

MINUTES OF THE FOURTH MEETING OF THE FIFTH NATIONAL COMMISSION FOR SCHEDULED CASTES HELD ON 23.10.2018 AT 12.00 P.M.

The fourth Meeting of the Fifth National Commission for Scheduled Castes (NCSC) held on 23.10.2018 at 12.00 P.M. under the Chairmanship of Dr. (Prof.) Ram Shankar Katheria, Chairman, NCSC. List of participants is at **Annexure-I**. The following Agenda items were taken up for discussion & decisions were taken thereon:

Agenda Item No. 5.4.1: Confirmation of minutes of the 2nd meeting of the Commission held on 15.09.2017.

Decision Taken: Minutes of the 2nd meeting of the Commission were approved unanimously.

Agenda Item No. 5.4.2: Action Taken Notes on the minutes of the 2nd meeting of the Commission.

Decision Taken: Action Taken on decisions of the 2nd meeting held on 15.09.2017 was noted and approved & it was decided that a reminder may be issued to Ministry of HRD about action taken on establishing a Dr. Ambedkar Chair in Central Universities and status thereof.

(Action:SSW-I&ESDW)

(Regarding agenda item No.5.2.11)

A further detailed discussion was held in agenda item No. 5.2.11 regarding Dhangar, Scheduled Caste of Uttar Pradesh. A PIL on the subject is pending in the Hon'ble High Court of Allahabad in which the Commission is a party it came to the notice of the Commission that the Government of Uttar Pradesh has submitted an Affidavit before the Hon'ble High Court of Uttar Pradesh judicature at Allahabad in this Writ Petition No. 18094 (M/B)/2017 stating that the State Government has issued Government order accepting the Commission's earlier decision dated 03.12.2012 and directed all the DMs concerned to issue certificate in favour of Dhangar (धनगर) community of Uttar Pradesh. The Commission's recommendation dated 15.09.2017, has been ignored by the State Government, On 15.09.2017, the Commission had made the following recommendation:

To treat the earlier decision of NCSC dated 03.12.2012 as superseded by the following:

- "that the Scheduled Caste mentioned at Sl. No. 27 for Scheduled Castes of Uttar Pradesh as per the Scheduled Caste and Scheduled Tribes Order (Amendment) Act, 1976 is /धंगड़ which is spelled as Dhangar in the English version of the Gazette Notification of Presidential Order, 1950 and Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976." The same was communicated to the Government of Uttar Pradesh by letter no. 6/Incl&Excl./2012/SSW-I dated:25.09.2017.

From the affidavit filled by the State Government on 10.02.2018 it is clear that the Commission's recommendation dated-15.09.2017, communicated to the Government of Uttar Pradesh vide our letter no 6/Incl&Excl./2012/SSW-I dated:25.09.2017 has not been

implemented by the Govt. of Uttar Pradesh and it denying legitimate rights to the genuine Scheduled Castes belonging to Dhanger/ धंगड़ caste of Uttar Pradesh.

A letter no. 6/Incl&Excl./2012/SSW-I dated:15.05.2018 pointing this out was written to Chief Secretary Government of Uttar Pradesh.

2. The Commission considered the entire issue again along with the facts and documents that a) the Dhanger Castes/ धंगड़ is listed as Scheduled Castes at SI No. 27 in the SC list of Uttar Pradesh as per the Gazette Notification, i.e The Constitution (Scheduled Castes) Order, 1950 and Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976", members of the Dhanger/ धंगड़ community reside in the Districts of Bhadoi and Sonbhadra of Uttar Pradesh.

(b) The Dhanger/ धंगड़ community is a sub caste of the पाल, बघेल, गड़िया community. The गड़िया caste are shepherds and the गड़िया, पाल, बघेल castes are listed as OBC (Other Backward Castes) in Uttar Pradesh at SI No. 19 in the list of OBC for the State of Uttar Pradesh as per Gazette Notification No.1576/17-Law-1-1 (K)-11-2002 dated- 31.8.2002 issued by the Law Department, Govt. of Uttar Pradesh on Uttar Pradesh Public Service (Scheduled Castes, Scheduled Tribes & Other Backward Caste reservation) (Amendment), Act, 2002 and Gaderia is listed at SI No.14 of the Central OBC list.

