Making Statutory Institutions Vibrant, Responsive and Accountable

Study of Institutional Structures for Safeguarding Socio-Economic Interests and Rights of the Scheduled Tribes

Synthesised National Report on Status of State Commissions for Scheduled Tribes
Making Statutory Institutions Vibrant, Responsive and Accountable

Study of Institutional Structures for Safeguarding Socio-Economic Interests and Rights of the Scheduled Tribes

Synthesised National Report on Status of State Commissions for Scheduled Tribes
PACS publication series:
**Study on Statutory Commissions for Socially Excluded Groups**

Year of conducting study: 2013  
Year of publication: February 2014; Second Edition Publication: May 2015

The content produced in the study is a joint initiative of Poorest Areas Civil Society (PACS) Programme and Society for Participatory Research In Asia (PRIA).

Contact info@pacsindia.org for re-printing and references.  
The report can also be downloaded from www.pacsindia.org

Reproduction of this publication for educational or other non-commercial purposes is authorised without prior written permission provided the source is fully acknowledged.

Editorial Team: Priyanka Sarkar, Nini Mehrotra Lali, Priyanka Dale - PACS

*Disclaimer: Views and opinions expressed in this document do not necessarily represent the official policies of PACS.*
# Contents

Preface 5  
Acknowledgements 7  
Abbreviations 8  

Chapter 1: Introduction 9  
  Background 9  
  Status of Scheduled Tribes in India 9  
  Constitutional and Government Safeguards for Tribes 11  
  Study Mandate and Coverage 13  

Chapter 2: Findings from the Field 15  
  Mandate and Institutional Design 15  
  Institutional Effectiveness 20  

Chapter 3: Emerging Issues 25  
  Identity and Autonomy 25  
  Institutional Capacity 25  
  Proactive Outreach and Disclosure 26  
  Relationships 27  

Chapter 4: Recommendations and the Way Forward 29  
  Identity and Autonomy 29  
  Institutional Capacity 29  
  Outreach and Disclosure 30  
  Relationships 31  

References 33  
About the Study 35  
Annexure 36
Socially excluded groups experience greater challenges in moving out of poverty. Being systematically pushed to margins, their life experiences are marked with inequality in accessing rights, entitlements and opportunities. This inequality manifests in contrasting figures of differential access to entitlements and even in access to constitutional rights. It is in the context of this chasm that Poorest Areas Civil Society (PACS) programme’s interventions are positioned. Focusing on Scheduled Castes, Scheduled Tribes, Muslims, Women and Persons with Disabilities, the programme works to assist the groups to claim their rights and entitlements while addressing issues of differential access. For PACS, strengthening demand as well as the supply side of the governance processes is strategically critical to ensure inclusive policies, programmes, and responsive institutions. Promoting social justice hence gets inevitably linked with making institutions for the socially excluded as well of the socially excluded vibrant, effective and accountable.

Recognising the tremendous historical barriers and discrimination that the socially excluded groups have faced and continue to face, the Constitution of India has various provisions and instruments for safeguarding their rights and addressing their development needs. For putting an end to all visible and invisible forms of discrimination however, it is crucial that all such protective and developmental measures are implemented and are continuously responding to the requirements of the people they are mandated to address. This is where the role of **Statutory Institutions gains centrality.** Having the constitutional mandate, the Statutory Institutions are to perform the important role of **overall safeguarding interests and rights of socially excluded,** of being the supervisory body with the primary responsibility of monitoring the entire gamut of protective, compensatory and developmental measures and mechanisms. It is in this context that the study of the Statutory Institutions* was undertaken by PACS in collaboration with the Society for Participatory Research in Asia (PRIA) across PACS programme focused states; viz. Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, Odisha, Uttar Pradesh and West Bengal.

The national level reports synthesise the findings and the experiences of the State level studies vis-à-vis each commission. The study has been conducted by using participatory tools and has generated important information through interviews (with all possible stakeholders), Focus Group Discussions with community members, and multi-stakeholder state level workshops in each state. People across the states and stakes expect concrete initiatives for strengthening of these commissions.

The underlying directional idea of this action research study has been to create a critical and collaborative space for various stakeholders to engage with. Developing this pathway of engagement, the study brings to fore interesting and important analysis on issues of (i) legislative mandate, structure, composition, modes of functions of the Statutory Institutions (ii) assesses

* State Commissions for Women, Scheduled Castes, Scheduled Tribes, Minorities and Persons with Disabilities
awareness levels and practical experience of community members and puts together (iii) a set of recommendations for advocacy and dissemination based upon the study and socially excluded community’s experiences. The study draws attention to the fecundity of the various commissions and at the same time also to the areas which need inputs for the Statutory Institutions to play their role more effectively.

There is a real and an urgent need to strengthen the presence and engagement of the commissions and to address issues of access and visibility. There is an equally pressing need for the civil society, the activists, the campaigns and the Statutory Institutions to work together for promoting the rights of socially excluded communities.

We hope that the study is able to generate useful debates and discussions towards making Statutory Institutions vibrant, responsive and accountable.

In solidarity,

Rajan Khosla
Director
PACS

Dr. Rajesh Tandon
President
PRIA
Acknowledgements

The study team would like to thank the office bearers of all the State Commissions, of the Nodal Departments of the State Governments, members of the Urban Local Bodies and of the Panchayati Raj Institutions who took time out, provided the study team the information they needed as well as their insights and valuable suggestions in this process of exploring ways of strengthening the statutory institutions. This study could not have proceeded without their support.

This study would also not have been completed without the support of the civil society organisations and individuals who are working very closely with community people, at the grassroots. We would especially like to thank Vikas Vihar;

Chhapra (Bihar), Development Education & Environmental Programme (DEEP), Patna (Bihar), Dalit Vikas Abhiyan Samiti (DVAS), Patna (Bihar), Nav Manas Kalyan Kendra, Bihar Sharif (Bihar), Disha Samaj Sevi Sanstha, Kanker (Chhattisgarh), Shikhar Yuva Manch, Bilaspur (Chhattisgarh), Badla Foundation, Jamtara (Jharkhand), Vedic Society, Latehar (Jharkhand), Samarthan – Centre for Development Support, Bhopal (Madhya Pradesh), Sangini Gender Resource Centre, Bhopal (Madhya Pradesh), Adivasi Sanrachna Sewa Sansthan, Betul (Madhya Pradesh), Mansi – Centre for Human Development Research & Initiative, Panna (Madhya Pradesh), Institute of Social Sciences, Bhubaneswar (Odisha), Centre for World Solidarity, Bhubaneswar (Odisha), Women Organisation for Socio Cultural Awareness (WOSCA) Keonjhar (Odisha), Ekta Parishad Trust, Kalahandi (Odisha), Tarun Chetna, Pratapgarh (Uttar Pradesh), PACE, Pratapgarh (Uttar Pradesh), Gramin Vikas Sansthan (Uttar Pradesh), Child in Need Institute (CINI), South 24 Parganas (West Bengal), Nari-O-Shishu Kalyan Kendra, Howrah (West Bengal) for their contributions and time.

We would also like to thank Rekha Panigrahi, L.S Hardenia, Upasna Behar, Adv. Milind Wankhede and Mr. Jeet Parmar for their support study in its various phases.

We also wish to acknowledge the persistent work that has been put in by the PRIA team under Dr. Alok Pandey who anchored the study on behalf of PRIA. A special thanks to Dr. Rajesh Tandon, Dr. Martha Farrell, Dr Namrata Jaitely and Mr. Majoj Rai who have drafted these reports.

Last, but definitely not the least, our heartfelt thanks to all the community people who not only gave us time but also shared their experiences and personal information with us; and to whom we would like to dedicate this report with a hope of being able to translate it into real actions for them.

Hoping these reports part a significant strategy towards empowering the marginalised community.

In solidarity

Priyanka Dale
Programme Manager, PACS
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>FGD</td>
<td>Focus Group Discussion</td>
</tr>
<tr>
<td>FRA</td>
<td>Forest Rights Act</td>
</tr>
<tr>
<td>MP</td>
<td>Madhya Pradesh</td>
</tr>
<tr>
<td>NCST</td>
<td>National Commission for Scheduled Tribes</td>
</tr>
<tr>
<td>NFHS</td>
<td>National Family Health Survey</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-Government Organisation</td>
</tr>
<tr>
<td>NSTFDC</td>
<td>National Scheduled Tribes Finance and Development Corporation</td>
</tr>
<tr>
<td>PESA</td>
<td>Panchayat (Extension to Schedule Areas)</td>
</tr>
<tr>
<td>PVTG</td>
<td>Particularly Vulnerable Tribal Group</td>
</tr>
<tr>
<td>SCST</td>
<td>State Commissions for Scheduled Tribes</td>
</tr>
<tr>
<td>STs</td>
<td>Scheduled Tribes</td>
</tr>
<tr>
<td>TAC</td>
<td>Tribes Advisory Council</td>
</tr>
<tr>
<td>ToR</td>
<td>Terms of Reference</td>
</tr>
<tr>
<td>TSP</td>
<td>Tribal Sub Plan</td>
</tr>
<tr>
<td>VO</td>
<td>Voluntary Organisations</td>
</tr>
</tbody>
</table>
This report presents a synthesis of the findings of a study on Commissions for Scheduled Tribes in two states also featuring a reference to the NCST. The report concludes with a set of recommendations based on the emerging issues.

