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### EXPERT COMMITTEE

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The block titled ‘Tribal Policies and Legislation’ consists of 4 units. It deals with the historical perspectives of tribal policies from the pre-independence period to the post-independence period. It also speaks about the Constitutional provisions and Acts for the Tribals. The block also provides meaning to the tribal territories and Common Property Resources and at the same time also includes the International Conventions and Covenants in respect to the tribals.

Unit 1 is about the ‘Historical Perspectives of Tribal Policies’ and hence, does provide information about the Tribal Policies during Pre-Independence Period and the Post-Independence Period. It even touches upon the Tribal Policies in the era of Economic Liberalization while at the same time emphasizing on the Eleventh Five Year Plan and the Scheduled Tribes and the Draft National Tribal Policy.


Unit 3 is about ‘Tribal Territories and Common Property Resources’. The unit begins by giving the meaning and features of Tribal Territory & CPRs. It also deals with the Common Property Resources in Tribal Areas and gives information about the legislative Writs for Tribal Territories.

Unit 4 ‘International Conventions and Covenants’ talks about the indigenous People and Interventions of the UNO and also provides significant awareness about the ILO Convention 107 of 1957 and ILO Convention 169 of 1989. It also provides information about the UN Declaration on the Rights of Indigenous People and the Indigenous People of Asia and India.
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UNIT 1  HISTORICAL PERSPECTIVES OF TRIBAL POLICIES

Structure

1.0 Objectives

1.1 Introduction

1.2 Tribal Policies during Pre-Independence Period

1.3 Tribal Policies during Post-Independence Period

1.4 Tribal Policies in the era of Economic Liberalization

1.5 Eleventh Five Year Plan and the Scheduled Tribes

1.6 Draft National Tribal Policy

1.7 Let Us Sum Up

1.8 Further Readings and References

1.0  OBJECTIVES

In this unit, we would be discussing the historical perspectives of tribal policies down the decades, both before and after the colonial period. After going through the unit you should be able to:

a) Understand various policies for tribals in the colonial period.

b) Examine the policies for tribals in the post-colonial period.

c) Explain the Draft National Tribal Policy.

1.1  INTRODUCTION

The colonial period in India began with the British colonizers entering India in the 18th century for trade and commercial ventures. They observed economic and cultural diversity and heterogeneity in livelihood. Hence, they categorized the Indian populations into certain habitational and occupational groups for their administrative convenience. The colonizers tried to develop these categories by way of providing education, health facilities, and communication so as to bring them into the mainstream society. They started implementing various laws, acts and policies for the development and benefits of these people.

After decades of policies for tribals during the colonial period and despite various Constitutional provisions and Acts, the plight of the tribals still persists. The following sections diachronically brief the tribal policies of the colonial and, post-colonial periods respectively. The post-colonial period is further divided into two sub-sections, namely pre and post-economic liberalization. The eleventh five-year plan and Draft Tribal National Policy, which are part of the post-economic liberalization period, are treated separately.
1.2 TRIBAL POLICIES DURING
PRE-INDEPENDENCE PERIOD

The British attributed the backwardness and inferiority of the tribes to habitation
structure and isolation of the people who were shy of coming to the mainstream
society. Hence, they tried to bring them to the mainstream culture through certain
policies. They engaged revenue collectors, forest officials, and local people to
collect data pertaining to these people. Economic development of the people was
a prime requisite of that period. This section elaborates the British policies for
tribal development during the colonial government.

The history of the forest policies reveals that interest in forestry was noticed as far
back as 1806 with the reservation of teak forest in Malabar during the British
period. It was done so in connection with the supply of timber to England for the
royal navy and other needs during the war with Napoleon. In course of time,
because of unabated railways expansion in British India and lack of any supervision
of the felling operation, great chunks of forests were destroyed. The Government
became aware of rapid depletion of the forest due to such reckless and wasteful
manner of forest operation by private enterprise. Then in 1862 the Governor
General called for a department of forest to supply the required wooden sleeper
for the railways. Thus, the British India witnessed the establishment of Forest
Department in 1864 with the help of the German foresters. The practice of scientific
forestry in India may be said to have begun with Mr. Dietrich Brandis who took
over the responsibility as the Inspector General of the forest, India, in 1864
(Dash, 2002, p. 354). Forest Department was established in the same year. Prior
to this the British made a stopped the free movement of forest dwellers on the
forest. In 1865, the Forest Act of 1865 was enacted that empowered the
government to appropriate any land covered with trees. However, notification
could only be effected, if existing rights of individuals and communities were not
impinged upon (Mohapatra, 1997, available at http://www.ganesha.co.in/
JoPubWeb/Frontdiss.htm). In 1878 another act was made which was particularly
concerning with removing ambiguity about the ‘Absolute Proprietary Right of the
State’. The new act was designed to facilitate strict State control over forest
resources, and was distinctly ‘annexationist’ in nature (Lowbuary, 2005, available
at http://www.ganesha.co.in/JoPubWeb/Frontdiss.htm).

In order to check the deforestation and for consolidation of the forest estate, the
assertion of State monopoly right over forest was needed and for this purpose, the
need of a separate department was felt, and at the same time, the enactment of
legislation was needed for its operation. Such provisions were required to control
the previously exercised unlimited rights of the users over the forests.

This policy went against the tribal as well as non-tribal communities. In this way
the customary use of forest by villagers was not based on their rights but on a
privilege which was being exercised at the mercy of the rulers. The loss of rights
and the consequent loss of control over the natural resources agitated the forest
dwellers giving rise to revolts in tribal areas and the people did not cooperate with
the forest department. In fact, alienation of natural resources has been one of the
main reasons for many tribal rebellions in the past as well as in the present. This
also gave rise to another fact that the people who were taking care of the forest
for their existence when it became the ruler’s property, turned passive in its
protection. Consequently, a settlement over forest was carried out in 1880.
The first forest policy was issued and declared in the year 1894 following the recommendation of Dr. Voeicker, a German expert. This policy, thus, emphasized the basic issues like the public benefit, preservation of climate and physical condition of the country, commercial neutralization of the timber and of the State revenue, checking of the encroachment of forest land for cultivation and use of forest in the interest of local population, etc. (Dash, 2002, p. 355). But it is a fact that no act has been mentioned about the ‘tribe’ and their access to forest resources. It was only the National Forest Policy 1988, in which the Adivasi forest rights was mentioned which introduced contractors, traders and non-tribal labourers to forest areas in a substantial manner. The Indian Forest Act of 1927 recognized concessions and privileges of the forest dwelling tribal peoples and peasants in respect of cultivations, grazing of animals, collection of firewood, and timbers for household consumption, of raw materials for crafts, mining and quarrying of stone, hunting and fishing gathering, besides those with regards to employment and other services (Mahapatra, 2002, p. 393).

The colonial governments including the Dutch and the Portuguese entered India for trade and commerce. However, due to communication constraint it was difficult for them to export goods and materials, particularly forest resources from India. So it was necessary for them to construct railway lines so as to make their commerce viable. Later on, they enacted Land Acquisition Act in 1894 to have a control over both the public and private land. This Act envisaged that, “acquiring of land for some public purpose by government/government agency, as authorized by the law, from the individual landowner(s) after paying government fixed compensation in lieu of losses incurred by land owner(s) due to surrendering of his/their land to the concerned government agency” (Retrieved from http://en.wikipedia.org/wiki/Land_Acquisition_Act), which the State still follows even after Independence for the construction of dams, and setting up of mining and industries in the tribal areas.

The rulers of the colonial period realized the difficulties in administration in the far flung tribal areas irrespective of the acceptance of policy of isolation or segregation. The isolation of the tribals, it was felt, would keep them away from political interference which was catching momentum at that time. Another assumption was that the tribals were better and happier in their natural surrounding and traditional socio-cultural milieu. It was further realized that isolation would protect the tribal against the hostility and exploitation, which they found on the increase. As isolationists, the British in position declared certain contiguous and thickly populated tribal belts as ‘Excluded and Partially Excluded’ areas. The policy of isolation was supported by the then separatist anthropologists who advocated for tribal reserves. For them, isolation, broadly speaking referred to a phenomenon where a group of people or communities was disconnected from other communities and resided in remote pockets having their own distinct ways of life. It could be in a relative form, complete or partial.

Subscribing to isolation, Elwin in 1939 suggested for the establishment of the ‘National Park’ theory (Mann, 1993, p. 77). Within the framework of policy of isolation and the creation of Excluded and Partially Excluded areas, some legislation was enacted. For example, Inner Line Regulation in 1873, which aimed at controlling trades and industries in the tribal areas of Northeast and restricting transfer of tribal land to non-tribals coming from outside and thereby to curb land alienation. With the restraint entry into interior tribal settlements, the other channels of
exploitations, such as money-lending would, it was thought, also be curbed. Thus, broadly speaking, the basic idea was to keep tribals away from the people coming from more advanced communities. The protection and preservation of tribal life and culture were ensured by the Scheduled District Act of 1874 that provided for special tribal administration. This excluded the tribal areas from the operation of ordinary laws of the country. The exclusion of the backward tracts from the jurisdiction of provincial government was also suggested by Montague-Chelmsford Report of 1918. Showing increasing concern of the tribal affairs and to protect tribal heritages, the tribal areas were divided into ‘Wholly Excluded Areas’ and ‘Area of Modified Exclusion’, according to Government of India Act, 1919. Under the Government of India Act, 1935, these areas were regrouped as “Excluded” and “Partially Excluded” areas (Mann, 1993, pp. 77-78).

On the eve of the Independence it was decided to put all the tribal communities, in a separate Schedule of the Constitution of India. Thus, the ‘excluded and partially excluded areas’ were enlisted in Fifth and Sixth Schedule (Mann, 1996, p. 2). The areas inhabited by Scheduled Tribes were termed as ‘Scheduled Areas’/ ‘Agency Areas’. These areas are specially defined in Para 6 of the part C of the Fifth Schedule of the Indian Constitution. Although the genesis of the concept of the Scheduled Area was traced back to the Scheduled District Act of 1874 in the pre-Independence period, the Scheduled Areas were retained to assist the tribals in enjoying customary right without exploitation and to develop and protect the tribes and their environment (Mallavarapu, 2006, p. 35).

As said earlier the tribal populated areas were divided into Excluded and Partially Excluded Areas under the Fifth and Sixth Schedules. The States except Assam, Meghalaya, Tripura and Mizoram are administered under Fifth Schedule of the Constitution and the remaining states were under the Sixth Schedule. Articles 244 (2) and 275 (1) are especially meant for the Sixth Schedule Areas that were later re-formed as ‘Schedule Districts’. This kind of formation by Verrier Elwin also made special provisions for the tribes of Northeastern India. The tribes of Arunachal Pradesh find special attention in Elwin’s book *A Philosophy of NEFA*. In the post-Independence period, the NEFA (North East Frontier Agency) visualized land in three Jhum Land Regulations in identical terms for the Three Frontier Tracts separately (Roy Burman, 2005, p.118). With regard to the forest policy, the Assam Forest Regulation was enacted. Communal land system prevailed in one form or the other in all the States of North-East, but remained, inoperative only in Tripura. The Manipur State Hill People Regulation, 1947, envisages the right to enjoy land within the boundaries of their village. The Arunachal Pradesh (Land Settlement and Record) Act, 2000, is a denouncement of the concept of *terra nullius*, meaning the traditional rights on land used by community. In this Act, a community is perceived as a ‘legal person’ only in a nominalistic manner. The Jhum Land Regulation recognized residents of a village as a whole, the clan, sub-clan, phratry or kindred as a community (Roy Burman, 2005, p.124).

### 1.3 TRIBAL POLICIES DURING POST-INDEPENDENCE PERIOD

In the post-Independent period, the British policy of isolation was shifted to the integration model of tribal development. So, various conventional programmes were started in the tribal areas so as to meet the Constitutional commitment and for bringing about social and economic change among the tribal people. New
direct and indirect measures were imposed to promote the integration of the tribal. The British protective legislations and their after-effect in certain parts of tribal India could not be found compatible with the democratic traditions, socialisms and integrations proposed in Independent India (Mann, 1993, p. 79).

Jawaharlal Nehru, who was concerned about formulating a tribal policy said, “I have no doubt that the development and change and so-called progress will come to them because it is becoming increasingly difficult for any people to live their isolated life cut off from rest of the world. But let this development and change be natural and be in the nature of self development with all the help one can give in the process” (Rath, 2006, p. 86). V. Elwin, a pronounced anthropologist worked among the Indian tribes and closely associated with Nehru, made a tremendous contribution to the tribal development policies. In his disputed isolationist approach Nehru insisted that tribal should maintain a selective distance from the mainstream socio-political and economic system, which was, however, not applicable to the Nehruvian patriotism. So Elwin changed his notion of isolationism to integrationism (Rath, 2006).

Based on his integrationist model, Nehru gave the policy of Panchsheel. The main features of the policy were:

a) Tribal 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.

b) Tribal people’s right in land and forest should be respected.

c) We should try to train and build up a team of their own people to do the work for administration and development.

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

e) We should judge results not by statistics or the amount of money spent but the quality of human character that is evolved (Mann, 1993, p. 36).

After Independence, a new forest policy was formulated in 1952 as a modification of the previous forest policies that more or less emphasized upon the destruction of forest or ecological deterioration. The Forest policy (1952) encouraged the formation of forest development committees in different states of India to check the commercialization of forest resources. In report of the committees on ‘Forest and Tribals in India’ (1982) some new lights have been thrown towards the forest based tribes of the country. The report was prepared under the chairmanship of B. K. Roy Burman, an Indian anthropologist and as such anthropological view points are duly reflected in the recommendations. At the outset of the report, he wrote a letter to Shri P.C. Sethi, the then Hon’ble Minister of Home Affairs, Government of India, saying that “there is a symbiotic relationship between the tribal social organization and forest economy in the specific historical context of our country”. Further, “the overwhelming majority of the populations living in forest are tribal communities” and that “they are not only forest dwellers” but also “they have evolved a way of life which, on the one hand, is woven round forest ecology and forest resources and on the other, ensure that the forest is protected against depredation by man and nature”. He emphasized that “there cannot be any
development of forest without development of the forest dwelling tribal communities”. The committee recommended that “the symbiosis between the tribal communities and the forest management should be established through imaginative forestry programmes and conservation and reorganization of traditional skill of labour” (as cited in Dash, 2002, pp. 357-358).

