ISBN 978-6169061168

AIPP
www.aippnet.org

India and the Rights of Indigenous Peoples

India and the Rights of Indigenous Peoples

C.R. Bijoy, Shankar Gopalakrishnan and Shomona Khanna

Constitutional, Legislative and Administrative Provisions Concerning Indigenous and Tribal Peoples in India and their Relation to International Law on Indigenous Peoples.

ASIA INDIGENOUS PEOPLES PACT (AIPP)
An organization of indigenous peoples movements in Asia

India and the Rights of Indigenous Peoples

Constitutional, Legislative and Administrative Provisions Concerning Indigenous and Tribal Peoples in India and their Relation to International Law on Indigenous Peoples.

C.R Bijoy, Shankar Gopalakrishnan and Shomona Khanna

INDIA AND THE RIGHTS OF INDIGENOUS PEOPLES
Constitutional, Legislative and Administrative Provisions Concerning Indigenous and Tribal Peoples in India and their Relation to International Law on Indigenous Peoples.

Editor: Ms. Luchie Maranan

Design and layout: Nabwong Chuaychuwong (house_dtp@me.com)

Cover Images:
Inside Photo:

Asia Indigenous Peoples Pact (AIPP) Foundation
108 Moo 5, Soi 6, Tambon Sanpranate
Amphur Sansai, Chiang Mai 50210, Thailand
Tel: +66 053 380 168 Fax: +66 53 380 752
Web: www.aippnet.org

ISBN:

Printed in Thailand or the name of the Printer

This publication has been produced with the support of PRO 169 of The International Labour Organisation (ILO), Geneva and financed by the European Commission's, European Initiative for Democracy and Human Rights (EIDHR) and the Danish Ministry of Foreign Affairs (Danida).

Disclaimer:
The views expressed in this publication are those of the authors and does not necessarily reflect the position of AIPP.

ILO Cataloguing in Publication Data

Contents

Ancestor statue (Garo, Meghalaya) *Photo: Chris Erni*

ACKNOWLEDGEMENTS

The publication of this comprehensive report on the Constitutional, Legislative and Administrative Provisions concerning Indigenous and Tribal Peoples in India would not have been possible without the dedication and hard work of all those involved.

AIPP would like to thank the following research team: C.R. Bijoy, Shankar Gopalakrishnan, Shomona Khanna, Bineet Mundu and Chonchuirinmayo Luithui for the excellence in their work and team spirit. We would also like to specially thank C.R. Bijoy for coordinating the research among the team. His extensive experience enabled the smooth execution of the challenging task within a short span of time.

We also extend our heartfelt thanks to Luchie Maranan for willingly taking on the task of editing this report.

We would also like to express our gratitude to all those who have provided their precious photos for this publication which has made it a lot more colourful and interesting.

Finally, we are always grateful to PRO 169 of the International Labour Organisation (ILO), Geneva for supporting the research and publication of the same.

Joan Carling
Secretary General
AIPP

Abbreviations Glossary

ADM	Additional District Magistrate
AFSPA	The Armed Forces (Special Powers) Act, 1958
ANPATR	Andaman and Nicobar Protection of Aboriginal Tribes Regulation
AP	Andhra Pradesh
C	Convention
CAT	Convention against Torture
CEDAW	Convention on the Elimination of Discrimination against Women
CERD	Convention on the Elimination of Racial Discrimination
CMW	Convention on Migrant Workers
CPI	Communist Party of India
CRC	Committee on the Rights of the Child
DPSP	Directive Principles of State Policy
ICCPR	International Covenant on Civil and Political Rights
ICECSR	International Covenant on Economic, Social and Cultural Rights
IDA	Iron Deficiency Anemia
ILO	International Labour Organisation
ITDP	Integrated Tribal Development Project
JFM	Joint Forest Management
LAMPS	Large Area Multipurpose Societies
MADA	Modified Area Development Approach
NCST	National Commission for Scheduled Tribes
NGO	Non-Government Organisation
NHRC	National Human Rights Commission
NHRC	National Human Rights Commission
NPE	National Policy on Education
NSTFDC	National Scheduled Tribes Finance and Development Corporation
NTFP	Non-Timber Forest Products
OBC	Other Backward Class
OBCs	Other Backward Classes
PESA	Panchayat Raj (Extension to Scheduled Areas) Act
PHR	Protection of Human Rights
PIL	Public Interest Litigation
RGI	Registrar General of India
SC	Scheduled Caste
SCs	Scheduled Castes
SHRC	State Human Rights Commission
ST	Scheduled Tribe
STs	Scheduled Tribes
TRIFED	Tribal Cooperative Marketing Development Federation
TSP	Tribal Sub Plan
UN	United Nations
UNDRIP	UN Declaration on the Rights of Indigenous Peoples
UT	Union Territory
WGIP	Working Group on Indigenous Populations

Foreword

This study forms part of an Asia-wide research initiative by ILO and AIPP which seeks to examine the extent to which the legal frameworks of key Asian countries impact on, and protect the rights of, indigenous and tribal peoples. It is hoped that this work, in addition to increasing awareness on this important issue, will contribute in the long run to the development and implementation of enabling policy and legal frameworks for the protection of the rights of these groups, who remain among the most marginalised and vulnerable in all countries where they live.

