

REPORT ON THE NATIONAL COMMISSION FOR SCHEDULED TRIBES

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Contents

I. Formal Organisation

1. Objectives of the Commission
2. A Brief History
3. Functions and Powers
4. Organisational Structure

II. Actual Functioning

1. Issues taken up by the Commission
2. People's Perception of its functioning
3. Overall Impact of the Commission

III. Recommendations

1. Powers of the Commission
2. Composition of Members
3. Relation to Ministry of Tribal Affairs
4. Staffing, funding, investigating machinery and regional offices

REPORT ON THE NATIONAL COMMISSION FOR SCHEDULED TRIBES

The objectives of the National Commission for Scheduled Tribes are to act as an independent agency that will investigate, monitor and record any violation of the Constitutional rights of the Scheduled Tribes, suggest measures for their development and in general act on their behalf. This report focuses on the extent to which the Commission performs its role and how effectively it does so. It does not touch upon the wider issues pertaining to the Scheduled Tribes, except insofar as they are addressed or not addressed by the Commission. The study involved interviews with the Chairman and staff at all levels, a study of the various reports prepared by the Commission, a detailed perusal of several petitions filed in the Commission under different heads, as well as interviews with petitioners to assess their impression of the Commission.

A brief history of the National Commission for Scheduled Tribes

The National Commission for Scheduled Tribes was set up in February 2004, replacing the National Commission for Scheduled Castes and Scheduled Tribes.¹ This Commission, in turn, replaced a series of offices/Commissions, which had their origin in the Special Officer for the Scheduled Castes, and Scheduled Tribes as laid down in Article 338 of the Constitution. As such, the scope of this study is both too short and too long – since the current National Commission for Scheduled Tribes has been

¹ The information in this section is taken from the First Report of the National Commission for Scheduled Tribes, 2004-5 and 2005-6, Delhi, pp. 1-7. (henceforth First Report)

functioning only for two years, and the functions or powers as such have existed in one form or another since 1950.

Initially, in 1950, the Special Officer was designated the Commissioner for Scheduled Castes and Scheduled Tribes, and was responsible for investigating the 'safeguards' provided by the Constitution and other laws, and reporting to the President.

In 1978, a multi-member (non-statutory) Commission for SC & ST was set up, with a Chairperson and four members, of which one was to be the Special Officer. For a while, the statutory office of the Commissioner for SC & ST co-existed with the non-statutory Commission for SC and ST. From 1981-85, the statutory office of the Commissioner remained unfilled. In 1987, the functions of the two offices were separated – the Special Officer/Commissioner was to submit reports to Parliament, while the National Commission was to conduct studies on the socio-economic situation of SC & STs, and submit them in project mode to the Government.

In 1990, by a Constitutional Amendment, the Special Officer (Office of the Commissioner) for SC & ST was replaced by a National Commission for SC & ST (NCSC&ST). However, the first National Commission following this was set up only in 1992. Since then there have been four Commissions for SC & ST, (1992- Chairperson, Shri Ram Dhan; 1995 – Shri H. Hanumanthappa, 1998 – Shri Dilip Singh Bhuria, 2002 – Dr. Bijay Sonkar Sastri).

Increasingly, however, functions related to Scheduled Tribes began to be separated from the functions relating to Scheduled Castes. This was reflected in the creation of a

separate Tribal Development Division in the Ministry of Home Affairs, and in 1999, the creation of a new Ministry of Tribal Affairs. The National SC & ST Finance Development Corporation was also bifurcated to create a separate National ST Finance Development Corporation in 2001.

In 2004, by amendment of Article 338 and the insertion of Article 338 A, the NCSC&ST was divided into the National Commission for Scheduled Castes and the National Commission for Scheduled Tribes. Since the bifurcation there have been two National Commissions for ST, (2004-2007 – Shri Kunwar Singh, 2007 – Ms. Jamuna Devi).

The Commissioner for SC and ST initially had 17 regional offices, but in 1967 these were re-grouped into five zonal offices and placed under the control of a newly created Directorate General of Backward Classes Welfare in the Department of Social Welfare, which was then under the Home Ministry. In 1978, however, they were brought back under the control of the Commission. In the bifurcation of the SC & ST Commission, the NCST retained six regional offices. These are located in Bhopal, Bhubaneswar, Jaipur, Raipur, Ranchi and Shillong.

