UNIT 7 RIGHTS OF DALITS AND TRIBES

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7.0 OBJECTIVES

In this unit we discuss the status and rights of Scheduled Castes and Scheduled Tribes and the machinery to implement those rights. After studying this unit, you should be able to:

• understand who are dalits and tribes;

• know various types of disabilities imposed on dalits as a result of the practice of untouchability;

• explain special rights conferred on dalits by the constitution to remove their socio-political disabilities;

• evaluate the nature and effectiveness of untouchability abolition laws;

• describe the problems and violence faced by dalits and tribes and the violation of their rights; and

• to know the functioning of National Commissions for Scheduled Castes and Scheduled Tribes.
7.1 INTRODUCTION

"Dalit" is a Marathi word, first used by Mahatma Jotiba Phule, a social reformer of 19th century, which means “broken people”. Dalits are known by different names: Untouchables, Outcastes, Harijans (used by Mahatma Gandhi), Depressed Classes, Chandala (a despised and lowly caste), Mlechha (despised, a derogatory term for foreigner), Asprushya, achhoot (literally, “untouchable”, from the Sanskrit sparsha or touch, and the Hindi choona or to touch), ati- Shudra (beyond or below the Shudra, the lowest “untouchable” caste), dasyu, dasa (terms denoting slaves or chattel), panchama (literally, the fifth, i.e., beyond the four varnas, and so on. In addition to these names which refer to Dalits in general, there are also the names of specific castes that are often but not always associated with particular occupations such as dhobi, bhangi, chamar, holeya, mahar, maang, paraiyan, pulaya, etc. In official documents, including the Constitution of India, dalits are designated as the Scheduled Castes (SCs). According to 2001 Census, the SCs number 166 million, constituting 16.2 per cent of the population. These castes traditionally have been exploited and marginalized in many ways. After independence several steps including providing constitutional rights have been taken to provide them justice and equality. Of course, traditions do not go easily. So is the case with them also. Another social category, economically, socially and politically marginalized is that of Scheduled Tribes. Legally, tribes are people belonging to tribes or tribal communities specified in the list of such tribes as per Article 342 of the Constitution. Scheduled Tribes are weaker sections not in terms of caste. They are the people who have been living in remote forest areas and hill tracks without any access to modern socio-economic inputs. It is difficult to define the tribal people of India in terms of any single set of formal criteria. They are popularly believed to constitute the aboriginal element in Indian society. But most tribals share certain common features like nature of rurality, illiteracy, economic backwardness and social deprivation. Historically, one of the principal feature of the tribal population has been its ecological, economic and social isolation. For centuries, the tribal people have been confined to hills and forests. This isolation has left definite impression on their social systems. It has also given them, in spite of wide cultural variations, a common destiny in the Indian society.

In this unit we will discuss about the status of SCs and STs, the rights they have been provided in the Constitution of India and some measures taken by government for their welfare.

7.2 PROBLEM OF UNTOUCHABILITY AND SOCIAL EXCLUSION

Caste system is a unique feature of Indian life. It is believed that originally there were only four broad/main castes — the Brahmins (the priestly class), the Kshatriyas (the warrior class), the Vaisyas (the merchant and peasant class), and the Sudras (the Untouchable class). But over the last two thousand years, these four castes have been astronomically sub-divided into thousands of castes and sub-castes. The 1901 census revealed that there were two thousand three hundred and seventy eight “main Castes” and tribes in India. The official list of “scheduled castes” prepared by the then British authorities of the Government of India in 1935 contained four hundred twenty nine Untouchable castes.
According to Dhamasutras (religious books), because Sudras were born from the feet of the Universal Soul Brahma (God), they were destined to serve the three upper castes/varnas born from His mouth (Brahmins), arms (Kshatriyas), and thighs (Vaisyas). These justified the hierarchical system of social orders saying that all these four orders represent the Creator, Brahma. It is believed that from the Lord’s “mouth” were born the Brahmins, so they became a priestly class; from His “arms” were born the Kshatriyas, so they became warriors; from His “thighs” were born Vaisayas, and they performed ordinary work, like business or agriculture; and from His “feet” the Sudras were born and so they performed the dirty work of scavenging, disposing of dead animals or unknown human bodies. The Untouchables were told by the rules of religious books that if they accept their position in life without questioning and by doing their assigned duties they become eligible to be born in the next life in a high caste. They were also told that because of the sins they committed in previous life, they were born in Untouchable castes. In this way a system of hierarchical order was created which survives even today. In fact, it is the longest surviving apartheid-like system of exclusion in the world.

