions of article 338(9) of the Constitution of India. The said article provides that the Union and every State Government shall consult the Commission on all major policy matters affecting the Scheduled Castes. The role of our Department and the Legislative Department in such matters was explained to the Commission. After the discussion, the Hon'ble Chairman directed me to take appropriate steps in the matter and inform the Commission.

3. I shall be grateful if you could kindly advise all Ministries/Departments to strictly follow the provisions contained in the said article as per observations of the Commission.

With Regards

Yours sincerely

(T.K. Viswanathan)

Shri K.M. Chandrasekhar,
Cabinet Secretary,
Cabinet Secretariat,
New Delhi.

Tel : 91-11-23384777, 23382902 Fax : 91-11-23387259 E-mail : vnathan@nic.in

F. No. 21013/01/2011-LRD
Government of India
Ministry of Rural Development
Department of Land Resources

'G' Wing, NBO Building,
Nirman Bhawan, New Delhi
Dated: 17.02.2012

To

The Secretary,
National Commission for Scheduled Tribes,
6th Floor, B-wing, Lok Nayak Bhawan,
Khan Market, New Delhi-110003.

Sir,

Please refer to NCST's letters No.NCST/2008/REHAB/01 dated 03.02.2012 and 13.02.2012 and the discussion held in the Chamber of Chairperson, NCST on 16.02.2012 at 3 pm.

2. I am to state that I have been on leave from Aug '11 to Feb '12 – a fact which my successor would have informed the Commission during the discussions held on 3rd Nov '11. The Letter of the Commission dated 14.10.2011 was replied vide the Department's letter dated 21.11.2011. This was also clarified in the meeting held in the Commission on 16.02.2012.

3. It was suggested that the DoLR may provide documentary evidence for the chronological progress of why the Commission was not consulted. It was clarified that copies of relevant documents had already been enclosed to the Department's letter dated 21.11.2011. However, if NCST wishes to peruse any other records in this regard, DoLR will be willing to provide the same.

This is for your kind information.

Your faithfully,

Chaudhary

(Anita Chaudhary)
Secretary to the Govt. of India

National Commission for Scheduled Tribes

Proceedings of the Meeting taken by Dr. Rameshwar Oraon, Chairperson , NCST with the Secretary, Deptt. of Land Resources, Ministry of Rural Development on 29.07.2011

A list of officers present in the meeting is at the Annexure

2. The Chairperson, NCST extended warm welcome to the Secretary, Deptt. of Land Resources, Ministry of Rural Development and other Officers present in the meeting. He mentioned that the meeting was convened due to non-receipt of action taken report from the Ministry of Rural Development regarding the recommendations of the Commission sent to the Ministry on the draft Rehabilitation and Resettlement Bill, 2007 and Land Acquisition (Amendment) Bill, 2007.

3. Initiating the discussion, Joint Secretary, NCST mentioned that the Committee on the Welfare of Scheduled Castes and Scheduled Tribes in its 33rd Report had also desired had desired feedback regarding action taken by the concerned Ministries/Deptts./Organisations on the recommendations/observations of the Commission on various policy related matters. He mentioned that Clause (9) of the Article 338 A of the Constitution makes it obligatory on the part of all the Ministries/ Deptts/ Organisations to consult the Commission on all major policy matters affecting Scheduled Tribes. However, the Ministry of Rural Development had not so far sought comments of the Commission on the draft Rehabilitation and Resettlement Bill, 2007 and Land Acquisition (Amendment) Bill, 2007. Notwithstanding this, the Commission had, suo-moto, communicated its views/suggestions to the Ministry of Rural Development on the both the Draft Bills vide D.O. letter dated 6th August, 2010.

4. The Commission emphasized that the tribals need special consideration through a special chapter in the Bills considering the following major factors:

(i) Special provisions have been made in the Constitution for protection as well as safeguarding the rights of STs and administration in Scheduled Areas. The Constitution also provides for the measures to be taken to ensure that a particular Legislation may not be applicable in the Scheduled Area or a special law may be enacted with reference to good regulation in the Scheduled Areas

(ii) Land being the primary means of production in the tribal society, acquisition of tribal land leading to their landlessness, is both socially and economically depriving the tribals, who have limited capacity to have their livelihood outside their habitat and any activity not involving agricultural land.

(iii) Land regulations generally prohibit transfer of tribal lands to others except with the approval of designated competent authorities. Tribal Rights in land are unalienable both by individual as well as State, in the spirit of the

Rameshwar Oraon

Supreme Court Judgement in Samatha vs. Govt. of Andhra Pradesh

(*transfer in favour of a person who is member of a Scheduled Tribe or Society is only permitted (person includes both natural persons and constitutional body*).

(iv) Diligent effort is essential to comprehensively identify all the environmental / displacement risks which tribals would be exposed, consequent to displacement; and to establish the overriding public interest which demands such sacrifice from them.

(v) The definition of public purpose in the Land Acquisition (Amendment) Bill is covering all sorts of projects which may not necessarily serve public interest. 'Public purpose' should be determined through a participatory and transparent process and should incorporate additional safeguards for tribals. Considering the fact that much larger extents of land than absolutely necessary are being commandeered as a substitute for capital mobilization by the State under the Public Private Partnership (PPP), the Commission is of the view that the definition of public purpose should preferably be restricted for acquisitions of land for re-development as in the British Law, and State owned/managed institutions only.

5. Secretary, Deptt. of Land Resources, Ministry of Rural Development mentioned that an integrated Bill was being proposed now covering both land acquisition and rehabilitation and resettlement. The Integrated Bill has special provisions for the Scheduled Tribes. Secretary, Deptt. of Land Resources, MoRD further apprised the Commission of the salient features of the Bill especially with regard to STs (enclosed) and mentioned that most of the concerns of the Commission relating to STs had been addressed in the draft Integrated Bill. MoRD also informed the Commission that the draft Integrated Bill was being hosted on their website for seeking suggestions/comments of public. After examination of the suggestions/comments, MoRD will initiate inter-Ministerial consultation. At this stage, the view of the Commission would also be invited. The Commission was of the view that that the matters for advice under the provision of Article 338A(9) may be referred to the Commission after completion of internal process of drafting the Bill and before submission to the Apex Cabinet Committee.

6. The Commission observed that in view of the issues discussed above, a separate Chapter, mentioning the manner in which the provisions of the draft Bill will be applicable to the Scheduled Tribes and the Scheduled Areas should be included in the Bill. Further, for the consultation with the NCST, as envisaged under Art. 338A(9) of the Constitution to be meaningful, the draft Bill finalized in the Ministry after inter-Ministerial consultations, may be referred to this Constitutional Commission and the observations of the Commission and views of the Ministry on those observations may also be placed along with the draft Bill for consideration by the Apex Cabinet Committee. The Secretary, Deptt. of Land Resources, MoRD mentioned that the Ministry would consider the observations of the NCST and, if considered necessary, the matter will be decided in consultation with the Ministry of Law. The Commission advised that the MoRD may take appropriate action immediately, before submission of the draft Bill to the Apex Cabinet Committee.

Rameshwar Oraon

-2-

Annexure

List of officials present in the meeting taken by Dr. Rameshwar Oraon, Chairperson, NCST with the Secretary, Deptt. of Land Resources, Ministry of Rural Development on 29.07.2011

	National Commission for Scheduled Tribes (NCST)		**Deptt. of Land Resources, Ministry of Rural Development,**
1	Sh Aditya Mishra, JS	1	Ms. Anita Chaudhary, Secretary
2	Smt. K.D. Bhansor, Dy.Dir.	2	Shri Charanjit Singh, Director

ANNEXURE 3.IX

(Ref. para 3.34, SR Ch 3)

BY

FAX/

SPEED

POST

GOVERNMENT OF INDIA

NATIONAL COMMISSION FOR SCHEDULED TRIBES

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

No. NCST/2008/REHAB/01 Date: 14th March , 2012

To

Ms. Anita Chaudhary,
Secretary,
Ministry of Rural Development,
Ground Floor, 'G' Wing, NBO Building,
Nirman Bhavan,
New Delhi. - 110011

Sub: Mandatory consultation with the National Commission for Scheduled Tribes under Clause (9) of Article 338A by the Deptt. of Land Resources, MoRD with reference to (i) Land Acquisition (Amendment) Bill, 2007, (ii) Rehabilitation and Resettlement Bill, 2007 and, (iii) Land Acquisition and Rehabilitation & Resettlement Bill, 2011.