Apart from the annual reports prepared by the Commissioner for SC & ST, and later, the NCSC & ST, there have been two Commissions appointed under article 339 of the Constitution to look into the administration of scheduled areas and the welfare of scheduled tribes. The first was the 1960 UN Dhebar Commission, which yielded the tribal sub-plan strategy, and the second was the Dilip Singh Bhuria Commission (appointed 2002, report submitted 2004).

The history of the various shifts that the NCST has undergone reveals three striking issues:

1. Right from the beginning, the Office of the Commissioner was envisaged in paternalist mode, and the provisions of the Constitution relating to Scheduled Tribes seen as ‘safeguards’ (to be taken away when they were deemed to be no longer required) rather than rights (such as the right to non-alienation of land, or the right to an alternative form of governance and different laws from those that govern the rest of the country).
2. The long periods when the statutory office of the Commission remained unfilled, the initial creation of a non-statutory commission which would merely give reports to the government in project-mode, the way in which the office has been periodically reorganised suggests that it is seen merely as one more department of the government, rather than an independent body with Constitutional powers, intended to provide a corrective to the functioning of the government when required. There is a regrettable lack of seriousness with which the office has been treated. Its current uneasy co-existence with the Ministry of Tribal Affairs underlines the continuing nature of this problem.
3. The running down of the regional offices is another trend that has continued till the present, when there are only six regional offices to deal with Scheduled Tribes across the country. These are severely understaffed to deal with the areas they are meant to cover. In general, they are little recognised and

complaints are generally made directly to the National Commission. The Commission has asked for four additional offices in AP, Maharashtra, HP and Gujarat, but failing that, there is a feeling among some officers that it would be better to consolidate all the offices in Delhi, rather than spreading itself thin. However, this would fundamentally defeat the purpose of the Commission. To expect adivasis to have the resources to come to Delhi or even the state capital to pursue their cases is clearly unrealistic.

4. While some of the Commissioners for SC & ST were people who were extremely knowledgeable and concerned about the Scheduled Tribes, such as the anthropologist NK Bose and the former administrator Dr. B.D. Sharma, subsequent appointments of Chairpersons and members have been political sinecures for those ST representatives of the ruling party whom it needs to satisfy. They have displayed little vision or imagination in addressing the issues of Scheduled Tribes, and been unwilling to take up issues that are uncomfortable for their party.

II. Functions and Powers

The functions, duties and powers of the Commission include:

1. to investigate and monitor all constitutional and legal safeguards for Scheduled Tribes, and make recommendations on these
2. to enquire into specific complaints regarding the violation of these safeguards and rights

3. to participate and advise on the planning process regarding the socio-economic development of Scheduled Tribes, and evaluate their progress
4. to discharge any other functions related to the protection, welfare and development of Scheduled Tribes which the President, subject to Parliament may specify (clause 5f).

In pursuance of these objectives, the Commission is both required and empowered to:

1. Report to the President annually on the working of safeguards, and make recommendations. The Government (Centre or State, depending on whether a particular report concerns a State Government) is required to table these in the concerned legislature along with an Action Taken Report.
2. Act as a civil court to investigate all complaints, including the power to summon attendance, requisition documents etc. However, it does not have the power to issue injunctions against anyone on the basis of its investigations.
3. The Union and State governments are required to consult the Commission on all major policy matters affecting Scheduled Tribes.

In 2004, the Ministry of Tribal Affairs (MOTA) also assigned the NCST additional functions to carry out studies and hold workshops on specific subjects. While initially reluctant to accept the added burden, in the light of limited funds, the NCST eventually gave in and included the work in its Rules of Procedure (as part of clause 5 f of Article 338). It also requested MOTA to sanction additional funds under the head of 'Other Administrative Expenses' to meet the cost of workshops and studies on these issues.