The old Hindu law prevented untouchables to read/recite the Veda (religious book) or participate in the Veda religious ceremonies of the Brahmins/Aryas.

Thus, traditionally Sudras /Dalits were excluded from engaging themselves in reading and learning profession and participating in Aryan religious customs and ceremonies. There is more to it. Many other disabilities and restrictions were imposed on them. For instance, any Dalit male who had had sexual relations with a Brahmin woman would be punished by “having his penis severed and his wealth confiscated, and if the woman has a husband or patron of some kind, these above two punishments will be followed by death”. Another rule from scriptures stated:

If he assumes a position of equality with high caste men, either in sitting, or going along the road, he shall receive corporal punishment. A Sudra committing adultery with women of the first three castes shall suffer capital punishment, or shall be burnt alive tied up with straw... if a Sudra intentionally reviles a Brahmin or criminally assaults him; the limb with which he offends shall be cut off.

For centuries, and even now, these castes have been subject to various restrictions/ limitations in their movements or relationships with other people, especially the high caste persons. Traditionally, they have been facing many social disabilities, like denial or restriction of access to public facilities such as wells, schools, roads, post offices and courts; denial or restriction of access to temples where their presence might pollute the deity as well as the higher caste worshippers; and from rest-houses, tanks and shrines connected to temples. They have been denied access to services such as those provided by barbers, laundrymen, restaurants, shops and theatres, and are required to use separate utensils and facilities within such places. They face a lot of restrictions on style of life, especially in the goods indicating comfort or luxury. Riding on horseback, use of bicycles, umbrellas, footwear, the wearing of gold and silver ornaments (in fact, their abject poverty could never afford them to do so), the use of palanquins to carry bridegrooms were all forbidden for these people. Some of these practices were aimed at assigning a subordinated role to (or forced inclusion of) a dalit (such as being compelled to play the drums at a religious ceremony). The performance of publicly visible acts of (self-humiliation) and subordination is an important part of the practice of untouchability. Common instances include the imposition of gestures of deference (such as taking off headgear, carrying chappal in the hand, standing with bowed head, not wearing clean or bright clothes etc.).
Normally, they were required to have their homes/huts constructed outside the village and quite away from the high caste families; this practice is followed even now in many villages. This segregation is believed to have a divine sanction. It was considered that even the touch of an animal did not pollute, whereas the very sight of an untouchable was enough to pollute and called for the performance of special cleansing ceremonies. Domestic and agricultural animals could live and eat in the same house with high caste Hindus but the untouchables could not even live in the same town. For many orthodox Hindus the cow dung is ritually so “clean”, that a Brahmin priest will use it to wash away his impurities. Even now untouchability continues to be widely prevalent and is practised in one form or another in most of the villages in India.

7.3 DALIT RIGHTS IN THE INDIAN CONSTITUTION

To address the problem of untouchability and to remove the socio-political disabilities faced by dalits our Constitution included two types of rights. The first set of rights prohibit discrimination based on caste and the second set of rights provide special measures to ensure their inclusion/participation in public offices (job reservation), educational institutions and representative bodies like Lok Sabha, State Assemblies, Panchayat and municipal bodies. Let us elaborate them further.

7.3.1 Equality for All

Articles 14, 15, 17, 23, 24 and 25 of the constitution provide the first category of rights. Article 14 of the Constitution declares that the “State shall not deny to any person equality before the law or the equal protection of laws.” Under article 15, discrimination by the State on the grounds only of religion, race, caste, sex, and place of birth is prohibited. Keeping in view the problem of Untouchability, Clause 2 of Article 15 further states that no person on grounds only of religion, race, caste, sex, or place of birth shall be subject to any disability, liability, restriction or condition with regard to (a) access to shops, public restaurants, hotels, places of public entertainment; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of state funds or dedicated to the use of the general public. Article 17 states that Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of “Untouchability” shall be an offence punishable in accordance with law. To give effect to this provision, the Parliament enacted the Abolition of Untouchability (offences) Act 1955, which was amended and renamed as the Protection of Civil Rights Act, 1976 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Article 23 prohibits traffic in human beings and forced/bonded labour practices. Article 24 provides that no child below the age of 14 shall be employed in any factory or mine or engaged in any other hazardous employment. Both these Articles are significant for SCs and tribals as majority of bonded/child labour belongs to these groups. Article 25 (2) (b) provides that Hindu religious institutions of a public character shall be thrown open to all classes and sections of Hindus. This provision is relevant as some sects of Hindus, especially of higher castes, used to claim that Dalits had no right to enter the temples.