Sir,

I am to refer to your letter No.21013/01/2011-LRD dated 17/02/2012, submitting your statement in pursuance of the position explained by the Commission to you in the Sitting taken by the Chairperson on 16/02/2012 with reference to NCST letter of even number dated 03/02/2012 and accompanying brief.

2. The statement has been examined. The Commission has noted that non-compliance/non-receipt of any response from you to the NCST communication dated 13/10/2011, asking you to produce a chronological record of the action taken on the request of the Commission, has been occasional as a result of your absence on long medical leave during the period. The Commission has, therefore, not proceeding with any action in this regard.

3. The Commission has, however, noted that despite exhortations, the (i) Land Acquisition (Amendment) Bill, 2007, (ii) Rehabilitation and Resettlement Bill, 2007 and, (iii) Land Acquisition and Rehabilitation & Resettlement Bill, 2011 were not forwarded to the Commission as mandated under Clause (9) of Article 338A of the Constitution. The draft Land Acquisition and Rehabilitation & Resettlement Bill, 2011 was also not forwarded to the Commission for its views/

comments even at the time of inter-Ministerial consultations, as assured by you in the meeting taken by the Chairperson on 29/07/2011.

4. The Commission has noted that the treatment of the case in your capacity as the Secretary of the MoRD, reflects lack of proper understanding of Constitutional provisions – in particular, the obligation to consult the Commission in a meaningful manner as mandated under the Constitution. Further, instead of responding substantively to the issues raised by the Commission in the meeting taken by the Chairperson on 29/07/2011, extraneous and illusory questions had been raised regarding the powers of the Commission (para 6 of minutes of the Meeting held on 29/07/2011 refer). These transgressions are viewed as deliberate disregard of the authority vested with the Commission under Clause (8) (b) of Article 338 A, whereby the Commission, while investigating any matter, inter- alia, referred to in sub-clause (a) has all the powers of a Civil Court in regard to production of documents. The Commission has viewed that such perfidious actions on the part of a very senior officer of the level of Secretary to the Government are to be deprecated as deliberate failure to maintain transparency of actions regarding implementation of Constitutional safeguards with respect to Scheduled Tribes; and the same do not exhibit the expected sensitivity of approach/attitude towards weaker sections.

5.. However, taking a lenient view of the matter, the Commission has decided to advise the DoPT, which is the Cadre Controlling Authority for the All India Services (IAS), as well as the Cabinet Secretariat, to take appropriate action in the matter; and also take requisite measures to avoid recurrence of such cases in future keeping in view the instructions contained/ in the DoPT O.M. No.36036/2/97-Estt (Res) dated 01/01/1998 and 30/11/1998.

Yours faithfully,

(Aditya Mishra)
Joint Secretary

Encl: As above.

Copy to:

The Secretary,
Deptt. of Personnel & Training,
North Block, New Delhi.

For further action keeping in view the instructions contained/ in the DoPT O.M. No.36036/2/97-Estt (Res) dated 01/01/1998 and 30/11/1998. The action taken in the matter may please be advised urgently, positively by 19/03/2012

Copy also forwarded to:
The Cabinet Secretary,
Cabinet Secretariat,
Rashtrapati Bhavan,
New Delhi.

In continuation of NCST letter No. 12/04/Coord. Dt. 29/02/2012, forwarding proceedings of the Sitting taken by the Chairman, NCST on 21/02/2012.

It is requested that appropriate action on the subject

may please be taken with requisite measures to avoid recurrence of such cases, keeping in view the instructions contained/ in the DoPT O.M. No.36036/2/97-Estt (Res) dated 01/01/1998 and 30/11/1998. The action taken in the matter may please be communicated urgently, positively by 19/03/2012.

(Aditya Mishra)
Joint Secretary

ANNEXURE 3.X
(Ref. Para 3.34 SR Ch 3)

GOVERNMENT OF INDIA
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS
Department Of Personnel & Training, New Delhi

OFFICE MEMORANDUM

No. 36036/2/97-Estt.(Res) Dated: 01,January 1998

Sub: Reservation policy for the Scheduled Castes and Scheduled Tribes-Implementation of

The undersigned is directed to say that, in terms of this Department's O.M. No. 36011/15/79-Estt(SCT) dated January 6, 1981, if other Ministries/ Departments intend to depart from the policies laid down by the Department of Personnel, it is mandatory for them to consult the Department of Personnel, in terms of sub rule 4 of Rule 4 of the Transaction of Business Rules, otherwise the policies laid down by the Department of Personnel are binding on them.

2. The instructions contained in this Department's Office Memorandum dated July 2, July 22, August 13, and August 29, 1997 continue to be in operation and there is no proposal to withhold or to keep in abeyance their implementation.

3. In the All India Indian Overseas Bank Scheduled Castes and Scheduled Tribes Employees Welfare Association and others Vs. Union of India and others (Civil Appeal No. 13700 of 1996) the Supreme Court has held that the National Commission for Scheduled Castes and Scheduled Tribes has no power of granting injunctions, whether temporary or permanent. The Court also held that the powers of the Commission in terms of Article 338(8) of the Constitution are all the procedural powers of a civil court for the purpose of investigating and inquiring into the matters and that too for that limited purpose only.

4. In view of the judgment of the Supreme Court referred to in para-3, the National Commission for Scheduled Castes and Scheduled Tribes has no power to direct withholding of the operation of any orders issued by the Government.

5. Ministry of Agriculture etc. may, therefore, keep in mind the directions contained in this Department's O.M. dated 06.01.1981 and the judgment of the Supreme Court referred to above while dealing with the directions given by the National Commission for Scheduled Castes and Scheduled Tribes. Ministry/ Departments etc. must, however, in all fairness consider the recommendations of the Commissions in the light of policies laid down by the Department of Personnel and Training.

Sd/-
(J. Kumar)
Under Secretary to the Govt. of India

To,

1. All Ministries/ Departments of the Government of India.
2. Department of Economic Affairs (Banking Division), New Delhi
3. Department of Economic Affairs (Insurance Division), New Delhi
4. Department of Public Enterprises, New Delhi
5. Railway Board
6. Union Public Service Commission/ Supreme Court of India/ Election Commission/ Lok Sabha Secretariat/ Rajya Sabha Secretariat/ Cabinet Secretariat/ Central Vigilance Commission/ President's Office/ P.M.O./ Planning Commission.
7. Staff Selection Commission, CGO Complex, Lodhi Load, New Delhi.
8. All Officers/ Sections of the Department of Personnel and Training/ Deptt. of Administrative Reforms & Public Grievances/ Department of Pensioners Welfare.

ANNEXURE 3.XI
(Ref. para 3.34, SR_Ch 3)

Department of PersonnelE and Training O.M. No.36036/2/97-Estt.(Res), dated the 30 th November, 1998, to all Ministries/Departments, *etc.*

Subject:- National Commission for SC and ST cannot issue any instructions in the nature of injuction on implementation of the Government's orders.

The undersigned is directed to refer to this Department's Office Memorandum of even number, dated 1-1-1998 and letter No. 4/3/98-SSW. II, dated Nil, addressed to the Secretary, Department of Personnel and Training by the National Commission for Scheduled Castes and Scheduled Tribes with copies endorsed to all Ministries/Departments of the Government of India, etc., and to say that the aforesaid letter of the Commission tends to create the impression that the Commission has powers have not been vested in the Commission in terms of Article 338 of the Constitution. As the Commission lacks the authority to issue directions in the nature of injunction, the aforesaid action of the Commission is clearly beyond its powers and is illegal.

2. The National Commission for Scheduled Castes and Scheduled Tribes is assigned the important role of safeguarding the interests of the Schedule Castes and the Schedules Tribes and has been vested with certain powers in discharge of its role in terms of Article 338 of the Constitution. The Ministries/Departments, etc., are therefore expected to extend maximum cooperation to the Commission in the discharge of its role and to give its recommendations/suggestions due consideration. They Ministry of Agriculture, etc., are, however, advised to ignore such of the instructions. The Ministry of Agriculture, etc., are, however, advised to ignore such of the instructions issued by the Commission as may purport to either amend or withhold or keep in abeyance the instructions issued by the Government in implementation of the reservation policy for the SCs and STs.

