

## **CHAPTER – II**

### **APPROACHES AND POLICIES OF TRIBAL DEVELOPMENT ADMINISTRATION IN INDIA**

## CHAPTER -II

### **Approaches and Policies of Tribal Development Administration in India**

The following chapter examined the approaches and policies of tribal development administration adopted in India since the British period. It discusses the broad framework through which problems of tribals were addressed, so as to uplift them from their socio-economic backwardness.

#### **2.1 Profile of Tribes in India**

The tribals in India could be broadly categorised into four types. The first category of tribals is represented by those communities which are extremely at underdeveloped stage. They are engaged for living using pre-agriculture method like food gathering, fruit gathering, hunting and fishing. They inhabit remote and inaccessible areas cut off from the mainstream. They are generally known as 'Primitive Tribes.' Examples are the 'Bondo'<sup>1</sup> tribes of Orissa. The second category is those tribes who are supposed to be little more advanced, practicing shifting cultivation and have some contact with the outside world.

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<sup>1</sup> The Bonda tribe is known as one of India's most primitive tribes who currently live in the hills of Odisha's Malkangiri district. There are two different Bonda tribes - the Upper Bondas who are the most primitive, and the Lower Bonda. Upper Bondas have almost no connection to the world other than themselves. In fact, only 6% of Bondas are actually literate. The life expectancy of the tribe is so low they are nearly extinct.

Example is the ‘Gond’<sup>2</sup> tribe. The third category comprised of those tribals who may be regarded as in transition. They are partly cultured, having contacts with the outside world. Their agriculture is more advanced than that of shifting cultivation and they are likely to adopt development pattern. Example is the ‘Munda’<sup>3</sup> tribe. Finally, the fourth category consists of the acculturated tribals who have taken to modern ways of technology and are almost indistinguishable from the non-tribals, for example the ‘Meena’<sup>4</sup> tribe.

In this connection, it could be stated that, over the last 50 years or so, many of the STs appear to have evolved into two, more or less, distinct groups. Firstly, those who have been able to take advantage of the protection and benefits guaranteed to them under the constitution and under various Acts and schemes and have been able to decrease the gap in development between them and others. Secondly, those STs whom such programs and protection have failed to reach and are, therefore, still at a subsistence level of economy with poor health, education and income levels.

The tribals have traditionally lived in about 15 (fifteen) percent of India’s geographical areas, mainly forest, hills, undulating inaccessible terrains and in plateau. They have lived as isolated entities for centuries, largely untouched by the society around them. This seclusion has been responsible for the slow growth, dissimilar pattern of their socio-economic and cultural development. This further creates an inability to negotiate and cope with the consequences of their involuntary integration with the mainstream society and economy.<sup>5</sup>

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<sup>2</sup> The Gond or Gondi tribe are a Dravidian people of central India, spread over the states of Madhya Pradesh, eastern Maharashtra, Chhattisgarh, Uttar Pradesh and formerly northern Andhra Pradesh (now Telangana) and Western Odisha. The Gondi language is related to Telugu and other Dravidian languages. About half of Gonds speak Gondi languages while the rest speak Indo-Aryan languages including Hindi.

<sup>3</sup> The Mundas are an ethnic tribal (Adivasi) group of people of the Chotanagpur Plateau region. They are found across Jharkhand state as well as adjacent to Assam, Odisha, West Bengal, Chhattisgarh, Bihar and into certain parts of Bangladesh. This tribal ethnic group is one of the largest tea-tribal groups in India. Their language is Mundari, which belongs to the Munda sub-group of the Austro-Asiatic language family.

<sup>4</sup> The Meena Tribe is found mainly in the state of Rajasthan and Madhya Pradesh. They fall into the category of Scheduled Tribe in the state of Rajasthan and majority of them is classified to be Hindu. But in Madhya Pradesh Meena they are recognized both as Scheduled Tribe and Other Backward Classes (OBC).

<sup>5</sup> *Draft of the National Tribal Policy: A policy for the Schedule Tribes of India*, New Delhi: Ministry of Tribal Affairs, p.1.

The STs in India are notified in 30 States / Union Territories (UTs). The number of ethnic groups notified as STs are 705 (seven hundred five). The tribal population of India, as per 2011 census is 10.43 crore, constituting 8.5 percent of the total population. Table 2.1 highlights the trends in proportion of ST population in India from 1951-2011.

Besides, 89.97 percent of them live in rural areas and 10.03 percent of them in urban areas. The decadal population growth of tribals from Census 2001 to 2011 has been 23.55 percent against 17.59 percent of the entire Indian population. The sex ratio of the overall population is 940 females, per 1000 males and that of STs to 990 females per 1,000 males.

**Table 2.1**  
**Trends in proportion of Scheduled Tribe population**

<b>Census Year</b>	<b>Total population (in millions)</b>	<b>Scheduled Tribes Population (in millions)</b>	<b>Proportion of STs population</b>
1951	439.2	30.1	5.9
1971	547.9	38.0	5.9
1981#	555.3	51.5	7.8
1991@	838.5	57.8	8.1
2001\$	1028.5	84.3	8.2
2011	1210.8	104.3	8.5

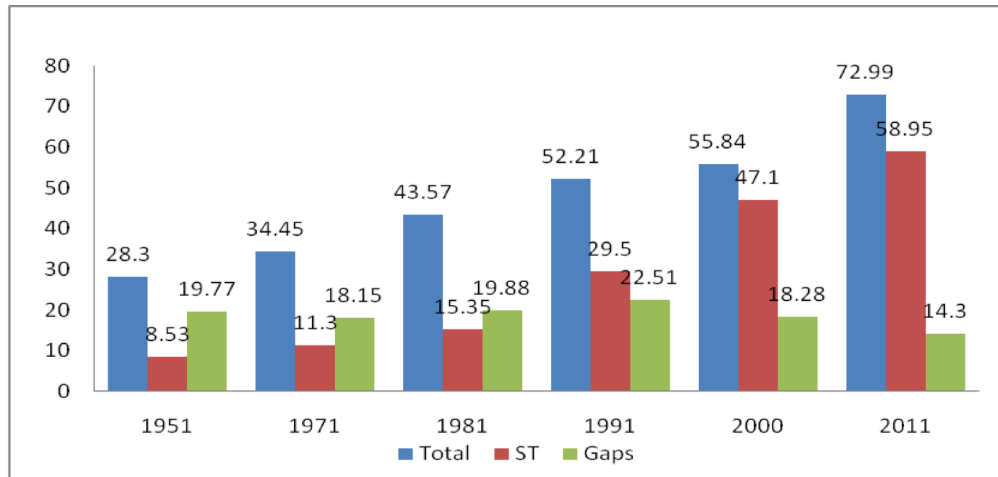
# Excludes Assam in 1981 @ Excludes Jammu & Kashmir in 1991,

\$ The figures exclude Mao-Maram, Paomata and Purul sub-divisions of Senapati district of Manipur, census 2001.

***Source:** Statistical Profile of Scheduled Tribes in India (2013), Ministry of Tribal Affairs, Government of India.*

So far as ST population in India is concerned, the literacy rate increased from 8.53 percent in 1951 to 58.95 percent in 2011, while the corresponding increase of the total population was from 28.30 percent in 1951 to 72.99 percent in 2011. Diagram 2.A elucidates the comparative literacy rates of total Indian population and STs, from the year 1951 to 2011.

**Diagram 2.A**  
**Literacy rates of ST and total population**



**Source:** *Statistical Profile of Scheduled Tribes in India (2013)*, Ministry of Tribal Affairs, Government of India.

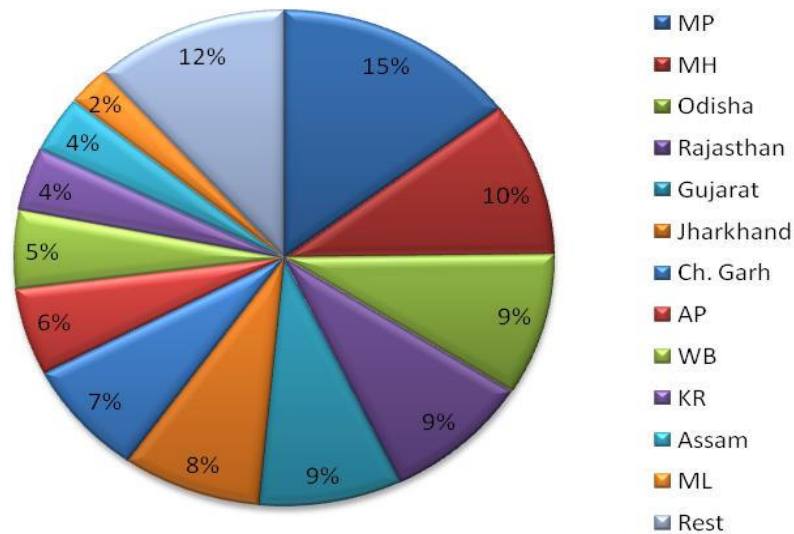
Broadly, the tribals inhabit two distinct geographical areas – the central India and the north-eastern areas. More than half of the ST population is concentrated in central India, that is, Madhya Pradesh (14.59%), Chhattisgarh (7.5%), Jharkhand (8.29%), Andhra Pradesh (5.7%), Maharashtra (10.08%), Orissa (9.2%), Gujarat (8.55%) and Rajasthan (8.85%). The other distinct area is the north-east (Assam, Nagaland, Mizoram, Manipur, Meghalaya, Tripura, Sikkim and Arunachal Pradesh). Diagram 2.B shows the State’s share of ST population out of India’s total ST population:

Tribal communities live in various ecological and geo-climatic conditions ranging from plains and forests to hills and inaccessible areas. While some tribal communities have adopted a mainstream way of life, there are certain STs, 75 in numbers, known as Particularly Vulnerable Tribal Groups (PVTGs), who are characterised by:

- 1) Pre-agriculture level of technology;
- 2) Stagnant or declining population;
- 3) Extremely low literacy; and
- 4) Subsistence level of economy.

**Diagram 2.B**

**Graph showing distribution of Scheduled Tribe population by States**



*Sources: Census of India, 2011*

## 2.2 Approaches and Policies of Tribal Administration

Tribal development administration is a very complicated task and needs more careful attention. The problems of tribals in India vary from tribe to tribe and from region to region. The strong conviction that economic development of the entire population, will by itself leads to development of tribals, has now proved to be an illusion. Hence, whenever tribal development as a concept is talked about, it reminds that various types of strategy are essential for the development of tribal communities in India. One may asked or raise pertinent question concerning the incompatibility of development strategies of general people, for the development of tribals, and the inevitability of separate strategies for tribals. The fact is that, tribal communities in India are the weakest section of the society which itself can be divided into many layers. 'Tribal Development means development of groups which are at different stages of socio-economic development.'<sup>6</sup>

<sup>6</sup> M. Soundarapandian (2000). 'Tribal Development in India: A Case Study,' Anmol Publications, New Delhi, p. 54.

So, the existing dilemma in preparing any policy for STs in India is how to strike the right balance between preservation of tribal identity, culture and values, without being absorbed by mainstream lifestyles; while increasing and ensuring their access to mainstream education, health care and income generation. However, it is fraught with problems because the number of individual tribes scheduled under the constitution is quite large and heterogeneity is immense. Each tribe is quite distinct from the other with languages and dialects, customs, cultural practices and life styles. To preserve this immense diversity is an enormously difficult task; because while bringing the benefits of development to them in education, health and income generation, a significant amount of loss of diversity is inevitable.