3. It was therefore decided to convey this specific view of Commission also regarding the धनगर being a sub caste of Gadheria, Pal, Baghel castes (listed as OBC in the notification dated 31.08.2002 of Government of UP) to the Chief Secretary, Government of UP and urge him to withdraw the OM no.453(1)/26-3-2018 dated 07.02.2018 of the Social Welfare Department Government of UP and issue new order which should be in line with the Presidential order 1950 and the Scheduled Castes & Scheduled Tribe Amendment Act 1976. The Chief Secretary also to be advised to get the amended affidavit filed in the Court in WP no. 18094/(MB)/2017 within 1 month and inform the Commission.

(Action: SSW-I)

Agenda Item No. 5.4.3: Confirmation of minutes of the Emergency (3rd) meeting of the Commission held on 22.03.2018.

Decision Taken: Minutes of the Emergency (3rd) meeting of the Commission held on 22.03.2018 were approved unanimously.

Agenda Item No. 5.4.4: Action Taken Notes on the minutes of the Emergency meeting of the Commission.

Decision Taken: Action Taken on decisions of the Emergency meeting held on 22.03.2018 was noted and approved.

Agenda Item No.5.4.5:	The Karnataka Extension of Consequential Seniority to Government Servants Promoted on the basis of Reservation (to the posts in the Civil Services on the State) Bill, 2017
------------------------------	--

Decision Taken: The issue has been deliberated in the meeting. It was apprised that the Bill proposed by the Government of Karnataka protects the interest of Scheduled Castes and Scheduled Tribes in promotion in Government Services as per the clause (4A) to Article 16 of the Constitution of India. The Commission, has deferred its decision on the same as the impact of the recent judgment of Hon'ble Supreme Court on the same needs to be explored.

(Action: SSW-II)

Agenda Item No.5.4.6:	Amendments in Section 3 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989-(vb) commits any offence specified under relevant sections of the Protection of Children from Sexual Offences (POCSO) Act, 2012 against a child belonging to a Scheduled Caste or a Scheduled Tribe (knowing that such a child is a member of a Scheduled Caste or a Scheduled Tribes).
------------------------------	--

Decision Taken: The Commission was apprised that a proposal regarding amendments in Section 3 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was received from Ministry of Social Justice & Empowerment for comments/views of the NCSC.

The issue relates to provision of relief to such children belonging to a Scheduled Castes (SC) or a Scheduled Tribes (ST), who have been victimized by the accused (knowing that such a child is a member of a SC or a ST), in relation to offences specified in an Act of Parliament namely, "The Protection of Children From Sexual Offences {POCSO} Act, 2012 (No. 32 of 2012)" {enforced on 14.11.2012}.

The Commission deliberated the issue in detail and decided to support the further amendments in the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 as proposed.

The approval may be Communicated to M/o SJE.

(Action: APCR)

Agenda Item No.5.4.7:	Exclusion of Creamy lawyer from amongst SCs & STs from the purview of benefits of reservation etc.
------------------------------	---

Decision Taken: The Commission was apprised and the proposal was approved. DoPT may be informed accordingly.

(Action: ESDW)

Agenda Item No.5.4.8:	Comments of the National Commission for Scheduled Castes on the promulgation of the Ordinance to enforce validation of all provisions the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities)Act, 1989 and subsequent inclusion of the Scheduled Cases and the Scheduled Tribes (Prevention of Atrocities)Act, 1989, in the Ninth Schedule of Constitution of India
------------------------------	---

Decision Taken: It was apprised that the Ministry of Social Justice & Empowerment has requested to offer the views of the Commission on the Amendment in Section 9 of the Scheduled Castes & Scheduled Tribes (Prevention of atrocities) Act, 1989 by 31.01.2018.

Which relates to conferment of powers of arrest, investigation and prosecution, on any officer exercisable by a police officer

(Action: APCR)

2. Proposed amendment in Section 9 of the Scheduled Castes & Scheduled Tribes (Prevention of atrocities) Act, 1989:-

- (i) States that an offence committed under this Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police/Assistant Commissioner of Police. The investigating officer in the rank of the Deputy Superintendent of Police/Assistant Commissioner of Police, shall be appointed by the State Government/Union Territory Administration/Director General of Police/Commissioner of Police/Additional Director General of Police/Special Commissioner of Police/Inspector General of Police/Additional Commissioner of Police/Deputy Inspector General of Police/Senior Superintendent of Police/Deputy Commissioner of Police, after taking into account his/her past experience, sense of ability and justice to perceive the implications of the case and investigated it along with right lines within the shortest possible time.

The M/o Social Justice & Empowerment has clarified that the draft formulation of the Section 9 of the POA Act is towards substituting the entire existing Section 9 of the POA Act.

