

THE NATIONAL COMMISSION FOR SCHEDULED TRIBES: A FORUM FOR POLITICAL REHABILITATION?



ASIAN INDIGENOUS & TRIBAL PEOPLES NETWORK



**The National Commission
for Scheduled Tribes:
A Forum for Political Rehabilitation?**

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1. Executive summary and recommendations

The National Commission for Scheduled Tribes (NCST) of India is a statutory body which came into existence with effect from 19 February 2004 consequent upon the bifurcation of erstwhile National Commission for Scheduled Castes and Scheduled Tribes (NCSCST) into two Commissions namely National Commission for Scheduled Castes and National Commission for Scheduled Tribes through the Constitution (89th Amendment) Act, 2003. The Constitution (89th Amendment) Act, 2003 inserted a new Article 338A establishing the National Commission for Scheduled Tribes.

The NCST has the mandate to protect and promote the rights of the over 84.3 million Scheduled Tribes (tribals) of India.

However, despite having enormous powers, the NCST has been hamstrung because of the lack of independence as given below:

First, the NCST's "Rules of Procedure" have made it subservient to the State authorities contrary to the Article 338-A of the Constitution. The NCST has to take prior permission from the concerned State government in order to investigate any case of human rights violations in that particular State. This has severely compromised the independence of the NCST more than anything else.

Second, the NCST has a flawed procedure of appointment of its members. The President (of India), who acts and exercises his/her constitutional powers on the advice of the Council of Ministers headed by the Prime Minister, appoints the members of the Commission on the basis of vaguely formulated criteria. Hence, in effect it is the Minister of Tribal Affairs

who recommends the appointment of the members of the Commission in absence of any Recommendation Committee.

Third, despite having plurality in representation in the Commission the plurality has been narrowed down by the political appointments in the Commission.

Fourth, the NCST does not have financial autonomy. Its budget is decided by the Ministry of Tribal Affairs.

Fifth, the NCST is not equipped with adequate staff to carry out its functions effectively.

The NCST is not easily accessible to the tribal populace. In a country of the size of India, there are only six Regional Offices with each Office having jurisdiction of at least six States (except the Regional Office at Raipur whose jurisdiction is only for Chhattisgarh). While the NCST Headquarters at New Delhi is far away from most parts of the country, the Regional Offices are hardly physically accessible to the poor tribals who mostly live in remote and inaccessible villages. The NCST virtually remains unknown to the tribals of the country.

AITPN makes the following recommendations for increasing effectiveness of the National Commission for Scheduled Tribes:

To the Government of India:

Amend Article 338A of the Constitution of India to provide for:

- Appointment of the Chairperson, Vice-Chairperson and members of the NCST through transparent procedures including

consent of the Leader of the Opposition in both houses of parliament and tribal civil society organisations;

- Transparent, independent and uniform procedures of dismissal/removal of Chairperson, Vice-Chairperson and members of the NCST;
- Enunciate eligibility conditions of the members including expertise on human rights, tribal rights, civil society groups etc;
- Privileges and immunities to the Chairperson, Vice-Chairperson and Members of the NCST;
- Financial autonomy of the National Commission for Scheduled Tribes;

To the NCST:

- Amend the Rules of Procedure of 2004 to remove prior permission from the

authorities prior to undertaking of any visit including for investigation purposes;

- Ensure that Chairperson, Vice-Chairperson and members are appointed on time;
- Undertake massive awareness raising programmes including organising workshops at the State level with all stakeholders including relevant government departments, indigenous and tribal peoples and civil society groups to inform about the mandate, powers and functions of the NCST;
- Establish more regional offices and provide adequate staffing; and
- Take measures for full utilisation of its funds allocated including undertaking awareness raising programmes and training the staff on human rights issues.

2. Independence

Independence of a national institution is the core issue in the establishment of any effective National Human Rights Institution. As the United Nations states, “An effective national institution will be one which is capable of acting independently of government, of party politics and of all other entities and situation which may be in a position to affect its work.” However, it does not mean “a total lack of connection to the State”¹

1. Legal and operational autonomy

The National Commission for Scheduled Tribes is a statutory body established through the Constitution (89th Amendment) Act, 2003. It is a product of the Constitution itself and therefore is an autonomous body.

The NCST has the legal authority to compel cooperation of others, especially government agencies. The NCST has been vested with the powers of a civil court for investigation and inquiry having authority to “(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath; (b) requiring the discovery and production of any document; (c) receiving evidence on affidavits; (d) requisitioning any public record or copy thereof from any court or office; (e) issuing commissions for the examination of witnesses and documents; and (f) any other matter which the President may, by rule, determine.”²

The power of the NCST to “summoning and enforcing the attendance of any person from any part of India and examining him on oath” is enforceable even to investigate the violations committed by the members of the armed forces over whom the National Human Rights Commission (NHRC) does not have any jurisdiction. Hence, in a way, NCST is more powerful than the NHRC of India.

Under Clause 9 of Article 338A of the Indian Constitution, the Union Government and every State Government “shall consult the Commission on all major policy matters affecting Scheduled Tribes”. According to the NCST, “This function helps the Commission to keep track of all the major policy decisions, and legislative and executive actions taken by the Government of India or any State Govt. in relation to Scheduled Tribes.”³

Clause 4 of Article 338A of the Constitution empowers the Commission to regulate its own procedure for a meaningful performance. But the Commission has framed such Rules of Procedures which make it subservient to the State authorities and eroded its independence. Rule 83 of Rules of Procedure of the NCST went a step further. It states - “*All rules, regulations and orders issued by the Central Government and applicable in the Ministries/Departments will also apply in the Commission*” which has undoubtedly reduced the National Commission for Scheduled Tribes into another department of the Government of India.

1. UN Centre for Human Rights: “National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the promotion and protection of Human Rights”

2. Clause 8 of Article 338A of Constitution of India

3. National Commission for Scheduled Tribes – A Handbook, 2007 available at <http://www.ncst.nic.in/writereaddata/mainlinkFile/File413.pdf>

II. Financial autonomy

Financial autonomy of any national institution is as important as its functional autonomy. The two go side by side. Due to lack of financial autonomy or if the national institution has to be dependent on the government for its finance, its independence is gravely eroded.

The NCST has no financial autonomy as its finance is controlled by the Central government. Rule 84 of the Rules of Procedure of the NCST states that “The provisions relating to the delegation of financial powers in the Government of India shall apply to the corresponding officers in the Commission”.

The Constitution (89th Amendment) Act of 2003 which created the NCST has failed to mention the source and nature of funding for the Commission so as to make it financially independent. It speaks nothing on the budget of the Commission.

Due to lack of financial autonomy, the NCST runs the risks of being dependent on the Finance Ministry or other government bodies which exercise such control.

Another fundamental important aspect of ensuring independence is to ensure that the budget of a national institution is not linked to the budget of a government department or ministry. But in the case of the National Commission for Scheduled Tribes, funds are provided under the budgetary grants of Ministry of Tribal Affairs of the Government of India. Business and delegation of financial rules and other administrative instructions issued by Government of India from time to time are followed in the Commission.

A national institution must have a secured budget of its own which is fundamental for its independence to ensure that no official action or decision of the institution shall hamper

its budgetary allocation. Since the National Commission for Scheduled Tribes has a complaints procedure or capacity to advise the government on tribal affairs, any link of its budget to the Ministry of Tribal Affairs or for that matter any other government body or ministry can result in conflict of interests.

III. Appointment and dismissal procedures

“Any institution can only ever be as independent as the individuals of which it is composed. The granting of legal, technical and even financial autonomy to a national institution will be insufficient in the absence of specific measures to ensure that its members are, individually and collectively, capable of generating and sustaining independence of action” – United Nations Centre for Human Rights: “National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the promotion and protection of Human Rights” (Page 11)

The method by which members of a national institution are appointed is critical to the independence of the institution. The Paris Principles stressed on the need for “pluralistic representation” in a national institution.

a. Flawed methods of appointment

The National Commission for Scheduled Tribes consists of a Chairperson, a Vice-Chairperson and three other Members.⁴

There is no independence and transparency in the appointment of members of the NCST. The Chairperson, Vice Chairperson and three other members of the NCST are appointed by the President of India.⁵ While on paper, the appointment of members by the President may appear independent, under Article 74 of the Constitution of India the President acts and

4. Clause 2 of Article 338A of Constitution (Eighty-ninth Amendment) Act, 2003

5. Clause 3 of Article 338A of Constitution (Eighty-ninth Amendment) Act, 2003

exercises his/her functions on the advice of the Council of Minister headed by the Prime Minister.

Since the President acts on the advice of the Council of Ministers, in effect it is the Minister of Tribal Affairs who appoints the members of the National Commission for Scheduled Tribes.

NCST's appointment procedure is a clear departure from the appropriate appointment procedure such as the one ensured in the case of the National Human Rights Commission. Under the Human Rights Protection Act of 1993, the members of the NHRC are appointed by the President of India on the basis of recommendations of a Committee consisting of the Prime Minister as Chairperson and Speaker of the House of the Lok Sabha (Lower House of Indian Parliament), Minister in-charge of the Ministry of Home Affairs, Leader of the Opposition in the Lok Sabha, Leader of the Opposition in the Rajya Sabha (Upper House of the Indian Parliament) and Deputy Chairman of the Rajya Sabha as members.

Because of these loopholes, the NCST has been used for political rehabilitation of the ruling party workers .

i. Analysis of the composition of the Second (Present) Commission

That appointment of the members of the NCST is political in nature can be understood by perusing the profiles of members of the Second (present) Commission.

The members of the Second Commission were appointed from June 2007 onwards.

The present Commission (second since establishment of NCST) consists of Mrs Urmila Singh (Chairperson), Mr Maurice Kujur (Vice Chairperson), Mr Tsering Samphel (Member) and Mr Oris Syiem Myriaw (Member). One post of member is presently vacant.

It is surprising to note that all the Members of this Commission including the Chairperson were Congress legislators or active workers of the Congress. The Congress is a national level political party which is leading the incumbent United Progressive Alliance Government at the federal level since 2004.

The present Chairperson of the National Commission for Scheduled Tribes, Mrs Urmila Singh (who assumed office on 18 June 2007) has been a "dedicated and active Congress worker who has been instrumental to keep the party workers active by organizing training camps and workshop for Seva Dal, Youth Congress and Mahila Congress."⁶

The Chairperson who was a "dedicated and active" worker of the Congress, the party which is leading the United Progressive Alliance government at the Centre, cannot be said to be independent.

Mr Murice Kujur, present Vice Chairperson (appointed on 25 April 2008) had political affiliations with the Congress party. He had been a Congress Member of Parliament (both Lok Sabha and Rajya Sabha).

The Manavadhikar Samajik Manch (MASM) to whom Mr Murice Kujur is also an Advisor, hailed his appointment as a member of the NCST stating, "With his [Murice Kujur's] appointment in this Constitutional body [National Commission for Scheduled Tribes], MASM takes this opportunity to thank the Prime Minister Dr. Manmohan Singh along with the UPA [United Progressive Alliance] Chairperson Mrs. Sonia Gandhi. Shri Kujur, a dynamic tribal leader was hand picked by Rajiv Gandhi and he represented Sundargarh in the Lok Sabha from 1984 to 1989. Again from 1996 to 2002 he was the member of Rajya Sabha. As a Member of Parliament Shri Kujur was member of several Parliamentary committees and delegations."⁷

7. Human Touch, a monthly publication of Manavadhikar Samajik Manch, May 2008, available at http://www.connectingminds.in/pdf/HT_MAY_2008.pdf

6. Profile of Smt Urmila Singh is available at the NCST website, <http://www.ncst.nic.in/writereaddata/linkimages/chairperson3203398591.pdf>

Similarly, Mr Tsering Samphel, present member of NCST (who assumed office on 14 June 2007) was a Congress man. He was elected Member of Legislative Party of Jammu and Kashmir from Leh-Ladakh constituency as Congress Party candidate from 1987 to 1990. He has been president of District Congress Committee, Leh since 2004 and during 1990 to 1996.⁸

Mr Oris Syiem Myriaw (appointed on 16 April 2008) is a former Congress MLA from Myllem constituency, Meghalaya. After his appointment to the NCST, Mr Syiem reportedly thanked Union Minister for Tribal Affairs PR Kyndiah for being instrumental in his induction as member of the Commission.⁹

Thus, it is seen that all the members of the present Commission are affiliated to the Congress party. This was also true of the Bharatiya Janata Party led National Democratic Alliance Government.

b. No clearly defined criteria for appointment

There are no clearly defined criteria for appointment of the members of the NCST.

The National Commission for Scheduled Tribes Chairperson, Vice-Chairperson and Members (Conditions of Service and Tenure) Rules, 2004 provides that the Chairperson, the Vice-Chairperson and the Members “shall be appointed from amongst persons of ability, integrity and standing who have had a record of selfless service to the cause of justice for the Scheduled Tribes”.¹⁰ The Rules 2004 also states that “the Chairperson shall be appointed from amongst eminent socio-political workers belonging to the Scheduled Tribes, who inspire

confidence amongst the Scheduled Tribes by their very personality and record of selfless service”.¹¹

The eligibility conditions laid down in the NCST Chairperson, Vice-Chairperson and Members (Conditions of Service and Tenure) Rules, 2004 are too vague. There is no defined mechanisms to identify as to who is a person with “ability, integrity and standing who have had a record of selfless service to the cause of justice for the Scheduled Tribes”. *These loopholes can be misused by the ruling parties to appoint members based on their political affiliations or political ideology which has been clearly exemplified by AITPN through its analysis of the present composition of the NCST. AITPN’s analysis of the present or Second Commission of NCST found that all members including the Chairperson of the NCST were either Congress Legislators or active workers of the Congress party prior to their appointments. Political nominees are less likely to be independent.*

The NCST must take lessons from the Human Rights Protection Act of 1993 (as amended in 2006) which provides specific conditions for appointment of the members of the NHRC. The Chairperson of the NHRC should be a retired Chief Justice of the Supreme Court. The conditions of appointment of other members are as follows: one Member who is or has been a Judge of the Supreme Court; one Member who is or has been the Chief Justice of a High Court; two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights and the Chairperson of the National Commission for Minorities, the National Commission for the

8. Profile of Mr Tsering Samphel available at NCST website, <http://www.ncst.nic.in/writereaddata/linkimages/member172142958.pdf>

9. Former MLA inducted as CST member, The Shillong Times, 19 April 2008

10. Cause 3 (1) of the National Commission for Scheduled Tribes Chairperson, Vice-Chairperson and Members (Conditions of Service and Tenure) Rules, 2004

11. Cause 3 (2)(a) of the National Commission for Scheduled Tribes Chairperson, Vice-Chairperson and Members (Conditions of Service and Tenure) Rules, 2004

Scheduled Castes, the National Commission for the Scheduled Tribes and the National Commission for Women shall be deemed to be ex-officio members of the Commission.

c. Plurality

The National Commission for Scheduled Tribes has been envisioned as a pluralistic institution.

The National Commission for the Scheduled Tribes consists of a Chairperson, a Vice-Chairperson and three other Members.¹² Clause 3 (2) of the NCST Chairperson, Vice-Chairperson and Members (Conditions of Service and Tenure) Rules of 2004 provides that (i) the Chairperson shall be a Scheduled Tribe, (ii) at least two out of the Vice-Chairperson and three other Members shall be Scheduled Tribes and (iii) at least one of the Members shall compulsorily be a woman.¹³

Thus, out of total five members (including the Chairperson) it has been provided that at least three should be Scheduled Tribes and at least one of the total five members of the Commission must be a woman.

But, the pluralistic nature of representation in the NCST has been narrowed down by the political appointments in the Commission.

d. Non-appointment of members on time

The Chairperson, the Vice-Chairperson and other Members hold office for a term of three years from the date on which he/she assumes such office. The members can be reappointed but for not more than two terms.¹⁴

But the President failed to appoint members of the NCST, in some cases for months, which hampers the work of the Commission.

Clause (2) of Article 338-A of the Constitution (Eighty-Ninth Amendment) Act, 2003 provides

that NCST shall consist of a Chairperson, a Vice-Chairperson and three Members.

Rule 46 of the Rules of Procedures of the NCST provides, "Presence of at least three members including the Chairperson and/or Vice-Chairperson shall constitute the quorum for holding meeting of the Commission."

Further, Rule 47 of the Rules of Procedures provides, "The following matters shall be brought up before the Commission at a meeting for consideration and decision:

- (i) Any amendment to these Rules of Procedure;
- (ii) Matters to be investigated by the Commission directly;
- (iii) All the reports that are required to be considered by the Commission as provided in these rules;
- (iv) Any matters that a Member may like to bring to the meeting, with the approval of the Chairperson;
- (v) Important matters relating to planning and development for the welfare and advancement of the Scheduled Tribes and specially references received under Article 338A (9) of the Constitution; and
- (vi) Any matter that the Chairperson may direct to be placed at a meeting of the Commission."

Upon a con-joint reading of Clause (2) of Article 338A of the Constitution (Eighty-Ninth Amendment) Act, 2003 and Rules 46 and 47 of the Rules of Procedures of the NCST, it is mandatory that any resolution/decision of the NCST with regard to all matters provided under Rule 47 to be legally binding and effective has

12. Clause 2 of Article 338A of Constitution (Eighty-ninth Amendment) Act, 2003

13. Clause 3 (2) of the National Commission for Scheduled Tribes Chairperson, Vice-Chairperson and Members (Conditions of Service and Tenure) Rules, 2004

14. Clause 4 of the National Commission for Scheduled Tribes Chairperson, Vice-Chairperson and Members (Conditions of Service and Tenure) Rules, 2004

to be passed/taken by at least three members including the Chairperson and/or Vice-Chairperson.

However, since the constitution of the first Commission in February 2004, there were a number of occasions when the NCST did not have the number of Members required to constitute the quorum. During 4-10 March 2007, after the resignation of Smt. Prem Bai Mandavi, Member on 03 March 2007, the NCST had only two Members namely Shri Gajendra Singh Rajukheri, Vice-Chairperson and Shri Buduru Srinivasalu, Member and during 11 March - 31 May 2007, Shri Gajendra Singh Rajukheri, Vice-Chairperson was the only Member in the NCST after the resignation of Shri Buduru Srinivasalu, Member on 10 March 2007. At present, one post of member is lying vacant.

As stated above, most of the time, the NCST remained without quorum because of non-appointment of either the Chairperson or the Vice-Chairperson or the Members on time. The non-appointment of the Members on time has been seriously affecting the constitutional obligations of the NCST for protection of rights of the members of the Scheduled Tribes across India. As a result, the NCST has become a vehicle without a driver.

e. Dismissal or removal procedures

The procedures for dismissal or removal of the Members of a national institution are as important as the appointment procedures for the independence of the national institution.

Clause 8 of the NCST Chairperson, Vice-Chairperson and Members (Conditions of Service and Tenure) Rules, 2004 specifies as to how the Chairperson, Vice Chairperson and other Members may be removed or how they can resign from the posts.

The Chairperson, Vice-Chairperson or any other Member of NCST may resign from his/her post in writing under his hand addressed to the President.

Two different procedures have been laid down

for removal of the Chairperson, Vice Chairperson and other Members by the President.