### ***2.2.1 Approaches and Policies during the British Period:***

The policies adopted by the British ruler were to isolate the tribals from the general mass. By and large, the tribal societies in India, particularly till the attainment of independence, have remained comparatively isolated from the mainstream of national life. In general, the British administrators strongly thought it expedient to leave the tribals alone, because the task of administration in the hill areas was difficult and costly. Besides, it was considered desirable to keep away the tribals from possible political influence of the larger community. Some of the British officers genuinely felt that the tribal people would remain a happier lot if they are left alone.

Thus, in most cases, the British allowed the tribal people to remain as they were. The British government never likes to disturb the isolated condition of the tribal habitat. The policy they adopted for the tribal people was the policy of isolation. As a result, the tribal people received very little of the modern facilities and western thought; the British brought to this country and granted to the Indian people. The approach of the British government towards the tribal world was to keep them isolated in order to prevent any contact with the Indian general masses. The British adopted this policy of isolation, so that the idea of freedom movement did not infiltrates among them. Their basic motive was to fulfill their colonial interest.

Verrier Elwin, who was a member of 'The Scheduled Areas and Scheduled Tribes Commission (1961),' remarked:

'The British Government was inclined, on the whole, to leave the tribesmen alone, partly because the task of administration, especially in the wild border areas was difficult and unrewarding, partly from a desire to quarantine the tribes from possible political infection and partly because a number of officers sincerely held the view that the people were better and happier as they were...' (Elwin, 1960)

The tribal areas were, therefore, the last to come under the British power because of their difficult terrain and inaccessibility. They adopted the policy of lightly administering those areas. The normal administration of the provinces, in which the tribal areas were located, was not extended to them. In many regions, single line administration was established, where all authority was vested in one individual who was the chief representative of the government in that area. The local custom was honored and there was judicious intervention only when it was considered inevitable. Thus, the administration in the tribal areas during the pre-independence days was not formalised.<sup>7</sup>

The British policy of keeping the tribals segregated from the mainstream also helped the administration in another way. They encouraged the Christian Missionaries to move into the tribals areas with two definite purposes – firstly to do the welfare works and secondly, which possibly was more important for the British government, was to convert the tribal people to Christianity. They rightly thought that it would help them in two ways. Firstly, the influence and assistance of the Christian Missionaries and the conversion of the tribal people into Christianity would prevent the tribals from going against the colonial administration and would make them loyal and faithful subjects. Secondly, this would shield the tribals from the impact of the freedom movement which was rapidly gaining ground.

Thus, they often provide covert and direct encouragement to the Christian Missionary activities in the tribal areas. Although the 'services for the suffering humanity is considered to be a duty for the Christian Missionaries, but at the same time it is coupled

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<sup>7</sup> Dr. B.D. Sharma, 1982. "Administration for Tribal Development," Occasional Papers on Tribal Development-20, Ministry of Home Affairs, Government of India, New Delhi, p. 4-5.



with the right of conversion.’<sup>8</sup> This resulted in large scale conversion of many tribal groups, especially in the states of eastern India, which had far reaching implications. With the passage of time, it became more and more apparent to the people that the primary goal of the Missionaries was conversion and ‘the opening of schools, hospitals and other welfare agencies were only bait in the trap of conversion.’<sup>9</sup> It was a sort of intellectual and moral aggression on Indian life strongly patronised by the British government, which aimed at gradually alienating a chunk of population from the mainstream, by generating a kind of sentimental and emotional detachment, with the rest of the people – a process which could be effectively carried out under the auspices of the policy of isolation. That is why they created the ‘Excluded and Partially Excluded’ (details is discussed in the latter part of this Chapter) areas and provided separate political representation to the tribes which create a new separatist minority.

Raha and Das (1982) remarked:

A careful analysis of the missionary activities thus, leads to the conclusion that under the garb of humanitarianism, the obnoxious political motives of the colonial rules were rampant. It was a sort of intellectual and moral aggression on the Indian life strongly patronised by the British Government which aimed, gradually, to alienated a chunk of population from the main national stream by generating a kind of ‘sentimental and emotional detachment’ with the rest of the people – a process which could be effectively carried out under the auspices of the policy of Isolation.

On the other hand, the British policy of neglect and isolation encouraged the vested interests, namely landlords, contractors and money lenders to exploit and usurp the tribal land and forests. The tribesmen had to remain at the mercy of officials and usurers. These vested interests of non-tribal does not only took possession of the tribal land, but also brought the tribals in perpetual bondage. Besides, the British never hesitated to intervene or even mop up whenever any untoward tendency, detrimental to their colonial interest, was sensed among the tribals. Sometimes, through brutal repression and quite often through indirect involvement by the method of appeasement of tribal chiefs and their

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<sup>8</sup> K.N. Sahay, 1985, ‘*Christianity as an Agency of Tribal Welfare in India,*’ quoted by Mahendra Mohan Verma in ‘*Tribal Development Administration in India,*’ 1996, p. 41

<sup>9</sup> M.N. Srinivas, 1962, ‘*Caste in Modern India and Other Essays,*’ Asia Publishing House, Bombay, quoted by Mahendra Mohan Verma in ‘*Tribal Development Administration in India,*’ 1996, p. 41

influential elite groups; they succeeded in deriving maximum political benefits. 'The main purpose of the British policy was to secure peace and not necessarily to help the people to advance on the road to progress either by integration with the plains Hindus or otherwise.... Consistently with keeping the peace, gradual survey settlement was carried out, and by slow stages regular land revenue was levied, wherever and whenever possible.'<sup>10</sup> In short, no deliberate attempt was made to strengthen the economic base of these down-trodden backward communities in the country.

From the above discussion on the British policy toward the tribals, it could be found that scholars have argued the falsity and point out various negative implications. According to them, British policy towards the tribals creates separatist minority and alienated large sections of tribals from the mainstream. It also creates a mass conversion to Christianity and patronised the Missionaries so as to keep the tribals faithful subject. Their argument might be sensible if viewed from a single perspective. But if viewed from various perspectives there are good implications as well. The British knew that the tribals in general and north-east Indian tribals in particular, need special protection considering their vulnerability. And conversion to Christianity or conversion to one religion from another is a general case that had taken place all over the world since time immemorial. It has no much linked with the Indian freedom movement or so as to make the tribals faithful subjects. It is rather experienced that conversion leads to socio-economic development among the tribals. British isolationist approach to a certain extent had also helped the tribals from direct assimilation.

### ***2.2.2 Approaches and Policies after Independence:***

In 1950s, there were tendency among some Indian leaders to assimilate the tribal people in the rest of the population. Besides, since the tribals have also come into contact with various communities, it creates a situation, leading to assimilation in different parts. This could be because of continuous process for their cultural contact with the neighbouring population. In the process, some tribals have gradually accepted the Hindu way of life and others have accepted Christianity.<sup>11</sup> Ghurye characterised the tribals as

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<sup>10</sup> G.S. Ghurye, 1963, 'The Schedule Tribes,' 2<sup>nd</sup> Edition, Popular Prakashan, Bombay, quoted by Mahendra Mohan Verma in 'Tribal Development Administration in India,' 1996, p. 41

<sup>11</sup> S.C. Dube, (1960), *Approaches to Tribal Problems in India: Anthropology in Action*, p. 91

backward Hindus and argued that any attempt to isolate them from the mainstream of Indian life would be meaningless. Sections of these tribes are properly integrated in Hindu society, very large sections, in fact, the bulk of them, are rather loosely integrated. Only very small sections, living in the recesses of hills and forests, have not been influenced by Hinduism.<sup>12</sup>

So, after the independence of India, the tribal people found their place on the map. New schemes for their development were proposed. The Constituent Assembly set up a Sub-Committee under the Chairmanship of Thakkarbaba. The most important finding by the Sub-Committee, accepted by the Constituent Assembly, was to establish the principles, that the new democratic state had a responsibility for the welfare of the tribal people and the development of tribal areas, however remote and inaccessible they might be.<sup>13</sup>

The social workers and politicians under the leadership of A.V. Thakkar, a close associate of Mahatma Gandhi, strongly criticised the 'isolationism' adopted by the British and supported their assimilation with the mainstream of Indian life. In 1941, Thakkar took for his RR Kale Memorial Lectures the theme of the problems of aboriginals in India. In his lectures, he criticised the theory of isolationism and in second part supporting the assimilation. He said, 'To keep this people confined to an isolated in their inaccessible hills and jungles is something like keeping them in glass-cases of a museum for the curiosity of purely academic persons.'<sup>14</sup>

However, Jawaharlal Nehru's philosophy and vision shaped the tribal policy in the 1950s, particularly in the north-east India. He avoided the extremes of the two standpoints around which raged an exciting and often acrimonious debate in the 1940s, namely, the anthropological approach which sought to treat the tribals as museum specimens to be kept apart, for study and observation; and the other approach which sought to destroy their individuality, distort the process of their development and absorb them in a culture and a way of life that was alien to them.

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<sup>12</sup> As cited in Ajit Kumar Singh on *Tribal Development in India*, pp. 15-16

<sup>13</sup> Verrier Elwin, (1960) *A Philosophy for NEFA*, 'Shillong', quoted by M.K. Raha, and J.C. Das, 'Constitutional Safeguard for Schedule Tribes: Their Relevance and Implications,' in Budhadeb Choudhary (ed.), 'Tribal Development in India: Problems and Prospect,' Delhi: Inter-India Publications, 1982, p.15

<sup>14</sup> L.P. Vidyarthi, 'Cultural Contours of Tribal Bihar,' pp. 180-81

Nehru himself remarked:

‘I am alarmed when I see not only in this country, but in other great countries too, how anxious people are to shape others according to their own image or likeness, and to impose on them their particular way of living.

..... I am not at all sure which way of living is better. In some respects I am quite certain theirs is better. Therefore, it is grossly presumptuous on our part to approach them with an air of superiority or to tell them what to or not to do. There is no point in trying to make them second-rate copy of ourselves.<sup>15</sup>

‘I would prefer being a nomad in the hills to being a member of the stock exchange, where one is made to sit and listen to noises that are ugly to a degree. Is that the civilisation we want the tribal people to have? I hope not. I am sure that the tribal folks, with their civilisation of song and dance, will last until long after stock exchanges have ceased to exist.<sup>16</sup>

Therefore, while tribal identity should be preserved, tribals should develop in their own way without let or hindrance. As Nehru said, ‘my ideas were not clear at all, but I felt that we should avoid two extreme courses: one was to treat them as anthropological specimens for study and the other was to allow them to be engulfed by the masses of Indian humanity. These reactions were instinctive and not based on any knowledge or experience.’<sup>17</sup>

Nehru again remarked:

They are our own people and our work does not end with the opening of so many schools and so many dispensaries and hospitals. Of course we want schools and hospitals and dispensaries and road and all that, but to stop there is rather a dead way of looking at things. What we ought to do is to develop a sense of oneness with these people, a sense of unity and understanding. That involves a psychological approach.