Despite various kinds of legislations, Schemes and laws in different states, the condition of India’s tribal population is critical, due to ineffective implementation of these laws and schemes.

The Scheduled Tribal groups have traditionally lived in remote and far-flung areas, closer to forests and natural resources in an interdependent manner with nature. Their access to critical infrastructure like roads, communication and facilities such as health, education and drinking water has remained limited. Their access to quality development services and relevant information on the same, has also remained low. This situation has often been attributed to ineffective implementation of social legislations, schemes and laws in different areas. Further, development in several of the scheduled regions, is also negatively impacted by Left Wing Extremism (LWE), or Naxal activities. Of the 76 LWE affected districts in the country, 32 are identified as Panchayat Extension to Scheduled Areas (PESA) districts. Several of these fall within the Red corridor that runs through Bihar, Jharkhand, Odisha, Chhattisgarh and Andhra Pradesh. According to the Planning Commission, the grievances emanating from non-implementation of the PESA Act, has also played a role in leading to local
villagers to join the Maoists. Service providers are hence unwilling to work in these areas, despite incentivising these services. This has also led to the poor socio-economic conditions of the STs, evident in the key development indicators pertaining to this group. As per 2011 Census the Literacy Rate among ST is 59%, with Male Literacy Rate being 58.2% and Female Literacy Rate being 41.7%. This is lower than the Literacy Rate of the general population, which is 73%, 80.9% and 64.6% respectively. The gender gap of 19.1% in ST population, and 16.3% in general population, clearly reflects the comparative disadvantage faced by the STs, in comparison to the general population.

Similarly the dropout rate, which is an important indicator for education, reflects the lack of educational development amongst ST children with the figure being higher than that of the non ST students. As per the statistics related to school education, 2010-11, the dropout rate of ST boys of classes between I-V was 37.2%, which was higher as compared to the dropout rate of 28.7% of all categories of children of the same classes. Similarly the dropout rate of ST girls of classes between I-V was 33.9%, higher as compared to the 25.1% of all the categories. This educational discrepancy is reflective of the fact that despite a number of schemes for educational entitlements of STs, they face impediments in this sphere. Different studies have also identified gaps in learning achievements of ST children in most states.

The STs also have poor health status, as compared to the other sections of society. As per the 2005-06 National Family Health Survey (NFHS-3) estimates, the Under-Five Mortality Rate and the Child Mortality Rate were much higher for STs than any other social group/ castes (95.7 and 35.8 respectively). However, it was found that STs had a lower Infant Mortality Rate (62.1) as compared to SCs (66.4) but higher than OBCs (56.6). Even the Prenatal Mortality Rate for STs (40.6) was found to be lower than other social group/ castes.

The STs are largely dependent on agriculture and allied activities, for economic purposes. In addition, the forest resources and Minor Forest Produce (MFP) contribute substantially to the tribal economy. With more than 1/5th of the ST population dependent on agriculture and forests, they are unable or are ill-equipped to take advantage of the new economic off-farm activities. Also, their traditional rights over forests, food gathering, hunting and shifting cultivation have been acutely impacted by certain forest policies and regulations.

Land alienation is another problem faced by the tribal population. Since British days, land having been acquired, for roads, railways, offices, and in recent times, for industrial and infrastructure purposes has lead to land alienation for the tribal populations. It has resulted in landlessness amongst them. They’re having to face problems of displacement caused due to the establishment of major industries including thermal power stations and hydraulic projects. As per the 12th Five Year Plan document, at least 55% of all displaced people are STs.

In these instances, a deep social and cultural marginalization occurs which is coupled up with a lack of apt economic compensation which does not get provided to them mostly, further marginalising them. They often get pushed into indebtedness, bonded labour, even human trafficking, due to their poor economic conditions. Further as migrant labourers, large sections of the tribal population work at construction sites, brick kilns, small industries, planning commissions, etc.

As per 2011 Census the Literacy Rate among ST is 59%, with Male Literacy Rate being 58.2% and Female Literacy Rate being 41.7%. This is much lower than the Literacy Rate of the non ST population, which is 73%, 80.9% and 64.6% respectively.

The STs are largely dependent on agriculture and allied activities, for economic purposes. In addition, the forest resources and Minor Forest Produce (MFP) contribute substantially to the tribal economy. With more than 1/5th of the ST population dependent on agriculture and forests, they are unable or are ill-equipped to take advantage of the new economic off-farm activities. Also, their traditional rights over forests, food gathering, hunting and shifting cultivation have been acutely impacted by certain forest policies and regulations.

Land alienation is another problem faced by the tribal population. Since British days, land having been acquired, for roads, railways, offices, and in recent times, for industrial and infrastructure purposes has lead to land alienation for the tribal populations. It has resulted in landlessness amongst them. They’re having to face problems of displacement caused due to the establishment of major industries including thermal power stations and hydraulic projects. As per the 12th Five Year Plan document, at least 55% of all displaced people are STs.

In these instances, a deep social and cultural marginalization occurs which is coupled up with a lack of apt economic compensation which does not get provided to them mostly, further marginalising them. They often get pushed into indebtedness, bonded labour, even human trafficking, due to their poor economic conditions. Further as migrant labourers, large sections of the tribal population work at construction sites, brick kilns, small industries, planning commissions, etc.

Planning Commission, 2013
Office of the Registrar General and Census Commissioner, 2013
Ministry of Tribal Affairs, 2013
Ministry of Tribal Affairs, 2013
Karegouda & Thakur, 2013
Planning Commission, 2013
agriculture where they suffer exploitation and are even denied wages as per the Minimum Wages Act. Apart from the poor socio-economic status, STs are also victims of social atrocities at the hands of members of the upper caste and class. Rates of incidences of atrocities against STs are high, especially on women; despite legislation such as The Scheduled Caste and Scheduled Tribes Prevention of Atrocities Act, 1989 (POA).

**Constitutional and Government Safeguards**

The Constitution of India has provided safeguards for STs, which includes their educational, cultural, social, economic, political and service rights. The Fifth Schedule of the Constitution contains provisions for the administration of the Scheduled Areas. The term “Scheduled Areas” encompasses all areas notified by the President of India as being covered under the Fifth Schedule. The Governor has been made responsible for the peace and good governance of these Scheduled Areas.

Further, the Constitution provides for reserved constituencies in Parliament and state legislatures for STs. The reservation of seats for ST communities is on the basis of population in the Lok Sabha, as per Article 330 and in the Legislative Assemblies of the states as per Article 332. In addition, as per Para 4 (1) of the Fifth Schedule of the Constitution, there is a provision for the establishment of a Tribes Advisory Council (TAC) in each state having Scheduled Areas therein and, if the President should direct, also in any State having STs but non-Scheduled Areas therein. The role of TAC is to advise on matters pertaining to the welfare and advancement of the STs in the state, as may be referred to them by the Governor. The members of TAC should not be more than 20, of whom as nearly as may be, three-fourths shall be the representatives of the STs in the Legislative Assembly in the state. Though the TAC has been constituted in nine Scheduled Area states, their effective functioning still remains a considerable challenge. (Ministry of Tribal Affairs 2013a)

Since independence a number of policies, programmatic and legislative interventions have been undertaken by the Government towards the betterment of the socio-economic status of the STs.

The Tribal Sub Plan (TSP) strategy is being implemented from 1972, towards the achievement of rapid socio-economic development of tribal population, wherein a specific budget component is provided for programmes and schemes for the STs. A real time implementation of this provision, however, is far from completion. Further the Scheduled Caste and Scheduled Tribes Prevention of Atrocities Act, 1989 (POA) has been another important legislation to prevent social discrimination against tribal population, despite which atrocities against STs, especially women and marginalised sections remain rampant.

To work towards ensuring the effective implementation of safeguards provided for STs under the Constitution as well as other laws and the Government schemes, an important initiative has been the formation of the statutory National Commission for Scheduled Castes and Scheduled Tribes. This step was taken in the year 1992, following the 65th Constitution Amendment Act 1990. The implementation of the provision of the 89th Constitution Amendment Act, 2003, led to the National Commission for SC & ST being replaced by National Commission for Scheduled Castes (NCSC) and National Commission for Scheduled Tribes on February 2, 2004. (National Commission for Scheduled Tribes, 2013).

