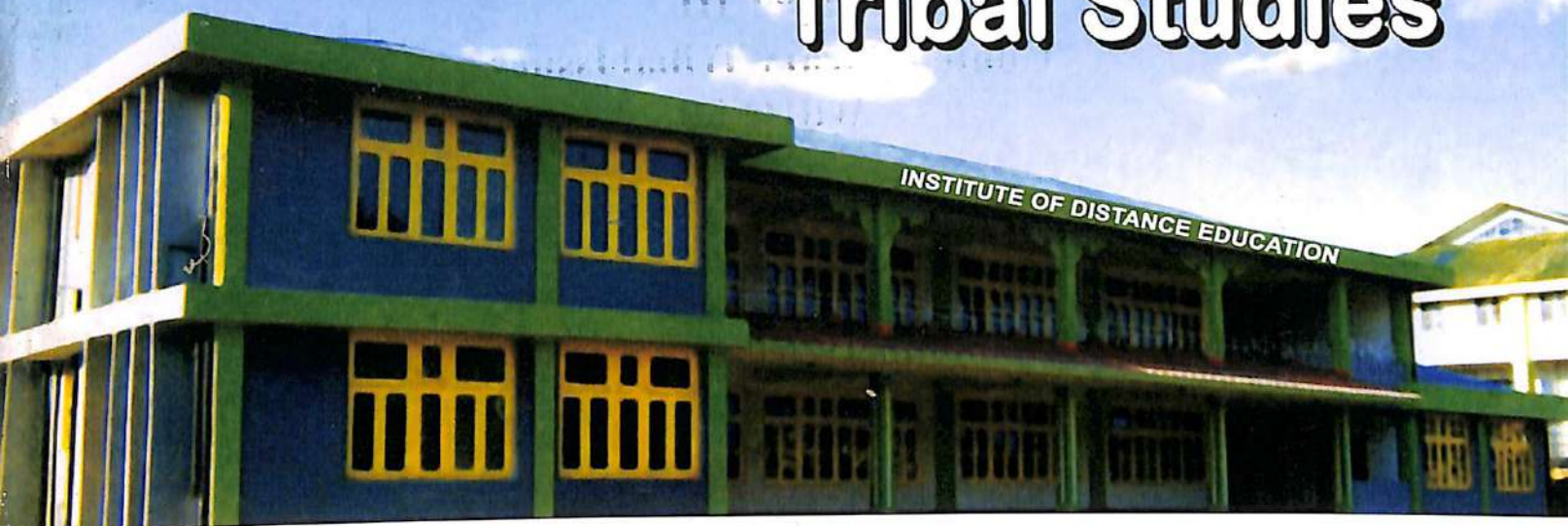


Tribal Studies



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THIRD YEAR**

PAPER-IV

**CONSTITUTIONAL PROVISIONS AND TRIBAL
DEVELOPMENT PROGRAMMES IN INDIA**

INSTITUTE OF DISTANCE EDUCATION
Rajiv Gandhi University
Rono Hills, Itanagar

Paper III
Contemporary Tribal Issues
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UNIT-I

HISTORY OF TRIBAL POLICY AND APPROACH TO TRIBAL DEVELOPMENT IN INDIA

1.1 Objectives

The objective of this unit is to introduce students the very concept of tribal development in the context of India which is basically an induced developmental initiative. More over an attempt has been made to give a historical backdrop of tribal policy as well as various approaches evident in relation to Indian tribal people giving more emphasis on colonial and post-colonial legacies.

1.2 Concept of Tribal development

Before discussing and reviewing the tribal development approach, it is pertinent to know how the anthropologists view development and particularly their understanding of tribal development.

The term development is often used in the sense of growth indicating a quantitative increase or progress in production, income, consumption of food etc. and thus giving emphasis on quantitative aspect ignoring the qualitative part of man. Belshaw, however, gave equal emphasis on social, cultural, economic and other aspects of life. He observed, "sociologically speaking, development should be looked upon as an organized activity with the aim of satisfying certain basic needs and to psychologically orient the tribals to adopt new skills, attitudes and life styles, so that they built up the inner strength and appropriate social and cultural infrastructure to stand the pressure of the new situation and accrue benefits from the new programmes and maintain higher levels" (1972). He considered the development as a positive change and observed "development presents an increase in the capacities of a society to organize for its own objectives and to carry out its programmes more efficiently".

Development, as has been observed by Beals and Hoijer, may be considered as those changes which are required but have minimum disruptive effects on the concerned population.

Vidyarthi (1981) observed that development means growth and change which include both the material and human—the socio-cultural factors which are an integral part of the dynamics of growth. He felt, "while striving for the development of a group or an area, due emphasis has to be given to their traditional values and historical experiences". In fact economists like Schumacher has also observed, "development does not start with goods; it starts with people and their education, organization and discipline" (1977:157).

With reference to development, Mahapatra has also observed that real development should consider the needs, values, and aspiration of the concerned population and local development are not likely to be in conflict with the national objectives, but at the same time, the local people's aspirations and potentialities should be honoured, respected and accommodated. To Roy Burman, development activities particularly in the context of tribals should be concerned with-

- (a) Satisfaction of minimum needs,
- (b) Control and management of productive resources,
- (c) Employment optimization,
- (d) Broad based participation of the population in development process and
- (e) Socio-cultural and political aspects of national integration (1986:133).

Thus, a number of issues may be suggested particularly in the context of tribal development.

- (1) Development includes both quantitative and qualitative change.
- (2) Social and cultural aspects of the concerned population should be considered.
- (3) Imposition of ideas and values, plans and programmes, and also priorities of work without considering the felt needs of the concerned population should not be made.
- (4) Development should promote participation of the concerned population in the development process.
- (5) Development should help in the elimination or at least reduction of various process of domination and

cultural hegemony of ruling classes, equalization of distribution of development benefits (growth with justice) and redistribution of income.

- (6) Development should not only prevent alienation of the tribals over productive resources, it should also not affect the physical environment to any appreciable extent and the traditional customary rights of the tribals over the productive resources.
- (7) Development should not in any way affect the quality of life, but is expected to improve it.

Thus, if we compare and examine the broad approach and type of tribal development visualized by Pandit Nehru and that suggested by the social scientists, particularly Anthropologists and Sociologists; it is interesting that the major issues are common. Thus, broad based participation of the concerned population in the development process and the development on the lines of their own genius have been suggested and it has been recommended that nothing should be imposed on them. Control and management of productive resources is another important issue and it has been advised that tribal rights over land and forest should be respected. Development is also expected to improve the quality of life.

The different measures taken or programmes initiated in the context of the tribal may be broadly classified in three groups; (a) protective, which include constitutional safeguards and also legislation restricting and regulating alienation of tribal over resources particularly land, (b) mobilization, which include reservation in academic institutions, services and legislatures and lastly (c) developmental which includes a large number of programmes covering social services, health, education, economy, etc. (Roy Burman: 1989)

Check your Progress

1. What do you mean by Development?
2. What is tribal development?

1.3 Tribal policy and Approaches to Tribal Development in India

In the present context it is essential to know how these tribal people have been approached so far by the administrations. It is true that in the historical India the people considered the tribals living in remote forest and hilly areas part and parcel of Indian population. They had enjoyed a free life of their own. It was only in the immediate past in the British period of Indian history that these people were approached in quite a different way. The British rulers came in contact with them only with the entry of some missionaries in the beginning of the 19th century. Later the Indian national leaders who were fighting for the freedom of the country felt pity for the backward, poor and naturally isolated tribals and wanted to uplift and bring them in the broader framework of the Hindu culture. They never regarded them as a separate section of the Indian population. When the country achieved Independence the Government followed the stereotyped policy of the British administration in a modified way. Experience of a decade or so of the administration of Free India, constant thinking of social reformers, political leaders of the nation and the Indian anthropologists as experts on the tribal ways of life found out a most desirable course for the integration of the tribal people in their respective regional and national setting.

Thus, the approaches to the tribals may be separately considered in the context of pre-Independence and post-Independence period. Historically there have been three main approaches:

1. Policy of Segregation.
In Pre-Independence Period.
In Post-Independence Period.
 2. Assimilation: A result of constant contact of the Tribes with the rest of Indian population and the efforts of Social Reformers.
 3. Integration of the Tribes in Regional and National setting.
- These approaches may be viewed in some detail.

1.3.1 Policy of Segregation: In Pre-Independence Period

The foremost policies which were adopted by the British rulers were to isolate these people from the general mass and separate the tribal areas from the purview of the normal administration. This administrative segregative adjustment was not at all realized by the rest of their countrymen as they were either too subdued or too ignorant to understand what was happening. This isolation led to much exploitation by non-tribal money-lenders, contractors, zamindars and middlemen. In the segregated areas, however, only a few such people could enter through the administration. But they were not welcomed by the tribals. Also their contact with non-tribals added to their strain of fighting a lone battle against nature in the hilly and forest areas.

The policy of isolation by the British Government was largely effected by their deliberate efforts not to develop communication in the tribal areas which, as a result, remained cut off from the rest of the population. A few roads that were constructed were for security purposes and to enable correctors to exploit the forest produce. Communication with the other groups of people, e. g., plain people, was also discouraged as the tribal areas were made secluded by the authority. The most burning example that can be cited in this respect is of the north-eastern Himalayan tribes. They had no communication with the rest of India and consequently a sense of separatism has developed in them.

In isolated tribal areas a very small number of people were allowed, i.e., some contractors, Government officials and a few businessmen. They grouped together and started business on their own terms. They were there to interpret the rule, and their terms of business swept in purchase and sale of the goods and thus exploitation of an extreme degree pervaded.

In some areas the British rulers also created "excluded" and "partially excluded" areas and gave them separate political representation. The feeling in the national field was that it was a wicked conspiracy to create a new separatist minority. And ultimately this precipitated the creation of Nagaland, a separate State, in 1960 with a population of a few lakhs.

In fact the area-wise isolation began with the enactment of the Government of India Act of 1870 and a few tracts were specified as "scheduled tracts", viz., in the Himalayan region the then Assam, Darjeeling, Kumaon and Garhwal, the then Tarai Parganas, Jaunsar-Bawar, Lahaul and Spiti; in middle India, - Chotanagpur and Santhal Pargana, Angul Mahal, Chanda, Chhattisgarh, Chhindwara, Manpur (Indore), Jhansi, Mirzapur, Ganjam; in western India, Panch Mahals, Mewasi (Khandesh); and in south India, Vizagapatam (Visakhapatnam) Godavari, and Lakshadweep. In 1874 the Scheduled District Act gave effect to the Government of India Act 1870. A number of Acts were enforced from time to time till 1919. When certain territories were declared "Backward Tracts under the Government of India Act of 1919. The areas were, more or less the same as those of "scheduled tracts" and "scheduled districts" with certain additions and omissions. For instance, Sambhalpur was included whereas the Mewasi, Chhattisgarh, Chanda, Chhindwara, Mirzapur and Jaunsar-Bawar were excluded. The "backward tracts" were the result of the reforms suggested by Montague and Chelmsford in their report. They considered certain areas to be backward, the people being primitive without political institutions and so on. This drama of helping the tribals with special protections in these demarcated areas did not end. The British Parliament was eager enough to show that something had been done to help the tribals through special administration in the areas concerned. Again in 1936 two areas were created. "Excluded Areas" and "Partially Excluded Areas" under Sections 91 and 92 of the Government of India Act of 1935. The list of the areas was embodied in the Government of India (Excluded and Partially Excluded Areas) Order, 1936. On the whole the list of excluded areas or partially excluded areas largely left the situation as it was in 1874 barring only certain areas on the then frontiers. The main features to distinguish an Excluded Area from a Partially Excluded Area were: (i) the Governor functioned in his own discretion in an "excluded area" whereas he sought the advice of the Ministers in a "partially excluded area", (ii) the expenditure in regard to the former was non-votable while the demands in the latter case were subject to a vote of the Legislature. (iii) the discussion of any matter regarding the excluded areas needed prior consent of the Governor. In 1939 Elwin advocated (1939: 511-519) for the "establishment of a sort of National Park" of the tribals and advised that their contact with the outside world should be reduced to the minimum. Again in 1941 he (Elwin: 1941) supported the idea of "isolationism" to a great extent.

1.3.2 Segregation in Post-Independence Period

In the early period of Independence, the Government of India too adopted the policy of isolation though in a slightly modified form. The partial exclusion of largely tribal areas was followed by special welfare measures. This greatly helped them to go ahead with a separatistic move, for instance the demand for an independent Naga State and an autonomous Jharkhand. Verrier Elwin, Adviser on tribal affairs to the Government of Assam recommended isolation of tribal groups in certain extreme cases.

His "National Park" policy of keeping the tribals as "museum specimens" became the model for the administration. Later, Elwin, in the second edition of his book (1959: 20), developed what he meant. He clarified, "We do not want to preserve the tribesmen as museum specimens, but equally we do not want to stop the clock of progress but we do want to see that it keeps the right time. We may not believe in the myth of noble savage but we do not want to create a class of ignoble .."

The declaration of "a few particular areas of tribal concentration as Scheduled Areas and Tribal Area", is again an example of isolation. The sub-committee, with Shri A. V. Thakkar, a close associate of Mahatma Gandhi, as Chairman, constituted by the Constituent Assembly, had emphasized that the great need of the aboriginal was protection from expropriation from his agricultural land and virtual serfdom under the moneylender. It further recommended "considering the past experiences and the strong temptation to take advantage of the tribal simplicity and weakness it is essential to provide statutory safeguards for the protection of the land" (Elwin, 1963: 15-16). This clearly indicates that the Constituent Assembly had never recommended isolation of some area as specific area but had simply wanted the end of the exploitation. The implementation of the safeguard was made by declaring some areas as Tribal and Scheduled. The governmental machinery remained confined to the scheduled area. The tribals living outside the areas were not duly protected. This is clearly sounded in the report of the Scheduled Areas and Scheduled Tribe Commission 1960. It notes, that if the Government is unable to accept this programme (i.e., programme of grouping of all the tribal areas under a Tribal- Development Block so that the bulk of the tribal population is brought under intensive development schemes) there is no alternative to declaring these areas as Scheduled Areas despite the complications involved (Elwin, 1963: 33).

The enlisting of the Scheduled Tribe also creates the wrong impression of the tribals being under a special law. The origin of the term "Scheduled Tribe" itself is the result of our Constitution coming into force on January 26, 1950. However, the first serious attempt to list these communities as primitive tribes was made during the census of 1931. In the Government of India Act (1935) a reference was made to "Backward Tribes" and again the Thirteenth Schedule to the Government of India (Provincial Legislative Assemblies) Order, 1936 specified certain tribes as backward in the then Provinces of Assam, Bihar, Orissa, Central Provinces, Barar, Madras and Bombay. In the 1941 census these people were recorded as "Tribes" and separate totals were furnished only for a few selected individual tribes.

Here, again, the old British concept of "excluded area" was applied in a modified form where the ethnic groups were the basis rather than the area. Moreover, the Constitutional safeguards and the inclusion of tribes in the Fifth Schedule created Constitutional gaps between general population and tribal population.

In pursuance of the provision under Article 343 of the Constitution, the President made an order in 1950 specifying certain tribes or tribal communities as Scheduled Tribes. This list of Scheduled Tribes was revised as the need arose in 1953, 1954, 1956, 1959, 1960, 1962, 1966, 1967, 1968 and 1970. Here mention may be made of the advisory committee of 1965 which was set up for advising the Government on the revision of the list of Scheduled Castes and Scheduled Tribes and which also suggested the revised list, and the orders made in 1967, 1968 and 1970 are the result of the efforts made by this committee.

Again, in the different Five Year Plans the tribal development faced financial segregation. The fund meant for "tribal welfare" was kept reserved for tribal development and the general fund was not utilized for the developmental work among them. They were not given the general benefit of being part of the general mass. At a meeting of the task force for tribal development which Rai attended as an invitee found resentment by the task force over this segregation of tribal-welfare and general welfare funds and their utilization (Vidyarthi, 1973). It is good that it has been felt and the Fifth Five Year Plan clearly laid down that major thrust of developmental efforts be provided by the general sector (Report: 1976, 3).

The intensity of isolation can well be grasped from a statement in the report of the Scheduled Areas and Scheduled Tribe Commission. It says:

"The problem emanates from centuries of isolation. Only to this extent it is different from the problems facing the other section of Indian society. The most hopeful feature is that the tribal himself has awakened to the need of finding a solution and is responding."

1.3.3 The Assimilation

The assimilation of the tribal people with the rest of the population is another approach and is a continuous process and the culture contact with the neighbouring population is held responsible for it. Though this has also created some problems for them, partly because of their isolation and partly because of their limited world view. About assimilation, Kroeber (1948: 428) opines that "normally, we may expect assimilation only 'When the outlook of one society is inclusive and when this society is definitely the stronger and its culture is more advanced'. In India, the tribal people have come in contact with different Hindu and other communities and situations have different degrees of culture contact leading to assimilation in different parts. Some tribals have gradually accepted the Hindu way of life and others have converted to Christianity. This culture contact has given rise to so many types of tribals and has created a set of different types of tribes on acculturation level. Ghurye (1963: 23) divided them into three classes: first, members of fairly high status within Hindu society, viz., Raj Gonds; second, partially, Hinduized and, thirdly, hill sections. Assimilation of the tribals attracted a number of anthropologists. Majumdar (1947:131) held "Hindu influence;" responsible and gave a threefold classification: (i) real primitive, (ii) primitive tribe with a degree of association with Hindu caste and (iii) Hinduized tribes whereas Elwin (1943) talked about it as the "external influence" and suggested four types of tribes-, viz., (i) most primitive, (ii) individualistic and used to outside life, (iii) detribalized and (iv) tribal aristocrats. In the Indian Conference of Social Work in 1952, four divisions of tribals were made: (i) tribal communities, (ii) semi-tribal communities, (iii) acculturated tribal communities and (iv) totally assimilated tribals. Dube (1960) classified into five categories considering the present habitation and behavior of the new communities which come in contact. According to this classification they are: (i) aboriginals living in seclusion, (ii) tribal group with some village folk association, (iii) tribals living in mixed villages, (iv) tribals who have been forced to live as untouchables, and (v) tribals enjoying a high social status.

These classifications reveal that the process of assimilation has been a part and parcel of the Indian tribal culture. Many anthropologists have explained it in their own ways. Sanskritization of Srinivas (1957) and tribe caste continuum model given by Sinha (1965) for the Bhumijis, by Srivastava (1966) for the Bhutias and by Sachchidananda (1970) for the Gonds explain the phenomenon. L. K. Mahapatra (1968) feels that there was an age-old process of cultural assimilation in Orissa especially among the -tribes like the Binjhal, Bhuiyan, Gond, Kond, etc. All this points to gradual assimilation into the Hindu peasantry at various levels as Kshatriya agricultural clean caste or even low castes. The process of assimilation has been propagated by the tribals themselves, the Hindus and the tribal chief (Ghurye, 1963: 45). Among the Mundas and Oraons as accounted by Roy (1912 and 1915) a Hindu-Munda Chief's family first introduced Hindu officers and Brahmans in the latter half of the 17th century.

Ghurye characterized the tribals as backward Hindus (1963: 19) and argued that any attempt to isolate them from the mainstream of Indian life would be meaningless. While sections of these tribes are properly integrated in Hindu society, very large sections, in fact the bulk of them, are rather loosely integrated. Only very small sections, living in the recesses of hills and forests, have not been more than touched by Hinduism. He opines that the tribals are the imperfectly integrated classes or Hindu society. Though for the sake of convenience they may be designated the "tribal classes of Hindu society" suggesting thereby the social fact, as viewed by him, that they have retained much more of the tribal creeds and organization than many of the castes of Hindu society, yet they are, in reality, Backward Hindus. The Gonds are the best illustration of assimilation and the Raj Gonds rank with the Hindu cultivating castes; and the Brahmans take water from them, (Ghurye, 1963: 52).

The tribes of the north-west and central Himalayan regions have assimilated themselves into the frame of Hindu castes. The Gujjars, Pangewals, Lahaulis (see Census Monograph 1961), Khasas (Majumdar, 1962),

Tharus (Srivastava, 1958) have all adopted the Hindu way of life. In middle India the Mundas and Oraons (Sachchidananda, 1964) have felt the impact of the neighbouring Hindus and their way of life. The Hos (Majumdar, 1950 and Rai, 1967) have exclusiveness as an important character but much has been adopted from the *Dikkus* (the Hindu neighbours). In the *Dikku Andi* way of marriage, a Brahman presides over the ceremony. The Parhayas feel proud to be called Hindus. The Bhumijis are new Hinduized (Sinha, 1965).

The Kols not only call themselves Hindus but also claim ancient association with them 'and their religion is a tribal edition of Hinduism (Hasan, 1972: 146-174). The Korkus and Baigas have a Hinduized section as Raj Korkus and Binjhars. The plain Bhuiyas are Hinduized. Roy expected (1935: 231) that within a few decades the Pauri Bhuiyas (Hill Bhuiyas) would hardly remain distinguishable from the Hinduized Plain Bhuiyas'. The Khonds of Puri (O'Malley, 1912) were so Hinduized as to resemble the lower Oriya castes of the Hindus. The Saoras of Puri are considered good enough to serve as cooks in the temple of Jagannatha.

Some of the Bhils are Hinduized to the degree that they claim to be classed as Rajputs. Some of the advanced sections employ Brahman priests. The Katkaris tend towards the standard of the Kunbis, the cultivators. The Warlis' marriages are performed by the Brahmans. The Thakurs (Chapekar, 1960: 211) can hardly be distinguished from their agriculturist neighbours. When the Ma Thakurs began to employ a Brahman priest for some of their rites, their assimilation proceeded at a greater pace. The Dhankas have adopted various Hindu Gods and Goddesses. Shah (1964: 285) opines that Gujarat tribal leaders are bringing about vast social changes to remove tribal backwardness and to adopt the prevailing folk ways of the majority community in the neighbouring areas. Rajasthan and Maharashtra tribes too are assimilated to a great extent with the folk population. The Minos consider themselves to be Kshatriyas.

The south India tribes also are not untouched by the process of assimilation. Luiz (1962: 12) believes that rapid Hinduization has been going on and the greater part of the Kerala tribes willingly proclaims Hinduism as its religion, uses Hindu names, celebrates Hindu festivals and visits Hindu temples. As regards the Lakshadweep people, 'Aiyappan never regarded them as tribes, but the inhabitants are as good as the Moplas of the west coast. Their coming to the mainland on different occasions (Roy Burman, 1973) and the historical account of Leela Dube (1969) about the people clearly indicate their close association with the coastal people.

It would be seen from the above that the tribal people of different regions have assimilated themselves in the neighbour folk people and have been in fairly intimate contact with them.

1.3.4 Integration of the Tribes in Regional and National Setting

The ultimate way in which the tribals were approached is the integrational one. The past experiences of the policies of isolation and assimilation (well defended by Ghurye, 1963: 59) and their results forced the thinkers and social reforms to go a midway which might have been more fruitful. The base of the Indian culture, i. e., "unity in diversity" once again got its due importance. The social reformers, politicians, anthropologists as experts on the tribal ways of life and the administration combined their skills and adopted an integrated approach towards the tribals.

For the first time the late Jawaharlal Nehru (1958: xiii) gave a "Panchsheel", i. e., five fundamental principles for the tribal upliftment, as an integrational approach which was later confirmed by the researches of anthropologists. The principles are:

- (i) People should develop along the lines of their own genius and, we should avoid imposing anything on them. We should try to encourage in every way their own traditional arts and culture.
- (ii) Tribal rights to land and forests should be respected.
- (iii) We should try to train and build up a team of their own people to do the work of administration and development. Some technical personnel from outside will no doubt, be needed, especially in the beginning. But we should avoid introducing too many outsiders into tribal territory.
- (iv) We should not over administer these areas or overwhelm them with a multiplicity of schemes. We should rather work through, and not in rivalry to, their own social and cultural institutions.
- (v) We should judge results, not by statistics or the amount of money spent. But by the quality of human character that is evolved.

From the experience of the "panchsheel" for the "Panchsheel" for the tribals we find: (i) that we should not force tribals to do things, that (ii) tribal rights aim at saving tribals from exploitation which can be possible only by integrating them with their neighbouring people, (iii) that only tribal officers may work in the area with some local bias, and in these conditions experienced non-tribal officers have proved themselves to be anthropological in approach. (iv) that tribal programmes be very simple, and (v) that one has to "serve the tribals in a dedicated spirit".

Dube (1968: 110) has reviewed the policy in the broader context of national unity and opines that in tribal India there is not one tribal culture but an admixture of so many tribal customs and traditions, and "unity", is not at all there, (The British administration and the free-India administration were previously of the view that there existed unity in tribal India.) The various all-India tribal Conferences organized by the Government or actively supported by it indirectly created solidarity in tribal India. But he found in this only additional encouragement to the separatist move in some parts of the country. The most desirable course, therefore, he suggests, was to work for the integration of the tribes in the regional and national setting according to their genius.

The latest approaches, i. e.: (i) single-line administration. (ii) Comparatively small districts due to communicational difficulties, (iii) area development approach (Vidyarthi, 1974) to develop the area in its totality in the Fourth Plan and drawing the Sub-Plans in the Fifth Five Year Plans are a clear reflection of the policy of integration with the regional and national setting. It is also a good sign that recently all the three districts of Nagaland have been bifurcated into seven districts and one big district of Madhya Pradesh, i. e., Raipur, have been bifurcated into two districts. The single district, Bastar, has been put under a Commissioner and has been made a commissioner. In Bihar, too, the number of districts has been doubled to give better administration and to speed up development.

The discussion on how tribals are approached will; however remain incomplete unless we consider the approaches to tribal welfare.

1.4 Approaches to Tribal Development in India

Since India opted for plan development, special attention has been paid to the amelioration and uplift of tribals and tribal areas, by providing enhanced allotment of funds and evolving special development programmes to integrate the tribals with the larger society within the shortest possible time. Many constitutional safeguards have been provided and protective legislation enacted by various states to protect the tribal's interests in land and forest and to afford opportunities of employment and education.

A massive programme of integrated development was initiated by organizing 43 Special Multipurpose Tribal Blocks during the second five year plan in areas with tribal concentration. Such programme incurred an expenditure of Rs 6.42 crores which formed part of Rs 43.93 crores spent on tribal welfare during the second five year plan. Top priority was given to the promotion of education followed by communications, agriculture, animal husbandry and medical facilities. In the third five year plan the expenditure went up to Rs 53.40 crores and the integrated development have been made available to all the tribal areas through the 489 Tribal Development Blocks opened by the end of 1966-67 on the basis of the recommendations made by the Elwin committee and Dhebar commission. During the third five year plan economic uplift was given to priority followed by education and health, housing and communications. The expenditure figures indicates that although the amount spent on tribal welfare during the third five year plan increased by 21.56 per cent over the amount spent during the second five year plan, the per capita expenditure decreased from Rs 3.90 actually to Rs 3.58. This has to be attributed to the failure of the planners to visualize the expected increase in the scheduled tribe population which rose from 25 million in 1951 to 30 million in 1961 (these census figures were not finalized by the time of the formulation of the Third Year Plan). Further, the percentage of expenditure on tribal welfare to the total plan expenditure also decrease from 0.94 per cent during the second plan to 0.62 percent during the Third plan. Another interesting feature of the expenditure is that while according to the census the scheduled tribe population constituted nearly 7 percent of the population, the percentage of expenditure on tribal welfare programmes was low as 3.63 percent in the Third Year Plan period.

Even though enhanced allocation were made for tribal welfare in the fourth Five year Plan, the effect of these higher allocations must have been offset by the increase in population between 1961 and 1971. While the priorities continued to be almost unchanged during the Fourth Plan, certain special programmes like the crash

Special Nutrition Programme and crash Employment Programme were introduced as corrective measure to provide nutritious supplementary diet to the tribal infants in order to save them from malnutrition and to increase the employment opportunities for the educated unemployed tribal youth and also save them from the nefarious teaching of extremist political parties.

The most important feature of the Tribal Welfare Programme in the fourth plan period was the introduction of six pilot projects in the backward tribal areas covering about 40,000 tribal families under each project with an investment of Rs. 1.50 crores per project. The projects were agriculture-oriented with stress on providing improved agricultural inputs like implements, fertilizers, seeds, irrigation facilities, etc., besides developing veterinary services, fisheries, etc.

However it is essential to bear in mind that the term "region" in planning is defined as a geographically contiguous area or space with common resource potentialities and felt needs of the people inhabiting the area, so as to constitute a viable unit of development irrespective of its ethnic composition. Further, the development situation of the tribals living in such a region may be referred to as both "underdevelopment" and "backward". The former to emphasize the suboptimal utilization of resource and the latter for referring to the backwardness of a given area or region, as are the tribal areas, where resource utilization is not up to the desired level.

