

**36**

**STANDING COMMITTEE ON SOCIAL JUSTICE  
AND EMPOWERMENT  
(2007-2008)**

**(FOURTEENTH LOK SABHA)**

**MINISTRY OF TRIBAL AFFAIRS**

**THE CONSTITUTION (SCHEDULED TRIBES) (UNION  
TERRITORIES) ORDER (AMENDMENT) BILL, 2007**

**THIRTY SIXTH REPORT**



**LOK SABHA SECRETARIAT  
NEW DELHI**

**July, 2008/Ashadha, 1930 (Saka)**

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AND EMPOWERMENT  
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**THIRTY SIXTH REPORT**

**Presented to Hon'ble Speaker, Lok Sabha on 18.09.2008**

**Laid in Lok Sabha on .....**

**Laid in Rajya Sabha on .....**



**LOK SABHA SECRETARIAT  
NEW DELHI**

**July, 2008/Ashadha, 1930 (Saka)**

# CONTENTS

PAGES

COMPOSITION OF THE COMMITTEE.....

INTRODUCTION.....

REPORT .....

## ANNEXURES

- I                    **The Constitution (Scheduled Tribes) (Union Territories) Order, 1951**
  
- II                   **The Constitution (Scheduled Tribes) (Union Territories) Order (Amendment) Bill, 2003 as introduced in Rajya Sabha on 5<sup>th</sup> March, 2003**
  
- III                  **The Constitution (Scheduled Tribes) (Union Territories) Order (Amendment) Bill, 2007 as introduced in Rajya Sabha on 27<sup>th</sup> November, 2007**
  
- IV                  **Minutes of the Fourth sitting of the Standing Committee on Social Justice and Empowerment held on 11 January, 2008**
  
- V                    **Minutes of the Seventh sitting of the Standing Committee on Social Justice and Empowerment held on 27 February, 2008**
  
- VI                   **Minutes of the Fourteenth sitting of the Standing Committee on Social Justice and Empowerment held on 15 July, 2008**

## APPENDIX

**Statement of Observations/Recommendations      ...**



**COMPOSITION OF THE STANDING COMMITTEE ON SOCIAL JUSTICE AND  
EMPOWERMENT  
(2007-2008)**

**Smt. Sumitra Mahajan - CHAIRPERSON**

**MEMBERS**

**LOK SABHA**

- 2.# Shri Mohd. Shahid Akhlaque
3. Shri Mahaveer Bhagora
4. Shri Eknath M. Gaikwad
5. Shri Loganathan Ganesan
- 6.@ Shri Syed Shah Nawaz Hussain
7. Shri Haribhau Jawale
8. Shri Tek Lal Mahato
9. Shri Bhai Lal
10. Dr. Babu Rao Mediyam
11. Shri Kailash Meghwal
- 12.\*\*\* Shri Vasantao J. More
13. Shri Rupchand Murmu
14. Shri Jual Oram
15. Shri Ram Chandra Paswan
16. Shri Rabindar Kumar Rana
- 17.\* Shri P.A. Sangma
18. Dr. R. Senthil
19. Smt. Pratibha Singh
20. Shri Lalit Mohan Suklabaidya
21. Smt. Krishna Tirath
22. Smt. Usha Verma

**RAJYA SABHA**

- 23.\$ Shri Urkhao Gwra Brahma
24. Shri Silvius Condpan
25. Shri Mahmood A. Madani
- 26.\*\* Shri Ahmad Sayeed Malihabadi
27. Dr. Narayan Singh Manaklao
28. Dr. Radhakant Nayak
29. Shri Abdul Wahab Peevee
30. Shri Dharam Pal Sabharwal
31. Shri Veer Singh
32. Ms. Anusuiya Uikey
33. Shri Nand Kishore Yadav

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@ Shri Syed Shah Nawaz Hussain ceased to be a Member of the Committee w.e.f. August 30, 2007.

# Shri Mohd. Shahid Akhlaque ceased to be a Member of the Committee consequent to his disqualification from the Membership of the 14<sup>th</sup> Lok Sabha by Hon'ble Speaker w.e.f. January 27, 2008.

\* Shri P.A. Sangma Ceased to be a Member of the Committee consequent to his resignation from the 14<sup>th</sup> Lok Sabha w.e.f. March 20, 2008

\$ Shri Urkhao Gwra Brahma Ceased to be a Member of the Committee consequent to his retirement from the Rajya Sabha w.e.f. April 9, 2008.