Just after Independence Five-Year Plans were initiated making target for development of certain specific projects including tribal development so as to make them integrated into the mainstream societies or thereby making their own destinies of ‘self-development’ by getting rid of exploitation by non-tribals. In pursuance of this, tribal development policies were framed in different consecutive Five Year plans of the Planning Commission.

In the First Five Year Plan (1951-56) no special attempts were made except introducing certain schemes on education and welfare. The schemes under this sector were meant to supplement the general development efforts for the backward classes including tribal populations.

In the Second Five Year Plan (1956-61) forty three Special Multipurpose Tribal (SMPT) Blocks were established in the scheduled area and the programmes of each block were given an additional thrust by siphoning a special allocation of Rs. 15 lakhs for five years. The Dhebar Commission (1960-61) was appointed to study the whole gamut of tribal development. The Dhebar commission recommendations have gone a long way to strengthen the protective shield and giving Panchayat Raj a tribal bias, besides taking a comprehensive and integrated view of tribal development. The commission’s recommendation on planning and development were more specific for solving the problems of land alienation, indebtedness, promotion of education, protecting tribal interest in forest and sectoral development. The Dhebar commission also recommended establishment of Tribal Cultural Research and Training Institutes in states for conducting training for official and non-official development functionaries and workers taking part in research studies so that their results can be used as feedback in planning and administration (Mohanty, 2002, p. 94).

During the Third Five Year Plan (1961-69), on the basis of Second Five Year Plan, 415 Tribal Development Blocks were set up to improve the conditions of tribal areas and to involve tribal people in the process of development with the aid of Panchayat Institutions as well. Priorities were in the order of economic upliftment, education, health, housing and communication.

In the Fifth Five Year Plan (1974-78), three categories, namely (a) area of tribal concentration, (b) dispersed tribals, and (c) Primitive Tribal Groups (PTGs) were given attention. Problems of the mentioned categories were emphasized. The basic approach towards tribal development adopted in the Fifth Plan was to identify larger areas of tribal concentration which included the Scheduled Areas, contiguous TD Blocks and other backward regions having 50 per cent tribal concentration.

In the Sixth Five Year Plan (1980-85), it was noticed that certain pockets of tribal concentration outside the tribal sub-plan area were still left out of the tribal sub-plan strategy. It was therefore decided during the Sixth Plan that pockets of centre groups villages/pockets having a minimum of 10,000 tribal population of which at least 50 percent are scheduled tribes, should be carved for intensive integrated development and Modified Area Development Approach, (MADA) under the Tribal sub-plan.
In the Seventh Plan (1985-90) the objective remained to be a mix of area-cum-family development. Simultaneously paying attention to the vulnerable sections amongst the scheduled tribes it can easily be ascertained that their resources based mainly on environmental devastation.

Check Your Progress I

Note: Use the space provided for your answers.

1) What were the policies of the British Government for the tribals?

2) What were some of the main policies of the Government for tribals in the Independent India?

1.4 TRIBAL POLICIES IN THE ERA OF ECONOMIC LIBERALIZATION

Liberalization as a concept gained momentum in 1990s as a form of globalization and economic reforms. It has made tremendous change in the economic life of certain tribal groups, particularly those who are advanced. The civil societies played an important role in providing the tribal Self Help Groups (SHGs) money and various loans at a subsidised rate. From the above discussed Five Year Plans, such efforts were made from the 8th Five Year Plan. It increased the economic growth and infrastructure of the concerned tribals. The skilled tribals also started migrating to the other parts of the country where they were working in public sector agencies and government as well. More involvement of international agencies was also found in the tribal development policy. They too were funding tribal development projects.

The major objectives and strategies of the eighth five year plan were to make the tribal sub-plan strategies more result-oriented and purposeful. Adequate emphasis was laid on the development of irrigation, horticulture, crops diversification, and improvement in the quality of education of the tribals. Special schemes were formulated during this period for the educational development of the scheduled tribes, particularly in the field of women education and reducing the drop-out rate among the Scheduled Tribes (ST) students at primary level.
The Ninth Plan (1997-2002) aimed to empower STs by creating an enabling socio-economically conducive environment for them to exercise their rights freely, enjoy their privileges and lead a life of self-confidence and dignity, at par with the rest of society. Therefore, a major shift was visualized in this period so as to envisage their advancement through a process of empowerment. This process essentially encompassed three vital components, viz. (i) social empowerment, (ii) economic empowerment, and (iii) social justice. To this effect, while ST-related line Ministries/Departments implemented general development policies and programmes, the nodal Ministry of Tribal Affairs implemented certain ST-specific innovative programmes (Dixit, 2006, pp. 187-188).

The Tenth Five Year Plan (2002-07) focused on tackling the unresolved issues and problems on a time bound basis, besides providing adequate space and opportunity for the tribals to empower themselves with the strength of their own potentials. The National Scheduled Tribe Finance and Development Corporation (NSTFDC) was set up in 2001 under which 14.53 lakh STs benefited.

1.5 ELEVENTH FIVE YEAR PLAN AND THE SCHEDULED TRIBES

This Plan does not make special plan for STs. It rather continues the existing schemes and programmes of the previous plans that were directed at the socio-economic development of the tribal population through an ‘area based approach’. It has only identified nomadic and de-notified tribe as disadvantaged. The Department of Elementary Education and Literacy and Higher Education in states have a provision for special incentives for ST students which include textbooks, uniforms, abolition of tuition fees, and so on. Special focus is also accorded to ST students under the District Primary Education Programme (DPEP), Kasturba Gandhi Balika Vidyalaya, Mid-day meal programme, Navodaya Vidyalaya, National Talent Search Scheme and the like (Planning Commission, 2008). Post-Matric Scholarships are open to all ST students whose parents’ annual income is up to one lakh rupees, to facilitate students to pursue professional courses.

The Sarva Shiksha Abhiyan (SSA) scheme recommended encouraging tribal languages in all the schools in tribal areas; opening of Adult Literacy Centres and spreading Inclusive Education. Regarding higher education, this plan has recommended setting up new colleges in tribal areas and establishment of central university was a mandate to promote educational avenue for tribal population. This plan also encourages tribal languages through text books and appointment of tribal teachers who were well versed in the tribal language and establishment of boy and girl hostels in different educational institutions.

This Plan recommends looking after the socio-cultural discrimination faced by disadvantaged groups including scheduled tribes at different levels. It promotes health care of the tribal people and setting up Auxiliary Nursing Midwifery (ANM) training centres in tribal blocks. Under housing schemes of the plan includes the Adim Jati for tribal and primitive tribal groups and Halpapti housing schemes for ST families.
**Check Your Progress II**

**Note:** Use the space provided for your answers.

1) What are the main features of the policies for tribals in the era of economic liberalization in India?

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2) What are the main features of the policies for tribals in the Eleventh Five Year Plan?

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**1.6 DRAFT NATIONAL TRIBAL POLICY**

This policy was formulated in order to address the issues concerning tribal groups like lower literacy levels, economic constraints, poor infrastructure, diminishing control over natural resource base, persistent threats of eviction from their habitat, exclusion from mainstream and economy in distribution of wealth and opportunities and non-empowerment and to place Scheduled Tribes on a progressive and constructive path and make them active partners in Nation building (Draft National Tribal Policy, 2006, p. 4). It was recommended that this policy shall be guided by the existing Constitutional Articles including the PESA Act and the Nehruvian Panchsheel. According to Dixit, The National Policy recognizes that a majority of Scheduled Tribes still live below the poverty line, have poor literacy rates, suffer from malnutrition and disease, and are vulnerable to displacement. It also acknowledges that STs in general are repositories of indigenous knowledge and wisdom. The National Policy also aims at addressing each of these problems in a concrete way. It lists out measures to preserve and promote tribal cultural heritage (2006, p. 259).

The National Tribal Policy seeks to increase the literacy rate of the tribal which is still low compared to the national literacy rate. It ensures development of education among the tribal by providing them financial assistance, and emphasizing on vocational education, and mother tongue in the school curriculums. The forest dwelling tribal people have possessed a kind of knowledge about their surrounding pertaining to medical system, agriculture, ethno-veterinary, environmental conservation and so on which the National Tribal Policy seeks to preserve and promote. The tribals seldom utilize the modern medical system albeit its availability in most of the areas due to their strong belief in traditional medical system and experiences. They are also prone to attack by various hazardous diseases due to vitamin deficiency. Against this backdrop, the National Tribal Policy seeks to
Tribal Policies and Legislation

promote the modern health care system and also a synthesis of the Indian systems of medicine like *ayurdeva* and *siddha* with the tribal system (Ibid, 262).

Since Independence, displacement of tribal population from their habitation is a huge problem due to construction of dams, industries and mining. It has largely affected the tribal people in terms of cultural, economic, health, and other kinds of vulnerabilities. The National Policy for Tribals, therefore, stipulates that displacement of tribal people is kept to the minimum and undertaken only after possibilities of non-displacement and least displacement have been exhausted. When it becomes absolutely necessary to displace Scheduled Tribe people in the larger interest, the displaced should be provided a better standard of living (Dixit, 2006, p. 264).

Shifting or slash-burning cultivation has been the main economic pursuit of the tribal people. But various acts of States deprive the tribal of their traditional practices as a result of which their subsistence economy gets affected. The National Tribal Policy, in order to handle the problem of shifting cultivation, seeks to rationalize the land tenure system.

This Policy seeks to develop the Primitive Tribal Groups (PTG) who are the most vulnerable among the tribal population. It envisages developing both the categories of PTGs, i.e. those who are isolated from the surrounding and placed in isolated ecological niches (heritage groups); and those who are located in the fringes of mainstream population and have contact with them. It seeks to develop them economically and to preserve their eco-system, life styles, and traditional skills of both the groups of PTG.

Land alienation and land transfers are two important problems in most of the tribal regions that cause them economic vulnerability which the National Tribal Policy ensures to stop. It seeks to formulate State anti-alienation land laws so as to scrutinize the loopholes of various State laws and bring them in conformity with the PESA Act. It also seeks to amend the Indian Registration Act in order to identify the transferee whether or not is a member of Scheduled Tribe. It seeks to establish special fast-track courts in Scheduled Areas to deal with the case of tribal land alienation and litigation.

The Human Development Indicators (HDI), of the ST population are much lower than the HDI of the rest of the population in terms of all parameters, such as education, health, employment, income, etc. STs also suffer from geographical and cultural exclusion, aspects which do not get captured in the HDI. Similarly, lack of capacity to make choices is not accounted for (www.tribal.nic.in/finalContent.pdf). Hence, the draft National Tribal Policy ensures to enhance all the indicators among the tribal population. It intends to check drop-out rate of tribal children particularly among girls by providing them various facilities, i.e. book, stationery, scholarship, reimbursement of examination fees, free bus travel, mid-day meal, etc. It encourages preserving the tribal language, not only in teaching but also in the form of books. It targets to operate the Eklavya Model Residential Schools with classes sixth to twelfth by the end of the Eleventh plan. It also ensures to stop teacher absenteeism by providing employment to the local tribals.

Poor health is a major problem in the tribal areas due to inaccessible health facilities, food insecurity, poor sanitation and safe drinking water. The tribal people still practice their traditional medical system albeit the availability of modern medical
facilities in some part of tribal regions. Of course the major problem is lack of communication, i.e. proper road etc., which the National Tribal Policy seeks to fulfill. It also seeks to establish Primary Health Centre (PHC) in most of the tribal regions. It aims to provide safe drinking water, and good hygiene and sanitation among STs so as to eradicate disease epidemic.

The National Tribal Policy seeks to develop livelihood standard of STs through different livelihood schemes like vocational training, establishment of Industrial Training Institute (ITI), encouraging traditional arts and crafts or agro-forest based activities. It also encourages marketing of these activities including minor forest produces (MFPs) so as to generate income through Banks, NSTFDC, TRIFED, etc. Migration is becoming a common problem in some specific tribal areas that has been creating various problems like school drop-out, health, and the like so, the National Tribal Policy seeks to arrest migration by providing income generating employment schemes in the tribal areas.

The draft National Tribal Policy aims to bring equality among male and female by providing the latter various legal aids or by policy frame-works. The policy also encourages the NGOs to work in the tribal areas so as to reduce the dependence of tribals exclusively on government. The policy intends functioning of various Acts and laws meant for Fifth and Sixth Scheduled Areas so as to ensure their development and security. While dealing with the scheduling and de-scheduling of tribes, this policy intends to follow the criteria developed by Lokur committee, i.e. primitive traits, distinctive culture, geographical isolation, shyness of contact with community at large and backwardness (tribal.nic.in/finalContent.pdf). It also seeks to make policies for nomadic tribes. The draft National Tribal Policy encourages strengthening research on the cultural facets of the tribal life that remained neglected during the earlier decades of anthropological research. Thus, this policy intends to establish more Tribal Research Institutes, particularly in the States predominantly inhabited by tribals.

Check Your Progress III

Note: Use the space provided for your answer.

1) What are the characteristic features of the draft National Tribal Policy?

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1.7 LET US SUM UP

The tribal policies can be seen in two broad periods: first, in the colonial period, and second, in the post-colonial period. In the colonial period, there was a policy of isolation of the tribes. In the post-Independence period, the British policy of isolation was shifted to the integration model of tribal development. Various conventional programmes were started in the tribal areas so as to meet the Constitutional commitment; and for bringing about social and economic change among the tribal people. In the early 1990s there was a shift in the economic policy of the Government of India with the introduction of economic liberalization,
which impacted majority of the tribal groups adversely. The Eleventh Five Year Plan does not make special plan for STs. It rather continues the existing schemes and programmes of the previous plans that were directed at the socio-economic development of the tribal population through an ‘area based approach’. This Plan has laid emphasis on poverty eradication in rural and tribal areas which focuses on sustainable development, education, employment, access to forest resources and agricultural production and subsidies. The draft National Tribal Policy tries to address the issues concerning lower educational levels, poverty, poor infrastructure, diminishing control over natural resource base, persistent threats of eviction from their habitat, exclusion from mainstream economy in distribution of wealth and opportunities and non-empowerment and to place Scheduled Tribes on a progressive and constructive path to make them active partners in nation building.