Removal of Chairperson:

Clause 8 (2) of the NCST Chairperson, Vice-Chairperson and Members (Conditions of Service and Tenure) Rules, 2004 provides:

- “(a) The Chairperson shall only be removed from his office by order of the President on the ground of misbehavior after the Supreme Court, on reference being made to it by the President, has on inquiry held in accordance with the procedure prescribed by it under sub-clause (i) of clause (1) of article 145 of the Constitution, reported that the Chairperson ought on any such ground to be removed.
- (b) The President may suspend from office the Chairperson in respect of whom a reference has been made to the Supreme Court under this sub-rule until the President has passed orders on receipt of the report of the Supreme Court on such reference.
- (c) Notwithstanding anything in clause (a) the President may by order remove from office the Chairperson if the Chairperson.
 - (i) is adjudged an insolvent; or
 - (ii) engaged during his term of office in any paid employment outside the duties of his office; or
 - (iii) is, in the opinion of the President, on unfit to continue in office by reason of infirmity of mind or body:

Provided that the Chairperson shall not be removed under this clause until he has been given a reasonable opportunity of being heard in the matter.

- (d) If the Chairperson is or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Government of India or the Government of a State participates in

any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of clause (a) be deemed guilty of misbehavior.”

Removal of Vice-Chairperson and other Members:

Clause 8 (3) of the NCST Chairperson, Vice-Chairperson and Members (Conditions of Service and Tenure) Rules, 2004 provides:

“The President shall remove a person from the office of Vice-Chairperson or Member, if that person.-

- (a) becomes an un-discharged insolvent;
- (b) gets convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude;
- (c) is in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body;
- (d) refuses to act or becomes incapable of acting;
- (e) is without obtaining leave of absence from the Commission, absent from three consecutive meetings of the Commission; or
- (f) in the opinion of the President, has so abused the position of Vice-Chairperson or Member as to render that persons continuance in office detrimental to the interest of the Scheduled Tribes.

Provided that no person shall be removed under this clause until he has been given reasonable opportunity of being heard in the matter.”

There are serious flaws with the dismissal procedures.

First, having two different sets of dismissal procedures - one for the Chairperson and another for the other Members (including the Vice Chairperson) is not justified. In case of the NHRC, the dismissal or removal procedures are the same for all the members including the Chairperson.

Second, the provisions contained in the sub-clauses c, d, and f of Clause 8 (3) are disturbing. Provisions such as “in the opinion of the President” (in sub-clauses c and f) are deeply flawed as means of removal of any member of a national institution. This is more so considering the fact that the President acts on the advice of the Council of Ministers headed by the Prime Minister under Article 74 of the Constitution of India.

The conditions for removal by the President if a member “refuses to act or becomes incapable of acting” as contained in sub clause d of Clause 8(3) are unacceptable. It implies that if the members or Chairperson of the NCST do not follow the orders of the President, it can be a reason for his/her removal from office?

f. Absence of privileges and immunities

The members of any national institution, particularly if it has the mandate and powers to investigate and act upon human rights violations by the State agencies, must have certain privileges and immunities, such as immunity from civil and criminal proceedings in respect of acts performed in an official capacity. Such privileges and immunities are crucial for independence of the national institution.

But no such privileges and immunities have been provided to the members of the National Commission for Scheduled Tribes.

Therefore, Article 338A of the Constitution of India should be suitably amended to include adequate protection of action taken in good faith by members of the NCST.

3. Adequate Powers, Restrictive Rules

Article 2 of the United Nations Paris Principles on National Human Rights Institutions provides that “A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence”.

I. Powers and functions of NCST

The National Commission for Scheduled Tribes (NCST) has been given a broad mandate and enormous powers by the Constitution. The NCST has the following powers and functions:¹⁵

- “(a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Tribes under this Constitution or under any order of the Government and to evaluate the working of such safeguards;
- (b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled tribes;
- (c) to participate and advise on the planning process of socio-economic development of the Scheduled Tribes and to evaluate the progress of their development under the Union and any State;
- (d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;
- (e) to make in such reports recommendations as to the measures that should be taken by

the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled tribes; and

- (f) to discharge such other functions insulation to the protection, welfare and development and advancement of the Scheduled Tribes as the President may, subject to the provisions of any law made by Parliament by rule specify.”

The Commission has been assigned the following additional functions vide the Ministry of Tribal Affairs’ Notification dated 23 August 2005 in relation to the protection welfare and development and advancement of the Scheduled Tribes:¹⁶

- (i) Measures that need to be taken over conferring ownership rights in respect of minor forest produce to STs living in forest areas.
- (ii) Measures to be taken to safeguard rights of the tribal communities over mineral resources, water resources etc. as laid down by law.
- (iii) Measures to be taken for the development of tribal to plug loopholes and to work more viable livelihood strategies.
- (iv) Measures to be taken to improve the efficacy of relief and rehabilitation measures for tribal groups displaced by development projects.

15. Clause (5) of Article 338A of the Constitution (89th Amendment) Act, 2003

16. National Commission for Scheduled Tribes – A Handbook, 2007 available at: <http://www.ncst.nic.in/writereaddata/mainlinkFile/File413.pdf>

- (v) Measures to be taken to prevent alienation of tribal people from land and to effectively rehabilitate such people in whose case alienation has already been taken place.
- (vi) Measures to be taken to elicit maximum cooperation and involvement of tribal communities for protecting forests and undertaking social afforestation.
- (vii) Measures to be taken to ensure full implementation of the provision of Panchayat (Extension to Scheduled Areas) Act, 1996.
- (viii) Measures to be taken to reduce and ultimately eliminate the practice of shifting cultivation by tribal that lead to their continuous disempowerment and degradation of land and the environment.

From the above powers and functions, it is clear that the NCST has also the mandate to enforce various laws concerning the Scheduled Tribes of India - (i) the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989; (ii) the Bonded Labour System (Abolition) Act, 1976 (in respect of Scheduled Tribes); (iii) the Child Labour (Prohibition and Regulation) Act, 1986 (in respect of Scheduled Tribes); (iv) State Acts and Regulations concerning alienation and restoration of land belonging to Scheduled Tribes; (v) Forest Conservation Act, 1980 (in respect of Scheduled Tribes); (vi) the Panchayat (Extension to the Scheduled Areas) Act, 1996; (vii) the Minimum Wages Act, 1948 (in respect of Scheduled Tribes) and (viii) the Scheduled Tribes and Other Forest Dwellers (Protection of Forest Rights) Act of 2006.

II. “Rules of Procedure”: Limiting NCST’s powers

The National Commission for Scheduled Tribes has not been able to use its powers fully. Clause 4 of Article 338A of the Constitution empowers the Commission to regulate its own procedure for its effective and smooth functioning. But

the Commission has framed such Rules of Procedure which not only limited its powers but also made the Commission compromise its independence by being subservient to the State authorities during investigation of complaints of human rights violations. The NCST has been weakened by its own Rules of Procedure notified by the Ministry of Tribal Affairs on 17 September 2004.

i. Flawed investigation process

The NCST follows three methods for conducting an investigation/inquiry: (a) by the Commission directly, (b) by an Investigating Team constituted at the Headquarters of the Commission, and (c) through its Regional Offices.

The Rules of Procedures have made the investigation process of the NCST a deeply flawed one. According to Rule 27 of Rules of Procedure, *“When a decision for direct investigation is taken, an officer not below the rank of Research Officer/Section Officer along with necessary staff may be attached to the Member(s) entrusted with such investigation or enquiry and they shall take all steps to arrange such sittings.”* However, the Investigating Team of the NCST must obtain prior permission and communicate about “the matter, purpose, scope and procedure of the investigation or inquiry” to the concerned state government officials where the NCST team is investigating a case as per Rule 34 of the Rules of Procedure.

Rule 34 of Rules of Procedure states, *“The Investigating Team may visit the area concerned after observing due formalities for obtaining approval of tours and other administrative requirements and after giving information to the concerned local authorities regarding the matter, purpose, scope and procedure of the investigation or inquiry. The Investigating Team may enlist the help of the officers and staff of the concerned State Office but the responsibility of preparing and presenting the report shall rest with the head of the Investigating Team.”*

Rule 18 goes a step further to make it compulsory for the members of the NCST to

obtain prior permission from the concerned state government officials and simply to follow “the norms laid down by the State Governments regarding security/travel/accommodation etc, during such tours”. It states - *“The Members shall communicate their tour Programme well in advance to the State Offices indicating in detail the purpose of the visit and to the State Government Department and other concerned for discussions/inquiry, etc., during the tour/visit. The Members will observe the norms laid down by the State Governments regarding security/travel/accommodation etc, during such tours.”*

Obviously, the State government officials will ensure a “guided tour” to NCST investigating team. The police will have sufficient time and opportunity to tamper with the evidence, deny/hide information and/or interfere with the investigation process. The fact that the NCST is an independent body with powers of a civil court mandated to investigate atrocities to is completely negated by its own Rules of Procedure.

In its “A Handbook” of June 2005, the NCST goes yet another step and states, *“Whenever information is received in the Commission about any incident of atrocity against a person belonging to Scheduled Tribes, the Commission would immediately get in touch with the law enforcing and administrative machinery of the concerned State and the district to ascertain the details of incident and the action taken by the district administration”* (Para 5.3.1).

While detailing the procedure for inquiry, the NCST in its “A Handbook” of 2007 (para 7.3.3) states, *“Whenever information is received in the Commission about any incident of atrocity against a person belonging to Scheduled Tribes, the Commission immediately gets in touch with the law enforcing and administrative machinery of the concerned State and the district to ascertain the details of incident and the action taken by the district administration”*. The Commission usually pays on-the-spot visits only in cases of serious human rights violations (para 7.3.5). It

is evident that the Commission pays excessive trust on the law enforcement agencies who themselves are responsible for serious human rights violations against the tribals including extra-judicial killings, rape and torture but often systematically deny such violations.

ii. Limited powers of Regional Offices

The Regional/ State Offices of NCST have been termed as the “eyes and ears” of the Commission. But the Regional Offices have been largely ineffective as they have been given limited power to investigate. Under Rule 39 of “Rules of Procedure” of NCST, the Regional Office has to take prior permission from the Headquarters in Delhi by submitting a special report with full facts to the Secretariat of the NCST before investigating into a case of human rights violation.

Rule 39 of Rules of Procedure of NCST states, *“If during the course of investigation or inquiry, the Head of the State Office feels that it is necessary to invoke the powers of the Commission to require the production of any document or compelling the attendance of a person, he may make a special report with full facts to the Secretariat of the Commission. On receipt of such special report, the matter shall be placed before the Secretary/Member in-charge of the subject/State/UT who may make an order that necessary legal process to compel attendance or to require production of any document may be issued. The summons and warrants issued for the purpose may be served on the person concerned either directly or through the officer-in-charge of the State Office as may be directed by the Secretary/Member authorizing issue of such legal process.”*

iii. Lack of power to implement its recommendations

The NCST has been given a broad mandate including conduct of inquiry into specific complaints of violations of the rights of the Scheduled Tribes and has the power of a civil court while conducting such inquiry. But it has not been given the power to enforce

implementation of its recommendations or rulings.

Nowhere in Article 338A of the Constitution of India, is there any provision empowering the NCST to enforce implementation of its recommendations or rulings. Absence of this power has virtually reduced the mandate of the NCST of being an advisory nature.

In addition, Rule 76 of Rules of Procedure of NCST provides, *“In order to ensure that monitoring is done effectively, the Commission, after getting the information as prescribed in the above rules and after reaching conclusions, may as early as possible send out communications to the concerned authority describing the shortcomings that have been noticed in the implementation of the safeguards and suggesting corrective steps. Decisions on sending out such a communication may be taken at a level not lower than that of Joint Secretary/Secretary at*

Headquarters. Directors-in-Charge of State Offices may take decisions on routine matter whereas they will seek approval of the Secretary and the concerned Member on complex and important matters affecting the interest of Scheduled Tribes as a group”. Under Rule 77, “the Commission may ask for the comments of the concerned authority on the action taken in pursuance of the communications sent under the Rule 76”.

Thus, the NCST at best is empowered only to send out communications to the concerned authority describing the shortcomings in the implementation of the safeguards or the corrective actions that the NCST has suggested. Despite enjoying a broad mandate to protect the rights of the Scheduled Tribes and having enormous powers with regard to investigating human rights violations, NCST has been rendered ineffective.

4. Accessibility

Any effective National Institution must be easily accessible to the people it intends to serve.

I. Awareness of NCST

The NCST is a constitutional body mandated to protect the rights of over 84 million tribal and indigenous peoples of India. The Constitution has vested the NCST with enormous powers to deal with human rights violations of the tribals. But due to lack of powers to enforce its recommendations and the weak Rules of Procedure which the NCST has developed to make itself subservient to the State authorities have left the NCST largely ineffective.

It has failed to ensure its visibility among the tribals.

Unlike the National Human Rights Commission (NHRC) which is only a statutory body, the existence of the NCST is hardly known to the common man. Except for a few civil society groups working on the rights of the Scheduled Tribes, the NCST practically does not exist. It can therefore be concluded that the NCST is an “invisible Commission”.

II. Physical accessibility

The Headquarters of the National Commission for Scheduled Tribes is situated in New Delhi. Hence, it is physically accessible only to the

people living in and around Delhi and NGOs based in Delhi.

In order to decentralize the Commission, six Regional Offices have been set up across the country. The six Regional Offices are situated at (1) Bhopal, Madhya Pradesh (jurisdiction: Madhya Pradesh, Maharashtra, Karnataka, Kerala, Goa, and Union Territories of Dadra & Nagar Haveli and Lakshadweep), (2) Bhubaneswar, Orissa (jurisdiction: Andhra Pradesh, Orissa, Tamil Nadu, West Bengal and Union Territories of Andaman & Nicobar Islands, and Pondicherry), (3) Jaipur, Rajasthan (jurisdiction: Chandigarh, Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir, Punjab, Rajasthan, Uttaranchal and Daman & Diu), (4) Raipur, Chhattisgarh (jurisdiction: Chhattisgarh), (5) Ranchi, Jharkhand (jurisdiction: Bihar, Jharkhand, and Uttar Pradesh), and (6) Shillong, Meghalaya (jurisdiction: Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura).¹⁷

India is a vast country and known as the sub continent. As evident from the location of the Regional Offices mentioned above, one Regional Office caters to six to seven states/ Union Territories (except Raipur Regional Office whose jurisdiction is only for Chhattisgarh). Hence, the Regional Offices are hardly physically accessible to the poor tribals who mostly live in remote and inaccessible villages.

17. NCST's "A Handbook 2007", ANNEX-XVII, available at: <http://www.ncst.nic.in/writereaddata/mainlinkFile/File413.pdf>

5. Inadequate resources in the regional offices

The NCST suffers from acute shortage of human and financial resources as discussed below.

I. Personnel

The NCST suffer from acute shortage of staff. As per the information obtained by AITPN by filing a RTI application, the sanctioned strength of staff is 124 in its Headquarter in Delhi as well as the six Regional Offices in Shillong, Jaipur, Bhubaneswar, Ranchi, Bhopal and Raipur. But the actual strength of staff never reached the sanctioned strength during the last five years of its functioning. There were only 89 staff in position as on 1 December 2004; only 85 staff in position as on 31 December 2005; only 83 staff in position as on 31 December 2006; and only 83 staff in position as on 31 December 2007.¹⁸

Except the Bhopal Regional Office, all the five Regional Offices face acute shortage of staff. In the Regional Office in Raipur, there is only 1 staff against sanctioned strength of 8 as on 1 February 2008 while there was a shortage of 6 staff against sanctioned strength of 12 in Shillong Regional Office; shortage of 5 staff against sanctioned strength of 15 in Jaipur Regional Office; shortage of 4 staff against sanctioned strength of 12 in Bhubaneswar Regional Office; shortage of 5 staff against sanctioned strength of 8 in Ranchi Regional Office and shortage of 1 staff against sanctioned strength of 13 in Bhopal Regional Office.¹⁹

From the data provided by NCST it is seen that the strength of staff in position during the last four years shows a sharp decline. Lack of adequate staff seriously affects the effectiveness of the NCST as national institution mandated with the onerous responsibility of protection and promotion of rights of the Scheduled Tribes.

The lack of staff remains a serious obstacle to its effectiveness. By any yardstick, the staff strength of the NCST is abysmally disproportionate to its volume of functions. It is simply not possible for less than 90 persons across the country to effectively carryout the mandate of the NCST and safeguard the rights of 84.3 million Scheduled Tribes in India. In a reply to one of AITPN's applications under RTI Act seeking certain information from NCST, the NCST candidly acknowledged "*acute shortage of manpower*" while refusing release of information. The NCST in its reply stated- "*Information sought by you covers a period of three years and relates to all the Units and Officials of the Commission and therefore, it will take huge time to compile the same. Moreover, this Commission has acute shortage of manpower to deal with the normal duties of the Commission viz. investigation into specific complaints relating to violation of safeguards for Scheduled Tribes and in case it concentrates on compiling the voluminous information sought by you, the entire work of the Commission will virtually come to halt and it will totally hamper the functioning of the Commission as per the constitutional mandate*".²⁰ (emphasis ours)

18. Information received by AITPN Coordinator Paritosh Chakma on 1 February 2008 from the NCST in response to his application under the Right to Information Act, 2005

19. Information received by AITPN Coordinator Paritosh Chakma on 1 February 2008 from the NCST in response to his application under the Right to Information Act, 2005

20. NCST's reply (No. 7/4/2007-Coord.) of 13 April 2007 to an RTI Application

The NCST also does not have power to recruit its own support staff. The Central government provides the staff to the NCST. Employees of the Commission from the Secretary level are the Central Government employees.

II. Financial resources

The NCST also does not have financial independence. There is no explicit provision about financial autonomy of the NCST in Article 338 A of the Constitution under which it has been established. Only in Rule 84 of Rules of Procedure states, “The provisions relating to the delegation of financial powers in the Government of India shall apply to the corresponding officers in the Commission.”

It is a travesty of justice that Article 338 A of the Constitution makes no reference on finances of the NCST, a constitutional body. In comparison, the National Human Rights Commission which is only a statutory body has special provision of finance to be made by the parliament. In the case of NCST, it is the Ministry of Tribal Affairs which makes the financial allocations.

Non-utilisation of the total allocated funds

Often, lack of funds is commonly cited by constitutional as well as statutory bodies/commissions as one of the major problems for non-implementation of a proposed welfare scheme. It is a fact that unlike the National

Human Rights Commission and the Election Commission of India, the National Commission for Scheduled Tribes do not get adequate amount of funds enough to meet the desired targets. But there are problems within the NCST itself. It does not have the ability or willingness to utilize the whole of the sanctioned grant received annually.

For example, the NCST received Rs.4,50,50,000/- during the financial year 2004-2005; Rs.4,56,00,000/- during financial year 2005-2006; Rs.4,39,00,000/- during financial year 2006-2007 and Rs.4,32,00,000/- during financial year 2007-2008. The NCST has not been able to fully utilized all these funds and a total of Rs.59,99,000/- during the financial year 2004-2005; Rs.1,27,94,000/- during financial year 2005-2006 and Rs.1,14,54,473/- during financial year 2006-2007 remained unutilized²¹ thereby adversely affecting the exercise of its mandates for protection and promotion of rights of the Scheduled Tribes.