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<sup>15</sup> K.S. Singh (Ed), (1989). *Jawaharlal Nehru, Tribes and Tribal Policy*, Calcutta, India, p. 3

<sup>16</sup> K.S. Singh, *Ibid*, p. 2.

<sup>17</sup> It can be found in Nehru’s forward to the first edition of Verrier Elwin’s book, *A Philosophy for NEFA (Arunachal Pradesh)*, Shillong, India, 1958.

As I said, we must approach the tribal people with affection and friendliness and come to them as a liberating force. We must let them feel that we come to give and not to take something away from them. That is the kind of psychological integration India needs. If, on the other hand, they feel you have come to impose yourselves upon them or that we go to them in order to try and change their methods of livings, to take away their land and to encourage our businessmen to exploit them, then the fault is ours, for it only means that our approach to the tribal people is wholly wrong.<sup>18</sup>

Though the outline of the tribal policy was framed on the eve of Independence, Independent India took some time to give the policy any final shape. Nehru's intervention at this stage was also not very conspicuous. He was not in a hurry to finalise a policy for the tribes. Rather, he kept the door open for different views on this matter.

Gradually and towards the close of the 1950s, outlines of tribal policy emerged as follows:

- 1) 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.
- 2) Tribal rights in land and forests should be respected.
- 3) We should try to train and build up a team of their own people to do the work of administration and development. Some technical personnel from outside will, no doubt, be needed, especially in the beginning. But we should avoid introducing too many outsiders into tribal territory.
- 4) We should not over-administer these areas or overwhelm them with a multiplicity of schemes. We should rather work through, and not in rivalry to their own social and cultural institutions.
- 5) We should judge results, not by statistic or the amount of money spent, but by the quality of human character that is evolved.<sup>19</sup>

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<sup>18</sup> Jawaharlal Nehru, (1960), *The Tribal Folk*, (Speech delivered at the Opening Session of the Scheduled Tribes and Scheduled Areas Conference, New Delhi, June 1952), Ministry of Information and Broadcasting, Government of India.

<sup>19</sup> Jawaharlal Nehru, Foreword to the Second Edition, 1958 of Verrier Elwin, *A Philosophy for NEFA*, Shillong, 1959

In consonance with this philosophy a strategy of tribal development was framed. The Nehru era laid the foundation of tribal policy. In the 1950s the community development model held sway. The assumption underlying it appeared to be that there already existed a community in the villages and all that was needed was simultaneous development in many areas such as agriculture, animal husbandry, education, social education, industry and crafts in order to activate it. Once this is done, a process of self-generating and self-sustaining growth would be set in motion. This model was extended to the tribal areas also, as the tribal problems were considered part and parcel of rural development.

The 1952, Scheduled Tribes Conference was a step in this direction. It was attended by a number of tribal elites, administrators, anthropologists, etc. This conference came out with certain suggestions. They were:

1. The foremost task in the tribal areas is to work for the psychological integration of the tribal people.
2. Full protection should be accorded to the rights of the tribal people to their lands, forest and all other aspects of their culture.
3. Nothing should be imposed forcibly on the tribal people.
4. Forced detribalisation or assimilation of tribal people by non-tribal societies should be resisted.
5. Tribal languages should be developed and allowed to flourish.
6. Development plans for tribal areas should be drawn up with particular emphasis on roads and communication.
7. Anthropologists are to be appointed as advisers for the administration of tribal areas.
8. Men with special aptitudes for work in tribal areas should be appointed to administer these areas.<sup>20</sup>

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<sup>20</sup> B.B. Das Shastri, an unpublished note prepared in defense of the tribal policy for the then North-East Frontier Agency, when the policy was criticized by several critics after the border conflict with China in winter, 1962.

### **2.3 Constitutional Provision relating to Protection of Scheduled Tribes**

The principal resolution of provisions for safeguarding the interests of weaker section was first of all introduced by Jawaharlal Nehru in the first session of Constituent Assembly in which he declared the objectives for the welfare and protection of these communities and outlined that ‘adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes.’ The resolution was adopted in the second session of the Constituent Assembly which was held in January, 1947.

For the welfare of the tribal people the Constituent Assembly adopted Article – 46 of the constitution, which reads as follows:

‘The state shall promote with special care the educational and economic interests of the weaker section of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitations.’

Since statutory provisions have been made more or less conjointly for the SCs and STs, they have been dealt with accordingly in this section. The present discussion takes into account modifications of the Articles and Clauses as amended up to 2003.

Special safeguards for the SCs and STs provided in the constitution of India have been spelled out in 24 Articles including Article 46, as referred to above and in two Schedules, that is, the Fifth Schedules and the Sixth Schedules. These two Schedules were outlined under Articles 244 and 275.

Article 8 of the 24 Articles comes within the purview of the Fundamental Rights under Part III of the constitution. This implies that, any provisions made in these Articles are enforceable through the courts of law and even any inconsistent with the spirit of these Articles is liable to be declared void. The 8 Articles under reference are 15, 16, 17, 19, 23, 25, 29 and 35.

Article 15 deals with the prohibition of discrimination on grounds of religion, race, caste, sex or place of birth and emphasises that no citizen shall be subject to any restriction on this count with particular reference to (1) access to shops, public restaurants, hotels, and places of public entertainment, or (2) the use of wells, tanks, bathing point, roads and

places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

However, nothing in Article 15 shall prevent that state from making special provision for women and children, educationally and socially backward classes and SCs and STs. This is known as the law of protective discrimination allowed by the constitution of India.

Equality of opportunity in matters of public employment has been ensured through Article 16, in addition to the prohibition of discrimination on grounds of religion, race, caste, sex and place of birth. This Article also specifies that nothing prevent the State from making any provision for reservation of appointments or posts in favour of any backward classes, if in the opinion of the State, certain classes are not adequately represented in State services.

Under Article 17 of the Indian constitution, untouchable was abolished unequivocally under any circumstances. It signifies that enforcement of any disability arising out of untouchable shall be an offence punishable in accordance with law. As a supplementary to Article 17, parliament adopted the Untouchable (Offence) Act 1955. In 1976 this Act was further amended and renamed as the Protection of Civil Right Act, 1976.

Protections of certain rights regarding freedom of speech, movement throughout the territory of India, settle in any part of India, association and unions, profession, occupation and trade have been outlined in Article 19.

Article 23 deals with prohibition of traffic in human beings and beggar and any other similar forms of forced labour. Nothing in Article 23, however, shall prevent that state from imposing compulsory service for public purposes, and in imposing such service the state shall not make any discrimination on grounds of religion, race, caste or class. Thus, though in an indirect manner, this ensures equality between citizens.

Freedom of conscience and free profession, practice and propagation of religion is outlined in Article 25. This is also an indirect manner, which ensures equal entitlement of Indian citizens, particularly regarding freedom of conscience.



As part of the cultural and educational rights, protections of interests of minorities have been dealt with in two clauses of Article 29. They are: (1) Any section of citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same. (2) No citizen shall be denied admission into any educational institute maintained by the State or receiving aid out of State funds on grounds of religion, race, caste, language or any of them. Lastly, under Right to Constitutional Remedies, legislation to give effect to the provision of Part III has been dealt with in Article 35.

Articles 38 and 46, belonging to Part IV of the Indian constitution, under Directive Principles of State Policies, dealt with special provisions toward promotion of welfare of the people at large, and with particular reference to the weaker sections like SCs, STs and Other Backward Classes (OBC). Article 38 (1) stated:

‘The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order, in which justice, social, economic and political, shall inform all institutions of the national life.’<sup>21</sup>

Article 335 of the Indian constitution outlined that the claims of the members of SCs and STs shall be taken into consideration, consistently 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.

Besides, provision for reservation of seats for SCs and STs at different level of political organisation are clearly outlined in the Indian constitution. Thus, reservation of seats in the House of the People, Legislative Assembly of a State, Panchayat and Municipalities are spelled out in Article 330, 332, 243D, 243T respectively.

Article 338A again outlined that the National Commission for Scheduled Tribes would be set up to look after the affairs of backward tribals. According to the Article, ‘There shall be a Commission for the Scheduled Tribes to be known as the National Commission for the Scheduled Tribes.’ The Commission was enacted under the

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<sup>21</sup> Article 38 (1) of the Indian Constitution

Constitution (Eighty-Nine Amendment) Act, 2003. Detailed discussions would be made in section 2.6.3 of this Chapter.

There are two Schedules, that is, Fifth and Sixth Schedule of the Indian Constitution, which relates to tribal administration. The Fifth Schedule, enshrined in Art. 244 (1), provides provisions as to administration and control of Scheduled Areas and Scheduled Tribes. Similarly, Sixth Schedule, enshrined in Art. 244 (2) and 275 (1), provides provisions as to the administration of tribal areas in the State of Assam, Meghalaya, Tripura and Mizoram. Discussion on Sixth Schedule is made in the latter part of this chapter.

Provision to set up a ministry in-charge of Tribal Welfare in State of Bihar, Madhya Pradesh and Orissa are found in Article 164 of the Indian constitution. Also, Article 138 provided for setting up of Advisory Council in the State and the appointment of a special officer at the center to promote their welfare.

Scheduled Area Regulation, 1969, deals more effectively with the problems of land alienation. It empowers the Deputy Commissioner to restore wrongfully alienated tribal land, without any bar of limitation. This regulation is applicable in the entire scheduled areas.

## **2.4 Key Acts and Amendments of the Constitution to safeguards Scheduled Tribes**

There are various Acts and amendments in the Indian constitution relating to safeguards of STs. They are discussed in detail.

### **2.4.1 *The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989:***

The Act contains the details on prevention of offences of atrocities against the members of the SCs and STs. It also provides Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences, and for matters connected therewith. Violation in any ways shall be punishable by law. The Acts encompasses all aspects of legal, social, economic, and political offences.

In social aspect, offences of atrocities includes – (1) force to drink or eat any inedible or obnoxious substance; (2) insult or annoyance by dumping excreta, waste

matter, carcasses or any other obnoxious substance in his / her premises or neighborhood; (3) forcibly removes clothes, parades him / her naked or commits any similar act which is derogatory to human dignity; (4) intentionally insults or intimidates with intent to humiliate in any place within public view; (5) assaults to any woman with intent to dishonor or outrage her modesty, and being in a position to dominate the will of a woman, uses that position to exploit her sexually, to which she would not have otherwise agreed; (6) denies the right of entry to a place of public resort, so as to prevent from having access, to which other members of public or any section have a right to use or access, and (7) forced to leave his / her house, village or other place of residence.

In economic, political and legal aspect, offences of atrocities includes – (1) wrongful occupation, cultivation or transfer of any land owned and allotted; (2) wrongfully deprived from his land or premises with the enjoyment of his rights over any land, premises or water; (3) compels to beggar or do other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by government; (4) force or intimidates not to vote or to vote to a particular candidate or to vote in a manner other than that provided by law; (5) corrupts the water of any spring and reservoir ordinarily used by them and render it less fit for the purpose for which it is ordinarily used, and (6) institutes false, malicious or vexatious suit or other legal proceedings.

The Acts again stated that a person (not a member of SCs and STs) is punishable if one – (1) intentionally commits mischief by fire or any explosive substance intending to cause damage to any property; (2) intentionally commits mischief by fire or any explosive substance intending to 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, or (3) a public servant, but not a member of SCs and STS, who willfully neglects the duties.