1.8 FURTHER READINGS AND REFERENCES


UNIT 2  CONSTITUTIONAL PROVISIONS AND ACTS FOR TRIBALS

Structure

2.0  Objectives
2.1  Introduction
2.2  The Constitutional Provisions for Scheduled Tribes
2.3  Rationale of the Acts for Scheduled Tribes
2.4  SC&ST (Prevention of Atrocities) Act 1989
2.5  The Provisions of the Panchayats (Extension to the Scheduled Areas) Act 1996
2.6  Forest Dwelling Scheduled Tribes (FDSTs) & Recognition of Forest Rights (TFDs) Act, 2006
2.7  Let Us Sum Up
2.8  Further Readings and References

2.0  OBJECTIVES

In this unit, we will discuss the provisions and legislations ensured in the Constitution of India for the Scheduled Tribes (STs). After going through the unit you should have a good knowledge of:

- Various Constitutional provisions for the Scheduled Tribes of India to safeguard their interests and empower them for a life of equality, justice and dignity.
- Important Acts promulgated for ensuring protection of tribals from atrocities, control over resources and their management, and local governance in Scheduled Areas and Tribal Areas.
- The rationale behind positive discrimination and other legislations relevant to the Scheduled Tribes of India.

2.1  INTRODUCTION

The Constitution of India is the fundamental law of the country, which came into effect on January 26, 1950. It enunciates the foundational principles of governance; establishes the basic structure of Government; defines the powers, functions and interrelationship of various administrative organs; and regulates the relationship between citizens and the State. It is the conscience of the nation. The Indian Constitution is the country’s cornerstone of the legal and judicial system (Mathew, 2004, p. 1). The Constitution has tried to spell out the hopes, dreams, and aspirations of the people of India, which emerge very powerfully in its Preamble as “We the people of India” taking a pledge to “constitute India into a sovereign socialist secular democratic republic and to secure to all its citizens: Justice, social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among them all Fraternity assuring the dignity of the individual and the unity and integrity of the Nation” (Retrieved August 19, 2009 from http://www.dishooom.com/26-11-people-powercampaign.aspx.)
Scheduled Tribes is one of the categories, for which the Indian Constitution has special safeguards and provisions. These are based on the principle of equity and justice within the framework of social, economic, political, and historical processes, which have left the STs alienated from their resources; exploited and discriminated against by the dominant groups; and excluded both from society and the benefits of development.

If these Constitutional provisions are implemented with commitment and political will, there can be three interrelated impacts. On the one hand, productivity, safety and security as well as economic well-being of the entire population would be ensured. Added to this, it would also aid in reducing the ever-widening gap between the resourceful majority and resource alienated and powerless minority population. Further, it would also result in the non-discrimination and deprivation of weaker sections.

2.2 THE CONSTITUTIONAL PROVISIONS FOR SCHEDULED TRIBES

Constitutional Measures for Tribal Development

The Ministry of Welfare now known as the Ministry of Social Justice and Empowerment, was entrusted with the task of economic welfare, social justice and empowerment of disadvantaged and marginalized sections of society. In 1999, the Ministry of Tribal Affairs was constituted by bifurcating the Ministry of Social Justice and Empowerment. This led to the split of National Commission for SCs and STs. In 2003, through the Constitution (Eighty-Ninth Amendment) Act, the National Commission for SCs and the National Commission for STs were created. The first National Commission for STs functioned from 2003 to 2007 (Retrieved August 19, 2009 from http://tribal.nic.in/aboutministry.htm).

The Constitution of India guarantees development of the STs and SCs. The idea of ST/SC development in the Constitution may seem to be confined to economic domain. However, various provisions made for the deprived groups, particularly for STs and SCs, do offer measures, which are holistic in nature. These can be categorized in terms of social, economic, political, gender, legal, and human rights domains.

Social Domain

Exceptions in the Constitution for STs and SCs

The Constitution of India emphasizes on the equality of every citizen. Article 14, for instance, provides equality before the law. According to this provision the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. In Article 15(1), there is a prohibition of discrimination on grounds of religion, race, caste, sex, place of birth. However, there is an exception in Articles 15(4), 16, and 16(4), for the empowerment of the Scheduled Tribes.

Safeguards for a Dignified Life

The Indian Constitution has provisions which ensure a life of dignity for the STs.

Article 19 provides protection of certain rights regarding freedom of speech, freedom to assemble, to form associations, etc.
**Tribal Policies and Legislation**

**Article 25** ensures freedom of conscience and free profession, practice and propagation of religion—entry into temples of Hindu religious institutions of a public character.

**Article 35** provides to give effect to the provisions relating to fundamental rights.

**Article 38** makes provision for the State to secure a social order for the promotion of welfare of the people.

**Educational and Cultural Safeguards**

**Article 15(4)** makes space for empowering the State to make any special provision for the advancement of a socially and educationally backward class of citizens or for SCs and STs. It is due to this provision that the State is enabled to reserve seats for SCs and STs in educational institutions including technical, engineering and medical colleges and in scientific and specialized courses. In this as well as in **Article 16(4)** the term ‘backward classes’ is used as a generic term and comprises various categories of backward classes, such as Scheduled Castes, Scheduled Tribes, Other Backward Classes, Denotified Communities (*Vimukta Jatiyan*) and Nomadic/Semi-nomadic communities.

**Article 16** provides that there be equality of opportunity in matters of public employment, but there is a special provision for scheduled castes and scheduled tribes.

**Article 46** is a comprehensive provision comprising both the developmental and regulatory aspects. As per the Article it is the State’s responsibility to promote with special care the educational and economic interests of the weaker sections of the people, particularly of the Scheduled Castes and the Scheduled Tribes, and protect them from social injustice and various forms of exploitation.

**Prohibition of Untouchability**

Article 17 prohibits untouchability and its practice in any form. The enforcement of any disability arising out of untouchability is considered to be an offence punishable in accordance with law.

In order to make Article 17 effective, Parliament enacted the Untouchability (Offences) Act, 1955. To make the provisions of the Act more stringent, the Act was amended in 1976 and was renamed as the Protection of Civil Rights Act, 1955. Government of India, under this Act, notified the Rules, viz., the PCR Rules, 1977, to carry out the provisions of this Act. Moreover, since cases of atrocities on SCs/STs were not covered under the provisions of PCR Act, 1955, Parliament passed another Act in 1989 to prevent the atrocities. This Act known as the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, came into effect from 30 January 1990. In order to carry out the provisions of this Act the Government of India notified the SCs and the STs (Prevention of Atrocities) Rules, 1995 on 31 March 1995.

**Prohibition of Human Trafficking and Forced Labour**

**Article 23** prohibits human trafficking, bonded labour and other similar forms of forced labour and provides that any contravention of this provision shall be an offence punishable in accordance with law. It does not specifically mention SCs and STs but since the majority of bonded labourers belong to SC and ST categories, this Article has a special significance for SCs and STs. In pursuance of this article,
Parliament enacted the Bonded Labour System (Abolition) Act, 1976. For effective implementation of this Act, the Ministry of Labour has been running a centrally sponsored scheme for identification, liberation, and rehabilitation of bonded labourers.

**Provision for children**

**Article 24** has provision for children. According to this Article no child below the age of 14 years should be employed to work in any factory or mine or be engaged in any other hazardous employment. In fact, there are Central and State laws to prevent child labour. This article is significant from the point of view of the SCs and STs as a sizeable number of children engaged in hazardous employment belong to SC and ST groups.

**Protection of Minorities’ Interests**

**Article 29 (1)** provides any section of citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own, have the right to conserve the same. According to Article 29 (2) no citizen shall be denied admission into any educational institution mentioned by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them. There is a Constitutional mandate for promotion of educational and economic interests of SCs, STs and other weaker sections.

**Economic Domain**

**Article 275(1)** speaks of Grant-in-aid from the Consolidated Fund of India each year for promoting the welfare of STs and administration of Scheduled Areas.

**Article 335** provides that the claims of the members of STs in the appointments to services and posts in connection with the affairs of the Union or of a State to be taken into consideration consistent with the maintenance of efficiency of administration.

**Administrative**

**Article 163** provides that there be a Council of Ministers with the Chief Minister at the head to aid and advice Governor in the exercise of his function.

**Article 164** makes a provision in the states of Bihar (which today would refer to Jharkhand), Madhya Pradesh (which would include Chhattisgarh) and Orissa, a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the SCs and backward classes or any other work.

**Article 338** provides for the National Commission for SCs and STs. Following the Constitution (Eighty-Ninth Amendment) Act, 2003, the National Commission for SCs and STs was reconstituted into the National Commission for SCs and the National Commission for STs.

**Article 339** makes provision for appointment of a Commission to report on the administration of the Scheduled Areas and the welfare of the STs in the states.

**Article 340** talks about the appointment of Commission to investigate the conditions of socially and educationally backward classes and the difficulties under which they labour and to make recommendations to remove such difficulties and to improve their conditions.
**Article 342** has provision for the list of STs, which Parliament may by law include in or exclude from the list of STs specified in a notification issued.

**Administration of Scheduled Areas and Tribal Areas**

Article 244 (1) has the provisions of the Fifth Schedule applicable to the administration and control of the Scheduled Areas and STs in any states other than the states of Assam and Meghalaya. The provisions of the Sixth Schedule enshrined in Article 244 (2) apply to the administration of the tribal areas in the states of Assam and Meghalaya and the union territory of Mizoram.

**Formation of an autonomous state comprising certain Tribal Areas in Assam and creation of local legislature or Council of Ministers or both**

Article 244A(1) provides that Parliament may, by law, form within the state of Assam an autonomous state comprising (whether wholly or in part) all or any of the tribal area specified in the Sixth Scheduled and create therefore—(a) a body, whether elected or partly nominated and partly elected, to function as a legislature for the autonomous state, or (b) a council of ministers, or both with such constitution, powers and functions in each case, as may be specified in the law.

**Special provision with Respect to the State of Nagaland**

Article 371 A (1) provides that notwithstanding anything in this constitution no Act of Parliament in respect of (i) religious or social practices of the Nagas; (ii) Naga customary law and procedure; (iii) Administration of civil and criminal justice involving decisions according to Naga customary law: (iv) ownership and transfer of land and its resources shall apply to state of Nagaland unless the Legislative Assembly of Nagaland by a resolution so decides.

The above Act also provides that the Governor of Nagaland has special responsibility with respect to law and order in the state of Nagaland for so long as in his opinion internal disturbances occurring in the Naga Hills-Tuensang Area immediately before the formation of that state continue therein or in any part thereof and in the discharge of his functions in relation to, the Governor shall, after consulting the Council of Ministers, exercise his individual judgment as to the action to be taken. Provided that if any question arises whether any matter is or is not a matter in which the Governor is under this sub-clause required to act in the exercise of his individual judgment, the decision of the Governor in his discretion shall be final, and the validity of anything done by the governor shall not be called in question on the ground that he ought or ought not to have acted in the exercise of his individual judgment.

**Special Provision with Respect to the State of Assam**

Article 371 (B) Not withstanding anything in the Constitution, the President may, by order made with respect to the state of Assam, provide for the Constitution and functions of a committee of the Legislative Assembly of the state consisting of Members of that Assembly elected from the tribal areas specified in the order and for the modifications to be made in the rules of procedure of that Assembly for the Constitution and proper functioning of such committees.

**Special Provision with Respect to the State of Manipur**

371 (C) (1) Notwithstanding anything in the Constitution, the President may, by order made with respect to the sate of Manipur, provide for the Constitution and
functions of a committee of the Legislative Assembly of the state consisting of members of that assembly elected from the Hill Areas of that state, for the modifications to be made in the rules of business of the government and in the rules of procedure of the legislative assembly of the state and for any special responsibility of the governor in order to secure the proper functioning of such committee.

371(C) (2) The Governor shall annually, or whenever so required by the President, make a report to the President regarding the administration of the hill areas (the expression “Hill Areas” means such areas as the President may, by order, declared to be hill areas) in the state of Manipur and the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said area.

Political Domain

Article 244 (1) provides that through the Fifth Schedule, the administration and control of Scheduled Areas and the Scheduled Tribes in any State, other than the states of Assam, Meghalaya, Tripura and Mizoram by ensuring submission of Annual Report by the Governors to the President of India regarding the administration of the Scheduled Areas and setting up of a Tribal Advisory Council to advise on such matters pertaining to the welfare and advancement of STs.

Article 244 (21) has special provisions through the Sixth Schedule for the administration of Tribal Areas in the states of Assam, Meghalaya, Tripura and Mizoram by designating certain tribal areas as Autonomous Districts and Autonomous Regions and also by constituting District Councils, Autonomous Councils and Regional Councils.

Extension of the 73rd and 74th Amendments of the Constitution to the Scheduled Areas through the Panchayats (Extension to the Scheduled Areas) Act, 1996, to ensure effective participation of the tribals in the process of planning and decision making.

Positive Discrimination

The positive discrimination measures, known as the provisions of reservation, are seen as the main means of empowerment of weaker sections. There are three types of provisions under positive discrimination: (a) reservation in the educational institutions; (b) reservation of services and posts in the government; and (c) reservation of seats in the legislatures. Historically, the so-called untouchables and tribals were denied access to education. The argument for reservation for the STs in educational institution is made on the ground that due to isolation and deprivation they were denied access to education for centuries (Louis 2008).

In line with Article 15(4) of the Constitution, which empowers the State to make special provisions for the educational development of STs, the Indian Government currently allows the reservation of 7.5 per cent of seats for STs in universities and colleges, and in public sector jobs. But the reservation provided by the Constitution has not been filled even after five decades. Significantly, in comparison to the SCs, the actual representation of STs is even lower. For instance, in Gujarat STs constitute 14.2 per cent of the population. Keeping this in mind, they were provided with 14 per cent reservation. But even in B Category just over four per cent of seats have been filled by them. Gujarat state is ranked third in terms of economic
development but this economic development has left tribals untouched (ibid).

Only in the reservation in seats in legislative bodies, there is some positive picture. Articles 330 and 332 speak about reservation of seats for SCs and STs in the Parliament and Assemblies. Since the seats for parliament and assemblies are earmarked as reserved seats, no candidate from non-tribals can contest there and thus the tribals have 100 per cent of the reserved seats. The 73rd Constitution Amendment Act 1992 further provides reservation for weaker sections in the local governance units (ibid).

**Reservation of Seats**

**Article 330** provides reservation of seats for SCs/STs in the Lok Sabha.

**Article 332 (1)** provides that seats be reserved for the SCs and the STs (except the scheduled tribes in the tribal areas of Assam, in Nagaland and in Meghalaya), in the Legislative Assembly of every state.

**Article 332 (2)** provides that seats be reserved also for the autonomous districts in the Legislative Assembly of the state of Assam.

