REPORT

OF THE

SCHEDULED AREAS AND SCHEDULED TRIBES COMMISSION GOVERNMENT OF INDIA

VOLUME-I

2002-2004

Drokpa Tribe of Darchik, Ladakh

दिलीप सिंह भूरिया
अध्यक्ष
DILEEP SINGH BHURIA
CHAIRMAN

भारत सरकार
GOVERNMENT OF INDIA
SEHEDULED AREAS &
SCHEDULED TRIBES
COMMISSION
अनुसूचित क्षेत्र एवं
अनुसूचित जनजाति आयोग
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To

16 July 2004

The President of India,
NEW DELHI

Sir,

In 1960, you appointed the Scheduled Areas and Scheduled Tribes Commission under Article 339 of the Constitution under the chairmanship of Shri U.N. Dhebar and assigned the task of investigating and reporting on the problems of the Scheduled Tribes. Forty-two years later, on 18 July 2002 you were pleased to appoint the Scheduled Areas and Scheduled Tribes Commission under Article 339(1) under my chairmanship with a charter which hardly leaves out anything pertaining to the Scheduled Tribes under the sun. My colleagues and I are happy to submit a unanimous Report herewith in three volumes – volume I dealing with the national scene in chapters, volume II relating to individual States and volume III containing copies of relevant documents, papers etc. In preparing it, we have kept in view that the Scheduled Tribes people, Adivasis, have been the original inhabitants and have made no mean contribution to this great land. Our northern borders from west to east are guarded by them. Yet, today, regretfully they form the bottom socio-economic deciles of the Indian society.

2. We have carefully gone through the Dhebar Commission Report and made use of the recommendations wherever possible and necessary. Volumes of water have flown through the Indian rivers since then. The tribal scenario in the country has become complicated manifold. It is not unexpected being in tandem with the Republic's larger polity. We believe that our voluminous Report reflects the tangled web. We would like to mention, however, that in our approach we have

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striven not only to explore a balance between the tribal segment and the larger society, but in the process also to cement and buttress the larger society as a whole.

3. The Dhebar Commission observed four different layers among scheduled tribes, at the base of which they found a group of tribals "in an extremely underdeveloped stage and at the topmost level amongst the tribals .... a layer that can very well afford to forgo any further help. We feel that this lowest layer needs the utmost consideration at the hands of the Government". During our perambulations through the length and breadth of the country, we came across a number of the former groups which have come to be known as "primitive tribal groups". The Government of India has identified their number as 75. A pressing basic requirement is a deeply thought-out strategy and dedicated care for them. At its extreme, the group is exemplified by the five Bay Islanders, the outstanding being the Jarawa, Sentinelese and Shompen. We feel that they should be regarded as "heritage groups" and have argued in this Report that the policy to be formulated for them should be such as enables them to move in the direction that they decide, on the terms which are their own and at the pace they wish to advance. The policy and action should allow them to progress, resonating with the values of our civilization and culture. Incidentally, we have advocated in this report that they should be earmarked a distinct share in entitlements overall available to scheduled tribes in the concerned states.

4. In this context, we cannot help referring to the dictum, aired not unoften, that the objective of the tribal policy should be to ensure the scheduled tribe people join the mainstream. In our interactions, we have found that the tribespeople have reservations about it, as being not only paternalistic and patronizing but also prejudicial to the indigenous and tribal peoples' ethnic identity and mores, and violative of their rights. They are averse to attempts, overt or covert, that aim at their assimilation. They wish to preserve the integrity of their culture and personality, say through the first of the five principles of the Panch Sheel of Tribal Development which exhorts that the tribal people should be allowed to develop along the lines of their own genius.

5. We have mentioned above the "heritage groups". They need and deserve special care and treatment. But we hasten to add that the bulk of the ST population calls for focused thought, priority attention and exclusive ministration. Their human development indices (having economic and social components) are the lowest as compared to any other section of the people. The nation's dream of India becoming a super-power, can be realized only if this most backward section is pulled out of the morass, on the economic front through better agriculture, irrigation, horticulture, animal husbandry etc. and on the social front through higher levels of health, education, safe drinking water, shelter etc. Apparently, the inputs of planning strategy, the plans and their implementation this half a century have been inadequate to the task. We have made suggestions in our Report in this regard and we advert briefly to these matters here in the paragraphs following.

6. Land and forests are the two basic resources of the tribal life-support system. There have been assaults on both. We have devoted considerable space in our report to measures which enable retention with them of land which tribals possess, but which unfortunately, continues to be under constant attempts at expropriation. We have also suggested ways in which optimal benefits can be derived by tribals as well as forests through tribal-forest equilibrist symbiosis. States laws for minimizing alienation of tribal land need to be reformed to plug loopholes and stringise them. With the accelerated urbanization and industrialization, tribal land-holdings in urban areas experience great pressure for transfer. We suggest application of anti-land alienation laws in urban areas and, at the same time, applicability of such laws to non-agricultural lands in addition to agricultural holdings.

7. The Supreme Court has interpreted the right to life and liberty guaranteed by Article 21 of the Constitution as including the right to livelihood. Article 48A calls upon the State to endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. The Supreme Court has further held that the Fundamental Rights (Article 21 here) and Directive Principles of the State Policy (Article 48A here) are to be harmoniously construed. Tribals have been living in forests since ages. Yet, an erroneous view has been held that such

tribals should be regarded as "encroachers". Nevertheless, State Governments took steps after Independence to make allotment of the forest lands to the tribals, some generations-long in occupation. The process was continuing when the Forest (Conservation) Act, coming into force in October 1980, halted it abruptly. Entirely laudatory in its objective to check further depletion of forest cover, those tribal families whose occupation had not been regularized, were left in the lurch. The uncertainty lasted for a decade. Fortunately, the Ministry of Environment and Forest issued comprehensive orders in 1990 to regularize the cases of eligible occupants, settle disputed claims over forest land arising out of forest settlement, settle disputes regarding Pattas/leases/grants involving forest land, eliminate intermediaries and payment of fair wages, convert forest villages into revenue villages etc. In 1995, the Supreme Court directed the State Governments to decide the peoples' claims in the light of these instructions of the Government. Before any significant action could commence, in a case relating to encroachments on extensive forest lands by avaricious planters for quick gains, the Supreme Court passed orders for clearing the forests forthwith of all encroachments. Unwittingly, the axe fell on the simple artless, voiceless and defenceless tribals, most of whom had genuine claims. Evictions started and notwithstanding the swings in the pendulum of various orders passed thereafter, the position presently is that little action has been taken either to regularize long-standing occupations by tribals or in respect of other subjects afore-mentioned. That the uncertainty and suspense over the life and liberty of millions of forest-dwelling or forest-fringe citizens should continue for decades is clearly unacceptable in a democratic set-up. All measures that tend to be anti-thetical to tribal-forest symbiosis should be forsworn and matters should be brought to a satisfactory solution.

8. The Tribal sub-Plan strategy was devised during the Fifth Plan period to ensure adequate funds-flow to the Scheduled Areas and tribal areas throughout the country. But adequate implementation by translation of funds into better quality of life of tribals through socio-economic improvement has, conspicuously, hardly concretized, notwithstanding constitutional provisions and safeguards. This has been a worrying aspect for the Commission. We have attempted to unravel the

causes and prescribe remedies in the report. In parenthesis, we would like to emphasise is the fear that the tribal people all over the country, consciously and sub-consciously, entertain of the exploitative squeeze over their natural resources and invasion of their cultural practices, driving them into unchartered courses.

9. The concept of Tribal sub-Plan, operative since the seventies, implies Central and State funds-flow to tribal areas (including Scheduled Areas) and ST people, of a quantum not less than their proportion in population–percentage. This direction has been given by successive Prime Ministers and Planning Commission to the Central Ministries, State Governments and UT Administrations. Doubtlessly, the Centre's responsibility and lead play a vital part in the matter. Certain wings of the Union Government entrusted with the task of rural and urban development gave us the impression of inadequate appreciation of the three-decades old guidelines for practices of apportionment and utilization of finances for tribal development. Similar has been our experience with many State Governments. This state of affairs needs to be mended.

10. Historic importance should be attached to the insertion of Parts IX relating to Panchayats and IXA relating to Municipalities in the Constitution in the nineties. Even more momentous has been empowerment of tribals through the passage of the Provisions of the Panchayat (Extension to the Scheduled Areas) Act [PESA Act] in 1996. A corresponding measure applicable to municipalities in Scheduled Areas has been pending to be legislated in the Parliament. But, still after so many years, all these need to be implemented fully. Some other interacting laws which have bearing on tribals and tribal areas need to be oriented in accordance with the PESA Act, as mandated by it.

11. Decentralisation has been held to be the key for transformation of rural India. So is the case with traditionally-democratic tribal India. We envisage the Panchayat bodies and people's councils, both traditional and elected, to play a crucial, paramount role in the all-round development of tribespeople and tribal areas. In our Report, we have sketched a paradigm shift, placing the Panchayats centre-stage for formulation and implementation of plans for economic development and social justice, as envisaged in the Constitution. The units of

planning and implementation, in this scheme of things, have to be the Gram Sabha, the Gram Panchayat and the vibrant village councils We have also defined the interface between the Panchayat system i.e. the peoples' deliberative and decision-making bodies on the one hand, and the delivery system i.e. the techno-administrative supportive executing agencies on the other. We feel this has been the virtually missing keystone of the arch in the edifice constructed. Our suggestions aim at integrating the binary (deliberative and delivery) systems with each other. The institutions conceived in the PESA Act can become powerful vehicle of tribal expression and development. We have forcefully recommended implementation of the Tribal sub-Plan strategy through such institutions. Our central theme and the USP of our Report is People's Progress through people power.

12. The Commission feels that, as a nation, we need to introspect how, during the past few decades, our changing legislations and policies have disrupted the lives of voiceless and helpless tribal people. Life-support systems constituted of elements like air, water and production–assets like land, forest, used and inherited by them through aeons, have been encroached upon and even wrested from them. Generations of tribal families have been ousted, from time to time, from their homes and habitat. Claims that seek credit for massive tribal development and promotion of ecology do not carry enough credence. As a nation, cherishing values of humanitarianism and justice, we need to ponder whether economic advancement is worth striving for, if the cost is shattering of centuries-long intricately-woven life-fabric of dumb millions. Further, whether even such actions on the part of the non-state and state actors stand the test of Article 21 of the Constitution guaranteeing life and liberty to every citizen in the country. Human rights are now enforceable. That the violations persist beyond a point, is signaled by the unseemly ways adopted by some people in tribal areas, a wake-up call for us to take note

13. The levers provided by the Constitution and statutes should be exercised by that authority at the Centre as has been entrusted the responsibility of their care and development. We mean the Ministry of Tribal Affairs. The Ministry was

created in 1999. According to the Rules of Business, it is said to be the nodal Ministry for all aspects of tribal affairs. This implies that, in addition to dealing directly with some subjects impacting on tribal life and areas, it has to liaise with other Ministries like Human Resource Development, Health, Agriculture, Environment & Forests, Rural Development etc., further implying that it should have long, effective out-reach since our impression has been that, presently, it is hamstrung by its short mandate and weak numerical strength. It should be the administrative ministry for the PESA Act 1996 and anti-land-alienation laws. Further, we propose that the present executive orders on reservations may be converted into a legislative piece. These aspects require consideration.

14. Through the ages, the tribal societies have derived social cohesion and strength from the practice of communitarianism permeating their internal dynamic. Of late, the winds of change blowing from outside have been impacting tribespeople. Particularly among the young segments, individualism is seen to be emerging as the more preferred choice. The question arising is: is individualism inexorably set to get the better of the traditional relations mode? If so, it is likely to transform the innate characteristics of a tribe, its "tribal-ness", which might also dent tribal identity. In spelling out the various themes in our report, consciously and sub-consciously, this trend has constituted an undercurrent. We feel, nevertheless, that in the long run, tribal identity is likely to assert itself with concomitant reappearance of some of the basic tribal traditional values and ethos, communitarism being one among them. One manifestation, among others, for this thought is that, as an individual, individualism may be practised by a tribal when he is at large and may be abroad, but even in facing the larger world his psyche looks backwards to lean on the support of his own tribal community, thereby revealing the profundity of bonds with his tribe.

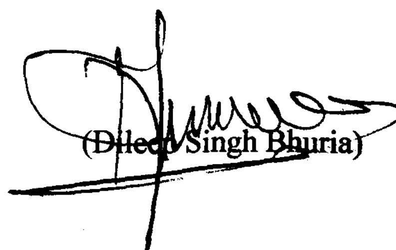
15. In relation to tribals, the Dhebar Commission's recommendations have been of great import these 45 years. We ourselves have attempted to leave no stone unturned to roll out the blue-print for the next half a century or so. It placed an onerous responsibility on us and we have, therefore, strained every nerve to

raise ourselves equal to the task. Regretfully, for want of time, we could not traverse the entire gamut of topics we would have liked to deal with. We are deeply conscious of the omissions and inadequacies in the Report, occasioned by abrupt termination of the tenure of the Commission. Nevertheless, we have tried to peer into the past, comprehend the present and visualize the future. It has been a daunting task. To what extent we have succeeded, it will be for others to judge. Nonetheless, we do hope that our sincere effort will be of some avail for progress of the tribespeople of the country.

16. I would like to thank you for giving the Members of the Commission and myself the opportunity of meeting the tribal people and renewing our acquaintance with the conditions in which they live and the aspirations that they nurture. On account of several constraints, the time factor being the chief, it has not been possible for us to reach out to every nook and corner where they live. But, on the whole, we have been able to make contact with many areas, far and near, some very remote, through your good offices. We would like to offer our sincere thanks to the Government of India and the State Governments who extended their cooperation. As President of the Republic, you stand for the millions of the country and it is, therefore, proper that in thanking you, we express our gratitude to the countless tribespeople whom we have been privileged to meet and to converse.

With kind regards,

Yours sincerely,



(Dileep Singh Bhuria)

Shri A.P.J. Abdul Kalam.
President of India.
NEW DELHI

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Introductory

In pursuance of the provisions of the Article 339 (1) of the Constitution, this Commission, designated as the Scheduled Areas and Scheduled Tribes Commission, was appointed by the President by an Order published in the Government of India, Ministry of Tribal Affairs notification No. 17014/8/93-TD (R) dated 18th July, 2002 (**Annexure-I**). The Commission was set up with the following Members:-

(i)	Shri Dileep Singh Bhuria	Chairperson
(ii)	Smt. Chokila Iyer	Vice-Chairperson
(iii)	Prof. Mei jin Lung Kamson	Member
(iv)	Dr. Bhupinder Singh	Member
(v)	Shri Kuwarsingh Fulji Valvi	Member
(vi)	Dr. Babubhai Doljibhai Damore	Member
(vii)	Prof. Diwakar Minz	Member
(viii)	Shri S.K. Kaul	Member
(ix)	Dr.P.K. Patel	Member
(x)	Shri Ram Sewak Paikera	Member
(xi)	Shri P.S. Negi	Member Secretary

Smt. Chokila Iyer, was made Vice-Chairperson of the Commission vide Order dated 20th March, 2003. Shri Ram Sewak Paikera, Member resigned as Member of the Commission on 07.11.2003.

Terms of Reference

The Terms of Reference of the Commission and the procedure to be followed by it were laid-down in the said Order dated 18th July, 2002 as under:-

"The following shall be the Terms of Reference of the Commission namely:-

(1) Keeping in view the various provisions of the Constitution and taking an overview of the tribal scenario in the country, the Commission shall

adumbrate a perspective and a vision for the future and formulate an outline of a viable comprehensive tribal policy.

(2) It shall examine the constitutional provisions in so far as they relate to the Scheduled Tribes, with a view to constitutional, legal, financial and administrative devices for promotion of tribal interests and recommend measures for adequate and appropriate operation of the Fifth and Sixth Schedule of the Constitution.

(3) The Commission shall review the functioning of policies, programmes and schemes being followed as per the recommendations of the Dhebar Commission and/or being implemented otherwise and suggest formulations in this regard as may be called for.

(4) It shall examine the development strategies followed so far and in particular, it shall scrutinize the tribal sub-plan integrated approach covering facets like –

   (a) plan and non-plan sectors e.g. agriculture and allied sectors, forest, education, health, employment, role of financial and cooperative institutions, displacement of tribals,

   (b) protective measures of a legal and administrative nature as in the fields of land alienation, money-lending, excise etc.,

   (c) financial and budgetary arrangements and make such suggestions for modifications and innovations as it may consider necessary

(5) It shall examine the socio-political and administrative set-up, particularly with reference to Part IX of the Constitution relating to Panchayats and the provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996, and suggest measures to make it effective for self-governance and socio-economic advancement of the tribal people.

(6) Any other matter connected with the administration of the Scheduled Areas and/or the welfare of the Scheduled Tribes in the States and Union Territories.

The Commission may –

(a) obtain such information as they may consider necessary or relevant for their purpose from the Central Government, the State Governments and such other authorities, organisations or individuals as may, in the opinion of the Commission, be of assistance to their work;

(b) appoint such sub-committees from amongst their members as the Commission may think fit for the purpose of exercising such powers and performing such duties as may be delegated to them by the Commission;

(c) visit or depute any sub-committee to visit such parts of India as the Commission may consider necessary or expedient;

(d) hold their sittings or the sittings of any sub-committee as such times and such places as may be determined by or under the authority of the Chairperson;

(e) act notwithstanding the temporary absence of any member of the Commission or the existence of any vacancy among the members; and

(f) regulate their own procedure in so far as no provision is made in this Order in that behalf.

The Commission shall submit its report to the President as soon as possible but not later than one year from the date of publication of this Order."

As may be seen from the Terms of Reference, the task assigned to this Commission has been huge, it being a one-time exercise undertaken forty-two years after the first-exercise undertaken in 1960-61 by the Scheduled Areas and Scheduled Tribes Commission known as Dhebar Commission. Today, considering the increase in ST population and the complexities of the modern world, despite technological advances, on the one hand some human problems remain grounded in hard realities as of old like land alienation, money-lending, displacement, forest, and, on the other some other problems have magnified as in the field of education and health. Some tribal areas have become the breeding ground for tribal unrest. In sum, the work has not only multiplied manifold but has also acquired complicated dimensions.

Office Accommodation

The Commission had to face certain constraints. It was appointed without an office accommodation and without an essential staff in position. It took over two and a half months first to have an approval of the Cabinet to establish the Headquarters of the Commission in Delhi itself and thereafter the entire process of hiring office accommodation and staffing etc. was undertaken. In fact, the Commission received the decision of the Government of India to locate the Commission's Headquarters in Delhi on 4th Oct., 2002. The Commission's Office was set-up in the first half of November, 2002 at the Jawahar Lal Nehru Stadium complex. Furnishing, installation of the office equipments and networking were completed by the middle of December, 2002. Actually, the office of the Commission started functioning effectively from January, 2003 onwards.

Staffing

The Commission received a budget allocation of Rs. 5.28 Crores and expenditure sanction and re-validation of 50 sanctioned posts against the original sanctions for 55 posts, in the middle of Sept., 2002. However, in anticipation of the expenditure sanction, the Commission circulated these posts to various Ministries for filling up on deputation basis. For a short-term tenure not many of the officers/employees were available on deputation. Most of the secretarial and research staff were appointed by direct recruitment through open competition and the work was accomplished by the first week of January, 2003. The staffing of the Commission considering the size of the task assigned was found to be inadequate which actually impeded the progress of the work. During the financial year 2002-03, the Commission had to surrender around 2/3rd of the total budget sanctioned owing to the constraints mentioned as above. Following posts were filled-up on deputation basis from the Central Ministries:-

(1) Joint Secretary
(2) Joint Director
(3) Under Secretary
(4) Section Officer
(5) Private Secretary to the Member Secretary

The Commission engaged Experts and Consultants to assist the Commission during the field visits and prepare base material for the report development.

Plan of Work

The Commission held 62 meetings during its tenure. The Commission decided to have Territorial Sub-Committees of the Members of the Commission to conduct the field visits and studies with a view to examine, scrutinize, review and submit the findings on the subject matters viz. administration of the Scheduled Areas; operationalisation of the provisions of the Fifth Schedule and the Sixth Schedule to the Constitution; socio-political set up with particular reference to the provisions of the Panchayats (Extension to the Scheduled Areas) Act 1996; Tribal Sub-Plan; Integrated Tribal Development Projects; Welfare programmes for the Scheduled Tribes; basic services and the economic development strategies; adequacies of the Constitutional safeguards for the Scheduled Tribes; protection of the rights of the tribals in their land and forests and tribal habitat development etc. – in the States and Union Territories assigned to each Sub-Committee. The Territorial Sub-Committees set up for the States/UTs assigned to each Sub-Committee vide Order dated 1st Sept., 2002 are as under:-

Territorial Sub-Committee - Arunachal Pradesh, Assam, Meghalaya, Manipur, Tripura, Mizoram, Nagaland, Sikkim, Uttaranchal, Himachal Pradesh, Jammu and Kashmir

Shri P.S. Negi
Dr Bhupinder Singh
Dr. Babubhai Doljibhai Damore
Prof. Mei Jin Lung Kamson Convener

Territorial Sub-Committee - Bihar, Jharkhand, Orissa, West Bengal, Uttar Pradesh, Andaman and Nicobar Islands

Prof. Diwakar Minz
Dr. P.K. Patel
Smt. Chokila Iyer
Dr. Bhupinder Singh Convener

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Territorial Sub-Committee - Madhya Pradesh, Chhattisgarh, Maharashtra, Gujarat, Rajasthan, Daman & Diu, Dadra & Nagar haveli, Delhi

Dr. Babubhai Doljibhai Damore
Shri Kuwarsingh Fulji Valvi
Shri Ram Sewak Paikera
Shri S.K. Kaul Convener

Territorial Sub-Committee - Andhra Pradesh, Karnataka, Tamil Nadu, Kerala, Goa, Ladshadweep

Dr. P.K. Patel
Prof. Diwakar Minz
Shri Kuwarsingh Fulji Valvi
Smt. Chokila Iyer Convener

Questionnaires

A Questionnaire Sub-Committee was set-up vide Order No. 26/TC/Admn /2002 dated 1st Sept., 2002 comprised of the following Members –

Dr. Bhupinder Singh
Shri S.K. Kaul
Prof Diwakar Minz
Dr. P.K. Patel Convener.

The Commission issued questionnaires separately for the States/UTs and the Central Ministries for eliciting information on the terms of reference of the Commission. Responses from the States and the Central Ministries were delayed. The Chairperson of the Commission had written to the Chief Ministers of the States with a request to expedite the replies to all the sets of Questionnaires. The Commission has not received replies to the Questionnaires from some of the major States with tribal population. The replies received from many States were incomplete. They were requested time and again to send replies to all the questions pertaining to some of the vital sectors of tribal economy, tribal development and implementation of the

Constitutional safeguards which some of the States had not covered in their replies.

Additionally, the Chairperson of the Commission addressed letters to the leaders of the political parties MPs and the eminent-persons to elicit their views on matters concerning the tribals.

Field Visits

The Commission decided to undertake field visits in all the 26 States and 4 Union Territories having tribal population mainly to assess the ground realities in respect of implementation of the tribal development, welfare of the Scheduled Tribes and the operationalisation of the Constitutional safeguards etc.

The Commission has taken care of the importance and the necessity of having interaction with the Governments in all the 26 States and 4 Union Territories with tribal population. There were persistent demands from various tribal communities in different regions in various States for a visit by the Commission. Due to time constraints, the Commission decided to have at least one visit to the States/UTs with tribal population. It visited 25 States and 4 Union Territories with tribal population and held consultation meetings with the Chief Secretaries, Secretaries and Heads of the Departments, development authorities and the field staff etc. In many States the Commission had interaction with the Governor, Chief Ministers, MLAs, MPs and other elected representatives, tribal leaders, social organisations, freedom fighters and a cross-section of the people in the tribal areas.

All these efforts made were for eliciting tribal opinion which in fact has formed the basis of our recommendations in this report for formulating an out-line of a comprehensive National Tribal Policy.

Field tours/visits of the Commission began with an homage paid to Martyr Birsa Munda at the Birsa Munda Memorial, Dombari in the State of Jharkhand on 14th

August, 2002. A public meeting was held at the memorial and Commission had interaction with the representatives of the social organisations and a cross-section of tribal people on various issues concerning tribal development programme and welfare of the Scheduled Tribes.

Consultations

The Commission had decided to hold consultation meetings with Central Ministries and Departments of the Government of India, nationalized Banks and Public Sector Undertakings concerned with the Tribal Affairs and Tribal Welfare etc. and also with prominent NGOs working in the tribal areas. The Commission could during its tenure undertake consultations with the Ministries of – Tribal Affairs, Human Resource Development, Rural Development, Urban Development, Environment and Forest, Health and Family Welfare, AYUSH; Planning Commission; Department of North Eastern Region (DONER); Department of Personnel & Training; Registrar General of Census, Government of India and Government of National Capital Territory of Delhi. It had consultation meetings with NGOs like Bharatiya Adimjati Sewak Sangh, Rama Krishna Mission and Vanavasi Kalyan Ashram. The Commission also had interaction with Reserve Bank of India and NABARD.

Report Development

As per the Terms of Reference, the main task assigned to this Commission is to adumbrate a perspective and a vision for the future of the Tribes of India and also to formulate an outline of a comprehensive National Tribal Policy. The Commission constituted a Report Drafting Committee vide Order dated 15.12.2003 and modified Order dated 05.01.2004 as under:-

Shri Dileep Singh Bhuria, Chairperson
Shri S.K. Kaul, Member
Shri P.S. Negi, Member Secretary
Dr. Bhupinder Singh, Member - Convener

The Commission's Report is comprised of three volumes.

Volume-I - consists of a Report on various subjects concerning tribal development, different sectors of tribal economy, and the Constitutional safeguards etc. The report is based on (a) the base material prepared from replies to the Questionnaires; (b) the observations and recommendations of the Commission made in the State-wise Reports in Volume-II of this Report; and (c) the consultation meetings of the Commission held with the Central Ministries, Planning Commission the State Governments, eminent persons and social organisations/NGOs working in the tribal areas.

Volume-II – contains State-wise Reports based on the field visits, interaction with the authorities responsible for the tribal development and also the views, petitions, proposals submitted by various social organizations, political parties, tribal organizations and a cross-section of the tribal people.

Volume-III – is comprised of Annexures pertaining to the base material built-up and State-wise list of the key development functionaries, Heads of various organisations, tribal leaders and eminent persons, social workers associated with the tribal development and tribal welfare with whom the Commission had held interaction/ consultations. It will be documented by the Office during the winding-up period.

Owing to paucity of time during its tenure, the Commission could present Report as contained in Volume-I only in respect of certain important sectors of tribal development and Constitutional safeguards provided for the tribals. While in respect of many other subjects, the Commission has prepared voluminous base material for building-up reports.

Tenure of the Commission

The Commission was appointed with a tenure not exceeding one year under the Order dated 18th July, 2002. One year tenure given to the Commission was too short considering the magnitude of the task assigned as may be seen from the Terms of Reference. At the request of Commission, the tenure of the Commission was

extended in two stages upto 16th July, 2004. The Commission made a request to the Government of India for extending its tenure upto 31st March, 2005 or at least upto December, 2004 for submission of the Report.

Grounds for extension were as under:-

⇒ Considering the magnitude of the task assigned, the tenure given was too short.

⇒ Preparatory works took time – Commission was to have its Hqrs. near Delhi as per the Orders. Government of India decided to locate the Commission's Hqrs. in Delhi on 4th Oct., 2002.

⇒ The Commission was appointed without an office accommodation and without an essential staff in position. It took 6 months to fill-up the posts and to make Commission functional.

⇒ The Commission had to postpone/defer the field visits due to the Assembly elections in some States in Dec., 2003 followed by three-month long Lok Sabha elections in March – May, 2004. Tours could be undertaken only with the approval of the Election Commission of India. The Commission could not hold interaction with the States/UTs authorities during this period because of their engagement in the election process. The Commission also realized that it was not proper to have interaction with the tribal leaders and the cross-section of the tribal people during the period of these elections.

The request of the Commission for extension of its tenure sought as above was not acceded to by the Government of India. The Commission, therefore, decided to submit its report within the time assigned to it for submission of its Report i.e. by 16th July, 2004.

Acknowledgments

The Commission is grateful to the State Governments/UTs and the tribal development authorities for their responses to the Questionnaires sent to them and also for making elaborate arrangements for the Commission's tour in the States/UTs. The Commission

extended in two stages upto 16th July, 2004. The Commission made a request to the Government of India for extending its tenure upto 31st March, 2005 or at least upto December, 2004 for submission of the Report.

Grounds for extension were as under:-

⇒ Considering the magnitude of the task assigned, the tenure given was too short.

⇒ Preparatory works took time – Commission was to have its Hqrs. near Delhi as per the Orders. Government of India decided to locate the Commission's Hqrs. in Delhi on 4th Oct., 2002.

⇒ The Commission was appointed without an office accommodation and without an essential staff in position. It took 6 months to fill-up the posts and to make Commission functional.

⇒ The Commission had to postpone/defer the field visits due to the Assembly elections in some States in Dec., 2003 followed by three-month long Lok Sabha elections in March – May, 2004. Tours could be undertaken only with the approval of the Election Commission of India. The Commission could not hold interaction with the States/UTs authorities during this period because of their engagement in the election process. The Commission also realized that it was not proper to have interaction with the tribal leaders and the cross-section of the tribal people during the period of these elections.

The request of the Commission for extension of its tenure sought as above was not acceded to by the Government of India. The Commission, therefore, decided to submit its report within the time assigned to it for submission of its Report i.e. by 16th July, 2004.

Acknowledgments

The Commission is grateful to the State Governments/UTs and the tribal development authorities for their responses to the Questionnaires sent to them and also for making elaborate arrangements for the Commission's tour in the States/UTs. The Commission

is also grateful to the Central Ministries, Planning Commission, Reserve Bank of India, NABARD, various NGOs/Voluntary Organisations and the media with whom the Commission had interaction. We wish to place on record our appreciation of the views expressed and valuable suggestions given to the Commission through consultations by eminent persons listed in the **Annexure-II.**

We would like to mention the effort put in by our officers, experts, research group and the staff of the Commission.

Annexure-I

Ministry of Tribal Affairs

(R & P Uniit)

OORDER

New Delhi, the 18th July, 2002

S.O.1271 (E).- In exercise of the powers conferred by clause (1) of article 339 of the Constitution, the President hereby appoints the Scheduled Areas and Scheduled Tribes Commission (hereinafter in this Order referred to as the Commission) consisting of the following persons with effect from the date of publication of this Order, namely:-

(xii)	Shri Dileep Singh Bhuria	Chairperson
(xiii)	Prof. Mei jin Lung Kamson	Member
(xiv)	Dr. Bhupinder Singh	Member
(xv)	Smt. Chokila Iyer	Member
(xvi)	Shri Kuwarsingh Fulji Valvi	Member
(xvii)	Dr. Babubhai Doljibhai Damore	Member
(xviii)	Prof. Diwakar Minz	Member
(xix)	Shri S.K. Kaul	Member
(xx)	Dr.P.K. Patel	Member
(xxi)	Shri Ram Sewak Paikera	Member
(xxii)	Shri P.S. Negi	Member Secretary

2. The following shall be the terms of reference of the Commission, namely:-

(7) Keeping in view the various provisions of the Constitution and taking an overview of the tribal scenario in the country, the Commission shall adumbrate a perspective and a vision for the future and formulate an outline of a viable comprehensive tribal policy.

(8) It shall examine the constitutional provisions in so far as they relate to the Scheduled Tribes, with a view to constitutional, legal, financial and administrative devices for promotion of tribal interests and recommend

measures for adequate and appropriate operation of the Fifth and Sixth Schedule of the Constitution.

(9) The Commission shall review the functioning of policies, programmes and schemes being followed as per the recommendations of the Dhebar Commission and/or being implemented otherwise and suggest formulations in this regard as may be called for.

(10) It shall examine the development strategies followed so far and in particular, it shall scrutinize the tribal sub-plan integrated approach covering facets like –

(a) plan and non-plan sectors e.g. agriculture and allied sectors, forest, education, health, employment, role of financial and cooperative institutions, displacement of tribals,

(b) protective measures of a legal and administrative nature as in the fields of land alienation, money-lending, excise etc.,

(c) financial and budgetary arrangements and make such suggestions for modifications and innovations as it may consider necessary

(11) It shall examine the socio-political and administrative set-up, particularly with reference to Part IX of the Constitution relating to Panchayats and the provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996, and suggest measures to make it effective for self-governance and socio-economic advancement of the tribal people.

(12) Any other matter connected with the administration of the Scheduled Areas and/or the welfare of the Scheduled Tribes in the States and Union Territories.

3. The Commission may –

(a) obtain such information as they may consider necessary or relevant for their purpose from the Central Government, the State Governments and such other authorities, organisations or individuals as may, in the opinion of the Commission, be of assistance to their work;

(b) appoint such sub-committees from amongst their members as the Commission may think fit for the purpose of exercising such powers and

performing such duties as may be delegated to them by the Commission;

(c) visit or depute any sub-committee to visit such parts of India as the Commission may consider necessary or expedient;

(d) hold their sittings or the sittings of any sub-committee as such times and such places as may be determined by or under the authority of the Chairperson;

(e) act notwithstanding the temporary absence of any member of the Commission or the existence of any vacancy among the members; and

(f) regulate their own procedure in so far as no provision is made in this Order in that behalf.

4.. The Commission shall submit its report to the President as soon as possible but not later than one year from the date of publication of this Order.

[No. 17014/8/93-TD(R)]
By Order of the President
S.CHATTERJEE, Jt. Secy.

Annexure-II

List of Eminent Persons Consulted

S.No.	Name
1.	Dr. B.D. Sharma Former Commissioner of SC/ST
2.	Shri Naresh Chandra Former Governor of Gujarat
3.	Shri S.R. Shankaran Former Secretary, Government of India
4.	Shri Sundarlal Bahuguna Social Activist
5.	Shri N.C. Saxena Former Secretary, Government of India
6.	Shri B.C. Negi Former Chief Secretary, Himachal Pradesh
7.	Shri Anadi Charan Das, Ex-MP Orissa
8.	Shri J.K. Banthia Registrar General & Census Commissioner
9.	Dr. R.K. Bhattacharya Former Director Anthropological Survey of India
10.	Prof. B.K. Roy Burman Anthropologist
11.	Shri P.K. Padhi MD, NSTFDC
12.	Shri B.S. Parsheera Principal Secretary to the Government of Andhra Pradesh
13.	Shri Bhagchand Meena Commissioner Income Tax
14.	Shri Wilferd Lakra Joint Secretary, Government of India Ministry of Rural Development
15.	Shri S.S. Pangtey, IAS Retd.
16.	Prof. Shreedhar Sharma Former Additional Director General Health Services
17.	Shri B.N. Sahay Former Advisor Planning Commission
18.	Shri C. Targay Secretary, SC/ST, Delhi Admnistration
19.	Shri R.S. Meena Executive Director, TRIFED
20.	Shri Pradeep Prabhu Social Activist

Notwithstanding the fact that formally the British power was established in 1858 and, ruling for the best part of a century, quit the country in 1947, it made its presence felt in varying degrees in different parts of the country even earlier.

2. The Permanent Settlement of 1793 introduced the concept of the intermediaries between tribal land-owners and the foreign power. Muttadars, Jagirdars, Thekadars and finally Zamindars were introduced in tribal areas extending the tentacles of the Company administration. The immediate implication was that the independent tribal land-owners were converted into land-tenants. The change was cataclysmic as till that time, for tribals, the central state was almost non-existent. the tribal communities were autonomous and tribal households enjoyed the status of land-owners. Now a revenue-collecting agency having formidable backing of force, was to bear on them. Secondly, they were being catapulted from an oral promise-based community-legitimated informal ownership economy into formal documentation-based authoritarian economy with which they were totally unfamiliar and in which they could hardly be expected to participate in view of their ignorance and illiteracy. Their communitarian socio-economic value system was now being overlaid through force by an imperialist-capitalist politico-economic degrading system. Without any preparation preceding the transition, it

wrought gross distortions in their life and economy. The implications were deep and the ramifications wide.

3. Apart from land, forest has been the other cardinal resource of tribal life-support system. It is difficult to aver that the alien conquerors did not understand its significance for tribal life and economy; the imperialist motivation of enrichment of mother-country was dominant. Even in the present times, there are numerous tribal communities whose member-families depend for their sustenance to the extent of 50 per cent on forest, the other 50 per cent being farm-derived. In the decades of eighteenth, nineteenth and early twentieth centuries, the number of tribal villages located in forests would have been many times what we see to-day. Perhaps, unmindful of or deliberately ignoring it, the new administrators drafted the first Forest Policy document in 1854 which conferred some rights on tribals. Their 1894 Forest Policy turned them into "rights and privileges". The post-Independence government would have been expected to undo the harm and endow tribals with appropriate rights. Surprisingly, however, the 12 May 1952 Forest Policy changed the "rights and privileges" to "rights and concessions". The First Scheduled Areas and Scheduled Tribes Commission 1960-61 (Dhebar Commission) made the following following comment on the 1894 Policy:

> This conception of regulating the rights and restricting the privileges affected the tribal people very deeply and was the root cause of the delicate relations between them and the Forest Department which continue to the present time. [Chapter 12, para 6].

The Commission described the impact of 1952 Forest Policy promulgated in independent India in the following words:

> Thus the tribal who formerly regarded himself as the lord of the forests was through a deliberate process turned into a subject and

> placed under the Forest Department. Tribal villages were no longer an essential part of the forests but were merely on sufferance. The traditional rights of the tribals were no longer recognized as rights. In 1894, they became "rights and privileges" and in 1952 they became "rights and concessions" Now they are being regarded as "concessions"[Chapter 12, para 20].

On a consideration of all the aspects of the matter and grievances of the tribals as well as the difficulties of the Forest Department, inter alia, they recommended that "the policy of 1952 should be reconsidered, and in relation to the rights of the tribals, the government should accept at any rate the position that obtained before Independence"{Chapter 12, para 61}. The National Forest Policy 1988 calls for protection of the rights and concessions enjoyed by tribals and other poor people living within and near forests. Notwithstanding the turn-around as per the latest Policy, most observers feel that the trend of erosion of rights and usages of tribals over forest has continued. One contributory factor has been eviction orders issued by the Forest Department from time to time.

4. The nineteenth century records repeated brushes by the tribal with the British might on account of the deep resentment and anger nursed by the indigenous people over gradual dispossession of their basic life-support system. Of course, they were no match, since the aliens were armed with the superior weaponry, including fire-power. The clashes betokened resistance against British interference, oppression and ham-handedness.

Fight for rights

5. In their report (1961), the Dhebar Commission referred to the 1789, 1801, 1807 and 1808 disturbances in Chhota Nagpur which were put down with the help of armed forces. They spoke of the great Kol insurrection of 1831-32 caused by dis-content among the tribal people owing to settlement of their land on non-tribal immigrants from other parts of India, the Santhal rebellion of 1855 caused by the oppression of money-lenders and rapacious landlords, the Sardar agitation of 1887 and the Birsa movement of 1895-1900 directed against the Hindu landlords and money-lenders and Christian missionaries. They recorded Koya Fituris in the Andhra Agency area of 1803, 1862 and 1879, the last of them in 1922 led by Alluri Sitaram Raju against oppression of Muttadars and petty officials. Although other uprisings i.e. Rampa rebellion 1803 in East Godavari, the Bastar rising of 1911 and the civil disobedience by the Kond Malliahs of Orissa and Tana Bhagats rebellion 1913-21 attracted their attention, it is worth noting that rebellions were fairly widespread across time and space in the country. For instance, the Koli disturbances in Maharashtra occurred as early as 1784-85, followed by Koli revolt in 1818. In Assam, Singhpos rebelled in 1825, Mishmis in 1827,Khasi in 1829; Terrut Singh massacred British generals and their Indian sepoys in 1829; in 1835, the Daflas raided British subjects; in 1842 Lushais raided the British territory of Arakan, Sylhet and defeated the British forces, in 1843 the Singhpos attacked British garrison. Orissa saw three revolts, of Chakra Bisoi, a Kond leader in 1850, of the Juang in 1861 and of Lakshman Naik in 1942. The Bhil tribe participated in

revolts of 1809-1828, 1846, 1857-58 in Gujarat. The Bastar tribals rose in 1842 and 1911. There were several other uprisings throughout the country which have been chronicled and others which have been not. Thus, it would not be too wide off the mark to say that when the rest of the country was still reeling under the impact of foreign domination, the tribals were fighting pioneering wars for freedom from the foreign yoke.

6. The British response was three-fold: to suppress the uprisings through military action, to strengthen the administration on the ground and to pacify the tribals through redressal of their grievances which were then mainly directed against Thekedars, Jagirdars, Mahajans, merchants etc. Most of their grievances centered round land and forests and against exploitation, particularly of their women. This phase can be deemed as the phase of confrontation and conflict.

7. The second phase registered a dramatic turn in the interrelationship. But this did not occur suddenly. The contact with tribal peoples, most of whom were tucked away in the interior (in a sense remoter then than now on account of more difficult communications), was little. By the middle of the nineteenth century, the suzerainty was near complete and the adventurist-commercial conquerors numbering some mere thousands had settled down to the sedate business of administering a colony many times the size of home country. Peace during the latter half of the century was prone to shatter less and the frequency of tribal revolts declined.

8. All this while, the impact of the fluid dynamics of the changing scenario was being internalized by the new alien rulers as well as the indigenous tribal

subjects. Two features call for notice. One that the agitations had been nearly always "ethnic" in character, that is to say that each originated mostly in the womb of a single tribe. Second, that each agitation created a disturbance, deep down in the tribal psyche, which left an indelible impression on the temperament and character of tribesman shaping his future attitude and world-view. Post-independent events might have altered the situation somewhat but it seems to have persisted to an extent even to this day among the tribal mass.

The Chota Nagpur experience

9. Early on, the colonial rulers realized that the operation of the normal rules for administration of civil and criminal justice and generally of the regulations of government, in the tracts of the country comprised in or bordering on the hills and jungles occupied by tribal people, would be inappropriate. Regulation XIII of 1833 was passed by them with the object of administration of justice of a kind adapted to the "peculiar customs and prejudices of local tribals in concert with the headman and diminishing their dependence on the Zamindar". The regulation laid the foundation for the administrative pattern of tribal areas in the north-east, known as non-regulatory system. Its essence was a centralized system with a powerful executive for running an administration through simple and personal procedures acceptable to the people. Yet, in Bihar, general acts passed after 1855 like the Rent Act, Civil Procedure Code, Stamp Act etc. led to enhancement of rent, eviction of headmen from their offices, increased exploitation by money-lenders and other ills.

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The Santhal felt so racked by these laws and their ferocious application, that the events culminated in the Santhal Revolt of 1855-56 and 1871. Two regulations were passed: Act XXXIII of 1870 which provided regulations for peace and good government to Santhal Parganas and Regulation III of 1872 empowering the Lieutenant-Governor to remove the grievances of the Santhal regarding settlement of land, fixation of rent, application of customs and usages of the people and limitation of interest on debt. It is of interest to note that barring fixation of rent, the other three issues i.e. land and its alienation, money-lending and customary laws are still rife in tribal areas.

10. With the experience of the insurrections behind them, the area was administered as a non-regulation area as the colonial government felt that the complicated machinery and laws were not suitable for the backward tribals. The administrative arrangements were a precursor of the Scheduled Districts Act of 1874 whereby the local government was empowered to declare in respect of the tracts specified in the Act what enactments were to be and were not to be enforced and to notify the application, with modifications or restrictions, if necessary, of any enactment in force at the time in any part of British India. These tracts were known as scheduled tracts and they included areas in Assam, Rajasthan, Andaman & Nicobar Islands, Bengal, Santhal Parganas, Chhota Nagpur, some pockets in Maharashtra, Central Provinces, Madras and some areas in Punjab and United Provinces. The basic policy to be followed in the scheduled tracts was to protect the interests of the tribal people. In Santhal Parganas, the government forbade sale and transfer of land either privately or by orders of court. In some areas, hereditary

serfdom was abolished. Exploitation was to be curbed by preventing transfer of rights of tribals to non-tribals and protecting their rights in land and forest of tribals.

Govt. of India Acts of 1919 and 1935

11. Subsequent to the Scheduled Districts Act of 1874, the Government of India Act of 1919 categorised tribal areas into "wholly excluded areas" and "areas with modified exclusion". For the former, the State legislatures could not enact any law, but for the latter legislators might pass laws which could come into operation on a date and with such modifications as the Governor General or Governor might direct. The Government of India Act of 1935 retained the two categories under a slightly different nomenclature i.e. "excluded areas" and "partially excluded areas". Section 92(1) thereof reads:

> " The executive authority of a province extends to excluded and partially excluded areas therein, but notwithstanding everything in the Act, no Act of the Federal legislature or the Provincial legislature, shall apply to an excluded area or a partially excluded area, unless the Governor by public notification so directs, and the Governor in giving such direction with respect to any Act may direct that the Act shall in its application to the areas or to any specific part thereof, shall have effect subject to such modification as he thinks fit ".

An order was promulgated specifying the excluded and partially excluded areas. Some of the provincial governments engaged themselves in working out legislative

measures that could offer protection to tribals particularly in regard to alienation of land and usury.

12. The constitutional-legal reforms introduced by the colonial administration during the decades preceding Independence were a response to the momentous popular non-violent movement that the country was going through as a result of steps taken by the national leadership. Earlier and contemporaneously, along with the transformation of a conquering power into a colonial administration, change was occurring among the tribal people. The mode of tribal protest and the nature of tribal demand were undergoing qualitative transformation. In contrast to the violent uprisings of the eighteenth and nineteenth centuries, the protest became peaceful and the demands and goals acquired distinct socio-economic and political content. For example, the Chhota Nagpur Unnati Samaj established in 1912 demanded spread of education and reservation for tribals, as well as a sub-state. In 1938, the Adivasi Mahasabha, a political body, came into being, reincarnating itself in 1949 as the Jharkhand party with the goal of a Jharkhand State. While the mass of tribals was still cloistered and backward, immiserated and illiterate, the upper stratum were becoming educationally and politically conscious. Another notable feature was that the Jharkhand movement tended to acquire pan-ethnic characteristics.

Thakkar and Bardoloi Committees

13. After attaining freedom, the Constituent Assembly 1946-48 embarked on its labours and set up an Advisory Committee on fundamental rights, minorities, tribal areas etc. The Committee split up into different sub-committees. There were two sub-committees dealing with tribal areas. One headed by A.V. Thakkar dealt with excluded and partially excluded areas (other than Assam) and the other, the Gopinath Bardoloi sub-Committee, was concerned with North-East Frontier (Assam) Tribal and Excluded Areas. So far as the sub-Committee on Central Tribal Areas (the Thakkar sub-committee) is concerned, it recommended the adoption of a measure which the Constituent Assembly enacted as the present Fifth Schedule. It is not difficult to detect in the Fifth Schedule conspicuous shades of its ancestor, the Scheduled Districts Act 1874. The recommendations of the Bardoloi Committee were transmuted into the Sixth Schedule. The perspective which informed the Fifth Schedule was paternalistic, extending the society's and government's shield for protection and promotion of tribal interests. Continuing the earlier trend, the Governor was charged with special responsibility therefor, but a Tribes Advisory Council having a majority of ST State legislators was to advise government. For the tribals of the north-east, the dispensation of the Sixth Schedule provided a self-management module which goes way towards self-rule at the district tier. We are treating the constitutional provisions for scheduled tribes in a separate chapter, but it is relevant to record here at least two provisions. Article 46 meant to guide government policy enjoins on the State to "promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and Scheduled Tribes, and ....protect them

from social injustice and all forms of exploitation". This is bolstered by several other provisions, one relating to provision of adequate finances by the Union Government in Article 275. It is also necessary to add that the major responsibility for development of Scheduled Areas and Scheduled Tribes has been placed on the Union Government, as is evident from Articles 275(1), 339(2) and para 3 of the Fifth Schedule.

The first post-Independence phase

14. It might be appreciated that in the matter of tribal affairs, the perspective and wisdom expressed in the constitutional provisions rested on the work and experience of not a few notable dedicated souls quietly at work among tribes for their welfare, at the instance and inspiration of national leaders like Mahatma Gandhi and Jawaharlal Nehru. In fact, Gandhiji included welfare of the tribes as one of the items in his 14-Point reconstruction programme drawn up in January 1942. Post-independence, the first phase was a time for soul-searching. Dr. B.R. Ambedkar made a powerful contribution to the cause of Dalit uplift through visionary leadership. Having initiated development module in democratic set-up, Prime Minister Jawaharlal Nehru enunciated the Panch Sheel (five principles) of Tribal Advancement. We have discussed these in detail elsewhere in this Report. Here we cannot help referring to the first of these to the effect that tribals should be enabled to advance along the lines of their own genius and imposition of anything on them should be avoided. The Panch Sheel became an ideological foundation.

15. Another marked feature of this phase was the appearance of a number of reports on tribal affairs. Among these were the reports of the Study Team of Social Welfare and Welfare of Backward Classes July 1959, also known as Renuka Ray Team, the Committee on Special Multi-purpose Tribal Blocks chaired by Verrier Elwin and the Study Team on Tribal Development Programmes chaired by Shilu Ao 1969, the First Scheduled Areas and Scheduled Tribes Commission 1961, also known as the Dhebar Commission. The report of the first Commission should be regarded as a high water-mark of this phase. It dealt comprehensively with a number of aspects of tribal affairs and development. Among the salient observations of the Commission were that the planning process was transforming the situation and important development activities had taken place in the fields of education, health and community development. A host of sectors were illumined by the suggestions and recommendations of the Commission, but one that turned out to be of far-reaching implications related to Article 275 of the Constitution. In it, the Commission expressed the view that grants under the Article were intended to supplement the general welfare programmes for the scheduled tribes and that the State Governments might consider issue of instructions on the lines of Andhra Pradesh Government to all heads of departments to the effect that 3 per cent of the total provision of each Department should be earmarked for the welfare of scheduled tribes during the Third five Year Plan. They also added that since a grant was intended to develop the area, the area's relative under development and problems should be assessed.

16. The point was subsequently emphasized in the 1969 report of the Study Team on Tribal Development Programmes led by Shilu Ao, a former chief Minister of Nagaland. In fact, the Team recommended that the Planning Commission should insist that the general development programmes should take into consideration the needs of tribals and indicate the directions in which the programmes could benefit the tribal communities. Adverse notice was taken by the Team of the delay in implementation of the Dhebar Commission's recommendations worsening the plight of tribals.

17. Apart from the Committees and Dhebar Commission which put in monumental labours, the Commissioner for Scheduled Castes and Scheduled Tribes was engaged in useful work conveying his observations and comments to the Government in his annual reports. On the whole, this phase was characterized by the observations of such important bodies contemplating on the scenario as it then was and searching for viable policies, formulations, programmes etc. The tribal masses were in receipt of small benefits from the backward classes sector of state plan projects and development works, including the tribal development blocks. The protective laws were being enforced feebly. The 1952 Forest Policy Resolution, the second for the country after 1894 and the first for Independent India, dealt a grievous blow to tribals. Their traditional rights over forest recognized as such earlier, were converted into "rights and concessions" and subsequently into mere "concessions". It was stated that village communities should not be allowed the use of forest produce "at the cost of national interest". The Dhebar Commission asked for reversion to pre-Independence position. On the whole, while through planned

socio-economic development effort, the condition of tribal mass was improving marginally, disparities between tribals and non-tribals were enlarging on social, economic, educational fronts.

The second post-Independence phase

18. In the second post-Independence and more or less the contemporary phase, beginning in the decade of seventies, committees and task forces were at work for evolving strategies and methodologies for tribal development. The ideas and suggestions of the fore-runner committees had blazed the trail. More specifically, the Dhebar Commission's concept of earmarking of funds on Andhra pattern in proportion to or in excess of tribal population percentage in the state was the core around which other formulations revolved. The Shilu Ao Team had reinforced it. In the early seventies, the concept gave birth to the strategy of Tribal sub-Plan (TSP) whose chief ingredients were projectised integrated multi-sectoral approach pointedly suited to the local tribal communities in identified administrative units of tribal population concentration with the help of funds pooled from central, state and institutional organizations. The TSP strategy was launched enthusiastically in the Fifth Plan period and it has held the ground since. The subsequent main inputs have come from the reports of the Working Groups appointed by the Planning Commission on the eve of Sixth, Seventh, Eighth and Ninth Plans. It has been evaluated off and on. Its detailed consideration may be found in a separate chapter devoted to it.

Political dimension

19. We have seen how conditions in the eighteenth and nineteenth centuries pitted tribals against the foreign power which was attempting to make inroads into hilly tribal areas pari pasu with its conquest in the plain areas. The tribals fought back to the extent that they could. Their resistance is recorded in the chronicles of the rebellions and uprisings. The tone and tenor of the invader kept changing along with its enlarging suzerainty, so much so that we find that the original commercial company transformed itself into an administering ruler in the early decades of the nineteenth century. It transferred power to the British Crown by the middle of that century and from then on it was a colonial government that ran the country. Having inherited peace and order, the colonial government undertook the task of legislation and administration. Ruthless and violent repression was being replaced gradually with subtle paternalism and economic imperialism. But it was difficult to abolish the dichotomous gulf between the apparently top benign policies and harsh ground realities in the nineteenth century. Violent insurrections continued till the end of the century. It is only in the second decade of the twentieth century, we find more or less a non-violent Tana Bhagat Oraon movement unusually combining protests against oppression at the hands of the police, Zamindars and Mahajans with a reformist thrust. Reformist movements took place in other parts of the country also, like the Rajmohini movement in the then Central Provinces. The colonial government passed a series of protective legislations for tribals particularly relating

to land. Reference has been made earlier to the formation of Chhotanagpur Unnati Samaj leading subsequently to the establishment of the Adivasi Mahasabha in the decade of the thirties. These were the beginnings of separate political organizations among tribals, though individual tribals might have been participating in some small way in the national movement for freedom. Elsewhere, in this report, we record how the tribals of Assam presented a memorandum to the Simon Commission in 1929. Their chief demand was for reservation of seats in various elective bodies

20. In the years preceding independence, the tribal representatives shared some legislative and executive fora with other sections of the society in the country. A major political movement made its appearance in the form of Jharkhand Movement in 1949. Passing through vicissitudes, it attained its goal of statehood in 2000. In the north-east, the struggle for independence from the successor power commenced soon after the British announced their departure from the subcontinent. Tribal states were established in the north-east, Nagaland in 1963 and Meghalaya in 1971, Arunachal and Mizoram following thereafter. The political ferment among the tribal people has been swelling these decades culminating in the establishment of Chhattisgarh (hived off from Madhya Pradesh) and Bodo Autonomous Council in Assam. The struggle for self-determination within the Indian Union will doubtless lead to formation of more such autonomous units. But it should cause no alarm. At the end of the day, the federal bonds grow stronger and more responsible with the fulfillment of aspiration of the constituents.

A look ahead

21. Thus, overall, roughly three distinct though overlapping historical phases are recognizable. In the first, spanning the eighteenth and nineteenth centuries, the land policy of the colonial administration led to degradation of the status of tribal land-owners into land-tenants. Tribal rights in forest were first diluted into some rights (1894). Land and forest policies led to land alienation through superimposition of a new class of non-tribal intermediaries, money-lenders, land-owning peasants and contractors. The consequence of erosion of rights on land and forest resources triggered violent tribal protests against injustice, repression and exploitation. The second, that is closing years of the nineteenth century and the first half of the twentieth, comparatively peaceful, was characterised by little socio-economic change and constitutional protests demanding share of political power and education. In the third, the post-independence years, tribal representatives occupying political niches in the legislative, judicial and executive institutions of the Republic have tended to be articulate in different spheres, while stratification has set in tribal societies. On the one hand, dispossession of their land and forest resources has continued, some observers dubbing it as neo-colonial exploitation, planned socio-economic measures for their progress put largely through the bureaucratic agency have had much less than the expected impact..

22. When the Dhebar Commission reviewed the tribal scene, they exclaimed:

> We stand at the threshold of a new era. The tribal people are prepared to make an entry into that area with other members of the family. The only thing that they expect is that the changes should not destroy the harmony of

their life, and the context should not result in suppressing their distinctive personality.

The problem of problems is not to disturb the harmony of tribal life and simultaneously work for its advance; not to impose anything upon the tribals and simultaneously work for their integration as members and part of the Indian family.

23. The Dhebar Commission was the first Scheduled Areas and Scheduled Tribes Commission set up under Article 339(1) of the Constitution and, as such, its report was a pioneering attempt. It was a laudable effort. We have the springboard of that report for further leaps but, it needs to be conceded that to-day, the scenario is much more complex and multi-faceted. They conceived of four-layered tribal societies and they could detect harmony among them. To-day, it is not difficult to recognize further layering. The top elitist layer and the bottom primitive groups layer are distinct. In between, there has been stratification in the tribal societies.

24. The world of Dhebar Commission seems to have been filled in by charm and grace. They could, in consequence, apprehend harmony in tribal life. But today's world is immersed in strife and violence and the tribal world has not remained totally impervious. Even so, cloistered somewhere there are tribal islands of peace, tranquility and harmony. The non-tribal world should seek it and emulate it.

25 The pertinent question is what direction should the tribals take at this juncture. The answer may not be simple. For that Commission, an article of faith was to promote tribal advancement without disturbing the essential harmony of

tribal life and to aim at integration without any imposition. Both these laudable goals call for a critical appraisal at the present juncture. In the first instance, it has to be clearly realized that four decades later, exogenous deliberations leading to formulations on the destiny of tribals may not be acceptable to them. Their representatives fill appropriate niches in the national political, economic and social space. Further, Part IX of the Constitution incorporating 73rd and 74th Constitutional amendments, and PESA Act 1996, provide an adequate institutional framework to the tribal communities to orchestrate their ideas and aspirations. The tribal elitist layer may be conceived to adopt modern modes of thought and behaviour, and the primitive tribal groups to continue largely with their unique life-style and world-view. Further, it may be safe to assume that the middle layers comprising a majority of tribal communities can be depended upon to evolve their own goals, mores and norms by interaction with and through the numerous fora available. In any event, the great diversity of tribal communities can be ignored at the peril of an enduring and viable frame of development. Considering the different parameters, it becomes imperative that sound policy directions be formulated which can usher in a bright future for the tribal people of the country. The question of a tribal policy will be discussed in a separate paper.

FIFTH SCHEDULE

[Article – 244 (1)]

Provisions as to the Administration and Control of the Scheduled Areas and Scheduled Tribes

1. Under Article 244 (1) of the Constitution, the provisions of the Fifth Schedule to the Constitution shall apply to the Administration and control of the Scheduled Areas and Scheduled Tribes in any State other than the State of Assam, Meghalaya, Tripura and Mizoram. The principal object of these specific provisions in the Fifth Schedule particularly those under paragraph 5, as it appears, is to protect the interests and rights of the tribals in their land, habitat and economy; to preserve the community customs and tradition and to ensure a faster socio-economic development in the Scheduled Areas.

2. Under the provisions of the Fifth Schedule to the Constitution, the Governor of each State having Scheduled Areas therein has certain powers to exercise and functions to discharge for the administration and control of the Scheduled Areas. The executive power of a State extends to the Scheduled Areas therein. The Fifth Schedule provides for:-
   (1) Report by the Governor to the President regarding the administration of the Scheduled Areas. (Part-A, Para – 3)
   (2) Appointment of Tribes Advisory Council by the Governor; (Part-B, Para-4)
   (3) Power of the Governor to regulate the application of laws of the State and the Acts of Parliament to Scheduled Areas; (Part-B, Para - 5)
   (4) Power of the Governor to make regulations for the peace and good government of any or all Scheduled Areas in a State.(Part-B, Para-5)
   (5) The President may by order declare an area to be Scheduled Area (Part-C, Para-6).

A Report by the Governor to the President regarding the administration of the Scheduled Areas

1. The paragraph 3 of the Fifth Schedule enjoins on the Governor of the State having Scheduled Areas therein the responsibility to make a report to the President of India regarding the administration of the Scheduled Areas, which reads –

   "The Governor of each State having Scheduled Areas therein shall annually, or whenever so required by the President make a report to the President regarding the administration of the Scheduled Areas in that State and the executive power of the Union shall extend to the giving of directions to the State as to the administration of said areas".

2. At present only 9 States namely Andhra Pradesh, Jharkhand, Gujarat, Himachal Pradesh, Maharashtra, Madhya Pradesh, Chhattisgarh, Orissa and Rajasthan have Scheduled Areas notified. Various Committees and Commissions and Working Groups which went into the problems of Scheduled Tribes, particularly, the Scheduled Areas and Scheduled Tribes Commission (Dhebar Commission, 1961) and the Shilu Ao Study Team (1969) and the Working Group on the Development of Scheduled Tribes during Seventh Plan (1984) had observed that no instructions had been issued by the Union Government about the format and contents of these reports with the result the State Governments had come to look upon them as departmental reports. Dr. Rajendra Kumari Bajpai, the Union Minister of State for Welfare, Government of India vide her D.O. letter No. – 18013/3/86-TD(R) dated Jan 5, 1987 had informed the Chief Ministers of the States having the Scheduled Areas stating that the recommendations of the Dhebar Commission were considered at various meetings and conferences and it had been agreed that preparation of the Governors' reports should be the responsibility of the State Secretariat and that the views of the Tribes Advisory Councils should be incorporated in the Governor's reports etc.

3. The States having the Scheduled Areas therein were given a format for the presentation of a Governor's Report. The Governor's Report is expected to contain objective assessment of quality and adequacies of the administration of

the Scheduled Areas, operationalisation of the Constitutional safeguards, Acts and regulations – (1) to regulate money-lending, (2) to prevent land alienation, (3) to protect the interest of the tribals in forest and trade (4) for the abolition of bonded labour, (5) for prescribing a special excise policy keeping up with the traditional tribal custom etc. The report should cover the problems arising out of the displacement of tribals and the implementation of the rehabilitation policy and the plans. It should also cover the governmental and social action taken against the atrocities detected, Law and Order problems, and tribal unrest etc. All these are important and essential for the peace and good governance of the Scheduled Areas in a State. Report must also provide a sketch of the Tribal Sub-Plan prepared and Integrated Tribal Development Projects and Welfare Programmes undertaken including financial allocations and physical targets achieved etc. The Report should also indicate the level of administration of the Scheduled Areas and measures taken for its further up-gradation, improvement and strengthening etc.

4. The Governor's Report is required to be submitted annually or whenever so required by the President. In fact, the report of the Governor is required to be placed before the Tribes Advisory Councils for their advice and recommendations, if any.

5. Records are not readily available about the reports submitted before 1999-2000 by the States having the Scheduled Areas. Andhra Pradesh and Madhya Pradesh have not sent reports from 1999-2000 onwards. Maharashtra and Orissa have not submitted reports for the years 2000-01 onwards. State of Gujarat has not submitted the report from 2001-02 onwards. The status about the reports' submission in respect of State of Rajasthan and Chhattisgarh is not readily available. There has been a delay in re-notifying Scheduled Areas in Jharkhand and Chhattisgarh after the re-organistion of the States. Himachal Pradesh has been submitting reports more or less regularly.

6. A sample study of the reports submitted by the States shows that these reports describe the infrastructure developed for the tribal development and welfare programmes; and the problems faced by the Scheduled Tribes such as

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unemployment, lack of infrastructural facilities etc. and describe about the programmes and schemes devised for tribal development/welfare usually ending with the statement that these schemes and programmes are making necessary dent in Scheduled Areas and that the specific efforts are being made to clear up reservations back-log in the Government services etc. **without any statistical back-up and without explaining what special programmes are under implementation and what has been the impact of the development efforts made on the overall development and welfare of the Scheduled Tribes. What these special efforts made are and results thereof are not specified in the report.** It appears that the States do not have the firmed up statistics and the assessment of the impact of development efforts to form part of the report other than the census figures where the reliance can be placed only on the demographic figures. The prevalent feeling is that these reports often tend to be a modified version of the annual reports of the Department of Tribal Development. The Union Government had prescribed the format for the report development covering all aspects of tribal development/welfare, tribal affairs and operationalisation of the Constitutional safeguards to protect the interests of the Scheduled Tribes etc.

7. Although, there is no provision, under the procedure laid-down, which expressly empowers a Governor to ask for a special report from the Council of Ministers on any issue, yet there is no bar on asking for a special Report from Council of Ministers on any important matter concerning Scheduled Tribes in the Scheduled Areas.

8. The Ministry of Tribal Affairs is expected to undertake an analysis of the Governor's Report and also to examine whether the Report reflects the correct state of affairs in the Scheduled Areas of a State. The Governor's Reports are received in the Ministry of Tribal Affairs where these are examined in a routine manner but are not analysed and the comments of the Ministry are put up to the Minister of Tribal Affairs for his approval whereafter the Governor's Report in respect of each State along with the comments of the Ministry are forwarded to the Secretary to the President with a request to submit it to the President of India. The Governors do not submit the Report directly to the President.

9. The Governors' Reports have become stereo-typed and the preparation of the report has been routinised and that important matters are not being adequately dealt with in these reports. There are serious problems faced by the tribals such as large scale displacement as a result of land alienation and lack of rehabilitation policy which have depleted the resource base of the tribals and have disturbed their traditional lifestyle. There are also problems of tribal – forest interface and many such problems that have largely contributed to widespread discontentment and emergence of sporadic tribal unrest in a number of States. Briefs on law and order problems, political matters, naxalite movement; insurgency problem and tribal unrest etc. do not find place in the Governor's Report despite the fact that the format devised for the Governor's Report is structured to cover all such matters apart from the state of tribal development and tribal welfare. The reports cover only development matters **The fact of the matter is that the present trend of Governor's Report development has reduced the importance of the report itself with the result it has failed to achieve the object as envisaged in the Fifth Schedule.**

10. The Ministry of Tribal Affairs in its reply to the questionnaire said that these Reports are of a routine nature, and in fact, it is practically treated as a departmental report at all levels with the result the object of having the Governor's Report as intended under the provisions of the Fifth Schedule has not been fully achieved.

11. **Recommendations**

(i) The Commission has observed that the States have not been submitting reports regularly and some of them have not sent the reports for a number of years. It is recommended that in the cases where the Governor's report do not reach within 6 months of the closing of the financial year, instructions should be sent invariably to the defaulting States to submit the report by extending the time for the reporting. If it is necessary the Union Government should not hesitate sending a Mission

from the Tribal Affairs Ministry to assess the state of the administration in the Scheduled Areas and make a report to the President of India.

(ii) **The format does not appear to be a rigid one which is good as this would help the Governors having vast powers under the Fifth Schedule to report on all aspects of tribal development/welfare and tribal affairs particularly the important problems faced with regard to the administration of the Scheduled Areas.**

(iii) **The Commission is of the view that any reference received by the Governor of a State by way of petition, suggestion, advice or recommendations received from the individuals and a cross-section of people, may be referred to the Council of Ministers with a direction to examine and undertake a feasibility exercise on the suggestion, advice and recommendations etc. and to report. This in itself is a purposeful exercise and the outcome of which can form part of the Governor's Report.**

(iv) **The appraisal of the Report may require inter-Ministerial consultations/interaction on various projects and programmes which concern the various Ministries. The scrutiny done of the processing of the Governor's Report shows that the inter-ministerial consultations/interaction are not being undertaken before the Report is finally presented to the President.**

(v) **Even though the Report is labelled as a routine Report by the State Governments/Ministry of Tribal Affairs, it can still serve a purpose if it describes objectively the actual status of the tribal development/welfare and the state of the tribal economy. The evaluators of the Report in the Government of India can have a fair idea of the state of the things in the Scheduled Areas on all aspects of tribal development and tribal affairs which can form the basis for tribal policy development and even for giving directions to the States by exercising the executive powers of the Union under the provisions of the Fifth Schedule.**

(vi) The Commission recommends that the Governor's Report received on a prescribed format should be thoroughly examined and appraisal done of the material presented in the Report, and in the process, the Government of India can interact with the concerned State Governments, if found necessary for seeking clarification. It can even make references to the State Government for a detailed Report from the Governor on certain matters/issues such as working of the Constitutional safeguards, Regulations on land transfer, Laws against land alienation and indebtedness and working of the excise policy etc.

(vii) If the Governor's Report is silent about the observations and advice of the Tribes Advisory Council, it can be sent back to the State Government concerned for placing it before the Tribes Advisory Council, as the TAC being an important forum to project tribal opinion which forms the basis for tribal development policy. The advice tendered by the non-official Members of the TAC carries the voice of the tribal people. Their advice on any matter cannot be ignored or brushed aside. We are of the view that the State Government should consider and act upon the advice of the TAC where it is found feasible to do so within the framework of the Constitution and laws enacted. Similarly, where the Report does not speak about the status of the operationalisation of laws and regulations to protect the interests of the tribals under para 5 of the Fifth Schedule, the President may call for a Supplementary Report from the Governor of the State concerned on this important aspect.

(viii) The Governor's Report should invariably contain a brief on law and order problems, naxal movement, insurgency problem, tribal unrest and political matters apart from the state of tribal development and tribal welfare, and also on the operationalisation of the Constitutional safeguards for the protection of the interest and rights of the tribals in their land resources, habitats, economy and cultural affairs etc., the Commission observed.

(ix) We recommend that the Union Government having the powers to give directions with regard to the Administration of the Scheduled Areas take

corrective measures to curb the proclivity of the States to abdicate the responsibility assigned to them for peace and good government of the Scheduled Areas and routinise the report.

(x) The Commission recommends that the Governor's report may be processed in the Ministry of Tribal Affairs in consultation with the Ministry of Home Affairs also for better co-ordination.

(xi) The time has perhaps come now that the Union Government may like to examine the manner in which the Governor's Reports submitted to the President can really work as mirror to reflect the correct state of affairs in the Scheduled Areas of the State and that necessary guidelines can be formulated as per our recommendations in this report for the States to prepare the Governor's report objectively with all sincerity to protect the interests of the tribals and welfare of the Scheduled Tribes. It is important that these reports apart from describing the state of economic development should also contain a brief on law and order situation, the problem of insurgency and militancy and about tribal unrest, if any, in the Scheduled Areas. A brief be given also on operationalisation of the Constitutional safeguards to protect the interests of the tribals in their indigenous faith, culture, custom and traditions embodied in the customary laws. We believe unless there is a correct reporting done about the sensitivity that is emerging in certain tribal habitats on account of lurking fear the tribals have about the cultural invasion from outside and the exploitative control over the tribal economy and the land resources from outside, nothing tangible can be done for the peace and good governance of the Scheduled Areas. The Union Government may also like to order a scrutiny as to why the planned development has not reached the tribal people in all these years despite adequate plan funds flow to the Scheduled Areas in the States of the Central India particularly, and also about the inapt application of the provisions of the Fifth Schedule and other Constitutional safeguards for the tribals, all of which have largely contributed to the spread of sporadic tribal unrest and naxal movement.

(xii) **The Commission recommends that necessary provision may be made in the paragraph 3 of the Fifth Schedule requiring the Governor's Report to be laid before the Vidhan Sabha.**

(xiii) **The Commission recommends that the Governor may submit the report directly to the President instead of forwarding it to the Ministry of Tribal Affairs which in practice has routinised the whole process of report making.**

B. Tribes Advisory Council (TAC)

1. Part-B of the Fifth Schedule to the Constitution provides for setting up of Tribes Advisory Council in the States with tribal population and these provisions read as under:-

"**Tribes Advisory Council.** – (1) There shall be established in each State having Scheduled Areas therein and, if the President so directs, also in any State having Scheduled Tribes but not Scheduled Areas therein, a Tribes Advisory Council consisting of not more than twenty members of whom, as nearly as may be, three-fourths shall be the representatives of the Scheduled Tribes in the Legislative Assembly of the State;

Provided that if the number of representatives of the Scheduled Tribes in the Legislative Assembly of the State is less than the number of seats in the Tribes Advisory Council to be filed by such representatives, the remaining seats shall be filled by other members of those tribes.

(2) It shall be the duty of the Tribes Advisory Council to advise on such matters pertaining to the welfare and advancement of the Scheduled Tribes in the State as may be referred to them by the Governor.

(3) The Governor may make rules prescribing or regulating, as the case may be, -

(a) the number of members of the Council, the mode of their appointment and the appointment of the Chairman of the Council and of the officers and servants thereof;

(b) the conduct of its meetings and its procedure in general; and

(c) all other incidental matters."

The framers of the Constitution thought that the TAC should be of great importance. The Excluded and Partially Excluded Areas (Other than Assam) Sub-Committee of the Advisory Committee (Constituent Assembly of India), in its Interim Report, paragraph 15, said that "to exercise special supervisory functions therefore and to bring to the attention of the Provincial Government from time to time the financial and other needs of the ab-original areas, the working of the development schemes, the suggestions of plans, or legislative or administrative machinery, it is necessary to provide by statute for the establishment of a Tribes Advisory Council in which the tribal element is strongly represented".

2. There are 26 States with tribal population in the country. All the States having the Scheduled Areas (at present 9), excepting the State of Jharkhand, have set up Tribes Advisory Council during the years between 1950 and 2003. As a result of re-organisation of the States in Central India, the Scheduled Areas (State of Chhattisgarh, Jharkhand and Madhya Pradesh) Orders 2003 were notified. In fact, the State of Chhattisgarh had set-up the Tribes Advisory Council in the year 2000 soon after its inception as a new State. Some of the States having Scheduled Tribes but not Scheduled Areas therein have set-up Tribes Advisory Council under the provisions of the Fifth Schedule to the Constitution. The State of Kerala has a State Tribes Advisory Board similar to TAC. The tribal States like Nagaland and Arunachal Pradesh having the preponderance of tribal population with over 80% population belonging to the Scheduled Tribes, do not consider it necessary to set-up the Tribes Advisory Council.

Membership of the Tribes Advisory Council (Composition of the Tribes Advisory Council):-

3. As per the provisions of the Fifth Schedule the strength of the TAC should not exceed 20 Members of whom as nearly as may be ¾ i.e. not exceeding 15

Members shall be the representatives of the Scheduled Tribes in the Legislative Assembly of the State. This leaves only 5 seats for the non-official Members of the Scheduled Tribes. The States which have constituted TAC have the rules prescribing or regulating, as the case may be – the mode of appointment of the Chairman and all the Members of the Council; and for the conduct of its meetings and its procedure in general; and all other incidental matters. In some States the Chief Minister has been made the Chairperson of the TACs with the Minister-in-charge Tribal Development/Tribal Welfare as Vice-Chairperson, while in others, the Minister-in-charge of Tribal Development/Tribal Welfare has been made Chairperson. Where the Chief Minister is the Chairperson and Minister-in-charge, Tribal Development/Tribal Welfare either as Vice-Chairperson or Member, there only 3 seats are available for non-official Members from the Scheduled Tribes. In the States with larger tribal population where there are 15 Members representing the tribal constituencies, the membership of the non-official representatives from the Scheduled Tribes is reduced to 3 only.

4. In the State of **Orissa**. the composition of the membership of the TAC is;- 15 MLAs. Chief Minister of the State, Minister-in-Charge of the tribal development, 2 MPs representing tribal constituencies and 1 woman Member belonging to ST community nominated. That means the only non-official Member taken on the TAC is a woman belonging to ST community. The State of Orissa has the substantial tribal population of STs and the object of having the Tribes Advisory Council is not served by nominating only 1 woman Member amongst the non-official Members from the representatives of the Scheduled Tribes.

5. The TAC in the State of **Chhattisgarh** consists of 25 Members of which 21 are the MLAs, 2 MPs (Lok Sabha), Chairman of Scheduled Tribes Commission of Chhattisgarh with Secretary, Tribal Welfare as its Member Secretary. There are no non-official Members representing the tribal people. The composition of the TAC in Chhattisgarh defeats the very purpose of having the TAC to enlist advisory inputs from non-official tribal representatives. Chhattisgarh having Scheduled Areas is expected to have the TAC set-up as per provisions of the Fifth Schedule.

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6. Similarly, in **Rajasthan** during the year 2002-03, there were 19 Members of TAC including Chairman and Deputy Chairman with 13 MLAs, 3 officials and 1 NGO representative who is a non-tribal. No purpose is served having this type of membership where there are no participation from the non-official Members belonging to the Scheduled Tribes.

7. In **Madhya Pradesh**, the Tribes Advisory Council has 22 Members composition of which is – Chief Minister as Chairman, Minister-in-charge as Vice-Chairman, 17 ST MLAs, Chairman of Scheduled Tribe Commission and 2 Non-Official Members. The Membership of the TAC is more than that prescribed in the Fifth Schedule.

8. It is only in the State of **Himachal Pradesh** that there is a greater participation of non-official representatives in the Council which adequately fulfils the object of having the TAC.

9. There were views expressed before the Commission that non-official Members should constitute around 50% to allow representation from various tribal belts/regions in the States. In a State like Himachal Pradesh, there are only 3 MLAs representing the tribal constituencies and that leaves enough seats for non-official representatives covering various regions/tribal belts of the State.

10. Uttaranchal which has not yet set-up a TAC has only 1 MLA representing tribal constituency.

    Some of the States with Scheduled Areas in the country have the strength of the MLAs representing the tribal constituencies close to 15 or more.

Term of Office and the eligibility criteria for the non-official Members

11. In many States, the rules do not provide for a definite term of office for the non-officials. In practice, the term of the Council ends with the call for the general elections, and the TACs are re-constituted on the formation of the new Government in the State. However, as per the rules of the Andhra Pradesh, the term of office shall ordinarily be 3 years with the proviso that (a) a Member of

the Legislative Assembly shall vacate his office in the Council, if he ceases to be a Member of that Assembly. (b) a Member of the TAC shall cease to hold office, if he absents himself from three consecutive meetings of the Council, or (c) if a Member resigns his office by giving notice in writing to the Government.

Mode of appointment

12. As per the Rules, in all States, non-official Members are appointed by nomination. There were also views expressed by some of the TAC Members and some tribal leaders as well in the States visited by the Commission that the non-official Members should be taken on to the TAC through direct elections held locally which would require proportionate distribution of the seats in the Scheduled Areas. There were others who opposed the direct election to the TAC as this would unnecessarily create a division in the community disturbing the peace and harmony in the areas as has been experienced in the Panchayati Raj elections. The provisions of the Fifth Schedule and the rules made by the States provide that the appointment of the Members shall be made by the Governor of the State by notification in the official gazette. In practice, the non-official Members are appointed by the political government.

Duties and functions assigned to the Tribes Advisory Council

13. As per the provisions, para 4(2) of the Fifth Schedule of the Constitution "it shall be the duty of the Tribes Advisory Council to advise on such matters pertaining to the welfare and advancement of the Scheduled Tribes in the State as may be **referred** to them by the Governor". Para 4(3) reads as under:-

"(3) The Governor may make rules prescribing or regulating, as the case may be, -

(a) the number of members of the Council, the mode of their appointment and the appointment of the Chairman of the Council and of the officers and servants thereof;

(b) the conduct of its meetings and its procedure in general; and

(c) all other incidental matters."

14. In the first place, there have been complaints made by some Members of the TACs that the State Governments do not refer any or the important matters to the TAC for its advice. The Members of the TAC have the opportunity to express their views and tender advice only during the meetings of the TAC held twice or thrice on small and routine subject matters as is the practice in most of the States. The policy issues rarely find place on the agenda items of the TACs. Some Members have alleged that no advice is taken on important legislative measures proposed concerning socio-economic development and tribal affairs etc. In most States, it appears from the records as well as from the interaction with the tribal leaders that no major policy proposals and recommendations on the tribal policy, development policy were submitted by the TAC in all these years.

15. However, in the recent years, a few specific issues were referred to the TACs in different States for their advice which are of some importance. In **Andhra Pradesh**, advice of the TAC was sought in respect of proposal to declare Gudemarri Pakala Wild Life Century. During the course of discussion, TAC sought for the rehabilitation programme to be taken up in its meeting held on 28.10.2002 on the subject. There had been instances when the official Members and non-official Members in Andhra Pradesh differed in their views. The State Government reported that in the meeting of the TAC held on 23.12.1988 non-official members disagreed with the views of the official Members on an important subject of regulating land transfers in the Scheduled Areas. However, in the meeting held on 20.07.1995, a decision was taken by all Members unanimously resolving not to amend Andhra Pradesh Scheduled Areas land Transfer Regulation. Again in the meeting held on 29.06.1996, a decision was taken to amend the Andhra Pradesh Scheduled Areas land Transfer Regulation, 1959 to declare the land purchased in the name of tribal woman married or kept as concubine by a non-tribal man as null and void.

16. The TAC of **Andhra Pradesh** had suggested several times certain issues pertaining to protection and advancement of Scheduled Tribes, for instance, electrification of tribal hamlets checking illegal adoption of tribal children,

stopping allocation of house sites to non-tribal in the Scheduled Areas etc. There has been no evaluation done and there are no reports whether any effective measures have been taken to implement these suggestions. The State Government of **Andhra Pradesh** in its replies to the Questionnaires admitted that even though TAC has been active but its impact on tribal communities is not clearly visible.

17. One important issue placed before the TAC in the State of **Orissa** related to the rights of the tribals on forest land those relating to pre-1980 occupation of forest land. In the TAC meeting this issue was discussed and the compliance on the decision taken were confirmed in their subsequent meeting dated 03.05.2002. However, there are no reports about the actual implementation of these decisions and its positive impact on the target groups have not been assessed nor the Commission had the opportunity to assess the status of the decision and its impact on the target groups. The State has, however, replied that the issue of settlement of the forest land occupied by the tribal remained unresolved. There is one silver lining in respect of Orissa i.e. that the new NTFP Policy of the State Government in the year 2000 is an example of the role played by the TAC for promoting the development interests of the tribals.

18. In the State of **Chhattisgarh**, the State Government accepted the TAC proposals to increase the rates of scholarship and stipends to the STs. A new Excise Policy was promulgated for the tribal areas of the State. TAC proposed to provide land to the displaced tribal farmers on land acquired by the Government for any purpose. The State Government has not replied with certainty whether this was actually implemented by the State Government. The Scheduled Tribes Finance and Development Corporation of the State was set-up on the suggestions made by the TAC. The State Government reported that the TAC passed a resolution against the privatization of Bharat Aluminium Co. Ltd. It was not accepted and the company was privatized.

19. In the State of **Rajasthan**, there was no specific proposal/advice made by the TAC on any subject of importance, on a scrutiny of the replies on the subject received from the State. The State Government stated that issues like total

prohibition in the Scheduled Areas; and to allocate 5% reservation to the tribals of Scheduled Areas out of the 12% reservation in the State as proposed by the TAC were still unresolved for long. The Commission during its visit to the State observed that TAC was not consulted on the enactment of laws affecting the tribal interests.

20. In the State of **Gujarat**, the State Government has not specified any specific advice or proposal received from the TAC on any subject of importance.

21. In the State of **Madhya Pradesh,** the proposals for the implementation of various Acts or other Amendments pertaining to Scheduled Areas are placed before TAC. The agenda items on the collection and marketing of tendu leaves, minor forest produces etc. are placed before the TAC for consideration. But, there are no specific instances mentioned by the State about the actual implementation of the advice tendered by the TAC in the matter.

22. The replies from the States to the Questionnaires sent to them and from the interaction the Commission had with some of the Members of the Tribes Advisory Council in different States show that the Tribal Sub-Plan – Five Year or Annual – are not placed before the TAC. However, in some States TAC Members are consulted at ITDP level during the exercise undertaken for formulating TSP.

National Tribes Advisory Council (NTAC)

23. Many State Governments have expressed views that the National level TAC should be set-up and it should have the advisory role to resolve the common problems and issues affecting tribal population in different States which can be addressed in more focused manner only by a National level Council. Such an Institution at National level will help coordination and interaction among the States and that the success stories of one State can be replicated in other States also. The State admitted that there are a number of policy interventions which are concluded at the National level only including legislation affecting tribals of the country. The tribals are in minority in most of the States and the State Governments tend to avoid making departure in general policy for the

tribals due to political pressures and compelling priorities. In that situation the voice of the tribals do not reach the Government of India.

However, there is National Commission for Scheduled Tribes set up under Article 338 of the Constitution which has the specific task assigned to advice, among other things, on the planning process of socio-economic development of the Scheduled Tribes and to make recommendations as to the measures that should be taken by the Union or any State for effective implementation of the Constitutional safeguards etc.

24. Recommendations

1. **The Commission recommends that the States and the Union Territories with the tribal population should have the Tribes Advisory Council set-up strictly as per the provisions of the Fifth Schedule of the Constitution. Necessary provision may be made in the paragraph 4 of the Fifth Schedule for setting-up TAC in the Union Territories with tribal population.**
2. **The Commission observed, on interaction with the tribal development authorities and the TAC Members and MLAs, that there is an advantage of having the Chief Minister as Chairperson to have all problems solved and all impediments removed for the smooth functioning of the mechanism set-up for the implementation of the tribal development and welfare programmes to achieve the desired object of a faster economic development, as the tribal development concerns almost all the sectoral Departments.**
3. **The Commission is of the view that serious thought need be given by the States having the Scheduled Areas about the composition and mode of appointment of the TAC Members. The Commission found that there was no intervention by the Central Government, Ministry of Tribal Affairs by way of guiding the States in the formation of these Councils. There should have been proper directions issued to the States having the Scheduled Areas particularly for the strict**

implementation of the provisions of the Fifth Schedule with regard to the composition of the Council.

4. In view of the facts stated as above, the Commission recommends that there should be some flexibility provided for the composition of the TAC. Where there are 15 or more MLAs representing tribal constituencies, their appointment may be made by rotation with 2 to 3 years term. The Commission further recommends that the MPs representing the tribal constituencies may be invited to attend meetings of the TAC but without a voting right. This arrangement will allow representation to all shades and hues of opinion from different tribal regions, belts in a State.

5. There is a great advantage in having the presence of the Chief Secretary, by virtue of his office, in the meetings of the TAC he being the Chief Coordinator of planning and development works executed by various sectoral Departments in the States. Similarly, the Secretary and the Commissioner/Director-in-charge, Tribal Development/Tribal Welfare have to attend the meetings of the TAC by virtue of the office they hold without being formally made Members of the TAC. The Secretary to the Government may also attend the meetings of TAC as an invitee. These measures proposed for the rationalization of the composition of the TAC would provide greater scope for the appointment of non-official representatives. The MLAs and MPs have the role assigned on a number of forums to contribute towards tribal development/welfare and to oversee the implementation of the Constitutional safeguards to protect the interests of the tribals. The Tribes Advisory Council is a forum where the non-officials should have the greater participation so as to elicit the opinion of the tribal people from different areas/regions in a State. In fact, the object of having a TAC is to enlist the advice particularly of the non-official tribal Members who are expected to come up with independent views/suggestions as inputs for the decision making process

concerning all aspects of tribal development, tribal welfare and tribal affairs. The above recommendations are based on the ground realities assessed and the views taken by the Commission from the tribal leaders, social workers and public representatives.

6. The Commission further recommends as under:-

   (i) That there should be a tenure of the Member fixed which should ordinarily be 3 years on the pattern of rules notified by State of Andhra Pradesh.

   (ii) Further, present practice of having the TAC re-constituted with the formation of a new Government in the State needs a review. That in respect of non-official Members representing the Scheduled Tribes, the rule must provide that they should complete their 3 years term. This will provide continuity and permanency to the TAC. In that the non-official Members with a fixed tenure will find membership in the TAC re-constituted after the general elections when the new MLAs are appointed as Members. This also helps remove complaints often made by the non-official Members that with the change of Government they cease to be Members of the TAC.

   (iii) Given that the TAC is neither a social organization nor a political forum, there should be no ambiguity about its being an advisory forum. There are other fora/Committees at the District level for the redressal of the grievances and that each routine matters/issues are solved by the Panchayati Raj Institutions. It is, therefore, recommended that the non-official Members of the TAC should have the formal education and that only the eminent tribals with some expertise in socio-economic and cultural affairs be taken on TAC, as the duty assigned to them is advisory in nature on various subject matters. The non-official Members of the TAC should have genuine interest in the social work and public welfare.

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7. The Commission recommends that the existing mode f appointment of Members by nomination may continue and there is . need to have the elections to fill the seats of non-official Members considering the duties assigned to them under the provisions of the Fifth Schedule of the Constitution which duty car be performed satisfactorily only by eminent non-official tribal Members with expertise in socio-economic development, cultural affairs and having genuine interest in some work and who can be appointed practically only by nomination.

8. The Commission recommends that:-
   (i) Although the Members may on their own tender advice on any subject yet a provision need be made to allow the Members to advise on matters other than those referred to them.

   (ii) There should be a mechanism devised for the consultations with TAC or for taking their advice before the laws, rules and regulations affecting the tribal interests are promulgated/passed by the Legislative Assembly/Parliament and the Council of Ministers.

9. The Commission recommends that the Tribal Sub-Plan proposals – Five Year as well as Annual – should be placed before the Tribes Advisory Council for their advice. The State Governments should not feel shy of consulting of Tribes Advisory Council in the matters such as formulating Five Year Plan as well as Annual Plan which, exercise in fact, should be open and transparent. Maximum possible efforts should be made to elicit opinion/views and enlist the advice of the TAC on tribal development and tribal welfare and all that has to be done in the interest of the tribal people. It is also recommended that the TAC should have the Standing Committee set-up to look after the interests of tribals in Land, Forest, Health, Education etc.

10. **The TAC should be made a forum to adumbrate a perspective and a vision for the future of the tribes in the States and that the tribal opinion should form the basis for formulating the socio-economic development policies and also for the legislative measures to be taken for the protection of the interests of the tribals, the Commission observed.**

11. **The Commission recommends that the Tribes Advisory Council being an important advisory body needs strengthening and it should enlarge its operation beyond the routinised process of its functioning, as this institution has tremendous role to play making TSP programmes successful apart from advising the State on measures to be taken for peace and good governance of the Scheduled Areas as well as of the tribal habitats outside the Scheduled Areas.**

C. Powers and Functions of the Governor under paragraph 5 of the Fifth Schedule

1. The Fifth Schedule to the Constitution confers powers on the Governor of a State having the Scheduled Areas to regulate application of the laws of the State and Acts of Parliament to the Scheduled Areas. Paragraph 5 (1) of the Fifth Schedule reads

> "Notwithstanding anything in this Constitution the Governor may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification and any direction given under this sub-paragraph may be given so as to have retrospective effect."

These provisions empower the Governor to reserve application of any particular Act of Parliament or of Legislature of the State to a Scheduled Area or he can modify them in their application to a Scheduled Area even with retrospective effect. These are very wide powers exercisable without taking a recourse to any

legislative amendments. But, the Governors have rarely exercised these powers. There are instances where laws of the Parliament or of the Legislature of the State have not been made applicable to the Scheduled Areas or to certain tribal communities declared as Scheduled Tribes primarily to protect the customary laws and social and religious practices of the tribal communities.

2. The Fifth Schedule assigns special responsibilities to the Governor for ensuring peace and good government of the Schedule Areas. Paragraph 5 (2) of the Schedule runs as follows:-

> "The Governor may make regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area.
>
> In particular and without prejudice to the generality of the foregoing power, such regulations may –
>
> (a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area;
>
> (b) regulate the allotment of land to members of the Scheduled Tribes in such area;
>
> (c) regulate the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes in such area.
>
> (3) In making any such regulation as is referred to in sub-paragraph (2) of this paragraph, the Governor may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question.
>
> (4) All regulations made under this paragraph shall be submitted forthwith to the President and, until assented to by him, shall have no effect.
>
> (5) No regulation shall be made under this paragraph unless the Governor making the regulation has, in the case where there is a Tribes Advisory Council for the State, consulted such Council."

3. Under paragraph 5(2) also the States have regulated the subjects like transfer of tribal land and the business of money-lending by framing regulations or by enacting laws or by modifying the existing regulations and Acts in their application to the Scheduled Areas. The allotment of land to the members of the Scheduled Tribes in the Scheduled Areas is regulated usually under the executive orders.
4. The First Scheduled Areas and Scheduled Tribes Commission had suggested a study of these protective laws/regulations made in pursuance of the provisions of the Fifth Schedule in order to plug the loopholes in them and make laws subserve the object to operationalising these Acts and regulations. This suggestion was prompted by the fact of there being loopholes in the relevant Act regulating business of money-lending and to prevent the money-lenders take undue advantage of these loopholes. Unfortunately, the recommendations of the said Commission in this regard have not been implemented in letter and sprit in all these years. During the interaction this Commission had with the State Governments some of them had admitted that there have been lapses in the implementation of the Acts and Rules regulating the money-lending and transfer of land etc. resulting in land alienation which had increased in number manifolds in all these years. There have been cases of *"benami"* transactions in all these years where non-tribals have taken the possession of the tribal land and the restoration of such alienated land legally did not arise because the ownership of such land is in the name of the tribals. Shilu Ao Committee had in fact pointed out way-back in 1969 that no serious attempt had been made to plug the loopholes in the Acts regulating money-lending. These protective provisions in the Acts and Rules have remained ineffective all these years and perhaps these will never be effective in future as well if we go by the trend analysis made.
5. The States have in fact either made the existing laws applicable in a modified form to adequately protect the interest of the Scheduled Tribes or they have enacted separate laws to regulate these subjects. In most cases the existing laws/regulations have been made applicable in a modified form. Even the laws/regulations of other States have been adopted. For example, the Chapter

X of the Assam Land and Revenue Regulations 1886 has been adopted in a modified form by many States in the North-Eastern region with tribal population. The Commission had the impression that there is hardly any case where any Governor had initiated a proposal to make such regulations for their application to the Scheduled Areas. Where the initiative for enactment of such laws comes from the State Government, it is welcomed as this would help build healthy convention and would in fact be desirable in a democratic set-up. Afterall the elected Government of the State has the mandate of the people.

6. The laws and regulations are protective in their nature but the important thing to examine is how these are operationalised; whether these have helped achieve the object of enacting them. The Commission was told by the State during its interaction with them that the Laws, Acts and Rules in operation are adequate to protect the interests and rights of the Scheduled Tribes. In our reports on the States these claims were not found quite fully justified. However, we believe that these protective measures have had some impact on the life and economy of the tribals and that the desired object of operationalising them has been achieved to some extent but not to an extent to the full satisfaction of the tribals of the country. Even where these have not been fully operationalised, these protective measures codified have had deterrent effect which helped achieve the desired object to an extent.

7. Under the provisions, para 5 of the Fifth Schedule the Governor must act in his own judgment when the advice of the Council of Ministers in its initiative taken for framing regulations/laws is not in accord with the regulations/laws the Governor wants to make.