In the same year as that of the formation of the National Commission for Scheduled Castes and Scheduled Tribes, the enactment of 73rd and 74th Constitutional Amendments Acts, 1992, paved way for creation of panchayats and municipalities as local governance institutions. Proportionate reservation for ST community was provided at this tier of governance, thus creating conditions for their active political participation on matters of local governance. Not less than one-third of the total number of seats reserved for ST were also reserved for women belonging to STs, thus ensuring the lather’s inclusion in local self governance.

8% for Central Ministries/Departments and in proportion to tribal population of States/UTs in State Budget
Further, in keeping with the realities of the Fifth Schedule Areas, the PESA Act 1996 was enacted, empowering the Gram Sabhas to manage socio-economic development interventions in Fifth Schedule Areas. In addition, PESA gave the Gram Sabha and the panchayats decision making powers on natural resources, which included land acquisition, management of minor water bodies, granting of license or mining lease for minerals, ownership of MFP, as well as for sale and consumption of intoxicants in Scheduled Areas. However, according to the 12th Five Year Plan document “PESA has been very poorly implemented across the nine states.” A scheme for development of Primitive Tribal Groups (PVTGs) was also launched in 1998-99, to ensure protection and development of the STs.

Ten years after the PESA Act, another important legislation supporting the legitimate entitlements of the STs was adopted. This was the Scheduled Tribes and Other Traditional Dwellers (Recognition of Forest Rights) Act 2006, also known as Forest Rights Act (FRA) 2006. This gives the STs and other traditional dwellers key forest rights which include title rights to land, user rights to MFP, grazing areas, relief and development rights as well as forest management rights. According to findings of a government committee however, most states have implemented only the individual forest rights, and are lagging behind in the implementation of community forest rights. This has led to the underutilisation of the potential of livelihood security based on the collection of MFP and also to the lack of strengthening of forest conservation.

The Government of India formulated a Draft National Tribal Policy in 2006. Its provisions address issues of alienation of tribal land, tribal-forest interface and conservation and development of PVTGs. They also relate to matters of Human Development Index and gender equity amongst the tribal population. Recent rights-based legislation for the STs, namely, The Right to Fair Compensation and Transparency in Land Acquisition Act, Rehabilitation and Resettlement Act, 2013, have replaced the Land Acquisition Act, 1894. This Act regulates land acquisition and establishes rules for granting compensation, rehabilitation and resettlement to the affected. Its effective implementation however requires close monitoring in order to yield the desired results.

In addition to the above mentioned legislative instruments, a number of targeted government programmes and schemes have been designed and implemented for the empowerment of the tribal population. Under 11th Five Year Plan an allocation of INR 3,04.41 crores was made towards special education schemes for STs. This included provisions for post-matric scholarship, hostels for ST boys and girls, free coaching for STs, scholarship for quality education, ashram schools for ST boys and girls, as well as measures to strengthen education among ST girls. The Tribal Affairs Ministry also operates the Grant-in-Aid scheme to Voluntary Organisations (VO), a scheme for the welfare of STs. This provides support to NGOs for managing ten or more bedded hospitals and mobile dispensaries in tribal areas.

Ten years after the PESA Act of 1996, another important legislation supporting the legitimate entitlements of the STs was adopted; The Scheduled Tribes and Other Traditional Dwellers (Recognition of Forest Rights) Act, 2006, also known as Forest Rights Act (FRA).

A number of employment and income generating schemes have also been launched. These include centrally sponsored schemes like the National Scheduled Tribes Finance and Development Corporation (NSTFDC) for market development of tribal products, establishment of vocational training centres in tribal areas, and Special Central Assistance to Tribal Sub Plan (SCA to TSP). Further the Grants-in-Aid under Article 275(1) provides for 100% financial assistance to the states through the nodal Ministry of Tribal Affairs, to promote welfare of the STs and upgrade level of administration in tribal areas.

---

1Planning Commission, 2013
2Synthesised National Report on Status of State Commissions for Scheduled Tribes
However despite 66 years since Independence, and a number of constitutional and government safeguards, the status of STs in India is not without serious concerns. Given this context, it becomes important that especially the statutory provisions are looked at in a reflective manner thus making it possible to assess the gaps and to arrive at doable solutions.

**Study Mandate and Coverage**

This study began in January 2013 as a joint initiative of PACS and PRIA with the following specific objectives:

- To understand the legislative mandate, structure, composition, modes of functioning and delivery of State Scheduled Tribe Commissions in the three states of Madhya Pradesh (MP), Chhattisgarh and Jharkhand, mandated to safeguard the socio-economic rights of STs.
- To assess the awareness levels and understand experiences of ST community members regarding their respective State Scheduled Tribe Commissions.
- To arrive at a set of recommendations for advocacy and dissemination to make these Scheduled Tribe Commissions more vibrant, responsive and accountable.

This study of ST Commissions is part of a larger study of five different Commissions in the seven states covered under the PACS programme, viz., Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, Odisha, Uttar Pradesh and West Bengal.

The first phase of study generated data reviewing the statutory and legislative mandates of each institution including their official Terms of Reference (ToRs), actual constitution, composition, structure and support system, general functioning, and process of appointments of Commissioners and officials for the Commission in the seven states. Post the analysis of preliminary data on ST Commissions and initial discussions with officer-bearers and/or associated actors of these commissions, the State Scheduled Tribe Commissions for MP and Chhattisgarh and National Commission for Scheduled Tribes (NCST) and its regional office in Jharkhand were selected for further in-depth study of the ST Commissions. This was based on the demographic, socio-economic and political indicators for STs in these states.

Two districts each in MP, Chhattisgarh and Jharkhand were selected for an in-depth empirical study as per the methods given below:

- **Focused Group Discussions (FGDs):** To assess the level of awareness, accessibility, approach and effectiveness of the State Scheduled Tribe Commission, eight FGDs (two each in rural and urban locations in each district separately for men and women) were organised with members of the ST community.

- **In-Depth Interviews (IDIs):** IDIs were conducted with select members of the ST community, local functionaries, NGO workers, local leaders and others (60 in each district) to gain further information on various aspects of the functioning of ST Commissions and National ST Commission.

- **Tracking of cases:** From the cases addressed by the ST Commissions within the last two years between eight to ten were tracked in each state to understand the actual procedures and time taken after a complaint is registered with the Commission.

The above intensive field data collection was carried out in two districts of each state; Panna and Betul (MP), Kaker and Bilaspur (Chhattisgarh) and Latehar and Jamtara (Jharkhand).
As per the objectives of the study the main findings include assessment of the mandate, the institutional design and the institutional effectiveness of the Commissions in relation to its outreach, transparency in functioning and responsiveness to the ST community. Efforts have been made to present a comparative picture across the three ST Commissions under study, making possible a more nuanced analysis of the status of the Commissions.

Mandate and Institutional Design

In addition to understanding the given mandate of the ST Commissions, it is equally essential to assess the stipulated institutional design and its implementation. This section provides an assessment of the same. It covers the statutory nature, formation, mandate, composition, budget and expenditure patterns of the NCST as well as the two State Commissions.

Statutory nature and formation

The NCST was established through an Amendment to Article 338 and by inserting a new Article 338A in the Constitution through the Constitution (89th Amendment) Act, 2003. Based on the provisions of this amendment, the National Commission for Scheduled Castes and Scheduled Tribes were replaced by two separate Commissions namely- (i) the National Commission for Scheduled Castes (NCSC), and (ii) the National Commission for Scheduled Tribes (NCST) w.e.f. 19 February, 2004.

In pursuance of the Madhya Pradesh Scheduled Tribes Commission Act, 1995 the Government of Madhya Pradesh established the office of the Commission for Scheduled Tribes on May 1995.

The Chhattisgarh State Commission for Scheduled Tribes was constituted in November, 2000 under the Chhattisgarh State Scheduled Tribe Commission Act - 1995. Interestingly in Jharkhand, a State Commission was not formed. One of the regional offices of NCST is based at Ranchi, headed by an officer in charge, whose jurisdiction includes Bihar, Jharkhand, and Uttar Pradesh.