**Article 332 (3)** has provision that the number of seats be reserved for the SCs or the STs in the Legislative Assembly of any state under clause (1) bear, as nearly as may be, the same population of the SCs in the state or of the STs in the state or part of the state, as the case may be, in respect of which seats are so reserved, bears to the total population of the state.

**Article 332 (4)** provides that the number of seats reserved for an autonomous district in the legislative assembly of the state of Assam bear to the total number of seats in that Assembly a proportion not less than the population of the district to the total population of the state.

**Article 332(5)** provides that the constituencies of the seats reserved for any autonomous district of Assam do not comprise any area outside that district.

**Article 334** originally laid down that the provision relating to the reservation of seats for SCs/STs in the Lok Sabha and the state Vidhan Sabhas (and the representation of the Anglo-Indian community in the Lok Sabha and the state Vidhan Sabhas by nomination) would cease to have effect on the expiration of a period of ten years from the commencement of the Constitution. This article has since been amended four times, extending the said period by ten years on each occasion. This provision was to expire in January 2000.

**Article 243-D** provides reservation of seats for SCs and STs in every Panchayat.

**Article 244 & 339** provides the administration of Scheduled Areas and Tribal Areas and control of the Union over the administration of Scheduled Areas and the welfare of the STs.

**The Rationale for Special Provisions for STs**

Reservation or affirmative action is usually defined as that measure which is aimed at minimizing, if not doing away, with discrimination and deprivation. The rationale for providing representation to the SCs and STs in educational, professional and political institutions was clearly spelt out by Dr. B.R. Ambedkar. The social order he envisaged was based on the principles of equality, liberty and fraternity. The
India of his dream was with a social order without any discrimination against any one (ibid).

**Service Safeguards**

**Article 16(4)** empowers the State to make provision for the reservation in appointments or posts in favour of any backward class of citizens which, in the State’s opinion, is not adequately represented in the services under the state.

**Article 16(4A)** provides the State from making provision for reservation in matters of promotion to any class or classes of posts in the services under the state in favour of the SCs and the STs, which in the State’s opinion, are not adequately represented in the services under the state.

**Article 335** makes provision for the claims of the members of the SCs and the STs, in consistency with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a state.

**Article 320(4)** provides that nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which any provision under Article 16(4) & 16(4)A may be made or the manner in which effect may be given to the provisions of Article 335.

**Protection of Women**

Article 14 of the Indian Constitution clearly grants equality between men and women making it obligatory for the State to undertake steps to remove disabilities which women suffer. However, steps have been taken in various plan periods to empower them. The 73rd Constitutional Amendment has special attention on women. It has granted 33 per cent reservation in the three-tier system so as to empower them. Besides, rural development programmes, like IRDP, TRYSEM, NREP, RLEG, DWACRA, etc. although meant for the rural women, these have emphasized more on tribals as most the programmes have been reportedly functioning in tribal areas. Most of these programmes are now merged into the flagship national programmes.

**Legal Measures**

Two of the important legal measures for the protection of the rights of the Scheduled Tribes can be identified as the SCs and STs (Prevention of Atrocities) Act 1989, which came into force from January 1990; and the constitution of ‘the National Commission for Scheduled Tribes’, which was established in 1990 with wide ranging powers and functions. The statement of objectives in the SC & ST Act of 1989 spells out the reasons behind the introduction of this Act—“Despite various measures to improve the socio-economic conditions of the Scheduled Castes and Scheduled Tribes, they remain vulnerable. They are denied civil rights. They are subjected to various offences indignities, humiliation and harassment. They have, in several brutal incidents, been deprived of their life, and property. Serious crimes are committed against them for various historical, social and economic reasons” (Naval, T.R., 2000, p. 4, Retrieved August 19, 2009 from http://ambedkar.org/NHRCReport/ 3.pdf)

The National Commission for SCs and STs was constituted to protect their rights from being violated. In 2003, the National Commission for SCs and STs was split
and the National Commission for SCs and the National Commission for STs were created precisely to give specific orientation and emphasis to the issues of the SCs and STs. The legal measures are in conformity with safeguarding the interests of weaker sections.

**Human Rights Dimension in Indian Constitution**

Human rights refer to the ‘basic rights and freedom to which all humans are entitled’. Examples of rights and freedom which have come to be commonly thought of as human rights include civil and political rights, such as the right to life and liberty, freedom of expression, and equality before the law; and economic, social and cultural rights, including the right to participate in culture, the right to food, the right to work, and the right to education” (Retrieved on 19/08/09 from http://en.wikipedia.org/wiki/Human_rights). Article 1 of the United Nations Universal Declaration of Human Rights also states, “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood (ibid). The Indian Constitution has also made such provisions in its Constitutional articles, Fundamental Rights and Directive Principles of State Policy (DPSP). The Government also intends to protect these rights through various acts. In the state level the Governor has been given the role of protecting people’s Constitutional as well as human rights. Right to Information (RTI) Act was also passed in 2005. Long before it, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was passed. All these are mean to protect the human rights of people including those of the Scheduled Tribes.

**Check Your Progress I**

**Note:** Use the space provided for your answers.

1) What are the Constitutional safeguards for Scheduled Tribes?

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2) What are the principles behind the Constitutional and legal measures for protecting the Scheduled Tribes?

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2.3 RATIONALE OF THE ACTS FOR SCHEDULED TRIBES

The overall goal of the Constitution of India is to promote equality, justice, and dignity for every citizen. It aims to protect and safeguard the interest of Scheduled Tribes. It is to this end that legislations have been enacted in all those states that have been inhabited by the tribals. Such Acts have been already there in some parts of India since the time of the British regime. In the post-colonial India, however, legislations have been enacted to ensure rights, dignity, and justice to tribals. Their preservation, protection, and promotion are also facilitated by special administration of the tribal areas, referred to as the Fifth and Sixth Scheduled Areas.

The Constitution (First Amendment) Act 1951 gave the State the directives, ‘Nothing shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes’ (Article 15 (4) (Retrieved August 19, 2009 from http://tribal.nic.in/hindi/Constitution.htm).

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, which came into effect from January 1990, is one of the landmarks in evolving a mechanism to ensure the protection of the STs and SCs. This Act clearly and categorically spells out measures for preventing atrocities, setting up special courts for speedy trial and stringent punishments for those violating the rights of weaker sections (Retrieved August 19, 2009 from http://www.socialjustice.nic.in/aproa89.pdf).

The Constitution provided the appointment of a Special Officer under Article 338 (1) of the Constitution, to investigate all matters relating to the safeguards provided for SCs and STs and report to the President about the working of such safeguards. The office of the Special Officer subsequently designated as Commissioner for SCs and STs came into being on 18th November 1950. By 1965 its seventeen regional field offices had been set up in different states to oversee the functioning of the various safeguards. This single member office was done away with and a multi-member Commission was constituted. The first Commission was set-up in August 1978 with Shri Bhola Paswan Shastri as Chairman and four Members (Retrieved August 19, 2009 from http://indiacode.nic.in/coiweb/amend/amend65.htm).

The Constitution (Sixty-Fifth Amendment) Act, 1990, was notified on 8th June 1990. The first Commission under the 65th Constitutional Amendment was formed on 12th March 1992 with Shri Ram Dhan as Chairman replacing the Commissioner for SCs and STs and the Commission set-up under the Resolution of 1987. From that time onwards four Commissions functioned.

2.4 SC & ST (PREVENTION OF ATROCITIES) ACT, 1989

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was promulgated to prevent the offences of atrocities against the members of the SCs & STs, to provide for Special Courts for the trial of such offences, and for the relief and rehabilitation of the victims of such offences. The important
aspect of this Act is that the punishment for committing atrocities on STs and SCs is applicable to anyone who is not a member of a SC or ST.

Some of the areas of atrocities on STs and SCs demanding a stringent punishment can be highlighted here in terms of the following:

**Dehumanizing Treatment/Humiliation**
- Forcing a member of SC or ST to drink or eat any inedible or obnoxious substance;
- Acts with intent to cause injury, insult or annoyance to any member of SC or ST by dumping excreta, waste matter, carcasses or any other obnoxious substance in his premises or neighborhood;
- Forcibly removing clothes from the person of a member of SC or ST or parading him naked or with painted face or body or committing any similar act which is derogatory to human dignity.

**False Accusation**
- Instituting false, malicious or vexatious suit or criminal or other legal proceedings against a member of SC or ST;
- Giving or fabricating false evidence intending thereby to cause any member of SC or ST to be convicted of an offence which is capital by the law;
- Giving or fabricating false evidence intending thereby to cause, any member of SC or ST to be convicted of an offence which is not capital but punishable with imprisonment for a term of seven years or upwards.

**False Information**
- Giving any false or frivolous information to any public servant and thereby causing such public servant to use his lawful power to the injury or annoyance of a member of SC or ST.

**Forced Dispossession**
- Wrongfully occupying or cultivating any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of SC or ST or getting the land allotted to him transferred;
- Wrongfully dispossessing a member of a SC or ST from his land or premises or interfering with the enjoyment of his rights over any land, premises or water;
- Forcing or causing a member of SC or ST to leave his house, village or other place of residence.

**Physical Torture**
- Assaulting or using force to any woman belonging to SC or ST with intent to dishonour or outrage her modesty;
- Being in a position to dominate the will of a woman belonging to a SC or ST and using that position to exploit her sexually to which she would not have otherwise agreed.
Deprivation of Rights

- Forcing or intimidating a member of SC or ST not to vote or vote to a particular candidate or to vote in a manner other than that provided by law;
- Contaminating the water of any spring, reservoir or any other source ordinarily used by members of SC or ST so as to render it less fit for the purpose for which it is ordinarily used;
- Denying a member of SC or ST any customary right of passage to a place of public resort or obstructing such member so as to prevent him from using or having access to a place of public resort to which other members of public or any section thereof have a right to use or access to.

Destruction of Property

- Committing mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause damage to any property belonging to a member of SC or ST;
- Committing mischief by the fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause destruction of any building which is ordinarily used as a place of worship or as a place for human dwelling or as a place for custody of the property by a member of SC or ST.

Forced Labour

- Compelling or enticing a member of SC or ST to do beggar or other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government.

Legal/Administrative Negligence

- Committing any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of SC or ST or such property belongs to such member, shall be punishable with imprisonment for life and with fine;
- Knowingly or having reason to believe that an offence has been committed under this chapter, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall be punishable with the punishment provided for that offence;
- Being a public servant, committing any offence under this section, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence;
- Willfully neglecting of duties by a public servant required to be performed by him who is not a member of the SC or ST, resulting in the harm of STs and SCs.
2.5 THE PROVISIONS OF THE PANCHAYATS (EXTENSION TO THE SCHEDULED AREAS) ACT, 1996

The Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996, also known as PESA Act, came into effect on 24 December 1996. The notion behind this Act was to extend the 73rd Constitutional Amendment of 1993 to the Scheduled Areas so as to enable tribal society to assume control over their own destiny to preserve and conserve their traditional rights over natural resources. Hence, this Act can be called the modified version of the Amendment. This Act was applicable for all the states except Assam, Meghalaya, Tripura and Mizoram which come under the Sixth Scheduled of the Constitution. This recognizes the prevailing traditional practices and customary laws of the local people besides management and conservation of natural resources through Gram Panchayat. As Patnaik (2007) says, “It decentralized existing approaches to forest governance by bringing the Gram Sabha to center stage and recognized the traditional rights of tribals over ‘community resources’— meaning land, water, and forests. PESA was important not just because it provided for a wide range of rights and privileges, but also because it provided a principle as well as a basis for future law making concerning the tribals” (p. 5).

This Act encourages the organization of people through Gram Sabha and State. It empowers the Gram Sabha (a) to approve the plans, programmes and projects for social and economic development before they are taken up for implementation by the village panchayat; (b) to identify beneficiaries of poverty alleviation programmes; and (c) to give certification of utilization of funds by the panchayats for the above programmes. These powers make the Gram Sabha a powerful body in implementation of projects for social and economic development of tribal communities. It also recommends consultation of the concerned authority in the matter of land alienation and land transfer as is the authority with the recommendatory power. The Act also stipulates the States to endow panchayats with such powers and authority so as to work within the institutions of self governance.

This paves the way for the state level Panchayat Raj Act. The rationale of this exercise is to convert the tribal villages into small units of self-rule. The new Act, with all its limitations, seems to be the last chance of democratizing governance and decentralizing power in an effort to encourage the notion of development amenable to local social and cultural sensitivities. The idea for ‘self-rule’ by tribes has an inherent philosophy that ‘subjects’ themselves as ‘subjects’ can achieve their own development and not as ‘objects’ as has been the case all along.

A review of the Constitutional provisions gives us an insight into the framework for tribal welfare, protection and development. Of these, the provisions in article 244 and 244 (A) under Part X of the Constitution have some implications for the expression of self-rule among tribes. The Fifth Schedule [Article 244(1)] has provisions for the administration and control of Scheduled Areas and STs. The Sixth Schedule [Article 244(2) and 275(1)] has provisions for the administration of tribal areas in the states of Assam, Meghalaya, Tripura and Mizoram (Sharma, 2001, pp. 234-253).

Tribal self-rule today can be best described in the PESA Act, 1996. Sharma (1997) explains how the tide has turned in favour of the people since the Gram Sabha has been made supreme and the State’s supremacy has been challenged.
But the success of the new Act will be gauged only if it addresses issues of indebtedness, land-alienation, poverty, alcoholism, illiteracy, housing, deforestation, industrialization, unemployment, migration, lack of openness, and exploitation (as in Hasnain, 1983, pp. 73-114).

**Prospects of the PESA Act, 1996**

It opens up range of prospects for safeguarding and promoting the interest of tribes. Some of the major prospects are:

(a) The Act has a Constitutional mandate and a binding law to put a legal and moral pressure on the government and its machinery to implement it.

(b) There is a qualitative change in the very notion of tribal development. There is no more distribution of funds but a paradigm shift which consists in it is basic assumption that tribal community is competent “to safeguard and preserve their traditions and customs, their culture identity, community resources and the customary mode of dispute resolution” [Article 4(d)].

(c) Development is projected as collective. The approval of plans, programmes and projects for social and economic development [Article 4(e)i] is the responsibility of the entire village.

(d) The idea of empowerment is based on the notion of decentralization. The higher levels of panchayats do not interfere with the lower.

(e) There is a provision for accountability to monitor all kinds of financial transactions to avoid any irregularities. The funds are available to Gram Sabha as per the need and for every paisa the panchayat is accountable to Gram Sabha.