The Regional Offices of NCST also did not fully utilized the funds allocated to them by the NCST Headquarters. The Regional Offices utilized only Rs 59,73,915 against Rs 78,90,000 allocated during 2004-05, utilized only Rs 91,53,942 against Rs 1,13,49,000 allocated during 2005-06, and utilized only Rs 96,03,846 against allocation of Rs 1,12,10,000 during 2006-07.²²

21. Information received by AITPN Coordinator Paritosh Chakma on 1 February 2008 from the NCST in response to his application under the Right to Information Act, 2005

22. Information received by AITPN Coordinator Paritosh Chakma on 1 February 2008 from the NCST in response to his application under the Right to Information Act, 2005

6. Transparency and accountability

The NCST also suffers from lack of accountability and transparency. Rule 41 of the Rules of Procedure of NCST states, “*The Commission may, through a decision at a meeting or otherwise, direct that the contents of any report made on any matter shall be kept confidential and shall not be revealed to any person other than those who have been authorized access to such report.*” Thus, this rule gives NCST the absolute right to deny access to any report or a part of a report to the victim or anyone. The rule has not laid down any procedure as to what and which contents of a report constitute “confidential” and cannot be disclosed.

This rule is contrary to the intent and spirit of the Right to Information Act, 2005. The rule does not make it mandatory for NCST to provide any reason for making any report as “confidential”, thereby denying access to the public.

All official reports of the NCST should be open to public scrutiny and comments. But NCST’s Annual Reports which must crucially reflect the works of the NCST in defending the rights of the tribal peoples have not been made public. Despite of filing of an RTI application under the Right to Information Act by a member of

AITPN, NCST refused to provide the First Annual Report of NCST for the year of 2004-05 and 2005-06 on the ground that these reports have been submitted to the President of India for laying in the Parliament but since the President has not yet laid these reports of the NCST before the Parliament, they cannot be disclosed to any member of the public. AITPN’s member appealed to the appellate authorities of the Rashtrapati Bhavan and the NCST but the appeal was dismissed in both cases. Finally, the applicant had to approach to the Central Information Commission for disclosure of the First Annual Report of the NCST for the benefit of the public. The decision of CIC is pending.

In response to another RTI application of AITPN, the NCST refused to provide information about the functioning of the Commission stating that “Moreover, this Commission has acute shortage of manpower to deal with the normal duties of the Commission, viz. investigation into specific complaints relating to violation of safeguards for Scheduled Tribes and in case it concentrate on compiling the voluminous information sought by you, the entire work of the Commission will virtually come to halt and it will totally hamper the functioning of the Commission as per the constitutional mandate” !

7. The North East regional office: A Case Study

AITPN has carried out a study on the complaints filed by the tribals and tribal organisations with the NCST regional office in North East India based in Shillong. Based on the study, AITPN has reached to the conclusion that Shillong regional office of NCST has failed to protect the rights of the tribal peoples.

The complaints received by NCST Shillong are primarily with regard to denial of promotions, denial of job opportunities, harassment of tribal employees by various means and availing of employment by non-tribal candidates through fake ST certificates at the expense of tribal candidates.

But in almost all the cases studied by AITPN, NCST has done nothing but forwarded the complaints to the Headquarters in New Delhi or at best issued notice to the concerned departments/office for submitting of reports. NCST failed to follow up and take adequate actions to address the issues raised by tribal victims.

1. Denial of employment/ Denial of promotions

1. Repeated denial of promotion to Smt M L Barman

The Central Water Commission (CWC) via Order No. A-32012/10/99/Estt-X dated 4th September 2000 promoted 13 (thirteen) D'man Gr.II employees to the Grade of D'man Gr.I. On 12th December 2000, Mrs M L Barman, a D'man Gr.II employee belonging to Scheduled Tribe (ST) submitted an application against denial of promotion to her by the CWC.

In response to Mrs Barman's complaint, the Central Water Commission (CWC) vide letter No. A-200112/2(20)/93-Estt.X/105 dated 24th January 2001 replied that "Smt. M.L. Barman,

D'man Gr.II has not yet completed the requisite number of years of service in the feeder grade for promotion to the post of D'man Gr.I." The CWC however had not mentioned what was the "requisite number of years of service" for promotion.

But the complainant was again denied promotion when the CWC via Order No. A-32012/4/2001-Estt.X/706 dated 20 May 2003 promoted 27 (twenty seven) D'man Gr.II to the Grade Of D'man Gr.I. Out of 27 employees, 6 were SCs. Although the complainant was the only ST candidate in the seniority list this time, she was not promoted. In her complaint dated 3rd June 2003 to the Chairman, the CWC, New Delhi, the victim stated that she was denied promotion despite the fact that she had already completed 10 years of service in the Grade of D'man Gr.II and that she had also submitted the vigilance clearance certificate to the CWC as demanded by the CWC. This time, the CWC provided no reason for denying her promotion. There was complete lack of transparency with the CWC.

In yet another time, the complainant was denied promotion when 30 (thirty) D'men Gr.II employees, including 4 SCs, were given promotion to the grade of D'man Gr.I via CWC Office Order No. A-32012/1/2003-Estt.X/196 dated 8th March 2004. In her complaint dated 15th March 2004, Mrs Barman sought to know from the CWC about the "requisite years of service required to be rendered by a D'man Gr. II (being ST candidate) for promotion to the grade of D'man Gr.I". A copy of the complaint was submitted to the National Commission for Scheduled Castes and Scheduled Tribes, Shillong Office.

On 5 April 2004, the National Commission for SC/ST, Shillong Office, in its direction

to the Under Secretary, Central Water Commission, New Delhi stated “By looking into the representation (from Mrs ML Barman) there seems to be miscarriage of justice and harassment” and sought “full facts of the case together with parawise comments on the points raised in the representation for further examination within one month”.

2. Denial of promotion to Mr Chubayanger Ao

On 2 April 2004, Mr Chubayanger Ao, Driver, HVD Ordinary, Atomic Mineral Directorate, North Eastern Region, Shillong submitted a representation to the Regional Director, AMD, NER, Shillong and the copies of which were forwarded to the National Commission for SC/ST, Shillong Office. In his representation, the complainant stated that he had been serving the Department for the last 18 years having joined the Department on 31 October 1986.

The complainant further stated that he was initially appointed in the pay scale of Rs 950-20-1150-EB-25-1500 and subsequently promoted to the Grade of HVD on 27 September 1988 in the pay scale of Rs 1150-25-1500 which was later merged into Rs 3050-75-3950-80-4590. The complainant stated that he had reached the maximum pay scale of Rs 4590 on 1 September 2001 and hence, was not given any increment till then. The Department held Trade Tests several times vide their memo Nos. (1) AMD/NER/1/211/94-Adm/Vol-I/6577 dated 8 December 1998, (2) AMD.21/1/2001 –Rectt/246 dated 22 June 2001, (3) AMD/NER/1/211/94-Adm/Vol-I/323 dated 15 April 2002 and (4) AMD/NER/Adm/2003/424 dated 28 May 2003. In all these occasions, the complainant was allowed to appear before the Interview Board for giving test. According to the complainant, each of his interview tests was “satisfactory” but he was not promoted. The Department provided no reason. He was not promoted although many of his juniors got promotions to the next higher grades. In his representation, the complainant has rightly raised the question that “It is surprise to know that as to how the Juniors have fulfilled

all the required/prescribed norms when a Senior did not satisfy the norm.”

In its reply No. AMD-21/2/2002-Rectt/462 dated 16 April 2004, Mr RG Raghavan, Assistant Personnel Officer, Department of Atomic Energy, Atomic Mineral Directorate for Exploration and Research informed the complainant that “based on availability of vacancies, for giving promotions under the existing scheme, one has to complete the requisite number of years of service and also fulfill the requisite norms. Shri Chubayanger Ao though had completed requisite number of years of service was not meeting the norms as on that date. As such his case was not recommended for promotion to the grade of Driver Grade-I.” But the complainant was not informed as to what norms he did not meet.

On 5 May 2004, National Commission for Scheduled Castes and Scheduled Tribes, Shillong Office, directed the Regional Director, Atomic Mineral Directorate, North Eastern Region, Shillong that “the facts of the case as well as action taken/proposed to be taken may kindly be intimated to this office most urgently.”

3. Denial of opportunity to appear in promotion examination to Mr Suren Ch. Patir

Mr Suren Chandra Patir was working as a Senior Accountant in the Office of the Accountant General (A&E), Assam.

On 25 July 2000 vide Meghalaya office letter No. Estt.1/3-5/SOGE/Nov.2000/1516, the Office of the Accountant General (A&E), Meghalaya informed the complainant Mr Suren Chandra Patir that he is “not eligible” to appear in the Section Officers Grade Examination (SOGE) Part-I to be held in November 2000 as he had not secured 30% marks in aggregate in any two of the last six chances availed by him.

In his plea dated 1st August 2000 to the Accountant General (A&E), Meghalaya through the Accountant General (A&E), Assam, , Mr Suren Chandra Patir requested the Accountant

General (A&E) Meghalaya to consider his case to grant him special /additional chance to appear in the SOGE Part-I on the grounds that he was a Scheduled Tribe candidate and on the sympathetic grounds that “during the last few years I was facing some inconvenience in the domestic front due to illness etc of family far which I could not prepare well”. Mr Patir expressed hope that he “will perform better in the ensuing exam” as he was well prepared this time.

On 31 August 2000, the Accountant General (A&E) Meghalaya wrote back to the A.G (A&E) Assam saying that Mr Patir’s request “cannot be acceded to in terms of Head Quarter’s Office letter No. 548-Exam/16-97/V dt. 19-11-98 read with para 9.2.10 of the MSO (A) Vol-I, 3rd Edition.” Therefore, the A.G (A&E) Meghalaya disposed of Mr Patir’s application dated 1 August 2000 and informed Mr Patir accordingly (Memo No. Estt-I/3-5/SOGE/Nov.2000/2177).

Mr Patir then sought to approach the Comptroller and Auditor General of India, New Delhi through the Accountant General (A&E), Assam but the Accountant General (A&E), Assam via its letter No. Admn 1/Ghy/SOGE/99-2001/2502 dated 21 September 2000 informed Mr Patir that his representation was not forwarded to the Headquarters office as it had “no merit for reconsideration”.

On 15 March 2001, Mr Patir again wrote to the Comptroller and Auditor General of India, New Delhi for grant of a special chance to sit in the SOGE examination. He stated that “the Hon’ble Central Administrative Tribunal, Guwahati Bench in a number of decisions rendered in similarly situated employees like Emergency Divisional Accountants who were on deputation to the office of the Accountant General allowed special additional chances to sit in the departmental examination”. In response to his representation, the Office of the Accountant General (A&E), Assam on 12 June 2001 informed Mr Patir that the Headquarters office has intimidated that “there is no provision for allowing chances beyond those mentioned in

para 9.2.10 of MSO (Adm) Vol. I for the SOGE and the CAT’s Guwahati Bench Judgement on Emergency Divisional Accountant’s examination does not apply to SOGE”, and disposed of his representation.

On 22 July 2005, Mr Patir sent a representation to the Comptroller and Auditor General of India through the Accountant General (A&E), Meghalaya requesting for “out of term exemption” for appearing SOGE examination.

Thereafter, he also wrote to the National Commission for Scheduled Tribe, Shillong Office to seek clarification from the Commission about relaxation/ concession granted for promotion of SC/ST candidates. On 19 September 2005, the NCST, Shillong Office provided him a copy of Office Memorandum of the Department of Personnel and Training (DOPT) No. 36012/23/96-Estt (Res)-Vol.II dated 3.10.2000).

4. The case of Mr Madan Chandra Boro - Non selection of ST candidate as lecturer in college

On 10 February 2005, Mr Madan Chandra Boro, an ST (P) candidate, filed a complaint with the Director of Higher Education, Assam - a copy of the complaint was sent to NCST, Guwahati – stating that on 4 October 2004, the Rabindra Sadan Girls College, Karimganj, Assam held an interview for appointment of a lecturer in Political Science. Two candidates appeared for the interview. However, Mr Boro was the only candidate having MA in Political Science as well as State-level Eligibility Test (SLET) on the same subject passed in 2002, which is required for lecturership. But the College authorities did not select any of the candidates saying that they did not get the “suitable” candidate and decided to issue advertisement again to fill up the vacancy. This time the college authorities decided to make the post “general” i.e. not reserved for any community. The complainant alleged discrimination against STs.

The complainant stated that according to the advertisement in the daily newspaper “The

Assam Tribune” on 23 June 2004 (Adv. No. SV/3235/1), one post each in Economics, Bengali and Political Science was reserved only for ST (P), ST (H) and SC candidates. Since Economics and Bengali posts were filled up from ST (H) and SC candidates, Political Science post ought to be filled up by an ST (P) candidate. Hence, Mr Boro was the only eligible candidate for selection under UGC norms. But he was arbitrarily rejected without giving any reason by the College authorities. Instead the college authorities decided to convert the reserved seat into a general seat.

On 22 February 2005, NCST, Shillong Office, “requested” the Secretary to the Government of Assam, Education (Higher Department) to inquire into the facts of the case and send information “on action taken/proposed to be taken” on the issue to the Commission. On 22 February 2005, the NCST also asked Mr Madan Chandra Boro to provide documentary proofs including copy of the advertisement in the Assam Tribune dated 23 June 2004 and copy of the letter from the Head of the Department and Principal of Rabindra Sadan Girls College.

5. Denial of promotion to Mr Bhagaban Boro

On 25 May 2005, Mr Bhagaban Boro filed a complaint with the NCST, Shillong Office against denial of promotion to him for being a Scheduled Tribe (Plain). He was originally appointed as Store Keeper (Lower Division Assistant, LDA) in the Gauhati Medical College (GMC) in Guwahati, Assam vide the GMC principal’s order no. MC/94/65/pt-6/222 dated 7th October 1997. Since then he had been working in main office of GMC till his transfer to Pathology Department of GMC in the same capacity vide GMC principal’s order No. MC/94/65/pt-6/287 dated 20th July 1998. He worked in the pathology Department as LDA up to 4th April 2005. As certified by the Head of the Department of Pathology, GMC, Mr Boro’s “conduct and character were good and satisfactory while he was in this department”

and that he was “enthusiastic, dynamic and hard working”.

But he was suddenly transferred from Pathology Department of GMC to Regional College of Nursing, Guwahati as LDA vide Director of Medical Education (DME), Assam’s order no. DME/2/77/93/1592 dated 14 March 2002 “in the interest of public service” vice Smt Abala Devi, LDA of Regional College of Nursing transferred to the Pathology Department in GMC in the same capacity. The reasons for the sudden transfer of Mr Boro were not known. The importance of Mr Boro in the Department of Pathology, GMC could be understood from the fact that in her communication to the Principal of GMC vide no. MC/Path/I/10/148 dated 2 March 2002, the Head of the Department of Pathology, Dr RA Sangma stated “Sri Bhagaban Boro,..... cannot be released immediately as he is related to all the store keeping works during the period of Health Mela i.e. from 26 March 2002 to 28 March 2002”. Yet, he was transferred and on 5th April 2002, Mr Boro joined the Regional College for Nursing, Guwahati as LDA.

In the Regional College of Nursing, he was denied the Hazard Allowance of Rs 100 per month which he was drawing in GMC. Repeated written appeals to the concerned authority, including the Director of Medical Education, Assam did not yield any result.

While he was in Regional College of Nursing, the process of promotion for the post of 12 Upper Division Assistant (UDA) was going on in the GMC. Hearing the news, on 29 March 2004 he requested the Principal of GMC to transfer him from Regional College of Nursing to GMC and include his name in the list of promotees to UDA as per 20 point roster provision. But before the favourable order came, promotion for 12 UDA posts was completed – nine posts promoted in April 2004 and three posts in September 2004 by the appointing authority. Smt Abala Devi who was transferred from Regional College of Nursing was promoted to UDA vide GMC Principal’s order memo no. MC/21/2004/51 dated 15/9/2004.

The Director of Medical Education, Assam, Prof UC Sharma vide Memo No. DME/3/27/87/4504-08 dated 10 May 2005 ordered the transfer of Mr Boro from Regional College of Nursing to his original establishment in GMC and Smt Abala Devi was transferred to her original establishment in the Regional College of Nursing after demoting her to LDA. The DME stated that “the above arrangement is in order to maintain the seniority of the incumbents in their respective establishment where they have joined initially”.

In his letter (No. DME/3/27/87/3009 dated 17 March 2005) to the Principal of GMC, the Director of Medical Education, Assam Mr UC Sarma stated that the promotion of Smt Abala Devi to the post of UDA meant “depriving the legitimate claim of Sri Boro who is originally appointed in your establishment” and asked the Principal of GMC to “consider the case of Sri Bhagawan Boro maintaining 20 points roster in your establishment so that he should not be deprived of his due promotion”.

On 16 May 2005, Mr Boro re-joined GMC as LDA. But he has not been given promotion. Moreover, he alleged that he had been prevented by the Secretary, GMC from signing the attendance register of GMC. He had been harassed by the Principal’s Office since his joining for being a ST (P) candidate.

The case of Mr Bhagaban Boro is an illuminating example of non-implementation of Assam SC and ST (RVSP) Act 1978 and Rules 1983 due to which large number of backlog of vacancies of SCs and STs are not filled up. As per the provisions of the Assam SC and ST (RVSP) Act 1978 and Rules 1983, all the appointing authorities under the Government of Assam are required to maintain a 20 point roster for appointment and promotion in all services and posts.

The NCST, Shillong Office in its letter to the Director of Medical Education (DME), Assam dated 13 June 2005 stated “there seems to be a miscarriage of justice which needs immediate rectification” and asked the Director of Medical

Education, Assam to immediately examine the matter and submit “full facts of the case as well as information on action taken/proposed to be taken” within one month time.

6. Denial of recruitment in Cachar Paper Mill

On 4 May 2005, Mr Sanjan Kr Purkayastha, General Secretary of Scheduled Castes and Scheduled Tribes Employees Welfare Association of Hindustan Paper Corporation Ltd filed a complaint with the National Commission for Scheduled Tribes, New Delhi against denial of recruitment to STs in the Cachar Paper Mill, Panchgram under Hindustan Paper Corporation Ltd which is a government of India enterprise. During his spot visit to the Cachar Paper Mill, Panchgram from 19-20 September 2000, the Director of National Commission for SCs/STs, Guwahati found nine discrepancies in the recruitment rosters for group B, C and D categories and that there were huge backlog vacancies for SCs/STs. The management of the Cachar Paper Mill assured the National Commission for SCs/STs, Guwahati Office through their letter ref. no. CPM/P&A/G-25/SCST-2/2302 dated 5 June 2003 to take steps to fill up the backlog vacancies. But the CPM management failed to recruit any SC/ST candidate. It has held recruitment drive through the District Employment Exchange and four candidates have been appointed in the post of Laboratory Assistant (Apprentice Trainee) for 18 months but no SC/ST candidate was appointed. These candidates will be made permanent after completion of their training period. The paper mill management also decided to hire a few ITI Technicians (Trainee) who would be made permanent after successful completion of 18 months training.

In their letter the SC & ST Employees Welfare Association of Cachar Paper Mill, Panchgram requested the NSCT to take immediate steps to stop the ongoing recruitment drive, direct the Cachar Paper Mill authorities to fill up the existing backlog vacancies of SCs and STs with immediate effect and visit the Cachar Paper Mill

to re-inspect the management's recruitment and promotion rosters.

On 16 May 2005, the NCST, Shillong Office via letter No. 29/1/05-Res requested the Executive Director of Hindustan Paper Corporation Ltd to submit parawise information on action taken on the representations No. SC/ST/EWA/CPM/2005/228 and 229 both dated 25 April 2005 by the General Secretary of SC and ST Employees Welfare Association, Hindustan Paper Corporation Ltd. The NCST, Shillong Office also requested the Executive Director of Hindustan Paper Corporation Ltd to submit information on the action taken on the inspection report conducted by the National Commission for SCs/STs. Guwahati within one month.