The Indigenous and Tribal Peoples Convention (ILO Convention No. 169) was adopted by the International Labour Organisation (ILO) in 1989. The Convention is currently ratified by 22 countries and revised an earlier version, Convention No. 107 on Indigenous and Tribal Populations, 1957, which is no longer open for ratification. In 2007, the United Nations General Assembly adopted the UN Declaration on the Rights of Indigenous Peoples (A/REAS/61/295). The adoption was the culmination of years of discussions and negotiations between governments and indigenous peoples from across the world. It is thus a landmark achievement, which provides the global community with a common framework for the realization of the rights of indigenous and tribal peoples. Convention No. 169 and the UN Declaration are compatible and mutually reinforcing.

The need for undertaking this research is premised on that fact that the rights guaranteed in ILO Convention No. 169 and the UN Declaration on the Rights of Indigenous Peoples will not be meaningful unless they are actually guaranteed and implemented in the domestic legal framework. In this regard, the situation in India provides a particularly interesting case study. While Asia has the highest concentration of indigenous and tribal peoples in the world more than 200 million, India alone accounts for over 84 million of them. Despite large diversity between and within indigenous peoples in India, as a social group they remain at the bottom of most socio-economic statistics. Although India voted in favour of the adoption of the UN Declaration on the Rights of Indigenous Peoples and is also one of the seventeen countries for whom the earlier ILO Convention No.107 remains in force it has yet to ratify ILO Convention No. 169 on Indigenous and Tribal Peoples. However, unlike many other countries in Asia, India has a highly developed legal and policy frameworks in place for its indigenous and tribal communities, known as 'Scheduled Tribes'.[1] Despite this fact, implementation of these legislative and policy prescriptions remains a major challenge, with the result that Scheduled Tribes are still one of the most excluded groups in India.

Experience from accross the world has shown that sustained denial of indigenous peoples rights leads to conflict and instabilty, which impacts severly on national development. India is no different. Concrete and sincere measures, as well as new approaches, are needed in order to uphold the social, cultural, economic and political integrity of India's Scheduled Tribes and to prevent their further alientation from the state. Such action would also go a long way in terms of ensuring equitable and sustainable development for the nation as a whole.

Asia Indigenous Peoples Pact
Chiang Mai, Thailand

PRO 169
International Labour Organisation (ILO), Geneva

1 Most significant examples include; the 5th and 6th Schedule of the Constitution of India; The Panchayat Extension to Scheduled Areas Act (PESA), The Scheduled Tribe and Other Traditional Forest Dwellers Recognition of Forest Rights Act, 2007 and an extensive reservation system for Scheduled (Castes) and Tribes. It also has a separate Ministry of Tribal Affairs to coordinate work on Scheduled Tribes.

Executive Summary

India is home to the largest population of indigenous peoples of any country in the world. Roughly a quarter of the world's indigenous population – around 80 million people – are scattered across India, their numbers a staggering diversity of ethnicities, cultures and socio-economic situations. They range from some of the last uncontacted indigenous communities in the world, like the Sentinelese of the Andamans, to some of the largest, such as the Gonds and Santhals of central India. They include not only communities who live under conditions of extreme destitution, but also communities with social indicators well above the national average. But across circumstances and areas, like other indigenous communities around the world, India's indigenous peoples do share one characteristic – social, political and economic marginalisation.

In recognition of this fact and reflecting more than a century and a half of continuous struggles by indigenous people, India has a panoply of laws, policies and Constitutional provisions aimed at protecting the rights of such communities. Yet India is also distinguished by the extreme reluctance of the government to acknowledge or accept the international framework for such protections, embodied primarily in International Labor Organization (ILO) Convention No. 169 on Indigenous and Tribal Peoples, 1989 and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), 2007. While India is a signatory to ILO Convention No. 107 on Indigenous and Tribal Populations (the predecessor to Convention 169) and voted in favour of the UNDRIP, it has adamantly insisted that its own indigenous peoples cannot claim status or protection under these laws. The government rejects the very term 'indigenous peoples', insisting that all Indians are indigenous, and is particularly hostile to any reference to the rights of indigenous people to autonomy, self-governance or self-determination. This is despite the fact that India's own laws provide for varying degrees of such protection - in some cases, far reaching - to certain communities.

This report examines the Indian policy and legal framework on indigenous peoples' rights through the lens of the values and spirit of international law on the subject. Part I of the report describes the social and political situation of indigenous communities in India, while Part II examines the policy and legal framework on specific areas of indigenous peoples' rights. The report is primarily focused on the extent to which the Indian political and legal situation conforms to the principles of equity, self-governance and justice that underlie the international instruments.We find that on all three fronts, India falls far short of international standards on indigenous peoples' rights. The seemingly impressive range of legal and policy instruments that exists in Indian law for indigenous peoples' rights is vitiated by one fundamental flaw – the Indian state's reluctance to respect the political rights of indigenous peoples and the subsequent widespread violations of these.