Ministry of Law & Justice
Department of Legal Affairs

3682/11/LS

Reference notes on pre-pages.

2. Department of Food and Public Distribution has sought our opinion on the following points with reference to the proposed National Food Security Act:-

(i) Is it mandatory to consult the NCST on the draft National Food Security Bill? Is similar consultation also required with National Commission for Scheduled Castes and any other body?

(ii) At what stage should the consultation with the Commission(s) be held? Should it be at the stage of inter-ministerial consultation on the draft cabinet note? Or

(iii) Would consultation require that the Commission (s) be consulted after the draft Bill is finalized and is to be placed before the Cabinet?

3. According to the long title, the proposed National Food Security Bill, 2011 seeks to provide for food and nutritional security, in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable prices, for people to live a life with dignity and for matters connected therewith or incidental thereto.

4. As such, the proposed Bill intends to provide food security, in general, to the people of India and not to particular class or community. However, under clause 22 of the proposed Bill, 'State Food Commission' shall be constituted by the every State Government and under clause 26 of the proposed Bill, 'National Food Commission' shall be constituted by the Central Government. In both the Commissions, one person each belonging to the Scheduled Castes and Scheduled Tribes shall be appointed as a Chairperson or Member or Member Secretary. Further, according to clause 36 of the proposed Bill, Vigilance Committees shall be set up by every State Government at the State, District, Block and Fair Price Shop level, in which due representation shall be given to the Scheduled Castes and Scheduled Tribes.

5. In view of the above provisions of the proposed Bill, and provisions of article 339A (9) of the Constitution, which provides that the Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Tribes, the National Commission for Scheduled Tribes may be consulted on the draft National Food Security Bill. So far as the consultation with National Commission for Scheduled Castes is concerned, position is the same and a similar consultation may be held with SC Commission under article 338 (9) of the Constitution

6. As regards point (ii) and (iii) above, in the absence of any statutory provision or any provision in the 'Manual of Parliamentary Procedures in the Government of India' in this regard, it is for the administrative department to take an appropriate decision as at which stage, the Commissions should be consulted.

May kindly see.

(R.K. Srivastava)
Deputy Legal Adviser
22.11.11

3682/LS/11
29.11.11

JS&LA (Dr S. S. Chahar)

Law Secretary

MLJ

406/MPSA/2011
30/11/11

Deptt. of Food & P.D

ANNEXURE 3.XIII
(Ref. para 3.43, SR_Ch 3)

NATIONAL COMMISSION FOR SCHEDULED TRIBES

Subject: Constitutional mandate for consultations with National Commission for Scheduled Tribes on Policy matters/ Legislations affecting Scheduled Tribes and Scheduled Areas.

Article 338A of the Constitution vests the National Commission for Scheduled Tribes (NCST) with the duty to monitor and evaluate the working of safeguards provided for the Scheduled Tribes, participate in the planning process and advise the Union and the State Governments on major policy matters affecting Scheduled Tribes, and submit report on the working of those safeguards to the President, annually and at such other times as the Commission may deem fit. The Constitution has also made special provisions for development of Scheduled Areas under Fifth Schedule and Tribal Areas under Sixth Schedule to the Constitution. The National Commission for Scheduled Tribes has decided to submit a Special Report on Good Governance for Scheduled Areas/ Tribes, also highlighting the need for meaningful Consultations with the National Commission for Scheduled Tribes.

2. While the Constitutional provisions regarding consultation with the Commission on policy matters (which would include legislative matters) affecting Scheduled Tribes and the Scheduled Areas which have been in existence for a long period (a similar provision existed regarding the predecessor joint Commission for Scheduled Castes and Scheduled Tribes since 1990), it has been noted by the Commission that various Ministries/ Departments of the Government of India have not implemented this mandate in desired spirit. Ministries/ Departments are very often faulting in lack of proper understanding of the Constitutional provisions (Clause 9 of Article 338A) – in particular, the obligation to consult the Commission in a meaningful manner, maintaining transparency of actions regarding implementation of Constitutional safeguards with respect to Scheduled Tribes and exhibiting sensitivity of approach in respect of matters affecting the Scheduled Tribes and Scheduled Areas specified under Schedule V and Schedule VI to the Constitution. Their apathy is demonstrably revealed from the processes adopted by the Ministry of Tribal Affairs, Ministry of Rural Development, Ministry of Mines and the Ministry of Consumer Affairs (Department of Food & Public Distribution) in the context of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, the Land Acquisition, Rehabilitation & Resettlement Bill, 2011, Mines and Minerals (Development and Regulation) Bill, 2011 and National Food Security Bill, 2011 respectively.

(A) The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

3. No formal reference was made by the Ministry of Tribal Affairs (MTA) with the National Commission for Scheduled Tribes as required under Article 338A (9) of the Constitution on the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005. The Commission, however, considered it appropriate to make a detailed mention in its First Report (submitted to the President on 8th August, 2006) about its observations on the various provisions included in the draft Bill, that was available in public domain through the website of the Ministry of Tribal Affairs. However, by the time First Report of the Commission was finalized it was learnt that the Bill had already

been introduced in the Parliament and referred to the Joint Parliamentary Committee (JPC) headed by Shri V Kishore Chandra S Deo for further examination. The Commission also mentioned in the Report that it pained to note that no formal consultation on such a major policy issue affecting the interests of Scheduled Tribes was made with it in terms of Clause 9 of Article 338A of the Constitution. by the Ministry of Tribal Affairs. MTA did not consult the Commission while framing the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007 also.

4. Thus, the case illustrates that the Ministry of Tribal Affairs, which amended the Constitution for making provision therein that the Union and every State Government shall consult the NCST on policy matters affecting the Scheduled Tribes, completely disregarded the mandate of the NCST while finalising ***the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill,*** *but also while drafting the Rules viz.* ***the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules 2007.***

(B) Mines and Minerals (Development and Regulation) Bill, 2011

5. The National Commission for Scheduled Tribes noticed from news Reports that the Group of Ministers (GoM) had approved the new draft Mines and Minerals (Development & Regulation) Bill, 2010 (MMDR Bill, 2010). As mining affects tribals in a large measure, particularly their livelihood, settlements, environment and culture, this Commission felt anxious that certain important concerns need to be adequately addressed in the Bill, notwithstanding the fact that the Ministry of Mines had not referred the draft Bill for advice of the Commission before its submission to the GoM. Accordingly, the comments of this Commission regarding safeguards of the STs in the MMDR Bill, 2010 were communicated to Hon'ble Minister for mines vide DO letter No.12/2/2009-Coord dated 11-10-2010. The Ministry, however, did not inform the Commission regarding the action taken on the comments/ suggestions made by the Commission.

6. In the meanwhile, a DO letter on the subject was also sent to the Union Minister of Mines on 13-07-2011 with the request to have the views of the Commission in the matter considered by the Council of Ministers before re-introducing the Bill in the Parliament. In view of this the Chairperson, NCST decided to have discussions on the subject with the Secretary, Ministry of Mines on 25-07-2011. The Secretary, Ministry of Mines alongwith other senior officers attended the meeting on 25-07-2011. The Secretary, Ministry of Mines was informed that the meeting was convened in pursuance of the observations of the Committee on the Welfare of Scheduled Castes and Scheduled Tribes in its 33rd Report, wherein the Committee had desired feedback regarding action taken by the concerned Ministries/ Departments/ Organizations on the recommendations/ observations of the Commission of various policy related matters. It was further mentioned that Clause (9) of the Article 338 A of the Constitution makes it obligatory on the part of all the Ministries/ Departments/Organizations to consult the Commission on all major policy matters affecting Scheduled Tribes but, the Ministry of Mines had not so far sought views/ comments of the Commission on the draft MMDR Bill,2010. Representative of the Ministry of Mines clarified during the sitting that the draft MMDR Bill was formulated in terms of the National Mineral Policy, 2008, which had been approved by the Government in March, 2008. Further, since the present proposal pertained to legislation and not policy matter, the draft MMDR Bill was not referred to NCST. However, once the concerns of the NCST were received, the same were considered

suitably for incorporation. As the draft MMDR Bill had been referred by the Cabinet Secretariat to a Group of Ministers, and the GoM had held two rounds of meetings, Vice-Chairman, NCST was so informed by Hon'ble Minister of Mines vide his D.O dated 27.9.2010. The Draft MMDR Bill, 2010 after consideration by the Group of Ministers (GoM) had been recommended by the GoM to the Cabinet after legal vetting for consideration and the concerns of the Commission on various provisions of the draft Bill had been appropriately taken care of.