Further, it is also clearly mentioned in chapter V (five) of the Acts that, it is the duty of the government to take necessary measures so as to ensure effective implementation of the Act. Such necessary measures include – (1) providing legal aid to the persons subjected to atrocities to enable them to avail justice; (2) the provision for travelling and maintenance expenses to witnesses and victims of atrocities, during investigation and trial of offences under this Act; (3) the provision for the economic and

social rehabilitation of the victims; (4) the appointment of officers for initiating supervisory works over prosecutions for the contravention of the provisions of this Act; (5) setting up of committees at such appropriate levels, as the state government may think fit to assist in formulation and implementation of such measures; (6) identification of areas where the SCs and the STs are likely to be subjected to atrocities and adoption of such measures so as to ensure safety for such members.

#### **2.4.2 *The Provision of the Panchayats (Extension to the Scheduled Areas) Act, 1996:***

The Act contains about the provision to provide for the extension of Part IX of the Indian constitution, relating to the *Panchayats*, in the ‘Scheduled Areas.’<sup>22</sup> In 1996, the Parliament passed the Panchayat (Extension to Scheduled Areas) Act or PESA, acknowledging the dire need to protect the rights and resources of the communities in Fifth Schedule Areas, by recognising and upholding their right to self governance. The law is expected to mark the beginning of a new era in the history of tribal people. The Act is applicable only to Fifth Schedule relating to the administration and control of Scheduled Areas and Scheduled Tribes in any Indian federated state other than the state of Assam, Meghalaya, Tripura and Mizoram. Accordingly, the provision of the Panchayats (Extension to the Scheduled Areas) Act (PESA) is not applicable within Sixth Schedule Areas of autonomous district council in north-east India.

The Act marks a departure from colonial laws of governance that pervades the administration of the people and the natural resources, promoting people-centric governance. ‘PESA is a unique legislation, often described as a Constitution within the Constitution, which attempts to bring together in a single frame two totally different worlds - the simple system of tribal communities governed by their respective customs and traditions, and the formal system of the state governed exclusively by laws.’<sup>23</sup> It provides a central role to the village recognising a habitation to be a natural unit of the community, as against the administratively defined unit based on population.

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<sup>22</sup> The term ‘Scheduled Areas’ has been defined in the Indian Constitution as ‘such areas as the President may by order declare to be ‘Scheduled Areas.’ The President of India in general, declared an area where there is majority tribal concentration.

<sup>23</sup> Ajay Dandekar and Chitragada Choudhury (2010). *PESA, Left-Wing Extremism and Governance: Concerns and Challenges in India’s Tribal Districts*, Institute of Rural Management, Anand, Commissioned by Ministry of Panchayati Raj, Government of India, New Delhi, p.5.

The provision of PESA is extended to the Scheduled Areas subject to such exceptions and modifications, which are as follows: (1) state legislation on panchayat should be in consonance with the customary law, social and religious practices and traditional management practices of the community; (2) every gram sabha should be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources, and the customary mode of dispute resolution; (3) every gram sabha should approve the plans, programmes and projects, before they are taken up for implementation by the panchayat, and should be responsible for the identification and selection of persons as beneficiaries; (4) every panchayat should be required to obtain from the gram sabha a certification of utilisation of funds by that panchayat for the plans, programmes and projects, and (5) the reservation of seats should be in proportion to the population of the communities, provided that the reservation for STs should not be less than one-half of the total number of seats and that all seats of chairpersons should be reserved for STs, and the state government may also nominate persons belonging to STs having no representation in the panchayat at the intermediate level or the panchayat at the district level.

In addition, the Act stated that gram sabha or the panchayats, at the appropriate level, should be consulted before making the acquisition of land in the Scheduled Areas for development projects. If affected by such project, rehabilitation should be coordinated at the state level. The Act again specify that, management of minor water bodies and mineral resources in the Scheduled Areas should be entrusted to panchayat at the appropriate level, and the recommendations of gram sabha or the panchayats should be made mandatory prior to grant of license or mining lease.

While endowing panchayat, in the Scheduled Areas, with such powers and authority to enable them to function as institution of self-government, the state legislature should ensure that gram sabha and panchayat, are endowed specifically with – (1) the power to enforce prohibition, regulate and restrict the sale and consumption of any intoxicant; (2) the ownership of minor forest produces; (3) the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawful alienation of land of STs; (4) the power to manage village markets by whatever name called, and the power to exercise control over money lending to the STs, and (5) the power

to exercise control over institutions and functionaries in all social sectors, and the power to control over local plans and resources, including Tribal Sub-Plan (TSP).

The state legislation that endowed panchayat with powers and authority, should contain safeguards to ensure that panchayat at the higher level do not assume the powers and authority of panchayat at the lower level or of the gram sabha. The state legislature should endeavour to follow the pattern of the Sixth Schedule to the Constitution, while designing the administrative arrangements of a panchayat at the district level in the Scheduled Areas.

#### **2.4.3 *The Constitution (Eighty-Nine Amendment) Act, 2003:***

Article 338A of the constitution of India stated that there shall be a Commission for the Scheduled Tribes to be known as the National Commission for the Scheduled Tribes. As per the Act, the Commission shall consist of a Chairperson, Vice-Chairperson and three other Members and the conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other Members so appointed shall be such as the President may by rule determine. The Chairperson, Vice-Chairperson and other Members of the Commission shall be appointed by the President by warrant under his hand and seal.

The Commission would have the power to regulate its own procedure. Therefore, the powers and functions of the Commission are – (1) to investigate and monitor all matters relating to safeguards provided for STs, under the Indian constitution and to evaluate the working of such safeguards; (2) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the STs; (3) to participate and advise on the planning process of socio-economic development of STs and to evaluate the progress of their development under the Union and any federated state; (4) to present to the President regarding reports about the working of those safeguards; (5) to make a recommendations as to the measures that should be taken by the Union or any state for the effective implementation of those safeguards, and other measures for the protection, welfare and socio-economic development of STs, and (6) to discharge such other functions in relation to protection, welfare, development and advancement of STs as the President may, by rule specify.

The Act also specifically mentioned that the Union and every State government should consult the Commission on all major policy matters affecting the STs.

#### **2.4.4 *The Scheduled Tribes and other traditional forest dweller (Recognition of Forest Right Act) 2006:***

It is an Act to recognise and vest the forest right and occupation in forest land to forest dwelling STs and other traditional forest dwellers, who have been residing in such forest for generations. Their habitat was not adequately recognised in the consolidation of state forests during the colonial period as well as in independent India, resulting in historical injustice to the forest dwelling STs and other traditional forest dweller, who are but an integral to the very survival and sustainability of the forest eco-system. The Act has become necessary to address the long standing insecurity of the access rights of forest dwelling STs and other traditional forest dwellers, including those who were forced to relocate their dwelling, due to state development interventions.

The following rights would be the forest rights of forest dwelling STs and other traditional forest dwellers. They are – (1) right to hold and live in the forest land under the individual or common occupation for habitation and self-cultivation for livelihood; (2) community rights, including those used in erstwhile princely state, *zamindari* or other regimes; (3) right of ownership, access to collect, use and disposed of minor produce which has been traditionally collected within or outside village boundaries; (4) other community rights of uses such as fish and other products of water bodies, grazing and traditional seasonal resource access; (5) rights of habitat and habitation for primitive tribal groups and pre-agricultural communities; (6) rights for conversion of *pattas* (a title deed of a land property) or leases or grants issued by any local authorities or any state government on forest lands to titles; (7) right of settlement and conversion of all forest villages, old habitation, un-surveyed villages and other villages in forest, whether recorded, notified or not into revenue villages; (8) right to protect, regenerate and conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use; (9) rights which are recognised by laws of any state, autonomous district council and autonomous regional council, or which are accepted as rights of tribals under any traditional or customary law; (10) right of access to biodiversity and community right to intellectual property right; (11) any other traditional right customarily enjoyed by the forest dwelling STs and other traditional forest dweller, and (12) right to permanent rehabilitation including alternative land in cases where the STs and other forest dweller have been illegally evicted from forest land.

However, no suit and other legal proceeding shall lie against the central and state government, offices and its employees, chairperson of various committees, member-secretaries, and member of gram sabha, for anything which is in good faith intended to be done under this Act. Tribal Affairs Ministry of Central government shall be the nodal agency for implementation of the provisions of this Act.

From the above discussion on the Acts and Amendments in regards to protection of tribals, it is found that the government of India, with best endeavor, has been trying to protect the tribals from all kinds of atrocity, land alienation and social and cultural assimilation. Special mention could be made of Forest Right Act, 2006, through which landless traditional forest dweller has been given the right of landholdings in the form of *patta*. In addition, government of India has also several schemes and programs for socio-economic development of tribals. The policy of India is that, tribal could not be uplifted only by legally protecting them in the form of Acts and Amendments. They need social and economic uplifts so as to bring them from acute backwardness. Thus, the following section analyse the major central schemes and programs to uplift tribals.

## **2.5 Central Schemes and Programs to uplift Scheduled Tribes**

High priority for the welfare and development of STs is accorded, right from the beginning of the First Five Year Plan (1951-56). An important landmark in this aspect is being an opening of 43 Special Multi-Purpose Tribal Blocks (SMPTBs) during the Second Five Year Plan (1951- 1961), later called Tribal Development Blocks (TDBs), each having about 25,000 people as against 65,000 in a normal block. However, ‘commission’<sup>24</sup> appointed by the government to review the tribal situation brought to its notice that, the earlier programs had not helped the tribals in getting their due share and viewed that much more is still needed to be done to uplift STs on par with the general population of the country.

So, the Fifth Plan (1974-1979) marked a shift in the approach when the Tribal Sub Plan (TSP) for the direct benefits of STs was launched. The TSP for the STs was designed to channelise the flow of outlays and benefits from the general sectors in the plans of the

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<sup>24</sup> Verrier Elwin, (1960) *Report of the Committee on Special Multipurpose Tribal Blocks*, Ministry of Home Affairs, Government of India.



States, Union Territories (UTs) and Central Ministries, in proportion to their population both in physical and financial terms. Each department of State government as well as Union government has to earmark funds on this principle. The approach envisages integrated development of the tribal areas in which all developmental programs, irrespective of their source of funding operate in unison for achieving the common goal of economically developing the area and improving the quality of life of tribal people living in the area. It is an umbrella agency under which all programs implemented by the States and Central Governments are dovetailed for addressing different needs of STs.

The TSP strategy took note of the fact that an integrated approach to the tribal problems was necessary in terms of their geographic and demographic concentration for their faster development. Accordingly, the tribal areas in the country were classified under three broad categories – (a) States and UTs having majority STs population; (b) States and UTs having a substantial tribal population, but majority tribal population in particular administrative units, such as block and *tehsils*, and (c) States and UTs having dispersed tribal population.<sup>25</sup>

As per the said approach, it is decided that tribal majority States like Arunachal Pradesh, Meghalaya, Mizoram, Nagaland and UTs of Lakshadweep and Dadra and Nagar Haveli may not need TSP, as the entire plan of those States / UTs is primarily meant for ST population. For the second category of States and UTs, TSP strategy is adopted after delineating areas of tribal concentration. A similar strategy is also adopted in case of States and Union Territories (UTs) having dispersed tribal population by paying special attention to pockets of tribal concentrations, keeping in view their tenor of dispersal.