States like Mizoram, Nagaland, and Arunachal Pradesh besides certain tribal areas in Madhya Pradesh and Orissa fall under the first category. Almost all the tribal areas of Andhra Pradesh and other southern states and certain tribal areas of Madhya Pradesh, Maharashtra and Orissa come either under one or the other area of the remaining three categories mentioned above. For the development of the areas falling under the first categories, the criteria, whereas for the development of the second and third category areas, a new approach with stress on area planning is to be adopted. While undertaking this area planning, it is important to remember that we have in our country backward areas not only on account of being exclusively inhabited by tribals but even when the populations are heterogeneous. It is therefore, necessary to plan for the development of these tribals as part of the complex whole as the development of tribals and tribal areas is inextricably inter-link with the regional development. For these purpose the areas falling under the second and third categories are to be divided into a number of blocks with predominant tribal population and predominant non tribal population but with sizeable tribal component. Both these types of blocks constitute backward areas. At macro-level, area development schemes like laying of major communication facilities, higher education, marketing, industries, irrigation, etc. can be profitably undertaken by keeping in view the resource potentialities and felt needs of the area. However, at macro level a distinction can be made in resource allocation to these blocks as was done in Andhra Pradesh, where block have been classified into advanced, ordinary, backward and tribal- on the basis of certain indices of development, such as extent of irrigated area, number of schools length of roads, etc.

This brief review of the tribal welfare programmes indicates that though efforts have been made during the last twenty years to improve the lots of tribals, enough has not been done to bring them on a par with the advanced sections of society which has been the theme of the development programmes. Both programme planning and implementation have remained stereotyped and devoid of tribal bias. Consequently, even the little that has been invested on the tribal welfare could not percolate to the intended beneficiaries in its entirety. In spite of the recommendations of the expert committees and commissions (e.g Elwin and Dhevar) the programme failed to give the expected results, due to the following reasons:-

1. Introduction of stereotyped programmes without relevance to the felt needs of the tribals.
2. Failure of the planners to take cognizance of variation in development from region to region and from tribe to tribe.
3. Varied levels of comprehension and mobilization of economic, natural and human resources.
4. Different levels of receptivity of the beneficiaries and variegated capabilities of tribal leadership.
5. Ill-suited administrative structure and incapable personnel, resulting in confused decision making and lack of initiative.

6. Ineffective implementation of protective measures due to lack of proper implementation machinery resulting in dilution of development effort.

The ultimate result of such effective planning and implementation is the emergence of an undulating socio-economic situation in which certain tribal groups and areas have progressed while others remained static. Thus, while certain groups of Nagas and Mizos achieved spectacular development, others like Chenchus, Samanths, Hill Reddies, etc are yet to out grow the food gathering and shifting cultivation stage. Therefore, any strategy for the development of tribal groups should in future aimed at a) removal of disparities between one tribal group and an others and b) jumping the gap between the tribal and the non-tribal. For this purpose the development problem of the tribals is to be tackled at regional level by broadly categorizing the tribal areas into:

- a) Areas which are exclusively inhabited by the scheduled tribes.
- b) Areas predominantly inhabited by the tribals but with sizable non-tribal populations living amidst them.
- c) Areas predominantly inhabited by non-tribals with a sizable component of tribals.
- d) Area where tribals are found dispersed in small groups amidst non-tribal.

The development of tribals dispersed amidst plains populations and yet constituting sizable numbers at district level is to be tackled on a different footing. For such groups, amenity schemes like drinking water wells and medical facilities can be provided on a small group basis while school and similar other programmes are to be organized along with the needs of the other population with special provisions for the tribal students both in securing seats and providing teaching and residential facilities. However, programmes like agriculture and allied development activities are to be planned on a family basis. It is neither desirable nor possible to evolved area development schemes for these groups.

Paucity of funds is another serious drawback hampering the tempo of development which is sometimes resulting in incomplete works giving rise to doubt on the sincerity of the efforts of the government in promoting tribal welfare. It is imperative to take the general sector resources by specifically ear marking funds, especially for area development of dispersed tribal population living in plains areas as the meager funds of the weaker section sector cannot bear the huge burden. The weaker section resources may be exclusively harnessed for removing the constrains which are responsible for their slow progress. These is essential in view of the past experience of poor flow of general sector fund inspite of the directive that the weaker section sector fund are only supplementary to the funds ear marked from the general sector and not meant for supplanting the latter.

Further, the welfare programmes so far implemented at micro level by taking a block as development unit could not be geared up to the optimal utilization of the natural and human resources of the area as the block is too small unit to permit economic exploitation of the resources. Similarly the development of large scale infrastructural facilities is also stifled due to the meagre financial and technical resources of the block. It is, therefore, imperative to carve out larger unit of development comprising a number of blocks endowed with common mineral, water, agriculture, forest and other resources potentialities which could be profitably exploited for the benefit of the area and the people. However, the carving out of such development areas should be undertaken only after a thorough investigation into the resources potentialities and feasibilities of their economic exploitation besides working out the details of the infrastructural facilities required for the exploitation of these resources. However, the interest of the local population should receive their due attention in the programmes planning of the area.

Beside, availability of adequate funds and implementation of development programmes, it is also essential to strengthen the insulatory measures for preventing the tribals from outside exploitation and the consequences dilution of development benefits as they percolate to the tribals. Though the existing protective legislation in states like Andhra Pradesh is comprehensive and fool-proof on paper, the desired protection is not ensured to the expected level. Several factors like absence of initiative and zeal on the part of official machinery, vast political influence wielded by non tribals coupled with indifferent attitude of the tribals and ignorance of the existing protec-

tive legislation contributed for their ineffective in practice. The answer to this situation lies in involving the tribal leaders themselves directly and effectively in the implementation of these protective measures. Constituting area committees, consisting of trustworthy traditional leaders selected by the agent to the government with some statutory power delegated to them under the provision of the regulations, may be worth trying. Such a system was in vogue in the tribal areas of the erstwhile state of Hyderabad to implement the tribal areas regulation, which in essence embodied the salient feature of various protective legislation now being enforced in Andhra Pradesh. However, the official machinery will continue to act as catalyst in the deliberations of these committees in the capacity of advisers. Besides, these committees in turn can also supplement the decision making activities of the elected leaders of the statutory bodies like Panchayats and Panchyat Samithis by providing them the necessary moral base.

It is increasingly felt that the administrative machinery should be geared up to the development demand of the tribals. In view of the acceptance of the integrated approach with the block as the micro-level development unit, it may not be necessary to have separate administrative machinery at block level as the various subject-matter specialists have to participate. However, it is at the district level that the weakest link lies. Here, a tribal welfare officer, well versed in human engineering with adequate and technically qualified staff, is necessary to identify the bottlenecks and find suitable solutions to the tribal's problems. At state level the director of tribal welfare with similar staff as suggested for the district level should guide and supervise the development programmes. Further, a committee for tribal development comprising the heads of departments, the planning secretary, the finance secretary and the revenue secretary with a senior member of the Board of Revenue as the chairman and the Director, Tribal Welfare, as its secretary and convener should be constituted for each state with the main object of finalizing districtwise, the tribal development programmes and periodically reviewing the progress of their implementation. At the district level also a similar body should be constituted with a few non official tribal member and other district level functionaries. This pattern which exists at the state level in Andhra Pradesh could be adopted to advantage by other state also. At all India level also it is desirable to have an exclusive department of tribal welfare with a senior officer In-Charge. The general sector should provide the necessary fund for area development of programmes and to ensure proper channelization of the funds, it is logical to make the existing State Tribes Advisory Council more broad base so as to include the Planning Secretary, the Finance Secretary, the Chairman of the State Central Cooperative Bank and Central Mortgage Bank and representatives of various lead banks operating in each state. They should also be made responsible to submit a report on the progress of the release of funds. This pattern may also be profitably emulated at the all-India level with necessary modifications.

Finally, it is important to remember that it is the human element that makes or mars the development of any region or group. Steps, should therefore, be taken to improve the quality of the development functionary, both official and non official, working at various levels, by drawing special programmes of training so as to improve the performance of the official executive and decision-making capability of the tribal leader. For this purpose the training programmes of the various Tribal Research and Training Institutes are to be so evolved as to cater to the needs of both types of development functionaries. Further, the results of research by these institutions should be communicated to the planners and administrators to help them implement the Plans (Pratap, 1990, pp287-94).

Check your Progress

1. What do you understand by Policy of Segregation?
2. What do you mean by the Policy of Assimilation?
3. What is Policy of Integration?
4. In your view, which is the best policy for the tribal development and why?
5. Discuss the approaches to Tribal Development in India.

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UNIT -II

FIVE YEAR PLANS AND TRIBAL DEVELOPMENT PROGRAMMES

1.1 Objective

The objective of the unit is to provide students the various strategies of the Independent India's Government to streamline and uplift the Tribal population with rest of the general population of India. Various development programmes and five year plans have been discuss in the following unit for the benefit of the students to know the tribal situation in India.

1.2 Five Year Plans and Tribal Development Programmes

Independent India's tribal development can be understood properly if we begin with a very brief introduction of this phenomenon since British rule, which may be credited with having been the first to extent the arms of government to the inaccessible hill areas. This had been the special concern of administration right from the days of Warren Hastings, when the first governmental attempts were made to bring bandit "Hillmen" or Pahariyas of the Rajmahal Hills under the pale of civilization through an indefatigable Brooke, Brown and Cleveland during the later part of the eighteenth century (Rai, 1970). Introduction of Regulation and Non-Regulation provinces by the British Government during nineteenth century was also of great significance in this respect. It is to be noted that no civilian officer was deployed to the tribal areas. The criterion of deployment seemed to have been efficiency. As the military officers were found effective in suppressing the unrest of tribal rebellions, the then prevailing notion was that the military officers were the best suited for administration and relief in tribal areas. This attitude came in such a bold relief that the provinces where such military officers were deployed were generally known as Non-Regulation areas while civilians were employed exclusively in Regulation Provinces (Malley, 1965).

This system had certain merits which served the British cause in Arracans in 1828, when Blunt framed the famous Arracan Rules. In Chotanagpur in 1834, when Wilkinson's Rules were promulgated and when a separate Santal Parganas District under Yule Regulation was created; the British Policy in those Non-Regulation areas remained isolationist. As the time went on, the idea, that special arrangements were necessary for the isolated tribal regions, gained general acceptance.

The whole of the nineteenth century was punctuated by one tribal rebellion or the other. This compelled the British administrators to experiment with one measures or the other, legislative or executive, till such time that these areas were turned into practically "ethnographic parks", protected and safeguarded by different tenurial steps and executive actions. Pax Britannica was meaningless without the religion of Christ being the major persuasion of the subject people, and therefore, a through and systematic induction of Christian missionaries started in the tribal areas. They were actuated by an "obligation to convert our erring brethren to the faith of Christ" (Duff: 1840). They thought "to make Government effectual to all the good purpose of it, there must be a religion" (Ibid.).

Emergence of 'Partially Excluded Area' and 'Excluded Area', served to a great extent the British purpose of keeping the tribal areas isolated, away from the mainstream of national life, so that the 'contagion' of the Freedom Movement did not affect the tribal people.

In spite of that the tribes responded in various times and in various ways to the call of our nationalist leaders (Sinha: 1970). Accordingly, the national leaders got first hand knowledge of their (tribal) conditions and became anxious to reintegrate the tribes with the main current of Indian life, from where they had been kept away all along by the British masters for reasons suited to their imperialist design. Protests were raised against the British policy of isolation through protection. After the formation of popular Ministries in 1934, committees were appointed in the provinces of Bihar, Orissa, Bombay and Madras (Chennai) to enquire into the condition of the tribes, but the resignation of the Ministries postponed adoption of any new policy for Tribal welfare until Independence (Ibid.).

After attainment of independence, tribal development as a topic of theoretical as well as practical consideration has assumed paramount significance. Initially 'economic development' was considered as the prime goal for the overall development of the country. The distinctive nature of the tribal groups in respect to their socio-economic characteristics as well as the area of living was recognised by the national leadership from the very beginning. Accordingly, a number of special provisions has been made in the Constitution of India for safeguarding rights and interests of the Scheduled Tribes as well as for their accelerated rate of development so as to bring them up to the level of the general population of the society as early as possible. Provisions for safeguard can be traced back from the very first session of the constituent assembly in December 1946, when Jawaharlal Nehru moved the principal resolution on the declaration of objectives which, along with other matters were outlined as below.

Wherein adequate safeguard shall be provided for minorities, backward and tribal areas and depressed and other backward -classes.

The Nehru era laid the foundation of the tribal policy which was pivoted around what is often referred to as the *Panchsheel*. This emerged as the guiding principle of tribal policy towards the close of the 1950's, particularly in the North-East. Five fundamental principles are as follows:

- (i) People should develop along the lines of their own genius and we should avoid imposing anything on them. We should try to encourage in every way their own art and craft.
- (ii) Tribal right in land and forest should be respected.
- (iii) We should try to train and build up a team of their own people to do the work of administration and development. Some technical personnel from outside will, no doubt, be needed, especially in the beginning. But we should avoid introducing too many outsiders into tribal territory.
- (iv) We should not over-administer these areas or overwhelm them with a multiplicity of schemes. We should rather work through and not in rivalry to, their own social and cultural institutions.
- (v) We should judge results, not by statistics or the amount of money spent, but by the quality of human character that is evolved.

In later days, specially in relation to the Nehru Centenary Celebrations a large number of scholars from different disciplines and some administrators critically scanned Jawaharlal Nehru's Tribal Policy from contemporary perspective (Tripathi 1992, Shanti 1922, Chowdhury 1989 and 1992, Pakem 1992, Ganguly 1992, Basu 1992, Chaube 1992, Banerjee 1992, Singh 1989, Mukhopadhyay 1989, Dutta 1989, Rumny 1989, Krishnatry 1989, Pandit 1989 and Dasgupta 1989).

During the second session of the Constituent Assembly, that held in January 1947, a resolution previously moved by Nehru was adopted. This, of course, found adequate expression in Article 46 under the Directive Principles of State Policies in Part IV of the Constitution which reads as follows:

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

All the safeguards have apparently been provided to facilitate the implementation of the directive principles contained in the Article of the Constitution.

According to Sharma, (1984), tribal development programme can be reviewed in the backdrop of general development programmes in India. The First Five Year Plan was started in 1951. A comprehensive programme of community development, which aimed at all round development in the rural areas, was inaugurated in 1952. It may be noteworthy to mention that the concept of community development programme was not evolved in our country. It is a concept developed by some American Anthropologist and prescribed for third world countries. It,

however, became clear very soon that it may not be possible to cover the entire country by such an intensive programme within a reasonable period. Hence, a comparatively less intensive model of Community Development Blocks was adopted to cover the entire country by the end of the Second Five Year Plan. The Community Development Blocks (CDB) were expected to create a new thrust for development in the rural areas and engender a process of self-sustained growth. No aspect of community life, therefore, was kept outside the purview of this programme. Harmonious development of all facets of community life was envisaged as the main task in the programme. The various schemes in the Community Development Blocks covered a wide spectrum of activities in agriculture, animal husbandry, education, health, communications, social services, rural industries, panchayats, and so on. Since the socio-economic situation varies considerably from one region to another as also within the same region, it was envisaged that a plan should be prepared for each Block with reference to its resource potential and the problems faced by the local community. Detailed programme formulation was expected to be preceded by a survey of resources, assessment of the problems, etc. in consultation with the people. Block Advisory Committees and District Advisory Committees were also constituted to ensure a constant dialogue between the administration and the people and a pragmatic and critical review of the programmes and its implementation on a continuing basis.

Since the community development programme was comprehensive in its coverage, the same concept was accepted as equally applicable to the tribal areas. The task in these areas was, however, considered relatively more difficult as they comprise hilly and forest regions and are sparsely populated, with poor communication and availability of little institutional infrastructure. It was transparent that they needed a much better financial investment as well as a greater effort for successful extension programme. It was, therefore, decided to supplement the community development programme by forty-three Special Multipurpose Tribal Development Projects which started during 1954. This programme, when reviewed in 1956, revealed that it might not be possible to take up and sustain such an intensive programme for the entire tribal region within a short period. Naturally, a less intensive model of Tribal Development Block was evolved. The norms for a Tribal Development Block were kept as an area of 150-200 sq. miles and a population of about 25,000. A beginning was made with the establishment of such Blocks in different States in areas having the highest tribal concentration. This programme was gradually extended to areas with less tribal concentration. In this way, all areas with more than two-third tribal population were covered by the end of the Third Five Year Plan. There were thus, 500 Blocks covering about 40 per cent of the total tribal population in the country.

Sharma (1984) added that this programme was reviewed during the Third Five Year Plan which brought out that the programme did not have the desired impact. The Tribal Development Blocks, according to the original plan, comprised two phases of five years each. It was decided to add a third phase of five years to the Blocks already started and desist from establishing further new Blocks. The only exception was made in Karnataka and West-Bengal where till then it was not found feasible to take up the Tribal Development Block programme because of the highly dispersed tribal population. In Karnataka isolated tribal habitations were covered by ad-hoc tribal development projects. In West Bengal, Tribal Development Blocks were established temporarily for two years in each area having a sizeable tribal population. Specific programmes were drawn up in different tribal hamlets of the area during the period before the Block unit moved to other areas. The total coverage in these two states, however, was very limited. Thus, by and large, areas with more than two-third tribal population only get the benefit of this special development effort upto the end of the Fourth Five Year Plan. The remaining tribal population continued to be served by general developmental programmes.

He (ibid.) also said that the protective measures relating to various factor, of the transitional phase in the tribal economy, particularly regulation of the transfer of land, marketing and money lending, which were specifically provided for under the constitution, were not linked with the new developmental system under the Blocks. Some special laws or regulations were enacted by different states which proved rather inadequate. The adminis-

trative aspects of tribal development, particularly in relation to the more backward tribal areas, remained largely unattended. The process of land alienation continued unabated and the economic base of the tribal community deteriorated. Thus, the Tribal Developmental Blocks could not emerge as the effective instrument for tribal development.

In the meantime many aspects of development in the larger national economy in relation to different sectors of her population were claiming attention of concerned authorities at the Centre and in the States. Many departments initiated intensive programmes of development for respective target sectors. Accordingly, numerous schemes were prepared from different sectors at the macro level. But during this phase little attention was paid to the micro units. Each department was rather keen to achieve results within its limited frame and investment decisions were accordingly taken largely in the isolation. While investments for different sectors in the State and the Central plans grew from plan to plan and from year to year, the outlay under Community Development Block and Tribal Development Block remained almost constant and in relative terms shrank to a small proportion of the total national developmental effort. The programmes under agriculture, education, and health particularly had outstripped the restricted frame of the Community Development Block even by the end of the Third Plan Period. Other sectoral activities were gradually withdrawn from their purview leaving the Block with an impressive outer shell but with a limited content of little significance (Sharma: 1984).

Check your Progress

1. Differentiate the Tribal perspectives of British and Independent Indian Government.
2. Discuss the various Five Year plans of the Government that have been initiated to uplift the tribal population of India.
3. In tribal development. What is Panchsheel? Discuss its significance.

1.3 Commissions' Report

The tribal development programmes were reviewed from time to time by the Planning Commission through the Social Welfare Division to examine the various welfare activities under operation and for their assessment and evaluation for future planning. The Commissions appointed were expected to examine the tribal problems and welfare situations in a perspective of reality and to suggest to the Government suitable remedial measures. A brief discussion of various Commissions' reports is given below:

The Committee on Special Multipurpose Tribal Block began to function under the Chairmanship of Verrier Elwin in 1959 to cover the following aspects:

- (a) To study the working of Special Multipurpose Tribal Blocks.
- (b) To advise the Government of India on how to implement the intensive development programmes of the Blocks more effectively and give the programme a proper tribal bias.

The report elaborately discussed the details of the staffing pattern and made the suggestion for appointment of a Forest Extension Officer and more tribal representation in such schemes. It suggested not to make frequent transfers of staff. Considering the landless status of the tribal people, the Committee opined that more land should be given to them through 'Gramdan Movement' along with *patta* or legal deed. Cultivated lands in these areas should be surveyed and unoccupied lands should be distributed to the tribes. The committee suggested that every tribal family should have at least one and a half acres of wet land or five acres of dry land. Money should be spent specifically for animal husbandry and agricultural extension along with land reclamation, irrigation and soil conservation. Areas of shifting cultivation have also been thoroughly examined and the Committee suggested to improve the fertility of the *jhum* cultivation land to produce more food and for growing alternate crops that could be raised in a short time. The problems of communication, health services, drinking water, education, etc. were also examined and it suggested establishment of Ashram types of schools. The Committee

critically evaluated the women's programme and suggested appointment of sensitive Mukhya Sevika and Gram Sevikas for implementation of social and educative programmes for the tribal women and their greater involvement in these programmes.

The Committee also identified poor performance in respect of arts and crafts, housing, and high indebtedness among the tribals. To overcome these problems, the Committee suggested to establish Co-operative Societies for providing them with loan and agricultural inputs at times of need. The Committee which making these suggestions took into due consideration the endeavors and research activities done by the Cultural Research Institute, Department of Anthropology of some Universities, and the Anthropological Survey of India.

Since the tribals, in general, are very poor most of their problems are intricate. As they live in the condition of backward technology, arrangements would have to be made with all seriousness by the State Governments on the above lines for their upliftment and proper rehabilitation. All the Departments entrusted with this work should tackle the problems in their proper perspective. Officers, specially the Block Development Officer, should know the major tribal languages for easy understanding of their problems and adopting appropriate administrative measures to solve them (Bhowmick, 1981).

The first comprehensive review of the tribal situation in the country was made in 1961 by the Scheduled Areas and Scheduled Tribes Commission (Dhebar Commission) which was appointed under Article 340 of the Constitution. The Commission noted the slow pace of development and rather meager investments in the tribal areas. The protective measures were sporadic and inadequate. The Commission called for a comprehensive legislation to provide effective protection to all tribal living within the Scheduled Areas and outside. They recommended institution of a simple administrative system and extension of the schemes of Tribal Development Blocks so as to cover all areas with more than 50 per cent tribal population. The commission was of the view that if protective measures and developmental programmes were taken up as recommended, it would not be necessary to extend the Scheduled Areas.

The position with regard to tribal welfare programmes and administration of tribal remained largely unchanged when the Shilu Ao Committee was appointed in 1969 for reviewing the tribal development programmes. This Committee, while agreeing with the general conclusion and approach of the Dhebar Commission on the point of suitability of the Tribal Development Block, came to the conclusion that this scheme of the Blocks was inadequate for dealing with the complex problems of tribal development. A Tribal Development Block was too small to function effectively as a basic unit for planning and implementation. The main problems of tribal communities, according to them, were related to indebtedness, land alienation, educational backwardness, and inadequacy of communication which were not adequately provided within the frame of Tribal Development Block. They drew attention to non-implementation of the recommendations of the Dhebar Commission. They called for vigorous action to implement these recommendations and for preparing a comprehensive tribal development programme with large resources commensurate with the size of the problems and the overall national development effort (Sharma, 1984).

1.4 New Strategy in Fifth Five Year Plan

The Fifth Five Year Plan 1974-79 should be regarded as a watershed in the history of tribal development. Much thinking and preparation went into the concept of tribal development before the commencement of that Plan period. In 1972, a Task Force on "Development of Tribal Areas" was set up with Professor L.P. Vidyarthi

as a Chairman to: (a) review the nature and level of development that had taken place so far, (b) suggest a perspective of development for a fifteen year period, and (c) formulate proposal for the Fifth Plan indicating priorities, policies, programmes and outlays in the light of the perspective. Based on the report of the five working groups, the Task Force observed (1972) that the problem of development of tribal areas was primarily linked to the backwardness of these areas, the poverty of the people and the integration of tribals with the rest of the population. They remarked that the tribes of different areas faced different problems. Those of the northern zones arising mostly out of remoteness of the habitat and difficult climatic condition; those of the northeastern zone on account of a disrupted economy following the formation of East Pakistan (Now Bangladesh); those of the eastern central and western zones related to pressure of population on land, land tenure, indebtedness and rights in forest along with a low level of productivity; those of southern zone based on shifting cultivation. They suggested that areas with a high concentration of tribal population should be identified and grouped, a combination of ecological, occupational and social parameters properly assessed for policy formulation and implementation and a steady flow of benefits assured to the Scheduled Tribes. In their view, the obvious emphasis would have to be on the primary sector of the tribal economy, i.e. agriculture and forestry; at the same time, there should be a frontal attack in the fields of alienation of land, indebtedness, credit and marketing, and excise policy.

Somewhat later, the same year an Expert Committee on Tribal Development headed by S.C. Dube, constituted by the Central Department of Social Welfare, Submitted its report (1972) defining the new strategy for tribal development in the Fifth Plan as follows:

(a) The problem of tribal development should be defined at the national level and national effort required for tackling it would be worked out.

(b) The precise part assigned to each State and to each department in this task should be fully defined and the central sector should play an important supplemental role.

(c) A review of important policies especially those covering forest, industry, minerals development and excise administration should be taken up.

(d) An integrated area development approach in consonance with the development of the people should be adopted. The development programmes should give high priority to programmes minimising the incidence of exploitation and helping local communities to build up their inner strength.

(e) Special schemes for extremely backward areas, neglected and isolated tribes and tribals affected by major projects should be formulated.

(f) Strengthening the streamlining of administrative and economic institutions should be taken up urgently and evaluation should become an integral part of the administrative structure (Singh, Bhupinder: 1981).

So it appeared that during the Fifth Five Year Plan, Integrated Tribal Development programme was adopted after delineating areas of tribal concentration at the levels of Blocks and Districts in the States and Union Territories having substantial tribal population. In addition Modified Area Development Approach was adopted for pockets of tribal concentration in respect of primitive tribes. To handle the problems of tribal population coming within purview of Integrated Tribal Development Programmes, Modified Area Development Approaches and Primitive Category, Tribal Sub-Plan (TSP) were drawn up from the respective states and Union Territories. But the states and union territories having a majority of Scheduled Tribes population were left out of the scope of Tribal Sub-Plan (TSP) (Ray Burman, 1986).

While continuing the Sub-Plan approach towards tribal development, the Sixth Plan attached primary importance to poverty alleviation among the Scheduled Tribes with a view to assisting economically at least 50% of the tribal families below the poverty line to enable them to cross that line. This effort was to be supplemented with adequate inputs by providing infrastructure, elimination of exploitation, and spread of education. During the

Sixth Plan and major objectives in tribal development were (Report of the Commissioner of S.C. and S.T. 1986-87, 28th report) as follows:

- (i) taking up family oriented beneficiary programmes through raising productivity level of the beneficiary families in the fields of agriculture, horticulture, animal husbandry, small industries, etc.;
- (ii) elimination of exploitation of tribals in the spheres of alienation of land, money lending, debt-bondage, forest, etc.;
- (iii) human resources development through education and training programmes;
- (iv) Infrastructure development.

Some of the shortcomings observed in the implementation of the tribal development programmes during the Sixth Plan are mentioned below:

(1) Too much emphasis was laid on targets and concentrated efforts were neither made, nor necessary follow-up action taken to ensure that the families which were economically assisted were actually able to cross the poverty line.

(2) In the protective sphere legislations have been enacted or made more effective by pulling of loopholes in several states. But an ardent approach to institution, detection and disposal of cases is needed in several areas. The result has been that there is only marginal abatement of the problem, particularly in land alienation, money-lending and debt bondage in some areas.

(3) There is a feeling that the Tribal Sub-Plan is merely an agglomeration of the State Plan Schemes taken up in the tribal areas. There is a little attempt to formulate need based schemes in an integrated manner.

(4) Pooling of funds as required under the basic guidelines of the Tribal Sub-Plans (TSP) is not done except in a few States.

(5) The single line administration was not introduced in the Integrated Tribal Development Projects and this was a major cause for shortcoming in implementation of the programmes.

(6) Certain sections of tribal population like shifting cultivators and forest villagers have not received adequate attention under the plan programmes.

(7) Monitoring system in the States was not quite effective. The nodal Department had little say in this matter in relation to the other Departments and was obliged to accept whatever reports were furnished by the latter. There was not much evidence about the improvement brought about in the quality of implementation of the programmes as a result of monitoring.

(8) The primitive tribes forming the most backward section of Scheduled Tribes population did not receive adequate attention for planned development keeping in view the level of economic and cultural development and the need of each of these groups. Since most of these groups are small, it should be possible to adopt a 'saturation approach' to their economic development by including within the programme fold all the families in a group or a substantial number of such families in case of bigger groups (Ibid.).

The following are the main objectives under Tribal Sub-Plan (TSP) strategy during the Seventh Plan:

- (i) taking up family beneficiary oriented programmes through raising productivity levels of the beneficiary families in the fields of agriculture, horticulture, animal husbandry, small industries, etc.;
- (ii) elimination of exploitation of tribals in the sphere of alienation of land, money-lending, debt bondage, forest, etc.;
- (iii) human resources development through education and training programmes;
- (iv) infrastructure development;
- (v) development of vulnerable tribal areas and groups like forest villagers, shifting cultivators, displaced and migrant tribals including tribal women; and
- (vi) upgradation of environment of tribal areas.

