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AGENDA NOTE (ITEM-IV)

Subject: Comments of National Commission for Scheduled Tribes requested by Ministry of Tribal Affairs on the suggestions/recommendations contained in the 36th Report of the Standing Committee on Social Justice and Empowerment in regard to explanation of the term "settle permanently" appearing under clause 2 of the Constitution (Scheduled Tribes) (Union Territory) Order (Amendment) Bill, 2007.

Proposal in Brief

The term "**settle permanently**" appearing in the Explanation under clause 2 of the abovesaid Bill has been defined as under:-

"a person shall be deemed to be 'ordinary resident in an Island if he has been ordinarily residing in such Island or is in possession of a dwelling house therein ready for occupation"

2. The Bill was introduced in Rajya Sabha on 27-11-2007 and then referred to the Standing Committee on Social Justice & Empowerment. While agreeing with the proposed amendment in the Bill, the Standing Committee recommended in its 36th Report that:-

- (i) The terms "**settle permanently**" should be clarified/defined under 'Explanation' of clause 2 of the proposed Constitution (Scheduled Tribes) (Union Territory) Order (Amendment) Bill, 2007 as: "**a person shall be deemed to be a 'ordinary resident' in the island if he has been ordinarily residing in such island and is in possession of a dwelling house therein.**"
- (ii) The suggestions/views expressed before the Committee by the individuals/groups/representatives of tribal community of Lakshadweep may also be considered before finalizing the proposed amendment in the Bill.

Earlier Recommendation of the Commission

(A) On the basis of the discussions held in the Commission on 01-03-2005, the following comments on the definition of the expression "**settle permanently**" were furnished to the Ministry of Tribal Affairs:-

- (i) The cases of children born on mainland on account of labour/delivery cases being referred by the competent medical authorities of Union Territory for safe delivery of children by inhabitants of the Union Territories should be treated on a different footing and not at par with non-medical cases i.e. not on account of labour cases being referred by the competent medical authorities.

- (ii) In view of (i) above, the conditionality of stay for a minimum period of 10 years in the islands after the birth of the children on the mainland should not be insisted in case of children born on the mainland on account of labour cases being referred by the competent medical authorities and in these cases their return to the islands soon after their birth should be sufficient to treat them as regular inhabitants of these islands within the meaning of the [Constitution (Scheduled Tribes) (Union Territories)] Order, 1951 in relation to Lakshadweep.
- (iii) A minimum period of stay of 10 years either for education or otherwise in the islands of Lakshadweep may be made mandatory in respect of such children who are born on mainland not on account of labour cases being referred by the competent medical authorities but due to certain other circumstances/grounds.
- (iv) It should be ensured that such children who are born on the mainland on account of circumstances not related to labour cases being referred by the competent medical authorities and who return to the islands soon after their birth on the mainland are provided with all concessions (including reservation if any) in the educational institutions during the period prior to completion of a minimum stay of 10 years in the islands, available to such children who are born in the islands.

B) On a further reference to the Commission, the issue was again examined by the Commission and the definition of the term "**settle permanently**" as incorporated in the aforesaid Bill was agreed to by the Commission vide d.o. letter, dated 20-07-2008 addressed to Ministry of Tribal Affairs.

Proposed Comments of National Commission for Scheduled Tribes

Since they are separated by 'or' the definition proposed in the Bill actually incorporates 2 independent criterion of (a) those ordinarily residing and (b) in possession of a dwelling house therein.

Possession of a dwelling house cannot be the criterion of geographical isolation of the community or its tribal character. The modification suggested by the Standing Committee would actually be further discriminatory in favour of economically better off sections. Therefore, it may be more prudent to delete the phrase "**or is in possession of dwelling house therein ready for occupation**" altogether from the definition of "**settle permanently**" in Clause 2 of the Bill.