In the second set of rights the Constitution imposes positive duty on the State to adopt special measures to provide Scheduled Castes equality in fact. Article 16 provides equality of opportunity for all citizens in matters relating to employment or
job in the government. It prohibits discrimination in matters of employment on prohibited grounds, including "caste". This Article has made a very special provision which permits Parliament to make any provision for reservation of appointments for SCs and STs. Under clause 4 (a) of this Article reservation in matters of promotion has been extended to dalits and tribals. Article 335 provides that the reservation provisions shall be made taking into consideration efficiency of administration. Article 15(4) empowers the State to make special provisions for advancement of any socially and economically backward classes and for SCs/STs. This provision has enabled the State to reserve seats for SCs/STs in educational institutions including technical, engineering and medical colleges.

To give effect to Article 16 and 15 (4) the government of India has issued orders in 1950 to reserve 15 per cent jobs and seats in educational institutions for SCs. This reservation is not time bound and is a temporary measure which can be allowed to continue so long as inequality exists between SCs and non-SCs.

Under Articles 330 and 332, 78 and 540 seats are reserved for SCs in the Lok Sabha and State Assemblies respectively. Initially, these political reservations were for 10 years, but they have been periodically extended through constitutional amendments (the present extension ends on 26 January 2010). Under Article 243 (D), reservation of seats in village Panchayats and Zila Parishads has been made for SCs/STs in proportion to their population at respective level in direct election. It has also been provided that the reserved seats for SCs/STs shall be allotted by rotation to different constituencies in Panchayats at each level. Under Article 343-T, reservation of seats for SCs/STs in proportion to their population has been made in municipal bodies at each level. Out of these reserved seats at least 1/3rd has been reserved for SC/ST women. It must be noted that the political reservations under these two Articles are not time-bound.

Check Your Progress 1

1) Who are the dalits?

2) Discuss the origin of caste system.

3) List the various types of disabilities faced by dalits.
4) What special rights have been provided to dalits(SCs) in the Indian constitution?

7.4 UNTOUCHABILITY ABOLITION LAWS

The Constitution did not define "untouchability" or the enforcement mechanism to punish those practicing untouchability as per Article 17. Therefore, the Parliament adopted the Untouchability (Offences) Act, 1955. This has been amended and renamed as Protection of Civil Rights Act in 1976 (PCR Act).

7.4.1 Protection of Civil Rights Act, 1955 (as amended in 1976)

This Act defines the following forms of discrimination and discriminatory social behaviour by high castes against lower castes as a violation of their civil rights.

Forms of illegal discrimination identified in the Act are:

- Denial of access to temples / places of public worship;
- Denial of access to teashops, hotels, restaurants etc.
- Denial of access to drinking water resources;
- Denial of barber services;
- Denial of services by the dhobi (washerman);
- Denial of access to village chaupal (meeting place) or Gram Sabha;
- Discrimination in educational institutions, Public Health Centres etc.;
- Discrimination in the use of utensils kept in public hotels and restaurants;
- Being forced to carry out occupations like removal of carcasses and sweeping;
- Prevention from carrying any occupation, trade or business;
- Preventing the use of public cremation / burial grounds;
- Denial of use of public passages, roads, etc.;
- Use of abusive or insulting language;
- Prevention of construction or acquiring of any residential premises;
- Denial of access to dhamshala, sarai (boarding houses, inns), etc.;
- Denial of use of jewellery, ornaments, etc.;
- Non-supply of goods from general shops;
- Justifying Untouchability on historical, philosophical or religious grounds or on the ground of any tradition of the caste system.
All these acts of discrimination have been declared as untouchability offences. The Act prescribes that anyone who practices untouchability as elaborated above shall be punished with imprisonment for a term not less than one month and not more than six months and also with fine which ranges between Rupees 100 to 500. The significant feature of this Act is that it prescribes enhanced penalty on subsequent convictions. If a person commits the offence second time he/she shall be punished with imprisonment for a term between six months and one year and also with a fine between 200 to 500 Rupees. For the third offence, or any offence thereafter, the punishment includes imprisonment of two years and also a fine between 500 and 1000 Rupees.