7. The Commission observed that since the draft MMDR Bill, as finalized and being processed had not been referred to the National Commission for Scheduled Tribes for comments by the Ministry of Mines, the Commission was not in a position to discharge its mandated function in regard to an important legislation relating to STs like the MMDR Bill, 2010. A copy of the draft MMDR Bill as recommended by the Group of Ministers was also called from the Ministry of Mines. The Joint Secretary, Ministry of Mines promptly informed vide letter dated 11-08-2011 as follows:

> *2 While appreciating the need to share the draft MMDR Bill with the Commission, since the draft Bill is presently under Cabinet process, and in order that no violation of the established process is committed, a clarification has been sought from the Department of Legal Affairs in the matter on:*
>
> *(i) Whether the draft MMDR Bill, 2011, as a legislation based on National Mineral Policy, 2008, qualifies as a policy matter affecting Scheduled Tribes in terms of the provisions of clause (9) of Article 338A of the Constitution of India, and*
>
> *(ii) Whether the draft MMDR Bill, 2011, can be shared at this stage with the National Commission for Scheduled Tribes, when the Group of Ministers has recommended the draft Bill to be placed before the Cabinet (since it is a part of the Cabinet process)*
>
> *3. Based on the outcome of the advice of the Department of Legal Affairs, further action in the matter is intended.*

8. Disagreeing with the contention of the Ministry of Mines, the Commission decided to hold another sitting with the Secretary, Ministry of Mines on 17-08-2011. In the meeting taken by the Chairperson, NCST on 17th August, 2011, the Commission was informed that the views of the Ministry of Law were being sought on the observations of the NCST that for the consultation with the NCST, as envisaged under Article 338 A(9) of the Constitution to be meaningful, the draft Bill finalized in the Ministry, should be referred to the Commission; that the reference to the Ministry of Law in the matter and their views, if received, would also be made available to the Commission. It was stated that the views of the Ministry of Law were awaited. The Ministry was requested that views of the Ministry of Law in the matter may be made available to the Commission immediately along with a copy of the Bill as finalized by the Ministry.

9. As views of the Ministry of Law and action taken by the Ministry of Mines in the matter was not received, another meeting was held on 15-09-2011. In the wake of the matter pending with the Ministry of Law & Justice, the Secretary (Legal Affairs), Ministry of Law & Justice was also invited to attend the meeting. The meeting was attended by the Secretary, Ministry of Mines and the Joint Secretary, Deptt. of Legal Affairs, Ministry of Law and Justice. The Joint Secretary (Legal Affairs) informed that the Ministry of Law was in the process of finalization of its views in the matter and its opinion would be communicated shortly. The Joint

Secretary (Legal Affairs), vide his letter dated 22-09-2011 informed the Commission that opinion of this Department on the issue of making available to the Commission a copy of the draft Bill on the aforesaid subject has been sent to the Ministry of Mines vide FTS No.3120/11/Adv.A on 15-09-2011. A copy of the advice sent to the Ministry of Mines was also received from the Department of Legal Affairs.

10. Relevant extracts from the advice to the Ministry of Mines by the Ministry of Law & Justice are reproduced below:

> *"5. From the above, it may be seen that the draft Mines and Minerals (Development and Regulation) Bill, 2011 is yet to be submitted to the Cabinet as recommended by the GOM. The administrative Ministry has neither disclosed nor placed on file any instructions/guidelines prohibiting to share the draft Bill with the NCST which is under the constitutional obligation to participate and advise on the planning process Socio-economic development of the Scheduled Tribes and to evaluate the progress of their development in terms of Article 338A(5)(c). The Commission also possesses powers of Civil Court under Article 338(8). Further, in terms of Clause (9) of Article 338A, the Union and every State Government are under an obligation to consult the Commission on all major policy matters affecting Scheduled Tribes.*
>
> *6. In view of above, we are of the opinion that the concerns expressed by the National Commission for Scheduled Tribes in their letters dated 06-08-2010 (p.23/c.) and 11-10-2010 (p.96-97/c) relate to the safeguards of the Scheduled Tribes and the provisions of the draft Bill may likely to affect the Scheduled Tribes and as such, may be a major policy matter affecting Scheduled Tribes. Hence in our opinion, the Ministry of Mines is under constitutional obligation to consult the Commission. Thus, there may be no legal or constitutional objection in sharing the draft Bill the Commission before its submission to the Cabinet."*

11. In view of the obdurate avoidance manifest by the Ministry of Mines in respect of the obligation to consult the Commission on the draft MMDR Bill, 2010, as mandated under the Constitution, the Chairperson, National Commission for Scheduled Tribes decided to call the Secretary, Ministry of Mines on 3rd November, 2011 to:-

(a) Produce a chronological record of the action taken on the requests made by the Commission regarding the MMDR Bill, 2010.

(b) Explain the reasons for avoiding meaningful consultation with the Commission on this important legislation concerning the STs; and

(c) Explain why legal action should not be instituted against the Secretary, Ministry of Mines, for repeated disregard of the Commission's requests to provide a copy of the draft legislation to the Commission to ensure meaningful consultation before submission of these Bills to the Cabinet.

11A. In response, the Ministry of Mines informed vide letter dated 03-11-2011, re-iterating their view that the consultation on the draft legislation may not be qualitatively of same order, where consultation on policy matters is mandated under the Constitution with the NCST. The Ministry further stated that there are no clear guidelines on whether the draft Bill, having been referred to the GoM, could be taken up for consultations with the NCST at such a stage.

12. *The case illustrates that the Ministry of Mines have faulted in lack of proper understanding of the Constitutional provisions – in particular, the obligation to consult the Commission in a meaningful manner as mandated under the Constitution,*

maintaining transparency of actions regarding implementation of Constitutional safeguards with respect to Scheduled Tribes and failed to exhibit expected sensitivity of approach/attitude towards weaker section. The views expressed by the Secretary, Ministry of Mines that MMDR Bill 2010 being a legislation based on National Mineral Policy 2008 may not qualify as a policy matter affecting STs in terms of the provision of Clause (9) of Article 338A of the Constitution and seeking opinion of the Ministry of Law in the matter is by itself a poor reflection of the understanding of the Constitutional provisions regarding mandatory consultation with the Commission; and sharply indicates the need for modifying the Transaction of Business Rules of the Government to unambiguously implements this Constitutional obligation in terms of the Legal Advice tendered by the Ministry of Law.

13. In this case also, MTA, the administrative Ministry for NCST has not consulted the Commission on the Bill.

(C) Land Acquisition, Rehabilitation & Resettlement Bill, 2011

14. The Commission learnt from news reports that the Government had formulated/ introduced the new Land Acquisition (Amendment) Bill, 2007 and Rehabilitation and Resettlement Bill, 2007 in Parliament in December, 2007. These Bills were passed by the Lok Sabha, but could not be tabled in the Rajya Sabha. The Commission noted that the Ministry of Rural Development did not consult the National Commission for Scheduled Tribes before introducing the Bill in the Parliament. However, considering the imperative need for normative definition/ implementation of rehabilitation and resettlement measures through law, the Commission conveyed detailed comments on the proposed legislation to the Ministry of Rural Development and Ministry of Tribal Affairs vide d.o. letter dated 06 August 2010 and 25 August, 2010 respectively from Shri Maurice Kujur, Vice-Chairperson, and acting Chairperson, National Commission for Scheduled Tribes.