8. The State Government concerned during their interaction with this Commission were unable to readily confirm whether there had been any case where the Governor had on his own made regulation or carried out modifications in the Acts of Parliament or of the State Legislature in their application to the Scheduled Areas.

9. The provisions of the para 5 of the Fifth Schedule are not limited to transfer of land, business of money-lending or the allotment of land to the members of the

Scheduled Tribes only. As per the provisions under para 5 (2), the Governor can make regulations on any subject or in any matter where such a regulation is essential for peace and good government of a Scheduled Area. There is one important subject of **trade and commerce** which is as important as the transfer of land where a regulation under the paragraph would be necessary to regulate the trade and commerce in the Scheduled Areas to protect the interests of the Scheduled Tribes.

10. In many States the process of institutional build-up for the operationalisation of the protective measures and even for the implementation of development strategy, the programmes and projects for the socio-economic development of the tribals are still in the making.

11. We believe the role that the Governor has been assigned under para 5 (1) and (2) as a modifier of the Acts and regulations of the State as well as of Parliament in their application to the Scheduled Areas should be effectively undertaken by the Governor to achieve the desired object i.e. to protect the rights of the tribals and for the peace and good governance of the Scheduled Areas. He has the powers to *ab initio* make regulations and getting them enacted and make them operational with the prior assent of the President which in our opinion is a continuous process. The proposals for the modification of the existing laws/regulations or to initiate new ones may come from the Tribes Advisory Council or from the cross-section of the tribal people or it may be initiated by the State Legislature or the Parliament which in fact, has been the conventional practice in the past rendering the role of the Governor under para 5 of the Schedule merely a routinised practice by applying the procedure under Article 163 of the Constitution.

12. While going through the report of the **Committee of Governors** on certain aspects concerning the Welfare and Rights of the Scheduled Castes and Scheduled Tribes, we found that the said Committee had very well observed in their Report to the Government of India submitted in April, 2001, which we feel necessary to quote here:-

"The present experience in all States is that the Governors have not exercised any significant role under the Fifth Schedule and wherever this has been so exercised it has been on the advice of the Council of Ministers."

13. The said Committee sought the advice of the Attorney General of India on the interpretation of the role of the Governor and the exercise of his powers under the Fifth Schedule. The relevant extracts from the Attorney General, Shri Sorabjee's advice on the subject as contained in the said report are as follows:-

"Under our constitutional scheme, as a general rule the Governor acts on the aid and advice of the Council of Ministers and not independently of it. The general rule is departed from in respect of certain functions to be performed by the Governor where the Constitution expressly provides that the Governor may act in his discretion. [the Sixth Schedule, para 9(2): Art. 371A(1)(d); Art. 371A(2)(b); Art.371A(2)(f)] or in his individual judgement [Art. 371A(1)(b)] or independently of the Council of Ministers. [Art.239(2)]. There are certain functions which from their very nature necessitate departure from the general rule. e.g report of the Governor to the President under Article 356 of the Constitution [Shamsher Singh V. State of Punjab, (1974) 2 SCC 831 at page 878 para 139 and page 885 para 154]."

"There is no provision in the Fifth Schedule of the Constitution which expressly empowers a Governor to act in his discretion independently of or contrary to ministerial advice. The Sixth Schedule of the Constitution contained such a provisions in para 18(3) – which has been subsequently deleted – and para 9(2) of the Sixth Schedule provides that the matters mentioned therein will be determined by the Governor "in his discretion". The omission of any such provision in the Fifth Schedule empowering the Governor to act in his discretion or in his individual judgement is significant."

"In my view, the Governor in discharge of his functions under the Fifth Schedule is required to act on ministerial advice and not independently of it."

14. In the light of the Attorney General's view, the said Committee of Governors was of the view that there being no provision under the Fifth Schedule for the Governor to act in his discretion the general principle of acting on the advice of the Council of Ministers seems to be binding on the actions of Governor under the Fifth Schedule. The said Committee was also of the view which is quoted here:-

 "It may therefore be desirable to set at rest any ambiguity about the role of the Governors in the Fifth Schedule."

15. It is evident from the Constitutional safeguards provided in the Constitution particularly the provisions of the Fifth Schedule that the protection of the interests and rights of the Scheduled Tribes have been intended to be placed on a special footing in view of their remoteness, isolation, backwardness and distinct socio cultural character. There are no two views that the tribal communities although have benefited to some extent from the planned development and special protective measures taken for the socio-economic development and for their upliftment, yet they continue to lag behind the other communities. The Constitutional safeguards act as the frame for the policy formulation and implementation. These protective provisions particularly those of the Fifth Schedule need to be viewed in that perspective i.e. as a departure from the general or usual run of the Constitutional provisions.

16. The advice of the Attorney General presumably based on the Article 163 is a normal procedure followed by the Governor in exercise of his functions *except in so far as he is by or under the Constitution required to exercise his functions or any of them in his discretion.* The words in italics may be noted. They enable departure from the normal procedure followed by the Governor in the event (a) where under the Constitution he is required to exercise his functions and (b)

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where he can in his individual judgment exercise his discretion about the action to be taken which may run contrary to the advice of the Council of Ministers. There is a specific requirement of the Constitution for the Governor to act in the circumstances mentioned in the paragraph 5 (1) and (2) of the Schedule. On a plain reading of paragraph 5 of the Fifth Schedule that is untrammelled by the conventions and practices governing Article 163 one may take the view that Governor has been empowered through issue of public notification to (a) reserve of application of any particular Act of Parliament or of the Legislature of the State to a Scheduled Area or any part thereof in the State, (b) introduce a modifier by which he may specify exceptions and modifications in the notification in such laws in their application to a Scheduled Area and any direction that may be given so as to have retrospective effect. These are, undoubtedly extraordinary powers conferred on the Governors in respect of Scheduled Areas by the Constitution. These measures empower the Governor to effect redressal in case a legal enactment of Parliament or of the State Assembly adversely affects the tribal interests.

17. There is no explicit provision made in the Schedule requiring the Governor to act on the advice of the Council of Ministers. Whereas it is mandatory for the Governor to consult the Tribes Advisory Council while bringing modifications in the existing laws of the Parliament or of the State Legislature in their application to the Scheduled Areas and in making the regulations for the peace and good government of the Scheduled Areas. The Commission has interacted with a number of eminent persons who have had deep understanding of the tribal affairs and rich experience in respect of tribal development and operationalisation of the provisions of the Fifth Schedule to the Constitution. The Commission also had interaction with the tribal leaders, non-official members of the Tribes Advisory Councils and with a cross section of the tribal people during its field visits to the States having Scheduled Areas. The general opinion formed on the basis of the plain reading of the provisions of the para 5 (1) and (2) of the Fifth Schedule to the Constitution and the consultations and interaction the Commission had on the subject as described supra is that the Governor is competent to act decisively to protect the interests of the tribals

without being adviced by the Council of Ministers and that he can in his judgment exercise his discretion. Subjecting it to the general principle under Article 163, where he is bound to act on the aid and advice of the Council of Ministers may not be in consonance with the letter and sprit of the para 5 of the Fifth Schedule. Both para 5 (1) and 5 (2) of the Schedule harmonise mutually and reflect the concern of the architects of the Constitution for the Scheduled Tribes. Both are in their very nature, specific and extraordinary provisions. As such, perhaps, as per the jurisprudence they should override the general provisions.

18. In view of the fact that there is no provision in the Fifth Schedule similar to paras 20 BB and 20 BA in the Sixth Schedule expressly empowering a Governor to act in his discretion i.e. independently of the advice of the Council of Ministers, it may be necessary to include in the Fifth Schedule provision conferring powers on the Governor to act as considered necessary "in his discretion". However, there is no bar on the Governor taking the advice of the Council of Ministers in exercising power under paragraph 5 (1) and (2), if he considers it necessary to have the advice of or consultation with the Council of Ministers before deciding anything in his own discretion. Such a consultation perhaps would be necessary in large many cases as, the Scheduled Areas are the integral parts of the State and any specific laws/regulations made for the Scheduled Areas may have their impact directly on indirectly on the life and economy of the people of the State concerned.

19. **Recommendations**

1. **In our opinion, the provisions of the Fifth Schedule have not been utilized to the full extent by the Governors of the States having Scheduled Areas. These protective measures are essential pre-requisites for the success of the Tribal Sub-Plan development strategy, programmes and projects for social and economic development of the Scheduled Tribes.**
2. **The Governors have themselves, generally, not applied necessary modifications in the applications of the regulations/Acts nor there are any**

new ones introduced to strengthen effectivity these protective laws/regulations. The implementing authorities in the States do not have necessary device to appraise and evaluate the efficacies of these protective measures being implemented. While the implementing authorities have taken the 'feel complacent' posture the ground realities are that due to ineffective implementation of the provisions of the Fifth Schedule the tribals have suffered an irreparable loss in all these years, the Commission observed.

3. The Commission recommends that it would be desirable to have a clause inserted under para 2 after clause c which should read:- *(d) regulate the trade and commerce in the Scheduled Areas.*

   The object of this provision is to put the native tribals in command over trade and commerce in the Scheduled Areas through necessary regulations framed under para 5(2) of the Fifth Schedule to the Constitution. We further recommend that the feasibility of making these provisions applicable to the ITDP Areas outside the Scheduled Areas may be gone into by the Central Government.

4. We recommend that the process of institutional build-up, inter-alia, under the provisions of the Fifth Schedule should be accelerated and that the authorities under the provisions of the Schedule may have pro-active role to play purposefully. We recommend that there should be a Legal Cell set-up in the Tribal Development Department and the task assigned to it should be to appraise the possible impact on the life and economy of the tribes of these legislative enactments already operationalised and the ones which are under consideration by Parliament or the State Legislature. It is not enough to leave this kind of task only to the sectoral Departments which do not have specific responsibilities to appraise and evaluate the impact of the laws and regulations pertaining to the Scheduled Tribes, tribal development, tribal affairs which are multi-dimensional and highly complex in the present day scenario. We further recommend that based on the inputs built-up by the Tribal Development

Department through its Legal Cell, there should be a Committee headed by the Chief Secretary, comprised of other Secretaries-in-charge of the Departments of Law, Home Affairs, Revenue, Forest, Agriculture, Industry, Social Welfare and the Panchayats/Local Self-Government which should be assigned the task apart from monitoring the existing laws and regulations, to undertake appraisal and evaluation of the impact of these Acts and regulations under consideration by the State Legislature or Parliament on the life and economy of the tribes of the State.

5. The Commission after having examined the provisions of the Fifth Schedule and on the basis of the views and opinion taken from a cross-section of the tribal people, tribal leaders, Members of the Tribes Advisory Council, social organisations, tribal development authorities as well during the Commission's interaction with them recommends that – there should be a paragraph inserted at the end of the paragraph 4 and paragraph 5 of the Fifth Schedule which should read as under:-

   "The Governor in the discharge of his functions under the Fifth Schedule, shall after consulting the Council of Ministers and the Tribes Advisory Council where there is one, take such action as he considers necessary in his discretion."

   These recommendations will require necessary amendment to the provisions of the Fifth Schedule to the Constitution.

6. The Commission is of the view that such a provision made in the Schedule will enable the Governors to exercise a significant role under the Fifth Schedule. The object of these provisions recommended is to empower the Governor to discharge his function in his individual judgement and act as considered "necessary in his discretion" in the matters of paramount importance for the peace and good governance in the Scheduled Areas.

The Scheduled Areas

20. Necessity for these provisions in the Constitution of India for governance of Scheduled Areas can be traced even prior to independence in the Govt. of India Act, 1935 and 1919, Scheduled District Act 1874, Ganjam and Vizagapatnam Act of 1839. The then British Administration had to resort to issuance of Regulation I of 1796, when the Paharias of the Raj Mahal Hills (now in Jharkhand) revolted against landlords. Their revolt continued in 1789, 1801,1807 and 1808. This followed disturbances among the Kols in 1831. The British had to enact " Ganjam and Vizagapatanam Act in 1839." Within next two decades, Santals revolted in 1855 against oppression of money lenders and landlords, land settlement with non-tribals, dispossession of khuntkatti rights, enhancement of rent, begar (forced labour) and unhelpful attitude of officials. The concept of 'Scheduled Districts' was brought in and the Scheduled Districts Act was brought into force in 1874. The Act provided for Civil and Criminal justice, Settlement and Collection of Public Revenue, Collection of rent and extension of laws to the Scheduled Districts with special restrictions and modifications as deemed fit in the interest of tribal people. Administrative reforms were carried therefore through Regulation XIII of 1883.

21. Tribal unrest was manifested through Sardari Agitation in 1887 in Ranchi area against compulsory labour, periodical contribution and illegal enhancement of rent by landlords. Mundas and Oraons led by Birsa Munda oraganised agitations in 1895 against landlords, moneylenders and Christian Missionaries. The agitation led to preparation of record of rights to give protection against exploitation by non-tribals, settlement and survey operations. In the Agency areas of Andhra Pradesh uprisings were reported by the Koyas in 1803, 1862 and 1879 against Muttadars (intermediary rent collector) who enforced forced labour, took best lands, and who did not allow tribals to come up. The tribals were even oppressed by the petty officials. The revolts by the tribals spread to East Godavari, Bastar (in1911) and to Orissa among the Konds in 1920. It is during this period that Tana Bhagat mobilized the tribals against exploitation.

Adilabad also witnessed uneasiness in 1941 when the Gonds and Kolams protested against alienation of land and forest rules.

22. Article 244(I) of the Constitution of India provides for the administration of Scheduled Areas and Tribal Areas, which reads as under: -

    (I) The provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than [the States of Assam (Meghalaya, Tripura and Mizoram).]

22.1 Part C of the Fifth Schedule, paragraph 6 reads as under:-

Scheduled Areas- (1) In this Constitution, the expression 'Scheduled Areas' means such areas as the President may by order declare to be Scheduled Areas.

(2) The President may at any time by order – (a) direct that the whole or any specified part of a Scheduled Area shall cease to be a Scheduled Area or a part of such an area; (aa) increase the area of any Scheduled Area in a State after consultation with the Governor of that State;

(b) alter, but only by way of rectification of boundaries, any Scheduled Area;

(c) on any alteration of the boundaries of a state or on the admission into union or the establishment of a new State, declare any territory not previously included in any State to be, or to form part of, a Scheduled Area;

(d) rescind, in relation to any State or States, any orders or orders made under this paragraph, and in consultation with the Governor of the State concerned, make fresh orders redefining the areas which are to be Scheduled Areas; and any such order may contain such incidental and consequential provisions as appear to the President to be necessary and proper, but save as aforesaid, the order made under sub-paragraph (I) of the paragraph shall not be varied by any subsequent order.

Constitution Order

23. In pursuance of these provisions as described in paras 4 & 4.1 above, the President of India has issued under-mentioned the Scheduled Areas Orders:-

(i) The Scheduled Areas (Part A States) Order, 1950 (C.O. 9) dated 26.01.1950

(ii) The Scheduled Areas (Part B States) Order, 1950 (C.O.26) dated 7.12.1950

(iii) The Scheduled Areas (Himachal Pradesh) Order, 1975 (C. O. 102) dated 21.11.1975

(iv) The Scheduled Areas (States of Bihar, Gujarat, Madhya Pradesh and Orissa) Order, 1977 (C.O.109) dated 31.12.1977 [later amended in 2003]

(v) The Scheduled Areas (State of Rajasthan) Order, 1981 (C.O. 114) dated 12.2.1981

(vi) The Scheduled Areas (Maharashtra) Order, 1985 (C.O. 123) dated 2.12.1985

(vii) The Scheduled Areas (States of Chhattisgarh, Jharkhand and Madhya Pradesh) Order, 2003 (C.O. 192) dated 20.2.2003

Criteria

24. First Scheduled Areas and Scheduled Tribes Commission known as the Dhebar Commission had recommended the following criteria for identification of Scheduled Areas:

    i. Preponderance of tribal population,
    ii. Compactness and reasonable size of the area,
    iii. Under-developed nature of the area, and
    iv. Marked disparity in economic standard of the people,

Views of State Governments

25. The State Governments were requested to review the aforesaid criteria in present day circumstances and suggest what should be the norm of percentage of ST population or the range of percentage of ST population to denote 'preponderance'? During the past decades, there has been appreciable influx of non-tribal population into Scheduled Areas, reducing the percentage of ST population, while not altering in any substantial manner the disparity of the non-ST and ST population and the area. In so far as compactness is concerned.

since scheduling implies special administrative arrangements for application of protective and developmental measures, it is an important consideration. In the earlier times, with lower density of population and lower rate of influx of non-tribal population in Scheduled Areas, compact areas were easy to map out. The unit also was larger. The Dhebar Commission recommended a tribal development block as the unit. In the Tribal sub-Plan concept also ITDP/ITDA, Modified Area Development Project approach pockets and clusters of tribal concentration were identified. Now, the significance of the role assigned to Gram Sabha has to be considered in the context of its constitutional mandate as per the 73rd Amendment. Prime-facie, it may be conceded that many Scheduled Areas and areas outside having the concentration of ST population are still under-developed. Their backwardness is visible particularly in the inadequacy of infrastructural facilities generally and inaccessibility in particular. Development of an area may be reckoned in terms of certain norms like agriculture, productivity, irrigated area, road length, etc. A comparison of the parameters of tribal areas with those of areas outside should indicate the level of under-development of the former. Also, there is marked disparity in the economic standards of the people. It is generally agreed that STs are the poorest and the most backward segment of the Indian society. Their mode of agriculture is generally of the unsettled type with shifting or terrace cultivation as an integral part of the economy. It does not commonly rise above the subsistence level. Their animal husbandry is generally of a primitive type. Whatever small or cottage indigenous industry is there, mostly caters to self-consumption. The human development indices, particularly those relating to education and health, place them far below that of the surrounding non-tribal population. Alongside these, exclusiveness and distinctive way of life mark the tribal communities.

25.1 The views of the State Governments were sought to suggest whether the aforesaid criteria were adequate and if not what could be added. Should all the Scheduled Areas in the State be co-terminus with the Tribal-sub-Plan areas? Should any new area be included in the list of Scheduled Areas or part

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of it cease to be a Scheduled Area? In response to the above, some of the States have expressed their views.

26. **Andhra Pradesh** - The State Govt. has favoured maintenance of status-quo in regard to criteria for the Scheduled Areas. They have sent a proposal for inclusion of 790 villages in the Scheduled Area to the Ministry of Tribal Affairs. The Commission was informed that there was an omission in the proposal (referred to above) of 23 villages of Warangal district and also of six villages of Khammam district, as we have listed them in our report on the State of Andhra Pradesh (See Vol. II)

26.1 **Chhattisgarh** - State Govt. has only 81,669.70 sq. km. of Scheduled Area as against 88,000 sq. km. included in the Tribal-sub-Plan, therefore, they have suggested that Scheduled Area should be co-terminus with that of TSP area and it should cover all the ITDPs, MADA pockets and clusters. A proposal in this regard has been formulated by the State Govt They have suggested that criteria of 50% ST population and a block being a unit should be modified to slightly less than that proportion and Gram Panchayat should be treated as a viable unit. As regards human development as one of the indices for determining the advancement of any area for exclusion from the Scheduled Area it may perhaps not be a viable because various tribes may be on different footing.

26.2 **Gujarat** – has reported that the existing criteria are adequate and it should be followed. Entire Scheduled Area in the State is co-terminus with the Tribal-sub-Plan area and there is no need to change the existing boundaries and the status-quo be maintained. As regards development of the Scheduled Area viz-a-viz the area outside, efforts should be made to improve the economy of tribals in the Scheduled Areas. In regard to exclusion or retention in the Scheduled Area, the State Govt. was of the view that the criteria should be based on the human development index. The Commission during its visit were given representations by various voluntary agencies and tribal

representatives for inclusion of the following areas in the list of Scheduled Areas:-

1. Danta and Hamirgadh tehsil of the Banaskantha district.
2. Sankheda tehsil of Baroda district.
3. All villages of the MADA pockets i. e. Choriwad, Karoli, Jambughoda and Choriyasi.
4. Cluster of Kathola, Mora, Govindi, Vadali, Bharpur, Ankleshwar, Uttara, Bhatgam, Rahej, Olpada, Palsana, Kamrej, Amod, Ganver, Sisodara Ganesh and Amirgadh.

In so far Danta and Hamirgadh tehsils of Banaskantha district are concerned, these two tehsils were earlier recommended by the State Government to the first Scheduled Areas and Scheduled Tribes Commission. This Commission recommends that the proposals referred to above may be examined by the State Government for inclusion in the list of Scheduled Areas and a suitable proposal thereto should be submitted to the Ministry of Tribal Affairs.

26.3 Himachal Pradesh - Scheduled Areas have been notified in the districts of Kinnaur, Lahaul & Spiti, Bharmour and Pangi. However, in Chamba district there are two development blocks - Bhatiyat and Chamba having 55% STs population included in MADA pocket, which is not a part of the Scheduled Area. State Govt. has made a suggestion for inclusion of certain areas as part of the Scheduled Area, as listed in our report on the State of Himachal Pradeh (See Vol. II)

26.4 Jharkhand – The State Govt. has informed that existing criteria are alright and no changes are necessary. However, an errata to the existing notification is necessary as two blocks, namely, Mandro and Udhwa of Sahebganj district have not been included although those were earlier part of the Scheduled Area. No area in the State could be deleted from the list of Scheduled Areas.

26.5 Madhya Pradesh - With the formation of State of Chhattisgarh out of Madhya Pradesh, Govt. of India has rescinded the Scheduled Areas (States of Bihar, Gujarat, Madhya Pradesh and Orissa) Order, 1977 and has replaced it by a separate Order known as the Scheduled Areas (Sates of Chhattisgarh, Jharkhand and Madhya Pradesh) Order, 2003. This Order was notified on

20.2.2003. The Govt. of M. P. in their letter dated 16.6.2003 has drawn the attention of Ministry of Tribal Affairs to carryout correction in the spellings of certain districts in their order referred to above. State Govt. has suggested that criteria for determining any area as Scheduled Area should be modified taking into account the following:

(1) Entire TSP area as it exists today should be declared Scheduled Area.

(2) All Blocks having more than 40% ST population and all Gram Panchayats having 40% and above ST population should be included in Scheduled Area. State Govt. does not consider any scheduled area in the State, which could be excluded. However, development of any area could certainly be measured on the scale of human development index. A proposal to make TSP area co-terminus with the Scheduled Area is being formulated by the State Govt.

26.6 Maharashtra - The Scheduled Areas in the State were originally specified by the Scheduled Areas (Part A States) Order, 1950 (C.O.9) dated 23.1.1950 and the Scheduled Areas (Part B States) Order, 1950 (C.O.26) dated 7.12.1950. With the introduction of the Tribal-sub-Plan (TSP) strategy the Scheduled Areas were enlarged and were re-specified under the Scheduled Areas of Maharashtra Order, 1985 (C.O.123) dated 2.12.1985 after rescinding the orders of 1950. The State Govt. has not suggested any modification to the existing criteria.

26.7 Orissa – State Government has opined that there should not be unnecessary tinkering with the Scheduled Areas. The Scheduled Areas have been generally accepted and should be allowed to continue as such with minor adjustments wherever absolutely necessary. The existing criteria are adequate. The percentage may continue to be 50%, but to eliminate the adverse influence of influx of non-tribal population to the Scheduled Area, the population living in municipal areas within the Scheduled Areas should be excluded from the calculations, but Municipalities and Notified Area Councils in Scheduled Areas as such must form a part of the Scheduled Area within which they are situated. The Scheduled Areas of the State are by and large co-terminous with TSP

areas. Only a small area of 912.00 sq. km in Suruda Tahasil of Ghumusur sub-division in Ganjam district which forms a part of the Scheduled Area is not included in any TD block and hence is not part of the TSP area. The Scheduled Areas declared in the Presidential Order, 1977 cover 118 Blocks out of 314 blocks of the State. Meanwhile some more Blocks having 50% tribal population have been identified for considering inclusion in the Scheduled Areas. As per the present criterion tribals forming 50% of population living in a compact area comprised in one or more block. Tileibani Block of Deogarh district. Laikera and Kirimira Blocks of Jharsuguda district, qualify to be declared as Scheduled areas. These three Blocks adequately meet the criteria relating to under-development and marked disparity in the economic standards of the people

26.8 **Rajasthan-** At present, existing Tribal-sub-Plan area is co-terminus with the Scheduled Area. State Govt. hold the view that criteria of backwardness should include ST female literacy, availability of safe drinking water, health and electrification facilities.

The State Govt. has a proposal under consideration based on a survey for inclusion of certain areas in the list of Scheduled Areas.

26.9 **Karnataka** - State Govt. has informed that no areas in the State fulfill the requisite criteria of the Scheduled Area and they have not made any recommendation to this effect.

26.10 **Kerala** - State Govt. has suggested that viable administrative unit for notifying Scheduled Area should be Gram Panchayat and not the Block.

26.11 **Uttar Pradesh** - State Govt. has suggested that proportion of ST population to total population should be relaxed from 50% to 35% to 40% in a Block and viable unit should be Gram Panchayat and not the Block. State Govt. has suggested that ITDP Chandan Chowki in Lakhimpur Kheri district and MADA project Vishnupur in Balrampur district should be declared as Scheduled Area.

Development of area, in particular, the tribal area should be measured by productivity of agriculture, animal husbandry and cottage industries, irrigated area, road and rail mileage and air facilities.

26.12 **Andaman & Nicobar Islands** - The UT has not been declared as Scheduled Area. However, tribal areas have been designated as reserved areas under the A&N Islands (Protection of Aboriginal Tribes) Regulation, 1956. Entry of non-tribals into reserved areas is prohibited and it is regulated by a permit. The interests of tribals in lands and trades in the reserved area are adequately protected.

26.13 **Dadra and Nagar Haveli** – The UT is predominantly inhabited by the STs and the Administration has not offered any comments on this issue.

27. Today, the possible causes of tribal unrest are likely to be following:

(1) Land alienation

(2) Unemployment among Post matric level ST students and lack of direction or no direction for school dropouts

(3) Making forest resources out of bounds for tribals

(4) Lack of health infrastructure in tribal areas

(5) Lack of development of tribals living outside Scheduled Areas

(6) Increased litigation against tribals and swelling of their number in jails as convicts and undertrials

(7) Against non-tribals who possess fake/false ST certificates

(8) Involuntary migration

28. Analysis

(a) Protection and development of tribals are needed most (i) where they live in forest area, (ii) where they are categorized as Primitive Tribal Groups, (iii) where their population is minimal say less then 10% to total population (iv) where they lived in areas affected by extremists/naxalities, and (v) which are not represented by democratic institutions (MLA etc.)

(b) Necessary protection and development of tribals is required in Laddakh region of J & K, Sikkim, Uttaranchal and Arunachal Pradesh and those settlements of Uttar Pradesh (Sonbhadra district) where tribals have been listed as STs in 2003.

(c) Protection and development of tribal oustees of Sardar Sarovar Project (the Narmada river) who were residents of Scheduled Area earlier (Jhabua district of Madhya Pradesh) deserve to be well looked after in Gujarat. Should these villages in Gujarat not be considered for inclusion in the list of Scheduled Areas? Likewise other Project affected areas also require due attention.

(d) Whereas Scheduled Areas in the country have been notified either as whole district, a tahsil, a block, a Revenue Inspector Circle, a Patwar Circle or sometimes a few villages, district Police has their own boundaries of Police Stations and Circles so also, Forest Deptt. has its own geographical boundary of Division, Range and beats of Forest Guards and **these are independent of Revenue set up. A Scheduled Area should also have its own identity.**

Recommendations

29. The Commission makes following observations/recommendations in regard to Scheduled Areas:

(1) **Scheduled Area as notified in 1950 should not be altered by an exclusion. The administrative units, such as, districts, tahsils, blocks and Gram Panchayats should be re-organized to extend prime significance to the Scheduled Areas and not vice-versa. Sanctity of Scheduled Areas should be preserved.**

(2) **Ministry of Tribal Affairs should look into the proposal of Govt. of Andhra Pradesh for inclusion of (a) 790 villages processed earlier, (b) 23 villages of Warangal district omitted due to oversight and (c) Six villages of Khammam district (omitted due to oversight as these were earlier part of Warangal district), in the Scheduled Areas. Laikera and Kirmira Blocks of Jharsugda district and Tileibani Block of Deogarh district of Orissa and Shahbad and Kishanganj tahsils of Baran district alongwith areas of Udaipur, Rajamand, Chittorgarh, Sirohi and Pali districts of Rajasthan may be surveyed whether they fulfil the criteria laid down for notifying as Scheduled Areas. Likewise, Leh and Kargil districts of Jammu & Kashmir State may also be considered for inclusion in the Scheduled Areas as these two districts fulfil the criteria laid down for Scheduled Areas, subject to the provisions of Article 370 of the Constitution. Jaunsar Bawar area of the State of Uttaranchal having the preponderance of the tribal population may also be considered for being notified as Scheduled Areas as it fulfils the basic criteria laid down.**

(3) **All revenue villages with 40% and more tribal population according to 1951 census may be considered as Scheduled Area on merit. Each proposal of State should be examined independent of other.**

General Recommendations

(4) **While notifying Scheduled Areas, Govt. of India should notify that Scheduled Area includes villages as well as towns and cities included in the blocks, tehsils and the districts in their entirety inclusive of all revenue and forest lands.**

(5) **The concept of 'Scheduled Area' should be given wide publicity so that 'dos' and don'ts' are known to the people. Signboards should be displayed on the borders of Scheduled Areas in adequate measures making the people knowledgeable about protecting the interests of tribal people and preserving their cultural heritage.**

(6) The lists of STs should be notified in two parts, Part I for Scheduled Areas and Part II for Non- Scheduled Areas. This will bring focused attention on the development of STs in Scheduled Areas.

(7) The Commission recommends that all the Integrated Tribal Development Projects (ITDPs), Modified Development Approach (MADA) Pockets and Clusters included in Tribal-sub-Plan should be considered for notifying as Scheduled Areas provided they fulfil the criteria laid down for Scheduled Areas. The Commission further recommends that a revenue village or a group of villages or Panchayats may also be considered for notifying them as Scheduled Areas provided they fulfil the other criteria suggested by us for creation of Scheduled Areas.

(8) The Commission further recommends that the system of single line administration should be strengthened in the Districts of the Scheduled Areas to make it an effective instrument of faster economic growth of development. The Collectors/Dy. Commissioners of the Districts in the Scheduled Areas should be given the administrative and financial powers of the Heads of Deptts. for providing administrative and financial approvals on time considering the remoteness of the Scheduled Areas some of which remain inaccessible for certain periods on account of geographical and climatic conditions.

(9) The Commission recommends that there should be a Secretary in the Prime Minister's office to monitor the implementation of the recommendations of the various Commissions and Committees on tribal development, tribal welfare, operationalization of the Constitutional safeguards for the Scheduled Tribes, and to advise the Govt. of India on tribal affairs.

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THE TRIBAL SUB – PLAN

RETROSPECT, REVIEW AND PROSPECT

The road to integrated planning for tribal development has been long and arduous. Even now, integrated planning can scarcely be regarded as having been fully grounded. For a long time, tribal development programmes remained either confined to within the four corners of one sector of a state's budget (the backward classes welfare sector) or encysted in the rigid schematic framework of a development block. At other times, the two were simultaneously in operation, but more or less compartmentalised. Only with the beginning of the Fifth Five Year Plan, there was attempt to transcend the sectoral barriers to acquire broad multi-sectoral integrated approach.

2. The strategy for integrated development led to the launching of the Tribal sub-Plan concept in the Fifth Plan period. Three basic parameters of the tribal situation in the country were recognised in the formulation of the concept. First, that there are variations in the socio-economic and cultural milieu among the different scheduled tribe communities in the country; second, that their demographic distribution reveals their concentration in parts of some States, dispersal in others and absence in a few; further, that the so-called primitive tribal communities live in secluded regions. Hence the broad approach to tribal development has had to be related to their level of development and pattern of distribution. In predominant tribal regions, area approach with focus on velopment of tribal communities has been favoured, while for primitive groups community-oriented programmes have been preferred. For dispersed

tribals, their participation in activities of rural development has been thought to be the apt developmental mechanism. For execution of programmes having integrated thrust, pooling of finances from all sources has been regarded as essential requisite.

Objectives of tribal development

3. In the words of the First Scheduled Areas and Scheduled Tribes Commission headed by Shri U.N. Dhebar (1961), "the task that confronted the framers of the Constitution was ....to devise a suitable formula which would protect the economic interests of the tribals, safeguard their way of life, and ensure their development so that they might take their legitimate place in the in the general life of the country" (para 4.12, p.33).

4. The Commission defined the objective of development among tribals as "advancement and integration of tribals.... The problem of problems is not to disturb the harmony of tribal life and simultaneously work for its advance".

5. With a view to clearing the confusion regarding the aim of tribal welfare policy, the Study Team on Tribal Development programmes headed by P. Shilu Ao, at one time Chief Minister, Nagaland , in its report (1969) observed that the progress was to be

> achieved not by attempting to transform them overnight ..... into carbon copies of the sophisticated plainsmen but by fostering all that is good and beautiful in their culture – their aesthetic sense, their honesty, their zest for life, in other words, by a process of growth which has its roots in their traditions and by instilling in them a sense of pride in their heritage and a feeling of equality in place of the existing feeling of inferiority.

Spelling out the aim of the policy on tribal development, the Study Team suggested it as

> ..... progressive advancement, social and economic, of the tribals with a view to their integration with the rest of the community on a footing of equality within a reasonable distance of time. Period has necessarily to vary from tribe to tribe and while it may be 5 or 10 years in the case of certain tribes, more particularly the tribes who have come in contact with the general population by living in

the plains, it may be two decades or more in the case of tribals who are still in the primitive food-gathering stage.

6. In "Guidelines for Tribal sub-Plan 1978-83" (1978), the Planning Commission ruled long-term objectives of tribal development as

(i) narrowing the gap between the level of development of tribal and other areas, and
(ii) improving the quality of life of the tribal communities.

7. As elaborated later, in our view, for the scheduled tribe people of the country, the objective should be envisaged as elimination of exploitation, accelerating the pace of socio-economic development, building inner strength and improving their organizational capability.

Approach to tribal development

8. The Study Team on Social Welfare and Welfare of Backward Classes led by Shrimati Renuka Ray reviewed the tribal scene in the late fifties and remarked in its Report (July 1959) that while each aspect of development was important in its own place, in the actual operation no rigid order of priority was universally applicable. They took note of the fact that the felt needs of tribal communities varied from community to community. The Team recommended (a) economic development and communication (b) education and (c) public health, as the overall order of priority. However, they stressed that the programme should be integrated based on agriculture, forestry, handicrafts and village industries, the degree of emphasis upon each of them being determined by a systematic survey of the needs and possibilities in each area.

9. Jointly sponsored and supported by the Ministry of Community Development and the Ministry of Home Affairs, from April 1957 an integral programme of intensive

development was initiated in the shape of special multi-purpose (SMP) blocks. The SMP blocks were endowed with schematic budget. Commenting, the Team observed that " the scheme of budget allocation in the special multi-purpose blocks does not fit in with the programme requirements which is variable under diverse local conditions". Further, "the schematic budget, more or less, sets a pattern which tends to be rigid". In 1961, the Dhebar Commission advocated " a balanced picture".

10. Apart from the 'integrated and planned approach', the Dhebar Commission crystallised the idea of distinctive quantification of resources, whether of the state or central governments, for tribal areas. They commended to other State Governments the example of the Andhra Pradesh Government which had issued instructions to the effect that three per cent of the total provision of each department should be earmarked for the welfare of STs during the Third Five Year Plan period.

11. In the background of the pronouncements of the two Study Teams of 1959 and 1969 and the Dhebar Commission 1961, the approach and policy were spelt out in the following words in the Fourth Five Year Plan documents for 1969-74:

> 136. The problems of Scheduled Tribes and Scheduled Castes have in addition some special features. The problem of scheduled tribes living in compact areas is essentially that of economic development of their areas and of integrating their economy with that of the rest of the country. The individual welfare approach or that of a schematic block is inappropriate in this case. Development plans must be formulated to suit the specific potentialities and levels of development of separate regions or areas.

The statement that the problem was essentially that of economic development of the tribal areas and of integrating their economy with the rest of the country, seemed to be related specifically to the then extant situation. The scenario has undergone complexities since.

12. Howsoever praiseworthy, these formulations led to little practical results. On the eve of commencement of the Fourth Plan, 489 tribal development (TD) blocks had come into existence and these blocks were thought to be the most important programme for economic betterment of the scheduled tribes and intensive development of areas having large concentration of tribal population. In fact, tribal development became synonymous with TD Blocks having pre-determined schematic budget. But, the programmes the TD blocks sponsored became more or less general benefit programmes and the special schemes of the backward classes welfare sector remained the only significant tribal development programme.

Tribal sub-Plan Strategy, Fifth Five Year Plan

13. The genesis of the total concept of the Tribal sub-Plan (TSP) is traceable to the thoughts scattered in the Dhebar Commission Report 1961:

> (a) As already mentioned, in Chapter 9 para 12 of their report, they cited the example of the Andhra Pradesh Government who had issued instructions that three per cent of the total provision of each department should be earmarked for the welfare of Scheduled Tribes during the Third Five Year Plan period. They commended the procedure to the other State Governments. The seeds of quantification and earmarking of funds were thus sown.
>
> (b) In Chapter 9 para 6, they stated that through grants under Araticle 275(1), the Union Government is in a position to correct inter-State financial disparities as may be conducive to an all-round development of the country and to exercise control and power of coordination in relation to state welfare schemes on a national scale. This flows from the intention of that Article since it gives powers to the Parliament to make such grants as it may deem necessary to any State which is in need of such assistance including that for schemes of tribal development and for raising the level of administration of the Scheduled Areas as well as for the development of the tribal areas of the State of Assam.
>
> (c) They emphasized that special financial provisions such as that provided under Article 275(1) and the provisions of the backward classes welfare sector in a State plan budget are "intended to supplement and not to supplant the general welfare programmes which are directed to the entire community, of which the Scheduled Tribes are only a part". For this interpretation, they drew corroboration from the Second Five Year Plan which made it clear that "the special provisions made in favour of backward classes should be so utilized as

to derive the maximum advantage from general development provisions and to make up as speedily as possible for retarded progress in the past". {Chapter 9 para 9}

(d) They quoted from a communication of the Ministry of Home Affairs of September1959 wherein the Ministry called for formulations in the Third Five Year Plan to ensure that maximum advantage was given to the backward classes from the general development programmes. {Chapter 9 para 10}

(e) The same communication of the Home Ministry called for a proportion of the general development outlays to be incurred to the disadvantaged sections of the society and to be shown separately.

(f) The Commission mentioned that the Planning Commission had sent a communication to the concerned Ministries of the Government of India asking them to ensure adequate provision for the welfare schemes of the tribal people from their normal programmes. {Chapter 9 para 11}

It will thus be clear that some characteristics of the Tribal sub-Plan i.e. the supplementary character of special Central financial assistance, State Plan budget being the backbone, population-proportionate allocations to the TSP from all concerned sectors, involvement of Central Ministries and earmarking of funds had been thought out in the earlier years and lay rather strewn about. The formal frame of the Tribal sub-Plan approach connected them, strung them together logically to crystallize into the concept.

14. Later, having been seized of the weaknesses in policies and programmes of tribal development following up to the end of the Fourth Plan, notably (a) the programme got atrophied financially and consequently physically since it became a sectoral programme for execution of certain schemes with the limited resources of backward classes welfare sector (b) there was failure to comprehend distinctive characteristics of the tribal areas and the scheduled tribes and (c) the policies and programmes as well as the administrative machinery, therefore, were hardly adapted to their needs, the Government of India took the decision that from the Fifth Plan

onwards, the major thrust for development of the tribal areas and tribal communities ought to be provided by the concerned sectoral authorities. Since sometimes area development was provided for at the cost of the resources meant for the tribal communities, it was laid down that the strategy would be "area development with the focus on development of the tribal communities.... for areas where tribals are a predominant community". As already noted, the tasks were defined as elimination of exploitation in all forms, speeding up the process of socio-economic development, building inner strength of the people and improving their organizational capability.

15. The four important ingredients of the Tribal Sub-Plan have been delineated as

- (i) identification of development blocks having, generally a majority of ST population and appropriately constituting them into ITDPs
- (ii) preparation of a project report for each ITDP based on the natural resource endowment therein, available financial resources and the avocations, skills and aptitudes of the people of the ITDP
- (iii) ensuring availability of at least population-proportionate pooled financial resources earmarked from State Plan funds, funds of Central and Centrally sponsored programmes, special Central assistance, institutional finance and any other source, and
- (iv) placement of a suitable techno-administrative structure in the ITDP for execution of programmes, schemes etc. contained in the approved project report of an ITDP.

16. We apprehend that the concept of Tribal sub-Plan is not sometimes viewed in clarity even in the papers of the Planning Commission and the Ministry of Tribal Affairs. For instance, it has been mentioned in reply to question 15 in our questionnaire addressed to the Planning Commission "the funds available through the SCA have to be utilized in conjunction with TSP funds to meet the critical gap in these areas". What, perhaps, is meant is that the SCA funds have to be utilized in conjunction with the State Plan flows. The TSP concept implies that the TSP funds are the funds in totality composed of State Plan funds plus Central funds plus Special Central Assistance plus

institutional finance. Thus, the SCA is a part of the total TSP funds. Similarly, in the order of the Ministry of Tribal Affairs No. 14020/5/2003-SG&C dated 2 May 2003, in IViv, it has been mentioned that "the TSP component of various Departments/sectors under the State Plan should be put in a separate Budget Head of the Tribal Development Department of the State". Here, again, the reference to "TSP component" seems really to be to State Plan component. In the use of "TSP" conceptual clarity is essential for a common understanding.

17. The exercise of identification of tribal majority blocks in the country was undertaken in the Fifth Plan period (1974-79) and completed in the Sixth Plan period (1980-85). According to the background paper on Tribal Development No. 7 entitled TRIBAL SUB-PLAN AREAS of the Ministry of Home Affairs, 633 full and 280 part blocks (1982 figures, which might have undergone change since) have been constituted into 194 ITDPs/ITDAs in the country. Generally, an ITDP as a unit rests between the district and the block tiers. During the Sixth Plan period, it was noted that some pockets of tribal concentration falling outside the tribal-majority development blocks remained uncovered. It was felt that they also called for coverage under the TSP strategy. Accordingly, pockets comprising contiguous villages having 10,000 or more of tribal population with half or more than half of ST population were identified and placed under the special dispensation. In subsequent Plan periods, smaller clusters comprising contiguous villages of tribal concentration of a total population of about 5,000 wherein a majority are STs also were located for the special development approach. It is understood that presently there are 259 pockets and 82 clusters wherein modified area development approach (MADA) has been adopted. Together with 194 ITDPs, they are distributed in 21 States and 2 Union Territories, namely Andhra Pradesh, Assam, Bihar,

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Chhatisgarh, Gujarat, Himachal Pradesh, Jammu & Kashmir, Jharkhand, Karnataka, Kerala, Madya Pradesh, Maharashtra, Manipur, Orissa, Rajasthan, Sikkim, Tamil Nadu, Tripura, Uttar Pradesh, Uttaranchal, West Bengal, Andaman & Nicobar Islands and Daman & Diu. It seems that the benefits of the TSP have been extended also to the scattered tribal population through family-oriented programmes. The Report of the Working Group for Empowering the Scheduled Tribes during the Tenth Five Year Plan (2002-07) of the Ministry of Tribal Affairs indicates that cent per cent ST population has been brought under the TSP strategy in the afore-said States and UTs. In some States, there is a happy geographical co-incidence of a sub-division and an ITDP. Also the TSP area and the Scheduled Areas are now, to a large extent, co-terminus. Yet there remain some disjunctures between them and they need to be either removed or at least minimised. Rationalisation may be needed in some other respects also.

18. In this context, there has been a proposal to effect coterminality as between a district and an ITDP/ITDA where the district is totally Scheduled. Prima facie, it looks attractive as it may imply economy in establishment and overheads. But in the balance, the consequential little economy may hardly be worthwhile, as it may result in a large degree of diffusion of attention to the required programmes of intensive nature. However, the matter should also await structural reorganization in the district consequent on induction of the Panchayat system.

19. At the launch of the TSP during the Fifth Plan, there was considerable enthusiasm resulting in preparation of project reports for a large number of ITDPs and it was sustained during the Sixth Plan. The basic idea of establishing ITDPs in the country has been to institute a projectised integrated multi-sectoral approach with the help of pooled funds garnered from various sources. The results of operationalising the

project reports during these two Plan periods were visible in the field. To an extent, the tempo was kept up during the Seventh Plan period (1986-91), but there seems to have been a decline later. One reason may be the lack of attention to the preparation of five-year and annual reports for each ITDP resting on sound principles of multi-sectoral planning.

20. The Tribal sub-Plan has been envisaged as representing the total development effort in the identified areas with the aid of resources pooled from various sources, viz. (i) outlays from the State Plans (ii) investment of Central ministries and Planning Commision (iii) special Central assistance of the Ministry of Home Affairs and (iv) institutional finance. The first State TSPs were finalised in 1975-76. Separate sub-heads for TSPs were introduced in State budgets at approximately the same time. Further, in the Fifth Plan the allocations from the backward classes sector remained as additive to the allocations from the general sectors.

21. Prior to the introduction of TSP, the main agency of administration of development in the district was the development block with some tenuous ramifications among the Panchayats. Except for tribal development blocks, of which we have already spoken, hardly any other agency looked after tribal development specifically. With the formation of ITDPs, the need arose for an appropriate techno-administrative structure attached to it. Generally a Project Director or a Project Administrator has been placed in charge with a few selected sector-specialist associates. In some States, the ITDP remained an integral part of the district administration, but in Andhra Pradesh and Orissa, the projects were converted into independent integrated tribal development agencies (ITDAs) formed under the Societies Registration Act 1860. The constituent blocks and the constituent Gram Panchayats of those blocks became a part of the

ITDPs/ITDAs. On the higher echelons, the Project Administrator accounted to the district collector/deputy commissioner. At the ITDP level, a deliberative body headed by the collector or deputy commissioner, comprised of not only the administration and technical officials, but also tribal and other local leaders, were constituted. Thus, a full-fledged hierarchy for execution of programmes and schemes contained in the project report was brought into being.

22. A vital aspect of the Tribal sub-Plan strategy has been that, echoing the provisions of Article 46 contained in the Chapter on Directive Principles of State Policy of the Constitution, it places stress on adoption of anti-exploitative measures. In fact, in defining the strategy, protection from exploitation was described as the first step necessary for raising the socio-economic condition of the tribals. The specific fields in which anti-exploitative action was indicated as necessary were eviction from forest areas, land alienation, indebtedness, market, bondage etc. Legislative and executive measures were expressed as necessary, particularly removal of loopholes in legislation and infirmities in administrative machinery.

Methodology of preparation of TSP

23. In prescribing the methodology of preparation of TSP for the tribal regions of a State, briefly, it has been laid down that since the strategy is to prepare programmes for specific needs of the area and the people, planning should be ITDP-based. Each constituent block of an ITDP should formulate its five-year plan with annual phasing in the context of the natural resources endowment, occupations and skills of the people, infrastructure available and human requirements. The block plans should be aggregated at the ITDP level, taking an overview of the entire project area. The project reports thus prepared should be aggregated at the state level into the TSP of the State.

The need-based ITDP project reports and the State TSP have to be matched to resource availability. The process of planning should, thus, be built up, funneling upwards. Further, the process needs to be initiated simultaneously multi-sectorally at the sub-district level and the state level, as well as individual sectorally at the concerned levels. Harmonious interweaving has to take place at the block, the ITDP as well as the State level. In other words, the project report for an ITDP should reflect the balanced multi-sectoral programmes relative to the earlier cited desiderata of natural resource endowment, the needs and aspirations of the people and their skills and aptitudes. Similarly, the State TSP should represent an aggregate of the various project reports, articulating, in sum, the priorities, needs and aspirations of the tribal people and tribal areas in the State, duly married to the financial resources available.

24. The methodology implies that the State authorities communicate to the project authorities outlays which the latter can expect for the five-year period as well as for each of the annual phases well before the commencement of the respective periods. Once the outlays are known, the project authorities have to sort out priorities and arrange sectoral programmes in the light of the priorities. At this stage, particularly, association of tribal representatives is of crucial importance so that the plans can become truly reflective of the people's needs, aspirations and inclinations. However, the process has not come into being completely in any of the states owing to a variety of reasons. Generally, the disaggregation exercise at the State level has been adopted, whereby lump sectoral outlays are broken up and passed on to the tribal development department and/or the concerned field authorities for implementation of programmes. Even if this step is adopted in certain states, it misses out on other vital aspects. In

short, both elements in the planning process viz. planning from below and realistic integrated efforts have yet to materialise.

25. During the Fifth, Sixth and Seventh Plan periods, the practice was that the ITDP/ITDA project reports prepared in the states were discussed for approval at the Central level i.e. among officials of the concerned State Government and representatives of the Ministry of Home Affairs, the Planning Commission and the concerned Ministries. Even a Minister of State took part in the discussions to strengthen the plans and programmes. Somewhere down the line, the process languished. It is understood from the replies of the Planning Commission and the Ministry of Tribal Affairs that a Central Standing Committee met in December 2002 and reviewed the formulation of TSP in respect of important Central Ministries/Departments and suggested certain remedial measures. As hitherto, similar standing committees are needed for scrutiny on a regular basis by the Ministry of Tribal Affairs in conjunction with the Planning Commission and the concerned Ministries of ITDP/ITDA project reports, annual TSPs and five-year TSPs prepared in the states.

26. So far as the financial aspect is concerned, adequate financial provisions should be made from the State Plans for tribal areas keeping in view (a) the total population of the TSP area (b) the geographical area (c) the comparative level of development and (d) the state of social services. The State Plan outlays may be regarded as comprised of 'divisible' and 'non-divisible' components. Those investments whose benefit does not or cannot flow to the target group may be called the non-divisible part. From the state divisible pool, weightage needs to be given to schemes of income-generation and related infrastructure back-up for tribal families, while due accrual of benefits for development of tribal regions should be ensured through capital-intensive

infrastructure sectors of the non-divisible portion. The object has been that, on the whole, to compensate for the past neglect and backwardness, the tribal areas should attract weightage in allocation of funds. Another important factor to be taken into consideration is that while the ST population in the country is about 8% of the total population, the TSP area constitutes about 18 % of the total geographical area. When we consider some states, the population-area disparity becomes glaring. For example, the 22% ST of the total population is spread over 44% of Orissa's total geographical area; in Manipur the ST population is about 30% of the total population but the TSP area is 90% of the total area. The other two factors i.e. (c) the comparative level of development and (d) the state of social services, have hardly attracted any notice so far, perhaps, on account of difficulty in their computation. But they *should* influence earmarking of funds. In fact, the entire gamut of criteria deserves detailed attention.

Priorities

27. The question to be considered is whether a larger proportion of the admittedly limited resources being earmarked for the tribal areas should not be utilized for schemes which are likely to make quick impact on the socio-economic condition of individual tribal families. Reasonable investments in family-oriented schemes in the economic sectors like agriculture, horticulture, animal husbandry, forestry, small and village industries can usher in quick benefits, howsoever small, and liable to make substantial difference to the meagre income of the family. It has been seen, for instance, that effective marketing arrangements for items of minor forest produce collected by a tribal family has pulled the family out of the brink of starvation. Further, investment in social sectors like education and health are likely to play, for short-term

as well as long-term, a big role in the progress of each such family whose members are educated and healthy.

28. As a part of Sixth Plan Mid-term Appraisal, an exercise was made to appreciate what proportion of financial resources went into different sectors. Three groups of sectors were envisaged as follows:

(i) direct economic-benefiting sectors like agriculture, horticulture, animal husbandry and dairy development, fisheries, forests, small village and cottage industries

(ii) social service group of sectors comprising general education, technical education, culture, health, water supply, housing, nutrition, backward classes welfare

(iii) infrastructure group of sectors like large and medium industries, mining, power, ports and harbours, roads and bridges, road transport, flood control, major and medium irrigation.

It was found that for the period of the Fifth Plan and the early years of the Sixth Plan, the infrastructure sectors groups appropriated more than 60 per cent of the financial resources, sometimes adding up to over 70 per cent of the State Plan budget. The capital-intensive nature of this group limits availability of funds for the other two groups of sectors which are, in the short and medium term, more germane for a section of the population like the scheduled tribes hovering around the poverty-line and low levels of health and education. It was concluded that for the short-term (a) attention needs to be focused on the direct economic-benefiting sectors through strong inter-linkage with minor irrigation, soil and water conservation, marketing, cooperation etc. (b) effort needs to be intensified on the social services sectors group, particularly in the fields of drinking water, health, general education and technical education so that the gap between the present capability of STs and that required to assimilate advantages of the modern sectors can be closed over a minimum period and (c) so far as the

programme of infra-structure is concerned, emphasis should be laid more on improving back-up facilities in identified minimum needs sectors.

29. During the Fifth and the Sixth Plan periods, the approach laid down was that the TSP should aim at area development with focus on development of tribal communities in tracts where they predominate. The objectives in the Sixth Plan period were indicated as raising productivity levels, consideration of education as the key sector, provision of adequate infrastructure and combating exploitation. The Seventh Plan Working Group Report emphasized area-based development with focus on the scheduled tribe population, particularly providing them a protective legal shield. The Eighth Plan Working Group on Tribal Development again called for de-emphasis on heavy infrastructure investments to emphasise family-oriented programmes. They favoured a judicious mix of infrastructure development and beneficiary-oriented schemes, the infrastructure geared more towards improving facilities in identified minimum needs sectors. The Tenth Plan Working Group has suggested that following tribal ethos, the entire community should be placed center-stage for elevation from all points of view (economy, education, health, communication and so on) and not merely the individuals. It may thus be seen that the stress has been on the beneficiary, earlier an ST family and in the Tenth Plan Working Group Report the community. In other words, the planning direction adopted has sought to channelise financial and physical resources to human development along with allocation of funds for a commensurate infrastructure. Translation of such planning desiderata into neat practical formulations does require a degree of adroitness. In the first instance, the perspectives of national and state levels planners may differ and, secondly, even more important, the ground conditions may vary a great deal from one region to another, influencing ideas of field

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implementers and creating hiatus between them and the planners. It is in this context, that the entry of peoples' own bodies i.e. the Panchayats at four different tiers in the field of "economic development and social justice" and implementation of schemes therefore (cf. Article 243 G of the Constitution) is to be welcomed whole-heartedly. They have to plan and implement. No one may be regarded as more suited to the task, as the task is their own and they are located close to the mother earth. No doubt, the plans, programmes and schemes drawn up by them would harmonise with the national policies and plans, but the effort at assonance would have to be at both the ends.

Gender planning

30. Article 243D of the Constitution stipulates that not less than one-third of the total number of seats reserved for scheduled tribes are to be reserved for ST women. Further, that not less than one-third (including the number of seats reserved for SC and ST women) of the total number of seats to be filled by direct election in every Panchayat are to be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat. It also provides that not less than one-third of the total number of offices of chairpersons in the Panchayats at each level shall be reserved for women. These provisions are valid for Scheduled Areas also wherein The Provisions of the Panchayats (Extension to the Scheduled Areas) Act 1996 is applicable. Women enjoy a high social status in tribal areas, in contradistinction to their sisters in non-tribal societies, linked, perhaps, to the substantial contribution they make to the well-being of the family through their physical labour and moral support. It is [illegible] proper that they should claim separate component in the State and Central TSPs. In each ITDP/ITDA, there should be a section devoted to womens' planning and implementation. Every TSP and project report should exhibit suitable earmarked

distinctive programmes and schemes for women, along with earmarked resources. In the guidelines of the Ministry of Tribal Affairs cited earlier, they have called for drafting of such schemes and projects as throw up centre-stage issues affecting tribal women and their participation right from the stage of formulation to implementation. In their earlier guidelines for release and utilization of grants under the first proviso to Article 275(1) of the Constitution i.e. No. 14011/9/2001-SG&C dated 2 July 2002, the Ministry had directed that substantial benefits, at least 30 per cent in proportion, should be targetted to women. These are salutary provisions and, if implemented adequately and sincerely, may bring about radical improvement in the condition of tribal women. We strongly recommend these measures.

Contribution of Central Ministries

31. As earlier mentioned, the Tribal sub-Plan strategy, launched in the Fifth Plan period, seeks inter alia to ensure adequate flow of funds not only from the State Plan funds, the Central Sector and Centrally Sponsored Schemes of the Ministry of Tribal Affairs, institutional funds, but also from the Planning Commission, other Central Ministries and Departments. The Centre having a special constitutional responsibility towards the Scheduled Tribes and Scheduled Areas, the role of Central Ministries assumes significance. The Planning Commission had asked Central Ministries and Departments to have a clear idea of the problems of tribal people and tribal areas to prepare specific programmes relating to their concerned sectors and adapt the programmes wherever necessary, in consultation with the State Governments. In order to ensure that the Central Ministries and Departments accept responsibility for development and welfare of the Scheduled Tribes, the Government of India (Allocation of Business) Rules 1961 were amended in 1999 and the amended rule reads as follows:

The Ministry of Tribal Affairs shall be the nodal Ministry for overall policy, planning and coordination of programmes of development for the Scheduled Tribes. In regard to sectoral programmes and schemes of development of these communities, policy, planning, monitoring, evaluation etc., also their coordination will be the responsibility of the concerned Central Ministries/Departments, State Governments and Union Territory Administration. Each Central Ministry/Department will be the nodal Ministry or Department concerning its sector.

32. In order to focus attention to tribal development, in letter dated 12 March 1980 the then Prime Minister called upon the concerned Central Ministries to take the following steps:

(i) quantification and earmarking of funds for tribal areas under the Central Ministries programmes
(ii) formulation of appropriate need-based programmes for tribal areas
(iii) adaptation of the on-going programmes to meet the specific requirements of scheduled tribes
(iv) identification of a senior officer in a Ministry to monitor the progress of implementation of programmes for the welfare of scheduled tribes.

33. These guidelines have been reiterated from time to time by the Ministry of Tribal Affairs and the Planning Commission, particularly that funds at least equivalent of the percentage of ST population in the country should be set aside under TSP by the concerned Central Ministries and Departments. It is understood that, as a part of its Plan exercises, the Planning Commission has been issuing instructions to all the Central Ministries on formulation of TSP in their annual plans. Similarly, the Ministry of Tribal Affairs also has been sending communications to them on the need for quantification of funds for TSP from their annual plan in proportion to the population-percentage of STs in the country. The objective has been that areas in which Central Ministries/Departments can play distinct role are to be identified and quantified outlays projected. It has been stressed time and again that the basic investments in tribal areas

and for tribal communities are to be made from the State Plan and funds of the Central schemes as well as Centrally Sponsored Schemes. It is important that the Ministries and Departments of the Central Government take an integrated view of the developmental programmes undertaken by them, simultaneously with an appreciation of the special needs of the tribal socio-economic situation, in order to be able to identify schemes of relevance to the tribal areas and tribal population. In this context, the need for weightage over and above funds equivalent of population-percentage has also been mentioned. This should be seriously considered. The special Central assistance (SCA) has been cut out in the role of a gap-filler i.e. to make available resources for specially relevant schemes or in critical programme spaces for which funds are otherwise not in sight. In other words, the SCA is to be treated as supplementary in character. These guidelines should be enforced strictly.

34. Attention has also been paid to the manner of exhibition of earmarked funds in the budgets of the Ministries, though discussions have centred more around the question of exhibition of quantified funds in State budgets. The report of the Working Group on Tribal Development during the Seventh Plan period 1985-90 recalled that the Central Ministries had been asked to adopt separate sub-heads under the respective major heads in their budgets to reflect flow of funds to tribal areas. Adoption of appropriate budgetary mechanism to this end had been agreed to by the Ministry of Finance. We are not aware to what extent this measure has been complied with and whether it carries the requisite quantifications.

35. The Central Ministries/Departments can play a vital role in a number of key sectors converging on tribal areas and tribal population. Their involvement appears to have been increasing since the Sixth Plan period. It could be more purposeful if the

concerned Ministries and Departments identify and incorporate such programmes in consolidated TSP documents. Periodical, at least annual, review of these programmes could bring to focus the urgency of steps to be taken in important segments of activities which may not have received attention and, hence, may be lagging behind. A Tribal sub-Plan for development-oriented Ministries and Departments is, therefore, an undoubted requirement. Since most of the concerned Ministries and Departments would have already established a tribal cell in them, there should be no difficulty in consolidating the TSP component of their programmes in a separate document. Specifically, adequacy and relevance of scheme component and population coverage vis-à-vis total plan size of the Ministry/Department should be borne in mind.

36. One of the shortcomings identified by the Eighth Plan Working Group on Tribal Development was that no guidelines had been issued to States and UTs to ensure that adequate share in the benefits arising from the activities of the concerned Ministry/Department flow to the ST population and TSP areas. We are not aware whether such guidelines have since been issued and, if so, whether they have been acted upon. We would like it to be ensured that on receipt of funds of Central sector and Centrally sponsored schemes, the State Governments distribute them equitably among the ITDPs, MADA and cluster areas, PTGs etc. apart from being made available to other areas. A second shortcoming they indicated was that quantification of funds and physical targets were being worked out on purely notional basis. This is a criticism which is applicable in respect of utilisation of states resources also. It has to be understood that illusory hand-outs create socio-political tensions. Real and substantial benefits alone can satisfy STs.

37 We understand that instructions have been issued that in the Annual Administration reports of some selected Ministries, separate chapters on progress in Tribal sub-Plan should be included; for other Ministries/Departments exclusive chapters have not been insisted upon, though related matters should be included in some other appropriate chapter or chapters in the report. On perusal of some Annual Administration reports, we find that while broadly these instructions have been followed, there is need for improving these reports both in respect of quantity and quality of information.

38. The Central and Centrally sponsored schemes constitute an important area of common interest to both the Centre and the States. They are joint efforts in important areas and fields to push programmes relating thereto not getting sufficient attention otherwise. In our tours of states, we found that at the cutting edge of tribal administration in the field i.e. at the level of ITDP/ITDA etc., the Project Administrators have no clear idea of the programmes. We have recommended above formulation of a Tribal sub-Plan document by each concerned Central Ministries and Departments. These documents should be made available to the Project Administrators, making it possible for the field units to have a clear picture of the programmes enabling a more viable plan to be operationalised. Hopefully, this should be a step towards a more informed and coordinated approach to tribal development on the plane of the critical field nodal units.

39. The contribution of the Central Ministries has been reviewed from time to time and, on the whole, as mentioned elsewhere, it has been found to be below par. The table hereunder shows the picture as gleaned from different records:

Rs. in crores

	Outlay	Flow to TSP	Percentage	Source
Sixth Plan	7,508	912	12.10	Working Group report for Seventh Plan
Seventh Plan				NA
Eighth Plan (1992-97)	68,924	5517	8.00	Plan.Com's Ninth Plan document
Ninth Plan (1997-2002)	1,10,454	6462	5.85	Plann.Com's Tenth Plan document

The contributions of the Central Ministries have not been uniform or all of satisfactory level. Nor all the concerned Ministries have come forward. According to the Tenth Plan document of the Planning Commission, earmarking of funds for TSP is being carried out in 25.Ministries/Departments of the Central Government and 20 States/UTs.

40. The Parliamentary Committee on Welfare of Scheduled Castes and Scheduled Tribes has made observations and recommendations generally on quantification of benefits and found it to be not satisfactory. On occasions they expressed unhappiness on the performance of the Ministries and urged them as well as the Planning Commission to ensure that the intended funds and benefits from the general sectors are actually availed of for their welfare. Further, they suggested evaluation to be undertaken periodically to assess the extent of flow of funds and benefits with a view to rectification of shortcomings and augmentation of the provisions. These should be noted for compliance.

41. According to the Tenth Plan document of the Planning Commission, though the percentage of ST families below poverty-line had come down from 51.94 in 1993 to 45.86 in 1999-2000 in rural areas and from 41.14 to 34.75 during the same period in urban areas, the gap between the figures of general population below poverty-line and ST population below poverty-line persist. Further, in reply to this Commission's questionnaire, the Planning Commission mentioned that 32 per cent of ST agricultural labourers have been landless "with no productive assets and no access to sustainable employment as well as minimum wages". Undoubtedly, there has been a range of Central and State programmes and schemes, both for poverty alleviation as well as infrastructure strengthening. But, judged from the above figures and otherwise, their impact has been inadequate. In fact, during the Ninth Plan period, there has been consistent shortfall in achievement of educational schemes like hostels for ST boys and girls where the outlay was Rs.73.30 crores and the expenditure Rs. 53.20 crores, Ashram schools with outlay Rs.44.86 crores and expenditure Rs.23.97 crores, low literacy pockets Rs.23.20 crores and Rs. 11.71 crores vocational training centres RS.30.25 crores and Rs. 16.78 crores. Evidently, the development machinery has not been able to translate monetary assets into physical achievements. According to the mid-term appraisal of the Planning Commission, the performance of TRIFED and TDCs did not inspire the confidence that they would be able to ensure remunerative prices for tribal produce. The turn-out of various other schemes also did not match the expectations. The Gram Sabhas and Panchayats have not become sufficiently functional as yet. Two dimensions need particular attention (a) capabilities of institutions and instruments of implementation and (b) adequacy of fiscal infusions into tribal areas. In so far as

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the former are concerned, apart from the techno-bureaucratic administrative machinery, emplacement of Gram Sabhas and Panchayats in the totality of the development infrastructure in Scheduled and Tribal Areas as well as the poverty situation of STs calls for massive financial provisions. The government agencies, particularly the Planning Commission, should look at the matter from the point of view of bringing ST population on par with the rest of the population in a designated span of time, say before the end of the Eleventh Plan.

Budgetary Procedures

42. As already mentioned, being aware of the lack-lustre achievements of the backward classes sector of State budgets in the field of tribal development, the Dhebar Commission called for earmarking of financial provisions by each concerned department for the welfare of the scheduled tribe people. The concept of the Tribal sub-Plan put into effect during the Fifth Plan period evolved therefrom. The stipulation of earmarking of financial resources in the States and at the Centre led to increased and increasing total provision during successive Plan periods. The total outlay during the Fifth Plan period was Rs. 1158 crores and it grew to Rs. 32,087 crores during the Ninth Plan period. Taking into consideration the expansion of the on-going programmes and new starts in the Tenth Plan period, the Working Group on Empowering the Scheduled Tribes has recommended a total outlay of Rs. 10,470 crores.

43. The first question which arises is the basis on which fund allotment is made for TSP (a) by the Centre to the States whether it be Special Central Assistance or Central sector schemes fund of the Central Ministries or Centrally sponsored schemes fund and (b) by the States internally among the ITDPs/ITDAs.

44. In so far as the distribution Special Central Assistance by the Ministry of Tribal Affairs among States is concerned, it is governed by recent orders contained in their communication No.14020/5/2003-SG&C of 2 May 2003 wherein they have factored population and area, but have side-stepped backwardness. In fact, they have categorized the States into A and B

Category A: having substantial areas predominantly inhabited by tribals such as Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Manipur, Orissa, Rajasthan and Sikkim.

Category B: having dispersed tribal population with some areas of tribal concentration such as Assam, Bihar, Jammu& Kashmir,Karnataka, Kerala, Tamil Nadu, Tripura, Uttar Pradesh, Uttaranchal, West Bengal and the UTs of Andaman and Nicobar island and Daman and Diu.

In the first instance, the Ministry allocate SCA between the above two groups of States in proportion to the total tribal population of States/UTs included in each group.

44.1. The fund allocated to category A is then distributed to the States on the basis of the criteria:

70% on the basis of ST population in ITDPs/ITDAs

30% on the basis of geographical area of ITDPs/ITDAs

The fund allocated to the category B States is distributed among the states in that category on the basis of only ST population in the ITDPs. Thus, it would be seen that the backwardness criterion does not figure in the allotment formulae.

44.2. In so far as distribution of SCA fund among ITDPs/ITDAs in a State is concerned, it has been mentioned in the aforesaid order of the Ministry of Tribal Affairs

that such funds are earmarked by the Ministry for ITDPs and should be released by the State Governments / UT administrations directly to the ITDPs/ITDAs and no part should be released directly to any department at the State level; transfer of funds to implementing department/agency should be done by the ITDPs. It is understood that earmarking of funds of SCA in the Ministry inter se among ITDPs/ITDAs is done on the basis of population as well as geographical areas. After allocation of funds to the ITDPs/ITDAs, the balance of the SCA is allocated inter se to MADA areas and primitive tribal groups, for the former on the basis of population and for the latter on the basis of a specific formula.

45. In our view, the index of backwardness is an important factor which should influence allocations both at the Centre and in the States and, hence, needs to be built into the funds-allotment prescriptions. However, we are also aware of the difficulty in its adoption. At present backwardness indices are available, if at all, for a State as a whole. These indices do not specifically reflect backwardness of tribal areas. As per the Gadgil formula, allocation to an economically advanced State relative to its backwardness index may be less than the allocation to a less advanced State whose backwardness index is higher, though it may be arguable whether the tribal areas in the former State are any less backward than the tribal areas of the latter. The solution lies in evolving specific backwardness indices for tribal areas in the concerned States. On becoming available, such indices should be factored in formulae regulating apportionment from the Centre to States as well as in the States internally among ITDPs/ITDAs.

46. The second issue arising is: what achievements have accrued with this order of investment? The physical achievements in the field relating to the advancement of ST families and upgradation of infrastructure would specially need to be scrutinized. We shall revert to this question later.

47. The third question relates to the manner in which quantified funds are exhibited in the budgets of the State Governments and the Central Ministries.

48. In so far as the State Governments are concerned, the backward classes welfare sector has been under the administrative control of the Tribal Development Department, from the beginning. The mode of exhibition of quantified funds in each department indicates not only the quantum of funds earmarked but also the control exercisable in regard to their utilization for the tribal development. One method has been to open in a sectoral department's budget a minor head under the appropriate sub-head/major head of account in which the flow-quantum to TSP is shown. This was a step forward, as for the first time, the sectoral departments were made conscious of the specific responsibility towards tribal areas. But, since the utilization of the quantified funds was left to the department itself, it could not ensure that the entire quantum would be channelised into the tribal areas or that relevant schemes would be implemented. The second method has been to have a single demand head in the budget under the control of the Tribal Development Department of the State exhibiting under the relevant heads, sub-heads etc. the quantified funds of all the sectoral departments. This latter method was considered as advance over the earlier mode, since it centralized the funds as well as control in the Tribal Development Department. But this procedure also has been found to have its draw-backs. The concerned sectoral department may lose sight of the provisions and, more hurtfully, may lose the sense of initiative, and

even responsibility for utilizing the provisions. Thirdly, if one may be realistic, one cannot ignore the fact that it generates an under-current of political envy of one department having been arrogated a sizeable percentage of the state's total finance. A concomitant symptomatic factor is that it casts the responsibility of explanation of lapses like shortfall in expenditure, diversion, misuse by other departments, on the Minister in charge of the Tribal Development Department in forums like the Legislature of the State, the Public Accounts Committee. It would, thus, appear that each of the two modes has its merits and demerits.

49. But, it is arguable that, on the whole, exhibition of the provisions earmarked for tribal areas in the budgets of the concerned departments with certain stipulations for their appropriate and full utilization may be regarded as of more practical value. One stipulation may be that, at the pre-budget formulation stage, the Tribal Development Department should be in the picture for adequacy and priority of provisions and relevance of schemes, with a view to a judicious mix of beneficiary-oriented and infra-structure development schemes. So far as infrastructure is concerned, the TD department could ensure that it is not unduly weighted in favour of capital-intensive low-utility schemes, but that its main function is to back up beneficiary-oriented programmes. In this context, we refer to pre-budget scrutiny procedure followed in some states. A small group comprising officers of the Finance, Planning, the concerned administrative department and Tribal Development department scrutinises the staff and other components of the schemes for TSP ahead of presentation of the budget to the State Legislature to satisfy itself and to enable issue of sanctions soon after passage of the budget. The leverage could be exercised in additional or in some other ways. It

needs to be ensured, however, that adoption of the procedure does not delay issue of sanctions, but that all sanctions are issued before the end of the first quarter of the financial year. Any methodology in this regard should keep in view the fact that the working season in most tribal areas is short, being circumscribed by several months of rain or snow. If need be, post-budget, there could be interaction between the concerned sectoral department and the Tribal Development department.

50. In the chapter "Panchayats", we have referred to the fact that there have been delays in funds reaching the field-end where they are actually required for implementation of programmes, schemes etc. It is no secret that funds for tribal development devolved on the State Governments generally get stuck at State headquarters in the Finance Department for varying periods, being used for the unstated purpose of mending the ways and means position of the State Governments. While we refrain from making comments in the matter of financial principles, we cannot help expressing our concern that funds which should reach the poor tribal people expeditiously for alleviation of their economic and social plight get blocked thus, even though temporarily. We have, therefore, stressed in the aforesaid chapter "introduction of procedures" which will enable the field formations like the ITDPs/ITDAs and the Panchayat tiers to assuredly and timely receive funds along with the stipulation of their accountability for such funds. We have quoted the example of District Rural Development Agency (DRDA) to whom the Central Ministry of Rural Development makes direct devolutions. In their guidelines for release and utilization of special Central assistance (SCA) to the Tribal sub-Plan contained in Ministry of Tribal Affairs communication No. 14020/5/2003-SG&C of 2 May 2003, they have gone so far as to say that (a) the SCA funds earmarked by the Ministry for ITDPs should be released

directly to the ITDPs by the State Governments/UT Administrations (b) no part of SCA should be released directly to any department at the State level and (c) transfer of funds to implementing departments/agencies, if required, should be done by the ITDPs. This guideline should eliminate one stage of likely delay. But it does not confront the situation which arises out of delay in distribution of funds by the Finance Department and the State line departments received/receivable by them from other Central Ministries. It is possible that the Ministry of Tribal Affairs desired to approach the matter step by step or that they might not have received the financial or other procedural concurrence for going beyond the stage mentioned. However, in our view, Government procedures should cut down dilatory steps to be able to directly deliver resources for improvement of tribals' condition. In other words, our approach should be to cut out superfluous links in the chain. Further, in the chapter mentioned, we have suggested that as the devolutions should now take place through the Panchayat tiers, each of the higher Panchayat tier should take timely action to make devolutions downwards, largely on population basis, giving weightage to particularly backward segments like primitive tribal groups and needs of infrastructure.

Institutional Finance

51. In the formulation of programmes, specific problems of each area as well as of the target group in terms of family are to be clearly defined and schemes directly benefiting the individual tribal given the highest priority. The State out-lays require to be multiplied by attracting institutional finance. This source of finance is the fourth significant contribution to the TSP funds. Its importance cannot be exaggerated if, as is the case, the emphasis is to be on schemes of individual benefit. Examples of such schemes are numerous. In the field of agriculture, a tribal family may be given part

subsidy and the other part may be loan component from a financial institution; the relative percentages of subsidy and loan component may vary from state to state and from time to time. Similar arrangements may hold in the fields of horticulture, animal husbandry, small irrigation, forestry, cottage and small industries. In the field of credit-cum-marketing, the part to be played by institutional finance is vital. Consumption credit, no less than production credit, has come to occupy a crucial position in the gamut of measures for the promotion of tribal economy. Despite the recognition of the role that institutional finance has in the tribal development framework, there is a feeling that, on the whole, the financial institutional sector has not helped adequately. In particular, though the decision to allow the tribal areas the benefit of differential rate of interest finance i.e. at 4 per cent, was taken by the Government of India some years ago, to what extent it has been operationalised is not known. In any event, institutional finance has to augment the State funds more and more for schemes of individual benefit.

Non-Plan Sector

52. There is an umbral region in the financial picture. This is non-plan budget of the State Government. It is known that programmes taken up in the course of a Plan period get transferred to the non-Plan side at the end of the Plan period. Maintenance of service created as a part of the plan activity is provided for by the award of the Finance Commission. A matter of concern in respect of tribal areas is that the developmental effort in these areas having so far been inadequate, the non-Plan sector also has remained correspondingly small. This is indeed a pity since certain sectors are financed largely from the non-Plan side e.g. education, health, cooperation, agriculture. It is well-known that in the education field, the non-Plan investment is many times that of

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the Plan outlay, since bulk of the expenditure goes for defraying salaries of teachers and maintenance of school buildings. It is incumbent that, as in the case of Plan outlays, earmarking of funds from the non-Plan side also for tribal areas should be undertaken by the State Governments.

53. In the overall schemes of priorities, as already explained there is a bias towards commitment of resources for capital-intensive sectors like power, flood-control, large and medium industries, mining and transportation, as a consequence of which resources available for schemes of individual family benefits have been disproportionately small. In the tribal context, utilization of infrastructural facilities created as a result of investment in capital-intensive sectors, though essential, can fructify over a long period of time. In the meantime, sustained application to implementation of family-benefit schemes will yield to a tribal family immediate tangible dividends. It is, therefore, to be emphasized that adequate quantum of resources should be earmarked for schemes of individual family development. In effect, of the three major orientation patterns of development strategy, namely region-specific, resource-specific and people (client) specific, the last named should preponderate over the other two in a mix of tribal development plan.

54. Non-Plan outlays are of considerable magnitude in certain sectors of States' activities. While most of this expenditure relates to maintenance of existing establishments, engineering works and other assets, in a number of cases there is development angle to it as much as addition to the staff and improvement to assets provide a base for several developments in these sectors. The Sixth Plan Working Group on Tribal Development had recommended consideration of the non-Plan funds. However, it seems so far little move has been made in this direction. On the other

hand, even Plan funds have been utilized for establishments and works which should have been borne on non-Plan funds.

55. The non-Plan sectors which subsume development angle concerning tribal population vitally and where success of investments in schemes and critical infrastructure calls for adequate attention, are education, health, rural development schemes, communication, cooperation, agriculture, irrigation. In fact, substantial funds under the non-Plan rubric are spent in these sectors for maintenance and improvement. Since, so far, the TSP has remained deprived of non-Plan funds, it is incumbent that the concerned Ministries and Departments at Centre and the States review the position to make reasonable non-Plan allocations. The Tribal Affairs Ministry at the Centre and the Tribal development Departments in the States should review the matter with the concerned Ministries and Departments to ensure adequate flow. The extent of availability of non-Plan funds will correspondingly relieve the pressure on Plan funds in the different sectors of tribal development.

56. In this context, the awards of the Finance Commissions assume importance. The Seventh Finance Commission (1979-84) recognized, for the first time, that the level of administration in the tribal areas stood in need of upgradation and awarded Rs. 42.6 crores to 13 revenue deficit TSP States, consisting of Rs. 23.52 crores of compensatory allowance to staff and Rs. 19.11 crores for construction of residential quarters in tribal areas. Diversion of funds from one scheme to other was permitted. The Eighth Finance Commission (1984-89) recommended a grant-in-aid of Rs. 97.19 crores to 13 revenue deficit TSP States, again for upgradation of tribal administration. Against this award, the Government of India made a provision of Rs. 88.70 crores comprising Rs. 19.27 crores for compensatory allowance, Rs. 30.97 crores for staff

quarters and Rs. 38.45 crores for improvement of infrastructure in 769 villages. The Ninth Finance Commission (1989-94) did not make any provision for payment of compensatory allowance, as it was found that some States had not been using it. On the other hand, in certain States expenditure on capital works and staff quarters contributing to infrastructure had been poor and it appeared that the works commenced with the award of the Eighth Finance Commission would remain incomplete. It recommended Rs. 14.37 crores for staff quarters, Rs. 2.05 crores for capital outlay in 41 villages, Rs. 4.01 crores for development of Bastar district and Rs. 0.32 crores for construction of office buildings etc. for the Autonomous District Council in Tripura, in all amounting to Rs.20.75 crores. The Working Group for the Eighth Plan period observed that payment of compensatory allowance should be continued even if not provided for in the award of the Commission; the entire provision made for upgradation of standards of tribal administration should be placed at the disposal of the Tribal Development Department for better coordination among the funding, executing and user agencies; staff quarters be provided in tribal areas to the employees of all Government Departments working in educational and health institutions etc; the States likely to lose revenue on account of implementation of full or partial prohibition in TSP areas and abolition of royalties on MFP collected by the tribals might approach the Finance Commission for compensation for such losses of revenue.

57. We have emphasized the importance of non-Plan funds. But we are glad to find that the Ministry of Tribal Affairs has submitted a memorandum to the Twelfth Finance Commission, though the opportunity of approaching the Eleventh Finance Commission was, perhaps, missed. Some of the States seem not to have shown adequate alacrity in

this regard. For instance, we noted with consternation that the Government of Arunachal Pradesh had not preferred their claims so far to any Finance Commission; they would now do so to the Twelfth Finance Commission. Loss of non-Plan funds means diversion of Plan funds from development to non-development (mostly establishment) purposes and a serious dent in the total resource availability of the TSP.

A Performance Appraisal

58. According to the Report of the Working Group on Tribal development during the Seventh Plan period, a majority of the ST areas and people remained isolated, poor and backward. About 2 lakh ST families in nearly 5000 forest villages (under the management and control of the Forest Department) did not possess the rights to lands which they cultivated. While integration of administration in ST areas at the ITDP level had been the aim, there were several programmes operating in the project areas of which the ITDP administration was ignorant. Above all, they observed that despite the strategy and efforts of all the years, 85 per cent of the total number of tribal families remained below the poverty-line on the eve of the Seventh Plan compared to the national average of 38 per cent.

59. According to the Report of the Working group for Scheduled Tribes during the Eighth Plan period, the results of the TSP strategy were not commensurate with both the investments and expectations. In several States, the TSP approach was interpreted as area approach, laying stress on infrastructure, de-emphasising family-oriented approach. It was indicated that Maharashtra had laid a premium on development of infrastructure, allocating 78 to 89 per cent funds to it. Adequate attention was not being paid to the relevance of the schemes for tribal people and assessment of likely flow therefrom of physical benefits. Integration under the TSP strategy had not been

achieved as an ITDP had not been accepted as a unit of planning. Implementation of protective laws had not received priority. Institutions like LAMPS had not been able to substitute moneylenders as viable credit agencies.

60. The appraisal of the Ninth Plan Working Group also does not register satisfactory implementation of the TSP strategy. But, on the whole, the record-keeping of physical achievements has been far from what is desirable.

Tribal participation

61. Unlike the problem of development in the rural areas of the country, that of development of scheduled tribes and tribal areas is not merely one of higher productivity, increased incomes and raised levels of consumption. It bears emphasis that the tribal areas have remained secluded from other areas and sections of society for long centuries. Almost every one of the tribal communities has, as a result, evolved its own distinctive economic system, culture and individuality. By and large, the general concept of development in post-independence India may not accord with their own idea system. On the contrary, it is not unlikely that the new western and industrial culture making inroads in the tribal areas might strike discordant notes in the harmony achieved by the tribal people through a fine balance of the various forces at work. The exhortation of Jawaharlal Nehru that the tribal people should be enabled to advance along the lines of their own genius has, therefore, relevance even today. It would be ideal if each of the scheduled tribe community were to deliberate over and decide the course of its development. The decision might be taken in the light of various factors like its cultural background, the present level of development and the projected needs.

62. In the earlier stage of evolution of Tribal sub-Plan, the anxiety was how to associate the tribals. For the purpose, Project Implementation Committees containing

tribal representatives were to be set-up at the ITDP level. The guide-lines worked in some states, though not in all. Consequently, tribal association has remained an uncertain factor. However, the situation changed on the passage of 73rd Constitutional Amendment leading to insertion of Articles 243, 243A - 243O. These provisions confer constitutional sanction on Panchayats at the grass-root, intermediate and district tiers in perpetuity. Part IX of the Constitution dealing with the subject contains some wholesome provisions including the one for filling up Panchayat seats through elections. Clause (4)(b) of Article 243M called upon the Parliament to pass a law extending the provisions of Part IX to the Scheduled Areas and the Tribal Areas subject to such exceptions and amendments as may be specified in such law and not to deem such law as an amendment of the Constitution. In pursuance of this provision, in 1994, the Govt. of India set-up a Committee of MPs and experts to make recommendations for such a law. The Committee, known as Bhuria Committee, submitted its report to the Government of India in 1995. Based on its recommendations, in December 1996, the Parliament passed the Provisions of the Panchayats (Extension to the Scheduled Areas) Act [PESA Act 1996]. This law calls upon the legislature of a state not to make any law under Part IX which is inconsistent with the (a) customary law, social and religious practices, and traditional management practices of community resources (b) the duties of every Gram Sabha to safe-guard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution. It confers on Gram Sabha and the Panchayats wide powers such as prevention of land alienation, restoration of alienated land, control over local plans and resources, control over institutions and functionaries in all social sectors, enforcement of regulations of intoxicants, control over money-lending etc. With such

highly empowered Gram Sabhas and Panchayats in place at least in law, the apprehension of lack of tribal participation should not have substance. But, in actual practice , there are hurdles in the way. In the first instance, the tribal Panchayats are not fully aware of their powers, responsibilities and duties conferred on them. Secondly, and partly as a consequence, impediments have been created in their functioning by some sections of the executive, that is those very quarters which ought to encourage them. Thirdly, it is doubtful that a well-conceived mechanism for the Panchayats and the techno-administrative government machinery to play their respective mutually complementary and integrated roles, has been evolved. Nevertheless, the Panchayat system offers tremendous opportunity for tribal communities to take command of their resources and with the help of public finances and techno-administrative apparatus, to carve out their own destiny and march forward towards economic, political, social and cultural well-being. The all-important role of Panchayats in this context is discussed in a separate chapter in this report, containing the lines on which a paradigm shift in the Tribal sub-Plan is envisaged.

63. Reference was made earlier to the existence of a number of regulatory measures framed under the Fifth Schedule of the Constitution. The foregoing review would also indicate that financial resources no longer remain a serious constraint to tribal development. It is to policy and implementational aspects that attention should turn more. The Fifth and Sixth Schedules offer comprehensive scope for shaping an administrative framework capable of translating the objectives into reality. It appears adequate use has not been made of it. Its effective instrumentality should engage our serious attention. It is the subject of another chapter here.

Ombudsman Authorities

64. We have found the processes of monitoring and evaluation weak. It is for that reason that we have not been able to depict hereinbefore a picture relating to physical achievements resulting from the massive financial investments which have been made in tribal areas during the past five five-year Plan periods commencing the Fifth Plan. As the various tables and statements indicate in this report, the outlays in tribal areas during the first four five-year Plan periods were hardly significant. Too much emphasis cannot be laid on making the monitoring and evaluation mechanism intensively operative and faithful. We have a separate chapter on the subject in this report.

65. The purpose of this particular section in this chapter is, however, slightly different though related in some way to monitoring and evaluation. We have in view creation of independent and autonomous Authorities at the Centre and in each of the States which have sizeable tribal ST population and which have already been identified. These Authorities should comprise High Court/ Supreme Court Judges, eminent ST leaders inside or outside the Legislatures, eminent non-ST men and women who have a glowing record of empathetic service and knowledge of tribal affairs, sociologists and anthropologists of very high caliber, not exceeding 10 in number at the Centre and not exceeding 7 at the State level. These Authorities should function as overseeing bodies and as Ombudsmen. Specifically, they should be entrusted with the following functions:

a) Keeping track of developments and happenings among the tribal people and in the tribal areas

b) Suggesting to the Central and/or State Governments measures for advancement of the ST communities along the right lines and at the appropriate pace

c) As Ombudsmen, adjudicating between Central/State Governments and tribal communities and individuals on matters likely to cause social or political friction or conflict.

66. It may be argued that at the national level, a National Commission for Scheduled Tribes may soon start functioning under Article 338(1) of the Constitution and similar

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bodies may exist in the States. Further, that Tribes Advisory Councils under the Fifth Schedule of the Constitution have been established. It may, however, be appreciated that these bodies have not brought about the requisite quality change in the situation. Notwithstanding the constitutional sanction behind the two organizations, they have concerned themselves more in the day-to-day matters which are, in any case, important in themselves as also numerous. It will be essential to vest the proposed Authorities with adequate stature and sanction to enable them to function more in the nature of super-Ombudsman. It needs to be stressed that, for the purpose, the positions should be filled up with individuals of unimpeachable integrity, high moral standing and deep understanding of public, particularly ST, affairs in the country.

Summary and Recommendations

For the scheduled tribe people of the country, the objective should be elimination of exploitation, acceleration of the pace of socio-economic development, building inner strength and improving their organizational capability.

2. The genesis o the concept of Tribal sub-Plan (TSP) is traceable to thoughts scattered in the Dhebar Commission Report, 1961.

3. Before the advent of the TSP concept, the policies and programmes of tribal development got atrophied financially and physically since it was merely a sectoral programme for execution of certain schemes with the limited resources of backward classes welfare sector. The Tribal sub-Plan was launched in the beginning of the Fifth Five Year Plan.

4. The four important ingredients of the TSP have been:

(i) identification of development blocks having, generally, majority of ST population and appropriately constituting them into ITDP

(ii) preparation of a project report for each ITDP based on the natural resource endowment therein, available financial resources and the avocations, skills and aptitudes of the people of the ITDP

(iii) ensuring availability of at least population-proportionate pooled financial resources earmarked from State Plan funds, funds of Central and Centrally sponsored programmes, special Central assistance, institutional finance and any other source, and

(iv) placement of a suitable techno-administrative structure in the ITDP for execution of programmes, schemes etc. contained in the approved project report of an ITDP.

5. According to available information, 633 full and 280 part development blocks have been constituted into 194 integrated tribal development projects (ITDPs)/

integrated tribal development agencies (ITDAs). In addition, there are 59 modified area development approach (MADA) pockets and 82 clusters, outside the ITDP/ITDA

areas. They are distributed in 21 States and 2 Union Territories. The report of the Tenth Five Year Plan (2002-07) Working Group of the Ministry of Tribal Affairs indicates that cent percent ST population has been covered thus. The TSP area and the Scheduled Area are, to a large extent, co-terminus.

6. The basic idea of constituting development blocks into ITDP/ITDA has been to institute a projectised integrated multi-sectoral approach with the help of pooled funds of various sources.

7. The TSP has been envisaged as representing the total development effort in the identified ardas with the aid of resources pooled from (i) outlays from the State Plans (ii) investment of Central Ministries and Planning Commission (iii) special Central assistance and (iv) institutional finance.

8. The project report for an ITDP/ITDA has been envisaged as reflecting the balanced multi-sectoral programmes relative to the desiderata of natural resource endowment, the needs and aspirations of the people and their skills and aptitudes. The State TSP should represent an aggregate of the various project reports articulating, in sum, the priorities, needs and aspirations of the tribal people and tribal areas in the State correlated to financial resources availability.

9. The approach during the Fifth, Sixth and Seventh Five Year Plans has been to aim at area development with focus on scheduled tribe population, particularly providing them a protective legal shield. The Tenth Plan Working Group has suggested that following tribal ethos, an entire tribal community should be placed centre-stage for elevation from all points of view (economy, education, health, communications and so on) and not merely the individuals. Thus, the stress has been on the beneficiary, earlier an ST family and in the Tenth Plan Working Group report, an ST community.

10. We recommend that every ITDP/ITDA should have a section devoted to women's planning and implementation. Every State TSP and ITDP/ITDA project report should exhibit suitable earmarked distinctive programmes and schemes for women, along with earmarked resources, at least 30 per cent.

11. The Centre having a special constitutional responsibility towards the scheduled tribes and Scheduled Areas, the role of Central Ministries and Planning Commission assumes significance. They should quantify and earmark funds for tribal areas under their programmes, formulate appropriate need-based programmes and adapt the on-going programmes to meet the specific requirements of scheduled tribes and identify a senior officer in the Ministry to monitor the progress of implementation of programmes for the development of STs. Weightage may be given over and above funds equivalent to ST population-percentage. The special Central assistance (SCA) should be regarded as a gap-filler to make available resources for specially relevant schemes and in critical programmes especially, for which funds are not otherwise visible. The SCA should be treated as supplementary in character.

12. Every concerned Ministry should prepare a Tribal sub-Plan indicating the programmes and available financial resources, distributed amongst States on equitable basis. These documents should be circulated to project administrators making it possible for the field units to have a clear picture of the programmes for implementation.

13. The Parliamentary Committee on Welfare of Scheduled Castes and Scheduled Tribes has observed unsatisfactory quantification of funds and benefits. We recommend that the Ministries and Planning Commission should take steps to improve the position.

14, The total outlays in the Tribal sub-Plan in the States recorded quantum jump from Fifth to Sixth Five Year Plans and succeeding Plan periods. So much so, the cumulative figures of investment may total to more than Rs. 30,000 crores. We have

not been able to ascertain the physical achievements accruing from this order of investment, either in respect of infrastructure or in relation to the benefits to ST families. We regret we find this most unsatisfactory. We request the Government of India and the concerned State Governments to put in place monitoring and evaluation mechanisms enabling the full picture of physical, achievements resulting from massive investments.

15. In so far as the question of exhibition of quantified funds in the State Government Departments and Central Ministries is concerned, for reasons mentioned, we recommend exhibition of the provisions earmarked for tribal areas in the budgets of the concerned sectoral Departments of State Governments and Central Ministries with certain stipulations for their appropriate and full utilization.

16. The Centre should make direct devolutions to the Zilla Panchayats, instead of routing the funds through the State Governments because of delays involved in funds reaching the field formations. The procedure being recommended is on all fours with that now obtaining between the Ministry of Rural Development and DRDAs.

17. Since beneficiary-oriented schemes in which loan component is generally a factor have been stressed all along, the role of institutional finance becomes important. So far, accessibility of institutional finance has been limited in tribal areas owing to various factors. The accessibility should be facilitated and even differential rate of interest finance should be made available to the ST beneficiaries.

18. Non-Plan finance has been neglected for tribal areas. The result has been unconscionable burden on Plan resources, restricting their availability, particularly for beneficiary-oriented programmes. At the same time, the existing assets have not been maintained properly. The Central and the State Governments should review the matter to ensure flow of adequate non-Plan funds to relieve pressure on Plan funds in different sectors of tribal development.

19. The Seventh, Eighth and Ninth Finance Commissions recommended certain devolutions. Perhaps, the subsequent Finance Commissions did not make allotments for tribal areas. The Central and the State Governments need to project their non-Plan requirements to the Finance Commissions at regular intervals.

20. By all accounts, the performance appraisal points to unsatisfactory state of affairs. We would urge improvement.

21. Since the passage of the 73rd and 74th Constitutional Amendments and the Provisions of Panchayats (Extension to the Scheduled Areas) Act 1996, the role of the four-tier Panchayats in Scheduled Areas has become dominant. The aims of the constitutional and statutory instruments should be carried out by empowering the Panchayats and constructing a viable interface between the Panchayats and the administrative apparatus. This has been suggested in the Panchayats chapter.