The issues that MOTA specified are:

1. Measures that need to be taken to confer ownership rights over NTFPs to STs living in forest areas
2. Measures to be taken to safeguard rights of tribal communities over mineral, water and other resources as per law
3. Measures to be taken for the development of tribals and to work for more viable livelihood strategies
4. Measures to be taken to improve the efficacy of relief and rehabilitation measures for tribal groups displaced by development projects
5. Measures to be taken to prevent alienation of tribal people from land and to effectively rehabilitate such people in whose case alienation has already taken place
6. Measures to be taken to elicit maximum cooperation and involvement of tribal communities for protecting forests and undertaking social afforestation
7. Measures to be taken to ensure full implementation of the provisions of Panchayat (Extension to Scheduled Areas) Act 1996 (40 of 1996)
8. Measures to be taken to reduce and ultimately eliminate the practice of shifting cultivation by tribals that lead to their continuous disempowerment and degradation of land and the environment.

Relation between MOTA and NCST: This manner of handing over responsibility for such studies to the NCST and the list of issues themselves betray government's attitude towards the rights of Scheduled Tribes. First, MOTA seems to be assuming the right to give instructions to the NCST, thus establishing a relation of superiority

over NCST. This is contrary to the spirit of Article 338, which envisages the NCST as an independent body capable of giving advice and directions to the government. The NCST has the powers to regulate its own procedures (clause 4). When asked the Chairperson of the NCST said that MOTA was the nodal ministry for NCST in terms of funding and the provision of infrastructure, but otherwise the two were independent. He also said that NCST reviews the work of MOTA and the Tribal Sub-Plan, but the NSCT is responsible only to the President.² While this is no doubt the official line, the reality of the relation between the two entities appears to be somewhat different. Control over funding and infrastructure effectively means control over an organisation.

Second, the list of issues is itself biased – it assumes displacement is inevitable, that it is shifting cultivation which is responsible for forest and land degradation rather than diversion of forest land for industrial and development projects or the forest department's own production forestry, that it is the government which needs to elicit people's co-operation in protecting forests and so on.

One of the points to be covered in this report is whether a citizens charter has been developed in consultation with the stakeholders. Adivasi communities and organisations have repeatedly made their views known, and have framed resolutions on their demands. These have included the right to land titles, the right not to be displaced, the right to protect their forests on their own without government interference and so on. These demands are mostly met with repression by agencies of the government, like the police and the district administrations. However, for the

² Interview with Sri Kunwar Singh, Chairperson NCST, 6.1.07

Ministry of Tribal Affairs to come up with such a list of measures which already presuppose what should be studied, and which is at variance with what adivasi communities have repeatedly expressed and demanded, shows that it is far from developing a citizens charter. It also shows that the paternalist view of ‘government knows best for the backward ST’ continues to dominate government thinking.

Finally, it is not clear how these are further responsibilities placed upon the Commission, since all these issues were previously taken up by the Commissioner SC and ST in the past. An assertive Commission should have been looking into these issues anyway, since they centrally concern the planning process regarding the development of tribes.

While Article 338 (9) clearly states that “the Union and every state government shall consult the Commission on all major policy matters affecting Scheduled Castes and Scheduled Tribes”, this does not seem to be happening. For instance, the Commission complained that it was not consulted by the Ministry of Tribal Affairs while framing the Scheduled Tribes (Recognition of Forest Rights) Act; it does not seem to have much of a role in suggesting rules for PESA and so on. Similarly, when it comes to framing the industrial or mining policy of the country, the Ministry of Tribal Affairs or even the NCST does not appear to be involved, even though this centrally concerns many ST populations.

Further evidence of the low status assigned by the government to the NCST is evident from the fact that the last seven reports submitted to the President by the National Commission for Scheduled Castes and Scheduled Tribes have not been tabled in

Parliament. Not only does this deprive the public of valuable information, but it is a serious abdication of government responsibility. Commission Members and Officers attribute this failure to the delay in tabling the ATR alongside, and recommend that the two be delinked, and that the Report be tabled within 3 months and the ATR within six months of the report being given to the President. It is the Ministry of Tribal Affairs which is responsible for preparing the ATR (previously it was tasked to the Ministry of Social Justice), and its failure to do this is once again a reflection of the fact that it appears to be MOTA which controls NCST because it controls funding, infrastructure and the ATR, rather than the other way around.