15. Subsequently, the Ministry of Rural Development processed an integrated Bill, Land Acquisition and Rehabilitation & Resettlement Bill, 2011. As land acquisition effectively transfers ownership of tribal land to others, the Commission was anxious that certain important concerns need to be adequately addressed in the Bill, and requested the Department of Land Resources, Ministry of Rural Development, on several occasions to submit the Bill as finalized; for obtaining the views/ comments of the Commission under Article 338A(9) of the Constitution. The Ministry of Rural Development vide letter dated 19-08-2011 informed the Commission that a draft Land Acquisition, Rehabilitation & Resettlement Bill, 2011 has been prepared and put in the public domain. The Ministry sought the comments and suggestions of the Commission on the draft Bill as placed in the public domain. The NCST vide letter dated 30-08-2011 highlighted that for a meaningful consultation, the Commission would be able to furnish the comments only after the draft Bill has been finalised by the Ministry of Rural Development.

16. The Ministry of Rural Development, Department of Land Resources was also apprised by the Commission that the Department of Legal Affairs, in response to a reference by the Ministry of Mines have opined vide letter dated 22-09-2011 that "the Ministry of Mines were under constitutional obligation to consult the Commission. Further, there may be no legal or constitutional objection in sharing the draft Bill with the Commission before its submission to the Cabinet." As it was already evident from the response of the Ministry of Rural Development that the Ministry was not prepared to have meaningful consultations with the NCST on the subject and take cognizance

of the views/ comments of the Commission on the Bill, since the Bill had already been introduced in the Lok Sabha on 07-09-2011, without having consultations with the Commission. The same were sent to the Hon'ble Prime Minister vide D.O. letter dated 17-10-2011 from the Chairperson, NCST requesting the Prime Minister to have the views of the Commission considered by the Government even while the matter was engaging the attention of the Standing Committee of the Parliament.

17. In view of this position, the Chairperson, National Commission for Scheduled Tribes called the Secretary, Department of Land Resources, Ministry of Rural Development for discussions on 3rd November, 2011, wherein it was desired that a chronological statement of the manner in which the request of the Commission had been dealt with by different officials at different stages so that the cause can be included in the Annual Report of the Commission.

18. The Ministry of Rural Development *vide* letter dated 21-11-2011 furnished the reply w.r.t. the meeting held in the NCST on 03-11-2011. It was stated in the letter that the Department has followed the guidelines/ instructions of the Cabinet Secretariat regarding inter-ministerial consultations. It was also highlighted in the letter that the Cabinet Secretariat vide its letter dated 21-10-2011 has informed that **"the sponsoring ministry/ department may consult the concerned administrative Ministry/Department dealing with the relevant Constitutional body/Commission/Statutory body etc. except in cases where there is no administrative Ministry/Department specified for such bodies/Commission etc."** (Copy of the Cabinet Secretariat letter is enclosed)

19. While the Ministry's reply is a clear afterthought, Cabinet Secretariat letter is dated 21/10/2011 while the Bill was introduced in Parliament on 07/09/2011 t*he case reveals that the Ministry of Rural Development has disregarded the provision under Article 338A(9) of the Constitution, despite several communications from this Commission, and also did not consider the advice of the Ministry of Law that Ministries are obligated by the Constitution to consult the Commission on the provision of the draft bill affecting Scheduled Tribes. It would also appear that the Cabinet Secretariat had not been fully cognizant of the impart of Constitutional obligations. The Law Secretary, vide his letter dated 26/10/2007 (copy enclosed), also written to the Cabinet Secretary requesting him to advise all Ministries/ Departments to follow strictly the provision contained in the said Article 338A(9). This advice of the Law Secretary is not correctly reflected in the clarification issued to the Ministry of Rural Development, which attempts to transfer this obligation to "Administrative Ministries". Interestingly, MTA, the administrative Ministry dealing with the NCST also did not refer the Bill to NCST for consultations.*

(D) National Food Security Bill, 2011

20. It was learnt from the news reports that the Department of Food & Public Distribution, Ministry of Consumer Affairs is processing the Draft National Food Security Bill and it has been hosted on the Ministry's website. This Commission vide D.O. letter dated 18th October, 2011 requested the Secretary, Deptt of Food and Public Distribution, Ministry of Consumer Affairs, Government of India to forward a copy of the Bill, as finalized, for seeking views of the Commission in accordance with the provisions of Clause 9 of Article 338A of the Constitution. In this connection, the opinion of the Ministry of Law emphasizing that the Ministries are obliged by the Constitution to consult the Commission on the provision of a draft Bill affecting STs, was also forwarded.

21. In response, the Department of Food & Public Distribution sought the views of the Commission on the Bill as available in the public domain only. Subsequently, Secretary, Department of Food & Public Distribution was informed vide D.O. letter dated 27th October, 2011 that the Deptt. of Food and Public Distribution had failed to appreciate the purport of NCST's communication wherein it was clearly mentioned that views of the Commission were required to be sought on the Bill, as finalized by the Ministry, for meaningful consultation with the NCST, as envisaged under Article 338A(9) of the Constitution. The Secretary, Deptt. Of F&PD was also informed that seeking views of the Commission at this stage, when the Ministry has not finalized its views on the Bill, does not serve the intended purpose and the spirit of the Constitution.

22. It was further understood from the news reports that the draft Bill, after incorporating certain changes to the version provided in the public domain would be drafted by the Department of Food & Public Distribution shortly. The matter was placed before the Chairperson, National Commission for Scheduled Tribes. The Chairperson decided to discuss the matter with the Secretary, Deptt. of Food & Public Distribution, Ministry of Consumer Affairs **on 11-11-2011 at 1430 hrs**.

23. The meeting called by the Chairperson, National Commission for Scheduled Tribes with the Secretary, Department of Food & Public Distribution, Ministry of Consumer Affairs on 11-11-2011 was attended by the Joint Secretary, Department of Food & Public Distribution as the Secretary Department of Food & Public Distribution was stated to be away. Joint Secretary, Department of Food & Public Distribution, informed the Commission that first round of discussion on the Bill was already over and inter-Ministerial consultations were being held on the Bill. At this stage, the Ministry of Consumer Affairs, Food & Public Distribution, was also separately referring the Bill to the National Commission for Scheduled Tribes for their comments. The Commission mentioned in the meeting that seeking views of the Commission at this stage, when the Ministry has not finalized its views on the Bill, does not serve the intended purpose and the spirit of the Constitution, as envisaged under Article 338A(9) of the Constitution. He also invited opinion of the Ministry of Law & Justice in the matter (also communicated to the Ministry of Consumer Affairs, F&PD vide letter dated 18th October, 2011), emphasizing that the Ministries are obliged by the Constitution to consult the Commission on the provision of a draft Bill affecting STs. The Joint Secretary, Department of Food & Public Distribution, Ministry of Consumer Affairs, mentioned that after receipt of comments from the various Ministries on the Bill, the Deptt. of F&PD is expected to finalize it within a very short period. He assured that the draft Bill after its finalization by the Ministry, and before consideration of the Cabinet, would be referred to the Commission for seeking views/ comments. He, however, requested the Chairperson, NCST to have views/ comments of the Commission on the draft Bill finalized by Ministry of Consumer Affairs, Food & PD, within one or two days.

24. Pending receipt of final draft Bill from the Department of Food & Public Distribution, the observations of the Commission on the revised draft Food Security Bill, 2011 (circulated for inter-ministerial consultations, as received from the Department of Food & Public Distribution, Ministry of Consumer Affairs and discussed in the meeting of the Commission held on 11-11-2011) were also forwarded to the Department of Food & Public Distribution, Ministry of Consumer Affairs vide letter dated 22-11-2011. It was pointed out to the Ministry that the revised Bill circulated for inter-ministerial consultations was not substantially different

from the earlier version. The Ministry was, therefore, requested to forward by 28-11-2011, a copy of the Bill as finalized by the Ministry before consideration of the Cabinet. The Secretary, Department of Food & Public Distribution, Ministry of Consumer Affairs personally met the Chairperson, National Commission for Scheduled Tribes on 28-11-2011 and assured the Chairperson that the final draft Bill will be made available to the Commission personally by 10:00 AM on 01-12-2011 and requested that the views/ comments of the Commission may be made available to the Ministry at the earliest as the Bill was slated to be submitted to the Cabinet shortly.