The Commission concurred the proposal of the Ministry of Social Justice & Empowerment and granted ex-post facto approval.

(Action: APCR)

Agenda Item No.5.4.9:	Non-implementation of reservation policy in Aligarh Muslim University (AMU)
------------------------------	--

Decision Taken: The Commission was informed that as per decision taken by Commission during hearing on 09.08.2018 a Central Government Advocate has been engaged for impleading the Commission in the SLP No. 2286/2006 on impact of non implementation of reservation policy in Aligarh Muslim University before the Hon'ble Supreme Court. A draft implementation application has been prepared for the same.

Secretary, NCSC stated that Ministry of HRD is one of the respondents in the case and NCSC is not a party. He opined that the Government (MHRD) should include the point in the case keeping in mind the interest of the SC/ST/OBC students.

A detailed deliberation/discussion was held, it was decided that a DO from Secretary, NCSC to Secretary, MHRD may be issued to include the issue of granting of reservation benefits to SC students by AMU (which is a Central University) in its counter affidavit before the Hon'ble Supreme Court, with the request that the said affidavit may be filed by MHRD within the time frame given by Hon'ble Supreme Court to MHRD/Govt.

Thereafter, the Commission may file the impalement application in the case before Hon'ble Supreme Court.

(Action: ESDW)

Agenda Item No.5.4.10:	Comments of the National Commission for Scheduled Castes on the draft note of Cabinet to amend the Protection of Children from Sexual Offences (POCSO) Act, 2012.
-------------------------------	--

Decision Taken: The Commission concurred the proposal of the Ministry of Social Justice & Empowerment and granted ex-post facto approval.

(Action: APCR)

Agenda Item No.5.4.11:	Comments of the National Commission for Scheduled Castes on the promulgation of the Ordinance to enforce validation of all provisions the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and subsequent inclusion of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, in the Ninth Schedule of Constitution of India.
-------------------------------	---

Decision Taken: The Commission concurred the proposal of the Ministry of Women and Child Development and granted ex-post facto approval.

(Action: APCR)

Agenda Item No.5.4.12:	Confirmation and Approval of the Minutes of the Review Meetings held between June, 2017 to May, 2018 of 5 States viz. West Bengal, Telangana, Punjab, Haryana and Rajasthan.
-------------------------------	---

Decision Taken: Approved. The Commission directed that reminder may be issued wherever required and pursued with the State Governments for remaining Action Taken Report.

(Action: C.Cell)

Agenda Item No:5.4.13:	Views/Comments of stakeholders on the recommendations of National Commission for Denotified Nomadic and semi- Nomadic Tribes (NCDNT).
-------------------------------	--

Decision Taken: The Commission was informed that the Ministry of Social Justice & Empowerment had constituted National Commission for Denotified, Nomadic and Semi-Nomadic Tribes (NCDNT) to study the problems being faced by Denotified and Nomadic Tribes and suggest appropriate measures that may be taken by the Central Government and the State Government for their betterment and to bring them in the mainstream. The Commission started functioning w.e.f. 09.01.2015 and submitted its report on 08.01.2018.

The NCDNT has made a total of 18 recommendations and views/comments of Ministries/Departments/Institutions of the Central Government have been sought.

The Ministry Social Justice & Empowerment has requested for the comments of the National Commission for Scheduled Caste on the 18 recommendations made by the NCDNT.

The Commission has gone through the recommendations of the NCDNT and agreed with the recommendations except for recommendation no.7 which states that the NCDNT has recommended for **carving** out a special sub quota for DNT/NT Communities in the quotes for SCs, STs & OBCs. The NCSC does not agree with this recommendation at SI No.7 The decision of the Commission is to be communicated to the M/o SJE.

(Action: ESDW)

Agenda Item No:5.4.14:	Views of the Commission on the Judgment of the Supreme Court in the Civil Appellate Jurisdiction Special Leave Petition (Civil) No. 30621 of 2011. Filed by Jarnail Singh & Others Vs. Lachhmi Narain Gupta & Others alongwith other 81 Special Leave Petitions.
-------------------------------	---

Decision Taken: The Commission was apprised that this Commission has taken suo-moto cognizance of the judgment of the Supreme Court on the above mentioned Writ Petitions. The Commission was not the party in the above Writ Petition. The issues involved in these 82 W.Ps. are not clearly known to the Commission. The Commission may ask the action plan of the DoPT on the same. If DoPT feels any change in policy of reservation is required then the DoPT may consult the Commission as per constitutional provisions i.e. as per Article 338(9).