If we assess the data from four additional states where the first phase of the study was undertaken, the Bihar State Scheduled Tribe Commission was formed on 8th November 2009 through resolution 5614 of the Government. Further the Government of Uttar Pradesh, in pursuance of the clause (3) of the Article 348 of the Constitution, enacted the respective state Act in 1995 and established the office of the Uttar Pradesh Commission for Scheduled Castes and Scheduled Tribes. It is noteworthy that despite having a large ST population, Odisha, like Jharkhand, does not have a State Commission for STs. This itself is an area of concern, and needs urgent action by the State Governments. West Bengal also does not have State Commission for STs.
Mandate

The NCST has the mandate to investigate and monitor matters relating to educational, cultural rights, social, economic, political and service rights safeguards provided for STs under the Constitution or under other Government laws or orders. This involves the evaluation of the functioning of such safeguards as well as holding an inquiry into specific complaints relating to rights and entitlements of STs. Similarly in MP and Chhattisgarh, the ST Commissions have the mandate to act as watchdogs for the protection provided to STs under the Constitution and other laws in existence. For Investigation and Inquiry, the National Commission, as well as MP and Chhattisgarh State Commissions are vested with the powers of a civil court, having authority to (i) summon and enforce attendance of any person and cross-examine them under oath (ii) order the discovery and production of any documents (iii) receive evidence on affidavits (iv) requisition of any public record or copy thereof from any court or office (V) issue Commissions for examination of witnesses and documents; and undertake any matter which President by rule (for National Commission), may determine, and matters which may be prescribed for the two State Commissions.

The National Commission has the mandate to participate and advise in the planning processes relating to socio-economic development of STs, and to evaluate the progress of their development under the Union and any State government.

Similarly the MP and Chhattisgarh Commissions have the mandate to keep a watch for effective and timely implementation of programmes meant for welfare of STs and to suggest improvement in programmes of the State Government or any other body or authority responsible for implementation. In addition the National Commission has the responsibility to discharge such other functions in relation to STs as the President may, by rule specify, subject to the provisions of any law made by Parliament. Similarly the State Commissions in MP and Chhattisgarh have the mandate to perform such other functions as assigned by the State Governments.

The National Commission has the additional mandate to discharge other functions in relation to the protection, welfare, development and advancement of the STs. This includes (i) measures for conferring ownership rights with respect to MFP to STs living in forest area (ii) safeguard rights of tribal communities over mineral resources, water resources etc. as per law (iii) development of STs and promotion of viable livelihood strategies (iv) improvement of relief and rehabilitation measures for tribal groups displaced by development projects (v) prevent alienation of tribal people from land and effective rehabilitation of people who face such forms of alienation (vi) fostering cooperation and involvement of tribal communities for protection of forests and undertaking social afforestation (vii) ensuring full implementation of PESA, 1996 and; reducing and ultimately eliminating the practice of shifting cultivation by tribal groups that lead to their continuous dis-empowerment as well as to the degradation of land and environment.

Similarly both the Commissions have the mandate to recommend the state government to take
steps for the inclusion of particular tribes or tribal communities or parts of or groups within tribes or tribal communities in the Constitution (in reference to Scheduled Tribes Order, 1950); as well as tender advice regarding reservation for STs in public services and admission into educational institutions.

The Regional Office of the National ST Commission of Bihar, Jharkhand, and Uttar Pradesh is mandated to keep a watch on the formulation of policy and issuing of guidelines for the welfare of STs in the States/UTs. It also keeps the Commission’s Headquarters periodically informed about the developments and policy decisions taken by state government/UT administration affecting the interests of the STs by bringing it to the notice of the concerned authorities for necessary action.

Table 2.2 provides a comparative assessment of the mandates of the NCST and the State Commissions.

### Table – 2.2 Mandates of the ST Commission

<table>
<thead>
<tr>
<th>National Commission for Scheduled Tribes (NCST)</th>
<th>State Commission for Scheduled Tribes - MP</th>
<th>Chhattisgarh State Commission for Scheduled Tribes</th>
</tr>
</thead>
<tbody>
<tr>
<td>To investigate &amp; monitor matters relating to safeguards provided for STs</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>To inquire into specific complaints relating to rights &amp; safeguards of STs</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>For investigation and Inquiry, the Commission is vested with powers of a civil court</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>To participate and advise in the planning process relating to socio-economic development of STs</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>To submit report to the President annually and at such other times as the Commission may deem fit</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>To discharge such other functions in relation to STs as the President may, subject to the provisions of any law made by Parliament, by rule specify</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>The Commission would also discharge other functions in relation to the protection, welfare and development &amp; advancement of the STs</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>To tender advice regarding reservation for STs in public services and admission in educational institutions.</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>To recommend to the State Government to take steps to add particular tribes or tribal communities or parts of or groups within tribes or tribal communities in the Constitution’s (Scheduled Tribes) Order, 1950.</td>
<td></td>
<td>✓</td>
</tr>
</tbody>
</table>

Source: Data collected during field study.
In terms of the reporting requirements, NCST is required to submit reports to the President annually and at such other times as the Commission may deem fit, on the working of safeguards as well as measures required for effective implementation of programmes/schemes relating to welfare and socio-economic development of STs. The State Commissions are expected to prepare Annual Reports, to be tabled in the State Legislative Assembly, and Action Taken Report to be shared with the Government.

The mandates of the National and State Commissions thus include both investigative and monitoring matters related to safeguards provided for STs, as well as facilitation of relevant measures for the socio-economic development of STs.

**Composition**

The composition of the ST Commissions include appointed members, as well as technical and administrative staff to support members in performing their mandated roles. The study assessed the current composition, as per the mandated stipulations.

The Chairperson and the members of NCST are appointed by the President, while at the State Commission level they are nominated by the State Government. The NCST Chairperson has been given the rank of Union Cabinet Minister, and the Vice-Chairperson that of a Minister of State, while other members are of the rank of a Secretary to the Government of India. The Chairperson of the State ST Commission has a status equivalent to Cabinet Minister of the State Government. The Chairperson and other members of the ST Commission hold the office for a term of three years from the date the person assumes charge.

As Table 2.3 indicates, the composition of the office bearers of the National Commission and the two State Commissions that were studied in-depth, is to a large extent, in accordance with the stipulated provisions.

**Table – 2.3 Office Bearers of the ST Commissions**

<table>
<thead>
<tr>
<th>National Commission for Scheduled Tribes (NCST)</th>
<th>State Commission for Scheduled Tribes - MP</th>
<th>Chhattisgarh State Commission for Scheduled Tribes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Mandated:</strong> 1 Chairperson, 1 Vice-Chairperson and 3 members.</td>
<td><strong>Mandated:</strong> 1 Chairperson and 2 members</td>
<td><strong>Mandated:</strong> 1 Chairperson and 2 members</td>
</tr>
<tr>
<td><strong>Functional:</strong> 1 Chairperson and 2 members</td>
<td><strong>Functional:</strong> 1 Chairperson</td>
<td><strong>Functional:</strong> 1 Chairperson and 2 members</td>
</tr>
<tr>
<td>(There are 6 regional offices of NCST. The regional office is headed by a Director/Assistant Director/Research Officer. There is a Regional Office of NCST at Ranchi)</td>
<td>(1 member position vacant and 1 member has resigned)</td>
<td></td>
</tr>
</tbody>
</table>

Source: Data collected during field study.

**Table – 2.4 Staffing of the ST Commissions**

<table>
<thead>
<tr>
<th>National Commission for Scheduled Tribes (NCST)</th>
<th>State Commission for Scheduled Tribes - MP</th>
<th>Chhattisgarh State Commission for Scheduled Tribes</th>
</tr>
</thead>
<tbody>
<tr>
<td>15 posts sanctioned</td>
<td>11 posts sanctioned</td>
<td>20 posts sanctioned</td>
</tr>
<tr>
<td>66% are technical/professional</td>
<td>9% are technical/professional</td>
<td>10% are technical/professional</td>
</tr>
</tbody>
</table>

Source: Data collected during field study.
The study shows that the position of the Chairperson is filled in all the three cases. However at the time of the study the positions of one Vice-Chairperson at the NCST level, and two members in MP state commission were vacant.

In terms of the staffing across the three commissions, as specified in Table 2.4, NCST has a sanction of 15 members, of which 66% are technical staff including the Secretary, Joint Secretary, Directors, Research Officers etc. In the case of both the State Commissions approximately 10% of the staff are technical staff including the Secretary and Assistant Research Officer (in case of Chhattisgarh), while the rest are administrative staff including the stenographer, accountant, record keeper, watchman, peon etc.

The regional office of NCST based at Ranchi has one officer in charge (Research Officer), with jurisdiction over Bihar, Jharkhand, and Uttar Pradesh. The post of the Assistant Director at the Ranchi Regional Office, however is vacant. In both the State Commissions there is no provision for legal advisors and counsellors. The staffing in all the Commissions thus has a larger number of administrative staff and fewer professionals such as research officers and legal experts. This restricts the functioning of the Commissions, especially of the State Commissions. For example in MP for seeking any legal recommendation, the Commission has to approach the Law Department through its nodal department. This delays the investigation process and impacts negatively on the responsiveness of the Commission.