25. The Department of Food & Public Distribution, Ministry of Consumer Affairs vide letter dated 01-12-2011 forwarded for views/ comments of the Commission, a copy of the National Food Security Bill, 2011 finalized by the Department before its submission to the Cabinet. The Commission held special meeting on 01-12-2011 to consider the final draft of the National Food Security Bill, 2011 as received on that date from the Ministry. The Commission noted that the Bill, as finalised by the Department of Food & Public Distribution was not much different in substance than the earlier draft, and the views/comments communicated on that draft Bill were not considered while finalizing the final version. These views/ Comments of the National Commission for Scheduled Tribes on finalised Bill received on 01/12/2011 were forwarded to the Department of Food & Public Distribution, Ministry of Consumer Affairs on the same day i.e. 1st December, 2011with the request to communicate the action taken on the recommendations for its inclusion in the forthcoming Report to be submitted by the Commission to the President. As the information about action taken on the recommendations made by the Commission on the National Food Security Bill, 2011 has not been received so far, the Hon'ble Chairperson has convened another meeting with the Secretary, Deptt. of Food & PD on 5th January, 2012.

26. *The case reveals that MTA, the administrative Ministry for the Commission did not seek consultation with the Commission on the Bill. The Ministry of Consumer Affairs, Deptt. of F&PD also did not seek views/comments on the Bill; and it was forwarded to the Commission only after repeated persuasion through letters and sittings at the level of the Chairperson. Finally, the views of the Commission were sought by the concerned Deptt. but with a condition that the comments may be communicated to them same day. The Commission has noted that neither the views/ comments of the Commission on the draft Bill were incorporated by the Ministry while finalizing the draft Bill for consideration by the Cabinet nor did the Ministry inform the Commission about the consideration, if any, given by the Ministry to the views/ comments furnished by the Commission. Further, the action taken on the recommendations of the Commission has not been made available to the Commission, which is required for incorporation in the forthcoming reports of the Commission to be presented to the President.*

27. The following major areas of concern emerge from the position explained above:

i. Ministry of Tribal Affairs, the administrative Ministry for the NCST did not refer even the important Bills concerning the Scheduled Tribes like the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, Land Acquisition (Amendment) Bill, 2007, Rehabilitation and Resettlement Bill, 2007, Rehabilitation & Resettlement Bill, 2011, Mines and Minerals (Development and Regulation) Bill, 2011, National Food Security Bill, 2011 for consultation with the Commission

ii. Notwithstanding the explicit provisions in the Constitution, none of the administrative Ministries dealing with the above Bills sought the comments of the Commission.

iii. Even when Commission suo-moto communicated its recommendations in respect of the Land Acquisition (Amendment) Bill, 2007, Rehabilitation and Resettlement Bill, 2007, Integrated Land Acquisition Rehabilitation & Resettlement Bill, 2011, Mines and Minerals (Development and Regulation) Bill, 2011, the concerned Ministries could not place the recommendations for consideration by the Cabinet.

iv. The concerned Ministries dealing with Rehabilitation and Resettlement Bill, 2007, Integrated Land Acquisition, Rehabilitation & Resettlement Bill, 2011, Mines and Minerals (Development and Regulation) Bill, 2011 sought views of the Commission on the Bill, as available in the public domain, which does not serve any purpose because for a meaningful consultation as envisaged under Article 338A(9) of the Constitution, it is desirable for the concerned Ministry to seek consultation with the Commission after finalization of internal process of drafting at the time of inter-Ministerial consultations.

v. The repeated efforts by the Commission to impress upon the concerned Ministry dealing with these Bills to incorporate the recommendation of the Commission for consideration of the Cabinet did not yield any result and the Ministries indulged in seeking clarifications from the Cabinet Secretariat and the Ministry of Law in the matter on the issue incorporated into Constitution over 20 years ago.

vi. Though after repeated communications including sittings taken by the Chairperson, with the Secretary, Deptt of Food & Public Distribution, Ministry of Consumer Affairs, F&PD, Deptt. of F&PD referred the Bill to the Commission for its views/ comments indicating that these are required within a day. Thus, adequate time was not given to the Commission in the matter. (The manner in which the views/ comments of the Commission have been submitted by the Deptt. of F&PD for consideration of the Cabinet have also not been communicated as yet).

vii. The Commission is required to include Action taken on its recommendations on the matters concerning the Scheduled Tribes in the Report to be submitted to the President as required under Article 338A of the Constitution. The position explained above and the absence of feed-back from the concerned Ministries in this regard has incapacitated the Commission to discharge its constitutional duties in such an important area.

28. In earlier Reports, the Commission recommended to the President that the Cabinet Secretariat and the Ministry of Law, Justice and Legal Affairs should be tasked with the responsibility of ensuring meaningful consultations with the Commission before legislative proposals are placed for consideration by the Council of Ministers. A copy of the Commission's Report were also forwarded to the Prime Minister vide D.O. letter no. 4/2/11-Coord. dated 20-07-2011. Since, the Ministry of Law has tendered a detailed opinion on the subject, the Commission is of the view that the existing instructions contained in the Hand Book on "Writing Cabinet Notes" Section 3 of this Hand Book issued by the Cabinet Secretariat, including

consolidated instructions applicable to Notes for the Cabinet/ Cabinet Committees/ EGoM/ GoMs and the clarifications issued by the Cabinet Secretariat to the Ministry of Rural Development by the Cabinet Secretariat vide its letter dated 21-10-2011, quoted in para 16 above, need review in view of the following:

i. The existing instructions as well as the clarifications issued to the Ministry of Rural Development by the Cabinet Secretariat. vide letter dated 21-10-2011 have not been able to serve the intended objective regarding mandatory consultation enshrined under Article 338A (9) of the Constitution, which have also been emphasized by the Ministry of Law and Justice.

ii The position explained in sub-para (i) to (v) of para 27 above highlight the gap of understanding amongst the Ministries of the Government regarding the constitutional responsibility of the NCST and the constitutional obligation for the Union Government under Article 338A(9) of the Constitution and also lack of sensitivity towards the needs and problems of the Scheduled Tribes and the Scheduled Areas in the country, for which special provisions have been incorporated in the Constitution.

iii The National Commission for Scheduled Tribes is a Constitutional body and it should not be treated as a subordinate organisation. The views/ recommendations made by the Commission are required to be laid in both Houses of Parliament along with action taken Memorandum explaining the acceptance/ non-acceptance of those recommendations. Therefore, Ministry of Tribal Affairs, or for that purpose any other Ministry, has no oversight role to play in the context of recommendations made by the Commission or amending those recommendations. The provision to seek consultation with the Ministry/ Department only, (as per existing instruction 39 of Hand Book on "Writing Cabinet Notes"), and consultation with the Commission through the concerned Ministry/Department (as per the clarifications issued to the Ministry of Rural Development by the Cabinet Secretariat. vide letter dated 21-10-2011 refer) dilute the role of the Commission regarding mandatory consultation with the Commission as enshrined in Article 338 (A)9 of the Constitution.

Iv *The Commission has recommended in its earlier reports that w*henever matters are referred to this Commission for advice or comments, the views expressed by this Commission should invariably be placed, without any oversight or modification, before the concerned authorities for their consideration, as the final decision on the issue rests with the concerned authority. The instructions no.39 of the consolidated instructions applicable to Notes for the Cabinet/ Cabinet Committees/ EGoM/ GoMs issued by the Cabinet Secretariat ("*the views of the consulted Ministries/ Departments need to be faithfully reflected in the main note to ensure that the Cabinet/ Cabinet Committees could peruse them before arriving at a decision. The comments of the consulted Ministry should not be edited or para-phrased in a manner as to alter their connotation and all the comments/ conditionalities should be incorporated in the note/ annexures")*, should therefore, be strictly followed in respect of the recommendations of the Commission too.

ANNEXURE 3.XIV
(Ref. para 3.44, SR_Ch 3)

AJIT SETH

सत्यमेव जयते

मंत्रिमंडल सचिव
CABINET SECRETARY
NEW DELHI

D.O. No. 703/1/1/2011-CA.V **January 4, 2012**

Dear Secretary,

Article 338A(9) of the Constitution of India provides that the Union and every State Government shall consult the National Commission for Scheduled Tribes on all major policy matters affecting the Scheduled Tribes.