\*\* Nominated w.e.f. 22 May, 2008

\*\*\* Nominated w.e.f. 13 June, 2008

## **SECRETARIAT**

- |                          |   |                      |
|--------------------------|---|----------------------|
| 1. Dr (Smt.) P.K. Sandhu | - | Additional Secretary |
| 2. Shri Ashok Sarin      | - | Joint Secretary      |
| 3. Shri R.K. Saxena      | - | Director             |
| 4. Shri Bhupesh Kumar    | - | Deputy Secretary     |
| 5. Shri Yash Pal Sharma  | - | Executive Assistant  |

## INTRODUCTION

I, the Chairperson of the Standing Committee on Social Justice and Empowerment having been authorized by the Committee to submit the Report on their behalf present the Thirty-sixth Report of the Committee on 'The Constitution (Scheduled Tribes) (Union Territories) Order (Amendment) Bill, 2007' of the Ministry of Tribal Affairs.

2. The Bill was introduced in Rajya Sabha on 27 November, 2007 and was referred to the Committee by the Hon'ble Speaker, Lok Sabha on 14 December, 2007 under Rule 331E (b) of the Rules of Procedure and Conduct of Business in Lok Sabha for examination and report.

3. The Committee wish to express their thanks to the representatives of the Ministry of Tribal Affairs, representatives of Ministry of Law and Justice (Legislative Department), representatives of Ministry of Home Affairs, Registrar General of India for tendering evidence and placing their considered views before the Committee and also for furnishing written notes and information as desired by the Committee in connection with the examination of the Bills.

4. The Committee considered and adopted the report on the Bill at their sitting held on 15<sup>th</sup> July, 2008.

5. For facility of reference and convenience, the observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

**New Delhi;  
15 July, 2008  
24 Ashadha, 1930(Saka)**

**SUMITRA MAHAJAN,  
Chairperson,  
Standing Committee on Social  
Justice and Empowerment.**

## REPORT

1.1 The Ministry of Tribal Affairs have intimated that according to the Constitution (Scheduled Tribes) (Union Territories ) Order , 1951, the inhabitants of the Laccadive, Minicoy and Amindivi islands who, and both of whose parents were born in the Union Territory are deemed to be the Scheduled Tribes. The Constitution (Scheduled Tribes) (Union Territories) Order (Amendment) Bill, 2007 seeks to further amend the 1951 Order. In the Schedule to the Constitution (Schedule Tribes) (Union territories) Order, 1951, in Part I- Lakshadweep, the following proviso and Explanation are proposed to be inserted at the end of the proposed Bill, namely :-

“Provided that the children who are born to inhabitants of Lakshadweep in any other place in the mainland of India shall be deemed to be inhabitants born in the islands if such children settle permanently in the islands.

Explanation :- The term “settle permanently” shall have the same meaning as defined under clause 3 (I)(d) of the Lakshadweep Panchayats Regulation, 1994.”

### **Background and reasons for the revision of the list of Scheduled Tribes in Union Territory of Lakshadweep.**

1.2. The Ministry of Tribal Affairs in their note have stated that the Scheduled Tribes are notified by the Presidential Order under article 342 (I) of the constitution. Subsequently, an Act of Parliament can only modify such an Order. Article 342 prescribes the procedure to be followed in the matter of specification of Scheduled Tribes.



**“342. Scheduled Tribes:**

**(1) The President may with respect to any State or Union territory, and where it is a State after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union Territory as the case may be.**

**(2) Parliament may, by law, include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.”**

(ii) The list of Scheduled Tribes is State/Union Territory specific and also community specific. The persons belonging to the notified Scheduled Tribes are eligible to get the benefit meant for such Tribes only in the State/Union Territory in respect of which the community has been notified.