There are stipulated criteria for the selection of the Chairperson and the members have been NCST stipulates that the Chairperson, Vice-Chairperson and the members shall be persons of ability, integrity and standing, having record of selfless service towards the STs. Additionally it is stipulated that the Chairperson and at least two members should be from the be ST community and at least one member should be a woman. Similarly the Chhattisgarh State Commission is mandated to have three non-official members having special knowledge in ST matters, with at least two members from the ST community.

Beyond these stated criteria, there is no clear-cut qualification required for the Chairperson or members of the Commission. This makes the selection process politically driven and thus prone to bias.

If we further study the gender profile of the Commissions, we find that in the NCST 33.3% of the members are women, while in the Chhattisgarh and MP Commissions all the members are men. None of the ST Commissions had women Chairpersons. The skewed gender balance in the Commission is a matter of concern, especially in keeping with the vulnerable positions of the tribal women in insurgency affected areas.

**Financial Status**

A study of the current annual budgets reflects significant variations across Commissions. The annual budget for the NCST is INR 5.99 crores for 2011-12, in which INR 1.71 crores is allocated to the regional offices, while INR 4.28 crores to the headquarters. In the case of the State Commissions, while the Chhattisgarh Commission had an annual budget of INR 1.25 crores (2012-13),

for MP the annual budget was INR 52.68 Lakh (the latest figure available for 2009-10). The data on budgets across the three Commissions, showed that the financial allocation under the subheads of salary and administrative expenses was much higher than for programmatic work.

**Expenditure patterns**

Details of the annual expenditure of the National Commission were not available. The figures for the State Commission of Chhattisgarh, showed a 100% expenditure of the annual budget for the year 2011-12. However, the expenditure for MP for the year 2009–2010 was approximately 70.77% of the total amount received. 29.22% of the total amount was returned. In these cases as well, the expenditure pertained mainly to the heads of salary and administration, with no clear programmatic expenses.
### Table – 2.5 Annual Budget and Expenditures of the ST Commissions

<table>
<thead>
<tr>
<th></th>
<th>National Commission for Scheduled Tribes (NCST) (INR)</th>
<th>State Commission for Scheduled Tribes – MP (INR)</th>
<th>Chhattisgarh State Commission for Scheduled Tribes (INR)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Budget</td>
<td>5.99 Crores (2011-12 – current figures) 1.71 crores allocated to the regional offices and 4.28 crores to the headquarters.</td>
<td>52.68 Lakh (2009-10). 1.25 crore (2012-13 – latest available) 1.10 crore (2011-12)</td>
<td>1.10 crores (approx.) (2011-12 – latest available)</td>
</tr>
<tr>
<td>Expenditure</td>
<td>Information not available</td>
<td>37.28 lakh (2009-10).</td>
<td>1.10 crores (approx.) (2011-12 – latest available)</td>
</tr>
</tbody>
</table>

*Source: Data collected during field study.*

### Institutional Effectiveness

The indicators to assess institutional effectiveness of the ST Commissions included public awareness about them, the degree of transparency vis-a-vis their mandated functions and the extent of responsiveness. These assessments were based on the interviews and the FGDs that were conducted with the ST community members and representatives of the government.

However in Chhattisgarh as the Chairperson of the Commission belonged to Kanker district, and was a renowned political party leader of the district the percentage of awareness in Kanker (21.3%) was higher, than in Bilaspur district (16.4%). Across the three states, the various sources of information about the Commission were newspapers, TV, radio, hoardings, pamphlets, discussions with people/ local leaders/panchayat representatives, tribal community meetings, etc. Majority of the people who were aware about the Commission accessed this information from newspapers.

In Jharkhand while, no one from the interview respondents were aware about the nodal department, in Chhattisgarh and MP it was 18% and 22% respectively. Knowledge about location of the office of the Commission in Jharkhand, Chhattisgarh and MP was 8%, 19.7% and 22% respectively. Amongst the respondents who were aware of the Commission, the percentage visiting the regional office in Jharkhand, the State Commission Office in MP and Chhattisgarh was 2%, 3% and 25%, respectively. The reasons mentioned by the respondents for less frequently accessing the office of the Commission were as below:

I. The office is set up only at the state level, thus not easily accessible from entire region
II. Exact address of the Commission is not known
III. The absence of an educated escort, illiteracy, household work etc.

### Data from interview respondents

The interview respondents included community members, CBO members, representatives of panchayats, NGOs, government officials, as well as other citizens like shop keepers etc. It was found that 92% of the respondents in Jharkhand, 62.3% in Chhattisgarh and 57% in MP were not aware about the Commission’s work to protect the interest and rights of the ST community.
None of the respondents were aware about the criteria and process of appointment of Commission members in Jharkhand, while in Chhattisgarh and MP only 3.3% and 13% respectively were aware. Interestingly in all the three states, even the government respondents were only minimally aware of the criteria of selection. Those who were aware, for instance in MP came from the legal background.

**Data from FGDs with ST community members**

The findings of the FGDs conducted with ST community members, across all three states showed that nearly all the members were unaware about the existence of the Commissions and its functions, nodal departments as well as selection process of the commission members.

The field realities demonstrated that in terms of public awareness about the ST Commissions work, nodal Department, location of office; as well as criteria and process of appointment. The respondents were least aware in Jharkhand, followed by Chhattisgarh and then MP.

The study also revealed that the awareness levels to a considerable extent were also linked to the presence of the Chairperson, and visits by him in this case. Further the absence of State Commission in Jharkhand is a highly significant reason for the state faring low on this aspect. Across all the three states, the awareness amongst the ST community members was very low, thus raising serious concerns regarding the outreach efforts of the ST Commissions.

**Transparency of the Commission**

2%, 3.3% and 10% of the interview respondents in Jharkhand, Chhattisgarh and MP respectively stated that awareness programmes were conducted by the Commissions. The number of these programmes ranged between 1-2, the case of Jharkhand; which too, were organised by NGOs. 9.8% and 11.7% of the interview respondents in Chhattisgarh and MP respectively stated that the members of the Commission visited their villages, while in Jharkhand none of the respondents stated that Commission members visited their area. Interestingly in Chhattisgarh, it was observed that members of the Commission restrict their visits to their native place while ignoring other districts.

The data from the FGDs with the ST community members on proactive disclosure by the ST Commissions, reflected the lack of awareness amongst them.

Another indicator of transparency by the ST Commissions is the preparation and presentation of the Annual Reports in the public domain which is part of their mandate. Article 338A of the Constitution enjoins upon the National Commission for Scheduled Tribes to present reports to the President on the working of the constitutional safeguards for STs, and to make recommendations for effective implementation by the Union or state government for the protection, welfare and socio-economic development of STs. As per the constitutional provisions, the report of the Commission has to be presented in both houses of Parliament along with a Memorandum that explains the action taken or proposed on the recommendations. Similar action has to be taken by the state governments on the presentation of the report in the state Legislative Assembly, in relation to the recommendations concerning the State itself.

In case of NCST, while the first and second Annual Reports are available on the website, the subsequent Annual Reports, from the third to the sixth year (2010-11) are not yet presented in the Lok Sabha or Rajya Sabha. Its publication and public dissemination thus is withheld till it is presented and approved by both the houses. The ST Commission of Chhattisgarh has regularly prepared Annual Reports and also published the same. The Report of 2011-12 is available on the website of the Commission. The Commission has also published the Annual Report for the year 2012-13 and hard copy of the same is available in the Commission’s office. In case of the MP ST Commission, the Annual Report 2009-2010 is the latest report available on the website.

Websites today are an important tool of public disclosure. The website of NCST include information on the implementation of the safeguards, meetings cum tours of the Commission, hearing and proceedings, investigation of atrocities, RTI disclosures etc. The website of
The website of NCST includes information on the implementation of the safeguards, meetings and tours of the Commission, hearing and proceedings, investigation of atrocities, RTI disclosures etc.

the Chhattisgarh State Commissions includes the Annual Report, as well as details of the cases under investigation. However the MP State ST Commission does not have a separate website. The only web-space where the relevant information is available is on the MP SC and ST Welfare Department website.

An important component of the functioning involves financial transparency. In most cases, as the Annual Reports themselves are not yet out in the public domain, hence an overview of their annual financial status is also unavailable in the public domain. However through the RTI disclosures’ root the annual budget for 2010-11 is available on the NCST website. The Chhattisgarh State Commission has given information on the budget and expenditure in the Annual Report (2012-13), which is also available on its website. The MP Commission has also given details of the budget and expenditure in its Annual Report 2009-2010. This is a positive trend.