2. The Commission has observed that various Ministries/Departments of Government of India are not consulting them on policy matters including legislative matters affecting Scheduled Tribes and the Scheduled areas. Such non consultation violates the provisions of Article 338A(9) of the Constitution of India. The Commission has expressed their concern regarding this lapse.

3. I would request you to strictly follow the provisions laid down in the said Article.

With regards,

Yours Sincerely,

(Ajit Seth)

ANNEXURE 3.XV
(Ref. para 3.45, SR_Ch 3)

आलोक रावत
ALOK RAWAT

सचिव (समन्वय एवं लोक शिकायत)
मंत्रिमंडल सचिवालय
राष्ट्रपति भवन, नई दिल्ली
SECRETARY (COORD. & PG)
CABINET SECRETARIAT
RASHTRAPATI BHAWAN
NEW DELHI-110004

MOST IMMEDIATE

D.O. No. 703/1/1/2011-CA.V

February 10, 2012

Dear Secretary,

You may kindly recall that all Ministries/Departments had been requested vide Cabinet Secretary's D.O. letters No. 701/6/4/2007-CA.V dated 20th November, 2007 and D.O. No. 703/1/1/2011-CA.V dated 4th January, 2012 to follow the provisions laid down in the Constitution of India with regard to consultation with the National Commission for Scheduled Castes and the National Commission for Scheduled Tribes.

2. I would like to clarify that such consultations in respect of major policies with the National Commission for Scheduled Castes and the National Commission for Scheduled Tribes are to be carried out through the concerned administrative Ministries in respect of all major policy issues including those placed before the Cabinet/Cabinet Committees as required under the Constitution.

3. I shall be grateful if you issue appropriate instructions to all concerned for strict compliance in your Ministry/Department.

With regards,

Yours sincerely,

10.2.2012

(Alok Rawat)

Secretaries to the Government of India (As per list attached)

ANNEXURE 3.XVI
(Ref. para 3.45, SR_Ch 3)

No. 1/3/2/2012-Cab.
GOVERNMENT OF INDIA (BHARAT SARKAR)
CABINET SECRETARIAT (MANTRIMANDAL SACHIVALAYA)
RASHTRAPATI BHAVAN
*****

New Delhi, the 16th February 2012

OFFICE MEMORANDUM

Subject:- Instructions on preparation of notes for the Cabinet/Cabinet Committees/Empowered Group of Ministers/Group of Ministers.

The undersigned is directed to state that some instances have been brought to the notice of the Government where the National Commission for the Scheduled Castes, and/or the National Commission for the Scheduled Tribes have not been consulted as envisaged under the Constitution on major policy matters affecting the Scheduled Castes or the Scheduled Tribes, respectively, by the Ministries/Departments concerned. All Ministries/Departments have, keeping in view the Constitutional mandate of Article 338(9) and Article 338A(9), been advised *vide* Cabinet Secretary's D.O. letters no. 701/6/4/2007-CA.V dated 20.11.2007 and 703/1/1/2011-CA.V dated 04.01.2012 to ensure strict compliance of the relevant provisions of the Constitution. It has further been clarified *vide* D.O. letter no. 703/1/1/2011-CA.V dated 10.02.2012 from Secretary (Coord.), Cabinet Secretariat that such consultations would also be required in respect of major policy issues placed before the Cabinet/Cabinet Committees.

2. Accordingly, the sponsoring Ministries/Departments are advised to ensure that the National Commission for the Scheduled Castes, and the National Commission for the Scheduled Tribes, as the case may be, shall mandatorily be consulted by them through the Ministry/Department administratively concerned with the Commission before finalization of such notes for consideration of the Cabinet/Cabinet Committees. In all such cases, the administrative Ministry/Department concerned will place the views of the concerned National Commission, as the case may be, as received by them, before the Minister-in-charge of the Ministry/Department before their final views/comments on such issues are communicated to the sponsoring Ministry/ Department. It has also been decided that the unabridged/unedited views of the concerned Commission along with the views of the Ministry/Department administratively concerned with the Commission be included in/enclosed with the note for consideration of the Cabinet/Cabinet Committees along with responses thereon by the sponsoring Ministry/Department.

3. It is requested that the above instructions may be disseminated to all concerned for ensuring strict compliance.

4. The consolidated instructions relating to preparation of notes for the Cabinet/Cabinet Committees, as also the Handbook on writing Cabinet notes stand duly modified to the extent as indicated above.

(K.L. Sharma)
Director (Cabinet)
Tele No. 2301 5802

To

All Secretaries to the Government of India.

ANNEXURE 3.XVI
(Ref. para 3.45, SR_Ch 3)

No. 1/3/2/2012-Cab.
GOVERNMENT OF INDIA (BHARAT SARKAR)
CABINET SECRETARIAT (MANTRIMANDAL SACHIVALAYA)
RASHTRAPATI BHAVAN
*****

New Delhi, the 16th February 2012

OFFICE MEMORANDUM

Subject:- Instructions on preparation of notes for the Cabinet/Cabinet Committees/Empowered Group of Ministers/Group of Ministers.

The undersigned is directed to state that some instances have been brought to the notice of the Government where the National Commission for the Scheduled Castes, and/or the National Commission for the Scheduled Tribes have not been consulted as envisaged under the Constitution on major policy matters affecting the Scheduled Castes or the Scheduled Tribes, respectively, by the Ministries/Departments concerned. All Ministries/Departments have, keeping in view the Constitutional mandate of Article 338(9) and Article 338A(9), been advised *vide* Cabinet Secretary's D.O. letters no. 701/6/4/2007-CA.V dated 20.11.2007 and 703/1/1/2011-CA.V dated 04.01.2012 to ensure strict compliance of the relevant provisions of the Constitution. It has further been clarified *vide* D.O. letter no. 703/1/1/2011-CA.V dated 10.02.2012 from Secretary (Coord.), Cabinet Secretariat that such consultations would also be required in respect of major policy issues placed before the Cabinet/Cabinet Committees.

2. Accordingly, the sponsoring Ministries/Departments are advised to ensure that the National Commission for the Scheduled Castes, and the National Commission for the Scheduled Tribes, as the case may be, shall mandatorily be consulted by them through the Ministry/Department administratively concerned with the Commission before finalization of such notes for consideration of the Cabinet/Cabinet Committees. In all such cases, the administrative Ministry/Department concerned will place the views of the concerned National Commission, as the case may be, as received by them, before the Minister-in-charge of the Ministry/Department before their final views/comments on such issues are communicated to the sponsoring Ministry/ Department. It has also been decided that the unabridged/unedited views of the concerned Commission along with the views of the Ministry/Department administratively concerned with the Commission be included in/enclosed with the note for consideration of the Cabinet/Cabinet Committees along with responses thereon by the sponsoring Ministry/Department.

3. It is requested that the above instructions may be disseminated to all concerned for ensuring strict compliance.

4. The consolidated instructions relating to preparation of notes for the Cabinet/Cabinet Committees, as also the Handbook on writing Cabinet notes stand duly modified to the extent as indicated above.

(K.L. Sharma)
Director (Cabinet)
Tele No. 2301 5802

To

All Secretaries to the Government of India.

ANNEXURE 3.XVII

(Ref. para 3.47, SR_Ch 3)

National Commission for Scheduled Tribes

PROCEEDINGS OF THE SITTING HELD ON 21/02/2012

Subject: (i) Consultation with the National Commission for Scheduled Tribes under Clause(9) of Article 338A of the Constitution and

(ii) Empanelment of officers belonging to the Scheduled Tribes for appointment at the level of Secretaries in the Government of India

A Sitting was held at 12:45 Hrs. on 21-02-2012 in the Chamber of Dr. Rameshwar Oraon, Chairperson, National Commission for Scheduled Tribes. Shri Upendra Tripathy, Additional Secretary, Shri Rajive Kumar Additional Secretary, Smt. Nivedita Shukla Verma, Joint Secretary and Shri K. L. Sharma, Director in the Cabinet Secretariat attended the sitting. Both the issues mentioned above were discussed in the Sitting. Initiating the discussions, Shri Aditya Mishra, Joint Secretary, National Commission for Scheduled Tribes mentioned that a sitting was held on 04-01-2012 in the Chamber of the Chairperson, National Commission for Scheduled Tribes to discuss the above mentioned two issues with the Cabinet Secretary, Government of India. As the finalization of the Special Report of the Commission was pending for want of information about action taken on the decisions taken in the sitting held on 04/01/2012, the Commission decided to hold another Sitting, being hel;d on the day.