(f) Gram Sabha is supreme and is endowed with the power to have control over water [4(j)], minor minerals [4(k)], drinks [4(m)i], minor forest produce [4(m)ii], alienation and restoration of tribal land [4(m)iii], market [4(m)iv], and over the system of debt [Article 4(m)v].

(g) There is recognition of the traditional way of settling disputes. This avoids the bureaucratization of justice.

(h) Women empowerment gets a boost as the Act ensures one third (33%) of women participation in the panchayat.

**Challenges**

The provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996, despite many provisions, has within its own inbuilt “policy-level struggles” (Sharma, 1997).

There is, in the process of empowerment, a clash of interests. Vested interests at every place either in bureaucracy and political party or in the village itself try their best to throttle the process of tribes’ empowerment. In the political and bureaucratic circles the stakes are quite high. Provisions for direct transactions with government with a view to control exploitation and corruption hits the bureaucrats, politicians, contractors and petty brokers. Hence, non-cooperation from them is not quite unexpected. The experience of Bihar is an eye opener in this regard. According to a report by Mishra (2002, p. 1), within 6 months of its existence after a gap of 23 years, Bihar Panchayat Raj came under attack from bureaucrats and politicians. At Bihta the B.D.O. allegedly gunned down a mukhia. Near Sheikhpura,
the election of candidates “not backed by a senior Congress leader” led to the killing of nine political workers, including a mukhia and zila parishad member. In Jehanabad, a pramukh and the BDO were not in talking terms. Nearly in all Panchayati Raj bodies, the elected bodies were at loggerheads with bureaucrats or MLAs, MLCs and MPs. After the Panchayati Raj elections that year there were at least 300 killings related to conflicts in such bodies. There were by polls for over 1,700 Panchayat seats in Bihar including 104 that of mukhias mainly due to the killings of the functionaries elected in the Panchayat polls.

An analysis of these reporting shows that these are conflicts of interests. A battle between entrenched vested interests and new social forces seems to be emerging at the grassroots. Bureaucrats, assumably, are uncomfortable about the powers of the panchayat. There is also lack of awareness and understanding among elected functionaries and officials. Anti-social elements are getting elected and politicians are using them. “The officials do not want to lose their unquestioned power and the elected functionaries overreact to their newly acquired status” maintains Tej Narayan Singh, who has been working on Panchayati Raj in Bihar for the last 35 years (Mishra, 2002, p.1).

Polarization and segmentation of village population on the basis of caste, religion and ethnicity defeats the purpose of the people’s democracy. The politics of majority-minority and antagonism among various parties will be a hindrance to the development of the village. In the entire country in general caste, religious and ethnic tensions are on the rise. Prospects of poll violence intimidation, booth capturing and blood bath in some of the sensitive areas cannot be ruled out. The panchayat elections in Bihar after 23 years had the same experience. According to Khan (2002, p. 10), the Bihar panchayat elections for 8,452 panchayats, held in 6 stages left 100 dead and many injured. At least 588 people with criminal background were elected. Out of 1, 30,563 mukhia posts, criminals occupied more than 500. Police had arrested 40,000 criminals to control violence. The Government had borrowed 1,15,000 rifles from neighboring states. The Government had appointed 50,000 police and 57,000 home guards. When police refused to go on duty for fear of violence, the government ensured each for 10 lakhs.

With the new Panchayat Act, most villagers, especially tribals, hope that their dreams of a dignified life will be fulfilled. They are hopeful that the new Act will bring them equality and justice. They hope that their alienated lands will be restored to them. They want to have control over the resources and their management. They believe that the new Act will provide them a mechanism to be masters of their own destiny without falling prey to the bureaucratic set up of the government.

Check Your Progress II

Note: Use the space provided for your answer.

1) What are the main characteristics of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989?

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2) What are the main features of the PESA Act 1996?

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2.6 FOREST DWELLING SCHEDULED TRIBES (FDSTs) & RECOGNITION OF FOREST RIGHTS (TFDs) ACT, 2006

The Forest Dwelling Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, is the revised version of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005. It emphasized the forest rights of both the tribals and the forest dwelling communities (FDCs) as the earlier Bill ignored the ‘other’ forest dwelling communities. It extends to all the States except Jammu and Kashmir. It recognizes the rights of the STs and Forest Dwelling Communities (FDC) on forest land that include the protected forest, reserved forest, wildlife sanctuary, and national parks. It also recognizes the people whose forest rights can be recorded. It mandates that the forest dwelling communities and other traditional forest dwellers have rights over forest occupied before December 13, 2005 (Retrieved August 05, 2009 from http://www.commonlii.org/in/legis/num_act/staotfdofra2006805/). This Act recognizes the forest rights and occupations of scheduled tribes and forest dwelling communities who have been residing in such forests for generations but whose rights were not recorded. This Act provides a framework for recording and recognizing the rights of other forest dwelling communities in respect to forests and forest based resources.

The Act includes responsibility of sustainable use, biodiversity conservation, and maintaining the ecological balance. Thus, the Act seeks to strengthen the conservation regime while ensuring livelihood and food security of the Scheduled Tribes and Other Traditional Forest Dwellers. The Act accepts that it was ‘historical injustice’ during the colonial and post-colonial periods – not to have recognized the tribal rights on their ancestral lands. In 1793 the Permanent Settlement Act was enacted by the British for revenue. In 1894 the Land Acquisition Act was passed by the British to relax the laws to acquire land. In 1984, in the Independent India the Act was amended not to give more rights to the tribals but rather to relax the existing laws further to take the land away from the owners.

Rights of the FDSTs and TFDs

The central government vests Scheduled Tribes and Other Forest Dwellers with a number of rights, such as *patta* to forest lands occupied as per the cut off date; *nistar* (usufruct) or ownership rights to forest resources, grazing rights including seasonal ones of nomadic communities; habitation rights (for those classified as Primitive Tribal Groups); conversion of forest villages into revenue villages. The Act also ensures that no tribal shall be evicted for currently occupied land until the process of determining rights is completed.
Difference from the past laws governing their right to forestland

The past forest laws enacted by colonial government did not give any right to tribals on forest. The colonial government took away the forest lands and restricted the tribal rights over forest. The Act treated tribals as ‘encroachers’. The tribals had, in fact, rights over forest before the enactment of the Forest Act by the British. The new Act has received appreciation for recognizing the rights of the forest dwelling Scheduled Tribes and Other Traditional Forest Dwellers over the forests where they have inhabited from time immemorial. The Act has also been appreciated for acknowledging that there has been a ‘historic injustice’ done to the tribes.

How do the tribals view the Act?

India has a forest cover of only about 13 per cent of the landmass. Majority of the tribals in the country inhabit the forests and eke out their living from the forest resources. This Act overemphasizes on the positivistic jurisprudence while acknowledging individual proprietary rights linked to forest management. Hence the Act from the beginning stresses on regularizing ‘encroached’ lands in the forest. Allocation of 2.5 hectares of land to every FDST and TFDs is also opposed to the recognition of corporate (community) and usufructuary rights. It is incongruous with the practical requirements– the soil quality in the forest zones is very poor and continuous cultivation without a break on such lands is counterproductive. The Act seeks to convert the forest villages into revenue villages. Such conversion is due for a long time in order to ensure ‘the democratic means of governance and infrastructural development’. But it should be realized that many of the Forest Villages are inhabited by migrant labourers– both tribals and non-tribals. For example, a large number of Forest Villages in North Bengal have Nepali and Adivasi migrants. Ensuring customary rights to these people may not be to the liking to the host Scheduled Tribe population. Hence, Government should take appropriate steps to rehabilitate them elsewhere.

The Act fails to dilute the overarching control of the State. This is obvious from the stipulation that ‘rights of forests can be exercised only for bonafide livelihood purposes and not for exclusive commercial purposes’. This militates against the ethos of self-management and self-determination– not permitting the FDST and TFDs to determine their own future.

Though the Act speaks about grassroots management through Gram Sabhas it is conspicuously silent on the inclusion of Panchayati Raj Institutions at the Sub-divisional and District levels. Gram Sabha is reduced to being just ancillary to the State. The Act is totally silent on the role of traditional tribal institutions including those related to the forests. The Act does not envisage any provision for ensuring their role in forest management. The Act does not fully overcome the colonial outlook of the powers of the state. It still uses the terminology ‘Primitive Tribe’ to ascribe one group of the FDST. The term is a distinctly colonial construct and even tribes in general were never ‘Primitive’. They were only different from the non-tribal people. Hence, the tribals from North-East India raised voices when the present Act was in its Bill form. However, the changes made in the final Act are laudable but not sufficient.

Undoubtedly, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 is another landmark measure for protection
of the forest rights of tribals. This Act recognizes the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights were not recorded. This Act provides a framework for recording the forest rights.

However, this Act is looked upon by some as a betrayal since the definition of ‘forest dwelling Scheduled Tribe’ or ‘other traditional forest dweller’ refers to those who ‘primarily reside in the forest’, a term that could be interpreted to refer only to those who in fact reside entirely on forest land. Moreover, the democratic process of verification of rights (based on the Gram Sabha, with a right of appeal) suggested by the Joint Parliamentary Committee (JPC) has been rejected. The process will now be in the control of a District Level Committee consisting of three officials and three panchayati raj representatives. Gram Sabha is only a recommendatory body, and there is ambiguity in whether its decisions can be overturned at the taluka and district levels, even if no one appeals against or disputes them (Louis, 2008).

Similarly, the clauses on community forest control and management have been diluted, and the provision for community consent before diversion or acquisition of forest land, recommended by the JPC, has been rejected. The result is that while communities’ rights might be recognized, they might also be nullified by the growing assault on forests by big companies and international capital. The Act has ambiguous clauses specifically retained by the government that would allow for arbitrary interference by the judiciary and the authorities. As the Section 15, mentions that ‘this Act shall be in addition to and not in derogation of any other law in force.’ The courts could hold this to mean that, while rights would be recorded, they cannot be exercised except under existing provisions of the Indian Forest Act and other legislations— thereby defeating the entire purpose of this legislation. The JPC recommendation for the reformulation of this clause was rejected (ibid).

Check Your Progress III

Note: Use the space provided for your answers.

1) What are the main features of the Forest Dwelling Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006?

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2) How do the Scheduled Tribes look at this Act?

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It is important to point out here that 67 percent of the best forest cover in India is located in the 144 tribal dominated areas. Evidences are available with the tribal activists that nearly 1500 tribal villages are protecting the forests in their areas. There are thousands of unrecorded evidences of conservation of the forests by the tribals. So the forests in India have not been destroyed but conserved by the tribals in India. This clearly shows the harmonious relationship between the tribals and the forests are still prevalent in India. Against this background, this Act is a forward step in preserving the traditional right and livelihood of the tribal and forest dwelling people. This Act needs to be developed in consonance with the objectives of a final policy for tribals, which is itself under consideration and not yet finalized by the same Ministry of Tribal Affairs. The ambit and scope of the Act is narrow in its formulation and does not reflect the spirit of its objectives to comprehensively address historical injustice and the collective rights of the tribal people and forest dwellers in that it only addresses the rights of Scheduled Tribes.

2.7 LET US SUM UP

In this unit, we have discussed the provisions and legislations ensured in the Constitution of India to safeguard the interests of Scheduled Tribes and to empower them for a life of equality, dignity, and justice. Some of the most important Acts promulgated for ensuring protection of tribals from atrocities, control over resources and their management, and local governance in Scheduled Areas and Tribal Areas, give us an insight into the plight of the tribals and a rationale for institutionalized safeguards to protect them. The relevance of positive discrimination and other legislations in the context of the Scheduled Tribes of India have been discussed.

2.8 FURTHER READINGS AND REFERENCES


20. [http://socialjustice.nic.in/schedule/poa-act.pdf](http://socialjustice.nic.in/schedule/poa-act.pdf)


25. [http://www.laslgl.org/Local-Aid-System-On-Local-Governance_2.asp?id_lvl_1=2&idlv_l2=111](http://www.laslgl.org/Local-Aid-System-On-Local-Governance_2.asp?id_lvl_1=2&idlv_l2=111)


UNIT 3 TRIBAL TERRITORIES AND COMMON PROPERTY RESOURCES (CPRs)

Structure
3.0 Objectives
3.1 Introduction
3.2 Tribal Territory and CPRs: Meaning and Features
3.3 Common Property Resources Classified
3.4 Common Property Resources in Tribal Areas
3.5 Legislative Writs for Tribal Territories
3.6 Decline of Common Property Resources
3.7 Let Us Sum Up
3.8 Further Readings and References

3.0 OBJECTIVES
In this unit, we shall discuss tribal territories and Common Property Resources (CPRs). Tribals have their own world-view concerning territory and property very different from those of the other communities. At the end of the unit you should be able to develop:

1. An understanding of the importance of common property resources like, forest, land and water-base resources for the tribal people,
2. Knowledge of the existing tribal policy in relation to the preservation of CPRs,
3. An idea about the legislative writs for tribal territories, and
4. Knowledge of the main reasons for the decline of CPRs.

3.1 INTRODUCTION
Ever since the origin of the human beings, they have been living in close proximity with natural environment—both biotic and abiotic. Biotic environment constitutes living organism such as forest, animals, and abiotic environment constitutes non-living organism, i.e. land, water, air, etc. But these two resources are indispensable for the human survival. All these resources are considered natural or free gift of nature. Centuries ago there were plenty of resources, so no competition among the organisms, particularly humans were evident and people used to access them freely. However, after the establishment of British colony in India, there was an unprecedented exploitation of resources by the British administrators. The local people were excluded from free use of these resources, i.e. the colonial forest policies restricted people from entering into the forest areas as the intention of the colonial government was to exploit the natural resources available in India for their
own profit. As a result, the natural resources declined adversely affecting the people, particularly the forest dwellers who were greatly dependent on forest resources for their day-to-day livelihood and socio-cultural life. We still find such problems in the contemporary period. However, the supporters of the modern development approach hold the local people responsible for the decline of natural resources although there are other external factors responsible for it. In the post-independence era, however, both the State and Centre have been taking essential measures to control the declining resources and to balance the needs of the poor people, in the form of laws and acts. These legislations have, however, become fruitless due to certain external factors. So the rural economy has been subjected to severe stress.