The Working Group has suggested the following levels of investment during the Seventh Plan:

(a)	State Plan Sector	Rs. 7,500 crore (3,550)
(b)	Central Plan and Centrally Sponsored Schemes	Rs. 1,750 crore (900)
(c)	Special Central Assistance	Rs. 1,500 crore (485.5)
(d)	Institutional Finance	Rs. 2,250 crore (800)
	Total	Rs. 1300,00 crore (5,735.5)

The figures in the brackets indicate investment during the Sixth Plan. While the total Seventh Plan size is estimated to be of the order of Rs. 1,80,000 crore, the approved size of the Tribal Sub-Plan is Rs. 6955.63 crore (Rs. 6199.63 crore under State Plans and Rs. 756 crore under the SCA).

Check your progress

1. Discuss the aspects that were under the preview of the Committee on Special Multipurpose Tribal Block under the Chairmanship of Verrier Elwin in 1959.
2. Discuss the Report submitted by Expert Committee on Tribal Development headed by S.C. Dube.
3. Discuss the shortcomings of the Sixth Plan in the tribal development programmes.

1.5 Changes in the Tribal Sub-Plan (TSP) Strategy

There has been a change in the strategy of the Tribal Sub-Plan (TSP) during the Seventh Plan. Up to the Sixth Plan the ITDPs, the MADA pockets and the projects for the primitive tribal groups constituted the TSP. During the Seventh Plan clusters outside the TSP area were to be identified to further increase the coverage of the Scheduled Tribes population. The Ministry of Welfare clarified in their circular that the TSP would cover the entire tribal population in a State, that is:

(a) tribals coming within area specific projects like ITDPs, MADA pockets, Primitive Tribe Projects and identified cluster areas, and

(b) tribals living outside such areas/projects, wherever they be, in the State.

The Ministry further clarified that one of the objectives during the Seventh Plan was to cover vulnerable tribal groups living within the urban areas would also come within the scope of assistance. However, the following principles were to be borne in mind while allocating funds under family oriented programmes and infrastructure development relevant to the Scheduled Tribes:

1.6 Family Oriented Programmes

(a) While allocating the Special Central Assistance (SCA) care should be taken to earmark beneficiaries and amounts to be utilised for the Scheduled Tribes within the identified tribal area units like ITDPs, MADA pockets, Primitive Tribe Projects and clusters on the one hand and the rest of the scattered tribal population on the other

(b) For Family oriented schemes under the State Plan funds including Integrated Rural Development Programme (IRDP), National Rural Employment Programme (NREP), Sectoral allocations under State Plan schemes of different sectoral Departments, the above pattern of earmarking of funds and beneficiaries must also be kept in view.

1.7 Infrastructure Programmes

For quantification or specific exhibition of funds flowing to infrastructure development in the tribal areas the concept would, however, continue to hold its relevance. The funds of infrastructure both under the SCA and the State Plan should be shown as flow to the TSP when earmarked only for the identified I areas (ITDPs, MADA pockets, Primitive Tribe Project areas and clusters). Funds under infrastructure items shown as flow to the TSP should be utilised for these specific areas only. The infrastructure expenditure for scattered tribal population must necessarily be taken care of as a part of general infrastructure expenditure for scattered tribal population must be quantified as flow to the TSP (Ibid., pp. 385-86).

Table 2.1 : Special Central Assistance Released for Primitive Tribal Groups

State/UT	No. of Communities identified as Primitive Tribes	No. of families (approx)	SCA released		
			Sixth plan	1985-86	1986-87
1	2	3	4	5	6
Andhra Pradesh	12	21,563	184.64	54.00	59.79
Bihar	9	11,809	207.08	56.00	62.00
Gujarat	5	12,101	72.30	10.00	10.07
Madhya Pradesh	6	103,362	439.62	110.00	121.79
Maharashtra	3	40,622	193.88	55.00	60.90
Orissa	12	36,144	224.08	55.00	60.90
Manipur	1	908	10.70	5.00	5.54
Karnataka	2	2,652	19.68	5.00	5.54
Kerala	5	251	39.24	8.00	8.86
Rajasthan	1	7,000	74.03	8.00	8.85
Tamil Nadu	6	4,000	49.38	12.00	13.29
Tripura	1	12,935	70.60	16.00	17.72
Uttar Pradesh	2	2,074	24.14	10.00	11.07
West Bengal	3	9,378	75.70	25.00	27.68
A & N Islands	5	102	119.55	18.00	25.00
Total	73	264,901	1804.62	447.00	500.00

Source: Report of the Commissioner of Scheduled Castes and Scheduled Tribes (28th Report).

Check your progress

1. What are the Changes in the Tribal Sub-Plan (TSP) Strategy?
2. Discuss the Family Oriented Programmes and Infrastructure Programmes?

1.8 Summing up

The whole tribal development programme have heterogenous ramifications among the Indian tribes which can not be understood in monolithic way. There are huge numbers of studies, largely done by the anthropologists, to evaluate the impact of various developmental programmes in various states as well as evolution of tribal policy in post independent period. Intricacies of policies as well as basic provisions provided in the form of safeguards within the Indian Constitution are discussed in other units to build up a comprehensive idea about the state sponsored developmental initiatives for the tribal population of India. However, it has to be kept in mind that today large number of NGOs are working in different parts of India focusing on various sectors, such as, education, health, economy etc., and addressing some of the key issues related to exploitation, displacement and marginalization of tribal population. It also has to be kept in mind that with the reorganization of the states and

emergence of tribal states inter-tribal as well as intra-tribal disparities are growing rapidly. There are instances where dominant tribes are failed to ensure the effective implementation of various tribal development programmes for the smaller tribes who hardly have access in the decision making process of the state. We can locate many such cases in North east India in general and arunachal Pradesh in particular. In a recent edited book, Rath (2006) discussed diverse arguments on the issues related to tribal development and argued that the mainstream development model has limited impact on the people living at the peripheries. According to him (ibid:57-58), "Over the past more than 50 years, the mainstream and welfare models of development together have brought very little to the tribes, but the overall performance is not at distressing as it was at the time of independence... Despite all such mismatches, welfare model of development remains relevant today for seeking development among the tribes, but its total success depends on the collective performance of the state, market, social activists and, of course, tribes themselves as the target group. It is noticed that the benefits of the welfare model of development are not equally distributed among the members of the groups, and in some cases even lead to intensification of the oppression of the less privileged members by the privileged members of the same tribe. In both the cases, it is necessary to restructure the development policy with the salient objective of equal dissemination of benefits and retention of earlier egalitarian values at the receiving end of the development".

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UNIT- III CONSTITUTIONAL PROVISIONS AND SAFEGUARDS

3.1 Objectives

An attempt has been made to introduce students with various provisions and safeguards which are given in the Indian constitution for the Scheduled tribes in an elementary way.

3.2 Backdrop

It is generally perceived that the tribes are very back-ward section of our society. This backwardness precisely relates to their technological efficiency linked with their production systems or livelihood patterns and obviously not liked with their mental capabilities. Any such discussion on backwardness need to be taken in to consideration that in the context of North East India or other newly evolved tribal states such situation is changing very fast. For instance, Mizoram is one of the most advanced states in terms of literacy status. However, many persons believe that this backwardness of the tribals is due to their long isolation from the general society. This is not a true assessment of the problem. While there is no doubt that the isolation of the tribals from the main community is responsible, to a great extent, for their backwardness, it cannot be forgotten that one major and very important factor that has led to this state of affairs, is the exploitation of the tribes, to which they have been exposed on account of their contacts with the so-called civilized society. In his report on the Aboriginal and Hill Tribes of the partially Excluded Areas in the Bombay Presidency, submitted in March, 1938, to the govt. of the erstwhile Bombay State, Mr. D. Symington, I.C.S., has rightly pointed out: "Actually, the problem of the aboriginal and hill tribes lies not in their isolation from but their contacts with the main body of the community, where their geographical position keeps them beyond the reach of the outside world, as in the Akrani mahal, they are happy and independent; but in the places, now all too many, where they are in constant contact with more educated people, they are degraded; timid and exploited". What Mr. Symington has said about the tribals of Bombay, is equally true about the tribals in other parts of India. We know how these contacts have harmed the Todas of the Nilgiri district of Madras and the Totos of the Jalpaiguri District of West Bengal. Similar is the case of the Andamanese of the Andaman and Nicobar Islands. In fact, in many other parts of the world also wherever the indigenous people came into contact with the so-called civilized people the results were generally disastrous. This type of contact of the innocent and ignorant aboriginals with their more advanced and clever neighbours, exposed them to exploitation of all types at the hands of the latter. It generally resulted in the tribals getting dispossessed of their lands and contracting dirty and dangerous diseases like V. D. and Yaws. Late Dr. B.S. Guha, a well-known Anthropologist, has stated:

"In the past, in those parts of the world where primitive tribes lived and later brought into contact with the civilized man, the results have not been very happy. They were conquered, dispossessed of their lands, their tribal life disintegrated and they were either brought under servitude or partially exterminated. To give only the most striking examples, the once proud and war-like Red Indian tribes of North America, living in tipis and hunting the bison on horseback, were reduced to about one quarter of their total estimated strength. The figures published by the Bureau of Census of the U.S.A. show a total reduction; from the round figure of nine lakhs of people in 1860 to 237,000 in 1900. In Melanesia, Polynesia and New Zealand situation was even worse, they were virtually wiped out and are now confined to a few straggling bands in the central waste lands and deserts. From an estimated population of 7,000, the native Tasmanians were reduced to 120 persons in 1864, and soon after 1864 the last of that race passed away leaving a sad commentary on the white man's solicitude for the aboriginal."

It should not be misunderstood to mean that it is wrong to try for the assimilation of the tribals with the general community. In fact, our society has committed a great sin, in the past, by altogether ignoring the tribals in the various welfare programmes, and in thinking of them only for the purpose of exploitation them for the furtherance of our own selfish ends. There has, therefore, always been a great and urgent need for tag suitable steps for the amelioration conditions—economic, social educational and political—of the tribals taking, at the same time, full care that their contacts with the so-called "civilised man, which is bound to occur" during this process, do not expose the tribals to exploitation at the hands of unscrupulous persons, or

account of "the penetration of the tribal country, the opening up of communications, the protection of forests and the establishment of schools". It was, apparently, due to the resentment on the part of the tribals to their open exploitation that there had been a number of uprisings and rebellions, in the past.

In the words, again, of Dr. B. S. Guha, "With the British occupation and rapid opening up of the country they came-closely in contact with the civilised Indian, from, whom, it is regrettable to say, they did not always receive a square deal. Several uprisings, of the tribal people took place beginning from Mai Paharia rising in 1772, the mutiny of the Hos of Singhbhum in 1831, the Khond uprising in 1846, to the Santal rebellion of 1855. In like manner a punitive expedition was sent to the Jaintia Hills in 1744 and in 1833 the Confederacy of the Khasi Chiefs was defeated by the British army. Other expeditions were sent, such as those to Chin-Lushai Hills between 1850-1890, the Naga Hills expedition of 1878, the Abor-expedition of 1912 and finally the column sent to the un-administered areas of the Naga Hills as late as 1939".

It appears that the British Government in India also never thought seriously of ameliorating the conditions of these people. Their policy had, generally, been of providing protection to the tribals through isolation, which resulted in their exploitation at the hands of landlords, moneylenders, contractors and also Christian Missionaries who were the supporters of the British administration. It was the result of this policy that in 1874 "Scheduled Districts" were carved out in accordance with the provisions of the Scheduled Districts Act, 1874, to administer the tribal areas. This Act provided for the appointment of officers to administer civil and criminal justice, to superintend the settlement and collection of public revenues and all matters relating to rent, and otherwise to conduct the administration within the Scheduled Districts. It also provided for the extension, by notification to the Scheduled Districts, of laws in force in any part of British India, with such special restrictions and modifications as were deemed fit. Thus, wide powers of legislation by simple executive order were vested in the Executive. Later, in accordance with the provisions of the Government of India Act, 1935 areas predominantly inhabited by the tribals, came to be classified into the excluded and the partially excluded areas, on the recommendations of the Indian Statutory Commission—commonly known as Simon Commission. In drawing up the scheme of exclusion under Section 91 of the Government of India Act, 1935, the Secretary of State indicated that the areas to be placed in the category of "Excluded Areas" must be based upon strict necessity and be as limited as possible in scope consistently with the needs of the tribal population. In regard to areas to be classified as "Partially-Excluded" there should be no hesitation to include in the category any area containing a preponderance of tribals which was of sufficient size to make possible the application of special legislation and special administrative treatment. Keeping these principles in view, the Government of India recommended that the frontier and border regions in Assam, the Laccadive and Minicoy Islands, the Lahaul and Spiti areas in the Punjab should be declared Excluded Areas' and extensive tribal tracts in the Provinces of Madras, Bombay, Bengal, United Provinces, Bihar, Central Provinces and Orissa 'Partially-Excluded Areas'. All this was, however, done more with a view to having a smooth administration in these areas than to ameliorating the condition, of the tribals; and these conditions continued up to the attainment of Independence.

It will thus be seen that, all along, the poor tribals did not get a fair deal either at the hands of the Government or at those of their civilized neighbours and it was only after the attainment of independence that the welfare of the tribals, in its true sense, was made the responsibility of the State. There is no doubt that before the attainment of Independence, social reformers, like A. V. Thakkar Bapa and Sarat Chandra Roy did pioneer work among the tribals. One cannot also ignore the efforts made by the Christian missionaries for the amelioration of the conditions of these people. However, it was only after the coming into force of the Constitution that efforts have been made for the welfare of the tribals, and it has been made a responsibility of the State to promote, with special care, the educational and economic interests of the scheduled Tribes" and to protect them from social injustice and all forms of exploitation, as laid down in article 46 of the constitution.

In order to ensure that the benefit of the various safeguards provided for them is derived by the tribals alone, the President has, in accordance with the provisions of article 342 of the Constitution, issued state-wise lists of the tribals as contained in the Schedules appended to the Presidential Orders published on the subject since 1950.

To help in the proper and smooth implementation of the Directive Principle contained in article 46, suitable provisions have been made in the Fifth and the Sixth Schedules of and also at other suitable places in the Constitution. The Constituent Assembly of India had set up two sub-committees; one of which examined the administration of the excluded and the Partially Excluded Areas in India (other than those in Assam) and the other examined the administration of the North-East Frontier Tribal and excluded Areas of Assam. The Fifth and the Sixth Schedules of the constitution was the result of the findings of these sub-committees and subsequent deliberations on their findings in the Constituent Assembly.

3.3 Relevance and Implications of Safeguards

In a valuable essay Raha (1982) categorically said that quite often a somewhat awkward question is posed by average individuals of non-scheduled population whether in a Welfare State like India where the Constitution is committed" ... "to secure to all its citizens: Justice social, economic, and political; Liberty of thought, expression, belief, faith and worship; Equality of status and opportunity; and to promote among them all Fraternity assuring the dignity of the individual and unity of the Nations ... ", there exists further need for providing additional statutory safeguard to certain ethnic groups declaring them as "Scheduled Tribe"-the status which automatically entitles them to some special privileges in addition. Further, they argue that by bestowing the "Scheduled Tribe" status on a certain section of people who constitute barely 6.94 per cent of the Indian population" the Government itself, in a way, instead of guaranteeing "right of Equality, including prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth ... " is deviating from the ideal cherished in the Constitution. Thus, they say that such an approach treats the "scheduled" groups as "more than equals" while the rest, that is, the majority of population, suffer from a kind of "benign neglect". And for this state of affairs they accuse the politicians, the administrators, the planners and such others. But, are they right? Is it really irrelevant to provide special constitutional protection to the Scheduled Tribe? Is such a policy in any way damaging the basic ideals envisaged in our Constitution? These are some of the basic questions that recurrently stir even the educated mind, and hence require suitable clarifications. In order to appreciate the justifiability of proclaiming some groups as "Scheduled Tribe" we may try to look into the socio-cultural background of these groups from an anthropological view point which, it is felt, may provide satisfactory answers. And it is only in this perspective that one can realize best the relevance of the constitutional safeguards accorded to the Scheduled Tribes and may also know what kind of implications they have in the tribal life of India. With this end in view let us try to understand and reveal the usefulness of the constitutional provisions for the upliftment of the tribal population in order to bring them on a par with the general mass.

Check your Progress

1. Briefly examine the Tribal situation in India prior to the implementation of Constitutional Safeguards.
2. In your view, is it necessary to provide Constitutional safeguards to Tribal Communities? If yes, justify.

3.4 Socio-cultural background of the Scheduled Tribes: A general outline

Being a land of culture heterogeneity with an appreciable degree of variations, India presents a panorama of admirable contrast within broad canvass of unity in overall Indian culture and civilization. Any keen observer of Indian conditions would readily discover this complexity of the socio-cultural world which is obvious of both organizational and structural levels.

This, in effect, has made the task of anthropologists and other social scientists not only difficult but also challenging as treating any constituent system of the total cultural realm in isolation would perhaps be a futile exercise for the simple reason that the part can be fully understood only in relation to the whole; otherwise the significance of the part is automatically curbed to a great degree. And so the socio-cultural system of the tribal people has to be considered from this view point, that is, in relation to the total cultural whole with which the former is articulated.

It is an undeniable fact that the socio-cultural pattern of the tribal people displays a kind of characteristic

distinctiveness on account of which it constitutes a significant part of the total cultural fabric of the Indian society. Thus, in spite of the fact that tribal communities are within the social field of the great Indian tradition still they have managed to retain a significant distinctiveness unique to them. "Partly because of isolation and partly because of their limited world view, characterized by lack of historical depth (resulting in the early merging of history into mythology) and an overall tradition-orientation, they are integrated in terms of certain themes rooted in the past. These integrated themes coupled with a special cultural focus give them a separate cultural identity, and they often possess latent or manifest value-attitude and motivational systems which are remarkably different from those of the other people" (Dube, 1968). Basing on the above observations we may thus conceive the tribal societies as a unique kind of cultural system which, at a general level, distinguishes itself from similar other constituent systems of the overall Indian culture in terms of "habitat, economy, social structure, and ideological system" (Sinha, 1959). Although minor mutual differences among the tribal groups cannot be ignored still in general the tribal groups are found to live in forests or in geographically disadvantageous areas of our country which alone can account substantially for their isolation. And this isolation, though it may not be complete seclusion, can reasonably explain their still having a relatively simpler technological level of food-producing economy, a different type of social make-up and a distinct character of ideological systems. All these traits taken together impress upon the relative backwardness of the tribal world in contradistinction to the non-tribal societies. The distinctiveness as patent in the lack of socio-economic advancement, seclusion in remote areas and ideological specialty reflected in the primitive level of manifestation of core traditions and the like may have rendered suitable ground to put them under a common term, and many groups from among them were later on constitutionally marked as "Scheduled Tribe". Keeping this sketchy general background of the tribes in mind we may now pass on to the tribal policies of the Colonial Government and the present Independent Government, the exposition of which would automatically justify the usefulness of assigning safeguards to the Scheduled Tribes by the National Government.

At the outset it may be stated that to correctly appreciate the tribal policies followed by the British Government and the present Government as well, we are required to be conscious of the basic approaches of the two Governments which primarily oriented their policies. At the first instance, the approaches of these two administrative machineries show a striking difference in terms of deep motivational principles. While the approach adopted by the British Government was fundamentally political, being purely guided by their colonial interests, the present Government's attitude was prompted by a desire of welfare and an uncompromising concern for the socio-economic development of our tribal people. This basic difference in attitudes is, thus, an important point to note which should not be lost sight of while assessing the nature of their respective policies towards our tribal brethren.

By all accounts it is clear that the character of the tribal policy of the British Government was isolationist. "The British Government (was) inclined, on the whole, to leave the tribesmen alone partly because of the task of administration, especially in the wild border areas, was difficult and unrewarding, partly from a desire to quarantine the tribes from possible political infection, and partly because a number of officers sincerely held the view that the people were better and happier as they were" (Elwin, 1960). But the moot point here is that whether the British, throughout the years of their political hegemony over this country, remained entirely aloof from the tribals because of their generally adopted policy of "leave them alone"? Any careful reader of Indian history would agree to the fact that the -reverse is rather true. The British never hesitated to intervene or even to mop up whenever any untoward tendency, detrimental to their colonial interest, was sensed among the tribal folk. Sometimes, through brutal suppression and quite often through indirect involvement by the method of appeasement of tribal chiefs and other influential elite groups, they succeeded in deriving maximum political benefit. "The main purpose of the British policy was to secure peace and not necessarily to help the people to advance on the road to progress either by integration with the plains Hindus or otherwise ... consistently with keeping the peace, gradual survey settlement was carried out, and by slow stages regular land revenue was levied, wherever and whenever possible" (Ghurye, 1963).

Simultaneous with their general policy of isolation characterized by non-intervention or limited intervention under dire political need was their often covert and sometimes direct encouragement to the Christian mission-

ary activities in the tribal areas. It is, of course, an undeniable fact that the Christian missionaries had done something for the wellbeing of the tribes, the scope of which was wide. That was an activity of high-spirited social service and reforms as a result of which many of the tribal areas had schools, hospitals, etc. The missionaries, therefore, must be deemed as the pioneers who initiated the process of socio-economic transformation in the hitherto stagnant tribal life. Al though the "Service for the suffering humanity is considered to be a duty for the Christian missionaries but at the same time it is coupled with the right of conversion" (Sahay, 1968). This resulted in the large-scale, conversion of many tribal groups, especially of the States in Eastern India, which had far-reaching implications. With the passage of time it became more and more apparent to the people here that the primary goal of the missionaries was conversion and "the opening of schools, hospitals and other welfare agencies (were) only bait in the trap of conversion" (Srinivas, 1962). Instances are not lacking about their resorting to unfair means of all sorts including material inducement, political favour, etc., for conversion. A careful analysis of the missionary activities thus leads to the conclusion that under the garb of humanitarianism, the obnoxious political motives of the colonial rulers were rampant. It was a sort of intellectual and moral aggression on Indian life strongly patronized by the British Government which aimed, gradually, to alienate a chunk of the population from the main national stream by generating a kind of "sentimental and emotional detachment" with the rest, of the people—a process which could be effectively carried out under the auspices of the Policy of Isolation. One can very well understand in this context as to why the British Government's creating the "excluded" and "partially excluded" areas and giving separate political representation to the tribes had invited criticism of the Nationalists who "viewed both these measures as part of a diabolic conspiracy to create a new separatist minority" (Dube, 1968). However, with the independence of the country, this policy had undergone a qualitative change.

Contrasted with the British policy, the present Government of India's foremost concern which moulded its policy was securing the welfare and socio-economic upliftment of the tribal people. The policy imbued with a high sense of respect for the tribal cultures and traditions is stoutly opposed to any kind of interference by outside agencies which are likely to contribute to the destruction of the tribal art, culture and so on. This has amply been demonstrated in the five fundamental principles of tribal development by Pt. Nehru the former Prime Minister of India, who was directly concerned with the tribal policy of the North-East region. These are:

"People should develop along the lines of their own genius and we should avoid imposing anything on them. We should try to encourage in every way their own traditional arts and culture.

Tribal rights in land and forest should be respected.

We should try to train and build up a team of their own people to do the work of administration and development. Some technical personnel from outside will, no doubt, be needed, especially in the beginning. But we should avoid introducing too many outsiders into tribal territory.

We should not over-administer these areas or overwhelm them with a multiplicity of schemes. We should rather work through, and not in rivalry to, their own social and cultural institutions.

We should judge results, not by statistics or the amount of money, spent, but by the quality of human character that is evolved" (cf. Elwin, 1960).

In the Constitution of India various Articles have been provided with the object of promoting and safeguarding the interest of the Scheduled Tribes. In many states there are Scheduled Tribes living within the "Scheduled Area". Of course, there are some tribal groups who reside outside the Scheduled Areas who also attract equal constitutional obligation in-so-far as their welfare and general development are concerned. Besides "Tribal Areas have been declared in States of Assam and Meghalaya and the Union Territory of Mizoram. These areas are administered according to the provisions of the Sixth Schedule to the Constitution" (Twenty-Fifth Report: 19). Some of the important specialties of the Sixth Schedule are discussed briefly below but elaborated in another unit (please see for basic ideas).

- (1) There shall be a District Council for each autonomous district consisting of not more than twenty-four members, of whom not less than three-fourths shall be elected on the basis of adult suffrage.

- (2) There shall be a separate Regional Council for each area constituted as autonomous region under sub-paragraph (2) of paragraph 1 of this Schedule.
- (3) The Regional Council for an autonomous region in respect of all areas within such region and the District Council for an autonomous district in respect of all areas within the district except those which are under the authority of Regional Councils, if any, within the district shall have power to make laws with respect to (certain aspects a few of which are):
- (i) The management of any forest not being a reserved forest;
 - (ii) The use of any canal or water-course for the purpose of agriculture;
 - (iii) The regulation of the practice of *jhum* or other forms of shifting cultivation;
 - (iv) The appointment or succession of chiefs or Head-men;
 - (v) The inheritance of property;
 - (vi) Marriage;
 - (vii) Social customs.

Thus, the above provisions related to the whole complex of what is called "the way of living". Besides,

- (4) The District Council of an autonomous district may make regulations for the 'regulation and control of money-lending or trading within the district by person other than Scheduled Tribes resident in the district.

For the purposes of representation Articles 330 and 332 offer some special provisions to the tribals. A few important provisions of Articles 332 are: (1) Seats shall be reserved for the Scheduled Castes and Scheduled Tribes, except the Scheduled Tribes in the tribal areas of Assam, in the Legislative Assembly of every State, (2) Seats shall be reserved also for the autonomous districts in the Legislative Assembly of Assam, (3) No person who is not a member of a Scheduled Tribe of any autonomous district of the State of Assam shall be eligible for election to the Legislative Assembly of the State from any constituency of that district except from the constituency comprising the Cantonment and Municipality of Shillong.

The tribals who live in the Scheduled Areas receive special treatment through the areas where they are in majority. These Scheduled Areas which were treated as the Partially Excluded Areas during the British rule (Ghurye, 1963) get special grants for overall development, though, of course, these areas are treated with less importance than the tribal areas of Assam, but it is also true that these areas draw more attention of the Government than other non-Scheduled areas. As a result tribals of these Scheduled Areas enjoy more benefits than their brethren residing outside the Scheduled Areas.

Now we may come to the point of special treatment awarded to these people. There are three special provisions common to all the Scheduled Tribes living within the Scheduled Areas or outside. firstly, for political representation they are provided for together as one group, their representation both in the House of the People and in the State Legislative Assembly being proportional to their number in their State. Secondly, similar provision is made for reservation of services, posts in the State. Thirdly, in States where tribals live both in the Scheduled Areas and outside such areas, the compulsory Tribes Advisory Council is formed to advice on such matters pertaining to the welfare and advancement of the Scheduled Tribes in the State as may be referred to them by the Governor. Besides these, there are some other additional provisions for the Scheduled Tribes. They are: (a) The Scheduled Tribes have to be provided with a Tribes Advisory Council, if so enjoined by the President, in those States in which they are only the Scheduled Tribes but no Scheduled Areas; (b) The Union Government is bound to make grants-in-aid from the Consolidated Fund of India to the States in which there are Scheduled Tribes in order to meet the cost of schemes for promoting their welfare approved by the Union Government; and (c) The executive power of the Union extends to giving directions to a State for drawing up and execution of schemes specified by the Union to be essential for the welfare of the Scheduled Tribes in the State (op. cit. 308).

Thus, we are aware that the Constitution has provided numerous statutory measures to uplift these groups

who are at a less advanced stage than the one reached by other sections of the national community. The range of these measures is wide which swings from the recognition of their social customs, customary rights over land and forest, etc., to their upliftment by educational and economic development. Without going into the minute details of these numerous facilities, we may briefly say that "the state shall promote with special care the: educational and economic interests of the Scheduled Tribes and protect them from social injustice and all forms of exploitation". Thus, at a general level, we may divide these safeguards as being of two kinds: 1. Protective and 2. Ameliorative and Concessional. Of the two, the first impresses upon the Government's concrete show of respect for the customary laws of the tribes concerned. Provisions are there not to intervene in their customary marriage and succession rules. The protection of tribal land by stopping its transfer to the non-tribal has also been a generally adopted policy in order to put an effective check on land alienation.

As regards the second, ameliorative and concessional type of measures, under Articles 330 and 332 of the Constitution has made provision for the reservation of seats for the Scheduled Castes and Scheduled Tribes in Parliament and also in the State Legislative Assemblies. Similar provisions have also been made for their representation in the local bodies, e.g. Municipalities, District Boards, Panchayats, etc. Apart from all these, they have the privilege of getting certain reserved quota in services, educational institutions of higher and specialized studies and so on including some concessions in age, qualifications, etc., as granted to them by the Central and State Governments.

Check your Progress

1. What are the five fundamental principles of tribal development provided by Pt. Nehru?
2. Discuss the distinguishing features of British Policy and Independent India Government Policy towards Tribal Communities.
3. What are the special provisions provided for the Scheduled tribe in the Sixth Schedule?
4. What are the provisions provided under Article 330 and 332 for the Schedule Tribe?