In short, while Article 338 of the Constitution envisages the Commission as an independent body empowered to give advice to the government, the Government and the Ministry of Tribal Affairs treat the NCST as an appendage of its normal activities. The Commission, in turn, has not cared to exercise or be vocal about its independence. Thus it is unable to play the balancing, watchdog function it is meant to. On the other hand, even in Article 338, the powers of the Commission are limited to reporting and investigating. The fact that it has no independent powers to sanction officials who have committed atrocities against Scheduled Tribes makes it somewhat of a paper tiger.

Organisational Structure

The organisational structure of the Commission consists of the Chairperson at the top, followed by a Vice-Chairperson and three members. The senior administrative staff comprise of a Secretary to the Commission assisted by a Joint Secretary, two

Directors, and an under-secretary, Finally there are the principle investigators of the different units, as well as their ‘dealing hands’ or assistants.³

Work of the Members: In a section on the approach and methodology of the Commission,⁴ we are told of the number of meetings held by the Commission. These are largely on the issue of reservations, inclusion of communities in the list of STs, delimitation of constituencies, the report of the Commission and its internal functioning. In other words, issues of identity and reservation – which affect a small portion of the overall ST population of the country. However, a look at the field visits of the Chairman reveals quite an interesting range of issues covered: medical treatment of children in Orissa, rehabilitation of Kadana dam oustees in Gujarat, conflicts between STs and the Army in J& K, visits to Sikkim and Jharkhand to talk to local people and state officials about their problems, visit to the Andaman and Nicobar islands to assess the schemes taken up by the administration and review post-Tsunami work, visit to Sardar Sarovar and Kalinganagar to investigate rehabilitation, meetings with SC/ST employees of nationalised banks and PSUs like NTPC and so on. Some members tend to tour their own areas, whereas others tour more widely. One Chairman is said to have spent the last few months of his tenure visiting all the *swamis* and *peeths* in the country.

Senior Staff of the Commission: While the members of the Commission change with every new Commission that is appointed the Commission has been fortunate to have some continuity in the form of some senior staff, who have been with the Commission

³ National Commission for Scheduled Tribes: A Handbook, June 2005

⁴ First report, p. 16-17

in its various avatars from the 1970s. It is they who are largely responsible for the Report of the Commission, which is an extremely useful and comprehensive document, but which, as mentioned before, has not been tabled in Parliament.

Principle Investigators assigned to each research unit: It is this level which is most crucial for the bulk of cases handled by the Commission, and the impact felt by the public in everyday matters (which do not require major policy or political interventions). These units are severely understaffed, and fresh recruitment appears to be a serious problem, especially of the kind of graduates who are either from Scheduled Tribe communities themselves, or knowledgeable and concerned about them. Turnover is said to be high – recently PhDs were hired as investigators but they were leaving for better jobs. The number of staff to officers is also skewed with 1 dealing hand and research officer to 7 officers above him/her. The gender and caste composition of the Commission also bears attention. The representation or lack thereof of STs within the Commission manifests itself in subterranean tensions.

At this level, the staff is divided into four wings:

1. Administration/Establishment and Co-ordination Wing
2. Economic and Social Development Wing
3. Service Safeguards
4. Atrocities wing

While the administrative wing looks after all internal establishment and administrative matters of the Commission, the Services Safeguards wing deals with service issues. The issues it takes up include the implementation of reservation policies within the

government, cases relating to false community certificates and the inclusion (and very rarely exclusion) of various communities in the list of Scheduled Tribes. The Atrocities wing deals with cases as defined by the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, the Bonded Labour system (Abolition) Act, the Minimum Wages Act etc. The main complaint under this head is the non-registering of cases under the Atrocities act. The Economic and Social Development Wing is intended to monitor government schemes. A list of policy matters dealt with under this theme include: matters relating to land and rehabilitation, education/scholarships, health, drinking water and nutrition, matters relating to financial institutions – banks/corporations, matters relating to scheduled areas and tribal areas, matters relating to forest and excise policy for tribals, tribal policy, matters relating to distributive agencies like petrol pumps, LPG etc., matters relating to central ministries, the Tribal Sub-Plan, and the Planning Commission.⁵ While the index page of the register carried all these items, the register itself was rather empty.