To look after the tribal population coming within the purview of TSP, in a coordinated manner, Integrated Tribal Development Projects (ITDPs) were delineated in the tribal concentrated States. Special Central Assistance (SCA) to TSP and grant-in-aid under Article 275(1) of the Constitution were also initiated in this plan to provide additional funds to TSP implementing States for income generating activities, infrastructure development and administrative reinforcement. During the Sixth Plan, Modified Area Development Approach (MADA) was adopted to cover smaller areas of tribal concentration and during the Seventh Plan, the TSP strategy was extended further to

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<sup>25</sup> *Approaches to Tribal Development*, Ministry of Tribal Affairs, Government of India

cover even smaller areas of tribal concentration and thus cluster of tribal concentration were identified and put under MADA Cluster Program. Later, the development of the Primitive Tribal Groups (PTGs) has also been included in the strategy (PTG is renamed as Particularly Vulnerable Tribal Groups – PVTG). ‘The TSP strategy is now being implemented through 196 (one hundred ninety six) Integrated Tribal Development Projects / Integrated Tribal Development Agencies (ITDPs / ITDAs), 259 (two hundred fifty nine) MADA Pockets, 82 (eighty two) Clusters and 75 (seventy five) PGTs in 23 (twenty three) TSP States/UTs. It also envisaged a proper preparation of planning and execution of development programmes for each ITDP/ ITDA, MADA, Cluster and PTG group with proper administrative set-up and monitoring mechanism.’<sup>26</sup>

Developmental plans of India have two types of programs, namely, Central Sector Scheme and Centrally Sponsored Scheme (CSS). Under Central Sector Schemes, it is fully funded by the Union government and implemented by the central government machinery. They are mainly formulated on subjects from the Union List. Resources under those schemes are not generally transferred to federated states.

Whereas, under CSS, a certain percentage of the funding is borne by the States in the ratio of 50:50, 70:30, 75:25 or 90:10, and the implementation is done by the State governments. CSS are formulated in subjects from the State List to encourage States to priorities in areas that require more attention. Funds are routed either through consolidated fund of States or transferred directly to State / District Level Autonomous Bodies / Implementing Agencies.

The state share in CSS is usually lower for Special Category States as compared to General Category States. So, all the tribal majority States and UTs, especially the States of north-east India, are placed in a special category for allocation of funds. The development and administration of tribal areas are accepted as a special responsibility of the central government even though they are integral parts of the concerned state.

The Ministry of Tribal Affairs is implementing various CSS and Central Sector schemes. The financial needs are being taken care of by the credit available through

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<sup>26</sup> *Research Study on Livelihood Options and Assets Creation out of Special Component Plan (SCP) and Tribal Sub Plan (TSP) Programs and its Impact among SCs and STs in India*, (2007). Socio Economic and Educational Development Society (SEEDS), Planning Commission, New Delhi: Government of India, p. 5.

priority sector lending by banks and other financial institutions. The following discussion would highlight the major development schemes and programs, initiated by the Central government, basically for tribal development. They encompassed entire aspect of socio-economic sectors including health and education. Ministry of Tribal Affairs, Government of India, is the nodal agency in supervising the entire Schemes and programs.

### **2.5.1 *Schemes and programs of Central Ministry of Tribal Affairs:***

The Ministry of Tribal Affairs is implementing about 10 (ten) Central Sector Schemes and 6 (six) CSS for social and economic empowerment of the tribals. The ‘Social Empowerment’ of tribals is being undertaken through educational programs like – (1) Post- Matric Scholarship (PMS), Book Banks and Upgradation of merit for ST students; (2) Hostels for ST students for both boys and girls; (3) Ashram Schools in TSP Areas; (4) Coaching for STs (5) Educational Complex in low literacy pockets and (f) Rajiv Gandhi National Fellowship to pursue M.Phil and Ph.D. degrees.

Under ‘Economic Empowerment’ sector, programs are being undertaken relating to income generating activities like – (1) Vocational Training Centres; (2) National Scheduled Tribe Finance and Development Corporation (NSTFDC) for financial assistance with low rate of interest to STs, particularly BPL and women beneficiaries; (3) State Scheduled Tribe Development and Finance Corporations (SSTDFCs) for assisting entrepreneurship development; (4) Training Rural Youth for Self-employment (TRYSEM); (5) Tribal Co-operative Marketing Development Federation of India (TRIFED), for marketing assistance and remunerative prices of the Minor Forest Produce (MFP) and surplus agricultural produce.

Beside the above mentioned schemes and programs relating to socio-economic empowerment, the Ministry is also monitoring programs like – (1) Development of Primitive Tribal Groups (PTGs), (2) Grant-in-aid to Voluntary Organisation working for Welfare of STs, and (3) Grant-in Aid to Tribal Research Institutes (TRI).

### **2.5.2 *Schemes and Programs of other Central Ministries / Departments***

In addition to the Ministries of Tribal Affairs and Social Justice and Empowerment (the two nodal agencies for STs and SCs respectively), other Central Ministries / Departments like Human Resource Development, Health and Family Welfare, Rural Development, Women and Child Development, Water Resources, Labour and

Employment, Power, Urban Development, Village and Small Scale Industries etc, have schemes and programs targeting the SC and ST families.

Some of those important schemes and programs are poverty alleviation programs of rural development through District Rural Development Agency (DRDA) and Integrated Child Development Service (ICDS), Jawahar Gram Samridhi Yojana (JGSY), Employment Assurance Program (EAS), Swarnajayanti Gram Swarajgar Yojana (SGSY), Pradhan Mantri Gram Sadak Yojana (PMGSY), Indira Awas Yojana (IAY), Accelerated Rural Water Supply Program (ARWSP), Central Rural Sanitation Program (CRSP), National Social Assistance Program (NSAP), Reproductive and Child Health (RCH) Programs, Sampurna Grameen Rozgar Yojana (SGRY), National Food for Work Program (NFWP) etc. Some of the programs have now been agglomerated into National Mission programs like National Rural Health Mission (NRHM), Rajiv Gandhi Vidyuti Karan Yojana (RGVKY), Bharat Nirman, Sarva Shiksha Abhiyan (SSA) etc. SCs and STs getting benefit out of these schemes and programs are being accounted under Special Component Plan (SCP) and TSP by those Ministries/Departments.

Thus, the government of India has initiated and is being initiating various schemes and programs for the uplift of tribals. Sometimes it may create confusion because of the multiplicity of schemes and programs. It could be suggested that instead of introducing numbers of schemes and programs, the government could reduced the number of programs and strictly implement them with strict vigilance in implementation.

## **2.6 Schemes and Programs to uplift Tribals of Tripura**

The government of Tripura has taken various measures for the uplift and development of tribals. The government has created a department of Welfare for STs and SCs on 24<sup>th</sup> October, 1970, with the objective of providing more focused attention on the integrated socio-economic development of STs and SCs. Subsequently, it was bifurcated into the directorate of STs and SCs in 1982. The Department of Tribal Welfare is the Nodal Department for the overall policy, planning and coordination of programs for the development of STs. The major objectives of the department is – economic development, promotion of education and preservation of culture and tradition, protection from social exploitation, safeguarding the constitutional and traditional rights and, to ensure the rights of forest dwelling STs on forest land.

To advise the government in matters relating to the welfare of tribals, the government of Tripura has constituted a Tribal Advisory Committee (TAC), on 28<sup>th</sup> March, 1956. Initially, the Committee constituted 9 (nine) members only. Composition of members was increased at latter stages and at present the Committee constitutes 31 (thirty one) members. It is headed by Chief Minister as Chairperson, Tribal Welfare Minister as Vice-Chairperson and, the Director of Tribal Welfare Department as the Member Secretary. Among the 31 Members, 24 (twenty four) are from public representatives and 7 (seven) from high Officials. Besides, Tribal Advisory Sub-Committee has also been constituted to help and assist TAC. The Sub-Committee is headed by the Minister of Tribal Welfare Department. Among the 8 (eight) members of the Sub-Committee, 6 (six) are from public representatives and 2 (two) from high Officials.

The State government has also constituted State Level Monitoring Committee on TSP in the year 1995-1996. It is a mechanism under which each development department of the State government is required to quantify and set apart an amount of their plan budget provision for implementation of programs exclusively for the welfare of STs. The fund so quantified shall not be less than the percentage of ST population in a State. Thus, each development department in Tripura has to quantify at least 31 percent (as per population percentage) of their plan fund towards TSP. The existing committee is headed by Minister of Tribal Welfare, the two Lok Sabha MPs of Tripura, two tribal MLs, the Secretary of each department, Chief Engineer (road and bridge), and Chief Executive Officer (CEO) TTAADC.

### **2.6.1 *Programs for Economic Development:***

In order to augment overall economic welfare of tribals, the government of Tripura has initiated schemes and programs related to settled cultivation. In view of that, finance is given for plantation of various agricultural and horticultural crops which are sustainable in nature.

**Rubber Plantation:** The objective of the program is to assist the tribal people for sustainable economic development through rubber plantation. The beneficiaries are selected by the 'Block Advisory Committee' from the poor ST families. Beneficiaries are supported through agencies like Rubber Board, Tripura Rehabilitation Plantation Corporation (TRPC), Tripura Forest Development and Plantation Corporation Ltd.

(TFDPC) and District Administration through Block Development Officers (BDOs) and Sub-Divisional Magistrates (SDMs).

**Tea Plantation:** Under the scheme, landless tribal families residing in interior areas is provided with financial support. The project is implemented over a period of 5 (five) years. The unit cost is Rs.1, 73, 355 per hectare. The grant amount of Tribal Welfare Department is Rs.1, 06,180 per family for plantation of 1.00 hectare of tea. Rs.66, 975 is provided by Tea Board as a subsidy.

**Coffee Plantation:** The project is implemented over a period of 5 (five) years. The unit cost is Rs.70, 000 per hectare. The grant amount of Tribal Welfare Department is Rs.50, 000 per family for plantation of 1.00 hectare of coffee. A cash subsidy from the Coffee Board is Rs.20, 000.

**Horticulture:** Landless Scheduled Tribe families residing in interior areas are eligible to get the benefit of the program. Rs.68, 675 as grant is provided to each selected family in installments. The grant money is utilised over the period of 5 (five) years.

#### **2.6.2 Programs for Entrepreneurship Development:**

In order to take up beneficiary oriented economic programs suitable to tribal families, the Tripura Scheduled Tribes Co-operative Development Corporation (TSTCDC) was set up in the year 1979. Through the Corporation, loan is given for business in transport, poultry, piggery, handloom and handicraft and different service sectors. Besides, promotions of SHGs through capacity building, infrastructure development, etc. were encouraged by providing financial assistance to poor tribals. In addition, TSTCDC has started to provide financial assistance to ST students for higher studies in medical, engineering and diploma courses from the year 1992.

#### **2.6.3 Programs for Educational Development:**

Tribal Welfare Department spent about 80-90 percent of its plan funds towards educational program. The major programs are:

**Boarding House Stipend:** The government sanctions stipend of Rs. 40 per day per student and Rs.1 per day per student for sweeping and cleaning of boarding house for a maximum number of 322 days in an academic year for the students from KG-I to Class X, staying in approved Boarding Houses.