3.5 Other Safeguards

Other safeguards provided by the Constitution for the Scheduled Tribes are discussed, in brief, in the following paragraphs. As already stated above, all these safeguards have been provided to facilitate smooth implementation of the high Directive Principle contained in Article 46 of the Constitution, which reads as follows:

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

3.5.1 Safeguards for ensuring the political development of the Scheduled Tribes

Articles 330, 332 and 334 of the Constitution provide for the reservation of seats for the Scheduled Tribes, in the Lok Sabha and the Vidhan Sabhas of the various States. Originally, these reservations were made for a period of 10 years from the commencement of the Constitution, This period has since been extended by another 10 years, through an amendment to article 334 of the Constitution.

In accordance with the provisions of articles 81 and 330 of the Constitution, the Delimitation Commission have determined the, elective 'seats in the Lok Sabha for the various States, excepting Jammu and Kashmir and Nagaland, based on 1961 Census figures. The total number of such seats has been determined as 490, as against 481 determined on the basis of 1951 Census. The Commission has also allotted 27 seats for Jammu and Kashmir (6), Nagaland (1), Nefa (1) and the various Union Territories (19). The number of seats reserved for the Scheduled Tribes in the Union Territories has not yet been determined. In accordance with the 1951 Census, 6 seats had been allotted for Jammu and Kashmir, 1 for NEFA and 18 for the Union Territories; and out of the 18 seats allotted for the Union Territories 2 were reserved for the Schedule Tribes.

In so far as the Vidhan Sabhas of the States are concerned, the Delimitate Commission have determined

3,238 seats on the basis of the 1961 Census, as compared to 3,102 seats determined earlier on the basis of the 1951 Census. Of the 3,238 seats, 227 (221 "on the basis of the 1951 Census) seats have been reserved for the Scheduled Tribes.

There is also a provision, in article 164 of the Constitution, for the appointment of a Minister in charge of Tribal Welfare, who may in addition be in charge of the welfare of the Schedule Castes and backward Classes or an other work, in the States of Bihar Madhya Pradesh and Orissa, In Assam also, clause (3) of para 14 of the Sixth Schedule of the Constitution empower the Governor to place one of the Ministers specially in charge of the welfare of the Autonomous Districts and Autonomous Regions in the State. The fact however, is that practically in all the States which have Scheduled Areas or scheduled Tribes, Ministers in charge tribal Welfare have been appointed.

3.5.2 Safeguards for securing adequate representation in the State Services

Article 335 of the Constitution props for the taking into consideration of claims of the Scheduled Tribes, consequently with the maintenance of efficiency of administration, in the making of appointments merits to services and posts in connection with the affairs of the Union a State. Article 16 (4) provides that this can be given to the above provisions, if necessary, by reserving posts in favour of the Scheduled Tribes.

In pursuance of these provisions, the governments of India have decided to reserve 5% of vacancies occurring after January, 1950, (i.e. after coming into force of the Constitution) and which are filled / direct recruitment, on all-India basis, in favour of the Scheduled Tribes. In the case of local or regional recruitment for class III and IV services and posts, made otherwise than through the U.P.S.C., the reservation has been made in direct proportion to the Scheduled Tribe population in the State concerned, subject to a minimum of 5%. Some of the other concessions allowed to the Scheduled Tribes in matters of employment in Central Government are:

- (a) Relaxation of maximum age limit prescribed for appointment to the posts, by five year, and reduction to one-fourth of fees prescribed for admission to any examination or selection.
- (b) In the case of direct recruitment by examination, full discretion to the 'Union Public Service Commission and other recruiting authorities to recommend for appointment Scheduled Tribe candidates who may obtain a low place in the examination.
- (c) Where recruitment is made otherwise than by examination, discretion to the appointing authorities to select candidates from the Scheduled Tribes fulfilling a lower standard of suitability, so long as the candidate fulfils the prescribed minimum technical and educational qualifications.

Similarly, the various State Governments have also made reservations for the Scheduled Tribes, mainly corresponding to their population in the State. They also allow all or some of the other concessions indicated above, to the Scheduled Tribe candidates.

In order to increase the educational attainment of Scheduled Tribe Candidates and to prepare them for competitive examinations for All India and Central Services, the Union Government have also started a scheme for pre-examination training at Allahabad and Bangalore, through the local Universities.

Safeguards were proposed to ensure economic, education and general development of the Scheduled Tribes and the raising of the level of the administration of the Scheduled and the Tribal Areas.

In pursuance of the provisions of article 275 of the Constitution, funds were provided in the First and the Second Five Year Plans, for schemes for the Scheduled Tribes, with a view to bringing them to the level of the rest of the community and raising the level of administration of the Scheduled and the Tribal Areas to that of the rest of the areas.

In the First Five Year Plan, no planned programme had been drawn up for them. For that purpose, only a lump-sum of Rs. 25.00 crores had been made for the Scheduled Tribes. It was only during the Second Plan period that planned schemes were undertaken for their welfare. In that Plan, a sum of Rs. 50 crores was earmarked for the Scheduled Tribes. The Govt. of India and the State Government generally shared expenditure on these welfare schemes on 50:50 basis. During the Second Plan period, however, some important schemes undertaken for the amelioration of the conditions of the Scheduled Tribes were earmarked for cent per cent grants from the Central Government. Of the amount of Rs. 50 crores provided in the Plan

for the Scheduled Tribes, Rs. 28.98 crores were provided under the State Sector (shareable on 50:50 basis) and Rs. 21.01 crores under the Central Sector (cent per cent grant from the Centre). During the First Plan period, against an allocation of Rs. 25.00 crores, an expenditure of Rs. 19.83 crores could be incurred. During the Second Plan period, at expenditure of Rs. 43.00 crores was incurred on the Scheduled Tribes.

During the Second Plan periods a number of development schemes undertaken for the Scheduled Tribes. These included schemes for land settlement merit; land reclamation; distribute seeds and setting up of demonstration farms; establishment of service co-operatives and forest labourers' co-operatives improvement of communications; concessions in the form of stipends, free and scholarships (before and after Matriculation); establishment of new schools and Ashram Schools; supply of drinking water; improvement of housing conditions setting up of dispensaries, maternity and child welfare centres, mobile health units, etc., etc.

Based on the experience gained during the first two Five Year Plans, a well thought out programme had been drawn up for the Third Five Year Plan. For that purpose, an allocation of Rs. crores (Rs. 22.00 crores under the Central Sector and Rs. 38.00 crores und State Sector) has been made for the Scheduled Tribes.

The programme drawn up for the Third Five Year Plan for the Scheduled Tribes includes schemes like economic rehabilitation of persons engaged in shifting cultivation; working of forest labourers' co-operatives composed of members of the Scheduled Tribes; forma multi-purpose co-operatives for meeting the credit requirements of tribal agriculturists and artisans; land improvement; and reclamation and soil conservation; irrigation; supply of improved seeds, manures, implements and bullocks; provision of facilities for training; demonstration of improved practices; development of cattle, fisheries, poultry, piggeries and sheep-breeding; organization of training-cum-production centres and provision of assistance and advice to artisans engaged in cottage Industries; assistance at all stages of education and stipends and hostels; scholarships for technical training; construction of culverts, causeways and bridges needed for connecting inaccessible areas, approach roads and jeepable forest roads; repairs to existing communication connecting remote and accessible areas; preventive measures diseases common in various tribal areas provision of itinerant medical its; establishment of maternity and child welfare centres; provision of drinking water in difficult areas; etc.

The Plan also includes a very ambitious programme of Tribal Development Blocks which are being set up in the tribal areas, on the general pattern of the Community Development Blocks. During the Second Plan period, 43 such blocks had been started involving an outlay of Rs. 27 lakhs per block. The scheme has been slightly modified during the Third plan period in as much as Rs. 22 lakhs per block is now being provided in place Rs. 27 lakhs. This provision is intended to be spent during a period of five years. Thereafter, another Rs. 10 lakhs will be provided for each block for a period of 5 years again. The motivating force behind these blocks is to have an intensive and co-ordinated development in the tribal areas through these blocks. It is intended to set up 450 blocks during the Third Plan period. The expenditure on the blocks is being met under the Centrally Sponsored Programme, on cent per cent basis.

During the First Plan period, a sum of Rs. 0.42 crores was spent on post-matric scholarships for the Scheduled Tribes. During the second Plan period, this expenditure increased to Rs. 1.10 crores. During the first two years of the Third Plan, as much as Rs. 0.81 crores have been spent on post-matric scholarships for the Scheduled Tribes.

In 1954, a scheme for giving stipends to the Scheduled Tribe persons for studies abroad was introduced. Since then, upto 1962-63, as many as 31 Scheduled Tribe candidates have been granted such stipends. In addition, a few Scheduled Tribe candidates were provided with funds to cover sea passage.

Quite a large number of non-official organisations are rendering social service in many fields to the Scheduled Tribes. The organisations working in more than one State have been recognised by the Govt. of India for the purpose of grant-in-aid for specific schemes. During the Third Plan, an allocation of Rs. 1.25 crores has been made for being paid to these organisations as grant-in aid under the Centrally Sponsored Programme a portion of which will also be spent on the welfare of the Scheduled Caste and Denotified Communities. The organisations

which have been selected for such grant-in aid for work among the Scheduled Tribes are The Bharatiya Adimjati Sevak Sangh, Delhi, The Ramakrishna Mission, Cherrapunji, The Tata Institute of Social Sciences, Bombay, The Andhra Pradesh Adimjati Sevak Sangh, Hyderabad, The Indian Council of Child Welfare, Delhi, The Ramakrishna Mission, Shillong and The Servants of India Society, Poona. The various State Governments also give suitable grants to non-official organisations working within the respective States amongst the Scheduled Tribes.

(d) Protection of the civic rights of the Scheduled Tribes and saving them from exploitation;

Article 15 of the Constitution prohibits discrimination of any citizen on grounds only of religion, race, caste, sex, place of birth or any of them, with regard to (a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing ghats, roads and places resort maintained wholly or partly out of State funds or dedicated to the use of the general public. Under article 29 (2) no citizen can be denied admission to any educational institution maintained by the State or receiving aid out of State funds, on grounds only of religion, race, caste, language or any of them. The State has, however, been empowered to make any special provision for the advancement, inter alia, of the Scheduled Tribes with reference to the above provisions of the Constitution.

Article 19 also provides protection to all citizens with regard, inter alia, to moving freely throughout the territory of India, residing and settling in any part of the territory of India and acquiring holding and disposing of property. In this case also, the State has been given power to make any law imposing a reasonable restriction on the exercise of any of these rights either in the interest of the general public or for the protection of the interests of any Scheduled Tribe.

Under article 23 of the Constitution, traffic in human beings and beggar, and other similar forms of forced labour, have been prohibited. Any contravention of this provision has been made an offence punishable in accordance with law.

The above provisions in the Constitution have proved very helpful in protecting the interests of the Scheduled Tribes. Being ignorant and backward they were being exploited by unscrupulous persons, including contractors, money-lenders and even petty Government officials. The Governments have now taken adequate steps to save them from such exploitation.

(e) Provisions for the evaluation of the progress made in the welfare of the Scheduled Tribes.

Article 339 of the Constitution empowers the President to appoint a Commission to report on the administration of the Scheduled Areas and the welfare of the Scheduled Tribes. Such a Commission which was set up under the chairmanship of Shri U. N. Dhebar, has already submitted a very useful Report, which is under active consideration of the Government. It is understood that quite a large number of recommendations made in that Report have been accepted by the Government for implementation.

Article 339 also empowers the Union Government to give directions to a State government, for drawing up or executing of schemes considered essential for the welfare of the Scheduled Tribes. So there has been no occasion necessitating the issue of such a direction.

The President has further been empowered, under article 338 of the Constitution, to appoint a Special Officer to investigate all matters relating to the safeguards provided, inter alia, for the Scheduled Tribes, under the Constitution, and to report to the President about the working of those safeguards, at suitable intervals. The first appointment of this officer, designated as Commissioner for Scheduled Tribes, was made in November, 1950. Since then, the Commissioner is submitting twelve Annual Reports to the President.

Check your Progress

1. Discuss the Safeguards for ensuring the political development of the Scheduled Tribes.
Discuss the Safeguards of the Scheduled Tribes for securing adequate representation in the State Services

3.6 The Plight of these Safeguards

After having an outline of the various types of statutory safeguards for the Scheduled Tribes, we may now try to see the kind of implications these have resulted in the life of these people. Although it cannot be denied that there is a long way ahead to reach the intended goal, still it is easily noticeable that a healthy growth has set in the life of the tribes. Today most of the tribal areas enjoy the basic amenities which were not so long ago beyond their reach. Hospitals and Primary Health Centres have been opened even in the remotest pockets, and communication networks are being developed at a faster rate which would end the centuries-old isolation. Persistent efforts to improve their lot are going on in the shape of welfare schemes for socio-economic development. It is to be noted here that geographically and culturally speaking the Scheduled Tribes are at widely different stages of social and economic development and their problems differ from area to area and even within their own groups.

The new sub-plan approach for tribal development was evolved in the beginning of the Fifth Plan. In pursuance of this policy, areas with more than 50 per cent tribal concentration were identified and separate sub-plans prepared for them. In this way under the sub-plan formulation a substantial tribal population was covered. The tribal sub-plan consisted of four elements: (1) Outlays from State Plans, (2) Investments by the Central Ministries, (3) Institutional finance, (4) Special Central Assistance. Thus, an effort was made to have a total picture of the developmental efforts in the tribal areas and to give a suitable direction. The unit for planning and implementation in the tribal sub-plan has been taken as an Integrated Tribal Development Project. The significant feature of the sub-plan is that it has adopted a flexible frame so that specific needs of each area may be catered well. Besides, in the formulation of the Fifth Plan the problems of the more backward tribal communities were also considered. As a consequence of these multi-pronged developmental activities, the stagnancy of the tribal life could be eliminated, and a gradual progress in various sectors can be achieved. For instance, "offering of scholarships, reserving technical institutions and quick employment after completion of study are some of the reasons which have put a premium on the fast spread of education among the Bhotia Scheduled Tribes of Uttar Pradesh. And today the Bhotias are found holding very high posts in different organizations" (Das, 1977). What is happening to the Bhotias is true to a certain degree for most of the Scheduled Tribes. On the agricultural front many of these groups are gradually being induced to sedentary cultivation.

Apart from all the material gains, a most significant one may be realized at the psychological level. Nehru's rational approach and respect for tribal culture along with the formal statutory recognition for it are bound to generate a positive feeling among the tribal people. With the increasing contact with the outsiders carrying a different kind of socio-cultural system a sense of cultural and political inferiority could have ravaged the tribal mind as analysed by Elwin quite convincingly. "This kind of 'inferiority complex' is a dangerous thing. It poisons the source of individual happiness, making a man abnormally sensitive, bitter and resentful. It is destructive of art and culture, causing people to despise their own ideas and customs and to regard their own creations as inferior. It can ruin the political relations between two communities and in the tribal areas it can disturb the friendly association of the hill people and the outside world" (Elwin, 1960). By providing these safeguards the framers of the Constitution wisely tried to block the sources of these undesirable feelings that might otherwise have crept into the tribal life and polluted the cordial atmosphere of the country. And, truly enough, such an approach is bound to contribute positively in the promotion of national integration, in terms of equality and self-esteem, precisely where lies the relevance of these safeguards (Raha, ibid).

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UNIT -IV

PROVISIONS IN FIFTH AND SIXTH SCHEDULES, AUTONOMOUS DISTRICT COUNCILS

4.1 Objectives

The objective of this unit is to make students aware of the context of various schedule and the various provisions given with in the Indian constitution to ensure rights and privileges of the tribal population of our country.

4.2 FIFTH SCHEDULE

Under the Fifth Schedule of the Constitution, the President is empowered to declare any under-developed area having substantial population of the Scheduled Tribes, as a Scheduled Area. Such areas have been declared in eight States, viz., Andhra Pradesh, Bihar, Gujrat, Madhya Pradesh, Maharashtra, Orissa, Punjab and Rajasthan.

Though the Scheduled Areas are administered as a part of the State in which they are situated, the Governor is given powers under this Schedule to (a) prohibit the application of any Central or State law, or direct its modification in its application, to these areas, and (b) frame regulations for the peace and good Government of the areas, inter alia, for—

- (i) prohibiting or restricting the transfer of land by or among members of the Scheduled Tribes,
- (ii) regulating the allotment of land to members of the Scheduled Tribes, and
- (iii) regulating the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes.

The Governors of the States having Scheduled Areas are also required to make periodical reports to the President, regarding the administration of such areas. These reports which previously used to be made in respect of a calendar year, are now made in respect of a financial year.

The Fifth Schedule also provides for the establishment in each State having Scheduled Areas, a Tribes Advisory Council, to advise on such matters pertaining to the welfare and advancement of the Scheduled Tribes in the State as may be referred to it by the Governor of that State. These Councils must consist of not more than 20 members, of whom, as nearly as may be, three-fourths must be the representatives of the Scheduled Tribes in the Legislative Assembly of the State concerned. If in a particular State, the number of representatives of the Scheduled Tribes in the Legislative Assembly of the State is less than the number of seats in the Tribes Advisory Council to be filled by such representatives, the remaining seats are required to be filled by other members of the Scheduled Tribes only. Tribes Advisory Councils have so far been set up in the States of Andhra Pradesh, Bihar, Gujarat, Madhya Pradesh, Maharashtra, Orissa, Punjab and Rajasthan, all of which have Scheduled Areas, and also in the States of Madras and West Bengal, which have Scheduled Tribes but no Scheduled Areas.

In accordance with another provision of the Fifth Schedule the executive power of the Union has been extended to giving of directions to a State as to the administration of these Scheduled Areas. So far, no occasion has arisen for the issue of such a direction.

4.3 SIXTH SCHEDULE

The Sixth Schedule of the Constitution created to deal with the administration of the Tribal Areas in the then Assam.

1.3.1 Provisions as to the Administration of Tribal Areas in the States of Assam, Meghalaya, Tripura and Mizoram

1. Autonomous districts and autonomous regions

- (1) Subject to the provisions of this paragraph, the tribal areas in each item of Parts I, II and IIA and in Part

III of the table appended to paragraph 20 of this Schedule shall be an autonomous district.

- (2) If there are different Scheduled Tribes in an autonomous district, the Governor may, by public notification, divide the area or areas inhabited by them into autonomous regions.
- (3) The Governor may, by public notification-
 - (a) include any area in any of the Parts of the said table,
 - (b) exclude any area from any of the Parts of the said table,
 - (c) create a new autonomous district,
 - (d) increase the area of any autonomous district,
 - (e) diminish the area of any autonomous district,
 - (f) unite two or more autonomous districts or parts thereof so as to form one autonomous district,
 - (g) alter the name of any autonomous district,
 - (h) define the boundaries of any autonomous district:

Provided that no order shall be made by the Governor under clauses (c), (d), (e) and (f) of this sub-paragraph except after consideration of the report of a Commission appointed under sub-paragraph (1) of paragraph 14 of this Schedule:

Provided further that any order made by the Governor under this sub-paragraph may contain such incidental and consequential provisions (including any amendment of paragraph 20 and of any item in any of the Parts of the said table) as appear to the Governor to be necessary for giving effect to the provisions of the order.

2. Constitution of District Councils and Regional Councils

- (1) There shall be a District Council for each autonomous district consisting of not more than thirty members, of whom not more than four persons shall be nominated by the Governor and the rest shall be elected on the basis of adult suffrage.
- (2) There shall be a separate Regional Council for each area constituted an autonomous region under sub-paragraph (2) of paragraph 1 of this Schedule.
- (3) Each District Council and each Regional Council shall be a body corporate by the name respectively of "the District Council of (name of district)" and "the Regional Council of (name of region)", shall have perpetual succession and a common seal and shall by the said name sue and be sued.
- (4) Subject to the provisions of this Schedule, the administration of an autonomous district shall, in so far as it is not vested under this Schedule in any Regional Council within such district, be vested in the District Council for such district and the administration of an autonomous region shall be vested in the Regional Council for such region.
- (5) In an autonomous district with Regional Councils, the District Council shall have only such powers with respect to the areas under the authority of the Regional Council as may be delegated to it by the Regional Council in addition to the powers conferred on it by this Schedule with respect to such areas.
- (6) The Governor shall make rules for the first constitution of District Councils and Regional Councils in consultation with the existing tribal Councils or other representative tribal organisations within the autonomous districts or regions concerned, and such rules shall provide for
 - (a) the composition of the District Councils and Regional Councils and the allocation of seats therein;
 - (b) the delimitation of territorial constituencies for the purpose of elections to those Councils;
 - (c) the qualifications for voting at such elections and the preparation of electoral rolls therefore;

- (d) the qualifications for being elected at such elections as members of such Councils;
- (e) the term of office of members of Regional Councils;
- (f) any other matter relating to or connected with elections or nominations to such Councils;
- (g) the procedure and the conduct of business (including the power to act notwithstanding any vacancy) in the District and Regional Councils;
- (h) the appointment of officers and staff of the District and Regional Councils.

- (6A) The elected members of the District Council shall hold office for a term of five years from the date appointed for the first meeting of the Council after the general elections to the Council, unless the District Council is sooner dissolved under paragraph 16 and a nominated member shall hold office at the pleasure of the Governor: Provided that the said period of five years may, while a Proclamation of Emergency is in operation or if circumstances exist which, in the opinion of the Governor, render the holding of elections impracticable, be extended by the Governor for a period not exceeding one year at a time and in any case where a Proclamation of Emergency is in operation not extending beyond a period of six months after the Proclamation has ceased to operate:

Provided further that a member elected to fill a casual vacancy shall hold office only for the remainder of the term of office of the member whom he replaces.

- (7) The District or the Regional Council may after its first constitution make rules with the approval of the Governor with regard to the matters specified in sub-paragraph (6) of this paragraph and may also make rules with like approval regulating
 - (a) the formation of subordinate local Councils or Boards and their procedure and the conduct of their business; and
 - (b) generally all matters relating to the transaction of business pertaining to the administration of the district or region, as the case may be: Provided that until rules are made by the District or the Regional Council under this sub-paragraph the rules made by the Governor under sub-paragraph (6) of this paragraph shall have effect in respect of elections to, the officers and staff of, and the procedure and the conduct of business in, each such Council.

3. Powers of the District Councils and Regional Councils to make laws

- (1) The Regional Council for an autonomous region in respect of all areas within such region and the District Council for an autonomous district in respect of all areas within the district except those which are under the authority of Regional Councils, if any, within the district shall have power to make laws with respect to
 - (a) the allotment, occupation or use, or the setting apart, of land, other than any land which is a reserved forest for the purposes of agriculture or grazing or for residential or other non-agricultural purposes or for any other purpose likely to promote the interests of the inhabitants of any village or town: Provided that nothing in such laws shall prevent the compulsory acquisition of any land, whether occupied or unoccupied, for public purposes by the Government of the State concerned in accordance with the law for the time being in force authorising such acquisition;
 - (b) the management of any forest not being a reserved forest;
 - (c) the use of any canal or water-course for the purpose of agriculture;
 - (d) the regulation of the practice of jhum or other forms of shifting cultivation;
 - (e) the establishment of village or town committees or councils and their powers;
 - (f) any other matter relating to village or town administration, including village or town police and public health and sanitation;

- (g) the appointment or succession of Chiefs or Headmen;
 - (h) the inheritance of property;
 - (i) marriage and divorce;
 - (j) social customs.
- (2) In this paragraph, a "reserved forest" means any area which is a reserved forest under the Assam Forest Regulation, 1891, or under any other law for the time being in force in the area in question.
 - (3) All laws made under this paragraph shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect.

4. Administration of justice in autonomous districts and autonomous regions

- (1) The Regional Council for an autonomous region in respect of areas within such region and the District Council for an autonomous district in respect of areas within the district other than those which are under the authority of the Regional Councils, if any, within the district may constitute village councils or courts for the trial of suits and cases between the parties all of whom belong to Scheduled Tribes within such areas, other than suits and cases to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply, to the exclusion of any court in the State, and may appoint suitable persons to be members of such village councils or presiding officers of such courts, and may also appoint such officers as may be necessary for the administration of the laws made under paragraph 3 of this Schedule.
- (2) Notwithstanding anything in this Constitution, the Regional Council for an autonomous region or any court constituted in that behalf by the Regional Council or, if in respect of any area within an autonomous district there is no Regional Council, the District Council for such district, or any court constituted in that behalf by the District Council, shall exercise the powers of a court of appeal in respect of all suits and cases triable by a village council or court constituted under sub-paragraph (1) of this paragraph within such region or area, as the case may be, other than those to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply, and no other court except the High Court and the Supreme Court shall have jurisdiction over such suits or cases.
- (3) The High Court shall have and exercise such jurisdiction over the suits and cases to which the provisions of sub-paragraph (2) of this paragraph apply as the Governor may from time to time by order specify.
- (4) A Regional Council or District Council, as the case may be, may with the previous approval of the Governor make rules regulating
 - (a) the constitution of village councils and courts and the powers to be exercised by them under this paragraph;
 - (b) the procedure to be followed by village councils or courts in the trial of suits and cases under sub-paragraph (1) of this paragraph;
 - (c) the procedure to be followed by the Regional or District Council or any court constituted by such Council in appeals and other proceedings under sub-paragraph (2) of this paragraph;
 - (d) the enforcement of decisions and orders of such councils and courts;
 - (e) all other ancillary matters for the carrying out of the provisions of sub-paragraphs (1) and (2) of this paragraph.
- (5) On and from such date as the President may, after consulting the Government of the State concerned, by notification appoint in this behalf, this paragraph shall have effect in relation to such autonomous district or region as may be specified in the notification, as if
 - (i) in sub-paragraph (1), for the words "between the parties all of whom belong to Scheduled Tribes within such areas, other than suits and cases to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply," the words "not being suits and cases of the nature referred to in sub-paragraph (1) of paragraph (5) of this Schedule, which the Governor may specify in this behalf," had been substituted;

- (ii) sub-paragraphs (2) and (3) had been omitted;
- (iii) in sub-paragraph (4)
 - (a) for the words "A Regional Council or District Council, as the case may be, may with the previous approval of the Governor make rules regulating", the words "the Governor may make rules regulating" had been substituted; and
 - (b) for clause (a), the following clause had been substituted, namely: "(a) the constitution of village councils and courts, the powers to be exercised by them under this paragraph and the courts to which appeals from the decisions of village councils and courts shall lie;"
 - (c) for clause (c), the following clause had been substituted, namely: "(c) the transfer of appeals and other proceedings pending before the Regional or District Council or any court constituted by such Council immediately before the date appointed by the President under sub-paragraph (5);" and
 - (d) in clause (e), for the words, brackets and figures "sub-paragraphs (1) and (2)", the word, brackets and figure "sub-paragraph (1)" had been substituted.

5. Conferment of powers under the Code of Civil Procedure, 1908, and the Code of Criminal Procedure, 18981, on the Regional and District Councils and on certain courts and officers for the trial of certain suits, cases and offences

- (1) The Governor may, for the trial of suits or cases arising out of any law in force in any autonomous district or region being a law specified in that behalf by the Governor, or for the trial of offences punishable with death, transportation for life, or imprisonment for a term of not less than five years under the Indian Penal Code or under any other law for the time being applicable to such district or region, confer on the District Council or the Regional Council having authority over such district or region or on courts constituted by such District Council or on any officer appointed in that behalf by the Governor, such powers under the Code of Civil Procedure, 1908, or, as the case may be, the Code of Criminal Procedure, 18981, as he deems appropriate, and thereupon the said Council, court or officer shall try the suits, cases or offences in exercise of the powers so conferred.
- (2) The Governor may withdraw or modify any of the powers conferred on a District Council, Regional Council, court or officer under sub-paragraph (1) of this paragraph.
- (3) Save as expressly provided in this paragraph, the Code of Civil Procedure, 1908, and the Code of Criminal Procedure, 18981, shall not apply to the trial of any suits, cases or offences in an autonomous district or in any autonomous region to which the provisions of this paragraph apply.
- (4) On and from the date appointed by the President under sub-paragraph (5) of paragraph 4 in relation to any autonomous district or autonomous region, nothing contained in this paragraph shall, in its application to that district or region, be deemed to authorise the Governor to confer on the District Council or Regional Council or on courts constituted by the District Council any of the powers referred to in sub-paragraph (1) of this paragraph.

6. Powers of the District Council to establish primary schools, etc

- (1) The District Council for an autonomous district may establish, construct, or manage primary schools, dispensaries, markets, cattle pounds, ferries, fisheries, roads, road transport and waterways in the district and may, with the previous approval of the Governor, make regulations for the regulation and control thereof and, in particular, may prescribe the language and the manner in which primary education shall be imparted in the primary schools in the district.

- (2) The Governor may, with the consent of any District Council, entrust either conditionally or unconditionally to that Council or to its officers functions in relation to agriculture, animal husbandry, community projects, co-operative societies, social welfare, village planning or any other matter to which the executive power of the State extends.