From July 2006 onwards, this structure was replaced with a regional division of labour where each of the four research units deals with all issues, region wise. Research Unit I deals with the northern and western states, Research Unit II covers the north-east, Research Unit III covers the central states as well as the Andamans, while Research Unit IV covers the southern states. In addition, since the bulk of the Commission's work is to do with the activities of different ministries and government departments, especially service matters, each research unit has been assigned specific ministries/departments.

⁵ Index page of one Economic and Social Development wing register.

The rationale given for this by the senior officers was that it prevented over-specialisation and the problems that occurred when a specialist in one field was away. The staff handling the cases, however, felt that the issues required that kind of specialised knowledge across regions. Further, by clubbing all regional issues together, services matters got more attention than the others by sheer weight of numbers. Having separate wings for atrocities and economic and social development ensured that they had their own space. This remains an issue of discussion within the Commission.

There are three or four ways in which the Commission takes up cases. The first is the routine way, whereby petitions are received and attended to by the principle investigators and their dealing hands. Sometimes the petitions are forwarded by MPs, which ensures that they get attended to. The other route is for the Chairperson or members to take up issues/complaints they encounter on their field visits and pass them on to the staff for further action. Inevitably, they are more interested in their own states than elsewhere, and the number of petitions from a state is also higher if one of the members comes from there. For example, in 2006, the highest number of atrocities complaints came from MP, and although MP is the state with the highest number of atrocities against ST even according to the National Crime Records bureau,⁶ the representation of the other states in terms of complaints to the NCST was disproportionately low. The third route is for the Commission to take suo moto cognisance of an issue from newspaper reports. Earlier the librarian used to make clippings of cases relevant to STs, but now the system seems more haphazard.

⁶ First report, pp. 307-08

There are two problems regarding the handling of cases by the Commission. The first is the low number of cases handled, compared to the large number of cases that occur in the country. For instance, in 2005-6, a mere 204 new cases were recorded by the atrocities wing, 461 cases by the economic and social development wing, and 489 by the services wing. The number of atrocities cases in the country runs into thousands. According to the National Bureau of Crime Statistics, there were 6217 cases of atrocities against ST in 2001, 6774 in 2002 and 5889 in 2003.⁷ The Chairperson, however, claimed that since the NCSC&ST was bifurcated, the number of cases has gone up as the NCST is able to devote more attention to STs alone. The fact that there are now 5 members specifically focussing on issues related to STs as against the 2 on the joint Commission for SCs & STs has also helped. The problem of lack of cases in certain areas may also have to do with the inability of this particular section of society which is affected by atrocities – STs – to access institutions like the Commission.

Unfortunately, even all the petitions that the Commission gets are not recorded. I am personally aware of petitions submitted to the Commission following a meeting with the Chairperson, but which do not figure in the records of the relevant research unit. The mismatch between the atrocities that take place and the cases that the Commission deals with could be due to at least three reasons: 1.) not all cases which are registered require the intervention of the Commission, 2.) lack of staff to deal with the volume of cases that come in (each research unit gets about 4-500 letters on average per month) 3.) a tendency among staff to concentrate on the more easily manageable service cases where the petitioners are more organised and hence more

⁷ First Report, p. 306.

vocal, and thus neglect the atrocities cases. The shortage of staff is quite severe, and appears to be half of the sanctioned strength.

The second issue is the pendency of cases. Here again, it is not clear whether the problem is primarily a.) shortage of staff, b.) the nature of the files where explanations are called for and letters go back and forth. The usual procedure is for the Commission to write letters to the concerned Secretary/Chairperson of the organisation from which the complaint originated, or with which the complaint is concerned and ask for an explanation. In cases where they do not get an answer they can issue summons to the officer to appear in person before the Commission and explain. However, this is rare, and from March 2004-2007, summons have been issued in only two cases.

This procedure – of asking for clarification and explanation from the concerned officials – assumes a situation where governments respond honestly. As one staff member said, in the course of interviews, “where rules are knowingly violated by the administration, the tendency is to cover up the matter.” In such cases, the Commission is helpless. This procedure is especially problematic for STs, since a large part of the atrocities committed on them are by agencies of the government like the police and the forest staff. Of course, in a few cases, especially service matters, where the law is complicated, organisations do respond and the problem is resolved. In rare cases, the organisation is actually grateful for the intervention by the Commission and the clarification on law it offers. The point, however, is that while not every case can be independently investigated by the Commission and letters asking for an explanation do constitute some form of pressure, this mode of functioning as the dominant norm

needs to be seriously rethought. Apart from visits by the members, the existing independent investigating machinery in the Commission needs to be strengthened.