LAND

Some general observations

Before discussing the various aspects of the subject, it may be appropriate to set the perspective. In the non-tribal societies, land may be treated as a mere commodity, much like cash, which may change hands. The concept of land among tribal societies is radically different:

> Land is not something you inherit from your ancestors, rather something you borrow from your children .....
>
> It is essential to know and understand the deeply spiritual special relationship between indigenous peoples and their land as basic to their existence as such and to all their beliefs, customs, traditions and culture.
>
> .....of the most basic human rights – including the right to maintain their ancestral lands, their cultures and their traditional way of life .....
>
> Their land is not a commodity which can be acquired, but a material element to be enjoyed freely.

2. It needs to be appreciated that strong bonds subsist among members of a tribal village community than observed among non-tribal village societies. Its genesis may be traceable to their isolated existence for centuries in remote locations in forests and plateaux. The tribal village communities learnt and evolved their own governing and administrative systems, in which social relations played a significant part.

3. It is essential to understand that in many tribal societies, both community ownership and individual ownership of land exist side by side. While in the past, community ownership may have been the dominant mode, presently private holdings seem to be preferred. The community land may comprise of the common land, grazing land, wooded tracts, service tenures, religious lands, burial and commemorative lands etc. Customary laws usually regulate the use. The following kinds of land ownership prevalent among the tribal communities have been identified:

1) religious lands etc. treated as sacred on account of spirits residing there
2) burial, cremation or commemorative lands
3) land owned by village deity
4) land required for worship on specific occasions e.g. Pahn, Dali Katari, Bhut Petha
5) the tribal chief's land which may escheat into the community in the event of heirlessness
6) Service tenures of village black-smith, carpenter, washerman, watchman et al.
7) Common land benefiting the entire community occupied by pathways, village tanks, tree-groves, land used for fairs and festivals
8) Village wasteland that may be brought under the plough if so decided by the village community
9) Village forests
10) Individual land holdings, inheritable and transferable, usually with the sanction of the community

Custom also dictates that among certain communities heirless or abandoned land holdings revert to the village corpus.

4. While there is flexibility in the matter of other categories, the first three categories of land are deemed as inviolate and transfer of these lands is normally out.

Dhebar Commission's report

5. In chapter XI on Land and the Scheduled Tribes, the Dhebar Commission dwelt on the different facets of land as related to the tribal population. Repeatedly, they expressed concern at the loss of tribal land and, analyzing the reasons, made some recommendations.

6. It is appropriate to mention a few of their observations, inferences, recommendations etc. In the first instance, note has to be taken of the fact that, that Commission did not have access to adequate land data. The chapter contains references to results of only a few socio-economic surveys conducted in Gujarat, Madhya Pradesh and Rajasthan. It is, indeed, creditable that they could draw sound conclusions therefrom still holding validity. They cited poor soils, out-dated techniques of cultivation, low productivity and the burden of indebtedness as largely responsible for the many handicaps and hardships of the tribals. As evident to even a casual observer, a critical problem of tribals is dispossession of their land, which is their major resource.

7. To anyone familiar with the agrarian scene of a couple of decades following independence, a burning question of the time related to the abolition of the intermediaries, enforcement of ceiling on holdings and distribution of ceiling-surplus land. The Dhebar Commission pointed out that schemes

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of land reforms were based upon landlord-tenant system and tribal areas did not customarily have such a practice on a significant scale. But, in some States like Maharashtra and Gujarat, where a sizeable percentage of tribals were landless or marginal farmers, the land reforms were expected to help in matter of acquisition of tenancy rights. However, on account of changes in the laws and defective execution, much of the impact was lost. Even, it was estimated that in some tribal areas, about 15 to 30 per cent of the land belonging to tenants went out of their hands. Among other important reasons for the failure in tribal areas were: the tribals were ignorant of the law and the rights it conferred, they had no money to buy up tenancy, they were under the thumb of the land-holders.

8. According to the Dhebar Commission report, shifting cultivation has been practiced extensively in tribal areas. The NSSO 1988-89 reports that 6.5 per cent of the households resorted to shifting cultivation at the all-India level, the figure being 3.3 per cent for the Central tribal belt and 33.8 per cent for the north-eastern region. The regional variation is wide. In the north-eastern region, the percentage of area under Jhum was 9.5, while for the Central tribal it was 0.5.

Land Reforms

9. Before proceeding further, we wish to recall that early after attainment of independence, mainly with a view to elimination of intermediaries and vesting surplus land in the tenant, land reforms were put into effect. According to the Yugandhar Expert Group on Prevention of Alienation of Tribal Land and its Restoration 2003 (EGOTL), set up by the Ministry of Rural Development, Government of India, approximately 3.4 crore peasants in 57% of cultivated land areas under the Permanent Settlement were brought directly under the State and additional 2.6 crore hectares of land in the form of waste-lands went over to the State. Two repercussions are notable. First, that the tribal areas had few intermediary right-holders and, hence, there was little surplus land to be taken over from them. In fact, size-wise, distribution among tribal land-holders is less skewed than in non-tribal areas. Hence, the question of distribution of ceiling-surplus land is not of great significance in these areas. It may be useful to recall in this context that for the tribals, land is not purely a matter of economic resource but also a communitarian symbol. The second, that the intermediaries and tenure-holders were abolished and the aforesaid quantum of waste-land, which had hitherto been a part of tribal land rights, passed on to the State. But mostly, the ceded lands did not come to tribals for reasons recorded by the Dhebar Commission cited earlier as well as on account of poor land records maintained in the Zamindari areas and manipulations of unscrupulous lower revenue officials like Patwaries, Revenue Inspectors. At the higher level, the Government commenced functioning both as the State and landlord. Thus, the Land Reforms hardly brought in the expected benefits to the tribal

people. This will be clear from the following data, as on 31 March 2002, of the Directorate of Land Reforms, Ministry of Rural Development :

Total area declared surplus	73.73 lakh acres.
Area taken possession	65.01 lakh acres.
Area distributed to the individual beneficiaries	53.90 lakh acres.
Area allotted to ST beneficiaries	7.79 lakh acres.
Total number of beneficiaries	56.47 lakhs
Number of ST beneficiaries	8.30 lakhs

Data are not available as to what percentage of land allotted to tribals came to their actual possession and how many of them retained it.

10. During the post-independence times, one of the important items of development programme relates to distribution of Government land. The figures of the Ministry of Rural Development indicate that 14.7 crore acres have been distributed, as per information available in March, 2002, but it is not known how much of such land has been allotted to the tribals. According to the EGOTL, Government land in tribal villages was settled liberally with the non-tribals and such settlement tantamounts to deprivation of tribals from accessing lands, as the scope of expansion of the corpus of tribal land was blocked.

Some NSS data

11. The general impression is that land being abundant in tribal areas, the average per-family land-holding is high. It may have been so in the earlier times when ST population was relatively smaller and man-land ratio was more favourable. The 44th Round of National Sample Survey conducted July 1988 – June 1989 showed a great deal of variability among the tribes of different states. In the Central tribal belt, a household had, on an average, 1.09 hectares, the average figure of 1.58 hectares being the highest in the Central belt while the lowest average was 0.46 hectares in West Bengal. As expected, these figures are lower than the average holdings in the north-eastern region where the regional average was 1.32 hectares and maximum and the minimum average sizes 4.02 hectares in Arunachal Pradesh and 0.59 hectares in Tripura. Though not very meaningful, the results of the survey showed the all-India figure to be 1.10 hectares. It is noteworthy that households possessing between 0.01 hectares to 2 hectares

comprised the predominant percentage. About 21 percent of the households were landless i.e. having landholdings less than 0.005 hectares, 42 percent were marginal landholders having lands between 0.01 hectares to 1 hectare. Further, 6 percent of the households of the north-eastern region were landless while 22 per cent were landless in the Central tribal belt.

12. The general presumption is that the average tribal holding is bigger than that owned by a non-tribal household. The tribal land is generally slopy with a thin soil cover and without irrigation facilities. It may also be rocky. Often, it is comparatively less fertile. The 44th Round showed that, at the all-India level, despite the handicaps the average area owned by a tribal household was 1.15 hectares and that owned by non-tribal household was 1.16 hectares, indicating a slight edge over the tribals. The respective figures in the Central belt were 1.20 hectares and 1.24 hectares indicating a larger hiatus, and in the north-eastern region, the position was reversed with 1.54 hectares and 0.83 hectares.

13. The percentage of landless households among tribals was somewhat higher than among the non-tribals, the respective figures being 20.5 per cent and 16.3 per cent. The percentage of tribal marginal households was less than the non-tribal marginal households, that is respectively 40.6 percent and 51.7 per cent.

14. The NSS results also permit a comparison among the different ST communities. Among the Bhils, 52.4% Gujarat, 45.5% in Madhya Pradesh and 62.4% in Maharashtra occupied prior positions among the landless in the Central tribal belt. On the other hand, nearly 45% the Gond of MP possessed a holding above 2.03 hectares. In the north-eastern region, the Tripuri (13.8%) fell in the highest landless category. The number possessing land more than 4 hectares was not significant; the majority fell in the category belonging to land owning between 1 and 4 hectares.

15. The general conception of abundant land resources availability in tribal areas needs further scrutiny. For one thing, with growing population, this no longer remains true. The pressure from incursion of non-tribal population has been building up. Secondly, it should not be overlooked that most of the tribal groups occupy hilly and plateaux tracts, where soils are usually of poor quality and run-off rate of rainfall is usually high. Thirdly, a large majority of the tribal people usually ill-affords modern inputs and technology. These factors converge to low productivity in tribal areas. However, depiction of a full picture of these areas would need inclusion of low-lying paddy lands yielding two crops a year without irrigation, paddy lands capable of only one assured crop without irrigation in a year, medium land capable of broadcast coarse paddy and uplands yielding millets, oil-seeds and pulses. In shifting cultivation lands, rotation of at least 3 years may be observed.

16. The NSS estimates show that 46% of the rural tribal household earn a major share of their livelihood from self-employment, while 47% make a living from wage-employment as rural labour. Most of the self-employed tribal families, about 44%, derive their livelihood from farming and hardly 2% have had access to diversify non-agricultural self-employment. Other occupations like hunting and food-gathering are insignificant, considered from an over-all point of view.

17. Considering the country's major tribal groups, it is of interest to note that the Bhil of Maharashtra (85%), Gujarat (71%), Rajasthan (70%) and M.P. (58%) depend mainly on rural labour for sustenance. So is the case with the Santhal of West Bengal (65.6%) and Gond of Andhra Pradesh (62.3%). At the other end, 74% of the Meena, 77% of the Miri, 75% of the Khasi, 69% of the Bodo and 68% of the Rabha are self-employed at agriculture.

18.. The picture obtaining above indicates the prime importance of land for tribals. Directly as cultivators indirectly as agricultural labourers, land is their main-stay. At the same time, it speaks of lack of diversification of their economy.

19. Instituting comparison between tribals and non-tribals on the basis of NSSO data, one draws the inference that a tribal household possesses much poorer asset-base in the Central tribal belt than a non-tribal household, the two respective figures being Rs. 27,000 and Rs. 49,400 and that, on an average, the tribal households are indebted to the extent of 21.5%.

Poverty Picture

20. In so far as the poverty situation is concerned, the statistics furnished by the Planning Commission from time to time show that the percentage of Scheduled Tribes below the poverty-line has been decreasing over the years. The figures for 1983-84, 1993-94 and 1999-2000 have been shown as 58.4 %, 50.3 % and 40.305 respectively. Incidentally, the States scenario in this regard is available in Annexure I. The all-India rural–urban break-up of percentages for the total of Indian population and ST population extracted from the Planning Commission's Tenth Plan document is as follows:

(in percentage)

	1993-94		1999-2000		Percentage change	
					(Col.2-4)	(Col.3-5)
	Rural	Urban	Rural	Urban	Rural	Urban
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Total *	37.27	32.38	27.09	23.62	(-) 10.18	(-)10.04

STs	51.94	41.14	45.86	34.75	(-) 6.08	(-) 6.39
Gap	14.67	7.48	18.77	11.13	(+) 4.10	(+)3.65

Note : * includes ST population

Source: Perspective Planning Division, Planning Commission, New Delhi.

Some other studies have indicated higher levels of poverty among scheduled tribes. Nevertheless, it will be noticed that the gap between the percentage of rural total population and rural ST population below the poverty-line increased from 14.67 to 18.77 between 1993-94 and 1999-2000. Similarly, the gap in respect of urban population increased from 7.48 to 11.13. These figures indicate that while there is a decline in the percentages of rural and urban ST population below the poverty-line during the six years, the differential has grown. Considering the facts that predominant percentage of the ST population lives in the country-side and that land has been passing out of their hands, we need to treat these figures with caution.

The prelude

21: In the nineteenth century, the British colonial power was faced with a number of uprisings and rebellions, particularly in Central India. Consequently, it considered seriously the tribal situation and undertook a series of measures calculated to pacify the tribal people. The Wilkinson Rules 1839, the Chota Nagpur Tenures Act 1869 and the Santhal Parganas Act 1855, the Scheduled District Act, 1874, the Chota Nagpur and Santhal Parganas Tenancy Act 1908, were enacted. Two regulations were passed: XXXIII of 1870 for the peace and the good government to Santhal Parganas and Regulation III of 1872, empowering the Lt-Governor to remove the grievances of the Santhals regarding settlement of land, fixation of rent, application of customs and usages of the people and limitation of interest on debt. The burden of most of these enactments was to place the tribal people in a special category, to shield them from exploitation and to assuage their wounded pride and sentiment. The Deputy Commissioners and Assistant Commissions of districts were vested special power in the administration of tribal people and areas inhabited by them. The Governors wielded powers over and above those of the Deputy Commissioners and the Assistant Commissioners. Since land was the principal socio-economic resource of the tribals, legislative and executive actions focussed on prevention of its slippage. Restrictions on transfer of tribal land between tribal and non-tribals were placed. An outright ban was imposed as in the case of the Santhal and prior permission from the Deputy Commissioners was required for transfer. Equally important, the enactments sought to safeguard the traditional rights of the tribal communities in waste-lands, forests and water sources against landlords' or outsiders' incursions. Restrictions were

imposed on settlement of non-tribals in Scheduled areas. The institution of money-lending was regulated and creditors could not secure tribal land in lieu of debts.

22. The Government of India Act 1919 categorized tribal areas into "wholly excluded areas" and "areas with modified exclusion". The Government of India Act 1935 retained the two categories under a slightly different nomenclature i.e. "excluded areas" and "partial excluded areas". Relative administrative stability having set in by the last few decades of the nineteenth century, several provincial governments took a hand in legislating laws to prevent alienation of tribal land. For instance, Section 73 A of the Bombay Land Revenue Code 1879 prohibited without the written permission of the competent officer transfer of occupancy held by a tribal cultivator in Scheduled Areas and in areas where survey settlement operations had not taken place. The Central Provinces Land Alienation Act 1916 aimed at checking the tendency to dispossess the aboriginals of their lands. Similarly, in the composite state of Madras, the Agency Tracts Interest and Land Transfer Act, 1917, was enacted to check transfers of land in the Agency tracts.

23. Annexure II provides at a glance the laws in force presently in the different States of India, the source being by the Ministry of Rural Development. But before we scrutinize these laws state-wise, a synoptic picture of land alienated will be helpful.

Alienation of tribal land

24. As we have mentioned at a number of places, notwithstanding the operation of anti-land alienation laws for decades, legal and illegal transfer of tribal land has been taking place. This is illustrated by Table below.

Table

Statement showing Areas of Tribal Land Alienated and Restored

Sl. No.	State	No of Cases filed in the Court	Area	Cases Disposed of by the Court	Area	Cases Decided in favour of Tribals	Area	Cases in which land was restored to tribals	Area	Cases Pending in Court	Area
1	2	3	4	5	6	7	8	9	10	11	12
1	Andhra Pradesh	**65,875**	**2,87,776**	**58,212**	**2,56,452**	**26,475**	**1,06,225**	**23,383**	**94,312**	**7,663**	**31,324**
	(date not indicated)	*71,238*	NA	*68,137*	NA	*29,224*	NA	*27,599*	*1,10,277*	3101	NA
2	Assam	**2,042**	**4,211**	**50**	**19**	**50**	**19**	**50**	**19**	**1992**	**4,192**
		NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
3	Bihar*	**86,291**	**1,04,893**	**7,65,18**	**95,151**	**44,634**	**45,421**	**44,634**	**45,421**	**9,773**	**9,742**
		NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
4	Gujarat	**47,926**	**1,40,324**	**40,400**	**1,20,691**	**40,281**	**1,20,194**	**39,503**	**1,18,259**	**7,526**	**19,633**
	(upto sept.2002)	*20509*	*30,514 Hect.*	*19,621*	*29,354 Hect*	*19,159*	*28,859*	*18,848*	*28,261 Hect*	888	1160
5	Himachal Pradesh	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
		2	*4* Hect.	NA	NA	*2*	NA	NA	NA	NA	NA
6	Karnataka	**42,582**	**1,30,373**	**38,521**	**1,15,021**	**21,834**	**67,862**	**21,834**	**67,862**	**4,061**	**15,352**
		NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
7	Kerala	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
		8,088	NA	*1,021*	NA	NA	NA	*3*	NA	7067	NA
8	Madhya Pradesh #	**53,806**	**1,58,398**	**29,596**	**97,123**	NR	NR	NR	NR	**24,210**	**61,275**
		NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
9	Maharashtra	**45,634**	NR	**44,624**	**99,486**	**19,943**	**99,486**	**19,943**	**99,486**	**1,010**	NR
		NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
10	Orissa	**1,431**	**1,712**	**594**	**816**	**442**	**612**	**212**	**455**	**837**	**896**
	(Till Nov.2002)	*97,641*	*96,218*	*95,643*	*94,535 Acres*	*52,786*	*50,707 Acres*	*52,786*	*47,797 Acres*	1,998	1,683

11	Rajasthan	**651**	**2,300**	**240**	**774**	**187**	**587**	**187**	**587**	**411**	**1,526**
		NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
12	Tripura	**28,926**	**25,295**	**28,888**	**25,274**	**8,804**	**6,908**	**8,551**	**6,732**	**38**	**21**
		NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
13	West Bengal	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
		563	NA	NA	NA	NA	NA	*7.24 Hect*	NA	563	NA
	Total	375164	855282	317643	810807	162650	447314	158297	433133	57521	143961
		198041	126736	184422	123889	101171	79567	99244	186336	13617	2843

1)- Figures in acres as on 31-3-2002 in bold characters furnished by the Ministry of Rural Development

2) Figures in italics received from state concerned in reply to the Commission's questionnaire (Nov.2002)

* Figures of Bihar include those of Jharkhand

Figures of Madhya Pradesh include those of Chhattisgarh

25. It will be seen from the above Table that it contains two sets of figures: one furnished by the concerned State Government in reply to our November 2002 questionnaire and the other provided by the Ministry of Rural Development which is the administrative Ministry. The figures of the Ministry show the position as on 31.03.2002 while those of the States pertain to the period as indicated in column 2. As may be noticed, no information is available from the States of Assam, Bihar, Karnataka, Madhya Pradesh, Rajasthan and Tripura. In other states from whom information has been received, there are gaps in particulars. Further, state figures as are available do not generally tally with those communicated by the Ministry of Rural Development. In the circumstances, we feel that it may be more appropriate to go by the Ministry's figures.

26. Further, from the Table, it appears that the disposal of cases by courts is fairly high, only over 57,000 cases pending out of 3.75 lakhs cases filed. This gives a good impression. But, of the number disposed of i.e. 3.18 lakh cases, the number decided in favour of STs was 1.60 lakh, being nearly 50%. In the context of the general impression that the STs are hardly in a position to seek legal redress even in genuine cases, the percentage decided in favour of STs does not appear to be high enough. If we analyse the Table further, we find that, all the 4.47 lakh acres decreed in ST favour have not been restored to the STs. Over 14,000 acres had yet to be restored, as per the situation known in March 2002. Above all, we believe the picture obtaining through court cases does not represent the totality of the scenario. As we have stressed here as well as elsewhere, illegal and coercive transfers have taken a large toll of tribal land. Anyone who views tribal land alienation problem has to reckon with both court cases as well as extra-legal transfers.

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27. In the following pages, we have undertaken the exercise of scrutinizing i-alienation laws of the different states as have become available. We have referred to strength d weaknesses of these laws. We have also ventured to suggest some modifications where we felt them necessary for consideration of the State Governments.

Andhra Pradesh

28. The noteworthy features of the Andhra Pradesh Law designated as the Andhra Pradesh Scheduled Areas Land Transfer Regulation (LTR) 1959 may be summarized as follows :

(a) "Agency tracts" has been defined as areas which have been declared from time to time as Scheduled Areas in the districts of East Godavari, West Godavari, Vishakhapatnam, Srikakulam, Adilabad, Warangal, Khammam and Mahaboobnagar.

(b) Transfers has been defined to include lease, which is not the case in some other States.

(c) Section 3 (1)(a) prohibits absolutely transfer of land in the Agency tracts in favour of a person who is not a member of scheduled tribe or a cooperative society composed solely of ST members, even though the transferor may be a non-ST.

(d) As per section 3 (1)(b), until the contrary is proved, any immovable property situated in the Agency tracts and in the possession of a person who is not a member of a scheduled tribe is presumed to have been acquired by that person or his predecessor-in-possession through a transfer made to him by a member of a scheduled tribe. Section 6 (a) lays down penalty in case of acquisition of any immovable property unlawfully or continued possession of such property after a decree for ejectment has been passed. This provision may be compared with section 3-B inserted by the 2000 Amendment of Orissa Scheduled Areas Transfers of Immovable Property (by Scheduled Tribes) Regulation 1956 which obliges every person in possession of agricultural land in Scheduled Areas which belonged to a member of scheduled tribes between 1956 and 2000, to notify to the Sub-Collector. The prescribed information purports to show how he came in possession of such land. Failure in this regard has been deemed as absence of lawful authority ensuing in reversion of the land to the original owner. Further, on receipt of the information, the Sub-Collector has to make the requisite enquiry and if the finding indicates defraudment of a member of an ST, the transaction is to be declared as null and void, the land reverting to the original owner. No penalty has been stipulated in the Orissa Regulation.

(e) A ban is prescribed in section 3 (b) on registration of land transfer documents except where the person presenting the document furnishes a declaration by the transferee in the prescribed form to the effect that the transferee is a member

of a scheduled tribe or is a registered society composed solely of members of scheduled tribes.

29. The following further issues in the Andhra Pradesh context are relevant:

(i) Protection of the LTR is not available to members of scheduled tribes outside the Scheduled Areas. The result is that STs remaining outside are being elbowed out from their lands through various modes. The Yenadi and the Chenchu in the Nellore, West Godavari, Prakasam and other districts, being deprived of their lands, are examples. The remedy lies in either scheduling the area concerned on the basis of normative criteria or extension of the LTR to such areas.

(ii) Further, where the tribals institute cases against non-tribal transferees, the onus of proving that the transfer of immovable property is in violation of the LTR rests on the transferor. Under section 3(1)(b) of LTR, the non-tribal transferee should be required to prove that the transfer was valid.

(iii) Since the High Court has held that Section 15 of the Andhra Pradesh (Scheduled Areas Ryotwari Settlement) Regulation 1970 confers over-riding effect, the State Government may consider insertion of a new clause in the Andhra Pradesh Scheduled Areas Land Transfer Regulation 1959, so that orders passed under the latter have effect over the former.

(iv) Non-tribals have been using courts' stay orders and even mere acknowledgements from the High Court to halt proceedings for restoration of lands in LTR cases in the lower courts. Steps are required to be taken to ensure that stay orders do not impede the proceedings.

(v) The LTR may incorporate a provision to prohibit transfer of land to a female member of a scheduled tribe married to a non-tribal or kept as a concubine by a non-tribal.

(vi) If a tribal is hard-pressed to sell his land on account of distressed condition, the State Government or the Girijan Cooperative Corporation or any other authority should be made responsible for acceptance of his lands as mortgaged property. For the purpose, a corpus fund may be created. In case the tribal is not able to repay the loan and get back the mortgaged property, the land should vest with the Government and be leased out to a ST in the locality for a specified period.

(vii) Under the Agency Rules of 1870, oral testimonies and summary trial are permissible. This system could be adopted both for settlement of rights on revenue and forest lands.

(viii) It is reported that even among the scheduled tribes, the bigger and economically stronger tribal groups like the Lambada have been taking over the land of the smaller and weaker tribes like the Koya and the Chenchu. There have been demands that, as in the case of scheduled caste communities in Andhra Pradesh, there should be classification or gradation of scheduled tribe communities, so that the smaller and weaker communities are also able to avail of the benefit of positive discrimination.

(ix) In the non-Scheduled Area district of Nellore inhabited by the Yenadi, and elsewhere, Pattas have been given to STs on annual basis. The rationale for such temporary Pattas was that they would be converted subsequently into regular Pattas. This seems not to have been done.

30. It is understood that the Govt. of India has under consideration disinvestment of cent percent shares of the public sector Sponge Iron (India) Limited located in the Khammam district and a writ petition has been filed in the High Court of Andhra Pradesh against the move since it would imply transference of the public sector into private sector, violating the diktat of the judgement of the Supreme Court in Samata case.

31. It is also learnt that the Andhra Pradesh Tribes Advisory Council recommended amendment of section 3 (1)(a) of the LTR to the effect that the State should be empowered "to acquire or grant any interest in the land, including sub-soil, rights for reconnaissance permit or prospecting license or mining lease for major minerals to any person or organization whether or not under the control of State or Central Government". However, the State Government has expressed the view that they

would not proceed with the recommendation. As such, we do not wish to make any comment in the matter.

Arunachal Pradesh

32. Generally speaking, ownership of land is vested in the community as per the tradition and usage of tribal communities. But, except for land used for common community purposes, land under cultivation, whether settled or Jhum, is in the possession of an individual cultivator and is heritable. Section 7 of the Bengal Eastern Frontier Regulation 1873 prohibits acquisition of interest in land or the product of land by non-natives beyond the "Inner Line" without the sanction of the State Government. Further, transfer of Jhum land under Arunachal Pradesh Jhum Land Regulation 1947 has also been prohibited except with the previous permission of the Land Conservator i.e. the Deputy Commissioner. The State Government has reported that there are no cases of land alienation.

33 On account of community ownership of land, it has become necessary for the State to introduce a system of issue of land possession certificate (LPC) to individual land holders to enable them to approach institutions for obtaining benefits like credit. The LPC is issued on the certification of different authorities like Village Councils, Gaon Burha, Anchal Samities, Forest Department etc. However, it was understood that the financial institutions have been hesitant in accepting the LPCs as security.

34. The State has enacted the Arunachal Pradesh (Land Settlement and Records) Act 2000 which provides for revenue administration, preparation of record of rights over land, assignment of land for special purposes, assessment of land revenue with regard to the use of land for agriculture, industrial or commercial purposes, for dwelling and any other purpose. Under the Act, cadastral survey of land in a phased manner has begun for the first time in the State.

Assam

35. Land matters in the state of Assam have been regulated by the Assam Land and Revenue Regulation 1886. This Regulation refers to rights over land settlement and resumption, survey and demarcation, assessment, registration and protection of the interests of backward classes. The State Government has clarified that the backward classes include STs and SCs. It may be recalled that, in the earlier days, the state was coextensive with all the present seven sisters. Most of the present

state governments in the north-eastern region have adopted the provisions of the regulation with suitable adaptations.

36. As per Regulation the protective measures include constitution of compact areas in regions having predominance of the protective clauses and the boundaries of the areas so constituted should, as far as possible, coincide with the mauza boundaries or be otherwise easily distinguishable. The Government of Assam has reported that they have constituted 47 belts and blocks. Further, according to them, the provisions of chapter 10 of the 1886 Regulation prohibit transfer of Patta land from a tribal to any other land-owner within a protected belt or block to a non-eligible person. They have mentioned that the 1964 amendment to the Act placed an embargo on registration of transfer, exchange, lease agreement or settlement, if it appears to the registering authority that the transaction has been effected in contravention of the provisions of chapter 10. The condition of "appearing" to be in contravention of the provisions of the Regulation seems rather nebulous. Some states have inserted a better alternative. For instance, Andhra Pradesh has stipulated that at the time of registration a declaration has to be furnished by the transferee that he is a member of a scheduled tribe or is a member of a registered society composed solely of members of scheduled tribes. Another provision in chapter 10 relates to denial of right to any person to whom land is transferred in a belt or block in contravention of the provisions of the chapter by length of possession whether adverse or not. The duration of possession has not been specified, in the context of the provisions of the Limitation Act.

37. Two Autonomous Councils i.e. the Karbi Anglong Council and North Cachar Hills Autonomous Council have been formed in the two hill districts of Assam. In these two districts, the community owns or controls land, may be through village chiefs. Individual ownership of land is limited. It is, however, seen that the North Cachar Hills Autonomous Council has been engaged in building up a system of record of rights, land management, regulation of transfer of rights etc. The documentation should help obtaining credit, showing land as a collateral and is a good step. Legal instrument or instruments may be devised to help farmers to pledge the land, where it is held in community ownership.

Gujarat

38. Section 73AA of the Bombay Land Revenue Code bans transfer of land belonging to members of scheduled tribe without the previous sanction of the Collector. Section 73AB allows attachment of occupancy of a tribal by the State Government, bank or cooperative society in the

event of default in payment of loan, but the Collector has to approve before the occupancy is sold to a non-tribal. Section 73AB makes it obligatory on a transferee to submit documents containing the sanction of the Collector at the time of the registration of transfer. These are wholesome provisions. But despite their existence, control of land has been passing to non-tribals. During the years 1981–1997, 39,622 cases were registered for transfer under Section 73A and 73AA. Out of these, 33,537 cases were cleared in favour of tribals and 4116 cases went against them. But no data about of restoration of land under the provisions of Section 73AA are available.

39. Our recommendations are that alienated tribal land should be restored removing the bar of limitation. If a tribal does not agree to take back possession of his land, the land should be vested with the State and should be allotted to a landless tribal of the same village. In areas covered by the law, land in possession of a non-tribal should be presumed to have been acquired by transfer and the onus of proving it to have been legally acquired should rest on the non-tribal concerned. Special attention should be paid to incidence of land alienation around industrial towns and growing urban centres.

40. It was found that Jagirdari Nabubi Dhara was enforced, but the Jagirdars indulged in indiscriminate cutting of forests. The land was sold by them to the tribals from 1953 onwards. The tribals developed the land and dug wells. But in 1973, the State Government acquired the private forests with the land which had been sold to the tribals. Now, 1804 persons have been allowed 1308 hectares of the land. This has made them encroachers on their own land. The matter has to be resolved.

Jharkhand

41. Jharkhand has two major divisions (a) Chotanagpur division and (b) Santhal Parganas division. In the matter of land, the Chotanagpur division is governed by the Chotanagpur Tenancy Act 1908. The Santhal Parganas division is governed by the Santal Parganas Tenancy Act 1949.

The Chota Nagpur Tenancy Act

42. The Chota Nagpur Tenures Act 1869 had the object of ascertaining, regulating and recording certain tenures in Chota Nagpur. The tenures related to 'Bhuinhari' i.e. relating to persons claiming

to be descendants of the original founders of the villages in which such land is situated or their assigns; 'Bhetkheta', 'Dalikatari', 'Pahnai', i.e. consisting of lands set apart for duties which the village 'Pahan' or priest is required to perform and also other similar tenures known as 'Mahtoai' i.e. consisting of lands allotted to the village 'Mahto' or collector of rents. It had no special application to scheduled tribes, then known as aboriginals. This and other earlier enactments were consolidated in the Chota Nagpur Tenancy Act 1908 (CNT Act), which was made comprehensive. Its provisions were subsequently amended by the Bihar Scheduled Areas Regulation 1969 in their application to Scheduled Areas in the State of Bihar for the peace and good governance of the area.

43. The 1969 Regulation I also effected amendments to the Code of Civil Procedure, the Limitation Act of 1963 and the Santhal Pargana Tenancy (Supplementary Provisions) Act 1949.

44. The Code of Civil Procedure was amended so that the Deputy Commissioner could be joined as a defendant in suits for declaration of or for possession relating to immovable properties of a member of a scheduled tribe.

45. Through the Bihar Scheduled Areas Regulation 1969, the limit of 12 years prescribed in the Limitation Act of 1963 was extended to 30 years in the case of immovable property belonging to an ST. However, its benefit was denied retrospectively i.e. prior to the introduction of the Regulation on 9 February 1969.

46. Sections 71A relating to the power of the Deputy Commissioner to restore possession to a member of a scheduled tribe of land unlawfully transferred and procedure relating thereto and 71B relating to penalties for illegal and fraudulent transfer were added after section 71 in the Chota Nagpur Tenancy Act 1908 as per the amendments provided for in section 4 of the Bihar Scheduled Areas Regulation 1969 (Bihar Regulation I of 1969).

47. The interpretation of the High Court that 'surrender' of land is not a transfer within the meaning of section 46 of the CNT Act has operated adversely for the tribals, since the concerned ST raiyats were likely wheedled into surrenders by the non-tribal landlords before 1947 when permission of the Deputy Commissioner for transfer was not legally necessary.

48. The main provision relating to STs is contained in section 46 of the CNT Act placing restrictions on transfer of rights in lands by raiyats. Clause (a) of the second proviso of section 46 (1) of the Act lays down conditions for transfer of rights in a holding belonging to an ST: (a) the transferee should be a member of an ST community and should be resident within the local limits of the area of the police-station within which the holding is situated (b) the previous sanction of the Deputy Commissioner should be obtained. A transfer in contravention cannot be registered or recognized as valid by any court. If a transfer in contravention of this provision or by any fraudulent method comes to the notice of the Deputy Commissioner, he has to enquire

into the matter, evict the transferee from such land without payment of compensation and restore it to the transferor or his heir. The 1969 Regulation I also deals with the question of any building or structures which the transferee may have constructed within 30 years from the date of transfer in case where the transferor is willing to pay for them and in case where he is not willing to pay and these have been incorporated in section 46(4A) (c) of the Act. Section 71B relates to penalty for transfer of land in contravention of section 46 or by fraudulent method; if the land is held and cultivated by any person with the knowledge of such transfer, the penalty prescribed is imprisonment of either description for a term which may extend to three years as well as with fine.

The Santhal Parganas Tenancy Act

49. By the end of the eighteenth century, the region now known as Santhal Parganas was divided into different divisions called Parganas or Tappas, each under a chief called 'Sardar'. However, relating to the administration of the hills numerous complaints of corruption and tyranny poured in and disputes between hill-men and low-land Zamindars were rampant. The Santhals felt insecure in possession of land. The Santhal Rebellion broke out in 1855. Following it, the Santhal Parganas Act 1855 was enacted excluding the region from application of the general laws. The Santhal Parganas Settlement Regulation 1872 and subsequently Regulations II of 1904 and III of 1908 ensued, declaring non-transferability of raiyati lands, affirming power of the Deputy Commissioner to intervene in illegal alienation and to enforce the provisions of the settlement records. In 1949, these tenancy laws were supplemented by Bihar Act XIV of 1949 and the Santhal Parganas Tenancy (Supplementary Provisions) Act 1949 which placed some of the customary laws in the statute book.

50. The Santhal Parganas Settlement Regulation 1872 was aimed mainly at peace and good government in the Santhal Parganas territory through mediation by settlement officers into the rights of Zamindars against tenants or raiyats, the rights of
the Manjhis or head-men as against both the proprietors and the tenants, as "also in other landed rights to which by the law or custom of the country or of any other tribe, any person may have legal or equitable claim" (section 12). In relation to the scheduled tribe population (described as "aboriginals" in these enactments) the law acquired focus in the Santhal Parganas Tenancy (Supplementary Provisions) Act 1949 [SPT (SP)Act 1949)].

51. Sub-section (1) of section 20 of the SPTA 1949 invalidates transfer ˜ a land-holding by sale, gift, mortgage, will, lease or any other contract or agreement by a raiy. ..nless the right to transfer has been recorded in the record-of-right (ROR). Its sub-section (2) allows such transfer provided it occurs from an ST land-owner to another ST belonging to the Pargana or Taluk or Tappa in which the holding is situated. Following the G--ntzer survey and settlement report of 1936, the subsequent RORs mention details of the plots in terms of dimensions as well as quality of land, but do not inscribe secondary rights like womens' rights. Further, the last survey of 1980s was finalized for most blocks and districts in the Santhal Parganas division but has not been published as yet, resulting in several handicaps. In any event, the ROR is an important document since even bank credit is linked with entries therein and should be updated from time to time. The latest technology like computerization may be adopted, since it will be beneficial both for the revenue staff as well as the tenants.

52. Section 20(2) of the SPT (SP) Act 1949 stipulated that no right of an aboriginal raiyat in his holding shall be transferred in any manner to any one except a bona fide cultivating aboriginal raiyat of the pargana or taluk or tappa in which the holding is situated. It is noteworthy that this provision of the SPT(SP) Act omits one condition included in section 46 of the Chota Nagpur Tenancy Act 1908 (CNT Act 1908), that is the permission of the Deputy Commissioner is required even where the transfer is to another resident member of ST community. It implies that, in this respect, the CNT Act is more stringent than the SPT Act 1949. On the contrary, as per the SPT (SP) Act, an ST raiyat cannot enter into a simple mortgage with a scheduled bank or a registered cooperative bank or society or a public financial institution for the purpose of obtaining agricultural credit, without the previous sanction of the Deputy Commissioner; the CNT Act does not include such stipulation. Previous sanction of the Deputy Commissioner may not be deemed necessary when the transaction is with such aforesaid public institutions and, hence, in that respect the SPT(SP) Act calls for ·xcision of the clause. What needs to be considered is whether, in other cases, as prescribed in the NT Act, the prior permission of the Deputy Commissioner should govern transfer. The number of ··s of transfer (legal and fraudulent) has increased with the growing population. The level of ..ucation and awareness among STs has shown a distinct upward trend. At the same time, fraudulence has invented new devices and, as we have indicated in the note on the Jharkhand state, the conditions presently point to the need for a stiffer protective regime. This can be achieved by mounting pressure . the administrative machinery to implement the laws in the spirit in which they have been conceived, that is emphathetically pro-tribal. Slotting the prior approval of the Deputy Commissioner may introduce more stringency in the law. But, at the same time, it may unduly fetter inter-ST t nsactions. As such, we are in favour of continuation of the present laws,

with an additional rider that the application for registration of the transfer should be accompanied by an affidavit of the transferee to the effect that he belongs to a scheduled tribe.

53. Mention of the period of 30 years in sub-section (5) has given handle to preparation by unscrupulous elements of spurious documents known as 'Kurfa' showing occupancy details to accord with the timing contained in the law. Section 42 of the SPTA does not indicate any fixed time-limit for ejectment of any person who has encroached upon, reclaimed, acquired or come into position of agricultural land in contravention of the provisions of the Act. Analogously, the time-bar of 30 years in section 20(5) seems anomalous and may be considered for removal.

54. The provision relating to the situation where the non-tribal has constructed buildings or structures on the land in question, are similar in the two enactments.

55. The provision relating to contention of possession of land with the knowledge that such transfer is in contravention of the provisions of section 20, visited with punishment of either description for a term which may extend to three years or with fine or both, is identical with the clause contained in section 71 B in the CNT Act.

56. Appeals in section 57 of the Act have been contemplated to be four-tiered: from Deputy Collector to SDO, SDO to Deputy Commissioner, Deputy Commissioner to Commissioner and Commissioner to Tribunal. It is not known whether the government of Jharkhand has appointed a tribunal in this context. In some states like Orissa, the Commissioner is the final appellate authority. It is advantageous for tribals to have a simpler system.

57. Section 63 states that no suit shall be entertained in any court to vary, modify or set aside, directly or indirectly, any order of the Deputy Commissioner in any application which is cognisable by the Deputy Commissioner and every such order shall, subject to the provisions of the Act relating to appeals and revision, be final. This provision seems to be helpful and is, incidentally, in agreement with the provisions of the Orissa law.

58. It may thus be seen that salutary provisions exist in both the CNT Act and the SPT (SP) Act. Notwithstanding these provisions, land transfer has been taking place on an undesirably large scale in areas which now are a part of a new State of Jharkhand as well as those which are now included in the state of Bihar.

Kerala

59. In reply to questions in the Land chapter contained in our Questionnaire Volume I, the Govt. of Kerala observed as follows:

Kerala was carved out of Travancore and Kochi kingdoms and Madras province ruled by the British. Even during the Travancore and Kochi dynasties, there were orders permitting the tribes to live in forest areas, cultivate land and restricting the entry of non-tribals and restriction of transfer of land. The Travancore Government promulgated an order in 1903 permitting the tribals to live in forest areas and to cultivate land. In 1910, the Government passed an order permitting the tribals to enrol in Schools and in 1911 the Government ordered restricting the transfer of land and a rule by name "Hillmen rules" were ruled.

60. After independence, the Government of Kerala enacted Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act 1975 [Act 31 of 1975]. For several years, the rules for the Act were not framed and it remained inoperative. The rules were framed in 1986 and the Act came into force from 1 January 1982. As per the version of State Government, the Act could not be implemented in letter and spirit due to various reasons.

61. In supersession of the Act 31 of 1975, the State passed the Kerala Restriction on Transfer by and Restoration of Lands to Scheduled Tribes Act 1999. To quote the reply of the State Government "the Kerala Scheduled Tribes (Restriction of Transfer of Lands and Restoration of Alienated Lands) (Act of 1975) and the amended Act viz. the Kerala Restriction on Transfer by and Restoration of Lands to Scheduled Tribes Act 1999 could not be implemented for various reasons" [reply to question 7 in the chapter on Land Alienation Law in our Questionnaire Vol. II]. The fact is that the 1999 Act says clearly in its section 22 that the 1975 Act stood repealed. However, they have reported 8,088 cases involving 6,817 hectares for restoration of land under Act 31 of 1975 of which 1,201 cases favouring restoration of 183.93 hectares were disposed of, but restoration has occurred in only three cases.

62. The reason why even the 1999 Act has not been operationable is litigation. Its constitutional validity has been questioned in a case before the Supreme Court.

63. Kerala has no Scheduled Area. As mentioned, the Act 31 of the 1975 could not be operationalised till 1986 though made retrospective since 1982, because of the fact that the State Government did not frame rules thereunder. It was under the pressure of the Home Ministry which dealt with tribal affairs at that time that the State Government brought forth the rules. It is worth noting that that Act did not permit transfer of land belonging to a member of scheduled tribe to a non-tribal without the permission of a competent authority. Appeal against the order of the competent authority lay to another competent authority whose decision was to be regarded as final. Another provision made it clear that no right or interest held in any immovable property by a

member of scheduled tribe could be attached or sold for execution of a money decree against him. No legal practitioner was allowed to appear in the proceedings except with the permission of the concerned authority. The jurisdiction of civil courts was barred. The only adverse flaw visible in the Act is that at the stage of restoration of the immovable property to a member of scheduled tribe, he was required to make payment of the actual amount of consideration received by him at the time of transfer plus an amount determined for improvements effected by the transferee. Since the transferee enjoys possession of tribal land for years before restoration, the provision of compensation seems iniquitous.

64. In comparison, Act 12 of 1999 appears retrogressive. The restriction on transfer of land envisaged in Section 4 of the 1975 Act continues in this Act, but is subject to two serious conditions. Firstly, it does not disallow transfer between 1 January 1960 and 24 January 1986 of land not exceeding 2 hectares belonging to a member of a scheduled tribe to a person not belonging to a scheduled tribe. Secondly, without prescribing any time-frame, it permits retention of possession of agricultural land up to two acres transferred by a member of scheduled tribe to a non-tribal. Evidently, these two provisions are weighted against tribals. It needs to be kept in mind that most of the tribal families in Kerala have small holdings and it is likely that about 90 per cent of them have less than two acres each. Hence, most of them would be deprived. There are other negative features of this Act which repeals in Section 22 the Act 31 of 1975. On the grounds mentioned, the case seems to have gone to the Supreme Court and, being sub-judice, is inoperative presently.

65. It is estimated that in Kerala about 54 thousand families outside forest area and about two thousand families in forest areas are landless, that is they have less than one acre of land each. To settle them, the Ministry of Environment and Forest conveyed to the Government of Kerala approval for diversion of about 8,000 acres of reserve forest/vested land in the Kasargode, Kannur, Wynad, Palakkad and Malappuram districts under the Forest (Conservation) Act 1980, provided compensatory afforestation is taken up. The State Government have been asked to deposit the net present value of the forest to be diverted, amounting to Rs. 60 crores. Since the State Government is not in a position to bear this financial outlay, the Government of India may make available the sum so that the problem of resettlement of landless tribal families may be solved. No price should be charged from the tribal families.

Madhya Pradesh & Chattisgarh

66. The first Act to protect tribal land from being alienated was passed by the Central Provinces and Berar(present Madhya Pradesh) under the rubric of Land Alienation Act 1916. Another law applicable to the Madhya Bharat region only known as Madhya Bharat Scheduled Areas (Allotment

and Transfer of Land) Regulation was passed in 1954. Both these laws were aimed at checking indiscriminate transfer of tribal land by way of sale, mortgage, lease or otherwise without the permission of District Collectors. The "gift" mode of transfer seems to be an omission and should be included. After independence and reorganization of states, the Madhya Pradesh Land Revenue Code 1959 has become the basic document for the two States of Madhya Pradesh and Chattisgarh.

67. Section 165 (6) of the Code restricts the transfer of land belonging to a member of 'aboriginal tribe' to others in two parts: (a) the land–owning (Bhumiswami) right of a tribal is not transferable either by way of sale or as a consequence of transaction of loan to a person not belonging to such tribe in the area notified by the State Government where the aboriginal tribes predominate (b) in areas other than those specified in the notification, such transfer cannot be effected without the permission of a revenue officer not below the rank of a Collector who has to record the reasons for his orders.

68. However salutary, these provisions were nullified by section 169 which allows the rights of a occupancy tenant to accrue to those who cultivate the land of a Bhumiswami (tribal or non-tribal) for a period of more than two years continuously. This and section 190 were incorporated in the Code to prevent absentee landlordism and to protect the actual tillers of the soil. But they were misused for transfer of tribal land to non-tribals.

69. To counteract such malpractices section 170-A and 170-B were inserted in 1976 and 1980 respectively.

70. According to section 170-A any transfer during the period between 2 October 1959 and 29 November 1976 of agricultural tribal land to a non-tribal can be enquired into by a Sub-Divisional Officer on his own motion or an application made by the transferor. If the SDO is satisfied that such transfer is not bonafide, he can set aside the transfer both in Scheduled Areas and non-Scheduled Areas. If the land has been put to non-agricultural use, the SDO has to fix the price of such land which it would fetch at the time of transfer and order the transferee to pay within a period of six months the difference, if any, between the price so fixed and the price actually paid to the transferor. This provision does not seem to be fair, as the payment received by the tribal transferor contemporaneously might be more than what he would have obtained at the time of transfer.

71. Section 170-B relates to reversion of land to members of 'aboriginal tribe' which was transferred by fraud. In fact, it says that every person (here presumably a non-tribal is meant) in possession of agricultural land which belonged to a member of 'aboriginal tribe' has to notify to the Sub-Divisional Officer within two years of 2 October 1980 as to the manner how he came in possession of such land. On his failure to do so, the presumption has been made that such person has come into the possession without any lawful authority and the agricultural land would revert to the

person to whom it originally belonged on the expiration of the aforesaid period. Thirdly, taking into consideration the Provisions of the Panchayats (Extension to Scheduled Areas) Act 1996, sub-section 2A of Section 170-B places the responsibility of restoration of possession of the transferred land on the Gram Sabha in the Scheduled Areas; should the Gram Sabha fail in this regard, the matter has to be referred to the Sub-Divisional Officer who should make requisite enquiries and restore possession of the land within three months of the date of receipt of the reference. It is felt that a time limit should operate for the Gram Sabha and Panchayat bodies also.

72. Sub-section 3 relates to the provisions where (a) no building or structure has been erected on the agricultural land by the transferee, in which case the land has to be revested in the transferor and (b) where building or structures have been erected, in which case the transferee has to pay the difference between the price fixed by the SDO and the price actually paid to the transferor. It is not clear why this provision has been sought to apply to agricultural land only. As we have stated in respect of Orissa, it should be made applicable to ST non-agricultural land like homestead, common land.

73. It will thus be seen that, on the whole, the provisions contained in the Madhya Pradesh Land Revenue Code are fairly protective. A small formal matter relates to the use of the term 'aboriginal tribes'. In current parlance, as per the Constitution, 'Scheduled Tribes' is used.

74. A particularly important provision inserted in the Code relates to the role which a Gram Sabha can play in the matter of restoration of alienated lands, mentioned in one of the foregoing paragraphs. This has to be correlated to section 4 (m) (iii) of the PESA Act, according to which the Panchayats and the Gram Sabha in the Scheduled Areas are endowed with the power of preventing alienation of land in the Scheduled Areas and taking appropriate action to restore any unlawfully alienated land of an ST. It may, however, be noted that in section 170-B only the Gram Sabha has been brought into the picture and not the other Panchayats. To this extent, the Code needs amendment.

75. It may be mentioned that the Madhya Pradesh Land Revenue Code 1959 has been brought into force in the State of Chattisgarh also with certain formal amendments known as "Chattisgarh Land Revenue Code (Amendment) Act 2003. The comments foregoing will apply there also.

76. One problem that every tribal and, indeed, a tribal family faces is that, invariably, he or they do not possess a written authoritative document of rights they have over land and other resources. Nor are they satisfactorily made aware of the transactions between them and the official agencies. This is a serious lacuna which generally handicaps them, and even can become critical for their livelihood at times. The M.P. and Chattisgarh Land Revenue Code in section 114-A prescribes

"Bhoo Adhikar Avam Rin Pustika" in two parts. Part I consists of rights over holding and encumbrances thereon and Part II consists of rights over holding, recovery of land revenue, encumbrances on the holding and such other particulars as may be prescribed. In other words, the Pustika is a basic authoritative document which should stand in good stead whenever the tribal family is called upon to prove rights and accounts. In Chattisgarh, it has been designated as "Kisan Kitab". We feel it is a good example to be followed for tribal areas by states in the country which do not have such a practice.

Maharashtra

77. In 1987, the Tribal Research and Training Institute Pune conducted a studytodetermine the extent of tribal land alienation in the state. A survey of 1,339 tribal families drawn from 23 villages spread over 6 districts of Dhula, Yavatmal,Thane, Nashik, Bhandara and Chandrapur was undertaken. The surveyed families belonged to Bhil, Mahadeo Koli, Gond, Raj Gond, Andh, Malhar Koli, Ma Thakar, Katkari and Warli scheduled tribe communities. A majority of the families earned incomes ranging Rs.1001 to Rs. 6,000 and spent most of it on food 68% and clothing 13%. Their meagre income precluded savings. On the other hand, it obliged borrowings often by alienating part or the entire holding. It was found that the popular mode of transfer of tribal land was Kabuli Tabegahan i.e. oral agreement permitting de facto possession of land by a non-tribal, allowing de jure ownership to the tribal transferor. In some cases, the tribals were disinclined to get their land back for reasons like smallness of the alienated plot, its distance from residence. Of those who asked for restoration, 35% were given possession on paper only, 65% got physical possession and physical possession along with mutation and entries occurred for 32% households. A significant finding of the survey was an estimated 1.30 lakh hectares of tribal land alienated by 1.5 lakh tribal families to non-tribals. It is surmised that with advancing urbanization and industrialization over the succeeding decade and a half, the position has worsened.

78. It appears that in Maharashtra, three chief laws prevail i.e. Maharashtra Land Revenue Code, Tenancy Laws (Amendment) Act 1974 and the Maharashtra Restoration of Land to Scheduled Tribes Act 1974.

79. According to the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act 1974, with effect from 6 July 1974 transfer of tribal land to a non-tribal by way of sale (including sales in execution of a decree of a civil court or an award or order of any tribunal or authority) gift, exchange, mortgage, lease or otherwise without the previous sanction of the Collector, in case of a lease or mortgage for a period not exceeding 5 years, and in other cases

of the Collector with the previous sanction of the State Government. It appears that these two laws deal with the question of alienation. The third law i.e. The Maharashtra Restoration of Land to Scheduled Tribes Act 1974 deals with the question of restoration of alienated land. However, section 4 of this Act restricts the application of the law of restoration to those transactions or approaches which took place between 1 April 1957 and 6 July 1974. Restoration can be effected by the Collector either suo moto at any time or an application by the concerned tribal made within 30 years from the commencement of the Act (1 Nov 1975) and after making such enquiry as the Collector thinks fit. A noteworthy aspect of the Act is that the tribal transferor has to make payment in certain cases, such as improvements made by a tribal transferor to the land. We feel that, in the first instance, no time limit should be prescribed for restoration of alienated land belonging to the members of scheduled tribes and, secondly, payment of compensation should not be considered.

Manipur

80. The Manipur Land Revenue and Land Reforms Act 1960 does not apply to the hill areas of the state which are, in fact, tribal areas. Ownership of land in five tribal hill districts vests, in most cases, with the village chiefs and in some cases with the community. The chiefs and the community allot land to individual farmers for cultivation for a specified period. The system of Pattas does not exist. It is understood that land survey work has been done in some areas of Chandel and Churachandpur districts and, in some other districts, survey work is on. What land system should prevail in the hilly districts, is a matter which will depend on the decisions that the tribal communities in the hill areas take. Three aspects are, however, relevant in this context. Firstly, the land tenure system should enable an individual farmer to make investment for land development and higher production. Secondly, that credit should be legally and administratively become available. Thirdly, under section 158 of the Manipur Land Revenue and Land Reforms Act 1960, no land belonging to STs can be transferred to non-STs without the permission of the Deputy Commissioner, but since the Act does not apply to hilly areas and, as such, hill area tribals are not covered there should be an identical legal provision for hill areas.

North Cachar Hills District, Assam

81. From the note dated 11 Dec 2003 given us by the Revenue Officer of the North Cachar Hills Autonomous Council, we understand that District Council adopted the Assam Land Revenue

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Regulation 1886 by enacting the North Cachar Hills Revenue Act 1953 and 1982. Except land under reserve forest, railways and urban areas, all lands in interior areas of the district have been known as village common land. Such land is parceled out and allotted to a particular village for establishment of the village and cultivation by villagers. The Council does not, however, issue any Patta or order for such occupation. Only the villager has to pay Rs.10 per annum as house tax for use of the village community land. The villagers enjoy the right of occupation, but they have no other right. Hence, if the family shifts to some other village, they cease to have any right to occupy the land.

82. It is further reported that the villagers have started permanent occupation of the village land by taking up wet paddy cultivation and horticulture. In such cases, the Council grants settlement of land to such occupants with the consent of the village authority on annual Khiraj Patta which is renewed every year. It implies that the right of occupation and inheritance is enjoyed during the currency of such annual Pattas only. The Council seems to have taken up settlement operations for mapping the area of land occupied permanently and also for preparation of records on rights of the occupants. It means that periodic Pattas will be given to annual settlement holders. Under periodic Pattas, the Patta holders enjoy all rights over the land i.e. the right of occupation, inheritance and transfer. Rights are valid for 30 years in the first instance and automatically renewable for further period, unless the Pattadar violates the specified conditions.

Orissa

83. Orissa Regulation No.2 of 1956 known as the Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribes) Regulation 1956 has been designed to control and check transfers of immovable property belonging to STs in the Scheduled Areas of the State of Orissa. It has been amended in 1997 and in 2002. The main provision is contained in clause 3(1). According to the 1956 Regulation, any transfer of immovable property situated within a Scheduled Area by a member of a scheduled tribe is absolutely null and void and of no force or effect whatsoever unless made in favour of another member of a Scheduled Tribe or with the previous consent in writing of the competent authority; however, transfer by way of mortgage executed in favour of any public financial institution for securing a loan granted by such institution for agricultural purposes is in order. This provision was modified in the 2002 Amendment whereby the underlined words have been omitted. This means that in the Scheduled Areas of the State transfer of immovable property by a member of a Scheduled Tribe is possible only to (a) another member of a ST (b) a public institution by way of mortgage. The amendment puts a dampener on all other transfers. While this

expresses the intent of the legislators to instil a de rigeur discipline in the matter of transfer, it needs to be considered by the State authorities whether the inflexibility will not ensue in hardship, as for example to distressed tribal families desperately in need of cash, a circumstance which, earlier, could be considered by a competent authority.

84. The Amendment 2002 has inserted a new provision to the effect that a member of a Scheduled Tribe shall not transfer any land if the total extent of his land remaining after the transfer is reduced to less than two acres in case of irrigated land or 5 acres of unirrigated land. The intention behind this provision, that is to ensure that the holding of the transferee is not reduced to less than subsistence level, is laudable. But, again, there might be exceptional cases where a transfer may be warranted by hardships.

85. In Explanation I(b) of Section 3, it has been indicated that the transfer of immovable property shall include a transfer of immovable property to a person belonging to a ST for consideration paid or provided by another person not belonging to any such tribe. This provision seems really to relate to benami transaction. In section 2(f), the definition of transfer of immovable property includes transfer by sale. Perhaps, it has been added to make matters abundantly clear.

86. Section 3(2) deals with the manner in which contravention of the main provision is to be dealt with by a competent authority for restoration of possession of the property to the transferor or his heirs. In the proviso thereto, it is mentioned in the 1956 Regulation that in case restoration to the transferor or his heirs is not reasonably practicable, the competent authority may, subject to the control of the State Government. settle the property with another member of a ST or, in the absence of any such member, with any other person in accordance with the provisions contained in the Orissa Government Land Settlement Act 1962. A new proviso has been added by the 2002 Amendment whereby the prior approval of the concerned Gram Panchayat accorded with the concurrence of the Gram Sasan has been substituted for the control of the State Govt. This seems to be in order.

87. Section 3-A deals with eviction of person in unauthorized occupation of tribal property. A new sub-section(3) has been added which prescribes that the competent authority has to make a report to the concerned Gram Panchayat about the order of ejection passed in respect of any person in unauthorized occupation of a tribal's immovable property and its restoration to the original owner or his heirs as well as reasons for failure if that be the case. This will enable the Panchayat authorities to remain informed.

88. A new provision in Section 3-B has been added by the 2002 Amendment. It deals with reversion of land of STs which was transferred by fraud. Any person in possession of agricultural land which belonged to a member of a ST at any time between 4 Oct 1956 and 20 August 2002 has

to notify to the Sub-Collector within two years of the later date the information as to how he came in possession of such land. This is in line with section 170-B of the Madhya Pradesh Land Revenue Code 1959. The section was inserted in 1980. The moot point is why the provision has been confined to agricultural land and why it should not be extended to ST non-agricultural land like homestead, common land.

89. Section 4 is to the effect that no deed of transfer of any immovable property executed in contravention of the provisions of the Regulation will be accepted in registration. The law of Andhra Pradesh stipulates that a certificate by the transferee that he is a member of a ST should accompany the documents for registration. Such a provision may be considered by the Orissa Govt. also.

90. One more issue arises in Section 3-B(3)(b) relating to the difference in cost of land, that is between prices prevalent at the time of restoration and the price paid actually paid to the transferor. The context of this sub-section relates to buildings and structures erected on the agricultural land. It is not clear from the provision whether difference in the cost of land only has to be taken into account and, if so, how the cost of the buildings and structures has to be reckoned.

91. The Amendment 2002 replaces the original sections 7 and 7-A with one consolidated section 7 in it. The penalty for contravention of the provisions of the Regulation and continued occupation of the property by the unauthorized occupant has been enhanced. But, even in the Amendment it is imprisonment or fine in both cases. In one case the fine is up to Rs.5,000 and in the other up to Rs.10,000. It is felt that in the current economic conditions, the penalty of the fine indicated is too light. Imprisonment is a higher deterrent.

92. It is worth noting that through section 7D of the 1956 Regulation, the limitation of 12 years in the Limitation Act 1963 has been increased to 30 years in relation to immovable property belonging to a member of ST in the Scheduled Areas.

Rajasthan

93. The total quantum of land declared surplus in Rajasthan as on 31.3.2002 was 6.11 lakh acres out of which 5.70 lakh acres were taken possession of by the Government and 4.62 lakh acres were distributed to 81,806 beneficiaries, the number of ST beneficiaries being 11,586 (14 %) who were allotted 49,957 acres (10%).

94. The Rajasthan Tenancy Act 1955 (RTA) imposed restrictions on transfer of land by STs under sections 42, 43, 46A and 49A. As per the former two sections, transfer by sale, gift, bequest or mortgage to a person who is not a member of Scheduled Tribes has been prohibited. As per the latter two, sub-letting or exchange between members of ST and non-ST is not permissible. Sections

183B and 183C enable summary ejectment of tresspassers on land held by members of STs on pain of eviction and monetary penalty. Thus, there is a complete ban on alienation to non-STs of ST land. The remedy against illegal transfers is provided under Section 175 which calls for ejectment of both the tenant and the transferee from the land. Nevertheless, it seems that non-STs have adopted various methods to defeat these provisons.

95. The statistics of ST land alienated, number of cases filed in the court, number disposed of, area restored and area given possession of that restored, are not available in full. It has, however, been observed that a small number of cases of alienation i.e. 84 involving 112 hectares under section 175 of RTA and 38 involving 66 acres under section 183-B in Scheduled Area have been pending, as the tribals are not aware of the legal protection available to them, and they are neither able to defray lawyers' fees nor withstand prolonged litigation. According to the Central Ministry of Rural development 411 cases involving 1526 acres were pending in courts. Studies showed that despite the afore-mentioned legal provisions, alienation of tribal land has been continuing through land-grab, encroachment and state acquisition. Most of the land-grab and encroachment occur in collusion with the low-level revenue officers through manipulation of land records. Hardly any action is taken against such officers notwithstanding the provisions of Rajasthan Tenancy Act 1955 calling for it.

96. The total quantum of tribal land acquired by the state for the Mahi Bajaj Sagar Dam project in the district of Dungarpur, Kadana Dam project in the district of Banswara and Sagar Dam in the district of Sirohi as well as other dams, roads, canals, public and private mines and industries, educational and health projects does not appear to have been worked out. But the figures which are available indicate that such quantum and number of families displaced would be substantial. There have also been cases even of multiple displacements. Further, the Government of Rajasthan has acquired ST land for passing it on to non-tribal holders of mining leases, converting ST land-owners into refugees on their own land to work as daily labourers in the mines on paltry wages. Significantly, the ban on grant of mining leases for masonry stone was imposed after extending the current leases in favour of the non-STs for twenty years! The concerned STs should get annual fees from the lease-holders as part of compensation for loss of land, which should be restored to him in healthy condition on exhaustion of mineral deposit.

97. Secondly, while, on one hand, the Rajasthan Tenancy Act is absolute in the sense it does not permit transfer to non-STs land belonging to STs, it is strange that there exist two sets of rules that make it legally possible for all land-owners (STs and non-STs alike) to convert their agricultural land into residential and commercial categories and be able to sell it to a third party. The rules are Rajasthan Land Revenue Allotment, Conversion and Regularization of Agricultural Land for

Residential and Commercial Purposes in Urban Areas Rules 1981 and the Rajasthan Land Revenue Conversion of Agricultural Land for Non-Agricultural Purposes in Rural Areas Rules 1992. It is plain that the latter nullify the former. Their contradictory nature should not have escaped the attention of the State Government. We feel that these two sets of rules allowing conversion of agricultural land into residential and commercial land should contain provisions which bar transfer of the converted lands belonging to the scheduled tribes to non-scheduled tribes, on par with the Rajasthan Tenancy Act 1955.

98. There is a commonly held belief in which we concur, that illegal fraudulent transfers occur on a large scale, though it may not be possible to adduce hard data therefor. Several field studies organized by individuals and institutions have gone into this question. Several committees and groups, official and unofficial, have deliberated on it. Their number being so large that it would be difficult to reproduce all their findings here. However, we would like to refer to the conclusions of the Dhebar Commission (1961). They summarised the reasons for alienation as follows:

a) Ignorance of tribal people
b) Lacunae in the laws. They examined the Chota Nagpur Tenancy Act, 1908, which was shot through with a number of loopholes enabling shrewd merchants and money-lenders to secure transfers in their favour and, further, which enabled transfer for "reasonable and sufficient purpose" (Section 49) which was misused through fraudulent legal proceedings.
c) Utilisation of the machinery of the courts before which the tribal is more or less powerless
d) Temptation to the tribal of financial inducement
e) "Bazdawa" by which the tribal is persuaded to suffer a decree passed by a court of law against himself
f) Admission by a tribal before a court of law of adverse possession held by an opponent
g) Voluntary surrenders engineered by landlords taking advantage of the victims' ignorance.
h) Lack of adequate knowledge of conditions in tribal areas on the part of the authorities.
i) Complicated legislation.
j) Lack of sources of credit, an alternative to the money-lenders' usury.

Some reasons for alienation

99. We have reproduced in preceding para the Dhebar Commission's analysis of the circumstances leading to tribal land alienation. In their recommendations, apart from scrutiny of legislations with a view to plugging the loopholes, the Dhebar Commission recommended that :

a. There should be a general prohibition of all transfers, whether by sale, mortgage, gift or lease under any kind of agreement or contract entered into by tribals in favour of non-tribals without the permission of the Deputy Commissioner or the Collectors.

b. There should be a bar against suits or applications against any order made by a Deputy Commissioner or a Collector and the courts of law should be precluded from taking cognizance of such transfers by sale, mortgage, gift or lease or any other agreement or contract unless such arrangement has been entered into with the previous permission of the Deputy Commissioner or the Collector.

c. The Deputy Commissioner or the Collector should have powers suo motu or at the instance of the aggrieved tribal land-holders within a period of 12 years, to institute enquiries and restore possession of the land with or without payment of any compensation to the transferee, making this provision applicable to all transfers of land of tribals to non-tribals with retrospective effect from 26 January 1950.

d. Surrender of all lands should be only to the State and the surrendered lands should be held by the State as a trustee.

e. A campaign should be launched to educate the tribals preferably through non-official agencies regarding laws or regulations made for their benefit.

f. Requisite financial and legal assistance should be given to the tribals to take advantage of the concerned laws.

100. Many of the recommendations have been accepted and incorporated in the states' anti-land alienation laws. Many states have accepted the period of limitation as 30 years instead of 12, in amendment to the Law of Limitation.

101. In case of legal transfer, we have felt that, in not inconsiderable number of cases, the administrative agencies like the Collector of a District have not, as a matter of course, exercised adequate care and vigilance in permitting transfer. The tribals being the weaker party, economically and awarely, the administration has, perhaps, tended to ignore this vital factor. In any event, the

State Governments need to infuse degree of sternness and discipline in the administration for implementation of policy and laws.

102. We would also like to refer to the observations in the context of assessment in 1974 of the tribal situation in the Chota Nagpur and Santhal Parganas region by a Study Team of the Ministry of Home Affairs in regard to the following ways of land alienation

(i) Legal transfer facilitated by casual and routine approach adopted by the authorities
(ii) Benami transactions in the name of servants
(iii) Transfers through collusive civil proceedings
(iv) Transfers in the name of tribal women taken as wives or concubines by non-tribals
(v) Informal transactions in which land remains in the name of original land owner, but he is reduced to the status of a share-cropper.

103. We covered in our tours almost all the states in the country which have Scheduled Areas and even those which do not have Scheduled Areas but have sizeable tribal population. Our observation showed that tribal land alienation takes place, inter alia, in the following ways

(1) Rejection of applications filed by STs for restoration of alienated lands routinely and on flimsy technical grounds by trial courts

(2) Grant of official permission routinely for transfer of tribal lands to non-tribals for certain purposes such as those specified in section 49 of the Chota Nagpur Tenancy Act and its exploitation by non-tribals

(3) Coercive and forcible occupation of tribal land by non-tribals.

(4) Exploitation of the fact of non-possession in many cases of Pattas or other relevant documents by tribals in the context of a predominant oral tribal culture.

(5) Manipulation of land records at the time of settlement operation or at other times without the knowledge of the original tribal owner. Some village officers play a nefarious role in manipulation. One Chief Minister mentioned that even some tribals do "Dalali" for sale of land

(6) Elapse of a long time between a court judgment in favour of STs and actual hand-over of land to the ST owner, enabling the dispossessor to employ subterfuges to prolong matters and go in for appeal

(7) The twelve/thirty years time-bar clause often operating against the tribal, the more so since generally the tribal is not able to produce documentary evidence of his possession

(8) Revenue courts rulings generally in favour of the STs but loss of the case in High Court and Supreme Court on account of lack of understanding on the part of STs of the dynamics of the higher courts

(9) Ill-affordability in terms of time and money by STs of pursuit of cases particularly in appellate stages

(10)Since restrictions had been imposed in Jharkhand on registration on transfer of tribal land in favour of non-tribals, recourse to registration in
West Bengal of land transfer deeds, the complaints particularly having surfaced in Jamshedpur.

(11) A novel method of land appropriation devised in some districts of Jharkhand, that is non-tribals marrying ST women, thereby gaining access and ownership of tribal land. Incidentally, children born out of such union have been declared as STs by the Ranchi High Court.

(12)Land alienation laws should be strictly enforced.

We have repeated some of the observations here, despite the fact that we have made them under the states chapters. Our recommendations in this context are contained in a later part of this chapter. We have no doubt that the State Governments will undertake measures to plug the loop-holes and effect such other modifications as might make the laws fool-proof. Nevertheless, fraudulence is ingenuous and the State Governments need to be ever vigilant.

Urban tribal land

104. To be able to size up and come to grips with the urban land problem in Scheduled and Tribal Areas, we have to appreciate the situation as it obtains today. We have to contend with the fact that while in 2000, 47% of the world's population was urban, by 2008 more than half of the world's population is expected to be living in urban areas. In 1999, 36.2% of the Asian population was urbanized, the growth-rate being in the region of 3.77%. The Indian censuses relating to 1961, 1971, 1991 and 2001 exhibit the decadal urban percentage growth-rate as 26.41, 38.23, 36.46, 31.13. For reasons into which it may not be necessary to enter here, the growth-rates of the decades 1941-51 and 1971-81 have been abnormally high, being 41.40 and 46.14. Considered annually, the growth-rate of about 3% compares with that of the figure of 3.77% for Asian population mentioned. In the tribal areas of the country also, urbanization has been taking place at a rapid rate in the past two or

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three decades and it is, indeed, expected to pick up momentum even furt[illegible] In fact, the twin processes of industrialization and urbanization acutely impact the tribal areas [illegible] .he country due to the concentration therein of natural resources like land, minerals, forest, water etc. At the same time, the people of these areas are not in a position, by themselves, to exploit the resources and the technological deficit is compounded by non-tribal influx into these areas. Even the products of mining, industrial and water sectors are, in bulk, exported to outside areas. The local tribal and non-tribal population is, thus, doubly deprived i.e. in the matter of their natural resources (particularly land) and the benefits of industrialization and urbanization.

105. We had the opportunity to look at these problems closely on the ground in several regions of the country. Here, we cite two examples of burgeoning townships in the states of Rajasthan and Jharkhand. In the area around Mount Abu in Rajasthan, commercial activities springing up due, inter alia, to tourism and industry, have been sucking up land belonging to the scheduled tribe people. The transfer has become possible in terms of Rajasthan Land Revenue Allotment, Conversion and Regularization of Agricultural Land for Residential and Commercial Purposes in Urban Areas Rules 1981 and the Rajasthan Land Revenue Conversion of Agricultural Land for Non-Agricultural Purposes in Rural Areas Rules 1992. The total effect is that the tribal population is being displaced and ejected, with no prospect of any economic return or social fall-back.

106. The situation in Santhal Parganas division of Jharkhand is even more stark. Here, land mafias have started operating, coercing the poor hapless tribals to give up possession of their land for a pittance and selling it at profit for mining and industrial purposes. In fact, many of tribal land-owners, small or big, have been forced to sign Dan Patras (gift-deeds) in favour of third parties shown as close friends or kin.

107. As in the rural areas, in urban areas also, alienation of tribal land needs to be plugged. The relevant suitable anti-alienation laws should apply in the urban areas also, as they do in [illegible]al areas. A law based on the recommendations of the Bhuria Committee relating to urban [illegible]cipal bodies should be enacted. If there is any other legal hurdle in the way, it should be [illegible]d.

[illegible]ations

[illegible] uation both in the rural and urban areas has kep[illegible] ing since the tim[illegible] of the [illegible] mission on account of firstly, rapid growth of the [illegible] and non-tribal populations [illegible] flux of non-[illegible]bals into tribal areas facilitated by easier communications and the growing demand of land, inflating prices. We have gone into the different reasons and recorded the modus operandi of alienation of tribal land. Here, we only need to stress that, notwithstanding the

provisions of anti-alienation laws, dispossession of tribal land has not only been continuing but also accelerating.

109. In this context we refer to the Fifth Schedule of the Constitution, as per para 5(2) of which the Governor may make regulations for the peace and good Government of any area in a State which is, for the time being, a Scheduled Area; such regulations may relate to prohibition or restriction on transfer of land by or among members of scheduled tribes, regulation of allotment of land to members of scheduled tribes and regulation of business of money-lending. Rather exceptionally, the Governor has been conferred the power, with the assent of the President, to repeal or amend any Act of Parliament or of the Legislature of the State or any existing law applicable to the Scheduled Area in making such regulation. It would have been helpful if, in keeping with the guardian role devolved on the Centre by the Constitution, the Central Ministry of Tribal Affairs had drafted a model over-arching general law for the peace and good government of a Scheduled Area in the country as well as model anti-land alienation laws. Even now, these steps may be taken since they would obviate persisting handicaps of the concerned state governments.

110. In considering the land question, one faces the dilemma: should the present anti-alienation laws be continued, whether in the present or reinforced forms, with the diktat and in the hope that they can and will be enforced stringently to bring relief to the traumatized tribal people with the sword of Damocles constantly hanging over their head or, in the alternative, fine-tune such laws to liberalize them to meet the prevailing situation where transfers take place willy-nilly and the poor tribal land-owners are deprived of fair exchange prices on account of the forced exploitative underhand dealings. In the states, we perceive a whole range of situations. The laws of certain states may be rigorous and they may be applied strictly, the administration being capable of enforcing them. At the other end of the spectrum, there may be states whose laws may be neither firm nor administration capacitated enough to implement them uncompromisingly. In between may be states whose laws may be exacting, but the administration too weak to back them up. The fourth situation may be one in which scope exists for tightening of the laws and the administration quite capable of fulfilling the desiderata. It is difficult for the Commission to lay down rigid prescriptions in the scenario, beyond the tenet that the tribal should not be deprived of his land. To that end, one of the measures we suggest is that the anti-alienation law should provide that for transfer of tribal land to a non-tribal, permission of the state government is necessary, instead of the Collector or the Deputy commissioner, as at present.

111. Other requisite measures should be adopted by the states. Among others, an important step is updating land records, by holding fresh survey and settlement proceedings at periodic intervals. In fact, the revenue laws of the States in the country provide for a re-survey every thirty years. But this fiat is not followed systematically, notwithstanding the provision of funds by the Ministry of Rural Development to States under the scheme of Revenue Administration and Updating of Land Records on 50:50 sharing basis for undertaking base on revisional survey, by employing latest technology and equipment like total stations, theodolite. For projection of picture and consequent corrective action, the inter-settlement period may be reduced to twenty or twenty-five years. This would present a clear picture of tribal ownership of land through recent entries made in the records. In itself, this step would be helpful. Further, in accordance with tenancy laws, the status of tribals should be entered clearly and correctly in the record of rights. Hard copies of the relevant portion of a land record should be made available on application by an ST. Further, there is no reason to stop short at this step. Technological advances make it possible to computerize the land data and make them accessible to any one who cares to scan them. Elsewhere, we have suggested e-empowering tribals by means of information technology. Computerisation and IT knowledge together will go a long way in equipping the tribals to see through and withstand fraudulence and malpractices.

112. While, no doubt, laws have to be in place both for deterrence and penalty, we feel the best safeguard against fraudulent alienation is an appropriate socio-political ambience, having the general society's sanction and support. The general society should instil respect for tribal rights in land and forest, the first dictum of Jawaharlal Nehru's Panchsheel. In the absence of such respect and an ambience promoting it, no one can guarantee that the rules and regulations would operate in the innocent tribals' favour, rightfully; even an iron-clad law is likely to be breached and the sternest law likely to be flouted.

LAND ACQUISITION

Land acquisition under LAA 1894

113. We have dealt hereinbefore with alienation of land of tribals through transfer. Some transfers may have been in accordance with rules, regulations etc.; others may have been discovered on examination as fraudulent. Yet another method of dispossession of tribals of their land has been totally legal, yet unjust. We refer to official acquisition of private land and common land as per the provisions of the Land Acquisition Act 1894 (LAA) and transfer to the

state. This Act, one of the principal instruments for take-over of land, whether belonging to tribals or non-tribals, is of colonial vintage and was used by the British Government extensively for appropriation of land required for various purposes. However, it has been remarked that the total extent of land acquired under the Act during the five decades after independence has far exceeded that taken over by the colonial power during an equal period preceding independence.

114. In post-independence times, the pressure to acquire land at various places all over the country has been building up even as the pace of planned development has been gaining momentum. The brisk-sprouting new modern temples e.g. dams, hydels, industries, mines along with their settlements and townships, have devoured and continue to consume huge chunks of land. Tribal areas and tribal people have had to provide the land for the major part, for the reason that through a natural coincidence the tribal people have been sitting on top of reservoirs of mineral resources and playing in the lap of catchments of streams and rivers possessing enormous irrigation and power potential. Their land having been acquired under the LA Act, the simple, innocent tribals living and plying their livelihood have been displaced to make room for development projects.

115. Experts have distinguished partial displacement and total displacement, the former implying the loss of either the house or means of livelihood and the latter signifying a situation where the tribal loses both house and livelihood. Displacement has affected persons, owning or not owning land. Further and equally importantly, displacement may cover not only the rayaiti land but also waste lands, common lands, forest, rivers and water resources, habitat and the eco-system, all of which vitally contribute to the tribal life-support system.

116. In assessing the extent of displacement consequent on various factors like construction of dams, location of industries, opening of mines, a number of problems arise. In the first instance, records have been scanty and record-keeping and maintenance have been poor. If records had been maintained in the country for each and every project of say above a certain magnitude, collation of the relevant data would have been possible at the district, state and national levels. It appears that other dimensions of projects have over-shadowed the initial step of land acquisition, relegating it to the back-burner. Only in the recent years, the states have got down to create some data-base. But there has been no commonly accepted methodology for computation of the different parameters involved. The awareness and realization of the various concerned dimensions have been and are still being grasped slowly and gradually. The available records show only those land-owners who have been directly affected, that is those whose lands have been taken. Those indirectly affected have failed to attract notice. The concepts of partial and total displacement, apprehension beyond rayaiti and residential land to common lands, habitat and eco-systems have remained blurred. Particularly galling to the tribal communities has been the ignorance or insensitivity or both on the

part of implementors of the law, of psycho-sociological milieu of the tribal communities leading to the scattered tribal diaspora, snapping up social bonds and cutting at the roots of tribal moorings. Many, if not most, individual ousted tribal families have come to grief, adrift in strange uncharted seas.

117. Such calculations as have been made on the basis of incomplete data of the extent of displacement by different agencies has led to varying results. Since displacement and rehabilitation have not been viewed as strictly falling within the purview of the Act, and untouched by the plight of the oustees, the official records, such as exist, show generally the names and number of land-owners and the area acquired. Neglected at the earlier stage, the scattered diaspora may, at a later stage, hardly enable a correct head-count of the persons displaced. It needs reiteration that, a usual lacuna in the official figures is that they do not recognize and include those whose land may not have been directly acquired, but who, nevertheless, may have been adversely affected by the acquisition, as by construction of water courses, tree-felling etc. The susceptibilities of revenue officials who implement the land acquisition process have been limited to direct interest of the land-owner. It has been beyond them to be alive to the loss sustained and impact suffered on account of take-over of the common land and the eco-system which constitute the life-support system of the tribals. The lack of understanding has been damaging. Hence, the official statistics can, at best, be regarded as indicative. On the other hand, there are a number of more exhaustive studies by individual researchers, scholars, institutions and study groups. But such studies are not too numerous. The government and the non-government figures differ considerably. We reproduce in the Table below a set of data compiled by an independent researcher since it may not serve much purpose to quote the various sets of data traceable to different sources. It is possible that the figures in the table suffer from usual infirmities. But, in the circumstances available, it seems to be a good approximation. The Tenth Plan document of the Planning Commission cites the same figures.

Table

Displacement of Tribals (1951-1989)

Project	Total DPs (in million)	No. of DPs in tribal region (in million)	Percent of DPs in tribal region (in million)	No. of tribal DPs(in million)	Percent tribals among		Tribal DPs (in lakhs	
					All DPs	DPs of tribal region	Rehabilitated	Backlog

Mines	2.55	1.9	74.51	1.330	52.16	70	3.30	10.00
Dams	16.4	8.68	52.92	6.321	38.54	72.82	15.81	47.40
Industries	1.25	0.42	33.6	0.313	25	72.52	0.80	2.33
Sanctuar- -ies	0.6	0.5	83.33	0.45	75	90	1	3.5
Others	0.5	0.25	50.00	0.125	25	50	0.25	1.00
Total	21.3	11.75	55.16	8.539	40.09	72.67	21.16	64.23

Source: Subrata De; The Administrator Vol.XLIII, January-March,1998, pp.33

118. The table above shows that the total number of displaced persons (DPs) in mines, dams, industries and sanctuaries of the tribal region was 11.75 million, while the total number of tribal persons displaced came to 8.539 million, that is 40.9 percent of all DPs between 1951 and 1989. Including an estimated figure of tribal displacement from Sardar Sarovar Project, the total figure may come to 9.81 million, that is nearly 48 percent of the total persons displaced. This figure may be compared with the percentage of ST population in the country i.e. about 8 percent and the anomalous situation becomes apparent. These figures do not take in to account smaller development projects which are more numerous and cause a bigger impact in the displacement, since no information is available in this regard. We recommend that mechanisms should be evolved for enabling a full-data base in this context.

119. Apart from studies on individual projects, since no cogent picture is available of the total tribal land acquired, it is necessary that such records should be maintained at the state level compiling the data from the districts. It should show the extent of tribal land acquired indicating the purpose for which acquired. The state level statistics should be collated at the national level, showing total land acquired in the country, its second part belonging to STs and the third part belonging to SCs. Purpose-wise break-up should be kept for each of these categories.

Public purpose

120. From Table 4, an incidental observation emerging is that while tribal land alienated by private parties is presented in terms of area (as for instance the total area alienated has been indicated as 8.55 lakh hectares) and cases filed in court (indicated as 3.75 lakhs), so far as state acquisition of land is concerned, the country-wide statistics are available in terms of persons displaced 8.5 million and, in a smaller number cases, of area involved. A comparison of private land-grab with state acquisition can be purposeful only in terms of the two parameters (a) number of

households whose land has been transferred to private persons and agencies and the number whose land has been acquired by government (b) area involved in both the cases. Common parameters facilitating such a comparison have not been forthcoming. Prima facie, land acquisition by the state has occurred on a large scale during the five decades after independence and seems to have exceeded private land-grab during the last more than ten decades. This should cause one to reflect on the issue.

121. As explained earlier, a major instrument of acquisition by state authorities of land in this country has been the Land Acquisition Act, 1894 promulgated by the British Government for take-over of land for what is mentioned in the Act as "public purpose". Its provisions enable the land-owner to contest, inter alia, the quantum of compensation proposed, but leave no choice to him to question other grounds like the validity and justification of the "public purpose". In other words, the land-owner has been precluded from interrogating the fundamental one of why and wherefore of the acquisition. Thus, it appears that, while, apparently, the Land Acquisition Act fits in the frame of rule of law, it does not allow the more relevant and substantial basic concerns to be juridically raised. This seems to be a flaw.

122. A vital dimension in the matter has been that in considering "public purpose", the marginalisation and trauma of those who have suffered the consequences of acquisition have seldom engaged the serious attention of the authorities. "Public purpose" has been interpreted merely as one which enhances the good of the general public, but those who fall on the wayside in the process have not been thought worthy of a second look.

123. Another crucial aspect of Act which merits repetition is that its purview does not extend beyond rayati lands. It pays attention to compensation payable for land individually held, but common land, village forest land and other common property resources, do not attract any recompense. This step in law may be steeped in the philosophy of the "eminent domain", as per which a resource that is not privately owned belongs to the State. But in its application in tribal areas, it bears harshly on the communitarian ethos of tribal societies. As already mentioned, community and individual land ownership exist side by side in tribal areas. A tribal household lives on not only on the agricultural produce of the land they cultivate, but also on commons like pastures where cattle, goats and sheep are raised, village forest which provides them fuel, timber, minor forest produce etc., streams and nullahs which give them water etc. All add up to a whole life-support system. The dispossession of one or more of the collateral resources aggravates their pre-existing vulnerability. As such, in ignoring it, incalculable damage is done to the human being.

124. It needs to be appreciated that strong bonds subsist among members of a tribal village community than observed among non-tribal village societies. Its genesis may be traceable to

their isolated existence for centuries in far-off locations in forests and plateaux. The tribal village communities learnt and evolved their own governing and administrative systems, in which social relations played a significant part. More or less egalitarian and democratic, they created the governing elite and, as such, their system grew. For big hydel, mining, industrial etc. projects, whole villages may fall within the sweep of acquisition and, as a result, a village community may be decimated, its elaborate social-political structures dismembered and individuals and households scattered. Thus, a cohesive tribal community may undergo a double trauma, one economic on account of loss of land and other resources, and the other psycho-social.

Rehabilitation of displaced persons

125. Since, in certain situations, state acquisition of land may be unavoidable, it is necessary to lay down guidelines for the purpose of relief, rehabilitation and resettlement (R&R) of those involuntarily displaced. The National Human Rights Commission in its 2000-2001 annual report have taken the view that resettlement and rehabilitation of persons displaced due to acquisition of land for various projects should form part of the provisions of the Land Acquisition Act itself, or be the subject of an appropriate separate legislation. Further, that the Government should, while adopting a comprehensive policy, provide for that policy to be incorporated in the appropriate legislation within a specified time-frame. In their view, such a step is necessary for the reasons that the R&R package incorporated in the law will ensure systematic rehabilitation and resettlement of the affected people, help avoid litigation, cut down project time and cost over-runs, provide uniformity in dealing with the cases by courts, enable provision of R&R facilities before actual acquisition of land. Generally speaking, we are in agreement with these views. It should, however, be appreciated that a piece of legislation may not, generally, be expected to include details of the processes involved. Should it do so, it might tend to become rigid. On the other hand, couched in generalities, it might not serve the purpose of boundaries–marker. Hence, initially, a policy statement, followed by a via media law may have to be thought out.

126. A Central policy on R&R has been a long time, about a quarter of century, on the anvil of the Government of India. We have not been able to obtain a copy of it, but we understand that the draft policy acknowledges the trauma caused by the displacement process and that it provides for rehabilitation to undo disruptive effects of displacement for attainment of higher quality of life for the oustees.

127. From the reply to our questionnaire received from the Planning Commission, we quote the "special package for tribal families over and above the package available to all project affected persons" incorporated in the draft policy statement on rehabilitation and resettlement:

(i) Tribal families will be given preference in allotment of land for land.

(ii) Loss of grazing rights and customary rights to gather forest produce etc. will be compensated by providing 500 days minimum wages.

(iii) Tribal families to be resettled out of the district/taluka will get higher R&R benefits to the extent of 25% in monetary terms.

(iv) Tribals will be resettled close to their natural habitat in a compact block so that they can retain their ethnic, linguistic and cultural identity.

(v) Tribal land alienated in violation of the laws and regulations in force on the subject would be treated as null and void and the R&R benefits would be available only to the original tribal land owner.

128. In regard to item (ii) above, it is not clear in what way i.e. in cash or otherwise, the families will be compensated for loss of grazing rights and customary rights to gather forest produce etc. In item (iii) above, 25% extra benefit in monetary terms is to be given to tribal families resettled out of the district or taluka. We have lived through the experience of lack of awareness of tribal people of the value of money and how it is mis-spent. It would be better if something in kind, as say a house or a hut or even a bank account specifically for education of a child or children, is arranged for. Vide item (iv) above, a holistic community approach to rehabilitation is welcome from socio-cultural point of view. However, the crucial prescription that one looks for in the draft Policy statement seems to be missing: The land acquisition should be strictly need-based, in the context of preference for "no-displacement" and "least displacement" alternatives. As we have observed, the need for locating a project situated in a tribal area involving take-over of land, should be decided by a responsible body at an appropriately high level (tehsil, district, state, national) including therein Panchayat representatives relative to the size and nature of the project. The matter should not be left to the bureaucratic agencies only. Here, we reiterate again our anxiety in the matter of proper

interpretation of public purpose. Further, the different laws bearing on the different provisions of the R&R Policy will require to be examined for consistence particularly with reference to PESA Act 1996 and, if necessary, reorientation. Lastly, a policy is as good as its faithful implementation. We lay great store by implementation.

The Land Acquisition Act

129. On the various grounds mentioned above, persuading us to scrutinize the matter more closely, the Land Acquisition Act 1894 could be called a draconian law, in as much as its provisions appear to be loaded against land-owners and "persons interested". Its 1984 amendment tended to soften its severity by the slightly expanded definition of "persons interested", i.e. by including those who have interest "in easements affecting the land". Further, its following features call for notice:

(1) Fundamentally, the ambit of "public purpose" remains an official preserve and past experience does not testify to its entirely restrained and discriminate application in the context of consequential expropriation of livelihood resources of tribals and non-tribals.

(2) It allows any officer or government's agents to enter upon, survey, set out boundaries of the land proposed to be taken, cut down and clear away any part of any standing crop, fence or jungle etc. merely on publication of a preliminary notification indicating the intent to acquire the land. Though such damage as may occur in the process is liable to be compensated, the actions permitted give the colour of high-handedness.

(3) Under section 11, after inquiring into the objections, the Collector has to give an award of "compensation which in his opinion should be allowed for the land" and "apportionment of the said compensation among all the persons known or believed to be interested in the land ...." Sections 23 & 24 state that the basis on which the compensation amount is to be arrived at would be the market value of the land on the date of publication of the preliminary notification under section 4. It should be realized that, in tribal areas, land transactions being few on account of low economic levels and anti-alienation laws, land prices in the market are usually depressed.

(4) The Act lays down a time-limit of two years from the date of publication of declaration under section 6 for making an award, failing which the acquisition proceedings lapse. In

the first instance, this keeps the affected persons and families in a state of suspense too long. Secondly, no time-limit has been prescribed for payment. In accordance with section 16, the Collector may take possession of the land after he has made the award under section 11, free from encumbrances. This may mean take-over of the land before payment of compensation, which, in fact, happens in many cases. Compensation amounts may be paid long afterwards. No concern is shown as to how the family will eke out a living in the interregnum, causing untold hardships. There should be a provision to the effect that possession may be permitted only after payment of compensation amount and receipt of R&R benefits.

(5) As per section 23 (1A), in addition to the market value of the award, the court shall, in every case, award an amount calculated at the rate of 12 per cent per annum on the market value of the land for the period commencing on and from the date of the publication of the preliminary notification to the date of award of the Collector or the date of taking possession of the land, whichever is earlier. Here also, the "person interested" is at a disadvantage. The interest payment should be from the date of preliminary notification to the date of payment of compensation, which may be later than the date of award of the Collector or the date of taking possession of the land.

130. A snag in the Act is that the "persons interested" have no voice whatever in deciding on the question of the justification and rationale of acquisition and ancillary matters. The authority vested in official hands may be exercised arbitrarily. Not unoften, the people have been rough shod. To counteract this tendency, the Provisions of the Panchayats (Extension to the Scheduled Areas) Act 1996 [PESA Act 1996] stipulates that:

> The Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before re-settling or rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State level.

Moreover, section 5 of the PESA Act says clearly that any provision of any law relating to Panchayats in force in the Scheduled Areas, which is inconsistent with its provisions can continue to be in force until amended or repealed or until the expiration of one year from the date on which PESA Act came into being. This implies that after 23 December 1997, all related laws have to be in

conformity with the PESA Act. Hence, the provisions of the Land Acquisition Act 1894 as amended in 1984, have also to be in tune with the letter and spirit of the PESA Act. In other words, no acquisition of land in Scheduled Areas should occur without consultation with the concerned Gram Sabha or the Panchayats at the appropriate level. It is understood that amendment of the LA Act is presently under the consideration of the Central Government. This should find a place in the amended LA Act. Amendments proposed to the LA Act have not been made available to the Commission; nevertheless, the following suggestions are offered for consideration :

(i) Since every citizen of the country has the fundamental right to reside and settle in any part of the country under Article 19 as also the right to livelihood under section 21 of the Constitution, as interpreted by the Supreme Court, decisions on displacement should not vest merely in the official, specially lower, hierarchal agencies of the State.

(ii) The horizon of "public purpose" should be demarcated clearly and restrictively, as its becoming the subject of unduly wide interpretation hurts tribals greatly.

(iii) Displacing projects may be acceptable only if "no-displacing" or "least - displacing" alternatives are not available.

(iv) Acceptance of the recommendations of the Gram Sabha or the appropriate Panchayats made in consonance with the PESA Act 1996 should be obligatory. This is in consonance with Article 16 of the ILO Convention 169 (though the Convention has yet to be ratified by India) which says: Where relocation of these (tribal) peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent.

(v) In terms of the Samata judgement of the Supreme Court, the State has to be considered a non-tribal when it acquires land for a non-tribal requisitioning body.

(vi) Compensation should be comprehensive i.e. for loss of livelihood, basic resources, habitation, eco-system etc. and the onus for making it to the project-affected persons should lie on the requisitioning organization directly or working through governmental functionaries.

(vii) Disbursement of compensation amount should precede possession of land.

(viii) Relief and rehabilitation should be made mandatory. Displaced persons and people affected by the project should not be asked to stake their claim individually.

(ix) The displaced persons should be given land for land. In this connection, attention is again invited to Article 16 of the ILO Convention. Its clause 3 is to the effect that, wherever possible, these peoples (tribals) shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist. Further, clause 4 says that when such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples should be provided in all possible cases with lands of quality and legal status equal to that of lands previously occupied by them, suitable to provide for their present needs and future development. When the peoples concerned express a preference for compensation in money or kind, they should be so compensated under appropriate guarantees.

(x) If land for land is not possible, they should be entitled to partnership (equity shares, share in profits etc.) in the public or private sector units (say in industries, mining, hydel fields) located in the acquired land.