7. District and Regional Funds

- (1) There shall be constituted for each autonomous district, a District Fund and for each autonomous region, a Regional Fund to which shall be credited all moneys received respectively by the District Council for that district and the Regional Council for that region in the course of the administration of such district or region, as the case may be, in accordance with the provisions of this Constitution.
- (2) The Governor may make rules for the management of the District Fund, or, as the case may be, the Regional Fund and for the procedure to be followed in respect of payment of money into the said Fund, the withdrawal of moneys therefrom, the custody of moneys therein and any other matter connected with or ancillary to the matters aforesaid.
- (3) The accounts of the District Council or, as the case may be, the Regional Council shall be kept in such form as the Comptroller and Auditor-General of India may, with the approval of the President, prescribe.
- (4) The Comptroller and Auditor-General shall cause the accounts of the District and Regional Councils to be audited in such manner as he may think fit, and the reports of the Comptroller and Auditor-General relating to such accounts shall be submitted to the Governor who shall cause them to be laid before the Council.

8. Powers to assess and collect land revenue and to impose taxes

- (1) The Regional Council for an autonomous region in respect of all lands within such region and the District Council for an autonomous district in respect of all lands within the district except those which are in the areas under the authority of Regional Councils, if any, within the district, shall have the power to assess and collect revenue in respect of such lands in accordance with the principles for the time being followed by the Government of the State in assessing lands for the purpose of land revenue in the State generally.
- (2) The Regional Council for an autonomous region in respect of areas within such region and the District Council for an autonomous district in respect of all areas in the district except those which are under the authority of Regional Councils, if any, within the district, shall have power to levy and collect taxes on lands and buildings, and tolls on persons resident within such areas.
- (3) The District Council for an autonomous district shall have the power to levy and collect all or any of the following taxes within such district, that is to say—
- taxes on professions, trades, callings and employments;
 - taxes on animals, vehicles and boats;
 - taxes on the entry of goods into a market for sale therein, and tolls on passengers and goods carried in ferries; and
 - taxes for the maintenance of schools, dispensaries or roads.
- (4) A Regional Council or District Council, as the case may be, may make regulations to provide for the levy and collection of any of the taxes specified in sub-paragraphs (2) and (3) of this paragraph and every such regulation shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect.

9. Licences or leases for the purpose of prospecting for, or extraction of minerals

- (1) Such share of the royalties accruing each year from licences or leases for the purpose of prospecting for, or the extraction of, minerals granted by the Government of the State in respect of any area within an autonomous district as may be agreed upon between the Government of the State and the District Council of such district shall be made over to that District Council.
- (2) If any dispute arises as to the share of such royalties to be made over to a District Council, it shall be referred to the Governor for determination and the amount determined by the Governor in his discretion shall be deemed to be the amount payable under sub-paragraph (1) of this paragraph to the District Council and the decision of the Governor shall be final.

10. Power of District Council to make regulations for the control of money-lending and trading by non-tribals

- (1) The District Council of an autonomous district may make regulations for the regulation and control of money-lending or trading within the district by persons other than Scheduled Tribes resident in the district.
- (2) In particular and without prejudice to the generality of the foregoing power, such regulations may—
- prescribe that no one except the holder of a license issued in that behalf shall carry on the business of money-lending;
 - prescribe the maximum rate of interest which may be charged or be recovered by a money-lender;
 - provide for the maintenance of accounts by money-lenders and for the inspection of such accounts by officers appointed in that behalf by the District Council;
 - prescribe that no person who is not a member of the Scheduled Tribes resident in the district shall carry on wholesale or retail business in any commodity except under a licence issued in that behalf by the District Council:

Provided that no regulations may be made under this paragraph unless they are passed by a majority of not less than three-fourths of the total membership of the District Council:

Provided further that it shall not be competent under any such regulations to refuse the grant of a license to a money-lender or a trader who has been carrying on business within the district since before the time of the making of such regulations.

- (3) All regulations made under this paragraph shall be submitted forthwith to the Governor and, until assessment by him, shall have no effect.

11. Publication of laws, rules and regulations made under the Schedule

All laws, rules and regulations made under this Schedule by a District Council or a Regional Council shall be published forthwith in the Official Gazette of the State and shall on such publication have the force of law.

12. Application of Acts of Parliament and of the Legislature of the State of Assam to autonomous districts and autonomous regions in the State of Assam—(1) Notwithstanding anything in this Constitution

- (a) no Act of the Legislature of the State of Assam in respect of any of the matters specified in paragraph 3 of this Schedule as matters with respect to which a District Council or a Regional Council may make

laws, and no Act of the Legislature of the State of Assam prohibiting or restricting the consumption of any non-distilled alcoholic liquor shall apply to any autonomous district or autonomous region in that State unless in either case the District Council for such district or having jurisdiction over such region by public notification so directs, and the District Council in giving such direction with respect to any Act may direct that the Act shall in its application to such district or region or any part thereof have effect subject to such exceptions or modifications as it thinks fit;

(b) the Governor may, by public notification, direct that any Act of Parliament or of the Legislature of the State of Assam to which the provisions of clause (a) of this sub-paragraph do not apply shall not apply to an autonomous district or an autonomous region in that State, or shall apply to such district or region or any part thereof subject to such exceptions or modifications as he may specify in the notification.

(2) Any direction given under sub-paragraph (1) of this paragraph may be given so as to have retrospective effect. 12A. Application of Acts of Parliament and of the Legislature of the State of Meghalaya to this Constitution,

(a) if any provision of a law made by a District or Regional Council in the State of Meghalaya with respect to any matter specified in sub-paragraph (1) of paragraph 3 of this Schedule or if any provision of any regulation made by a District Council or a Regional Council in that State under paragraph 8 or paragraph 10 of this Schedule, is repugnant to any provision of a law made by the Legislature of the State of Meghalaya with respect to that matter, then, the law or regulation made by the District Council or, as the case may be, the Regional Council whether made before or after the law made by the Legislature of the State of Meghalaya, shall, to the extent of repugnancy, be void and the law made by the Legislature of the State of Meghalaya shall prevail;

(b) the President may, with respect to any Act of Parliament, by notification, direct that it shall not apply to an autonomous district or an autonomous region in the State of Meghalaya, or shall apply to such district or region or any part thereof subject to such exceptions or modifications as he may specify in the notification and any such direction may be given so as to have retrospective effect.

12AA. Application of Acts of Parliament and of the Legislature of the State of Tripura to the autonomous districts and autonomous regions in the State of Tripura.—Notwithstanding anything in this Constitution,—

(a) no Act of the Legislature of the State of Tripura in respect of any of the matters specified in paragraph 3 of this Schedule as matters with respect to which a District Council or a Regional Council may make laws, and no Act of the Legislature of the State of Tripura prohibiting or restricting the consumption of any non-distilled alcoholic liquor shall apply to the autonomous district or an autonomous region in that State unless, in either case, the District Council for that district or having jurisdiction over such region by public notification so directs, and the District Council in giving such direction with respect to any Act may direct that the Act shall, in its application to that district or such region or any part thereof, have effect subject to such exceptions or modifications as it thinks fit;

(b) the Governor may, by public notification, direct that any Act of the Legislature of the State of Tripura to which the provisions of clause (a) of this sub-paragraph do not apply, shall not apply to the autonomous district or any autonomous region in that State, or shall apply to that district or such region, or any part thereof, subject to such exceptions or modifications, as he may specify in the notification;

(c) the President may, with respect to any Act of Parliament, by notification, direct that it shall not apply to the autonomous district or an autonomous region in the State of Tripura, or shall apply to such district or region or any part thereof, subject to such exceptions or modifications as he may specify in the notification and any such direction may be given so as to have retrospective effect.

12B. Application of Acts of Parliament and of the Legislature of the State of Mizoram to autonomous districts and autonomous regions in the State of Mizoram.—Notwithstanding anything in this Constitution,

(a) no Act of the Legislature of the State of Mizoram in respect of any of the matters specified in paragraph 3 of this Schedule as matters with respect to which a District Council or a Regional Council may make laws, and no Act of the Legislature of the State of Mizoram prohibiting or restricting the consumption of any non-distilled alcoholic liquor shall apply to any autonomous district or autonomous region in that State unless, in either case, the District Council for such district or having jurisdiction over such region, by public notification, so directs, and the District Council, in giving such direction with respect to any Act, may direct that the Act shall, in its application to such district or region or any part thereof, have effect subject to such exceptions or modifications as it thinks fit;

(b) the Governor may, by public notification, direct that any Act of the Legislature of the State of Mizoram to which the provisions of clause (a) of this sub-paragraph do not apply, shall not apply to an autonomous district or an autonomous region in that State, or shall apply to such district or region, or any part thereof, subject to such exceptions or modifications, as he may specify in the notification;

(c) the President may, with respect to any Act of Parliament, by notification, direct that it shall not apply to an autonomous district or an autonomous region in the State of Mizoram, or shall apply to such district or region or any part thereof, subject to such exceptions or modifications as he may specify in the notification and any such direction may be given so as to have retrospective effect.

13. Estimated receipts and expenditure pertaining to autonomous districts to be shown separately in the annual financial statement

The estimated receipts and expenditure pertaining to an autonomous district which are to be credited to, or is to be made from, the Consolidated Fund of the State shall be first placed before the District Council for discussion and then after such discussion be shown separately in the annual financial statement of the State to be laid before the Legislature of the State under article 202.

14. Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions

(1) The Governor may at any time appoint a Commission to examine and report on any matter specified by him relating to the administration of the autonomous districts and autonomous regions in the State, including matters specified in clauses (c), (d), (e) and (f) of sub-paragraph (3) of paragraph 1 of this Schedule, or may appoint a Commission to inquire into and report from time to time on the administration of autonomous districts and autonomous regions in the State generally and in particular on—

(a) the provision of educational and medical facilities and communications in such districts and regions;

(b) the need for any new or special legislation in respect of such districts and regions; and

(c) the administration of the laws, rules and regulations made by the District and Regional Councils; and define the procedure to be followed by such Commission.

(2) The report of every such Commission with the recommendations of the Governor with respect thereto shall be laid before the Legislature of the State by the Minister concerned together with an explanatory memorandum regarding the action proposed to be taken thereon by the Government of the State.

(3) In allocating the business of the Government of the State among his Ministers the Governor may place one of his Ministers specially in charge of the welfare of the autonomous districts and autonomous regions in the State.

15. Annulment or suspension of acts and resolutions of District and Regional Councils

- (1) If at any time the Governor is satisfied that an act or resolution of a District or a Regional Council is likely to endanger the safety of India or is likely to be prejudicial to public order, he may annul or suspend such act or resolution and take such steps as he may consider necessary (including the suspension of the Council and the assumption to himself of all or any of the powers vested in or exercisable by the Council) to prevent the commission or continuance of such act, or the giving of effect to such resolution.
- (2) Any order made by the Governor under sub-paragraph (1) of this paragraph together with the reasons therefore shall be laid before the Legislature of the State as soon as possible and the order shall, unless revoked by the Legislature of the State, continue in force for a period of twelve months from the date on which it was so made: Provided that if and so often as a resolution approving the continuance in force of such order is passed by the Legislature of the State, the order shall unless cancelled by the Governor continue in force for a further period of twelve months from the date on which under this paragraph it would otherwise have ceased to operate.

16. Dissolution of a District or a Regional Council

- (1) The Governor may on the recommendation of a Commission appointed under paragraph 14 of this Schedule by public notification order the dissolution of a District or a Regional Council, and

(a) direct that a fresh general election shall be held immediately for the reconstitution of the Council, or

(b) subject to the previous approval of the Legislature of the State assume the administration of the area under the authority of such Council himself or place the administration of such area under the Commission exceeding twelve months:

Provided that when an order under clause (a) of this paragraph has been made, the Governor may take the action referred to in clause (b) of this paragraph with regard to the administration of the area in question pending the reconstitution of the Council on fresh general election:

Provided further that no action shall be taken under clause (b) of this paragraph without giving the District or the Regional Council, as the case may be, an opportunity of placing its views before the Legislature of the State.

- (2) If at any time the Governor is satisfied that a situation has arisen in which the administration of an autonomous district or region cannot be carried on in accordance with the provisions of this Schedule, he may, by public notification, assume to himself all or any of the functions or powers vested in or exercisable by the District Council or, as the case may be, the Regional Council and declare that such functions or powers shall be exercisable by such person or authority as he may specify in this behalf, for a period not exceeding six months: Provided that the Governor may by a further order or orders extend the operation of the initial order by a period not exceeding six months on each occasion.

- (3) Every order made under sub-paragraph (2) of this paragraph together with the reasons therefore shall be laid before the Legislature of the State and shall cease to operate at the expiration of thirty days from the date on which the State Legislature first sits after the issue of the order, unless, before the expiry of that period it has been approved by that State Legislature.

17. Exclusion of areas from autonomous districts in forming constituencies in such districts

For the purposes of elections to the Legislative Assembly of Assam or Meghalaya or Tripura or Mizoram, the Governor may by order declare that any area within an autonomous district in the State of Assam or Meghalaya

or Tripura or Mizoram, as the case may be, shall not form part of any constituency to fill a seat or seats in the Assembly reserved for any such district but shall form part of a constituency to fill a seat or seats in the Assembly not so reserved to be specified in the order.

19. Transitional provisions

- (1) As soon as possible after the commencement of this Constitution the Governor shall take steps for the constitution of a District Council for each autonomous district in the State under this Schedule and, until a District Council is so constituted for an autonomous district, the administration of such district shall be vested in the Governor and the following provisions shall apply to the administration of the areas within such district instead of the foregoing provisions of this Schedule, namely:

(a) no Act of Parliament or of the Legislature of the State shall apply to any such area unless the Governor by public notification so directs; and the Governor in giving such a direction with respect to any Act may direct that the Act shall, in its application to the area or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit;

(b) the Governor may make regulations for the peace and good government of any such area and any regulations so made may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to such area.

- (2) Any direction given by the Governor under clause (a) of sub-paragraph (1) of this paragraph may be given so as to have retrospective effect.

- (3) All regulations made under clause (b) of sub-paragraph (1) of this paragraph shall be submitted forthwith to the President and, until assented to by him, shall have no effect.

20. Tribal areas

- (1) The areas specified in Parts I, II, IIA and III in below shall respectively be the tribal areas within the State of Assam, the State of Meghalaya, the State of Tripura and the State of Mizoram.

- (2) Any reference in Part I, Part II or Part III of the table below to any district shall be construed as a reference to the territories comprised within the autonomous district of that name existing immediately before the day appointed under clause (b) of section 2 of the North-Eastern Areas (Reorganisation) Act, 1971:

Provided that for the purposes of clauses (e) and (f) of sub-paragraph (1) of paragraph 3, paragraph 4, paragraph 5, paragraph 6, sub-paragraph (2), clauses (a), (b) and (d) of sub-paragraph (3) and sub-paragraph (4) of paragraph 8 and clause (d) of sub-paragraph (2) of paragraph 10 of this Schedule, no part of the area comprised within the municipality of Shillong shall be deemed to be within the Khasi Hills District.

- (3) The reference in Part IIA in the table below to the "Tripura Tribal Areas District" shall be construed as a reference to the territory comprising the tribal areas specified in the First Schedule to the Tripura Tribal Areas Autonomous District Council Act, 1979.

PART I

1. The North Cachar Hills District.
2. The Karbi Anglong District.
3. The Bodoland Territorial Areas District.

PART II

1. Khasi Hills District.
2. Jaintia Hills District.
3. The Garo Hills District.

PART IIA

Tripura Tribal Areas District

PART III

1. The Chakma District.
2. The Mara District.
3. The Lai District.

20A. Dissolution of the Mizo District Council

(1) Notwithstanding anything in this Schedule, the District Council of the Mizo District existing immediately before the prescribed date (hereinafter referred to as the Mizo District Council) shall stand dissolved and cease to exist.

(2) The Administrator of the Union territory of Mizoram may, by one or more orders, provide for all or any of the following matters, namely:—

- (a) the transfer, in whole or in part, of the assets, rights and liabilities of the Mizo District Council (including the rights and liabilities under any contract made by it) to the Union or to any other authority;
- (b) the substitution of the Union or any other authority for the Mizo District Council, or the addition of the Union or any other authority, as a party to any legal proceedings to which the Mizo District Council is a party;
- (c) the transfer or re-employment of any employees of the Mizo District Council to or by the Union or any other authority, the terms and conditions of service applicable to such employees after such transfer or re-employment;
- (d) the continuance of any laws, made by the Mizo District Council and in force immediately before its dissolution, subject to such adaptations and modifications, whether by way of repeal or amendment, as the Administrator may make in this behalf, until such laws are altered, repealed or amended by a competent Legislature or other competent authority;
- (e) such incidental, consequential and supplementary matters as the Administrator considers necessary.

Explanation—In this paragraph and in paragraph 20B of this Schedule, the expression “prescribed date” means the date on which the Legislative Assembly of the Union territory of Mizoram is duly constituted under and in accordance with the provisions of the Government of Union Territories Act, 1963.

20B. Autonomous regions in the Union territory of Mizoram to be autonomous districts and transitory provisions consequent thereto

- (1) Notwithstanding anything in this Schedule,
 - (a) every autonomous region existing immediately before the prescribed date in the Union territory of Mizoram shall, on and from that date, be an autonomous district in that Union territory (hereafter referred to as the corresponding new district) and the Administrator thereof may, by one or more orders, direct that such consequential amendments as are necessary to give effect to the provisions of this clause shall be made in paragraph 20 of this Schedule (including Part III of the table appended to that paragraph) and thereupon the said paragraph and the said Part III shall be deemed to have been amended accordingly;
 - (b) every Regional Council of an autonomous region in the Union territory of Mizoram existing immediately before the prescribed date (hereafter referred to as the existing Regional Council) shall, on and from that date and until a District Council is duly constituted for the corresponding new district, be deemed to be the District Council of that district (hereafter referred to as the corresponding new District Council).

(2) Every member whether elected or nominated of an existing Regional Council shall be deemed to have been elected or, as the case may be, nominated to the corresponding new District Council and shall hold office until a District Council is duly constituted for the corresponding new district under this Schedule.

(3) Until rules are made under sub-paragraph (7) of paragraph 2 and sub-paragraph (4) of paragraph 4 of this Schedule by the corresponding new District Council, the rules made under the said provisions by the existing Regional Council and in force immediately before the prescribed date shall have effect in relation to the corresponding new District Council subject to such adaptations and modifications as may be made therein by the Administrator of the Union territory of Mizoram.

(4) The Administrator of the Union territory of Mizoram may, by one or more orders, provide for all or any of the following matters, namely:—

- (a) the transfer in whole or in part of the assets, rights and liabilities of the existing Regional Council (including the rights and liabilities under any contract made by it) to the corresponding new District Council;
- (b) the substitution of the corresponding new District Council for the existing Regional Council as a party to the legal proceedings to which the existing Regional Council is a party;
- (c) the transfer or re-employment of any employees of the existing Regional Council to or by the corresponding new District Council, the terms and conditions of service applicable to such employees after such transfer or re-employment;
- (d) the continuance of any laws made by the existing Regional Council and in force immediately before the prescribed date, subject to such adaptations and modifications, whether by way of repeal or amendment, as the Administrator may make in this behalf until such laws are altered, repealed or amended by a competent Legislature or other competent authority;
- (e) such incidental, consequential and supplementary matters as the Administrator considers necessary.

20C. Interpretation.—Subject to any provision made in this behalf, the provisions of this Schedule shall, in their application to the Union territory of Mizoram, have effect—

(1) as if references to the Governor and Government of the State were references to the Administrator of the Union territory appointed under article 239, references to State (except in the expression “Government of the State”) were references to the Union territory of Mizoram and references to the State Legislature were references to the Legislative Assembly of the Union territory of Mizoram;

(2) as if

(a) in sub-paragraph (5) of paragraph 4, the provision for consultation with the Government of the State concerned had been omitted;

(b) in sub-paragraph (2) of paragraph 6, for the words “to which the executive power of the State extends”, the words “with respect to which the Legislative Assembly of the Union territory of Mizoram has power to make laws” had been substituted;

(c) in paragraph 13, the words and figures “under article 202” had been omitted.

21. Amendment of the Schedule

(1) Parliament may from time to time by law amend by way of addition, variation or repeal any of the provisions of this Schedule and, when the Schedule is so amended, any reference to this Schedule in this Constitution shall be construed as a reference to such Schedule as so amended.

(2) No such law as is mentioned in sub-paragraph (1) of this paragraph shall be deemed to be an amendment of this Constitution for the purposes of article.

Paragraph 1 has been amended in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 2003 (44 of 2003), s. 2, so as to insert the following provision after sub-paragraph (2), namely: "Provided that nothing in this sub-paragraph shall apply to the Bodoland Territorial Areas District."

Paragraph 2 has been amended in its application to the State of Assam by s. 2, ibid., so as to insert the following proviso after sub-paragraph (1), namely: - "Provided that the Bodoland Territorial Council shall consist of not more than forty-six members of whom forty shall be elected on the basis of adult suffrage, of whom thirty shall be reserved for the Scheduled Tribes, five for non-tribal communities, five open for all communities and the remaining six shall be nominated by the Governor having same rights and privileges as other members, including voting rights, from amongst the un-represented communities of the Bodoland Territorial Areas District, of which at least two shall be women." Paragraph 2 has been amended in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 1995 (42 of 1995), s. 2 so as to insert the following proviso after sub-paragraph (3), namely, - "Provided that the District Council constituted for the North Cachar Hills District shall be called as the North Cachar Hills Autonomous Council and the District Council constituted for the Karbi Anglong District shall be called as the Karbi Anglong Autonomous Council." *Paragraph 2 has been amended in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 2003 (44 of 2003) s. 2, so as to insert the following proviso after the proviso in sub-paragraph (3), namely: - "Provided further that the District Council constituted for the Bodoland Territorial Areas District shall be called the Bodoland Territorial Council."

Paragraph 3 has been amended in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 2003 (44 of 2003), s. 2, so as to substitute sub-paragraph (3) as under, "(3) Save as otherwise provided in sub-paragraph (2) of paragraph 3A or sub-paragraph (2) of paragraph 3B, all laws made under this paragraph or sub-paragraph (1) of paragraph 3A or sub-paragraph (1) of paragraph 3B shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect." After paragraph 3, the following paragraph has been inserted in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 1995 (42 of 1995), namely:

"3A. Additional powers of the North Cachar Hills Autonomous Council and the Karbi Anglong Autonomous Council to make laws.—(1) Without prejudice to the provisions of paragraph 3, the North Cachar Hills Autonomous Council and the Karbi Anglong Autonomous Council within their respective districts, shall have power to make laws with respect to—

- (a) industries, subject to the provisions of entries 7 and 52 of List I of the Seventh Schedule;
- (b) communications, that is to say, roads, bridges, ferries and other means of communication not specified in List I of the Seventh Schedule; municipal tramways, ropeways, inland waterways and traffic thereon subject to the provisions of List I and List III of the Seventh Schedule with regard to such waterways; vehicles other than mechanically propelled vehicles;
- (c) preservation, protection and improvement of stock and prevention of animal diseases; veterinary training and practice; cattle pounds;

(d) primary and secondary education;

(e) agriculture, including agricultural education and research, protection against pests and prevention of plant diseases;

(f) fisheries;

(g) water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of List I of the Seventh Schedule;

(h) social security and social insurance; employment and unemployment;

(i) flood control schemes for protection of villages, paddy fields, markets, towns, etc. (not of technical nature);

(j) theatre and dramatic performances, cinemas subject to the provisions of entry 60 of List I of the Seventh Schedule; sports entertainments and amusements;

(k) public health and sanitation, hospitals and dispensaries;

(l) minor irrigation;

(m) trade and commerce in, and the production supply and distribution of, food stuffs, cattle fodder, raw cotton and raw jute;

(n) libraries, museums and other similar Institutions controlled or financed by the State; ancient and historical monuments and records other than those declared by or under any law made by Parliament to be of national importance; and

(o) alienation of land.

(2) All laws made by the North Cachar Hills Autonomous Council and the Karbi Anglong Autonomous Council under paragraph 3 or under this paragraph shall, in so far as they relate to matters specified in List III of the Seventh Schedule, be submitted forthwith to the Governor who shall reserve the same for the consideration of the President.

(3) When a law is reserved for the consideration of the President, the President shall declare either that he assents to the said law or that he withholds assent therefrom: Provided that the President may direct the Governor to return the law to the North Cachar Hills Autonomous Council or the Karbi Anglong Autonomous Council, as the case may be, together with a message requesting that the said Council will reconsider the law or any specified provisions thereof and, in particular, will, consider the desirability of introducing any such amendments as he may recommend in his message and, when the law is so returned, the said Council shall consider the law accordingly within a period of six months from the date of receipt of such message and, if the law is again passed by the said Council with or without amendment it shall be presented again to the President for his consideration."

After paragraph 3A, the following paragraph has been inserted in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 2003, (44 of 2003), s. 2, namely: —

"3B. Additional powers of the Bodoland Territorial Council to make laws.—(1) Without prejudice to the provisions of paragraph 3, the Bodoland Territorial Council within its areas shall have power to make laws with respect to :-
(i) Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases; (ii) Animal husbandry and veterinary, that is to say, preservation, protection and improvement of stock and prevention of animal diseases, veterinary training and practice, cattle pounds; (iii) Co-operation; (iv) Cultural

affairs; (v) Education, that is to say, primary education, higher secondary including vocational training, adult education, college education (general); (vi) Fisheries; (vii) Flood control for protection of village, paddy fields, markets and towns (not of technical nature); (viii) Food and civil supply; (ix) Forests (other than reserved forests); (x) Handloom and textile; (xi) Health and family welfare, (xii) Intoxicating liquors, opium and derivatives, subject to the provisions of entry 84 of List I of the Seventh Schedule; (xiii) Irrigation; (xiv) Labour and employment; (xv) Land and Revenue; (xvi) Library services (financed and controlled by the State Government); (xvii) Lotteries, cinemas (subject to the provisions of entry 60 of List I of the Seventh Schedule); (xviii) Markets and fairs; (xix) Municipal corporation, improvement trust, district boards and other local authorities; (xx) Museum and archaeology, institutions controlled or financed by the State, ancient and historical monuments and records other than those declared by or under any law made by Parliament to be of national importance; (xxi) Panchayat and rural development; (xxii) Planning and development; (xxiii) Printing and stationery; (xxiv) Public health engineering; (xxv) Public works department; (xxvi) Publicity and public relations; (xxvii) Registration of births and deaths; (xxviii) Relief and rehabilitation; (xxix) Sericulture; (xxx) Small, cottage and rural industry subject to the provisions of entries 7 and 52 of List I of the Seventh Schedule; (xxxi) Social Welfare; (xxxii) Soil conservation; (xxxiii) Sports and youth welfare; (xxxiv) Statistics; (xxxv) Tourism; (xxxvi) Transport (roads, bridges, ferries and other means of communications not specified in List I of the Seventh Schedule, municipal tramways, ropeways, inland waterways and traffic thereon subject to the provision of List I and List III of the Seventh Schedule with regard to such waterways, vehicles other than mechanically propelled vehicles); (xxxvii) Tribal research institute controlled and financed by the State Government; (xxxviii) Urban development—town and country planning; (xxxix) Weights and measures subject to the provisions of entry 50 of List I of the Seventh Schedule; and (xl) Welfare of plain tribes and backward classes:

Provided that nothing in such laws shall—

- (a) extinguish or modify the existing rights and privileges of any citizen in respect of his land at the date of commencement of this Act; and
 - (b) disallow and citizen from acquiring land either by way of inheritance, allotment, settlement or by any other way of transfer if such citizen is otherwise eligible for such acquisition of land within the Bodoland Territorial Areas District.
- (2) All laws made under paragraph 3 or under this paragraph shall in so far as they relate to matters specified in List III of the Seventh Schedule, be submitted forthwith to the Governor who shall reserve the same for the consideration of the President.
- (3) When a law is reserved for the consideration of the President, the President shall declare either that he assents to the said law or that he withholds assent therefrom: Provided that the President may direct the Governor to return the law to the Bodoland Territorial Council, together with the message requesting that the said Council will reconsider the law or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when the law is so returned, the said Council shall consider the law accordingly within a period of six month from the date of receipt of such message and, if the law is again passed by the said Council with or without amendments it shall be presented again to the President for his consideration."

Paragraph 4 has been amended in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 2003 (44 of 2003), s. 2, so as to insert the following sub-paragraph after sub-paragraph (5), namely:—

"(6) Nothing in this paragraph shall apply to the Bodoland Territorial Council constituted under the proviso to sub-paragraph (3) of paragraph 2 of this Schedule."

See now the Code of Criminal Procedure, 1973 (Act 2 of 1974).

Paragraph 9 has been amended in its application to the States of Tripura and Mizoram by the Sixth Schedule to the Constitution (Amendment) Act, 1988 (67 of 1988), s.2, so as to insert the following sub-paragraph after sub-paragraph (2), namely:-

"(3) The Governor may, by order, direct that the share of royalties to be made over to a District Council under this paragraph shall be made over to that Council within a period of one year from the date of any agreement under sub-paragraph (1) or, as the case may be, of any determination under sub-paragraph (2)."