3.2 TRIBAL TERRITORY AND CPRs: MEANING AND FEATURES

It is very difficult to define CPRs as there are plenty of attributes in defining them. In a common parlance, it refers to the natural resources commonly owned by a village or a community. It is considered as the source of livelihood for the poor, landless and marginalized sections of the communities. It is an important natural resource for rural communities in most developing countries including India. Jodha (1986) defines CPRs as “the resources accessible to the whole community of a village and to which no individual has exclusive property rights. In the dry regions of India, they include village pastures, community forests, waste land, common threshing grounds, waste dumping places, watershed drainages, village ponds, tanks, rivers/rivulets and riverbeds, etc” (quoted in Beck & Ghosh, 2000, p. 47). According to Agrawal (1995) CPRs include the “resources gathered by rural households from the village commons and forests, for personal use and sale; food, fuel, fodder, fibre, small timber, manure, bamboo, medicinal herbs, oils, material for housing building and handicrafts, resin, gum, honey, spices and so on” (ibid).

Magrath, (1989) defines it as those resources in which a group of people has co-equal use rights, specifically rights that exclude the use of those resources by other people. Individual membership in the group of co-owners is typically conferred by membership in some or other group, such as village or tribe, etc. (as in Babu & Dent, 1996, p. 2)

The CPRs are of great importance to the rural poor including tribal people as they potentially meet their basic needs such as fuel, fodders, green manures, food, timbers and other materials. Jodha (1990) is of the view that the rural poor receive the bulk of their fuel supplies and fodder from CPRs. CPR product collection is an important source of employment and income especially during the periods when other opportunities are non-existent (as in Dadibhavi, 2000, pp. 202-203). Arnold and Steward (1991) have summarized the contributions of CPRs in the hill region and forest regions. CPRs in the mid to high Himalayas are the main sources of high input of green manure. They are required to sustain upland agricultural production, and of grazing and collected animal fodder to sustain the livestock, which play a major role in the agricultural economy. They are also the source of the considerable amount of wood required for cooking, heating and house consumption. In the forest region, the importance of CPRs lies in their role in terms of minor forest produce for sale, food during lean periods, medical plants and other products of local use and sites for shifting cultivation (ibid, p.
Since the past, these resources have been contributing a lot to the village economies. CPRs, apart from maintaining the ecological balance by way of checking soil erosion, deforestation and saltation, benefits the rural masses in terms of availability of fodder, fuel wood, small timbers, mulch and manure, fruits and medicinal herbs (Pasha, 1992, p. 2499). CPRs play a crucial role in the economies of the poor, who have very little access to remunerative income earning opportunities. As Rao (1990) has pointed out, given the peripheral position of the poor in relation to the mainstream economy and their meager access to remunerative income earning opportunities, a reduction in the access to CPRs would be a disaster for them (as quoted in Pasha, 1992, p. 2499). Bromley and Cernea (1989) view it “not an object such as land but is a right to a benefit steam” (p. 199).

In the present environmental crisis, there is a long debate on the customary ownership of the common property rights. The UN document of 1966 defines customary rights as the rights to use or dispose of rights over land which rests neither on the exercise of brute force, nor on evidence of right guaranteed by government statute but on the fact that they are recognized as legitimate by the community, the rule governing the acquisition or transmission of these rights being explicit and generally known though not normally recorded in writing (Roy Burman, 1986; as in Mahapatra, 1999, p. 137). CPRs and customary rights hang together as the resources are things or objects of these rights. It is almost invariably so as CPR are not statutorily recognized by the state: as belonging to the tribal groups. But invariably the customary rights over CPR are the most substantive part of their style of life. Roy Burman thinks of only those resources to which the members of a culturally defined collectivity has a “right of fair share of access and use” irrespective of who formally owns and or controls these resources (Mahapatra, 1999, p. 138).

In a common parlance, by tribal territory we generally mean the areas on which the tribals have the complete right to exploit to fulfill their day to day life activities, i.e. a domain or area which provides them natural resources indispensable to their livelihood and traditional economy. Generally their territory does not have any boundaries as the neighbours too depend on the resources. However, traditionally each of the tribal villages had a culturally defined territory the boundaries of which are identified by natural objects like hill streams, hill range or trees. All these natural resources within these territories belong to the village communities or common property. The natural resources like forest and land were allocated to the villages by the village communities and they had usufruct right over the resources, the de jure ownership remaining with the community.

### 3.3 COMMON PROPERTY RESOURCES CLASSIFIED

The term CPR connotes an economic resource or a facility which is communally or collectively owned by an identifiable community or a group of people. The group has the right to access and to use the resources which is regulated by conventions, traditions, customs and others. There are two types of resources: (i) natural, and (ii) artificial. Natural resources encompass land, water, air, plants, animals, place of entertainment, parks, hospital, etc. Collective ownership of any resources means that there is lack of well defined individual private property rights.
to co-users of the resources. So CPRs implies that there is open access to resources for certain group of people and there is free use rights ambiguity in the ownership rights of the resources (Biswas, 2006, p. 54).

Bromley (1989) conceptualizes CPRs as “private property for a group with organizational rules, circumscribing that nature of rights and responsibilities existing within the groups with respect to them (as in Biswas, 2006, pp. 54-55). The common property resources access and use are regulated by formal and informal institutions. Formal institutions refer to the rule which human beings devise and informal institutions refer to the conventions and codes of behaviours. In the absence of resource regulating institutions the resources enumerated above are not CPRs (Kibreab, 2000, p. 289). Village community or clans were/are such institutions that were/are used to control the CPRs.

Statistics show that out of a total land area of 330 million hectares in India only about 140 to 147 million hectares are cultivated. The remaining 190 million hectares, consisting of forests, woodlands, grasslands, deserts, marshes, rivers, lakes, shorelines and other forms of common properties-support many other activities like forestry, fishery, livestock rearing and provide daily requirements like food, fuel, fodders and medicines. According to an estimate, the CPRs land in the country comes to 21.55 per cent of the total geographical area (Chopra, Kadekodi, & Murthy, 1990).

Anrold and Steward (1991) note three main types of CPR availability: (a) in the arid and semi-arid regions these are about 20 ha, of CPR land per village which is typically heavily degraded and under open access usages; (b) in the hill CPRs can comprise 60 to 80 percent of the total land area, mainly in the form of forest; (c) in the forest belt across central India, CPRs consist of minor forest products and some timber (as quoted in Beck & Ghosh, 2000, p. 47).

Biswas (2006) identifies three types of CPRs: (i) altruistic, (ii) free-riders, and (iii) conditional. The altruistic types of CPRs, he says, arise when people contribute to maintain a resource without expecting others to do likewise. Free-riders emerge when people fail to contribute to maintain resources with the expectation that others will contribute to maintain it. Conditional type arises when all members of the groups fail to subscribe to the rules governing the use of the resources (p. 55).

**Check Your Progress I**

**Note:** Use the space provided for your answer.

1) **What is meant by Common Property Resources (CPRs)?**

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3.4 COMMON PROPERTY RESOURCES IN TRIBAL AREAS

In the tribal areas the most visible CPRs are land and forest and other things fall within these two. We too find various socio-cultural factors maintaining balance in the tribal territory and/or surrounding resources. Gadgil (1990) is of the view that two major social systems of major resource-use prevail in the post-colonial India. According to him, the older one characteristic of the hunting gathering/shifting cultivation societies cover most of the hill tracts, its territory, as common property. Further, the society as a whole organizes a pattern of resource use on this land, including allocation of plot for cultivation in a given year. The flow of the material is within the territory though there are some exchanges with outside, for example honey and ivory for metal. However, the exchanges are quantitatively insignificant so that the material cycles are closed over the spatial scale of a tribal territory. This means that the tribal population has the real stake in the security of the resource base of their territory and evolved a number of cultural traditions to ensure its sustenance. These not only include long fallow period in the cycle of rotation of shifting cultivation but also selective retention of valuable trees such as mango while felling for slash and burn (p.132).

Thus, forest and land are the most important CPRs of the tribal community. The rights to forest are appropriated through collective participation in the form of hunting, food gathering, grazing, and collection. Forests are regarded mostly as a CPR. Lands are owned by both community and individual. There are three types of landowning structures in the tribal areas—community land belonging to the villages; land belonging to the clan; and land owned by the individual members.

Check Your Progress II
Note: Use the space provided for your answer.

1) What are the features of Common Property Resources (CPRs) in tribal areas?

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3.5 LEGISLATIVE WRITS FOR TRIBAL TERRITORIES

Since the colonial period, various legislative acts have been implemented pertaining to resource exploitation and use by the tribal. The Forest Act of 1800 can be taken as an example. Before the promulgation of this Act, grazing was free, which was circumscribed somewhat when the concept of the reserved forest was introduced and most of the states closed the forest to the people. So the monopolization of forest resources was witnessed resulting in the degradation of valuable resources. Since all lands belonged to State, it invited the outsiders/
industrialists for selling the resources in the name of development without being sensitive to the culture and lives of the people depending on the forest. As a result, people lost their legitimacy along with resource constraint. Gradually when population increased competition arose within these scarce resources. Thus, the Forest Conservation Act, 1980, which froze the status of the forests restricted people entering into it. However, certain concessions were made. As resources were in abundance there was not much competition among the populations. However, strict regulations were followed. The concessions given to them were sufficient in conserving their livelihood and culture.

The decline or the marginalization of the CPRs is also observed in the forced displacement of population due to dams, industries and other projects. The Land Acquisition Act of 1894 has allowed them to occupy the private as well as public land for doing such kinds of ventures, which the conventionalists think as ‘development’.

The existing tribal forest laws have also ignored the cultural ethos of the tribal communities by certain laws viewing them as ‘encroachers’, ‘poachers’ and ‘destroyer of forest resource’ because they practice shifting/slash burning cultivation. The colonial regime systematically introduced the concept of individual property ownership of land and other natural resources. The Indian Forest Act of 1878 established absolute propriety right of the State over forest land. The Land Acquisition Act came in operation in 1894. These Acts were governed by the principle of the ‘Eminent Domain’, giving supreme authority to the State to control and own all the property within the country’s territory. However, this intrusion was not meekly accepted by tribal communities (Patwardhan, nd, p. 2). The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, also emphasized on wildlife conservation by displacing the human population from the forest areas. The attempt of integrating tribal society with mainstream society also deprived them from CPRs use and by bringing them into the mainstream culture. It also talks about the recognition of the forest tribals/forest dwellers during certain period, who can be allotted land pattas. However, that would exclude majority of the aboriginals or Adivasis in accessing their customary rights over their land and forest.

In the post-Independence period, particularly during 1960s, the State control over the forest adversely affected the tribals due to its commercialization. Their customary rights over CPRs were lost and made them vulnerable as the resource users themselves could not market the resources. As Babu and Dent (1966) write, “In tune with the trends of development policy, policies adopted by the state towards development of these common property resources has been modified to reflect the growing concerns of policy makers and the villagers and their changing needs…Since the 1980’s there has been a marked shift in policy towards conservation with the enactment of the Forest Conservation Act 1980 and the new National Forest Policy of 1988” (p.4).

The introduction of the Gram Sabha in the Scheduled Areas under the 73rd Amendment of the Constitution has given the local people control over their territories and also distribution of minor forest produces among the local communities. But its functioning is not reported in most of the tribal areas either due to the politicization of the resource management or the marketisation of the resources. So the State control over forest is a great cause of the depletion of the
Tribal Policies and Legislation

CPRs. The State markets these according to its choice as the State has the full right over it. Shortly, however, the enactment of the Panchayat (Extension to the Scheduled Areas) Act, 1996, in Gram Sabha has given the community full right over access and utilization of the resources but in most of the tribal areas the question of right still exists where the land acquisition, displacement and illegal restoration is vague. In fact, the tribals still do not have any participation in the decision making process. The refrain from the CPR use has also led to the vulnerability of the people.

Even The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, seems to ignore the tribal people of the Sixth Scheduled Areas who too mostly depend on the CPRs for their traditional instruments and house materials and practice ‘jhum’ cultivation.

Displacement due to development, conservation, disasters or conflict, often leads to tremendous alienation from CPRs such as forests, land, fodder or water. Subaltern groups including tribals, Dalits and other marginal groups lack legal titles (patta) to these resources, which are often communally owned or managed. Unfortunately, the current legal system in India neglects the key role played by CPRs in the sustenance of subaltern groups, in particular subaltern women. Women have traditionally enjoyed a higher status in production systems that rely on CPRs. Moreover, they depend more than men on CPRs for their economic well-being and social status due to the gender-based division of labour that makes them caretakers of the family. However, legal processes justifying displacement in the name of ‘eminent domain’ do not recognise the importance of CPRs, and thus allow alienation processes to take place, which have a very negative impact on the gender and power dynamics in subaltern communities (Fernandes, 2008, pp. 105-106).

Today land alienation in the tribal areas is a common problem. The tribals voice against the alienation, but the politics of the state do not recognize them, their culture, and livelihood. Across the Adivasi regions, the struggle against the alienation has been intensified. Some of the struggles today are the demand for the rights over ‘jangal jamin’. Tribals from Southern Rajasthan and Van Gujjar of Shivalik forest (Uttaranchal); Kols of Sankargarh (Uttar Pradesh) and other tribal groups in the state of Chhattisgarh, Jharkhand, Orissa, and Madhya Pradesh are struggling for land and forest rights. Along with the recent tribal forest right bill, their struggles have been decisively politicized so as to evacuate the tribals and people living in and around forest areas (Rath, 2006, pp. 44-45).

In the post-Independence period, the construction of dams, mining and industries in the name of development has threatened the very livelihood of the scheduled tribe and scheduled caste population. The hand of bureaucrats and the State is clearly visible in these ventures. The State acts as agent in marketing the forest resources—the most important component of CPRs. The deprivation of the Adivasis from it has resulted in various problems such as health, education, and vulnerability. The State on the one hand speaks about the protection of tribal communities while on the other hand acts as an agent for selling tribal land to private companies in the sense of implementing the Land Acquisition Act, of 1894, which makes a “provision for acquiring land for some public purpose” (as in http://en.wikipedia.org/wiki/Land_Acquisition_Act). During the colonial period as there were plenty of resources, no vulnerabilities were marked due to subsistence pattern of tribal
economy. But the analysis of the forest policies shows that the State control of resources, particularly over land and forest, which are crucial CPRs, has encouraged the outsider ‘mafia’ groups to enter into the tribal world of resource conservation thereby depriving the tribals from accessing their traditional rights over forest resources. Thus, the target of bringing 33 per cent of the forest back as amended in National Forest Policy, 1988, remains a distant dream for the government. In contrast, the tribal and the people living adjacent to the forest are held responsible for the deterioration of the forest cover because they practice slash-and-burn cultivation.