**Pre-Matriculation Scholarship:** Pre- matriculation Scholarship is provided to ST students with an amount of Rs 40 per month, from class VI to VIII and Rs 50 per month, for the students of classes IX to X for a period of 10 months in an academic year.

**Post-Matriculation Scholarship:** After matriculation, the government again provides post matriculation scholarship to students of class XI and above for continuing higher studies. The ST students, whose annual family income is below Rs.2, 50,000, are eligible for the scholarship.

**Merit Award to Meritorious Students:** The objective of the program is to encourage ST students for excellence in studies. The meritorious ST students who secure 60 percent marks in annual examination and board examination of class VI to XII is given award along with a certificate. The rate of cash award ranges from Rs.400 to Rs.50, 000 for boys and from Rs.500 to Rs.50, 000 for girls.

**Coaching for Matriculation Failed Students:** Under the program, coaching is provided to the matriculation failed students through NGOs. Stipend of Rs.40 per student per day is provided to the failed students for a period of 8 months. The honorarium for each subject teaching staff is Rs.3, 000 per month. The program is implemented through District Administration, SDMs. There should be at least 50 percent pass percentage of enrolled strength for continuing of coaching by NGO run centers for the next year.

**Establishment of Ashram School (Class III to V):** With the aim to provide quality and value based education among the STs, children hailing from poor tribal families, 3 (three) number of Ashram School were set up at Kanchanpur (North Tripura), Ambassa (Dhalai), and Karbook (South Tripura). Medium of instruction in these schools is English.

**Supply of Free Text Books:** Under this program financial grant in lieu of textbooks is given to the students of Class IX to Degree Course and books are given to students of Class I to VII under Sarva Shiksha Abhiyan (SSA).

**Coaching for Civil Service Examination:** Under the program, candidates are sponsored by the Tribal Welfare Department and sent to coaching center at Delhi,

where all expenses on coaching fees, accommodation, travelling expenses of the candidates is borne by the Government.

**Special Coaching Scheme for different Competitive Examinations:** The Tribal Welfare Department has taken special initiatives for ST students of the State by providing coaching scheme for different competitive examinations in the field of technical, medical and various subjects. A course fee per student is Rs.5100.

**Special Coaching in Core Subjects:** Under this scheme tutorial guidance is given to the ST students reading in classes VI to X. Honorarium of Rs.3, 000 per month is paid to tutors. Coaching is given for 5 months in an academic session.

**Stipend to Trainees pursuing Professional Courses:** The government under this program provides stipends to ST trainees in the course of nursing under Health Department and in Industrial Training Institute under Industries and Commerce Department of the State Govt.

**Skill Up-gradation:** Beside the above mentioned assistance and facilities given to tribal students the government has also extended free training to tribals relating to vocational training, pre-induction training for recruitment to para-military forces, shorthand and type writing courses, multipurpose training, computer education etc.

#### **2.6.4 Protection of Constitutional Rights:**

Government of Tripura has taken various initiatives for protection of constitutional rights of tribals. Accordingly, measures like restoration of alienated land have been initiated and the autonomous district council has been created.

**Restoration of Alienated Land:** Land alienated from tribals has been restored again as per Acts and Rules. Tripura Land Revenue and Land Reforms Act, 1960, Section 187 of the Act, relates to restoration of tribal land alienated to non-tribals. The Act further said that, if any non-tribal member possess or occupies a tribal land without lawful authority, he shall be liable for punishment with imprisonment up to two years or a fine of three thousand rupees or both. However, under this Act, land can be transferred from a tribal to another tribal without any specific terms and conditions.

**Constitution of Autonomous District Council:** For the protection of tribals from exploitation and assimilation, TTAADC was set up under the provision of 6<sup>th</sup> Schedule of



the Indian Constitution to entrust more responsibilities and power to tribals. The activities of the Council range from primary education to maintenance of roads and bridges.

Thus, it could be seen that the government of Tripura has adopted various policies and initiated widespread measures for tribal development. It encompasses all aspects of social, educational and economic sphere. Besides, the government has also taken extensive measures for protection of constitutional and traditional rights of tribals. ADC is a mechanism framed under the Sixth Schedule of the Indian Constitution, entrusted with safeguarding the tribal's right. The following section accordingly, discussed the establishment of the Sixth Schedule of the Indian Constitution. In addition, it also analysed the key Acts and Amendment of Sixth Schedule of the Indian Constitution and the special provision enshrined in it.

## **2.7 The Sixth Schedule of the Indian Constitution [Art. 244 (2) and 275 (1)]**

Prior to Indian independence, all the tribal areas of Assam were designated as 'Backward Tract,'<sup>27</sup> under The Government of India Act, 1919. These tracts were governed as non-regulated areas and were commonly subjected to special laws. These laws usually prescribed simple and elastic forms of judicial and administrative procedures. Till 1935, the objective of Government policy in relation to the areas, inhabited by backward tribal population, had primarily been to give the tribal inhabitant in these areas security of land tenure, freedom in the pursuit of their traditional means of livelihood and a reasonable exercise of their ancestral customs. Later, the hills in Northeast India were administered under the provisions of the Government of India Act, 1935. This Act provides for administration of certain hill districts directly by the Governor of Assam. After independence, the constitution of India provided for protection of the interests of the tribal peoples of the hills of north-east India, including their interest in land and forest resources and allowed them autonomy in social and political development. The Sixth Schedule of the constitution provided the legal framework for this protection.

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<sup>27</sup> Part I, Sl. No. 15(2) of The Government of Indian Act, 1919, stated that, the Governor-General in Council may declare any territory in British India to be a 'backward tract,' and may, by notification, with such sanction as aforesaid, direct that the principal Act and this Act shall apply to that territory subject to such exceptions and modifications as may be prescribed in the notification.

When the Indian constitution was adopted, it envisaged strong democratic institutions at the grass root level as well as concerning the affairs of the tribal communities. Consequently, democratic decentralisation and establishment of Panchayat Raj became one of the Directive Principles of State Policy. However, in the case of tribal areas in the country, especially those in the north-east India, there are certain specific provisions provided in the Indian constitution. The constitution makers also recognised the necessity of a separate political and administrative structure for the hill tribal areas of the erstwhile province of Assam by enacting the Sixth Schedule to the constitution of India. 'In doing so, they were broadly guided by three major considerations:

- 1) the necessity to maintain the distinct customs, socio-economic and political culture of the tribal people of the region and to ensure the autonomy of the tribal people and to preserve their identities;
- 2) the necessity to prevent their economic and social exploitation by the more advanced neighbouring people of the plains, and
- 3) to allow the tribal people to develop and administer themselves according to their own genius.'<sup>28</sup>

Thus, in pursuance of paragraph 20 of the Cabinet Mission Statement of May 16, 1946, an Advisory Committee on Fundamental Rights of Minorities in Tribal Areas was constituted by the Constituent Assembly in India. One of the Sub-Committees constituted by the Advisory Committees was the Northeast Frontier (Assam) Tribal and Excluded Areas Sub-Committee, under the Chairmanship of Gopinath Bordoloi, popularly known as Bordoloi Sub-Committee. The Sub-Committee visited the tribal areas in the then composite state of Assam, which included visits to Lushai Hills District (present Mizoram), North Cachar Sub-Division (present Dima Hasao district, Assam), Mikir Hills (now Karbi Anglong, Assam) and the Naga Hills District (present Nagaland), and interact with the representative of the hill people in order to formulate a model administrative set up for these areas within the state of Assam. When the Sub-Committee studied the problems of the tribal people of the region, it realised that these areas needed protection and safeguards, so that they might be able to preserve their way of life and at the same time participates in the political affairs of the country along with others. The committee also noted the existence of the traditional tribal self-governing institutions which

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<sup>28</sup> L.S. Gassah (Eds.), 1997. '*Autonomous District Council*,' Omsons Publications, New Delhi, p. 3.

functioned democratically and settled their disputes in accordance with their own customs and traditions. The Sub-Committee further sought to develop an administrative set up, so that they might not be exploited, subjugated and oppressed by the more advanced people.

‘Thus, the Sub-Committee, after great deliberation, submitted its report on 28<sup>th</sup> July, 1947, to the Chairman, Advisory Committee on fundamental Rights, Shri Ballabbhai Patel. The report has dealt in details about various aspects relating to administration of the tribals areas. These aspects include thoughts on development, special features of this areas, land, forest, jhumming, courts, finance, control of immigration, mines, legislation, representation, services etc.’<sup>29</sup>

When the draft provisions of the Sixth Schedule were placed for discussion in the Constituent Assembly, severe opposition and criticisms came from two members of the Constituent Assembly i.e. Mr. Kuladhar Chaliha and Mr. Rohini Kr. Choudhury, both from Assam. In spite of indifferent attitude and ethnocentric views showed toward the Sixth Schedule by the two members, other members like Dr. Ambedkar, Rev. J.J.M. Nicholas Roy and Mr Jaipal Singh strongly defended in favour of incorporation of Sixth Schedule in the constitution of India; so that the tribal people under the Sixth Schedule areas would be able to enjoy the rights and privileges of administering their own distinct areas according to their own genius. The Drafting Committee accepted the draft for the creation of ADC in the hill areas of north-east India with certain autonomy and measures of self-government. It was also a remarkable skill performed by the Bordoloi Sub-Committee in which it sought to reconcile the hill men’s demand for political autonomy, despite Assam Government’s drive and desire to integrate them unnecessarily with the plains which they have nothing in common.<sup>30</sup>

### **2.7.1 Excluded and Partially Excluded Areas:**

The Government of India Act, 1935 divided the north-east Indian hilly tracts into ‘excluded’ and ‘partially excluded’ areas. The North-east Frontier (Sadiya, Balipara and Lakhimpur of present Assam) Tracts, the Naga Hills District, the Lushai Hills District and the North Cachar Sub-Division of Cachar District of present Assam, were specified as

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<sup>29</sup> B.L Hansaria, 2010. “*Sixth Schedule to the Constitution*,” Vijay Hansaria (ed.), *op.cit.*, p. 9

<sup>30</sup> L.S. Gassah (Ed.), 1997. ‘*Autonomous District Council*,’ Omsons Publications, New Delhi, p. 7.

‘excluded Areas.’ Whereas, the Garo Hills District of present Meghalaya, the Mikir hills District of present Karbi Anglong District, Assam, the British portion of the Khasi and Jaintia Hills District of present Meghalaya, other than the Shillong Municipality and Cantonment were specified as ‘partially excluded’ areas.

The principle adopted in the selection of these areas was that where there was an enclave or a definite tract of areas inhabited by a compact tribal population, it was classified as an ‘excluded areas.’ On the other hand, where the tribal population was mixed up with the rest of the community and the tribals were substantially enough in numbers, the area was classified as ‘partially excluded’ areas.

The point of distinction between the two was that, while both classes of areas were excluded from the competence of the provincial and Federal Legislatures, the administration of ‘excluded areas’ was vested in the Governor acting in his discretion, while administration of the ‘partially excluded’ areas was vested in the Council of Minister subject, however, to the Governor exercising his individual judgment.<sup>31</sup>

### **2.7.2 Key Acts and Amendments of the Sixth Schedule:**

The Sixth Schedule as it emerged from the Constituent Assembly has undergone changes on ten occasions. These amendments are briefly discussed below.