Paragraph 10 has been amended in its application to the States of Tripura and Mizoram by the Sixth Schedule to the Constitution (Amendment) Act, 1988 (67 of 1988), s.2, as under-

- (a) in the heading, the words "by non-tribals" shall be omitted;
- (b) in sub-paragraph (1), the words "other than Scheduled Tribes" shall be omitted;
- (c) in sub-paragraph (2), for clause (d), the following clause shall be substituted, namely:-
- (d) prescribe that no person resident in the district shall carry on any trade, whether wholesale or retail, except under a licence issued in that behalf by the District Council."

*Paragraph 10 has been amended in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 2003 (44 of 2003), s. 2, so as to insert the following sub-paragraph after sub-paragraph (3), namely:

"(4) Nothing in this paragraph shall apply to the Bodoland Territorial Council constituted under the proviso to sub-paragraph (3) of paragraph 2 of this Schedule."

Paragraph 12 has been amended to its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 1995 (42 of 1995), s.2, as under,-

"in paragraph 12, in sub-paragraph (1), for the words and figure "matters specified in paragraph 3 of this Schedule", the words, figures and letter "matters specified in paragraph 3 or paragraph 3A of this Schedule" shall be substituted.;

Paragraph 12 has been amended in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 2003 (44 of 2003), s. 2, as under, —

in paragraph 12, in sub-paragraph (1), in clause (a), for the words, figures and letter "matters specified in paragraph 3 or paragraph 3A of this Schedule", the words, figures and letter "matters specified in paragraph 3 or paragraph 3A or paragraph 3B of this Schedule" shall be substituted.

Paragraph 14 has been amended in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 1995 (42 of 1995), s. 2, as under,-

In paragraph 14, in sub-paragraph (2), the words "with the recommendations of the Governor with respect thereto" shall be omitted.

Paragraph 15 has been amended in its application to the States of Tripura and Mizoram by the Sixth Schedule to the Constitution (Amendment) Act, 1988 (67 of 1988), s. 2, as under,-

- (a) in the opening paragraph, for the words "by the Legislature of the State", the words "by him" shall be substituted;
- (b) the provision shall be omitted.

Paragraph 16 has been amended in its application to the States of Tripura and Mizoram.

Check your Progress

1. Discuss the constitutional provisions provided under Fifth Schedule for the Schedule tribe.
2. Discuss the constitutional provisions provided under Sixth Schedule for the Schedule tribe.
3. Explain how Fifth Schedule is different from Sixth Schedule.
4. Discuss the power and function of District and Regional councils provided under Sixth Schedule.
5. Discuss the various provisions to Administration of Tribal Areas in the States of Assam, Meghalaya, Tripura and Mizoram as provided under Sixth Schedule of Indian Constitution?

Discuss how District Councils and Regional Councils are constituted.

Summing up

Again in brief the powers of these District and Regional Councils under the sixth schedule includes the followings basic provisions:

- (i) making of Regulations for the regulation and control of money-lending, or trading within the District by persons other than Scheduled Tribes residing in the District;
- (ii) administration of justice in autonomous districts and autonomous regions;
- (iii) establishment, construction or management of primary schools, dispensaries, markets, cattle pounds, ferries, fisheries, roads and water-ways, and prescribing of the language and the manner in which primary education should be imparted in the primary schools;
- (iv) assessment and collection of land revenues and levying and collection of taxes :
 - (a) professions, trades, callings and employments;
 - (b) animals, vehicles and boats;
 - (c) entry of goods into a market for sale therein, and passengers and goods carried in ferries; and
 - (d) maintenance of schools, dispensaries ties or roads.

These powers also include the making laws relating to-

- (a) the allotment, occupation or use, or the setting apart, of land, other than any land which is a reserved forest, the purpose of agriculture or grazing or for residential or other nonagricultural purposes or for any other purpose likely to promote the interests of the inhabitants of any village or town;
- (b) the management of any forest not being a reserved forest;
- (c) the use of any canal or water-course for the purpose of agriculture;
- (d) the regulation of the practice of jhum or other forms of shifting cultivation;
- (e) the establishment of village or town committees or councils and their powers;
- (f) any other matter relating to village or town administration, including village or town administration, including village or town police and public health and sanitation;
- (g) the appointment or succession of Chiefs or Headmen;
- (h) the inheritance of property;
- (i) marriage;
- (j) social customs.

Autonomous District Council

As mentioned earlier, the whole approach to the problems of tribal areas was radically altered in the post-constitutional period. The old British policy of separation and isolation was replaced by a policy of integration and development. The Sixth Schedule as incorporated in the constitution was based primarily on the recommendations of the Bordoloi Committee. The Bordoloi Sub-Committee was appointed by the Advisory Committee on the Rights of Citizens, Minorities and Tribal and Excluded Areas to make proposals for the administration of the tribal areas in Assam. Assisted by the well-known social anthropologist Dr. Guha, the Bordoloi Committee was of the opinion that attempts should not be made at assimilation of the tribal people but that the tribes should be allowed to promote and regulate their way of life according to their own free will and choice.

The formation of District Councils in the Hill Districts is the cornerstone of the entire report of the Bordoloi

Committee. To mention some of the recommendations here, the Bordoloi Committee recommended that the District Council should have the legislative power over the occupation and use of land, other than land comprising reserved forests; the nature of cultivation of land should be left to the tribe themselves; the tribal people should have full powers of administering their own social laws, codifying and modifying them; primary education should be managed by the District Councils; certain taxes and financial power to the councils should be allocated; the establishment of regional councils in autonomous districts where there are distinct sub-tribes etc. What was remarkable about the Bordoloi report was the manner and the political skill through which it sought to reconcile the hill people's demand for political autonomy with the Government of Assam. It was proposed that the instrument to protect the hill people from the exploitation of the plainsmen would be the introduction of the District Councils. Despite some opposition in the constituent Assembly to the introduction of the district and regional councils, the drafting committee and the constituent Assembly accepted the recommendations of the Bordoloi Committee with some modifications. The Sixth Schedule was thus introduced and accordingly hill districts were classified into autonomous and non-autonomous areas. The autonomous district may be sub-divided into autonomous regions if there are different Scheduled tribes in it. The Governor was empowered to include any area in the list of autonomous areas, create a new autonomous district, increase and/or diminished the area of any autonomous district, unite two or more autonomous districts or parts thereof so as to form one autonomous district, define the boundaries of any autonomous district and finally exclude any area from the list of autonomous district.

The Sixth Schedule to the constitution of India allows for the formation of Autonomous District Councils to be run by the persons from within the tribal communities themselves. The strength of the District Council was fixed at the maximum of the 24 members. Members to be directly elected on the basis of adult franchise for a period of five years. The Governor was however empowered to nominate certain number of persons and the members so appointed by the Governor shall hold office during the pleasure of the Governor. Each District Council shall have a chairman and a deputy chairman, to be elected by the council itself. The Sixth Schedule and the reframed thereunder extended the legislative power of the district council to allotment, occupation or use of land for agricultural and non agricultural purposes, other than land classed as reserved forests; management of unclassified forests; the use canal or water courses for the purpose of agriculture; control of Jhumming or other forms of shifting cultivation. Besides that the council have the power to make laws regarding the appointment of chiefs or headmen, their successor, inheritance of property, marriage and all other social customs. The District Councils derived their income from land revenue, forests, administration of justice, taxes on animals, vehicles and boats, professions, trades, and grants in aid from the Government etc.

General

The constitutional safeguards described above, lay down the framework within which our tribal policy has to operate. The most important fact about their condition today is that they present wide range of socio-economic conditions, from a near-isolated tribalism to varying degree of modern forms and even compete assimilation into the national community. The growth of industrialization, particularly in the tribal areas, urgent needs for border defence and steps taken that connection, general development, communication, etc., are the factors which are the main agents of these ranges. Under these conditions, any policy, if it has to be fruitful and beneficial, should allow a good deal of latitude differential treatment to the groups at various stages of development. Further, its implementation should be done through machinery which is sensitive to all these factors and elastic enough to allow all sorts of adjustments that the changing scene of tribal life may warrant. The makers of our Constitution were sagacious enough to lay down a system of safeguards that allows for a cautious treatment of the tribals to ensure noninterference in whatever good is found-in their culture. These safeguards also open out best opportunities of higher education; government positions, etc., for those who are ready to take time. At the same time, they get all facilities of life to which they are entitled and they are given every aid to fight successfully against poverty and ignorance, unemployment and disease, exploitation and absence of better techniques. Full care has, however, to be taken to ensure that the Scheduled Tribes are developed according to their own genius, without imposing anything on them. The late Shri Jawahar Lal Nehru has given a lead-in this respect, in his speech delivered at the Scheduled Tribes and Scheduled Areas Conference, held in Delhi in 1952. Speaking about the Scheduled Tribes, he said:

“We must approach the tribal people with affection and friendliness and come to them as a liberating force. We must let them feel that we come to give and not to take something away from them. That is the kind of psychological integration India needs”.

Check your Progress

1. Discuss the historical background of Autonomous District Council.
2. What is the power and Function of Autonomous District Council?
3. In which part of our Constitution that the provision for ADC is provided?

Suggested Readings

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Sixth Schedule of Indian Constitution-Google search

Unit-V

CRITICAL REVIEW OF SOME TRIBAL POLICIES

5.1 Introduction

Democratic decentralization in the Indian context is not an end itself. It is a process for harnessing, channelising, and realizing the energies of the people with a view to bringing about social transformation where every member of the society gains his or her rightful place in the social, economic, and political life the country. Panchayati Raj Institutions (PRIs) are expected to play a multifaceted role. They are vehicles for political education and training in leadership. They have to be responsive to the needs of the community, impart values of equality and liberty, be transparent, accountable, and efficient to provide opportunities for mass participation in the process of development.

Democratic decentralization and involvement of people in decision-making process was recognized by the Constituent Assembly, which enshrined it in the Constitution as one of the Directive Principles of the State Policy. Several initiatives were taken in the 1950s and 1960s to promote democratic decentralization. However, the 73rd and 74th Constitutional Amendment Acts mark a watershed in the history of governance in the country. PRIs were introduced as a distinct third tier of government. At the time of the formulation of the Ninth Five Year Plan, the 73rd & 74th Amendment Acts were in the process of being operationalised. It was expected that PRIs that come up under the new Acts would be devolved functions, finances and the functionaries to enable them to emerge as institutions of self-government.

5.2 Objectives:

After reading this part of the unit you should be able to:

- To trace in brief concept of Panchayat.
- Some historical developments of the Panchayati Raj.
- Applicability of Panchayat System.
- An explanation as to why it should once again have assumed importance in the present state of affairs.

5.1 Provisions of the Panchayats (Extension To Scheduled Areas) Act, 1996

5.1.1 Concept of Panchayati Raj

‘Panchayat’ literally means assembly (*yat*) of five (*panch*) wise and respected elders chosen and accepted by the village community. Traditionally, these assemblies settled disputes between individuals and villages. The philosophy of Panchayat Raj is deeply rooted in tradition and culture of rural India and is by no means a new concept. Panchayati Raj Provided a system of self-governance at the village level, however, it did not have a constitutional status. The Constitution (Seventy-third Amendment) Act, 1992 provided this ancient political institution a framework on which to build the third level of governance.

Panchayati Raj is a system of governance in which gram panchayats are the basic units of administration. It has 3 levels, village, block, and district. At the village level, it is called a Panchayat. It is a local body working for the good of the village. It can have its members ranging from 7 to 31. However, in exceptions, it can have members above 31 but not below 7.

Panchayat refers to a council of elected members taking decisions on issues key to a village’s social, cultural and economic life: thus, a panchayat is also a village’s body of elected representatives. The council leader is named sarpanch in Hindi, and each member is a panch. The panchayat acts as a conduit between the local

government and the people. Decisions are taken by a majority vote (Bahumat). It is said that in such a system, each villager can voice his opinion in the governance of his village. Decisions are taken without lengthy legal procedures and the process remains for the most part transparent. In ancient India Panchayat meant Five Persons (Headman). Since then Panchayat system has come a long way. Today it is approved by Government of India by constitution. Now in almost every state there is Panchayati Raj.

5.3.2 The Historical Evolution of Panchayati Raj in India:

References to *panchayats* and *ganapadas* in ancient Vedic texts, translated into English for the first time by oriental scholars in the late eighteenth and early nineteenth centuries, played a part in persuading British officials that here was to be found an elemental unit of Indian society and politics. Its most succinct and influential expression however lay in Charles Metcalfe's defense of the *mahalwari* system of revenue settlement adopted in the territories of the then North-Western Province (now U.P.). Describing the fortified villages which sprung up around Delhi in the years after the collapse of Mughal power in 1761 Metcalf wrote to the 1832 Select Parliamentary Committee on the East India Company's charter in brilliantly evocative terms:

'The village communities are little republics, having nearly everything they can want within themselves and almost independent of any foreign relations. They seem to last where nothing else lasts. Dynasties after dynasties tumbles down; revolution succeeds to revolution; Hindoo, Pathan, Mogul, Mahratta, Sikh, English, are all masters in turn; but the village community remains the same... This union of the village communities, each one forming a separate state in itself, has, I conceive, contributed more than any other cause to the preservation of the people of India through all the revolutions and changes which they have suffered, and is in a high degree conducive to their happiness, and to the enjoyment of a great portion of freedom and independence.'

The same description was next picked up by Karl Marx and used to describe what he saw as one of the characteristic features of the societies that existed under 'Oriental despotism'.

The idea of the Village Community, and of the Panchayat or village council, then went on to assume enormous importance in the writings of Henry Maine, who, in an effort to contradict the Roman school of law, represented by Austin, sets out to describe in his influential *Ancient Law* (1861), the historical evolution of legal systems, linking these systems to what he saw as the various stages in the progress of Civilization. This theory of the backbones of the theory of indirect rule developed in India in the second half of the nineteenth century and extended elsewhere into other British colonial territories.

In the hands of these later colonial administrators, the main purpose of the idea of the village community and of its Panchayat, or council of elders, was that it purported to be a natural and customary source of authority upon whom the government could legitimately devolve certain responsibilities, thus avoiding the costs of a minute and detailed system of policing and of law, whilst at the same time avoiding the time-consuming and controversial business of holding elections and setting up local authorities to deal with matters such as street cleaning and petty theft. In time, a measure of democratic local government was also introduced, beginning with Municipal Boards in 1882, which were set up to administer towns which were also large enough to have a magistrate. However, **the village community and its panchayat remained a first resort in case of dispute over large parts of rural India.**

The problem was of course that lineage, locality and caste were the main determinants of traditional village tribunals, and the so-called village panchayats were often no more than caste panchayats (which were and still are widespread). This was a poor apparatus upon which to heap the burden of jurisdiction and the legal standards expected within a British-style system of justice. Furthermore, British district collectors were always reluctant to

devolve much of their power to a lower level. At the same time, the parallel development of the British court system meant that villagers were becoming increasingly reluctant to submit their disputes to the informal jurisdiction of a group of elderly high caste peers, and when they did so, would often then turn to the local British magistrate to overturn a judgment they had just received if it were not to their liking. **The real authority of the village Panchayat therefore, where it existed, was thus steadily eroded.**

CHECK YOUR PROGRESS

1. What was the traditional method of constituting the "Council of Elders" for local governance?

5.3.3 Panchayat System before Independence

In 1920 however, following the report of the Royal Commission on decentralization, and the Montagu-Chelmsford report of 1918, village Panchayats were formally vested with legal powers in no less than five provinces, including the Punjab, Central Provinces and U.P. The reasons for doing this were of course purely practical.

Nonetheless, the various provincial administrations went ahead and formally invested village committees with a combination of administrative and judicial powers, for a variety of reasons: one being the obvious grounds of economy as it was hoped that they might relieve pressures on the overstretched district and provincial courts. There was also the hope that by conferring powers upon villages, and cutting out the over-educated (and increasingly troublesome) class of collaborators upon whom the British depended for much else in their administration, the white rulers might further cement the bond between themselves and their loyal subjects.

The composition of these village committees and the powers they exercised varied enormously from Province to Province. Most were democratically elected, although in the U.P. all elections by the *gaon sabha* had to be approved by the local magistrate. In Punjab, Bombay and the Central Provinces the Panchayats covered about one-tenth or one-fifteenth of the countryside; in U.P. a quarter of the province was brought under their jurisdiction; and in Bengal and Madras presidencies panchayats were set up throughout the length of the country. Whilst initially the village committees set up by the 1920 act enjoyed some measure of success (the Bengal panchayats disposed of some 122,760 cases in 1925), the picture thereafter was one of steady decline, probably partly because, as previously stated, their jurisdiction was all too easily subverted by resort to a British court.

5.3.4 Gandhi's Concept of Gram Swaraj and Panchayat

Mahatma Gandhi, the Father of the Nation once stated, "Independence must reach the bottom ... it follows, therefore, that every village has to be self-sustained and capable of managing its affairs. Gandhi was strongly influenced by his reading of Sir Henry Maine, using Maine's *Indian Village Communities* as one of the principal items of evidence in a petition to the Natal Assembly in 1894, in which he argued that the franchise should be extended to members of the Indian community. A key passage in the Petition reads as follows:

*The Indian nation has known, and has exercised, the power of election from times prior to the time when the Anglo-Saxon races first became acquainted with the principles of representation... In support of the above, your Petitioners beg to draw the attention of your Honourable Assembly to Sir Henry Maine's *Village Communities*, where he has clearly pointed out that the Indian races have been familiar with representative institutions almost from time immemorial.*

Gandhi in a speech delivered before the East Indian Association in London, in which 'the East' was described as 'the parent of municipalities' and it was said that 'local self-government in the widest acceptance of the term' was 'as old as the East itself'. Gandhi himself then insisted, somewhat imaginatively, that:

Every caste in every village or town has its own rules and regulations, and elects representatives. He further said that to say that the Indian does not understand the Franchise is to ignore the whole history of India. Representation, in the truest sense of the term, the Indian has understood and appreciated from the earliest ages. That principle - the Panchayat - guides all the actions of an Indian. He considers himself a member of the Panchayat, which really is the whole body civic to which he belongs for the time being.

His argument was two-fold: firstly that the Indian people were as civilized as any other and therefore entitled to vote, secondly that they were long accustomed to the concept of representative democracy and indeed enjoyed the powers of voting.

In later years Gandhi's supporters saw in village based action not only the means to swaraj, in a personal sense, but also the means towards a national awakening and wholesale programme of social and economic reconstruction. Gandhi himself though was rarely so radical in his own writings on the subject, indeed he does not even mention the idea of village self-government at all in *Hind Swaraj*, his erstwhile nationalist manifesto, published in 1910. He nonetheless insisted that it was a good Indian tradition to subordinate self-interest to the collective decision of a Panch, and often described the Indian National Congress central working committee as one such Panch: a sort of elected oligarchy to which unquestioning obedience was expected.

5.3.5 Gandhi's Dilemma:

However, at the same time, he freely admitted that the practising institution of the Village Panchayat was rarely if ever likely to be found in effect. And although he expressed the hope that it might be revived, he clearly did not expect it to happen in a hurry. When asked in 1925 what should be done with those who borrowed funds from khadi boards and then failed to return it, he answered that in an ideal world they would submit themselves to the judgment of a Panchayat, but that since the idea of the Panchayat is 'as good as non-existent now' it would be best just to take them to court.¹ And in 1931 he wrote in *Young India* as follows:

...we may not replace trained judges by untrained men brought together by chance. What we must aim at is an incorrigible, impartial and able judiciary right from the bottom. I regard village panchayats as an institution by itself. But thanks to the degradation of the caste system and the evil influence of the present system of government and the growing illiteracy of the masses, this ancient and noble institution has fallen into desuetude, and where it has not, it has lost its former purity and hold. It must, however, be revived at any cost, if the villages are not to be ruined.

5.3.6 Rabindranath Tagore and C R Das on Panchayat:

Gandhi was thus a believer, but hardly an unequivocal champion of village self-government, and he fully accepted the practical limits to such a scheme. Others however were more enthusiastic. The idea of village development through self-regulated councils was in fact first deployed politically in India, not by Gandhi, but by Rabindranath Tagore as early as the 1900's and it became a major issue during the Swadeshi movement in Bengal between 1905 and 1910.² C.R. Das, the Bengali swadeshi campaigner, was amongst those who supported it. Like Gandhi, Das was a student of law, cognisant of the writings of Maine and Baden-Powell, and he shared the same thoroughly orientalist and idealistic view of rural India, but in many ways though he was more radical and politically ambitious. Thus in 1918 Das spoke on the issue during his Presidential Address to the Bengal Congress in 1918, advocating the growth of village councils as a means of economic development.

In 1922 Das became President of the Indian National Congress, and in his Congress Presidential

address he again urged, as a requisite of Swaraj, the 'organisation of village life and the practical autonomy of small local centres'. Village communities must not exist as disconnected units' he argued, but 'held together by a system of co-operation and integration'. He concluded: 'I maintain that real Swaraj can only be attained by vesting the power of government in these small local centres', and he advised the Congress to draw up a scheme of government based upon these proposals.¹

As a result of this an *Outline Scheme of Swaraj* was drawn up by C.R. Das and Bhagavan Das and presented to Congress in 1923 and was adopted as party policy. This plan recommended a massive decentralisation of government after independence, the higher centres of governmental power being reduced, and the organ of administration becoming the panchayat, organised into village, town, and district, provincial and all-India units of government. The purpose behind this idea was the upliftment of India's villages, and as the memorandum put it, the 'spiritualising of India's politics by changing the whole culture and civilisation of society from its present mercenary to a missionary basis'.²

5.3.7 Change in Gandhi's Stance:

As the nationalist struggle progressed, Gandhi became more ambitious for the idea of village self-government. His clearest and most often quoted exposition of the idea dates from 1942, when he wrote of 'village swaraj', in words that closely echoed those of Metcalf:

'My idea of village swaraj is that it is a complete republic, independent of its neighbours for its own vital wants and yet interdependent for many others in which dependence is a necessity...As far as possible every activity will be conducted on the co-operative basis. There will be no castes such as we have today, with their graded untouchability. Non-violence with its technique of satyagraha and non-co-operation will be the sanction of the village community... The government of the village will be conducted by a Panchayat of five persons elected annually by the adult villagers, male and female, possessing minimum prescribed qualifications. ...Since there will be no system of punishments in the accepted sense, this Panchayat will be the legislature, judiciary and executive combined to operate for its year of office... Here there is perfect democracy based upon individual freedom. The individual is the architect of his own government. The law of non-violence rules him and his government. He and his village are able to defy the might of a world. For the law governing every villager is that he will suffer death in the defence of his and his village's honour...'

Later on, Gandhi described his vision more poetically still in an interview given just two years before his death:

'In this structure composed of innumerable villages, there will be ever widening, never-ascending circles. Life will not be a pyramid with the apex sustained by the bottom. But it will be an oceanic circle whose centre will be the individual always ready to perish for the village, the latter ready to perish for the circle of villages, till at last the whole becomes one life composed of individuals, never aggressive in their arrogance but ever humble, sharing the majesty of the oceanic rule of which they are integral units.'

5.3.8 Nehru on Village Panchayat:

Jawaharlal Nehru also warmed to the idea, asserting in *The Discovery of India* that in ancient times 'the Village Panchayat or elected council had large powers both executive and Judicial and its members treated with great respect by the Kings officers.' For Nehru though this was nothing but a fit of historical imagination, with few

practical implications as far as Congress policy was concerned. Soon after writing it he was indeed engaged in discussions with P. Thakurdas, G.D. Birla, J.R.D. Tata and others, which led to the drawing up of the famous Bombay Plan of January 1944, which set the framework for India's social and economic development post independence: a world of industry, urbanisation and of partnerships in development between government and the national bourgeoisie.

5.3.9 Panchayati Raj after Independence

The concept of Panchayati Raj, for a while in the years after Indian independence, seemed to have disappeared permanently into the mists of India's romantic past. In the late twentieth century however the notion has returned once more to the political agenda, for a variety of reasons: strategic, practical, economic, and ideological.

5.3.10 The Resuscitation and Revival of Panchayati Raj

Following Gandhi's death the possibility of a continuing judicial and administrative role for the village Panchayat was considered, criticized, and rejected from the deliberations of the Indian Constituent Assembly: the view being held, as by the British previously, that they were all too prone to corruption. Ambedkar's experience of the suffering of his Mahar community gave him particular insights into this problem. Consequently, the only reference to Panchayats at all in the Indian Constitution adopted in 1951 is in Part IV (in the Directive Principles of State Policy), which is non justifiable, and which merely stated that 'The state should take steps to organize village panchayats and endow them with such power and authority as may be necessary to enable them to function as units of self-government'. The same fate befell upon the co-operative movement. After a brief flurry of enthusiasm in the 1950's, co-operation was found more often than not to be sham in practice, and the co-operative ideal, together with the panchayati ideal was shelved by most government departments.

The shortcomings quickly became apparent in the Community Development and the National Extension Service programmes, both of which became the subject of an enquiry by a national planning committee study team led by Balwantrai Mehta, a Member of Parliament, in 1957. The study team concluded that if these programmes were to be effective, affordable, and repeated interventions by officials were to be avoided, there was a desperate need for an agency at the village level 'which could represent the entire community, assume responsibility and provide the necessary leadership for implementing development programmes.' The case for governmental

decentralization was also subsequently affirmed by the National Development Council, and once again panchayats came back onto the political agenda and the phrase 'panchayati raj' came into fashion: zealots even claiming that the phrase was coined by Jawaharlal Nehru although it had obviously been previously used by Gandhi and many others.

Rajasthan was the first State to pass legislation authorising the constitution of a new style of Panchayat, the first such Panchayat, assuming largely administrative powers, being established at Nagaur, about 260 kms from Jaipur, the state capital in October 1959. Another was soon set up at Shadnagar in Andhra Pradesh, and by 1959 every State had passed a Panchayati Act and some sort of Panchayat was thereafter established, in theory at least, in nearly every village.

It seems likely that the idea of Panchayati raj was not only a response to financial exigencies, but also the emergent conflicts between the Congress government's espousal of equality and welfare for all, and its heavily urban and industry biased development planning. The conflict in this area was not only causing social but also

political tensions, and it is likely that Jawaharlal Nehru espoused the Panchayat ideal for the same reason that in 1963 he espoused the so-called Kamraj Plan - which called upon Congress politicians to resign from office and devote themselves to grass-roots work in the rural areas. Both could be seen as an attempt to undermine the influence of powerful and reactionary landed and bourgeois state level politicians and to reaffirm his party's links with the rural masses - just as the British had sought to do some forty years earlier. There was also strong support in favour of the Panchayati ideal coming from opposition groups. Jai Prakash Narayan, for example, was a great advocate of Panchayats in the late 1960's and early 1970s - his vision being quite a radical one, championing the notion of party less democracy.

The problem was of course, that these Panchayats were set up largely, as already stated, for developmental reasons, and although Panchayats were constituted at village level (including always a certain number of women and SC/STs), most often the executive powers lay at block level, where a block Samiti was constituted by delegates from a number of villages. Executive powers here were effectively shared with the government block development officer, and of course above the block there were also Zilla Parishads playing a supervisory and co-ordinating role.

CHECK YOUR PROGRESS:

1. What are the similarities between the Gandhi's concept of Gram Sabha and the Panchayati Raj?
2. Go to nearby village to trace the post-independence development of village council.

5.3.11 Constitutional Amendments in Panchayati Raj

The term 'panchayat raj' was adopted by state governments during the 1950s and 60s as laws were passed to establish Panchayats in various states. It also found backing in the Indian Constitution, which was amended in 1992 to accommodate the idea. April 24, 1993 is a red-letter day in the history of Panchayati Raj in India as on this day the constitution (73rd Amendment) Act, 1992 came into force to provide constitutional status to the Panchayati Raj institutions. The provisions of the 73rd Amendment Act were extended to the Schedule V areas of nine States i.e. Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Orissa and Rajasthan under Central Act 40 of 1996 i.e. The Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996. The Act is intended to enable tribal communities to assume control over their own destiny to preserve and conserve their traditional rights over natural resources. All States barring Jharkhand have enacted State Legislation to give effect to the provisions contained in Act 40, 1996. States other than Jharkhand have also amended most of the subject laws to bring them in conformity with the provisions of the Central Act, 40.

5.3.12 73rd Constitutional Amendment, 1992

The salient features of the Act are:

- To provide 3-tier system of Panchayati Raj for all States having population of over 20 lakh.
- To hold Panchayat elections regularly every 5 years.
- To provide reservation of seats for Scheduled Castes, Scheduled Tribes and women (not less than 33%)
- To appoint State Finance Commission to make recommendations as regards the financial powers of the Panchayats.
- To constitute District Planning Committee to prepare draft development plan for the district as a whole.