(i) Consultation with the National Commission for Scheduled Tribes under Clause(9) of Article 338A of the Constitution

2. The Commission was informed that the Cabinet Secretariat, after considering the decisions taken in the last Sitting held on 04/01/2012, vide D. O. letter No. 703/1/1/2011-CA.V dated 10/02/2012 from Secretary (Coordination) has separately emphasized regarding consultations with the Commission in respect of all major policy issues including those placed before the Cabinet/ Cabinet Committees as required under the Constitution. Further, instructions on preparation of notes for the Cabinet/ Cabinet Committees/ Empowered Group of Ministers/ Group of Ministers have been modified vide O. M. No. 1/3/2/2012-Cab. dated 16/02/2012. A copy each of the afore mentioned references were furnished to the Commission. The Commission was further informed that action for amending the guidelines issued by the Cabinet Secretariat for drafting the note for Cabinet/Cabinet Committees, etc. as also consequential changes in the Handbook had been completed and the consolidated instructions and the modified Handbook uploaded on the website of the Cabinet Secretariat.

3. Commission noted that the Secretary (Coord. & PG) vide D. O. letter No.703/1/1/2011-CA.V dated February, 10, 2012 has reiterated the instructions contained in the D.O. letter dated 4th Jan., 2012. The letter further clarified that such consultations with the National Commission for Scheduled Castes and the National Commission for Scheduled Tribes in respect of major policies are to be carried out through the concerned administrative Ministries in respect of all major policy issues including those placed before the Cabinet/ Cabinet Committees as required under the Constitution. Further, according to the revised instructions issued vide OM dated 16.2.2012, the sponsoring Ministries/ Departments were advised to ensure that the National Commission for the Scheduled Castes, and the National Commission for the Scheduled Tribes, as the case may be, shall mandatorily be consulted by them through the Ministry/Department administratively concerned with the Commission before finalization of such notes for consideration of the Cabinet/Cabinet Committees. In all such cases, the administrative Ministry/Department concerned will place the views of the concerned National Commission, as the case may be, as received by them, before the Minister-in-charge of the Ministry/ Department concerned before their final views/ comments on such issues were communicated to the sponsoring Ministry/ Department. It has also been decided that the unabridged/unedited views of the concerned Commission along with the views of the Ministry/Department administratively concerned with the Commission be included in/enclosed with the note for consideration of the Cabinet/ Cabinet Committees along with responses thereon by the sponsoring Ministry/Department.

4. The Commission pointed out that the revised procedure for consulting the Commission through the Ministry of Tribal Affairs creates a dilatory mechanism, which dilutes the responsibility of the Govt., as incorporated under Article 338A of the Constitution, to ensure mandatory consultation with the Commission on policy related matters concerning Scheduled Tribes and fastens it on to a Nodal Ministry instead. Further, this would give 00000greater opportunity/ alibi for evasiveness on the part of the sponsoring Ministries, considering the facts neither the sponsoring Ministry nor the Administrative Ministry consulted this Commission regarding the (Integrated) Land Acquisition, Rehabilitation & Resettlement Bill, 2011, Mines and Minerals (Development and Regulation) Bill, 2011 and the National Food Security Bill, 2011 and even after the Commission had advised these Ministries, they resorted to seeking opinion of the Ministry of Law for obtaining legal opinion in such matters , effectively aborting the Constitutional imperative in the process. The Commission, therefore, emphasized that the revised instructions/ procedures are also fraught with risk of failures as noticed in the past; and therefore, fool proof system should be designed to avoid recurrence of such cases in future. The Commission invited the attention of the Cabinet Secretariat towards

instructions No. 46 to 49 of the Handbook of instructions issued by the Cabinet Secretariat. These instructions read as follows:-

> 46. National Manufacturing Competitiveness Council should be consulted in all cases relating to manufacturing sector.
>
> 47. All proposals concerning revival or restructuring of public sector undertakings should be first referred to BRPSE and thereafter brought up before the Cabinet/Cabinet Committees after necessary inter-ministerial consultations.
>
> 48. In respect of proposals concerning North Eastern Region, consultations with the Ministry of Development of North Eastern Region should be carried out before finalizing the proposals(s) for consideration of the Cabinet/Cabinet Committees.
>
> 49. In respect of social sector schemes, the Ministries/Departments should necessarily consult the Ministry of Panchayati Raj to enable empowerment of these democratic institutions at grass root level. The Ministry of Panchayati Raj should also be consulted in all cases relating to centrally sponsored Programmes/ Schemes.

5. Instructions no. 46 and 47 specifically require consultation with the NMCC and BRPSE respectively without mentioning that such consultations will be done through their administrative Ministry/ Department. In this context it is worth mentioning that the NMCC, which is to be consulted in all cases relating to manufacturing sector ,is an autonomous body set up in October 2004, by a Government Order, under the Department of Industrial Policy and Promotions in the Ministry of Commerce and Industry and similarly, BRPSE, to which proposals concerning revival or restructuring of public sector undertakings should be first referred to, is an Advisory Body set up in December, 2004, by a Resolution of the Government, under the Department of Public Enterprises in the Ministry of heavy Industries & Public Enterprises. In contrast, the National Commission for Scheduled Tribes is a Constitutional Commission having legendary existence since the adoption of the Constitution. Therefore, in view of above the Cabinet Secretariat should have no reluctance in requiring directing for direct consultation with the National Commission for Scheduled Tribes in all major policy matters (including Notes for Cabinet Committees and the Legislative proposals) affecting Scheduled Tribes. The sponsoring Ministries may also be required to specifically mention in their Note/ proposal that the National Commission for Scheduled Tribes has been consulted and the views/ comments furnished by the concerned Commission were appended to the Note/ proposal.

6. The Cabinet Secretariat assured the Commission that the revised instruction/ procedures would be reviewed after sometime and requisite corrections, if necessary, will be issued and incorporated in the Handbook of Instructions.

(ii) Empanelment of officers belonging to the Scheduled Tribes for appointment at the level of Secretaries in the Government of India

7. The Commission was informed that the guidelines for empanelment of officers at the level of Secretary/ Additional Secretary, *inter-alia,* provide for suitable relaxation of the criteria for empanelment to give due representation to the category of Women/ Scheduled Castes/ Scheduled Tribes/ State Cadres, in case the empanelment process does not lead to their adequate representation. The adequacy of representation would mean the cumulative representation in four batches, i.e., the current batch and the immediately preceding three batches being less than 66⅔% of the all India percentages of empanelment. The number of officers to be empanelled on this basis shall not exceed 15% of the number in the panel and selection would follow the process laid down albeit with suitably relaxed norms. The Commission was further informed that the analysis done for the last 4 years indicate that:

(a) one of the main reasons for non-empanelment of ST officers at the level of Secretary was due to the fact that officers did not have prior Central experience; and

(b) ST Officers have been empanelled at the Secretary level by using the special provisions for empanelment under relaxed conditions.

8. The Commission noted that the response was obfuscatory since the Cabinet Sectt., had still not furnished para-wise comments on the issues raised in the matter as mentioned in para 5 and 6 of the agenda brief circulated for the meeting held on 4/01/2012. The surviving issue pertained to the denial to the ST officers of placement as Secretaries in the Govt. of India after empanelment, in respect of which the Cabinet Sectt., has not proposed any corrective mechanism addressing the issue. The Commission advised the Cabinet Sectt., that as a measure of increasing transparency predictability and fair play in the system, the Cabinet Sectt., should formulate their views on the issues raised by the Commission in para 5 and 6 of the agenda brief quoted above. The Commission further observed that the suggested action on the part of the Cabinet Sectt.,, was not a matter of choice but a responsibility to ensure true implementation of Constitutional safeguards in the proper spirit.