

NATIONAL COMMISSION FOR SCHEDULED TRIBES

Subject: Summary record of the 26th meeting of the Commission held at 11:00 AM on 27-05-2011.

The 26th meeting of the Commission was held at 11:00 AM on 27-05-2011 in the Conference Room of the Commission in Loknayak Bhawan, New Delhi. The meeting was presided over by Dr. Rameshwar Oraon, Chairperson, NCST. List of participants is enclosed at Annexure. Three Agenda Items and an Additional Agenda Item were circulated for discussion in the meeting. All items were discussed.

2. The decisions taken and the action points that emerged out of the discussions held in the meeting are given below.

3. Secretary, NCST stated that the Additional Agenda Item was proposed by the Chairman, NCST vide Notes dated 24/05/2011 and 25/05/2011 and included 5 references containing main issues, as under:

Sr. No.	Reference	Main issue
(i)	National Human Rights Commission (NHRC) Letter No. 20/1/2004-PRP&P dated 4 th May 2011,	Request for action by the Commission on the recommendations of the Report titled "Prevention of Atrocities against Scheduled Castes" submitted by Shri K.B. Saxena".
(ii)	Justice M.N. Rao, Chairperson National Commission for Backward Classes National Commission for Backward Classes DO Letter dated 22 nd May, 2011	Request for an enquiry by the NCST into compulsory retirement of ST Judges in the State of Chhatisgarh.
(iii)	Chief Minister of Arunachal Pradesh DO Letter No. CM (AP)/07/2011 dated 23 rd May, 2011	Request for taking measures by the Commission to reassure the Nyishis Tribes and repair the hurt as a result of a news item published in the web edition of Times of India, containing a reference that the Nyishis Tribes, who are the largest tribe in Arunachal Pradesh, "don't enjoy a good rapport with other tribes".

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(iv)	News items in Hindi captioned "(Vikas Ki Andhi Mein Jashpur ke Adivasi)" published in Dalit Adivasi Duniya: Issue dated 15-21 May, 2011	Forced acquisition of land, unreasonable fixation of compensation, non-payment of compensation to all affected persons etc. by Hydro Electric Power Limited, Chattisgarh,
(v)	National Advisory Council (NAC) vide Letter No. N.17014/1/2010-2176 dated 23 rd May, 2011	Views of the Commission sought by NAC on the draft "Prevention of Communal and Targeted Violence (Access to Justice & Reparations) Bill 2011".

4. Secretary, NCST mentioned that broadly, references to the Commission pertained to two important areas of its functioning viz. consultative role on policy-related matters under Article 338A(9) of the Constitution and investigation into grievances concerning discrimination against Scheduled Tribes or violation of safeguards provided for Scheduled Tribes under Article 338A(5)(a). The issues at Sr.No. (i) & (v) of the Additional Agenda item were related to the consultative function of the Commission, while issues at Sr. No. (ii) to (iv) actually pertained to the requests for investigation by the Commission into reported discrimination against Scheduled Tribes or violation of safeguards available provided for STs. The Commission has prescribed procedures to deal with such cases and also with regard to selection of an item for consideration of the Commission, as explained under:

- (i) The issues requiring consideration of the Commission are brought before the Commission based on an agenda prepared in accordance with the Rules of Procedure of the NCST (Chapter- IV: Meetings of the Commission Sl. No- 48). These Rules stipulate, inter-alia, that "the agenda will normally be circulated to all the Members at least seven days before the date of the meeting provided that for an Emergent Meeting, this time limit may not apply". (These Rules also prescribe the procedure for investigation and enquiry by the Commission). Further, the guidelines framed by the Commission (approved in the 13th meeting of the NCST held on 30/06/2009), prescribe the procedure for selection and approval of agenda item and its preparation and circulation of Agenda Notes for the meeting of the Commission. According to these guidelines, agenda note on each item, based on the views expressed by the Members and containing historical background, current status, relevant rules

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नई दिल्ली / New Delhi Meeting NCST_27.05.2011

and earlier recommendations of the Commission (and of the erstwhile NCSCST), has to be prepared and circulated before it is deliberated by the Commission for framing of the views on a subject. Thus, adequate time is required for preparation of agenda note on the selected issues for consideration of the Commission. Secretary, NCST further informed that the Commission had also formulated standard guidelines for dealing with policy-related issues, which, inter-alia, detail the procedure for selection and approval of agenda item, content and format of agenda item, presentation of agenda item etc.