This mode of functioning also saps the interest of the staff. One person said that when he joined the Commission it was with the expectation of doing research and giving policy suggestions on development. Now, however, the Commission had become a 'petition cell' and the work had become routinised.

Issues Taken Up by the Commission

The Commission has divided the issues that come before it into the following categories:

1. Constitutional Provisions for protection and development of STs
2. Socio-economic development of STs (land alienation, rights over MFP, housing, education etc.)
3. Resettlement and Rehabilitation of displaced tribals
4. Education
5. Service Safeguards
6. The problem of authenticating ST certificates
7. Crimes and atrocities against ST

This listing of issues before the adivasis of the country is fairly exhaustive (although it does not deal with important issues such as the growing militarisation of tribal areas).

The report of the Commission also deals quite exhaustively with the statistics and overall situation under all these sections, and makes broad recommendations to the Ministry of Tribal Affairs and other departments of the government, such as the need to 'expedite the passage of the Forest Rights Bill', the need to 'preserve the cultural

heritage of the tribal people' with respect to their places of worship, arts and crafts, the need for states to implement PESA effectively etc.⁸ It also recommends that "the Dept. of Mines should introduce a bill to give effect to the recommendations of the Bhuria Committee 1995 to the effect that in all industrial enterprises set up in the Scheduled Areas (other than small ventures) the community should be deemed to be the owner with 50% shares in its favour by virtue of its allowing the industry to use local resources and get established." (p.95). Having made this recommendation, however, the Commission is unable to back it up with sufficient voice when actual cases of acquisition of adivasi land for industrial purposes takes place. Even on Kalinganagar, when 12 adivasis were killed by the police for protesting against land acquisition, while the Commission visited the area, and called for a report from the state government, the Government set up its own enquiry commission, thus sidestepping the Commission. In cases like the Narmada dam or the Polavaram dam, where large number of adivasis are to be displaced, the Commission writes to the concerned engineers and government officials, but is unable to make much difference.

In terms of the everyday cases handled (as against policy recommendations), it is clear both from the volume of cases disposed of and conversations with the staff that the bulk of the cases before the Commission are individual service matters pertaining to employment by government, including the banking and insurance sector, and other nationalised bodies. Scheduled Tribes are rarely employed in the organised private sector. The focus on service matters is in part because government staff are the people most able to make use of a grievance redressal mechanism, and to follow up with the Commission staff in person, a factor which the staff admitted was of help in pushing a

⁸ NCST, First Report, 2004-5 & 2005-6, chapter 3

case forward. In part it is also because the other issues confronting adivasis are so vast and so difficult for a single Commission to address in the face of the overwhelming power of other ministries keen on pushing a certain model of development that marginalizes adivasis, that Commission staff themselves feel that only these cases yield tangible results for them. In effect however, this means that the Service Safeguards wing acts as an internal branch of the government, ensuring better service conditions for the scheduled tribe employees of the government.

This is by itself an important service considering that the vast majority of ST government staff belong to classes III and IV, and are relatively powerless within the system. For example, a petition by the All India General Insurance SC/ST employees federation states that there is a serious need for compassionate appointments for SC/ST staff, since their statistics showed that 80% of class IV staff had died while in service, particularly the safai karamcharis. Other charges against management are that they tend to promote only those SC/ST employees who were subservient, that more vigilance cases are filed against SCs/STs than against the general category employees (borne out by the figures), that SC/ST employees are posted to more difficult places, that reservations are being filled only at the lowest levels and not in managerial jobs, that the post-based reservation roster (instead of a vacancy based one) has destroyed whatever little reservation is available, since over time at least 15% SCs and 8% STs have been appointed in the organisation. In some cases, these ST staff are also the sole members of their community and thus have a model effect. One example comes from a case concerning the recruitment of one Major Sugathan who belongs to the Ulladan

ST community of Kottayam district, a very small community and who is the first and lone commissioned officer from this community.⁹

On the other hand, these cases are trivial in the light of the enormity of problems faced by the adivasis of this country, the majority of whom are in agriculture or unorganised sector work. The Commission is unable to seriously address their concerns in any concrete sense.