1.3. Further, according to the Ministry, the list of Scheduled Tribes of Lakshadweep is contained in Part-I of the Schedule to the Constitution (Scheduled Tribes) (Union Territories) Order, 1951 as amended to date and all the inhabitants of Lakshadweep, who and both of whose parents were born in Lakshadweep have been given Scheduled Tribe status based on the principle of geographic isolation without reference to any community (A copy of the 1951 order is appended in Annexure-I). The entry is as under :

**“Throughout the Union territory :-**

***Inhabitants of Laccadive, Minicoy and Amindivi Islands who, and both of whose parents, were born in those islands”.***

### **Need for Legislation**

1.4. At the instance of the Committee the Ministry of Tribal Affairs have explained that they had received several representations from the Union Territory that Part I of the Schedule to the Constitution (Scheduled Tribes) (Union Territories) Order, 1951 was creating difficulties for certain islanders who were born on the mainland on account of non-availability of adequate health services in the Islands.

1.5. Seeing the genuine difficulties faced by the islanders, since the aforesaid Order provides that the person has necessarily to be born in the islands apart from his/her parents also having been born in the Islands for being considered as a member of the Scheduled Tribe community of Lakshadweep, such persons who are born outside the islands, even to the inhabitants of the islands, were not treated as belonging to a Scheduled Tribe, the Ministry of Tribal Affairs introduced a Bill namely “the Constitution (Scheduled Tribes) (Union Territories) Order (Amendment) Bill, 2003” to amend the list of Scheduled Tribes in relation to Lakshadweep in the Rajya Sabha on 5<sup>th</sup> March, 2003 (Annexure-II) with the following proviso:-

***“Throughout the Union Territory:-***

***Inhabitants of Laccadive, Minicoy and Amindivi Islands who, and both of whose parents, were born in those islands”.***

***“Provided that the children who are born to inhabitants in any other place in the mainland of India on account of cases referred by the competent***

***medical authority for safe delivery of the children by such inhabitants shall be deemed to be inhabitants born in the Islands if such children are brought to the Islands for inhabitation soon after their birth.***

***Provided further that the President may, by order, notify any authority as competent medical authority for the purposes of this part”.***

1.6. Explaining further in this regard, the Ministry have stated that the consideration of the above Bill was deferred on 9-4-2003 since the Ministry of Home Affairs was pressing for a more open ended amendment so as to include cases other than the medical ground cases covered by the afore-cited amendment Bill of 2003. Thereafter, the Ministry of Home Affairs also proposed the following amendment:-

“Throughout the Union Territory-  
Inhabitants of Lakshadweep who, and both of whose parents, were born in those Islands.

“Provided that if children born outside Lakshadweep to such parents, both of whom were born in these islands, settle permanently in Lakshadweep, they shall be deemed to have been born in Lakshadweep”.

The Ministry of Home Affairs suggested the following definition of the expression “settle permanently”.

“Settle permanently means a minimum period of stay of 10 years either for education or otherwise in the Island of Lakshadweep”.

1.7. According to the Ministry the definition of the term ‘settle permanently was deliberated upon in a meeting taken by Secretary (TA) on 6-4-2005 with the representatives of Ministry of Law & Justice, Ministry of Home Affairs, Registrar General of India (RGI), National Commission for Scheduled Tribes (NCST), and

the UT Admn. Of Lakshadweep with the limited agenda of defining “settle permanently” as suggested by the Ministry of Home Affairs. After deliberations, the following formulation proposed by the Ministry of Home Affairs was agreed to:-

“Throughout the Union Territory:-

Inhabitants of Laccadive, Minicoy and Amindivi Islands who, and both of whose parents, were born in those islands.

Provided that if the children born outside Lakshadweep to such parents, both of whom were born in these islands, settle permanently in Lakshadweep, they shall be deemed to have been born in Lakshadweep”.

(N.B.\* Settle per permanently means a minimum period of 10 year’s stay immediately after birth for education or otherwise in the islands of Lakshadweep).

Subsequently, the Ministry of Home Affairs, vide their letter dated 21.4.2005 intimated that the definition of “settle permanently” given by them may not be proceeded with and to await their revised comments. The Ministry of Home Affairs vide their OM number U-14011/2/2001-ANL dated 9.9.05 furnished the following definition:-

**“Settle permanently would mean those who are ordinarily residents as defined under Clause 3(l)(d) of the Lakshadweep Panchayat Regulation, 1994”, which is explained as under :-**

**3(l) A Gram Sabha shall consist of persons registered in the electoral rolls relating to an Island or group of Islands comprising the area of Village**