7. Denial of fair wages and arbitrary expulsion of three tribal employees from North Eastern Space Applications Centre, Shillong

On 10 May 2007, three tribals – Mr Edison Tangsang, Mrs Daisy Dora Mukhim and Mr Arbinson Thangkhiew of Shillong filed a complaint with the National Commission for Scheduled Tribes, Shillong Office, against injustice, harassment and arbitrary expulsion from their jobs by the North Eastern Space Applications Centre (NESAC) at Umiam, Barapani in Shillong, Meghalaya.

According to the complaint, Mr Arbinson Thangkhiew and Mrs Daisy Dora Mukhim joined the NESAC, Shillong as casual labours (unskilled) on 31 May 2001 and Mr Edison Tangsang joined the NESAC, Shillong as casual labour on 1 July 2002. The three joined directly without reference to Employment Exchange at Rs 50 per day which was the minimum wages of the State government of Meghalaya then as per Minimum Wages Act 1948. However, when the State government of Meghalaya revised the rates from Rs 50 to Rs 70 per day for unskilled labour w.e.f. 1 April 2003 vide notification no. LBG 10/2002/214 dated 1 June 2004, NESAC continued to pay them Rs 50 per day till December 2006. This is a clear violation of the labour laws. Despite repeated requests for

fair wages as per the existing rules, the NESAC chose not to respond to them. Although the three casual employees did not join the NESAC through the Employment Exchange, they registered themselves with the Employment Exchange – Mr Arbinson Thangkhiew on 4 June 2003, Mr Edison Tangsang on 5 May 2005, and Mrs Daisy Dora Mukhim on 6 June 2005 and thus each of them completed more than 240 days of regular service with the NESAC, Shillong as casual labourers. They served the NESAC for more than 5 years with the hope that one day their jobs will be regularized.

They requested the Director of NESAC, Shillong to regularize their services vide letter dated 17 August 2005 and reminder dated 8 October 2005. Failing to get any response, they wrote to the Chairman of The Indian Space Research Organisation (ISRO), Karnataka vide their letter dated 31 October 2005 followed by reminders dated 15 February 2006 and 23 May 2006. In response to the letters addressed to the Chairman of ISRO, the North Eastern Space Applications Centre, Shillong vide its letter dated 24 November 2006 acknowledged receipt of their letters “regarding grant of temporary status under Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993” but stated that “I am directed to inform you you're your representations have been examined under the provisions of the above scheme. You are hereby informed that provisions of this scheme are not applicable to you, as you were not engaged through Employment Exchange, which is a mandatory provision under the scheme.” The Administrative Officer, NESAC further stated that “no further representation will be entertained in this regard”.

The NESAC became more hostile towards these three tribal employees. On 3 January 2007, they were not allowed to enter the rooms to do their duties without providing any reasons. They went to work as usual every day but they were not allowed to sign the attendance register. They were not paid their due salaries for the months of January and February 2007. The worst days

came when the services of the three tribals were terminated verbally w.e.f. 1 March 2007 without any notice. They wrote to the authorities seeking reasons for their termination but the authorities failed to reply.

On 18 May 2007, National Commission for Scheduled Tribes, Shillong Office wrote to the Director, North Eastern Space Applications Centre, Shillong stating, “By looking into the representation (of the three tribal victims) there is glaring instances of injustice and harassment done to these educated employed local Scheduled Tribe youths in many ways” and sought “information on action taken” to be sent to the NCST, New Delhi for further action.

8. Harassment, discrimination and denial of Sabbatical leave to Loli Kh Mao, Staff Officer, Bank of India, Motinagar, Shillong

On 1 May 2007, Mr Loli Kh Mao, Staff Officer of Bank of India, Motinagar Branch, Shillong filed a complaint with the National Commission for Scheduled Tribes, Shillong Office regarding harassment, discrimination and denial of sabbatical leave to him by the Zonal Manager, Bank of India, Siliguri Zone. Mr Mao basically forwarded his complaint to the Chief Liaison Office and General Manager, Human Resources Department, Bank of India, Head Office, Mumbai to the NCST, Shillong Office.

In his complaint to the to the Chief Liaison Office and General Manager, Human Resources Department, Bank of India, Mr Mao stated that on 2 September 2006 he applied for three years sabbatical leave “to take up employment in India” under the Bank of India Sabbatical Leave Scheme which was sanctioned on 15 February 2007 by the General Manager, Bank of India, Head Office Mumbai. The desks were cleared for Mr Mao and even an officer from the Guwahati Branch has been transferred to Motinagar Branch, Shillong in place of Mr Mao. But the sabbatical leave was suddenly cancelled and Mr Mao was transferred to Siliguri Branch by the Zonal Manager, Siliguri Zone without assigning any reason.

Mr Mao fulfilled all conditions to be granted sabbatical leave. According to the provisions of the Bank of India Sabbatical Leave Scheme, “All employees who have completed minimum of 10 years of service are eligible to apply for Sabbatical leave under the Scheme”. Yet, he was discriminated and denied leave allegedly because he belonged to Scheduled Tribe. In his order to the Branch Manager, Motinagar Branch dated 16 April 2007, the Zonal Manager, Siliguri Zone abruptly cancelled his sabbatical leave stating that “Taking into account the existing circumstances, you are requested to ensure that Sri Loli Kh Mao is not relieved on sabbatical leave and the said leave be treated as cancelled”. By the same order, Mr Mao was transferred to Siliguri Branch with immediate effect. No reason was provided for the denial of sabbatical leave and transfer.

Mr Loli alleged that he had been a victim of frequent transfers. According to him, he was transferred to Abhoypur (where he served from 8 June 2004 to 9 June 2005), then to Guwahati (where he served from 10 June 2005 to 12 April 2006, then Motinagar, Shillong where he served from 12 April 2006 before now being transferred to Siliguri Branch, West Bengal.

He suffered a lot of losses from all fronts, including mental agony, financial losses and damage to his properties during shifting from one place to another as he was transferred almost every year since June 2004. He suffered financial loss due to double school admissions for his three children after every transfer and the education of his children was also suffered as a result of frequent change of schools and environment.

In addition to these, Mr Moe also lost opportunity for promotion. Under the terms and conditions number (iii) of the Bank of India Sabbatical Leave Scheme, “The employees are not eligible to participate in the promotion process during the Sabbatical Leave period, even if they are otherwise eligible”. As he sanctioned sabbatical leave by the Head Branch in Mumbai, Mr Mao was not eligible to participate in the promotion

process which was underway and concluded by the time his leave was cancelled. Mr Mao also alleged that in the earlier promotion process held in April 2006, he had applied under merit channel (which required 15 marks for qualification) but the Zonal officer put him in fast tract which required 18 marks for qualification. He alleged that the promotion process of April 2006 was “manipulated” and he was also denied the right to information as his written test mark sheet had not been issued to him.

In its letter to the Chief Liaison Officer and General Manager, Human Resource Department of the Bank of India, Head Office Mumbai on 9 May 2007, the National Commission for Scheduled Tribes, Shillong Office stated that “the representation (of Mr Mao) shows that miscarriage of justice, harassment and even atrocities has been committed on the Scheduled Tribe employees as per proof submitted by him which the Commission viewed very seriously” and asked for “parwise comments along with information on action taken to redress his grievances”.

9. Discrimination against ST employee in Commander Works Engineer, Shillong

On 16 August 2006, Mr Kar Singh Nongkynrih filed a complaint with the National Commission for Scheduled Tribes, Shillong Office, against discrimination against him for being a Scheduled Tribe by the Commander Works Engineer (CWE), Shillong. According to Mr Nongkynrih, he was appointed as Mazdoor under ST quota in the office of GE Umroi on 21 November 1967. Subsequently, he was promoted to Mate w.e.f. 10 April 1978, to wireman w.e.f. 30 October 1982, to Electrician (Skilled) w.e.f. 24 June 1987, to Electrician Highly Skilled (HS)-II w.e.f. 31 January 1995 and to Electrician HS-I w.e.f. 18 February 2002. He was promoted to MCM by CWE Shillong letter No. 1118/17/1134/EIA dated 2 March 2006 w.e.f. 20 May 2003. Mr Nongkynrih told the National Commission for Scheduled Tribes, Shillong Office, that he should have been promoted long back in 1996 because he was the “senior most” Electrician

(Highly Skilled) in the office of GE Umroi. Even his junior Mr Jaminder Singh who is a Scheduled Caste was given promotion to MCM w.e.f. 1 February 1998 although he joined the office only on 26 April 1984, i.e. he is 17 years junior to Mr Nongkynrih.

In reply to Mr Nongkynrih’s representation, the CWE Shillong via its letter No. 1118/A/1185/E/A dated 20th May 2006 stated that Mr Jaminder Singh has been promoted to MCM w.e.f. 1 February 1998 as per vacancy reserved for Scheduled Caste candidate as per 100 Point Roster and that of Mr Nongkynrih w.e.f. 20 May 2003 as per Scheduled Tribe vacancy fallen vacant against 100 Point Roster. The CWE Shillong further stated that “vacancy reserved for either SC or ST categories are to be filled by candidates belonging to such categories irrespective of their seniority positions”.

On 12 September 2006, the National Commission for Scheduled Tribes, Shillong Office stated that “Looking at the representation (of Mr Kar Singh Nongkynrih) there appears to be a miscarriage of justice towards the Scheduled Tribe officials”. Coming down heavily on the discrepancies in awarding promotions, the NCST stated “In this respect it is not understood how your office maintained the ‘ROSTER’. Whereas DOPT O.M. No. 36012/2/96-Estt (Res) dated 2.7.97 has specifically instructed that 100 Point roster is a roster where direct recruitment is to be made on local or regional basis for Group ‘C’, ‘D’ your office appears to have maintained it for promotion”. The NCST asked for certain documents from the CWE for effective examination of the case by the Commission.

10. Harassment to the SC and ST Employees

On 20 December 2006, Uttam Chand Barman, Advisor to Cachar District SC and ST Employees’ Coordination Committee, Silchar filed a complaint with the Chief Engineer, Irrigation Department, Assam alleging non-implementation of the provisions of the Assam SC and ST (Reservation of Vacancies in

Services and Posts) Act, 1978 and harassment to the SC and ST employees. Mr Barman alleged that there had been “a vicious circle” at work in the office of the Superintending Engineer, Irrigation, Cachar Circle, Silchar, and even the Superintending Engineer, who is the appointing/promoting authority, was opposed to the Act.

In 1992, one Mrs BB Deb (General), L.D.A. and Mrs K Bhattacharjee (General), L.D.A. filed appeals against the order of promotion of Mr S Das who is SC, L.D.A. and Mr R Barman, Scheduled Tribe (Plain), L.D.A to U.D.A. before the Assam Administrative Tribunal to harass the SC and ST employees and deny them promotion. The Tribunal dismissed the appeal.

Mrs K Bhattacharya once again complained against the promotion of Mr R Barman to H.A. against vacancy when Mr P Dutta, H.A. retired on 31 May 2006 before the Guwahati High Court. Mrs Bhattacharya had applied for promotion to HA and claimed that she deserved the post of HA as she was the senior most U.D.A. However, this is not true as Mrs Bhattacharya was promoted to U.D.A. only in 1999 whereas Mr Barman was promoted in 1992. Also, the guidelines contained in the Government Circular No. ABP.59/96/163 dated 12 March 2002 issued by the Government to be followed in the matter of fixation of seniority of reserved candidates vis-à-vis General candidates in promotional posts clearly states that SC and ST employees shall on their promotion by virtue of rule of reservation/roster be entitled to consequential seniority and that the seniority allowed earlier to General and OBC employees in the light of the Government Circular No. ABP.59/96/17 dated 12 June 1996 shall be revised as if that Circular was never issued.

On 9 January 2007, the National Commission for Scheduled Tribes, Shillong Office, requested the Secretary, Irrigation Department, Government of Assam to provide information along with parawise comments of the case. But the Commission did not receive any response. Again on 13 June 2007, the National Commission for Scheduled Tribes, Shillong Office sent a rejoinder asking for information.

11. Injustice done to Nilam Basumatary – Denial of job

Nilam Basumatary from Kokrajhar is a lecturer in the Department of Zoology at Cachar College, Silchar, Assam. He has been serving in Cachar College since 20 September 2001. He is the only child of his aged parent staying at their home town in Kokrajhar. So, Mr Basumatary desired to serve in Kokrajhar to enable him to look after his old parents.

An opportunity came when the Kokrajhar College advertised a post of a lecturer in Zoology Department. He applied for the job and was selected for the post. An appointment letter (Order No. 531 dated 5 January 2006) was issued to him by the Principal of Kokrajhar College asking him to join the college on or before 12 January 2006 after taking the approval from the Directorate of Higher Education, Assam, Guwahati. Accordingly, on 10 January 2006, Mr Basumatary wrote to the DHE for his approval to join the Kokrajhar College and protect his present pay structure as per rules. But the DHE failed to reply. In the meantime, the Kokrajhar College re-advertised the post in the Assam Tribune dated 2 July 2006 without giving any notice to Mr Basumatary.

On 6 July 2006, Mr Nilam Basumatary wrote to the Hon'ble Minister of Higher Education, Assam for intervention and a copy of the representation was forwarded to the National Commission for Scheduled Tribes, Shillong Office.

The NCST, Shillong Office in its letter dated 13 July 2006 to the Director of Higher Education, Assam stated that “Looking in the representation, there appears to be miscarriage of justice” and sought information on action taken to redress the grievances of Mr Nilam Basumatary.

12. Backlog vacancies in the Regional Medical Research Centre, Dibrugarh and the Animal Husbandry and veterinary Department, Government of Assam

On 29 June 2006, the All Assam Scheduled Castes and Scheduled Tribes Unemployed

Association, Guwahati wrote two separate letters to the National Commission for Scheduled Tribes, Shillong Office, seeking its intervention to fill up the backlog posts in Regional Medical Research Centre, Dibrugarh and the Animal Husbandry and veterinary Department, Government of Assam as per the 20 point roster.

In response to the above representations, on 13 July 2007 the National Commission for Scheduled Tribes, Shillong Office stated that owing to the general nature of the complaints, “the Commission will find it difficult to take up”. Instead, the Commission sought “detail and specific cases along with documentary proof”.

13. Denial of opportunity of transfer

On 31 May 2006, Mr Thrasterwell Lyngdoh, D/man Division I, Assam & Nagaland GDC, Guwahati wrote to the Surveyor General of India, Dehra Dun – a copy of the letter was forwarded to the National Commission for Scheduled Tribes, Shillong Office – requesting for transfer from Assam & Nagaland GDC, Guwahati to Meghalaya & Arunachal Pradesh GDC, Shillong. Mr Lyngdoh had earlier submitted two applications – one on 20th June 2005 and the other on 19th December 2005 through the Director, Assam and Nagaland GDC, Guwahati to the Surveyor General of India, Dehra Dun praying for transfer. But he received no response to any of the applications.

In his letter to the Surveyor General of India, Mr Lyngdoh stated that he joined Assam and Nagaland GDC, Guwahati after being promoted to D/Man Div. I on 26 August 2004. He has nine young children, an ill mother of 80 years and his wife was suffering from high blood pressure. Moreover, with his meager income he was not able to afford two houses – one at Shillong for his family and one at Guwahati for himself. He stated that his transfer to Shillong was necessary for “the betterment of my family’s future”. He further stated that a post of D/man Div. I fell

vacant in the office of Meghalaya and Arunachal Pradesh, Shillong GDC against Mr T R Sagar, D/Man Div.I, who had gone on transfer to Haryana GDC Chandigarh in December 2005. So, he prayed for his transfer to Shillong.

On 13 July 2006, National Commission for Scheduled Tribes, Shillong Office, wrote to the Surveyor General of India calling for examination of the case and information on action taken to redress the grievances of Mr Lyngdoh.

14. Non appointment/promotion of ST Post Graduate Teachers as principals in NF Rlys HS Schools

On 9 May 2006, a group of Post Graduate Teachers (PGT) including Chandra Kanta Baruah filed a complaint with the National Commission for Scheduled Tribes, Shillong Office against non-appointment of any Scheduled Tribe post graduate teacher as the principal in any N. F. Railways Higher Secondary School as per the roster points. They stated that a Scheduled Tribe had never been promoted as principal on the basis of reservation criteria due to discrimination. Only one Scheduled Tribe namely Robin Deka was appointed as Principal in Rly H.S. School, Maligaon. But in 1994-95, he was demoted to post graduate teacher following a case filed by one PK Gosh belonging to general category with the Central Administrative Tribunal (CAT), Calcutta questioning the appointment of Late Deka on the basis of seniority. Late Robin Deka approached the Supreme Court challenging the verdict of the Tribunal. The apex court decided in favor of Late Deka and restored his post as Principal of Rly H.S. School, Maligaon. Hence, it is clear that Late Deka was appointed solely on the basis of seniority and not as per the roster points.

On 22 May 2006, the National Commission for Scheduled Tribes, Shillong Office sent a notice to the Chief Personnel Officer, NF Railways, Maligaon, Guwahati in respect of appointment of Principals in NF Railways Higher Secondary Schools.

II. Admission into educational institutions

1. Denial of seat in National Institute of Technology, Rourkela

A tribal student, Iban Khraw Kupar Pyngrope filed a complaint with the NCST, Shillong Office against alleged willful denial of admission in M. Tech (Computer Science and Engineering) in the National Institute of Technology (NIT), Rourkela. In his representation Mr Pyngrope stated that he was called for interview on 12-7-2004 vide letter No. NITR/AC/2004/1046 dated 28 June 2004 for admission to M. Tech programme for the session 2004-2005. He appeared at the interview and passed it. But the Admission Committee sent him to the Director NIT Rourkela to clarify the matter regarding relaxation of marks for SC/ST candidates. Meantime, the Admission Committee carried on with the admission process and gave away his seat to the candidate next in line who has a lower GATE score and the admission procedure ended even before Mr Pyngrope's discussion with the Director ended. Hence, he was denied a seat.

Mr Pyngrope was a Computer Engineer from NIT Silchar (Assam) with aggregate percentage was 56.4% and his GATE score was 79.14%. In his complaint before the NSCT, Mr Pyngrope stated that in the first place, the NIT authorities violated the rules of the government of India by not mentioning the relaxation of marks of the qualifying examination for the SCs/STs in the advertisement for M. Tech admission. Then, the authorities called Mr Pyngrope for appearing in the interview without properly checking his documents including whether he was qualified for admission etc. Since, he was called for interview, it is understood that he was found qualified for admission but the Admission Committee arbitrarily denied him admission.

In its letter (No. 30/1/2004-Res/71) to the Registrar (Academic) of NIT Rourkela, the NCST stated, "By going through the

representation and supported documents there appears to be a miscarriage of justice done to him (Mr Pyngrope)". The NCST further stated, "In view of the above, the Commission feels that action done by the Institute Academic Section, right from the concealing of the relaxation marks for SCs and STs in the advertisement till denying him a seat in the final stage is unjust and unfortunate". The Commission directed the institute to review the case immediately and submit report to it.

2. Inordinate delay in declaration of results of interview for ST candidates

On 20 July 2005, the United Bank of India held an interview for the recruitment of Scheduled Castes and Scheduled Tribes candidate into Sub-ordinate staff at Guwahati. The recruitment of 3 sub-ordinate employees (one SC and Two ST) was notified through the Employment Exchange, Jowai, Jaintia Hills district of Meghalaya. But the UBI failed to announce the results.