(xi) If land is acquired in tribal areas for mining purposes, mining leases should be given to the displaced families. On expiry of the lease period, the land should revert to the original owner or owners.

(xii) The laws should ensure that compensation relates to replacement value and not merely market value.

(xiii) Only the High Court should have the appellate power and no appellate authority should intervene between the Collector and the High Court.

131. We have referred above to section 4(i) of the PESA Act 1996 which makes consultation with the Gram Sabha or the Panchayats at the appropriate level obligatory before making acquisition of land in the Scheduled Areas for development projects and before resettling or rehabilitating persons

affected by such projects in the Scheduled Areas. The implementation of this provision has to be monitored properly. We would like to place here, in juxtaposition, a provision of the Sixth Schedule of the Constitution i.e. Para 3(a) which spells the power of the district councils and regional councils to legislate on :

> (a) the allotment, occupation or use, or the setting apart, of land, other than any land which is a reserved forest for the purposes of agriculture or grazing or for residential or other non-agricultural purposes or for any other purpose likely to promote the interests of the inhabitants of any village or town :
>
> Provided that nothing in such laws shall prevent the compulsory acquisition of any land, whether occupied or unoccupied, for public purposes [by the Government of the State concerned] in accordance with the law for the time being in force authorizing such acquisition.

Thus, while the recent PESA Act allows land acquisition proceedings in the Fifth Schedule Areas only in consultation with the Gram Sabha or the Panchayats at the appropriate level, the five-decades old Sixth Schedule confers for the Sixth Schedule areas unbridled power on the State Government to acquire land over-riding the powers vested in elected autonomous district and regional councils of allotment, occupation, use or setting apart of land. The proviso reproduced above seems to have become anachronous. It is not difficult to imagine that it would have caused suffering to the people displaced on acquisition of land in the Sixth Schedule Areas. The autonomous district councils of the Sixth Schedule have been meant to be people-oriented bodies and consultation with them should democratize the Sixth Schedule.

The Coal Bearing Areas (Acquisition and Development) Act 1957

132. The Coal Bearing Areas (Acquisition and Development) Act 1957 [CBA (A&D) Act] seems to be a companion to the Land Acquisition Act 1894. Though it is marked by differences for meeting the contingencies of coal mining, its basic frame-work is similar to the latter. It is also oriented towards acquisition of land of existing prospecting and mining right-holders. A closer look reveals a slightly more authoritarian tilt in it than even in the LA Act.

133. In the critique of the LA Act 1894, we have expressed the view that on mere publication of preliminary notification, that is at the stage of mere notification and no decision, it is unfair to

deploy servants and workmen [as provided in clause (2) of section 4] for the purpose of digging or boring in the sub-soil and such other acts which cause damage to the land, and then provide for compensation later. Similar provisions are contained in the CBA (A&D) Act and call for the same comments. As per 11A of the LA Act, if the Collector does not make an award within two years from the date of publication of the declaration under section 6, the entire proceedings for the acquisition of the land stand lapsed. We are not happy with this provision, since it keeps the 'interested parties' in suspense for the long period of two years. The CBA (A&D) Act elongates this period in section 7 to a maximum of three years. This is even more iniquitous.

134. As per section 17 in the LA Act, in case of urgency the Collector has been empowered to take possession of any land needed for a public purpose on expiry of 15 days from the date of publication of notice under section 9(1); consequential steps have also been mentioned in the section. There is no doubt that such sudden action can inflict untold suffering and misery to the 'interested parties'. Sadly, a corresponding provision has been made in the CBA (A&D) Act.

135. In the LA Act, the Collector has the power under section 16 to take possession of the land when he has made an award under section 11; no other conditions have been inscribed. But section 12 of the CBA (A&D) Act calls upon "any person in possession of any land acquired under this Act to surrender or deliver possession of the land within such period as may be specified in the notice, and if a person refuses or fails to comply with any such notice, the competent authority may enter upon and take possession of the land, and for that purpose may use or cause to be used such force as may be necessary". In its authoritarian temper, the CBA (A&D) Act goes even farther than the LA Act 1894.

136. Other comments which we have made in the LA Act 1894 apply mutatis mutandis here.

137. We refrain from touching the topic of rehabilitation since our observations on this subject elsewhere in this chapter apply equally here.

138. We would, however, like to emphasize that most of the coal-bearing areas fall in tribal areas. Hence, we visualize that the tribal land-owners have to bear the brunt of the provisions of the CBA (A&D) Act. The experience is that sufferings do not end with acquisition of their land. After exhaustion, if the mining land is returned to the tribal, it is so dug-up and pock-marked that it is unfit for agriculture. Hence, though in name the lease may be for a temporary period, in actuality the tribal's loss is permanent. Hence, the measures contemplated in the CBA (A&D) Act are unjust. A humane approach is needed, even though the intended development may benefit a larger number of people than the number of "interested persons".

139. Finally and importantly, the contents of the provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 need to be juxtaposed with those of the CBA (A&D) Act. The former contains in its section 4 the following

(k) the recommendations of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory for grant of prospecting license or mining lease for minerals in the Scheduled Areas.

(l) the prior recommendation of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory for grant of concession for the exploitation of minor minerals by auction;

The provisions of the Panchayats (Extension to the Scheduled Areas) [PESA] Act of 1996 vintage is a special Act relating to the Scheduled Areas and Scheduled Tribes, while the CBA (A&D) Act is a general Act having been enacted in 1957. Further, the PESA Act in section 5 says clearly that any provision of any law relating to Panchayats in force in the Scheduled Areas, immediately before the date from which the Act receives the assent of the President, which is inconsistent with it can continue to be in force until amended or repealed by a competent legislature or other competent authority or until the expiration of one year from the date on which the Act received the assent of the President. It received the assent of the President on 24 December 1996. As such, the provisions of the CBA (A&D) Act need to be harmonized with those of the PESA Act. Specifically, the provisions of section 4 (k) & (l) of the PESA Act have to be treated as mandatory.

National Mineral Policy 1993

140. A general rough estimate is that about 80% of minerals are found in tribal areas, particularly in Scheduled Areas. It is not out of place to record that before the formation of Jharkhand State in 1999, South Bihar (presently the area of Jharkhand State) contributed a preponderant percentage to Bihar's receipts in the form of royalties, duties, taxes etc. As we have remarked in the note on the State of Jharkhand in Volume II of this report, Jharkhand State is an affluent State owing to royalties, duties etc. on minerals, possessing within its domain may be 40% of the country's mineral wealth. Similar is the case of tribal areas of Orissa, Chattisgarh, Madhya Pradesh, Rajasthan, Gujarat, Maharashtra. A large variety of minerals is found in this region like iron ore, coal, bauxite, kyanite, copper and manganese ores, asbestos, quartz, mica,

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chrome ore, lime-stone, dolomite, noble metals besides minerals required for electronic and other hi-tech industries.

141. The petrographic opulence has, however, not meant any degree of prosperity to the regions' population, predominantly tribal. On the contrary, it has, more often than not, brought suffering, misery and impoverishment. The mining operations could take place after the duress-evacuation of the tribal people from their homes and hearths. They have had to move away from their agricultural and forest lands, resulting in loss of livelihood. Mineral mining did not offer alternative employment as dignified as agriculture they were pursuing earlier. At the most, the able-bodied were taken on board often as unskilled labour, less commonly as skilled labour. Hence, the story of mining and mineral extraction in tribal areas has generally been a tragic story of forced displacement, loss of life-support systems and drift in life. We do not have reliable statistics to show the numbers which have been sacrificed thus on the altar of general or national development which, in other words, has meant economic development of the other sections of the society.

142. Like for the Land Acquisition Act 1894, the Coal Bearing Areas (Acquisition and Development) Act 1957, we need to look at the National Mineral Policy 1993 with a view to ascertaining what it calls for for mineral exploration and development. It says clearly that the best use should be made of the available resources through scientific methods of mining, beneficiation and economic utilization, besides laying down objectives, strategy and various other aspects. It does recognize the need for development of infrastructural facilities, regional development, rehabilitation of individuals including members of the weaker sections displaced on account of acquisition of land, orderly and systematic closure of mines to help workers and the dependent community rehabilitate themselves without undue hardship, prevention and mitigation of adverse environmental effects, reclamation and afforestation pari passu with mineral extraction etc.

143. In so far as provision of infrastructural facilities and regional development are concerned, the following extract from para 7.10 of the Policy is relevant:

> A major thrust needs to be given for development of infrastructural facilities in mineral bearing areas following an integrated approach for mineral development, regional development and also social and economic upliftment of the local population including tribal population.

144. Thus, the need for infrastructural and socio-economic development of the population has, no doubt, been recognized. But it lacks focus in implementation, so far as the tribal population is concerned.

145. In para 7.12 of the Policy, it has been mentioned that in grant of mineral concessions for small deposits in Scheduled Areas, preference shall be given to the scheduled tribes. It is a welcome provision. But it is not clear what 'small deposits' connote. This should be made clear and, importantly, enforced.

146. Para 7.16 relates to rehabilitation of displaced persons:

> Mining operations often involve acquisition of land held by individuals including those belonging to the weaker sections. While compensation is generally paid to the owner for the acquisition of his land, efforts shall be made to ensure suitable rehabilitation of affected persons especially those belonging to the weaker sections who are likely to be deprived of their means of livelihood as a result of such acquisition.

The policy does not ensure that rehabilitation of displaced persons will be undertaken as a mandatory measure. It only speaks of "efforts" in that direction. We have seen during the past half a century the havoc caused to the tribal people thrown out of their homes and hearths and rendered destitute. It is difficult to rely on the vague assurance of efforts at rehabilitation. In the first instance, tribal land acquired for mining should revert back to him in a healthy condition. Elsewhere, wherever the tribals are likely to be displaced, we have insisted that displacement should be regarded as a step of last resort and, in case it becomes essential, cast-iron modes of rehabilitation should be implemented. We suggest the same approach here too.

147. In para 7.13 relating to mineral development and protection of environment, it has been ruled that both these aspects have to be "properly coordinated to facilitate and ensure a sustainable development of mineral resources in harmony with environment". In the concluding sub-paragraph of this paragraph, it has been stated that "efforts would be made to convert old disused mining sites into forest and other appropriate forms of land use". In the first instance, the provision should be mandatory and tribal land should revert back to the tribal owner. Secondly, it is found that quite often land acquired from tribals and mined is, after extraction, left in a state unfit for either agriculture or habitation or any other fruitful use. It is necessary that the old disused mining sites be converted into forest or agriculture and into a state fit for human use otherwise.

148. In para 7.7, the need for review and upgradation of the existing facilities for basic and specialized training to ensure that adequately trained manpower at all levels is available for development of mines and minerals industries, has been emphasized. It overlooks the fact that the

existing local population in the mining areas, more commonly the tribal population, has not been given adequate attention in the matter of technical training for absorption either in the mining sector or in the mineral-based industry. The result is that the ST land-owners and landlords have been proletarianised and made menial, unskilled labour in the mining areas. The need is to plan and implement the training of these people well in advance of the establishment of the mines and industries with a view to their employment therein.

149. An important development needs to be taken cognisance of. In furtherance of the objectives of the National Mineral Policy, the Mines and Minerals (Development and Regulation) Act 1957, the Mineral Concession Rules 1960 and the Mineral Conservation and Development Rules 1988 have been modified. Some of the salient features of the amended legislation include removal of restrictions on foreign equity holding in mining sector companies registered in India, prescription of minimum period of twenty years and maximum period of thirty years for a mining lease, removal of thirteen minerals from the public sector list throwing them open for exploitation by private sector etc. These have serious implications for tribal areas and tribals. The apprehension is that profit motive may drive out the human dimension in the mining arena more and more.

150. On the whole, the mineral policy does take into consideration some facets which we feel are germane. But, it does not advert to specific measures to meet the specific requirements of such aspects. We hope that our observations above will receive due consideration for such action in respect of the policy and legislation as is necessary, in so far as the tribal population is concerned.

151. We would like to illustrate the predicament of the scheduled tribe people in mining areas by referring to their plight in Santhal Praganas division of the State of Jharkhand. Despite the Supreme Court Samata judgement which has restricted mining operations in Scheduled Areas through private tribal cooperatives only and despite petitions to the Ranchi High Court for stay on renewal of old and grant of new mining leases in the light of the judgement, grant of leases is reported to have continued apace. It is learnt that royalty revenues from Dumka district recorded a high of Rs.2.12 crores during 2002-03. The stone-quarry contractors and owners have mostly been non-tribals, while the land belongs to the tribals. The poor tribals have been made to sign affidavits according to which, in return for some cash, they hand over their land to the contractors. In most cases, the affidavits euphemistically say that the land is stony for which they seek help from the contractor to clear it of stones and make it cultivable. A lot of land is being taken over by quarry contractors through such private agreements, that are not only illegal as per the Santhal Praganas Tenancy Act 1949 (SPTA) but which also deny the owner a fair

compensation for the use of the land which is likely to become unfit for agriculture in a few years time. A concomitant fall-out is that the earth dug out of the quarries and mines is heaped on Gochar or common grazing land rendering it unusable in course of time. Thus, both private and common lands are being lost.

152. In so far as coal mining is concerned, flouting (a) the Samata ruling, (b) section 4(k) & (l) of the PESA Act and (c) the provisions of the SPTA, mining operations have been carried on and, indeed, more are in the offing as the central block of the Pachwara project envisages 44 years of open-cast mining to extract 289 million tones of coal bringing to the Jharkhand Government an annual royalty of Rs.100 crores. As usual, the displacement of tribal families is apprehended to bring in its train untold misery and suffering.

Forest Land

153. In addition to the loss of agricultural and habitational land, tribals have also been losing forest land. According to one estimate, while 187 tribal districts in the country span 33.6% of the total geographical area of the country, the forest cover therein constitutes 60% of the total forest cover in the country. In other words, the tribal areas provide the bulk of forest cover boosting the average. A balanced perspective would dictate that pushing tribals out of forests for further forestry operations therein may neither be equitous from the human point of view nor make good economics. There are uncultivable and degraded cultivable lands elsewhere in non-tribal areas which demand urgent forest cover both from the production and ecological angles. Efforts need to be made in that direction. We revert to this topic in our chapter on forest.

Some suggestions and recommendations

154. We have reviewed in the foregoing pages the situation of alienation of tribal land in general in the country and with reference to specific states in respect of which we have been able to obtain materials. The analysis which we have made leads us, very broadly, to the following suggestions:

(1) The laws legislated for prevention of alienation need to be subjected to review in every state both at present in the context of the current circumstances and from time to time as they arise in future. As will be seen, we have made specific suggestions in respect of states we have reviewed. These may be taken into consideration.

(2) In our view, the laws should be made more stringent than what they are today. Some state laws contain the provision that transfer of tribal land to a non-tribal should take place with the sanction of the competent authority. The competent authority usually designated is the District Collector. Quite often, the power of sanction in this respect is delegated to an SDO by the Collector. In our experience, as we have already remarked, sometimes the sanctions are issued as a matter of course, without adequate application of mind entailing serious repercussions to the tribal. Hence, we suggest that the permission-granting authority for transfer of land should vest in the State Government.

(3) We feel that, generally speaking, the laws as they exist, imperfect though they may be in certain particulars, have not been implemented adequately and in the right spirit. Whereas the implementers should have applied them to deliver redress to the aggrieved ignorant and unlettered tribal land-owners for whom the instruments were made, the balance has, not infrequently, tilted against them. The imperative need is to orient the administration in tune with the underlying intent, purpose and spirit of the legislation.

(4) Apart from the executive, the role of judiciary is vital. In States like Andhra Pradesh, separate courts have been constituted to deal with the tribal land alienation cases in Scheduled Areas. At the ground level, Sub-deputy Collectors function as presiding officers of these courts. Through the result has not been encouraging, the measure can yield dividends. In the first instance, the concerned personnel, should be properly trained and motivated. Secondly, they should be given a good grounding of administrative, financial and judicial subjects and knowledge. Thirdly, the supervisory level should be strengthened. In this connection, we would particularly like to suggest that, in the judicial field, a high court judge should be appointed for exclusively dealing with and supervision of legal work pertaining to scheduled tribes in States having large concentration scheduled tribe population.

(5) It has been found that a sizeable ST population lives outside the Scheduled Areas in bigger states like Andhra Pradesh, Gujarat, M.P, Maharashtra and Orissa. They are as vulnerable to exploitation and need protection as their brethren living within Scheduled

Areas. We feel that the question of extension of protection of relevant laws to them should be taken up.

155. In recapitulating, we make our recommendations as follows.

(1) The paramount objective should be to ensure no further erosion of tribal land holdings. Steps should be taken for restoration of land which has been unduly lost.

(2) There should be a general prohibition on all transfers, whether by sale, mortgage, gift, or lease or on any ground of agreement or contract entered into by tribals in favour of non-tribals, without the permission of the State Government, who should act in consultation with the Gram Sabha and Gram Panchayat. Copies of the State Government orders should be sent to the Gram Sabha and the Panchayats.

(3) The Andhra law places ban on registration of land transfer documents except where the person presenting the document furnishes an affidavit by the transferee (in the form where prescribed) to the effect that the transferee is a member of a scheduled tribe or a registered society composed solely of members of scheduled tribes. This provision should be incorporated in all states laws.

(4) In a case where transfer of land from a tribal to a non-tribal is processed in accordance with law, it should be ensured that the resultant depleted tribal holding does not fall below a viable (un-irrigated and irrigated) holding limit. The Orissa law mentions two acres in the case of irrigated land and five acres of un-irrigated land.

(5) Transactions of land transfer have been taking place between members of scheduled tribes without any legal restrictions. We feel that even where a transfer takes place between one scheduled tribe and another, it should be subject to the same conditions, namely that the resultant depleted holding of the transferor does not fall below the viable holding limit, depending on whether it is irrigated or un-irrigated land.

(6) The State Governments should, through executive instructions, discourage grant of official permission routinely for transfer of tribal lands to non-tribals and it should be allowed strictly in bonafide cases.

(7) In the Andhra Pradesh, MP and Orissa laws, until the contrary is proved any immovable property situated in the Scheduled Areas and in possession of a person who is not a member of scheduled tribe, is to be presumed to have been acquired by the person or his predecessor in possession through transfer made to him by a member of scheduled tribe. Such person has been made responsible for production of evidence of valid transfer on pain of penalty. Other states may consider.

(8) The provision in some state laws that the Deputy Commissioner or Collector should have the power suo moto or at the instance of the aggrieved tribal, to institute enquiries and restore possession of the land, making this provision applicable to all transfers of land of tribals to non-tribals with retrospective effect from 26 January 1950, may be considered for adoption by other states.

(9) The M.P. and Chattisgarh Land Revenue Code 1959 lays down in Section 170-B(2A) that if a Gram Sabha in a Scheduled Area finds that any non-tribal is in possession of the land of an ST without lawful authority, it shall restore possession of such land to the original ST land-holder. This provision is in accordance with Section 4(m)(iii) of the PESA Act 1996. Should the Gram Sabha fail to restore the possession, it has to refer the matter to the SDO who has been enjoined to restore the possession within three months of the date of receipt of the reference. This is a wholesome provision, flowing from the PESA Act and should be adopted by the States. The Orissa law goes only to the extent of saying that the competent authority has to make a report to the concerned Gram Panchayat about the order of ejection and restoration of the land to the original owner, or reasons for failure, if that be the case. This much can only keep the Panchayats informed and may not suffice. The M.P. and Chattisgarh LR Code has wholesome provision and may be adopted by other states.

(10) Reports indicate and our field visits confirmed evidence of manipulation of land records at the time of settlement operations or at other times, without the knowledge of the original tribal owner. Further, taking advantage of the

ignorance of tribals, their clear and correct status regarding land is, not unoften, not entered in the land records. To meet the contingency, survey and settlement operations should be conducted by the State Governments regularly and at reasonably short intervals, say within 10 to 15 years, preceded by wide publicity in the tribal areas. The record of rights and other related books and papers should go on the internet to enable the public to scan them.

(11) Experience shows that an unconscionably long time elapses between a court judgement in favour of an ST and actual hand-over of the land to the ST owner, enabling the dispossessor to employ subterfuges to delay matters and go in for appeal. The state laws should clamp a time-frame, say two or three months, within which possession should be given over to the ST land-owner.

(12) The ignorance and innocence of tribals are exploited by clever non- tribals dragging them into prolonged litigation. The STs ill-afford it in terms of knowledge, time and money and, as such, they are often losers. Some State Governments have made provision for legal aid to tribals. But its competence and timeliness are open to doubt. The State Governments should ensure competent legal aid accessible timely to tribals at all stages of litigation.

(13) As recommended by the Dhebar Commission, there should a bar against suits or applications against any order made by a Deputy Commissioner or a Collector. There is a tendency for non-tribal transferees to take recourse to hierarchal courts of law as dilatory tactics. The Orissa law provides appeal only to one revenue court. This provision may be considered for being incorporated in other state laws, if not already existing.

(14) Normally, jurisprudence places reliance on documentary evidence. Tribal culture is oral culture. Tribals are not good at obtaining and preserving records. Quite often, the administration does not take care to convey documents to the respective tribal land-holders. As such, the courts would have to be advised to consider credibility of tribal oral evidence in Scheduled Areas.

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(15) We have referred earlier to the novel method of land appropriation, particularly prevalent in Jharkhand, whereby non-tribals marry ST women gaining access to tribal land, specially on the strength of the orders of the Ranchi High Court to the effect that children born out of such union are STs. Requisite measures to defeat ills arising in this context need to be taken either by appeal to higher judiciary or legislation.

(16) The anti-alienation law should be got translated in regional languages and disseminated widely in tribal areas.

156. Since land is one of the two most crucial and vital resources of tribals, their economy being predominantly limited to land and forest, we feel called upon to suggest recourse to some constitutional measures. In the first instance, the possibilities of inadequate or unsuitable laws being framed or apposite laws being wrongly interpreted or indifferent implementation of appropriate laws have to be kept in view. We have cited the case of Kerala in the pages of this chapter indicating how, for several years, the Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act 1975 could not come into force for want of framing of rules. The amended Act of 1999 has not come into operation yet, on account of litigation. In the context of such and other hurdles, some device is needed to place matters on right track. At least in two places viz. in Article 339(2) and para 3 of the Fifth Schedule, the Union Government has been entrusted the responsibility of giving directions to the States in ST interests. So far as we are aware, this executive power has been used sparingly, if at all. It appears to us that its use in the matter of land resource would be quite legitimate, should a situation of jeopardy of tribal land resource arise.

157. It is not generally remembered that the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 deals with offences committed by non-STs on STs. The following extract is relevant:

3(i) Whoever, not being a member of a scheduled Caste or a Scheduled Tribe –

xxx xxx xxx xxx xxx

(iv) wrongfully occupies or cultivates any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe or gets the land allotted to him transferred;

(v) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water;

xxx xxxx xxxx xxxx xxxx

shall be punishable with imprisonment for a term which shall not be less than 6 months but which may extend to 5 years and with fine.

The difficulty arises from the fact that since little knowledge exists of this Act, hardly any use is made for its appropriate application. It is felt that in case the offenders are punished in accordance with this law, it will serve as a serious deterrent.

158. It has been generally observed that the objectives of several land reforms enactments have been frustrated, inter alia, by indiscriminate and unduly long stays under Article 226 of the Constitution. In Scheduled Areas, to thwart implementation of the provisions of anti-alienation laws, the better-off, deeply entrenched exploitative elements approach High Courts under Article 226 of the Constitution and obtain long stay orders. Further, when a decision is handed down in regard to a provision of anti-alienation law, the same piece of land is made the subject matter of dispute under some other Act or provision and another stay order is obtained. These are legal tactics resulting in enormous delays in cases where tribals obtain favourable decisions in lower courts, neutralizing the effectiveness of the protective legislation. In one case, the Andhra Pradesh High Court granted a stay not in regard to one piece of land or a particular village, but a blanket order was passed covering about 50 villages in which numerous persons had been coercively impleaded. The result was that the land of the petitioners could not be touched under any regulation or Act. These facts lead to the question whether it is feasible to amend the Constitution for preventing courts from prolonged adjudication on anti–land alienation legislation.

159.1. The question as to whether the authority of the High Court in the matter of tribal land alienation cases should not be abridged in order to fulfill the objectives of the Fifth Schedule requires consideration. Two alternatives are available: (a) inclusion of the protective legislations in the Ninth Schedule of the Constitution (b) amendment of the Constitution to suitably recast Article 226 of the Constitution.

159.2. In so far as the alternative of the Ninth Schedule is concerned, even on its adoption land alienation may still remain the subject matter of a High Court under Article 226 of the Constitution, since the inclusion only ensures that the validity of the legislation is not questioned on the ground that it affects fundamental rights. But under Article 226 the jurisdiction of the High Court is not confined only to issues relating to or affecting fundamental rights; it extends to "and for any other purpose". Thus, mere inclusion of protective enactments in the Ninth Schedule of the Constitution may not help as litigation may be launched for myriad contentions, intrinsic or extraneous. Further, amendment of Article 226 may be beset with complications as numerous other issues may fall within the purview of the words quoted.

159.3 The question arises whether intervention of the Fifth Schedule can be sought to place a ban on any person from invoking a High Court for writ under Article 226 of the Constitution. Two questions arise in this context. First, whether it is possible to limit the power of the High Court in this regard. The answer lies in the understanding that the suggestion is to curb the right of the individual to approach the Court indiscriminately and not the power of the Court itself given to it under Article 226 of the Constitution. This view is supported by the observation of the Supreme Court in the MISA case wherein they stated that by placing restrictions on individuals, the power of the High Court is not curbed. The measure is directed only against an individual. Secondly, in its plenary amplitude, the Fifth Schedule enables such a step, full and proper. For, Para 5 of the Fifth Schedule relating to law applicable to Scheduled Areas opens with the words "notwithstanding anything in the Constitution......". This gives the authority to the Governor, in consultation with the Tribes Advisory Council, to legislate on tribal land, particularly in the context of clause (a) of Para 5 which enables the Governor to make regulations to prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in Scheduled Areas. Court rulings to the effect that the words "notwithstanding anything in the Constitution..." empower the executive widely and support this suggestion.

160. Prone to euphemistic usage, the state must interpret "public purpose" in acquisition of land not only equitably but also restrictively. For more than a century, its unrestricted application has led, more often than not, to harrowing experience for the common mass. Whereas Article 21 in the chapter on Fundamental Rights in the Constitution guarantees the right to livelihood [as interpreted by the Supreme Court in the Narendra Kumar vs. the State of Haryana IT (1994) 2 SC 94], and Article 39 in the chapter on Directive Principles of State Policy enjoins on the State to direct its policy towards securing to the citizens adequate means of livelihood, the state land acquisition has brought within its trail displacement of millions of tribal people, loss of the

means of their livelihood and disruption of their economic and social life. Apart from the constitutional imperatives, the basic question is moral elongating into human rights: Is it ethical on the part of the state to inflict sacrificial impoverishment on one section of the people for the sake of economic advancement of some other sections? In our view, the proposal for establishment of any project involving ousting of village and tribal communities, dismantling life and its support-systems and destroying their culture, values, identity and ethos, should be given the most earnest and careful consideration. Even the most well-conceived plan of rehabilitation cannot match the agony and misery of disintegration of tribal communitarian living and loss of life-support and eco-systems. We cannot exaggerate the importance of this issue. Depending on the extent of area involved, deliberative hierarchical authorities, including the Panchayat bodies, should be set up. They should weigh each proposal carefully, particularly in terms of human costs involved, for giving clearance.

161. A related question is whether industrialization based on the availability of natural resources of tribal areas could be effected with concomitant benefit to the tribal population of those areas. One view is that, with accelerating industrialisation, benefits will percolate tribal areas and tribal people automatically. Our experience is that, generally, that does not happen. On the one hand, they lose their land and other resources and, on the other, they are denied employment in the new enterprises except in the unwanted unskilled and menial jobs. While subscribing to the view that both underground and overground immense wealth of these areas cannot lie untapped for a length of time, we would like to call for equitable shared development experience as well as its equitable shared fruits.

162. In this context, the land-mark Samata Supreme Court judgment (1997) is relevant. The tribals in Borra Panchayat in Vishakhapatnam district of Andhra Pradesh, the denizens of hills of the Andhra Agency areas for centuries, were denied title deeds relating to their lands. But mining companies were given leases since 1960s on tribals' lands and forest. A public interest litigation was filed in the Andhra Pradesh High Court in 1993 by Samata, an NGO, working in the area, on the ground that Government also was a 'person' and, as such, could not lease out tribal lands in a Scheduled Area to non-tribals. In 1995, the High Court dismissed the case. In 1997, the Supreme Court declared that grant of the mining leases in Scheduled Areas militated against the Andhra Pradesh Scheduled Areas Land Transfer Regulation 1959 and, hence, the leases were null and void. The State Government were directed to issue title deeds to tribals in occupation of the land. More important, it was ruled that government as a 'person' did not have the right to grant mining leases of land in Scheduled Areas. However, the Andhra Pradesh State Mineral Development Corporation or

a cooperative of tribals could take up mining activity in the Scheduled Areas without infringing provisions of the Forest Conservation Act 1980 and Environment Protection Act 1990. In reference to the PESA Act 1996, the Supreme Court reiterated the competence of Gram Sabhas to safeguard and preserve community resources, upholding the right of self-governance of tribals. They called for allocation of 20% of net profits flowing out of mining operations by the State as a permanent fund for establishment and maintenance of water resources, hospitals, transport facilities like roads. Thus, the Court was translating constitutional provisions in favour of STs contained in its Fifth Schedule and elsewhere into promotion of their social, economic and political empowerment.

163. There is need for a strategy that enables both the tribal people and the tracts they occupy to develop step-in-step. We feel this can happen only if the strategy, however big or small in concept and intent, is worked out by the local self-governing bodies -- Panchayats hierarchies that we have spoken of in an earlier paragraph -- in concert with the planners. The terms and provisos should largely be set by the former. For instance, they may lay down the tempo of industrialization which suits them; it may be made compatible with the competence and capacity of STs' own organizations (like cooperatives) as well as the pace of the vocationalisation of the local youth to enable their participation. Another condition they might specify is that the local people be made partners in the ventures projected, with explicit rate of accrual to them of annual returns. A third may relate to limitation on lease periods along with the proviso that, on expiration of the lease, the land should revert in a usable form to the original owner or his successors-in-interest. Doubtlessly, a variety of situations can spawn a large variety of terms and conditions which may satisfy both the interest of the people and the needs of industrial development. In any event, remote state administrations enforcing their own agenda of development with their own set of rules and regulations spell arbitrariness, development failure and graft.

164. Lastly, we find that the subject of land resources is being dealt with by the Ministry of Rural Development (MRD) including land alienation, land acquisition, laws, enactments etc. Being the subject-matter of Ministry, normally these items, despite some part relating to STs, should continue to fall within the province of MRD. However, three facts are relevant. One, a separate Ministry of Tribal Affairs has come into existence since 1999. Second, land is the single most important resource of the tribal, he is highly vulnerable in regard to it and, in fact, land has been passing out of his hand. Thirdly, the general perception is that unrest in tribal areas could, in no small measure, be related to erosion of the land resource. As such, it may be in the fitness of things that the Ministry of Tribal Affairs should handle the subject and should be made responsible for all aspects and issues relating to tribal land particularly pertaining to anti-alienation laws. We are quite aware that this may

be an unusual recommendation, as a subject should normally be dealt with by the subject-matter department or ministry and the nodal department or ministry should have a coordinative liaison with the subject-matter authority. Nevertheless, we are constrained to make the recommendation in view of the special circumstances.

RECOMMENDATIONS

1. In many tribal societies, both community ownership and individual ownership of land exist side by side. While in past, community ownership may have been the dominant mode, presently private holdings seem to be preferred. The community land may comprise of common land, grazing land, wooded tracts, service tenures, religious lands, burial land, commemorative land etc. Statutory laws should accord with customary laws.

2. Land reforms enacted by the state hardly resulted in ceding lands to tribals for various reasons, including poor land records maintained in the Zamindari areas and manipulations of unscrupulous lower revenue officials. As per figures available, as in March 2002, of the 73.73 lakh acres declared surplus and 65.01 lakh acres taken possession, the land allotted to 8.3 lakh ST beneficiaries was 7.79 lakh acres, being disproportionately small as compared to what they should have been allotted considering their land-holding status. Further, of the 14.7 crore acres distributed under the programme of distribution of Government land, the quantum settled on tribals is not known. [Para 10]

3. The 44th round of NSS conducted in 1988-89 showed that, at the all-India level, the average holding of the tribal household was 1.15 acres and that owned by a non-tribal household was 1.16 acres, belying the general presumption that an average tribal holding is larger than that of a non-tribal holding. The tribal land is generally slopy and rocky with a thin soil cover. Observations generally conform to the above presumption. Further, the percentage of landless households among tribals, according to the NSS, was higher than among non-tribals, the respective figures being 20.5% and 16.3%. [Para 13]

4. The NSS estimates showed that 46% of the rural tribal households earned a major share of their livelihood from self-employment, while 47% made a living from wage-employment as rural labourers. Hence, land is their main-stay, directly as cultivators and indirectly as agricultural labourers. [Para 17]

5. Even in British times, several provincial Governments took a hand in legislating laws to prevent alienation of tribal land. Presently, nearly all states having a sizeable concentration of ST population have made laws to prevent alienation of tribal land. [Paras 22-24]

6. A look at the figures furnished by the Ministry of Rural Development on court proceedings in regard to land alienated, restored etc. in the different states of the country indicated in Table 4 [Para 25] in reply to the Commission's Questionnaire shows that roughly 50% of the cases filed by the STs in courts have gone in their favour. The general impression is that STs resort to legal action only in case of extreme necessity and in genuine cases and, from that point of view, the results of court cases seem rather discouraging. Apart from that, we feel that a large number of cases of ST land alienation occur outside the legal orbit. As such, the Table reproduced from the records of the Ministry of Rural Development does not furnish a full picture. The states need to look into the matter carefully. [Paras 25-27]

7. The following issues arise in respect of the laws of the concerned states. Requisite action may be taken as necessary.

Andhra Pradesh: Protection of LTR is not available to members of scheduled tribes outside the Scheduled Areas. The bigger and economically stronger tribal groups have been able to obtain benefit of the laws, but not the smaller and weaker tribes. Pattas should be assigned on a permanent basis. Wherever possible, advantage of the Agency Rules of 1870, which permit oral testimonies and summary trial, should be taken. [Paras 28-31]

Gujarat: The alienated tribal land should be restored removing the bar of limitation. Land in possession of a non-tribal may be presumed to have been acquired by transfer and the onus of proving it to have been legally acquired should rest on the non-tribal concerned. Special attention should be paid to incidence of land alienation around industrial towns and growing urban centres. [Para 40]

Jharkhand: The interpretation of the High Court that surrender of land within the meaning of section 46 of the CNT Act is not a transfer, needs to be looked into. Reference section 20(2) of the SPT (SP) Act 1949, the suggestion that the application for registration of transfer should be accompanied by an affidavit of the transferee to the effect that he is a member of a scheduled tribe, may be considered. [Paras 41-48]

Kerala: According to the Act 31 of 1975 as amended in 1999, on restoration of immovable property of an ST, he is required to make payment of the actual amount of consideration received by him at the time of transfer plus an amount determined for improvements effected by the transferee. Generally, such a demand is not made on the

ST transferor, as the transfer is regarded as illegitimate. The Act allows transfers between 1960 and 1986 of ST land not exceeding two acres to a non-ST and its indefinite retention by a non-ST. Considering that most STs in Kerala are either small or marginal land-holders or are landless, this is hurtful. In any event, the law is presently inoperative, as it is sub judice in the Supreme Court. We shall watch the proceeding with interest. The State has determined about 22,000 persons as landless tribals. High priority should be accorded to endowing land on them if possible or, in the alternative, engaging them in self-employment. [Paras 59-65]

M.P. & Chattisgarh: The provisions of the M.P. Land Revenue Code 1959, applicable to both the states, seem satisfactory. In fact, the Code is the only one among the various state anti-alienation laws, which contains reference to Gram Sabha for its role in the matter of restoration of alienated tribal land, co-related to section 4(m)(iii) of the PESA Act. The only snag is that it omits the role of other panchayats i.e. the Gram Panchayat, the intermediate Panchayat and the Zilla Panchayat. We have commended the "Bhoo Adhikar Avam Rin Patrika" of M.P. and "Kisan Kitab" of Chattisgarh, as examples for other states to follow. [Paras 66-76]

Maharashtra: The State has three chief laws i.e. Maharashtra Land Revenue Code, Tenancy Laws (Amendment) Act 1974 and the Maharashtra Restoration of Land to Scheduled Tribes Act 1974. It will be desirable to make one consolidated law incorporating the various aspects contained in the three laws. Secondly, it is not clear whether the Maharashtra Land Revenue Code relates to only period April 1957 and July 1974 or extends to later period also. Thirdly, in certain cases, at the stage of restoration, the tribal transferor has to make payment for improvement carried out in the land by the transferee. The laws of some other states do not call for such payment. The Maharashtra Government may consider omitting the condition of compensation by the tribal transferer. [Paras 77 – 79]

Manipur: Since land survey work has been taken up in some districts and has yet to be taken up in some other districts, the following three aspects may be kept in view. First, the individual farmer should be enabled to make investment for land improvement and higher production; secondly, the credit should be legally and administratively available thirdly, there should be general prohibition on transfer of tribal land to a non-tribal without permission of the Deputy Commissioner or such other authority as the State Government thinks fit. [Para 80]

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Orissa: Section 3A (3) of Orissa Regulation 2 of 1956, as amended, escribed that the competent authority has to make a report to the concerned Gram Panchayat about the order of ejection of unauthorized occupation of a tribals' immovable property. This is comparable to the recent amendment of M.P. Code. However, reference to Gram Sabha and other Panchayats is lacking. Again, as in the M.P. Code, a non-ST has to explain how he came in possession of agricultural land in a Scheduled Area between October 1956 and August 2002. Otherwise welcome, the moot point is why the provision has been confined to agricultural land. The example of Andhra Pradesh Regulation stipulating that a certificate by the transferee that he is a member of a scheduled tribe community should accompany transfer documents for registration, may be considered by the State Government. Only fine as a punishment has been prescribed in section 7 of the 2002 Amendment Act for contravention of the provisions of the Regulation and continued unauthorized occupation of the property; imprisonment as a punishment may be considered. [Paras 83 - 92]

Rajasthan: The ban on grant of mining leases for masonry stone was imposed recently, but after extending the current leases in favour of non-STs for 20 years. This is prejudicial to tribal interest and should be reviewed. While, on the one hand, the Rajasthan Tenancy Act does not permit transfer of tribal land to non-STs, the rules for urban areas make it legally possible for all land-holders (STs and non-STs alike) to convert their agricultural land into residential and commercial land and sell it to third party, nullifying the effect of the Rajasthan Tenancy Act. The State Government might look into it. [Para 93 - 97]

8. The generally understood causes for alienation are ignorance of tribal people, coercive and forcible occupation of tribal land by non-tribals, fraudulent means adopted by non-tribals for transfer, manipulation of land records to the adverse interest of tribals, devious and prolonged litigation, rejection on flimsy and doubtful grounds of restoration petitions etc. [Paras 90-95]

9. As in the rest of the country, in tribal areas i.e. both Scheduled Areas and non-Scheduled Areas, urbanisation has been taking place at a rapid rate during the past two or three decades. Due to the twin processes of industrialization and urbanization related to concentration of natural resources like land, minerals, forest, water etc., legal and illegal alienation of tribal land in urban areas has increased. Surprisingly, Rajasthan rules permit it, though rather deviously. In Jharkhand, urban land mafia has been active. Firstly, the states in which Scheduled Areas anti-land alienation laws are applicable to urban areas also, should

implement them stringently. Secondly, where such laws have not been brought into operation in urban areas steps should be taken therefor. A law based on the recommendations of the Bhuria Committee relating to urban municipal bodies should be enacted. Destitution of tribals should be stemmed.

10. In the Scheduled Areas of Rajasthan, lands converted from agricultural to residential and commercial categories under the Rajasthan Land Revenue Allottment, Conversion and Regularisation of Agricultural Land for Residential and Commercial Purposes in Urban Areas Rules 1981 and the Rajasthan Land Revenue Conversion of Agricultural Land for Non Agricultural Purposes in Rural Areas Rules 1992 should be subject to the same restrictions as are applicable under Rajasthan Tenancy Act1955.

11. Though estimates vary, the Tenth Plan document of the Planning Commission quotes the figures of 8.539 million tribals as having been displaced on account of acquisition of land for various development projects i.e. 41% of all displaced persons between 1951 and 1989. ST population in the country is about 8%.[Para108]

12. Since no reliable records of tribal land acquired exist, steps should be taken to prepare a reliable data-base. In this respect, figures of tribal land acquired with a break-up for the purposes acquired, should be obtained from the districts and compiled at the state headquarters. The state level statistics should be furnished to the Centre for maintenance of corresponding record at the national level.

13. The interpretation of "public purpose" should take into consideration the views of the party or parties which suffer the application of the Land Acquistion Act 1894.

14. Land acquisition should be strictly need-based in the context of preference, as a matter of policy, for "no-displacement" and "least displacement" alternatives. The decision for location of a project situated in a tribal area should be entrusted, in lieu of just official agencies as at present, to bodies constituted at appropriately high levels at tehsil, district, state, national tiers, including therein Panchayats representatives, relative to the size and nature of the project.

15. High priority should be given to allotment of land for land to displaced tribal families. Socio-cultural community relocation should be regarded as indispensable for tribals. [Paras 116 and 117]

16. **The Land Acquisition Act needs to be amended in the light of suggestions made by us. Further, its provisions should be tailored to the requirements of the PESA Act 1996. [Para 119]**

17. **The Samata judgment should be respected in acquisition proceedings in Scheduled Areas.**

18. **The provisions of the proviso to Para 3(a) of the Sixth Schedule relating to acquisition of land by State Government in the tribal areas, defined in Article 244(2), should be re-oriented to accord with the spirit of the provisions of the PESA Act. [Para 120]**

19. **Similarly, the provisions of the Coal Bearing Areas (Acquisition and Development) Act 1957 and National Mineral Policy 1993 should be harmonized to conform to the PESA Act 1996. We have suggested other amendments also. [Para129-141]**

20. **All steps necessary should be taken to ensure that the tribal is not deprived of his land. Briefly, our recommendations are as follows.**

(i) **It should be ensured that there is no further erosion of tribal land holdings. There should be a general prohibition on transfer of tribal land to a non-tribal, except with the permission of the State Government. Consultation with the Gram Sabha and Gram Panchayat should enable the State Government to take a proper view in each case. Copies of the orders of the State Government should be sent to the Gram Sabha and Panchayats. Steps should be taken for restoration of land already lost. Existing anti-alienation land laws should be stringently implemented.**

(ii) **The anti-alienation land laws should be subjected to review from time to time for amendments, as necessary. Our specific suggestions in respect of states may be taken into consideration.**

(iii) **Separate courts should be established in the Scheduled Areas to deal with cases of tribal land alienation, as done in Andhra Pradesh. The presiding officers and other personnel should be properly trained and motivated. The supervisory level should be strengthened. A high court judge should be appointed for exclusively dealing with and supervision of legal work pertaining to scheduled tribes in states having large concentration of ST population.[Para 154(4)]**

(iv) A sizeable ST population living outside Scheduled Areas in bigger states like Andhra Pradesh, Gujarat, Madhya Pradesh, Maharashtra and Orissa, also is vulnerable to exploitation and needs protection. The question of extension of protection of relevant laws to them should be taken up. [Para 154(5)]

(v) There should be a ban on registration of land transfer documents except when accompanied by an affidavit of the transferee to the effect that the transferee is a member of a scheduled tribe or a registered society composed solely of members of scheduled tribes. [Para 155(3)]

(vi) In case where transfer of land is processed in accordance with law, it should be ensured that the resultant depleted holding does not fall below a viable holding limit. [Para 155(4)]

(vii) Until the contrary is proved, any immovable property situated in Scheduled Areas and in possession of a person who is not a member of a scheduled tribe, is to be presumed to have been acquired by the person or his predecessor in possession through transfer made to him by a member of a scheduled tribe. Such person has to be made responsible for production of evidence of valid transfer on pain of penalty. [Para 155(7)]

(viii) Land records should be updated regularly at periodic reasonably short intervals. The status of tribals should be entered in the land records correctly i.e. in accordance with the land laws. Land data should be computerized for wide accessibility.

(ix) Ways and means have to be devised to ensure that tribals are not dragged into prolonged expensive litigation. There should be one appellate stage. Competent legal aid accessible timely to tribals at all stages of litigation should be provided.[Para 155(13)]

(x) Possession of land back to the tribals should be legally ensured within a specified time-frame, say two to three months.[Para 155(11)]

(xi) The possibility of investing tribal oral evidence in courts with credibility may be considered. [Para 155(14)]

(xii) Specious methods to gain control of tribal land by non-tribals made possible through marriage with tribal women need to be discounted by appropriate methods. [Para 155(15)]

(xiii) The letter and spirit of the PESA Act 1996 should permeate anti-alienation laws and other laws in the way that Madhya Pradesh Land Revenue Court 1959 provides for involvement of the Panchayats.[Para 155(9)]

(xiv) The anti-alienation laws should be got translated in regional languages and disseminated widely in tribal areas.[Para 155(16)]

21. As per the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, any non-ST who wrongfully either occupies or cultivates any land belonging to a member of a Scheduled Tribe or gets land allotted to such member transferred to him, or wrongfully dispossesses the member of the Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water is liable to imprisonment for a term not less than six months up to 5 years as well as with fine. Little application has been made of this provision. It could be resorted to as often as necessary and could serve as a deterrent.[Para 157]

22. Intervention of the Fifth Schedule should be sought to place a ban on any person invoking a High Court for a writ under Article 226 of the Constitution in tribal land alienation cases. This would enable curb the right of the individual to approach the Court indiscriminately without abridging the power of the Court itself under Article 226. This view is supported by the observation of the Supreme Court in the MISA case wherein they stated that by placing restrictions on individuals, the power of the High Court is not curtailed.[Para 157]

23. We recommend that the subject of tribal land, Particularly in respect of alienation, should be handled by the Ministry of Tribal Affairs, instead of by the Land Resources Department of the Ministry of Rural Development for the reasons we have cited in the report.[Para 164]

Annexurel

State-wise Percentage of Scheduled Tribes and total Population Below Poverty Line For 1993-94 and 1999-2000

Sr.No.	States	1993 - 94				1999 - 2000			
		Rural		Urban		Rural		Urban	
		STs	**All**	**STs**	**All**	**STs**	**All**	**STs**	**All**
1	2	3	4	5	6	7	8	9	10
1.	Andhra Pradesh	25.66	15.92	46.68	38.33	23.82	11.14	44.99	26.53
2.	Assam	41.44	45.01	7.11	7.73	38.73	40.20	2.70	7.47
3.	Bihar	69.75	58.21	35.76	34.50	59.68	44.22	39.47	32.95
4.	Gujarat	31.20	22.18	35.47	27.89	29.11	13.17	36.66	15.59
5.	Harayana	41.55	28.02	0.00	16.38	--	8.27	--	9.99
6.	Himachal Pradesh	63.94	30.34	0.00	9.18	5.73	7.94	--	4.63
7.	Karnataka	37.33	29.88	62.05	40.14	25.49	17.36	51.37	25.25
8.	Kerala	37.34	25.76	1.08	24.55	24.20	9.38	--	20.27
9.	Madhya Pradesh	56.69	40.64	65.28	48.38	56.26	37.09	52.59	38.54
10.	Maharashtra	50.38	37.93	61.06	35.15	43.56	23.82	42.98	26.91
11.	Orissa	71.26	49.72	64.85	41.64	73.93	48.13	59.59	43.13
12.	Punjab	27.00	11.95	0.00	11.35	17.99	6.44	12.95	5.80
13.	Rajasthan	46.23	26.46	13.21	30.49	25.27	13.65	20.71	19.85
14.	Tamil Nadu	44.37	32.48	30.08	39.77	43.20	20.55	5.22	22.17
15.	Uttar Pradesh	37.11	42.28	36.89	35.39	34.06	31.22	13.27	30.90
16.	West Bengal	61.95	40.80	19.41	22.41	50.02	31.82	31.88	14.86
17	All India	51.94	37.27	41.14	32.36	45.86	27.11	34.75	23.65

N.B.

(i) *=STs: Scheduled Tribes; * All: All Population

(ii) The Poverty Line for all population is used for SC's and ST's

(iii) All India poverty ratio is worked out from the NSS distribution of persons and (implicit) all India poverty line.

(iv) The estimates are based on the methodology outlined in the Report of the Expert Group on Estimation of Proportion and

(v) Poverty ratio of Assam is used for Sikkim, Arunachal Pradesh, Meghalaya, Mizoram, Manipur, Nagaland and Tripura

(vi) Poverty ratio of Tamil Nadu is used for Pondicherry and A&N Island

(vii) Poverty ratio of Kerala is used for Lakshadweep

(viii) Poverty ratio of Punjab is used for Chandigarh

Source: Planning Commission reply (Nov. 2003) to this Commission's questionnaire of November 2002.

Annexure II

LAWS AGAINST TRIBAL LAND ALIENATION CURRENTLY IN FORCE IN THE CONCERNED STATES

Sl.No.	State	Legislation in Force	Main Features
1.	Andhra Pradesh	The Andhra Pradesh (Scheduled Areas) Land Transfer Regulation, 1959 as amended.	The Act applies to Scheduled Tribes in Scheduled Areas only. Protection to be extended to Scheduled Tribes living outside Scheduled Areas.
2.	Bihar	(a) Chota Nagpur Tenancy Act, 1908 (b) Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949. (c) Bihar Scheduled Areas Regulation, 1969.	These Acts apply to Scheduled Tribes in the State. Chota Nagpur Tenancy Act applies to North & South Chota Nagpur Divisions. The Second Act applies to districts of Santhal Pargana Division. The Third Act applies to all Scheduled areas in the State.
3	Assam	Assam Land Revenue Regulations 1886 amended in 1981.	The Chapter X of the Regulation create Tribal Belts & Blocks. Transfer exchange and lease of land in these blocks & belts is restricted in the interest of tribals.
4.	Gujarat	The Bombay Land Revenue (Gujarat Second Amendment Act, 1980).	Prohibits transfer of tribal land and provides for restoration.
5.	Himachal Pradesh	The Himachal Pradesh Transfer of Land (Regulation) Act, 1969.	The Act prohibits transfer of land from tribals to non-tribals.

6.	Karnataka	The Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978.	The Act covers only land assigned by the Government should extend to cover all lands held by the STs.
7.	Kerala	The Kerala Scheduled Tribes (Regulation of Transfer of Land and Restoration of Alienated Lands) Act, 1975.	The Act has been made applicable from 1st June, 1982 only by a notification brought in January, 1986.
8.	Madhya Pradesh	1. The Madhya Pradesh Land Revenue Code, 1959. 2. Madhya Pradesh Land Distribution Regulation Act, 1964.	The Section 153 of the code protects Scheduled Tribes against alienation of land. In the Scheduled Areas of Madhya Bharat region, the 1964 Act is in force.
9.	Manipur	The Manipur Land Revenue and Land Reforms Act, 1960.	Under Section 158 of the Act, no land belonging to STs can be transferred to non-STs without permission of Dy. Commissioner. The Act, however, does not apply to hill areas and as such hill area tribals are not covered.
10.	Maharashtra	1. The Maharashtra Land Revenue Code, 1966 as amended in 1974. 2. The Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974.	The period of application by tribals for restoration of illegally alienated land under these laws is only 3 years. This period expired in 1977. Though suo-moto provisions for filing cases by revenue officers exist under the laws, the State Government has been requested to permit STs themselves to apply even beyond the limited period of 3 years.

11.	Orissa	(a) The Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Regulation, 1956. (b) The Orissa Land Reforms Act, 1960 as amended.	Prohibits trar fer of ST land in Scheduled Ar Prohibits transfer of land of Scheduled Tribes living outside Scheduled Areas.
12	Rajasthan	(a) The Rajasthan Tenancy Act, 1955. (b) The Rajasthan Land Revenue Act, 1956.	The Act of 1955 prohibits transfer of land of STs by way of sale, gift, mortgage, subletting, exchange etc. State Government is proposing to amend Section 91 of this Act to authorize Tehsildar to suo-moto proceed against trespassers into ST land.
13.	Sikkim	Revenue Order No. 1 of 1977.	The Revenue Order of 1977 is in force. The Sikkim Agricultural Land Ceiling And Reforms Act, 1977 in Chapter 7 provides for restriction on alienation of lands by Scheduled Tribes. This Chapter has not yet been brought into force.

14	Tamil Nadu	Standing Orders of the Revenue Board-BSO, 15-40.	The BSO 15-40 apply not only to Malayali and Sholage tribes of Tamil Nadu. They prohibit transfer of land assigned to these tribes without approval of Divisional Commissioner. The State has no legislation prohibiting transfer of ST land as yet. The draft bill has been prepared and is under process.
15	Tripura	Tripura Land Revenue and Land Reforms Act, 1960 as amended.	Section 187 of the Act prohibits transfer of ST land to others without permission of the Collector. Transfers after 1.1.1969 only, however, are covered under restoration provisions by an amendment.
16	Uttar Pradesh	U.P. Land Laws (Amendment) Act, 1982 amending Uttar Pradesh Jamindari Abolition and Land Reforms Act, 1950.	The amending Act has never been applied being locked up in a writ case in Allahabad High Court (Swarn Singh Vs. State Government) since 23.9.81. State Government has been requested to move the court for vacation of stay order.
17	West Bengal	West Bengal Land Reforms Act, 1955 as amended.	Chapter 11-A of the Act prohibits alienation of tribal land and provides for the restoration.

Source: Reply of the Ministry of Rural Development, Deptt. of Land Resources (May 2003) to the Commission's questionnaire (Nov. 2002)

Tribal Economy

A 1. **Tribal economy** traditionally and even in modern times is based on *"jal"* (water), *"jungal"* (forest), *"zamin"* (land) which the tribals consider as God given. Tana Bhagats of Chotanagpur during their revolt against the British Rule in 19th Century asked a pertinent question:-

"God Created the Earth
We are Children of God
Pray, Wherefrom has the Government Appeared?"

We have described the situation arising out of the tribal-forest interface and about traditionally established community command over land resources in the tribal areas in the Chapters on land and forest in this report.

2. The entire World population 12000 years ago were hunters and food gatherers. Today they are fewer only about 0.001%. There are a few tribal groups in India still having their economy based on hunting and food gathering. The Commission had a chance to interact with number of Primitive Tribal Groups and nomadic tribes in the States/UTs. Jarawas, Sentinelese and Shom Pens tribes of Andaman & Nicobar Islands are still dependent on hunting and food-gathering. Onges and Andamanese tribes are being introduced to simple horticultural practices and at the same time they continue to retain their hunting and food gathering avocation. There is a need to have a survey done of such tribal habitats which have their economy still at the stage of hunting and food gathering.

3. There are, in the modern times also, some tribes still having pastoral economy, characterized by keeping herds of animals such as cattle,

sheep, goats and camel in India. Pastoral economy is found predominantly in the mountains and in the hill slopes where the land is used as pasture which is not suitable for agriculture for climatic reasons. Also there are some dry lands in the country where pastoral economy is predominant. The Commission had interacted with the pastoralist tribal groups about the sustainability of the pastoral economy in the wake of green revolution and operationalisation of the Forest (Conservation) Act, 1980 etc. Many of such pastoralists are nomadic having to move in search of good grazing grounds – some of them living in scattered areas most of their life. These pastoralists use their sheep and goats, cattle and other pack animals like donkey, mules and horses to transport goods. In the past some of these highlanders of the Himalayas – from Ladakh, Himachal Pradesh, Uttaranchal, Sikkim – Darjeeling District to Arunachal Pradesh – had international trade with Tibet (China) which has now been revived by opening some of the traditional silk routes to Tibet (China). Many tribal groups combine pastoralism with agriculture as the base of their economy.

4. Agriculture with animal husbandry as its subsidiary is the main-stay of tribal economy. To supplement the agricultural economy the tribals all over the country heavily depend on gathering minor forest produce which has been their traditional right. In some cases, such rights are duly recorded in the revenue records of the Government. While in others, these rights are available conventionally in which case, in the recent years, as a result of implementation of the provisions of the Forest (Conservation) Act, 1980 there has been wide-spread forest – tribal interface some of which have reached the stage of confrontation. Agricultural Land traditionally held by the tribals have become the forest land in the process of implementation of the provisions of the said Act. The tribes of modern India, in the process heavily paid for holding on to the traditional oral land tenure system which is responsible for the present malaise.

5. Agriculture supported by horticulture and animal husbandry continues to be the main-stay of the tribal economy. The support of the forestry sector for the tribal economy is dwindling faster as a result of the operationalisation of the provisions of the Forest (Conservation) Act, 1980.

B. Agriculture

1. The tribal areas are located in different climatic zones – the temperate zone in the Himalayas – the tropical and sub-tropical zones in sub-Himalayas, North-Eastern States, hill areas in the rest of the country, and – the tropical zone in all the tribal areas of the country barring the higher Himalayan ranges.

2. Agro-climatic conditions in the tribal areas of the country are quite suitable for the production of the food-grains, pulses, fruits and vegetables, oil-seeds, medicinal herbs etc. Important crops raised in the tribal areas of the country are – barley, wheat, pulses & oilseeds, maize, millets, potatos and beans. Some of these crops are grown commercially in many tribal areas particularly in the Central India. In the North-Eastern States paddy, maize, millets are produced but paddy is raised in the valley areas where settled cultivation is prevalent with irrigation facilities. But, in the jhumland major crops raised are maize, pulses, potatoes and beans etc. However, the trend is now for food production on commercial lines. In the Himalayan belt from Ladakh through Himachal Pradesh/Uttaranchal, Sikkim to Arunachal Pradesh wheat, barley, peas, beans, pulses, mustard and medicinal herbs are grown not only for domestic consumption but also on commercial lines. Temperate as well as tropical fruits and vegetables are grown on commercial lines. The productivity has increased and production quantum has gone up in the Himalayan belt where most tribal areas depend heavily on irrigation with the aid of minor irrigation channels (kuhl) taken from the snow-fed rivulets, streams and rills except in the rain-fed

areas of Arunachal Pradesh. Food crops grown in the Southern India are paddy, maize, cardamom, tea, coffee, pepper, ginger, spices, banana, coconut and vegetables etc.

3. While in the Himalayas the agricultural farmers take two crops a year with minor irrigation through the traditional water channels (kuhl) by channelising water from the snow-fed rivulets, streams and rills. In North-Eastern States, the tribal areas are rain-fed. It is only the paddy fields which are irrigated. In the tribal areas of Central India the farmers heavily depend on the rains and in some plain areas irrigation is done by channelising water from the tube wells/wells and the canals drawn from medium and major irrigation projects wherever these canals pass through the tribal areas. In Southern States, very few tribal areas have major or medium irrigation projects. The Karapuzha Irrigation Project in Wyanad District of Kerala was started many years ago and it has not yet been commissioned. Many tribal farmers have been displaced from this project area and have been settled in places without any means made available for them for agricultural production. The Commission had visited this project area and heard the displaced tribal families who reported that the compensation paid to them was inadequate and there was no land assignment made for these displaced tribes for agricultural purposes. In the North-Eastern States the cropping pattern is mainly based on traditional, cultural, geographical and economic factors. In most tribal areas in different States in the region with settled cultivation double cropping is the pattern for growing paddy, maize, wheat, millets, potato and mustard etc.

4. The Ministry of Agriculture, Government of India supports the Scheduled Tribes under various schemes and programmes for raising their production and productivity in agricultural sector, which is a key to improve their socio-economic conditions. Under these schemes efforts have been

made to increase the quantum of benefits to the Scheduled Tribes and special efforts have been made for infrastructural development in tribal areas. The Ministry has also advised the State Governments to ensure that the benefits flow to the Scheduled Tribe farmers at least in proportion to their population. The special programmes listed are – Oil-seeds Production Programme, National Pulses Development Projects, Oil Palm Development, Accelerated Maize Development Programme, and the programmes under Technology Mission on Cotton etc. where the assistance provided range from 8% to 10% of the total expenditure under these programmes. In the States having larger population of Scheduled Tribes allocation of Scheduled Tribe components is enhanced proportionately and for the schemes like drip irrigation system and distribution of sprinkler sets subsidy to the tune of 50% of the cost is provided to the ST farmers limited to Rs. 1500/- per farmer for the sprinkler sets and between Rs. 11300/- and Rs. 26000/- for the drip irrigation system.

5. The Ministry reported that under the scheme - Documentation of Indigenous Technology - Birsa Agricultural University, Ranchi is provided with financial assistance for identification of the available indigenous technology deployed by the tribal farmers based on their experience and local conditions, and document them on agro-climatic zone basis for validation.

6. **The National Agriculture Policy** recognizes that agriculture is the main-stay of the tribal economy. The policy emphasizes rapid growth of agriculture to build food security for the tribal households and to reduce the poverty levels. A special emphasis has also been given under the policy on institutional reforms, land reforms and updating and improvement of land records, farm credit and easy flow of loans to the poor tribal farmers.

The Ministry through the administrative approval of the schemes ensures that the benefits accruing from the schemes flow to the Scheduled Tribes farmers at least are in proportion to the population in the respective States.

7. Not all the States have firmed-up data about the size of the tribal population subsisting on agriculture and allied sectors. Some States which have firmed-up data and these data/statistics amply prove that the tribal economy is mainly agrarian.

8. As per 1991 census* the percentages separately of agricultural cultivators and agricultural labourers out of the total tribal work force in respect of some States is given as under:-

State	Agricultural Cultivators	Agricultural Labourers
Andhra Pradesh	41.19%	46.57%
Karnataka	36.82%	42.98%
Kerala	16.65%	55.47%
Madhya Pradesh including Chhattisgarh	63.21%	29.48%
Himachal Pradesh	63%	N.A.

For the rest of the States, break-ups in terms of the percentage of the tribal agricultural work force are not available. On an average 87% of the tribal work force is dependent on agriculture.

9. According to 1995-96, agricultural census, there were 9.52 million tribal land holdings which is 8.24% of the total of 115.58 million land holdings in the country. The total area under the land holdings in the country was 163.35 million hectares with an average per capita holding at 1.41 hectares. Whereas the total area under tribal land holdings was 17.52 million hectares i.e. 1.84 hectares per holdings which is on an average

* The figures in respect of the tribal work force for the year 2001 census were not published by the Registrar General of Census by the time this Report was completed.

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slightly higher than that for the country as a whole. The si of the tribal holdings is given in table 4 as under:-

Table - 4

Size of holding	No. of holdings (in million)	Percentage
Upto 1 Hect.	4.38	46.0
2 to 3 Hect.	3.54	37.7
4 to 5 Hect.	0.92	9.7
6 to 10 Hect.	0.54	5.7
Above 10 Hect.	0.14	1.4
Total	**9.52**	**100**

The table above reveals that 46% of the Scheduled Tribes owned marginal holdings upto 1 hectare and another 47% owned upto 2 to 5 hectares. The size of the tribal land holdings worked out in respect of the North-Eastern States may not be truly representative as most lands in the tribal areas there are in the ownership of the community as a whole and they have land tenure system based on assignment of land for cultivation made periodically by the communities. The Agriculture Ministry in its Agricultural Census Report has admitted that in the North-Eastern States only 20% of the villages were brought under the agricultural census, where major part of the land is in the ownership of the community and that the cultivators are assigned land by the community on a tenure basis, though in most cases the land assigned to the individual cultivators are heritable and have passed through inheritance from generation to generation. The individual cultivators have the possessory rights under the customary laws.

10. In comparison to agriculture census carried out in 1980-81, there has been an increase in a number of land holdings held by the STs from 6.8 million in 1981 to 9.52 million in 1995-96. This could be attributed to the fragmentation of the holdings through partition, sale or transfer of land. The average size of holding has come down from 2.44 hectares in 1981 to 1.84 hectares in 1995-96. The total area of land holdings has increased by

0.82 million hectare from previous agricultural census. The agricultural census analysis also revealed that in Bihar, Meghalaya, Nagaland, Sikkim, Tamil Nadu and Tripura the overall area of ST land holdings has decreased. The reason attributed can be – acquisition of land by the Government and land alienation or transfer of land etc. However, agricultural census has not done any analysis to find the reason for decrease in the land holdings in the States mentioned above.

11. **TSP allocations to the Sector**

Flow of funds out of the Tribal Sub-Plan to Agriculture and Allied Sectors during the year 2002-03 in different States with Scheduled Areas have been meagre. The leading State of Madhya Pradesh had a flow of only 6.49% out of the TSP. Himachal Pradesh had 13% and Chhattisgarh had 5.19% flow.

In the North-Eastern region, Arunachal Pradesh, Nagaland, Mizoram, Meghalaya are the tribal States and therefore, they do not have separate Tribal Sub-Plan. In respect of other three States – Assam, Tripura and Manipur funds flow to this sector from Tribal Sub-Plan has always been meagre.

12. The ground realities are that the green revolution has not touched most tribal areas, adequate irrigation facilities have not been provided beyond the traditional community-run minor irrigation channels (kuhl) and some areas are totally dependent on the rains. Soil fertility has not improved, modern agricultural extension services are not being provided by the sectoral departments in adequate measure. For all these reasons, the agricultural productivity has not increased to an optimum level which is posing a serious threat to the subsistence base of the tribal economy.

13. As per the assessment done at the end of Ninth Five Year Plan, the agricultural sector contributed 24.2% to the Gross Domestic Product (GDP) for the country as a whole. It provides livelihood to about 2/3rd of the country's population, and it provides employment to 56.7% of the country's work force. Although there are no separate figures available for the tribal areas. But, the investment in this sector under the planned development, as it appears, is very low.

14. The agricultural sector has a crucial role in maintaining food security. The Tenth Plan has recognized that agricultural development is central to economic development of the country. After remaining a food deficit country for a number of years India has now become self-sufficient in food-grains and has surplus stock of food-grains. But, the situation in the tribal areas of the country is different from that obtaining for the whole country. Agriculture and allied sector provides livelihood support to over 80% of the tribal population, yet most tribal areas are food deficit. It is important that the primary object of planned development is to provide food security in the tribal areas. Agriculture and allied sector should receive impetus. The green revolution has not yet touched the tribal areas significantly. Land resources (zamin) have not been gainfully utilized to build tribal economy on scientific lines. Water (Jal) scarcity is a major problem in some tribal areas. The tribals have been deprived of traditional forest resources (jungal) in most tribal areas of the country consequent upon the operationalisation of the Forest (Conservation) Act, 1980.

15. In some tribal areas of the North-Eastern States, Southern States and Central States emphasis is laid on the production of organic manure and there are schemes introduced for production of enriched compost and use of farmyard manure, as a solution found to counter the adverse effects of the increased use of chemical fertilizers. The farmers opined that they would like to have the increased use of chemical fertilizers to optimize

productivity and maximize the production to increase the family income from agricultural sector but they have come to realize that in the long run increased use of chemical fertilizer has its adverse effect and therefore, they have decided to use organic manure as well as chemical fertilizers depending upon the type of soil in a particular area. The Department of Agriculture should provide technical assistance for the balanced use of organic manure/compost and chemical fertilizers to optimize the production.

16. Some structural changes in the pattern of growth of agriculture are needed. There is a need to step-up public investment in agriculture and allied sector for bringing additional acreage under agriculture for commercial crops like paddy, wheat, potato, oilseeds, cardamom, fruits and vegetables etc. This sector has tremendous potential for providing employment to the under-employed cultivators as well as unemployed people in the tribal areas. The TSP areas should get the projects for re-generation of degraded forest, watershed development and some highly labour intensive activities, development of infrastructural facilities – roads, transport etc. for employment and income generation which would help poverty reduction in the tribal areas. Unfortunately, the vital and basic inputs like seeds of high yielding varieties, improved plant material, soil testing, fertilizers – chemical fertilizers and organic manure, agricultural farm implements, agricultural extension services, plant protection and pest control and financial assistance through an easy access to the credit system and subsidies on the various inputs have not reached the tribal farmers in most places. The tribal economy has now reached a stage when there is a need to have proper blending of traditional and frontier technologies to maximize the production in the agriculture and allied sectors.

17. Incidentally, there are not many agricultural research stations, nurseries and progeny orchards set-up for plant material propagation in the North-Eastern States. Nagaland has State Agriculture Research Station in Mokakchung District which has sub-stations at number of places. Services of ICAR, IARI, CSRI and CPRI in the field of technology transfer are availed of in a limited way by the agricultural and horticultural universities and the agriculture Depts. in the States with tribal population. The Commission recommends that special measures need be taken to transfer research based technology from the lab to fields as a part of extension services.

18. An important question raised by the tribal farmers is about the marketing infrastructure. Most tribal areas do not have adequate infrastructural facilities like roads, transport, power supply and tele-communication etc. Food and fruit processing, agro-industry and post harvest handling facilities have not been developed for want of basic infrastructural facilities. Some of the tribal areas have developed these facilities under the planned development schemes where the agriculture/horticultural produce in sizable quantity is available for marketing. It has been found both in the tribal and non-tribal areas that with the increased production market forces come into operation automatically and the problems of post harvest marketing can be taken care of by both public sector and the private sector marketing agencies. In modern times, there is very little scope for any sort of exploitation by middlemen in post harvest handling and marketing of the agriculture/horticultural produce as the market forces have shown in recent years. The tribal areas also should be covered under minimum support price scheme for the food-grains and horticulture produce as well.

C. Horticulture

1. The agro-climatic conditions of the tribal areas of the country are suitable for horticultural production and plantation of tea and coffee, rubber etc. There is a thrust given for horticultural development in the Tenth Plan which is applicable to the tribal areas also. The thrust areas particularly for the tribal areas are – the area expansion under horticulture covering degraded lands, hill areas and jhumlands; increasing the production and productivity; intensive agri/horticultural extension programme for production of plant material through nurseries and progeny orchards, the development of post harvest handling and marketing infrastructural facilities like warehousing, godowns, cold storages, processing plants, agro-industrial units both in public and private sectors etc. and finally all these would need investment requiring financial assistance by way of soft crop loans and subsidies. In the Tribal Sub-Plan of the States, most of them, have the provision made for subsidies on plant material, agri/horticultural inputs, nursery development, plant protection – insecticides, pesticides and fungicides, chemical fertilizers and agri/horticultural implements like sprinklers, sprayers and the implements required for the agriculture/horticultural operations.

2. The horticultural crops grown in the North-Eastern region are plum, peaches, banana, citrus, pine-apple and vegetables as well. Jute, cardamom and tea are commercially grown in some of these North-Eastern States. In the tribal areas of Himachal Pradesh, Uttaranchal, horticulture is fast-gaining ground. Temperate fruits like apple, pear and stone fruits like peaches, apricots, plum are being produced on commercial lines. Stone fruits, citrus and apple can be propagated on commercial lines in the States of Sikkim and Arunachal Pradesh also. In the tribal areas of the Central India, tropical fruits are being grown on commercial lines but it has not yet received necessary impetus. In Madhya Pradesh, the Tenth Plan provides for horticulture Rs. 77 crores out of

which a sum of Rs. 30 crores is earmarked for the tribal areas in the State which is about **39% of the total allocation for horticulture** which is a welcome step.

3. In Tamil Nadu, the climatic conditions are suitable for production of coffee pepper, coconut, pine-apple, banana and these are grown in the tribal areas also. Grapes can be propagated in the tribal areas of Karnataka and Maharashtra. Lakshadweep, Andaman & Nicobar Islands grow coconut-extensively. The State of Andhra Pradesh has reported that on account of introduction of high yielding varieties of fruit crops with the backup of extension services and technical assistance provided to the tribal farmers, the per capita income has increased from Rs. 3000/- to Rs. 10,000/- particularly in the podu/jhum cultivation areas after shifting the shifting cultivators from podu/jhum cultivation to cashew plantation on permanent basis.

4. Technology Mission for Integrated Development of Horticulture is working in the North-Eastern State and that all Centrally Sponsored Schemes have been made part of this Mission. The Mission is comprised of the programmes for research and development with backup from ICAR and Agriculture University for the transfer of technology and for providing plant materials etc. The target of the Mission is to increase the productivity of the horticultural products by introducing the fruit varieties suiting the climatic conditions in the State. Horticultural extension and technical assistance is provided under the Mission. The Mission also takes care of the post harvest handling, marketing technology and marketing management. But so far no study has conducted to, evaluate the impact of the Technology Mission in any of the North-Eastern States.

5. One important Central Sector programme known as Integrated Programme for Development of Horticulture in Tribal Areas, started in 6

Tribal Districts during the Ninth Plan is now being implemented during the Tenth Plan period in 20 Districts. List of Districts identified for implementation of central sector scheme on integrated development of horticulture in tribal/hilly areas during Xth Five Year Plan (2002-2007) is as under:-

S.No.	Name of the State	Name of Identified Tribal/Hilly Districts
1.	Andhra Pradesh	Adilabad (Tribal)* East Godavari (Tribal)
2.	Chhattisgarh	Bastar (Tribal)* Kanker (Tribal)
3.	Gujarat	Dahod/Panchmahal (Tribal)* Valsad (Tribal)
4.	Jharkhand	Ranchi (Tribal)* Hazaribagh (Tribal)
5.	Madhya Pradesh	Ratlam (Tribal)
6.	Maharashtra	Nanded (Tribal)
7.	Rajasthan	Banaswara (Tribal)
8.	Orissa	Keonjhar (Tribal)* Gajapati (Tribal) Koraput (Tribal)
9.	West Bengal	Darjeeling (Hilly)
10.	Himachal Pradesh	Kinnaur (Hilly)
11.	Uttaranchal	Almora (Hilly)* Pauri Garhwal (Hilly) Chamoli (Hilly)
12.	Tamil Nadu	Namakkal (Hilly)

The programme aims at production of quality plant material of improved cultivars and of improved high yielding varieties; transfer of technology and for setting-up post-harvest handling and marketing infrastructural facilities etc.

* Districts also covered during IX Plan

6. The outlays provided should be made available to the s'¬te agencies as 100% central grant. The schemes covered are – establishment of nurseries; area expansion under horticultural fruits, vegetable, mushroom, floriculture and medicinal and aromatic plants; transfer of technology; irrigation facilities, horticultural tools and implements for the farmers etc. Subsidies to the farmers shall be @ 50% on various items.

7. It appears that the Horticulture Division of the Agricultural Ministry has not done any impact study in respect of the programme implemented in 6 Districts in the Ninth Plan. However, this is an additional programme launched apart from those under TSP and other CSS for the horticultural development in the tribal areas.

8. The States with the tribal population have not done any survey of production and acreage covered under the horticultural crops/fruits grown on commercial basis in the tribal areas.

9. Agricultural/Horticultural Produce Marketing

The Directorate of Marketing and Inspection (DMI) has been implementing 3 Plan schemes for integrated development of marketing for agricultural and horticultural produce in the country primarily to safeguard the interests of the producers as well as the consumers. Special provisions made for promotion of marketing infrastructure for the tribal communities in the tribal dominated States of the country are as under:-

i) **Marketing Research and Information Network** under which States are free to seek assistance from the Central Government for supply of computers to the tribal markets. Such computer facilities have been provided to Arunachal pradesh where 50 out of 96 markets have been covered. In Mizoram, Meghalaya and Nagaland

very few markets have been covered during the Ninth Plan. During the Tenth Plan it is proposed to cover more number of markets for networking for these North-Eastern States.

ii) **Capital Investment Subsidy Schem of Grameen Bhandaran Yojna** under which the Central Government provides a subsidy @ 33.3% of the capital cost for the tribal areas and the North-East States for the construction or renovation of rural godowns and this is implemented under NABARD scheme.

iii) **Capital Investment Subsidy for Development of Market Infrastructure such as Grading and Standardization** under which Central Subsidy @ 33.3% of the project cost is provided to the North-Eastern States and to the tribal areas in the country.

The States have the post harvest infrastructural facilities developed under general plan and TSP for the tribal areas. Major part of the marketing is taken care of by the private sector though the State has major role for regulating the market to ensure fair deal for all including the tribal farmers.

10. The question of value addition comes when there is a comparative advantage in doing that. The food-grains must find place in the food-grains markets whether it is through FCI procurement or through purchases made by private agencies. In the case of food crops fresh and quality fruits properly graded following the grades and standards and packed must reach the fruit markets ranging from local markets to the terminal markets quickly through marketing channels by using forwarding, transport services and auction services and sales, cold storaging etc. which process/system is the same for the agri/horticultural produce whether the produce is from the tribal area or from elsewhere. Only thing to be ensured is the accessibility to the system and services for a produce from interior tribal areas.

11. Agricultural Credit

Agriculture Ministry has reported that the total ground level credit for agriculture and allied activities disbursed by the Tribal Sub-Plan Areas/ST farmers who availed of credit was not available with the Ministry. However, it was mentioned that the total crop loan disbursed by the cooperative structure during the year 2000-01 was Rs. 1250.71 crore and in the year 2001-02 it was Rs. 1512.58 crore. The break-up of it separately for the Scheduled Tribe farmers is not available. We cannot say for certain about the share of tribal farmers in it, but the sum of crop loan disbursed seems to be quite substantial. The total projected credit flow during the Tenth Five Year Plan is to the tune of Rs. 7,36,570/- crore but its flow to the Tribal Sub-Plan areas and the number of ST beneficiaries to be covered have not been indicated separately.

12. **NABARD** had done study in 2002 to assess the economic impact of credit supply plans in which SC/ST and Backward Classes constituted 83% of the study sample. The brief findings of the study were that

    - In the States of Chhattisgarh, Orissa and Jharkhand there was significant increase in assets and income levels of the members.
    - 45% of the households registered increase in assets – up by 30% between pre and post SHG (Self Help Groups) situations and that consumption oriented loans were replaced by production oriented loans during the post SHG situation, 23% increase in income level etc.
    - Employment per sample households increased by 34%.
    - Availing of loans from money-lenders were significantly reduced due to SHG interventions.

There are no separate figures for the Scheduled Tribes in these findings of the samples study by NABARD. Agriculture Ministry has also reported that Self-Help Group (SHG) has met with tremendous success in the tribal dominated areas. Out of a total number of 717360 SHGs linked to banks as at the end of 31st March, 2003, 255957 SHGs were linked to the predominantly tribal districts. 90% of these SHGs are exclusive women groups and the on-time repayment of bank loans by SHGs was over 95% which is a positive feature.

13. In the tribal areas, where the ownership of the land is with the community, the cultivators do not have any access to soft-loan facilities from the financial institution and the banks for making necessary investment in the agricultural holdings and that has come in the way of optimizing productivity.

14. While country has made tremendous progress in this sector resulting in food surplus but the tribal areas still remained food deficit despite the fact that this sector contributes over 80% to the tribal economy. It appears that the Planning Commission, Government of India and the State Governments have not given adequate impetus to this sector. In the Tenth Plan document the **Planning Commission says that "India is in the midst of transforming an agrarian economy into multi-dimensional economy powerhouse". The state of tribal economy is far from it.**

15. Land based Programmes

The Department of Agriculture reported that an area of 54.86 lakh ha. has been treated under the CSS in the States/UTs enhancing productivity of degraded lands in the catchments of River Valley Projects and Flood Prone Rivers till the end of Ninth Five Year Plan. The scheme covered the tribal areas also but the State-wise tribal area treated is not available with

the Ministry. The reports revealed that Arunachal Pradesh, Jharkhand, Manipur, Meghalaya, Nagaland, Andaman & Nicobar Islands, Dadra & Nagar Haveli, Daman & Diu, Lakshadweep all these having tribal habitats have not been covered under these CSS schemes which are mainly the River Valley Projects and that there were no such major River Valley Proejcts in these States/UTs covering tribal areas as per the statistics available with the Ministry.

16. Jhum/Shifting Cultivation

Jhuming or Shifting cultivation has been the first human endeavour in evolving a method used for agricultural production. It has been prevalent for thousands of years in the rain-fed areas under tropical climatic conditions. Why shifting was necessary? Answer lies in the fact that after taking two successive crops fertility of land is reduced and that compost was not available in the absence of cattle rearing which is feasible only under the settled agriculture. The chemical fertilizer is of recent origin.

17. Under the system a new land is broken by removing the forest and vegetative growth in an area demarcated for jhuming during the season and such jhumlands in a State are scattered and occur on the landmap of a State sporadically. The land selected and assigned for jhum cultivation is set-on fire for clearing the vegetation. There is fire smoke all around in March/April in the North-Eastern States when the new land in patches is broken for cultivation. The helicopter by which this Commission's team travelled over the hill areas of Manipur was engulfed by fire-smoke rising from the forested area below set-on fire for jhuming.

18. In the North-Eastern region the preparation of the jhumland for cultivation starts in the month of January and with the on-set of Monsoon the seeds are sown in the months of April and May followed by weeding activities. Harvesting of crop starts from October and continues till the November

end and December. This practice has been there since time immemorial. It is also called shifting cultivation, slash and burn cultivation as the jhumia shifts from plot to plot. It is generally known as jhum in the North-Eastern region, Podu in Andhra Pradesh, Bagad, Davar in Madhya Pradesh etc.

19. The crops grown are wheat, barely, maize, other cereals, pulses, potatoes, beans, soyabean and some vegetables like pumpkin etc. The land put under jhum, after the crop is harvested at the end of the season, is kept as fallow land for a period of years which in the past was invariably on a 10 year cycle denoting 10 fingers including thumbs found easier to count, communicate and remember. Now, the jhuming cycle is reduced to 4 or 5 years due to pressure on land on account of growing population. Now, there is a new pattern of cropping in jhumland. Three crops are taken before the land is kept fallow. First, it is of maize and on harvesting it buckwheat and vegetables are grown. Third crop taken is paddy in less steep slopes.

20. In ancient time jhuming was done in the plain areas with flat land. Today such lands are used for settled cultivation on a sustainable basis particularly by growing valuable crops of paddy, wheat, barely and cereals. There are minor irrigation channels and in a couple of States some major canals have been provided for irrigating the agriculture land.

21. Land put under jhum/shifting cultivation is under the command of the community with individual cultivators having possessory rights which are heritable and transferable from generation to generation. In some areas the village chiefs (normally families of the founding clan) are the custodian of the jhumland. There are some individual land-owners whom the community or village chiefs may have sold or transferred the land for any reason. In some cases, there are some land-owners who have come to acquire in some way major parts of the community land. Land in the

ownership of the community or held by the village chiefs is further assigned to the individual cultivators for jhuming on yearly basis and for settled cultivation also for a period decided which is renewable periodically.

22. No chemical fertilizer is used though they would like to make use of it to increase the productivity, but the jhum cultivator is usually a poor farmer and does not have the means to buy chemical fertilizers. Jhum cultivation is done in rain-fed areas, mostly in the hill slopes. While passing through the jhumland areas one can find these jhum lands dotted with small huts.

23. In respect of community land put under jhuming, there are no returns made by the jhuming families. In some cases, there are returns made by the jhuming families by way of tax in cash or kind. They only pay house tax in some jhuming areas. In respect of the land of the village chief/estate holders assigned for jhuming the individual jhumia family pays at the end of the harvesting to the village chief/estate holder one standard basket of food-grain produced which is known as 'changso' in Manipur and by some other names in other States. In Naga areas, there are no payments made to the community for jhuming except the house tax. In Arunachal Pradesh the shifting cultivators do not have to pay anything to the community. In fact, here even jhumland is heritable.

24. It was reported that the Forest (Conservation) Act of 1980 has taken away most part of the land put under jhum tradition and made part of the forest land. Even where such a forest land is not in the ownership of the Forest Department, permission is necessary for non-forest use which invariably is refused. In Arunachal Pradesh the Forest Department has treated jhumland as forest land and there is now a forest tribal interface on account of conflicting claims. It appears that the Forest Department has not taken care to recognize the traditional, customary and possessory

rights of the tribals over the land which is technically a forested land in terms of the Forest (Conservation) Act and the Supreme Court's directives of 1996, but traditionally the jhumland has always been agricultural land because it is used for growing food-grains and fruits etc. under a periodic cycle system which is why it is called shifting cultivation, the Commission observed.

25. In all human activities there is an element of socio-cultural-spiritual values attached whether it is agriculture practices or any other avocation. Jhuming or Shifting cultivation is an economic activity and that spiritual values are attached to it as is done for the settled agriculture or even in trade and commerce by the tribals and non-tribals equally. It should be seen that way only for taking an objective approach to the tribal development. The fact of the matter is that jhuming/shifting cultivation is an economic activity primarily to meet the food requirements of the community/families involved. They continue with the jhuming practice mainly because this alone gives them an access to the community land where land is in the ownership of the community or tribal chief who assign the land for agricultural production through jhuming which the community perhaps consider safer way of land assignment which is a kind of land tenure. The cultivators cannot alienate the land to anybody even to himself. It is a kind of a safeguard applied by the community to have command over the community land. There are community lands assigned to the individual for settled cultivation which is renewed periodically and the possession is transferred from generation to generation and such lands under settled cultivation were one time jhum lands. If a land is fit for jhum cultivation, it is fit for settled cultivation as well though land development would require some investment. Due to pressure on land with the rising population jhuming is attempted even in difficult upland terrain having steep slopes. Such a terrain can infact be converted into woodland as has been done in Nagaland where social forestry and fruit

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tree plantation tea, rubber, bamboo cultivation are being undertaken profitably with some investment which is feasible if the land tenure system is improved by assigning such land to the cultivators for settled cultivation with necessary backup provided through financial assistance, technical assistance and delivery of agricultural/horticultural extension services made available to the cultivators.

26. Traditionally there was no record kept in respect of the land assigned for jhum cultivation. Assignment of land for jhum was done verbally. Today, some documentation process has been started in most tribal areas in the North-Eastern States about the land brought under jhuming/shifting cultivation.

27. 10th Plan document estimated that over 6 lakh tribal families in the North-Eastern States, Orissa, Madhya Pradesh in some other tribal areas practice shifting cultivation on a continuous basis. Most of these jhumia families are in the North-Eastern States. 54000 families in Karbi-Anglong and over 30,000 families North Cachar Hills Autonomous Councils in Assam alone have done jhum cultivation in all these years. Reports say that the area under the jhum/shifting cultivation in the North-Eastern States is estimated to be 19.01 lakh hectares – around 2 million hectares which is 83% of the total land covered under shifting cultivation in the country. In Manipur over 900 Sq. Km. land with vegetative growth is cut-down for jhum cultivation every year with a cycle of 3 – 4 years. In Mizoram over 35000 hec land has been under jhuming which is 34% of the total cropped area. In Nagaland traditional jhumlands are being converted into woodlands with social forestry and fruit tree plantation on commercial lines. In some States jhumlands on the hill slopes are put under the cultivation of rubber, tea, coffee etc. on commercial lines.

28. As per the status report, an ecological imbalance has been caused due to destruction of forest resources – trees, medicinal plants, bamboos etc. under the jhuming. The practice of jhum cultivation has caused massive soil erosion and loss of moisture in the soil and depleted the green coverage of fragile Hill Areas particularly in the Autonomous Council Areas. The top soil is removed due to the adverse affect of rainfall on the soil. There have been a drop in rainfall at an alarming rate over the years. All this is attributed to jhuming/shifting cultivation. As per the report of the Department of Land Resource, Ministry of Rural Development, Government of India, shifting cultivation has caused deforestation that has reached an alarming proportion. Under the shifting cultivation or jhum, there is an indiscriminate cutting and burning of forest, improper land use which lead to resource degradation, ecological imbalance and that the system accelerates degradation due to erosion, loss of bio-diversity and deterioration of water-shed hydrology. The shifting cultivation practice has caused loss of valuable wild-life, flora of diverse gene pool, grasses and edible vegetation useful for animal nutrition. The studies done by the Indian Council of Agriculture Research on shifting cultivation have indicated a soil loss to the tune of 40.9 Tonnes per hectare. The report further revealed that the size of the area covered under shifting cultivation in the North-Eastern States is estimated to be 19.91 lakhs hectares which is 83.7% of the total land covered under shifting cultivation in the country.

29. **The Integrated Jhumia Development Programme** aims at control of shifting cultivation and rehabilitation of jhumia tribal families for sustainable economic activities such as planting of trees, raising of orchards, terracing and bunding the land already put under the jhum cultivation. There are other projects such as Mini Jhum Control Projects (MJCP) and Waste Land Development Schemes and Watershed Development Projects. The object of these projects have been to wean away the jhumia families from shifting cultivation and settle them with

land-based sustainable occupation. There are a number of Centres set-up for the implementation of these programmes mostly in the hill areas and in the Autonomous Council Areas covering the Jhumia families.

Schemes undertaken are:-

i) Soil conservation and the land development work which includes terracing and land reclamation etc. There are schemes for water harvesting and distribution through pipelines etc.

ii) In animal husbandry sector, schemes under these projects for jhumia development programme are on piggery, poultry development and distribution of milch cattle – cow and buffalo. Under the Cottage Industry and Handloom Sector, the schemes include distribution of knitting machines, tailoring units, carpentry tools, distribution of looms and yarn.

iii) Major thrust is given to boost agriculture production through settled agricultural practices. Agricultural inputs like seeds, grafts and cuttings are distributed among the beneficiaries. Extension services in agriculture and allied sectors are provided to the jhumia families. Forest Departments of the States are implementing the schemes for natural re-generation.

30. Watershed Development Programmes for the control of shifting cultivation area is a vital scheme aimed at an overall development of jhum areas on watershed basis for restoring ecological balance in the hill areas and improving the socio-economic conditions of the tribal community engaged in jhum cultivation. The jhum control measures taken through these projects have had little impact in the absence of perennial and sustainable activities provided to the jhumia families. The strategy now adopted is for intensive cash crop production like tea, rubber, coffee, cardamom with the help of Rubber Board, Tea Board, Coffee Board and in some cases as joint ventures. During the financial year 2003-04, an amount of Rs. 3.50

crores was allocated for the rehabilitation of jhumis cultivators under the jhumia control programmes/projects in the State of Assam.

31. Watershed Development Programme for the control of shifting cultivation area have been launched all with the object of providing an alternative to the traditional jhum cultivation on a sustainable basis by encouraging settled cultivation through terracing and agriculture land development and also by promoting self-employment in allied sectors such as animal husbandry, dairying, piggery and poultry farming, cottage and agro-Industrial, business sector, handloom and handicraft sector. These schemes are expected to provide employment and income resources on a sustainable basis.

32. The physical and financial progress made under the scheme of Watershed Development Projects in shifting cultivation areas for the seven North-Eastern States aimed at overall development of jhum areas on watershed basis till the end of the Ninth-Plan as reported by the Ministry of Agriculture is given hereunder:-

State	**Financial Progress (Rs. In crores)**	**Physical Progress (Areas in lakh hec.)**
Arunachal Pradesh	7.62	0.19
Assam	6.80	0.12
Manipur	18.80	0.40
Meghalaya	11.63	0.18
Mizoram	28.21	0.61
Nagaland	30.56	0.55
Tripura	9.89	0.17

The Watershed Development Project under implementation since 1994-95 have the following objects:-

1) To protect the hill slopes of jhum areas and to reduce further land degradation process.

2) To settle jhumia families by providing developed productive land and with improved cultivation packages.

3) To improve socio-economic status of tribal families.

4) To mitigate the ill-effects of shifting cultivation and preserve the eco-environment.

The Ministry reported that so far nearly 1,30,000 jhumia families have been benefited in the North-Eastern States. The scheme is proposed to be extended to the States of Orissa, Jharkhand, Bihar, Madhya Pradesh, Chhattisgarh and Andhra Pradesh.

33. It is said that in the North-East States where jhum cultivation is still in practice the tribals are not keen on continuing with the practice and would prefer to opt for the settled cultivation. The poor and small farmers have been depending on shifting cultivation because they do not individually own agricultural land. They take the area on lease for shifting cultivation from the tribal chiefs who are the owners of most of the lands and also from the community land pools where village community has their own common land. There are, however, some farmers with the ownership of cultivated land in the valley areas. However, in some tribal communities the jhumland is heritable and the jhumias have the possessory rights which helps them to return to same land at the end of the cycle of 5 years or so.

34. The main reason for continuing this devastating practice of shifting cultivation is the absence of land tenure system as the Commission has observed in the North-Eastern region also. The settled cultivation is possible only with investment on land development, terracing of the land, harvesting water for occasional irrigation and in fact most places in the tropical North-East do not require any irrigation particularly for the horticultural crops and for the social forestry. The investment on land

development and cultivation/farming with modern technology require financial resources. Since the farmers do not have the land in their ownership it will not be feasible for them for any kind of investment made on an area taken on lease from the community or tribal chiefs as the jhumland assigned is subject to a periodical renewal.

35. Recommendations

(1) **The Commission recommends that there should be a comprehensive survey undertaken of tribal habitats which have their economy still at the stage of hunting and food gathering, and also of those tribal communities having the pastoral economy. Such a survey, in our opinion, is an essential pre-requisite to the tribal development, planning and programming.**

(2) **The Commission is of the view that the land traditionally put under agricultural cultivation, which is now listed as Government forest – by the Deptt. of Forest in the States should be properly documented and measures taken to declare such land as agriculture land and that possessory rights should be passed on to the farmers who actually have been cultivating such land in most cases from generation to generation.**

(3) **We recommend that sustainable development of the land, water and forest resources in the tribal areas of the country should be the major thrust of the economic development policy. The strategic policy for agricultural development in tribal areas must aim at optimizing the productivity and maximizing the production in the agricultural sector which in our opinion is essential for making the tribal areas self-sufficient in food grains and for the eradication of poverty.**

(4) **Recognizing that the traditional practices cannot be abandoned/given up which still remains relevant, some pro-active**

measures need be taken to blend the traditional technologies/practices with the modern frontier technologies. The tribals cannot be deprived off the benefits of modern technology and practices in this sector. Important thing to be done is to launch green revolution in the areas untouched by it. Measures need be taken to build necessary infrastructure facilities such as nurseries and progeny orchards for raising plant material and for the development of improved varieties of food crops. And that necessary extension services be provided to the farmers.

(5) The Commission observed during its field visits that in most tribal areas the Food Corporation of India or the State Agencies do not have the arrangement for the procurement of food-grains. The tribal people have demanded that whatever little production of food-grains which is surplus for marketing should be procured by the FCI or the State Agencies to provide remunerative returns to the farmers. The farm produce procured can be put in the public distribution network in the areas of procurement itself. There is a need to build-up storage facilities/cold storages in the tribal areas. The Technology Mission for the horticultural development in the North-Eastern region can make investment on post-harvesting handling infrastructure such as cold storage, grading and packing facilities and fruits and herbal processing units wherever it is found economically and commercially viable.