The Commission approved the proposal.

(Action: SSW-II)

Agenda Item No:5.4.15:	Any other items with the permission of Chair.
-------------------------------	--

5.4.15(i): Admission in zero fees to the Scheduled Castes Students in the Private Institutions under the scheme of Post Matric Scholarship.

Decision Taken: It has been brought to the notice of the Commission that some Private Institutions are not giving admission to the Scheduled Castes students at zero fees, since this has been done away in the new guidelines issued by the Ministry of Social Justice & Empowerment in the year 2018 under the Centrally Sponsored scheme of Post Matric Scholarships to the Students belonging to Scheduled Castes for studies in India. The Department of Social Welfare, Govt. of Uttar Pradesh has also issued a revise guidelines “Uttar Pradesh Scheduled Castes & Scheduled Tribes Post Matric Scholarship Scheme (7th Amendment) Rules, 2018” and as per this Rules the SC students will be eligible for admission on zero fee basis as per their eligibility in the approved courses who are clear from all angles the Govt. aided private schools but the zero fee admission is not applicable in the Private Institutions.

Since a number of SC students are not getting admission in the Private Institutions and their academic career has been jeopardized as they belong to poor families and income sources of their parents are very low, it was decided by the Commission, to take the issue of the difficulties faced by SC Students due to this amendment with the Ministry of Social Justice & Empowerment.

(Action: ESDW)

5.4.15(ii): Eligibility condition in the Scheme of Venture Capital fund for Scheduled Castes Entrepreneurs.

Decision Taken: The issue was discussed. In This regard, the Commission had sent a letter dated 03.11.2014 and 05.02.2016 to Ministry of Social Justice & Empowerment and advised that “a Central Level Committee should be constituted to select the SC Entrepreneurs. A representative from National Commission for Scheduled Castes may be one of the Members of that Committee.” It was decided that a report may be called for from the Ministry of Social Justice & Empowerment on the action taken on recommendation of the Commission.

(Action: ESDW)

5.4.15 (iii): Proper Monitoring of centrally sponsored scheme to ensure welfare of Scheduled Caste persons.

Decision Taken: The Chairman raised the issue of implementation of centrally sponsored pre and post matric scholarship scheme. It was directed that the centrally sponsored scholarship schemes are not being implemented properly and the funds are either surrendered or diverted to other non-SC schemes.

Therefore, a D.O letter to Secretary, MSJE may be written for proper utilization of funds. He further pointed out that there is no reservation in Army Schools and therefore, this matter needs to be taken up with Ministry of Defence.

(Action: ESDW)

5.4.15 (iv): Follow up on pending issues.

Decision Taken: It was decided in the meeting that issues pending in Ministry of Social Justice and Empowerment and States should be followed up by Secretary, Joint Secretary and Officers of State Offices concerned. Periodic reminder may be issued on all the pending issues.

(Action: Admn & C.Cell)

The meeting ended with the thanks to the Chair.

LIST OF PARTICIPANTS IN FOURTH MEETING OF THE NATIONAL COMMISSION FOR SCHEDULED CASTES HELD AT 12.00 PM ON 23.10.2018 AT NEW DELHI.

PRESENCE OF MEMBERS AND OFFICERS

S.NO. Name & Designation

MEMBERS OF THE COMMISSION

1. Prof. Ram Shankar Katheria, Chairman
2. Shri L. Murugan, Vice-Chairman
3. Shri K. Ramulu, Member
4. Dr.Yogendra Paswan, Member
5. Dr. (Mrs.) Swaraj Vidwan, Member

OFFICERS OF THE COMMISSION

6. Shri Pritam Singh, Secretary
7. Dr. (Mrs.) Smita S. Chaudhri, Joint Secretary
8. Shri Ajit Kumar Sahu, Dy. Secretary (Admn. &C.Cell)
9. Shri Kaushal Kumar, Director (SSW)
10. Shri Biswajit Saha, Under Secretary (ESDW)
11. Shri Austin Jose T., Section Officer (Admn. & C.Cell)
12. Shri A.P. Gautam, Research Officer (APCR)
13. Shri P.S. Mehta, Research Officer (ESDW)

EXTRACT OF AGENDA ITEM NO. 5.2.11 AND 5.4.15 (iii) OF THE MINUTES OF THE FOURTH MEETING OF THE FIFTH NATIONAL COMMISSION FOR SCHEDULED CASTES HELD ON 23.10.2018 AT 12.00 PM.