Another important transparency criterion is an easy access of information relating to the number of cases received and progress made on them by the Commission; more like an update. The NCST information (updated till 2009-10) in this regard is on its website. Similarly the Chhattisgarh and MP State Commissions give this information in their latest available Annual Reports (2012-13 and 2009-10 respectively). The preparation of Annual Reports sharing of income and expenditure as well as progress of cases is being undertaken by the three Commissions, though at varying pace.

These examples indicate that, there is, nevertheless, a considerable scope for timely proactive disclosures and to strengthen the aspect of transparency.

Responsiveness of the Commission

The element of responsiveness was assessed via the cases that were tracked as a part of the study. During the study, a total 24 cases were tracked, which included 10 cases from Chhattisgarh, 8 from MP, and 6 from Jharkhand. The prime objective behind the tracking of cases was to understand the various dimensions related to the functioning of the ST Commissions. This was undertaken to assess the effectiveness of the Commissions in facilitating justice, support and relief to the victims of atrocities or violation of socio-economic rights. The tracking of cases was meant to understand factors such as the speed of response, independence of investigation, duration of the redressal, satisfaction of the complainant and other relevant factors.

Step 1: Filing of the case by the complainant

The first step in the Commission’s investigative role is the filing of the case by the complainant. This can be done through various modes such as submitting an application in person, through post or through e-mail. There is no prescribed format regarding the same. In Jharkhand four to six Case - applications were submitted to the NCST Chairperson while he was on the visit to that particular district, while two complainants went personally to file their case at the regional office in Ranchi and at the National Office in Delhi. In Chhattisgarh eight to ten cases were filed by visiting the Commission, and one by post. In MP, the complainants approached the Commission either directly or with support from various tribal groups. Out of the 24 cases tracked, 41% cases were filed under illegal land grab either by a company or by the district administration. Interestingly the land grab cases were mostly in Jharkhand, followed by Chhattisgarh and then MP. Other cases were related to atrocities, lack of job benefits, lack of promotions, reservations etc.

In one case the Inland Power Ltd Company, in Chhattisgarh illegally acquired land from tribals. This was a direct violation of the Chota Nagpur Tenancy Act, 1908 of Jharkhand. The complainant filed his case by directly approaching the National ST Commission. The complainant was asked to
gather evidences so that the case could be solved. This proved unfeasible for him. There has been no decision taken till date on the complaint and the violation remains to be addressed.

**Step 2: Enquiry by the commission on the registered complaint**

It is important to remember that for carrying out its role in investigation and inquiry, the Commissions are vested with the powers of a civil court, having authority to:

- summon and enforce attendance of any person and examine them under oath;
- search for and produce relevant documents;
- receive evidence on affidavits;
- requisition public record or copy thereof from any court or office;
- issue Commissions for examination of witnesses and documents and;
- any other matter which by rule, may be prescribed.

Out of the total cases tracked, 83% cases got an acknowledgement/receipt from the Commission. In 58% cases the registration of the complaint was done within two days of filing the complaint while in 33% cases it took about 2-3 weeks.

It was found that there was no established standard for taking action and initiating an enquiry on the level of the commission. The study showed that once the case was received/registered in the Commission, it conducted an enquiry on the case/complaint through the concerned authority/department, by writing letters to higher authorities and asking for the departmental enquiry report. The Commission also took the statement and affidavit from the complainant to ensure that she/he does not turn hostile. It also investigated the incident in the presence of both the parties by organising a hearing.

An analysis of the 24 cases tracked showed that in 29% cases the enquiry time was less than one month, while in 12.5% cases, the enquiry time was between 2-4 months. In 20.8% of cases the enquiry time was about seven months. While in 25% cases, the hearings was conducted once, in 20.8% cases it was conducted twice, and in 12.5% cases it was more than three times. The overall trend thus was positive in terms of the responsiveness of the Commission in undertaking the enquiry and conducting the hearing of cases.

There are, however, variations in the performance on this step, among the Commissions. The performance of Chhattisgarh ST Commission was best with 60% cases having the enquiry time of one month. In Jharkhand in 83% cases it was between 4-7 months, while in MP enquiry of only 1 case was undertaken, over a five-month period. In Chhattisgarh the hearing of all cases was undertaken once or twice, while in MP there was no hearing conducted. In most of the cases, the Chairperson of the Commission was part of the hearing and decision making. Further, in none of the cases was there any mention of ongoing feedback on the enquiry process, to the complainant.

**Step 3: Disposal of cases**

On the basis of tracked cases, it is found that only in 45.8% cases the applicants received recommendations and decisions from the Commission. A large majority of the cases have decisions pending till date. All the complainants shared that the Commission did not personally undertake any field investigations.

On this aspect, the Chhattisgarh State Commission has once again fared better than the other two Commissions, with decisions given by the Commission for all the 10 cases tracked.

Further analysis reflects that certain kinds of complaints had their redressal done in less time, as compared to others. For example in Chhattisgarh Commission, in the case of bribe being taken by government officials for promotion, the process was completed between two to three months. However, in cases such as separation from service, encroachment on land, the process was completed between five to twelve months. Similarly in Jharkhand, most of the cases dealing with the land grab issue, despite one or two hearings were done by the Commission, the final decision is still pending.

The delay in disposal of cases is also due to pending reports from the government departments, district administration and officials. In Jharkhand, in the absence of a State Commission,
the cases were registered with the NCST. This acted as a deterrent for several of the complainants to attend all the hearings and proceedings, due to the travel and the costs involved. This has been one key reason for pending decisions in many cases especially in Jharkhand.

**Step 4: Pronouncement of judgement by the commission**

The study has shown that neither of the three Commissions have a follow-up mechanism to enforce their judgement or to ensure that the offence has been addressed. In all the cases tracked, there was no opportunity given to the complainants to express their satisfaction or dissatisfaction with the decision of the Commission.

Out of the tracked cases only two petitioners in Chhattisgarh and one in Jharkhand expressed their satisfaction with the decision and with the action taken by the concerned department. In the remaining cases, the respondents were happy with the recommendations made by the Commission as it went in their favour, but were not satisfied with the outcome as neither was any action taken per their recommendations, nor was there any follow-up by the Commission on the final decisions and suggestions that it gave. In two other cases, the respondents approached the local courts.

During the study, only in one out of the 24 cases tracked, the Commission had taken suo-moto intervention. To illustrate, in Kanker district, the Chhattisgarh ST commission proactively conducted departmental inquiry on a land encroachment issue by a non-tribal person and issued directives to the Collector and DFO to cancel the patta of land in the name of non-tribal person and transfer it in the name of the concerned tribal. Unfortunately, even after two years, the concerned department has not taken any action on the recommendation of the Commission.

On the basis of the 24 cases tracked in the context of the responsiveness indicator, it can be concluded that response by the Commissions in registering cases and undertaking its enquiry is timely. In 42% of cases, the enquiry time was about four months, with 1-2 hearings undertaken in 45% of the cases. In terms of disposal of cases in 55% of the cases tracked, the recommendations and decisions of the Commission are still awaited, which is an area of concern. The response of the officials and line departments on the recommendations of the Commission however is weak as it shows a pattern of going un-responded. This is reflected by the fact that in only 12.5% cases, the complainants were satisfied with the actions taken by the concerned departments.
Emerging Issues

The critical and in-depth assessment of the mandated role, institutional design, as well as institutional effectiveness of the NCST and two State Commissions, has raised some pertinent issues related to the identity, capacity, outreach and relationship dimensions of these statutory institutions. These issues are also relevant to the existing State ST Commissions (i.e. of Bihar), as well as other Regional Offices of the NCST.

Identity and Autonomy

- **Political Affiliation:** In the absence of prescribed qualifications, criteria or processes, defined for the appointment of members in the ST Commissions, political appointments have become the unstated and preferred norm. The appointed Commission members thus are at a risk of being put to pressure from political mentors or forced to comply with the Government in power.

- **Restricted Independent Powers:** The ST Commission enjoys the power of a civil court, however its powers are limited to sending recommendations to the Government which is as per the provisions in the acts of the State and National Commission. Since the Commissions are not vested with the power to enforce implementation, the final decision is taken by the authorities. This was reinforced in the study, wherein in the three states, the Commissions even after having given recommendations in a number of cases could not yield any action from the authorities.

- **Ambiguity on Mandate:** There are instances highlighting ambiguities. For instance whether a case related to ST women should be filed at the State Commission for Scheduled Tribes or at the State Commission for Women, came to light. Most of the time people lodge their complaints in both the Commissions, since their boundaries overlap.

Institutional Capacity

- **Centralised Administrative System:** The State Commission has only one office at state level, with no district offices or presence. This centralised administrative setup of Commission thus becomes practically a huge challenge for the complainants in terms of easy access to the Commission from different parts of the state. Further in Jharkhand, the absence of a State Commission, adversely impacts the functioning of the Regional Office of NCST, which is understaffed and overburdened with responsibilities of managing other states.