### 7.4.2 The Scheduled Castes and Scheduled Tribes
*(Prevention of Atrocities) Act, 1989*

The PCR Act (in its 1955 and 1976 formulation) did not bring desired results. Offences against dalits did not decrease; rather they were increasing. In fact, the commission of offences aggravated into atrocities. In the 1970s and 1980s growing number of atrocities against dalits were committed. To deal with this situation the Parliament enacted Prevention of Atrocities Act (POA) in 1989. This Act not only listed out atrocities but also tightened the law further and raised the severity of punishment. It identified the following atrocities:

1. Forcing a dalit or tribal to drink or eat any inedible or obnoxious substance;
2. Dumping excretion waste matter, carcasses, in his premises or neighbourhood;
3. Forcible removal of clothes from the person or parading him naked or with a painted face violative of the dignity of the person;
4. Wrongfully occupying or cultivating any land owned by or allotted to a dalits and tribals;
5. Wrongful dispossession of land or premises;
6. Compelling or enticing a member to beg or forced or bonded labour;
7. Forcing or intimidating a SC /ST not to vote or to vote for a particular candidate;
8. Instituting false, malicious, vexatious suit or criminal or other legal proceedings against a member of these communities;
9. Giving false and frivolous information to any public servant, thereby causing injury to the member;
10. Intentionally insulting or intimidating or humiliating dalits /tribals;
11. Assaulting or using force on a SC or ST woman to dishonour or outrage her modesty;
12. Using positions of power for exploiting her sexuality;
13. Foul the waters of any spring or reservoir used by the members SCs/STs;
14. Denying a member customary right to a place of public passage or resort; and
15. Forcing or causing a member to leave his house and village.

There are many striking features of this Act. First, it prescribes harsh and enhanced penalties. Given the nature of these offences, they have been made punishable with
imprisonment between six months and five years with fine. The Act also provides for procedural justice. Therefore, it prescribes that if anybody who does not belong to the communities of SCs and STs fabricates or gives false evidence in any case leading to a conviction for a capital offence, he / she shall be punished with imprisonment for life. Further, the Act says if an innocent member is convicted and executed as a consequence of forged evidence; the person shall be punished with death. If any person is convicted of committing an atrocity, the special court may, in addition to awarding him punishment, declare that the property of such persons shall stand forfeited. Prof. Hargopal says the growing severity of punishment is indicative of the growing concern for the dalit rights and the belief that deterrence can contain the atrocities.

The second and the most important feature (and not widely known also) is that under the Act the accused is not entitled to get anticipatory bail from the court. This is probably the only law of the land where there is no provision for the accused to seek or get anticipatory bail. Thirdly, the Act provides for speedy trial. The State governments shall specify in each district a “special court” to try offences under the Act.

The POA Act also empowers the Central Government to make rules for carrying out the purposes of the Act. In pursuance of this objective, the Government notified in 1995 various rules.

Let us discuss these rules. (1) The District Magistrate and Superintendent of Police while reviewing the law and order situation as a part of precautionary and preventive measures may not only cancel the arms licenses of persons but also can seize their firearms with a view to ensuring the safety of SCs and STs. They can even provide arms licenses to the members of SCs and STs, if they deem it necessary. (2) These rules provide for the constitution of powerful State, district and division level committees to assist government and for the establishment of vigilance and monitoring committees to ensure the effective implementation of the PAO. (3) Monetary relief and rehabilitation has to be provided to the victims of atrocities, which range between Rupees 25,000 to 2,00,000. Rupees 1 to 2 lakhs is prescribed in the case of murder of the non-earning and earning member of the family respectively.

Some critics point out that despite the coming into force of POA on 30 January 1990, there is no significant decline in the occurrences of atrocities against dalits. One main reason for this is that the implementation of the Act has largely remained tardy and weak. There appears to be a lack of will on the part of law enforcement officers to take action. The Supreme Court in 1992 in State of Karnataka vs. Appa Balu Ingale said that more than 75 per cent of the cases under this Act are ending in acquittal at all levels.

