

National Commission for Scheduled Tribes

Summary Record of the meeting to review Implementation of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 in the State of Orissa.

The meeting to review the implementation of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 in the State of Orissa was held at 11:30 Hrs. on 28/05/2010 in the Conference Room of the National Commission for Scheduled Tribes. The following were present:

National Commission for Scheduled Tribes

1. Shri Maurice Kujur, Hon'ble Vice-Chairperson (in Chair)
2. Shri Tsering Samphel, Member
3. Shri Oris Syiem Myriaw, Member
4. Shri Aditya Mishra, Joint Secretary
5. Shri R.C. Durga, Director
6. Shri K.C. Behera, PS to Vice Chairperson

Government of Orissa.

1. Shri Ashok Kumar Tripathy, Principal Secretary, ST & SC Development Department
2. Shri Aditya Padhi, Principal Secretary, Home Department
3. Shri Manmohan Praharaj, DGP

2. Initiating the discussions Hon'ble Vice-Chairperson, National Commission for Scheduled Tribes mentioned that the Commission was in the process of finalisation of its 4th Report for submission to the Hon'ble President as per mandate provided in Article 338A of the Constitution. Since atrocities on Scheduled Tribes by non-Scheduled Tribes was a vital issue, it was decided to highlight the position relating to implementation of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 prevailing in the States having Scheduled Areas and in this context this meeting with the officials of the Government of Orissa has been convened.

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3. The discussion on various issues relating to atrocities on Scheduled Tribes, commenced with the remarks by the Commission that in most of the cases there was undue delay in furnishing of comments/ reports by the Police authorities and the Distt. Officials of the Govt. on the representations received/ cases dealt in the Commission pertaining to atrocities on the STs. In almost all the cases, while the reply has not been received within the stipulated period of 30 days, in some cases the reports furnished by the Police Authorities have also not been found to be comprehensive with specific comments on the issues raised by the Commission. Copies of FIR, charge-sheets, Medical Examination Reports of the ST victims/ postmortem reports of the ST diseased information about arrest of the accused and details of relief and rehabilitation provided to the ST victims are generally missing in most of the cases. After reference to some of the important cases it was decided that, in cases of atrocities on Scheduled Tribes the communications sent to the district police authorities may also be sent to the Addl. DG (Human Rights Protection Cell) at the Police Headquarter of the State, for proper follow up and directions.

4 Regarding machinery for dealing with the cases of atrocities on Scheduled Tribes received at the Police Stations, the Commission was informed that at the State Level there is a Cell called Human Rights Protection Cell headed by Addl. DGP. The complaints can be lodged by the STs at any Police Station and these complaints are taken cognizance by the Police without any delay and a copy of the FIR was also given to the complainant free of cost. It was further informed that wherever an atrocity is committed on SCs and STs, such information is sent in the Daily situation report by the Superintendent of Police to the concerned District Magistrate, the concerned Range Dy. Inspector General of Police and also the State Police Control Room promptly. Besides, the District Magistrates are being informed on reporting of each atrocity case by sending copies of the FIRs as per Rule 5 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 after registration of the FIR.

5. The Commission was also informed that keeping in view the incidence of atrocities on Scheduled Castes and Scheduled Tribes reported being large in number and the fact that as per the Rule 7(1) of POA Rules, 1995, the case under

PoA has to be investigated by an Officer not below the rank of Dy. Superintendent of Police, 7 posts of Inspectors have been upgraded to the rank of Dy. SP.

6 With regard to the complaints of atrocities on STs committed by the Police personnels, the Commission was informed that the complaint against the Constable and other subordinate staff was investigated by the Inspector and the complaints other Police personnels were inquired by the Magistrate. The Commission was of the view that investigation reports in such cases should pass through internal verification mechanism in the Police Deptt. The Commission also emphasized that suitable guidelines/ instructions/ procedures should be formulated by the State Government for handling such cases.

7 Since the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 deals with cases of atrocities on Scheduled Tribes by non-Scheduled Tribes, it was necessary to ascertain caste status of the victim as well as accused and the circumstances in which the incident of atrocity took place. The Commission was informed that the case was registered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 on the basis of the statement of the victim. However, the caste status of both victim as well as accused persons are ascertained on the basis of statement of the neighbors, if certificates are not available. It was mentioned that there was some problems of identification in Kandhmal district only otherwise there has been no problem in identification of ST status of the victims in all the districts.

8. The Commission was informed that the population of Scheduled Castes in the State was much less than the population of Scheduled Tribes, but the cases of atrocities on Scheduled Castes registered in the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was much higher than the cases of atrocities on Scheduled Tribes. Hon'ble Vice-Chairperson mentioned that the reason for less number of cases may be due to less awareness among the tribals about the provisions of PoA Act. The Principal Secretary, SC & ST Development Department mentioned that the State Government have recently set up a Toll Free Help line Number (155335) to receive, during 10:00 AM to 5:00 PM, complaints from SCs, STs and other weaker sections relating to about 10 Departments of the State. 9.