- **Inadequate Human Resources:** The Commissions, especially at the state level, are facing a deficit in human resource. The MP State Commission did not have a Chairperson during the year(s) 2008-2009 and 2009-2010, and also the position of two members was vacant in the year 2009-10. Similarly in Chhattisgarh Commission, as against the twenty sanctioned staff positions, only twelve were filled, which affects the smooth functioning of the Commission. The problem is not
only are the stipulated staff positions vacant, but there is also a limited provision for professional, legal or research staff to support the Commission members in their independent studies and investigations.

The outreach efforts of the National and State Commissions to make the community aware about its existence, mandate and functioning are not adequate. This has led to a lack of awareness amongst STs about the existence of the ST Commissions.

This restricts the investigative as well as developmental role of the Commission.

- Restricted Financial Resources for Programmatic Work: The Commission's functioning is also affected by inadequate planned financial resources earmarked to assist them to undertake programmatic interventions, regarding their investigative, as well as developmental role. There is no separate budget head for programmatic expenditure, like awareness generation, publicity of provisions of the Act, publication, etc. which restricts the Commission's functioning. The State Government provides grants to the State Commission, while the regional office of the NCST gets a proportion of the NCST budget. However there are no clearly defined norms to guide the formulation and sanction of the annual budgets. This is evident from the variation in the State Commissions' budgets from one state to the other.

- Ineffective Operating Mechanisms: The existing systems for filing complaints, to facilitate enquiry and dispose the cases are limited in their effectiveness. Online system for registering of complaints, proper mechanism to follow up cases, online grievance redressal mechanism or toll free numbers, specified mechanism for meetings of the Commission members, or keeping records of the same are key aspects of enhancing the effectiveness of the current operating mechanism. For instance, Section 8 (1) of Chhattisgarh State Scheduled Tribe Commission Act, 1995 states that “the Commission shall meet as and when necessary at such time and place as the Chairperson may think fit.” In the absence of a stipulated guideline for meetings, the investigative as well as the developmental role of the Commission suffers.

Proactive Outreach and Disclosure

- Limited Outreach of the Commission Interventions: The National and State Commissions need to undertake proactive and systematic outreach drives to make the community aware about its existence, mandate and functioning.

- This has emerged as a clear area which needs further strengthening and input; lack of which has led to a lack of awareness amongst STs about the existence of the ST Commissions which in turn has lead to them not approaching the Commission for grievance redressal.

- Community Unaware about Statutory Rights: Majority of the ST respondents were not aware about the rights and provisions available to them under the Constitution and the existing social legislation to safeguard their rights. Due to this the tribal community does not access the Commission for seeking justice and, grievance redressal.

- Restricted Proactive Interventions: The study has revealed that the suo-moto interventions by the State Commissions on pressing tribal issues such as land acquisition and rehabilitation, have been few. The NCST website mentions details about the review of implementation of safeguards, and the suo-moto cases taken up by the NCST. It also includes details about the recommendation and consultations on proposals, bills, policy and administrative issues related to STs, as well as the review of implementation of development programmes for STs in the district. There however remains a larger unfulfilled potential for action by the National and State Commissions in terms
of advising and participating in planning, monitoring and evaluating the implementation of socio-economic development programmes meant for welfare of STs.

**Relationships**

- **Inadequate Linkages with Judiciary:** The Symbiotic linkages between these Commissions and other organisations and institutions responsible to further the rights of STs are inadequate. The relationship between them and the judiciary and the Legal Assistance Cells in the districts needs to be established as well made strong.

- **Restricted Engagement with CSOs:** The present engagement of the CSOs is mostly restricted to get the complaints filed, leading to a more or less isolated way of functioning. The study has reflected inadequate institutional linkages between the ST Commissions and the large number of CSOs, NGOs and social activists working at the state and district level on common issues of socio-economic and political empowerment of STs; at the same time indicating that these areas must be explored and strengthened.

- **Absence of Synergy with Tribal Research Institutes and Academia:** Synergy with the tribal research institutes and institutes of social work at the national as well as the district level can help widen the ambit of the Tribal Commissions. An initiative on the part of the commissions must be undertaken to make these networks strong, too.

- **Inadequate Linkages with Tribal Leadership:** Working with and engaging with the PRI members at the district, block and panchayat level can be a very important platform cum a channel for supporting its outreach efforts if the opportunity is made well use of by the Commissions. The Commissions have also not made efforts to involve traditional tribal leadership and active Gram Sabha members, especially in Fifth Schedule or PESA areas, to assist in the outreach and dissemination efforts; another area which, if rightly used, can amplify the Commission’s efforts.

- **Relationship between National and State ST Commissions:** An important finding of the study has also been that despite having similar mandates and sharing the statutory nature, there is no stipulated or operational linkage between the NCST and the State Commissions.

- For instance there is no link between the NCST regional officer and the State ST Commission, both located at Raipur. This is an issue which needs to be further debated, in light of strengthening the ST Commissions as institutions for safeguarding the rights of the STs in India.
Building on the key findings of the study and the critical issues highlighted, a set of recommendations have been made in order to make the Scheduled Tribe Commissions more ‘vibrant, responsive and accountable’. This section includes suggestions for the ST Commissions to enhance autonomy, strengthen institutional capacity, expand outreach and forge relationships. It builds on the voices of the respondents of the study.

Identity and Autonomy

- **Membership Criteria:** In order to enhance the independent identity of the ST Commission, it is important to establish a clear and transparent set of criteria for the appointment of Chairperson and members of the Commission. This should take into account an educational qualification, professional experience, social commitment and an independent track record of previous efforts to work on issues of ST empowerment. It is important for the Chairperson to be apolitical.

- **Appointment of Commissioners:** A transparent and clearly defined process of appointment of Commissioners needs to be instituted. There needs to be such procedures in place which can prevent the post from lying vacant or a vacuum being created. A selection committee comprising of the Prime Minister/Chief Minister, Leader of the Opposition, Judge of Supreme/High Court and a nominee of the President/Governor (who is a civil society person outside the political party connection or government service) should arrive at a conclusion regarding the appropriate candidate. Further, in order to ensure the selection of a capable Commissioner, a pool of potential Commissioners can be created and maintained through an open process.

- **Independent Power to the Commission:** Like the NCST, each state ST Commissioner must be appointed by the Governor. The Annual Report of the ST Commissions should be sent at the outset to the Governor. This is consistent with the constitutional provisions where the President of India, and governors of the state, are duty-bound to protect the rights of ST community. Suitable amendments are required to enhance the powers of the Commissions, especially related to penalty clauses. This is important as under the existing framework, the Commissions despite being vested with the powers of a civil court, are limited to an advisory role, with government/other departments not bound to take action based on its recommendations. There should be specific rules for Commissions related to investigation, summoning powers, early disposal and follow-up of cases. In addition specific rules to get immediate support of the judiciary/legal-aid section also needs to be framed.

Institutional Capacity

- **Strengthen the Human Resources of the Commission:** An eclectic team with competencies in jurisprudence, investigation, research, capacity development, communication and
documentation can be a good support. In addition, there is a need for a full time member Secretary in all the Commissions in order to enhance the responsiveness of the Commission. The State Government should fill the vacant posts so that Commission can function smoothly. Ongoing capacity building of the staff needs to be regularised and undertook in a way so that the ground realities of the ST community are instilled as an important orientation in the entire staff. This should cover both its investigative as well as developmental role and mandate.

- **Strengthen the Financial Resources of the Commission:** The Commissions need to also prepare five-year plans, with deliverables and budgets; based upon which an annual plan of action must guide their activities. This will not only enable them to have a decisive role, but will also make it possible for them to have a reference. A nationally accepted norm for benchmarking the budget outlay, needs to be created in this regard. These budgets should include various types of activities such as awareness-raising, studies, field-based capacity development, investigation, etc. towards the fulfilment of its mandate.

- **Strengthen Internal Mechanisms of the Commission:** The internal functioning of Commissions needs to be strengthened to assist in filing of cases, enhance speed of response on complaints, ensure strong follow up mechanisms of the cases, prepare reports and make presentations to different stakeholders. These include provisions like:
  - A toll free number and online complaint registration system to enable people to easily file their complaint from their respective places;
  - A system in which the Commission office-bearers make regular visits in their area to become aware about the ground realities;
  - Facilitating the provisions through which the Commission members can make investigative visits and hold regular meetings to review the progress of cases
  - Provision to address cases through fast track courts, which would ensure that decisions/resolutions are made without bureaucratic delay;
  - Computerised system of updating and tracking of cases to enable complainants and the general public to access relevant information, without having to write to or visit the Commission;
  - A fully functioning website to provide information about the Commission’s activities and responses to the complaints;
  - An efficient follow-up mechanism to inquire and keep track of the action taken by the concerned authority on the recommendation made by the Commission;
  - An enhanced systems of data-collection, recording, analysis and dissemination.