Among the communities served by the commission, dominant communities like the Meenas from Rajasthan have the maximum number of cases, in part because they are

⁹ Major Sugathan VK (Rtd), Chief Security Officer HMT I and II (MTB), P.O. Bangalore, who had not been considered for the vacancy in the post of Security Officer reserved for ST in Kochi Refineries Limited, Kochi Kerala, complained to the Commission on 29.9.05. In advertisements dated 2001 and 2003, a reserved vacancy had been advertised, but was not filled, and subsequently in 2005, two vacancies were announced, concealing the fact that one was reserved. “The petitioner was of the view that the Company had deliberately suppressed the opportunity meant for a ST candidate.” The Commission sent a letter to the Deputy General Manager (Personnel) Kochi Refineries Ltd. on 2.3.2006. A month and a half later, on 24.3.06, the DGM (Personnel) replied. The petitioner had also complained to the Bhopal office of the SCST who had already written to the company. Based on its advice, the Company had re-advertised the post for an ST security officer, and Mr. Sugathan VK had been selected. Mr. Sugathan then informed the Commission of his appointment. In this case, the entire process took six months, but was worth the Commission’s time.

the best represented in the services.¹⁰ There are relatively few petitions from the North east. A look at the registers indicates that some organisations, especially PSU employees federations or unions are relatively frequent petitioners, and therefore more likely to get heard.

In the following sections, I will take up some examples of cases which have come before the Commission, starting with those cases where the Commission has been successful.

Several of the complaints described as ‘successful’ in the first report, under the heading of Economic and Social Development, deal with complaints by students who were not given admission into courses in engineering, or were not given attendance and so on. In all these cases, the Commission intervened with the university authorities and succeeded in getting the students grievances redressed. There is also a listing under different heads, like the provision of drinking water, a health centre, electricity and land pattas to villages in West Bengal, following a visit by the Chairman to West Medinipur district, in WB.¹¹ There is little to distinguish these cases from the ‘successful cases’ handled under the service safeguards wing which also deal with individual service related grievances, such as denial of promotion, the refusal of an organisation to return original marksheets to the petitioner when he changed jobs, non-payment of pension and so on..

¹⁰ This was confirmed by staff in the Commission, as well as my own perusal of complaints, many of which were filed by Meena petitioners.

¹¹ These successful cases are listed at the end of chapter 3 in the first report.

A look at the cases reported under the atrocities section of the report reveals far less success in handling these cases. To begin with, the reach of people who undergo atrocities of this nature is more limited, and they are unable to take their complaints directly to the Commission. Many of these cases have been taken up by the Commission following newspaper reports. To give one example:

“A case of abduction and gang rape of a Scheduled Tribe woman in Chindwada, Madhya Pradesh was reported in the newspaper ‘Dainik Bhaskar’ dated 21.8.04. The Commission suo moto took up the case with the District Superintendent of Police Chindwada. The SP reported that a case under Sections 366, 376 (2) and 506-B IPC and Section 3 (1) (xii) of the SCs and STs (POA) Act 1989 had been registered and chargesheet submitted in the Court and that an interim relief of financial assistance of Rs. 25,000/- had been paid to the victim as per the SC and ST (POA) Rules, 1995. Since an offence under Sec 376 (2) of IPC is punishable with an imprisonment for a term of 10 years or more, the Dist. Superintendent of Police, Chindwada has been advised by the Commission to submit supplementary chargesheet taking cognizance of Section 3 (2) (v) of the SCs/STs (POA) Act 1989 in place of Section 3 (1) (xii).

Moreover, all these cases are of individual atrocities and the Commission seems unwilling to take up the widespread atrocities on adivasis that are going on in the name of militarization and internal security, both in the north-east and central India, including the gang rapes and widespread murders by the Salwa Judum in

Chhattisgarh, or by the armed forces in the north-east despite these having been brought to its notice.