- (ii) The Union Government and every State government is obliged to consult the Commission on all major policy matters affecting Scheduled Tribes in accordance with Clause 9 of the Article 338A of the Constitution. However, such views are only proffered by the Commission on policy-related proposals received from the Central and the State Governments/UT Administration, and not on any other proposal emanating from any intermediate level organisation of the Central and the State Governments/UT Administration, because the autonomy conferred by the Constitution does not require the Commission to work as a subordinate line functionary of the Government. Besides, in the interest of Scheduled Tribes, it is also necessary to ensure that the views of the Commission receive proper attention at the highest decision-making levels of the Government; and do not lose definition in the maelstrom of the Govt's internal processes. It is noted that the reference at Sr. No (v) is from the NAC¹, which has been set up as an interface with Civil society providing policy and legislative input to the Government with special focus on social policy and the rights of the disadvantaged groups. Moreover, the draft "Prevention of Communal and Targeted Violence (Access to Justice & Reparations) Bill 2011, on which views of the Commission had been sought, was only a working group draft and not a final NAC recommendation. Therefore, this stage is not opportune for the Commission to comment on the draft Bill. The Commission has recommended in its 4th Report that legislation being the most pristine articulation of Govt. policy, the Cabinet Secretariat and the Ministry of Law and Legal Affairs should be tasked with the responsibility of ensuring meaningful consultations with the Commission before legislative proposals are placed for consideration before the Council of Ministers. It would, therefore, be appropriate for the Commission to render its advice only after the MHA takes a final view on the Draft Bill and seeks the Commission's advice under Article 338 A.
- (iii) As per the procedure being followed by the Commission, the issues concerning discrimination with Scheduled Tribes or violation of safeguards are referred to the respective

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organization and the reply received from the organization is sent for information to the petitioner. In case of receipt of any rejoinder from the petitioner, it is examined in consultation with the concerned organization. Depending on the nature of the reply received from the respective organization, the Commission with a view to expedite the disposal of the petition organizes hearings in which the senior officers of the concerned organization are called to appear before it. The recommendations made after the discussion are recorded and sent to the respective organisation for taking necessary action on the Commission's advice/recommendations within a specified period of time. This procedure is applicable in respect of the cases at Sr. No. (ii) to (iv), which are pertaining to reported discrimination with Scheduled Tribes or violation of safeguards provided for STs.

5. Considering the position explained above, the Commission decided that the references listed in paragraph 2 above may be processed as under:

(i)	National Human Rights Commission (NHRC) Letter No. 20/1/2004-PRP&P dated 4 th May 2011,	The matter may be submitted to the Commission for consideration according to the guidelines mentioned in paragraph 4(i) above.
(ii)	Justice M.N. Rao, Chairperson National Commission for Backward Classes National Commission for Backward Classes DO Letter dated 22 nd May, 2011	The comments of the State Govt. in the matter should be sought urgently, and the case should be processed according to the guidelines mentioned in paragraph 4(iii) above.
(iii)	Chief Minister of Arunachal Pradesh DO Letter No. CM (AP)/07/2011 dated 23 rd May, 2011	The matter should be urgently examined in accordance with the guidelines mentioned in paragraph 4(iii) above.
(iv)	News items in Hindi captioned "(Vikas Ki Andhi Mein Jashpur ke Adivasi)" published in Dalit Adivasi Duniya: Issue dated 15-21 May, 2011	The report should be urgently examined in accordance with the guidelines mentioned in paragraph 4(iii) above. The concerned Member may also visit Jaspur for actual assessment of the reported position regarding forced acquisition of land, unreasonable fixation of compensation, non-payment of compensation to all affected persons etc. by Hydro-Electric Power Limited, Chhattisgarh.
(v)	National Advisory Council (NAC) vide Letter No. N.17014/1/2010-2176	The Commission may apprise the NAC that according to the provisions of Article 338A of the Constitution, the Commission

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	dated 23 rd May, 2011	is required to be consulted on policy-related proposals matters by the Central and the State Governments/UT Administration. As, the draft "Prevention of Communal and Targeted Violence (Access to Justice & Reparations) Bill 2011 was a working group draft and not a final NAC recommendation, the Commission will render its advice after the MHA takes a final view on the Draft Bill and seeks the Commission's advice under Article 338 A.
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Agenda Item I	Comments on Compendium of instructions compiled by the DoPT on reservation in services under the Govt. of India for the SCs, STs and OBCs
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6. Secretary, NCST explained that the DoPT had clarified that the proposed Compendium of instructions compiled by them on reservation in services under the Govt. of India for the SCs, STs and OBCs was aimed to consolidate the existing instructions on the subject and not to change any aspect of policy; and while consultation with the National Commission of Scheduled Tribes was, therefore, not mandatory, the benefit of expertise was sought to purview the new instructions.

7. Secretary, NCST mentioned that the Compendium was examined by the officers of the Commission and the following observations have been made:

- i) There is no reference of the OM based on which instructions mentioned in the Compendium were issued.
- ii) It is not clear from the Compendium that which OM is superseded/ deleted.
- iii) Extract from the DoPT OM No. 36036/2/97-Estt.(Res) dated 30/11/1998

"The Ministries /Departments, etc. are therefore expected to extent maximum cooperation to the Commission in the discharge of its role and to give its recommendations/suggestions due consideration." should also be added in para 49.5 of the Compendium.

