

- 1 **Clause 5(d)** of Article 338 provides “to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards” and **Clause 5(e)** provides “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 Castes.”
- 2 As per provision of these Clauses it is the duty of the Commission to present annually a report upon the working of Constitutional safeguards and measures taken by the Union and the States for the protection and welfare of the Scheduled Castes. In this series the erstwhile National Commission for Scheduled Castes and Scheduled Tribes has presented seven Annual Reports and four Special Reports during the period from 12th March, 1992 to 19th February, 2004 containing a number of recommendations.
- 3 **Clause 6 of Article 338** provides, “The President shall cause all such reports to be laid before each House of Parliament along with 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 such recommendations.
- 4 **Clause 7 of Article 338** provides, “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 non-acceptance, if any, of any of such recommendations.

G. Organizational set up of the Secretariat of the Commission

The National Commission for Scheduled Castes functions from the Headquarters located at New Delhi and from 12 State Offices of the Commission located in various States/UTs. The location and jurisdiction of these Offices and designation of office heads is given at Annexure-XI of the handbook.

- 1 **There are four Wings at Hqrs.**
 - i. Administration & Coordination Wing
 - ii. Service Safeguards Wing
 - iii. Atrocities and Protection of Civil Rights Wing
 - iv. Economic & Social Development Wing

2 **Administration and Co-ordination Wing**

This Wing looks after personnel management of officers and staff of the Secretariat of the Commission and provide administrative support in the functioning of the Commission. The Co-ordination Wing co-ordinates the various activities being performed in the Commission, including making arrangements for holding internal meetings of the Commission as well as with State/UT Administrations for reviewing the implementation of constitutional safeguards.

3 **Service Safeguards Wing**

This Wing is dealing with the implementation of service safeguards provided to Scheduled Castes in the Central/State Government services as well as Central and State Government Public Sector Undertakings. All representations/complaints relating to Scheduled Castes persons about their service matters are dealt within this Wing. In addition, policy matters relating to enactment/Government orders and instructions pertaining to representation of Scheduled Castes in service, evaluation studies/surveys relating to implementation of the various Constitutional safeguards in respect of service matters are dealt in this Wing. Cases relating to false caste certificate and inclusion or exclusion of caste(s) in Scheduled Castes list are also dealt in this Wing.

4 **Atrocities and Protection of Civil Rights Wing**

This Wing is dealing with matters pertaining to atrocities caused on Scheduled Castes and cases relating to protection of Civil Rights Act, the Bonded Labour System (Abolition) Act, the Minimum Wages Act, etc. either on receipt of complaint from individuals or from newspapers report. Evaluation studies/surveys on these subjects are also conducted by this Wing.

5 **Economic and Social Development Wing**

This Wing is dealing with matters relating to development of Scheduled Castes particularly implementation and monitoring of plan schemes of the Central/State Governments. Some of the specific items of work handled by this Wing are:

- (i) Special Component Plan for Scheduled Castes,
- (ii) National Scheduled Castes Finance and Development Corporation.,
- (iii) Representations/ complaints made by Scheduled Castes persons regarding their grievances on matters other than atrocities, untouchability practices and service matters;
- (iv) Social Research Institute and other research bodies;
- (v) Land Reforms Acts and their implementation;

- (vi) Education Schemes for Scheduled Castes etc.

H. FUNCTIONS OF STATE OFFICES OF THE COMMISSION

1. **The State Offices of the Commission work as 'eyes and ears' of the Commission.**

They keep a watch on the formulation of policy and issue of guidelines relating to the welfare of Scheduled Castes in the respective States/UTs under their jurisdiction and keep the Commission Headquarters informed about the developments periodically. Policy decisions taken by any State Government/UT Administration affecting the interest of the Scheduled Castes are brought to the notice of the concerned authorities for necessary modifications. The State officers are requested to liaise with the State/UT Administration for taking up evaluation and other studies to assess the working of various development programmes implemented for the welfare of the Scheduled Castes and their impact on ameliorating the socio-economic conditions of the target groups. The findings of the studies are brought to the notice of the concerned State Government for taking remedial measures. The main observations are highlighted in the Commission's Report.

2. The State Offices of the Commission are required to interact with the State Administrations and guide them with a view to see that the interests of the Scheduled Castes is protected and promoted while in formulating plans and policies. The State Offices also monitor the utilization of funds earmarked for plans pertaining to Scheduled Castes including keeping a watch on diversion of funds from Special Component Plan.
3. Each of the State Offices sends Quarterly Report to the Commission Hqrs. on the activities undertaken by them highlighting major issues relating to welfare of Scheduled Castes in each States/UT under their jurisdiction. These reports contain useful information about the developments in a State and enable the Commission to have an overall view in respect of various States as well as national situation for taking appropriate action.

I. Powers of the Commission to act as a Civil Court

While investigating any matter referred to in sub-clause (a) or inquiring into specific complaints under sub-clause (b) of the clause (5) of Article 338 of the Constitution, the Commission shall have the powers of a Civil Court trying a suit and in particular in respect of the following matters:

- (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 of any public record or copy thereof from any court of office;

- (e) Issuing commissions for the examination of witnesses the documents;
- (f) Any other matter which the President may, by rule, determine.