**(Dweep Panchayat):**

**Provided that a person shall be disqualified for being a member of the Gram Sabha, if he**

**(d) is not ordinarily a resident within the Island for which the Gram Sabha is established.**

**Explanation : - For the purposes of clause (d) a person shall be deemed to be “ordinarily resident” in an Island if he has been ordinarily residing in such Island or is in possession of a dwelling house therein ready for occupation”.**

1.8. The Ministry of Tribal Affairs have added that the suggestion of the Ministry of Home Affairs regarding the definition of “ settle permanently” was examined by them but it was felt that the Ministry of Home Affairs formulation was contrary to the principle of geographic isolation, the main basis for treating all such inhabitants of Lakshadweep, who and both of whose parents were born in these Islands. The Ministry of Home Affairs, however, did not accept this view and reiterated that the formulated and suggested by it be adopted.

1.9. The matter was discussed in many meetings and then finally, in a meeting between Hon’ble Minister of Home Affairs and Minister of Tribal Affairs on 23/05/2007, it was ordered that necessary action be initiated to bring in an amendment to the Bill already introduced in Rajya Sabha in 2003 incorporating the afore-cited formulation suggested by the Ministry of Home Affairs read with the definition of term ‘settle permanently’.

1.10. The formulation suggested by the Ministry of Home Affairs has been considered and in consultation with the Ministry of Law & Justice (Legislative Department), it is proposed that in the Schedule to the Constitution (Scheduled Tribes) (Union Territories) Order, 1951, in Part I-Lakshadweep, the following proviso and Explanation shall be inserted at the end, namely :-

“Provided that the children, who are born to inhabitants of Lakshadweep in any other place in the mainland of India shall be deemed to be inhabitants born in the islands, if such children settle permanently in the islands.

Explanation : The term “settle permanently” shall have the same meaning as defined under Clause 3(l)(d) of Lakshadweep Panchayat Regulation, 1994”.

Clauses 3(l)(d) of the Lakshadweep Panchayat Regulation, 1994 reads as follows:-

“3(l) A Gram Sabha shall consist of persons registered in the electoral rolls relating to an Island or group of Islands comprising the area of Village (Dweep Panchayat):

Provided that a person shall be disqualified for being a member of the Gram Sabha, if he-

(d) is not ordinarily a resident within the Island for which the Gram Sabha is established.

Explanation : For the purposes of clause (d) a person shall be deemed to be “ordinarily resident” in an Island if he has been ordinarily residing in such island or is in possession of a dwelling house therein ready for occupation.”

1.11 Taking into account the above said facts, the proposals in the Bill introduced in 2003 have been revised and revised Bill namely “the Constitution (Scheduled Tribes) (Union Territories) Order (Amendment) Bill, 2007” has been introduced in the Rajya Sabha on 27/11/2007 so as to include case of inhabitants of the islands, who have been residing away from Lakshadweep due to educational or job requirements, etc., resulting in their children having been born in the mainland of India.

1.12 During interaction with the representatives of the Ministries of Tribal Affairs, Home Affairs, Law and Justice (Legislative Department) and Registrar General of India, Hon'ble Chairperson pointed out that in case of parents either of whom is born in and is inhabitant of the island but marries in other part of the country and settle permanently in the islands after marriage and desired to know whether their children would be conferred the status of Scheduled Tribe in the islands. She stated that she was asking that question because it had been agreed to that that was a geographical isolated area.

1.13 The Secretary, Ministry of Tribal Affairs replied that :-

“Madam, I would like to tell you that this community is tribal. There is a Supreme Court order that if a member of the family is tribal, and if he/she gets married to a person residing at some other place, in that case in which category their children will be treated, the order of the Supreme Court is quite clear in this regard, it says that it depends upon the children in which category he wants to be treated after his birth. If he wants to be treated as tribal, he will be regarded as tribal. If he does not want to be treated as tribal, he will be regarded as a non-tribal. But it has not been the case with regard to Lakshadweep\*. The decision of the Apex Court, the Supreme Court, is very clear. In the case of Lakshadweep, geographical isolation is paramount. In the definition, the first part of the clause is that both parents must have been born to show that they are the inhabitants of Lakshadweep from the beginning.”

\* Originally spoken in Hindi.