Powers and Responsibilities

According to the Constitution, Panchayats shall be given powers and authority to function as institutions of self-government. The following powers and responsibilities are to be delegated to Panchayats at the appropriate level:

- Preparation of plan for economic development and social justice.
- Implementation of schemes for economic development and social justice in relation to 29 subjects given in Eleventh Schedule of the Constitution.
- To levy, collect and appropriate taxes, duties, tolls and fees.

Gram Sabha

In the PRIs set up, the Gram Sabha, the general assembly of villagers has a key role for effective functioning of Panchayats. In the Gram Sabha meeting, the rural poor, the women, and the marginalised people would get an opportunity to join in decision making on matters affecting their lives. Active functioning of the Gram Sabha would ensure a participatory democracy with transparency, accountability, and achievement.

- Gram Sabha should meet at least in each quarter preferably on Republic Day, Labour Day, Independence Day and Gandhi Jayanti.
- Decide developmental work to be undertaken by Panchayats based on needs assessment.
- Suggest remedial measures for economy and efficiency in the functioning of the Panchayats.
- Question and scrutinize the decisions of Panchayats in the meeting of Gram Sabha.
- Discuss the Annual Financial Statement of Gram Panchayats.

73rd Amendment Constitution of India

THE CONSTITUTION OF INDIA

"PART IX * THE PANCHAYATS 243. Definition - In this Part, unless the context otherwise requires:

- "district" means a district in a State;
- "Gram Sabha" means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level;
- "Intermediate level" means a level between the village and district levels specified by the Governor of a State by public notification to be the intermediate level for the purposes of this Part;
- "Panchayat" means an institution (by whatever name called) of self-government constituted under article 243B, for the rural areas;
- "Panchayat area" means the territorial area of a Panchayat;
- "population" means the population as ascertained at the last preceding census of which the relevant figures have been published;
- "Village" means a village specified by the Governor by public notification to be a village for the purposes of this Part and includes a group of villages so specified.

243-A. Grama Sabha - A Gram Sabha may exercise such powers and perform such functions at the village level as the Legislature of a State may, by law, provide.

243-B. Constitution of Panchayats - (1) There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part. Notwithstanding anything in clause (1), Panchayats at the intermediate level may not be constituted in a State having a population not exceeding twenty lakhs.

243-C. Composition of Panchayats - (1) Subject to the provisions of this Part, the Legislature of a State may, by law, making provisions with respect to the composition of Panchayats:

* Inserted vide Constitution 73rd Amendment Act, 1992 and came into force on 22.04.1993.

Provided that the ratio between the population of the territorial area of a Panchayat at any level and the number of seats in such Panchayat to be filled by election shall, so far as practicable, be the same throughout the State.

(2) All the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area and, for this purpose, each Panchayat area shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the Panchayat area.

(3) The Legislature of a State may, by law, provide for the representation -

- Of the Chairpersons of the Panchayats at the village level, in the Panchayats at the intermediate level or, in the case of a state not having Panchayats at the intermediate level, in the Panchayats at the district level;
- Of the Chairpersons of the Panchayats at the intermediate level, in the Panchayats at the district level;
- Of the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly a Panchayat area at a level other than the village level, in such Panchayat;
- Of the members of the Council of States and the members of the Legislative Council of the State, where they are registered as electors within -
 - A Panchayat area at the intermediate level, in Panchayat at the intermediate level;
 - A Panchayat area at the district level, in Panchayat at the district level.

(4) The Chairperson of a Panchayat and other members of a Panchayat whether or not chosen by direct election from territorial constituencies in the Panchayat area shall have the right to vote in the meetings of the Panchayats.

(5) The Chairperson of -

- A Panchayat at the village level shall be elected in such manner as the Legislature of a State may, by law, provide; and
- A Panchayat at the intermediate level or district level shall be elected by, and from amongst, the elected members thereof.

243-D. Reservation of seats - (1) Seats shall be reserved for -

- The Scheduled Castes; and

b) The Scheduled Tribes in every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat.

(2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled castes or, as the case may be, the Scheduled Tribes.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.

(4) The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide:

Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State 'Provided further that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women.

Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.

(5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in Article 334.

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens.

243-E. Duration of Panchayats etc. -

(1) Every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Panchayat at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).

(3) An election to constitute a Panchayat shall be completed -

a) Before the expiry of its duration specified in clause (1):

b) Before the expiration of a period of six months from the date of its dissolution: Provided that where the remainder of the period for which the dissolved Panchayat would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Panchayat.

(4) A Panchayat constituted upon the dissolution of a Panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Panchayat would have continued under clause (1) had it not been so dissolved.

243-F. Disqualifications for membership - (1) A person shall be disqualified for being chosen as, and for being, a member of a Panchayat -

a) If he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned: Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;

b) If he is so disqualified by or under any law made by the Legislature of the State.

(2) If any question arises as to whether a member of a Panchayat has become subject to any of the disqualification mentioned in clause (1), the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide.

243-G. Powers, authority and responsibilities of Panchayats - Subject to the provisions of the Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to:

a) The preparation of plans for economic development and social justice;

b) The implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.

243-H. Powers to impose taxes by and Funds of the Panchayats-

The Legislature of a State may, by law, -

a) Authorize a Panchayat to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;

b) Assign to a Panchayat such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits;

c) Provide for making such grants-in-aid to the Panchayats from the Consolidated Fund of the State; and

d) Provide for constitution of such funds for crediting all moneys received, respectively, by or on behalf of the Panchayats and also for the withdrawal of such moneys there from as may be specified in the law.

243-I. Constitution of Finance Commission to review financial position.

(1) The Governor of a State shall, as soon as may be within one year from the commencement of the Constitution (Seventy-third Amendment) Act, 1992, and thereafter at the expiration of every fifth year, constitute a Finance Commission to review the financial position of the Panchayats and to make recommendations to the Governor as to -

(a) The principles which should govern:

(i) The distribution between the State and the Panchayats of the net proceeds of the taxes, duties, tolls and fees leviable by the State, which may be divided between them under this Part and the

allocation between the Panchayats at all levels of their respective shares of such proceeds;

- (ii) the determination of the taxes, duties, tolls and fees which may be assigned to, or appropriated by, the Panchayats;

5.3.13 Provisions of the Panchayat (Extension to Scheduled Areas) Act, 1996 (PESA)

PESA extends Panchayats to the tribal areas of eight States, namely Andhra Pradesh, Bihar, Gujarat, Himachal Pradesh, Maharashtra, Madhya Pradesh, Orissa and Rajasthan. This has come into force on 24th December, 1996. Except Rajasthan and Bihar all States have passed laws to give effect to the provisions contained in the Act, 40 of 1996.

Salient Features

Under the Act, Gram Sabha has been vested with powers for:

- Ownership of Minor Forest Produce
- Development plans approval
- Selection of beneficiaries under various programmes
- Consultation on land acquisition
- Manage minor water bodies
- Control mineral leases
- Regulate/Prohibit sale of intoxicants
- Prevent alienation of land and restore unlawfully alienated land of STs
- Manage village markets
- Control money lending to STs
- Control institutions and functionaries in all social sector

Training and awareness generation programme

The Ministry of Rural Development extends limited financial assistance to the States in their effort to train and create awareness among the elected members of Panchayats and functionaries. The State Governments are being asked to conduct such training courses. The Ministry has also been providing financial assistance through the Council for Advancement of People's Action & Rural Technology (CAPART) to the non-governmental organisations for conducting training and awareness generation programmes on Panchayati Raj. This Ministry also commissions research and evaluation studies related to Panchayati Raj from voluntary organizations/institutions.

No. 40 of 1996

THE PROVISIONS OF THE PANCHAYATS (EXTENSION TO THE SCHEDULED AREAS) ACT, 1996

An Act to provide for the extension of the provisions of Part IX of the Constitution relating to the Panchayats to the Scheduled Areas. BE it enacted by Parliament in the Forty-seventh Year of the Republic of India as follows:

1. This Act may be called the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996.
2. In this Act, unless the context otherwise required, "Scheduled Areas" means the Scheduled Areas as referred to in clause (1) of Article 244 of the Constitution.

3. The provisions Part IX of the Constitution relating to Panchayats are hereby extended to the Scheduled Areas subject to such exceptions and modifications as are provide in section 4.

4. Notwithstanding anything contained under Part IX of the Constitution, the Legislature of a State shall not make any law under that Part which is inconsistent with any of the following features, namely:

- (a) A State legislation on the Panchayats that may be made shall be in consonance with the customary law, social and religious practices, and traditional management practices of community resources;
- (b) A village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs;
- (c) Every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls for the Panchayat at the village level;
- (d) Every Grama Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources, and the customary mode of dispute resolution;
- (e) Every Grama Sabhas shall:
 - (i) Approve the plans, programmes, and projects for social and economic development before such plans. Programmes and projects are taken up for implementation by the Panchayat at the village level;
 - (ii) Be responsible for the identification or selection of persons as beneficiaries under the poverty alleviation and other programmes;
- (f) Every Panchayat at the village level shall be required to obtain from the Grama Sabha a certification of utilization of funds by that Panchayat for the plans, programmes, and projects referred to in clause.
- (g) The reservation of seats in the Scheduled Areas at every Panchayat shall be in proportion to the population of the communities in that Panchayat for whom reservation is sought to be given under Part IX of the Constitution; Provided that the reservation for the Scheduled Tribes shall not be less than one-half of the total number of seats: Provided further that all seats of Chair-persons of Panchayats at all levels shall be reserved for the Scheduled Tribes;
- (h) The State Government may nominate persons belonging to such Scheduled Tribes as have no representation in the Panchayat at the intermediate level or the Panchayat at the intermediate level or the Panchayat at the district level: Provided that such nomination shall not exceed one-tenth of the total members be elected in that Panchayat;
- (i) The Grama Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before re-setting or rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State level;
- (j) Planning & management of minor water bodies in the Scheduled Areas shall be entrusted to Panchayats at the appropriate level;
- (k) The recommendations of the Grama Sabha or the Panchayats at the appropriate level shall be made mandatory prior to grant of prospecting licence or mining lease for minor minerals in the Scheduled Areas;

(Scheduled Castes) Orders (Amendment) Act, 1990 which pertains to modification in paragraph 3 of the Constitution (Scheduled Castes) Order, 1950, was strictly followed for the purpose of enumeration of SCs population in the country. The State/UT wise SCs and STs list used at the time of census operations is at Annex.

At the 1991 Census, two questions were included in each of the Household Schedule and Individual Slip. While through question 10 of Household Schedule and question 9 of Individual Slip, inquiry was made in regard to SC/ST status of the person, the name of the SC/ST was enquired through question 11 of the Household Schedule and question 10 of the Individual Slip. Against this, at the 2001 Census, information on the SCs & STs was ascertained through question numbers 8 & 9 of the Household Schedule. The question 8 enquired, "If Scheduled Caste, write name of the SC from the list supplied. It was clarified that the SCs can be only among Hindus, Sikhs, and Buddhists. Whereas question 9 enquired, "If ST, write name of the ST from the list supplied". It was clarified that the STs can be from any religion. There was thus a major departure from the past in respect of designing/formatting of questions in the census schedule to elicit information on SCs/STs as well as the procedure followed for determining their population. One of the reasons for it was the adoption of advanced technology to scan the census schedules through high speed scanners and create ASCII records by converting the hand-written data from the schedules into digitized form through Intelligent Character Reading (ICR) software for further processing of census data.

Under the constitutional order, 1950 as amended in 1990, SCs can be only from Hindus, Sikhs and Buddhists while STs can be from any of the religions. The question on religion of each individual was canvassed through question no.7. The SC/ST status of each member of household was ascertained by asking whether she or he belonged to SC or ST. If the reply to either of this question was in the affirmative, the name of caste/tribe to which the individual belonged was recorded, provided the name of caste/tribe returned featured in the approved list for the State/UT. The enumerator was supposed to record faithfully in the Household Schedule, the name of SC/ST as revealed by the respondents.

Specific instructions were given to the census enumerators to tally the name of caste/tribe returned by the respondents with the names in the SCs/STs list supplied before it is recorded under the appropriate column of the Household Schedule. In spite of all this, in many Household Schedules, the name of SC or ST was recorded in generic terms like 'Harijan', 'Adivasi', or surnames like Ramteke (generally used by Mahar) and Banjare, Miri, Kureel (generally used by Satnami, a sub entry under Chamar in Chhattisgarh) etc. In several cases, spelling or phonetic variations of scheduled caste/tribe names were also returned.

Such census returns were all considered by the Task Force which was specially constituted for this purpose before finalization of the SCs and STs population.

Finalization of Scheduled Castes (SCs) & Scheduled Tribes (STs) population :

Based on the information returned in response to questions 8 and 9 of the Household Schedule, the population of SCs & STs for each of the State/UT has been compiled. In the earlier censuses, total population of SCs & STs was finalized at the time of the manual compilation of the Primary Census Abstracts (PCAs) by the Regional Tabulation Offices which were specially set up for this purpose. This was done, based on response to question no. 10 of the Household Schedule - whether the person belongs to SC/ST. The individual SC/ST population for each state was finalized later. In 2001 Census, the SC and ST returns have been coded directly on computers based on information recorded in column nos.8 & 9 of the schedule. The response on 'Religion' wherever required, was considered along with the processing of PCA.

Two 'Special Task Forces', one on 'Religion' and the other on 'SCs/STs' were set up under the chairmanship of RGI with officials drawn from the Social Studies Division, Census Division and each Census Directorate for scrutiny and appropriate classification of the responses.

The task of the 'Special Task Force on Religion' was to appropriately merge or group the new responses and code them into the appropriate religious community based on available literature and local knowledge. The Task Force on SCs/STs examined the different SC and ST entries and classified them into appropriate category based on the Presidential Notification as well as the available literature. Thus, systematic and scientific approach was adopted to firm up both the religion of each individual and the scheduled caste/tribe status of each one of them. The total population of both SCs & STs in 2001 Census has been finalized by aggregating the population data of individual SC and ST at the appropriate geographical levels.

CHECK YOUR PROGRESS

1. In what ways 1976 order differed from the 1950 order?

5.4.2 Scheduled Tribes Order Amendment Bill, 2006.

THE CONSTITUTION (SCHEDULED TRIBES) ORDER AMENDMENT BILL, 2006

A BILL

Further to amend the Constitution (Scheduled Tribes) Order, 1950 to modify the list of Scheduled Tribes in the State of Bihar.

BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:—

1. This Act may be called the Constitution (Scheduled Tribes) Order Amendment Act, 2006.
2. In the Constitution (Scheduled Tribes) Order, 1950, as amended by the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976, in the Schedule, in Part III relating to Bihar, for item 22 (since renumbered as item 21), as appearing in the Hindi version of the said Act, the following shall be substituted, namely:— "21. Lohara, Lohra".

TO BE INTRODUCED IN THE RAJYA SABHA

Bill No. LXX of 2006

STATEMENT OF OBJECTS AND REASONS

The Scheduled Castes and the Scheduled Tribes Order (Amendment) Act, 1976 (108 of 1976) made certain amendments in the Constitution (Scheduled Tribes) Order, 1950. Prior to this amendment, item 20 of the list of Scheduled Tribes in the State of Bihar stood as "Lohara or Lohra". Subsequently, on account of the passing of the Scheduled Castes and the Scheduled Tribes Order (Amendment) Act, 1976, item 20 underwent change, wherein "Lohara, Lohra" appeared at item 22. Inadvertently, the word "Lohara" appearing in the English version was misspelt as "yksgkj" in the Hindi version of the said Amendment Act.

2. Due to this mis-spelt word, there has been consistent attempt by Lohar (yksgkj) in Bihar, who fall under the category of Other Backward Classes, to be treated as the Scheduled Tribe and to obtain the constitutional benefits meant for genuine Scheduled Tribes by taking benefit of the Hindi version of item 22 "yksgkj" occurring in the Hindi version of the said Amendment Act of 1976. It may be added that "Lohar" is a distinct group and can not be treated as identical to "Lohara, Lohra". It has, therefore, become necessary to amend the Hindi version of the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976 so as to rectify the error occurred in item 22 by substituting the word "yksgkjk" in place of the existing word "yksgkj".

3. The Bill seeks to achieve the aforesaid objective.

CHECK YOUR PROGRESS

1. How far the Bill 2006 has been effective? Furnish it with the examples from your own locality?

5.5 DRAFT SCHEDULED TRIBES (RECOGNITION OF FOREST RIGHTS) BILL, 2005

5.5.1 History of Forest Policies in India

In India, around 1927, the forest management, so long a central matter was transferred as a part of the revenue department to become a provincial subject. Soon the forest section became independent of the revenue department. The forest organization since then consisted of a Chief Conservator of Forests (CCF) located at the provincial headquarters, his deputies called Conservators of Forests, at regional levels. The next layer of Divisional Forest Officers was posted usually at the district headquarters, and his deputies Forest Rangers at the block levels. **The set-up is almost similar to the general administration but with some basic differences. The most important variation is that de-concentration in forestry never went down to the village cluster level as it did in general administration and in legislative wings.** Sometimes, a forest guard was entrusted with an independent responsibility of a small forest block but the forest guard was simply a watch and ward man and had no proper authority in any other forest duties. The most important variation however was that the forest department had always taken the stand of doing away with the private or communal ownership of land containing forests, in spite of an apparent de-concentration, the forest management continued to be a centralized system, which was mainly the result of state coercion. The local revolts were not powerful enough to confront or force a change of the policy of coercion.

The logic presented behind this centralization in forestry has been many. **First**, it was believed that the forest is a national resource, which should therefore be utilized for the nation/state. That particular sections of the people inhabit the land adjoining the forest is an accident of history and can not be accepted as a sufficient reason to allow them to manage it either for subsistence or profit. The analogy presented is that of mining. Coal, gold, petroleum etc. belong to the state which exploits it, no matter where they are found. Forests can not be an exception. **Secondly**, forests have effects that transcend the local environs. The local people will manage a resource keeping in mind its own local interests which may have disastrous effects on the outside areas. For example, the local interests may like to use it for fuel wood production while the particular forest may be a storehouse of biodiversity. Similarly, the people may use a forest area for grazing when it may be required to be protected from all uses being catchments of a dam reservoir. **Thirdly**, the colonials and later the national government wanted the forest areas to be a source of revenue. For example, teak was extensively exploited by the British colonial government for ship construction, sal and pine in India for railway sleepers and so on. The revenue earned by the Indonesian government annually is second to the money earned by the country from petroleum, which is the largest money earner. In parts of India, the forest contracts, such as that of biri pata (leaves of *Diospyros melanoxylon*), earns so much revenue that it is often used by the people involved in this business as a leverage for political power. **Fourthly**, some forests were earmarked by the government or the rulers with the sole purpose of using them for hunting and rest for the royalty and the colonial officials. **Fifthly**, the control of such large forest areas provided political power to the centre. **And last but not the least**, the government thought wrongly, an idea still held by many, that the local people are ignorant of forests, their indigenous forest management unsustainable and unscientific. Thus the forest management should continue to pursue a policy of centralization. Only in the recent past, a number of initiatives in several countries have been taken more as an adjunct to the main policy of centralization. These initiatives however are certainly significant departures from centralization worth separate discussion.

5.5.2 Pre Colonial Times

Before the advent of the colonial powers in different parts of Asia and the Pacific, which happened around the beginning of the 16th century, the forest land was mostly under the use of the local communities. The nature of use to which the forest land was put varied from place to place, depending on the characteristics of the people who inhabited the local areas. Some used it as the hunting and gathering ground for subsistence. The gathering included fruits, vegetables, cereals for food, fibre for clothing, timber, fibre and grasses for homes and materials for daily use and medicine. Some other groups who have already been initiated into agriculture practiced shifting cultivation, which developed different forms in different areas. But there are some commonalities between them. An individual household chooses a certain area of a forest, cuts it down, burns the wood for the ash to add nutrients to the soil, cultivates the area for a year or two and then moves to another forest leaving the first one to fallow and thus to naturally reforest. The household comes back to the first area after a fallow period for re-cultivation. The fallow time used to be around 15-20 years, now in places diminished to 3-5 years. Besides the hunting and gathering and shifting cultivation categories, there were two other forms of forest use. In one, the forests were permanently felled for sedentary agriculture. In the other, home gardens were introduced. In home gardens, the original forest vegetation near the home was disturbed and replaced by species of trees more useful to the householders. The garden simulated the forest in having a number of artificially grown canopies of trees, shrubs, herbs and grasses.

Whatever the form of use, the forest area was under the control of one or a group of households, except in the case of hunting and gathering where the entire community was in control of the whole forest. The households did not have the ownership of the land which vested with the community or sometimes in a very vague manner with the sovereign. The management however rested with the household/s. In other words, the forest administration was de-concentrated to the household or a group of households or to the community level but the authority lay with the community. It has to be kept in mind that this devolution is not an introduced or imposed process but is a step in the naturally developing human society, which we have classified as traditional.

5.5.3 Policies during British Raj (Colonial Times)

Except in a few countries, the equation between households, groups of households and community and the forest land changed dramatically with the advent of the colonial powers and consolidation of their hold on the countries concerned. The change was towards concentration i.e. the ownership was usurped by the colonial powers which took over as the sovereign power.

One of the earliest of such a change happened in **Sri Lanka. In 1840**, the British Administration promulgated an ordinance called Crown Land (Encroachment) Ordinance by which all forests, wastes, unoccupied and uncultivated lands were vested in the crown. The shifting cultivation land was considered as uncultivated and therefore came under the aegis of the ordinance. In Java of Indonesia, the proprietary rights of land in Java were vested to the sovereign by the British Administrator in 1811. By the Agrarian Act of 1870, the government accepted the local ownership only of continuously cultivated land which by implication excluded all shifting cultivation lands as not owned by the local community and thus subject to acquisition. **In India, by the Forest Act of 1878**, the British Administration acquired the sovereignty of all wastelands which by definition included forests. This Act also enabled the administration to demarcate reserved and protected forests. In the former, all local rights were abolished while in the latter some existing rights were accepted as a privilege offered by the government to the local people which can be taken away if necessary. **Similar stories can be told of Nepal, Philippines, Malaysia and other countries.**

The net outcome of the changed circumstances during the colonial period was that the forests came under the sovereignty of the state, which means a move towards centralization. The de facto situation was however different. Where the forest produces were immediately useful and valuable such as Teak in

India, Burma or Thailand or Pine (for railway sleepers) in Garhwal Himalayas, the arm of the administration reached the forest for exploitation. Where however the forests were distant, needing large investment or the products were not marketable or the area was malarial, (e.g. Nepal terai) the local people, continued to use the forests as they used to do traditionally. For such areas therefore the de facto and the de jure situation were different which created a lot of tension between the people and the sovereign at a later stage of history. **The perception of the users was that the forests belonged to them while the government functionaries believed that the forests were allowed to be used by the people either by default or as a gesture of goodwill.** As the countryside opened up, as the demand of all types of timber developed in the local and in the international markets, and as the state realized the potential monetary and other values of the forests, stricter rules were enforced by coercion to bring all these forests under the state control.

With the departure of the colonial administration and attainment of independence, the noose of state control around the forests was further tightened and the traditional users were more and more left out. Only around 1970s and thereafter some initiatives in devolution were taken.

Before the close of 19th century the tribal enjoyed absolute right over the forests of their respective areas. **The first national Policy on forest was formulated in 1894.** Thereafter, the state began to manage the affairs of the forest. At the same time the commercial exploitation of the forest also began. Secondly, the Indian Railways began expanding for which huge amount of timber was needed to lay the Railway Tracks. All this had a very adverse effect in life of the tribesmen. The Indigenous Rights and privileges of the tribals and the forest resources were curtailed due to the forest policy.

5.5.4 Policies after independence (India)

In 1953, which is a few years after the attainment of independence, the government took over the forests which were earlier with the zaminders. Even as late as 1980, the Conservation Act stipulated that the central permission is required to change the legal status of any forest, which is a concurrent subject. It has been ensured in the Act that even the practice of agro-forestry in a forest area will need central permission or else attract punishment. The moves towards centralization was intended amongst others, to keep deforestation under check, to earn revenue from the forests for using it in the country's developmental work, to conserve certain areas for ecological purposes such as biodiversity and soil and water conservation, to put a break to the fast dwindling animal life and so on. However, the intention was not matched by performance. Whether by design, inefficiency, lack of political will or centralization being a wrong policy, none of the intended objectives was attained in a significant manner. The states had faced obstacles to indiscriminately dereserve forests for ostensible development work, but overall deforestation went on increasing, the animal life dwindled further and the erosion of the forest land accentuated to clog the river valleys with more sediments.

The exact impact of National Forest Policy, 1894 was not realized till independence. As there was plenty of forest, however, the tribals on many occasions resented, which is reflected in different tribal revolts. After independence the industrialization and urbanization in India started at an unprecedented rate. This had a very adverse effect in the life of the tribals. On the one hand, large scale deforestation took place causes ecological imbalance on the other, the tribals were prevented from making use of forest even for domestic purposes. **In 1952 a new forest policy was introduced,** which recognized 6 vital needs:

1. Evolution of a system of balanced and complementary land use (with regard to shifting cultivation).
2. Checking of soil erosion.
3. Establishment of free land.
4. Creation of small woods for grazing and collection for fuel and for domestic purposes (for the tribals).
5. Supply of the timber for National needs.
6. Realization of maximum annual revenue.

The new forest policy drew the concessions granted to the tribals for free grazing in the forest. Instead it introduced grazing free. It brought private forest under state control and it also discouraged the traditional practice of shifting cultivation of some tribes.

After the introduction of this policy the tribals who considered themselves to be the Master of Forest became their subject. The traditional rights of the tribals over forest were reduced to mere concessions. As a result there was much hue and cry against this policy. The curtailment of the rights and the concession of the tribals very often resulted in conflict between them and the forest officers.

CHECK YOUR PROGRESS

1. List the major drawbacks in the Forest Policy of India before independence?

5.5.5 National Forest Policy 1988

Sensing the mood and the resentment of the tribal people in different part of the country government announced a new forest policy in 1988, which is given as below:

The Government has been taking a consistent view on this central theme of integrating Forest Dwelling Scheduled Tribes (FDSTs) living in and around forests in to every aspect of managing forests. All policy statements, including the Forest Policy, 1988, circulars, guidelines, Government Orders issued by the Ministry of Environment and Forests (MOEF) have been espousing the cause of tribal communities and emphasizing the need for putting these communities at the centre of any conservation measures. Relevant excerpts of some of the important policies of MOEF are as under:

- **The Forest Policy, 1988** stresses that forests are a first charge to the tribal communities and their domestic and livelihood needs are paramount and superior to any other commercial needs.
- **The National Forest Policy of 1988**, while recognizing the symbiotic relationship between tribal people and forests, also safeguards the customary rights and interests of the tribal people and forest dwellers on forest lands.
- **This policy provided** for the association of tribal people closely in the protection regeneration and development of forest with a view to provide gainful employment to the people living in and around the forest, with special attention to:
 - (i) Replacement of contractors by tribal cooperatives,
 - (ii) Protection, regeneration and optimum collection of Minor Forest Produce (MFP) along with institutional arrangements for the marketing of such produce,
 - (iii) Development of forest villages on par with revenue villages, family oriented schemes for improving the status of the tribal beneficiaries, and
 - (iv) Undertaking integrated area development programmes to meet the needs of the tribal economy, but the fact remains that most of the high value minor Forest produce are monopolized by the State Forest Corporations and the tribal are just employed as daily wagers.

In order to fulfill the commitments as enshrined in the National Forest Policy, 1988, the Central Government in the Ministry of Environment & Forests had issued 6 circulars on 18.9.1990 for settlement of disputed claims. As per these Circulars, the pre-1980 encroachments on forest lands were considered eligible for regularization provided the State Governments had evolved certain eligibility criteria in accordance with the local needs and conditions and had taken a decision to regularize such encroachments but could not implement their decision either wholly or partly due to enactment of the Forest.

(Conservation) Act, 1980. These circulars provided for:

- Appointment of joint teams of Revenue, Forest and Tribal Welfare Deptt.;
- Involvement of Gram Sabhas;
- Banning agricultural practices only on certain slopes;
- Restoration of titles to the claimants once the bonafides of the claims are established through proper inquiry;
- Demarcation of land to be restored to the claimant – no ceiling on the size of holding.
- Proposals for de-notification of forest lands along with the proposal for compensatory afforestation;
- Elimination of intermediaries and replacement of contractors by institutions such as tribal cooperatives, etc;
- Protection of tribals and non-engagement of outside labour in forestry activities;
- Conversion of forest villages which were set up in remote and inaccessible forest areas with a view to provide uninterrupted manpower for forestry operations into revenue villages.
- Accepted that it would not be appropriate to deny the inhabitants of forest village's legitimate rights over such lands which were allotted to them decades ago for settlement and have been continuously under their occupation since then.
- Restricting admissible evidences mainly to First Offence Report and thus in practical terms denying recognition.

The Draft National Environment Policy-2004 states that "give legal recognition to the traditional rights of forest dwelling tribes. This would remedy a serious historical injustice, secure their livelihoods, reduce possibilities of conflict with the Forest Departments, and provide long-term incentives to the tribal to conserve the forests".