On 18 July 2006, the Assistant Employment Officer, Divisional Employment Exchange, Jowai, Jaintia Hills District wrote to the Chairman and Managing Director, United Bank of India, Kolkata requesting to "look in to the reasons leading to the delayed of publishing the result of the interview of sub ordinate staff held on 20th July 2005 at Broadway Hotel." A copy of the letter was forwarded to the National Commission of Scheduled Tribes, Shillong Office.

On 24 July 2006, the NCST, Shillong Office, wrote to the Chairman-cum-Managing Director, UBI, Kolkata stated that it was a "clear indication that miscarriage of justice has been done to the Scheduled Tribe candidates whereby the office has not bothered to publish the result of the interview appeared by them for the appointment in the post of sub-ordinate cadre even after one years." This was despite the fact that the interview was a Special Recruitment Drive meant for the Scheduled Castes and Scheduled Tribes. The Commission sought information on action taken within two weeks time.

III. Human rights violations

1. Burning down of houses, looting, torture of tribal Reang people at Betcherra under Hailakandi district of Assam

In their memorandum submitted to the Hon'ble Governor of Assam – a copy of the memorandum was also forwarded to the National Commission for STs, the Reang villagers of Betcherra village under Katlicherra Police Station in Hailakandi district of Assam stated that a group of armed policemen and Muslim people of the locality led by Officer-in-Charge of Katlicherra Police Station, Rabindra Singha came to the Riang Punji area of Betcherra village and set afire six houses of the Reang indigenous peoples on 20 November 2005 at about 4 pm. When the Headman of the village and the Secretary of Village Defence Party protested, they were threatened by O.C. Mr Rabindra Singha. The local Muslim people, who were alleged illegal settlers from Bangladesh, also looted the properties of the indigenous peoples. A pregnant woman died due to the atrocities and fear psychosis. The indigenous peoples lost their paddy, oilseed, cotton and other properties in addition to livestock such as goats, pigs and poultry birds. The family heads whose houses were burnt down were identified as Kharendra Reang (loss of properties worth Rs 1,00,000); Bhrigu Reang (loss of properties worth Rs 70,000); Aunkarjai Reang (loss of properties worth Rs 50,000); Laklacha Reang (loss of properties worth Rs 1,50,000) and Tajiham Reang (loss of properties worth Rs 1,00,000).

The prime accused, Officer-in-Charge of Katlicherra Police Station, Rabindra Singha was also responsible for torture of the Reang villagers. He had past records of gross human rights violations including custodial killing when he was posted at Lala Police Station, shooting his own wife by his service pistol and was also facing CBI inquiry in Pratul Deb murder case.

The Reang villagers identified the following perpetrators: Rabindra Singha, OC, Katlicherra Police Station; in-charge (IC) of Karicherra

outpost under Katlicherra police station; Abdul Matin Talukdar, IC of Jamira outpost under Katlicherra Police Station; Md Majub Uddin Laskar; Md Abu Uddin Laskar; Md Karim Uddin Laskar; Md Saheed Ali; Md Kubaid Ulla; and Md Babulal Laskar.

In their memorandum, the Reang villagers sought a CBI inquiry into the attack on the indigenous peoples of Betcherra village, immediate arrest and suspension of Rabindra Singha, OC, Katlicherra Police Station, immediate arrest of all other perpetrators who have been named in the memorandum; and adequate protection of the life and properties of the indigenous villagers.

On 30 January 2006, the National Commission for Scheduled Tribes, Shillong Office requested the Secretary to the Government of Assam that “enquiry in the matter may kindly be ordered and information on the factual position as well as action taken may kindly be informed to this office at the earliest for onward transmission to the Headquarters New Delhi”.

2. Misbehavior and use of racist remarks against ST girl students at Kendriya Vidyalaya, ONGC, Agartala

On 28 November 2005, Mrs Tetari Devi, a resident of Quarter No. 143, ONGC Colony in Agartala filed a complaint with the NCST, Shillong Office against misbehaviour and use of racist remarks against her and her daughters – Manikala and Kanaklata by Radha Kishan Gupta, a primary teacher of Kendriya Vidyalaya, ONGC, Agartala. Tetari Devi's daughters Manikala and Kanaklata are students of Class V A and III A respectively in the same school.

According to Mrs Tetari Devi, the teacher Radha Kishan Gupta used to torture her minor daughters physically and mentally and used racist remarks against them in the school. When she personally went to inquire about the complaints of misbehavior, Mr Gupta allegedly rebuked Mrs Devi and used casteist remarks. On 26 October 2005, Mrs Devi filed a formal complaint with the school principal. But the

school principal on 16 November 2005 replied that a committee was formed to inquire into the matter but the committee found that “no incident of mental and physical harassment is caused to your wards by Mr Radhakrishan at any time in the vidyalaya”. Mrs Tetari Devi questioned the impartiality of the committee formed by the school management as it did not seek the comments from her and her daughters, who are the victims but reached the conclusion that their complaint was false.

On 5 December 2005, National Commission for Scheduled Tribes, Shillong Office took a serious note of the matter and directed the District Administration to conduct a probe into the allegations. The NSCT also directed the Principal of Kendriya Vidyalaya, ONGC, Agartala to submit a copy of the Notification/ Order constituting the Committee members for probing the case as well as the findings of the Committee.

3. Eviction of small business vendors by Municipal Authority in Shillong

On 2 May 2005, Shillong United Social Upliftment Association (SUSUA), Shillong submitted a memorandum to Mr DD Lapang, Chief Minister of Meghalaya – a copy of which was also forwarded to the NCST, Shillong Office – requesting him to intervene against eviction of small business vendors by the Municipal Board Authority from their place of business opposite to Government Press, Shillong on 29 April 2005. All the evicted small business vendors belonged to Scheduled Tribe (Khasi/Garo) residing at various places in East Khasi Hills district of Meghalaya. They were also members of Shillong United Social Upliftment Association (SUSUA), a registered Association and were selling fresh vegetables from that place for the last two years. Majority of the uprooted vendors were widows and poor. After their eviction, they have not been able to find another market place and as a result, majority of them were left without any source of income. Therefore, SUSUA appealed to the Chief Minister of Meghalaya to “arrange seating

place or allot permanently the same place” to the evicted vegetable vendors.

On 11 May 2005, National Commission for Scheduled Tribes, Shillong Office “requested” the Chief Executive Officer, Municipal Board, Shillong to provide information on action taken/ proposed to be taken with regards to the case.

4. Discrimination and harassment of ST doctor of Guwahati Medical College

On 10 January 2005, Co-ordination Committee of ST/SC Organization, Guwahati filed a complaint with the Additional Chief Secretary, Government of Assam – which was also forwarded to the National Commission for Scheduled Tribes – against alleged discrimination and harassment of a ST doctor identified as Dr Amulya Kr Hazarika, Registrar of Guwahati Medical College (GMC) by the Department of Health and Family Welfare of the Government of Assam. According to the complainant, Dr Hazarika was arbitrarily transferred from GMC to Dibrugarh Medical College before completion of Post Graduate course under Orthopedic department. Dr Hazarika was allegedly victimized because he belonged to ST. According to the complainant, he was not alone. In the last one year, two other ST doctors of GMC were “victimised” by the Health department in similar manners. The complainant stated that “as per the rules of the health department there is no provision of transfer of any doctor while they are under going higher studies but the health department have violated the provision.”

IV. Land grabbing

1. Land grabbing by non Tribals in Tirap Tribal Belt, Assam

On 8 March 2005, the Singpho Tribal Women’s Association filed a complaint with the NCST, New Delhi against harassment, forcible land grabbing and filing of false cases against tribals by the non tribals in the Tirap Tribal Belt in Tinsukia district of Assam. In its complaint, the Singpho Tribal Women’s Association alleged

that the non tribals have created a nuisance in the area through constant harassment, intimidation, teasing, molestation and abduction of young tribal girls in the area. Due to constant harassment and filing of false cases against the innocent tribals, many tribal villagers have left their homes. More than 10,000 non tribals such as Bihari, Nepali, Marwari and Bangladeshi Muslims have encroached the Government Khas lands upto 1995 and the number of land grabbing cases by non tribals was also “very high”. The complainants alleged that the District Administration was playing a “doubtful” role and did nothing to provide protection to the local indigenous peoples, including physical protection and protection of their lands from the non tribals.

On 10 June 2005, the NCST, Shillong Office merely “requested” the Government of Assam to inquire into the allegations and submit a report to the Commission.

V. Fake ST certificates

Complaint against giving away reserved posts to non-STs

On 3 May 2007, the Greater Guwahati Karbi Students’ Association, Guwahati, Assam filed a complaint with the National Commission for Scheduled Tribes, Shillong Office, against advertisements issued by the Deputy Commissioner of Karbi Anglong for filling up of temporary posts of Grade III and IV in the amalgamated establishment of the Deputy Commissioner, Karbi Anglong.

The Deputy Commissioner issued an advertisement No. KAPE 3/2006-07/6 published in “The Assam Tribune” dated 11 March 2007 to fill up 24 vacancies of various categories. The advertisement did not mention whether the posts were reserved or unreserved. But it stated, “The Board shall strictly follow the rules of the Hon’ble Supreme Court of India and the latest guidelines of the Government in filling the posts covering 20 point of Roster including reservation for Physically handicapped personal, etc”.

The Deputy Commissioner also issued another advertisement for the same 24 posts in the local Karbi daily newspaper “Thekar” on 10 April 2007. Of the 24 vacant posts, 3 were reserved for Scheduled Castes, 3 for Other Backward Classes/Most Other Backward Classes, 10 were unreserved and only 8 were reserved for the Scheduled Tribes (Plain). Even the three posts of interpreters of tribal languages were reserved for the non-tribals.

In their complaint, the Greater Guwahati Karbi Students’ Association claimed that the advertisements were in violation of the 6th Schedule of the Constitution of India since Karbi Anglong is a scheduled district and all the employments were reserved for the tribal peoples. Moreover, under the provisions of the Assam ST and SC (Reservation of Posts and Vacancies) Act, 1978 and the Rules of 1983, the 20 Point Roster is not applicable in the sixth scheduled areas. Therefore, the Greater Guwahati Karbi Students’ Association urged the National Commission for Scheduled Tribes, Shillong Office to direct the Deputy Commissioner of Karbi Anglong to cancel both the advertisements published in “The Assam Tribune” and “Thekar” and all the vacancies be reserved for the tribals.

On 3 May 2007, the National Commission for Scheduled Tribes, Shillong Office, requested the Deputy Commissioner of Karbi Anglong district to examine the matter and submit information on action taken to NCST, Shillong Office.

In addition, the following non-tribals have allegedly availed employment on the basis of fake ST certificates procured by them:

1. Sri Shibdas Deb Barma

On 27 January 2006, the State Level Scrutiny Committee declared as fake the ST certificate of Sri Shibdas Deb Barma, son of Late Aswini Deb Barma of Bishnu Para (Birati) village in 24 Parganas of West Bengal working under Indian Airlines. The Committee after proper examination of all records found that Shibdas Deb Barma belongs to Laskar community,

which is not recognized as ST in Tripura and therefore ordered for cancellation of his ST certificate bearing No. 555/DM/GL/W/73 dated 13/7/73 with immediate effect as per the Notification No. 38296-396/F.6-4(C-D)/TW/89 dated 31-3-90.

On 30 March 2006, National Commission for Scheduled Tribes, Shillong Office, directed the General Manager, Airline House, Kolkata to initiate action against Mr Shibdas Deb Barma including termination from service, filing of FIR and imposition of penalty under appropriate section of Indian Penal Code etc if he secured appointment on ST quota after 31.3.1990 by virtue of his fake tribal certificate. If the accused had been appointed prior to 31.3.1990, the NCST Shillong Office asked the General Manager, Airline House, Kolkata to furnish information on action taken on facilities (e.g. promotion etc) already availed by the accused after 31.3.1990.

2. Sri Pradyut Deb Barma

On 7 November 2005, the State Level Scrutiny Committee declared as fake the ST certificate of Sri Pradyut Deb Barma, son of Late Durgadas Deb Barma of TP Road, Krishna Nagar, Agartala, West Tripura. The Committee after proper examination of all records found that Pradyut Deb Barma belongs to Laskar community, which is not recognized as ST in Tripura and therefore ordered for cancellation of his ST certificate bearing No. 62/DM/GL/W/74 dated 20/1/75 with immediate effect as per the Notification No. 38296-396/F.6-4(C-D)/TW/89 dated 31-3-90.

On 30 March 2006, National Commission for Scheduled Tribes, Shillong Office, directed the State Bank of India, Udaipur Branch, Agartala, Tripura to initiate action against Mr Pradyut Deb Barma including termination from service, filing of FIR and imposition of penalty under appropriate section of Indian Penal Code etc if he secured appointment on ST quota after 31.3.1990 by virtue of his fake tribal certificate. If the accused had been appointed prior to 31.3.1990, the NCST Shillong Office asked the Manager, SBI, Udaipur Branch, Agartala to

furnish information on action taken on facilities (e.g. promotion etc) already availed by the accused after 31.3.1990.

3. Sri Sudip Deb Barma

On 7 November 2005, the State Level Scrutiny Committee declared as fake the ST certificate of Sri Sudip Deb Barma, son of Late Durgadas Deb Barma of TP Road, Krishna Nagar, Agartala, West Tripura working under Doordarshan Kendra, Agartala. The Committee after proper examination of all records found that Sudip Deb Barma belongs to Laskar community, which is not recognized as ST in Tripura and therefore ordered for cancellation of his ST certificate bearing No. 34/SDO/KLS/TW/86 dated 7/2/87 with immediate effect as per the Notification No. 38296-396/F.6-4(C-D)/TW/89 dated 31-3-90.

On 30 March 2006, National Commission for Scheduled Tribes, Shillong Office, directed the Director of Doordarshan Kendra, Agartala, Tripura to initiate action against Mr Sudip Deb Barma including termination from service, filing of FIR and imposition of penalty under appropriate section of Indian Penal Code etc if he secured appointment on ST quota after 31.3.1990 by virtue of his fake tribal certificate. If the accused had been appointed prior to 31.3.1990, the NCST Shillong Office asked the Director, DD Kendra, Agartala to furnish information on action taken on facilities (e.g. promotion etc) already availed by the accused after 31.3.1990.

4. Mrs Rita Deb Barma

On 27 January 2006, the State Level Scrutiny Committee declared as fake the ST certificate of Mrs Rita Deb Barma, Wife of Mr Dulal Ch. Das working under Shibnagar College, Police Station East Agartala, Tripura. The Committee after proper examination of all records found that Mrs Rita Deb Barma belongs to Laskar community, which is not recognized as ST in Tripura and therefore ordered for cancellation of her ST certificate bearing No. 896/DM/GL/W/76 dated 22/9/70 with immediate effect as

per the Notification No. 38296-396/F.6-4(C-D)/TW/89 dated 31-3-90.

On 30 March 2006, National Commission for Scheduled Tribes, Shillong Office, directed the Director of School Education, Government of Tripura, Agartala to initiate action against Mrs Rita Deb Barma including termination from service, filing of FIR and imposition of penalty under appropriate section of Indian Penal Code etc if she secured appointment on ST quota after 31.3.1990 by virtue of her fake tribal certificate. If the accused had been appointed prior to 31.3.1990, the NCST Shillong Office asked the Director of School Education, Tripura to furnish information on action taken on facilities (e.g. promotion etc) already availed by the accused after 31.3.1990.

5. Mrs Jayanti Majumder (Deb Barma)

On 27 January 2006, the State Level Scrutiny Committee declared as fake the ST certificate of Mrs Jayanti Majumder (Deb Barma), Wife of Mr Chunilal Majumder of Pragati Road, Krishna Nagar, Agartala, West Tripura working under Forest Department. The Committee after proper examination of all records found that Mrs Jayanti Majumder (Deb Barma) belongs to Laskar community, which is not recognized as ST in Tripura and therefore ordered for cancellation of her ST certificate bearing No. 1265/DM/GL/W/74 dated 19/11/1974 with immediate effect as per the Notification No. 38296-396/F.6-4(C-D)/TW/89 dated 31-3-90.

On 30 March 2006, National Commission for Scheduled Tribes, Shillong Office, directed the Chief Conservator of Forest, Government of Tripura, Agartala to initiate action against Mrs Jayanti Majumder (Deb Barma) including termination from service, filing of FIR and imposition of penalty under appropriate section of Indian Penal Code etc if he secured appointment on ST quota after 31.3.1990 by virtue of his fake tribal certificate. If the accused had been appointed prior to 31.3.1990, the NCST Shillong Office asked the Chief of Conservator of Forest, Tripura to furnish information on

action taken on facilities (e.g. promotion etc) already availed by the accused after 31.3.1990.

6. Sri Saktimoy Choudhury

On 27 January 2006, the State Level Scrutiny Committee declared as fake the ST certificate of Mr Saktimoy Choudhury, son of Late Srish Ch. Choudhury of Gangail Road, Agartala, working under Food Corporation of India, Agartala. The Committee after proper examination of all records found that Mr Saktimoy Choudhury belongs to Laskar community, which is not recognized as ST in Tripura and therefore ordered for cancellation of his ST certificate bearing No. 332/DM/GL/W/72 dated 02/08/1972 with immediate effect as per the Notification No. 38296-396/F.6-4(C-D)/TW/89 dated 31-3-90.

On 30 March 2006, National Commission for Scheduled Tribes, Shillong Office, directed the Director, Food Corporation of India, Agartala, to initiate action against Mr Saktimoy Choudhury including termination from service, filing of FIR and imposition of penalty under appropriate section of Indian Penal Code etc if he secured appointment on ST quota after 31.3.1990 by virtue of his fake tribal certificate. If the accused had been appointed prior to 31.3.1990, the NCST Shillong Office asked the Director of FCI, Agartala to furnish information on action taken on facilities (e.g. promotion etc) already availed by the accused after 31.3.1990.

7. Mrs Binapani Deb Barma

On 20 November 2005, the State Level Scrutiny Committee declared as fake the ST certificate of Mrs Binapani Deb Barma, wife of Mr Dhiraj Deb Barma of Pragati Road, Krishnanagar, Agartala, Tripura working under Civil Secretariat, GA(AR) Department. The Committee after proper examination of all records found that Mrs Binapani Deb Barma does not belong to a ST community and “her claim that she acquired ST status by virtue of her marriage to an ST person in not valid”. Hence, the State Level Scrutiny Committee cancelled his ST certificate bearing No. 47/DM/L/W/72 dated 17/01/1973 and asked him to surrender his original ST certificate to

the Director, Tribal Welfare, Government of Tripura immediately.

On 20 March 2006, National Commission for Scheduled Tribes, Shillong Office, directed the Joint Secretary (AR), General Administrative Department, Government of Tripura to initiate action against Mrs Binapani Deb Barma including termination from service, filing of FIR and imposition of penalty under appropriate section of Indian Penal Code etc.

8. Mrs Lalita Deb Barma

On 25 July 2005, the State Level Scrutiny Committee declared as fake the ST certificate of Mrs Lalita Deb Barma, wife of Mr Sanjoy Deb Barma of Old Kali Bari Road, Krishnanagar, Agartala, Tripura working under Industry Department, Government of Tripura. The Committee after proper examination of all records found that Mrs Lalita Deb Barma belongs to Manipuri community and hence the ST certificate bearing No. 266/DM/GL/XVI-II/63 dated 14/08/1969 held by her is “not valid” and directed her to surrender her original ST certificate to the Director, Tribal Welfare, Government of Tripura immediately.