(6) The Commission recommends that agriculture and allied sector should be given top priority in tribal development, it being the main-stay of tribal economy particularly in the tribal areas where settled agriculture has not yet taken-off. The Central Government and the State Governments should ensure that agriculture/horticulture and allied sector receive impetus under the Planned Development. The TSPs must provide adequate flow of funds to these sectors. Analysis

made by the Commission during the field visits revealed that flow of funds from TSP to the agriculture/horticulutre and allied sector on an average has been less than 20% of the total TSP budget which is minimal considering the fact that over 80% of the tribal families subsists on this sector it being the main-stay of the tribal economy. The contribution of agriculture and allied sector to the family budget in the tribal areas is as high as 80% which is quite substantial.

(7) The Commission is of the view that in the Five Year Plans as well as in the Annual Plans flow of credit to Tribal Sub-Plan areas to benefit tribal farmers should be clearly indicated in the Plan provisions budgeted. There should be a survey done of the credit needs of the tribal farmers in different regions of the country and that credit plan should be based on the demand assessed through periodical surveys. It is only through this institutional credit flow to the Tribal Sub-Plan Areas that apart from meeting the credit needs of the tribal farmers, they would be saved from the vicious circles and the crisis syndrome of indebtedness/debt bondage that the tribals are very often subjected to mainly on account of exploitation by the private money-lenders.

(8) The Commission observed that the gap between country's developing economy and the traditional tribal economy is widening further. The purpose of Tribal Sub-Plan primarily is to abridge this gap but the ground realities are different. The question is: Can the country achieve the nation's vision of an India free from all poverty, illiteracy, and homelessness given the present state of tribal economy?

(9) The Commission also recommends that the land surveys and land-reform measures initiated particularly in the North-Eastern region should be expeditiously completed.

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(10) Considering the facts revealed by the agricultural census of 1995-96 discussed as above in this report, the Commission recommends that measure should be taken to check the fragmentation of land holdings so that it does not go down to an unviable size of holding by half an hectare. There is a need to augment the size of the holdings held by marginal farmers belonging to Scheduled Tribes so as to make the agricultural holdings economically viable. This can be done by undertaking land assignment schemes wherever it is feasible.

(11) Subsidies on agricultural inputs, plant material, insecticides, pesticides, chemical fertilizers, agricultural implements etc. for the Scheduled Tribes should continue. The tribal economy has not reached a stage as yet where subsidies can be cut-down. The tribal areas need huge investment on land development. They should be provided soft loans/concessional finance for investment in the land development. Priority should be given to the small and marginal farmers belonging to the Scheduled Tribes.

(12) The Commission further recommends that the Central Government and the States with tribal population together should build a pathway to help the traditional tribal food-gatherers and pastoralists for their smooth transition to a settled agriculture and allied sector which would require assigning land to them on priority basis for agricultural and allied sector's avocations.

(13) The Commission recommends that measures need be taken up to set-up public investment in agriculture and allied sector for bringing additional acreage under commercial food crops, fruit plantation and medicinal herbs development etc. in the tribal areas. Under the policy announcement made by the present Government to double the investment in this primary sector of the economy, the tribal areas

need be covered which would require additional plan allocation to the TSP.

(14) **The Commission observed that the schemes and projects taken-up for the control of jhum cultivation and rehabilitation of jhumia cultivators on a sustainable basis are the measures in the right direction and are laudable. There are Centrally Sponsored Catchment Area Development Programmes, National Waste Land Development Programmes, Integrated Jhumia Development Programme, Compact Area Development Programme, Mini Compact Area Development Programme, and finally important among them, Watershed Development Programmes under execution in the tribal areas/tribal habitats in the North-Eastern States covering both areas under Autonomous District Council and also in other tribal belts. These projects are designed to help the jhuming/shifting cultivators to take up sustainable activities for a settled cultivation through agricultural crop husbandry, horticultural crop husbandry through tree plantation, social forestry and other cash crop plantation etc. The Commission recommends that the State Governments executing these Centrally Sponsored Schemes should enlist the cooperation of the tribal community leaders and the functionaries of the Autonomous Councils for getting the land surveys completed; building the land records and documentation of record of rights of the cultivators in land; assigning the land already put under jhum cultivation to the Jhumia families with possessory rights for a settled agriculture where the land would continue to be under the ownership of the community. Under this kind of agricultural land tenure system the concerned States should build a mechanism to help the cultivators pledge the land assigned to them against the loans taken from the financial institutions, commercial banks, cooperative banks etc. for agricultural land development.**

(15) While implementing the provisions of the Forest (Conservation) Act, the administration may have to recognize the traditional customary and possessory rights of the tribals over the land particularly the jhumland which is technically a forested land in terms of the Forest (Conservation) Act and the Supreme Court's directives of 1996, but traditionally the jhumland has always been agricultural land because it is used for growing food-grains and fruits under a periodic cycle system which is why it is called shifting cultivation, the Commission observed. The Commission further recommends that the present interface between the forest and the jhum/shifting cultivators in the North-Eastern States should be resolved recognizing the age-old traditional agricultural practice of jhum/shifting cultivation for raising food-grains which even today continues to be the means of food security in the interiors of the tribal habitats.

(16) The Commission further recommends that bamboo cultivation on scientific lines under the Integrated Bamboo Development Programme of the National Mission on Bamboo Technology and Development launched by the Planning Commission should aim at generating employment and income on a sustainable basis for the shifting cultivators in the hill areas of North-Eastern States inhabited by the tribals. Under the social forestry schemes the bamboo plantation should receive impetus as this can generate employment and income on a sustainable basis for the jhumia families.

(17) The Commission observed that the State Governments and the Autonomous Council Authorities in the North-Eastern States do not have any specific land tenure measures planned for the assignment of the community land or land under the control of tribal chiefs to the cultivators or jhumia families for a settled cultivation on a sustainable basis so as to help the cultivators/jhumia families increase productivity and maximize the returns from the settled cultivation.

(18) The Commission observed that the fragile eco-system of Hills Areas of the North-Eastern States can be protected and that the soil erosion and depletion of the forest resources can be checked through the programmes like the development of Horticulture and of Bamboo plantation with the active participation of the farmers and with the help of modern technology as an alternative to the present practice of Jhum cultivation.

(19) Jhum cultivation as it appears is presently indispensable for tribal economy, the mind-set of the people should be changed to switch over to permanent cultivation that is eco-friendly. The Commission recommends that the land under Jhum cultivation should be brought under the social forestry, fruit-tree plantation and settled cultivation by the farmers who can be given the possessory rights in eligible cases so that they can invest on the development of their holdings by terracing the land for cultivation. Where the ownership of the land is with the community a legal instrument should be devised to enable the cultivators to pledge their agricultural land holdings against the loan taken from the financial institutions and commercial banks etc.

(20) Jhumland particularly in difficult upland terrain having steep slopes can be converted into woodland as has been done in Nagaland where social forestry and fruit tree plantation tea, rubber, bamboo cultivation are undertaken profitably with some investment which is feasible if the land tenure system is improved by assigning such land to the cultivators for settled cultivation with necessary backup provided through financial assistance, technical assistance and delivery of agricultural/horticultural extension services made available to the cultivators. This will assure full employment and income generation to hitherto under-employed jhumia which in turn will have multiplier effect on the tribal economy.

(21) There are a number of Centrally funded projects such as Watershed Development Projects, Wasteland Development Projects, Integrated Jhumland Development Projects etc. under implementation for helping the shifting cultivators to have settled agriculture/horticulture as an avocation on a sustainable basis. It appears on the ground, these projects have not made any impact as these programmes lack coordinational efforts. The planners and implementing authorities of these programmes perhaps have not been able to enlist the cooperation and support of the tribals in the areas these are being implemented. The Commission is of the view that there should be a short-term Commission or a Task Force floated to study the entire problem of jhum/shifting cultivation and rehabilitation of jhumia for a settled agricultural/horticultural avocation on a sustainable basis. There are many dimensions to the practice of jhuming/shifting cultivation, as such it would not be easier to find solution to the complex traditional practice of jhuming/shifting cultivation.

(22) **The Commission recommends that the Annual Report of the Ministry of Agriculture should have a separate chapter to report on the status of agricultural development in the scheduled areas and the tribal areas of the country with facts and figures and unless that is done, it is difficult to gauge the impact of agricultural development in the tribal areas of the country.**

D. Animal Husbandry

1. As per the Tenth Plan document, contribution of animal husbandry and dairying to total GDP was around 6% in 2000-01 at current prices. The value of output of livestocks and fisheries as estimated during 2000-01 was 30% of the total value of output from agriculture and allied sectors. The contribution of milk alone was higher than that of wheat. A decade

ago almost 18 million people were employed in livestock sector. Women labourers constituted 70% of the total labour force in livestock development. The growth rate in the livestock sector has been steady. However, there are no statistics separately available neither in the Planning Commission nor with the Agriculture Ministry in respect of the tribal areas of the country and in the absence of a data-base particularly relating to milk production, egg production, wool production and overall livestock resources in respect of tribal areas, the state of animal husbandry and allied sector cannot be known. It appears, even for the country as a whole, such a data base is not available. The Tenth Plan envisages setting-up a National Animal Health and Production Information System. Beginning may be made with tribal areas of the country for operationalising this system with the involvement of Panchayati Raj Institutions, Gram Sabhas/Village Councils in the tribal areas of the country and this will help build a credible national data base.

2. The major thrust of the Tenth Plan is – i) for the upgradation of indigenous native cattle; conservation of livestocks to preserve those showing decline in numbers; ii) for building infrastructural network for animal husbandry by enlisting pro-active role of Panchayats, Gram Sabhas/Village Councils in the tribal areas.

3. The planners have given the least attention to the sheep and goat development among all major livestocks. The emphasis should not merely be for increasing the population of goat and sheep, but also on productivity with the backup of extension services and marketing infrastructure. Pig husbandry is an important sector of economy of the North-Eastern region of the country inhabited by the tribal people. Already there is some progress made in the piggery development in the North-Eastern States and these states have around 25% of the country's pig population. The latest live-stock census 1997 in the State of Mizoram

shows that there were 2.56 lakh live-stocks. Of these, 1.63 lakh were pigs. The poultry population in the State at 18.76 lakh is impressive.

4. In the tribal areas some of the existing indigenous animal breeds are facing the threat of getting extinct, some of which are on the verge of extinction such as yak, chicku-goat, pashmina goat and Tibetan and bonpala sheep, highly useful as pack animal and for the production of wool, mutton and milk products. One of the reasons for the decline of population of these indigenous breeds is perhaps lack of immunization programme.

5. The Annual Report for the year 2002-03 of the Department of Animal Husbandry and Dairying, Ministry of Agriculture states that allocation of separate funds for the Tribal Sub-Plan is not feasible in view of the specific nature of activities and schemes implemented by the Department which is not directly implementing any beneficiary oriented programmes. However, there are some schemes which cover exclusively the Scheduled Tribes under the Central Mini-kit Distribution Programme, Foot and Mouth Disease Control Programme, and the development of fisheries and acquaculture which provide for subsidy assistance for the Scheduled Tribes under various programmes.

6. The State Governments have provided separate funds allocations for the animal husbandry sector under the Tribal Sub-Plan.

7. Some National statistics on animal husbandry are as under:-

The National Agriculture Policy has the target for achieving the growth rate in excess of 4% per annum in the agriculture sector which recognizes importance of food, nutritional security issues and the importance of the animal husbandry and fisheries in generating employment and income as animal husbandry can help achieve growth rate of 6 to 8% in animal

husbandry sector, then only the growth rate of 4% per annum targetted for the agriculture sector as a whole can be achieved. Interestingly, the Annual Report does not have the statistics on animal wealth in the country except in respect of milk production where it says that country achieved milk production to the level of 84.6 million tonnes at the end of 2001-02 against the 17 million tonnes in 1950-51. India has become the largest producer of milk in the world. The per capita availability of milk has increased.

8. The Commission was told during its field visits to the tribal areas that the per capita availability of milk in most tribal areas is very low. In fact, some of the tribal areas particularly in the North-Eastern States have not developed animal husbandry as the subsidiary of the agriculture on commercial lines. The nomadic Gujjar Tribes which are totally dependent on cattle breeding for the milk production have not been able to increase the returns on their investment and in fact, livestock propagation is getting discouraged due to the grazing problems particularly after the operationalisation of the provisions of the Forest (Conservation) Act, 1980, the Commission observed. The goat and sheep breeding which is the major occupation of the Gaddi Tribes is also facing the grazing problems. The economy of the Gaddi and Gujjar are in the doll-drums. The question is what are the economically viable alternatives that can be made available to the Gujjar and Gaddi Tribes?

9. Fodder development has never received the attention of the planners. In the study report of Dr. Baba Saheb Ambedkar National Institute of Social Sciences, Mhow (MP) presented in 1998, it was highlighted that providing fodder for the cattle in the areas hit by drought was a severe problem faced by the tribals. It was suggested that fodder banks should be set-up to take care of the cattle deposited at the cattle centers by the tribal when

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they migrate to outside places and they would get them back on their return. Commission agrees with the suggestions given.

10\. In some of the tribal areas the livestock population is almost two times the human population where cattle, sheep and goats rearing is the main-stay of tribal economy. Poultry farming is gaining ground in the tribal areas. The entire agriculture sector including animal husbandry is a private sector enterprise but the Central Government and the State Government have the special responsibilities to shoulder under Article 48 to direct the States to organize animal husbandry on modern and scientific lines and take necessary steps for preserving and improving the breeds. Census of livestock including poultry and pig population etc. will have to be updated. There should be a special census taken on the livestocks in the tribal areas based on that all plans and programmes for animal health-care and to conserve and improve the quality indigenous breeds can be developed and necessary infrastructural facilities can be developed. States have set-up veterinary dispensaries, sheep breeding farms, poultry units to propagate the livestock development and to provide animal health-care in the tribal areas of the country. But there are no credible studies done and necessary data base is not available right from Planning Commission down to the Animal Husbandry Departments in the States about the state of animal husbandry in the tribal areas of the country. Milk production has been subsidiary occupation of the tribal people apart from rearing cattle to meet their demands for agricultural operation and manure. Rarely in the tribal areas, milk production is taken up on commercial lines, which can in fact, be a sizable source of nutrition, employment and income. Most tribal habitats do not have the milk chilling centers not primarily because of budget constraints under the plan funds but mainly because of the lack of extension services made available in the tribal areas.

11. Recommendations

(1) The Commission recommends that the policy thrust of the Tenth Plan described as above should cover the tribal areas at faster rate. Under the Tribal Sub-Plan, animal husbandry and dairying, poultry, piggery and fisheries should receive priority for generating animal wealth and employment. Use of appropriate technology and marketing intervention in the production, processing of milk and dairy products should be given priority in the tribal areas. Animal husbandry is considered essentially a subsidiary to the agriculture but in many tribal areas it has not developed in full measure particularly in the North-Eastern region in the absence of settled agriculture as there has not been any significant headway made in the supply of pack animals, milk and production of milk, mutton, wool and compost etc.

(2) The Commission recommends that apart from providing extension services, R&D efforts should be stepped-up to improve the indigenous breeding to achieve higher growth and productivity. Some of the indigenous animal breeds are on the verge of extinction. A live-stock census should be conducted for the tribal areas of the country which has not been done in most of the tribal areas in the past, the Commission observed.

(3) The Commission recommends that the Union Government may issue necessary directions to the States under Article 339 (2) and the Fifth Schedule to the Constitution advising the State Governments to develop pastures and grazing grounds for the live-stocks of Gujjar and Gaddi Tribes for both summer and winter grazing as they are professionally nomadic under the compulsion to search for grazing grounds and until that is done States be advised to provide free and unhindered access to the pastures and grazing grounds which they have been using traditionally as recorded in the

revenue records of rights in most areas and in some areas without any documented rights enjoyed conventionally.

(4) We recommend that Department of Animal Husbandry, Ministry of Agriculture in their Annual Reports should provide national statistics on animal wealth apart from the live-stock census data. It is not enough, in our opinion, for the Government of India to simply say that animal husbandry is a State subject and the States are primarily responsible for the growth and development of this sector. There should be a National Policy and a vision for the future of this sector of economy. Merely having a few central sector special programmes would not help overall development of this sector which is an integral part of the tribal economy as it provides the tribal families in most parts of the tribal areas of the country additional income as well as nutritional security and food in the form of milk, eggs, meat and wool for clothing etc.

(5) The Commission recommends that the cattle farming in the tribal areas need upgradation the primary object of which inter-alia should be to increase the milk production. In most tribal areas per-capita availability of milk is as low as 90 gms. which is far below the recommended level of 250 gms. per head. To meet the optimum level of milk consumption in the tribal areas the State Governments should take-up Milk Village Schemes by the Dairy Development Wing of the Department of Animal Husbandry. This scheme has been started in the TSP areas and the tribal areas in Assam with some success.

E. Industry

1. The Tenth Plan target is to achieve a growth rate of 10% per annum for the industrial sector. The tribal areas are industrially backward. The Tenth Plan targets fixed for the industrial sector has no relevance for the tribal

areas as the industrial development has not reached the take-off stage as yet in the tribal areas of the country. However, the consumption pattern in the tribal areas have undergone changes as we find that the use of manufactured consumer goods has increased in the tribal areas indicating a rise in the standard of living, but this cannot be taken as an indicator of economic progress in the tribal areas. Rural industries including cottage and village industries, handicrafts, handlooms and small scale industry provide employment outside the agriculture and allied sector. The development of these industries can change the employment scenario of the tribal areas. These industries comparatively are labour intensive providing opportunities for employment and income generation, the Commission observed.

2. Cottage and village industries are traditionally artisan based involving individual entrepreneurs, Self-Help Group (SHGs) which have widened the industrial activities at the village level. There are no data base separately prepared for the tribal areas in respect of cottage and village industries. Khadi and Village Industries Commission is expected to play the role of the nodal agency for the whole village industry sector in the tribal areas including the tribal areas.

3. The tribal areas in the country – most of it – are located in the hills, interior forested areas, high altitude mountainous areas, some of which still remain inaccessible. Infrastructural facilities – roads, transport system, communication etc. are inadequate. Now, the tribal areas have started opening-up with the planned development strategies, development schemes and projects executed. Due to infrastructural constraints, there are not many major and medium industries set-up in most of the tribal areas. However, some of the towering heights of the public sector industries are located in some of the tribal pockets of the country which have helped develop country's economic growth at a faster rate but have

displaced a large number of tribals, alienated their land holdings and some of them have been rendered destitute, if we are to believe the dark figures on displacement. We have discussed the problem of displacement and rehabilitation of tribal population elsewhere in this Report.

4. Whatever little industrial investment being made in the tribal areas all over the country are in the small industry sector. Village and khadi industries, handloom and handicraft, some forest and agro-based units have traditionally been there in the tribal areas supplementing the agricultural income of the tribals. Almost all the State have reported that the large and medium sector units as per the opinion of the tribals will have no positive impact on the socio-economic life of the Scheduled Tribes. They have reported that the village and cottage industries have the potential for development as the raw material, man-power and traditional art and skills are locally made available. The tribal areas in some States have become famous for their handloom products and handicraft items.

   Some tribal Districts in the country have District Industries Centres set-up for the promotion of small scale industry, village and khadi industry, handloom and handicraft products development. These industries also provide extension services.

   Khadi and Village Industries Board has been active now for many years and they have their separate activities right into interior tribal areas as well. They provide financial assistance for small and tiny industrial units in handloom and handicraft sector.

5. The plan expenditure made is for the promotional activities, training of weavers and craftsmen, training of individual entrepreneurs for running hotels and restaurants etc. There are ITIs run with the plan expenditure under the Technical Education Department of the States to impart

professional training in many trades and these institutions are not tribal specific. General impression is that the professional training programmes are not commensurate with the felt needs of the tribal areas. Extension services also are inadequate generally. Plan Expenditure made is very small on all these schemes for professional development, skill generation and the orientation training etc.

6. This sector has the strategic role to play for the promotion of employment and income generation to help (a) alleviate poverty amongst the Scheduled Tribes and lift them above the poverty line, (b) provide additional income for the cultivators in the agricultural sector, (c) open-up opportunities for seasonally unemployed labour and also to open-up avenues for the educated unemployed tribals. As per the statistical figures given by the Planning Commission in the Tenth Plan document, the tribal population below the poverty line in 1993-94 was 51.94% as against 37.27% of the country's rural sector. The percentage has come down to 45.86% in 1999-2000, yet it is substantially higher than that for the country's rural sector at 27.09%. With the rising population, the pressure on land particularly on agricultural land holdings is increasing. The agriculture cannot absorb additional unemployed force. Most of the cultivators with a small fragmented land holdings have become underemployed, as the income from the small agricultural holdings is not enough for their subsistence. The augmentation of income of the small and marginal farmers is necessary for helping them to meet the cost of living and to provide opportunities for increasing their standard of living at a reasonable level apart from meeting their family budget. They need income for education and health-care of their children. One major reason for higher drop-out rate at the elementary level and above is the lack of finances for higher education outside their habitat. The additional income is essential for human resource development which can help reduce unemployment among the tribals.

7. The village and cottage industry comprised of handloom and handicraft, agro-industry has a key role to play in generating employment and income. The secondary sector – industry, trade and commerce and tertiary sector – tourism, transport services can absorb substantially the unemployed. Migrations from the Himalayan belt which were the traditional practice particularly during the winter has now stopped after the opening-up of the area under the planned development. The tribals in the State of Himachal Pradesh, Sikkim and Uttaranchal now have the increased avenues particularly in the labour force, road building works, hydro power projects etc. The agriculture and allied sector in the tribal areas of these States have reached the stage of take-of and they find shortage of labours during the seasons. The shortage is mainly because of the fact that the traditional labour force, most of them, prefer to undertake self-employment as weavers and craftsmen, small entrepreneurs in the projects and are better engaged in post-harvest handling, shops and establishments, hotels and restaurants etc. which they find more remunerative. These areas were getting labour force traditionally from Nepal to meet the demand of the agricultural sector and for the construction of roads, hydel projects, building works etc. The demand is being met now by large scale migration of the labour force from the tribal areas of Orissa, Jharkhand, Chhattisgarh and Bihar. This has not only helped meeting the labour requirement of tribal areas of the Himalayan States, but also helped opening-up employment avenues for the unemployed tribals from the Central India tribal belts. In fact, a large number of these tribal migratory labour force is deployed in the tribal as well as non-tribal areas in the States of Himachal Pradesh and Uttaranchal. In the year 2002 over 10,000 tribal labour force migrated from the Central India tribal belts had their social congregation held for the first time at Shimla. The number is on the rise.

8. The States of Himachal Pradesh, Karnataka and Rajasthan have done an industrial survey of large, medium and the small scale sector i.e. SSI, cottage and village industries, handloom and handicraft sector. The figures in respect of these States are given as under:-

State	Village, small and cottage industries
Himachal Pradesh	970 units
Karnataka	13798 units
Rajasthan	13582 units

Other States have not done any industrial survey in this sector. It would be difficult to assess the impact of industrialization policy and industrial progress in the tribal areas, in the absence of a survey done to enumerate the units which include individual entrepreneurs.

9. Most States claim that industrial development of any kind or size has not led to the dispossession or an encroachment on a tribals survival system like land, forest, water, air, homes and hearths. The State Governments say that the District Industries Centres, industrial areas/estates have been developed on the Government land. Way out need be found to make land available for capital investment in the industrial sector by the tribals as well as the outsiders. A suitable land lease system need be developed to allow leasing land on rental basis or on lease basis for a specific period which should be reasonably longer to allow returns on the investment.

Small Scale Industry

10. This sector is not confined to manufacturing activities only, but also includes all activities – trade, transport and financial services. This industry is labour intensive and hence employment generating. For this reason, this sector is given fiscal support by way of incentives such as excise, sale tax and income tax concessions/exemptions. Special credit

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support and marketing support are provided under various schemes for this sector.

Agro-based industry, food and fruit processing units can help generate employment and income considering the fact the agriculture/horticulture is the main avocation in the tribal areas of the country. These industries are supported by a food chain starting from farming, post harvest handling and marketing and requiring in some cases the processing activities for utilizing the cull/processing grade fruits and also to export outside tribal areas as raw and value added products. Although, the tribal areas are being individually declared taxfree zones apart from other concession by way of interest subsidy and transport subsidy etc. yet there are a number of levies like market cess, Inter-State barrier tax and the taxes on packaging material etc. charged on the industrial goods from the tribal areas.

11. Some consumer goods industries like – floor mills, rice shellers, edible oil extraction units etc. which are in the small scale sector have the tremendous scope in the tribal areas. Sugar factories generally are in the medium sector requiring better production technology which is handled mainly by the cooperative sugar mills. Processing industries except for the juice extraction have not been found viable in small and tiny sector on account of low juice recovery percentage.

12. Handlooms

The tribal areas traditionally depended upon handloom products for meeting the clothing needs. It also plays an important role in the economy which helps generate income and employment. The tribal handlooms are part of India's rich heritage. It provides employment to the millions of weavers, households which are engaged in weaving and allied sectors and quite a substantial size of it is in the tribal areas. However, it is facing

tough competition from the powerlooms and the mills. At the country level handloom sector contributes nearly 19% of the total cloth produced in the country and it also contributes substantially in the country's export earnings. But, in the tribal areas although there are no data base prepared, yet traditionally and even in the modern terms, this sector meets in a big-way clothing needs of the people. The handloom industry in the tribal areas is facing a number of problems like use of obsolete production technology, high cost on procurement of yarn and inadequate supply of inputs like standardized dyes and inadequate market intelligence. It being an unorganized sector consequently it has the weaker financial base. One thing important from the employment angle, traditionally and even in the modern times, this sector is in the hands of weaker sections of the society, women and the scheduled castes weavers in greater number. One good trend that as emerging is that a large number of women in younger age groups have taken up weaving handloom products. They are trained in Government run District Industries Centres and through training imparted by the traditional weavers in the villages. Another constraints is that an unorganized handloom sector is largely dependent on the mills in the organized sector for the supply of most of the raw materials and inputs. Procurement of the raw material at the reasonable prices has been a problem for the entrepreneurs and the individual weavers and craftsmen in the interior and inaccessible tribal areas. It has been noticed that in the areas which have comparatively better infrastructural facilities like regular transport services and communication facilities, market forces have helped improving the supply position.

13. Traditionally this sector did not have to depend on large scale import of raw material into the tribal areas for production. The Himalayan tribes have their habitat along the International land border. For handloom products, the basic raw material – raw-wool and pashmina wool came from Tibet and these areas had the flourishing trade with Tibet, which was

closed after Indo-China War of 1962. The handloom sector in the tribal areas and in the non-tribal areas as well in all these years have been procuring wool and cotton yarn from the mills located in the Plains. Raw wool and pashmina are used for weaving traditional shawls, saris and other fabrics and dresses now used occasionally during the festivals, marriages and on other social occasions. The tribals rear up Himalayan sheep and goats for a limited production of wool and pashmina wool. Now, with the opening-up of some of the traditional trade/silk routes, the tribal traders are enthused and are hopeful about the availability of wool and pashmina from Tibet. During the course of Commission's field visits to the tribal areas of Ladakh, Himachal Pradesh, Uttaranchal, Sikkim and Arunachal Pradesh, the tribals associated with the border trade reported that only wool is available for trade in Tibet. China has discouraged export of pashmina wool. The tribals do not expect any increase in the production and availability of pashmina wool thread/yarn for the handloom sector. This sector will have to heavily depend upon the marino wool yarn produced in the mills. In fact, the marino wool production in some of these areas has increased marginally as a result of wool development and strengthening of marino sheep breeding farms and the extension services being provided by the Department of Animal Husbandry in the tribal areas for the production of marino and pashmina wool.

14. The items produced are – hand woven shawls with traditional designs, blankets, weaved saris, woolen cloths for use as dress material, wood carving, carpet weaving, thanka painting, jewellery making etc. in the Himalayan Tribal Belts - Pottery, stone-carving, bamboo basket making, mat weaving, carpet weaving, lacquer-ware, beads, embroidery etc. in the Central South India Tribal Belts - In the North-Eastern Tribal Areas production in this sector with special art and crafts prevalent are - wood carving, beads and neckless manufacturing, painting on cloth, hand-made

paper cane and bamboo products pottery, colourful handloom shawls, garments and the fabrics etc.

15. This sector has although been able to ensure employment, yet it has not been remunerative to the weavers it being labour intensive and a time consuming production. There is not much incentive for the weavers to continue with this avocation. However, it guarantees the minimum they are getting as they are in big demand, because the shawls with designs and other fabrics are much in demand in the markets.

16. In the handloom sector, policy thrust is on preserving country's heritage and culture. As per the National data among the weaver, 65% are women, 32% belonged to Scheduled Castes and Scheduled Tribes categories. However, there are no statistics available as to what percent of the weavers belonged to the Scheduled Tribe. There has never been any separate profile prepared for the Scheduled Tribes, in the absence of which no appraisal, analysis of the impact of this sector on tribal economy can be determined.

17. In the North-Eastern region, handloom and handicraft and sericulture continue to be major source of employment and income generation after agriculture particularly in the tribal areas. This region has rich tradition in handloom and handicraft sector including cane/bamboo based crafts. The production of the handloom and handicrafts items on commercial scale has not been encouraging in the tribal areas due to constraints of inadequate infrastructural facilities like availability of soft financial support and weak marketing tie-up. All these have contributed to the low remunerative returns to the artisans and craftsmen. The Ministry of Textile has recognized the immense potential that the region has in the handloom and handicraft sectors. That is not enough. What is needed is building measures for the development of this sector removing all impediments to

the faster growth of the sector which can contribute a lot in building tribal economy resulting in employment and income generation. In the higher mountainous tribal areas in the cold climatic region woolen textiles in the handloom sector traditionally and in the modern times have greater share compared with the powerloom/mill manufactured clothes, garments and cardigans etc. Carpets weaving has the major share of the production in this sector. The carpets manufactured in the tribal areas of Arunachal Pradesh, Sikkim, Himachal Pradesh and Ladakh have found popularity in the carpet markets particularly in the export markets. But then, production of the carpet on commercial lines has not made much headway due to constraints of raw material, procurement and marketing at remunerative prices.

18. From the replies received from the States, it appears, not much has been done to explore the possibilities of reviving arts and crafts except that some of the States have started rural artisans programme under which local artisans are trained and given some exposure on different trades.

19. Karnataka has done some progress in the industrial sector for the tribal areas particularly in the development of Coir based industries. Karnataka State Coir Development Corporation has established production-cum-training centres in the Districts with the tribal concentration. The State reported that around 60 tribals are engaged in product manufacturing. Under the Prime Minister's Rojgar Yojna, loan assistance through commercial banks have been provided to the unemployed youth. So far 4100 ST candidates have been sanctioned loan for setting-up self-employment ventures and total loan sanctioned was to the tune of Rs. 26 crore. Khadi and Village Industries (KVI) Board has been assisting ST artisans by providing margin money.

20. The Gujarat State Handicraft Development Corporation is providing gainful employment opportunities to tribals by encouraging avocations like carpet weaving. The State reported that carpet weaving under old craft of Persia have been flourishing in the remote tribal areas of the State. Carpet weaving of old craft of Persia requires a skill formation at the young age. This has a tremendous potential for employment in the tribal areas and for remunerative returns. As reported most of the production centres being run are in the small thached premises. The State has the programme to construct proper worksheds to promote this industry.

21. Many States have reported that the tribal people have artistic and creative temperament but there is a decline in arts and craft as they do not get enough income from the craft it being a labour intensive. There are a number of schemes sponsored by the Government of India and Khadi Village Industries Board also which provide financial assistance as 30% grants and 70% loan through nationalized banks to the local artisans and weavers.

22. Given proper hand on training and guidance young entrepreneurs can come up for self-employment. In the North-Eastern States weaving has been the way of life for the tribal women. The tribal textile designs have a rich heritage. Handloom has a vital role in the development of economy of the tribal areas in the North-Eastern region.

23. Handicraft

Handicraft sector has tremendous scope for substantial contribution to the tribal economy in terms of employment and income generation. This sector can generate foreign exchange earnings. Not much promotional work has been done for the development of handicraft sector in the tribal areas. Again it is labour intensive industry involving lot of skills and artistry and the production is time consuming. In return craftsmen do not get

remunerative returns. Skill upgradation/skill development is not an easy task and that training of the artisans is a tedious problem. There are in most places no design and technical assistance provided to the craftsmen and the artisans. The local craftsmen face raw material supply constraints particularly in the interior inaccessible tribal areas.

24. Despite the fact that the craftsmen do not get remunerative returns, they would love to continue their avocation for the sake of craft even with lower income level. The major impediment which the craftsmen reported in the tribal areas is the emergence of middle-men at different levels in the marketing chain that take away the margin leaving a very little as returns for the craftsmen.

25. In the handicraft sector about 7% of the outlay in respect of identified Central Sector Schemes is earmarked for the benefit of the Scheduled Tribes and women artisans. The allocations made in the major schemes are Baba Saheb Ambedkar Hastashilp Vikas Yojna, design and technology upgradation, marketing support and services and export promotion etc. At the National level, women constituted a major segment of handicraft/ handloom workers i.e. around 46.8% of the total work force, as there are certain crafts which are practised predominantly by the women.

26. There are a number of schemes operated by the Ministry of Food Processing Industries which aim at providing facilities and incentives for promotion of food processing industries with an enhanced scale of assistance for difficult areas including the Integrated Tribal Development Project (ITDP) areas. The assistance is being provided for the supply of raw materials and for the people working in the plants and also for those engaged in the marketing activities.

27. In the tribal areas, the private sector investment from outside i.e. by the non-tribals in any type of industry has not been encouraging due to certain constraints. The Land Transfer Regulations come in the way of leasing private land of tribals to non-tribals. An industrial unit of a tiny size may need land/plot measuring around 300 Sq. mtrs. The leasing by the tribals of their land is restricted requiring the prior approval of the State Government authorities. In some States, it is totally banned.

28. The tribals do not have enough capital raised for setting-up industrial units as their first priority is always the agriculture and allied sector as far as the investment is concerned. Where credit/loan facilities are available, the tribal entrepreneurs need margin money which is normally 10% of the cost of the product. The projects/schemes funded by KVI have a built-in provision made for margin money assistance. Industrial Policy of the States also provides some industrial subsidy ranging from 15 to 25% subject to certain ceiling which is normally used as margin money and also as working capital. The units and activities financed by the National Scheduled Tribes Finance and Development Corporation has a provision to allow margin money along with the loan sanctioned. But, it has not ventured in practice into the industrial sector as its policy thrust has been the service sector where land is not involved and an entrepreneur seeking loan must have his family income less than 40,000 only per annum and with that kind of stipulation no tribal entrepreneur becomes eligible for loan even for tiny sector units. For any investment more than 10 lakhs would require higher margin money which renders many tribal entrepreneurs ineligible for loan. The State Financial Corporations and Industrial Development Corporation do not provide margin money assistance as a part of loan assistance.

29. The tribal entrepreneurs need margin money for initial investment on the pattern provided by the KVI for investment in the cottage and village

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industries, handloom, handicraft, small hotels and restaurants. The National Scheduled Tribes Finance and Development Corporation may have to review its financing pattern with regard to the present eligibility criteria by raising the annual income of the family of the entrepreneurs seeking loan assistance from present ceiling of Rs. 40,000/- to a reasonable level at Rs. 80000/- per month or so. It may not be feasible for a person below the poverty line to make investment in any industrial unit for small or tiny sector for running a small enterprise like restaurant or a workshop. But, it should continue to finance persons below the poverty line for tiny enterprises like restaurant, cycle rickshaw service, taxi service etc. The priority should be given to them.

30. Industrial Policy of various States have provided certain measures to protect the interests of the tribals for capital investment particularly in the small, village and cottage industry. The industrial plots developed in the industrial areas/estates in the tribal areas are allotted to the tribal entrepreneurs on priority basis. A non-tribal in a Scheduled Area may not be able to invest on industrial venture, as they may not be entitled to the built-up industrial plots, yet the States have the policy to encourage investors from outside the tribal areas, in the sectors where tribal entrepreneurs are not forthcoming. Arunachal Pradesh predominantly a tribal State encourages investors from outside the State to invest in the State. An important condition for investment by the outsider in any industrial venture is that 100% equity ownership of individual units set-up by entrepreneurs from outside will be allowed for a maximum period of 30 years whereafter such equity holdings should be reduced to 49% to enable the State Government/Undertakings or the local Arunachal tribal entrepreneurs to hold 51% of the equity share. And, the entrepreneurs from outside will be allowed to hold land on lease for a period of 30 years which can be renewed for further period of 30 years. The lease may be used as security for the loan from the financial institutions. These type of

investment is intended primarily to protect the interest of the indigenous people of the Arunachal Pradesh. It appears that not many entrepreneurs from outside would be encouraged with these conditions. However, other States may experiment this pattern of investment by entrepreneurs from outside the tribal areas.

31. Trade and Commerce

The trade and commerce in the Scheduled Areas and in the tribal concentrated pockets are generally in the hands of non-tribals, merchants and shopkeepers from outside the tribal areas except in the North-Eastern region wherein most places trade and commerce is mainly in the hands of the natives. Traditionally in the tribal areas marketing was based on barter system through the exchange of goods and services. Sales and marketing based on monetary system was in use for some limited items procured from outside the tribal areas. Involvement of the outsiders in trade and commerce originated on account of the monetary system, accountancy and banking etc. which was something new to the tribals and there were not many literate tribals in the trade. Some of the trades like running shops, hotels, restaurants are of the technical nature requiring professional knowledge and techniques. With the rise in literacy rate things have changed. Now, the tribals themselves can have the command over trade and commerce which is turning out to be a big avenue for employment and income generation. There are measures needed for the protection of the interests of the tribals in the absence of which the cases of indebtedness and land alienation etc. are likely to increase. Already in the industrial sector some protective measures have been taken to promote investment by the tribals by allotting industrial plots to them on priority basis, through supply of credit/loans at subsidized interest rate and various tax exemptions and concessions given to them, the object of which is to protect the interest of the tribals. Similar, protection need be

given to the tribals to protect their interest in the trade and commerce in the Scheduled Areas.

32. Recommendations

1. **We believe that small scale industries with village and cottage industries, handloom and handicraft, tiny industrial units and individual enterprises have a key role to play supplementing income of the tribals from agriculture and allied sector. The development of this sector which has a greater potential for generating employment and income need be given priority which will help solve certain unresolved problems such as underemployment problem in the agricultural sector, rising unemployment on account of the fact that the agricultural sector cannot absorb additional labour force as whatever accelerated development that can take place in the agriculture and allied sector can help underemployed agricultural cultivators only.**

2. **We recommend that there is a need to set-up industrial training institutes in the tribal areas which at present only few States have limited ITIs in the tribal areas. ITI with a large number of trades introduced will produce trained craftsmen, skilled workers, carpenters, plumbers, painters, masons, tinsmiths and others who can be trained in manufacturing locally agricultural tools and implements etc. With these efforts, availability locally of skilled workers in the tribal areas will increase. Important thing is that the requirement of skilled workers should be locally met to provide avenues for the unemployed particularly the educated youths of the tribal areas. The unemployed youths have come to realize that with these trade skills imparted through ITI trainings, they have all avenues available in the private sector which are more remunerative then the clerical and secretarial jobs in the Government Departments**

and public sector organisations and they would even try and opt for self-employment as individual entrepreneurs in handloom, handicraft, SSI sector running tiny/small units now that the credit facilities are available and soft loans are obtainable.

3. **Not much public investment has been made in this sector, as discussed in the paras above. There is a need to augment both public and private investment in this sector. Credit facilities and loans should be made available at concessional rates. The present scale of interest subsidies provided need be increased by subsidizing through Plan/Tribal Sub-Plan funding and under Special Central Assistance programme. The concessions provided by various States such as declaring tribal areas as tax free zones and a plethora of subsidies and other concessions in the tribal areas of the country will not have much impact made on the economic development of these areas unless first thing is done first i.e. by encouraging the tribals to take self-employment and set-up small and tiny village and cottage industries, handloom and handicrafts, small workshops service stations and run hotels and restaurants, buses and taxies etc. in the tribal areas itself which apart from generating employment and income will have a multiplier effect on the overall economic development of the tribal areas. Key to all these is the availability of concessional loans/credits for the investment in this sector. There should be a provision made in the industrial regulations for giving preference to the local people seeking employment in the industrial units.**

4. **The Commission recommends that technical assistance and extension services should be provided for innovational design, development and also for the preservation of traditional art and craft. This will help solve problem of the present mismatch of demand and**

supply particularly in terms of designs and blending of raw materials etc. The States may be funded with central grants and special packages for design development by setting up design centres in the tribal areas at least one in each State for the revival of tribal art and craft some of which are reported to be on the verge of extinction.

5. **The Commission recommends that the public investment for building marketing infrastructure should be doubled so as to facilitate unhindered marketing of the products which will help reduce a number of middle level marketing chains in the whole link of marketing infrastructure which will assure the remunerative returns to the units and the individual entrepreneurs in this sector.**

6. **The Commission has assessed the ground realities and found that the tribals are generally opposed to the setting-up of big industries except the hydro-power projects which in modern times are set-up underground without much disturbing the surface land areas. The tribals are aware that any type or size of industry can provide opportunities for market expansion services and construction activities etc. from which the tribals may derive some benefit. But, they have always had lurking fear of displacement and land alienation. The Commission, therefore, recommends that only those industrial units be promoted which do not require acquisition of tribal land as far as possible and also those which do not create environmental hazards. Chemical industries and cement factories should be banned in the tribal areas as these are not eco-friendly considering the fragile eco-system of the tribal areas. The gram sabha/traditional Village Councils and the Panchayats should be consulted and 'No Objection Certificate' need be taken before final approval is given by the Government for setting-up industrial units.**

7. The Commission recommends that the industrial policy on the equity share with slight deviation from the pattern adopted in Arunachal Pradesh (discussed in the para above) be devised to allow the local tribals to lease their land for a specified period or on the rental basis to the non-tribal entrepreneurs so as to encourage capital investment from outside the tribal areas.

8. The Commission recommends that small industrial areas/estates need be developed with infrastructural facilities for setting-up agro-based industries, fruit processing units, medicinal herbs processing units. Not all fruit processing units set-up in the small and tiny sector turn economically and commercially viable where the unit is for extraction of juice. The reason being the commercial viability of a juice extraction unit depends upon the higher percentage of juice recovery which only the hi-tech plant with the state-of-the-art technology can ensure requiring heavy investment which is not feasible for a small scale industrial unit. Some States with the tribal areas have large processing units set-up outside the tribal areas where fruits from the production areas are procured including that from the tribal areas. Himachal has one such hi-tech plant with over 30,000 tonne processing capacity which meets the processing requirement of the State. In such situation, there should be built-in provisions made for subsidizing the transportation cost in respect of procurement from the tribal areas.

9. The traditional handloom and handicraft should be revived and some of the handicrafts which are on the verge of extinction need be preserved. The Commission recommends that there should be programme for design development and skill generation in handloom and handicraft sector particularly. There is a need to upgrade the knowledge of the traditional weavers about the production inputs

such as various raw material inputs and about the marketing management and marketing technology. There should be a package provided by the Central government for the design development and skill generation in the handloom and handicraft sector in the different tribal regions of the country.

10. The Commission recommends that medicinal herbs naturally found in the forest can be propagated on the jhumland and in all types of forest areas in the State. Herbal gardens can be developed by taking technical financial assistance from the Ministries of Health, Forest and Environment which have the programmes to promote medicinal herbs production. This will help promote medicinal herbs processing units in the tribal areas by using traditional wealth of knowledge the tribals have transmitted from generation to generation can be practically used which at the same time will protect the Patency Rights of the tribal with regard to their knowledge about the herbs and herbal medicines.

11. Eco-friendly locally produced material based industrial development particularly handloom and handicraft industry run on commercial lines in the tribal areas will have multiplier effect on the economy resulting in employment and income generation for the tribals. The village and cottage industry, handloom and handicraft sector need a policy development thrust on preserving country's heritage and culture. This sector needs research and development support and technical assistance. The tribals of India cannot be deprived of the state-of-the-art frontier technology.

12. The Commission is of the view that there is a need to have resource mobilization for the optimum use of existing potentials including human resource, skills and expertise in this traditional sector of

village and cottage industries. We recommend that industries should be developed as an organized sector through the tribal weavers cooperatives, modernisation of looms by way of programme for improving the skills diversification of production, design development as per the market demands, arranging supply of inputs to the weavers. The most important aspect is the marketing tie-up arrangements needed on a sustainable basis. As per the demands placed by the tribal communities during the Commission's visit, we recommend that this vital sector of tribal economy having tremendous potential for employment and income generation for the tribal people and to protect the tribal heritage, there should be a special package of financial assistance provided particularly for design development on traditional lines to generate market demands for building commercial base on a sustainable basis. We further recommend that the technical assistance programme and the extension services delivery system in this sector for the tribal habitats should be strengthened.

13. **The Commission recommends that the industrial survey of the tribal areas of the country may be undertaken covering small scale industries, village and cottage industries, handloom and handicraft, agro and forest based industrial units, tourism, hotel and restaurants etc. and all big, large, medium small scale and tiny sector and individual enterprises with complete enumeration done. The actual state of industrial development can be ascertained only through such surveys. Scientific planning and programming of the industrial development of any sort can be undertaken only with the data base which the survey alone can furnish. It would not perhaps be feasible for all States to have the survey undertaken under the TSP with a small budget. The Commission recommends that the Central**

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Government may provide one-time financial package for undertaking the survey.

14. The Handicraft and Handloom Corporation of the States may be funded on the pattern of khadi and village industries sector to encourage handloom, handicraft and khadi activities. The local traditional artisans need be given special exposure of the modern technique being used in other parts of the State in the country.

15. The Commission recommends that the credit facilities at subsidized interest rate should be provided. At present, it is for industrial units in the organized sector that are provided with interest subsidies on loans and credit. In respect of tribal handloom products not much efforts have been made for the creation of brand identity with the result positioning of the traditional handloom products in the export market has been a problem.

16. The Commission recommends that necessary measures need be taken to provide an easy access to the supply of inputs like yarns, dyes. The designs are transmitted to the weavers from generation to generation. While in some tribal areas, design centres have been set-up to help develop innovative designs suiting the market requirements, some more R&D efforts in respect of design development technique need help and necessary thrust.

17. The tribal handloom industry is faced with the problem of influx of powerloom shawls and fabrics imitating the traditional tribal handloom design. Himbunkar and Apex Handloom Cooperative Society in Himachal Pradesh has demanded that the alarming proportion of influx of such shawls should be stopped. The tribals of Uttaranchal also said the same thing before the Commission as their

traditional handloom and handicraft market has been invaded by the mill made shawls and fabrics. The Central government may have to intervene exercising the powers under the provision of the Fifth Schedule to the Constitution by directing the States to ban the entry of such goods which have the devastating impact on the market for the traditional tribal handloom and handicraft, the Commission observed.

18. The First Scheduled Areas and Scheduled Tribes Commission recommended pilot schemes to be floated for helping the tribals processing tobacco and preparation of bidis in Bihar, Madhya Pradesh and Orissa that has not happened in all these over 43 years. It is recommended that special protective measure be taken through necessary directives under Article 339 (2) or under para 5 (2) of the Fifth Schedule to the Constitution, where the Union Government has accepted the recommendations of the Commission but the States have not implemented the same.

19. The Commission recommends that measures need be taken to put the native tribals in command over trade and commerce in the Scheduled Areas through necessary regulations framed under para 5 (2) of the Fifth Schedule to the Constitution and for the tribal concentrated pockets ITDP areas outside the Scheduled Areas similar protective measures be taken through necessary directives from the Central Government to the States by exercising powers under Article 339 (2) of the Constitution. In the trade and commerce sector also necessary incentives, concessions and subsidies on the investment in this sector may be provided to the tribal traders and businessmen as has been done for them in the industrial sector.

FOREST

In the nineteenth century, the differing perceptions of forests of the forest-dwellers and the emerging paramount British power spawned rebellions and uprisings. The tribals had generations-long implicit view of forest as a community property resource. They had been using it without let or hindrance, having had free access. They met their needs of construction, firewood, grazing, minor forest produce etc. from the forests. The alien rulers hardly appreciated the indigenous mind, mores and milieu. The colonial power was driven by the doctrine of the state ownership for its own ends, which led to more than a hundred revolts and uprisings across the central tribal belt. The State asserted its control. The Indian Forest Act 1927 ratified it. The Forest (Conservation) Act 1980 consolidated the position, though its aim to stem the depletion of the forest cover has been laudable. All through, in the course of implementation of the state-held concepts, tribals have been undergoing untold and undeserved sufferings.

2. The Dhebar Commission 1961 recalled the relationship between tribals and foresters. They captured the essence of the relationship by observing that from times immemorial the tribal people have enjoyed freedom to use the forest and hunt its animals and this has given them a conviction that remains deep in their minds that forests belong to them. By about middle of nineteenth century, the extension of the authority of the Government in these areas and exercise of close control over forest products disturbed the tribal economy and introduced psychological conflict. That Commission concluded that a state of tension and mutual distrust existed between the tribals and the foresters and interfered with the work of forest development.

3. The State Forest Report (SFR) 2001 of the Forest Survey of India set up by the Ministry of Environment was set to provide a new baseline information for the forest cover in the country. It appears it has now been assessed by employing digital interpretation of satellite data, enabling delineation of forest cover. The tree cover which includes all trees even within small wood lots, below 1 hectare, has

been assessed by using methods which include field inventory. According to it, the forest cover in the country was 6.76 lakh square kilometers and tree cover 0.81 lakh square kms., the total being 7.57 lakhs square kms. constituting 23.03% of the country's geographical area. Dense forest covered 4.17 lakh square kms (12.68%) and open forest 2.59 square kms (7.87%). The following further features call for notice :

(1) Madhya Pradesh with 0.77 lakh square kms had the maximum, forest cover among all the states and union territories followed by Arunachal Pradesh with 0.68 lakh square kms and Chattisgarh with 0.56 lakh square kms.

(2) In 187 districts of the country, classified as tribal districts, the total forest cover was estimated as 4.04 lakh square kms (average forest cover of 36.62%). The forest cover of these districts constitute 59.8% of the total forest cover of the country.

(3) There are 123 districts in the country categorized as hill districts where the total forest cover was 2.71 lakh square kms (average forest cover of 38.34%).

4. According to the SFR, a comparison of 2001 assessment of forest cover with that of 1999, though somewhat inhibited by differences in methodology and technology, reveals that there was an overall increase of 0.38 lakh square kms or 6.0%. This constituted an increase of 1.16% of the country's geographical area. The increase in dense forest cover with respect to 1999 assessment was 0.34 lakh square kms i.e. 9% and increase in open forest cover 0.37 lakh square kms i.e. 1.4%. The total forest and tree cover in the country was estimated to be 7.57 lakh square kms. constituting 23.03% of the geographical area, leading to the current per capita forest and tree cover in the country as 0.074 hectares. On the whole, it seems that the efforts at afforestation tend towards the target of 33% set in the 1952 National Forest Policy Resolution.

5. It may be relevant to juxtapose with these figures the human development indices indicated in the National Human Development Report 2001 of the Planning Commission. According to the report

(a) 43%, 23% and 7% of the ST households go respectively without safe drinking water, electricity and toilet facilities

(b) The ST population spends 63% of per capita income on food alone, compared to 59% by the combined rural population.

6. The two sets of figures bear out the inverse relationship. A smaller segment of the tribal people, that is the forest-dwelling and rural tribal population, has significantly even less access to such basic needs as safe drinking water. On the other hand, there is no doubt about inter-dependence of tribals and forests, many authorities describing their relationship as symbiotic. By and large, tribals live off forest and forest is sustained by tribals. So much so, that the concept of heaven was once described by a tribal "as miles and miles of forest". On another plane, sacral forests are inviolate, woven into articles of faith like "Sarna". It is, therefore, clear that promotion of the interest of the forest is certainly in tribal interest and, conversely, any step or measure meant to destroy forest is harmful to tribal life and economy.

Government's Forest Policy Resolutions

7. We may briefly outline the Government's Forest Policy Resolutions of 1894, 1952 and 1988.

8. The 1894 Forest Policy averred that " in almost all cases, the constitution of the forest involved, in greater or lesser degree, the regulation of rights and restriction of privileges of user in the forest area which may have previously been enjoyed by the inhabitants of its immediate neighbourhood". The hitherto inviolate forest domain of the tribals was now transgressed by the new alien power and their natural unfettered rights over forest were curtailed. It was the beginning of an era which the Dhebar Commission called of "delicate relations between them and the Forest Department". It marked the characteristic hegemonic bureaucratic authority bordering on repression. Among the other features of the Policy was one which enabled conversion of forests into agricultural lands "wherever an effective demand for cultivable land exists and can only be supplied from forest areas", subject to

cultivation being permanent and not resulting in honey-combing of valuable forest by patches of cultivation.

9. The 1952 National Forest Policy was oriented towards evolving a system of balanced and complementary land-use under which each type of land is allotted to that form of use under which it would produce the most and deteriorate the least. While it stressed ecology and sustained availability of forest products, it considered "realization of the maximum annual revenue in perpetuity consistent with the fulfillment of the needs enumerated ..." as one of the six paramount needs of the country. The Dhebar Commission was obliged to remark that the 1894 Policy had turned the tribal into a subject placing him under forest department and the traditional rights of the tribals were derecognised. In 1894 they became " rights and privileges" and in 1952 they became "rights and concessions". Thus, the approach in general was towards progressive downgradation of rights. The 1952 Policy also adverted to the instructions of the Union Government which exhorted exercise of greater regulation and control not only for the protection of forests but also for soil conservation etc. Thus, from the middle of the nineteenth century, the control of foresters over forests kept on tightening.

10. The bearings and directions of the 1988 National Forest Policy Resolution differ from the earlier two resolutions. It may be said to revolve around environmental stability and conservation, conservation being signified to encompass preservation, maintenance, sustainable utilization, restoration and enhancement of the natural environment. Nevertheless, in it the focus on (a)ecological imperative (b) increased biomass through massive afforestation and social forestry programmes specially on denuded, degraded and un-productive land and (c) the requirements of fuel-wood, fodder, minor forest produce and small timber for the rural and tribal population, appear as the basic objectives. It declares provision of sufficient fodder, fuel and pasture as well as improvement and enhanced production of minor forest produce, among others, as essentials of forest management. For the first time, a separate section 4.6 Tribal People and Forests, appears in the Resolution. It enunciates that the primary task of all agencies responsible for forest management should be to associate the tribal people closely in the production, regeneration and development of forests as well as to provide

gainful employment to people living in and around forests. While calling for safeguarding the customary rights and interests of such people, it desires special attention to

(i) replacement of contractors by tribal cooperatives, labour cooperatives, government corporations etc. as early as possible

(ii) protection, regeneration and optimum collection of minor forest produce with institutional arrangements for marketing of such produce

(iii) development of forest produce on par with revenue villages

(iv) family-oriented schemes for improving the status of tribal beneficiaries

(v) undertaking integrated area development programmes to meet the needs of tribal economy in and around forest areas.

It will thus be seen that the 1988 Policy marks a new welcome trend in favour of tribals. It is, however, a different matter whether its implementation has kept up with its changed perspective and laudable objectives.

11. In this context, we find the following observations in the Tenth Five Year Plan (2002 – 2007) document of the Planning Commission revealing:

> 4.2.55 Forests and Tribals share a symbiotic relationship. Tribals continue to live in forest areas, though in isolation, yet in harmony with environment. Recognising this dependency, the National Forest Policy, 1988, stipulated that all agencies responsible for forest management should ensure that the tribal people are closely associated with the regeneration, plantation, development and harvesting of forests so as to provide them gainful employment. Despite these special safeguards tribals continue to struggle for mere survival as they face formidable problems and displacement due to development of national parks and wild-life sanctuaries and other environmental restoration projects, lack of development in forest villages etc. The protection of rights of tribals in forests is key to the amelioration of their conditions.

The Constitutional frame

12. Forestry as a subject has been placed in the Concurrent List of the Seventh Schedule of the Indian Constitution. The Ministry of Environment and Forests is the nodal agency for planning, promotion, coordination and overseeing

implementation of various forestry programmes in the country. The State Governments implement programmes.

13. According to Article 48A contained in the chapter of Directive Principles of State Policy, the State has to endeavour to protect and improve the environment and to safeguard the forests and wild-life of the country. As per Article 38 of the same chapter, the State has to strive to promote the welfare of the people by securing and protecting social order in which justice, social, economic and political, informs all the institutions of national life. In Article 39, the state has been directed to secure to the citizens the right to adequate means of livelihood and ensure that the ownership and control of the material resources of the community are so distributed as best to subserve the common good. Above all, of great significance are the provisions of Article 21 which embody in a nutshell all that is precious and significant to an individual citizen; the article is an aphoristic statement of a truly fundamental right stating that no person shall be deprived of his life or personal liberty except according to procedure established by law. The Supreme Court has interpreted the right to livelihood as an integral facet of the right to life. We, thus, have a constellation of articles emblazoning the rights of the citizen. At the same time, the state has been exhorted to effect and improve the environment and safeguard the forest. In the tribal context, do the two sets of provisions appear to be inconsistent? Is it possible to protect the forest and, at the same time, uphold the right of the tribal to his livelihood in the forest? The Supreme Court has ruled that directive principles and fundamental rights are to be harmoniously construed. In the real world also, forest and tribal have pulsated in unison; the former has nourished the latter, while the latter has preserved and tended the former.

14. In the year 2002, there was an upheaval amongst the forest-dwelling people of India, particularly the tribals, as a sequel to the issue of orders dated 3 May 2002 of the Ministry of Environment and Forests to the effect that all encroachments not eligible for regularization as per the guidelines issued by the Ministry of Environment and Forest in their No. 13.1/90-FP (1) dated 18 September 1990 should be summarily evicted time-bound and, in any case, not later than 30 September 2002. As the Ministry admitted later in their No.2-1/2003-FC(Pt) dated 5 February 2004, despite the request of the Central Government to settle the

disputed claims, issue of Pattas, grant of leases etc. to the tribal population on forest land as per their aforesaid letter of September 1990, by and large, few proposals had been received by them; only a couple of states had sent proposals under the category of regularization of eligible encroachments. In light of the nominal action taken by the authorities, the guide-lines remained a dead letter. The eviction orders assumed draconian proportions for the forest-dwelling population. The severe eviction steps following in reality, and the uproar following the May 2002 orders, created panic all over the country. It was a question of tribal survival. Through dispossession of the forest resource, they were being rendered resourceless and penurious. Representations to the Supreme Court ensued. As a result, the Ministry issued a clarification in their letter of 30 October 2002 that there was no change in the policy with regard to the pre-1980 eligible encroachments as well as the commitment with reference to forest-tribal interface on the disputed settlement claims.

15. To understand the situation, it may be recalled that the Forest (Conservation) Act 1980 lays down that, except with the approval of the Central Government, no State Government or other authority can (i) dereserve any reserved forest and (ii) divert any forest land for non-forest purposes. The Act explains that "non-forest purposes" means breaking up or clearing of any forest land for purposes other than reafforestation.

16. Prior to the introduction of this law, the State Governments were considering, from time to time, grant of occupancy to bonafide forest-dwellers who had long been in occupation of such land. For instance, the Government of Maharashtra had issued orders for regularization of "encroachments" subsisting up to 1.4.1972 and subsequently up to 31.3.1978. Similarly, the Government of Rajasthan had decided to regularize "unauthorized occupations" up to the year 1971 and the Government of Madhya Pradesh had decided to undertake the same exercise for occupations up to 1978. The Government of Chattisgarh has reported that Pattas had been distributed to all eligible encroachers up to 1976.

17. The government of Gujarat apprised that their proposals in respect of 34,441 persons over 21,082 hectares of land were regularized by the Government of India

in the year 2000. But, close to 30,000 applications are still pending. We are glad to note that action is being taken by State Government on such applications.

18. The government of Himachal Pradesh reported 4,388 encroachments in an area of 861 hectares as on 30.6.2002 and that they were following the procedure for vacation. They have not, however, referred to the question of regularization of long-standing occupations, if any, found in the state.

19. It seems that in Karnataka so far out of 14,848 hectares of forest land, 2,985 hectares have been regularized and the State Government have decided to evict all encroachments which have taken place after 27.4.1978. This seems contrary to the 1990 guidelines of the MOEF.

20. Scheduled tribe people in Kerala have been in a difficult predicament since the Tribal Development Department has approved all tribal settlements in forest areas and it has been indicated that the Government policy is to issue a record of rights to all tribals occupying forest land, though the papers made available to us suggest that the Forest Department has not been in favour. The Government has constituted a committee for conducting joint verification, comprising ITDP Officers/Tribal development Officers and representatives of Revenue and Forest Departments. The measure has been necessitated on account of the fact that pre-1980 non-tribal encroachers have been assigned title to lands. Details of post-1980 encroachers are not available. The tribal situation is compounded by the fact that anti-land alienation law has been, more or less, inoperational, because it has been subjudice. Taking all these factors into consideration, the Commission would like the land question, whether relating to the revenue or forest department, to be resolved equitably as soon as possible.

21. Some state governments have been rather vague. For example, the Government of West Bengal stated that there were cases of encroachment of forest by tribals, but the policy of the forest department is to recover the land while not leaving the tribal people "unsheltered".

22. The Forest (Conservation) Act 1980 acted as an estoppel on the regularization steps. This led to a state of uncertainty, bewilderment and discontent

among the forest-dwelling tribal people. They were not clear as to what the law would do to them despite their long-standing occupation. Worse, the forest officials were taking action for removing them.

23. In these circumstances, in September 1990 the Ministry of Environment and Forest came out with the following series of measures :

(1) In their no. 13-1/90-FP (1) of 18.9.1990 they called for review of pre-1980 "encroachment" cases where the State Government had taken a decision before enactment of the Forest (Conservation) Act 1980 to regularize eligible category of encroachments. Those cases were to be regularised which fulfilled the eligibility criteria and encroachments subsisted. The review was required to be carried out by joint teams of Revenue, Forest and Tribal Welfare Departments officals.

(2) In their no. 13-1/90-FP (2) dated 18.9.1990, the Ministry called for a review of disputed claims over forest land arising out of forest settlement viz. claims (a) in respect of forest areas notified as "deemed reserved forest" without observing the due process of settlement as provided in the Forest Act (b) in tribal areas where there was prima facie evidence that the process of forest settlement had been vitiated by incomplete or incorrect records/maps or lack of information to the affected persons as prescribed by law and (c) in tribal areas wherever the process of settlement was over, but notification under section 20 of the Indian Forest Act 1927 (or corresponding section of the relevant act) was yet to be issued, particularly where considerable delay had occurred in the issue of final notification under section 20, provided the claimants were still in possession of the disputed land. The claims were to be enquired into by a committee as in (1) above and adjudicated.

(3) Their no. 13-1/90-FP (3) dated 18.9.1990, referred to cases where Pattas had been issued by different authorities of a state/union territory government, the land in question continued in the possession of the allottees and its status was under dispute between different departments. The Ministry asked for a review. It ruled that where Pattas/leases/grants were given by the government departments to scheduled tribes either

individually or collectively, such Pattas/leases/grants should be honoured provided they were in physical possession of the land and the Their letter term of the Patta/lease/grant had not expired. The cases should be examined by committees of the type mentioned earlier.

(4) no. 13-1/90-FP (5) dated 18 September 1990 related to conversion of forest villages into revenue villages and settlement of other old habitations. In it, the State Governments were asked to convert forest villages into revenue villages after denotifying the requisite land as forest, conferring heritable but inalienable rights on the villagers and entrust the administration of these villages and other revenue villages preferably to the State Forest Department.

24. It was to be expected that with the issue of such unequivocal orders, their implementation would clear the air and rid the tribal people of uncertainty over their right to the second most important resource. In fact, a landmark order was passed by the Supreme Court in March 1995 in which the states of Maharashtra and Madhya Pradesh were directed to decide the peoples' claims in the light of 1990 instructions of the Government of India [Writ Petition (c) no. 1778 of 1986 and Writ Petitions no. 13696-700 of 1983]. But the resolution of disputes remained isolated success story and this order of the Supreme Court did not obtain wide dissemination. Further, little ground work was done. In the meantime, the Supreme Court took exception to encroachments on extensive forest lands by planters for quick gains. In 1996, they passed an order for clearing of all encroachments by the State Governments forthwith. Whatever may have been the repercussion elsewhere, the axe fell on the simple artless, voiceless and defenceless tribals many of whom had genuine claims. Pursuant to the Supreme Court's order, the Ministry of Environment issued the orders of May 2002 with which we started this narration.

25. The tribals were touched to the raw. The number affected by the eviction proceedings was sometimes estimated to be 2 crores of tribals; in any case, lakhs of families were affected undoubtedly. Their cries went up to the heaven. Initially, as mentioned, in clarification, the Ministry notified in October 2002 that there was no change in the policy with regard to regularisation of pre-1980 eligible encroachments. But after the stern May orders of eviction, to the people it struck as

a weak volte face. However, the Supreme Court has stayed even these orders for regularization of "encroachments" by the tribal people on the ground that they would jeopardize over two lakh hectares of forest. The uncertainty and suspense continue for the bulk of the so-called encroachers, may be running into lakhs of tribal families. The issues involved are, no doubt, weighty. On one side, we appreciate the concern over forests, held to be crucial determinants of national ecological security. On the other side, it is life and livelihood of the tribal families. Compared to the total area of 68 million hectares under forests in India, occupation by tribals and other poor, even if it is be 1.5 million, constitutes approximately 2% area. Dereserving this area, dispersed in thousands of forest blocks is likely to have no adverse effect on the environment of the country. But it will have a salutary impact on the disturbed situation in tribal areas, bringing in peace and satisfaction. The matter needs to be viewed in a human perspective and resolved expeditiously.

26. In so far as the question of settlement of disputed claims, issue of Patta, lease etc. of the tribal population on forest land is concerned, dealt with in the MoEF's orders contained in their No.13-1/90-F.P.(2) and (3) of September 1990, the Ministry desired in its letter No.2-1/2003-FC(Pt) dated 5-2-2004 that the State Governments and UT Administrations should recognize the traditional rights of the tribal population and these should be incorporated into the relevant acts, rules and regulations prevalent in the concerned state/union territory. Further, they advised that on receipt of complete proposals from the state governments/union territory administrations concerned, they would consider diversion under the Forest (Conservation) Act 1980 of continually occupied forest land so that the concerned tribals can get unfettered legal rights over such lands, the rights being heritable but inalienable. As already mentioned in their No.2-1/2003-FC(Pt) dated 5 February 2004, the MOEF has stated that they have received few proposals from the states. Progress in the matter is painfully slow. Incidentally, it is significant that, earlier, continued occupation up to 1990 was stipulated for conferment of the rights, and in 2004 the date prescribed is 1993.

27. The dictum that regularization of so-called encroachments should not act as inducement in future for encroachment on forest lands is unexceptionable. But cases of genuine occupation before the enactment of Forest (Conservation) Act

1980 or even the Indian Forest Act 1927 have not been settled as yet. They need to be attended to urgently. Further, there is a category of scheduled tribes classified as primitive tribes groups by the Government of India, numbering 75. Age-long denizens of forests, they need forest areas for bonafide survival. Section 65 of the Wild Life (Protection) Act 1972 recognises hunting rights of the scheduled tribes in the Union Territory of Andaman and Nicobars. Further, as per the Andaman and Nicobar Islands (Protection of Aboriginal Tribes) Regulation 1956, areas which are predominantly inhabited by aboriginal tribes have been declared as reserved areas. Aboriginal tribes here refer to scheduled tribes. Similar provisions should be made in the Indian Forest Act for the primitive tribal groups.

28. To facilitate and expedite resolution of so-called encroachments, the Government of Maharashtra issued orders on 10 October 2002 to constitute local committees comprising members of Panchayats, police, revenue and forest to verify claims for regularization of "encroachments" on forest lands. Should the decision of the local committee be not acceptable to the claimants, review committees comprising Naib Tehsildar, Circle Officer, Range Forest Officer have been constituted. The Gram Sabha has been empowered to consider other relevant evidence, if documentary evidence is not available. Grant of ample opportunities for consideration of claims by the committees has been suggested. The procedure is simple, ensuring accessibility. We commend it to other state governments for adoption.

29. The guidelines of 1990 require that for settlement of even bonafide claims mentioned in the different orders of the Ministry, compensatory afforestation should be effected. Since most of the claims of the tribal families would be found to be genuine, insistence on compensatory afforestation might only delay matters. We suggest, on a balance of various considerations, it may not be insisted upon.

Shifting cultivation

30. The 1894 Forest Policy allowed conversion of forests into agricultural land subject to the condition, among others, that the cultivation must be permanent; shifting cultivation could be permitted under due regulation, where forest tribes depended on it for their sustenance. Following it, the 1952 Policy, while

recognizing the damage caused to forests by shifting cultivation, advocated a missionary and not authoritarian approach. It felt that since tribals eke out a precarious living from axe-cultivation moving from area to area, it requires persuasion and not coercion to wean them away from swidden. It favoured regulation of shifting cultivation by combining it with forest regeneration i.e. Taungya. In comparison, the approach adopted in the 1988 Policy differed in its tone and tenor, as it contains no reference to the missionary approach, in fact, none to the human element. It advocates alternative avenues of income suitably harmonized with the right land-use practice to discourage shifting cultivation.

31. The Dhebar Commission estimated in 1961 that 26 lakhs of people were engaged in shifting cultivation. The current estimates of different sources do not deviate materially, the range being 5 lakh to 10 lakh hectares of forest land under this form of cultivation in the north-east, Jharkhand, Orissa, Chhattisgarh, Madhya Pradesh, Andhra Pradesh and Maharashtra. The Planning Commission's Tenth Plan document mentions six lakh tribal families (which translates roughtly into the same figure as mentioned in the Dhebar Commission report) in this context. They have pronounced the problem of shifting cultivation as a very complex one involving economic, social and psychological aspects of the tribal communities.

32. We may juxtapose these observations with the provisions of section 10(5) of the Indian Forest Act 1927 which declares unequivocally that " the practice of shifting cultivation shall in all cases to be deemed a privilege subject to control, restriction and abolishing by the State Government". The Act further stipulates that the arrangements made in the field by the Forest Settlement Officer are subject to the previous sanctions of the State Government. Notwithstanding this legal provision, and as implicitly recognized in the three Forest Policy Resolutions, the practice of shifting cultivation occurring over large areas in the country since ages and adopted by lakhs of tribal families even currently, is a ground reality, beyond doubt.

33. The government of Mizoram has reported that 70% of population of the state depends on shifting cultivation, the annual estimated Jhum area is 40,000 hectares and the Jhum cycle has been reduced to 4-5 years. In Assam, 84,000

families in the two districts of Karbi Anglong and North Cachar Hills have been reported to be Jhumias. A benchmark survey conducted in 1987 showed that 40% of the total tribal families in Tripura were engaged in Jhum.

34. The States of Nagaland and Arunachal Pradesh have, in fact, enacted laws regulating Jhum land. In Nagaland, Jhum-land has been defined to mean any land over which any member or members of a village or a community have customary right to cultivate by means of shifting cultivation or to utilize by clearing jungle or for grazing live-stock and includes beds of rivers, provided that such a village or community is in a permanent location. It excludes terraced land and land under permanent cultivation. Transfer of Jhum-land can take place with the permission of the Deputy Commissioner given on the recommendation of the Village and Area Council concerned. The Arunachal Pradesh law is on all fours with the Nagaland law.

35. In its 1961 Report, the Dhebar Commission referred to two opposing views. One, in which shifting cultivation practice was indicted as damaging to the forest and responsible for large-scale erosion; the other, that it was the way of life of the tribals. They appreciated that the practical aspect of the matter was that nearly ten percent of the tribal population depended on Jhuming and cannot be deprived "of their land, their livelihood and their way of life for a theoretical opinion on which not all experts agree". They felt that, while Jhum is not an ideal method, and that, wherever possible, terracing or other means of cultivation should be introduced, the fact of lakhs of tribal families depending or Jhum cannot be wished away and they cannot be deprived of their land, their livelihood and their way of life. They thought that total replacement of the system, if it comes to all, will be a life-time process and, in the meantime, the proper course is to regulate it, experiment with it, improve it and try out other workable alternatives.

36. In the north-east region, land is generally owned by the community as a whole and individual ownership of land is recognized in certain areas, say in respect of homestead and settled farmland. The chiefs have not been the owners of the land; they have been custodians of the village land and forest. At the beginning of the agriculture season, land is distributed among individual families within the

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demarcated area of the village according to necessity. As indicated, in Nagaland and Arunachal Pradesh, the actual cultivator of land has the right of cultivation handed down by inheritance. In Orissa, shifting cultivation lands have been observed to be cultivated by the same family, quite often their right being recorded in revenue books. However, no uniform system is observable in the different parts of the country. In fact, some parts of tribal areas remain unsurveyed and, in some surveyed areas, the records of rights are either faulty or outdated. The State Governments may consider the desirability of survey of unsurveyed areas, creation of land records where they do not exist and their updation where they exist. Presently, the Jhumias enjoy the right of usufruct, but not of ownership. This generally inhibits investments in the land for improvement.

37. The shifting cultivation land in a village is related to a period of rotation or cycle depending upon the density of population, availability of suitable land slopes, nature of soil, climate, distance from habitation (temporary or permanent) etc. Earlier, when the pressure of population on land was not as high as today, the cycle was more than 10 years, up to 20 years long. With the land-man ratio falling, the cycle has kept on shortening. It is known to have been reduced to less than five years in many places, with deleterious effects on output and ecology. The Dhebar Commission advocated a cycle of not less than 10 to 12 years. Evidently, in the present conditions, this does not appear feasible.

38. In the context of land being the single limiting factor, any land reform which helps should be effected. The North Cachhar Hills Autonomous Council in the State of Assam has been engaged in building up a system of record of rights, land management, regulation of transfer of rights etc. Though documentation may not translate immediately into individual private ownership and may only lead to recognition of the ground situation, it should help secure credit for improvement of the status of land and agriculture, a progressive step. In other states, community stands collateral, which financial institutions should trust.

39. Customarily and characteristically, shifting cultivation has been a self-sufficient economy, with a barter margin. Even now, but more so in the past, shifting cultivators consumed whatever they produced. Though paddy is grown

wherever possible, elsewhere, they adopt a mixed cropping system of millets, maize, coarse grains, beans, other vegetables, oil-seeds etc. In Mizoram, horticultural crops like pineapple, oranges, bananas and citrus fruits are grown. Significantly, diversity is the corner-stone of food security in societies which do not produce surplus. Cotton and seasum were important commercial crops; presently, however, more have been added like ginger, potato, tapioca, chillies, tobacco. Some of the shifting cultivation lands in Tripura have been converted into rubber plantations. Part of the commercial crops has been finding their way to markets, monetising the economy.

40. Considerable stress has been laid on the damage shifting cultivation causes to ecology, soil erosion etc. The shortening length of the shifting cultivation cycle has been a matter of concern. Nevertheless, the system as such has met with approbation from independent and well-meaning observers as an optimal arrangement in the given constrained conditions. We have to recognize that tribals had, in course of time, been pushed to the hills, the hills had been forested and to survive tribals have had to adopt swidden, that is an adaptation of agriculture to the given environment. Some State Governments like Mizoram have pronounced Jhum as indispensable at the moment. Two trends may, however, be noticed. The tribal communities seem to be sensitive to the issues involved and have been taking remedial measures. There are striking examples of terracing, contour-bunding and soil-binding measures in swiddens. The shifting cultivators preserve top-soil by not ploughing it. Secondly, research and experimentation should and are expected to contribute to the evolution of suitable solutions. Forest, horticulture, rubber plantations, varied and varying land-use, pattern each has a place. In the north-east, agriculture as a land-use has been closely linked with other sub-systems of the village eco-system functions, and with forestry, impelling a holistic approach, having distinct advantage over others for in situ conservation. It may be possible to unfold strategies on the basis of inter-disciplinary scientific studies that make shifting cultivation contextually viable and, at the same time, enable the shifting cultivators to adopt higher yielding strategies. But it is not a matter merely of technology. Members of the tribal groups need to be persuaded and convinced, evidence of practicability, feasibility and viability of the options being placed

before them : the swidden cultivators are not ill-disposed towards a system which promises a better deal.

41. There is one aspect which requires attention and, may be, intervention of the state. Broadly speaking, shifting cultivators do not possess Pattas of the land which they cultivate since these lands are managed by village communities or chiefs. As the domestic and multi-national corporate sector has been expanding in the country and their activities depend on natural and economic resources, Jhumia lands being soft spots, are susceptible of easy take-over. Ostensible more productive systems may replace shifting cultivation, elbowing out the Jhumias into resourcelessness and immiseration. The state has to step in to protect these weak sections of the society.

Forest Villages

42. The matter of forest villages is an old one. In their report, the Dhebar Commission (1961) explained that a large labour force required for the activities of the forest department led to the formation of colonies composed of tribals, giving rise to the concept of forest villages. They stated that the tenure in forest villages was admittedly "tenancy on sufferance". They recommended that security of tenure should be assured to the tribals; at the same time, the forest department should take upon itself the responsibility of providing assistance for the improvement of forest villagers. They reckoned about a thousand forest villages in Madhya Pradesh, though they did not have an idea of the total number in the country.

43. According to the Tenth Five Year Plan document, "development of 5000 forest villages and the 2.5 lakh tribal families living therein continued to remain as one of the weakest links in the whole process of tribal development. The Tenth Plan will, therefore, take up the development of Forest Villages on priority basis and ensure extending benefits /services just as in the case of Revenue Villages and reaching the comprehensive package with basic minimum services of food, safe drinking water, health care, primary education, approach roads and other infrastructual facilities". It goes on to further state that efforts will be made to

develop effective coordination to converge not only on the existing services but also the men and machinery of the related state departments.

44. In March 1984, the then Ministry of Agriculture suggested to the state and union territory governments that they should confer heritable and inalienable rights on forest villagers if they had been in occupation of the land for more than 20 years. Twenty years later, in their letter of 3 February 2004, reference to which will be made again, the Ministry of Environment and Forest lamented that few proposals had been received from the State Governments and, even of the proposals received, many were either incomplete or otherwise defective.

45. The different Working Groups on Development of Scheduled Tribes appointed from the Sixth Plan onwards by the Planning Commission recommended that forest villages be converted into revenue villages and forest villagers in occupation of forest land should be conferred heritable and inalienable rights over the land.

46. The National Forest Policy 1988 directs that forestry programmes should pay attention, inter alia, to development of forest villages on par with revenue villages. The Ministry's order No.13-1/90-FP(5) dated 18.9.1990 directed conversion of forest villages into revenue villages and conferment of heritable but inalienable rights on the villagers. The figure of 5,000 forest villages has been cited off and on. In their communication no. 11-70/2002-FC(Pt) dated 3.2.2004, to which we alluded earlier, the Ministry of Environment and Forest has mentioned the figure of 2690 in the country; they desired the state governments to step up the process of conversion of these forest villages into revenue villages. Incidentally, it was indicated that, so far, 311 forest villages in Madhya Pradesh and 73 such villages in Maharashtra, a total of 384, had been converted into revenue villages during the previous year.

47. As per the report from Karnataka, lands which were found occupied during reservation proceedings have been allowed as forest enclosures. Earlier temporary leases for cultivation were granted for such lands and these were subsequently confirmed as permanent leases.

48. The government of Madhya Pradesh which has reported a total of 925 forest villages proposed to be converted into revenue villages, states that the Government of India has given permission to convert only 80 villages into the revenue villages. On the other hand, the Ministry of Environment and Forests, in their 1990 communication called for a time-bound programme in their aforesaid letter to convert all forest villages into revenue villages in the next 6 months so that "the people living in these villages can enjoy the fruits of development and also their dependency on forest is reduced".

49. While we regret that this matter raised by the Dhebar Commission in 1961 has still to move substantially forward, we are happy to note that the Ministry of Environment and Forest has taken it up earnestly. Apart from forest villages, in some states there are what are known as "forest enclosures", as in Andhra Pradesh and Karnataka. In Tamil Nadu, these are forest settlements.These also need to be considered for conversion, wherever feasible, into revenue villages and panchayat villages. We are anxious that all such forest villages and forest enclosures should not be left out of the mainstream of planned development. It needs to be noted commonly, that, "forests" in and around these villages are, in reality, no more forests. They are practically denuded of forest growth. Further, the total area involved may not be more than a few thousand acres. With conferment on their inhabitants heritable but inalienable rights over land, they should be able to receive attention from the various departments of the government for securing development benefits. It will help if specific committees/authorities are set up at the state and national levels for focusing attention on implementation and monitoring of the programme. But, at the national level, MOEF may consider taking a global view for issue of general orders for conversion and connected arrangements.

Forest labour

50. To eliminate contractors and other intermediaries, in the earlier days some states, notably Gujarat and Maharashtra, had organized forest labour cooperative societies (FLCS). In fact, the Dhebar Commission waxed eloquent on the constitution and functioning of these societies in Maharashtra, saying that the progress was encouraging, for much of the exploitation had been eliminated. They

envisaged that all areas would be covered by the end of the Fourth Plan period. The National Forest Policy 1988 reiterated that contractors should be replaced by institutions such as tribal cooperatives, labour cooperatives, government cooperatives etc. as early as possible.

51. It seems some state governments and U T administrations execute forest work through government departments and/or government agencies like forest corporations. However, in their No.13-1/90-FP(4) dated 18 September 1990, the MOEF stressed the need to eliminate contractors and other intermediaries with a view to ensure fair wages to the labourers. Some guidelines were issued in this communication such as that no outside labour should be engaged where local tribal labour is adequately available, tribal cooperatives should be involved, norms for payment of wages for piece work should be worked out, uniform wages should be prescribed for similar pieces of work, representatives of tribal development department should sit in the wage board appointed by forest department for fixation of wage-rate and, lastly but importantly, the State Forest Department and Forest Corporations should comply with the provisions of the Minimum Wages Act in payment of wages for forestry operations.

52. Our reports indicate that full action in accordance with these guidelines is yet to be taken by the State Governments and UT administrations. Even in Maharashtra and Gujarat the forest labour cooperatives have no longer been functioning as they used to. Further it is, indeed, regrettable that sometimes we have to come across cases in which government organizations have not been following statutory minimum rate of wages in payments to the labourers.

53. We recommend that utmost efforts should be made to organize forest labour cooperative societies of tribal workmen and steps should be taken to ensure their proper functioning. Secondly, there should absolutely be no breach by the official and non-official agencies of the minimum wage rate fixed by the concerned legislature. Any breach or breaches even by the departmental officials should lead to prosecution, as provided in the laws.

Joint Forest Management programme

54. The National Forest Policy 1988 calls for "creating a massive people's movement with the involvement of women" for achieving its basic objectives. The Ministry of Environment and Forests has reported that it has issued guidelines to all State Governments and UTs for protection, regeneration and development of degraded forests with the involvement of village communities constituted under Joint Forest Management (JFM) programme. According to the MOEF, joint forest management is a management strategy under which the State Forest Department and the village community enter into an agreement to jointly protect and manage forest-land adjoining villages and to share responsibilities and benefits. The village community is represented through an institution specifically formed for the purpose. Commonly, it is referred to as the joint management forest committee (JFMC) or forest protection committee (FPC) registered under the Societies Registration Act 1860. The FPC takes responsibility of protecting forest patches from fire, grazing and illegal harvesting. In return, it gets greater access to forest produce and share in income earned from those forest patches. FPCs federate together to form forest development agencies (FDAs) at the territorial/wild life forest division level, and they also are registered societies.

55. The MOEF has focused on JFM to achieve the national target of 33% tree cover by 2012. Other existing schemes have been merged into National Afforestation Programme to be implemented through the JFM. The National Afforestation Programme is a Central Sector scheme for which money is said to flow directly from Central Government to implementing agencies in the field, basically the forest development agencies.

56. Appropriate resolutions have been passed by 27 states and UTs resulting in management of 16.67 million hectares of forest land by 7,271 JFM communities throughout the country, as on 1.5.2003. The Ministry expect improvement in the socio-economic status of the forest-dwellers through their labour-oriented participation in afforestation and other forestry activities, alongside protection of forests, carried through JFM.

57. The Tenth Five Year Plan (2002–2007) document of the Planning Commission states that one of the resolutions of JFM relates to the use of indigenous capacity and legal knowledge about different aspects of conservation, development and use of forests. It emphasizes that rural people, particularly women and tribal communities, have an intimate knowledge of species, their growth characteristics, utility, medicinal value etc. and it should be utilized under JFM for the benefit of the community.

58. Some major problems in the JFM area are that though the village forest committees may be registered under Societies Registration Act 1860, they have no legal and statutory basis and, further, their relationship with the Gram Sabhas and Panchayats is either absent or vague and tenuous. They are viewed to function as "parallel bodies", despite the fact that standing committees of Panchayats for subjects ranging from planning, construction, administration to welfare, education, water management are built in the Panchayat system. During discussion, the Ministry of Environment and Forest stated that the State Governments had been requested to consider the matter and issue suitable guidelines. We feel this is a subject which merits consideration at the Central level for counsel to the States and UTs. In the Scheduled Areas, the difficulty is further compounded by the fact that the JFM does not take into account the Provisions of the Panchayats (Extension to the Scheduled Areas) Act 1996. As per section 4(m)(ii) of the Act, the Gram Sabha and the Panchayat are to be endowed with the ownership of minor forest produce by the State legislation. Some states have adopted this provision in their state law, but JFM committees do not seem to take much cognizance of it. In fact, the opposing views over ownership of minor forest produce as belonging to the Forest Department and Panchayat/Gram Sabha have created confusion and mistrust in the minds of the people. As mentioned, JFM does not have statutory status, whereas PESA Act has. It is incumbent that the JFM bodies should function within the canopy of the Panchayat system. In other words, the forest committee should function as one arm of the Panchayat. The entire JFM structure in the Scheduled Areas needs to be recast in the light of the PESA Act and the unique milieu of these areas.

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59. The biggest drawback of the JFM, however, is that committees of this system are not able to function autonomously, since their stewardship rests with the Forest Department. The Forest Department controls the purse-strings. It is essential that the JFM committees exercise genuine autonomy to be able to take decisions in the interest of the people and their environment. For the purpose, they should be converted into community forest management committees and devolved funds appropriately. Further, having formulated the programme, they should implement them and be accountable to the people. The officials of the Forest Department should (a) function as their technical advisers and (b) monitor the programmes.

60. The government of Andhra Pradesh has reported that Joint Forest Management has since been transformed into Community Forest Management in the state with considerable freedom. According to them social forestry has been a successful programme in the state meeting the requirements of fuel and industrial pulp, wood, small timber particularly through Subabul planting.

61. The state of Himachal Pradesh has reported a marked shift in forests management, with forestry in shifting its focus to become people-centered. They feel that the introduction of social forestry schemes viz. Sanjhi Van Yojna and formation of FDAs in this direction.

62. The government of Karnataka have issued guidelines governing the pattern of sharing, involvement of the stake-holders etc. for village forest committees.

63. Institutionalisation at grass-root level has thrown up new challenges in inter-village and intra-village relations on the one hand, enhancing expectations of the people on the other. The first problem is recognition of long-time tribal occupants of land within forest. With divergent aims, how are the present JFM bodies treating them? Are they to be displaced on account of the professed objective of JFM of afforestation, as is happening in Andhra Pradesh? It is iniquitous. The second relates to accessibility of forest related to village proximity, and denial of forest benefits on account of distance of villages from the managed forest. Thirdly, power equations within the nominated JFM committees, weighted in favour of the influential and the powerful. Fourthly, plain male domination. Fifthly, an area of

concern, which we have voiced elsewhere too, the growing multiplicity of organizations, both in the field and at the state level, leading to confusion, obfuscation and wastage. In brief, innovations are needed to address issues of equity (displacement, poverty and landlessness), conflict resolution (particularly inter-village, may be intra-village), social inclusion (women, tribal occupants of forest lands). A pro-active balanced approach is required.

64. Effective engagement with broad range of stake-holders including NGOs, activists, academics, private sector entities, public persons and the media would increase awareness and understanding.

65. In Madhya Pradesh, the World Bank started forestry project executed through JFM during 1995-99. Some evaluation results of this project have been reported to the effect that regeneration of plants had increased, there was impact on environment, poor forest fringe dwelling communities had been empowered, land-less tribals had found wage employment. On the flip side, village protection committees, forest protection committees and environment development committees have usually been dominated by influential sections, linkages between these committees and statutory Panchayat have been tenuous, gender representation has been limited, social aspects have not received adequate attention. An important observation is that while access to forest has increased for those dwelling inside or proximate to forest, those outside have diminished access, creating socio-psychological as well as economic problems, leading to questioning of legality of JFM. There is apprehension that the ascendance of the fringe forest-dwellers may lead to friction with those having no little or no access to forest. One expects the community-forester partnership should lead to some transformation in the attitude of forest personnel towards forest-dwellers.

66. Our suggestions are that, at the field level, a healthy relationship between the constitutional Panchayats and the parallel JFM committees registered under the Societies Registration Act 1860 should be initiated and established. The JFM committees should function as standing committees of the Panchayat. At the state level, a committee may be constituted in the Tribes Advisory Council comprised of

ST representatives and experts, state level forest and administrative officials to look into all forestry issues.

Minor forest produce or non-timber forest produce (MFP or NTFP)

67. Dependence of a tribal family on minor forest produce (MFP) or what is otherwise known as non-timber forest produce (NTFP) varies from region to region and has been estimated by different agencies up to 80%. It is also related to proximity of the family to a NTFP-bearing forest. It is estimated that about 40 crore people living in and around forests depend on it to a smaller or a higher degree. But for a majority of tribals it is a source of food, medicine, shelter and economy.

68. Botanists and foresters have compiled lists of thousands of items of minor forest produce. Traditionally, the tribals have been gathering and collecting some of them. They have been keeping some of these items for domestic-use and some for supplementation of their income through sale. Important items have been Kendu leaves, sal seeds, Mahua seeds, Karanj seeds, Mahua flower, Chironji, forest castor, Van Tulsi seeds, tamarind, myrobalan, gums and resins, lac, tassar cocoon, broom-stick, honey etc.

69. The tribal has since times immemorial conceptualized forest as a common property resource and, as such, collection and consumption of the major part of minor forest produce has been a non-formalised right. The attempt at his exclusion from forest commenced with the assertion of the State's ownership over forests in the later part of the nineteenth century. But the conceptual divergence never died. Perhaps, it was in its recognition that the National Forest Policy Resolution 1988 articulated as follows:

> 4.3.4.3 The life of tribals and other poor living within and near forest revolves around forests. The rights and concessions enjoyed by them should be fully protected. Their domestic requirements of fuelwood, fodder, minor forest produce and construction timber should be the first charge on forest produce. These and substitute materials should be made available through conveniently located depots at reasonable prices.

70. Even before this enunciation, some State Governments had ceded some rights to tribals. The government of Himachal Pradesh has reported that the rights and concessions of the tribal people as enshrined in the various settlement reports have been duly recorded and recognized and they have been enjoying them unhindered. They have access to NTFP for their domestic bonafide use and also as an important source for supplementing their income. A feature which marks the state as different from other states is dependence of the people on forests for grazing sheep and goats, an important part of their economy. The graziers migrate seasonally from their traditional home villages in the higher reaches snow-bound through winter, to the plains in summer. A small community of semi-nomadic Gujjars depend on grazing for buffalo-husbandry. The state has to expend considerable resources for maintenance and augumentation of pastures, fuel and fodder plantations, social forestry programmes, fast growing species etc.

71. According to the Andhra Pradesh Government rights over forest products have been completely transferred to the Van Samrakshan Samities (VSS) which can allow tribals usufruct to meet domestic needs of the tribals as well as market the surplus. The VSS are, however, required to recycle at least 50% of returns from harvest of timber and bamboos for furthering forest management for their own benefit. It seems that in the State rights and concessions in reserved forests have been recorded. They have indicated that tribals can collect various MFP items not only for their use but also for sale to the Girijan Cooperative Corporation through which they can earn income. Further, that value-addition has been taken up by the GCC to enable tribals adopt simple methods like cleaning, deseeding, graining etc. It is, however, significant that in the view of Andhra Pradesh government MFP plays crucial role in the economy of the tribal people in north-coastal Andhra Pradesh and Telangana. This is in contradistinction to what the government of Orissa have observed.

72. The Kerala Government has reported that tribals living in forest areas have been informed of their rights and concessions. But what these rights and concessions are, have not been spelt out. At the same time, it has been mentioned that nearly half of the 21,000 tribal families living in the forest areas have been

engaged in MFP collection. They propose to approach large-scale herbal medicine manufacturers for sale of MFP collections.

73. The government of Assam have stated that they would enact suitable legislation endowing ownership rights of minor forest produce. We have referred to this matter in the section here relating to PESA Act 1996.

74. The rights and concessions enjoyed by tribals have been protected in Chattisgarh and there is no restriction on their gathering minor forest produce; the State has echoed the principle contained in the 1988 Resolution that the domestic requirements of tribals in respect of fuelwood, fodder, minor forest produce and construction timber should be the first charge on forest and essential items should be made available through conveniently located Nishtar and consumer depots at reasonable rates. Yet, they have fixed targets for collection of items of minor forest produce though it is not clear on what basis this was being done. The need for target-fixation may be considered in view of the fact that tribals are allowed to gather MFP freely. Further, it seems that bonus distribution is, generally, delayed. The State Government has enacted a legislation for regulating cutting and sale of teak trees on farmers' private land. A general complaint was that delay occurs in the grant of permission; since, often, trees are sold in cases of dire necessity, delays cause distress. In fact, in Madhya Pradesh, which has a similar law, the tribals expressed their anguish over the attitude of forest officials in the disposal of matters concerning trees standing on non-forest lands.

75. The government of Madhya Pradesh has reported that as per their Nishtar policy, tribals living within 5 kms of the forest area are allowed to collect firewood, fodder, bamboo, other items of NTFP and small timber. But they have expressed the apprehension that increase of live-stock population would continue to exert higher pressure on forest.

76. The government of Orissa has trodden a safe path by stating that " the tribals have not been denied .. collection of their domestic, bonafide and non-commercial need required for firewood, fodder, MFP and construction of timber. Government is thinking of conducting specific studies and pilot projects to get tribal rights in

unsurveyed areas. This is besides the measures taken to settle rights in course of finalizing RFs, Sanctuaries etc". At the same time, elsewhere, they have mentioned that most of the tribals have left the usual practice of collecting MFP and shifting cultivation; this does not correspond to our own observations in the field in the state of Orissa. They have, however, taken action through the government resolution of 31.3.2000 to transfer 68 items of MFP to PRIs and the Orissa Forest Act 1972 is said to be under modification in accordance therewith.