7.4.3 Employment of Manual Scavengers and Construction of Dry Latrine (Prohibition) Act, 1993

The most degrading of all occupations and forms of labour thrust upon dalits is that of manual scavenging. Persons who are engaged in this work are made to clear faeces from public and private latrines, using broom, tin plate and a basket and carry them on their heads to dumping grounds. These dalit workers are paid very low wages. In cities, scavengers are lowered into filthy gutters in order to unclog them and fully immersed in human waste without any protective gear. A number of them die as a result of carbon monoxide poisoning.
The Manual Scavengers (Prohibition) Act bars any person to engage persons for manually carrying human excreta. The State Governments are empowered to make schemes for regulating conversion of dry latrines into water sealed latrines and rehabilitation of those who were employed for manual scavenging. The Act mandates a time bound phased programme for conversion of dry latrines into water based latrines. Financial or technical assistance has to be provided through government schemes. The Act makes violation of the law an offence punishable with imprisonment up to one year or with fine or both.

### 7.5 VIOLATIONS OF DALIT RIGHTS

Rights of dalits are violated throughout India despite PCR and POA Acts. The official statistics for the decade 1990-2000 indicate that a total of 285,871 cases of various crimes against dalits were registered countrywide, of which 14,030 were registered under the Protection of Civil Rights Act and 81,796 under the Prevention of Atrocities Act. This means that an average of 28,587 cases of practice of untouchability and atrocities against SCs were registered every year during the 1990s. These include 553 cases of murder, 2,990 cases of grievous hurt, 919 rapes, 184 kidnappings/abductions, 47 dacoities, 127 robberies, 456 cases of arson, 1,403 cases of caste discrimination and 8,179 cases of atrocities. In other words, every hour more than three cases of atrocities against SCs are registered, and every day three cases of rape and at least one murder are reported.

Besides the above data on crimes against dalits following two incidents may be noted: (i) On 1 December 1997, Ranvir Sena in Bihar shot dead 16 children, 27 women and 18 men in the village of Laxmanpur-Bathe, Jehanabad district. Five teenage girls were alleged to be raped and mutilated before being shot in the chest. (It is curious that no one practices untouchability when it comes to sex.). The villagers were sympathetic to a Naxalite group that had been demanding more equitable land redistribution in the area. When Human Rights Watch, a New York based NGO, asked why the Sena killed children and women, one Sena member responded, “We kill children because they will grow up to become Naxalites. We kill women because they will give birth to Naxalites”. (ii) In July 1998 an Allahabad High Court Judge was reported to have had his chambers purified with “Gangajal”, because it had been occupied by a dalit judge.

### 7.6 NATIONAL COMMISSION FOR SCHEDULED CASTES (NCSC)

Under Article 338 of the Constitution the President is empowered to appoint a Commissioner for SCs and STs with a broad mandate to investigate the working of all the schemes of preferential policies. The original conception of this office was to serve as an independent critic of the government. In the first two decades of its existence, the Commissioner produced excellent analysis of the working of these policies.

In 1990 the office of the Commissioner was made a five member Commission. However, by amending the Constitution the NCSCST was bifurcated in 2004, and now there are two Commissions — National Commission for SCs (NCSC) and National Commission for STs (NCST). The functions of both are similar. The NCSC is mandated to investigate and monitor all matters relating to the safeguards provided
in the Constitution and under any other laws for the SCs and to evaluate the working of these safeguards. It has power to inquire into specific complaints with respect to the deprivation of rights of SCs. It presents annual reports to the President which are subsequently tabled in the Parliament. You can know more about NCSC in Unit 11 of this course.

Check Your Progress 2

1) Explain the salient features of the Protection of Civil Rights Act, 1976.

2) Identify any eight atrocities under the Prevention of Atrocities Act, 1989.

3) Write about the two important features of POA, 1989.

4) Explain the nature, kinds and frequency of crimes against dalits.

7.7 RIGHTS OF THE SCHEDULED TRIBES IN THE CONSTITUTION

Article 342 of the Constitution provides for scheduling of tribes or tribal communities. Under this Article 500 tribes are notified by the Government of India. The Scheduled Tribes (STs) are also known as Adivasis or tribal people. As per 2001 Census STs number 8.43 crores, which constitutes 8.2 per cent of the total population.