**State of Nagaland Act, 1962:**<sup>32</sup> In July, 1960 a sixteen point agreement was arrived at between the Naga People’s Convention and the Government of India, where it was agreed that the Naga Hills – Tuensang Area (Nagaland), which was then within the state of Assam, should be formed as separate state to be known as Nagaland. Accordingly the State of Nagaland Act, 1962, was enacted by the Indian Parliament and consequently the provisions of the Sixth Schedule ceased to be applicable to the state of Nagaland.

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<sup>31</sup> S.K. Agnihotri, 1997. ‘District Councils under the Sixth Schedule’, in L.S. Gassah (Ed.), ‘Autonomous District Council,’ Omsons Publications, New Delhi, pp.42-43.

<sup>32</sup> State of Nagaland Act, 1962, (Act 27 of 1962), is an Act which provides for the formation of the State of Nagaland and for that matter connected therewith.

**Assam Reorganisation (Meghalaya) Act, 1969:** <sup>33</sup> On 11<sup>th</sup> September, 1968, the Government of India announced a scheme for constituting an autonomous State within the State of Assam. In terms of the said announcement, the Indian constitution, 22<sup>nd</sup> Amendment Act, 1969, was enacted conferring power on the parliament for the formation of an autonomous State within the State Assam. Accordingly, Assam Reorganisation (Meghalaya) Act, 1969, was enacted establishing the State of Meghalaya, comprising of the United Khasi and Jaintia Hills District and the Garo Hills District. District Council of North Cachar Hills and Mikir Hills were given the option to join Meghalaya by passing a resolution of not less than two third of the members. However, no resolution was passed by the two Districts and as such the two District Councils have continued to remain within the State of Assam.

**North-Eastern Areas (Reorganisation) Act, 1971:** <sup>34</sup> In 1970-1971 there was political reorganisation of the areas in the north-eastern region of India, which was brought about by the North-Eastern Areas (Reorganisation) Act, 1971. By this Act, statehood was granted to Manipur and Tripura which were till then Union Territories (UTs). Besides, the State of Meghalaya was formed and Mizo District and North-East Frontier Agency were taken out of Assam and made separate UTs, called Mizoram and Arunachal Pradesh. Along with the aforesaid Act, constitution 27<sup>th</sup> Amendment Act, 1971 was passed, which granted the powers to the Governor to make regulation for peace, progress, and good governance of the two new UTs. The constitutional amendment further made special provision for the State of Manipur, empowering the President to constitute a committee of the legislative assembly of the State for the welfare of the hill areas of the State of Manipur.

**Government of Union Territories (Amendment) Act 1971:** <sup>35</sup> In line with the North-Eastern Areas (Reorganisation) Act, 1971, the Government of Union Territories

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<sup>33</sup> Assam Reorganisation (Meghalaya) Act, 1969, (Act 55 of 1969), provides for the formation of autonomous State within the State of Assam to be known as Meghalaya and for matters connected therewith.

<sup>34</sup> North-Eastern Areas (Reorganisation) Act, 1971, (Act 81 of 1971) is an Act which provides for the establishment of the States of Manipur and Tripura and to provides for the formation of the State of Meghalaya and of the Union Territories of Mizoram and Arunachal Pradesh by reorganisation of the existing State of Assam and for that matters connected therewith.

<sup>35</sup> Further amends the Government of Union Territories Act, 1963 and also amend the Sixth Schedule to the Indian Constitution and the Representation of the People Act, 1950.

(Amendment) Act 1971, (Act 83 of 1971) made special provision with regard to Union Territories of Mizoram. It is in pursuance of this power that the Mizoram District Council was issued by the ‘Administrator’<sup>36</sup> Constituting Chakma, Lakher (Mara) and Pawi (Lai) District Council.

**Repealing and Amending Act, 1974:**<sup>37</sup> An insignificant change was made by the Repealing and Amending Act, 1974, which substituted the words ‘cattle pounds’ with the words ‘cattle pond.’

**Constitution (49<sup>th</sup> Amendment) Act, 1984:**<sup>38</sup> The Sixth Schedule as originally enacted did not apply to any part of the State of Tripura. The Tripura Legislative Assembly passed a resolution on 19<sup>th</sup> March, 1982 and again on 11<sup>th</sup> February, 1983 urging the Government of India to apply the provisions of the Sixth Schedule of the constitution to the tribal areas of the State of Tripura. Accordingly, by the constitution 49<sup>th</sup> Amendment Act, 1984, the provisions of the Sixth Schedule were made applicable to the tribal areas of the State of Tripura.

**The State of Mizoram Act, 1986:**<sup>39</sup> On 38<sup>th</sup> June, 1986, a memorandum of settlement was signed by the Government of India and the Government of Mizoram with the Mizo National Front to bring about an end to the disturbed conditions in Mizoram and to restore peace and harmony. Following the settlement, the State of Mizoram attained statehood. The Act carried out consequential amendments in the heading of the Sixth Schedule. Accordingly, constitution (53<sup>rd</sup> Amendment) Act, 1986 was passed providing that no Act of Parliament in respect of religious or social practices of the Mizo, Mizo customary law and procedures, administration of civil and criminal justice involving decisions according to Mizo Customary law and ownership and transfer of land shall apply to the State of Mizoram unless the legislature of the State of Mizoram by a resolution so decides.

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<sup>36</sup> ‘Administrator’ means the Administrator of the Union Territory of Mizoram appointed under article 239 of the Indian Constitution.

<sup>37</sup> It is an Act to repeal certain enactment and to amend certain other enactments.

<sup>38</sup> Constitution (49<sup>th</sup> Amendment) Act, 1984, is an Act that further amends the Constitution of India.

<sup>39</sup> It is an Act to provide for the establishment of the State of Mizoram and for matters connected therewith.

**Sixth Schedule to the Constitution (Amendment) Act, 1988:**<sup>40</sup> The Sixth Schedule to the constitution (Amendment) Act, 1988, granted further autonomy to the district councils in the States of Tripura and Mizoram by providing a different scheme for application of laws of the State Legislature and of the Parliament to the tribal areas of these States. Further autonomy of the district council was preserved by granting personal discretionary powers to the Governors of Tripura and Mizoram.

**Sixth Schedule to the Constitution (Amendment) Act, 1995**<sup>41</sup>: The tribal people of Karbi Anglong and North Cachar Hill District were dissatisfied with the autonomy available to them under the existing provision of the Sixth Schedule and there has been a demand of constituting an autonomous state within the State of Assam comprising the said two districts. Accordingly, a memorandum of understanding was signed on 1<sup>st</sup> April, 1995, between the Government of Assam and some representative bodies of two districts in the presence of the Home Minister, Government of India, where it was agreed to grant more autonomy to the two district council and have lesser control of the State Government over them. To effectuate the said settlement, the provisions of the Sixth Schedule, in its application to the State of Assam, were amended by the Sixth Schedule to the constitution (Amendment) Act, 1995.

**Sixth Schedule to the Constitution (Amendment) Act, 2003**<sup>42</sup>: Bodo tribe of lower Assam has been demanding a separate Bodoland since 1987. After long drawn negotiation and series of meetings, a Bodo Accord was signed on 20<sup>th</sup> February, 1993, by All Bodo Students' Union and Bodo People's Action Committee with the Government of Assam to provide maximum autonomy to Bodos within the framework of the constitution for their all round development. As a consequence, the Bodoland Autonomous Council (BAC) was constituted by the Government of Assam by enacting Bodoland Autonomous Council Act, 1993. However, Bodo groups were of the view that Bodo Accord had become unworkable and further autonomy was demanded. Accordingly, a Memorandum of settlement was signed on 10<sup>th</sup> February, 2003, between the Central Government, the

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<sup>40</sup> It is an Act which further amends the Sixth Schedule to the Constitution of India in its application to the States of Tripura and Mizoram.

<sup>41</sup> It is an Act, which further amend the Constitution of India, in its application to the State of Assam.

<sup>42</sup> It is an Act that further amends the Constitution of India in its Application to the State of Assam.

Government of Assam and Bodo Liberation Tigers. To implement the said settlement, Sixth Schedule of the Indian constitution, in its application to the state of Assam, was amended by the Sixth Schedule to the Indian constitution (Amendment) Act, 2003, and the provision of Sixth Schedule were made applicable to area of the Bodoland Territorial Council (BTC).

**2.7.3 Constitutional provisions under the Sixth Schedule:**

Article 244(2) of the Indian constitution provides for the Sixth Schedule which shall apply to the administration of the tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram. Para 20 of the Schedule provides a list of tribal areas covered by the Sixth Schedule in four Parts – Part I, Part II, Part IIA and Part III. These are as follows:

Part – I		
1. The North Cachar Hills Autonomous District.	}	Assam
2. The Karbi Anglong Autonomous District.		
3. The Bodoland Territorial Council.		
Part – II		
1. The Khasi Hills Autonomous District	}	Meghalaya
2. The Jaintia Hills Autonomous District		
3. The Garo Hills Autonomous District		
Part – II A		
1. Tripura Tribal Areas Autonomous District Council	}	Tripura
Part – III		
1. The Chakma Autonomous District Council	}	Mizoram
2. The Mara Autonomous District Council		
3. The Lai Autonomous District Council		

Constitutional provisions for the above mentioned district councils, outlined in different paragraph of the Sixth Schedule are briefly discussed below:

Paragraph 1 of the Sixth Schedule stated that if there are different Scheduled Tribes in an autonomous district, the Governor may, by public notification, divide the area or areas inhabited by them into autonomous regions. Thus, the Governor may include or exclude any area, create a new autonomous district, increased the area, diminish the area, unite two or more as to form one autonomous district, alter the name and define their



boundaries. But this provision shall not be applicable to BTC in Assam, as per Sixth Schedule to the Constitution (Amendment) Act, 2003.

In this regard, the Governor of Assam, Tripura and Mizoram while dividing autonomous district into autonomous region or while changing, creating the area or altering the area of any autonomous district, act in their personal discretion in view of a provision contained in paragraph '20 BA and 20 BB'<sup>43</sup> of the Sixth Schedule. Nevertheless, they are required to consult the Council of Ministers and respective district council before taking final decision. In case of Meghalaya, the Governor has to act on the aid and advice of the Council of Ministers as per Article 163 of the constitution and has no personal discretion.

Paragraph 2 outlines that there shall be district council for each autonomous district consisting of not more than thirty members, of whom not more than four persons shall be nominated by the Governor and the rest shall be elected on the basis of adult suffrage. In case of BTC, it shall consist of not more than forty-six members of whom forty shall be elected on the basis of adult suffrage.

Thus, rules framed under paragraph 2 provides for the composition of district and regional councils and the allocation of seats therein, delimitation of territorial constituencies, qualifications of voters, qualification of being elected, term of office, appointment of officers and staff, etc. the rules are to be framed by the Governor in consultation with the existing tribal councils or other representative tribal organisation within the district or region.

Paragraph 3 of the Sixth Schedule gives powers to district councils and regional councils for their respective jurisdiction to make laws with respect to – (1) the allotment, occupation or use, or the setting apart of land, other than any land which is a 'reserved forest'<sup>44</sup> for the purposes of agriculture or grazing or for residential or other non-agricultural purposes or for any other purpose likely to promote the interest of the inhabitants of any village town. However, nothing in such laws shall prevent the

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<sup>43</sup> Exercise of discretionary powers by the Governor in the discharge of his functions.