77. The government of West Bengal has reported that it issued in July 1980 "New Directives on Forest Management in tribal areas" whereby tribals have been allowed free of charge to gather leaves, flowers, fruits and seeds of trees (except Tendu leaves and sal seeds), to have one pole per tribal household per annum for being used as a plough and three poles per tribal household for house construction every five years, to assign any tree in the forest as Jaher Than for the purpose of offering prayers and worship, and to collect brushwood and Jhanti for domestic use a head-load per individual and cart-load per group.

78. The government Tamil Nadu in the Forest Department's GO MS.No. 79 dated 29.4.2003 permitted tribal communities to collect non-timber forest produce from forest areas free of cost and sell them in the open market for their day-to-day earnings, with the association of the village forest committees. However, the rights have not been codified.

79. The government of Karnataka has introduced tree Patta scheme providing for rights of usufruct for forest-dwelling tribals. The tree Patta is being given free of cost. But the rights and concessions of tribals in forest produce have not been recorded.

80. We would urge that there is pressing need to codify and consolidate the rights and privileges of tribespeople. The tribal communities have to be assured of access to domestic needs of poles, small timber, thatch grass, fire-wood, grazing, minor forest produce freely, as promised in the 1988 Forest Policy Resolution.

81. Further, in the matter of marketing, we would like to stree that, at the primary level arrangements should be made to enable tribal collectors of minor forest produce to sell it to primary cooperatives like large-sized multiple purpose cooperative societies (LAMPS). The tribal primary societies should be linked to secondary bodies at the district level and/or state apex bodies like Tribal Development Corporation and Forest Development Corporations. The state-level bodies should be linked to Tribal Cooperative Marketing Federation of India Ltd. (TRIFED). This marketing network should have the basic objective of ensuring proper remuneration to the tribal collector. There may, however, be no needless nationalization of the forest produce items. Selective minimum price support mechanisms may help marketing better.

82. However, conditions in the field vary from state to state. In Chattisgarh, some nationalized NTFP items like Tendu leaves, sal seeds, myrobalan are being collected through minor forest produce societies at the primary level. The collection, drying, packing and local transportation are being undertaken by these Samities. Marketing of these products is required to be effected by the Chattisgarh MFP federation.

83. The Dhebar Commission saw no justification for auctioning out the right to collect the forest produce or have a middle-man to exploit it. They referred approvingly to the establishment of the Andhra Scheduled Tribes Cooperative Finance and Development Corporation. In fact, in the sixties, seventies and even in the eighties of the last century, the prevalent general opinion was that the middleman-exploiter should be eliminated through government take-over of the trade. Hence, corporations or cooperative corporations were set up in states having substantial tribal population and forests. These state-level bodies were down-linked to district-level cooperatives as extant, and further to primary cooperatives or LAMPS entrusted with the responsibility of purchase of NTFP items from the individual tribal collectors. In other words, the trade in important items was nationalized with the intention of adequate returns to the tribal collectors. A simultaneous objective seems to have been sustainable exploitation and development of the forest products. It is reported that availability of most of these products has gone down drastically all over the country as reflected in revenues

accruals in respect of important items like bamboo, Kendu leaves, sal and other tree-borne oil- seeds. More important is the fact emerging from several evaluation studies and personal observations that, in practice, the rights have been sublet to private traders and industry creating a hierarchy of objectives, wherein industry and other large end-users have the first charge on the product at low and subsidized rates. On the whole, the tendency has been to maximize revenue, the interest of the tribal and the poor being relegated to the background. In other words, the prime objective of eliminating the middleman has been almost defeated. The Mid-Term Appraisal Report of the Ninth Five Year Plan (1997 – 2002) of the Planning Commission remarked that

> Practical consideration would show that government is incapable effectively to administer complete control and do buying and selling of NTFPs. It is better for government to facilitate private trade and act as a watch dog rather than to eliminate it. Monopoly purchase by government requires sustained political support and excellent bureaucratic machinery. It is difficult to ensure these over a long period and hence nationalization has often increased exploitation of the poor.

84. We are aware of the pitfalls which the TRIFED has fallen into on account of the policy of purchase of mainly agricultural produce items directly from the 'Mandis'(big markets). We are, however, glad to know that they have now commenced focus on their basic mandate of marketing development of tribal products and have submitted a proposal to the Ministry of Tribal Affairs for adoption of a minimum support price scheme for items of MFP on the pattern of the scheme adopted by NAFED and FCI for agriculture produce. This will necessiate grant of adequate funds for the purpose. The scheme should make them responsible to intervene in markets in the event of fall of prices below the minimum, to be announced by the designated authorities. TRIFED should implement the scheme through state-level organizations. Large-scale collection and procurement of NTFP items takes place in tribal areas. Moreover, there is a high potential of medicinal herbs and organically-produced agricultural crops in tribal areas. In the state of Chattisgarh conservation of minor forest produce, specially medicinal plants, is being undertaken and in, some forest areas, buy-back arrangements with local traders have been effected. We understand a good international market exists for

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many of these items. TRIFED and other related organizations should aggressively explore and exploit these markets.

85. Apart from the tribal being merely regarded as a lowly gatherer of forest produce, his exploitation is compounded due to lack of value-addition to the produce. More often than not, various oil-seeds like sal, Karanj, Kusum, Mahua, forest castor, Vantulsi are sent out of tribal areas as such, without conversion into oil. Lac, gums and resins are hardly treated. Even de-seeding of certain produce like tamarind is more of an exception than the rule. Rearing of tassar cocoons can be easily done and even weaving can be picked up where necessary, without much difficulty. There is dire need of first-processing of minor forest produce through cooperatives of primary collectors and effecting value-addition.

86. Though tribals possess skills in large measure so far as items of minor forest produce are concerned, things may improve with training in certain skills. For instance, tapping of resins, storage of sal seeds, preparation of tamarind extracts may witness higher output with imparting of training. In fact, culling, barking, tapping, storage, processing, marketing etc. all call for upgradation of existing levels of knowledge and skills. The relevant skills and trades should be included in the syllabi of the ITIs which should mushroom in tribal areas for vocational training.

87. As touched upon earlier, in mid-eighties, contract system was abolished all over India and departmental harvesting and collection of MFP were decided to be taken up by specialized wings/corporation with the objective of sustainable exploitation through post-harvesting silvicultural operations. However, since then production / collection have drastically come down as post-harvesting operations like coppicing, thinning etc. were not done. Higher revenue collection became the sole objective rather than sustainable production. Most of the specialized wings created in states for timber-harvesting have either been closed or have become defunct. We commend this matter to the Ministry of Environment and Forest for examination and suitable action.

88. The National Commission on Agriculture recommended product-wise survey, proper method of collection and grading, improving resource-base, developing a system of marketing and distribution, ensuring proper processing and utilization. We have not come across inventories of item-wise stocks in the country. The inventories may be prepared. Further, as we have already mentioned, drop in revenue accruals in respect of certain items suggests depleting stocks. The decline in herbs stocks has been badly impinging on the indigenous system of medicine, as witnessed, for example, in Meghalaya, telling on tribal health. We recommend that non-timber forest produce should be properly regenerated, harvested, processed and marketed for improving the economy of forest dwellers. The stock of NTFP items should be enhanced through mixed forestry, that is including species like fuel-wood, items of MFP, fruit, fodder, timber (for house construction, agricultural implements, domestic furniture) herbs etc. The resource-base of the local community should be strengthened through such mixed interspersal in all types of forests i.e. reserve forests, protected forests, village forests etc.

Indian Forest Act 1927

89. Indian Forest Act is being considered for amendments. The MOEF have enabled us to obtain copy of the amendments suggested. In the Annexure to this chapter, we present section-wise amendments proposed by the MOEF and our suggestions and comments.

Indian Forest Act 1927 and PESA Act 1996

90. The Provisions of the Panchayats (Extension to the Scheduled Areas) Act 1996 (PESA Act) was passed by the Parliament in pursuance of Article 243M(4)(b) of the Constitution. The PESA Act relates to Panchayats in Scheduled Areas. It calls upon State Legislatures to endow Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government ensuring that Panchayats and the Gram Sabhas are endowed specifically with, inter alia, ownership of minor forest produce. Some state governments have made laws for Scheduled Areas incorporating this and other provisions. But many State Governments have balked at the idea of transplanting in

letter and spirit the desiderata of the PESA Act into their own legislations, as mandated in the Act. For example, the Assam Government have manifestly stated that it would undertake legislation conferring ownership rights of NTFP on Gaon Panchayats, hedging it with conditions like that these rights will be supervised by the Forest Department or that only those items of NTFP would be transferred to the Panchayats as are not being collected or disposed of departmentally, contrary to the essence of the provision contained in the PESA Act. We have elaborated the differences between the PESA Act and State legislations in our chapter on Panchayats. Suffice it to say that there are divergent viewpoints and these need to be reconciled as indicated in that chapter. The important aspect is that quite a few of the provisions of forest laws like the Indian Forest Act 1927 and the Forest Conservation Act 1980 do not accord with the provisions of the PESA Act 1996. Another attendant problem is the interpretation placed on the different laws. The former are thought by some to be special acts, while others claim the latter to be a special act with the further edge of recent nascence. Further, the PESA Act states that any provision of any law relating the Panchayats in force in the Scheduled Areas before the date on which it received the assent of the President (24 December 1996), which is inconsistent with the provision Part IX of the Constitution, will continue to be in force until amended or repealed or until the expiration of one year from the date on which the PESA Act received the assent of the President. Action as per this provision is, hence necessary. The government of Andhra Pradesh has informed that they contemplate framing separate set of rules to ensure assonance between the provisions of the Indian Forest Act 1927 and the PESA Act 1996. We urge expeditious action to resolve the matter at the national and state levels, so that the two sets of laws harmonise with each other.

Forest (Conservation) Act 1980

91. The Act was introduced with the objective of halting diversion of forest land for non-forestry purposes. Since about 45 lakh hectares of forest was reckoned to have been lost through diversion between 1950 and 1980 to non-forestry purposes, the objective of the Act was laudatory. It lays down that, except with the approval of the Central Government, no state government or other authority can (i) dereserve any reserved forest (ii) divert any forest land for non-forest purposes.

The Act explains that "non-forest purposes" means breaking up or clearing of any forest land for purposes other than re-afforestation. It would appear that when the measure was enacted, it referred to "reserved forest in any law for the time being in force in that State". However, in course of time, it was extended to all notified forests under the administrative control of the Forest Department. Its application was further amplified to include forests in the dictionary sense of the term, as per the orders of the Supreme Court dated 12.12.1996 in writ petition (civil) 202/95 in the case of T.N.Godavarman versus Union of India and others. The Chambers dictionary equates "forest" with "a large uncultivated tract of land covered with trees and under-growth; woody ground and rough pasture". This expands the perimeter manifold. At the same time, it introduces vagueness and subjective element, possibly leading to arbitrary interpretations and sowing seeds of controversies, disputes and conflicts.

92. As per the State Forest Report (SFR) 2001 published by the Forest Survey of India, which functions under the Ministry of Environment and Forest, reserved forests occupy 4.23 lakh sq. kms., protected forests 2.17 lakh sq. kms and un-classed forests 1.28 lakh sq. kms.; dense forests occur in 4.2 lakh sq. kms. and open forests in 2.6 lakh sq. kms. It is probable that there is a rough coterminality between reserved forests and dense forests. Most of the reserved forests constitute the backbone of ecology and bio-diversity of the country and, as such, need to be conserved vigilantly. Moreover, every tree of the protected, village, un-classed and other forest contributes to ecology and bio-diversity. The different categories of forests have been conceived to serve varied functions. It should be understood, however, that the protected, village and un-classed forests do not merely play a role in the development field, they also add to the stability of ecological and biotic regimes. It appears that the aim of classifying forests into the three categories was, perhaps, to strike a balance between conservation and development needs. What we recommend here conforms to our anxiety to maintain a golden mean between the twin desiderata.

93. We entirely endorse the objectives and are not in favour of dilution of the Forest (Conservation) Act 1980 to enable diversion of forest land for commercial or non-site specific activities. At the same time, we cannot help the thought that tribal

development goals should receive filip in every conceivable way. In their letter number 2–1/2003-HC dated 20.10.2003, the Ministry of Environment and Forest issued guidelines under the Act for stepping up development projects in tribal areas. These are meant to encourage infra-structure development projects in tribal areas. The guidelines convey general approval under section 2 of the Act for under-ground laying of electric cables and wires to individual houses, drinking water supply / water pipelines, which involve felling of trees not exceeding fifty in number per project, are outside national parks or wild life sanctuaries and are laid along routes within the existing right of way. Several other development projects in backward tribal areas have been held up. During the course of our tours, we found that development works like construction of tanks, check-dams, school buildings, health centres, approach roads, rural electric lines had been put in cold storage for want of clearance under the Act. Government may consider grant of similar permission in favour of such over-ground projects with a view to expediting them. Guidelines issued by MOEF would need, however, to be incorporated into rules to have the force of law.

94. Apart from the question of the requirement for development, one more reason for looking at the Conservation Law can be appreciated from the situation in Tripura. Schemes have been launched to wean tribal families away from Jhum activity to settle them in rubber plantations with the assistance of World Bank. The land includes that unfit for agricultural crops as well as degraded land. Most of the shifting cultivators, said to number about 4,000 families including members of primitive tribal groups, reside in the forest area. The Government of Tripura has stated categorically that non-forest land is not adequately available and the Forest (Conservation) Act 1980 has to be amended to enable to settle Jhumia and even non-Jhumia families in rubber, tea and coffee plantations. A similar scenario is encountered in Tamil Nadu. Another relevant point in this connection is that insistence on compensatory afforestation may nullify the scheme and projects for neither alternative land is available nor even state governments have adequate funds for the purpose.

95. In Kerala, the law has taken a curious turn. The State Government had decided in 1971 to distribute 1.1 lakh acres of land to land-less. SC and ST farmers desirous of taking to agriculture as means of livelihood. The quota earmarked for tribals was 50% of the total land. Administrative problems delayed distribution and subsequently the Forest Conservation Act came into existence. The scheme could not be implemented and the concerned tribal families thus remained deprived. According to their report, the Government of Kerala has approached the Government of India for diversion of 12,196 hectares of forest land for distribution to the landless tribals and they are awaiting clearance of the Government of India. Separately, in another communication to the Commission, the State Government informed that the Union Ministry of Environment and Forest have conveyed clearance to divert 7,693 hectares of vested forest land in five districts for distribution among landless tribals; the clearance seems, however, to be tied up with payment of present value of more than Rs.577 crores. Thus, both the proposals may not find easy passage. However, three bright features in the scenario are (a) the State Government has stated that the Aralam Farm, a Central Farm, is being purchased by the State Government at a cost of Rs. 40.19 crores for allotment of 3,500 acres to landless tribals (b) the State Government has issued orders for grant of record of rights to ST families in occupation of forest land prior to 1980 and (c) general instructions have been issued that "tribals residing in forest land as encroachers before this date should not be evicted, pending a final decision on their resettlement", though it is not clear what date is referred to. Further, how many families will be found eligible to record of rights as per (b) above is another moot point.

96. Gujarat has a special problem in the responsibility of settlement of families and persons displaced from forest areas which they once occupied, under the Sardar Sarovar Narmada Project. As an impact of the project, 19 villages of Gujarat, 36 of Maharashtra and 193 of Madhya Pradesh may get submerged. As a result, 46,000 project affected persons (PAFs) of Gujarat, 1,000 PAFs of Maharashtra and an estimated 14,000 PAFs from Madhya Pradesh have to be rehabilitated in Gujarat.

97. A problem of forest land peculiar to the State of Maharashtra related to Dalhi and Eksali lands in the Konkan region. Dalhi lands were forest lands leased out to the community during the British days in the name of local headman called Naik who was to collect revenue from the residents of the hamlet and pay it to the Talati. On 14 January 1970, the Government of Maharashtra decided to confer individual property rights on the Dalhi plot-owners. The Dalhi lands were to be first deforested and then handed over to the respective beneficiaries. Between 1970-71 and 1975-76, 11,390 hectares of land were deforested, but only 1406 hectares were transferred to the Revenue Department out of which only 718 hectares were actually granted to 422 plot-holders. Had the process continued, it would have culminated in satisfaction to all plot-holders. But there was delay and with the passage of the Forest (Conservation) Act 1980, it came to a standstill. Notwithstanding the orders of the Ministry of MOEF, no concrete action was visible, as a result of which a writ petition filed in the Supreme Court led to its direction in 1995 to the Government of Maharashtra to form district committees for immediate solution of the matter. The Government of Maharashtra forwarded its proposals to the Government of India and the matter seems to have been travelling back and forth. The approval of the Government of India is awaited, while 11,514 hectares area continue to be cultivated by the plot-holders.

98. In so far as Eksali (annual) leases are concerned, the State Government has apprised that there are 17,000 Eksali plot-holders cultivating about 30,000 hectares of land. This also has remained as a matter of exchange between the State and the Central Governments. The State Government had taken a decision in 1969 to regularize the leases, but delays bogged it. In the meantime, the plots have been cultivated for the last several decades. People have launched peaceful struggles while undergoing untold ordeals. Urgent steps are required to grant land rights to both the Dalhi and Eksali cultivators.

99. We would also suggest the Government consider limiting the applicability of the Act to only such forest areas which have been notified as forests under the provisions of the Indian Forest Act and the State Forest Acts. The orders of the Supreme Court of 1996 referred to above, expanding the scope of forest in consonance with the dictionary meaning of the term were, perhaps, interim in

nature and are likely to be subject to vague, subjective interpretations for demarcation of forests, sowing the seeds of controversies, disputes and conflicts. As desired by the Court, each State Government should constitute an expert committee to identify areas which are good forests irrespective of their having been notified, recognized or classified under any law, and irrespective of the ownership of the land of such forests. Certain lands where hardly any vegetation exists have also been classed as forest, whereas such land can be put to more profitable non-forest uses. With the approval of the apex court, the Ministry of Environment and Forests may take decision in the matter to restrict applicability of the Forest (Conservation) Act to appropriate areas only.

Wild Life (Protection) Act 1972

100. There are about 80 national parks and 441 sanctuaries in the country covering approximately 14.8 million hectares i.e. 4.5% of the country's land area. The creation of sanctuaries and national parks is mainly governed by the provisions contained in chapter IV of Wild Life (Protection) Act 1972. Section 18A(2) is to the effect that till such time as the rights of affected persons are finally settled under sections 19 to 24 (both inclusive), the State Government shall make alternative arrangements required for making available fuel, fodder and other forest produce to the persons affected, in terms of their rights as per the government records. It appears that, by and large, hardly any State Government has followed this statutory provision, adversely affecting the lives of millions of tribal people. The limited exercise of some rights by tribals in sanctuaries to meet their bonafide needs was first curtailed through amendment in the Wild Life Act in 1991 and then completely extinguished as per the ruling of the Supreme Court of 14 February 2000, calling upon the states to refrain from permitting the removal of dead, diseased, dying or wind-fallen trees, drift wood, grasses etc. from any national park or game sanctuary. It is reported that villagers residing in and around the protected area are not able to obtain even bamboo poles and small timber to repair houses and huts in view of the total ban. In our view, relief to poor tribal communities in and around protected areas is necessary.

101. The problem is compounded by the fact that, at the time of issue of notification of intent, the boundaries of protected areas are not clearly demarcated. There are instances where an entire forest division was notified, but settlement of rights not commenced. In fact, section 18 contains an explanatory note to the effect that the area of a sanctuary can be described by roads, rivers, ridges or other well-known or readily intelligible boundaries. It is understood that the MOEF had constituted an expert committee some years ago to rationalize the boundaries of the sanctuaries but not much progress has been made. However, the basic issue is, in practice, having commenced the procedure as per the law, alternative arrangements for making available the requisite necessities to the tribal people as per section 18A (2) are not made. In the Ghadchiroli district of Maharashtra tribal families have been living in the forests or in the vicinity of game sanctuaries and national parks for generations without any formal title of land. They have been cultivating the land in the sedentary or shifting cultivation mode. With the introduction of Wild Life (Protection) Act 1972 and Forest (Conservation) Act 1980, regularization could not be effected, despite the 1990 guidelines of the Ministry of Environment and Forest.

102. The National Wild Life Action Plan 2000-2016 of the MOEF recognizes that local communities are put to a lot of hardship after notification of an area as national park or sanctuary because of denial of forest usufruct and other natural products like fish and marine animals. The statutory provision relating to interim arrangements for fuel, fodder and other produce should be strictly complied with and steps should be taken for time-bound rational demarcation of boundaries of protected areas making them widely publicly known.

103. Further, MOEF may consider taking up with the Supreme Court the question of exclusion from application of the relevant provisions, of such protected areas where final settlement of rights is yet to be arrived at.

104. Under the provisions of the Act, almost every activity of the people living within the protected areas is barred and further the inter-face between the people and the local forest staff is, more often than not, not too friendly. Normal life utilities like drinking water, schools, hospitals, electricity are scarce. The

alternatives of amending the Act so that they can avail of facilities in situ or shifting them out to areas where such facilities are available, should be considered.

105. Further, it seems that dwindling nature-human interaction in the protected areas has contributed to ecological impairment. For instance, in the Bharatpur bird sanctuary, sudden stoppage of grazing has been thought to be the reason for fire havoc. A second instance is the over-growth and congestion in bamboo clumps where removal of bamboo is not done, leading ultimately to extinction. A sylvi-sociological factor which has been over-looked is that round-the-year activity by humans in forest, like gathering of MFP, removal of bamboos, timber etc. lead to better protection of these areas since the people help through removing organic dead detritus for better vegetal generation, fightng fire, checking poaching and illicit felling etc. The day's strict regulations and their partisan implementation seem to dampen people-departmental relations by arraigning them on opposite sides, impinging upon peoples' rights on one side and hampering departmental functions on the other. We are, therefore, of the view that restriction on collection of forest produce for bonafide use should be removed, except in relation to uncontrolled grazing which is damaging to both forest and wild-life habitat. Limited removal of timber and collection of MFP not consumed by wild life is likely to improve the health of the forest.

106. For villages being settled around protected areas, such package for income generation should be developed and implemented by the forest department, as is based on non-forest resources.

107. Section 19 of the Wild Life Act empowers the District Collector to determine the existence, nature and extent of the rights of any person in or over the land comprised within the limits of a sanctuary. Section 26 empowers the State Government to direct that the powers of the Collector may be exercised and performed by such other officer as may be specified in the order. Some State Governments appointed Conservators of Forest as settlement officers. Since the functions of such officers are quasi-judicial in nature, involving adjudication between people's rights and forest department's demands, appointment of a member of the forest department may be interpreted as tantamount to appointment

of a partisan in the proceedings and may be prejudicial to the principles of natural justice. The matter may be considered by MOEF.

108. In State laws, there is provision for payment of some compensation, but payment is generally delayed a good deal due to procedure and red-tape. Ways should be devised to make prompt payments.

109. Lastly, we reiterate that since procedural steps delay final declaration and notification of an area as a protected area, restrictions on the local people of entry into it for grazing, right to fuel, forest produce etc. lead to enormous suffering on their part. The law should provide that till the affected persons have been satisfactorily relocated and rehabilitated, such restrictions should not be imposed. Further, we would urge that the widest possible dissemination in local language or languages of the various stages of conversion of an area into a protected area should be made and, in any case, people should be taken into confidence. Section 36C contains shades of community involvement. It should be participation, and with a wider base.

Forest Education

110. We have referred to the divergence in perception and perspectives of the tribes people and foresters dating back to the days of Baden Powell who wrote the forest manual in 1889. In the Preface to the 1983 Report of the Committee on Orientation of Forest Education in India appointed by the Ministry of Home Affairs, the Chairman of the committee Shri. K.M. Tiwari, ex-President Forest Research Institute (FRI) and Colleges wrote

> Thus, both the tribal people and the foresters have ultimately the same common aim of preserving and augmenting the forest wealth. How strange is then, that in many places, the foresters and the tribal people do not see eye-to-eye with each other and occasionally come into a conflict. Such a situation is definitely due to lack of communication between the foresters, on the one hand, and the tribal and the forest dwellers, on the other hand. In some places the tribal people think that the forest does not belong to them but to the State and, therefore, it is not their property and so they can indulge in its destruction without any damage to themselves. The foresters probably think that the forests are not necessarily meant only for the tribal people but also for making available raw-materials to far-off

> places to meet requirement of the society through the wood-based industries. If, somehow, they understand that they are the real partners in the management of the forests, very likely the antagonistic feeling from their minds will disappear. This is only possible when there is close communication between the foresters and the tribal people and the forest-dwellers .... The management of the forests must be for the satisfaction of the day-to-day needs of the tribals and the forest dwellers in respect of firewood, leaf-fodder, small timber, edible fruits, leaves, gums, resins etc.
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> .... it will be possible only when we impart a course of education especially tailored to bring home the above objectives, amongst not only the foresters but also policy makers, legislators, administrators, the tribal people and all other people of the country. It is, therefore, imperative that suitable course of instructions should be devised for different categories of the persons mentioned above.

111. In its report, the Committee recommended that the syllabi for Forest Officers (IFS and SFS), Rangers, Guards should include tribal study; all other subjects taught during the training period should place pointed emphasis on coverage of tribal development. Members of the Forest Department at different echelons should be exposed to tribal problems. From the papers furnished by the Ministry of Environment and Forest, it appears that tribal welfare is one of the subjects in the Directorate of Forest Education, Dehradun. However, we have not been able to obtain a full idea as to whether adequate attention is being paid to forest-tribal interface in the syllabi or to research in all aspects of tribals of the Forest Research Institute, Dehradun, the Forest Management Institute, Bhopal and other such institutions. This is an area which requires close and sustained attention, in the interest of both forest and tribes in the long range perspective.

112. We have had the opportunity of a brief visit to the Indian Council of Forestry Research and Education. We could not equip ourselves completely with the work the Council is doing in the field of education and research. But we cannot emphasize enough the importance of these areas for the future of tribal economy and life. We hope that the National Forestry Commission, reference to whom is made hereunder, will be able to look into these aspects in detail.

Forestry Commission

113. In a resolution dated 7 February 2003 the Government of India in the Ministry of Environment and Forest appointed a National Forest Commission to review the working of forest and wild life sector, with Justice B.N. Kirpal ex-chief justice of India as the chairman with six other members. Their terms of reference suggest that the Commission has to review and assess the existing policy and legal framework as well as their impact in a holistic manner from the ecological, scientific, economic, social and cultural points of view. So far as this Commission is concerned, the most relevant term of reference is to establish "meaningful partnership and interface between forestry management and local communities including tribes". We would like the whole horizon of forest-tribal interface to be examined by that Commission. We have explained in this chapter the suffering and anguish which the tribespeople have been undergoing since the past century and a half. The causes lie basically in the divergent perspectives and perceptions of the tribespeople and government since the closing decades of the nineteenth century. The legal and administrative consequences of official perception have led to legislation, policy and administrative frameworks which have, generally, impacted adversely on the tribes. It is a golden opportunity for the establishment to unravel through the Kirpal Commission the knots which have tied up the interface. Tribal rights and privileges need to be spelt out and codified. The tribal communities need to be assured of access to domestic needs of poles, small timber, thatch grass, firewood grazing, minor forest produce etc. We have tried to look at matter objectively for a creative equilibrium between the human and sylvan aspects. Nevertheless, we look forward to the Forestry Commission making equitable and constructive recommendations.

Budget and Funds availability

114. The recommendation that the budgeted out-lay for forestry should be increased from 1% to 2% has emanated from many fora, but it seems not to have received adequate attention from the relevant quarters. It is learnt that, generally, from the MoEF budget only 30% is earmarked for forestry and wild-life sectors, the balance being allocated to environment, river cleaning etc. Even from the 30%, it

seems hardly 5% is allocated to natural forests management. For instance, out of the Ninth Plan outlay of Rs. 868 crores, the break-up was Rs. 525 crores for wild life, Rs. 273 crores for Indian Council for Forest Research and Education (ICFRE), Rs.25 crores for FSI, Rs.15 crores for establishment, leaving Rs.30 crores only for actual forestry work. If the figures furnished to us are correct, it is too meagre an amount. Silvicultural operations are also carried out with the help of States funds. Nevertheless, there is need for (a) enhanced outlays for forestry and (b) appropriate prioritization within the MoEF outlays.

115. Further, diminution in fund availability has also occurred in other ways. For example, in the seventies and early eighties, 20% of the fund of NREP and JRY used to be earmarked for forestry, boosting afforestation along the roads, canals etc. The earmarking scheme having been omitted, it affected forestry programme on non-forest land.

Concluding

116. We face an anomalous situation. Normally, in the non-tribal tracts of the country, land has been occupied by the civil population since generations. Further, in course of time, people occupy or obtain through various means parcels of land and the process continues. On account of the accessible inter-face with the administration, they manage to secure insertions of ownership or possession in the land records. In tribal areas, the position is different. Despite possession and ownership spanning generations, records do not exhibit it, for reasons like the lack of accessibility and inadequate interface with administration, ignorance of tribals, manipulative acts of lower echelons of bureaucracy etc. In the result, millions of tribal families have remained deprived of formal title. Instead of systematic action to legally endow them, they have unwittingly come within the mischief of certain well-intentioned Acts like the Forest Conservation Act 1980 and the Indian Forest Act 1927. We regret the approach in the matter has not been empathetic. It needs to be understood that every community has a right to use the natural resources of land, water, air, minerals etc. found in and around its settlement. The tendency during the past decades to appropriate land and forest resources was commenced typically by the colonial power from commercial and strategic points of view and

seems to have been continued during post-independence times. The tribal demand for access to forest and its usufructs, and for land for agriculture, has to be met in the interest and basis of equity. The State Forest Report 2001 identifies 187 districts in the country as tribal districts, the forest cover in these districts constituting 60% of the total forest cover in the country, whereas the area of 187 tribal districts forms 33.6% of the geographical area of the country. Undeniably, expanding forest cover in these districts would reduce the land available to the tribals, leading to further deprivation. On the other hand, the same Report indicates that 26 million hectares of open forest are with less than 40% crown density. These degraded forests, more so those which fall outside the tribal areas, should be afforested. With afforestation at the rate of a million hectares annually, it might take about 26 years for this work.

117. The increase in tribal populations over the last fifty years on the one hand, the plans of the Forest Departments to add to the state's forest areas and incursions of plains people in the tribal areas, have all increased pressures. It is futile to gloss over tensions subsisting between the forest staff and forest dwellers, particularly tribals. Various measures have been devised to offset the interface stresses and strains. The forest management programme, if run imaginatively, can be a good solution as, in fact, it is turning out to be in some places. Equally salutary will be induction of staff belonging to scheduled tribes into the department. Presently, there is no dearth of educated and talented ST youth available all over the country. Arrangements for their training at various levels like forest guards, foresters, deputy rangers, rangers and higher echelons should be made. Training centers and schools for the purpose should be set up in tribal areas to enable them to acquire the requisite training and skills. Recruitment of the educated tribal youth should be made. We presume that among the ST youth, some may already have entered the Indian Forest Service. If so, and wherever they are, they can be expected to contribute to appropriate orientation of other forest officials.

SUMMARY OF RECOMMENDATIONS

It should be clearly recognized that promotion of interest of forest is in tribal interest and, conversely, any step or measure meant to destroy forest is harmful to tribal life and economy.

2. The situation in Kerala is complicated. Pre-1980 non-tribal encroachers have been assigned title to lands. A committee has been constituted for joint verification in respect of tribal lands. At the same time, anti-land-regulation has been, more or less, inoperational in the State, because of its being sub judice for long. We urge that the questions both in respect of revenue and forest lands be resolved equitably as early as possible.

3. The most critical question today relates to regularization of the so-called encroachments of tribal people in forests, forest enclosures, forest settlements, in terms of the Ministry of Environment and Forest (MoEF) orders No. 13-1/90/-FIP(1) dated 18 September 1990. The uncertainty and suspense being experienced by lakhs of tribal families, branded as "encroachers", most of whom have been in occupation of the lands for generations, continue to haunt these families. This is against the letter and spirit of Article 21 of the Constitution concerning life and liberty of a citizen, as interpreted by the Supreme Court. It touches the life and livelihood of tribal families. Compared to the total area of 68 million hectares under forest in the country, occupation by tribals and the other poor of about 1.5 million hectares constitutes hardly 2 percent of the area. Dereserving this area, spread over thousands forest blocks, is likely to have no adverse effect on the environment of the country. On the contrary, it will have salutary impact on the disturbed situation in tribal areas, bringing in peace and a degree of satisfaction.

4. In so far as the question of settlement of disputed claims, issue of Pattas, leases etc. of the tribespeople on forest land are concerned, in other communications bearing the same date i.e. 18 Septemcbr 1990, the MoEF called upon state governments and UT administrations to recognize the traditional rights of tribespeople, incorporating them into the relevant acts,

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rules and regulations. Since the progress has been very slow, it should be expedited.

5. To facilitate and expedite the solution of the so-called encroachments, the procedure adopted by the Government of Maharashtra in the Revenue and Forest Departments Decision No.Sankirn 2002/372/J-1 dated 10 October 2002 for constituting local committees comprising members of Panchayats, Police, Revenue and Forest to verify claims for regularization of "encroachments" on forest lands, are commended for adoption by other state governments and UT administrations.

6. On the analogy of the Andaman and Nicobar Islands (Protection of Aboriginal Tribes) Regulation 1956 and section 65 of the Wild Life (Protection)Act 1972, areas predominantly inhabited by primitive tribal groups should be declared as reserved.

7. Since most of the claims of tribal families would be found to be genuine, insistence on compensatory afforestation might delay matters.

Shifting cultivation

8. It needs to be recognized that tribals have, in course of time, been pushed to the hills, the hills had been forested and, to survive, tribals have had to adopt swidden, that is adaptation of agriculture to the given environment.

9. Since shifting cultivation is said to cause soil erosion and damage to ecology, on the basis of inter-disciplinary scientific studies it is necessary to unfold strategies that make shifting cultivation contextually viable and, at the same time, enable the shifting cultivators to adopt higher yielding strategies. Members of the tribal groups need to be persuaded and convinced, placing before them evidence of practicability, feasibility and viability of the options evolved.

10. Since Jhumia lands are soft spots in the context of expanding corporate sector in the country, it is apprehended that ostensibly more productive systems may replace shifting cultivation, elbowing out the Jhumias into resourcelessness and immiseration. The state should step in and extend protection to these weak sections of the society.

Forest villages

11. In March 1984 the then Ministry of Agriculture suggested to the state and UT governments that they should confer heritable and inalienable rights on dwellers of various villages in occupation of the land for more that 20 years. The Ministry of Environment and Forest (MoEF) in their order no. 13-1/90-FP(5) dated 18.9.1990 directed conversion of forest villages into revenue villages and conferment of heritable but inalienable rights on the dwellers. But subsequently, in the letter of 3 February 2004, the Ministry stated that few proposals had been received from the State Governments and, even of those received, many were either incomplete or defective. Though, earlier, there have been copious references to the figure of 5000 as the number of forest villages in the country, in this letter the Ministry mentioned the figure of 2690. Apart from forest villages, in the states of Andhra Pradesh and Karnataka, there are "forest enclosures". Whatever be the number and the nomenclature, there is the urgent need to convert them into revenue villages, enabling the forest dwellers to partake of the development benefits. In fact, the Tenth Five Year Plan document of the Planning Commission states that the 2.5 lakh tribal families living in these forest habitations continue to remain "as one of the weakest links in the process of tribal development".

12. Not uncommonly, forests in and around forest villages and forest enclosures are mostly denuded of forest growth and the total area involved for conversion into revenue villages may not be more than a few thousand acres. With conferment on their inhabitants heritable but inalienable rights over land, they should be able to receive attention from the various departments of the government for securing developmental benefits. More than ordinary attention would need to be devoted to them by all state functionaries.

13. Specific committees/authorities should be set up at the state and national levels for focusing attention on implementation and monitoring of the programme. The MoEF may consider taking a global view for issue of general order for conversion and connected arrangements.

Forest labour

14. Utmost efforts should be made to organize forest labour cooperative societies of tribal workmen and steps should be taken to ensure their proper functioning.

15. There should be no breach of statutory minimum wage rate to be paid to the individual workmen in the forest. Any breach or breaches, even by the departmental officials, should lead to prosecution as provided in the laws.

Joint forest management programme

16. A major problem in the area of joint forest management (JFM) is that though the village forest communities may be registered under the Societies Registration Act 1860, they have no legal and statutory basis and, further, their relationship with the Gram Sabhas and Panchayats is either vague or tenuous. In the Scheduled Areas, the difficulty is further compounded by the fact that the JFM does not take into account the Provisions of the Panchayats (Extension to the Scheduled Areas) Act 1996. As per section 4(m)(ii) of this Act, the Gram Sabha and the Panchayat are to be endowed with ownership of minor forest produce by the state legislation. Opposing views over ownership of minor forest produce as belonging to the Forest Department and Panchayats/Gram Sabha have created confusion. Since JFM does not have statutory status, whereas PESA Act has, the JFM bodies should function within the canopy of the Panchayat system. The forest committee should function as one arm of the Panchayat.

17. The JFM committees should be converted into community forest management committees and devolved funds appropriately. The officials of the forest department should (a) function as their advisers and (b) monitor the programmes.

18. Institutionalization at the grass-root level has thrown up new challenges in inter-village and intra-village relations on the one hand, enhancing people's expectations on the other. Innovations are needed to address issues of equity (displacement, poverty and landlessness), conflict resolution (particularly inter-village, may be intra-village), social inclusion (women, tribal occupants of forest lands) etc. A pro-active balanced approach is required.

19. At the state level, a committee may be constituted in the Tribes Advisory Council comprised of ST representatives and experts, state level forest and administrative officials to look into all forestry issues.

Minor forest produce or non-timber forest produce (MFP or NTFP)

20. Dependence of a tribal family on MFP varies from region to region and has been estimated by different agencies up to 80%. For a majority of tribals it is a source of food, medicine, shelter and economy.

21. There is a pressing need to codify and consolidate the rights and privileges of tribespeople and assure the tribal communities access to domestic needs of poles, small timber, thatch grass, fire-wood, grazing, minor forest produce freely, as promised in the 1988 Forest Policy Resolution.

22. Proper arrangements should be made to enable tribal collectors of MFP so that they can sell it to primary cooperatives like LAMPS. The tribal primary societies should be linked to secondary bodies at the district level and/or state apex bodies like TDCs and FDCs. The state level bodies should be linked to TRIFED at the national level. This marketing network should have the basic objective of ensuring adequate remuneration to the tribal collector.

23. Needless nationalization of MFP should be eliminated and recourse to minimum price support mechanisms should be adopted to help marketing.

24. There is a dire need of first-processing of MFP like oil-seeds of forest origin, Vantulsi, lac, gums, resins, tassar cocoons etc. through cooperatives of primary collectors, effecting value-addition.

25. Relevant skills and trades like culling, barking, tapping of resins, storage of sal seeds, preparation of tamarind extracts etc. should be imparted to the tribals through ITIs and other training centers, a number of which should be established in tribal areas.

26. Post-harvesting operations like coppicing, thinning etc. having been neglected, production/collection have come down. MoEF may look into the matter.

27. Inventories of item-wise stocks of MFP species and medicinal flora do not appear to have been prepared. They should be maintained. At the same time,

drop in revenue accruals in respect of these items suggests depleting stocks. NTFP should be properly regenerated, harvested, processed and marketed for improving the economy of forest dwellers. The stocks of NTFP items should be increased through mixed forestry i.e. including species like fuel-wood, items of MFP, fruit, fodder, timber (for house construction, agricultural implements, domestic furniture) herbs etc.

Indian Forest Act

28. Our overall comment in regard to the Indian Forest Act and the amendments proposed is that it is generally weighted against the tribals and contains certain provisions of colonial vintage and flavour which are sought to be fortified through the changes proposed. We have given our comments included in the remarks column of the statement contained in the Annexure herewith.

Indian Forest Act 1927 and PESA Act 1996

29. In pursuance of the 73rd Constitutional amendment, for the Scheduled Areas the PESA Act 1996 confers powers on the Panchayats and Gram Sabhas, conforming to the spirit of democratic decentralization. On the contrary, the Indian Forest Act 1927 contains provisions which still smack of imperialist overtones. It should be clearly understood that the forest department is the custodian of forest on behalf of the people. Forest and tribals have a mutual symbiotic relationship and, as such, there has to be assonance between the provisions of the two laws. Since, the PESA Act relates to a segment of the population, namely the STs, who have unusual characteristics, the PESA Act applicable to them should be regarded as a special Act. In consequence, the provisions of the Indian Forest Act 1927 need to be harmonized with the provisions of the PESA Act 1996.

Forest (Conservation) Act 1980

30. We endorse the objectives of the Act and are not in favour of its dilution to enable diversion of forest land for commercial or non-site specific activities. At the same time, we cannot help the thought that tribal development goals

should receive filip in every conceivable way. In their letter of 20.10.2003, the MoEF have issued guidelines conveying general approval under section 2 of the Act for under-ground laying of electric cables and wires to individual houses, drinking water supply/water pipelines etc. During the course of our tours, we found that development works like construction of tanks, check-dams, school buildings, health centers, approach roads, rural electric lines had been put in cold storage for want of clearance under the Act. Grant of permission in favour of such over-ground projects with a view to expediting them may be considered, analogous to relaxation permitted in the letter cited.

31. Similar relaxation is necessary in respect of Jhumia schemes, as in Tripura, resettlement of displaced families in case of Narmada project, Dalhi and Eksali lands in Maharashtra which, in any case hardly carry any vegetation.

32. MoEF may consider the applicability of the Act to only such forest areas which have been notified as forest under the provisions of the Indian Forest Act and the State Forest Acts.

33. State Governments may constitute expert committees to identify areas which are good forests irrespective of their having been notified, recognized or classified under any law, and irrespective of the ownership of such forest lands. This should compensate for land proposed by us to be set apart for the purposes mentioned in this chapter.

Wild Life (Protection) Act 1972

34. Section 18A(2) of the Act is to the effect that, till such time as the rights of the affected persons are finally settled under section 19 to 24 (both inclusive), the State Government shall make alternative arrangements required for making available fuel, fodder and other forest produce to the persons affected, in terms of their rights as per the government records. It appears that, by and large, hardly any State Government has followed this statutory provision, adversely affecting the lives of millions of tribal people. The provisions of the Act should be followed in letter and spirit. Ad interim restrictions on collection of forest produce for bonafide use should be removed, except in relation to uncontrolled grazing which is damaging to both forest and wild-life habitat.

Limited removal of timber and collection of MFP not consumed by wild life is, in fact, likely to improve the health of the forest.

35. For villages being settled around protected areas, such package for income generation should be developed and implemented by the forest department, as is based on non-forest resources.

36. Some State Governments appointed Conservators of Forest as settlement officers under section 26 to determine the existence, nature and extent of the rights of any person in or over the land comprised within the limits of a sanctuary. Since the functions of settlement officers are quasi-judicial in nature, involving adjudication between people's rights and forest department's demands, appointment of a member of the forest department may be interpreted as tantamount to appointment of a partisan in the proceedings to the prejudice of the principles of natural justice.

Forest education

37. Both tribals and foresters need to understand and feel that they are partners in the management of forests, in consequence of which the mutual antagonistic feeling from their minds will disappear. This will be possible only when we impart courses of forest education specially tailored to bring home that objective, to not only the foresters but also policy-makers, legislators, administrators and tribal people. The syllabi of all ranks of forest officers should include empathetic tribal studies. All other subjects taught during the training period should place pointed emphasis on coverage of tribal development.

Forestry Commission

38. While we have been entrusted the responsibility of looking at all aspects of the scheduled tribe people of India, the National Forestry Commission appointed by MoEF in February 2003 is charged with the responsibility of reviewing the entire working of forest and wild life sectors. The span of attention that we have been able to give to forestry in the totality of tribal affairs is, therefore, no match for what the forestry commission can look at. We have attempted to envision a creative equilibrium between the human and

sylvan aspects. We look forward to the Forestry Commission making equitable and constructive recommendations.

Budget and funds availability

39. As per the figures we have furnished in the text of this chapter, a fraction of the funds in the budget of the MoEF is allocated to natural forests management. It seems there is need for (a) enhanced outlays for forestry (b) appropriate prioritization within the MoEF outlays and (c) attracting fund availability from outside the MoEF, say from sources like NREP and JRY sources.

40. The State Forest Report 2001 identifies 187 districts in the country as tribal districts, forest cover in these districts constituting 60% of the total forest cover in the country, whereas the area of 187 tribal districts is about 33.6% of the geographical area of the country. Expanding the forest cover in these districts would reduce the land available to tribals, leading to further deprivation. On the other hand, the same report indicates that 26 million hectares of open forest have less than 40% crown density. These degraded forests, more so those which fall outside the tribal areas, should be afforested. With afforestation at the rate of a million hectares annually, it might take about 26 years for this work.

41. Various measures have been devised to offset the interface stresses and strains between the personnel of the forest staff and forest-dwellers. If run imaginatively, the forest management programme can contribute to reduction of tensions. Equally salutary will be induction of ST staff into forest department, making arrangements for their training at the different levels.

Statement showing provisions of the Indian Forest Act 1927, Amendments proposed by Ministry of Environment and Forest and the comments of the Commission

INDIAN FOREST ACT, 2003

Section	Indian Forest Act, 1927	Proposed amendment	Remarks
1	2	3	4
	INDIAN FOREST ACT 1927	**THE INDIAN FOREST ACT, 2003**	
	Preamble: An Act to consolidate the law relating to forests, the transit of forest-produce and the duty leviable on timber and other forest-produce. WHEREAS it is expedient to consolidate the law relating to forests, the transit of forest-produce and the duty leviable on timber and other forest-produce; it is hereby enacted as follows:-	**Preamble:** An Act to provide for the restoration, conservation and management of forests and matters connected therewith and incidental thereto. WHEREAS it is imperative and expedient to conserve forests to ensure environmental well being and stability, preserve natural heritage, augment and safeguard biodiversity and fulfill the basic needs of the people on the principles of sound ecological management and sustained bio-mass production on a long term basis, as well as to revive and restore degraded forests and to deal with all matters connected therewith or ancillary or incidental thereto, and to consolidate the law relating to the subject and to provide a comprehensive and uniform forest legislation in the country, and to	In the original amendments proposed by the Ministry of Environment and Forest (MoEF), the words "enlist people's participation on usufruct sharing basis" had been added after "bio-diversity". The Ministry of Tribal Affairs (MoTA) had proposed adding words "people tribals living in and around forest in conservation, management and development of forests" for the word "basis". Both these clauses are missing from the present amendment. These are important provisions and need to be added. Failing, the Forest Departments will acquire heavier technical orientation than hitherto and move further away from the human orientation.

		implement the pronouncements made in the National Forest Policy, 1988.	

Section	Indian Forest Act, 1927	Proposed amendment	Remarks
1	2	3	4
		Be it enacted in the year by the Parliament of the Republic of India as follows:	

CHAPTER I

PRELIMINARY

Section	Indian Forest Act, 1927	Proposed amendment	Remarks
1	2	3	4
1	**Short title and extent.**	**Short title and extent.**	
(1)	This Act may be called the Indian Forest Act, 1927.	This Act may be called the Indian Forest Act. 2003.	
(2)	It extends to the whole of India except the territories which immediately before the 1st November, 1956, were comprised in part B States.	It extends to the whole of India, except the state of Jammu & Kashmir.	
(3)	It applies to the territories, which, immediately before 1st November, 1956, were comprised in the State of Bihar, Bombay, Coorg, Delhi, Madhya Pradesh, Orissa, Punjab, Uttar Pradesh and West Bengal; but	It shall come into force with effect from ………. It shall be special act within meaning of section (5) of Criminal Procedure Code.	The amendment for making Indian Forest Act "a special Act" within the meaning of section 5 of the Indian Penal Code and section 5 of the CrPC has relevance in regard to the " Provisions of Panchayats (Extension to the Scheduled Areas) Act 1996". The Commisison has held that the PESA Act is a special Act since it has application only to Scheduled Areas

	the Government of any State may by notification in the Official Gazette bring this Act into force in the whole or any specified part of that State to which this Act extends and where it is not in force.		and Scheduled Tribes and since so far IFA 1927 has not been declared a special act, the provisions of the PESA Act should prevail over those of IFA where necessary. Should the IFA be legally accepted as a special law, its provisions will prevail over those of the PESA Act taking away the force of the PESA Act. We have two options before us. One, to suggest deletion of special act from the amendment and alternatively, to move for declaring PESA Act also as special act.
2	**Interpretation Clause** In this Act, unless there is anything repugnant in the subject or context,-	**Interpretation Clause** In this Act, unless there is anything repugnant in the subject or context,-	

Section	Indian Forest Act, 1927	Proposed amendment	Remarks
1	2	3	4
(1)		"biomass" (in respect to plant species) means the total mass or weight of an individual species, a group of species or of a community as a whole, per unit area or habitat volume.	
(2)	"cattle" includes elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids;	"cattle" includes buffaloes, bulls, bullocks, cows, oxen and other livestock such as camels, domesticated elephants, donkeys, goats, horses, mares, mithuns, mules, pigs, sheep, yaks and also their	

(3)		young; "claimant" in respect of any land means a person, claiming to be entitled to the land or any other interest therein acquired, owned, settled or possessed or purported to have been acquired, owned, settled or possessed whether under, through or by any lease or license under and in accordance with any provision or any enactment.	
(4)		"community" is a group of persons specified on the basis of revenue records living in a specific locality and in joint possession and enjoyment of common property resources, without regard to race, religion, caste, language and culture.	

Section	Indian Forest Act, 1927	Proposed amendment	Remarks
1	2	3	4
(5)		"degraded forest" includes a tract of land covered with trees or woody vegetation of natural growth or planted, having crown density less than 40%, or blanks.	The word "includes" creates the impression that "degraded forest" is meant to imply a tract larger than that covered with trees or woody vegetation of natural growth or planted, having crown density less than 40%. Such non-specific definition leads to questions about intention behind it. If the intention is clear, the word "includes" should be substituted by the word "means".
(6)		"Divisional Forest-officer" means any Deputy Conservator of forests in charge of any forest Division or a Deputy Conservator of forest having jurisdiction over a portion or portions of any such	

Section	Indian Forest Act, 1927	Proposed amendment	Remarks
1	2	3	4
(8)	"forest-offence" means an offence punishable under this Act or under any rule made thereunder;		
(9)	"Forest-officer" means any person whom the State Government or any officer empowered by the State Government in this behalf, may appoint to carry out all or any of the purposes of this Act or to do anything required by this Act or any rule made there under to be done by a Forest-officer,	"Forest-officer" means any person whom the Central or the State Government or any officer empowered by the Central or the State Government in this behalf, may appoint to carry out all or any of the purposes of this Act or to do anything required by this Act or any rule made there under, to be done by a Forest-officer;	
(10)	"forest-produce" includes – the following whether found in, or brought from, a forest or not, that is to say:-	"forest-produce" includes – the following whether found in, or brought from a forest or not, that is to say:-	The definition of forest produce should include 'bamboo', cane and brush-wood also.
(a)	timber, charcoal, caoutchouc, catechu, wood-oil, resin, natural varnish, bark, lac, mahua flowers, mahua seeds, kuth and myrabolams, and	timber, sawnwood, wood-veneer, charcoal, sandalwood, red sanders wood, caoutchouc, catechu, wood-oil, gum, resin, natural varnish, mahua flowers, mahua seeds, kuth, sal-seed, tendu leaves, wild animals, wildlife as defined under the Wildlife (protection) Act, 1972 and products derived there from, and	
(b)	the following when found in, or brought		

Section	Indian Forest Act, 1927	Proposed amendment	Remarks
1	2	3	4
(22)		"saw pit" means a place where wood is sawn by manually operated saws;	
(23)		"state government" in relation to a Union Territory means the Administrator of the Union Territory appointed by the President of India under Article 239 of the Constitution.	
(24)		"shifting cultivation" means cultivation of forest land by Adivasis/Tribals for a time interval after the clearing of bushes and trees. (The tribal shall be a notified tribes as per State/Central Government notification).	**In the definition of "shifting cultivation", it has been shown to be undertaken by Adivasis/Tribals. Since forest-dwellers, including non-tribals, engage themselves in it, the definition should refer to forest-dwellers and not merely adivasis/tribals.**
(25)	"timber" includes trees when they have fallen or have been felled, and all wood whether cut up or fashioned or hollowed out for any purpose or not; and	"timber" includes trees when they have fallen or have been felled or uprooted and all wood whether cut up, sawn, sliced, veneered, split, fashioned or hollowed out or partially processed for any purpose or not;	
(26)	"tree" includes palms, bamboos, stumps, brush- wood and canes.	"tree" includes palms, bamboos, reeds, canes, stumps, brush- wood;	
(27)		"usufruct" means forest produce that may be obtained from dead plants, or the produce of harvested from living plants including grasses, sedges, forbes, herbs, creepers, vines, shrubs and wood, without uprooting, felling, coppicing,	

Section	Indian Forest Act, 1927	Proposed amendment	Remarks
1	2	3	4
4(2) 4 (3) 4(4)	shall be sufficient to describe the limits of the land by roads, rivers, ridges, or other well-known or readily intelligible boundaries. The officer appointed under clause (c) of sub-section (1) shall ordinarily be a not holding any forest-office except of Forest Settlement-officer. Nothing in this section shall prevent the State Government from appointing any number of officers not exceeding three, not more than one of whom shall be a person holding any forest-office except as aforesaid, to perform the duties of a Forest Settlement-officer under this Act.	A Forest-officer hereafter called "presenting officer", not below the rank of Ranger, as authorized in this behalf by the Divisional Forest Officer, may represent the Forest Department at enquiries conducted under this Chapter.	This is a new provision. We propose that a similar right should be available to a claimant as defined in section 1(3) as otherwise, it is likely to prejudice the claimant's case. It should be remembered that the claimants would, generally, be persons who may not be well-versed in administrative and legal matters.
5. (1) (a)	**Bar on accrual of forest rights.** After the issue of a notification under section 4,	**Bar on accrual of forest rights.** After the issue of a notification under section 4,	Ministry of Tribal Affairs has suggested that the right of ownership over NTFP (MFP) endowed on Panchayats and Gram Sabhas by the state legislatures should not be subject to bar. This is in keeping with the letter and spirit of the PESA Act 1996. We support the amendment of the MoTA.

Section	Indian Forest Act, 1927	Proposed amendment	Remarks
1	2	3	4
(3)		granted by or on behalf of the State Government; nor any lease be granted except in accordance with the rules made in this behalf by the State Government. Save as otherwise provided in this Act, no Civil Court shall between the dates of publication of the notification under section 4 and of the notification to be issued under section 20, entertain any suit to establish any right in or over any land or to the forest produce from any land, included in the notification published under section 4.	
6. (a) (b)	**Proclamation by Forest Settlement-officer** When a notification has been issued under section 4, the Forest Settlement-officer shall publish in the local vernacular in every town and village in the neighbourhood of the land comprised therein a proclamation --- specifying, as nearly as possible, the situation and limits of the		The present section 6 relating to proclamation by the Forest Settlement Officer in pursuance of notification under section 4, should make it obligatory that all means should be deployed to ensure that the proclamation reaches all concerned. This is important, as it has been found that reservation proceedings have been continued after the proclamation was issued, though the tribals and forest dwellers remained ignorant of it. This was the case in the Gadchiroli district and adjoining forests as well as others. The means for communicating the proclamation should be such as have been traditionally in vogue in the

Section	Indian Forest Act, 1927	Proposed amendment	Remarks
	proposed forest; explaining the consequences which, as hereinafter provided, will ensue on the reservation of such		concerned area, apart from publication in local vernacular.
1	2	3	4
(c)	fixing a period of not less than three months from the date of such proclamation, and requiring every person claiming any right mentioned in section 4 or section 5 within such period either to present to the Forest Settlement-officer a written notice specifying or to appear before him and state, the nature of such right and the amount and particulars of the compensation (if any) claimed in respect thereof.	fixing a period of not less than three months and not more than six months from the date of such proclamation, and requiring every person claiming any right mentioned in section 4 or section 5 within such period either to present to the Forest Settlement-officer a written notice specifying or to appear before him and state, the nature of such right and the amount and particulars of the compensation (if any) claimed in respect thereof.	
7.	**Inquiry by Forest Settlement-officer** The Forest Settlement-officer shall take down in writing all statements made under section 6, and shall at some convenient place inquire into all claims duly preferred under that section, and the existence of any rights	**Inquiry by Forest Settlement-officer** The Forest Settlement-officer shall take down in writing all statements made under section 6, and shall at some convenient place inquire into all claims duly preferred under that section, and the existence of any rights mentioned in section 4 or section 5 and not claimed under section 6 so far as the same may be ascertainable	Since the presenting officer who will be the representative of the forest department is being specifically mentioned to present the departmental case, it is equally important that the facility should be given to the claimant to advance his case either by himself and/or through others he may wish to associate. For this purpose, after the word " section 6" the words "giving full opportunity to the claimant or claimants" may be added.

	mentioned in section 4 or section 5 and not claimed under section 6 so far as the same may be ascertainable from the records of Government and the evidence of any persons likely to be acquainted with the same.	from the records of Government and the evidence of any persons likely to be acquainted with the same, including the presenting officer.	

Section	**Indian Forest Act, 1927**	**Proposed amendment**	**Remarks**
1	**2**	**3**	**4**
8. 8(a) (b)	**Powers of Forest Settlement-officer** For the purpose of such inquiry, the Forest Settlement-officer may exercise the following powers, that is to say:- power to enter, by himself or any officer authorized by him for the purpose, upon any land, and to survey, demarcate and make a map of the same; and the power of a Civil Court in the trail of suits.		Section 8(b) allows the Forest Settlement Officer the powers of civil court in the trial of suits. In the context of tribal areas, including Scheduled Areas, it needs to be kept in view that the tribals and other forest-dwellers are mostly unlettered, ignorant persons and the merest legal step, but particularly legal coercive processes, intimidate them. Hence, simple procedures should be devised and those which are likely to lend handle to the power staff to brow-beat them should be excluded. Incidentally, even the Land Acquisition Act 1894 does not confer powers of a civil court on the District Collector. There is no reason why the IFA should include it.
9.	**Extinction of rights.** Rights in respect of which no claim has been preferred under section 6, and of the existence of which no knowledge has been		

Section	Indian Forest Act, 1927	Proposed amendment	Remarks
1	2	3	4
(10).	**Treatment of claims relating to practice of shifting cultivation.**	**Treatment of claims relating to practice of shifting cultivation.**	It is a loaded amendment. We feel that the amendment proposed in this section relating to shifting cultivation is unrealistic. We are not opposed to shifting cultivation being replaced by a less harmful and more viable occupation. The proposed amendment gives impression that the existing livelihood of Jhumias should be closed down and alternative "to be provided in consultation with Reviewing Authorities for rehabilitating the families practicing shifting cultivation". It should be recognized that this is not a proposition which can be implemented through fiats. We are aware of the plight of lakhs of ST families displaced on account of various development projects. It is difficult to cite even a small number of successful rehabilitation projects, making us skeptical about the provision being included here. The Ministry of Agriculture has been conducting some projects to wean shifting cultivators, persuading them to take to settled cultivation. MoEF may look into these projects. We are not in favour of the amendment proposed, not even the existing provision. We object to the replacement of the term "privilege" by "concession".
(1)	In the case of a claim relating to the practice of shifting cultivation, the Forest Settlement-officer shall record a statement setting forth the particulars of the claim and of any local rule or order under which the practice is allowed or regulated, and submit the statement to the State Government, together with his opinion as to whether the practice should be permitted or prohibited wholly or in part.	In the case of a claim relating to the practice of shifting cultivation, the Forest Settlement-officer shall -----	
(a)		entertain claims to the practice of shifting cultivation in the manner herein after provided whenever, after hearing the presenting officer and making such enquiries as may be deemed necessary, he is satisfied that the practice of shifting cultivation as claimed had been in existence on a regular basis in the land during preceding **twenty years** from the date of notification under section 4.	
(b)		record a statement setting forth the particulars of the claims and of any local rule or order under which the practice3 is allowed or regulated, and	

Section	Indian Forest Act, 1927	Proposed amendment	Remarks
1	2	3	4
12.	**Order on claims to rights of pasture or to forest-produce** In the case of a claim to rights of pasture or to forest-produce, the Forest Settlement-officer shall pass an order admitting or rejecting the same in whole or in part.	**Order on claims to rights of pasture or to forest-produce** In the case of a claim to rights of pasture or to forest-produce, the Forest Settlement-officer shall pass an order admitting or rejecting the same in whole or in part, after considering the viewpoint of the presenting officer, or the Divisional Forest Officer, provided that the Forest Settlement-officer shall not admit any claim, in whole or in part, unless after considering the evidence provided to him under section 7, he is satisfied that such claim is within the carrying capacity of the forest.	The PESA Act 1996 confers ownership of minor forest produce on the Panchayats and Gram Sabhas. In such event, how the Forest Settlement Officer can pass an order admitting or rejecting a claim to MFP, is not understood. Evidently the PESA Act should prevail.
13.	**Record to be made by Forest Settlement-officer** The Forest Settlement-officer, when passing any order under section 12, shall record, so far as may be practicable, --		

Section	Indian Forest Act, 1927	Proposed amendment	Remarks
1	2	3	4
14 (a)		in case of a right of way, by whom they may be enjoyed, the width of the way, and whether for vehicular traffic or for persons and cattle only, and the conditions, if any, attached to such right;	
14 (b)		in case of the right of pasturage, the number and description of cattle which the claimant is, from time to time, entitled to graze in the forest, the season during which such pasturage is permitted, and any conditions attached to such right;	
(c)		in case of forest-produce, the quantity of timber or other forest-produce, which the claimant is, from time to time, authorized to take or receive, and whether or not such forest-produce other than timber or firewood may be sold or bartered, and such other particulars as may be necessary in order to define the nature, incident and extent of the right and manner in which the forest-produce shall be remove; and	Our comments above hold
(d)		in case of water-course, by whom and for what purpose the water-course may be utilized and any condition attached to its use.	

Section	Indian Forest Act, 1927	Proposed amendment	Remarks
1	2	3	4
15	**Exercise of rights admitted**		Our comments above hold
(1)	After making such record Forest Settlement-officer shall, to the best of his ability, and having due regard to the maintenance of the reserved forest in respect of which the claim is made, pass such orders as will ensure the continued exercise of the rights so admitted.		
(2)	For this purpose the Forest Settlement-officer may-		
(a)	set out some other forest-tract of sufficient extent, and in a locality reasonably convenient, for the purpose of such claimants, and record an order conferring upon them a right of pasture or to forest- produce (as the case may be) to the extent so admitted; or		
(b)	so alter the limits of the proposed forest as to exclude forest-land of sufficient extent, and in a locality reasonably convenient, for the purpose of the claimants; or		
(c)		subject to sub-section (3) of this section, record an order, continuing to such claimants a right of	

Section	Indian Forest Act, 1927	Proposed amendment	Remarks
1	2	3	4
		part thereof, so constituted under Chapter IV of this Act.	
16 16(A)	**Commutation of rights.** In case the Forest Settlement-officer finds it impossible, having due regard to the maintenance of the reserved forest, to make such settlement under section 15 as shall ensure the continued exercise of the said rights to the extent so admitted, he shall, subject to such rules as the State Government may make in this behalf, commute such rights, by the payment to such persons of a sun of money in lieu thereof, or by the grant of land, or in such other manner as he thinks fit.	**Commutation of rights.** If, on the representation of the presenting officer, or the Divisional Forest officer, the Forest Settlement- officer is satisfied that the exercise of any right whether individually or collectively, is inconsistent with the conversation of the proposed reserved forest, he shall proceed to acquire such right and shall, subject to such rule, as the State Government may make in this behalf, commute such rights by payment to such persons, of a sum of money in lieu thereof, or by the grant of land, or in such other manner as he thinks fit, to maintain the social organization of the forest dwelling communities. **Copy of order passed under section 11, section 12, section 15 or section 16.** A copy of every order passed under section 11, section 12, section 15 and section 16 shall be furnished to the claimants in local language by the Forest Settlement-officer and also to the	Our comments above hold

Section	Indian Forest Act, 1927	Proposed amendment	Remarks
1	2	3	4
19.	**Pleaders** The State Government, or any person who has made a claim under this Act, may appoint any person to appear, plead and act on its or his behalf before the Forest Settlement-officer, or the appellate officer or Court, in the course of any inquiry or appeal under this Act.		
20. (1) (a) (b) (c)	**Notification declaring forest reserved** When the following events have occurred, namely:- the period fixed under section 6 for preferring claims has elapsed, and all claims, if any, made under that section or section 9 have been disposed of by the Forest Settlement-officer; if any such claims have been made, the period limited by section 17 for appealing from the orders passed on such claims has elapsed, and all appeals (if any) presented within such period have	if the period prescribed under sub-section (3) of section 10 for extinguishing the practice of shifting	We have not agreed to the provision under section 10 and, hence, we do not agree to the provision here.

Section	Indian Forest Act, 1927	Proposed amendment	Remarks
1	2	3	4
	under section 11, elected to acquire under the Land Acquisition Act, 1894, have become vested in the Government under section 16 of that Act,	cultivation has elapsed;	
(d)	the State Government shall publish a notification in the Official Gazette, specifying definitely, according to boundary-marks erected or otherwise, the limits of the forest which is to be reserved, and declaring the same to be reserved from a date fixed by the notification.	all lands, building (if any) to be included in the proposed forest, which the Forest Settlement-officer has, under section 11, elected to acquire under the Land Acquisition Act, 1894, have become vested in the Government under section 16 of that Act, the State Government shall publish a notification in the Official Gazette, specifying definitely, according to boundary-marks erected or otherwise, the limits of the forest/land which is to be reserved, and declaring the same to be reserved from a date fixed by the notification.	
(2)	From the date so fixed such forest shall be deemed to be a reserved forest.	From the date so fixed such forest or land shall be deemed to be a reserved forest and requisite alteration shall be made in the revenue records and	It has been found in some cases that before completing this stage of the process, forest areas are taken over and forest-dwellers are made to quit. We stress that full procedures should be followed and all stages should be observed meticulously.

Section	Indian Forest Act, 1927	Proposed amendment	Remarks
1	2	3	4
		maps. After notification, such forest/land shall be deemed as recorded as reserved forest in revenue records for all the purposes.	
21	**Publication of translation of such notification in neighbourhood of forest.** The Forest-officer shall, before the date fixed by such notification, cause a translation thereof into the local vernacular to be published in every town and village in the neighbourhood of the forest.	**Publication of translation of such notification in neighbourhood of forest.** The Divisional Forest-officer shall before the date specified in the notification issued under section 20, cause a translation thereof into the local vernacular to be published at a conspicuous place in every town and village in the neighbourhood of the reserved forest.	The dissemination should be undertaken not only through publication in local vernacular, but also through traditional methods like drum-beating, as most of the forest-dwellers are un-lettered or inadequately educated.
22	**Power to revise arrangement made under section 15 or section 18.** The State Government may, within five years from the publication of any notification under section 20, revise any arrangement made under section 15 or section 18, and may for this purpose rescind or modify and order made under section 15 or section 18, and direct that any one of the proceeding specified in section 15 to be taken in lieu of		

Section	Indian Forest Act, 1927	Proposed amendment	Remarks
1	2	3	4
23	**No right acquired over reserved forest, except as here provided.** No right of any description shall be acquired in or over a reserved forest except by succession or under a grant or contract in writing made by or on behalf of the Government or some person in whom such right was vested when the notification under section 20 was issued.	**No right acquired over reserved forest, except as here provided.** No right of any description shall be acquired in or over a reserved forest except by succession or under a grant or contract in writing made by or on behalf of the Government or by, or on behalf of some person in whom such right vested when the notification under section 20 was published, or by succession from such person; Provided that no lease shall be granted by the State Government for any land included within the reserved forest without the prior approval of the Central Government. Every lease granted without such approval shall be null and void.	The right of ownership over MFP conferred on the Panchayats and Gram Sabhas should continue to be vested after the section 23 notification.
24 (1)	**Rights not to be alienated without sanction.** Notwithstanding anything contained in section 23, no right continued under clause (c) of sub-section (2) of section 15 shall be alienated by way of grant, sale, lease, mortgage or otherwise, without the sanction of the State	**Rights not to be alienated without sanction.** Notwithstanding anything contained in section 23, no right continued under clause (c) of sub-section (2) of section 15 shall be alienated by way of grant, sale, lease, mortgage or otherwise, without the sanction of the State Government. However, inheritance of such rights shall	Our comments against section 23 are relevant here.

Section	Indian Forest Act, 1927	Proposed amendment	Remarks
1	2	3	4
26	**Acts prohibited in such forests**	**Acts prohibited in such forests**	According to section 4(a) of the PESA Act 1996, no law shall be made which is inconsistent with the customary law, social and religious practices and traditional management practices of community resources. In fact, customary and other revenue rights enjoyed by the tribal as per this Act, Schedule Area Regulation and other Acts will have to be respected. We suggest that actions in conformity with these and customary laws should not be prohibited under section 26.
(1)	Any person who –	Any person who –	
(a)	makes any fresh clearing prohibited by section 5, or	contravenes the provision of clause (b) or clause (c) of sub-section (1), and sub-section (2) of section 5; or	
(b)	sets fire to a reserved forest, or, in contravention of any rules made by the State Government in this behalf, kindles any fire, or leaves any fire burning, in such manner as to endanger such a forest;		
(c)	or who, in a reserved forest –		
(d)	kindles, keeps or carries any fire except at such seasons as the Forest-officer may notify in this behalf;		
(e)	trespasses or pastures cattle, or permits cattle to trespass;	causes any damage by negligence in felling any tree or cutting, or dragging, or removal of any timber; or	
	causes any damage by negligence in felling any tree or cutting or dragging any timber;		

Section	Indian Forest Act, 1927	Proposed amendment	Remarks
1	2	3	4
(b)	the ·exercise of any right continued under clause (c) of sub-section (2) of section 15, or created by grant or contract in writing made by or on behalf of the Government under section 23.		
(3)	Whenever fire is caused willfully or by gross negligence in a reserved forest, the State Government may (notwithstanding that any penalty has been inflicted under this section) direct that in such forest or any portion thereof the exercise of all rights of pasture or to forest-produce shall be suspended for such period as it thinks fit.	Whenever fire is caused willfully or by gross negligence in a reserved forest, or theft of forest produce or grazing by cattle occur on such a scale as to imperil the regeneration and future yield of such forest, the State Government may (notwithstanding that any penalty has been inflicted under section 78) direct that in such forest or any portion thereof, the exercise of all rights of pasture or to forest-produce shall be suspended for such a period as it may thinks fit.	
26. (4)		Where a person contravenes the provisions of clause (a), clause (g) or clause (h) of sub-section (1), without prejudice to any other action that may be taken against him under other provisions of this Act, a Forest Officer not below the rank of a Ranger, or a Police-officer not below the rank of a Sub-Inspector, or a	Such powers have not been conferred elsewhere on Tehsildars and Sub-Inspectors of Police and should not, therefore, be conferred on the forest rangers. The procedure for eviction should be subject to the existing civil laws governing the eviction. Grant of such powers to the level of officers mentioned is likely to be misused. In fact, it is a common experience for tribals to be driven out, sometimes unlawfully, of their forest abode by forest rangers.

		Revenue-officer not below the rank of Tehsildar, may evict the person from forest or that land, pertaining to which the	

Section	Indian Forest Act, 1927	Proposed amendment	Remarks
1	2	3	4
		Contravention has taken place and remove any building or other construction or anything grown or deposited on it.	
26 (5)		**Appeal** Any person aggrieved by any action taken against him under sub-section (4) may, within thirty days from the date of such action, appeal to the Conservator of forests having jurisdiction over the area in which the property is located and the Conservator of Forests shall, after giving an opportunity to the appellant and hearing the officer who has taken action under sub-section (4), pass such order as he may thinks fit, confirming modifying or annulling such action taken under sub-section (4).	Appeal against the action of Sub-Inspector of Police or a Tehsildar to Conservator of Forest might create cross-departmental administrative problems. Even more unfortunately, we have to imagine how the simple and ignorant tribal people will be able to make appeals to the Conservator of Forest within a short period of one month. We feel that a tribal family might not be able to locate his office within a period of one month, specially the plight in which it will be placed for eviction.
(6)		Where any agricultural or other crop is grown on the land or any building or other	

		all exploitation by the State Government, of the area in question till such time as the direction of the Central Government are carried out. Anyone who violates such directions or abets in violation of the same shall be liable for punishment as contained in section 78.	
28.A		**Certain forest deemed to be reserved forest** The forest areas which have previously been declared as reserved forests under any Act shall	A rider should be added that the Panchayats and Gram Sabhas shall continue to have the right of ownership over minor forest produce originating from such forests.

Section	Indian Forest Act, 1927	Proposed amendment	Remarks
1	2	3	4
		be deemed to have been declared as reserved forests under this Act with effect from the date of coming into force of this Act.	

CHAPTER III
OF PROTECTED FORESTS

Section	Indian Forest Act, 1927	Proposed amendment	Remarks
1	2	3	4
29. (1). (a)	**Protected Forests** The State Government may, by notification in the Official Gazette, declare the provisions of	**Protected Forests** The State Government may, by notification in the Official Gazette, declare the provisions of this Chapter	

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Section	Indian Forest Act, 1927	Proposed amendment	Remarks
1	2	3	4
(c)	prohibit, from a date fixed as aforesaid, the quarrying of stone, or the burning of lime or charcoal, or the collection or subjection to any manufacturing process, or removal of, any forest-produce in any such forest, and the breaking up or clearing for cultivation, for building, for herding cattle or for any other purpose, of any land in any such forest.	prohibit, from a date fixed as aforesaid, the quarrying of any major or minor mineral, quarrying of stone, or the burning of lime or charcoal, or the collection or subjection to any manufacturing process, or removal of, any forest-produce in any such forest, and the breaking up or clearing for cultivation, for building, for herding cattle or for any other purpose, of any land in any such protected forest.	
31	**Publication of translation of such notification in neighbourhood.** The Collector shall cause a translation into the local vernacular of every notification issued under section 30 to be affixed in a conspicuous place in every town and village in the neighbourhood of the forest comprised in the notification.	**Publication of translation of such notification in neighbourhood.** The Collector or any other officer authorized by the State Government shall cause a translation into the local vernacular of every notification issued under section 30 to be affixed in a conspicuous place in every town and village in the neighbourhood of the forest comprised in the notification.	Apart from publication in local vernacular of the notification, traditional methods of its dissemination should be employed.
32 (a)	**Power to make rules for protected forests.** The State Government may make rules to regulate the following matters, namely:- The cutting, sawing, conversion and removal		State Governments may frame rules in consultation with Panchayats in view of provisions of the PESA Act 1996.

Section	Indian Forest Act, 1927	Proposed amendment	Remarks
1	2	3	4
(2)	Whenever fire is caused willfully or by gross negligence in a protected forest, the State Government may, notwithstanding that any penalty has been inflicted under this section, direct that in such forest or any portion thereof the exercise of any right of pasture or to forest-produce shall be suspended for such period as it thinks fit.	Whenever fire is caused willfully or by gross negligence in a protected forest, or theft of forest produce or grazing of cattle occurs on such a scale to be likely to imperil the future yield of such forest, the State Government may (notwithstanding that any penalty has been inflicted under section 78) direct that in such forest or any portion thereof the exercise of any right of pasture or to forest-produce shall be suspended for such period as it may deem fit.	
(3)		Where a person contravenes the provision of clause (b) or (c) or (h) of sub-section (l), without prejudice to any other action that may be taken against such person under the provisions of this Act, a Forest-officer not below the rank of a Ranger; or a Revenue-officer not below the rank of a Tehsildar, may evict the person from the forest or the land, pertaining to which the contravention has taken place and remove any building or other construction or anything grown or deposited on it.	While we appreciate that prompt action may be necessary in case of willful offences like those listed in sub-section (1), as we have observed before, summary action by officers of the rank of Ranger and Tehsildar for eviction may be arbitrary and high-handed. There are civil laws relating to the question of eviction, as we have mentioned before and these should be brought into play.
(4)		Where any agricultural or other crop is grown on the land in contravention of clause (c) of sub-section (1) or any building or other structure is set	

Section	Indian Forest Act, 1927	Proposed amendment	Remarks
1	2	3	4
		Every ten years, shall review as which of the protected forests notified under section 29 need to be constituted as reserved forests and forward his recommendations in this regard to the State Government. On receipt of such a proposal, the State Government, within a period of six months, shall direct either to start proceedings as per the provisions of Chapter II for constituting a reserved forest in such protected forest or part thereof as deemed fit, or direct the Head of the Forest Department of the State concerned to review his proposal, in respect of such protected forest or part thereof as may be considered necessary, and record the reasons therefore, or decide not to proceed according to such recommendation for the reasons to be recorded in this respect; provided that whenever the State Government disagrees with the recommendations of the Head of the Forest Department, in whole or in part, the reasons therefore shall be forwarded to the Central Government.	
34.A.		**Certain forest deemed to be protected forest.**	After the word "person", the words "and community" may be added, since in tribal areas, rights are held not only by persons but also by communities.

CHAPTER IV
OF VILLAGE FORESTS

Section	Indian Forest Act, 1927	Proposed amendment	Remarks
1	2	3	4
34.B 1(a)	**28. Formation of village forests** The State Government may assign to any village-community the rights of Government to or over any land which has been constituted a reserved forest, and may cancel such assignment. All forests so assigned shall be called village-forests.	**Formation of village forests** Notwithstanding anything contained in any other Act, rules or regulations, whenever the State Government consider that any forest or land, other than a reserved forest notified under Chapter II of this Act, which is the property of the Government or over which the Government has proprietary right or any Panchayat land or any land at the disposal of village community or over which the village community has access by way of any right, concession, or privilege, needs to be constituted as village forest with a view to assign to village community its conservation, development and management on the principles of sustained bio-mass production for the collective benefit of the said village community; the State Government or any officer authorized by it on this behalf, may constitute, by a notification in the Official Gazette, such land as village forest, and manage it in the manner herein after provided.	The provision for constituting village forest precludes reserved forest, but does not preclude protected forest. It is not clear whether this is intentional and, if so, what the reason behind it is. Secondly, in sub-section 1(b), the representation is sought to be given to "Gram Sabha or any other local body such as village forest committee constituted under section 80(b) of this Act". As far as we can see, a village forest committee is merely a subject-matter committee and cannot be expected to take a holistic view, which only a Gram Sabha is in a position to do. Hence, we recommend that representation be confined to Gram Sabha. The Gram Sabha may constitute a Village Forest Committee as one of its subject matter committees. So far as clause (f) is concerned, as reiterated earlier, the Gram Sabha and the Panchayat have been conferred ownership of minor forest produce as per section 4(m)(i) of the PESA Act. The clause should be amended accordingly. Reference sub-section (3), the State Government may consult Panchayats in the matter. Reference section 6, the eviction proceedings should not be arbitrary, but should be in conformity of the concerned laws.

CHAPTER IV A
CONTROL OF SHIFTING CULTIVATION OVER FOREST LANDS

Section	Indian Forest Act, 1927	Proposed amendment	Remarks
1	2	3	4
34.C		**Procedure to control the practice of shifting cultivation.**	This is a new chapter on shifting cultivation. Section 10 in the present Act as well as in the amended form here deals with shifting cultivation. We have given our comments above in the matter. As far as can be seen, the provisions being suggested in the new chapter relate to policy matter, having little relevance to regulatory provision. Moreover, as we have pointed out above, and in our report, shifting cultivation continues to be a widely-held practice by millions of Jhumias. Little purpose will be served by converting a popular method into a regulatory subject. Replacement of shifting cultivation by modes, wherever feasible, has been taking place. In certain not un-common topographic-climatic-edaphic situations, alternatives are not available and the force of law may make little sense there.
(1)		The Central Government, under the powers vested in sub-section (1) and (2) of section 76 of this Act shall, by notification, constitute an authority of experts in order to study in depth the practice of shifting cultivation over forest areas.	
(2)		The authority constituted under sub-section (1), shall go through all the reports available on the shifting cultivation and based on it make specific studies of the prevalent methods of shifting cultivation of the practice on merit within one year from the date of appointment of the authority or such time as specified by the Central Government. it shall also recommend the restrictions on the practice for its continuance, wherever necessary, including the areas where the shifting cultivators have switched over to settled cultivation.	

CHAPTER V
OF THE CONSERVATION OF FORESTS AND LANDS NOT BEING THE PROPERTY OF GOVERNMENT

Section	Indian Forest Act, 1927	Proposed amendment	Remarks
1	2	3	4
	OF THE CONTROL OVER FORESTS AND LANDS NOT BEING THE PROPERTY OF GOVERNMENT	**OF THE CONSERVATION OF FORESTS AND LANDS NOT BEING THE PROPERTY OF GOVERNMENT**	
35	**Protection of forests for special purposes.**	**Conservation of forests and lands not owned by Government.**	The penalties proposed under section 78 for contravention as per sub-section (1) seem far-fetched, as such contraventions have been conceived to be on land not belonging to government.
(1)	The State Government may, by notification in the Official Gazette, regulate or prohibit in any forest or waste-land ---	The State Government may, by notification in the Official Gazette, regulate or prohibit in any forest or land not being the property of such government or over which it has no proprietary rights.	
(a)	the breaking up or clearing of land for cultivation;	the breaking up or clearing of land for cultivation or any other purpose;	
(b)	the pasturing of cattle; or	the pasturing of cattle; or	
(c)	the firing or clearing of the vegetation;	setting fire to vegetation; clear felling or over-exploitation which endangers such forest or land;	
	when such regulation or prohibition appears necessary for	when such regulation or prohibition appears necessary for any of the following purposes:-	

CHAPTER VII
OF THE CONTROL OF TRADE, POSSESSION AND TRANSIT OF TIMBER AND OTHER FOREST-PRODUCE AND ITS PROCESSING

Section	Indian Forest Act, 1927	Proposed amendment	Remarks
1	2	3	4
40.A (1) (2)		**Regulation of trade in forest-produce and its possession** Save as otherwise provided in this Chapter, the Central or the State Government may, by notification in the Official Gazette, prescribe that in the specified area from such date or dates as may be specified in the said notification, no person other than – the Central or the State Government; or an officer of the Central or the State Government or an agency or organization or individual authorized, in writing in this behalf; shall purchase, transport or sell any forest-produce or any class of forest-produce specified in the notification, or transport or deal in any manner in such forest-produce or possess the same in such quantity, except as may be specified in the said notification. The State Government may, by notifications in the	(Sections 40A to 40N) These sections relate to control of trade, possession and transit of timber and other forest produce and their processing. Many new regulatory provisions have been incorporated. We assume that these provisions relate mainly to big traders, contractors and forest operators. Further, since the law is applicable to all, the small poor tribal is likely to be embroiled. MoEF may consider how the provisions can be modulated, so as not to let them be unduly repressive to tribals.

CHAPTER IX -PROCEDURES FOR DEALING WITH FOREST OFFENCES

Section	Indian Forest Act, 1927	Indian Forest Act, 1927	Remarks
1	2	3	4
	Penalties and Procedure.	**Penalties and Procedure.**	
52.	**Seizure of property liable to confiscation** When there is reason to believe that a forest offence has been committed in respect of any forest-produce, such produce, together with all tools, boats, carts or cattle in committing any such offence, may be seized by any Forest-officer or Police-officer. Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized, and shall, as soon as may be, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.	**Seizure of property liable to confiscation** When there is reason to believe that a forest offence has been committed in respect of any forest produce, such forest produce, together with all tools, ropes, chains, boats, vehicles, cattle, plants, machinery, equipments, weapon and any other article used in committing such offence, as may be seized by Forest-officer, Police officer or Revenue officer. Provided when seizure is made by a Police officer or Revenue officer, he shall hand over to the concern forest officer for initiation of confiscation under this act. Every officer seizing any property under this section shall place a mark and assign a number indicating that the same has been seized as soon as possible but not exceeding 24 hours, shall produce the property before the forest officer not below the rank of Assistant Conservator of Forest authorized by the State Government in this behalf by the notification (hereinafter referred as authorized officer) and the arrested person in the case alone shall be produced before the Magistrate for launching criminal proceeding immediately.	(Sections 52,52A, 52C, 52E) The seizure cost should be subject to grazing and usufructuary rights enjoyed under various customary rights, revenue and other acts, PESA etc. Appeal and bar to jurisdiction of court etc. need harmonization with the provisions existing in civil, criminal, revenue legislations impacting on scheduled tribes.

Section	Indian Forest Act, 1927	Proposed amendment	Remarks
1	2	3	4
		Provided that where a report is made to the Magistrate of the property seized under section 52, the officer so empowered, shall not release the property without the consent in writing of such Magistrate.	
62 (1) (2)	**Punishment for wrongful seizure.** Any Forest-officer or Police-officer who vexatiously and unnecessarily seizes any property on pretence of seizing property liable to confiscation under this Act shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.	**Punishment for wrongful seizure or arrest.** Any officer exercising powers under this Act who vexatiously and unnecessarily seizes the property on pretence of seizing property liable to confiscation under this Act, or who vexatiously and unnecessarily arrests any person, shall be liable to punishment prescribed in section 78. Any fine so imposed, or any portion thereof, shall, if the convicting Court so directs, be given as compensation to the person aggrieved by such seizure.	At present any Forest Officer or Police Officer who vaxatiously and un-necessarily seizes any property on pretence of seizing property liable to confiscation is punishable with imprisonment for term which may extend to six months or with fine which may be up to five hundred rupees or with both. In the amendment, the imprisonment indicated in section 78 has been reduced to one month or fine which may be up to three thousand rupees, or both. In our experience, the power under consideration has been exercised against tribals vexatiously quite often. There is a case for severer punishment and not its reduction.
63	**Penalty for counterfeiting or defacing marks on trees and timber and for altering boundary marks.** Whoever, with intent to cause damage or injury to the public or to any person, or to cause	**Penalty for counterfeiting or defacing marks on trees and timber and for altering boundary marks and for encroachment** Whoever, with intent to cause damage or injury to the public or to any person, or to cause	

Section	Indian Forest Act, 1927	Proposed amendment	Remarks
1	2	3	4
		part of forest or land to which the provisions of this Act are applied; shall be liable to punishment prescribed in section 78.	
64 (1) (a) (b)	**Power to arrest without warrant.** Any Forest-officer or Police-officer may, without orders from a Magistrate and without a warrant, arrest any person against whom a reasonable suspicion exists of his having been concerned in any forest offence punishable with imprisonment for one month or upwards.	**Power to arrest without warrant.** Any Forest-officer or Police-officer may, without orders from a Magistrate and without a warrant, arrest any person against whom a reasonable suspicion exists of his having been concerned in any forest punishable with imprisonment for one month or upwards. Further, arrest be made in following situation also, any person, if the officer, knows or has reason to believe that such person is committing or has committed any forest offence or if a reasonable suspicion exists against such person of his having been concerned in any forest offences; any person who obstructs such officer in the execution of his duty under this act, or who has escaped or attempts to escape from custody in	This is an unjustifiable provision in the Act. It has been misused widely. Arrest on the basis of suspicion by a Forest Officer or a Police Officer is against norms of liberty under Article 21 of the Constitution. The present occasion offers the right opportunity to consider this section fully for bringing it in line with not only democratic norms and women's rights but also other laws. The involvement of people's bodies like the Gram Sabha and Panchayats in prevention and apprehension of offences is likely to help. Serious consideration needs to be directed towards the question whether the powers of the officer incharge of the police station may be vested under a Forest Ranger. Further, the Forester's area or jurisdiction may not always be co-terminus with police station. As a result unexpected and harmful ramifications may ensue in the day-to-day lives of scheduled tribes.

Section	Indian Forest Act, 1927	Proposed amendment	Remarks
1	2	3	4
		to commit the offence or to carry or transport or conceal or keep the forest-produce.	
(3)		No prosecution against any officer for any act purpporting to be done under the preceeding sub-sections shall be instituted in any criminal court except with the prior sanction of the State Government. Provided that such sanction for prosecution shall not be accorded by the State Government unless an inquiry by a Executive Magistrate is got conducted for the alleged wrong done or excess committed.	
(4)		Notwithstanding anything contained in any other law in force, no Forest-officer acting under the preceeding sub-section in good faith, or doing any act in obedience to any order which he was bound to obey; shall be deemed to have thereby committed an offence.	
66.A		**Power of entry and search.** Any Forest-officer not below the rank of an Assistant Conservator of forests, when he has reason to believe that an offence	When a Police Office enters or searches a place, the procedure prescribed in the Cr.PC is followed. An entry in the Station Diary is made before leaving for such searches. If almost parallel police stations are allowed to

		under this Act has been committed, or is being or is likely to be committed, he or an officer duty empowered by him may inform the Village Panchayat or Gram Sabha and may-	be worked in an around forest areas with forester having powers of officer in charge of a Police Station, that too dealing with offences not necessarily related to only the reserved or protected forests but also to all classes of forests and forest land that may even not be owned by government, special protection needs to be provided to tribals living in and around forests. The statements and evidence recorded by the Police Officers are, as such, not admissible in the trial before a Magistrate without being corroborated. However, the evidence recorded before the forest officers are proposed to be admissible as evidence before the trial court whereas the officers even upto the rank of Ranger are not being treated as police officer.

CHAPTER XI
OF FOREST-OFFICERS

Section	Indian Forest Act, 1927	Proposed amendment	Remarks
1	2	3	4
72	**State Government may invest Forest-officer with certain powers.**	**Investing Forest-officer with certain powers.**	Powers of Civil Court are not even vested in the Officer Incharge of Police Station or District Superintendent of Police. The functions of executive and judiciary have been separated to ensure delivery of fair and impartial justisce. Various provisions of the proposed Act tend to overlap with judicial functions, that too in the authority that exercises executive powers.
(1)	The State Government may invest any Forest-officer with all or any of the following powers, that is to say:-	Forest-officer not below the rank of a Ranger shall have the following powers, that is to say:-	
(a)	power to enter upon any land and to survey, demarcate and make a map of the same;	power to enter upon any land and to survey, demarcate and make a map of the same;	
(b)	the powers of a Civil Court to compel the attendance of witnesses and the production of documents and material objects;	power to hold an inquiry into forest offences, and, in the course of such inquiry, to receive and record evidence;	
(c)	power to issue a search warrant under the Code of Criminal Procedure, 1898; and		
(d)	power to hold an inquiry into forest-offences, and, in the course of such inquiry, to receive and record evidence.		

CHAPTER XII
POWER OF GOVERNMENT

Section	Indian Forest Act, 1927	Proposed amendment	Remarks
1	2	3	4
76	**SUBSIDIARY RULES**	**Power of the Central Government**	(Sections 76 and 76A)
(1)	**Additional power to make rules.** The State Government may make rules – (a) to prescribe and limit the powers and duties of any Forest-officer under this Act;	**Power of Central Government to take measures for protection and improvement of forests.** Subject to the provisions of this Act, the Central Government shall have the power to take all such measures as it deems necessary or expedient for the protection and improvement of the quality of the forests and abating the forest degradation in any land defined as forest.	In making rules, the comments we have made on different subjects above should be taken into consideration.
(2)	(b) to regulate the rewards to be paid to officers and informers out of the proceeds of fines and confiscation under this Act; (c) for the preservation, reproduction and disposal of trees and timber belonging to Government, but grown on lands belonging to or in the occupation of private persons; and (d) generally, to carry out the provisions of this Act.	**Power to constitute an authority.** The Central Government may, if it considers it necessary or expedient so to do for the purpose of this Act, by order, publish in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions of the Central Government under this Act and for taking measures with respect	

80.B		**Management of degraded forests or wastelands jointly by the Government and the local body.**	
(1)		The State Government may, by notification in the Official Gazette, adopt the practice of joint management by the Government and the local body such as the Village Forest Committee (VFC), of degraded forests and wastelands classified as reserved, or protected or village forests or any other class of forest/wasteland or lands notified under section 80.A of this Act.	After the words "such as", and after the words "the Village forest Committee" the words " Gram Sabha and / or Panchayat" may be added.

Section	Indian Forest Act, 1927	Proposed amendment	Remarks
1	2	3	4
80B (2)		The State Government may provide for the constitution of the Village Forest Committee (VFC) for participatory or Joint Forest Management (JFM) of the degraded forests or wastelands described in Sub-Section (1) and provide for :	
(a)		their constitution and registration, by Registration-officer,	
(b)		the composition, tenure, powers, duties, and responsibilities of the Village Forest Committee,	
(c)			
(d)		the conduct of election to the Committee,	

Section	Indian Forest Act, 1927	Proposed amendment	Remarks
1	**2**	**3**	**4**
(b) (c)		as to the person liable to pay such sum; the question shall be preferred to, and after giving notice to the person concerned and after considering his objection (if any), be decided by an officer not below the rank of the Conservator of forests authorized by the State Government in this behalf and his decision shall be final.	
85.A	**Saving for rights of Central Government .** Nothing in this Act shall authorize a Government of any state to make any order or do anything in relation to any property not vested in that State or otherwise prejudice any rights of the Central Government or the Government or the Government of any other State without the consent of the Government concerned.		
86 (1)	**Repeal by the Repealing and Amending Act. 1947 (2 of 1948), s.2 and Sch.** THE SCHEDULE – [Enactment replaced.] Rep. by s.2	**Repeal of earlier enactments and provisions/processes of those enactment to be retained.** As from the commencement of this Act, every other Act relating to any matter	It should be clarified that the legislative acts relating to Panchayats such as the Provisions of the Panchayats (Extension to Scheduled Areas) Act 1996 shall prevail.

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CHAPTER XIV
OF REGULATORY PROVISIONS

Section	Indian Forest Act, 1927	Proposed amendment	Remarks
1	2	3	4
87		**Working Plans.**	The working plans for protected forests, village forest, unclassed forest and Autonomous Council forests should be prepared in consultation with the respective local peoples bodies and should take care of the rights, privileges, concessions and domestic requirements of the forest-dwellers and neighbouring people in respect of small timber, firewood, minor forest produce, fodder, pastures as per the traditional practice. The words "as far as possible" in the proviso to sub-section (2) should be omitted.
(1)		The State Government shall, from time to time, cause to be prepared working plans for reserved and protected forests and working scheme for village forests, unclassed forests and Council forests and for any other area identified as forests requiring management.	
(2)		Every working plan shall regulate, as hereinafter provided, the management of the forest described in the said working plan for such period, not exceeding fifteen years, as may be stated in the working plan and in conformity with the objectives of management therein stated. provided that every such working plan shall, as far as possible, ensure to meet the rights, privileges and concessions admitted in such forest and also to meet the bonafide domestic requirements of the neighbouring people in respect of small timber, firewood, edible forest-produce, cut and baled grass and fodder etc., on such terms and conditions as may be deemed fit by the State Government.	