The Constitution of India provides many special rights to tribal people. Under Article 16 reservation of posts in the State services and reservation in matters of promotion
for STs is provided. Under Article 15 (4) STs are provided reservation of seats in educational institutions, including technical, engineering and medical colleges and in specialized courses. On the basis of these two Articles a proportional reservation for STs, i.e. 7.5 per cent, has been provided by the Government.

Article 330 and 332 provide for reservation of seats for STs in the Lok Sabha and in the State Legislative Assemblies. Originally this political reservation was for a period of ten years which has been extended by amending the Constitution from time to time (the present extension ends on 26 January 2010).

The tribal people are associated with a territory and have strong and living tradition of self-governance. Accordingly, special provisions have been incorporated in the Constitution relating to the administration of the tribal areas. The relevant areas in the States of Assam, Meghalaya, Tripura and Mizoram have been formally designated as “Tribal Areas” while those in other States as “Schedules Areas”. The provisions of the Fifth and the Sixth Schedules apply to the administration and control of the “Scheduled Areas” and “Tribal Areas” respectively.

7.7.1 Protection of Tribal Identity

Let us elaborate how the tribal peoples’ strong and living tradition of self-governance has been ensured in the Fifth and the Sixth Schedules of the Constitution.

The Fifth Schedule has been described as “Constitution within the Constitution”. It gives lot of autonomy to Scheduled Areas (SAs) in the matter of administration. In the case of SA, the Governor has a special responsibility in respect of administration and control of the area. The Governor has power to direct non-applicable or application with suitable adaptation of Acts of Parliament or State Assemblies to SAs. Moreover, the Governor can make regulations for peace and good administration of the SAs in consultation with the Tribes Advisory Council, subject to their approval by the President. Such regulations may specifically prohibit or restrict the transfer of land, regulate allotment of land to tribals in such area and money lending to STs. The Governor has to submit a report on the administration of SAs to the President annually. The executive power of the State in respect of the SAs is subject to the provisions of the Fifth Schedule and the executive power of the Central Government extends to the giving of directives as to the administration of the said areas. The financial outlays necessary for raising the level of administration to that of the rest of the State are not voted but are charged on the Consolidated Fund of India under Article 275(1) of the Constitution. The financial sanction in these cases is automatic once a scheme is agreed to.

A unique feature of the Sixth Schedule is establishment of autonomous District Councils with legislative, judicial and executive functions, all rolled into one. The legislative functions under Para 3 of the Sixth Schedule cover management of land, water courses, forests not being a reserved forest, regulation of Jhum, village/town administration including police, inheritance, social customs. No law of the State legislature shall extend to a District Council Area without its consent. The District Council can modify or adapt with exceptions such laws if it so desires. In the case of Assam, the Governor can direct by a notification that any Act of Parliament and of the State legislature shall not apply to “an autonomous” district/region” or any part of it or shall apply subject to such modifications and exceptions as he may specify. In the case of Meghalaya, Mizoram and Tripura, this power in respect of Acts of Parliament is however, vested with the President of India.
Despite enormous powers that are given to Governor under the Constitution, which are automatic, to adopt Central and State laws for SAs and TAs, B.D. Sharma, a former Commissioner for SCs and STs, writes that no systematic review of the Central and State laws was made by the President (as per Article 372), and no Governor deemed it necessary to have a second look at those laws in terms of his responsibility implicit in the limitless powers for adaptation under Para 5 of the Fifth Schedule and Para 12 of the Sixth Schedule. There is more to it. Virtually no Governor has used this power ever thereafter to adapt any Central or State law enacted in the last half century.

Thus we have an ambivalent situation. Despite Constitutional rights of STs, the tribal people stood deprived of the protective shield of their traditional system of self-governance. The inaction of the Government has made them totally defenseless. Moreover, all sorts of intruders, traders, contractors, criminals and fortune seekers are challenging the simple people of these areas. All human rights embedded for the identity of the community and its natural right of self-governance and command over resources in the traditional territories have been severely limited.