(Regarding agenda item No.5.2.11)

A further detailed discussion was held in agenda item No. 5.2.11 regarding Dhangar, Scheduled Caste of Uttar Pradesh. A PIL on the subject is pending in the Hon'ble High Court of Allahabad in which the Commission is a party it came to the notice of the Commission that the Government of Uttar Pradesh has submitted an Affidavit before the Hon'ble High Court of Uttar Pradesh judicature at Allahabad in this Writ Petition No. 18094 (M/B)/2017 stating that the State Government has issued Government order accepting the Commission's earlier decision dated 03.12.2012 and directed all the DMs concerned to issue certificate in favour of Dhangar (धनगर) community of Uttar Pradesh. The Commission's recommendation dated 15.09.2017, has been ignored by the State Government, On 15.09.2017, the Commission had made the following recommendation:

To treat the earlier decision of NCSC dated 03.12.2012 as superseded by the following:

- * "that the Scheduled Caste mentioned at Sl. No. 27 for Scheduled Castes of Uttar Pradesh as per the Scheduled Caste and Scheduled Tribes Order (Amendment) Act, 1976 is "धंगड़" which is spelled as Dhangar in the English version of the Gazette Notification of Presidential Order, 1950 and Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976." The same was communicated to the Government of Uttar Pradesh by letter no. 6/Incl&Excl./2012/SSW-I dated:25.09.2017.

From the affidavit filled by the State Government on 10.02.2018 it is clear that the Commission's recommendation dated-15.09.2017, communicated to the Government of Uttar Pradesh vide our letter no 6/Incl&Excl./2012/SSW-I dated:25.09.2017 has not been implemented by the Govt. of Uttar Pradesh and it denying legitimate rights to the genuine Scheduled Castes belonging to Dhangar/ धंगड़ caste of Uttar Pradesh.

A letter no. 6/Incl&Excl./2012/SSW-I dated:15.05.2018 pointing this out was written to Chief Secretary Government of Uttar Pradesh.

2. The Commission considered the entire issue again along with the facts and documents that a) the Dhangar Castes/ धंगड़ is listed as Scheduled Castes at SI No. 27 in the SC list of Uttar Pradesh as per the Gazette Notification, i.e The Constitution (Scheduled Castes) Order, 1950 and Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976", members of the Dhangar/ धंगड़ community reside in the Districts of Bhadoi and Sonbhadra of Uttar Pradesh.

(b) The Dhangar/ "धनगर"community is a sub caste of the पाल, बघेल, गड़रिया community. The गड़रिया caste are shepherds and the गड़रिया, पाल, बघेल castes are listed as OBC (Other Backward Castes) in Uttar Pradesh at SI No. 19 in the list of OBC for the State of Uttar Pradesh as per Gazette Notification No.1576/17-Law-1-1 (K)-11-2002 dated- 31.8.2002 issued by the Law Department, Govt. of Uttar Pradesh on Uttar Pradesh Public Service (Scheduled Castes, Scheduled Tribes & Other Backward Caste reservation) (Amendment), Act, 2002 and Gaderia is listed at SI No.14 of the Central OBC list.

3. It was therefore decided to convey this specific view of Commission also regarding the धनगर being a sub caste of Gadheria, Pal, Baghel castes (listed as OBC in the notification dated 31.08.2002 of Government of UP) to the Chief Secretary, Government of UP and urge him to withdraw the OM no.453(1)/26-3-2018 dated 07.02.2018 of the Social Welfare Department Government of UP and issue new order which should be in line with the Presidential order 1950 and the Scheduled Castes & Scheduled Tribe Amendment Act 1976. The Chief Secretary also to be advised to get the amended affidavit filed in the Court in WP no. 18094/(MB)/2017 within 1 month and inform the Commission.

(Action: SSW-I)

5.4.15 (iii): Proper Monitoring of centrally sponsored scheme to ensure welfare of Scheduled Caste persons.

Decision Taken: The Chairman raised the issue of implementation of centrally sponsored scheme. It was directed that the centrally sponsored schemes are not being implemented properly and the funds are either surrendered or diverted to other non-SC schemes.

Therefore, a D.O letter to Secretary, MSJE may be written for proper utilization of funds. He further pointed out that there is no reservation in Army Schools and therefore, this matter needs to be taken up with Ministry of Defence.

(Action: ESDW)