The Toll Free Number remains under the control of ST & SC Development Department and the grievance received on the Help Line Number is immediately transferred to the concerned authorities/ district administration by E-mail and Fax. It was further informed that the response has been very good as 37 complaints were received within first two days of installation of the help line. It was also noted that various NGOs were taking the cause of STs and SCs in the State and various issues and problems relating to Scheduled Castes and Scheduled Tribes were being highlighted from various parts of the State. It was, therefore, suggested to the State Government that Fax facility may also be attached with the Toll Free Help Line Number so that clear and confirmed complaint could be received from the STs, SCs and the NGOs/ Associations working for ST/ SC Welfare. Hon'ble Vice-Chairperson, however, emphasized that the Police has to act in such a way that tribals must have trust in the system and it also has to be ensured that the cases do not get dismissed in the Court due to technical and procedural flaws.

10. The Commission noted that the number of cases of atrocities registered during 2006, 2007, 2008 and 2009 was 349, 394, 387 and 306 respectively. Against this figure relating to pendency at the end of each year was also high i.e. 245, 321, 501 and 382 respectively. The Commission advised the State Government to take suitable measures for timely disposal of cases by the Police otherwise delayed submission of the case with the Court may lead to further delay in trial and leading the cases to disposal due to lack of interest by the victims and the witnesses.

11. The Commission was informed that there are 53 designated Special Courts in the State. As the designated Courts are already loaded with other cases, the State Government was considering to set up three exclusive Special Courts under PoA Act in the districts where pendency was very high, in order to ensure disposal of PoA cases, particularly those relating to serious crimes, on day to day basis. It was, however, stated that the conviction rate in atrocity cases was 11% only. The reason for low rate of conviction was stated to be lack of evidence and turning of victims and witness as hostile during the hearing and making out of Court compromise with the accused. Another reason for low conviction was stated to be high rate of chargesheet in Orissa. It was stated that about 86% of the cases of atrocity

registered with the Police were chargesheeted in Orissa as against 50-60% chargesheet level in other States.

12 Actual details of registration and disposal of cases of atrocities on Scheduled Tribes registered the Police as well as Special Courts were not available. The State Government will furnish these details in respect of last 4 years i.e. 2006, 2007, 2008, and 2009 by Fax as well as SPEED POST.

13 As regards, identification of atrocity prone areas in the State, the Commission was informed that areas coming under various Police Station areas extending over 16 districts of the State had been identified as atrocity prone areas. These areas were notified by the State Government in January, 2003. A copy of the Gazette Notification was made available in the meeting details of the atrocity prone areas in the State of Orissa to be furnished by FAX/ SPEED POST.

14 Rule 16 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 provide for constituting State Level Vigilance and Monitoring Committee to review the implementation of the provisions of the PoA Act and relief and rehabilitation facilities provided to the victims and other matter connected therewith. The Director of the Commission is also Member of the SLVMC. The Committee is expected to meet at least twice in a year. Similar Committee has to be constituted at District Level under the provision of Rule 17 of the PoA Rules and this Committee is expected to meet at least once in three months. The Commission was informed that the last meeting of SLVMC was held on 26/05/2010 while information about meetings of DLVMC was not available in the meeting. The State Government may furnish the dates of meeting of SLVMC and the DLVMC held during the year 2008, 2009 and 2010. The Commission expressed that the matters relating to atrocities on Scheduled Tribes should not be taken lightly and the State Level as well as District Level Committees should meet regularly to review the implementation of the PoA Act and PoA Rules in the State.

15 Rule 12 (4) of the PoA Rules provide for grant of relief and rehabilitation to the ST victims of atrocity. The Commission was informed that the Contingency Plan has been prepared by the State Government with reference to the measures to be taken

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from that in the State of Chhattisgarh and Andhra Pradesh, though, the naxal activity in the State was being nourished by the high liners from those States. It was felt that development of the areas and employment to the educated youth and creation of sources of livelihood for the people was the need of the time. The State Government has taken initiative by appointing Special Police Officer from amongst Scheduled Tribes by relaxing the standards prescribed for a Constable. After completion of 4 years of duty as Special Police Officer the concerned person is appointed as Constable on regular basis. In this context it was felt that on the lines of special relaxations given to Gorkhas of West Bengal, the Scheduled Tribes of Orissa State should also be given relaxations in the matter of appointment to Para-Military Forces and Defence Services. The Commission was informed that the Chief Minister of the State has already written on the subject to the Government of India and a copy of the same would be sent to the Commission for information and necessary action by the Commission. It was also felt that there was need to create awareness through Press and Media about the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 and the measures taken by the State Government and Central Government. The Ministry of Social Justice & Empowerment and the Ministry of Tribal Affairs provide funds to the State Government as Central Assistance for implementation of the PoA Act. The State Government may utilize the funds for creating awareness among the public. The Commission also supported the view of the Principal Secretary (TW) that issues relating to SCs and STs and PoA Act and PoA Rules may be made as part of syllabus for Civil Service Examination and also State Level Examinations. Hon'ble Vice-Chairperson desired that the Commission will take up matter with UPSC and other concerned authorities.

19 In the context of any problems or suggestions relating to implementation of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 the Commission was informed that the State Government have sent four suggestions to the Ministry of Social Justice & Empowerment for amendment of the Act and the Rules. Since the details of the proposed amendments were not

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available, it was agreed that the State Government will send the details by FAX/
SPEED POST.

20 The Commission invited the attention of the State Government to the list of cases of atrocities on Scheduled Tribes sent by the Commission vide letter dated 13/05/2010 and emphasized that the detailed information on points (i) to (x) mentioned in the letter may be furnished w.r.t each case indicated in the list, urgently so as to incorporate the same in the Report of the Commission.

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