J. Consultation by the Union and State Governments with the Commission (SOCIO-ECONOMIC DEVELOPMENT)

1. Section (9) of the Article 338 of the Constitution reads as follows:

“The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Castes.”

The Constitution has made it mandatory for the Union and every State Government to consult the Commission on all major Policy matters affecting SCs. This is very important function of the Commission, which has to keep track of all the major policy decisions, Legislative or Executive action taken by the Government of India or any State Government.

2. As per the provisions of Clause 5 (c) of Article 338, the Commission is required to participate and advise on the planning process of socio-economic development of SCs and evaluate the progress of their development under Union and any State. The role of the Commission in these areas involve interaction at various levels, i.e., with the Planning Commission, with the Central Ministries and with the State Governments. The Commission and its officers both at Headquarters and the State offices participate in formulation of policies and the developmental programmes for SCs including Special Component Plan for Scheduled Castes.

K. Monitoring:

CONSTITUTIONAL SAFEGUARDS

The important Constitutional Safeguards for Scheduled Castes is mentioned below:-

(I) Development and Protective Safeguards

These safeguards are contained in the Directive Principles of State Policy of the Constitution and a specific provision in Article 46 which is a comprehensive provision comprising both the developmental and regulatory aspects. It reads as follows:-

Article 46 “The State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation”.

(II) Social Safeguards

Article 17 "Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.

To give effect to this Article, Parliament made an enactment viz., **Untouchability (Offences) Act, 1955**. To make the provisions of this Act more stringent, the Act was amended in 1976 and was also renamed as the **Protection of Civil Rights Act, 1955**. As provided under the Act, the Government of India also notified the Rules, viz, the PCR Rules, 1977, to carry out the provisions of this Act. As cases of atrocities on SCs/STs were not covered under the provisions of PCR Act, 1955, Parliament passed another important Act in 1989 for taking specific measures to prevent the atrocities. This Act known as the **Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989**, became effective from 30-1-1990. For carrying out the provisions of this Act the Govt. of India have notified the SCs and STs (Prevention of Atrocities) Rules, 1995 on 31-3-1995. Copies of PCR Act, 1955, PCR Rules 1977, the SCs and the STs (POA) Act, 1989 and the SCs and STs (POA) Rules 1995 are placed at **Annexures-V, VI, VII and VIII of the handbook respectively.**

Article 23 prohibits traffic in human beings and beggar and other similar forms of forced labour and provides that any contravention of this provision shall be an offence punishable in accordance with law. It does not specifically mention SCs but since majority of bonded labour belong to SCs this Article has a special significance for these communities. In pursuance of this Article, Parliament has enacted the Bonded Labour System (Abolition) Act, 1976. For effective implementation of this Act, the Ministry of Labour is running a Centrally Sponsored Scheme for identification, liberation and rehabilitation of bonded labour.

Article 24 provides that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment. There are Central and State laws to prevent child labour. This Article is also significant for SCs as a substantial portion of child labour engaged in hazardous jobs belong to these groups.

Article 25(2)(b) provides that Hindu religious institutions of a public character shall be thrown open to all classes and sections of Hindus. This provision is relevant as some sects of Hindus used to claim that only members of the concerned sects had a right to enter their temples. This was only a subterfuge to prevent entry of SC persons in such temples. For the purpose of this provision the term Hindu includes Sikh, Jain and Buddhist.

(III) Economic Safeguards

The provisions of Articles 23, 24 and 46 mentioned above also form part of the economic safeguards for Scheduled Castes.

(IV) Educational and Cultural Safeguards⁷

Article 15(4) empowers the State to make any special provision for the advancement of any socially and educationally backward classes of citizens or for SCs and STs. This provision was added to the Constitution through the Constitution (First Amendment) Act, 1951, which amended several Articles. This provision has enabled the State to reserve seats for SCs and STs in educational institutions including technical, engineering and medical colleges and in Scientific & Specialized Courses. In this Article as well as in Article 16(4) the term 'backward classes' is used as a generic term and comprises various categories of backward classes, viz., Scheduled Castes, Scheduled Tribes, Other Backward Classes, De-notified Communities* (Vimukta Jatiyan) and Nomadic/Semi nomadic communities.

Article 164(I) provides that in the States of Bihar, Madhya Pradesh and Orissa there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.

Article 330 provides for reservation of seats for SCs and STs in the Lok Sabha.

Article 332 provides for reservation of seats for SCs/STs in the State Vidhan Sabhas (Legislative Assemblies).

Article 334 originally laid down that the provisions relating to the reservation of seats for SCs/STs in the Lok Sabha and State Vidhan Sabhas (and the representation of the Anglo-Indian community in the Lok Sabha and the State Vidhan Sabhas by nomination) would cease to have effect on the expiration of a period of ten years from the commencement of the Constitution. This Article has been amended five times, extending the said period by ten years on each occasion. This provision will now expire in January, 2010.