CHECK YOUR PROGRESS

1. What were the major provisions made in favour of tribals in the National Forest Policy of India, 1988?

5.5.6 Draft Scheduled Tribes (Recognition of Forest Rights) Bill 2005

In continuation to the aforesaid bills, acts and policies, the Draft Scheduled Tribes (Recognition of Forest Rights) Bill 2005, is discussed below:

FORMULATION OF THE SCHEDULED TRIBES (RECOGNITION OF FOREST) RIGHTS BILL, 2005:

It is in this background that the historical rights of the FDSTs had not been recognized despite all the legislative/policy framework of the Ministry of Environment & Forests, a decision was taken that the Ministry of Tribal Affairs would take steps to formulate a comprehensive Central Legislation to redress the historical injustice done to tribal community and for clear assertion of their legal rights on land. With the help of the Technical Support Group (TSG), a draft Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 was formulated by the Ministry of Tribal Affairs and circulated amongst the Ministries concerned for their comments.

The draft Bill has by and large been accepted with suggestions by concerned Central Ministries, except by the Ministry of Environment & Forests.

THE MAIN FEATURES OF THE PROPOSED SCHEDULED TRIBES (RECOGNITION OF FOREST RIGHTS) BILL, 2005 ARE AS FOLLOWS:

Objective:

The objective of the Bill is to undo the historical injustice by recognizing and vesting the forest rights and occupation of forest land to forest dwelling Scheduled Tribes who have been residing there for generations and who are integral to the very survival and sustainability of the forest eco-system, including wildlife, but whose rights could not be recorded.

1. Rights of Forest Dwelling Tribes: The Bill in Section 4 seeks to recognize and vest Forest Rights to forest dwelling Scheduled Tribes where they are scheduled.

Such forest rights, as defined in Section 3, are in respect of recognition of occupation of FDST on forest land and their habitat, where they have been living for generations and include:

- To hold and live in the forest land under the individual or common occupation for habitation or for self cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe;
- Rights such as nistar, by whatever name called, and uses in erstwhile princely States, Zamindari or such intermediary regimes;
- Right of access to, use or dispose of minor forest produce;
- Other rights of uses or entitlements such as grazing (both settled and transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;
- Right of habitat and habitation for primitive tribal groups and pre-agricultural Communities;
- To be exercised for bonafide livelihood needs and not for exclusive commercial purposes;
- Not to exceed 2.5 ha per nuclear family of the forest dwelling Scheduled Tribe;
- To be heritable but not alienable or transferable;
- To include the responsibility of protection, conservation and regeneration of forests;
- To be registered jointly in the name of the husband and wife when it is in respect of land where a title is vested or recognized.
- To include traditional and customary rights

Further provides that no forest dwelling Scheduled Tribes shall be evicted or removed from forest land under their occupation till the recognition and verification procedure is complete.

2. Duties of Forest Right holders have been defined in Section 5 of Chapter III of the proposed Bill which include responsibility of not carrying out any activity that adversely affects the wild life, forests and biodiversity.

3. The Authorities, including their functions, have been defined in Chapter IV of the proposed Bill which includes Gram Sabhas, Sub-Divisional Level Committees, District Level Committees having forest tribal welfare and revenue officials as Members.

4. Offences under the Act

Detailed provisions for penalty for contravention of the provision of the Act and also the offences by

Government authorities under this Act have been provided in Chapter V of the proposed Bill. A simple imprisonment up to 30 days with or without a fine of Rs.5000/- has been considered appropriate as the proposed Bill also, in addition, provides for de-recognition the forest rights in case the offence is committed more than once. The penalties provided under other legislation including Indian Forest Act, 1927, the Forest Conservation Act, 1980 are in any case not barred by this Act.

5. **Nodal Agency:** The Ministry of Tribal Affairs or any other officer or authority authorized by the Central Government in this behalf shall be the Nodal Agency and shall be responsible for implementation of the Act.

THE SCHEDULED TRIBES (RECOGNITION OF FORESTRIGHTS) BILL, 2005

A BILL

To recognise and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes who have been residing in such forests for generations but whose rights could not be recorded; to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land.

WHEREAS the recognised rights of the forest dwelling Scheduled Tribes include the responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance and thereby strengthening the conservation regime of the forests while ensuring livelihood and food security of the forest dwelling Scheduled Tribes;

AND WHEREAS the forest rights on ancestral lands and their habitat were not adequately recognized in the consolidation of State forests during the colonial period as well as in independent India resulting in historical injustice to the forest dwelling Scheduled Tribes who are integral to the very survival and sustainability of the forest ecosystems;

AND WHEREAS it has become necessary to address the long standing insecurity of tenurial and access rights of forest dwelling Scheduled Tribes.

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:-

1. (1) This Act may be called the Scheduled Tribes (Recognition of Forest Rights) Act, 2005.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
2. In this Act, unless the context otherwise requires,-
 - (a) "bonafide livelihood needs", in relation to forest dwelling Scheduled Tribes, means the use of forests and forest based products for subsistence of such Tribes or for their own consumption and includes barter and sale of such forest based products for their household needs;
 - (b) "Commercial purpose" includes a forest based activity where such activity is used for profit or for large scale trade or mercantile purposes;
 - (c) "Forest dwelling Scheduled Tribes" means the members or community of Scheduled Tribes who primarily reside in and around forests and includes the Scheduled Tribes pastoralist communities and who depend on the forests or forest lands for bonafide livelihood needs;
 - (d) "Forest land" means land of any description falling within any forest area and includes unclassified forests, existing or deemed forests, protected forests, reserved forests, sanctuaries and na-

- (e) "Forest rights" means the forest rights referred to in section 3;
- (f) "Forest villages" means the settlements which have been established inside the forests by the forest department of any State Government for forestry operations or which were converted into forest villages through the forest reservation process and includes forest settlement villages, fixed demand holdings, all types of taungya settlements by whatever name called for such villages and includes lands for cultivation and other uses, permitted the Government;
- (g) "Gram Sabha" means a village assembly, which shall consist of all adult members of a village whose names are included in the electoral rolls for the Panchayat at the village level and in case of State having no Panchayats, the traditional village institutions;
- (h) "Minor forest produce" includes all non-timber forest produce of plant origin including bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and the like;
- (i) "Prescribed" means prescribed by rules made under this Act;
- (j) "Scheduled Area" means any Schedule Area as referred to in clause (1) of article 244 of the Constitution;
- (k) "Village" means-
 - (i) A village referred to in clause (b) of section 4 of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996;
 - (ii) Any area referred to as a village in any State law relating to Panchayats, other than a Schedule Area;
 - (iii) Forest villages, old habitation or settlements and unsurveyed villages, whether notified as village or not; or
 - (iv) In the case of States where there are no Panchayats, the traditional village, by whatever name called; 40 of 1996.

CHAPTER II

FOREST RIGHTS

3. For the purposes of this Act, the following rights shall be the forest rights of forest dwelling Scheduled Tribes, namely:-
 - (a) Right to hold and live in the forest land under the individual or common occupation for habitation or for self cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe;
 - (b) Rights such as nistar, by whatever name called, and uses in erstwhile princely States, Zamindari or such intermediary regimes;
 - (c) Right of access to, use or dispose of minor forest produce;
 - (d) Other rights of uses or entitlements such as grazing (both settled and transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;

- (e) Right of habitat and habitation for primitive tribal groups and pre-agricultural communities;
- (f) Rights in or over disputed lands under any nomenclature in any State where claims are disputed;
- (g) Rights for conversion of Pattas or leases or grants issued by any local authority or any State Government on forest lands to titles;
- (h) Rights of conversion of forest villages into revenue villages;
- (i) Rights of settlement of old habitations and unsurveyed villages, whether notified or not;
- (j) Right to access to bio-diversity and community right to intellectual property and traditional knowledge related to forest biodiversity and cultural diversity;
- (k) Right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving;
- (l) Rights which are recognised under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribals under any traditional or customary law of any State;
- (m) Any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes which are not mentioned in clauses (a) to (l) but excluding the right of hunting.

CHAPTER III

RIGHTS OF FOREST DWELLING SCHEDULED TRIBES

4. (1) Notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Act, the Central Government hereby recognises and vests forest rights in the forest dwelling Scheduled Tribes, where they are scheduled, in respect of forest land and their habitat including right to collect, utilize or transfer minor forest produce in such manner as may be prescribed.
- (2) The recognition and vetting of forest rights under this Act to forest dwelling Scheduled Tribes in relation to any State or Union territory in respect of forest land and their habitat shall be subject to the condition that such Tribes or tribal communities had occupied forest land before the 25th day of October, 1980 or such other date as the Central Government may, by notification in the Official Gazette, specify.
- (3) A right conferred by sub-section (1) shall be heritable but not alienable or transferable.
- (4) Save as otherwise provided, no member of a forest dwelling Scheduled Tribe shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is completed in such manner as may be prescribed.
- (5) Where the forest rights recognized and vested under sub-section (1) are in respect of land, -
- (i) such land in no case exceed an area of two and one-half hectares per nuclear family of a forest dwelling Scheduled Tribe;
 - (ii) the title to the extent given shall be registered jointly in the name of the male member and his spouse;
- (6) The forest rights recognized and vested under sub-section (1) in the forest dwelling Scheduled Tribe shall -

- (i) Be exercised only for bonafide livelihood purposes and not for exclusive commercial purposes;
- (ii) Include the responsibility of protection, conservation and regeneration of forests.

(6) In case any forest right recognized and vested under sub-section (1) is disputed by any State Government or local authority, the Competent Authority appointed by the Central Government shall consider the records prepared at the time of declaring the area as a Scheduled Area, and while notifying any tribe to be or deemed to be a Scheduled Tribe under article 342 of the Constitution, along with evidence and then pass an appropriate order in the matter:

Provided that no order denying or refusing to grant any forest right shall be passed unless the aggrieved member or members of the community are given an opportunity of being heard.

The holder of any forest right under this Act shall ensure that, -

- (a) save as those activities that are permitted under such rights, no activity shall be carried out that adversely affects the wild life, forest and the biodiversity in the area including clearing of forest land or trees which have grown naturally on that land for any non-forestry purposes including reforestation;
- (b) Catchment areas, water sources and other ecologically sensitive areas are adequately protected;
- (c) The habitat of forest dwelling Scheduled Tribes is preserved from any form of destructive practices affecting their cultural and natural heritage;
- (d) Any activity that adversely affects the wild life, forest and the biodiversity is intimated to the Gram Sabha and to the forest authorities;
- (e) Appropriate measures taken in the Gram Sabha to regulate access to community forest resource and stop any activity which adversely affects the wild life, forest and the biodiversity are complied with.

CHAPTER IV

AUTHORITIES AND PROCEDURE FOR VESTING OF FOREST RIGHTS

6. (1) The Gram Sabha shall be the authority to initiate any action for determining the extent of forest rights that may be given to the forest dwelling Scheduled Tribes within the local limits of its jurisdiction under this Act.
- (2) Every action under sub-section (1) shall be initiated in such manner and subject to such procedure as may be prescribed.
- (3) A Sub-Divisional Level Committee shall examine the decision taken by the Gram Sabha.
- (4) The composition and functions of the Sub-Divisional Level Committee and the procedure to be followed by it in the discharge of its functions shall be such as may be prescribed.
- (5) Any person aggrieved by the decision of the Gram Sabha may prefer an appeal to the Sub-Divisional Level Committee in such manner as may be prescribed and the Sub-Divisional Committee shall consider and dispose of such appeal:
- Provided that no such appeal shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to represent his case.
- (6) Every appeal under sub-section (5) shall be preferred within sixty days from the date of decision of the Gram Sabha.

(7) There shall be constituted a District Level Committee with such composition and functions as may be prescribed to consider the record of forest rights prepared by the Sub-Divisional Level Committee for its final approval.

(8) Any person aggrieved by the decision of the Sub-Divisional Committee may prefer an appeal to the District Level Committee in such manner as may be prescribed and the District Level Committee shall consider and dispose of such appeal:

Provided that no such appeal shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to represent his case.

(9) In discharging the functions under this Act, the District Level Committee shall follow such procedure as may be prescribed.

(10) Every appeal under sub-section (8) shall be preferred within sixty days from the date of decision of the Sub-Divisional Level Committee.

(11) The decision of the District Level Committee shall be final and binding and the Gram Sabha shall maintain the records accordingly.

7. (1) The State Government shall constitute a State Level Monitoring Committee with such composition and functions as may be prescribed.

(2) The State Level Monitoring Committee shall examine the record of recognised and vested rights of forest dwelling Scheduled Tribes submitted by the District Level Committee and conduct periodic inquiry into the process of recognition and vesting through random selection of sites.

(3) The State Level Monitoring Committee shall submit to the nodal agency such periodic returns and reports as may be called for by that agency along with the recommendations of the Committee for appropriate action.

CHAPTER V

OFFENCE AND PENALTIES

8. If any holder of any forest right conferred by or under this Act or any other person—

- Contravenes or abets the contravention any of the provisions of this Act, or
- Commits a breach of any of the conditions of the forest right vested or recognised under this Act; or
- Engages in unsustainable use of forest or forest produce; or
- Destroys wildlife, forests or any other aspect of biodiversity; or
- fells trees for any commercial purpose, he shall be guilty of an offence against this Act and be punished with a fine which may extend to one thousand rupees and in case of the offence is committed more than once, the forest right of the person who has committed the offence shall be derecognised for such period as the District Level Committee, on the recommendation of the Gram Sabha may decide.

9. Where any authority or officers or member of such authority contravenes any provisions of this Act or any rule made thereunder shall be deemed to be guilty of an offence under this Act and shall be liable to be proceeded against and punished with imprisonment which may extend to thirty days or with fine which may

extend to five thousand rupees, or with both:

Provided that nothing contained in this sub-section shall render any member of the authority or head of the department or any person referred to in this section liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

10. No court shall take cognizance of any offence under section 9 of this Act unless any forest dwelling Scheduled Tribe in case of dispute relating to a resolution of a Gram Sabha or the Gram Sabha through a resolution against any higher authority gives a notice of not less than sixty days to the State Monitoring Committee and the State Monitoring Committee has not proceeded against such authority.

CHAPTER VI

MISCELLANEOUS

11. Every member of the authorities referred to in Chapter IV and every other officer exercising any of the powers conferred by this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code 45 of 1860.

12. (1) No suit, prosecution or other legal proceeding shall lie against any officer or other employee of the Central Government or the State Government for anything which is in good faith done or intended to be done under this Act. (2) No suit or other legal proceeding shall lie against the Central Government or the State Government or any of its officers or other employees for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.

(3) No suit or other legal proceeding shall lie against the Authority as referred to in Chapter IV including its Chairperson, members, member secretary, officers and other employees for anything which is in good faith done or intended to be done under this Act.

13. The Ministry of the Central Government dealing with Tribal Affairs or any officer or authority authorised by the Central Government in this behalf shall be the nodal agency for the implementation of the provisions of this Act.

14. In the performance of duties and exercise of powers by or under this Act, every authority referred to in Chapter IV shall be subject to such general or special directions, as the Central Government may, from time to time, give in writing.

15. Save as otherwise provided in this Act, the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

16. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the powers, such rules may provide for all or any of the following matters, namely:-

(a) The procedure and for manner of recognition and verification of forest rights under sub-section (4) of section 4;

(b) The manner in which action may be initiated to determine the extent of forest rights to be recognised and vested in a nuclear family of a forest dwelling Scheduled Tribe and the procedure to be followed in such proceedings under sub-section (2) of section 6;

- (c) The composition and functions of the Sub-Divisional Committee and the procedure to be followed by it in the discharge of its functions under sub-section (4) of section 6;
- (d) The manner of preferring an appeal to the Sub-Divisional Committee under sub-section (5) of section 6;
- (e) The composition and functions of the District Level Committee under sub-section (7) of section 6;
- (f) The manner in which an appeal may be preferred to the District Level Committee under sub-section (8) of section 6;
- (g) The procedure to be followed by the District Level Committee under sub-section (9) of section 6;
- (h) The composition and functions of the State Level Committee under sub-section (1) of section 7;
- (i) The periodic reports and returns to be submitted to the nodal agency by the State Level Committee under sub-section (3) of section 7;
- (j) Any other matter is required to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Specific Section wise Comments on the Draft Scheduled Tribes (Recognition of Forest Rights) Bill 2005

1. Chapter II Section 3 (k) says that scheduled tribes would have a "right to protect, regenerate and/or con-serve or manage any community forest resource which they have been traditionally protecting and conserv-ing,....". What is meant by "Community Forest Resource"? Is this a legal category? Does it include RF/PFs and other categories of government forests? Would the forests being protected by many villages across India but are legally Reserved Forests fall under this category? Would the conserving villages be able to use this provision to acquire a legal right to manage these forests?
2. Chapter 4 Section 5 (c) mentions that "the habitat of forest dwelling Scheduled Tribes is preserved from any form of destructive practices affecting their cultural and natural heritage". However, for this to happen it is important that there is a corresponding right of Prior Informed Consent having to be taken from the right holders, in the case of development and conservation projects coming up on lands to which they have been conferred rights under this Act".
3. In general, there are several measures built into the Bill, regarding conservation and sustainable use in chapter III, and the "responsibility of protection, conservation and regeneration of forests" (Chapter 3 Section 4 (6ii)). However, there remains a lack of clarity on what prevails in the event of "rights" causing wildlife/forest/ biodiversity loss. Chapter 3 Section 5 (a) talks about activities that should not be done by any right holder

which would be harmful for forests and biodiversity, "save for those activities that are permitted under the terms of such rights...". So what happens if the rightfully granted activities are not sustainable and are causing harm to biodiversity? For instance, if the collection of a medicinal plant that has now become threatened is considered a traditional right, would the Act restrict it? It is not clear whether the Act explicitly restricts granting of rights if these rights are harmful to forests/ wildlife/ biodiversity... such a process has to happen *before* the granting of the rights, and could perhaps more explicitly be built into the Rules where the process for granting rights is elaborated.

4. Chapter 3 Section 5 (d) "any activity that is harmful to the forest, wildlife,... should be intimated to the gram sabha and the forest authorities". The same question as above holds true for this as well. What if these activities have been granted as rights? Chapter 3 Section 5 (e) "appropriate measures are taken in the gram sabha to regulate access to community forest resources and stop any activity that adversely affects the wildlife....."....this is again confusing. What right would a gram sabha have to stop someone who is doing something which is rightfully allowed? Also what if the village or the Gram Sabha doesn't take on this responsibility of regulating use? Who, under the Act, is to ensure that this happens? However, neither the Act nor the rules elaborate on a process by which this would be done.
5. Chapter 5 Section 8 (iii) specifies penalty for unsustainable use. However, no where in the Act has "unsustainability" has been defined. Who decides that the use is sustainable or not and on what basis?
6. **The relationship with other related Acts is not absolutely clear.** For instance:
 - (i) Many of the area where such offences are happening will also fall under the jurisdiction of the Forest Conservation Act and the Wildlife Protection Act. How do the penalties under this Act relate to the ones under FCA and WLPA? Does this come under the purview of Chapter 6 Section 15 which says "the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law..."? However, it is not clear if penal provisions (or provisions regarding jurisdiction of the Forest Dept) of the IFA, FCA, and WLPA "contravene the provisions of this Act"?
 - (ii) In this Act the gram sabha has been given the responsibility to decide on the penalty for an offence. This means that all the offences such as unsustainable use, illegal felling of trees, destruction of wildlife will be dealt by the gram sabha. Is this in conflict with the Wild Life (Protection) Act or other relevant Acts which does not give any such rights to the gram sabha? The intention here is good but needs to take into account the existing provisions of WLPA and other relevant Acts. In situations where the gram sabha may not be very active, or where the species of wildlife involved have very high trade value, there need to be explicit provisions for checks and balances?
 - (iii) In general, if the gram sabha fails to deal with instances of wildlife/biodiversity destruction, when and how do the other Acts become operational? Is it expected that the powers of the sub-divisional level committee and the district level committee, in which the Forest Dept is involved, would be adequate to provide for checks and balances? This perhaps needs to be made more explicit, while clarifying the precise relationship between this Act and other Acts.
7. In PAs where settlement of rights may have happened already, without taking into account the people who have been denied rights because of lack of clarity, will the process be opened up again under this Act? How does this process relate to the process of settlement of rights in intended and finally notified PAs? Will this be part of the Settlement of Rights process?
8. Chapter 2 Section 3(j) is about right to intellectual and traditional knowledge; potentially this is a powerful provision, but it needs to be elaborated in the Rules. What does such a right mean in operational terms? How is it to be enforced, and by whom? There is considerable debate and work on community intellectual rights, which needs to be built on to enable this provision to become effective.

9. The composition of the Sub Divisional, District, and State level committees should have included NGOs and individual experts working on wildlife, both to provide information and knowledge inputs to the decisions taken, and to add another layer of checks and balances. The inclusion of the FD in these committees is not sufficient for this purpose!
10. Chapter 1 Section 2(d), the definition of "forest land" should also include Conservation Reserves and Community Reserves, the two new protected area categories in the WLPA.

CHECK YOUR PROGRESS

1. Enlist the Forest Rights entitled to FDSTs in the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005?

5.6 Present Scenario/Conclusion

The forest policy of India is based on the principle that sustainability is not an option but an imperative (Planning Commission 2001). While maintenance of the ecological balance remains an important objective of forest management, contributions that forests make to the livelihood needs of the rural poor, especially tribal communities, are a primary consideration (MOEF 1988). Forest management in India must address biodiversity and environmental conservation, assist in meeting the livelihood needs of around 350 million rural poor, expand forest cover, and increase productivity in accordance with national and international commitments. Since the mid-1980s, the forest area has increased (FSI 2000). Conservation efforts are based mainly on collaboration among forest departments, local communities, people's representatives and NGOs (MOEF 2001a). Although the National Forest Policy (1988) is the primary policy statement regarding forest management, various policy statements on environment and wildlife management also guide the management of the forestry sector.

The draft Scheduled Tribes (Recognition of Forest Rights) Bill 2005 spells out 12 rights to tribals ranging from inheritable rights to forestland, rights of ownership to minor forest produce, and rights to traditional knowledge.

Major highlights of the Bill are as follows: 1) The Bill proposes giving 2.5 hectares of land to each tribal family occupying forestland since or before October 25, 1980. 2) The Gram Sabha be fully empowered to determine the extent of forest rights to the inhabitants. 3) Convert forest villages into revenue villages to bring modern development. 4) Access to traditional seasonal resources.

However, the Bill in its present form is dogged by controversy, with many social and conservation groups, as also the Ministry of Environment and Forests (MoEF) opposing it. The most contentious issue being that the Bill leaves out many forest dwellers, such as tribes not scheduled in the Constitution, dalits and backward communities, creating circumstances for their eviction from notified areas. The Ministry of Environment and Forests (MoEF) has objected to the Bill, saying it will hinder efforts to conserve India's dwindling forest cover and subsequently its biodiversity. Quoting a clause from the draft bill, the MoEF says that if 2.5 ha of land is given to each tribal family then going by this calculation 20 per cent of India's land (68 million hectares) is forested; 8 per cent of India's population is tribal, which adds up to more than 50 million hectares! The land, the Bill states clearly, is for livelihood purposes only, not for commercial cultivation. The right to allot this land to be registered jointly, the name of a male member of the family and his spouse rests with the Gram Sabha of the village concerned, which is also empowered to punish wildlife crimes and any action that leads to the destruction of the forest. Here, the opposition expresses a lack of confidence in the ability of the Gram Sabhas to carry out this mandate. They feel that without adequate levels of literacy, it would not be possible to expect a Gram Sabha to understand the rules/provisions and at the same time feel bold enough to take action. It fears that Gram Sabhas will fall prey to the local traders and mafias. The conservation lobby feels strongly that protected areas in particular will be jeopardized as a result of this Bill and should not be considered within its purview. It is certainly not a holistic

policy approach for addressing tribal issues, and seems to be made in haste without consideration to the other relevant issues that affect tribals. The draft in its present form only caters to the tribal groups mentioned in the schedule of the Constitution. The procedure of including more tribal groups in the schedule list is a lengthy procedure and was last done in 2002 after amendment to the 1950 Act. A number of tribes are yet to be listed. The draft if implemented will do gross injustice not only to tribal groups but also to people who are dependent on the forests for their livelihood. On the other hand, proponents of the Bill feel it is a remedy to the grave historical injustice that has been inflicted on tribals from time immemorial. They feel that tribals need land to sustain their culture, and by giving them their rights this is an attempt to undo the injustice done to them. Moreover, it is felt that as tribals know their surroundings well, they are better equipped to safeguard and protect their flora and fauna. They also argue that the legislation only seeks to recognize and regularize ground reality by granting legal entitlement to those millions of families who are today seen as encroachers and thus empower and improve livelihood chances of a historically marginalized people. This, they point out is already a part of the existing government orders and that bringing them under a central legislation will ensure that these orders will be implemented.

The policy formulation process in the forest and wildlife sectors has moved away from the domain of bureaucracy and experts to consultations with many stakeholders from the public and private sectors and civil society. Gradually, policy changes have expanded the role of local committees in terms of functional areas. Communities are increasingly involved in forest protection and the implementation of forestry schemes at the local level. The need to strengthen capacities of local committees and village leaders remains. The requirements of the forestry sector seldom appear on the priority list of the state exchequer, and budget allocations to the sector have remained low. External assistance has become important for implementing long-term structural changes. The mobilization of adequate resources for forestry programs and the inordinate delay in translating policies into statutory provisions require immediate attention.

Until recently, policy assessment was the exclusive domain of top-level bureaucrats and national experts, and assessments tended to be subjective. The participation of more stakeholders in monitoring and assessments has increased objectivity, although coordination remains a challenge.

The new approach for preparing, implementing and monitoring site-specific plans provides an opportunity for local communities to participate in decision-making. The new approach also requires institutions to strive for the right balance of effectiveness, efficiency, equity and sustainability. The changes in the policy process require problem-oriented forest policy research.

5.6 Present Scenario

5.7 Let Us Sum Up

In this part of unit we have learnt about conceptual and historical development of PRIs. How it applied since pre-independence and post-independence era. Beside these the discussion precedes with presentation of 73rd amendment and extension to schedule area act, 1996 and their salient features, which ended with situation of present scenario.

5.8 Key Words

Panchayat: *bhaiband* or 'brotherhoods' (in the villages of the Bombay Deccan) the *nurwa* and *patidar* (in Gujarat), the *gana*, *sabha*, *samiti* and *parisad* (in the north), the *nadu*, *brahmadeya* and *periyannadu* (in southern India), Gram Swaraj/Sabaha: Village self governance, PRIs: Panchayati Raj Institution, democratic decentralization of decision making process. **Minor Forest Produce:** "Minor forest produce" includes all non-timber forest produce of plant origin including bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and the like; **Indigenous Rights:** The rights inherited by the native people of any area, **Forest Dwelling Scheduled Tribes:** The communities residing in and

around the forests and chiefly dependent on forests for their livelihood, e.g. hunter-gatherers and shifting cultivators. **Amendment:** To correct, to alter in detail, bill before Parliament with view to improvement.

5.9 Check Your Learning

1. Discuss the reasons behind the centralization of forests in India
2. How was forest used during the pre-colonial period?

5.10 Suggested Readings

Gandhi, M.K.	<i>Collected writings of Mahatma Gandhi</i> , c. 86 vols. (New Delhi: 1958 -)
Government of India	<i>Report of the Committee on Panchayati Raj Institutions</i> (New Delhi: GOI, Ministry of Agriculture and Irrigation, Dept. of Rural Development, August 1978)
Institute of Social Sciences	<i>Status of Panchayati Raj in the States of India, 1994</i> (Institute of Social Sciences, Delhi: 1995)
Pal, Mahi	'Panchayats in Scheduled Areas', <i>Economic & Political Weekly</i> , 35, 9 (May 6 2000), pp 1602-1606.
Sahay, V.S. and P.K. Singh	"Indian Anthropology", K.K. Publication, Allahabad. (1998)
Srinivas, M.N.	<i>Caste in modern India and other essays</i> (London: Asia Publishing House, 1962)
MOEF	1988. <i>The National Forest Policy, 1988</i> . New Delhi, Government of India.
Planning Commission.	2002. http://planningcommission.nic.in/about.html

Paper IV Constitutional Provisions and Tribal Development Programmes in India

Unit-I History of Tribal Policy and Approach to Tribal Development in India

- (a) Concept of Tribal development
- (b) Tribal Policy during; (i) Pre-British Periods; (ii) British Period; and (iii) Post-Independence Period
- (c) Approaches to tribal development in India

Unit-II Five Year Plans and Tribal Development Programmes

Unit-III Constitutional Provisions and Safeguards

Unit-IV Provisions in Fifth and Sixth Schedules, Autonomous District Councils

Unit- V Critical review of some tribal policies

- (a) Provisions of the Panchayats (Extension to Scheduled Areas) Act, 1996,
- (b) Constitution (Scheduled Tribes) Orders (Amendment) Bill, 2006
- (c) Draft Scheduled Tribes (Recognition of Forest Rights) Bill, 2005.