**Outreach and Disclosure**

- **Enhancing Awareness within the Community about their Legal and Statutory Rights and about the Powers and Functions of the Commission:** This can be done by i) conducting awareness camps and programmes at district and block level; and ii) officials conducting meetings in villages in order to address the concerns of people on matters such as land grab and untouchability.

Modes of awareness include making use of a wide range of media such as newspaper, radio, TV, folk songs etc. Wall writings, hoardings at the village, markets and roadside should be placed, for high degree of visibility. Basic information including phone numbers, provisions, rights and duties of the Commission can be featured on the community walls. In addition, the services of village functionaries and CBOs can be taken to generate awareness since the functionaries at the village level such as Sahayika, school teachers, Anganwadi workers, Rozgar Sevaks have close contact with the tribal community, especially in
remote, inaccessible areas. In addition, community-based groups such as Mahila Mandalas, farmers group and SHGs can be involved as information mediators. Thus, sensitising the functionaries on the work of the Commission as well as making them aware about the statutory rights of the tribals, will assist them in playing the role of an extension arm of the Commission in awareness generation work. The Gram Sabha being the focal point for the entire community to meet and discuss issues of relevance, it offers an appropriate platform for awareness generation.

- **Strengthen Community Capacity:** The members of the tribal community can be greatly supported at the workshops or seminars held by the NGOs or other Organizations, aimed at making them aware of their legal rights as well as educating them on the procedure involved in filing a case in the Commission.

- **Decentralised Apparatus of the State Commissions:** The lack of district level presence has been stated as a constraint in all the three states. This is the basis of the recommendation for district level representation or presence of the Commission. Suggestions included the setting up on an office of the District Commission; stationing a representative of the Commission at the district or block level to facilitate the process of approach by the community, especially tribal groups living in remote areas or establishing district level committees with representatives from CSOs as members. This committee can be responsible for supporting/receiving complaints, organising awareness programmes and hearings in the district.

- **State ST Commission in all States:** In states with a large presence of ST community, like Jharkhand, it is essential to constitute a State Commission for effective realisation of the mandate of these Commissions. The Regional Offices of National ST Commission are currently unable to perform this function effectively.

- **Creating Multi-stakeholder Platforms on ST Issues:** The Commission can provide a platform for government agencies, academia, media, civil society working towards improving the status of ST in the state. Periodic meetings can be held on matters of ST rights and issues, creating spaces for convergence of actions and for establishing a mutual accountability mechanism.

**Relationships**

- **Linkage with the District and State Level Judicial Process:** The legal functions of the Commissions can be conducted in partnership with judicial bodies which have greater degree of competence and legitimacy to effect this. The Commission can partner with State and District Legal Aid Cells which possess the legal expertise as well as the mandate that is in line with the mandate of the Commission.

- **Relationship with Panchayats:** Linkages should be developed with Panchayats for enhancing awareness about the Commission’s work, and also sharing information amongst the tribal community on their statutory rights. This would be useful for them in identifying the instances of rights violation and lead them to their approaching the Commission. In order to ensure this, the Commission should undertake specific orientation for the elected PRIs about its work, mandate as well as the statutory and legal rights of the tribal population especially under Acts including PESA, Forest Rights Act etc. The orientation can include operational aspects like process to file complaints too.

- **Relationship/Linkages with CSOs:** It is very important that the Commission develops strategic linkages with district, state and national level CSOs that are working to improve the status of STs. This will enable them to enhance their outreach and also assist in their functioning. The NGOs can play a role in enhancing awareness about the

**Recommendations and the way forward**
Commission, identifying cases and mobilising those affected to file complaints by providing necessary support; undertaking field studies and investigations; supporting the Commission in its capacity development programmes, and undertaking campaigns on ST community issues.

- **Engagement with Tribal Research Institutes and Academia**: Structured engagement with State Tribal Research Institutions and University departments working on Social Inclusion and ST issues will assist the Commission in undertaking research and monitoring of the developmental programmes and policies in the states. This will enable them to play their development role more effectively for protecting the rights of STs and enhancing their capacities.

- **Synergy with other Commissions**: In each state, a number of Commissions exist, with areas of overlap in mandates; an issue highlighted during the study. Periodic meetings of related Commissions within the state, would assist in meeting specific mandates of the Commissions. For instance, the ST Commission can work with Women’s Commission on issues related to ST women. Additionally, linkages need to be established between the National and State Commissions, to enhance their respective levels of functioning.


Annual Report of Madhya Pradesh State Scheduled Tribes Commission (2009-10) http://tribal.mp.gov.in

Statistical profile of Scheduled Tribes in India’, Ministry of Tribal Affairs (Statistics Division) Government of India.


Booklet on Chhattisgarh Rajya Anusuchit Janjati Ayog Adhiniyam -1995
Pamphlet on the key information about the ST commission, Chhattisgarh

Official order/circulars/ Gazette Notification about the ST commission


10 Cases filled in the ST commission. (from the period of 2010 to 13) Field study in Kanker & Bilaspur district.

Website of Census of India. http://cg.gov.in/profilenew/profile1.htm (as on February 12, 2013)

Statistical profile of Scheduled Tribes in India’, Ministry of Tribal Affairs (Statistics Division) Government of India.

Crime against ST in India – NCRB 2011.

Jharkhand-Data Highlights: The Scheduled Tribes (2001), Office of Registrar General, India Kundu, M (1990): Tribal Education in India-Some Problems (pp246-254) in B. Chaudhuri (ed.) Education and Literacy Programmes Delhi,

Tribal development Plan, Water supply and Sanitation department, GOJ.

Socio-economic Status of Scheduled Tribes in Jharkhand, Dr. Debjani Roy

Websites
- http://www.censusindia.gov.in
- http://education.nic.in
- http://www.dise.in
- http://socialjustice.nic.in
- http://www.ncst.nic.in/index.asp?langid=1
- http://tribal.mp.gov.in
This study was initiated by Poorest Areas Civil Society (PACS) programme through Participatory Research in Asia (PRIA) to look some critical areas and aspects of selected institutions in Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, Odisha, Uttar Pradesh and West Bengal.

Objectives of the study

- To understand the legislative mandate, structure, composition, modes of functioning and delivery of institutions mandated to safeguard constitutional rights of Scheduled Castes, Scheduled Tribes, Women, Minorities and Persons with Disabilities.
- To assess the awareness levels and practical experiences of members of socially excluded communities towards two selected institutions, from the five mentioned, in each of the seven states.
- To arrive at a set of recommendations for advocacy and dissemination efforts to make these institutions vibrant, responsive and accountable.

Methodology

Field visits and desk review were conducted during the first phase of the study. The mandates and remit of each of the above mentioned commissions were studied through secondary sources gathered from websites, existing literature and reports of the commissions.

Meetings and interviews with the office bearers of the commission were also held.

In the second phase, 14 commissions were shortlisted from the first 35 for a deeper study. This was done after taking into account various aspects, the population of a particular social group and functioning of the respective institutions in a particular state. In this phase two distinct processes were involved, two districts were selected; two blocks each, to conduct interviews of persons from socially excluded communities. This was to assess awareness levels, experience of engagement with commissions in cases of violations. Eight focus group discussions were also organised. To ensure participation by women in the study and allow them to voice their perspectives separate focused group discussions were held. Ten cases were taken for study to get an on-ground of the cases those were taken up these commissions.

This study is conducted by using participatory tools and it has been able to generate information through interviews (with all possible stakeholders), Focus Group Discussions with community members, and multi-stakeholder state level workshops in each state.
Flow chart: Depicting the process of response and redressal in ST Commission

Complainant

Complaint through post

Suo Moto on the incident

Filing complaint by visiting

Cognisance by Commission

Response to applicants

Order for Investigation

Calling the applicant, non-applicant and witnesses for hearing

Visiting place for probing further (If required)

Judgment/recommendations of the Commission

Complainant Satisfaction

Complainant Dissatisfaction

Source: Chhattisgarh State Tribal Commission Report, 2013
Poorest Areas Civil Society (PACS) Programme is an initiative of the UK Government’s Department for International Development (DFID) aimed at assisting the socially excluded groups to claim their rights and entitlements while addressing issues of differential access.

www.pacsindia.org

Participatory Research in Asia (PRIA) is an international centre for learning and promotion of citizen participation and democratic governance. PRIA’s professional expertise and practical insights are utilised by other civil society groups, NGOs, governments, donors, trade unions, private business and academic institutions around the world.

www.pria.org