1.14. In this context Registrar General of India also stated that:-

“I would like to add this thing as the Registrar General of India because we are only handling these cases. The geographical isolation is at the core of deciding that saying all right, we will give the benefit of Scheduled Tribe status to those who stay there. But, I think, the Entry is very carefully and wisely written that they must be born there so that the other communities do not take undue advantage of it; they do not go there, settle there and become the Scheduled Tribes. The benefit has to be given to the local community which is there and to those who are born there. I think this is a principle which holds good for most of the tribal areas. If I

am born in Rajasthan as a tribe, then I am a tribal of that area. If I go from outside, settle down and marry somebody – I think Mr. Mukherjee has clarified what the Supreme Court’s decision is – then, I get the benefit only under certain conditions. But here in the case of Lakshadweep, to see that nobody goes from outside and takes undue benefit of the geographical isolation, they have said that both the parents must be born there. I think this is a protection given to the local people of it.”

1.15 The Secretary, Ministry of Tribal Affairs added that :-

“We are not making changes in the fundamental and only doing minor modifications for convenience.”

1.16 In this connection, the Committee undertook a study visit to Lakshadweep from 21<sup>st</sup> to 23<sup>rd</sup> May, 2008 and interacted with individuals/groups/representatives etc. of Tribal Communities of Lakshadweep and heard their views on the proposed Bill. Divergent views were expressed by them before the Committee on the proposed amendment in the Bill which are as follows :-

- (i) Inhabitants of Lakshadweep islands do not want to loose their Scheduled Tribes status because of any reason whatsoever. However, children of the inhabitants of islands born in mainland due to reasons like medical, employment, education etc. should be given ST status.
- (ii) The main criteria of inclusion in the list of STs of Lakshadweep should be the status of residence i.e. ordinarily resident and permanent and continuous stay in Lakshadweep for the first fifteen years of one’s life or before he attains the age of eighteen years.
- (iii) If an inhabitant of Lakshadweep marries a boy or girl from the mainland, their children should be given ST status. However, in this connection it was



also expressed by some that in case the parents are inhabitants of islands, only then their children should be given ST status. If either of them are not from islands, their children should not be given ST status. Another view that was put forth was that in case one of the parents marries in mainland, as a special category they may be classified as OBC and may be given consideration in proportion to their population in Lakshadweep.

- (iv) Non resident Lakshadweewians, who on their own preferred to settle in mainland to overcome the remoteness and backwardness arising out of it, should never be given the status of ST of Lakshadweep. Those born and brought up in mainland and residing in mainland and owning properties and business interest should not be considered for issue of ST certificates due to their current status and circumstances in mainland. Ownership of a piece of ancestral property or ancestral house should not be accepted as a ground for ST certificate.

**1.17 The Committee observe that no particular community is listed as Scheduled Tribe in Lakshadawweep and all the inhabitants of the Union Territory irrespective of the community or religious affiliation are being treated as Scheduled Tribe in view of their socio-economic backwardness arising out of geographical isolation from the mainland. The Constitution (Scheduled Tribes) (Union Territories) Order 1951 provides that throughout the Union Territory, inhabitants of Laccadive, Minicoy and Amindivi islands who and both of whose parents were born in those islands are deemed to be the Scheduled Tribe. It is based on the principle of geographical isolation without reference to any community. However, the children of islanders**

who were born in the mainland on account of non-availability of adequate health services in the island or due to educational or job requirements etc., were not conferred the status of Scheduled Tribe in the island. Keeping such difficulties faced by the inhabitants of Lakshadweep the present Bill envisages to insert a proviso wherein children who are born to inhabitants of Lakshadweep in any other place in the mainland of India shall be deemed to be inhabitants born in the Islands if such children settle permanently in the island.

1.18 While agreeing with the proposed amendment in the Bill, the Committee recommend that the term 'Settle Permanently' should be clarified/defined under 'Explanation' of clause 2 of the proposed Constitution (Scheduled Tribe) (Union Territory) Order (Amendment) Bill, 2007 as :-

'a person shall be deemed to be a "ordinary resident" in the island if he has been ordinarily residing in such island and is in possession of a dwelling house therein'.

1.19 The Committee further desire that the suggestions/views expressed before the Committee by the individuals/groups/representatives of tribal community of Lakshadweep may also be considered before finalizing the proposed amendment in the Bill.

New Delhi;  
15 July, 2008  
24 Ashadha, 1930(Saka)

SUMITRA MAHAJAN,  
Chairperson,  
Standing Committee on Social  
Justice and Empowerment.