Article 371A contains special provisions with respect to Nagaland.

Article 371B contains special provisions with respect to Assam.

Article 371C contains special provisions with respect to Manipur.

Article 371F contains special provisions with respect to Sikkim.

(V) Service Safeguards

Article 16(4) empowers the State to make "any provision for the reservation

(VI) Political Safeguards

In appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State".

Article 16(4A) specific that nothing in this Article shall prevent the State from making any provision for reservation in matters of promotion, "with consequent seniority" to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State".

Article 16(4B)—"Specific that nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty percent reservation on total number of vacancies of that year".

Article 320 (4) provides that nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which any provision under Article 16(4A) may be made or the manner in which effect may be given to the provisions of Article 335.

Article 335 mentions that the claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making to appointments to services and posts in connection with the affairs of the Union or of a State"

"Provided that nothing in this Article shall prevent in making of any provision in favor of Member of SCs & STs for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with affairs of Union or of a State" (**Constitutional 82nd Amendment,-Act, 2000**).

NATIONAL COMMISSION FOR SCHEDULED TRIBES

A. INTRODUCTION

On the 89th Amendment of the Constitution coming into force on 19th Feb. 2004, the National Commission for Scheduled Tribes has been set up under Article 338A on the bifurcation of the erstwhile National Commission for Scheduled Castes and Scheduled Tribes to oversee the implementation of various safeguards provided to Scheduled Tribes under the Constitution. The Commission comprises a Chairperson, a Vice-Chairperson and three full time Members (including one lady Member). The term of all the Members of the Commission is three years from the date of assumption of the charge.

B. ORGANISATIONAL SET-UP

The National Commission for Scheduled Tribes functions from its Headquarters at New Delhi and from the Regional Offices of the Commission located in six States.

There are following six Units at the Headquarters:

1. Administration
2. Coordination Unit
3. Research Unit-I
4. Research Unit - II
5. Research Unit-III
6. Research Unit-IV

The main functional units are Research Unit-I, Research Unit-II, Research Unit-III, Research Unit-IV, which deal with all matters pertaining to socio-economic and educational development, service safeguards and atrocities in relation to STs as per distribution of the Ministries/ Departments (including CPSEs and other Organisation/ Offices under their administrative control) and the States and UTs among these four Research Units.

There are 6 Regional offices of the National Commission for Scheduled tribes which work as 'eyes and ears' of the Commission. They keep a watch on the formulation of policy and issue of guidelines relating to the welfare of Scheduled Tribes in the States/UTs and keep the Commission's Headquarters informed about the developments periodically. Policy decisions taken by any State Government/UT Administration affecting the interests of the Scheduled Tribes are brought to the notice of the concerned authorities for necessary action.

C. COMPOSITION:

- Chairperson, Smt. Urmila Singh.
- Vice Chairperson, Shri Maurice Kujur
- Member, Shri Tsering Samphel
- Member, Shri Oris Syiem Myriaw
- Member (Vacant)

D. DUTIES AND FUNCTIONS OF THE COMMISSION:

The functions, duties and power of the National Commission for Scheduled Tribes have been laid down in clauses (5), (8) and (9) of the Article 338A of the Constitution, as amended by Constitution [Eighty-ninth Amendment] Act, 2003. Clause (5) states that it shall be the duty of the Commission:

- to investigate and monitor all matters relating to the safeguards provided for the Scheduled Tribes under this 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.
- to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Tribes.
- 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.
- to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards.
- 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
- 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.

Clause (8) states that 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:- summoning and enforcing the attendance of any person from any part of India and examining him on oath.

- requiring the discovery and production of any documents; receiving evidence on affidavits.
- questioning any public record or copy thereof from any court or office.
- issuing commissions for the examination of witnesses and documents.
- any other matter which the President may by rule, determine.

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

E. POWERS OF THE COMMISSION: *(Under Clause (8) of Art. 338A)*

For Investigation and Inquiry, the Commission is vested with powers of a civil court having authority to:

- a. Summon and enforce attendance of any person and examine on oath; Discovery & production of any documents;
- c. Receive evidence on affidavits;
- d. Requisition any public record or copy thereof from any court or office;
- e. Issue Commissions for examination of witnesses and documents; and
- f. Any matter which President, by rule, may determine.

F. Consultation by the Union and State Governments with the Commission: *(Under Clause (9) of Art. 338A)*

Union and every State Govt. to consult the Commission on all major Policy matters affecting Scheduled Tribes.

G. MONITORING AND WORKING OF THE COMMISSION

I. Educational & Cultural Safeguards

Art. 15(4):- Special provisions for advancement of other backward classes *(which includes STs);*

Art. 29:- Protection of Interests of Minorities *(which includes STs);*

Art. 46:- "The State shall promote, with special care, the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes, and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation."

Art. 350:- Right to conserve distinct Language, Script or Culture;

Art. 350:- Instruction in Mother Tongue.

II. Social Safeguard

Art. 23:- Prohibition of traffic in human beings and beggar and other similar form of forced labour;

Art. 24:- Forbidding Child Labour.