On 20 March 2006, National Commission for Scheduled Tribes, Shillong Office, directed the Director of Industries, Government of Tripura to initiate action against Mrs Lalita Deb Barma including termination from service, filing of FIR and imposition of penalty under appropriate section of Indian Penal Code etc.

9. Mrs Archana Deb Barma

On 20 September 2005, the State Level Scrutiny Committee declared as fake the ST certificate of Mrs Archana Deb Barma, wife of Mr Pradip Deb Barma of Colonel Bari, Agartala, Tripura working under TRP & PGP, Government of Tripura. The Committee after proper examination of all records found that Mrs Archana Deb Barma does not belong to Tribal Community and “her claim that she has acquired tribal status by virtue of her marriage to an ST person is not valid”. Therefore, the State Level

Scrutiny Committee cancelled her ST certificate bearing No. 597/DM/L/W/72 dated 1/11/1972.

On 20 March 2006, National Commission for Scheduled Tribes, Shillong Office, directed the Director, TRP & PGP, Government of Tripura to initiate action against Mrs Archana Deb Barma including termination from service, filing of FIR and imposition of penalty under appropriate section of Indian Penal Code etc.

10. Mr Pradip Deb Barma

On 20 September 2005, the State Level Scrutiny Committee declared as fake the ST certificate of Mr Pradip Deb Barma, son of Late Radhacharan Deb Barma of Joynagar (Dashamighat), Agartala, West Tripura working under Fishery Department, Government of Tripura. The Committee after proper examination of all records found that Mr Pradip Deb Barma belongs to Laskar Community, which is not a tribal community in Tripura, and hence his ST certificate bearing No. 499/DM/GL/W/77 dated 27/6/1977 is “not valid”.

On 28 March 2006, National Commission for Scheduled Tribes, Shillong Office, directed the Director of Fisheries, Government of Tripura to initiate action against Mr Pradip Deb Barma including termination from service, filing of FIR and imposition of penalty under appropriate section of Indian Penal Code etc.

11. Mrs Anjali Deb Barma

On 20 September 2005, the State Level Scrutiny Committee declared as fake the ST certificate of Mrs Anjali Deb Barma, daughter of Late Harendra Deb Barma of Badharghat, Nutan Pally, PS Amtali, Agartala, West Tripura working under Health Department, Government of Tripura. The Committee after proper examination of all records found that Mrs Anjali Deb Barma belongs to Laskar Community, which is not a tribal community in Tripura, and hence her ST certificate bearing No. 499/DM/GL/W/77 dated 27/6/1977 is not valid.

On 28 March 2006, National Commission for Scheduled Tribes, Shillong Office, directed

the Director of Health Services, Government of Tripura to initiate action against Mrs Anjali Deb Barma including termination from service, filing of FIR and imposition of penalty under appropriate section of Indian Penal Code etc.

12. Mrs Sukla Chakraborty

On 7 July 2005, the State Level Scrutiny Committee declared as fake the ST certificate of Mrs Sukla Chakraborty, wife of Mr Hiran Deb Barma of Agartala working under the Directorate of Social Welfare for Social Education, Government of Tripura. The Committee after proper examination of all records found that Mrs Sukla Chakraborty does not belong to Scheduled Tribe and her claim of belonging to ST by virtue of marriage "is not valid". Therefore, State Level Scrutiny Committee canceled her fake ST certificate bearing No. 1056/DM/GL/W/78 dated 30/3/1978 is not valid.

On 28 March 2006, National Commission for Scheduled Tribes, Shillong Office, directed the Director of Social Welfare for Social Education, Government of Tripura to initiate action against Mrs Sukla Chakraborty including termination from service, filing of FIR and imposition of penalty under appropriate section of Indian Penal Code etc.

13. Mr Haridas Deb Barma

On 7 July 2005, the State Level Scrutiny Committee declared as fake the ST certificate of Mr Haridas Deb Barma, son of Late Nripendra Deb Barma of Arundhatinagar, Road No. 6, Agartala, West Tripura working under Civil Secretariat, Government of Tripura. The Committee after proper examination of all records found that Mr Haridas Deb Barma belongs to Laskar Community, which is not recognized as ST in Tripura and hence cancelled his ST certificate bearing No. 361/DM/L/W/71 dated 25/10/1971.

On 28 March 2006, National Commission for Scheduled Tribes, Shillong Office, directed the Joint Secretary (P&T), General Administration Department, Government of Tripura to initiate

action against Haridas Deb Barma including termination from service, filing of FIR and imposition of penalty under appropriate section of Indian Penal Code etc.

14. Mrs Anita Deb Barma

On 7 July 2005, the State Level Scrutiny Committee declared as fake the ST certificate of Mrs Anita Deb Barma, wife of Pankaj Kumar Bhowmik of Bardowali, Agartala, West Tripura working under District Magistrate & Collector, Government of Tripura. The Committee after proper examination of all records found that Mrs Anita Deb Barma belongs to Laskar Community, which is not recognized as ST in Tripura and hence cancelled her ST certificate bearing No. 280/DM/GL/W/76 dated 29/3/1976.

On 20 March 2006, National Commission for Scheduled Tribes, Shillong Office, directed the District Magistrate and Collector, Government of Tripura to initiate action against Mrs Anita Deb Barma including termination from service, filing of FIR and imposition of penalty under appropriate section of Indian Penal Code etc.

15. Mr Kajal Deb Barma

On 7 November 2005, the State Level Scrutiny Committee declared as fake the ST certificate of Mr Kajal Deb Barma, son of Kalidas Deb Barma of Dhaleswar Road No. 1, Agartala, West Tripura working under Industry Department, Government of Tripura. The Committee after proper examination of all records found that Mr Kajal Deb Barma belongs to Laskar Community, which is not recognized as ST in Tripura and hence cancelled his ST certificate bearing No. 396/DM/GL/W/1972 dated 28/8/1972 with immediate effect as per the Notification No. 38296-396/F.6-4(C-D)/TW/89 dated 31-3-90.

On 30 March 2006, National Commission for Scheduled Tribes, Shillong Office, directed the Director of Industries, Government of Tripura to initiate action against Mr Kajal Deb Barma including termination from service, filing of FIR and imposition of penalty under appropriate section of Indian Penal Code etc if he secured

appointment on ST quota after 31.3.1990 by virtue of his fake tribal certificate. If the accused had been appointed prior to 31.3.1990, the NCST Shillong Office asked the Director of Industries, Government of Tripura to furnish information on action taken on facilities (e.g. promotion etc) already availed by the accused after 31.3.1990.

16. Mr Atanu Deb Barma

On 7 November 2005, the State Level Scrutiny Committee declared as fake the ST certificate of Mr Atanu Deb Barma, son of Late Monomohan Deb Barma of Sankar Chowmuhani, Krishnanagar, Agartala, West Tripura working under Forest Department, Government of Tripura. The Committee after proper examination of all records found that Mr Atanu Deb Barma belongs to Laskar Community, which is not recognized as ST in Tripura and hence cancelled his ST certificate bearing No. 727/DM/GL/W/74 dated 11/6/1974 with immediate effect as per the Notification No. 38296-396/F.6-4(C-D)/TW/89 dated 31-3-90.

On 30 March 2006, National Commission for Scheduled Tribes, Shillong Office, directed the Chief Conservator of Forest, Government of Tripura to initiate action against Mr Atanu Deb Barma including termination from service, filing of FIR and imposition of penalty under appropriate section of Indian Penal Code etc if he secured appointment on ST quota after 31.3.1990 by virtue of his fake tribal certificate. If the accused had been appointed prior to 31.3.1990, the NCST Shillong Office asked the Chief Conservator of Forest, Government of Tripura to furnish information on action taken on facilities (e.g. promotion etc) already availed by the accused after 31.3.1990.

17. Mr Tulshidas Deb Barma

On 7 November 2005, the State Level Scrutiny Committee declared as fake the ST certificate of Mr Tulshidas Deb Barma, son of Late Aswini Deb Barma of TP Road, Krishnanagar, Agartala, West Tripura working under State Bank of India, Agartala. The Committee after

proper examination of all records found that Mr Tulshidas Deb Barma belongs to Laskar Community, which is not recognized as ST in Tripura and hence cancelled his ST certificate bearing No. 38/DM/GL/W/75 dated 7/5/75 with immediate effect as per the Notification No. 38296-396/F.6-4(C-D)/TW/89 dated 31-3-90.

On 30 March 2006, National Commission for Scheduled Tribes, Shillong Office, directed the Manager, State Bank of India, Melarmah Branch, Agartala to initiate action against Mr Tulshidas Deb Barma including termination from service, filing of FIR and imposition of penalty under appropriate section of Indian Penal Code etc if he secured appointment on ST quota after 31.3.1990 by virtue of his fake tribal certificate. If the accused had been appointed prior to 31.3.1990, the NCST Shillong Office asked the Manager, SBI, Agartala to furnish information on action taken on facilities (e.g. promotion etc) already availed by the accused after 31.3.1990.

18. Mr Diptanu Deb Barma

On 7 November 2005, the State Level Scrutiny Committee declared as fake the ST certificate of Mr Diptanu Deb Barma, son of Late Monomohan Deb Barma of Chowmuhani, Krishnanagar, Agartala, West Tripura working under United India Insurance Company, Agartala. The Committee after proper examination of all records found that Mr Diptanu Deb Barma belongs to Laskar Community, which is not recognized as ST in Tripura and hence cancelled his ST certificate bearing No. 6800/1274/F. XII/2/SDO/SDR/TW/85 dated 9-10-1985 with immediate effect as per the Notification No. 38296-396/F.6-4(C-D)/TW/89 dated 31-3-90.

On 30 March 2006, National Commission for Scheduled Tribes, Shillong Office, directed the Branch Manager, United India Insurance Company, Agartala to initiate action against Mr Diptanu Deb Barma including termination from service, filing of FIR and imposition of penalty under appropriate section of Indian Penal Code etc if he secured appointment on ST quota after 31.3.1990 by virtue of his fake tribal

certificate. If the accused had been appointed prior to 31.3.1990, the NCST Shillong Office asked the Branch Manager, United India Insurance Company, Agartala to furnish information on action taken on facilities (e.g. promotion etc) already availed by the accused after 31.3.1990.

19. Mrs Manisha Deb Barma

On 27 January 2006, the State Level Scrutiny Committee declared as fake the ST certificate of Mrs Manisha Deb Barma, wife of Mr Jyotirmoy Deb Barma of Chowmuhani, Krishnanagar, Agartala, West Tripura. The Committee after proper examination of all records found that Mrs Manisha Deb Barma belongs to Laskar Community, which is not recognized as ST in Tripura and hence cancelled her ST certificate bearing No. 806/DM/GL/W/76 dated 27-8-1976 with immediate effect as per the Notification No. 38296-396/F.6-4(C-D)/TW/89 dated 31-3-90.

On 30 March 2006, National Commission for Scheduled Tribes, Shillong Office, directed the Director of School Education, Government of Tripura to initiate action against Mrs Manisha Deb Barma including termination from service, filing of FIR and imposition of penalty under appropriate section of Indian Penal Code etc if he secured appointment on ST quota after 31.3.1990 by virtue of his fake tribal certificate. If the accused had been appointed prior to 31.3.1990, the NCST Shillong Office asked the Director of School Education, Government of Tripura to furnish information on action taken on facilities (e.g. promotion etc) already availed by the accused after 31.3.1990.

20. Mrs Sabita Deb Barma

On 7 November 2005, the State Level Scrutiny Committee declared as fake the ST certificate of Mrs Sabita Deb Barma, daughter of Late Kalidas Deb Barma of TP Road, Krishnanagar, Agartala, West Tripura working under Education Department, Government of Tripura. The Committee after proper examination of all records found that Mrs Sabita Deb Barma belongs to Laskar Community, which is not

recognized as ST in Tripura and hence cancelled her ST certificate bearing No. 28/DM/GL/W/76 dated 29-3-1976 with immediate effect as per the Notification No. 38296-396/F.6-4(C-D)/TW/89 dated 31-3-90.

On 30 March 2006, National Commission for Scheduled Tribes, Shillong Office, directed the Director of School Education, Government of Tripura to initiate action against Mrs Sabita Deb Barma including termination from service, filing of FIR and imposition of penalty under appropriate section of Indian Penal Code etc if he secured appointment on ST quota after 31.3.1990 by virtue of his fake tribal certificate. If the accused had been appointed prior to 31.3.1990, the NCST Shillong Office asked the Director of School Education, Government of Tripura to furnish information on action taken on facilities (e.g. promotion etc) already availed by the accused after 31.3.1990.

21. Mr Bidyut Deb Barma

On 7 November 2005, the State Level Scrutiny Committee declared as fake the ST certificate of Mr Bidyut Deb Barma, son of Late Durgadas Deb Barma of TP Road, Krishnanagar, Agartala, West Tripura working State Bank of India, Agartala. The Committee after proper examination of all records found that Mr Bidyut Deb Barma belongs to Laskar Community, which is not recognized as ST in Tripura and hence cancelled her ST certificate bearing No. 782/DM/GL/W/74 dated 26-6-1976 with immediate effect as per the Notification No. 38296-396/F.6-4(C-D)/TW/89 dated 31-3-90.

On 30 March 2006, National Commission for Scheduled Tribes, Shillong Office, directed the Manager of State Bank of India, Bazar Branch, Agartala to initiate action against Mr Bidyut Deb Barma including termination from service, filing of FIR and imposition of penalty under appropriate section of Indian Penal Code etc if he secured appointment on ST quota after 31.3.1990 by virtue of his fake tribal certificate. If the accused had been appointed prior to 31.3.1990, the NCST Shillong Office asked the

Manager, SBI, Agartala to furnish information on action taken on facilities (e.g. promotion etc) already availed by the accused after 31.3.1990.

22. Mr Santanu Deb Barma

On 7 November 2005, the State Level Scrutiny Committee declared as fake the ST certificate of Mr Santanu Deb Barma, son of Late Monomohan Deb Barma of Sankar Chowinuhani, Krishnanagar, Agartala, West Tripura working under GA (P&T) Department, Government of Tripura. The Committee after proper examination of all records found that Mr Santanu Deb Barma belongs to Laskar Community, which is not recognized as ST in Tripura and hence cancelled her ST certificate bearing No. 726/DM/GL/W/74 dated 11-6-1974 with immediate effect as per the Notification No. 38296-396/F.6-4(C-D)/TW/89 dated 31-3-90.

On 30 March 2006, National Commission for Scheduled Tribes, Shillong Office, directed the Joint Secretary, GA (P&T) Department, Government of Tripura to initiate action against Mr Santanu Deb Barma including termination from service, filing of FIR and imposition of penalty under appropriate section of Indian Penal Code etc if he secured appointment on ST quota after 31.3.1990 by virtue of his fake tribal certificate. If the accused had been appointed prior to 31.3.1990, the NCST Shillong Office asked the Joint Secretary, GA (P&T) Department, Government of Tripura to furnish information on action taken on facilities (e.g. promotion etc) already availed by the accused after 31.3.1990.

23. Mr Kamal Choudhury

On 27 January 2006, the State Level Scrutiny Committee declared as fake the ST certificate of Mr Kamal Choudhury, son of Late Sukumar Choudhury of Ramnagar Road No. 7, PS Agartala, West Tripura working under State Electricity Corporation Ltd, Agartala. The Committee after proper examination of all records found that Mr Kamal Choudhury belongs to Laskar Community, which is not

recognized as ST in Tripura and hence cancelled her ST certificate bearing No. 251/DM/GL/71 dated 16-8-71 with immediate effect as per the Notification No. 38296-396/F.6-4(C-D)/TW/89 dated 31-3-90.

On 30 March 2006, National Commission for Scheduled Tribes, Shillong Office, directed the Chairman-cum-Managing Director, State Electricity Corporation Ltd, Agartala to initiate action against Mr Kamal Choudhury including termination from service, filing of FIR and imposition of penalty under appropriate section of Indian Penal Code etc if he secured appointment on ST quota after 31.3.1990 by virtue of his fake tribal certificate. If the accused had been appointed prior to 31.3.1990, the NCST Shillong Office asked the Chairman-cum-Managing Director, State Electricity Corporation Ltd, Agartala to furnish information on action taken on facilities (e.g. promotion etc) already availed by the accused after 31.3.1990.

The NCST, Shillong Office sent a reminder to the Chairman-cum-Managing Director, State Electrical Corporation Ltd, Agartala for necessary action against Mr Kamal Choudhury. But on 17 May 2007, Deputy General Manager (Corporate), Tripura State Electricity Corporation Ltd, Agartala that the Commission's letters "have not been (made) available in this office" and requested for copies of those letters again. On 28 May 2007, NCST, Shillong Office sent the two letters to the Deputy General Manager (Corporate), Tripura State Electricity Corporation Ltd, Agartala for immediate action.

24. Mrs Dipali Barua

On 7 July 2005, the State Level Scrutiny Committee declared as fake the ST certificate of Mrs Dipali Barua, wife of Anil Baran Singh of Chodhury Tilla, Indranagar, Agartala working under Khadi and Village Industry Commission. The Committee after proper examination of all records found that Mrs Dipali Barua belongs to Barua Community, which is not recognized as ST in Tripura as per Notification No. 12928-13000/F.300/TW/Con/94 dated 3/10/2002. So,

Dipali Barua's ST certificate bearing No. 962/SDO/KLS/CT/79 dated 15-2-1979 has been cancelled and directed her to return the same to the Director, Tribal Welfare, Government of Tripura immediately.

On 25 March 2006, National Commission for Scheduled Tribes, Shillong Office, directed the Director (Administration), Khadi and Village Industries Commission, Mumbai to initiate action against Mrs Dipali Barua including termination from service, filing of FIR and imposition of penalty under appropriate section of Indian Penal Code etc.

25. Mrs Mira Barua

On 27 January 2006, the State Level Scrutiny Committee declared as fake the ST certificate of Mrs Mira Barua, wife of Mr Ananta Barua of Chandigarh, PS Melaimath, West Tripura presently residing at Agartala working under SA Department, Government of Tripura. The Committee after proper examination of all records found that Mrs Mira Barua belongs to Barua Community, which is not recognized as ST in Tripura as per Notification No. 12928-13000/F.300/TW/Con/94 dated 3/10/2002. So, Mira Barua's ST Certificate has been cancelled and she was directed to return the original ST Certificate to the Director, Tribal Welfare, Government of Tripura immediately.

On 13 April 2006, National Commission for Scheduled Tribes, Shillong Office, directed the Joint Secretary to the Government of Tripura, SA Department, Agartala to initiate action against Mrs Mira Barua including termination from service, filing of FIR and imposition of penalty under appropriate section of Indian Penal Code etc.

26. Mrs Melina Barua

On 27 January 2006, the State Level Scrutiny Committee declared as fake the ST certificate of Mrs Melina Barua, daughter of Mr Pramotosh Barua of Chailengta, PS Longtharai Valley presently residing at Gandhigha in Agartala

working under Rural Development Department, Government of Tripura. The Committee after proper examination of all records found that Mrs Melina Barua belongs to Barua Community, which is not recognized as ST in Tripura as per Notification No. 12928-13000/F.300/TW/Con/94 dated 3/10/2002. So, Melina Barua's ST Certificate has been cancelled and she was directed to return the original ST Certificate to the Director, Tribal Welfare, Government of Tripura immediately.