Section	Indian Forest Act, 1927	Proposed amendment	Remarks
1	2	3	4
		(e) Ministry of Industry; (f) Ministry of Science and Technology; (g) Ministry of Tribal Affairs	
(v)		Deputy Chairman Planning Commission;	
(vi)		Forest Ministers of all the State as members;	
(vii)		Lt. Governor/Administrate of all Union Territories;	
(viii)		Three members representing the Parliament – two from the Lok Sabha and one from the Rajya Sabha;	
(ix)			
89.2-(x)		Commissioner of Scheduled Caste and Scheduled Tribe;	[Sec. 89 2 (x)] In lieu of "Commissioner of Scheduled Caste and Scheduled Tribe", the following may be substituted: "Chairman of the National Commission for Scheduled Tribes".
(xi)		Five non-governmental organization to be nominated by the Government of India;	
(xii)		One representative of the Tribal Cooperative/federation nominated by the Government of India;	
		Five non-officials amongst eminent subject matter specialist, conservationists, and environmentalists, nominated by the Government of India;	

Section	Indian Forest Act, 1927	Proposed amendment	Remarks
1	2	3	4
(xiii)		The Secretary to the Government of India in the Ministry of Environment and Forests;	
(xiv)		The Director General of Forests and Special Secretary to the Government of India;	
(xv)		Secretaries to the Government of India in the following Ministries/Departments. (a) Ministry of Energy, Department of non-conventional energy sources; (b) Ministry of Information & Broadcasting; (c) Ministry of Water Resources; (d) Department of Bio-Technology; (e) Department of Animal Husbandry, Ministry of Agriculture; (f) Ministry of Tribal Welfare	[Sec. 89.2 - xv (f)] For the words "Ministry of Tribal Welfare", the words "Ministry of Tribal Affairs" should be substituted.
(xvi)		Member, Planning Commission in charge of Environment & Forests;	
(xvii)		Two specialist organization or institution to be decided by the Government of India.	

PANCHAYATS

In the early nineties, the time-honoured institution of Panchayats was reinvigorated through constitutional recognition. The 73rd and 74th amendments inserted in Part IX of the Constitution gave Panchayats and Nagar Palikas not only constitutional sanction but also unprecedented strength. The important features of the present Panchayats are

(a) Panchayats at the village, intermediate and district level are to be elected

(b) As an institution, a Panchayat stays in perpetuity, though a particular Panchayat has, normally, a life of five years

(c) A State Finance Commission has to make recommendations for distribution between the State and Panchayats of net proceeds of taxes, duties, tolls and fees leviable by the State

(d) A State Election Commission has to conduct elections to the Panchayats

(e) The Panchayats are responsible for preparation and implementation of plans for economic development and social justice.

(f) The Legislature of a State may endow the Pachayats with such power and authority as may be necessary to enable them to function as institutions of self-government.

2. Article 243M rules that the general provisions pertaining to Panchayats in Articles 243A to 243L in Part IX of the Constitution would not apply to areas in the country covered by the Fifth and Sixth Schedules but the Parliament might, by law, extend the provisions of Part IX to such areas subject to such exceptions and modifications as may be specified in such law, and no such law should be deemed to be an amendment to the Constitution for the purpose of Article 368. In pursuance of this provision, the Government of India constituted a Committee in 1994 to make recommendations for framing of the law to be passed by the Parliament. On the basis of the report submitted in 1995 by the Committee of MPs and Experts to consider extension of the provision of Panchayats to Scheduled Areas [also known as Bhuria Committee], the Parliament passed

The Provisions of the Panchayat (Extension to Scheduled Areas) Act 1996 [PESA Act 1996]. The Act seeks to extend the provisions of Part IX relating to Panchayats to the Scheduled Areas in accordance with the guide-lines contained in its Section 4 and calls upon the State Legislatures to enact consonant laws. The guide-lines purport to confer wide-ranging powers on Gram Sabhas and Panchayats at village, intermediate and district tiers. To recapitulate its essential provisions

(i) The State legislation should be in tune with the customary law, social and religious practices and traditional management practices of community resources

(ii) Every Gram Sabha should be competent to safe-guard and preserve the traditions and customs of the people, their cultural identity, community resources and customary mode of disputes resolution

(iii) Every Gram Sabha should be responsible for identification or selection of persons as beneficiaries under the poverty alleviation and other programmes

(iv) Every Gram Sabha should have the authority to approve the plans, programmes and projects for social and economic development before such plans, programmes and projects are taken up for implementation by the Panchayats at the village level

(v) Reservation of seats in the Scheduled Areas in every Panchayat should be in proportion to the population of the scheduled communities, but reservation for scheduled tribes should not be less than one-half of the total number of seats

(vi) The Gram Sabha or the Panchayat at the appropriate level should be consulted before making acquisition of land in the Scheduled Areas and before resettling or rehabilitating persons affected by such projects in the Scheduled Areas

(vii) The recommendations of the Gram Sabha and the Panchayats at the appropriate level should be mandatory prior to grant of prospecting licence or mining lease for minor minerals in the Scheduled Areas

(viii) The Gram Sabha and the Panchayats should

(a) have the power to enforce prohibition or regulate or restrict the sale and consumption of any intoxicant

(b) be endowed with the ownership of the minor forest produce

(c) be conferred the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of the scheduled tribes

(d) have the power to manage village markets and exercise control over
money-lending to the scheduled tribes

(e) have the power to exercise control over institutions and functionaries
in all social sectors

(f) have the power of control over local plans and resources for such plans including theTribal sub-Plan.

Thus, the Parliament has called upon the State Legislatures to frame laws to make Gram Sabhas and Panchayats effective and powerful bodies for self-management particularly in the Scheduled Areas.

PESA and State Acts

3. The following specific provisions of PESA Act 1996 are note-worthy:

(1) The Gram Sabha has to approve the plans, programmes and projects of social and economic developments before such plans, programmes and projects are taken up for implementation by the Panchayats at the village level

(2) In Section 4(n), it has been laid down that the state legislation should endow Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government

(3) For the afore-said purpose, the Panchayats have to be satisfactorily empowered as in (viii)(a – f) in the preceding paragraph.

It is clear that the Gram Sabhas and the Panchayats have been intended to assume total responsibility for planning and implementation of plans, programmes and projects aimed at the following two objectives embodied in Article 243G of the Constitution:

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

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

4. It is important to note, however, that despite the almost plenary role of Panchayats conceived in the 73rd Constitutional Amendment Act and plenitude of powers prescribed in the PESA Act, Article 243G in regard to the former and Section 4(n) of the latter rely

on the State Legislatures to "endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for devolution of powers and responsibilities upon Panchayats, at the appropriate level ...." (Article 243G). Hence, practical empowerment and legitimization of Panchayats rests, by and large, with the State Governments.

5. The Committee of Members of Parliament and Experts constituted to make recommendations on Law concerning extension of provisions of the Constitution (Seventy-third Amendment) Act 1992 to Scheduled Areas in its 1995 report observed that the choice of leadership among many tribal communities has been based on informal consensus or selection by the people of the village or the region and decision-making also has been through consensus rather than by count of votes and that such traditional arrangements should not be disturbed [para 7(8) of the Report]. Further, in para 22, they say :

> In some tribal areas, traditionally village councils have been constituted and at the inter-village level regional councils have been constituted. Both at the village and at the regional level, traditional organisations have been conducting socio-political, economic and judicial affairs. The Gram Sabha may nominate its executive council, which may be a traditional body. In any event, the wholesome influence, wisdom and experience of the older generation should not be discounted, particularly since the reins of affairs have been, for aeons, in their hands.

Similar views have been expressed by the National Commission to Review the Working of the Constitution in its Report (21 December 2001). The following observations were made with reference to the north-eastern region:

> Careful steps should be taken to devolve political powers through the intermediate and local-level traditional political organisations, provided their traditional practices carried out in a modern world do not deny legitimate democratic rights to/of any section in their contemporary society.
>
> xxx xxx xxx xxx
>
> The traditional forms of governance must be associated with self-governance because of the political failure of local elites.

We feel that these views may be kept in mind whenever we consider Panchayat structure.

6. In respect of conformity to the letter and spirit of the PESA Act, the enactments of State Governments vary. A comparative analysis of PESA and six State Acts i.e. Orissa, Gujarat, Madhya Pradesh, Himachal Pradesh, Andhra Pradesh and Rajasthan has been projected in Annexure I. At Annexure II is a similar table prepared by the RD Ministry.

6.1. Taking the Madhya Pradesh law, there were high expectations from it. On scrutinizing it, a number of deviations from the Central law may be discerned. The provisions in the Central law, that prior consultation with the Gram Sabha and Panchayat at the appropriate level is required before acquisition of the land and resettlement of affected persons [section 4(i)], that prior recommendation of the Gram Sabha is mandatory before grant of prospecting license or mining lease for minor minerals and for exploitation of minor minerals [section 4(k) and (l)], that ownership of MFP vests in the Gram Sabha and the Panchayat at the appropriate level [section 4(m)(ii)], that the state legislature should endeavour to follow the pattern of the Sixth Schedule while designing the administrative arrangements in the Panchayats at the district level in the Scheduled Areas [section 4(n)], that inconsistencies between the Central Act and other state laws relating to Panchayats should be removed within one year [section 5], do not find place in the Madhya Pradesh law, and are some important deviations.

6.2. Taking the example of Orissa law, it is clear that its focus is on the Zilla Panchayat, called Zilla Parishad, while the PESA Act focuses on Gram Sabha. For acquisition of land, planning and management of minor water bodies, recommendation for mining leases and exploitation of minor minerals, only the Zilla Panchayat has been brought in. The Gram Sabha and Gram Panchayat have been excluded from control over institutions and functionaries, as well as other local plans and resources for such plans including TSP. In respect of control over institutions and functionaries, the power of Panchayat Samitis has to be prescribed by the government; for the time being, this has uncertain implications. Similarly, the competence of Gram Sabha to safeguard and preserve traditions and customs of the people, their cultural identity, community resources and customary mode of dispute resolution has been hedged in by the words "consistent with relevant laws in force and in harmony with basic tenets of the Constitution and human rights". No reservation is provided for the offices of heads of

Gram Sabhas. The Act is silent in regard to provisions in the PESA Act calling on the State legislature to follow the pattern of the Sixth Schedule while designing administrative arrangements at district level in the Scheduled Areas.

6.3. There is no indication in the Gujarat Act in regard to the power to prevent alienation of land and action for restoration of unlawfully alienated land, recommendations in respect of mining leases and for exploitation of minor minerals. The ownership of minor forest produce is vested only in the village Panchayat. Whereas the PESA Act states that the Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and customary mode of dispute resolution, the Gujarat Act substitutes the word "competent" by "endeavour". The rationale for provision in the PESA Act of nomination for representation of unrepresented ST community or communities has not been understood and, as a result, the provision in the Gujarat Act is incongruent. There is no reference to the application of the Sixth Schedule pattern for districts in the State.

6.4. So far as the Himachal Pradesh Panchayat Raj (Second Amendment) Act 1997 is concerned, it makes reservation for STs in Gram Panchayat and Panchayat Samiti, but not in Gram Sabha and Zilla Panchayat. An important provision in the PESA Act, that is the power given to all the Panchayat tiers to prevent alienation of land and take action for restoration of any unlawfully alienated land belonging to a member of scheduled tribe, has been left out of the State Act. In regard to acquisition of land and restoration or rehabilitation of affected persons, only the Gram Sabha has been empowered and the three other tiers have been omitted. The power in regard to planning and management of minor water bodies, recommendations for grant of mining leases and exploitation of minor minerals, have been qualified with the addition of " as may be prescribed". For enforcement of prohibition and ownership of minor forest produce, the intermediate Panchayat and Zilla Panchayat have been left out. Three tiers i.e. Gram Sabha, intermediate Panchayat and Zilla Panchayat do not figure in the provision relating to exercise of control over institutions, functionaries, local plans and resources for such plans including TSP, only the Panchayat having been empowered. Further, no indication

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is given in regard to the pattern of Sixth Schedule to be followed by designing administrative arrangements in the Panchayats in the districts.

6.5. The Andhra Pradesh Panchayat Raj Act 1994 amended in 1998 with a view to bringing it in tune with the provisions of Central Act 40 of 1996 (PESA) in application to Scheduled Areas in the State has some deviations. In the first instance, while Section 4(d) of PESA confers competence on a Gram Sabha to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution, the Andhra Pradesh Act qualifies it to apply "without detriment to any law for time being in force". Secondly, in section 4(j), the PESA Act entrusts planning and management of minor water bodies in the Scheduled Areas to Panchayats at the appropriate level; the Andhra Act qualifies the planning and management "in such manner, as may be prescribed". Thirdly, the Andhra Act omits conferment of powers like ownership of minor forest produce, as mentioned in Section 4(m) of the PESA Act.

6.6. West Bengal has no Scheduled Area, but the West Bengal Gram Panchayat Act 1973, as amended from time to time, the latest amendment being of 14 July 2003, is elaborate. It is interesting to note that each of the three-tier Panchayat consists of executive bodies i.e. Gram Panchayat, Panchayat Samiti and Zilla Parishad, as well as corresponding deliberative body called Gram Sansad, Block Sansad and Zilla Sansad respectively. The local MPs, MLAs and MLCs are members of Panchayat Samitis as well as Zilla Parishads. The number of members at each tier of the Panchayat system is large. The powers, duties and functions of the different Panchayat tiers are wide ranging. Generally, a Block and a Panchayat are conceived to be development-oriented bodies, but the West Bengal Act goes further and empowers them under section 133 even to levy tolls, taxes and fees etc.

7. The task of preparation of plans for economic development and social justice as well as their implementation has been envisaged in Article 243G in relation to a list of 29 items contained in the Eleventh Schedule of the Constitution. It seems that no state in the country has so far taken full action in this regard. The subjects and the number transferred differ from state to state. It appears that, in consequence, the Union

Government has been considering an amendment to the 73rd Constitutional amendment to arm the Panchayats of financial and administrative powers. This may be done as early as possible. It is understood that the Centre desires transfer of fourteen subjects: primary and secondary education, minor forest produce, veterinary dispensaries, rural dispensaries, rural housing, drinking water supply, rural roads, poverty alleviation schemes, water-shed management, soil conservation, fair and village Haats, PDS and maintenance of communal assets as undoubtedly, all these subjects are important from tribal development point of view, but we would single out primary and secondary education as the most important.

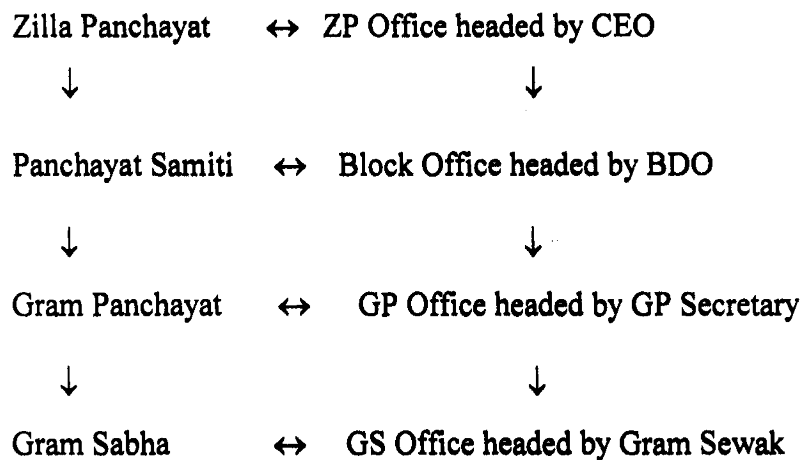
Interface between Panchayats and supportive agencies

8. The PESA Act 1996 envisages the Panchayats at the appropriate level and the Gram Sabha being endowed with the power of control over institutions and functionaries in all social sectors. This is the provision which the State Governments do not, perhaps, find it convenient to adopt. May be because it disturbs the status quo, or perhaps otherwise. Coming down from pre-colonial through independence to post colonial-times, inter-organisational and inter-personnel relations have evolved as between the political and bureaucratic executives at the national and state levels and latterly, to an extent, at the district level too. Similarly, appropriate relationship has to emerge and develop at the three Panchayat tiers, coming up newly. Among the three tiers, inter se, formally it may have been conceived as a relationship of subordination of the one to the other, but its working can be rendered smoother if practised as partnership for the greater common good.

9. Studies indicate that, in the country at large, there is lack of definitive inter-face between the Panchayat system i.e. the people's deliberative and decision-making bodies on the one hand, and the delivery system i.e. the techno-administrative supportive executing agencies on the other. This is a serious lacuna, one which may almost spell the doom for success. Full-scale tie-ups need to be unfolded and binary (deliberative and delivery) systems secured in tandem with each other.

10. There are three facets. First, the need for a structural paradigm which inter-connects the two systems collaterally at each tier. Second, the need for a clear enunciation of the structural configuration among the corresponding supportive techno-administrative apparatus. The third, the need for enunciating inter-personal relations among the personnel occupying the different slots in the representative bodies and the delivery agencies.

11. The former two facets can be represented by the following diagram:



The horizontal arrows indicate collateral relationships while the two-way vertical arrows symbolize cooperative and complementary, as opposed to strictly hierarchical, relationship.

12. In so far as the structural paradigm is concerned, congnisance has to be taken of the extant representative and supportive systems in a district. At the district level, apart from the District Collector, by and large, states have Zilla Parishads (known by different names) and may also have district development committees, DRDAs, ITDPs/ITDAs, district representatives of line departments of the State Government, voluntary organizations and so on. Bypassing the more or less strictly official sub-divisional regulatory tier, at the block level the non-official Panchayat Samiti has, since the community development days been a non-official body with, generally, exiguous complement of supporting staff, consisting mostly of a secretary. In the context of the constitutionally-sanctioned Panchayats mandated into the district, the desideratum of

integrative and inter-penetrative district paradigm calls for complementary horizontal representative-administrative assembly as well as apposite vertical structural linkages, as shown above. The administrative assembly should mean to include technical component.

13. The question is how to structure a Gram Sabha into the Gram Panchayat, the Gram Panchayat into Panchayat Samiti and the Panchayat Samiti into the Zilla Panchayat. To create an intimate, coordinated and organic relationship, among others, the chiefs of Gram Sabhas may sit as members of the Gram Panchayats, the Sarpanches of Gram Panchayats as members of the Panchayat Samitis and chairpersons of Panchayat Samities as members of Zilla Panchayats. In several states, this pattern obtains already. The representative-relay paradigm should make for accountability and synergy, generating at each level impulses that should traverse through and up to the highest rung of the federal hierarchy (i.e. the national rung) on the one hand and, on the other, absorb and assimilate ideas navigating downwards from the national and state levels downwards.

14. To an extent, rationalization can be effected if various development branches, not excluding DRDA, concerned with development are brought within the aegis of Zila Panchayat. To an extent, this has already been effected: DRDAs have been merged in the Zilla Panchayat in several states. The Collector of the district may primarily preside over the regulatory functions, but his association with development wings including Zilla Panchayat will prove beneficial. In some states, he functions as the chief executive officer of the Zilla Panchayat. There are other bodies like joint forest management committees, self- help groups, water-user groups, water-shed groups, womens' groups that have come into existence and in some states are reported to have been doing well. As a result, we find that there are signs of parallel leadership ensuing in programmes being conducted based on individual decisions causing conflicts and unhealthy atmoshperics in villages. Lack of coordination has been in evidence and this needs to be prevented through appropriate tie-ups in the Panchayats. In principle, we would like a majority of people's organizations to be subsumed within the Panchayats framework, one way or another, loosely or closely. Of course, NGOs should continue to exist and work independently.

15. The third facet touching on inter-personnel relationship between members of the representative bodies and those of the executive may involve some degree of sensitivity. Seen in the historical perspective, the civil service has been junior partner of the political executive. In the parliamentary system of government, it has to play second fiddle. Contrari-wise, we have seen reports of resentment expressed by chairpersons of Zilla Panchayats over hegemony of district collectors reducing the former to mere figure-heads. There are complaints that the chief executive officers of Zilla Panchayats have not been answerable to the chairpersons. While the Government of Madhya Pradesh has been considering the matter, the Rajasthan Government has decided that the authority to write the annual performance reports of chief executive officers and block development officers will be entrusted to the chairpersons respectively of Zilla Panchayats and Panchayat Samities. In fact, in some other states it is the current practice and in states where it is not so, the question may be under contemplation. Similarly, in terms of Section 4(m)(vi) of the PESA Act, the chairperson of a Gram Sabha and the Sarpanch of a Gram Panchayat should have the power of control over the staff of the Gram Sabha and the Gram Panchayat.

16. Incidentally, it is not un-common to come across the spectacle, particularly in some relatively backward regions, of unlettered or even semi-educated Panchayat members and Panchas being led or sometimes misled by secretary Gram Panchayat or BDO or other officials. In this context, a view has been taken that since, on account of the ignorance of the Sarpanchas and other non-officials, adequate responsibility is shirked, or irregularities are committed by officials, the role of Panchas, should be minimized and responsibility should rest on officials. This may be a pro tem measure. But a long-range perspective would warrant that the Panchas, in fact all Panchayat members, should exercise their respective responsibility, so that they acquire enough experience and ability to act independently and judiciously. The earlier this happens, the better it would be for tribal development in particular and for democratic planned development in general. The process can be accelerated through training instituted for office-bearers and members of the Panchayats.

17. We have sketched above a paradigm shift. In the new design, we have placed the Panchayats centre-stage, as we believe the tribals' own bodies are in the best position to judge their problems, needs and aspirations in the physical and socio-economic environment obtaining. The Sarpanches may be regarded as arch-priests and the Panchas and other members high priests in the matter of planned development at these levels. They should prepare annual and five-year programmes and plans. The process should start at the very bottom i.e at the level of Gram Sabha which, in our view, should be regarded as the pivot of the Panchayat system. The development plans prepared by Gram Sabha may be collated and coordinated by the Gram Panchayat in whose jurisdiction the Gram Sabhas lie, supplementing/adding to the plans what was missed out or what specifically pertains to items/subjects within the province of the Gram Panchayat. The process has to be replicated relative to plans prepared by Gram Panchayats and Panchayat Samities to be collated and coordinated at the levels of respectively the Panchayat Samiti and the Zilla Panchayat. At the level of the Zilla Panchayat, the Block plans should be collated and coordinated by the ITDP/ITDA organization headed by a Project Director/Project Administrator. The district Tribal sub-Plan should thus emerge. The Zilla Panchayat being at the apex of the Panchayat system, should collate and coordinate with the lower and higher hierarchies, becoming a nodal point for both plans and resources. The higher Panchayat bodies should be exhorted to eschew hegemonic and parochial tendencies in appraising the plans of the lower bodies. In fact, Section 4 (n) of the PESA Act even incorporates the unusual provision that the State enactments should contain "safeguards to ensure that Panchayats at the higher level do not assume the powers and authority of any Panchayat at the lower level or of the Gram Sabha." For the smooth running of the Panchayat system, it would be advisable not to tread over each other's toes. Untrammeled, if the planned development effort succeeds at the tier of the Gram Sabha, it may be reasonably expected to meet with success at the higher tiers.

18. Two trends should be clearly perceived in the afore-said design. One, that it places the responsibility of planning in the prospective beneficiaries of the development process, transposing it from remote planners at district and state headquarters to the Gram Sabha at the grass-roots i.e. the village. It reverses the current trend of planning from top-bottom to bottom-up. This should infuse community-specificity and environment-

specificity, enhancing the relevance and realism of the plans. Secondly, in doing so, it draws into the orbit of the federal hierarchy, tribal leadership as well as tribal people situated at the geographical, politico-administrative and psychological periphery, strengthening bonds.

19. There is one seeming anomaly. The allotment of the subject of PESA under the PESA Act 1996 under general rubric of Panchayats is allotted to the Ministry of Rural Development in the Government of India's business rules. It is a large Ministry with manifold subjects like rural development, Panchayats, land resources, drinking water etc. Though the Panchayats Department in the Ministry might be paying full attention to PESA Act, more appropriately it should be the subject of the Ministry of Tribal Affairs. The latter may be able to do even better justice to it. Of course, collaboration between the two Ministries will have to be close.

Implementation

20. It is important to recall that Article 243G does not limit the role of Panchayats to planning only. It charges them with the task of implementation also. For instance, the Gram Sabha may have included a minor irrigation scheme within its plan. The Gram Sabha should also undertake its execution, preferably directly by a member with technical help. Should that be not possible, the execution may be through a professional individual or bodies. Similar should be the case with Gram Panchayat, Panchayat Samiti and Zilla Panchayat. For the purpose, the Panchayat bodies should be properly staff-equipped.

21. For implementation, the Gram Sabha and the three other hierarchical Panchayats would require the requisite infrastructural wherewithal, comprising techno-administrative personnel, office support and financial resources to carry out the tasks. It appears that the staff needs of the Gram Sabhas and Gram Panchayats have not attracted adequate attention in many states. In West Bengal, a Gram Panchayat is serviced by three personnel. Nevertheless, it is understood that, generally, in other states they have little staff support. The common perception is that the States have helped themselves with prunable bulging bureaucracies. The time has now come for them to feel obliged to

down-size, in other words to creatively self-destruct themselves, and to correspondingly strengthen the Panchayats.

22. Since, at the district apex level, some body in one form or another like a Zilla Parishad or a district development committee has been in existence as a fore-runner of the Zilla Panchayat, a modicum of infrastructure can be presumed to be already available there. So may be the case at the intermediate i.e. block level, as Panchayat Samities or their equivalents came into being some time ago. Gram Panchayats also have been with us for some time, though not in uniformly good size, shape and health all through. Inclusion of the four tiers in the Constitution has invested them with unprecedented status and authority. The States will have to assess to what extent the infrastructure of each tier is short and wanting, and the extent to which the normative deficiency should be made up. In our view, entrustment of the duty of planned development along with techno-administrative support is an essential recipe for reinvigorating the Tribal sub-Plan and conveying its benefits to members of the local communities.

23. The task of designing suitable administrative infrastructure for each of the four tiers has to be undertaken by each state government keeping in view its extant administrative traditions, norms, patterns and requirements. Evidently, suggestions for strait-jacket formula for infrastructure for different states of the country would be impracticable and irrelevant. Hence, we refrain from making any concrete suggestion in this behalf. However, we would still venture to indicate that

(a) The Gram Sabha in tribal areas being intrinsically the most effective body closest to the people, and in that capacity the recipient of a prior attention in the PESA Act, should be looked at carefully. In its rejuvenated form, it is a comparative new-comer in the comity of Panchayats and it needs to be infrastructurally equipped. The staff infrastructure presently available at each other tier should be evaluated and deficiencies made up to fulfill the requirements and to excise redundancies, if any

(b) It seems that since engineering works like roads, buildings, wells, irrigation schemes are indispensable part of the development plans, engineering personnel at most levels would be a prime need, even at the Gram Sabha level. Secondly, extension agents for education, health, agriculture and allied sectors would be a necessity but careful consideration would have to be given to the level to which each of them should be attached. It is not difficult to see

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that it is possible to err on both the sides. Hence, discrimination would need to be exercised.

(c) Having evaluated the administrative infrastructural requirements, the next requisite would be to link hierarchical Gram Sabhas and Panchayats with each other with a view to optimally achieving integration, coordination and efficiency. Representative hierarchical bodies should forge into a strong flowing chain in the cause of planned socio-economic development of tribals, each performing its role in its jurisdiction. The important elements of transparency and accountability should be built in the system.

(d) Some suggestive patterns have been included in the four annexures to the 1995 Report of the Bhuria Committee, reference to which has been made earlier. This can help in making formulations.

24. In making these suggestions, not only we have kept the basic premise that the local tribal communities know their own needs and can practice development in the manner that they think best but also a few other aspects, in view. Their communitarian ethos still moves their members who, by and large, are, more unconsciously than consciously perhaps, motivated towards the common good. Secondly, they have a fund of social capital through associationalism and promotion of good activities. Before modern technologies erode that character, the advantages related to communitarianism and associationalism should be fully utilized and developed. In fact, the communities themselves might work on their own towards this end, on account of their innate attributes. If need be, they should be encouraged towards that direction.

Finance

25. Article 243H enables the legislature of a state to enact law that authorizes the Panchayats to levy and collect taxes, assigns to the Panchayats share of taxes, duties etc. levied and collected by the State Government and provides for grants-in-aid to the Panchayats from the consolidated fund of the State. There is provision in Article 243I for constitution of a state finance commission for distribution between the State and the Panchayats of financial resources.

26. Apart from the techno-administrative bulwark necessary to support the Panchayat system from bottom upwards, availability of requisite finances is a critical need. All

these years, the matter may have been considered, but no satisfactory solution to economic decentralisation has been in sight. The Panchayats may not have acquitted themselves conspicuously in mobilization of resources though equipped legally. But, the State Governments also have often been charged with parsimony when it comes to Panchayats. The comment has also been heard that, generally, they delegate economically less productive, politically inconvenient or administratively cumbersome taxes. Items such as profession tax, entertainment tax are mostly retained by them on account of inherent possibilities of better collection. The constitutional-mandated state finance commissions have not made their appearance in all the states. Where constituted, in some cases their reports have not been tabled or accepted. Andhra Pradesh has, however, earned the distinction of being the first state in the country to constitute a third State Finance Commission. In any event, we expect weighted equity for tribal areas from them.

27. Presently, Scheduled Areas and Tribal sub-Plan areas are more or less coterminus. Such discrepancies as exist are being considered elsewhere in this report. Making the broad assumption of co-terminality, in these areas the Tribal sub-Plan has been operative through ITDPs/ITDAs in the past nearly three decades. In consequence, financial flows of State Plan, Central sector and Centrally sponsored scheme funds, Special Central Assistance and may be even institutional finance can reasonably be expected to have been taking place into the ITDPs/ITDAs through the States budgets.

28. The time has now arrived to consider the matter afresh. The responsibility for advancement of 8 percent scheduled tribe population of India has been apportioned constitutionally between the Centre and the states. The execution of programmes and schemes towards that end rests with the state governments. The Centre's concern is expressed more through provision of funds, legal frameworks, institutional structures, directives etc. The experience all the years after the launch of the Tribal sub-Plan has been that, since the state governments have, by and large, been funds-strapped, there has been a tendency to utilize to the maximum all kinds of resources for relieving the ways and means position. Even the additionalities provided by the Centre like the special Central assistance, grants-in-aid under Article 275(1) have, to an extent, been

appropriated for purposes other than they were intended for. In the end result, although, theoretically, a large quantum of resources have been pumped into the TSP system, in practice the picture may be different. Other ills have also been visiting the system. Diversions have diminished its availability for tribal development. Taking a broad overview, one may conclude that there is need, at present, to devise procedures which would enable the field formations to assuredly receive funds and enforce on them accountability for those funds. The DRDA procedure offers ready example. Just as the Ministry of Rural Development makes direct devolutions to the district rural development agencies (DRDAs), the Central Ministries, including and certainly the Ministry of Tribal Affairs, should open direct channels to the districts and ensure direct flow of funds to District Panchayats, which should earmark them for ITDPs/ITDAs, MADA pockets, clusters etc. The demand that the Centre should fund the Zilla Panchayats directly instead of channeling finances through the state governments, as is being currently done for DRDAs, has been growing. It is understood that State Governments have expressed reservations against such a demand, principally on the ground that it will affect their ways and means position. To us it appears that the more important question is that financial resources should reach the ground level so that they are utilised in the interest of the people. In fact, we see a corresponding incidental benefit in the procedure. Should the funds meant for tribal development be not available to the State Governments for bolstering their ways and means position, they will be, perforce, compelled to inculcate fiscal discipline which will be salutary in the long run. Hence, we are in favour of the demand. If and when conceded, it should be accompanied by a fiat that, concomitantly, the Zilla Panchayat should devolve the funds on the Panchayat Samitis and lower bodies on the basis of equitable formula or formulae within prescribed periods.

29. The Ministry of Tribal Affairs have included formulae (1) in their communication No. 14020/5/2003-SG&C dated 02-5-2003 addressed to the State Secretaries and Commissioners in charge of Tribal Development and Project Directors of ITDPs/ITDAs for distribution, release and utilisation of Special Central Assistance to TSP and (2) in their communication No. 14011/9/2001-SG&C dated 02.07.2002 to the same addressees containing guidelines for distribution, release and utilisation of grants under the first proviso to Article 275(1) of the Constitution. Broadly speaking, these formulae are based

on a predominant population factor and a comparatively subsidiary geographical area factor. It is note-worthy that the factor of backwardness i.e. inverse relation to the net State domestic product does not find mention in these formulae. The omission is based on the consideration that, leaving apart some small tribal areas in the country, the backwardness status may not differ appreciably among most others. On the other hand, if the net State domestic product (NSDP) of a State is taken, there are variations which could lead to wide differentials among inverse of NSDP figures and consequent unjustifiable differentials in the backwardness factor. One result will be that tribal tracts of the so-called forward states would be placed in a disadvantageous position. As of now, there could be force in this argument. But we suggest that the matter should be kept open, for there is potential for some tribal areas in the so-called advanced States receiving accelerated push, creating recognizable gap between them and other tribal areas located in more backward States.

30. It is hoped that the devolutions from the state finance commissions and the TSP finances will render the Panchayats financially viable to undertake planned development measures of their volition. It is understood that the Central Government contemplates introducing an Amendment Bill in the Parliament for giving financial powers to Panchayats. Should that happen, along with concretization of other reformative measures in the politico-administrative fields envisaged in the Eleventh Schedule and elsewhere, the bottom-up methodology should translate into a reality.

31. The Bhuria Committee 1995 recommended that education and health should be the first charge on Panchayat finances. We also have singled out primary and secondary education as the most important sector for tribal development. Hence, we recommend that a substantial percentage of the total funds from State and Central budgets for these two sectors earmarked into TSP budget should devolve on the Zilla Panchayats in Scheduled Areas and tribal areas and, further, the Zilla Panchayats should devolve 50% of these funds on the Gram Sabhas while the balance 50% should be shared among the Zilla Panchayats, Panchayat Samities and the Gram Panchayats. The Gram Sabhas should be held squarely responsible for universal primary education with the help of this devolution, and secondary education should be the responsibility of the three other tiers

as per a suitable arrangement. To reiterate, we recommend that the state finance commissions deploy the norm of weighted equity for tribal areas in the matter of distribution of financial resources.

32. We have deliberately left out the distribution inter se of subjects among Zila Panchayat, Panchayat Samiti, Gram Panchayat and Gram Sabha, so that the concerned State Governments may work them out in tune with their existing politico-administrative framework. However, the four annexures in the 1995 Report of the Bhuria Committee relating to the distribution of functions among the four Panchayat tiers should serve as a guide.

CPR

33. One general observation is pertinent. The common property resources (CPR) should be accessible to the entire village community without any individual having exclusive property rights. The traditional management system for common property resources involved user regulations, enforcement of user obligations and investment for conservation and development. The traditional village elders were working the system. However, it seems to have suffered erosion, as the new elective Panchayats are generally unable to enforce regulations of maintenance of the CPR, despite legal powers vested in them, as in the matter of collection of taxes and dues mentioned elsewhere. The dependence of Panchayat on community votes inhibits imposition of strict user regulations and user obligations by the Panchayat office-bearers. The result is that the Panchayats have been rendered ineffective and, at the same time, the CPRs deteriorate. The trend has to be reversed as continued apathy and neglect of CPR will specially affect the quality of the life of the poor and the less well-to-do in the village. This aspect needs careful consideration. Further, the strength and stature of the new constitutional Panchayats have to be preserved and enhanced.

Compatibility

34. According to Section 5 of the PESA Act, "any provision of any law relating to Panchayats in force in the Scheduled Areas, immediately before the date on which this

Act received the assent of the President, which is inconsistent with the provisions of Part IX with such exceptions and modifications shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from the date on which this Act receives the assent of the President". Earlier, we have pointed out that, in terms of the Act, the Gram Sabha or the Panchayats at the appropriate level have to be consulted before making acquisition of land and before resettlement and rehabilitation of displaced persons. This is a provision which necessitates amendment of the Land Acquisition Act 1894. To give another instance, the PESA Act confers ownership of minor forest produce on Gram Sabhas and Panchayats. But the Indian Forest Act 1927, while not making any distinction between major and minor forest produce, implicitly and even explicitly vests the entire range of forest produce, in the state, meaning thereby the Forest Department. In consequence, is it not incumbent that the provisions of the Indian Forest Act be modified to accord with the provisions of the PESA Act? It can be argued that both the Land Acquisition Act 1894 and the Indian Forest Act 1927 are not laws "relating to Panchayats" – vide reference to Section 5 quoted above. The fact of the matter is that any law applied in the jurisdiction of a Panchayat in Scheduled Areas impinges on the Panchayat and thereby on the provisions of the PESA Act. For instance, Section 4(j) of the PESA Act empowers Panchayats to plan and manage minor water bodies, but forest laws come in the way. In Tupakulagudem village in the Warangal district of Andhra Pradesh, the forest department has refused permission to build a 'bund' of a pond located alongside a reserve forest. It becomes essential, therefore, to re-orient the other concerned laws in conformity with the provisions of the PESA Act.

35. Another argument advanced is that like the Indian Forest Act 1927, there are other special laws and, as per court rulings, the special laws over-ride general laws. In this view of the matter, the PESA Act is regarded as a general law to be subordinated to a special law. The PESA Act 1996 also qualifies to be treated as a special law, since it deals with matters confined to one segment of the population i.e. scheduled tribes. It may be true that the wide charter of autonomy conferred by the PESA Act on the Gram Sabha and the three hierarchical Panchayat tiers is apparently inconsistent with some regulatory laws and functions. With the changing times and a heightened sense of democratic

consciousness of tribal people, the adaptation of the latter is indispensable. The revenue, excise, irrigation, markets, forest law and regulation regimes antedating the PESA Act thrusts, call for harmonization.

36. According to section 4(d) of the PESA Act 1996, the legislature shall not make any law on Panchayats in Scheduled Areas which is inconsistent with the traditional management practices of community resources. This implies that the natural and physical resources vest in the community as of yore, in contradistinction to the recent concept of eminent domain of the State, and they should be managed by it as per its traditions. An instance how this is nullified obtains in Andhra Pradesh. Under the Andhra Pradesh Water, Land, Trees (APWLT) Act 2002, a high-powered authority is constituted for promoting water conservation, enhancement of tree-cover, regulating exploitation of ground and surface water and to advise the Government on strengthening of public participation in conservation of natural resources from time to time in such way that equity in cases of water in different basins, sub-basins and regions in the state is maintained. The water-users associations are required to adopt measures suggested under the APWLT Act. All land allottees and tenants within the notified areas under the Act are members of water-users associations. The Andhra Pradesh Government has not devolved minor irrigation to Panchayats in Scheduled Areas, notwithstanding the provision in the Central Act. Thus, the state continues to have a legal frame-work which is disharmonious with the authority of the Panchayats, while PESA confers the responsibility for planning and management of minor water bodies on Panchayats. Secondly, in respect of another item of common property resources, i.e. land, there are numerous instances where, traditionally, villagers have been cultivating land which has been subsequently brought under the joint forestry management programme leading, as one consequence, to virtually converting it into forest land in the books of the forest department and, as another, to the demand for 'Pattas'. This has also had the effect in some Scheduled Areas of wiping away the traditional village forest systems, and further creating schism between villages located at the forest fringes and those located at some distance. This situation has major implications in law and policy. Unless issues of such nature are resolved on the ground, eviction of tribal forest dwellers will not stand the test of both propriety and legality. Thus the State Governments have legal frameworks to

regulate natural resources like water, forest, through their own regulatory authorities, which are at variance with provisions of the Central PESA Act 1996. The new committees and groups working at cross-purposes seem to have replaced a consciousness of the total communitarian and consensual ethos by an insistent sense of individual rights, contributing their share to the dismemberment of the traditional management and security systems. The stance of the two sets of legislation needs to be resolved. The administrative and legal spaces need to be fully explored for carefully evolved inter-relationships between the Panchayat institutions and formal and informal regimes on the ground. In this context, the injunction of the PESA Act that the State legislation on Panchayats should assonate with the customary law, social and religious practices and traditional management practices of community resources is relevant. An edifice which enables Panchayats to exercise primacy in effecting synergy in the interest of holistic and integrative approach has to be built.

Impediments to Panchayats' functioning

37. The PESA Act 1996 at the apex confers enormous powers and responsibilities on the Panchayats. Taken to its fullest sense, it is no less than a magna carta. However, there are some impediments to the functioning of the Panchayats in Scheduled Areas. The crux is that the PESA Act embodies guidelines and it calls upon the state legislatures to "endow Panchayats with powers and authority as may be necessary to enable them to function as institutions of self-government" and build in "safeguards to ensure that Panchayats at the higher level do not assume the powers and authority of any Panchayat at the lower level or of the Gram Sabha" [section 4(n)]. In fact, it enjoins that the legislature of a state shall not make any law under Part IX of the Constitution which is inconsistent with the features it describes in clauses (a) to (d). Thus, the responsibility of creating assonance of state legal enactments with the PESA Act lies with the state legislatures. We find that most of them do not echo the PESA Act in letter and spirit. This is evident from (a) comparative analysis made in Annexure I between the Central PESA Act 1996 and the relevant laws of Orissa, Gujarat, Madhya Pradesh, Himachal Pradesh, Andhra Pradesh and Rajasthan, referred to in para 5 supra and (b) the statement at Annexure II of the RD Ministsry titled "Implementation of the Provisions of

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Panchayats (Extension to Scheduled Areas) Act, 1996". In the first place, there is need for congruence between the Central and state laws.

38. For the state laws to be operative, the requirement of a set of rules under the Act (PESA,1996) voted by the legislature is a sine qua non. This condition has not been fulfilled in all cases. Had it been complied with, the operation on the ground of the law and the rules would have day-lighted the discrepancies between traditional practices and the laws, the grey areas between the requirements and the provisions in the laws, the contradictions, problems etc. at grass roots. For instance, there are grey areas even in the PESA Act. Section 4(a) calls for state legislation that should be in tune with the traditional management practices of community resources. The questions arise: Which specific items are covered by the term "community resources"? Who (whether the State or the Panchayat) commands (ownership or management or other rights) the community resources? Is it not necessary for the local people and, specifically the tribal people, to continue to have a sense of ownership over the different CPR items like common land, village forest, drinking water sources, small irrigation sources, rather than push these items into the eminent domain with remote and indifferent maintenance management systems by unconcerned officials or officially appointed bodies?

39. The best guarantee for operation of Panchayats as vehicles for self-governance and tribal socio-economic progress is awareness of the legal, administrative and other instruments on the part of all concerned, particularly the tribal people. Reports indicate this is woefully lacking. It is incumbent on the official and non-official agencies to disseminate knowledge.

40. Elections have not been held in some states. For instance, in Jharkhand, the last elections held to Panchayats were in 1978 i.e. 25 years ago. Even the constitutional provisions and the PESA Act have failed to move the authorities to hold elections. The lack of a formal status is a big handicap in the ability of Gram Sabhas and Panchayats to put through programmes as well as in dealing with other organizations.

41. Section 5 of PESA Act is to the effect that before the expiry of one year any provision of any law relating to Panchayats in force in the Scheduled Areas immediately

before 24 December 1996 which is inconsistent with PESA, should be amended or repealed. There have been laws which, in reality, relate to Panchayats. We have mentioned in the chapter on forests that, as it stands, that the Indian Forest Act 1927 does not permit any scope for conferment of ownership rights of minor forest produce items on Panchayats, though PESA bestows such ownership on the Gram Sabhas. Similarly, the PESA Act arms the Gram Sabhas and Panchayats at the appropriate level to prevent alienation in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a person of a scheduled tribe. In Andhra Pradesh, there are state laws which confer powers on the State, specifically revenue officials, leading to a confused situation. Meantime, rampant tribal land alienation continues in some parts of Scheduled Areas, mainly because of prominence of non-tribals in Panchayats. In the state of Jharkhand, the Chhotanagpur Tenancy Act and the Santhal Parganas Tenancy Act need to be examined with a view to eliminating mis-match between the provisions of the recent PESA Act along with corresponding state act on the one hand and the revenue and other laws concerned on the other.

42. We have referred earlier to the phenomenon of growth and existence of multiplicity of committees, some of them having formal backing, like Van Suraksha Samities, joint forest management committees, water users' groups, water-shed groups, ayacut committees, DWCRA groups, womens' groups. While some of these groups and committees have been acquitting themselves well and rendering useful service, the over-all effect of the existence of manifold parallel committees in the Panchayat context, has to be assessed carefully. Their functioning independent of the Panchayat structure may tend to negate a coordinated approach and integral perspective. They may not have a symbiotic relationship with the Panchayats, as has been the case so far with official agencies like ITDP/ITDAs. It is desirable to evolve rational and effective net-work so that the programmes of other functional groups and those of the Gram Sabha dove-tail into one another.

Conclusion

43. For the Fifth Schedule areas, we have etched out a position of eminence for Panchayats. We are quite aware that, as of now, some Panchayats in the Scheduled Areas have not fared as well as they should have. In the area of planning and decision-making, the Panchayats should largely substitute bureaucracy which has, for the past decades after independence, shouldered the task with marginal tribal involvement. By motivation and inclination, it cannot be expected to distinguish itself too much. The life of tribals is a hard life, immiserated in poverty, want, ill-health and illiteracy, deprived of basic necessities. The task of ensuring the basic necessities of adequate nourishment, health, education etc. should be made their own, while providing them the requisite wherewithal. One may reasonably hope that the planned development process operated by the Panchayats, inspired with the community's own ideas and ethos, will meet with success hereafter.

44. The Panchayat (Extension to Scheduled Areas) Act 1996, an offshoot of the 73rd Constitutional Amendment Act, passed in consequence of Article 243M (4)(b), lays down guidelines that the legislature of a state should follow in enacting law for Scheduled Areas. As we have seen, the corresponding laws passed by the State Governments do not always conform to its letter and spirit. They may require amendments which may materialize hereafter. For the time being, we need to stress that the Panchayats in the Scheduled Areas, particularly the Gram Sabhas, should be regarded as sheet-anchor of socio-economic development activities in its jurisdiction. Some progress is perceptible. Women's participation has increased, though not uniformly all over; women's self-help groups have sprung up even in remote and distant areas like Koraput district of Orissa. We came across awareness on the part of some Panchayats of PESA and other laws, signifying their powers and rights. The knowledge has to spread.

45. The Panchayats in Scheduled Areas need to be clear in their goals. They should also be fully aware of the enormous powers and responsibilities vested in them by PESA Act 1996. At the same time, a degree of consciousness of duties and responsibilities in the members should be visible. In the information age, they should not suffer from knowledge deficit owing to lack of information about Panchayat acts, amendments and

their implications as well as lack of knowledge about structures, functions, roles and procedures governing the delivery systems. For the purpose, they need to be educated and trained. While training can be imparted even to semi-literate members of Panchayats on adhoc basis, education comes through long studies and application. Hence, our hounding concern in this report has been education of tribal children as well as adults, to which we attach top priority.

46. It may be idle to imagine that the experiment of power to the tribal people initiated recently through the Panchayat system network has met with the success everywhere. In the first instance, it is still taking time to get set. ST members may be new to the present tasks and they would need to be educated, trained and grounded in the art of governance and planned development, particularly in the matter of accounts and accountability. Appropriate and relevant training syllabi and courses need to be devised and organized. Some states have already instituted training courses. Those that have not, may do so at the earliest. Fortunately, tribal communities have been living in self-management modes for centuries past and they can be expected to pick up threads of modern administration, wielding their new power and authority in the larger interest of the community, though instances of elites grabbing power and misusing it for sometime cannot be ruled out. We are confident, however, that the responsibility which is now entrusted to their representatives would, in the long run, be utilized transparently in favour of common tribals.

47. We would also urge the bureaucracy to read the signs of the times and by becoming facilitators help the cause of tribal development through their own Panchayat institutions. In the age of today, they can produce only skirmishes by placing minor road blocks, but they can not stop or even slow down the juggernaut of tribal development. In radical role transformation, we visualize a pro-active role of the bureaucracy and a sympathetic role of the larger civil society. Conceptualisation and attitudinal internalization of the revolutionary character of the legislation and changes ensuing therefrom are essential part of the current life and society.

48. In reality, the Panchayats have not come into their own as yet. One problem is that the State laws lag behind the letter and spirit of the PESA Act 1996. In states where the law has come into being, its implementation has to pick up momentum. In some states, even elections have not been held, as in the state of Jharkhand. Where the Panchayat institutions have come into being, they have hit different executive road blocks. Financial arrangements have still to be sorted out. On the whole, the authorities need to build in them full capacities along with requisite structures and systems. Some reports indicate that the "silent revolution" has tended to turn into "bloody revolution", since power, patronage and pelf have been involved. Strangely, groups which profess, in the interest of the people, the ideology of revolution (may be through violent means) like the Naxalites and Peoples' War Group have exhibited intolerance of certain Panchayats doing sincere and dedicated work. But, notwithstanding these impediments, the local bodies as conceived in the PESA Act 1996 appear to possess great potential for exercising authority in the interests of the people in the long run. One may hope that the hurdles are temporary and will disappear after a while.

Salient Recommendations

1. Since practical empowerment and legitimization of Panchayats rests, by and large, with the State Govts. as per Article 243G, appropriate action should be taken by them. The State laws should conform to the provisions of the PESA Act in letter and spirit.

2. It is seen that in quite a few states, the focus is on Intermediate and/or Zilla Panchayats. The focus should be on all Panchayats, but specially on the Gram Sabha.

3. An important provision in PESA Act is to provide power to all the Panchayat tiers to prevent alienation of land and for action for restoration of unlawfully alienated land belonging to scheduled tribes. In some States only the Gram Sabha has been empowered and three other tiers have been omitted. All the tiers need to be empowered.

4. It is understood that consequent upon the 73rd Constitutional Amendment, the Centre desires transfer of fourteen subjects: primary and secondary education, minor forest produce, veterinary dispensaries, rural dispensaries, rural housing, drinking water supply, rural roads, poverty alleviation schemes, water-shed management, soil conservation, fair and village Haats, PDS and maintenance of communal assets as undoubtedly, all these subjects are important from tribal development point of view and the transfer should take place expeditiously. But we would single out primary and secondary education as the most important.

5. Studies indicate that, in the country at large, there is lack of definitive inter-face between the Panchayat system i.e. the people's deliberative and decision-making bodies on the one hand, and the delivery system i.e. the techno-

administrative supportive executing agencies on the other. This is a serious lacuna. Full-scale tie-ups are needed.

6. A long-range perspective would warrant that the Panchas, in fact all Panchayat members, should exercise their respective responsibility, so that they acquire enough experience and ability to act independently and judiciously. The earlier this happens, the better it would be for tribal development in particular and for democratic planned development in general. The process can be accelerated through training instituted for office-bearers and members of the Panchayats.

7. We believe that the tribals' own bodies are in the best position to judge their problems, needs and aspirations in the physical and socio-economic environment obtaining. The Sarpanches may be regarded as arch-priests and the Panchas and other members high priests in the matter of planned development at these levels. They should prepare annual and five-year programmes and plans. The process should start at the very bottom i.e. at the level of Gram Sabha which, in our view, should be regarded as the pivot of the Panchayat system. The development plans prepared by Gram Sabha may be collated and coordinated by the Gram Panchayat in whose jurisdiction the Gram Sabhas lie, supplementing/adding to the plans what was missed out or what specifically pertains to items/subjects within the province of the Gram Panchayats. The process has to be replicated upwards relative to plans prepared by Gram Panchayats and Panchayat Samities to be collated and coordinated at the levels of respectively the Panchayat Samiti and the Zilla Panchayat. For the Zilla Panchayat, the Block plans should be collated and coordinated by the ITDP/ITDA organization headed by a Project Director/Project Administrator. The district Tribal sub-Plan should thus emerge. In short, the Zilla

Panchayat being at the apex of the Panchayat system, should collate and coordinate with the lower and higher hierarchies, becoming a nodal point for both plans and resources.

8. On account of the fact that the Ministry of Rural Development has been assigned the subject of Panchayats under the business rules of the Government of India, the PESA Act 1996 also is being dealt with by them. We feel it is more appropriate for the Ministry of Tribal Affairs to deal with this Act, while retaining the overall subject of Panchayats with the Ministry of Rural Development.

9. It is important to recall that Article 243G does not limit the role of Panchayat to planning only. It charges them with the task of implementation also. For instance, the Gram Sabha may have included a minor irrigation scheme within its plan. The Gram Sabha should also undertake its execution, preferably directly by a member with technical help. Should that be not possible, the execution may be through a professional individual or bodies. Similar should be the case with Gram Panchayat, Panchayat Samiti and Zilla Panchayat. For the purpose, the Panchayat bodies should be properly staff-equipped.

10. The Commission is of the opinion that, considering variations in the different states, the task of designing suitable administrative infrastructure for each of the four tiers has to be undertaken by State Govts. In order to achieve this objective, the Commission indicate following steps:

(a) The Gram Sabha in tribal areas being intrinsically the most effective body closest to the people, and in that capacity the recipient of a prior attention in the PESA Act, should be looked at carefully. In its rejuvenated form, it is a comparative new-comer in the comity of Panchayats and it needs to be infrastructurally equipped. The staff

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infrastructure presently available at each other tier should be evaluated and deficiencies made up to fulfill the requirements and to excise redundancies, if any.

(b) It seems that since engineering works like roads, buildings, wells, irrigation schemes are indispensable part of the development plans, engineering personnel at most levels (including the Gram Sabha) would be a prime need. Secondly, extension agents for education, health, agriculture and allied sectors would be a necessity but careful consideration would have to be given to the level to which each of them should be attached. It is not difficult to see that it is possible to err on both the sides. Hence, discrimination would need to be exercised.

(c) Having evaluated the administrative infrastructural requirements, the next requisite would be to link hierarchical Gram Sabhas and Panchayats with each other with a view to optimally achieving understanding, integration, coordination and efficiency. The representative hierarchical bodies should forge into a strong flowing chain in the cause of planned socio-economic development of tribals, each performing its role in its jurisdiction. The important elements of transparency and accountability should be built in the system.

11. In some cases, the additionalities provided by the Centre like the special Central assistance, grants-in-aid under Article 275(1) have, to an extent, been appropriated for purposes other than they were intended for. In the end result, although, theoretically, a large quantum of resources may appear to have been pumped into the TSP system, in practice the picture may be different. Other ills like diversion of funds have diminished availability for tribal development. Taking a broad overview, one may conclude that there is need, at present, to devise procedures which would enable the field formations to assuredly receive funds and enforce on them accountability for utilization of those funds. The district rural

development agencies (DRDAs) procedure offers ready example. Just as the Ministry of Rural Development makes direct devolutions to the DRDAs, the Central Ministries, including and certainly the Ministry of Tribal Affairs, should open direct channels to the districts and ensure direct flow of funds to District Panchayats, which should earmark them timely for ITDPs/ITDAs, MADA pockets, clusters, etc. The demand that the Centre should fund the Zilla Panchayats directly instead of channeling finances through the state governments, as is being currently done for DRDAs, needs to be considered seriously.

12. It is pertinent to point out that the Bhuria Committee, 1995 recommended that education and health should be the first charge on Panchayat finances. We also have singled out primary and secondary education as the most important sector for tribal development. Hence, we recommend that a substantial percentage of the total funds from State and Central budgets for these two sectors earmarked into TSP budget should devolve on the Zilla Pachayats in Scheduled Areas and tribal areas and, further, that the Zilla Panchayats should devolve 50% of these funds on the Gram Sabhas while the balance 50% should be shared among the Zilla Panchayats, Panchayat Samities and the Gram Panchayats.

13 According to section 4(a) of the PESA Act, a State legislation on the Panchayats that may be made should be in consonance with the customary law, social and religious practices and traditional management practices of community resources. After examination of the PESA provisions of various states, it is felt that the responsibility of creation of assonance between State legal enactments and the Central PESA Act lies with State Govts under the supervision of the Central Ministry of Rural Development. Hence, they should take steps accordingly.

14. According to section 4(d) of the PESA Act, the State legislature shall not make any law on Panchayats in tribal areas which is inconsistent with the traditional management practices of community resources. This implies that the natural and physical resources vest in the community as of yore, in contradistinction to recent concept of eminent domain of the state, and they should be managed by it as per its traditions. Some states have created legal frameworks to regulate natural resources like water, forest through their regulatory authorities which are at variance with in the provisions of the PESA Act. Further, new committees and groups have been organized and they seem to have replaced consciousness of the total communitarian and consensual ethos by insistent sense of individual rights, contributing their share to the dismemberment of traditional management and security systems. The stance of the two sets of legislation and policy needs to be resolved.

15. On the ground, the phenomenon of growth of multiplicity of committees, some of them having formal backing like Van Suraksha Samities, joint forest management committees, water-users groups, water-shed groups, ayacat committees, DWCRA groups, womens' groups, has had the effect of setting up parallel committees co-existent with Panchayats. This may tend to negate coordinated approach and integral perspective. It is desirable to evolve rational and effective net-work. It is desirable to evolve rational and effective net-work so that the programmes of other functional groups and those of the Gram Sabha dove-tail into one another.

16. It is suggested that States not having Scheduled Areas but having tribal population should act on the provisions of PESA Act for the benefit of tribals.

17. Tribal individuals need to be educated and trained as they are new to Panchayati system. While training can be imparted even to semi-literate members of Panchayats on adhoc basis, education comes through long study and application. Hence, our hounding concern in this report has been education of tribal children as well as adults, to which we attach top priority.

18. Since the ST Panchayats members may be new to the present tasks, they would need to be educated, trained and grounded in the art of governance and planned development, particularly in the matter of accounts and accountability. Appropriate and relevant training syllabi and modules need to be devised and organized. Some states have already instituted training courses. Those that have not, may do so at the earliest. Fortunately, tribal communities have been living in self-management modes for centuries past and they can be expected to pick up threads of modern administration, wielding their new power and authority in the larger interest of the community, though instances of elites grabbing power and misusing it for sometime cannot be ruled out.

19. It is observed that the Panchayats have not come into their own, as yet. One problem is that the State laws lag behind the letter and spirit of the PESA Act, 1996. In states where the law has come into being, its implementation has to pick up momentum. Steps need to be taken to harmonise other relevant laws like Land Acquisition Act 1894 and the Indian Forest Act1927 in consonance with the PESA Act. States should look into this aspect and take remedial measures.

20. Rampant tribal land alienation continues in some parts of Scheduled Areas, sometimes, because of prominent presence of non-tribals in Panchayats. The Commission strongly feels that vigorous efforts should be made to check the

practice of alienation of poor tribals' land, specially with the help of ST members of Panchayats rightfully in position.

21. There are some impediments to the functioning of the Panchayats in Scheduled Areas. The crux, however, is that the PESA Act embodies guidelines and it calls upon the state legislatures to "endow Panchayats with powers and authority as may be necessary to enable them to function as institutions of self-government ...... safeguards to ensure that Panchayats at the higher level do not assume the powers and authority of any Panchayat at the lower level or of the Gram Sabha [Section 4(n)]. In fact, it enjoins that the legislature of a state shall not make any law under Part IX of the Constitution which is inconsistent with the features it describes in clauses (a) to (d). Thus, the responsibility of legal enactments in assonance with PESA Act lies with the state legislatures. When we examine some of them, we find that they do not correspond to the PESA Act in letter and spirit. This is evident from comparison made in the Annexure. Taking the example of Orissa law, it is clear that its focus is on the Zilla Panchayat called Zilla Parishad, while the PESA Act focuses on Gram Sabha. Gujarat Act defaults on the question of ownership of minor forest produce among other items. In the first place, there is need for congruence between the state and Central laws both in letter and spirit, since underlying the Central law there is a certain concept involved.

22. For the state laws to be operative, the requirement of a set of rules under the State Act voted by the legislature is a sine qua non. This condition remains to be fulfilled in many cases. Further, the operation of the law and rules thereunder can be expected to daylight any discrepancies between traditional practices and the laws, the gray areas between the requirements and available provisions in the laws, the contradictions, problems etc. at the grassroot. For instance, gray areas may be said to exist in the PESA Act: Section 4(a) calls for state legislation that should be in tune with the traditional management practices of community resources. The questions arise which items are covered by the term community resources and who (the state or the Panchayat) commands ownership of the community resources.

23. A third important factor is that incompatibilities between the provisions of the PESA Act and other laws re manifest. In terms of Section 4(i), a Gram Sabha or

the Panchayats at the appropriate level have to be consulted before making acquisition of land and before resettlement or rehabilitation of displaced persons. Since no such provision exists in the Land Acquisition Act, 1894, which is a colonial hang over, amendment of the latter becomes necessary. To give another instance, the PESA Act confers ownership of minor forest produce on Gram Sabhas and Panchayats in Section 4(m)(ii), but the Indian Forest Act 1927 implicitly and perhaps even explicitly vests the entire range of forest produce, whether major or minor, in the state, meaning thereby the forest department. Evidently, the two need to be harmonized with each other. Any number of such examples can be multiplied.

24. Article 243E prescribes a life of 5 years for a Panchayat, the maximum period of a break on dissolution or otherwise being 6 months. In other words, an elected Panchayat is a body in perpetuity. For the purpose of elections to the Panchayats, a State Election Commission has been prescribed in Article 243K. But elections have not been held in some states, even after the coming into force of the 73rd Constitutional Amendment resulting in Article 243. For instance, in Jharkhand, the elections have not been held so far. The last elections were held in Bihar in 1978. Even the Constitutional provisions and the PESA Act have failed to move the authorities to hold elections. The lack of a formal status is a big handicap in the ability of Gram Sabhas and Panchayats to put programmes through as well as in dealing with other organizations.

Annexure- I

Comparative Provisions of the PESA Act 1996 (Central Act) and the Orissa Panchayat Act as amended by Orissa Act No. 15 of 1997

S.No	PESA Act 1996 (Central)	Orissa Act NO. 15 of 1997	Comments
1	State legislations on Panchayats should be in consonance with state customary law, social and religious practices and traditional management practices of community resources [Section 4 (a)]	Not indicated.	
2	A village shall consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community, managing affairs in accordance with traditions and customs [Section 4 (b)]	Same as in Central Act [Section 4, proviso]	
3	Constitution of a Gram Sabha [Section 4, (c)]	Same as in Central Act [Section 4 (2)]	
4	Every Gram Sabha shall be **competent** to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and customary mode of dispute resolution etc [Section 4 (d)]	Departure in as much as after the words "dispute resolution", the words "consistent with relevant laws in force and in harmony with the basic tenets of the constitution and human rights" have been added. These words seem unnecessary, as the laws, tenets and rights have to be enforced even otherwise.	
5	Powers of the Gram Sabha to approve the plans, programmes and projects for social and economic development prior to implementation by the Panchayat at the village level [Section 4 (e) (i)]	Same as in Central Act, except that "Gram Panchayat" has been substituted for by " the Panchayat at the village level" [Section 5 (3) (a)]	

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6	Power of Gram Sabha to identify or select beneficiaries under poverty alleviation and other programmes. [Section 4 (e) (ii))]	Same as in Central Act [Section 5 (3) (b)]	
7	Every Panchayat at the village level shall be required to obtain from the Gram Sabha a certificate of utilization of funds by that Panchayat for the plans, programmes and projects referred to in SL. No 5 and 6 [Section 4 (f)]	Same as in Central Act [proviso to Section 5 (3) (a) and (b)]	
8	The reservation of seats in the Scheduled Areas at every Panchayat shall be in proportion to the population of the communities in that Panchayat for whom reservation is sought to be given under Part IX of the Constitution [Section 4 (g)]:	This provision has not been inserted.	
	(i) Provided that the reservation for the STs shall not be less han a one-half of the total number of seats;	Same as in Central Act [Section 6 (i) proviso]	
	(ii) Provided further that all seats of Chairpersons of Panchayats at all levels shall be reserved for the STs.	Same as in Central [Section 6 (ii) proviso] Whereas in the Central Act, all seats of chairpersons of Panchayats at all levels have been reserved for Scheduled Tribes, in the Orissa Act, the office of Sarpanches at Gram Sabha level has not been reserved	
9	The State Government may nominate persons belonging to such Scheduled Tribes as have no representation in the Panchayat at intermediate level or the Panchayat at the district level.	This provision has been inserted in the Orissa Act for Panchayat Samiti and Zilla Parishad and not for the two other lower Panchayats.	

	Provided that such nomination shall not exceed one-tenth of the total number of members to be elected in that Panchayat [Section 4 (h)]		
10	Consultation with Gram Sabha or Panchayats before acquisition of land in the Scheduled Areas for development projects and before resettlement or rehabilitation of affected persons. The actual planning and implementation of the projects in the Scheduled Areas to be coordinated at State level [Section 4 (i)]	It is significant that neither the Palli Sabha (roughly corresponding to Gram Sabha), nor the Gram Panchayat, nor even the Panchayat Samiti have been allowed such consultation and only the Zilla Parishad is so empowered. Empowering any Panchayat below the Zilla Parishad was that relatively large areas of land need to be acquired and the matter should fall within competence of the Zilla Parishad. Since cases for acquisition of smaller small land patches with which the Gram Sabha or Gram Panchayat or Panchayat Samiti may be locationally or jurisdictionally concerned , consultation with these bodies should be deemed essential.	
11	The planning and management of minor waterbodies in Scheduled Areas shall be entrusted to Panchayats at the appropriate level [Section 4 (j)]	Neither the Gram Panchayat nor the Panchayat Samiti has been entrusted with such functions.	
12	Mining leases – the recommendation of the Gram Sabha or the Panchayat at the appropriate level is mandatory before grant of prospecting license or mining lease for minor minerals [Section 4 (k)]	The power has been conferred only on the Zilla Panchayat.	

13	Similarly, prior recommendation of Gram Sabha or the Panchayat at the appropriate level for exploitation of minor minerals by auction is mandatory [Section 4 (l)]	-do-	
14	While endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, a state legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specifically with-		
14-A	(i) the power to enforce prohibition or to regulate and restrict the sale and consumption of any intoxicant [Section (4 (m) (i))]	Such power has been vested in the Gram Panchayat subject to the control and supervision of the Gram Shashan.	
14-B	(ii) ownership of minor forest produce [Section 4 (m) (ii)]	-do-	
14-C	(iii) the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe [Section 4 (m) (iii)]	-do-	
14-D	(iv) the power to manage village markets. [Section 4 (m) (iv)]	-do-	
14-E	(v) the power to exercise to control over money-lending to the Scheduled Tribes [Section 4 (m) (v)]	-do-	
14-F	(vi) the power to exercise to control over institutions and functionaries functioning in all social sectors.	This power does not vest either in the Palli (Gram) Sabha or in the Gram	

		Panchayat. The Panchayat Samitis have been empowered to exercise control and supervision, the nature and extent of which shall be such as may be prescribed over institutions and functionaries of various social sectors in relation to the programmes and measures, as the Government may, by notification, specify. Thus the power; has not been clarified, but circumscribed.	
14-G	(vii) the power of control over local plans and resources for such plans including TSP [Section 4 (m) (vii)]	No such power has been conferred either on the Palli Sabha or Gram Panchayat. It vests in the Panchayat Samiti. It is presumed that by extension it vests also in the Zilla Panchayat.	
15	The State Legislature may endow Panchayats with such power and authority as may be necessary to enable them to function as institutions of self-government and shall contain safeguards to ensure that Panchayats at the higher level do not assume the power and authority of any Panchayat at the lower level or at the Gram Sabha by Panchayats at higher level [Section 4 (n)]	This provision is totally absent.	
16	The State Legislature shall endeavour to follow the pattern of the Sixth Schedule while designing the administrative arrangements in the Panchayats at district level in the Scheduled Areas [Section 4 (o)]	This provision is totally absent.	

17	Notwithstanding anything in Part IX of the Constitution, with exceptions and modifications made in this Act, any provision of any law relating to Panchayats in force in the Scheduled Areas, immediately before the date on which PESA received the assent of the President, which is inconsistent with the provisions of Part IX with such exceptions and modifications shall continue to be in force until amended or repealed by a competent legislature or other competent authority or until the expiration of one year from the date on which the PESA receives the assent of the President.	Not indicated.	

Comparative position of the provisions of the PESA Act, 1996 (Central Act) and the Gujarat Panchayat Act (as amended up to 13th July, 1998)

S.No.	PESA Act 1996 (Central)	Gujarat Act, 1998	Comments
1.	State legislations on Panchayats should be in consonance with state customary law, social and religious practices and traditional management practices of community resources. [Section IV (a)]	Not indicated.	
2.	Village shall consist of a habitation or a group of habitation or hamlet comprising a community, managing affairs in accordance with traditions and customs. [Section IV (b)]	Same as in Central Act (Section 3)	
3.	Constitution of a Gram Sabha [Section IV, (c)]	Same as in Central Act [Section 4 (2)]	
4.	Gram Sabha shall be **competent** to safeguard and preserve the traditions and customs etc. [Section IV (d)]	Same as in Central Act, excepting the substitution of the word "competent" by "endeavour" [Section 3 (a)]	
5.	Powers of the Gram Sabha to approve the plans, programmes and projects for social and economic development prior to implementation by the Panchayat at the village level. [Section 4 (e) (i)]	Section 3 (b) (i)	
6.	Power of Gram Sabha to identify beneficiaries under poverty alleviation and other programmes. [Section 4 (e) (ii)]	Same as in Central Act, Section 3 (b) (ii)	
7.	Panchayat at the village level shall be required to obtain certificate of utilization of funds from the Gram Sabha [Section 4 (f)]	Same as in Central Act, Section 12 (1A)	
8.	The reservation of seats in the Scheduled Areas at every Panchayat shall be in proportion to the population of the communities in that Panchayat for		

	whom reservation is sought to be given under Part IX of the Constitution [Section 4 (g)]: (i) Provided that the reservation for the STs shall not be less than a one-half of the total number of seats. (ii) All seats of Chairpersons of Panchayats at all levels shall be reserved for the STs.	 Same as in Central Act Sec. 4 is for reservation in every village Panchayat Sec. 5 is for every Taluka Panchayat Sec. 6 is for every District Panchayat respectively. Same as in Central Act in respect of Sarpanch of village Panchayat and President of Taluka Panchayat (Section 8 (i) and 9 (i) and reservation for President of District Panchayat provided under Section 10 (i).	
9.	State may nominate such Scheduled Tribes as have no respresentation in the Panchayat at intermediate level or the Panchayat at the district level. Section (h)	If for any reason an election does not result in the return of any member of ST in a taluka Panchayat or district Panchayat, then the State Govt. may nominate from amongst members belonging to STs who are qualified to be elected, such number of members as not to exceed one-tenth of the total members to be elected in that panchayat.	The two provisions are different. The contingency visualized in the State Act may occur rarely. The provision in the PESA Act needs to be followed.
10.	Consultation of Gram Sabha or Panchayats before acquisition of land in the Scheduled Areas for development projects and rehabilitation of affected persons. Section 4 (i)	Power given to Taluka Panchyat in respect of land acquisition and resettlement of persons displaced by development projects. Section 13	It should be given to Gram Sabha also, depending on Jurisdiction.
11.	Planning and management of minor waterbodies entrusted to Panchayats. Section 4 (j)	Planning and Management of waterbodies. Section 14 (2) (k-i)	

12.	Mining leases – the recommendation of Gram Sabha or the Panchayat at the appropriate level is mandatory before prospecting of minerals lease of minerals. Section 4 (K)	Not indicated.	
13.	Similarly, prior recommendation of Gram Sabha or the Panchayat at the appropriate level for exploitation of mining minor mineral by auction is also mandatory. Section 4 (I)	- do -	
14.	While endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, a state legislature shall ensure that the Panchayats at the appropriate level and the Panchayats at the appropriate level and the Gram Sabha are endowed specifically with – (i) the power to enforce prohibition to regulate and restrict the sale and consumption of any intoxicant. Section [(4 (m) (i)] (ii) ownership of minor forest produce. Section 4 (m) (ii)	 Same as in Central Act. Section (14) (I) (a) Section (11) (5) (a). There shall be vested in the village Panchayat minor forest- produce found (except found in the areas of national parks or sanctuaries) in such area of a forest as is situated in the jurisdiction of that village.	
15.	The power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore and unlawfully alienated land of a	Not indicated.	Conferment of this power on the Gram Sabha and Panchayat at the appropriate

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	Scheduled Tribe. Section 4 (m) (iii)		level essential.
16.	Power to manage village markets. Section 4 (m) (iv)	Not indicated.	
17.	Power to exercise to control over money-lending to the Scheduled Tribes. Section 4(m) (v)	Same as in Central Act by amendment of the Bombay Money Lenders Act, 1946.	
18.	Power to exercise to control over institutions functioning in social sectors.	Section 14 (3) same as in Central Act.	
19.	Power of control over local plans and resources for such plans including TSP. Section 4 (m) (vii)	Section 15 (e) same as in the Central Act.	
20.	Panchayats to function as institution of self-government and safeguards against erosion of authority of Panchayat and Gram Sabha by Panchayats at higher level. Section 4 (n)	Not indicated.	Should be included in the State Act.
21.	Replication of Sixth Schedule pattern while designing the administrative arrangements in the Panchayat Act at district level in the Scheduled Areas. Section 4 (o)	Not indicated.	- do -
22.	Continuance of existing laws and Panchayats, unless dissolved by a resolution passed by State Legislative Assembly.	Not indicated.	- do -

Comparative Provisions of the PESA Act 1996 (Central Act) and the M.P. Panchayat Raj Adhiniyam 1993 amended from time to time

S.No.	PESA Act 1996 (Central)	M.P. Panchayat Act. 93 (97, 99.2001)	Comments
1.	State legislations on Panchayats should be in consonance with state customary law, social and religious practices and traditional management practices of community resources. [Section IV (a)]	Section 129 C (i) of M.P. Panchayat Act 1997. Gram Sabha shall safeguard and preserve the traditions and customs of the people, their cultural identity and community resources and customary mode of dispute resolution.	
2.	A village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community, managing affairs in accordance with traditions and customs [Section 4 (b)]	Section 129 (A) (b). Village means village in the Scheduled Areas which shall ordinarily consist of habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs.	
3.	Every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls for the Panchayat at the Village level. [Section 4 (c)]	Section 129 (A) (a). "Gram Sabha" means a body consisting of persons whose names are included in the electoral rolls relating to the area of a Panchayat at the village level, or part thereof, for which it is constituted.	
4.	Every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and customary mode of dispute resolution etc. [Section 4 (d)]	Please see reply to serial 1 above.	

5.	Powers of the Gram Sabha to approve the plans, programmes and projects for social and economic development prior to implementation by the Panchayat at the village level [Section 4(e) (i)]	According to Section 129 C (v), Gram Sabha in Scheduled Areas shall also have the following powers and functions, namely (i) To safeguard and preserve the traditions and customs of the people, their cultural identity and community resources and the customary mode of dispute resolution. (ii) To manage natural resources including land, water and forests within the area of the Village in accordance with its traditions and <u>in harmony with the provisions of the Constitution and with due regard to the spirit of other relevant laws for the time being in force.</u> (iii) To manage village markets and Melas including cattle fair, by whatever name called <u>through the Gram Panchayat.</u> (iv) To control local plans, resources and expenditure for such plans including Tribal sub-Plans, and (v) To exercise and perform such other powers and functions as the State Govt. may confer on or entrust under any law for the time being in force.	Already given against sl. 1. The underlined words are additional and modify the Central provision. - do - Please see sl. 14 F & G
6.	Power of Gram Sabha to identify or select beneficiaries under poverty alleviation and other programmes. .[Section 4 (e) (ii)]	No corresponding provision in M.P. Act.	
7.	Every Panchayat at the Village level shall be required to obtain from the Gram Sabha a certificate of utilization of funds by that	- do -	

	Panchayat for the plans, programmes and projects referred to in SL. No. 5 and 6 [Section 4 (f)]		
8.	The reservation of seats in the Scheduled Areas at every Panchayat shall be in proportion to the population of the communities in that Panchayat for whom reservation is sought to be given under Part IX of the Constitution [Section 4 (g)]: (i) Provided that the reservation for the STs shall not be less than a one-half of the total number of seats; (ii) Provided further that all seats of Chairpersons of Panchayats at all levels shall be reserved for the STs.	Same as in Central Act vide section 129 E of M.P. Act, 1997. Same provision as in the Central Act. Same provision as in the Central Act.	
9.	The State Government may nominate persons belonging to such Scheduled Tribes as have no representation in the Panchayat at intermediate level or the Panchayat at the district level. Provided that such nomination shall not exceed one-tenth of the total number of members to be elected in that Panchayat [Section 4 (h)]	Same as in the Central Act, vide section 129 E (2) of M.P. Act of 1997 Same as in the Central Act.	
10.	Consultation with Gram Sabha or Panchayats before acquisition of land in the Scheduled Areas for development projects and before resettlement or rehabilitation of affected	Not indicated.	Provision should be made for consultation in respect of land acquisition and resettlement as in the Central Act.

	persons. The actual planning and implementation of the projects in the Scheduled Areas to be coordinated at State level [Section 4(i)]		
11.	The planning and management of minor water bodies in Scheduled Areas shall be entrusted to Panchayats at the appropriate level. [Section 4 (j)]	Section 129 F. Without prejudice to the generality of powers conferred by this Act, the Janapad Panchayat or the Zila Panchayat, as the case may be in Scheduled Areas, shall also have the powers, namely to plan, own and manage minor water bodies up to a specified water areas.	The Gram Sabha and Gram Panchayat also should be empowered.
12.	Mining leases. The recommendation of the Gram Sabha or the Panchayat at the appropriate level is mandatory before grant of prospecting license or mining lease for minor minerals. [Section 4 (k)]	There is no clear-cut provision in the M.P. Act.	Gram Sabha and other Panchayats should be involved as about 80% mining is located in the vicinity of Tribal Bastis.
13.	Similarly, prior recommendation of Gram Sabha or the Panchayat at the appropriate level for exploitation of minor minerals by auction is mandatory. [Section 4 (1)]	There is no clearcut provision in the M.P. Act.	Gram Sabha and other Panchayat should be involved as about 80% mining is located in the vicinity of Tribal Bastis.
14.	While endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, a state legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specifically with.	Not indicated.	
14-A.	(i) the power to enforce prohibition or to regulate and restrict the sale and consumption	M.P. Abkari (Sanshodhan) Adhiniyam 1997 permits preparation of home brewed	

	of any intoxicant [Section (4 (m) (i))]	liquor for domestic consumption and for social and religious functions.	
14-B	(ii) ownership of minor forest produce [Section 4 (m) (ii)]	Gram Sabha have been empowered in respect of ownership of MFP	Gram Panchayats intermediate Panchayats and Zilla Panchayats have not been brought into the picture.
14-C	(iii) the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe [Section 4 (m) (iii)]	According to M.P. Land Revenue Code, only the Gram Sabha has been empowered in this behalf	The Panchyat Law should empower the Panchayats suitably.
14-D	(iv) the power to manage village markets. [Section 4 (m) (iv)]	Section 129 C (v) confers power on Gram Sabha to manage village markets and Melas including cattle fair, by whatever name called through the Gram Panchayat. Section 129 D (ii) 2 confers power on the Gram Panchayat to manage village market and Melas including cattle fair, by whatever name called.	Power does not seem to have been conferred on Janpad Panchayat and Zilla Panchayat.
14-E	(v) the power to exercise to control over money-lending to the Scheduled Tribes [Section 4 (m) (v)]	Information is awaited from Government of M.P.	Nothing indicated in the Panchayat Act.
14-F	(vi) the power to exercise to control over institutions and functionaries functioning in all social sectors.	Provisions in section 129 F (ii) same as in PESA Act, 96.	
14-G	(vii) the power of control over local plans and resources for such plans including TSP [Section 4 (m) (vii)]	M.P. Panchayat Raj Act empowers control over local plans, resources and Expenditure for such plans including Tribal sub-Plans on The Gram Sabha in section 129 (vi) the	

		Gram Panchayat in Section 129 D (vii) the Janpad and Zilla Panchayats in section 129 F (iii)	
15	The State Legislature may endow Panchayats with such power and authority as may be necessary to enable them to function as institutions of self-government and shall contain safeguards to ensure that Panchayats at the higher level do not assume the power and authority of any Panchayat at the lower level or at the Gram Sabha by Panchayats at higher level [Section 4 (n)]	Not indicated.	The State Government may consider.
16	The State Legislature shall endeavour to follow the pattern of the Sixth Schedule while designing the administrative arrangements in the panchayats at district level in the Scheduled Areas [Section 4 (o)]	Not indicated.	The State Government may consider.
17	Notwithstanding anything in Part IX of the Constitution, with exceptions and modifications made in this Act, any provision of any law relating to Panchayats in force in the Scheduled Areas, immediately before the date on which PESA received the assent of the President, which is inconsistent with the provisions of Part IX with such exceptions and modifications shall continue to be in force until amended or repealed by a competent legislature or other competent authority or until the expiration of one year	Not indicated.	The State Government may consider.

	from the date on which the PESA receives the assent of the President. [Section -5]		
18 19 20		**New provisions in the M.P. Act** 1. Section 129E (3). In a Panchayat in Scheduled Areas such number of seats shall be reserved for persons belonging to other backward classes, which together with the seats already reserved for Scheduled Tribes and Scheduled Castes, if any, shall not exceed three-fourths of all the seats in that Panchayat. 2. Section 27 of M.P. Panchayat Raj (Sanshodhan) Adhiniyam, 2001. The provisions of the Madhya Pradesh Panchayat Raj Sanshodhan Adhiniyam, 2001 shall not apply to Scheduled Areas so far as they are inconsistent with the provisions of Chapter XIV A of the M.P. Panchayat Raj Act 1997 and "The provisions of the Panchayats (Extension to the Scheduled Areas) Act. 1996 (No. 40 of 1996) 3. Section 129F (iv). To exercise and perform such other powers and functions as the State Government may confer on or entrust under any law for the time being in force.	

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Comparative Provisions of the PESA Act 1996 (Central Act) and the Himachal Pradesh Panchayat Raj Act, 1994 amended from time to time

S. No.	PESA Act 1996 (Central)	H. P. Panchayat Raj (Second Amendment) Act, 1997	Comments
1	State legislations on Panchayats should be in consonance with state customary law, social and religious practices and traditional management practices of community resources [Section 4 (a)]	No indicated.	
2	A village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community, managing affairs in accordance with traditions and customs [Section 4 (b)]	Section 97-B As in Central Act.	
3	Every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls for the Panchayat at the Village level. [Section 4 (c)]	Not indicated.	
4	Every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and customary mode of dispute resolution etc. [Section 4 (d)]	Section 97-C as in Central Act.	
5	Powers of the Gram Sabha to approve the plans, programmes and projects for social and economic development prior to implementation by the Panchayat at the village level [Section 4 (e) (i)	Section 97- C (2) (i) as in Central Act.	
6	Power of Gram Sabha to identify or select beneficiaries under poverty alleviation and other programmes. [Section 4 (e) (ii)]	Section 97-C (2) (ii) as in Central Act.	

7.	Every Panchayat at the village level shall be required to obtain from the Gram Sabha a certificate of utilization of funds by that Panchayat for plans, programmes and projects referred to in sl. 5 and 6 [Section 4 (f)]	Section 97-C (3) (ii) as in Central Act.	
8.	The reservation of seats in the Scheduled Areas at every Panchayat shall be in proportion to the population of the communities in that Panchayat for whom reservation is sought to be given under Part IX of the Constitution [Section 4 (g)]: (i) Provided that the reservation for the STs shall not be less than one-half of the total number of seats; (ii) Provided further that all seats of Chairperson of Panchayats at all levels shall be reserved for the STs.	Section 97-D. The reservation of seats in the Scheduled Areas to every Gram Panchayat and Panchayat Samiti shall be in proportion to the population of the communities in that Gram Panchayat Samiti, as the case may be: Same as in the Central Act, but limited to two tiers. -do-	Reservation is limited to Gram Panchayat and Panchayat Samiti and the other two tiers have been omitted.
9.	The State Government may nominate persons belonging to such Scheduled Tribes as have no representation in the Panchayat at intermediate level or the Panchayat at the district level. Provided that such nomination shall not exceed one-tenth of the total number of members to be elected in that Panchayat [Section 4 (h)]	Section 97-E. Same as in Central Act, Section 97-E. Same as in Central Act.	
10.	Consultation with Gram Sabha or Panchayats before acquisition of land in the Scheduled Areas for development projects and before resettlement or rehabilitation of affected persons. The actual planning and implementation of the projects in the Scheduled	Section 97-F The Gram Sabha shall be consulted before making the acquisition of land in the scheduled areas for development of projects and before re-settling or rehabilitating persons evicted by	Only Gram Sabha has been empowered and other tiers have not been.

	Areas to be coordinated at State level [Section 4 (i)]	such projects in the scheduled areas; the actual planning and implementation of the projects in the Scheduled Areas shall be co-ordinated at the State Level.	
11	The planning and management of minor water bodies in Scheduled Areas shall be entrusted to Panchayats at the appropriate level [Section 4 (j)]	Section 97-G Planning and management of minor water bodies in the scheduled areas shall be entrusted to Gram Panchayats, Panchayat Samitis or the Zilla Parishads, as the case may be, in such manner as may be prescribed.	The words " as may be prescribed" have been added, with uncertain implications.
12	Mining leases. The recommendation of the Gram Sabha or the Panchayat at the appropriate level is mandatory before grant of prospecting license or mining lease for minor minerals [Section 4 (k)]	Section 97-H. The recommendations of the Gram Sabha, made in such manner as may be prescribed, shall be taken into consideration prior to grant of prospecting license or mining lease, for minor minerals in the Scheduled Areas.	Except Gram Sabha, other tier Panchayats do not find any role in the HP Act. Further, the underlined words have uncertain implications.
13	Similarly, prior recommendation of Gram Sabha or the Panchayat at the appropriate level for exploitation of minor minerals by auction is mandatory [Section 4 (I)]	Section 97-H (2). The prior recommendation of the Gram Sabha, made in such manner as may be prescribed, shall be taken into consideration for grant of concession for the exploitation of minor minerals by auction.	1. Except Gram Sabha, other tier Panchayats do not find any mention. 2. The underlined words have uncertain implications. 3. The recommendation is not mandatory.
14	While endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, the state legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specifically with	Section 97-I. The Gram Panchayat or as the case may be, the Gram Sabha shall exercise such powers and perform such functions in such manner and to such extent as may be prescribed in respect of the following matters, namely:-	The intermediate Panchayat and Zilla Panchayat have been left out.
14-A	(i) the power to enforce prohibition or to regulate and	Section 97-I (b). Same as in Central Act.	-do-

	restrict the sale and consumption of any intoxicant [Section (4 (m) (i)]		
14-B	(ii) ownership of minor forest produce [Section 4 (m) (ii)]	Section 97-I (a). Same as in Central Act.	-do-
14-C	(iii) the power to prevent alienation of land in the Schedule Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe [Section 4 (m) (iii)]	Not indicated.	The State has left out an important provision.
14-D	(iv) the power to manage village markets. [Section 4 (m) (iv)]	Section 97-I (c). Same as in Central Act.	The intermediate Panchayat and Zilla Panchayat have been left out.
14-E	(v) the power to exercise control over money-lending to the Scheduled Tribes [Section 4 (m) (v)]	Section 97-I (d). Same as in Central Act.	-do-
14-F	(vi) the power to exercise control over institutions and functionaries functioning in all social sectors.	Sections 97-I (2) The Panchayat Samiti shall exercise such powers and performs such functions in such manner and to such extent as may be prescribed, in respect of the following matters, namely:- (a) exercising control over institutions and functionaries in all social sectors.	The three other tiers viz. Gram Sabha . intermediate Panchayat and Zilla Panchayat have been left out.
14-G	(vii) the power of control over local plans and	(b) control over local plans and resources	

	resources for such plans including TSP [Section 4 (m) (vii)]	for such plans including Tribal sub-Plans..	
15	The State Legislature may endow Panchayat with such power and authority as may be necessary to enable them to function as institutions of self-government and shall contain safeguards to ensure that Panchayats at the higher level do not assume the power and authority of any Panchayat at the lower level or at the Gram Sabha by Panchayats at higher level [Section 4 (n)]		
16	The State Legislature shall endeavour to follow the pattern of the Sixth Schedule while designing the administrative arrangements in the Panchayats at district level in the Scheduled Areas [Section 4 (o)]	Not indicated.	
17	Notwithstanding anything in Part IX of the Constitution, with exceptions and modifications made in this Act, any provision of any law relating to Panchayats in force in the Scheduled Areas, immediately before the date on which PESA received the assent of the President, which is inconsistent with the provisions of Part IX with such exceptions and modifications shall continue to be in force until amended or repealed by a competent legislature or other competent authority or until the expiration of one year from the date on which the PESA receives the assent of the President. [Section 5]	Not indicated.	

Comparative Provision of the PESA Act, 1996 (Central Act) and the Andhra Pradesh Panchayat Raj Act, 1994 amended by Act No. 7 of 1998.

S.No.	PESA Act 1996 (Central)	The Andhra Pradesh Raj (Amendment) Act, 1998	Comment
1	State legislations on Panchayats should be in consonance with state customary law, social and religious practices and traditional management practices of community resources [Section 4 (a)]	Not indicated.	
2	A village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community, managing affairs in accordance with traditions and customs [Section 4 (b)]	Section 242 B. Same as in Central Act.	
3	Every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls for the Panchayat at the village level.[Section 4 (c)	Not indicated.	
4	Every Gram Sabha shal be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and customary mode of dispute resolution etc [Section 4 (d)]	Section 242 C(1). Every Gram Sbha shall be competent to safeguard and preserve the traditional and customs of the people, their cultural identity, community resources and <u>without detriment to any law for the time being in force,</u> the customary mode of dispute resolution.	Underlined words have uncertain implications.

5	Powers of the Gram Sabha to approve the plans programmes and projects for social and economic development prior to implementation by the Panchayat at the village level [Section 4 (e) (i)]	Section 242 C(2)(i) Same as in Central Act.	
6	Power of Gram Sabha to identify or select beneficiaries under poverty alleviation and other programmes. [Section 4 (e) (ii)]	Section 242 C(ii). Same as in Central Act.	
7	Every Panchayat at the village level shall be required to obtain from the Gram Sabha a certificate of utilizations of funds by that Panchayat for the plans, programmes and projects referred to in sls. 5 and 6 above [section 4 (f)]	Section 242 (3). Same as in Central Act.	
8	The reservation of seats in the Scheduled Areas at every Panchayat shall be in proportion the population of the communities in that Panchayat for whom reservation is sought to be given under Part IX of the Constitution [Section 4 (g)] (i) Provided that the reservation for the STs shall not be les than one-half of the total number of seats;	Section 242 D. the reservation of sears in the Scheduled Areas to every Gram Panchayat and Mandal Parishad shall be in proportion to the population of the communities in that Gram Panchayat or the Mandal Parishad as the case may be: Section 242 D. Same as in Central Act.	Zilla Parishad has been omitted.

	(ii) Provided further that all seats of chairpersons of Panchayats at all level shall be reserved for the STs.	All seats of Sarpanchs of Gram Panchayats and President of Mandal Parishad shall be reserved for STs.	Zilla Parishad has been omitted.
9	The State Government may nominate persons belonging to such Scheduled tribes as have no representation in the Panchayat at intermediate level or the Panchayat at the district level. Provided that such nomination shall not exceed one-tenth of the total number of members to be elected in that panchayat [Section 4 (h)]	Section 242 E. Provision made in only Mandal Parishad (Intermediate level). Section 242 E. Provision made in only Mandal Parishad (Intermediate level)	- do - - do -
10	Consultation with Gram Sabha or Panchayats before acquisition of land in the Scheduled Areas for development projects and before resettlement or rehabilitation of affected persons. The actual planning and implementation of the projects in the Scheduled Areas to be coordinated at State level [Section 4 (i)]	Section 242 F. The Mandal Parishad shal be consulted before making the acquisition of land in the Schedu!ed Areas for development projects and before resettling or rehabilitating persons evicted by such projects inn the Scheduled Areas, the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State Level.	The provision omits mention of Gram Sabha Gram Panchayat and Zilla Parishad.
11	The planning and management of minor water bodies in Scheduled Areas shall be entrusted to Panchayats at the appropriate level [Section 4 (i)]	Section 2442 G. Planning and management of minor water bodies in the Scheduled Areas shall be entrusted to Gram Panchayats, Mandal Parishad or the Zilla Parishad, as the case may, in such manner as may be	Underlined words have uncertain implications.

		prescribed	
12	Mining leases. The recommendation of the Gram Sabha or the Panchayat at the appropriate level is mandatory before grant of prospecting license or mining lease for minor minerals. [Section 4 (k)]	Section 242 H (I). The recommendations of the Gram Sabha Panchayat made in such manner as may be prescribed, shall be taken into consideration prior to grant of prospecting license or mining lease, for minor minerals in the Scheduled Areas.	a) Except Gram Panchayat other Panchayat tiers do not figure in the State Act. b) The underlined words have uncertain implications.
13	Similarly recommendation of Gram Sabha or the Panchayat at the appropriate level for exploitation of minor minerals by auction is mandatory [Section 4 (10)]	Section 242 H (2). The prior recommendation of the Gram Panchayat, made in such manner as may be prescribed, shall be taken into consideration for grant of concession for the exploitation of minor minerals by auction.	- do -
14	While endowing Panchayat in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, them state legislature shall ensure that the Panchayat at the appropriate level and the Gram Sabha are endowed specifically with.	Section 242I (10). The Gram Panchayat or as the case may be, the Gram Sabha shall exercise such powers and perform such functions in such manner and to such extent as may be prescribed in respect of the following matters:	(a) Zilla Parishad and Mandal tiers do not figure. (b) Underlined words have uncertain implications from (a) to (e).
14-A	(i) the power to enforce prohibition or to regulate and restrict the sale and consumption of any intoxicant [Section 4 (m) (i)]	Section 242 I (1) (a). Same as in Central Act.	
14-B	(ii) ownership of minor forest produce [Section 4 (m) (ii)]	Section 242 I (1) (b). Same as in Central Act.	