<sup>44</sup> Reserve Forest' mentioned in this paragraph means any area which is a reserved forest under the Assam Forest Regulation, 1891 or under any other law for the time being in force in the area in question.

compulsory acquisition of any land, whether occupied or unoccupied, for public purposes in accordance with the law; (2) the management of forest not being a reserved forest; (3) the use of any canal or water course for the purpose of agriculture; (4) the regulation of the practice of jhum or other forms of shifting cultivation; (5) the establishment of village and town committees or councils and other powers; (6) any other matter relating to village or town administration, including village or town police and public health and sanitation; (7) the appointment or succession of Chiefs or Headmen; (8) the inheritance of property; (9) marriage and divorce and (10) social customs.

In addition, under paragraph 3A, additional powers have been conferred on North Cachar Hills Autonomous Council and Karbi Anglong Autonomous District Council (both in the State of Assam) to make laws on ‘fifteen additional subjects.’<sup>45</sup> Under paragraph 3B additional powers have been conferred to BTC in the State of Assam to make laws on ‘forty additional subjects.’<sup>46</sup> However, no law/laws made by BTC under paragraph 3B can extinguish or modify the existing rights and privileges of any citizen in respect of his land and disallow any citizen from acquiring land either by way of inheritance, allotment, settlement or by any other way of transfer if such citizen is otherwise eligible for such acquisition of land.

All laws made under this paragraph shall be submitted forthwith to the Governor and until assent by him shall have no effect.

Paragraph 4 empowers the district councils and regional councils to constitute village council courts for trial or suits and cases in which all the parties are members of Schedule Tribes to the exclusion of other court in the State. The appellate powers over this village councils or courts vest in district council or regional council. No other court,

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<sup>45</sup> In respect to industries, communications, preservation and protection of livestock, primary and secondary education, agriculture, fisheries, water, employment and unemployment, flood control, cinemas, health and sanitations, minor irrigation, trade and commerce, libraries museum and alienation of land.

<sup>46</sup> Agriculture, preservation and protection of livestock, co-operation, cultural affairs, education including higher education, fisheries, flood control, food and civil supplies, forests, handloom and textile, health, drugs, irrigation, labor and employment, land and revenue, library service, markets, municipal corporation, museum and archeology, panchayat and rural development, planning and development, printing and stationary, public health engineering, PWD, publicity and public relation, registration of births and deaths, relief and rehabilitation, sericulture, cottage industries, social welfare, soil conservation, sport and youth affairs, statistics, tourism, transport, tribal research institute, urban development, weight and measures and welfare of plain tribes.

except the High Court and the Supreme Court has any jurisdiction over the suits and cases tried by village council or courts. The district council or regional council shall make rules, with the approval of the Governor, regulating the functioning of village council or courts.

Paragraph 5 authorised the Governor to confer power on the district council or regional council courts constituted by such council under the Code of Civil Procedures 1908, or the Code of Criminal Procedures 1898, to try suits or cases specified by The Governor in this behalf, or try the offences punishable with death, transportation of life or punishment for a term not less than five years.

Paragraph 6 confers power on the district council or regional council to establish, construct or manage primary schools, dispensary, markets, cattle ponds, ferries, fisheries, roads, transports and waterways. It has also empowered the district council to make rules for the regulation and control of the subjects mentioned above and in particular in particular to prescribe the language and the manner in which primary education shall be imparted. Besides, the Governor may, with the consent of any district council, entrust either conditionally, or unconditionally, to that Council or to its officers in relation to agriculture, animal husbandry, community projects, co-operative societies, social welfare, village planning or any other matter to which the executive power of the state extends.

Paragraph 7 stated that District Fund for each autonomous district and Regional Fund for each region is required to be constituted to which all moneys received by the district council or regional council is to be credited. The accounts are to be kept in the form prescribed by the Comptroller and Auditor general (CAG) of India who is to cause accounts of those councils to be audited. The report is to be submitted to the Governor who is to lay it before the district council.

Paragraph 8 empowers district council or regional council to levy or collects taxes/revenues on the following items: (1) land revenue in respect of all lands; (2) taxes on land and buildings; (3) tolls on persons and resident; (4) taxes on professions, trades and employments; (5) taxes on animals, vehicles and boats; taxes on entry of goods into markets for sale therein, and tolls on passengers and goods carried in ferries and (6) taxes for maintenance of schools, dispensaries or roads.

However, it is pertinent to note that paragraph 8 only empowers the district council to lay and collect revenues. So, by virtue of this power it cannot be said that district council has become the owner of the land.

Paragraph 9 deals with share royalties accruing from licenses or leases granted for the purpose of prospecting or extracting minerals in respect of any area within the concerned autonomous district. In case of any dispute as to the share of royalties, the matters should be referred to the Governor whose decision shall be final. It may be stated that this is the only paragraph in the entire Sixth Schedule which still spoke of the Governor acting in his discretion in exercising power under the schedule.

A new sub-paragraph (3) was inserted in its application to States of Tripura and Mizoram by the Sixth Schedule to the constitution (Amendment) Act, 1988, which empowered the Governor to direct that the share of royalties to be made over to the district council be paid within a period of one year from the date of any agreement or determination.

Paragraph 10 confers power on the district council to make regulations for the control of money-lending and trading by non-tribals. The regulations framed by the district council under this paragraph may provide for the following:

- 1) Prescribe that no one except the holder of license issued in that behalf shall carry on the business of money-lending;
- 2) Prescribe the maximum rate of interest which may be charged or be recovered by a money lender;
- 3) Provide for the maintenance of accounts by money lenders and for the inspection of such accounts by officers appointed in that behalf by the District Council, and
- 4) Prescribe that all the non-Schedule Tribes residence must obtain license for carrying on business in the District.

A regulation made under this paragraph is required to be passed by a majority of not less than three-fourth of the total members of the district council and also require the assent of the Governor. The Governor has to act on the aid and advice of the Council of Minister while granting assent under this paragraph except in the case of State of Assam where the Governor Acts in his personal discretion.

Paragraph 10, in its application to States of Tripura and Mizoram, has been amended by the Sixth schedule to the constitution (Amendment) Act, 1988, which has the effect of empowering the district councils to make regulations under this paragraph not only for the persons other than tribals or Schedule tribes, but for all persons which would include tribals and non-tribals in the district.

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

The paragraph does not apply to BTC vide insertion of a new sub-paragraph (4) in its application to the State of Assam by the Sixth Schedule of the constitution (Amendment) Act, 2003.

However, no law made by BTC under paragraph 3B can extinguish or modify the existing rights and privileges of any citizen in respect of his land and disallow any citizen from acquiring land either by way of inheritance, allotment, settlement or by any other way of transfer if such citizen is otherwise eligible for such acquisition of land.

Paragraph 11 (eleven) relates to publication of laws, rules and regulations made under the Schedule. Thus, all laws, rules and regulations made under the Sixth Schedule by district council or a Regional Council would be published in the Official Gazette of the State, and on such publication have the force of law.

Paragraph 12, 12A, 12AA and 12B relate to application of Acts of Parliament and State legislature to autonomous district and autonomous regions of Assam, Meghalaya, Tripura and Mizoram respectively. The provisions contained in paragraph 12, 12A, 12AA and 12B provides schemes with respect to:

1. Applicability of laws of State Legislature on the subjects mentioned in paragraph 3, 3A and 3B. (It is about the powers of district councils and regional councils for their respective jurisdiction to make laws, and about the additional powers given to BTC, North Cachar Hills Autonomous Council and Karbi Anglong Autonomous District Council).

2. Applicability of laws of State Legislature on the subject other than those mentioned in paragraph 3, 3A and 3B. (In serial 3, applicability of State laws in regards to paragraph 8 and 10 are again mentioned, meaning that this scheme relates to applicability of State laws on the subjects other than paragraph 3, 3A, 3B, 8 and 10. (Refer paragraph-wise explanation in this section).
3. Applicability of laws of State Legislature on the subject mentioned in paragraph 8 and 10. (It is about the powers of district council or regional council to levy or collects taxes/revenues, and to make regulations for the control of money-lending and trading by non-tribals).
4. Applicability of laws of State Legislature prohibiting or restricting the consumption of any non-distilled alcoholic liquor.
- 5) Applicability of laws made by the Parliament.

The applicability of the five categories of law to tribal areas of the State of Assam, Meghalaya, Tripura and Mizoram is presented in table 2.2.

**Table 2.2**  
**Applicability of Union/State Laws in Sixth Schedule Areas**

Sl. No.	Categories of law	Assam (Para 12)	Meghalaya (Para 12A)	Tripura (Para 12AA)	Mizoram (Para 12B)
1	Laws of State Legislature relating to paragraph 3, 3A, 3B	Not Applicable unless District Council directs	State Legislation prevails	Not Applicable unless District Council directs	Not Applicable unless District Council directs
2	Laws of State Legislature other than paragraph 3, 3A, 3B	Governor may direct not to apply or apply	State Legislation prevails	Governor may direct not to apply or apply	Governor may direct not to apply or apply
3	Laws of State Legislature relating to paragraph 8 and 10	District Council regulation shall Prevails	State Legislation prevails	District Council regulation shall prevails	District Council regulation shall Prevails
4	Laws of State Legislature relating to prohibiting consumption of non-distilled alcohol	District Council regulation shall Prevails	State Legislation prevails	District Council regulation shall prevails	District Council regulation shall Prevails
5	Laws made by Parliament	Governor may direct not to apply or apply	President may direct not to apply or apply	President may direct not to apply or apply	President may direct not to apply or apply

*Source: Compiled from Sixth Schedule to the Indian Constitution, Vijay Hansaria*

Table 2.2 clearly explains the applicability of State and Union laws in Sixth Schedule Areas of north-east India. It shows that, as far as applicability laws of State legislature are concerned, in respect to subjects mentioned in different paragraphs, regulation of respective district council prevails in Assam, Tripura and Mizoram. But in case of Meghalaya, State legislation prevails over the regulation of district council. The case is different in regards to laws made by Parliament. In three States of Meghalaya, Tripura and Mizoram, President of India has the power to direct whether to apply those laws made by parliament. But in case of Assam, it is the Governor who may direct whether to apply those laws made by parliament. So, the Governor of Assam has special powers as compared to Governor of other three States.

From the above discussion, it could be found that, since independence, the government of India has taken and is being adopting several approaches and policies to uplift the tribals in India. For the purpose, the Indian government has also good numbers of constitutional Acts and Amendments to safeguard tribals. It is enshrined in different parts and articles of the Indian constitution. When the approaches and policies for tribal development are thoroughly examined, it is found that the Indian Government is inclined to strike a balance between preservation of tribal identity, culture and values on the one hand, and ensuring their access to mainstream education, health care and income generation without being absorbed by mainstream lifestyles.

In fact, to fulfill the objective, the Indian Government has adopted and amended a special schedule, that is, Sixth Schedule of the Indian constitution for north-east Indian tribals. The basic objective of Sixth Schedule is to preserve and promotes the tradition, culture, and identity of tribals. The following chapter discussed in details tribal development administration in Tripura under the Sixth Schedule of the Indian constitution.