On 13 April 2006, National Commission for Scheduled Tribes, Shillong Office, directed the Director (Projects), State Level Monitoring Cell, SGSY, Rural Development Department, Government of Tripura, Agartala to initiate action against Mrs Melina Barua including termination from service, filing of FIR and imposition of penalty under appropriate section of Indian Penal Code etc.

27. Mrs Alo Rakshit (Deb)

On 27 January 2006, the State Level Scrutiny Committee declared as fake the ST certificate of Mrs Alo Rakshit (Deb), wife of Late Jatindra Kr Deb of Sonamura, PS Sonamura under West Tripura working under Office of the CJM, Udaipur. The Committee after proper examination of all records found that Mrs Alo Rakshit (Deb) "does not belong to ST Community" and that "she acquired ST status by virtue of her marriage of an ST person is not sustainable as per law". Hence, the State Level Scrutiny Committee held that her ST Certificate bearing No. 455/DM/GL/W/77 dated 17/06/1977 "is no longer valid" and directed her to return her original ST certificate to the Director, Tribal Welfare, Government of Tripura immediately.

On 13 April 2006, National Commission for Scheduled Tribes, Shillong Office, directed the Officer-in-Charge, Office of the CJM, Udaipur to initiate action against Mrs Alo Rakshit including termination from service, filing of FIR and imposition of penalty under appropriate section of Indian Penal Code etc.

28. Mrs Dipika Deb Barma

On 27 January 2006, the State Level Scrutiny Committee declared as fake the ST certificate of Mrs Dipika Deb Barma, wife of Mr Pratul Deb Barma of 24 Thakur Palli Road, Krishnanagar, Agartala, West Tripura working under Education Department, Government of Tripura. The Committee after proper examination of all records found that Mrs Dipika Deb Barma “does not belong to ST Community” and that “her claim that she acquired ST status by virtue of her marriage of an ST person is not valid”. Hence, the State Level Scrutiny Committee held that her ST Certificate bearing No. 2581/DM/GL/W/77 dated 18/04/1977 “is not valid” and directed her to return her original ST certificate to the Director, Tribal Welfare, Government of Tripura immediately.

On 13 April 2006, National Commission for Scheduled Tribes, Shillong Office, directed the Director of School Education, Government of Tripura, Agartala to initiate action against Mrs Dipika Deb Barma including termination from service, filing of FIR and imposition of penalty under appropriate section of Indian Penal Code etc.

29. Mr Dhilon Singha

On 27 January 2006, the State Level Scrutiny Committee declared as fake the ST certificate of Mr Dhilon Singha, son of Mr Deepayan Singha of Abhoynagar, PS East Agartala, West Tripura working under Health Department, Government of Tripura. The Committee after proper examination of all records found that Mr Dhilon Singha belongs to Barua Community which is not recognized as a Scheduled Tribe in Tripura as per Notification No. 12928-13000/F.300/TW/Con/94 dated 3/10/2002. Hence, the State Level Scrutiny Committee cancelled the ST Certificate bearing No. 141/SDO/SDR/TW/XII-2 dated 17/02/1981 held by Mr Singha and directed him to return his original ST certificate to the Director, Tribal Welfare, Government of Tripura immediately.

On 13 April 2006, National Commission for Scheduled Tribes, Shillong Office, directed the Director of Health, Government of Tripura, Agartala to initiate action against Mr Dhilon Singha including termination from service, filing of FIR and imposition of penalty under appropriate section of Indian Penal Code etc.

30. Mrs Riti Deb Barma

On 27 January 2006, the State Level Scrutiny Committee declared as fake the ST certificate of Mrs Riti Deb Barma, daughter of Late Binode Behari Deb Barma of Advisor Chowmuhani, Krishnanagar, Agartala, West Tripura working under Printing and Stationery Department, Government of Tripura. The Committee after proper examination of all records found that Mrs Riti Deb Barma “does not belong to ST Community” and her claim that “she acquired ST status by virtue of adoption by an ST person” is not valid. Hence, the State Level Scrutiny Committee cancelled the ST Certificate bearing No. 387/DM/GL/W/75 dated 8/5/1975 held by Mrs Riti Deb Barma and directed her to return the original ST certificate to the Director, Tribal Welfare, Government of Tripura immediately.

On 13 April 2006, National Commission for Scheduled Tribes, Shillong Office, directed the Director of Printing and Stationery Department, Government of Tripura, Agartala to initiate action against Mrs Riti Deb Barma including termination from service, filing of FIR and imposition of penalty under appropriate section of Indian Penal Code etc.

31. Mrs Sarmistha Deb Barma

On 7 November 2005, the State Level Scrutiny Committee declared as fake the ST certificate of Mrs Sarmistha Deb Barma, daughter of Tulshidas Deb Barma of TP Road, Krishnanagar, Agartala, West Tripura who was a student of Fishery Science in the West Bengal University of Animal and Fishery Science, Kolkata. The Committee after proper examination of all records found that Mrs Sarmistha Deb Barma belongs to Laskar Community, which is not recognized as ST in Tripura as per the

Notification No. 38296-396/F.6-4(C-D)/TW/89 dated 31-3-90. Hence, the State Level Scrutiny Committee cancelled the ST Certificate bearing No. 367/SDO/KLS/TW/1987 dated 9/10/1987 held by Mrs Sarmistha Deb Barma and directed her to return the original ST certificate to the Director, Tribal Welfare, Government of Tripura immediately.

On 3 April 2006, National Commission for Scheduled Tribes, Shillong Office, directed the Principal of West Bengal Veterinary and Fishery Science Institute, West Bengal, to initiate action against Mrs Sarmistha Deb Barma as per rule with immediate effect and inform the Commission.

32. Mrs Madhumita Deb Barma

On 7 November 2005, the State Level Scrutiny Committee declared as fake the ST certificate of Mrs Madhumita Deb Barma, daughter of Kajal Deb Barma of Dhaleswar, Road No. 1, PS East Agartala, West Tripura working under the Health Department, Government of Tripura. The Committee after proper examination of all records found that Mrs Madhumita Deb Barma belongs to Laskar Community, which is not recognized as ST in Tripura as per the Notification No. 38296-396/F.6-4(C-D)/TW/89 dated 31-3-90. Hence, the State Level Scrutiny Committee cancelled the ST Certificate bearing No. F.XII-2/SDO/SDR/2003-04/234 dated 14/10/2003 held by Mrs Madhumita Deb Barma and directed her to return the original ST certificate to the Director, Tribal Welfare, Government of Tripura immediately.

On 3 April 2006, National Commission for Scheduled Tribes, Shillong Office, directed the Director of Health Services, Government of Tripura to initiate action against Mrs Madhumita Deb Barma as per rule with immediate effect and inform the Commission.

33. Mr Bhupati Bhusan Deb Barma

On 27 January 2006, the State Level Scrutiny Committee declared as fake the ST certificate of Mr Bhupati Bhusan Deb Barma, son of Mr

Jitendra Ch Deb Barma of 222 Milannagar, Salt Lake, Kolkata, West Bengal. Mr Bhupati Bhusan Deb Barma retired as Executive Engineer, PWD under Government of Tripura) The Committee after proper examination of all records found that Mr Bhupati Bhusan Deb Barma belongs to Laskar Community, which is not recognized as ST in Tripura as per the Notification No. 38296-396/F.6-4(C-D)/TW/89 dated 31-3-90. Hence, the State Level Scrutiny Committee cancelled the ST Certificate bearing No. 935/DM/GL/W/77 dated 29/10/1977 held by Mr Bhupati Bhusan Deb Barma and directed him to return the original ST certificate to the Director, Tribal Welfare, Government of Tripura immediately.

On 3 April 2006, National Commission for Scheduled Tribes, Shillong Office, directed the Chief Engineer, Public Works Department, Government of Tripura to send information on action taken against Mr Bhupati Bhusan Deb Barma.

34. Mr Amiya Nimai Choudhury

On 16 February 2006, the State Level Scrutiny Committee declared as fake the ST certificate of Mr Amiya Nimai Choudhury, son of Late Narayan Ch. Choudhury of Chandrapur, PS RK Pur, South Tripura working under Vijaya Bank, Agartala, Tripura. The Committee after proper examination of all records found that Mr Amiya Nimai Choudhury belongs to Laskar Community, which is not recognized as ST in Tripura as per the Notification No. 38296-396/F.6-4(C-D)/TW/89 dated 31-3-90. Hence, the State Level Scrutiny Committee held that Mr Amiya Nimai Choudhury cannot enjoy any benefit given to the STs.

However, earlier in his reply dated 12 January 2005 Mr Amiya Nimai Choudhury had stated that he had already surrendered his original ST certificate issued by the District Magistrate and Collector, South Tripura and his caste status had also been changed as General Category in the Vijaya Bank, Agartala as per the order of the Deputy General Manager, Vijaya Bank, Agartala vide his reference no. PER; HRD; RCT; EC; 13003;C;10210;97 dated 21.10.1997.

The State Level Scrutiny Committee directed the DM and Collector, South Tripura to confirm whether the ST certificate issued to Mr Amiya Nimai Choudhury had been canceled.

On 24 July 2006, National Commission for Scheduled Tribes, Shillong Office, directed the District Magistrate and Collector, South Tripura, Udaipur to send information regarding the matter.

Surprisingly, no action was recommended against Mr Amiya Nimai Choudhury who first fraudulently managed to get his job in the Vijaya Bank as a ST candidate, and then cunningly got his caste status changed into General category. It is surprising that even the Bank did not take action against Mr Choudhury but allowed to change his caste status.

35. Mr Samarendra Ch. Deb Barma

On 20 September 2005, the State Level Scrutiny Committee declared as fake the ST certificate of Mr Samarendra Ch. Deb Barma, son of Late Harendra Deb Barma of Badharghat, Agartala, West Tripura working as Head Clerk under Tripura Board of Secondary Education. The Committee after proper examination of all records found that Mr Samerendra Deb Barma belongs to Laskar Community, which is not recognized as ST in Tripura as per the Notification No. 38296-396/F.6-4(C-D)/TW/89 dated 31-3-90. Hence, the State Level Scrutiny Committee cancelled the ST certificate bearing No. 465/DM/GL/XVI-11/70 dated 19/3/70 and directed Mr Samarendra Ch. Deb Barma to return his original ST certificate to the Director of Tribal Welfare, Government of Tripura immediately.

On 20 March 2006, National Commission for Scheduled Tribes, Shillong Office, directed the Secretary, Tripura Board of Secondary Education, Agartala to initiate action against Mr Samarendra Deb Barma including termination from service, filing of FIR and imposition of penalty under appropriate section of Indian Penal Code etc.

VI. Denial of funds to the tribal welfare institutions

1. Non receipt of funds for vocational training centres in tribal rural areas in Assam

On 30 June 2006, All Assam VTI Employee Association filed a complaint with the NCST, Shillong Office against failure of the Ministry of Tribal Affairs to release funds to the vocational training centres (VTCs) established under the Central Government scheme of Vocational Training in Tribal Areas. According to the complainant, ten VTCs have been established in the tribal rural areas in different districts of Assam since 1997 and another 16 VTCs have been set up in the last two years. The VTCs are run by the Ministry of Tribal Affairs and intended to solve unemployment problem of tribal youths.

In each Vocational Training Centre, five different trades are taught to the tribal peoples: embroidery, cutting and tailoring, carpenter, plumber and stenography. For each trade, there was one instructor and a helper. The instructor drew a remuneration of Rs 2500/- while the helper was paid Rs 900/-. Over 300 tribal peoples have been provided employment while each training centre trained 50 tribal youth per year. Each of the trainees also received a stipend of Rs 350.

In 2003-2004, the Ministry of Tribal Affairs released Rs 62,53,800 grant-in-aid to the State government of Assam to be disbursed to the ten ongoing vocational training centres. But the Ministry of Tribal Affairs has failed to release funds for these vocational training centres since 2004-2005.

On 13 July 2006, the NCST, Shillong Office, directed the Chairman-cum-Managing Director, Assam Tribal Development Authority, government of Assam to submit the action taken report on the issue.

Annexure - I: The Gazette of India

Extraordinary

PART II-Section 1

PUBLISHED BY AUTHORITY

No.55 NEW DELHI, TUESDAY, SEPTEMBER 30,2003/ASVINA 8, 1925
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 30th September, 2003/Asvina 8, 1925 (Saka)

The following Act of Parliament received the assent of the President on the 28th

September, 2003, and is hereby published for general information:-

THE CONSTITUTION (EIGHTY-NINTH AMENDMENT) ACT, 2003

[28th September, 2003]

An Act further to amend the Constitution of India.

Be it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:-

1.(1) This Act may be called the Constitution (Eighty-ninth Amendment) Act, 2003.

(2) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

Short title and commencement

2. In article 338 of the Constitution-- Amendment of article 338

(a) for the marginal heading, the following marginal heading shall be substituted namely:-

“National Commission for Scheduled Castes”,

(b) for clause (1) and (2), the following clauses shall be substituted, namely:-

(1) There shall be a Commission for the Scheduled castes to be known as the National Commission for Scheduled Castes.

(2) Subject to the provisions of any law made in this behalf by Parliament the Commission shall consist of a Chairperson, Vice-Chairperson and three other Members and the conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other Members so appointed shall be such as the President may by rule determine.:

(c) in-clauses (5) and (10), the words “and Scheduled Tribes” where they occur shall be omitted.

Insertion of New Article 338A.

(3). After Article 338 of the Constitution, the following article shall be inserted namely:-

National Commission for Scheduled Tribes

“338 A (1) There shall be a Commission for the Scheduled tribes to be known as the National Commission for the Scheduled Tribes.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Commission shall

consist of a Chairperson, Vice-Chairperson and three other Members and the conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other members so appointed shall be such as the President may by rule determine.

(3) The Chairperson, Vice-Chairperson and other Members of the Commission shall be appointed by the President by warrant under his hand and seal.

(4) The Commission shall have the power to regulate its own procedure

(5) It shall be the duty of the Commission----

(a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Tribes under this Constitution or under any order of the Government and to evaluate the working of such safeguards;

(b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled tribes;

(c) to participate and advise on the planning process of socio-economic development of the Scheduled Tribes and to evaluate the progress of their development under the Union and any State;

(d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

(e) to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled tribes; and

(f) to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled tribes as the President may, subject to the provisions of any law made by Parliament by rule specify.

(6) The President shall cause all such reports

to be laid before each House of Parliament alongwith a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.

(7) Where any such report, or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the Governor of the State who shall cause it to be laid before the legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations.

(8) The Commission shall, while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause (5) have all the powers of a civil court trying a suit and in particular in respect of the following matters namely:-

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses and documents;

(f) any other matter which the President may, by rule, determine.

(9) The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Tribes.”

SUBHASH C. JAIN

Secy to the Govt. of India

Annexure - II: National Commission for Scheduled Tribes

EXTRAORDINARY GAZETTE

(Formation notified vide file No.17014/12/99-TDR, dated 19th February, 2004, Ministry of Tribal Affairs, Government of India).

(Under Article 338A(4) of the Constitution)

NOTIFICATION

New Delhi dated 17th September, 2004

RULES OF PROCEDURE OF
THE NATIONAL COMMISSION FOR
SCHEDULED TRIBES

F.No.1/1/NCST/2004-C.Cell

CHAPTER I

GENERAL

Constitution of the Commission

1. The National Commission for Scheduled Tribes (hereinafter called the Commission) has been constituted under new Article 338A of the Constitution of India as amended by the Constitution (Eighty-Ninth Amendment) Act, 2003. The Commission shall consist of a Chairperson, a Vice-Chairperson and three other Members.

Headquarters of the Commission

2. The Headquarters of the Commission shall be located at New Delhi.

3. The functions and responsibilities of the Commission as laid down in the

Constitution are:

- (a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Tribes under the Constitution or under any other law for the time

being in force or under any order of the Government and to evaluate the working of such safeguards;

- (b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Tribes;
- (c) to participate and advise on the planning process of socio-economic development of the Scheduled Tribes and to evaluate the progress of their development under the Union and any State;
- (d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;
- (e) to make in such report recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socioeconomic development of the Scheduled Tribes; and
- (f) to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Tribes as the President may, subject to the provisions of any law made by Parliament, by rule specify.

4. The Commission shall function by holding 'sittings' and 'meetings' at any place within the country and also through its officers at the Headquarters and in the State Offices. The Members of the Commission including the Chairperson and the Vice-Chairperson shall function in accordance with the procedure prescribed under these rules.

CHAPTER II

DIVISION OF RESPONSIBILITIES AND ALLOCATION OF WORK

Chairperson

5. The Chairperson shall be the head of the Commission and shall have the residuary powers to decide on all questions and matters arising in the Commission excepting such matters where specific provision has been made in these rules.

6. The Chairperson shall allocate subjects and responsibilities among the Members of the Commission. The Order allocating the subjects and responsibilities shall be circulated to all concerned by the Secretariat of the Commission.

7. The Chairperson shall be the authority to sanction leave and approve tours of the Members.

8. The Chairperson shall preside over the meetings of the Commission.

9. All important decisions in the Commission pertaining to the subjects allotted to the Members shall be taken with the approval of the Chairperson.

10. The Chairperson may call for any records on any matter which he/she considers important and may take a decision on it himself/herself or, if necessary, place it at the meeting of the Commission.

Vice-Chairperson

11. The Vice-Chairperson shall preside over the meetings of the Commission in the absence of the Chairperson.

12. The Vice-Chairperson shall perform such functions as are entrusted to him/her by the Chairperson.

Members

13. The Members of the Commission shall have collective responsibility and shall function by

participating in the 'meetings' and 'sittings' of the Commission and looking after the subjects allocated to them. Important actions and decisions of a Member may be brought at a meeting of the Commission which may review the same.

14. Any Member may suggest items for inclusion in the agenda of a meeting of the Commission and the same shall be so included after obtaining the consent of the Chairperson.

15. Each Member shall have overall responsibility of subjects and/or regions or State(s) as may be allocated to him.

16. The Members shall play the role of advising the State Governments under their jurisdiction on matters of planning and development relating to the welfare of Scheduled Tribes. The Commission's Secretariat at Headquarters and the State Offices shall assist the Members in keeping them fully informed of the problems and activities of the States and subjects under their respective charge.

17. One or more Members may, in accordance with the procedure specified in the rules elsewhere, hold sittings of the Commission to give hearing to the cases or to collect evidence or information on any matter, issue or case under investigation or inquiry of the Commission.

18. The Members shall communicate their tour Programme well in advance to the State Offices indicating in detail the purpose of the visit and to the State Govt. Department and other concerned for discussions/inquiry, etc., during the tour/visit. The Members will observe the norms laid down by the State Govts. regarding security/travel/ accommodation etc., during such tours.

Secretary

19. The Secretary shall be the administrative head of the Commission and shall assist the Commission in the discharge of its functions with the assistance of the officers of the Commission.

20. All important administrative matters shall

be placed before the Secretary who may pass general or specific orders on such matters.

21. The Secretary shall be responsible for having the agenda prepared for the meetings of the Commission and for circulating the minutes.

22. The Secretary shall assist the Commission in finalizing the Reports.

23. The Secretary may, in his discretion, delegate any of his functions or authority to a subordinate officer of the Secretariat.

CHAPTER III

INVESTIGATION AND INQUIRY BY THE COMMISSION

Methods of investigation and inquiry

24. The Commission may adopt any one or more of the following methods for investigating or inquiring into the matters falling within its authority:

- (a) By the Commission directly;
 - (b) By an Investigating Team constituted at the Headquarters of the Commission; and
 - (c) through its Regional Offices Investigation and Inquiry by the Commission directly
25. The Commission may hold sittings for investigation into matters relating to safeguards, protection, welfare and development of the Scheduled Tribes for inquiry into specific complaints for which the Commission decided to take up investigation or inquiry directly. Such sittings may be held either at the Headquarters of the Commission or at any other place within the country.