There is a ray of hope, however. The reservations in Panchayats and Municipalities for STs are now a constitutional mandate under Article 243D and 243T. The traditional right of self-governance of the tribal community has been given a formal frame under the Panchayats (Extension to the Scheduled Areas) Act, 1996. It may be noted here that the Constitution (Seventy-third Amendment) was not extended automatically to the Scheduled Areas, thus it became the first law of independent India not applicable to SAs. Hence the 1996 Extension Act was adopted. Under this Act it is mandatory that not less than 50 per cent of seats in Panchayats at any level shall be reserved for STs irrespective of the proportion of their population in the relevant areas and that the Chairperson of all such Panchayats shall be a ST.

Some of the important powers of Gram Sabha in Scheduled Areas according to the Panchayats Extension Act are:

i) Safeguard and preserve the traditions and customs of the people;

ii) Approval of the programmes and projects to be carried on;

iii) Grant of license or mining lease for minor minerals;

iv) Regulate or restrict any sale of intoxicants;

v) Ownership of minor forest produce;

vi) Prevention of alienation of land;

vii) Management of village markets;

viii) Control over money-lending.

7.8 VIOLATIONS OF THE RIGHTS OF TRIBAL PEOPLE

In the earlier section we have discussed how in spite of constitutional responsibilities in the fifth and sixth schedule for the tribal States the interests of tribal have been neglected. Following points further illustrate the violations of rights of Tribals.
Rights of Special Categories

1) The representation of STs in government jobs is inadequate. Their share in A, B, C, and D grades of services in Central Ministries as on 1 January 1999 was 3.29, 3.35, 6.07 and 7.00 per cent respectively. The Hindu reported on 2 February 1999 that the backlog in SC and ST appointments is reported to be 25,000 in Tamil Nadu alone and 10 lakh in Union Government services. Some vacancies have not been filled since 1978.

2) Presidential Orders for scheduling communities broadly followed the pre-independence listing of tribals in the British provinces. A detailed exercise for areas of erstwhile Indian States was not undertaken. Some communities were left out from scheduling even though they were listed earlier as tribes and their areas were non-regulation areas, e.g. the Gonds and Kols in Sonbhadra and Mirzapur. No Areas were scheduled in Kerala, Karnataka and Tamil Nadu which have some of the vulnerable groups, as in Tripura and West Bengal.

3) Money lending is a major problem in tribal areas. Many individual money lenders and banks are exploiting tribal people. The State has not succeeded in controlling money lenders. Some of the banks charge interest exorbitantly. Thus the institutional credit itself became responsible for large-scale alienation of tribal lands.

Thus the basic reasons of tribal indebtedness have remained unresolved despite the presence of laws to deal with the issue. However, it should be recalled that imprisonment for defaulting loan payment has been prohibited under the International covenant on Civil and Political Rights.

7.9 NATIONAL COMMISSION FOR SCHEDULED TRIBES (NCST)

Under Article 338A, the NCST is functioning since 2004. It is mandated to investigate and monitor all matters relating to the safeguards provided in the Constitution and under any other laws for the STs and to evaluate the working of these safeguards. It has power to inquire into specific complaints with respect to the deprivation of rights of STs. It presents annual reports to the President which are subsequently tabled in the Parliament. You can know more about NCSC in Unit 11 of this course.

Check Your Progress 3

1) Discuss the administrative, legislative and judicial autonomy enjoyed by tribal people under the Sixth Schedule of the Constitution.

2) The Fifth Schedule has been described as "Constitution within the Constitution". Explain this statement.
3) Do you think the Governors are exercising their enormous powers under Para 5 of the Fifth Schedule and Para 12 of the Sixth Schedule?

4) What powers are conferred on Gram Sabha by the Panchayats Extension to the Scheduled Areas Act, 1996?

7.10 LET US SUM UP

In this unit we have read about the status of Scheduled Castes and Scheduled Tribes in India and the problems they have been facing as marginalized and vulnerable communities. Scheduled Castes also known as Dalits are earstwhile untouchables, who traditionally have been out castes in varna and caste systems. For centuries these low castes have been subject to various restrictions and discriminations. Scheduled Tribes are people who have been living in Forests and hills for centuries and have remained isolated from social, cultural and economic changes taking place in the main land areas. After independence the Constitution of India, to remove the socio-political discriminations, included two types of rights for these people. In the first place through general civil and political rights of all persons have to be treated equal irrespective of caste, religion, race, sex and place of birth. The other kind of rights makes special provisions for Scheduled Castes and Tribes. These include reservations in elected bodies, educational institutions and government jobs. In addition, governments have also formulated and implemented special welfare schemes for them. For protection of identity and culture of Tribals Constitution also provides special measures in Schedule 5 and 6. While some progress has been made in removal of discrimination and provision of benefits of development to SC and STs in many ways, they still suffer various types of social and economic problems, particularly at societal level. Much needs to be done for promotion and protection of their rights and make them feel equal citizens of the country able to enjoy and exercise equal rights.