8. Secretary, NCST mentioned that in the absence of any reference (s) to the OM vide which various instructions were issued, it was not possible to check the correctness of the contents of the instructions contained in the proposed draft compendium. He emphasized that unless the issues on which

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the Commission is consulted have been clearly delineated, the exercise would be fraught with frivolity and would lack purpose. The process of compilation of instructions inevitably involves harmonization of policies/processes, which should be clearly identified before embarking on their overhaul- both for clarity of intent as well as compliance of governance systems.

9. After discussion, the Commission decided to recommend that the DoPT should undertake due diligence before issue of fresh instructions besides adverting to the points made in paragraph 7 & 8 above.

Agenda Item II	Comments on Minority status of Jamia Milia Islamia (JMI) a Central University at New Delhi
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10. Explaining the background, Secretary, NCST stated that as per the National Commission for Minority Educational Institutions (NCMEI) (Amendment) Act, 2010 universities were also included in the definition of "Minority Educational Institution". It appears NCMEI has interpreted the same to extend it to Central Universities also.

11. Secretary, NCST further mentioned that the Ministry of Human Resources & Development had informed in the meeting taken by the ex-Vice Chairperson on 19/04/2011 that Article 15(5) of the Constitution and Section 4 of the Central Educational Institutions (Reservation in Admission) Act, 2006 provided that the reservation for SCs/STs is not applicable in respect of a Minority Educational Institution defined in the Act, the provisions of which were reviewed by the Constitutional Bench of Hon'ble Supreme Court in 2008 in Ashok Kr Thakur & Ors. Case and upheld. Subsequent to the aforesaid meeting, the Commission was further informed that JMI has passed an Ordinance providing 50% reservation only to Muslims which includes 10% reservation to (Muslim) STs/OBCs for current academic year onwards. Thus, with the grant of minority status to the JMI, by the NCMEI, the reservation in admissions as well as in recruitment/appointment for STs, will not be applicable in the JMI, which is a Central University.

12. The Commission noted the views expressed in the meeting held by the ex-Vice Chairperson on 19/04/2011 that the moot purpose of Article 15(5) is to enable the State to make special provision relating to admission of

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Scheduled Tribes to educational institutions, including private educational institutions other than minority educational institutions referred to in Clause (1) of Article 30. Constitutional safeguards for Scheduled Tribes should not be diluted through incidental interpretation of laws. The Commission, therefore, endorsed the recommendations made to the Ministry of HRD in the meeting to ensure continued reservation to STs in admissions (as well as employment) in all the Universities supported by grants from public funds irrespective of their minority educational institution status; and if necessary, the Ministry of HRD may take steps to amend the Central Educational Institutions (Reservations in Admission) Act, 2006 to bring it squarely in line with the Constitutional safeguards for Scheduled Tribes, besides taking immediate steps so that Constitutional rights of the Scheduled Tribes in admission to Central Universities are not denied, or curtailed in any fashion during the current academic year.

13. The Commission also noted that a PIL has since been filed by a NGO, 'Centre for Public Interest Litigation' in the High Court of Delhi requesting to quash the order dated 22.02.2011 delivered by the NCMEI. In the PIL, the NCST has been impleaded as Respondent No. 4. After discussion, the Commission approved the draft Para-wise comments of the PIL against paragraph No. 19, which are in line with the recommendations approved by the Commission in the matter as mentioned above.

Agenda Item III	To consider and approve background note for the next meeting of National Integration Council (MHA) on discrimination especially against minorities and scheduled tribes; measures to eliminate such discrimination
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14. Secretary, NCST, referred to the earlier suggestions of the Commission made in January, 2007 on certain important issues relating to STs for inclusion in the agenda for the meeting of the NIC and their finalization with broad coverage in the single point agenda item with the approval of the Prime Minister as Chairman of the NIC in Sept, 2007; and mentioned that the background note expresses the views of the Commission on discrimination in appointment to public services, economic opportunities and living conditions and other important areas concerning Scheduled Tribes

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relating to computerization of rosters, de-reservation of promotion posts and atrocities on Scheduled Tribes, as comprised in previous recommendations made by the Commission in various Annual Reports .

15. After discussion, the Commission approved the proposed note on the agenda item and authorized the Secretary, NCST to further edit it wherever necessary, and forward it incorporating the background information.

16. The Meeting ended with a vote of thanks to the Chair.

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F.No.1/6/11-Coord.

Annexure.
(w.r.t. Para 1 of the Summary Record)

National Commission for Scheduled Tribes

**Meeting of the Commission held on 27-05-2011 in the Conference Room
of the Commission.**

S. No.	Name and Designation	Signature
1.	Dr. Rameshwar Oraon, Chairperson	(in Chair)
2.	Smt. K. Kamala Kumari, Member	
3.	Shri Bheru Lal Meena, Member	
4.	Shri R.S. Sirohi, Secretary	
5.	Shri Aditya Mishra, Joint Secretary	
6.	Smt. K.D. Bhansor, Dy. Director	
7.	Shri S.P. Meena, Assistant Director	