14-C	(iii) the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe [Section 4 (m) (iii)]	Section 242 I (1) (c). Same as in Central Act.	
14-D	(iv) the power to manage village markets. [Section 4 (m) (iv)]	Section 242 I (1)(d). Same as in Central Act.	
14-E	(v) the power to exercise control over money-lending to the Scheduled Tribes [Section 4 (m) (v)]	Section 242 I (1) (e). Same as in Central Act.	
14-F	(vi) the power to exercise control over institutions and functionaries functioning in all social sectors.	Section 242 I (2). The Mandal Parishad shall exercise such powers and perform such functions in such manner and to such extent as may be prescribed, in respect of the following matters, namely:- (a) exercising control over institutions and functionaries in all social sectors.	Except Mandal Parishad other tiers have been excluded.
14-G	(vii)the power of control over local plans and resources for such plans including TSP [Section 4 (m) (viii)]	Section 242 I (2) (b). control over plans and resources for such plans including tribal subplans.	-do-
15	The State Legislature may endow Panchayats with such power and authority as may be necessary to enable them to function as institutions of self-government and shall contain safeguards to ensure that Panchayats at the higher level do not assume the lower level or at the Gram Sabha by Panchayats at higher		

	level [Section 4 (n)]		
16	The State Legislature shall endeavour to follow the pattern of the Sixth Schedule while designing the administrative arrangements in the Panchayats at district level in the Scheduled Areas [Section 4 (o)]	Not indicated.	
17	Notwithstanding anything in Part IX of the Constitution, with exceptions and modifications made in this Act, any provision of any law relating to Panchayats in force in the Scheduled Areas, immediately before the date on which PESA received the assent of the President, which is in consistent with the provisions of Part IX with such exceptions and modifications shall continue to be in force until amended or repealed by a competent legislature or other competent authority or until the expiration of one year from the date on which the PESA receives the assent of the President. [Section 5].	Not indicated.	

Comparative Provisions of the PESA Act 1996 (Central Act) and the Rajasthan Panchayati Raj Act, 1994. amended from time to time.

S. No	PESA Act 1996 (Central)	The Rajasthan Panchayat I Raj (Modification of provisions in their Application to the Scheduled Areas) Act, 1999.	
1	State legislations on Panchayats should be in consonance with state customary law, social and religious practices and traditional management practices of community resources [Section 4 (a)]	Not indicated	
2	A village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community, managing affairs in accordance with traditions and customs [Section 4 (b)]	Not Indicated	
3	Every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls for the Panchayat at the village level. [Section 4 (c)]	Section 3 (a). Same as in Central Aact.	
4	Every Graam Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and customary mode of dispute resolution etc [Section 4 (d)]	Section 3 (b). Same as in Central Act	

5	Powers of the Gram Sabha to approve the plans, programmes and projects for social and economic development prior to implementation by the Panchayat at the village level [Section 4 (e) (i)]	Section 3 c (i). Same as in Central Act.	
6	Power of Gram Sabha to identify or select beneficiaries under poverty alleviation and other programmes. [Section 4 (e) (ii)]	Section 3c (ii). Same as in Central Act.	
7	Every Panchayat at the village level shall be required to obtain from the Gram Sabha a certificate of utilization of funds by that Panchayat for the plans, programmes and projects referred to in sl. 5 and 6 [Section 4 (f)]		
8	The reservation of seats in the Scheduled Areas at every Panchayat shall be in proportion to the population of the communities in that Panchayat for whom reservation is sought to be given under Part IX of the Constitution [Section 4 (g)}	Section 3 (e). Same as in Central Act.	
	(i) Provided that the reservation for the STs shall not be less than one – half of the total number of seats:	Section 3(e). Same as in Central Act.	
	(ii) Provided further that all seats of chairpersons of Panchayats at all levels shall be reserved for the STs.	-do-	
9	The State Government may nominate persons belonging to such Scheduled Tribes as have no representation in the Panchayat at intermediate level or the Panchayat at the district level.	Section 3(e). Same as in Central Act	
	Provided that such nomination shall not exceed	-do-	

	one-tenth of the total number of members to be elected in that Panchayat [Section 4 (h)]		
10	Consultation with Gram Sabha or Panchayats before acquisition of land in the Scheduled Areas for development projects and before resettlement or rehabilitation of affected persons. The actual planning and implementation of the projects in the Scheduled Areas to be coordinated at State level [Section 4 (i)]	Section 3 (g). Same as in Central Act.	
11	The planning and management of minor water bodies in Scheduled Areas shall be entrusted to Panchayats at the appropriate level [Section 4 (j)]	Section 3 (h). Planning and management of minor water bodies, as maybe specified by the State Government, in the Scheduled Areas shall be entrusted to Panchayati Raj Institution at such level as may be prescribed.	The words "as may be proscribed" have been added with uncertain implications.
12	Mining leases. The recommendation of the Gram Sabha or the Panchayat at the appropriate level is mandatory before grant of prospecting license or mining lease for minor minerals [Section 4 (k)]	Section 3 (i). No prospecting licence or mining lease for minor minerals in the Scheduled Areas shall be granted to any person or body of persons without obtaining prior recommendation of the Gram Sabha or the Panchayat Raj Institution at such level and in such manner as may be prescribed.	-do-
13	Similarly, prior recommendation of Gram Sabha or the Panchayat at the appropriate level for exploitation of minor minerals by auction is mandatory [Section 4 (1)]	Section 3 d (i). No concession for the exploitation of minor minerals by auction in the Scheduled Areas granted without obtaining the recommendation of the Gram Sabha or the Panchayat Raj Institution at such level and in such manner as may be prescribed.	-do-

14	While endowing Panchayats in the Scheduled Areas with such authority as may be necessary to enable them to function as institutions of self-government, the state legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specifically with	The Panchayati Raj institution at appropriate level, or Gram Sabha as may be prescribed, in a Scheduled Areas, shall have	The words "as may be prescribed" have been added, with uncertain implications.
14-A	(i) the power to enforce prohibition or to regulate and restrict the sale and consumption of any intoxicant [Section (4) (m) (i)]	Section 3 (k) (i). The power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant subject to such rules as may be made by the state Government in this behalf.	Rules should be notified without further delay.
14-B	(ii) ownership of minor forest produce [Section 4 (m)	Section 3 (k) (ii). The ownership of minor forest produce subject to such rules as may be prescribed by the State Government as to control and management of minor forest produce.	The underlined words qualify the ownership of the Panchayat bodies.
14-C	(iii) the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe [Section 4 (m) (iii)]	Section 3(k)(iii). The power to prevent alienation of land in the Scheduled Areas and to take appropriate action in accordance with laws in force in the State, to restore any unlawfully alienated land of a Scheduled Tribe.	
14-D	(iv) the power to manage village markets. [Section 4 (m) (iv)	Section 3 (k)(iv). The power to manage village market by whatever name called subject to such rules as may be made boy the State Government in this behalf.	Rules should be notified without further delay.
14-E	(v) the power to exercise control over money-lending to the Scheduled Tribes [Section 4(m) (v)]	Section 3 (k)(v). Same as in Central Act.	

14-F	(vi) the power to exercise control over institutions and functionaries functioning in all social sectors.	Section 3(k) (vi). The power to exercise control over institutions and functionaries in all social sectors to the extent and in the manner to be specified by the State Government from time to time.	The underlined words detract from the unqualified control envisaged in the Central Act.
14-G	(vii) the power of control over local plans and resources for such plans including TSP [Section 4 (m) (vii)]	Section 3 (k) (vii). The power of control over local plan and resources of such plan including Tribal sub-Plan to the extent and in the manner to be specified by the State Government from time to time.	-do-
15	The State Legislature may endow Panchayats with such power and authority as may be necessary to enable them to function as institutions of self-government and shall contain safeguards to ensure that Panchayats at the higher level do not assume the power and authority of any Panchayat at the lower level or at the Gram Sabha by Panchayats at higher level [Section 4 (n)]		
16	The State Legislature shall endeavour to follow the pattern of the Sixth Schedule while designing the administrative arrangements in the Panchayat at district level in the Schedule Areas [Section 4 (o)]	Not indicated	
17	Notwithstanding anything in Part IX of the Constitution, with exceptions and modifications made in this Act, any provision of any law relating to Panchayats in force in the Scheduled Areas, immediately before the date on which	Not indicated.	

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	PESA received the assent of the President, which is inconsistent with the provisions of Part IX with such exceptions and modifications shall continue to be in force until amended or repealed by a competent legislature or other competent authority or until the expiration of one year from the date on which the PESA receives the assent of the President. [Section 5]		

Appendix-II

Implementation of the Provision of Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA, 1996)

S.No	Component Manda- - tory provisions	Andhra Pradesh	Chhattisgarh	Jharkhand	Gujarat	Himachal Pradesh	Madhya Pradesh	Maharashtra	Orissa	Rajasthan
1	2	3	4	5	6	7	8	9	10	11
1	Acquisition of land - Prior consultation with Gram Sabha or Panchayats at appropriate level	The AP Act has assigned this responsibility to intermediate Panchayat. However, actual planning and implementation will be coordinated at the State level.	The Chhattisgarh Act has made provision that before acquiring land for development projects, Gram Sabha will be consulted.	The Jharkhand Act has no provision in this regard.	The Gujarat Act has assigned this responsibility to Intermediate Panchayat.	The HP Act provides that Gram Sabha will be consulted before making acquisition of land.	Provision made	The Mahrashtra Act says that every Panchayats shall be consulted by the authority while every Panchyat shall consult Gram Sabha before conveying its decision.	The Orissa Act has stated that District Panchayat shall be consulted before land is acquired.	Many powers provided to Gram Sabha.
2	Planning & management of Minor water bodies - To be entrusted to Panchayats at the appropriate level	The AP Act has assigned this power to either of the three tiers of Panchayats as the case may be.	The Chhattisgarh Act has assigned powers on Gram Sabha. Intermediate and District Panchayat have powers to plan, own and manage minor water bodies upto a specified water areas	The Jharkhand Act has assigned this power to Gram Panchayat	The Gujarat Act entrusts this power to Gram Panchayat.	The HP Act has assigned these powers at the appropriate level of panchayats with powers to planning and management.	MP Govt. has assigned functions to Gram Sabha to plan, own and manage bodies situated within its territorial jurisdication	The Maharashtra Act does not make a mention in this matter.	The Orissa Act has assigned this subject to District Panchayats.	Many powers provided to Gram Sabha.
3.	Grant of prospecting license or mining minerals	The AP Act provides for recommendatio	The Chhattisgarh Act has no	The Jharkhand Act has no	The Gujarat Mines & Mineral	The HP Act says that the recommendati	Prior recommendation of Gram Sabha	The Maharashtra Act says that Panchayat shall be	The Orissa Act has assigned	Prior perr.[illegible] on

	- Prior recommendations of Gram or Panchayats at the appropriate level	ns of Gram Panchayat which shall be taken into consideration prior to grant of prospecting license.	provision in this regard.	provision in this regard.	(Regulating & Development) Act provides that prior to granting the quarry lease and quarry permit; recommendations of the GP shall be obtained.	ons of Gram Sabha shall be taken into consideration. Prior to granting license. In other areas, resolution of GP is mandatory.	is mandatory.	competent to make recommendations to licensing authority prior to grant license or permit. Proposal for devolution powers to Gram Sabha is under process.	this power to District Panchayat.	Gram Sabha or PRI made compulsory.
4	Grant of concession for exploitation of minor minerals - Prior recommendations of Gram or Panchayats at the appropriate level	The AP Act has provided that prior recommendations of GP shall be taken into consideration.	The Chhattisgarh Act has no provision in this regard.	The Jharkhand Act has no provision in this regard.	The Gujarat Mines & Mineral Act provides that prior to granting the quarry lease land quarry permit, recommendations of GP shall be obtained.	The HP Act has stated that prior recommendation of Gram Sabha shall be mandatory for grant of concession.	Yes	The Mines & Minerals (Reg. & Dev) Act provides powers to Gram Sabha in this matter.	The Orissa Act has assigned this power to District Panchyat.	Recommendation of Gram Sabha or the PRI made compulsory for the concession.
5.	Enforce prohibition regulate or restrict sale & consumption of any intoxicant. - Panchayats at the appropriate level and the Gram Sabha to endowed with powers.	The AP Act has assigned this function either to Gram Panchayat or Gram Sabha as the case may be.	The Chhattisgarh Act has assigned this power to Gram Sabha.	The Jharkhand Act has assigned this power to Gram Panchayat.	The Gujarat Act has no provision as the State has adapted prohibition in the whole State.	The HP Act has assigned this power either to Gram Panchayat or Gram Sabha. Gram Panchayat may by vote 2/3rd majority of members, direct not to	Gram Sabha empowered.	The Maharashtra Act says that Gram Sabha shall be competent to enforce prohibition or to regulate through Panchayat. Accordingly powers have been assigned to all three tiers.	The Orissa Act has assigned powers to Gram Panchayat to be exercised under direct supervision of Gram Sabha.	PRI at the appropriate level is empowered to enforce prohibition.

						sold intoxicant within that Panchayat.				
6.	Ownership of MFP - Panchayats at the appropriate level and the Gram Sabha to endowed with powers.	The AP Act says that Gram Panchayat or Gram Sabha as the case may be shall exercise powers in this matter as may be prescribed.	The Chhattisgarh Act has no provision in this regard.	The Jharkhand Act has assigned these powers to three tiers of panchayat.	The Gujarat Act has given the right to ownership of MFP to Gram Panchayat. Sale proceeds shall be paid into & form part of village fund.	The HP Act says that either Gram Panchayat or Gram Sabha shall exercise these powers.	The 'Madhya Pradesh Laghu Van Upaj (Gram Sabha Ko Swamitwa Ka Sandan) Vidheyak 2000' submitted by the Forest Department of MP is under revision to include issues such as 'Ownership of Minor Forest Produce', 'Jurisdictional Issues' etc. raised by the Min. of Rural Development.	The Maharashtra Act provides that every GS shall issue to Panchayat with regard to exploitation and regulation of trading of 33 MFPs and every Panchayat shall be competent to regulate exploitation management and trade of MFPs.	The Orissa Act has assigned powers to Gram Panchayat to be exercised under direct supervision of Gram Sabha	PRI at the appropriate level is endowed with the ownership to control and manage the minor forest produce.
7.	Prevention and restoration of Tribal Alienated Land. - Panchayats at the appropriate level and the Gram Sabha to endowed with powers.	The AP Act says that either Gram Panchayat or Gram Sabha shall perform such functions.	The Chhattisgarh Act has no provision in this regard.	The Jharkhand Act has assigned this power to District panchayat.	The Gujarat Act has assigned this power to District Panchayat.	The HP Act has no provision in this regard as tribals in HP cannot alienate their land to non-tribals under the Hp 'Transfer Land Regulation Act'.	Gram Sabha Endowed with such powers.	The Maharahstra Act has assigned this power to Gram Sabha to recommend through Panchayats. IP and DP have also assigned these powers.	The Orissa Act has assigned powers to GP to be exercised under direct supervision of Gram Sabha.	PRI at the appropriate level is empowered to prevent alienation of land in Scheduled Areas and to restore unlawful alienation of an ST.

8	Managing village markets - Panchayats at the appropriate level and the Gram Sabha to endowed with powers.	The AP Act has assigned power to Gram Panchayat or Gram Sabha as the case may be.	The Chhattisgarh Act provides that Gram Sabha shall have powers to manage village markets and melas through Gram Panchayat.	The Jharkhand Act has assigned this power to all three tiers of panchayat.	The Gujarat Act has assigned this power to Gram Panchayat.	The HP Act has assigned powers to Gram Panchayat or Gram Sabha.	The Gram Sabha has been assigned with powers to manage village markets and melas including cattle fair through the Gram Panchayats.	The Maharashtra has not made any provision in this regard.	The Orissa Act has assigned powers to GP to be exercised under direct supervision of Gram Sabha.	PRI at the appropri ate level is empowe red to manage village market.
9	Money lending to STs - Panchayats at the appropriate level and the Gram Sabha to endowed with powers.	The AP Act says that either Gram Panchayat or Gram Sabha shall perform such functions.	The Chhattisgarh Act has no provision in this regard.	The Jharkhand Act has assigned this power to District panchayat.	The Gujarat Act has assigned this power to Gram Panchayat.	The HP Act has assigned powers to Gram Panchayat or Gram Sabha.	Gram Sabha endowed with powers.	Under the Maharashtra Act such license can be granted by Registrar after consultation with Gram Sabha (s) and concerned Panchayat(s).	The Orissa Act has assigned powers to GP to be exercised under direct supervision of Gram Sabha.	PRI at the appropri ate level is empowe red to exercise control over money lending to the member s of ST

Policy of Reservations for Scheduled Tribes

The Commission has gone into the concept of reservation or positive discrimination for the Scheduled Tribes in the jobs and services and also the operationalisation of the provisions under Article 330 and 332 of the Constitution for reservation of seats in the Lok Sabha and State Vidhan Sabhas. With a view to improve the effectiveness of implementation of reservation policy for STs and to achieve the objective of reaching the prescribed percentage of reservation for them in the posts and appointments as also in admission in educational and professional courses, the Commission had circulated a comprehensive questionnaire to ascertain the views of Central Ministries, State Governments, PSUs, Autonomous Institutions etc., besides holding consultation at National, State and local levels over a period of more than one year. Based on the responses received and the consultations held, following recommendations are made for priority action:-

(1) At present there is no single nodal Ministry for coordinating reservation policy for STs in the Government of India. DoPT deals with reservation in posts and appointments but is not concerned with reservations in educational/professional courses nor in relation to socio-economic development programmes. There is very little communication with State Governments on this issue who look upto the Government of India for guidance. Therefore, the Ministry of Tribal Affairs may be made the nodal Ministry for planning, implementation and monitoring the reservation policy for Scheduled Tribes.

(2) The National Commission for Scheduled Tribes can play an important role in monitoring the implementation of reservation policy. But for that it would be necessary to see that the Chairman and the Members are carefully

chosen keeping in view their capability, commitment and experience. Suitable guidelines should be framed for selection and appointment of Members and Chairperson of the National Commission for Scheduled Tribes.

(3) Implementation of reservation policy through Executive instructions has not succeeded in achieving the desired objectives. Therefore a comprehensive legislation to regulate reservation for STs in posts and services as also in admissions in educational/professional courses may be enacted at an early date.

(4) There is an urgent need to extend reservations to STs in recruitment to the Armed Forces which has so far been denied without valid and justifiable reasons. Immediate action should be taken to initiate discussion with the concerned authorities on this issue paving the way for making provision for reservations for STs in Armed Forces.

(5) For recruitment in most of Central PSUs at Officers level minimum 60% marks is prescribed for eligibility to appear in the entrance examination. As a result large number of ST candidates having less than 60% marks in engineering or other professional courses are denied opportunity even to compete for those jobs and large number of reserved vacancies in these PSUs remain unutilized. Concerned recruitment agencies should be instructed to bring down the eligibility criteria to a reasonable level so that the ST candidates are not deprived of their legitimate rights.

(6) For different levels of cadres, the reservation percentage should be corresponding to proportion of tribal population at that level. For example, for recruitment to district cadre posts if ST population proportion in a district is 50 or 60% the ST candidates should get reservation benefit at the same level, as is already happening in many of the States. Government of India should issue instructions in this regard.

(7) For admission in educational and professional courses, the UGC has issued detailed instruction. But, it has no authority to enforce it and as a result these instructions are not followed by most of the Universities and Institutions. Effective mechanism should be evolved for proper monitoring and implementation of UGC guidelines.

(8) Government should immediately initiate action for formulating a policy for continuation of reservation policy in PSUs etc., after disinvestments or privatization as also for extending reservation policy for STs in private sector.

(9) We further recommend that the clause 3 of Article 80 of the Constitution may be amended to provide reservations for STs in the President's nominations in the Council of States.

(10) According to the rough estimate, Scheduled Tribes constitute about 8 to 10% of the total population of Delhi. Having regard to this significant size of the tribal population a Presidential Order under the Constitution may be made for providing reservations in jobs and services by relaxing criteria of nativity as it has been a persistent demand of the Tribes of the country who have settled down in Delhi.

Tribal Health and Medical Services

There are immense diversities among the nearly 698 Scheduled Tribe communities in the country. The demographic structure varies from one tribal community to another. Since many tribal communities belong to pre-industrial stage and depend on farm and forestry for their subsistence, the condition of environment has significance for them, which is not generally appreciated. In a meaningful relationship with nature not only do they directly interact with elementary forces of nature like the Earth, Sun, Wind, Rain and Forest during their everyday life, but they also derive their subsistence from primary resources like land and forest. There has been depletion of forest as well as large-scale destruction of wild life.

The shrinkage of these resources also had considerable effect on availability of food for tribals. It has been reported that for every case of frank nutritional deficiency, there are several cases of twilight zones of malnutrition. The ill-nourished groups live in a environment which has been degraded and has been disease-infested, say with malaria, filaria, tuberculosis, leprosy, skin diseases. A general lack of hygiene and sanitation aggravates the problems. On the whole, tribal enjoys a lower level of health as indicated by various health indices like low birth weight, life expectancy at birth, maternal mortality rate, infant mortality rate and prevalence rate of various communicable diseases, genetic disorders, alcoholism and drug addiction.

An Indigenous system of tribal medicines has sustained them for generations. They have recently gained access to modern medicine and more and more of the numbers are taking to it. But health and medical care services are not easily accessible and affordable and they are inequitable inefficient and are of poor quality. The delivery system and health care institutions should conform to the unique condition in tribal areas. In the light of above, the Commission make the following observations and recommendations.

Village Level :-

1. There should be Village Health Guide in each village, which has been recommended by NHP –1983 also. He would assist male/female multi-purpose health workers (MPHW) in implementing various National Health Programme. He should be supervised by PRI and should be given honorarium. Preference should be given to tribal traditional medicinal men, to whom the tribals trust the most.

2. Each *mohalla, basti* or *pada* should have at least one trained traditional birth attendant. She should have a delivery kit with aseptic liquid and

scissors for cutting cords. She should be given suitable honorarium. Her work should be strictly supervised by female health workers and PRI.

3. The supervision of the village health guides, TBA (Dai), Anganwadi workers, mid day meal employees should be handed over to Gram Panchayat and Gram Sabha.

4. For every 500 population of tribals, there should be one Anganwadi with building and storeroom etc. At present for every 700 population one Anganwadi is sanctioned. The Anganwadi worker should belong to tribal community, from the same village and should be given adequate salary. The breakfast and other eatables should be provided regularly. Antenatal check up and nutritional programmes should be carried out meticulously and regularly. Anganwadies should have toys and other amusement equipment, which will attract the children and ultimately acclimatize the tribal children for their education.

5. As per the guideline of the Supreme Court and government of India. Mid Day Meal should be regularly given and should be according to Menu prepared by the Nutritional Research Laboratory, Hyderabad. The food should be cooked. PRI should be given responsibility to supervise mid – day meal programme.

6. All the village habitations should be connected by all whether roads. In hilly regions like in Himachal Pradesh and Uttaranchal, each habitation should be connected to main roads by walkable roads, hanging walk able pools. Snow scooters and earth movers should be provided in the snow clad areas to keep the road connectivity for the entire season.

7. All the *bastis* should be provided safe drinking water through tap and regular chlorination should be done to prevent communicable diseases. This responsibility should be given to PRI.

8. Regular spraying of the insecticide to prevent diseases like malaria, filaria and other communicable diseases etc.

9. Drug and alcohol addicts should also be screened out and properly treated and rehabilitated.

10. Under weight new born, infants and children should be detected and be taken proper care by various nutritional programmes. Weighing machine along with delivery kit should be provided to TBA.

11. Information, awareness regarding the family planning, various communicable diseases and genetic disorders should be provided by documentaries, advertisements, posters and lectures etc. at regular intervals.

12. Because of lack of facility for medical care in tribal areas, quackery has flourished in their tribal areas. PRIs should be given power to take action against the quacks.

SC Level :-

13. Where at every 3000 of population in tribal area Sub Centres have not been established; it should be done at the earliest and all Sub Centres should have government building with residential accommodation for the multi purpose female/male health workers. The Sub Centre should be provided with the laboratory facilities for urine; albumin and sugar which can be easily carried out by female health workers.

14. Essential minerals and vitamins should be distributed to the expectant and lactating mothers regularly through the multipurpose health worker. Female health worker should be encouraged by giving some extra honorarium if they conduct the deliveries at odd times. Immunization and other National Health Programme should be implemented through SCs.

15. Local ST girls and boys should be trained and given priority in appointment as multi purpose male/female health workers.

16. Each district must have training school for male and female multi purpose health workers exclusively for the needs of Scheauled Area sub centres.

PHC level :-

17. The PHC as per the NHP norms should be established for every 20,000 of the population in tribal area but since the tribals live in scattered houses to have this 20,000 of population, one has to cover wider area compared to urban areas. So, while sanctioning PHC in tribal area, area also should be one of the norms. If needed, norms can be relaxed as has been done in Himachal Pradesh in Lahoul and Spiti area.

18. All the PHCs in tribal area should have their own buildings with full residential accommodation for all the staffs. The PHC must have fully equipped laboratory with technicians.

19. Routine medicines like ARV, ASV, TT etc., and essential drugs should be available at the PHC. The budget for the medicines and other consumables should be relaxed. PHCs should give equal importance to curative, preventive and promotive type of services.

20. Doctors at PHC should be suitably rewarded by allowances and other facilities and incentives, like out of turn promotion, preference in PG admission and after a fixed tenure (service) in tribal area, a posting of his liking.

21. As PHC in tribal area covers a vast area it should be given one ambulance vehicle, which will be useful for attending to emergencies and shifting the patient to the referral hospitals whenever necessary.

22. Doctors at the PHC should be trained to give the MTP services

23. Such paramedical staff of the Sub Centre should be given extra allowances if they provide round the clock obstetric services at the PHC level.

24. Free immunization and vaccination should be strictly given to all expectant mothers, infants and children, which should be strictly supervised by PHCs.

25. Basic equipment like infant weighing machine, deep freezer, refrigerator and auto clave machine should be compulsorily provided to each PHC.

26. Male health assistant and female health assistant should be provided with the two wheelers, so, that they can move in the tribal area with ease and supervise various national programmes, vaccination and immunization etc.

CHC level :-

27. All the specialist doctors posts of i.e. gynecologist, peadiatrition, general surgeon and physician should be filled up in the tribal area as per the Central guidelines.

28. Those doctors (Medical Officers) who want to render, medical services as a specialist and for that want to pursue PG study on the condition that they would serve as a specialist in tribal area, for specific period, should be given preference in PG admission.

29. All the doctors who are interested in pursuing the PG course should be permitted to do so only after serving full tenure in the tribal area. Recently Medical Council of India has also suggested this to the government of India.

30. All the CHCs should have well equipped operation theatre with anesthetic trolley, operation table, suction machine, AC machine, oxygen equipment and specialist services of anesthetic doctors. Anesthetic doctor would be posted at each CHC without which gynecologist, general surgeon can not undertake the required operations.

31. Paramedical staff as stated earlier should also be given extra pay and allowances and out of turn promotion for working in difficult tribal areas.

32. Each CHC should have one ambulance vehicle to bring and to shift the patient and bring blood, essential medicines and oxygen etc.

33. Each CHC should have one mortuary to preserve the dead body and one post mortem, examination room.

34. Each CHC should have working x – ray machine, sonography machine, ECG machine with a technician. The lady doctor or gynecologist should have training in sonography examination for expecting mothers.

35. The PHC and. CHC authorities should have budgetary powers to purchase medicine locally in emergency cases.

District Hospital :-

36. It should have all the specialists with well equipped machinery, furniture, instrument, operation theatre and other facilities. District hospital must have blood bank services which should supply blood to CHCs on demand.

37. If the district hospital is located far away from the CHCs then, one of the CHCs in Scheduled Area, located centrally should be upgraded with the facilities available in district level hospitals.

Mobile Hospital :-

38. Tribal areas should be provided with mobile hospitals for the curative, preventive and promotive type of services at the door step of the patients. Mobile hospital can effectively monitor the various national health care programmes.

39. This type of services also would solve the problem of medical personnel and paramedical staff. Doctors and paramedical staff would stay at their choice and would visit the tribal area, fixed and advertised earlier.

40. Through mobile hospital services health education can be given effectively through distribution of pamphlets, posters and showing film slides and documentaries.

41. Regular chlorination and decontamination process can be supervised easily and regularly at all drinking water sources.

Medical College :-

42. Each medical college located close the Scheduled Area must adopt some Scheduled Area for prevention, detection and management of the various diseases.

43. Medical college should hold a month long medical camp in the Scheduled Area hospital. All the services of the specialist doctors should be provided to the tribal people. Major operations, investigation can be carried out by arranging such camps. Fresh medical graduates would be exposed to various health programmes of tribals. Project administration office should initiate, manage and monitor such type of camps with the

help of P. & S.M department of medical college. Such type of camps should be financed by tribal development department in the state.

44. In medical colleges, nursing schools and in technical courses those persons who are willing to go to tribal areas should be given preference in admission.

Defence and Railways Services :-

45. Military and other defence forces have their own health care system with modern equipment, machinery and medicines with all type of medical personnel and paramedical staff. They camp in the remote inaccessible areas, where the tribals also live. Moreover, they have got modern information system also. It should be mandatory for them to give medical and health services to the inhabitants of that area. Their finance can be augmented by the central and state government for this purpose.

General :-

46. Where the allopathic doctors are not available, after few months of training, the BAMS and Homeopathic doctors should be given appointment in the primary health centers.

47. There should be a separate cadre for medical personnel, paramedical staff and technicians in the Scheduled Area.

48. The tribals migrate in thousands to urban area in search of livelihood. It should be the responsibility of the government to provide medical and health services to these people, at places of their work. Regular health check up, immunization and vaccination should be carried out regularly at their temporary habitations.

49. Even though medical and health services have not reached the tribal people, surprisingly in some cases their health is relatively good as for example Jarawa community of the Andaman and Nicobar Irelands. Detailed study and research should be carried out on the tribal health system.

50. Anti malarial, anti diarrhoeal measures should be augmented and strengthened in the month of June and July in the tribal area, to control the spread of malaria and diarrhoea.

Tuberculosis:-

51. All the PHCs should have infrastructure for sputum microscopy and enough quantity of anti TB medicines.

52. NGOs and village traditional health attendant should be involved in carrying out, National Tuberculosis Eradication Programme. Village panchayats should also involved in this programme.

53. Since TB is a chronic disease, it is essential that the Utility, acceptability and sustainability of the DOTs strategy is evaluated. New policy should be adopted for tribal areas considering different factors like geographical, food habits, social taboo, ignorance, illiteracy and poverty.

54. Increased participation of NGOs and private practitioners should be encouraged in the programme

55. Private practitioners must have data of TB patients and they should strictly follow the norm of treatment of tuberculosis.

Leprosy :-

56. The tribal area which has got high prevalence rate of leprosy and are difficult to access, case detection and MDT coverage should be intensified and services of mobile Leprosy Treatment Unit should be provided.

57. Laboratory services should be provided for leprosy detection in PHCs and CHCs. Tribal area should be provided special surveillance system for monitoring trends and prevalence of leprosy.

58. Facility for disabilities, corrective surgery and rehabilitation of such persons should be initiated in tribal area.

59. PRI/NGOs should be involved in detection and management of leprosy patients. They should do house to house survey with the help of Gram Sabha and Panchayat.

Genetic Disorders :-

60. To screen out the genetic disorders, it requires lot of finance and since the health is a State subject and majority of the tribal states do not have financial resources, it is not possible for them to screen out such type of diseases. The central government must take responsibility for financing the diagnosis and screening.

Occupational Diseases :-

61. Various provisions mentioned in the Safety Act must be carried out judiciously. Each factory or unit must have facility for prevention of such diseases. The workers working in the units must be screened at regular intervals and those affected should be compensated.

Snake Bite and Animal Bite :-

62. Prompt treatment is required to save the patient of snakebite. Anti Snake Venom should be available at each PHC level. Refrigerators, Deep freezer must be available at the each PHC for preservation of snake venom.

63. Anti rabies should be easily available at each PHC.

AIDS :-

64. Because in some tribal communities polygamy and polyandry are being practised and they being poor, are lured in to the business of sex worker, the chances of S.T.D and AIDS are more in tribal area. Moreover, there

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is no effective drug for the treatment of vaccine for protection against HIV infection. AIDS is the terminal stage of diseases.

65. Multi sectoral efforts involving PRI/NGOs are needed to contain the infection and combat the adverse consequences on the affected person, family and community.

66. All the tribal districts should be provided blood banks and STD clinics.

67. Establishment of sentinel sites for monitoring the trends in prevalence of HIV infection in tribal area.

68. Promotion of IEC, voluntary testing and counseling regarding HIV/AIDS should be started in the tribal area.

Administration :-

69. In tribal populated state in the health department there should be a separate post of Director of Tribal Health in the TD, who will supervise, monitor, manage, the medical and health care system in Scheduled Area.

70. There should be a separate post of Scheduled Area Health Officer at each Tribal Sub Plan Project Office, who will work under the Director of Tribal and Medical health.

71. Paramedical staff at village level like village health guide, TBA, Anganwadi worker should be under the charge of PRI.

72. The staff of the Sub Centre i.e. male/female health worker and that of PHCs medical officer and other paramedical staff should be under the block level panchayat.

73. Demographic profile and health indices are very much important for formulating the health policy. But there are no separate statistics for the tribal people. The Commission strongly recommends to have separate demographic and health data like IMR, MMR, U5MR, CBR, CDR, life expectancy at birth (LEB), % age of B.P.L. population, % age of underweight children, prevalence rate of Tuberculosis, Leprosy, Malaria etc; literacy rate, average family size, annual per capita income, average

female marriage age, population above 65 years and below 14 years, sex ratio male/female, of the tribals. The availability of these vital health indices of the STs would help in formulation of suitable tribal health policy.

74. The Human Development Report (HDR) of the central and the Scheduled Area State governments should have a separate chapter on tribal health data on the lines of the data for general population. The availability of this data for tribals would also enable the Govt. in implementation of proper health policy for scheduled tribes living in the Scheduled Area of the states, this recommendation is being made in view of the fact that the government, has a special constitutional responsibility for the all-round development of the tribals of the Scheduled Areas.

75. **Tribal Health Insurance**

The Commission observed during the tour of various Sates / U.T. s that the health services in the tribal areas are inequitable, inefficient, and inaccessible and are unaffordable and are of poor quality. Government should plan equitable, efficient, affordable and good quality of health services which would result in better health status, greater quality of opportunity, better human capital development and greater productivity and competivity leading to improved economic status of the tribals. There are 8.5 crore (8.20 %), tribal population, consisting of approximately about 1.6 crore tribal families. The percentage of families living B.P.L is 45% of the total tribal population, which means there are 72 lakh B.P.L. families. In each tribal family, male and female both are earning member. If one of the two falls ill the whole family is affected. Government should insure these earning members of the tribal family so that they can get efficient, equitable and high quality of health and medical services to prevent them from the trap of indebtedness. Health insurance policy for tribal should cover outdoor and indoor treatment, hospitalization, investigation, operation, anesthesia and medicinal charges. As they live in remote area, transportation cover under this scheme should be borne by govt.

76. IPR for traditional know how and herbal medicinal plants.

The tribal communities have a storehouse of knowledge about their flora, fauna, and possess methodology for treatment of various types of diseases. This age-old knowledge has been used by the tribal medicine man in all tribal areas before accepting the modern allopathic method of treatment. Even today one can come across tribal ***Bhagat*** who gives efficacious treatment for many diseases for which allopathy has no treatment.

The process of globalization is threatening the appropriation of elements of the traditional knowledge for tribal folklore medicines into periphery for the commercial exploitation of the few pharmaceutical companies. Urgent action is required to protect their fragile knowledge by taking adequate steps to protect their know how and it is an area where the government intervention with involvement of tribals is urgently called for. There is a need to focus on community knowledge and community innovation and to encourage communities; it is necessary to establish linkages between innovation, enterprise and investment for achieving optimum results.

TRIBAL WOMEN

INTRODUCTION

The challenge of tribal women and tribal children development is a segment of the larger problem of women and child development in the country. The problem assumes greater intensity and complexity for the tribal women on account of the debilitating economic and social backwardness and the abject poverty that large number of them suffers from. Whether the life of tribal women folk has been deteriorating over the decades -as some studies indicate- is perhaps debatable. But what is not in doubt is that there has been no significant betterment or improvement in their status, despite the constitutional safeguards, legislations, policies, and the substantial monies and attention that have been invested in tribal development. In the planning process tribal women have been neglected. "Poverty, lack of basic necessities and exploitation by non-tribals have been the problems faced by all tribes, along with environmental degradation. Destruction of forests, the lifeline of tribal economy, has hit the tribals hardest"[1] The Commission, in its tour of tribal areas, observed the dismal condition of the tribal women and children.

The tribal population of India does not represent a homogenous group, there exist considerable variations in physical, linguistic, economic and socio-cultural make up amongst them. Developmental measures aimed to improve their parlous condition have, therefore, to cater to these diversities while, of course, addressing the shared double handicap of being a woman and a tribal. That tribal women have a better standing in their community compared to women of the mainstream society is but a small consolation to them in the face of the deprivation and poverty that face them as a group. The rapid and climactic changes occurring in the socio-economic scene of the country affect tribal areas more harshly than others. As the Eighth Five Year Plan document observes " Significantly, development processes have interfered in many cases with traditional tribal institution and ethos and have produced negative results". Thus, Tribal Women have much longer distance to traverse and much steeper gradient to clamber in their quest for empowerment and social justice in their search for a better life.

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[1] Tribal Women in Development - Dr. Lipi Mukhopadhyay (Pg 143)

SPECIAL CONSTITUTIONAL PROVISIONS FOR SCHEDULE TRIBES

The Founding Fathers of the Constitution of India, recognizing the vulnerability of the tribes incorporated specific provisions for the protection of the Scheduled Tribes. While the tribes get the guarantees, along with all citizens, to equal rights and opportunities (Art 14) and against discrimination on grounds of sex, religion, race, caste, sex or place of birth (Art 15) there are other Articles specially to protect tribal interests. These could broadly be classified into three categories, namely,

1.Protective

Art 15(3) empowers the state to make affirmative discrimination in favour of women.

Arts 15(4), enjoins upon the State to make provisions for the advancement of any socially and educationally backward classes,

Art. 16(4)(4A)(4B) empowers the State to make provisions for reservation in appointments or posts in favour of any backward class of citizens, in the matter of promotions in favour of the Scheduled Tribes, and carry forward of the unfilled vacancies.

Art. 19 (5), is an enabling provision under which the State can make laws imposing reasonable restrictions on the freedom to reside and settle in any part of India (guaranteed by clause (e) of Art. 19(1)) for the protection of interests of Scheduled Tribes.

Art 39 stipulates that the state shall direct its policy towards providing men and women equally the right to means of livelihood and equal pay per equal work.

Art. 42 directs the state to make provisions for ensuring just and humane conditions of work and maternity relief.

Art. 46 exhorts the State to promote with special care the educational and economic interests of the weaker sections of the people and in particular ..the Scheduled Tribes and enjoins upon it to protect them from social injustice and all forms of exploitation.

Art 51 (A)(e) imposes a fundamental duty on every citizen to renounce practices derogatory to the dignity of women.

Art.335 enjoins upon the State to take into consideration the claims of the members of --
the Scheduled Tribes in making appointments to public services and posts.

Art. 244 (1) (2) and the Fifth and Sixth Schedules. The Fifth Schedule lays down certain prescriptions about the Scheduled Areas and Scheduled tribes in states other than Assam, Meghalaya, Tripura and Mizoram by requiring submission of Annual Reports by the Governors to the President of India regarding the Administration of Scheduled Areas and setting up of Tribes Advisory Councils to advise on matters pertaining to the welfare and advancement of the STs. The Sixth Schedule refers to the administration of the Tribal Areas in the states of Assam, Meghalaya, Tripura and Mizoram by designating certain tribal areas as Autonomous Districts and Autonomous regions and also by constituting District Councils and Regional Councils.

2. Political

Arts 330,332 stipulate reservations of seats for STs in the Lok Sabha and in the State Legislative Assemblies. Art 334 envisages these reservations for 60 years from the commencement of the Constitution.

73rd & 74th Constitutional Amendments (1993) has ensured equal access and increased participation in grass root democratic institutions viz Panchayati Raj Institutions and Local Bodies.

Art. 243 D (3) – Not less than one third (including the number of seats reserved for women belong to SC & ST) of the total number of seats to be filled by direct election in every Panchayat

to be reserved for women and such seats to be allotted by rotation to different constituencies in a Panchayat.

Art. 243 D (4) Not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level to be reserved for women.

Art. 243 T (3) – Not less than one-third (including the number of seats reserved for women belonging to SC & ST) of the total number of seats to be filled by direct election in every Municipality to be reserved for women and such seats to be allotted by rotation to different constituencies.

Art. 243 T (4) – Reservation of offices of Chairpersons in Municipalities for the SC & ST, and Women in such a manner as the legislature of a State may, by law, provide.

3. Developmental

Art. 46 has been covered above and Art. 275(1) provides for grant-in-aid for promoting the welfare of Scheduled Tribes and for raising the level of administration of Scheduled Areas.

DISTRIBUTION AND DEMOGRAPHY

Majority of the Scheduled Tribe population of the country (about 85%) is concentrated in a belt extending from Gujarat and Rajasthan in the west to West Bengal in the east through the States of Maharashtra, Madhya Pradesh, Chhattisgarh, Andhra Pradesh, Orissa and Jharkhand. Most of the remaining Scheduled Tribe population is accounted for by the northeastern and southern states. The tribal areas constitute roughly one-fifth of the geographical areas of the country.

As per the 2001 Census the ST population is 84.51 million accounting for 8.23% of the total population. The female population is 41.32 million (without Manipur) (49.43%) and the male population is 42.26 million (without Manipur) (50.57%). The ST female population is 8.33

% of the country's female population of 495.74 million; that is every 12th female in the country belongs to a ST category.

There are more than 698 officially recognized Scheduled Tribe communities in India who span a broad spectrum of socio-economic and socio-cultural levels of development. Some of the tribal communities are at food gathering stage and some others at primitive agricultural stage. There are also tribal groups who have entered modern era in agriculture, industry and the service sector.

Tribal communities living in different regions could be broadly categorized into six administratively recognizable divisions;

(i) North-eastern States comprising Arunachal Pradesh, Meghalaya, Mizoram, Nagaland, Assam, Manipur, Sikkim and Tripura

(ii) Sub-Himalayan region comprising Himachal Pradesh and Uttranchal.

(iii) Central belt comprising West Bengal, Bihar, Jharkhand, Orissa and Chattisgarh.

(iv) Western belt comprising districts of Madhya Pradesh, Maharastra, Rajasthan, Gujarat, Union Territories of Dadra & Nagar Haveli, Daman & Diu and state of Goa.

(v) Southern zone comprising Andhra Pradesh, Karnataka, Kerala and Tamil Nadu

(vi) Island regions of Andaman and Nicobar and Lakshadweep.

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State-wise ST population (*2001*) with the breakup between male and female population is given below: -

CENSUS OF INDIA 2001 SEXWISE

S.N.	State	*P STs 2001	#M STs 2001	$F STs 2001
1.	Andhra Pradesh	5024104	2548295	2475809
2.	Andaman & Nicobar	29469	15127	14342
3.	Arunachal Pradesh	705158	352017	353141
4.	Assam	3308570	1678117	1630453
5.	Bihar	758351	393114	365237
6.	Chhattisgarh	6616596	3287334	3329262
7.	Chandigarh	0	0	0
8.	Dadra, Nagar & Haveli	137225	67663	69562
9.	Daman & Diu	13997	7190	6807
10.	Delhi	0	0	0
11.	Goa	566	299	267
12.	Gujarat	7481160	3790117	3691043
13.	Haryana	0	0	0
14.	Himachal Pradesh	244587	122549	122038
15.	Jammu & Kashmir	1105979	578949	527030
16.	Jharkhand	7087068	3565960	3521108
17.	Karnataka	3463986	1756238	1707748
18.	Kerala	364189	180169	184020
19.	Lakshadweep	57321	28611	28710
20.	Madhya Pradesh	12233474	6195240	6038234
21.	Maharashtra	8577276	4347754	4229522
22.	Manipur	**930582**	Not available	Not available
23.	Meghalaya	1992862	996567	996295
24.	Mizoram	839310	422963	416347
25.	Nagaland	1769561	910950	858611
26.	Orissa	8145081	4066783	4078298
27.	Punjab	0	0	0
28.	Pondcherry	0	0	0
29.	Rajasthan	7097706	3650982	3446724
30.	Sikkim	651321	328917	322404
31.	Tamil Nadu	111405	56940	54465
32.	Tripura	993426	504320	489106
33.	Uttaranchal	256129	131334	124795
34.	Uttar Pradesh	107963	55834	52129
35.	West Bengal	4406794	2223924	2182870
	INDIA	84511216 without manipur 83580634	42264257 without manipur	41316377 without manipur

*P= for Person
M= for Male
$ F =for Female.
Note-Population of Manipur according Sub-Plan (Manipur) estimated.

EMPOWERMENT (SWAYAM SIDHA)

Women and children constitute 65.6% of the country's population and account for 673.80 million as projected in the 2001 census. Women alone accounts for 495.74m representing 48.3% of the population Out of this 41.32m (2001 census without Manipur) or 8.3% belong to the ST. Taking these figures into consideration and for the overall benefit/advancement of the country, the empowerment of women and development of children should be given significant priority in our development agenda. STs being at the bottom deciles of the Indian society, their position is far worse and need special attention. There is no doubting the fact, that there is an increasing awareness for the need to improve the status of women. As pointed out in the earlier paragraphs, the principle of gender equality is enshrined in the Constitution. Though, the development of women has been a focus area from as far back as the Fifth Five Year Plan however, there still exists a wide gap between the goals enunciated and the situation on the ground. The position of the weaker sections including the Scheduled Tribes, majority of whom are in the rural areas and in the informal and unorganized sectors is particularly pathetic. Their access to education, health and socio-economic resources among others is grossly inadequate.

The National Policy for the Empowerment of Women has been described as a landmark achievement. The main objectives of the Policy are the advancement, development and empowerment of women; elimination of all forms of discrimination and ensure their active participation in all spheres of life and activities. It also prescribes affirmative action taking into account the new developments initiated by the process of economic reforms and the impact of globalisation and liberalization particularly in the informal sector. The Department of Women and Child Development is in the process of finalizing a Plan of Action with achievable goals by the year 2010. The POA will also identify commitment of resources, responsibilities for implementation, structures for monitoring and strengthen institutional mechanisms. **It is urged that while formulating this Plan of Action, the distinctive features of the tribal women's life and her place in the different tribal societies must be reflected in order to ensure full implementation of the Plan. There is an urgent need to have a separate division/section on ST women.**

The following paragraphs will deal with various sectoral issues, that should help towards the advancement, development and empowerment of women in particular tribal women.

(a) Education

Literacy level among the ST females is indeed serious and unless strenuous efforts are made this group is unlikely to garner benefits of developmental investments made in other social and economic sectors. Conversely, the observation that those Scheduled Tribes, which acquired education "have more awareness of their situation and take maximum advantage of the privileges given to STs under the Constitution. They have also taken up leadership of their own tribes,"[2] succinctly reinforces the fact that education is the key to empowerment; it brings about awareness of one's rights and catalyses overall development.

The literacy rate among the rural tribal population is considerably lower than those of their counterpart non-tribal population. The Scheduled Tribe literacy rate, according to the 1991 census, is only 29.6 %; the female literacy rate among the group is a low 18.19%(ranging from 4.42% in Rajasthan to 78.7% in Mizoram –i.e the lowest and the highest female literacy rate is among the tribal women) against the all India average female literacy rate of 39.29%. Added to the low literacy rate is the alarming drop out rate. The drop out rate of ST girls in different stages of school education has been estimated, sometime back, to be approximately 68.73 in primary, 81.45 in middle and 89.91 in secondary stages. State wise data reveal that AP, Bihar, Meghalaya, Tripura, Gujarat, M.P. Maharashtra, Orissa and Rajasthan had more than 90% dropout at secondary stage.

[2] Tribal Women in Development - Dr. Lipi Mukhopadhyay (Chp. 10 Pg 72).

The States and UTs could be grouped into 6 categories as below according to the range of ST female literacy:

Range of literacy level	States/ UTs
(1) Above 70%	Lakshadweep, Mizoram
(2) 60-70%	Nil
(3) 50-60%	Kerala, Nagaland, Sikkim
(4) 40-50%	Andaman & Nicobar Islands, Daman& Diu, Manipur, Meghalaya
(5) 30-40%	Assam, Himachal Pradesh
(6) 20-30%	Arunachal, Goa, Gujarat, Karnataka, Mahahrastra, Tamilnadu, Tripura
(7) Below 20%	Andhra Pradesh, Bihar, Dadra & Nagar Haveli, Madhya Pradesh, Orissa, Rajasthan, Uttar Pradesh, West Bengal

From the above table it will be seen that only 5 States/UTs have more than 50% of their ST females as literates. At the other end 8 States/UTs have ST females with less than 20% literates. Only 9 States and UTs (A&N, Daman & Diu, Kerala, Lakshadweep, Manipur, Meghalya, Mizoram, Nagaland, and Sikkim) having only 6.45% of the total ST female population of the country ranked equal to or above the all-India average female literacy rate (39.29) for total population.

While it can be said that about 70-90% of ST population clusters in various States have primary schools within a radius of 1km distance "there is no uniformity in the enrollment ratios among the States and there is wide variation when the primary and middle schools are compared. It is always much less enrolment in middle schools as compared to primary schools, instead of increasing the enrolment ratios, over the years, it has been on the decrease in many of the states. It can also be inferred that girls education has been neglected mostly at the middle school level for various reasons".[3]

[3] Ibid (pg 73)

The major reasons cited by Commissions and Sociologists who have examined the problem at various points of time are:

1) Poor economic conditions of parents, lack of proper equipment in schools and communication facilities, unsuitable school medium of instruction, inappropriate content and coverage of syllabus.
2) Lack of special textbooks, need for medium of instruction through local language, sufficiently and efficiently trained teachers.
3) Tribal children live in isolated areas and can hardly assimilate information about history and geography of the country, or outdated stories and personalities unknown and unheard of in tribal areas.
4) Process of implementation of different incentives not effective. There should be a common environment to both tribal and non-tribal students when setting up educational institutions and hostels.
5) School hours and holidays not convenient.
6) Educational institutions in tribal areas not equipped with proper facilities and equipment and run by unsuitable teachers and not properly maintained.
7) Ignorance and reluctance of parents, family environment, unhappy school atmosphere and medium of teaching through unfamiliar language.

From the above, it can be seen that even after 50 plus years, the reasons cited for low literacy levels still remain, although equality of access to education, including higher education is a fundamental right as per Supreme Court Judgement in 1992 (Mohini Jain Vs the State of Karnataka). Besides, free and compulsory education to all children below 14 years is a Constitutional directive. "The National Policy on Education, 1986 and Programme of Action 1992, have perceived education as fundamental to all round development of children and stipulate free and compulsory education of satisfactory quality to all children upto 14 years of age. The National Policy on Education also emphasizes universal enrolment of children and is directly addressed to setting right the traditional gender imbalances in education ----- further strengthen the commitment made in the constitutional provisions and lay special emphasis on education of the girl child. In the expanded vision of education that emerges, the most important

key element is making girl's education a major priority."[4] The National Perspective Plan, 1998 also laid emphasis on the importance of educating girls. However, despite this, the male-female disparity continues and the ambivalence regarding the importance of women's education remains; the mind-set has to change. This disparity is even more amongst the tribals. Much more needs to be done to raise the literacy levels. Education brings about awareness which leads to empowerment. As such education for girls must be given top priority. Efforts have to be made to address the socio economic and cultural obstacles. Parents have to be motivated through appropriate campaigns as also financial compensation to send their children to school. The Government, on its part has to set up schools at all levels. Most of the tribal children are from remote and rural areas. Schools particularly primary, should be located within walking distance of the child's home. Ashram or residential schools serving a cluster of villages should be established. Provision for hostels in the middle, higher secondary, college and university levels must be made. Book Banks must be made available for students who cannot afford expensive textbooks. Special coaching classes should also be organized.

During the Commission's tour to tribal areas, it was noticed that in areas where the economic status was better, all school going children were at school. Obviously, key factors for school enrolment, attendance and retention are closely linked to economic development, household incomes and poverty. **In order to ensure attendance and prevent dropouts, incentives, such as mid-day meals, financial support, free uniforms and books must be provided.**

More often than not the girl child has to help at home. They are entrusted with the domestic responsibilities of fetching fuel, fodder, water, as also looking after their siblings. Schools, therefore, have to be responsive to the girl's need from physical location, convenient timings, curriculum and ancillary facilities like drinking water, toilets etc. Childcare facilities should also be made, to relieve them from their siblings responsibilities. Anganwadis should be opened in each village even if the number of children are less than 10 to 15. A local community girl who has passed 5-7 class could be selected, trained and deputed as a teacher, with a nominal honorarium. For those who remain outside the formal

[4] Annual Report of the Department of Women and Child Development 2002-2003- (pg. 60)

system, non-formal education may be more relevant. This could be specially designed and made functional. Panchayats and local bodies should be roped into assisting.

A number of schemes are operating some of them are relevant to tribal areas. These should be extended to tribal areas if not already done. To name a few –

Sarva Shiksha Abhiyan (SSA) was initially to be implemented in low female literacy districts only, however it has now been extended to all districts in the country. A new scheme of National Programme for Education of girls at Elementary level has been launched under SSA with additional interventions for the blocks having female literacy below the national average and gender gap above national average. According to Ministry of Human Resource & Development 2656 blocks with low SC & ST female literacy have been covered. The scheme is yet to be evaluated. STs should be separately covered. Depending on the results further expansion should be undertaken. The National Council for Teacher Education in collaboration with IGNOU developed a programme entitled "Certificate in Primary Education" of six months duration through distance mode. This programme is targeted at untrained primary teachers working in the state-run schools in the northeastern states including Sikkim which have sizeable tribal population. This is aimed at meeting the shortage of trained teachers at primary stage of education. Another scheme which may be considered is that instead of outside teachers local persons who have passed 10th standard may be employed with an honorarium. Teaching in the mother tongue upto 4th standard maybe made compulsory.
During the tours of the Commission, the shortage/absence of teachers was observed. **These schemes should be extended to all parts of the country which will help towards meeting the shortage of teachers as well as generate employment.**

The Mahila Samakhya Scheme is in operation in rural areas covering women from socially and economically marginalized groups. It is basically an empowerment programme - which obviously includes STs. The districts and blocks taken up in this scheme are those with the highest figures of gender disparity and lowest female literacy rates. The scheme according to Ministry of Human Resource & Development covers 12,024 villages in 58 districts of Andhra Pradesh, Gujarat, Karnataka, Bihar, Assam, Jharkhand, Uttaranchal and Kerala. The programme

has enabled women's collectives to address the larger socio-cultural issues that have traditionally inhibited the participation of women and girls in the education system. Through its strategy of building grass root women's organizations, the scheme has created a forum and an environment for women's education at the community level. The scheme needs to be evaluated and thereafter extended to other states and thus help in the process of improving the dismal lot of women, particularly tribal women in rural and remote regions.

Vocational training must be given importance. The involvement of girls in vocational educational programmes is crucial. They must be encouraged to participate in non-traditional and emergent technologies. There is an urgent need to extend, particularly in tribal areas, the existing network of regional vocational training centers. Provision should be made for the STs in the Women's Industrial Training Institutes and Women's Wings with General Industrial Training Institutes with residential facilities. These Institutes are required to be set up in more districts and sub-districts. Vocational Training should be in marketable skills. Studies on skills for which a demand exist or are likely to arise, require to be commissioned.

In the tribal sub-plan, efforts have been directed towards education and special attention has been made towards female education. There is also a scheme for construction of girls hostel for which the center allocates 50% of the outlay. **More such hostels should be constructed so as to motivate the parents to send their daughters to school.**

Much thought and planning has gone into devising schemes for education including for girl child and women. However, implementations on the ground and results have fallen short of expectation. Schemes of incentives based on results could be thought of.

(b) Health & Nutrition

Majority of the Scheduled Tribes Community in the country have, in general, failed to benefit in any significant measure from the developmental efforts in various spheres including health.

The following observations in the matter of health care of tribals in general and tribal women in particular have been made in Reports, Studies, etc.

1. Despite the existence of quite a vast net work of institutions to study and research ST communities, there is dearth of information concerning the health status of Tribal Women. Whatever data are available are fragmentary, scattered and isolated. There is, for eg, hardly any study on maternal mortality among the tribal population. Different studies on the health concerns of different communities at different times have been made but composite study / picture is lacking.
2. The nutritional problems of different tribal communities located at various stages of development are full of obscurities and very little scientific information on dietary habits and nutritional status is available due to lack of systematic and comprehensive research investigations. Maternal malnutrition which is quite common among the tribal women is also a serious health problem. The linkage of forests cover with nutrition may be mentioned. Deforestation has affected nutritional status of the tribals. Disturbance of tribals' habitation and eco-systems has had deleterious effects on their health as has the uncontrolled use of pesticides .
3. Tribal people are prone to diseases such as Malaria, Filaria, TB, Yaws, STD, sickle-cell-anemia. As tribal women work hard even during advanced stage of pregnancy, they suffer from different types of gynecological disorders.
4. Due to large scale deforestation, tribal women have to walk longer distance and work much harder to gather provisions for basic necessities like food, fuel, medicine, housing material etc. from the forest. This adds to their work load and physical and mental strain.
5. The nutritional levels of the tribal people varies from tribe to tribe depending upon their socio economic and ecological background. However their dietary habits and nutritional

levels are grossly inadequate. In fact, most women suffer from nutritional anemia that lowers resistance, fertility and working capacity and increases susceptibility to diseases.

6. Tribal women enjoy high social status in tribal societies, but they have low health status. The women folk work in the fields, forest, and at home as much as 15-16 hours a day. Even during pregnancy and postnatal stages, they work hard. They have a negative energy balance, high morbidity and low output.
7. The infant mortality rates and general morbidity rates have remained high in India, particularly in tribal areas because of the lack of well coordinated health care and family welfare services. The health care services are not only scarce, their quality is questionable. This has a negative impact on family welfare planning program.
8. In the tribal areas the objective of empowering women with a view to developing their decision- making capabilities concerning fertility has special relevance. The objective will be served only if, in addition to literacy and gainful employment, they have reasonable access to a range of reproductive services and child health services.
9. It is hoped that the Panchayati Raj Institutions would infuse a fresh élan to the family planning program.
10. The approach to family planning program in the tribal areas need to be examined afresh. Different Scheduled Tribe Communities in the country are in different stages of socio-cultural and economic development. As such the approach in the matter has to be observed carefully after a correct comprehension of the situation on which appropriate tribal population policy can be built. This policy should be Scheduled tribe Community specific, oriented to the democratic and socio-cultural milieu of each tribal society.

The special health needs of women and the girl child, which includes tribal population, is recognized. The reduction of infant mortality and maternal mortality, which are sensitive indicators of human development, is a priority concern. There are many indicators to point out that the neglect of health needs of women, specially that of pregnant women, adolescent girls and girl babies is responsible for the present high rate of IMR/ CMR/ MMR. A holistic approach which includes both nutrition and health needs of women and the girl child at all stages of the life cycle must be adopted. Taking into account the multiple roles including physical labour that tribal women living in the backward rural areas have to shoulder, efforts should be made to

ensure that the health services become more responsive towards women-specific health problems. In this direction, women must have access to appropriate, affordable and user-friendly health care services. Primary health care services should be extended and priority should be given to the rural and urban poor living below the poverty line.

Malnutrition and disease is the bane of the tribal women. Focused attention needs to be made in meeting the nutritional requirement of women at all stages of the life cycle. Intra-household discrimination in nutritional matters vis-à-vis girls and women must be tackled. Widespread nutrition education ought to be introduced. Women's participation in the planning, supervision and delivery of end service should be encouraged and supported.

During the tours of the Commission, the inadequacy of the infrastructure for health services was observed. Medical care remains inaccessible to large sections of the population, particularly in the remote and rural areas, where the majority of the tribes reside. Government has laid down norms for the network of sub-centers, primary health centers and community health centers. However, there is a severe shortfall. The inadequacy of manpower in the rural primary health care institutions, with vacancies and absence of staff in critical posts has very serious implications for the health care of the people. Large numbers of posts remain vacant due to slow recruitment and unwillingness of the selected persons to report in the rural duty posts. Government must devise incentive schemes, (financial, good housing facilities, educational arrangement for their children etc.) for posting to difficult stations. Special training for local dais should be given top priority. Local youth from remote villages could be selected and basic health training for a short period may be given. They should be supplied with a medical kit for first aid treatment. Mobile clinics should be introduced for remote areas. What is most essential is the proper implementation of these schemes.

The infant mortality rate is very high among the tribals. Major health problems of the females occur during pregnancy, childbirth and lactation, mostly due to unhygienic conditions. The ICDS programme is expected to provide a package of services covering nutrition, education and immunization of children. However, better coordination and monitoring is required for the proper implementation of the schemes.

Traditional medicines should be encouraged. However, with the restrictions imposed by the various Forest Acts collection of herbal medicines is becoming difficult. Government is urged to address this problem. Loss of traditional systems and knowledge can be an irreparable national loss, all out efforts must be made to keep them above.

(c) Economic And Work Scenario

One of the means of improving the status of women, like that of any sector of the population, is by strengthening their economic sinews. However, women's economic strength in India is far from satisfactory and there is a long way to go, particularly in the face of a societal mindset that discriminates against them. It cannot be gainsaid that changes have been taking place; but that is restricted mainly to the urban and semi-urban areas where education, technology and training have given women skills with which they have seized new opportunities. It is, however, only a thin veneer of the upper strata of Indian women who have been absorbed into the modern sectors like medicines, management, civil services, engineering, technology, etc. Tribal women, however, are few and far between in these modern professions. The rural societies to which the majority of tribal women belong are, by and large, still tradition bound and both education and opportunities have been denied them. At the same time, one must not overlook or underestimate the contribution of tribal women to tribal economy, brought out in a number of studies by sociologists and anthropologists.

The tribal scenario should cause us to pause and reflect on our approach to tribal women. In the first instance, she has been ignored by the development process. In the Sixth Plan (1980-85) the shift from "welfare" to "development" of women was recognized. "Empowerment of Women" became one of the primary objectives of the Ninth Plan where the approach was to create an enabling environment where women could freely exercise their rights both within and outside the home as equal partners along with men. This is a far cry as far as tribal women are concerned. "Even the Tribal Sub-Plan designed to focus squarely on the tribal people never got down to focus genderly. From the vantage hindsight perspective one can see that the facile assumption that once the development process got into the stride the fruits would flow on tap for

tribal men, women and children alike, was flawed. It can now be argued that development formulations should have appreciated the gender differentials and should have, therefore, created the apposite planning strategies. Nevertheless, the time has now come to consider the matter in the correct perspective. Plans, programmes and schemes should scrutinize gender wise implications and make requisite appropriate provisions. Due discrimination needs to be exercised. Taking the example of agriculture, the extension agencies spotlighted the male. The tribal female has been out of the picture, notwithstanding the fact that she is dominantly involved in sowing, transplantation, weeding, cutting, harvesting operations. Her role in forestry is even more preponderant. In fact, part of the failure of the total planning strategy may lie in the sidetracking of the female. Secondly, the tribal female is an overworked person and is conservative by nature. Her birth in a tribal society confers on her certain advantages. As compared to her sister in non-tribal societies, relatively speaking, she is not suppressed or confined. She has the freedom to walk with gait erect in the expanses of the hills and dales. She can participate in the deliberations of her community more than the non-tribal female can. All these endow her a position and status in her society which have been overlooked by planners."[5]

According to UNDP Administrator James Gustav Speth "sustainable development is people centred, participatory, pro-poor and therefore pro-women." Recognition has to be accorded to the largely sustainable modes of economic activities of the tribal societies. Whether it is farming or forestry, they have been practising such modes. An overwhelmingly favourable land-man ratio formed the base. Even shifting cultivation called Podu in Orissa, Jhum in the Northeast and by other names in different tribal regions of the country and branded as anti-ecological by some, has not been really harmful in the past, because of the relative abundance of land and longer Jhum cycle. The tribal customs, beliefs and traditions have been geared to maintain the balance between their needs and preservation of natural resources. Tribals have been champions of sustainable development and among them, the women have been the chief protagonists. It is through their patient, prolonged labour that stone terraces have been built, contour bunds and ridges constructed, alder and other soil binding devices planted. The role of tribal women in the minor forest produce component, which can be as high as upto 60% in the total household income budget, has not been precisely evaluated, but it is seen as preponderant.

[5] Report on Tribal Women and Employment, National Commission For Women, 1998 – (pg.9-10)

But the dwindling forests are a cause of concern, as it has robbed them of a sizeable slice of household income, which have traditionally been added by the women.

Commercial exploitation of tribals is rampant. Tribal commodities are purchased at cheap rates and the middle-man makes huge profits. "All government efforts to shield them from exploitation through interventionist strategies like establishment of fair price purchase and sale shops, LAMPS, PACS, Tribal Development Corporations, Forest Development Corporations have borne little fruits owing either to lack of understanding of tribal mores by government officials manning them, or plain bad intent. Certain State Governments have entrusted procurement of minor forest produce items from tribals, which really means from tribal women at rates dictated by these organizations. The original intention presumably was to protect tribal women from exploitation. But in practice, these government organizations have been acting as monopolist middle-men. The freedom to sell MFP items in the market without the obligation to sell them to a particular organization is likely to benefit, tribals. Government organizations should, however, continue to operate as one of the players but not as a monopoly procurement agency. In other words, Government should play merely a salutary interventionist part" [6]. This is an urgent requirement.

Women are deeply involved in the conservation of the environment and control of environmental degradation. The vast majority of rural women still depend on the locally available non-commercial sources of energy, such as animal dung, crop waste and fuel wood. Non-conventional energy resources such as solar energy, biogas, smokeless chulahs have to be encouraged. Women have also taken keen interest in the conservation and restoration of forests. The Chipko movement led by the women has contributed to control felling of trees. The Innovative Women Farmers Club of Chinchpur, Gujarat has changed the face of agriculture in the village and brought success and prosperity in their village. Though there are other such success stories but barely enough. Women have to be encouraged and motivated to take the initiative to push ahead.

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[6] Ibid – (pg. 48).

There are a number of **programmes and schemes** formulated by the Government aimed towards empowerment of women. These would, no doubt, be beneficial for women in general. However, it is hoped that the benefits will reach the tribal women who live in the geographic and societal fringe. No data is available on this.

The following schemes would be particularly beneficial for the tribal women and should be given extensive coverage in the tribal areas.

Swayamsidha: - An integrated programme for women's empowerment with the concept of convergence of all women related schemes of the State and Central Government at the block level through Swayamsidha through the network of Self-Help Groups of Women. It aims to create confidence and awareness among the members of the SHGs regarding women's status, health, nutrition, education, sanitation and hygiene, legal rights, economic upliftment and other social, economic and political issues, help in accessing micro credit and involve women in local level planning. With sufficient support and motivation the SHGs should do well. During the Commission's tours in different states excellent work done by the SHG's in energy, entrepreneurship, agriculture, horticulture, plantation, etc. was observed. Networking is very essential for the SHGs in the different regions to learn from each other's experience, this should be encouraged.

Swa-Shakti Project also known as the Rural Women's Development and Empowerment Project. Started in 1998 it aims at setting up of self-reliant Self Help Groups (SHG) and developing linkages with lending institutions to ensure women's access to credit facilities for income generation activities. Thus ensuring better quality of life. This is particularly suited for tribal women and should be extensively propagated.

The Musahar women in Bihar were mobilized under this scheme and have greatly benefited from it. So also the Gollas of Karnataka and the Birhors of Jharkhand. The transformation is gradual but it is a move forward. More primitive and backward tribes must be brought within its fold.

Support to Training and Employment Programme for Women (STEP) –

This programme was launched in 1987. Women beneficiaries are organized into viable and cohesive groups or co-operatives. A comprehensive package of services such as training, extension, infrastructure, market linkages etc are provided besides linkage with credit for transfer of assets. Thus the women's traditional occupations such as agriculture, animal husbandry, dairying, fisheries, handlooms, handicrafts, khadi and village industries, sericulture, social forestry and wasteland development have been enhanced and helped them in their income generation. These are the sectors of tribal's involvement, and the scheme must be extended to them extensively. Tribal women's Cooperatives can play a key role in their economic advancement.

Swawlamban launched in 1982-83 with the assistance from the Norwegian Agency for Rural Development (NORAD) may provide training and skills to women to facilitate them to obtain employment or self-employment. The target group includes tribes. Financial assistance is provided to women's development corporations, autonomous bodies and voluntary organizations to train women mostly in non-traditional trades and to ensure their employment. Some of the popular trades under the programme are computer-programming, medical transcription, electronics, watch assembling, radio and television repair, garment making, handloom weaving, secretarial practice, community health work, embroidery etc. This scheme helps in opening up new opportunities for the tribal women and accelerate their upliftment.

Agriculture and Land Management

As the majority (89.5%) of the female work force is concentrated in the agricultural sector, they are often marginalized, first as women and second as landless labourers with no inheritance rights of land or other productive assets. Thus Government has to ensure effective implementation of land reform legislations, ceiling and distribution of surplus land, issue of joint pattas etc. Special training should also be conducted in soil conservation, social forestry, dairy development, agriculture and its allied activities of horticulture, small animal husbandry, poultry, fisheries etc and also in the latest technology which will help women in meeting the market demands.

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Non-Agricultural Sector

Different tribal communities produce their own distinctive handlooms and handicrafts which are attractive and of great artistic value. These could be cloth for everyday wear, shawls, rugs, carpets etc. Each community has its own pattern, designs or colour which distinguishes them from each other. The tribals of the north-east produce beautiful and colourful hand woven textiles. The Arunachalis weave exquisite carpets. The Bhotias of U.P and the Spitians and Lahaulis of H.P. are known for their wool-work. The Bondo, a primitive tribe of Orissa produces a textile made from a fibre plant found locally. The Todas of the Nilgiris create their own unique clothing. The Bhils of Central India make Beed clothing while the Banjaras of the north and south make colourful dresses with in-land mirror work. Apart from handlooms, the tribal women are engaged in arts and crafts. These could be utility, religious or decorative objects such as baskets, vessels, combs, headgear, musical instruments, jewellery and ornaments etc. Unfortunately not much data is available on the quantum of production or to what extent the production of these items appropriates the family's time, labour and income. It is important to preserve these traditional crafts. Improved technologies should be infused to bring about greater efficiency and production. The tribals should be allowed to decide on the appropriate technology. Numerous examples are available, Tribal women are making leaf plate and cup by machines in Mayurbhanj in Orissa. In Ranchi district of Jharkhand reeling of tassar cocoons is done both manually and mechanically. Therefore, it is essential to make concerted efforts to develop appropriate technologies suited to tribal women's needs so as to reduce their drudgery and also help towards their economic empowerment.

There is need for greater involvement of women in science and technology. Girls should be motivated to take up science & technology for their higher studies. Special training should be conducted in areas like communication and information technology. This will, in the long run, bring about a greater bonding amongst the different tribal groups.

Industry – Women must be encouraged to equip themselves with the necessary professional / vocational skills in sectors such as electronics, technology, food-processing, agro-industry and textiles which are crucial to development. They have to be trained to make entry into newer areas. Suitable support services such as child care facilities, transport, security etc must be provided.

Unorganised / Informal Sector – Women and majority of the tribals account for more than 90% in the informal sector. Efforts must be made to ensure that they are provided better work conditions and welfare services. As per the constitutional commitment they must get "equal pay for equal work."

Rashtriya Mahila Kosh – Set up in 1993 as a national level mechanism to meet the credit needs of poor and asset less women in the informal sector has established its credentials as a premier micro-credit agency. It has helped to popularize the concept of micro-financing, therefore, credit, formation and stabilization of SHGs and also enterprise development for poor women. Tribal women's cooperative groups will greatly benefit from Rashtriya Mahila Kosh.

Women's Component Plan – The Tenth Plan promises to make the Women's Component Plan more effective by identifying schemes and programmes of various ministries/departments. It will also direct that 30% of fund / benefit are earmarked in all women related sectors. Also the flow of funds will be monitored to ensure that the strategy of empowering women is a multi-sectoral approach towards holistic development and advancement of women. It may be useful to extend this concept to a ST Women's Component Plan incorporating therein the share of resources for the ST women with linked policies, programmes and schemes.

Legislation – It has been stated earlier that the Constitution of India grants equality to women and also empowers the State to adopt measures of positive discrimination in favour of women. The preamble speaks of equality of status and opportunity and of social, economic and political justice. The Fundamental Rights, among others, ensure equality before the law, equal protection of law, prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth. The Government has enacted several women specific and women related legislations to protect women against social discrimination, violence and atrocities and also to prevent social evils like child marriage, dowry, rape, etc. Such acts as Equal Remuneration Act of 1976 and the Prevention of Atrocities Rules of 1995, just to name a few, have not prevented discrimination against women. Various reviews reveal the low status of women on many counts and there is a wide gulf between what was intended in the Constitution and what prevails in practice.

For the tribal regions the traditional and customary laws have their due importance. Although, the tribal women have a high status in their community and their role (hard work) towards the family and community is recognized and invaluable, however, the customary laws are not necessarily in their favour, particularly on the issues of inheritance, divorce, economic independence, local governance, etc. Even in the matriarchal societies where the women's role is vital, the status is not much better. These laws need to be reviewed and changes brought about so that the tribal woman is allowed to progress. Of course, changes in social attitudes and institutions cannot be brought about by legislative fiat or brought about overnight. But the Government and the Community, through women's organizations and voluntary organizations should mobilize public opinion and help towards changing some of the oppressive ways and systems. This could lead towards greater equality.

The National Commission of Women, a statutory body set up in 1992, safeguards the rights and interests of women. The NCW has reviewed 32 of 41 legislations having direct bearing on women and have suggested remedial legislative measures. NCW has also requested the State Governments to reserve a certain percentage of resources for women even at village programmes for water supply, health services, nutrition, sanitation etc. It has also organized workshops for tribal women thus helping towards greater awareness about each other. Networking amongst tribal communities should be a priority.

Political Status

From the dawn of independence, women in India were granted equal political rights as men, including the right to vote and the right to hold public office. This was an extension of the women's large-scale participation in India's freedom movement. Article 326 of the Constitution guarantees political equality to women and Article 325 prohibits exclusion from electoral role on the basis of sex.

Women have through collective movements, effected changes in their circumstances, such as social movement against alcoholism, (which is a real scourge in the rural/tribal areas), trafficking of drugs, gambling etc. As mentioned earlier the Chipko Movement has helped in

safeguarding of forest wealth. The Total Literacy Campaign in Andhra Pradesh has resulted in prohibition throughout the State. This also happened in some other states. While women have been in the forefront in various movements, their presence has not been strongly felt in decision-making institutions. However, they have participated in the political process, as voters, candidates and members in the State Assemblies and Parliament. They have also held office at different levels. At the individual level they have reached positions of power and influence as Prime Minister, Chief Minister, Ambassador etc. However, the majority of them have been marginalized, more so amongst the tribals.

The 73rd and 74th Constitutional Amendments in 1993 were historic and brought forth a definite impact on the participation of women, in terms of absolute numbers, in grassroot democratic institutions viz Panchayati Raj Institutions and Local Bodies. The significance of these amendments is to be seen not only in the decentralization of powers but in cession of power to women, assigning them a third of the membership in the Panchayats and their Presidencies and in proportion for the Scheduled Castes and Scheduled Tribes. Holding of periodic elections to the local bodies is mandatory, so that there is democratic renewal of reservations. The response to this strategy has been successful. " Of the 475 Zilla Parishads in the country, 158 are being chaired by women. At the Block Level, out of 51,000 members of Block Samitis, 17,000 are women. In addition, nearly one-third of the mayors of the Municipalities are women. In the elections to PRIs held between 1993 and 1997, women have achieved participation even beyond the mandatory requirement of 33 ⅓ percent of the total seats in states like Karnataka (43.45 per cent). Kerala (36.4 per cent) and West Bengal (35.4 per cent). However, the all India figures for women show that their representation in 2001 is still low." [7]

[7] 10th Five Year Plan – 2002-2007 (pg. 235)

Women in Panchayati Raj Institutions (1995-2001) [8]

Year	Women	Men	Total
(1)	(2)	(3)	(4)
1995#	**318 (33.5)**	630	948
2001@	**725 (26.6)**	1,997	2,722

Note: Figures within parentheses indicate percentage to total.
Data refers to 9 states – Gujarat, Haryana, Karnataka, Kerala, Madhya Pradesh, Punjab, Rajasthan, Tripura and West Bengal.
@ For whole of India. (As on 18.10.2001).

The challenge now is to transform this large presence into effective participation supported by real delegation of powers and responsibilities. This is what the women's movement has been demanding for a long time. The National Policy for the Empowerment of Women has also given a strong emphasis to efforts to increase the critical mass of women in decision making at all levels by calling for continued affirmative action to make this happen. Certainly doubts have been raised about the capability and availability of women for elections to the local bodies. However, as stated above, experience has disproved these doubts. At the same time, women members are often confronted with problems of gaining recognition from their peers and the bureaucracy. Often they have been accused of being the front for their menfolk. Being aware of their lack of experience and lack of exposure, they look to the Government and voluntary organizations for support, guidance and training. During the Commission's tour, the women's organizations emphasized the need for training. They were aware of their responsibilities and felt that with proper orientation, their role in the PRIs would be effective and informed. Quite a number of NGOs and other training institutions are imparting training to women. More should be done. Studies indicate that women have a greater perception of the needs of the village. They, therefore, are prioritising provision of drinking water, education, health, hygiene, establishment of mother and child care centers, road constructive, check dams, etc in executing developmental works. They have also been active in campaigns and drives against alcoholism. When more and more women are positioned at various levels of decision-making it is bound to have a definite impact on public policy and societal benefit.

[8] Ministry of Rural Development, GOI, New Delhi

There has also been a demand from various sections including political parties, NGO etc to reserve seats for women in the state legislatures and the National Parliament. A Bill (85th Constitutional Amendment) seeking to institute one-third reservation for women in Parliament and State legislatures is under consideration, but its passage has proved difficult.

Conclusion

From the above, it is apparent that if equality and gender justice is to be ensured, women will have to be socially, economically and politically empowered. Education is the key to social empowerment as it generates awareness and helps them to realize their own potential. For economic empowerment, they have to given vocational training in appropriate skills including managerial and entrepreneurial, then provided employment and income generation activities, access to micro-credit and given greater visibility. For political empowerment there is need for affirmative discrimination and their presence ensured in decision-making bodies and services so that their voices are heard. For the tribal women, Government assisted by the voluntary organizations/institutions will have to make concerted efforts to bring them out of their isolation and misery. It will not be easy nor rapid, but change has to take place and the tribal women given their due place in the Indian milieu.

TRIBAL POLICY

According to the 2001 Census, the population of scheduled tribe in the country was 8.45 crores, representating 8.14 % of the country's total population of 102.70 crores. There are 698 scheduled tribe communities spread all over the country mostly in far-flung areas, barring some states and UTs like Chandigarh, Haryana, Pondicherry and Punjab. Each of them has its own unique cultural characteristics, common outstanding among them being communitarian spirit. More than 75% of them live in Scheduled Areas notified by the President from time to time. Seventy-five of the 698 scheduled tribe communities have been identified by the Government of India as primitive tribal groups, considering their pre-agricultural stage of economy, backwardness, very low literacy-rates, stagnation or declining population etc.

2. The National Policy should recognize that a majority of the scheduled tribes experience continued vulnerability to exploitation, live below the poverty- line, have poor literacy rates, suffer from ill-health and mal-nutrition, have been victims of displacement. At the same time, their contribution to maintenance of ecology, economy, indigenous knowledge, culture has been of no mean order.

3. The list of Scheduled Areas should be reviewed to add to or abstract from it such areas as require fresh consideration.

4. Specific attention to raise the socio-economic levels of the scheduled tribe communities has been directed through the procedure of the Tribal sub-Plan which commenced in the Fifth Five Year Plan (1975-80). It calls for aggregation of all available financial resources from the State and Central Ministries as well as non-State resources, at the level of integrated tribal development projects (ITDPs)/integrated tribal development agencies (ITDAs), and concerted and coordinated execution of sectoral programmes and schemes with the help of such resources at that level. The ITDPs/ITDAs should be headed by officers of the Indian Administrative Service or Indian Forest Service. So far, the involvement of scheduled tribes in the process has been inadequate. In recognition of this, the Tribal Policy should ensure that the plans and programmes are prepared by the ST communities themselves commencing from

below, i.e from the Gram Sabha/village councils Gram Panchayat level moving upwards through Panchayat Samitis to Zilla Panchayats and State levels.

5 The Constitution in its Article 243G enjoins that the Panchayats have to be endowed through state legislations such powers and authority as may be necessary to enable them to function as institutions of self-government and the concerned law may contain provisions for the devolution of powers and responsibilities upon Panchayats for the preparation of plans for economic development and social justice as well as implementation of related schemes. Further, the Provisions of the Panchayats (Extension to the Scheduled Areas) Act 1996 calls for approval by the Gram Sabha of plans, programmes and projects for social and economic development before being taken up for implementation by the Panchayat at village level. Importantly, the Act confers powers on the Panchayats and Gram Sabhas of control over local plans and resources for such plans, including Tribal sub-Plan.

6. Steps will be taken to prepare a Project Report for every ITDP/ITDA in the country. The need-based project reports will reflect balanced inter-sectoral programmes relative to the natural resource endowment in the ITDP/ITDA area, the skills and aptitudes of people and resource availability. The Tribal sub-Plan for a state will represent an aggregate of the various project reports, articulating in sum priorities, needs and aspirations of the tribal people in the state, duly matched to the financial resources available. At the national level, the concerned Ministries will prepare Tribal sub-Plans based on earmarked resources in the concerned sectors, in consultation with the Ministry of Tribal Affairs. Annual and Five Year Tribal sub-Plan of the states and the Ministries will be discussed in the Planning Commission for clearance.

7. The planning process should start at the Gram Sabha level. The Gram Sabha plans should be collated and coordinated at the Gram Panchayat level, the Gram Panchayat plans being similarly collated and coordinated at the Panchayat Samiti (block) level and the Panchayat Samitis plans being collated and coordinated at the Zila Panchayat level. Indications of resource availability in advance will enable each of these plans to be sized appropriately.

8. In view of the concept of the Tribal sub-Plan and the provisions of Article 243G of the Constitution as well as the PESA Act 1996, the Tribal Policy should ensure

(a) all plans and programmes are prepared in accordance with these provisions

(b) sectoral emphases should relate to the locale and situation in each ITDP/ITDA area

(c) resources are allocated to the Panchayat and Gram Sabhas accordingly

(d) panchayat bodies and the Gram Sabhas implement the plans and programmes

(e) for implementation, the requisite techno-administrative structures are provided in place and the requisite techno-administrative personnel are in position

(f) monitoring of planning and implementation is done at the district and state levels.

9. The Centre having a constitutional responsibility towards the scheduled tribe and Scheduled Areas, the role of Central Ministries and Planning Commission assumes significance. They should quantify and earmark funds atleast equivalent to ST population-percentage for tribal areas under their programmes, formulate appropriate need-based programmes, adapt the on-going programmes to meet the specific requirements of scheduled tribes and identify a senior officer in the Ministry to monitor the progress of implementation of the programmes.

10. Every Ministry should prepare a Tribal sub-Plan indicating the programmes and available financial resources to be distributed amongst states as per the prescribed formula. These documents will be circulated to project administrators, making it possible for the field units to have a clear picture of the programmes for implementation.

11. The state line departments and the Central Ministries should exhibit financial provisions earmarked for tribal areas in their respective budgets. Their utilization should be effected in consultation with the Tribal Development Department in the State and by the Ministry of Tribal Affairs at the Centre.

12. It is seen that there have been short-falls in expenditure relative to the outlays. But a more serious drawback has been the near-absence of records of physical achievements flowing from the investments. The Panchayat bodies, district level organizations, the state line departments and the Central Ministries will have to devise

procedures for maintenance of financial accounts and physical achievements. Focused attention will have to be paid to physical achievements and monitoring.

13. Since non-Plan finance for tribal areas has been neglected, the Central and the concerned State Governments should review the matter to ensure flow of adequate non-Plan funds to relieve pressure on Plan funds in the different sectors of tribal development. The devolutions of the Finance Commissions will have to be sought.

14. Land

In respect of land, the following should engage the attention of Tribal Policy

(i) Anti-alienation laws of the State Government will be amended to make them fool-proof to prohibit transfer of tribal lands to non-tribals without the permission of the State Governments and to prevent further erosion of tribal land

(ii) Laws to prevent alienation of tribal land in urban areas should be passed

(iii) Reliable data-base of tribal lands alienated through legal and illegal transfers, and acquisitions, should be prepared

(iv) Land Acquisition Act 1894 be amended to orient it to the democratic spirit of the present times

(v) Land acquisition will be strictly need-based, to be resorted to after consideration of "no-displacement" and "least displacement" alternatives

(vi) In the package of rehabilitation, socio-cultural community relocation will have to be regarded as indispensable for tribals

(vii) The provisions of the anti-alienation land laws, Land Acquisition Act 1894, Coal Bearing Areas (Acquisition and Development) Act 1957 and National Mineral Policy 1993 will have to be harmonized with those of the Provisions of the Panchayat (Extension to Scheduled Areas) Act 1996

(viii) Land records to be updated regularly at periodic reasonably short intervals and computerized for wide-accessibility

(ix) The provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 should be invoked in respect of offences pertaining to ST land

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(x) Money-lending laws applicable to Scheduled Areas and tribal areas should be amended as necessary and their effective enforcement will be ensured.

15. **Forest**

(i) The symbiosis between tribals and forest should be fully recognized by all

(ii) The critical question relating to regularization of the so-called encroachments of tribal people in forests will have to be resolved early

(iii) Disputed claims, issue of Pattas, leases etc. of the tribespeople and forest land should be disposed of early

(iv) Inter-disciplinary scientific studies to unfold strategies that make shifting cultivation contextually viable and, at the same time, to enable shifting cultivators to adopt higher yielding strategies

(v) Forest villages to be converted into revenue villages and occupants in such villages to be conferred heritable and inalienable rights over the land

(vi) Forest labour cooperative societies should be organized

(vii) JFM committees will have to be converted into community forest management committees

(viii) The rights and privileges of tribespeople over access to minor forest produce, thatch grass, poles should be codified and consolidated

(ix) First-processing of MFP should be undertaken through cooperatives of primary collectors

(x) The Indian Forest Act 1927 should be amended to make it tribal and user-friendly

(xi) The Indian Forest Act 1927 and the Provisions of Panchayats (Extension to Scheduled Areas) Act 1987 should be made mutually compatible

(xii) The provisions of the Forest (Conservation) Act 1980 will have to be examined for relaxation to enable expedite development works

(xiii) Pending final settlement of rights under the Wild Life (Protection) Act 1972, ad interim restrictions on collection of forest produce for bonafide use under section 18A(2) of the Act will have to be removed to enable tribespeople exercise their rights

(xiv) Forest education should include courses on empathetic tribal studies

(xv) Adequate funds should be earmarked for natural forest management and forest working

16. **Agriculture and allied sectors**

1) Intensive research will be undertaken in the national and regional agricultural research institutions in the country to evolve high-yielding varieties of crops grown mostly and disseminated by tribals, which are dry-land crops.

2) Intensive and extensive steps will be taken to provide irrigation in tribal areas.

3) Efforts will be made to induct agro-processing in tribal areas.

4) Help will be rendered to the tribal families in marketing their produce.

17. **Industry**

1) Appropriate steps will be taken to give filip to small, village and cottage industries in tribal areas particularly in the handloom, agro-processing, MFP-processing sectors.

2) Only such medium and large industries will be permitted to be set up in tribal areas as are consistent with the demands of ecology and tribal ethos.

18. **Education**

The education sector should be regarded as a key sector for the overall progress of tribes5people.. Though the literacy percentage has increased from 8.53% in 1961 to 29.60% in 1991, this does not necessarily mean that the STs have become educated in the real sense of the term. They have also not been able to catch up with the rest of the society; in fact, the gap in literacy percentage as between the STs and non-STs continues to widen.

19. The tribal policy will aim at

(i) Making pedagogy suitable to tribal life and milieu

(ii) attuning curricula and syllabi to tribal life and culture

(iii) imparting teaching in the tribal child's mother-tongue, at least up to primary level.

(iv) focusing national programmes like the Sarva Shiksha Abhiyan on the tribal population, since it constitutes the most illiterate section of the society

(v) providing scholarships, hostel maintenance costs, free school uniforms etc. up to the matriculation stage

(vi) in the first instance, setting up educational institutions in the Scheduled Areas and tribal areas, as per the prescribed norms Further, considering, lowering of the norms in view of the scattered tribal populations

(vii) repair and renovation of school and hostel buildings lying in a state of disrepair. Provision of toilet facilities in all schools and hostels, particularly those meant for girl students

(viii) establishment of atleast one residential school for boys and one residential school for girls in each development block.

(ix) establishment of one Navodaya Vidyalaya in each tribal block

(x) establishment of one model residential school of the pattern evolved by the Ministry of Tribal Affairs in ITDP/ITDA.

(xi) provision of supplementary nutrition and mid-day meals to children in tribal areas up to middle stage

(xii) emphasis on vocational and professional education, setting up polytechnics for studies in subjects like farming, forestry, horticulture, dairying, veterinary sciences etc. Orientation of these studies towards self-employment.

(xiii) devising measures for meeting the problem of absenteeism of teachers, particularly in far-flung areas, like constituting village education committees, contractual employment, appointment of ST teachers.

20. **Health**

(i) Health indices and other statistical data for tribal areas and tribal people being sparse for planning purposes, special steps will be taken for compiling information, date etc.

(ii) The National Human Development Report and such State Reports will

(iii) have separate sections on tribal health data on the lines of data for general population.

(iii) Considering the large number of vacancies in para-medical and medical staff in health sub-centres, primary health centres, community health centers and hospitals all over the country, concerted steps will be taken to fill them up

(iv) Normative deficiencies in the establishment of health sub-centres. PHCs and CHCs should be made.

(v) Since tribal areas are far-flung and population is scattered, mobile medical vans and mobile hospitals will be provided in selected areas.

(vi) On account of remoteness, generally there is deficiency of equipment and medicines. Health authorities will pay special attention to make up the deficiencies.

(vii) Adequate arrangements should be made to meet the situation arising out of heavy incidence of diseases like T.B., Leprosy, malaria and specific diseases afflicting the tribal people like genetic disorders, AIDS etc.

(viii) Since tribal areas suffer from certain handicaps like remoteness, lack of communication, lack of educational facilities and other amenities, competent and educated para-medical and medical personnel should be posted in tribal areas. Special incentives should be provided to them to compensate for the hardships. Sub-cadres may be constituted in the States and Centre as necessary.

(ix) Earning members of the tribal families living below poverty line will be provided health insurance to save the families from distress.

(x) Tribal communities being store-house of knowledge of their flora and fauna and their use, appropriate action will be taken to protect the intellectual appropriate rights over their knowledge and resources.

(xi) IMR being high in tribal areas, each Basti/Para/Mohalla in tribal villages will be equipped with at least one trained traditional birth attendant.

(xii) There will be one ananganwadi for every 500 ST population..

(xiii) All hamlets/Bastis will be provided with safe drinking water.

(xiv) Special attention will be paid to arrangements for sanitation in tribal

(xv) hamlets and villages.

(xvi) Information and awareness about communicable diseases, genetic disorders, hygiene, sanitation family planning will be disseminated intensively and widely throughout the tribal areas.

(xvi) The indigenous tribal medicinal systems will be researched, validated and promoted.

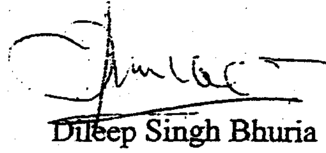
21. Since the task of planning and development in full is being assigned to the Panchayat bodies, requisite administrative structure will be provided for both planning and implementation at the Gram Sabha and the three higher Panchayat tiers. For the purpose, the available development personnel at the district level will be placed at the disposal of the Zila Panchayat, similarly the available techno-administrative machinery at the block level will be provided to the Panchayat Samiti and the requisite administrative structure and personnel will be attached to the Gram Panchayats and the Gram Sabhas. As required by Section 4(m)(6) of the Provisions of the Panchayats (Extensions to the Scheduled Areas) Act 1996, the power of control over institutions and functionaries will vest in the Panchayats and the Gram Sabhas.

22. Sub-cadres of cadres like education, health, agriculture personnel will be constituted to serve in tribal areas and proper incentives will be given to them.

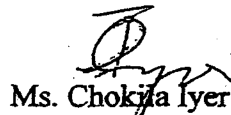
23. In the matter of benefits – flow in all fields, gender entitlements will have to be ensured.

24. The extant executive orders on reservations in services will be converted into statutes.

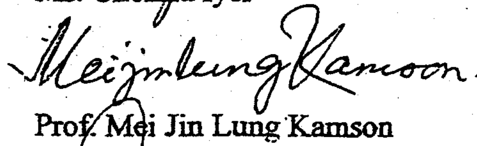
25. The demand of the people in the north-east region for Sixth Schedule councils will be considered. Attention will be paid to improvement in the performance of the Autonomous Councils, including by means of direct funding.



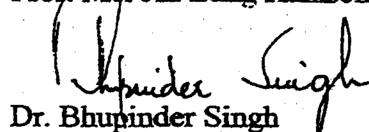
Dileep Singh Bhuria	Chairperson



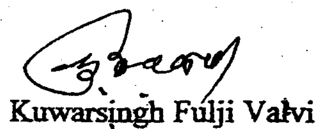
Ms. Chokila Iyer	Vice-Chairperson



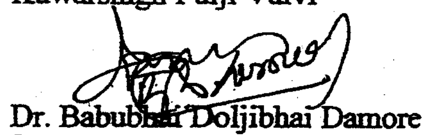
Prof. Mei Jin Lung Kamson	Member



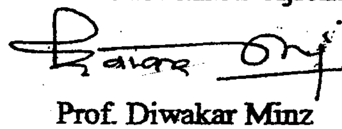
Dr. Bhupinder Singh	Member



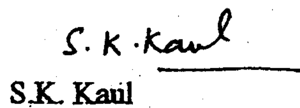
Kuwarsingh Fulji Valvi	Member



Dr. Babubhai Doljibhai Damore	Member

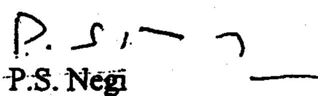


Prof. Diwakar Minz	Member



S.K. Kaul	Member

Dr. P.K. Patel	Member



P.S. Negi	Member Secretary

Dt- 16.7.2004