7.11 USEFUL BOOKS AND ARTICLES


7.12 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress 1

1) Dalits are persons of lowest caste. Also known as Sudras, Outcastes, Harijans, Untouchables (cahoots), Scheduled Castes or Depressed Classes. The term “dalit” is a Marathi word, which means “broken people”. For details see section 7.1

2) According to Dharmasutras it is believed that different castes were born from the Universal Soul Brahma (God): Brahmins (upper caste) were born from the Head and mouth of Brahma, the Kshatriyas were born from arms of Brahma, Vaisyas from the thighs and Sudras from the feet of Brahma. Since Sudras were born from the feet of God, they were destined to serve the three upper castes / varnas. See section 7.2 for details.

3) Dalits have been facing many disabilities, such as they not allowed to enter temples or recite scriptures from holy books or even listen to recitation from holy books. They are given harsh punishments for adultery with higher caste woman. Access to facilities such as wells, schools, roads, post offices is denied or restricted. They have been denied access to services such as those provided by barbers, laundry men, restaurants, shops, and theatres, and are required to use separate utensils and facilities within such place. For details see section 7.2.

4) Special rights have been provided to them include: (i) Under Article 15 (2) State cannot discriminate people on grounds of caste (as dalits are discriminated) or impose any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels, places of public entertainment or the use of wells, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds (ii) Article 17 abolishes untouchability. Under this Article three Acts have been enacted to punish those who practice untouchability. (iii) Article 25 (2) (b) provides that Hindu religious places shall be accessible to all sections of Hindus (including dalits). (iv) Reservation of seats in educational institutions for SCs is provided under Article 15(4) and job reservation is available under Article 16 (4) Article 330 and 332 provides for reservation of seats in Parliament and State Assemblies.

Check Your Progress 2

1) PCR Act, 1976 defines 18 forms of discriminations practised against dalits. They are in fact forms and manifestations of the practice of untouchability, such as denial of entry to temples, shops, restaurants, public ghats / wells, etc. secondly, the Act prescribes imprisonment between one to six months and fine of Rs. 100 to 500 for those who practice untouchability. Thirdly, the penalty is increased for second and subsequent convictions. See sub-section 7.4.1.
2) See sub-section 7.4.2

3) First, POA Act mandates the establishment of special courts in every district to try the cases of atrocities. Second, the persons accused of committing atrocities are not entitled for bail from the court. See sub-section 7.4.2

4) Crimes/atrocities of various kinds against SCs are committed, such as, murders, rapes, parading naked etc. In the 1990s annually there were more than 500 cases of murder, 2,990 cases of grievous hurt, 919 rapes, 184 kidnappings, 456 cases of arson, 1,403 cases of discrimination and 8,179 cases of atrocities. See section 7.5

Check Your Progress 3

1) Under the Sixth Schedule the tribals have autonomy to manage land, water courses, forests (other than reserved forest), Jhum, village and town administration including police, inheritance and social customs. Without the consent of District Council Area (DCA), no State law shall be extended to them. DCA can modify or adapt these laws. See section 7.8

2) The Fifth Schedule has been described as a “Constitution within the Constitution”. It gives lot of autonomy to Scheduled Areas (SAs) in matters of administration, e.g., the Governor has power to exempt the application of Acts of Parliament to these Areas. He may suitably adapt them for SAs. For any new programmes/plans, the budget is not voted by State legislature but automatically money is charged on the Consolidated Fund of India. See sub-section 7.7.1

3) The enormous powers vested with the Governor under Fifth Schedule are rarely invoked. According to B.D. Sharma virtually no Governor has used these powers during the first 50 years of the Constitution.

4) The powers include, among others, safeguarding and preserving the local traditions/customs; granting of license for minor minerals; regulation of intoxicants; ownership of minor forest produce; prevention of alienation of land; and control over money lending.