Declaration of all natural forests as reserved forests by the British through the first forest act also transferred the legal right or ownership of the community to the states. Initially there was no problem as there were plenty of forests. The representatives of the State, like forest guards, could not reach the interior village frequently. Thus, there was no threat to the traditional ownership pattern and social organization of the utilization of the resources. But the bureaucratic intervention in commercializing the State resources, particularly giving the forest investors, has threatened the very pattern of ownership and resource accesses. After Independence, the hold of the government over forest increased while certain concessions were given to the tribals, especially for collection of MFPs for livelihood.

3.6 DECLINE OF COMMON PROPERTY RESOURCES

The CPRs are reported to have been declining particularly in dry tropical region of India (Jodha, 1986). Population pressure, market forces, outsiders interventions, technological changes and environmental stresses are always attributed for the decline of CPRs. Privatization of resources is a main cause of its degradation. As Dadibhavi (2000) observes, “Under various welfare programmes CPR land had been distributed to people for private use. CPR land had also been illegally appropriated often with subsequent legislation. The stated intension of privatization of CPRs was to give land to the poor who were landless or who had very little land” (p. 104). During the recent past, while examining the new sources of stress disfavouring CPRs Jodha (1995) has pointed out that the key factor adversely affecting the status of CPRs is the overall pattern of the rural transformation. According to him the State’s undeclared assault on CPRs specific opportunities created by market forces, land hunger accentuated by population growth, collapse of traditional forms of rural cooperation and reorientation of farming system de-emphasising the role of bio-mass, are key factors that have led to marginalization of CPRs role and decline of their area and productivity in the dry area (as cited in Dadibhavi, 2000, p. 204).

Babu & Dent (1996) opine that irrespective of significant contributions to the rural community, the CPRs have been undergoing severe degradation, continuous erosion and are becoming transformed into open-access resources. Although CPRs contribute greatly to rural populations, the potential of involving local people in equitable and participatory development has been continuously ignored by policy makers, researchers and planners. There have been some development interventions in the village common lands but these have been half-hearted and did not involve systematic planning for participatory development. This has meant that although these areas have received technological inputs and financial support they continue
to be degraded. The tragedy of commons is used to justify the adoption of incorrect methodology in village common property, resources include village forests, pastures, waste lands, thrashing grounds and dumping grounds for agricultural crops and for storing cow dung, village ponds and small streams and rivers and their banks, etc. Common property resources play an important role in assuring the livelihood of the rural poor. The breakdown of traditional CPR management systems not only causes environmental harm as resources are severely degraded under open-access regimes, but social harm because the poor can no longer depend on them (p.5).

There is a need to ensure that the agenda of establishing social control of forest communities over India’s forests does not get eclipsed by the ‘communalization’ of the resources. Finally, when the tribal people are landless and fall below the poverty line, they can survive only when they have access to CPRs in an equitable manner.

Check Your Progress III
Note: Use the space provided for your answer.

1) What is the impact of legislations on Common Property Resources (CPRs)?
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2) Why is there a decline of the Common Property Resources (CPRs)?
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3.7 LET US SUM UP

Common Property Resources are defined as the natural resources collectively owned by a village or communities. In these resources a group of people have co-equal use rights, specifically rights that exclude the use of those resources by other people. They are the sources of livelihood for the marginalized sections of the communities. The forest and land are the most important CPRs of the tribal community. The rights to forest are appropriated through collective participation in the form of hunting, food gathering, grazing, and collection. Lands are owned by both community and individual. The natural resources like forest and land are allocated to the villages by the village communities and they have rights over the resources. However, various legislations during the colonial as well as the post-colonial period restricted the collective ownership rights of the tribals. The free access of the tribals and other forest dwellers was restricted. On the contrary, the common properties and resources began to be commercialized. The cultural ethos of the tribal communities also began to be ignored. Thus there has been a decline
of the CPRs due to factors, such as population pressure, market forces, outsiders’ interventions, technological changes, environmental stresses, privatization of resources, and so on. There is a need to ensure the establishing social control of forest communities over India’s forests to protect, preserve, and promote forests.

3.8 FURTHER READINGS AND REFERENCES


UNIT 4 INTERNATIONAL CONVENTIONS AND COVENANTS

Structure

4.0 Objectives
4.1 Introduction
4.2 Indigenous People and Interventions of the UNO
4.3 ILO Convention 107 of 1957
4.4 ILO Convention 169 of 1989
4.5 UN Declaration on the Rights of Indigenous People
4.6 Indigenous People of Asia and India
4.7 Let Us Sum Up
4.8 Further Readings and References

4.0 OBJECTIVES

In this Unit, we shall discuss various international conventions and covenants in view of the tribes/Indigenous People across the world. United Nations Organization (UNO) is an international institution, which has played a significant role on the question of survival, livelihood, development, and identity assertion of the tribes/indigenous people. After going through the chapter you should know about:

- The interventions of the UNO for the preservation, promotion, and protection of the Indigenous people across the world,
- The International Labour Organization (ILO) Convention 107 and 169,
- The International Indigenous People’ Decades, and
- The Issues of Indigenous people in Asia and India.

4.1 INTRODUCTION

There are about 300 million indigenous people across more than 70 countries, of whom approximately 70 per cent live in Asia. About 8.6 per cent Indian population are indigenous people. They are not always numerical minorities. They speak more than 5,000 languages, half of which are likely to disappear in a very short time. They maintain a distinct identity and culture. They hold a distinct world view. Indigenous people are a distinct people, who subscribe to a different development paradigm. They are increasingly asserting their rights, which historically have been denied to them. Indigenous people today remain poor and uprooted from their physical and cultural customary resource base. They suffer from health epidemics. They are exposed to armed conflicts. They are the worst affected by climate change.

The use of the term ‘Indigenous People’ for certain groups of people has been controversial. According to Xaxa (2008, p. 223) there was no problem in using
the expression before, but there is a contestation now in the use of the term. He
draws our attention to the fact that the concept of indigenous people primarily
came from international agencies such as the ILO and UNO that have worked out
much of the available literature on them. The term ‘indigenous people’ was used
for the first time in 1957 in ILO Convention 107. It gained wide currency with the

The focus on Indigenous people is traced back to 1960s. The process of
decolonization led to renewed emphasis on people’ right to self-determination
creating a larger political space in which new groups could begin to assert themselves
in the new political mainstream. Anti-racism and women’s movement in the West,
through their defense of diversity paved the way for an incipient indigenous
movement (ICIMOD, 2007, p. 2).

In 1977, the First Non-Government Organization (NGO) Conference took place
on the discrimination against indigenous population. In 1978 a special rapporteur
on discrimination against Indigenous people came out with a report. While ILO
had started revising the 107 convention on indigenous people and tribal people,
in 1982, there was engagement of the United Nations (UN) system through setting

The Group also began to employ the working definition of indigenous people
developed in 1972 by Martínez Cobo, a special rapporteur of the UNO. In 1986,
Cobo in his final report ‘Study of the Problems of Discrimination against Indigenous
Population’ defined indigenous people as follows:

“Indigenous communities, people and nations are those which, having a
historical continuity with pre-invasion and pre-colonial societies that developed
on their territories considers themselves distinct from other sections of the
societies now prevailing in those territories, or parts of them. They form at
present non-dominant sector of society and are determined to preserve,
develop and transmit to future generations their ancestral – territories, and
their ethnic identity, as the basis of their continued existence as people, in
accordance with their own cultural patterns, social institutions and legal
systems” (as cited by Xaxa 2008, p. 225).

There are three important aspects in the above definition – existence before the
onslaught of colonization; distinct socio-cultural, historical, economic, and political
identity; and belonging to a non-dominant society.

### 4.2 INDIGENOUS PEOPLE AND INTERVENTIONS

**OF THE UNO**

was barely over, the United Nations General Assembly adopted resolution 59/174
on 20 December 2004, proclaiming a second International Decade of the World’s
Indigenous People to commence on 1 January 2005. The Under-Secretary-General
for Economic and Social Affairs was appointed as the coordinator of the second
Decade and a voluntary fund was established as a successor to the already-
existing Voluntary Fund of the first Decade.

Prior to the declaration of the first Decade, the year 1993 was declared as the
first International Year of Indigenous people. When in 1993 the UN World
Conference on Human Rights in Vienna recommended the declaration of a Decade of Indigenous People 1995-2004, the goal set was ‘to strengthen international cooperation for the solution of the problem faced by Indigenous People in the areas of human rights, culture, environment, development, education and health’. The theme of the Decade was ‘Indigenous People: Partnership in Action’ (ICIMOD 2007:2).

The main objectives of the First Decade were: first, setting up of a Forum for Indigenous people within the UN; second, the development of activities, by specialized agencies of the UN system and other inter-governmental and national agencies, that benefit indigenous people; third, the education of indigenous and non-indigenous societies concerning the cultures, languages, rights and aspirations of indigenous people; fourth, the promotion and protection of the rights of indigenous people; fifth, the implementation of all the recommendations concerning indigenous people adopted by all high level international conferences; and sixth, the adoption of the draft Declaration on the Rights of Indigenous People, and the development of international standards and national legislation to protect and promote indigenous peoples’ human rights.

The question obviously is why the need of declaring the second consecutive International Decade of the World’s Indigenous People. Were the objectives of the First Decade unfulfilled necessitating thereby declaration of the second? In the resolution of the First Decade, the General Assembly had requested the Secretary-General to appoint the Assistant Secretary-General for Human Rights as the Coordinator of the Decade and established the Voluntary Fund to assist the funding of projects and programmes which could promote the goals of the International Decade of the World’s Indigenous People. In its resolution, the General Assembly appointed the High Commissioner for Human Rights as Coordinator of the Decade. In its resolution of 23 December 1994, the General Assembly had adopted the short-term programme of activities for 1995. The comprehensive programme of activities was adopted by the General Assembly in its resolution of 21 December 1995. The General Assembly also authorized the establishment of the Voluntary Fund for the International Decade for the purpose of financing projects and programmes during the Decade.

The UN Commission on human rights draft declaration on the rights of indigenous people, as revised by the members of the working group on indigenous population seeks to promote right to diversity, equality, freedom, development in accordance with their own needs and interests, recognition to their rights– to their lands, territories and resources which derive from their cultures, spiritual traditions, histories and philosophies, as well as from their political, economic and social structures. There is also a mandate for the indigenous people organizing themselves, respect for indigenous knowledge and practices for sustainable development and management of the environment, human rights and right to self-determination.

In April 2000, the Commission on Human Rights adopted a resolution to establish the UN Permanent Forum of Indigenous Issues which was endorsed by the Economic and Social Council in resolution of 28 July 2000. The mandate of the Permanent Forum was to discuss indigenous issues related to culture, economic and social development, education, the environment, health and human rights. Several National Governments have also passed specific laws on the rights and special identities of indigenous people and their right to ownership over their traditional lands.
The UN General Assembly by its resolution decided to celebrate the International Day of the World’s Indigenous People on 9 August every year during the International Decade of the World’s Indigenous People. In 2004 the Assembly proclaimed a Second International Decade. The goal of this Decade is to further strengthen international cooperation for the solution of problems faced by indigenous people in such areas as culture, education, health, human rights, the environment, and social and economic development.

Check Your Progress 1

Note: Use the space provided for your answers.

1) Who are the Indigenous People?

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2) What were the goal and themes of the First International Decade of the World’s Indigenous People?

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4.3 ILO CONVENTION 107 OF 1957

The ILO Convention 107 of 1957 was adopted by International Labour Organisation on 5th June, 1957. It was a mandate for the protection and integration of the indigenous and other tribal and semi-tribal populations in independent countries. It affirms that “all human beings have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity”. It was also a mandate for improving “the living and working conditions of these populations by simultaneous action in respect of all the factors which have hitherto prevented them from sharing fully in the progress of the national community” (Retrieved August 18, 2009 from http://www.ilo.org/ilolex/cgi-lex/convde.pl?C107).

This convention was meant for (a) members of tribal or semi-tribal populations in independent countries whose social and economic conditions were at a less advanced stage than the stage reached by the other sections of the national community, and whose status was regulated wholly or partially by their own customs or traditions or by special laws or regulations; (b) members of tribal or semi-tribal populations in independent countries which were regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation and which, irrespective of their legal status, lived more in conformity with the social, economic and cultural institutions of that time than with the institutions of the nation to which they belonged (Article 1).
Articles 2-5 deal with the protection and integration of these populations with the national communities. These envisage promotion and integration of the matters in terms of socio-cultural change and exclusion. These also promote enhancement of the living standard of these people.

Article 3 deals with the right to citizenship of these populations without discrimination.

Article 4 deals with the protection of cultural and religious value of these people.

Articles 7-10 provide with the legal matters of these people that include protection of customary laws, customs, and institutions, practices of social control, and prevention from detentions and rehabilitation rather than confinement of prison.

Articles 11-14 deal with the matters concerned with the land of these people that include right to ownership of land, individual or collective transmission of rights of ownership and use of land and land grabbing, land alienation, and displacement.

Article 15 deals with the employment of the indigenous people. It also deals with the discrimination of these people in the offices, institutions and equal remuneration for the work. It promotes for the security of these people in the offices they work.

Articles 16-18 promote vocational training, and preservation and protection of their handicrafts, industries, including technologies. As these enable them to transcend their economic standards these articles also deal with the market of their knowledge. These articles encourage them to increase respect for their craft knowledge, technologies, artistic values, that show their cultural expressions and epitomes.

Articles 19-20 deal with the social security of indigenous people along with promoting their health standards through providing adequate health services.

Articles 21-26 deal with the development of their education and means of communication through various methods, such as promotion of mother tongues/vernacular language, utilization of primary education, and translation of other languages to the mother tongue.

Finally, Articles 27-37 deal with the administration of these people and duties of the member countries.

4.4 ILO CONVENTION 169 OF 1989

The ILO Convention 169 of 1989 is the revised version of the Convention No. 107 of 1957 (Retrieved from August 18, 2009 http://www.ilo.org/ilolex/cgi-lex/convde.pl?C169). The ILO adopted this in the conference held on 7 June 1989 at Geneva. It was adopted with the view to remove the assimilationist orientation of the previous convention. It was made with a particular view to recognize the aspirations of these people to exercise control over their own institutions. The idea was also to decide for themselves their way of life; economic development; maintain and develop their identities, language and religions within the frameworks of the States, in which they live. The view was also to protect their fundamental rights, law, values, customs, and so on.