26. The sitting(s) of the Commission would be held after giving due notice to the parties intended to be heard and also due publicity notice to the general public. Care will be taken to see that the members of the Scheduled Tribes who are affected in the matter under investigation

or inquiry are given due information through notice or publicity.

27. When a decision for direct investigation is taken, an officer not below the rank of Research Officer/Section Officer along with necessary staff may be attached to the Member(s) entrusted with such investigation or enquiry and they shall take all steps to arrange such sittings.

28.(i) In accordance with clause 8 of Article 338A of the Constitution, while investigating in a matter referred to in sub-clause (a) or in inquiring into any complaint referred to in sub-clause (b) of clause (5) of Article 338A, the Commission shall have all the powers of civil court trying a suit and in particular in respect of the following matters, namely:-

- (a) Summoning and enforcing the attendance of any person from any part of India and examining him on oath;
- (b) Requiring the discovery and production of any document;
- (c) Receiving evidence on affidavits;
- (d) Requisitioning any public record or copy thereof from any court or office;
- (e) Issuing commissions for the examination of witnesses and documents;
- (f) Any other matter which the President may, by rule, determine.

(ii) The Commission for the purpose of taking evidence in the investigation or inquiry may require the presence of any person and when considered necessary may issue summons to him/her. The summons for enforcing attendance of any person from any part of India and examining him/her during the course of investigation and inquiry by the Commission shall provide at least 15 days' notice to the person directed to be present before the Commission from the date of receipt of the summons.

29. Where the property, service/employment of Scheduled Tribes and other related matters are under immediate threat and prompt attention

of the Commission is required, the matter shall be taken cognizance by issue of telex/fax to the concerned authority for making it known to them that the Commission is seized of the issue. Urgent reply by telegram or fax shall be called from the concerned authority. In case no reply is received within ten working days, the authority concerned may be required to appear before the Commission at a shorter notice for enquiry.

30. The Commission may issue commission/under clause 8 (e) of Article 338A of the Constitution to take evidence in any matter under investigation or inquiry and for this purpose appoint any person by an order in writing. The Commission may make further rules for payment of fee and traveling and other allowances to persons appointed to take evidence on commission.

31. After holding the required sittings, the Member(s) who conducted the investigation shall make a report which shall be sent to the Secretary or any other officer authorized to receive the report. After examination, action may be initiated on the report with the approval of the Chairperson.

Investigation or inquiry by an Investigation Team constituted at the Headquarters of the Commission

32. The Commission may decide about the matter that is to be investigated or enquired into by an Investigating Team of officials of the Commission, provided that in case the matter is urgent, the decision for such investigation or inquiry may be taken by the Chairperson.

33. The Investigating Team shall hold the investigation or inquiry, as the case may be, promptly and for this purpose, may initiate necessary correspondence including issuance of notices for production of documents in Form I, appended to these rules.

34. The Investigating Team may visit the area concerned after observing due formalities for obtaining approval of tours and other administrative requirements and after giving

information to the concerned local authorities regarding the matter, purpose, scope and procedure of the investigation or inquiry. The Investigating Team may enlist the help of the officers and staff of the concerned State Office but the responsibility of preparing and presenting the report shall rest with the head of the Investigating Team.

35. The Investigating Team shall submit the report of the investigation or inquiry, as the case may be, to the Secretary or a subordinate officer of the Commission as may be directed by general or specific orders within the stipulated time, if any. If the time limit stipulated is likely to be exceeded, the head of the Investigating Team shall obtain the orders of the Secretary through the Officer-in-charge of the matter. The report shall be examined and put up to the competent authority for a decision regarding the action to be taken on the report.

36. The report shall be placed before the Chairperson of the Commission who will take appropriate action in the matter.

Investigation and inquiry through the State Offices

37. The Chairperson, the Vice-chairperson, the Members having jurisdiction over the subject or the Secretary of the Commission may decide about an investigation or inquiry that may be carried out through the State Offices of the Commission. The decision will be conveyed to the Officer-in-Charge of the concerned State Office who will be asked to get the matter investigated or inquired into within a stipulated time and send the report. The State Office shall conduct the investigation or inquiry through interrogation, on the spot visit, discussions and correspondence and examination of documents as may be necessary in the case and shall follow any special or general instructions issued in the matter by the Secretariat of the Commission from time to time.

38. If the investigation or inquiry cannot be completed within the stipulated time, the officer-in-charge of the State Office may send

a communication to the Secretariat of the Commission before the expiry of the stipulated time and explain the circumstances and reasons for non-completion of the investigation or inquiry, as plated time. The Secretary to the Commission or an officer acting under delegated functions may consider the request and communicate a revised date for the completion of the investigation or inquiry.

39. If during the course of investigation or inquiry, the Head of the State Office feels that it is necessary to invoke the powers of the Commission to require the production of any document or compelling the attendance of a person, he may make a special report with full facts to the Secretariat of the Commission. On receipt of such special report, the matter shall be placed before the Secretary/Member incharge of the subject/State/UT who may make an order that necessary legal process to compel attendance or to require reduction of any document may be issued. The summons and warrants issued for the purpose may be served on the person concerned either directly or through the officer-incharge of the State Office as may be directed by the Secretary/Member authorizing issue of such legal process.

40. After completion of the investigation or inquiry, as the case may be, the head of the State Office shall submit the report to the Secretary of the Commission suggesting the course of action that could be followed in the matter. The gist or findings of the report may be placed before the Secretary who may decide about further action in the matter.

Confidentiality of certain reports

41. The Commission may, through a decision at a meeting or otherwise, direct that the contents of any report made on any matter shall be kept confidential and shall not be revealed to any person other than those who have been authorized access to such report.

Legal processes

42. All summons and warrants that are required

to be issued in pursuance of the exercise of the powers of a civil court by the Commission shall be written in the prescribed form and shall bear the seal of the Commission. The legal process shall be issued from the Legal Cell of the Commission and shall bear its seal. The provisions of the Code of Civil Procedure applicable for the service of the legal processes shall be followed by the Commission.

Issue of letters and notices

43. Letters and notices requiring production of documents which are issued without exercising the powers of the civil court by the Commission may be signed by an officer not below the rank of Research Officer/Section Officer.

Form of summons and warrants

44. The summons and warrants shall be as provided in Form II and III respectively, appended to these rules.

CHAPTERS IV

MEETINGS OF THE COMMISSION

Frequency of meetings

45. The Commission shall meet at least once in two months. The notice for a meeting shall normally be issued two weeks in advance. Emergent meetings may also be called by the Chairperson either on his own or on the request of a Member or the Secretary for disposing of important matters requiring urgent consideration by the Commission.

Quorum

46. Presence of at least three members including the Chairperson and/or Vice-Chairperson shall constitute the quorum for holding meeting of the Commission.

Matters requiring decisions by the Commission at its meetings

47. The following matters shall be brought up before the Commission at a meeting for consideration and decision:

- (i) Any amendment to these Rules of Procedure;
- (ii) Matters to be investigated by the Commission directly;
- (iii) All the reports that are required to be considered by the Commission as provided in these rules;
- (iv) Any matters that a Member may like to bring to the meeting, with the approval of the Chairperson;
- (v) Important matters relating to planning and development for the welfare and advancement of the Scheduled Tribes and specially references received under Article 338A (9) of the Constitution; and
- (vi) Any matter that the Chairperson may direct to be placed at a meeting of the Commission.

Agenda for the meeting

48. 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.

49. The minutes of a meeting shall be circulated as soon as possible to all the Members.

Place of meeting of the Commission

50. Normally the place of meeting of the Commission shall be the Headquarters of the Commission at New Delhi. The Commission may, however, decide to hold a meeting at any other place in India.

Fee

51 The Chairperson, the Vice-Chairperson and the Members shall not be entitled to any fee for sitting in the meeting of the Commission. However, the entitlement of part-time Members, if any, may be determined by the terms of appointment of such Members.

CHAPTER V

SITTINGS OF THE COMMISSION

Need for sittings

52. Whenever a matter is to be investigated into directly by the Commission it may do so by holding sittings of the Commission. In the case of such sittings, the presence of all the Member may not be necessary.

Officers to be present

53. Whenever a Member(s) is holding a sitting, an officer of the Commission, not below the rank of Research Officer/Section Officer, duly deputed for the purpose, shall be present to assist the Member(s) holding the sitting to discharge the functions properly and promptly. It shall be the duty of the officer to assist the Member(s) in preparing the report if called upon to do so by the Member(s). The officer shall also be responsible for assisting the Member(s) in following the prescribed procedure.

Frequency of sitting(s)

54. Sittings of the Commission may be held as and when necessary. The Commission may hold more than one sitting simultaneously in different parts of the country with different Members functioning separately.

Programme of the sittings

55. The Programme of the sittings, both at the Headquarters and at other places, would normally be worked out each month in advance and duly circulated.

Defraying expenses to witnesses

56. The Commission may defray traveling expenses to persons who have been called through summons to appear before the Commission in a sitting, provided that the place of residence of one person is more than 8 kms. from the place of the sitting of the Commission. The amount so defrayed shall be limited to the actual traveling expenses plus Daily Allowance for the number of days that the person has appeared before

the Commission in its sitting, provided that the person is not entitled to traveling and daily allowance from any other source.

Persons who are employees of the Government/ Public Sector Undertaking shall be deemed to be on duty if they are summoned to depose before the Commission or produce documents. The limit of traveling expenses shall be determined on the basis of the rail fare and road mileage calculated on the basis of the rates that may be prescribed by the Commission. In the case of any doubt regarding the entitlement of the person, the decision of the Secretary of the Commission shall be final.

57. The officer attached to the Member for the purposes of the sitting shall take steps to ensure that sufficient cash amount is carried if the sitting is held at a place other than the Headquarters of the Commission. The Secretariat of the Commission may devise a suitable procedure to ensure that such claims as above are paid on the spot and in cash to the person(s) so appearing.

58. The claim for traveling expenses as above shall not be admissible in the case of a person who appears before the Commission during any investigation or enquiry on his own accord or in response to a communication or notice which is not a summon issued by the Commission.

CHAPTER VI

DUTIES OF THE STATE OFFICES OF THE COMMISSION

59. It shall be the duty of the State Offices of the Commission:

- (i) To act as the “eyes and ears” of the Commission in the State(s) under their jurisdiction.
- (ii) To maintain effective interaction and liaison with State Government/ UT Administration on behalf of the Commission.
- (iii) To serve on State Level Advisory Councils/Committees/Corporations, etc. on behalf of the Commission.

(iv) To provide information and documentation about the policies and programmes of the Union Government for the welfare and advancement of Scheduled Tribes to the States, NGOs, Media in their respective jurisdiction, and obtain similar information and documentation from such organizations and provide to the Headquarters of the Commission information/documentation about important developments, social movements, policy changes etc. in the State(s) affecting the interest of Scheduled Tribes.

(v) To monitor and assist the working of voluntary and other non-governmental organizations receiving grant-in-aid from the Ministry of Tribal Affairs as also other Ministries/Departments of the Central Government and the concerned State governments, foreign Aid Agencies etc., for Research Studies and any other development work relating to Scheduled Tribes.

(vi) To conduct Research Studies, Seminars, Conferences, Surveys etc. either on their own or as entrusted to them by Headquarters from time to time.

(vii) to conduct on-the-spot inquiries into cases of atrocities on Scheduled Tribes either on their own or as entrusted to them by Headquarters and interact with the concerned Administrative/Police authorities having jurisdiction and report to the Headquarters.

(viii) To deal with complaints/representations from individuals, Scheduled Tribes Welfare Associations, etc., on various matters.

(ix) To participate and advise in the planning process for socio-economic development of Scheduled Tribes as envisaged under clause 5 of Article 338A of the Constitution of India.

- (x) To collect, compile, analyze and monitor issues pertaining to development of Scheduled Tribes in the states especially with reference to Tribal Sub Plan (TSP) and Special Central Assistance (SCA) and prepare drafts of Reports pertaining to the State(s)/UT(s) under their jurisdiction.
- (xi) To prepare and maintain a comprehensive and up-to-date database of Scheduled Tribes population, education, development etc. in the State(s)/UT(s); and
- (xii) To perform any other duty specifically assigned/entrusted to the State Office(s) by the Commission or the Secretary or any other officer empowered in this regard.

CHAPTER VII

ADVISORY ROLE OF THE COMMISSION

Interaction of the Commission with the State Governments.

60. The Commission shall interact with the State Governments through its Members, Secretariat and the State Offices.

61. The Members in-charge of the State/UT would interact with the State Government/UT Administration through meetings, personal contacts, visits and correspondence. The information in this regard may be sent to the concerned should also be informed about the same. For this purpose, detailed guidelines may be formulated by the Commission. The Secretariat of the Commission through its concerned Wing(s) would provide necessary assistance and information to the Member for enabling him to discharge his functions effectively.

The State Governments should provide facilities for transport, security, accommodation etc. to the Member as per his entitlement.

Interaction with the Planning Commission

62. The Commission shall interact with the Planning Commission at appropriate levels through representation in the various Committees, Working Groups or other such bodies set up by the Planning Commission. The Commission shall indicate this requirement through general or specific communication to the Planning Commission.

63. The Commission may request the Planning Commission to forward copies of all the documents concerning the process of planning and development and evaluation of all programmes and schemes touching upon the Scheduled Tribes.

64. The Commission may decide about the manner of interaction between the Chairperson/ Members of the Commission and the Deputy Chairman/Members of the Planning commission. Interaction of the State Offices with the State Governments

65. The State Offices of the Commission shall work in a manner so as to provide a regular and effective link between the State Governments concerned and the Commission. For this purpose, the Commission may send communications to the State Governments suggesting that the officers-in-charge of the State Offices of the Commission may be taken on important Planning, Evaluation and Advisory bodies including Corporations concerned with the welfare, protection and development of the Scheduled Tribes.

66. The officers-in-charge of the State Offices may be directed or authorized by the Commission to convey to any State authority the formal views, opinion or approach of the Commission on any specific or general matter or issue arising at any meeting or deliberation.

Research/Studies/Surveys/Evaluation

67. The Commission may undertake studies to evaluate the impact of the development schemes on the socio-economic development of the Scheduled Tribes taken up by the Union

or State Governments. For this purpose, the Commission may constitute Study Teams either at the Headquarters or at the State Offices. The Study Teams may undertake investigations, surveys or studies either in collaboration with Central or State Govt. authorities or Universities or Research Bodies, as the case may be, or may do so independently.

68. The Commission may entrust surveys or evaluation studies to any professional body or person considered suitable and competent to undertake such work and, for this purpose, may make any reasonable payment to such body or person towards the cost of the study by way of fee or grant.

69. The studies so undertaken or their gist's may form part of the Annual or Special Report of the Commission to be presented to the President or may be published separately by the Commission.

70. The Commission may forward a copy of such a study report to the Union or the State Government concerned, as the case may be, asking for their comments, if any. The comments or action taken reports by the Union/State Government may also form part of the Annual Report of the Commission.

CHAPTER VIII

MONITORING FUNCTIONS OF THE COMMISSION

The Commission to determine subjects for monitoring

71. The Commission may determine from time to time the subjects or matters and areas that it would monitor relating to safeguards and other socio-economic development measures provided for the Scheduled Tribes under the Constitution or under any other law for the time being in force or under any order of the Govt.

Prescribing returns and reports

72. The Commission may prescribe periodical returns or reports to be furnished by any

authority responsible for or having control of the subject matter of which monitoring is being done by the Commission.

73. The Commission may from time to time issue instructions to its State Offices to collect information and data on any particular subject or matter from the State Governments, Local bodies, Corporate Bodies or any other authorities which is charged with the implementation of the safeguards provided for the Scheduled Tribes.

74. The Commission may direct its State Offices to process the information of data in the State Offices with a view to arriving at conclusions with regard to the deficiencies/ shortcomings discovered through such processing or analysis of the data and to bring these to the notice of the concerned authority for comments and rectification, where necessary.

75. The Commission may have data relating to the subjects monitored, collected at the headquarters and may prescribe returns and reports for the purpose to be sent the Central government or a State Government or Public Sector Undertaking or any other body or authority which is charged with the responsibility of implementing safeguards relating to the Scheduled Tribes.

Follow-up action

76. In order to ensure that monitoring is done effectively, the Commission, after getting the information as prescribed in the above rules and after reaching conclusions, may as early as possible send out communications to the concerned authority describing the shortcomings that have been noticed in the implementation of the safeguards and suggesting corrective steps. Decisions on sending out such a communication may be taken at a level not lower than that of Joint Secretary/Secretary at Headquarters. Directors-in-Charge of State Offices may take decisions on routine matter whereas they will seek approval of the Secretary and the concerned Member on complex and important matters affecting the interest of Scheduled Tribes as a group.

77. The Commission may ask for the comments of the concerned authority on the action taken

in pursuance of the communications sent under the Rule 76.

78. The Commission may include in its Annual Report or any Special Report, findings and conclusions arrived at through the process of monitoring of the subjects relating to the safeguards and socio-economic development measures provided for the Scheduled Tribes under the Constitution or under any other law for the time being in force or under any order of the Union/State Government.

CHAPTER IX

Non-formal actions by the Commission

79. The Commission may initiate correspondence in special cases in matters which are not strictly covered under the law if the matter is such that the welfare of an individual person belonging to Scheduled Tribes or that of a group of such persons is involved and it is necessary for the Commission in its inherent capacity as the protector of the interests of these classes of persons, to take action. The decision for correspondence on such matter shall be taken at the level of Director or above.

80. All routine formal communications from the Commission shall be issued under the signatures of an Officer not below the rank of Research Officer/Section Officer.

81. The Commission can sue or be sued through its Secretary.

82. The Scheduled Tribes in these rules will have the same connotation as is given in clause 10 of Article 338A of the Constitution. Applicability of rules, etc., of the Central Government

83. All rules, regulations and orders issued by the Central Government and applicable in the Ministries/Departments will also apply in the Commission.

84. The provisions relating to the delegation of financial powers in the Government of India shall apply to the corresponding officers in the Commission.

Use of Staff cars

85. The Staff Car Rules of the Government of India shall apply for the purposes of utilization of staff cars in the Commission. Decision on matters not specified in these rules

86. If a question arises regarding any such matter for which no provision exists in these rules, the decision of the Chairperson shall be sought. The Chairperson may, if he deems fit, direct that the matter may be considered at a meeting of the Commission.

SECRETARY

NATIONAL COMMISSION FOR
SCHEDULED TRIBES

The Asian Indigenous and Tribal Peoples Network (AITPN) is an alliance of indigenous and tribal peoples' organisations and individual activists across the Asian region. It seeks to promote and protect the rights of indigenous and tribal peoples in Asia:

- by providing accurate and timely information to national human rights institutions, the United Nations and its specialised mechanisms, as appropriate;
- by conducting research, campaigning and lobbying on country situations or individual cases;
- by increasing the capacity of indigenous peoples through relevant training programmes for indigenous peoples' rights activists and community leaders;
- by providing legal, political and practical advice to indigenous peoples organisations;
- by providing input into international standard-setting processes on the rights of indigenous peoples; and
- by securing the economic, social and cultural rights of indigenous peoples through rights-based approaches to development.

AITPN has Special Consultative Status with the United Nations Economic and Social Council (ECOSOC).

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