The Commission also gets a significant number of cases pertaining to false ST certificates or demands from particular communities to be included in the ST list, such as the Sarania Kachari or the ex tea- garden tribes in the list for Assam, the Gujjars for Rajasthan and so on. For a community to be included in the scheduled list, its claims have to be agreed to by the concerned state government, the Registrar General and the National Commission for Scheduled Tribes. While the Commission does list some cases of this kind that it settled, such as the claim of the Maleru tribe in Karnataka to be recognised as Primitive Tribal Groups (PTG), in general it is doubtful whether it commands the kind of expertise on such subjects that is required. The petitions that are sent usually contain gazetteer style ethnographic information on the claims of their own communities over others. One petition signed by a number of Delhi University students from different ST communities of the North east asks the Commission to take action against the appointment of Baruas in teaching posts reserved for STs since they were really Bengali Buddhists and not STs.¹² While the Commission has written to the Governments of West Bengal and Meghalaya asking for the facts, it is clear that such cases are really beyond the capacity of the Commission except to push paper back and forth.

¹² Assam-3/FCS/Services/2006/RU II

Public Perceptions of the Commission

Several adivasi organisations fighting on land and forest issues do approach the Commission, but mainly in terms of routinely covering all bases, and not because they expect any serious help from the Commission. Many of them do not bother, since it is evidently more time-effective to approach the concerned authorities directly like the state government, or the various ministries, or file cases in court.

One would have thought that regular petitioners of the Commission in service matters would find greater uses, but a long interview with an SC/ST insurance employees federation revealed rather negative perceptions of the Commission. They called both the ST and SC Commission ‘tigers without teeth’ and the members of the Commission ‘political people working for their own survival’. One chairman was even accused of being purchased by the management. The personnel manager of the company, on the other hand, was more positive about the Commission. In the last two years his office had got 3-4 references per month from the Commission (for an overall SC staff of 4549 and ST staff of 1062) but, he said, the exchange is ‘positive and fruitful. Once they are convinced there is no case of discrimination they stop the case.’

Overall Impact of the Commission

The overall impact of the Commission will have to be judged by two criterion:

1. Factors within the Commission's Control, such as its political courage in defending the rights of the STs and acting as a watchdog body on other ministries and government organisations, or its overall sensitivity to adivasi issues. In the case of R&R issues, for example, despite a strong constitutional mandate the Commission has not been able to exercise much influence. Certain issues have not been taken up by the Commission at all despite petitions – e.g. militarisation.

2. Factors outside the Commission's Control, such as funding, staff, and the overall policy of the government regarding investment in tribal areas, and subsequent displacement. Increasingly, the Commission is at best a palliative, as market forces have increasingly come to usurp the space in tribal areas, and decisions about scheduled areas are made not in the Commission or even the Ministry of Tribal Affairs but by the various ministries dealing with forests, water, mining etc., as well as by the WTO and other international agencies. The NCST, like other institutions such as the NHRC is useful as an instrument to tell the international community that India is serious about its STs, and therefore does not require any outside intervention but such a stance is of little help to the adivasis of India.

The following recommendations are therefore rather limited, keeping in mind the overall political economy in which the Commission functions. None of the institutions

envisaged by the Constitution to protect the rights of the STs are working – whether it is the Tribes Advisory Councils or the office of the Governor. The standard and shocking response by the MOTA or the Home Ministry whenever complaints are made to it of gross violations is that x or y is a state subject, despite the fact that the 5th Schedule empowers the Union to give directions to the states on the administration of scheduled areas. The issue for scheduled areas and scheduled tribes is not simply one of the failure of government to provide essential services like health and education, but a deliberate policy to disenfranchise people and deprive them of their resources.

Recommendations

The primary recommendation in this report is that the Government follow the Constitution in the spirit it was envisaged, among other things, by strengthening the role of the Commission as a truly independent watchdog body with punitive powers.

The composition of the Commission needs to be examined, in particular, the implications of a commission composed entirely of political appointments by the ruling party. The qualifications of the Chairperson and Members should be publicly available, and there should be an effort to involve people from different professions concerned with Scheduled Tribes.

The overlap with the Ministry of Tribal Affairs needs to be examined, and the independence of the Commission vis-à-vis MOTA asserted.

The Commission is short staffed, as well as underfunded and therefore unable to deal satisfactorily with the volume of cases. The Regional offices need to be strengthened, along with an independent investigating mechanism. This should replace the standard procedure of asking for clarification as the dominant mode of functioning.