Further, it called for the ‘contribution of indigenous and tribal people to the cultural diversity and social and ecological harmony of mankind and to international cooperation and understandings’. As many as 44 Articles were amended in the
Convention on different aspects as given below. This convention was applied to (a) tribal people in independent countries whose social, cultural and economic conditions distinguish from other sections of the national community; and whose status is regulated wholly or partly by their own customs or traditions or by special laws and regulations; (b) people in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical regions to which the country belong, at the time of conquest or colonization or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their social, economic, cultural and political institutions (Article 1).

**Preservation of cultural rights and identity:** Article 2-5 deal with promotion of socio-political and economic rights of the people.

**Preservation of Value system:** Articles 2-5 deal with the preservation and respect of the identity, and cultural traditions and customs of the indigenous and tribal people.

**Protection of environment and territory (Articles 4 & 7):** These Articles deal with the protection of the environment and the territories these people inhabit.

**No discrimination/Freedom/self-determination (Articles 3, 4, 7):** This deals with issues concerning freedom of the people and stopping of all forms of discrimination of these people.

**Human rights (Articles 9-12):** These articles deal with the legal aspects in relation to indigenous people, such as atrocities, punishment, prison, and so on.

**Articles 13-19** deal with the issues concerning land rights, land alienations, forced displacement, rehabilitations, relocation, and public enquiries in these matters, compensations, land transformation, and so on. These also deal with the forest rights of these people including common property resources.

**Article 20** specifically deals with employment that includes their respect, promotion, remuneration, occupational safety, and benefits irrespective of their sex.

**Articles 21-23** deal with providing vocational trainings to these people so as to promote their economic livelihood and income. These also encourage them to respect and provide training for these people regarding the development, and marketisation of their handicrafts and industries.

**Articles 24-25** deal with the health and social security of the indigenous people. These also ensure adequate health facilities, its delivery and utilization in the area they inhabit. These also deal with the cooperation with these people in matter of their traditional health care practices and traditional medicines.

**Articles 26-31** deal with promotion of education among the indigenous people in addressing their needs, socio-economic aspirations, and formulation, implementation and evaluation of the programmes meant to develop their education. These encourage them to preserve the indigenous language and promote its use in their educational institutions.

**Article 32** of the Convention deals with the issues of the protection of indigenous people, inhabiting on border areas, and their socio-cultural, economic and other needs.
Articles 33 deals with the administration of the indigenous people. Finally, Articles 34-44 deal with the provisions, administrations and the duties of the concerned member countries.

4.5 UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLE

This declaration was adopted by General Assembly Resolution 61/295 on 13th September, 2007. Guided by the principle of Charter of the United Nations, this Declaration affirms the equality of the indigenous people along with recognizing their rights. It also affirms their contribution to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind. It also affirms their freedom from discrimination, which they have been suffering since colonialism, so as to develop them according to their needs, interests and aspirations. The resolution also mandates respect and promotion of their inherent socio-political and economic rights, especially their rights to land, territories and resources. The Declaration recognizes respect for their knowledge, and cultural and traditional practices, contributing to sustainable and equitable development and proper management of the environment. It also emphasizes on the contribution of indigenous people to peace and socio-economic progress of the world. This Declaration adopted 46 Articles that emphasize various aspects of the development of indigenous people (The International Forum on Globalization & Tebteba Foundation, 2008). Some of the important provisions are grouped under various themes as follows:

- **Right to freedom and absence of discrimination**: Articles 1, 2, 5, 7, 15 of the Declaration deal with the right to freedom of the indigenous people in exercising their socio-political, legal, and economic rights along with their full participation as citizens of the country.

- **Right to Self-determination**: Articles 3, 4, 6, 20, 21, 23, and 33, deal with the ‘right to self-determination’ of the indigenous people in terms of their own identity, sense of belongingness to any religious faith and traditions.

- Articles 8 & 9 protect them from **forced assimilation or integration** so as to protect the culture and promote their right to belonging to any community or nation.

- Article 10 deals with the protection of indigenous people from **forced displacement**.

- **Revitalization of history**: Articles 11 to 13 give the indigenous people right to revitalize their cultural history to maintain and protect their cultural past, i.e. historical sites, religious and cultural sites, artifacts, designs, ceremonies, and technologies.

- Articles 14 to 17 recommend the protection of the **education system** including language of indigenous people. These encourage people to establish media in their own language so as to reflect the indigenous cultural diversity.

- Articles 18, 34, 35, deal with the **right to decision making process** of the indigenous people and to promote, develop, and maintain their institutional structure, and their distinctive customs, spirituality and traditions.
Tribal Policies and Legislation

- Article 22 deals with the protection of the rights of indigenous women, youth, children and person with disabilities.
- Article 24 & 31 protect the knowledge system of the people in the matter of traditional medical and health practices including the conservation of medicinal plants and animals as well as manifestation of their own science, technologies and culture, traditional games and visual and performing arts.
- Articles 25-30 and 32 deal with the right to land or territory of indigenous people, including their laws, inheritance/ownership, conservation, and protection of the lands and forest resources, etc.
- Articles 36-38 recommend the role of the State in protecting the rights of the indigenous people. Similarly, Articles 39 and 40 deal with the right of the indigenous people to have the right to assistance from the States in finance and technical matters.
- Finally, Articles 41-46 deal with the roles of the UN systems and other inter-governmental organizations in ensuring the protection of the rights of indigenous people.

Thus the resolution of the United Nations pertaining to the Indigenous People takes a rights-based approach without which the real recognition of their diversity, and empowerment, seems to be a distant dream.

Check Your Progress II

Note: Use the space provided for your answers.
1) What are some of the recommendations of ILO 107?
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2) What are some features of ILO 169?
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4.6  INDIGENOUS PEOPLE OF ASIA AND INDIA

Indigenous People’ struggle found a space with the UN system in 2000 when the Permanent Forum on Indigenous issues was established. In this body Indigenous People and States were equally represented (Erni, 2008, p.13). So far it used to be the domain of the state governments.

The success of the international indigenous movement culminated in the adoption of the UN Declaration on the Rights of Indigenous People by the UN General Assembly. The Declaration was adopted by majority vote of 144 states. As many as 11 countries abstained. Only four countries voted against it – the US, Canada, Australia and New Zealand (Xaxa 2008, pp. 13-14). Until June 6, 2008, when Japan Parliament voted in favour of recognizing the AINU as the country’s Indigenous People, only two Asian countries had officially recognized the existence of Indigenous people within the boundaries: the Philippines and Taiwan (Erni 2008, p.15).

According to Lasimbang indigenous people are subjected to many names or terms in their own countries. Asian governments have difficulties with the concept of indigenous people. The workshop on the ‘Concept of Indigenous People’ was jointly organized by the Asia Indigenous People Pact (AIPP), the International Workgroup for Indigenous Affairs (AWGIA) and Tebtebba Foundation in March. The deliberations showed that a definition of indigenous peoples’ was not necessary and would be counterproductive in view of many positive developments at the international scene. A definition was not needed in view of the great diversity of Indigenous People in Asia (Lasimbang, 2008, p.9).

According to Erni (2008, p.13) over the past decades there has been an increasing presence of indigenous people in international processes and institutions dealing with issues such as human rights, sustainable development, forest and biodiversity conservation, international trade or intellectual property rights. The main agenda of these processes was to ensure the indigenous peoples’ rights to prevent them from further marginalization or destruction of their livelihoods, cultures and societies (ibid).

**Tribal/Indigenous People in India**

The term ‘indigenous people’ or ‘indigenous populations’ is used in various senses. B.K. Roy Burman (2003, p. 8) uses it in three different senses, first, chronological; second, relational; and third, normative. Indigenous people or populations, in a chronological sense, means the ‘earliest inhabitants if not autochthones’ (available at www.krepublishers.com). He further points out that the ILO does not use the term ‘universally for the same or analogous category of social entities’. In a relational sense the term ‘indigenous’ means the ‘indigenous and tribal people’ occupying ‘almost without exception in the North and the South a poor and marginalized position in national societies’. These are the people who until recently are believed to have ‘lived in isolation and whose traditional way of life is being slowly torn apart’. Further, ‘in other regions of the globe, their resource base has been severely eroded and no alternative means of subsistence has been provided’. It has also been pointed out that in some regions, they may be better off. However, in general, they still form the ‘lowest social strata’. Hence, Roy Burman uses the term ‘indigenous people’ in the sense of their ‘isolation, techno-economic backwardness, distinctiveness from the dominant culture of the country and marginalisation’ (pp.8-9). In a normative sense the term is used to identify those people who feel rooted in their surroundings, contain a custodial sense about their territory and resources, are bound together primarily through moral bindings, and carry a sense of reciprocity and mutuality reinforced by egalitarian ethos (p. 9).
Thus, Roy Burman observes, “To me it appears that when ‘indigenous’ is projected in a chronological sense it has a power right dimension attached to it; when projected in relational term it is need-right or justice-right which is invoked. Projection of the concept of “indigenous” in normative sense on the other hand is an invocation of companionate value oriented praxis” (p. 9).

The Indigenous People, the original inhabitants, also known as tribals, Adiwasis, adivasis, aboriginals, hill tribes, ethnic minorities and ethnic nationalities in various parts of Asia, constitute a considerable number in the Continent. India is inhabited by 84 million indigenous populations, i.e. 8.2 per cent of the entire population of the country as per the 2011 census. The presidential order in 1950 provided that as many as 212 tribal communities in as many as 14 states were declared to be Scheduled Tribes. As per the Scheduled Tribes Order (Amendment 1976), nearly 300 tribal communities were listed in the Constitution. The Anthropological Survey of India under the People of India Project identified as many as 461 tribal communities in the country (as cited in Xaxa, 2008, p. 226). The term ‘adivasi’ is also in use meaning people living from ancient times or the first settlers. This goes beyond the communities listed in the Constitution as “Scheduled Tribes” (ibid).

However, the Government of India does not recognize the term indigenous as applicable to such people. There was unanimity in locating the situation of the Indigenous People in India as peculiar because whichever the ruling party, the position of the Government of India has been the same, i.e. ‘Indigenous People do not exist in India’. It was also pointed out that interestingly the Indian Government signed all documents pertaining to Indigenous People in international arena generously, but refused recognition to them within India. The position of the Indian Government has been, “All in India are indigenous”.

The Government of India enlists them as the ‘Scheduled Tribes’ (STs) as per the notification by the President of India under Article 342 of the Constitution of India, which was first issued in 1950. The main characteristics considered for notification were primitive traits, distinctive culture, shyness with the public at large, geographical isolation and socio-economic backwardness. In the Report of Commissioner for Scheduled Castes and Scheduled Tribes (1952) the following eight common features were mentioned: first, they live away from the civilized world in inaccessible areas – forests and hills; second, they belong to one of three stocks– Negrito, Australoids or Mongoloids; third, they speak the same dialect; fourth, primitive religion “animism”, worship of ghosts and spirits; fifth, primitive occupations: hunting, gathering of forest produce, shifting cultivation; sixth, largely carnivorous or meat eaters; seventh, primitive in dress and clothing; and eighth, nomadic habits and love for drink and dance. A total of 75 groups in the country are identified as Primitive Tribal Groups (PTGs) as they are more backward than the other groups with pre-agricultural stage of economy, very low level of literacy, and their numbers stagnant or declining.

It is indeed ironical that despite diversity and distinctiveness among different communities of the indigenous people in India, there is one thing in common, i.e. their underdevelopment. They still live in backwardness in terms of low literacy, high mortality, poor health and hygiene, malnutrition, indebtedness, lack of basic amenities of life, human rights violations, and so on. In order to address their problems a new Ministry of Tribal Affairs was created in October 1999 and, in
2003 a separate National Commission was set up for the Scheduled Tribes (94th amendment) by bifurcating the National Commission for Schedule Castes and Scheduled Tribes.

Situation of Indigenous People in India

Despite the fact that India has substantial constitutional provisions for safeguarding the interests of indigenous people, many legislations take away what has been given in their favour. The Government of India claims to have allocated significant amount of resources for tribal development, but the impact has been rather limited. The approach adopted has been more welfare oriented, and there has been less empowerment. The Acts on land acquisition, forests, environment, mining, industry, etc., have proven that under the garb of ‘national interest’ it is always the indigenous people who primarily have to make the supreme sacrifice. The indigenous people are even deprived of social and political constellation in the State. The States have assumed the ancestral and customary rights over natural resources (land, water, forest); value and meaning system; ideology, knowledge and traditions; and over economic and political rights of the indigenous people. Economic policies are oriented towards exclusively ‘economic’ ignoring other indicators of development, such as health, education, human rights, participation in the decision making process, and so on.

Despite these international conventions and national legislations, indigenous people continue to be marginalized. The displacement of their communities from their traditional lands and the militarization of the territories are some of the nightmares of their powerlessness. Most of the current issues impacting indigenous people in South and Central Asia stem not from natural disasters, but from processes associated with globalization, imperialism, and capitalism. There are number of issues, such as identity and full citizenship, democracy and participation in the political life of the state and country, development and displacement, ownership of land and custodianship of the forest and natural resources, education and health, human security, food security, and the right to sustained and dignified livelihood.

Indigenous people continue to be among the poorest and most excluded and marginalized—politically, economically, educationally, and socially. There are exacerbated threats to their lands and resources under the pressure of globalization. There is increasing evidence of identity related conflicts often rooted in socio-economic discontent. Addressing indigenous people’ poverty requires a ‘new development paradigm’. They need policies substantially different from those currently being applied.

Check Your Progress III

Note: Use the space provided for your answers.

1) Who are the Indigenous People in India?
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2) What is the position of Indian Government on Indigenous People?

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4.7 LET US SUM UP

There are about 300 million indigenous people across more than 70 countries of which approximately 70 per cent live in Asia. India accounts for about 10 per cent of 8.6 million indigenous people of the country. The use of the term ‘Indigenous People’ for certain groups of people has been controversial. The focus on Indigenous People can be traced back to 1960s. The process of decolonization led to renewed emphasis on peoples’ right to self-determination creating a larger political space in which new groups could begin to assert claims, marginalization of indigenous groups in the ‘new’ political mainstream. The ILO Conventions 107 of 1957 and 169 of 1989 have provisions for preservation, protection, and promotion of the Indigenous Populations. The year 1993 was declared as the first International Year of Indigenous People. In 1993 the UN World Conference on Human Rights in Vienna recommended the declaration of a Decade of Indigenous People 1995-2004. Again, 2005-2015 was declared as the second International Decade of the World’s Indigenous People.

4.8 FURTHER READINGS AND REFERENCES