Garo women (Meghalaya) *Photo: Chris Erni*

Jharkhand *Photo: Chris Erni*

I: Introduction to India's indigenous peoples, and its legal system

1. Indigenous peoples in India

1.1 Basic Situational overview

The Government of India officially does not consider any specific section of its population as 'indigenous peoples' as generally understood and implied in its usage in the UN. Rather, the government claims all its peoples as indigenous. However, operationally in many of its dealings, those sections of people declared as falling within the administrative category of 'Scheduled Tribes' (STs) are considered as indigenous peoples. Though STs are not coterminous with either the socially and historically accepted term 'Adivasi' (meaning indigenous or original people) or 'tribal', by and large it is accepted that the STs include mostly 'indigenous peoples" in the Indian context. This 'indigenousness' is also recognized as distinct and different from 'regionalism' and finds clear and distinct expression in the constitution and laws. While recognizing that not all indigenous peoples are STs and vice versa, this study will focus on STs.

A neat classification of an ST as a homogenous social-cultural category is not possible. Neither has it been possible to arrive at a clear anthropological definition of a 'tribal' in terms of ethnicity, race, language, modes of livelihood or social forms. The tribal communities are divided into Veddids, similar to the Australian aborigines; Paleamongoloid Austro-Asiatic from the northeast; the Greco-Indians who spread across Gujarat, Rajasthan and Pakistan from Central Asia and the Negrito group of the Andaman Islands - the Great Andamanese, the Onge, the Jarawa and the Sentinelese.

The STs inhabit about 15-20% of the land area of the Indian sub-continent in largely contiguous areas. In the mid-Indian region, the Gond who number over 5 million, are the descendants of the dark skinned Kolarian or Dravidian tribes and speak dialects of the Austric language family, as are the Santhal who number 4 million. The Negrito and Austroloid people belong to the Mundari family of Munda, Santhal, Ho, Ashur, Kharia, Paniya, Saora etc. The Dravidian groups include the Gond, Oraon, Khond, Malto, Bhil, Mina, Garasia, Pradhan etc. and speak Austric or the Dravidian family of languages. The Gujjar and Bakarwal descend from the Greco Indians and are interrelated with the Gujjar of Gujarat and the tribes settled around Gujranwala in Pakistan. There are some 200 indigenous peoples in the northeast. The Boro, Khasi, Jantia, Naga, Garo, Tripiri, Mikir, Apatani, Boro, Khasi, Kuki, Karbi etc. belong to the Mongoloid stock and speak languages of the Tibeto-Burman language groups and the Mon Khmer. The Adi, Aka, Apatani, Dafla, Gallong, Khamti, Monpa, Nocte, Sherdukpen, Singpho, Tangsa, Wancho, etc. of Arunachal Pradesh and the Garo of Meghalaya are of Tibeto-Burman stock while the Khasi of Meghalaya belong to the Mon Khmer group. In the southern region, the Irula, Paniya, Adiya, Sholaga, Kurumba etc. belong to the proto-Australoid racial stock speaking dialects of the Dravidian family. There are also STs in Uttar Pradesh, Himachal Pradesh, West Bengal, Arunachal Pradesh, Sikkim, Nagaland, Manipur and Mizoram, whose communities extend across the international border in China (including Tibet), Bhutan, Myanmar and Bangladesh.[2]

2 The Adivasis of India - A History of Discrimination, Conflict and Resistance, Indigenous Affairs, International Work Group for Indigenous Affairs,1/01, March 2001, pp.54-6. Available at http://www.iwgia.org/graphics/Synkron-Library/Documents/publications/Downloadpublications/IndigenousAffairs/IAracism.pdf

1.1.1 The Category of Scheduled Tribes

'Scheduled Tribe' is an administrative term used for the purpose of 'administering' certain specific constitutional privileges, protection and benefits for specific section of peoples, historically considered disadvantaged and backward. Article 366 (25) of the Constitution of India defines Scheduled Tribes as 'such tribes or tribal communities or parts of, or groups within such tribes, or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of this Constitution'. The Scheduled Tribe status confers on the tribe, or part of it, a Constitutional status invoking the safeguards provided for in the Constitution in their respective states/UTs. The Scheduled Tribe status is conferred on the basis of birth to a person into a Scheduled Tribe.

According to Clause 1 of Article 342, the Scheduled Tribes are the tribes or tribal communities or part of or groups within these tribes and tribal communities which have been declared as such by the President of India through a public notification (See Annexure 1 for the list of notifications). Thus, the President notifies the Scheduled Tribes in relation to a particular state/ Union Territory (UT), and not on an all India basis, by an order after consultation with the State Governments concerned. These orders can be modified subsequently, to include or exclude, but only through an Act of Parliament under Clause 2 of the Article.

Although no well-defined criteria have been developed for the purpose, the general official[3] refrain has been that the identification of Scheduled Tribe (ST) is done on the basis of the following characteristics:-

(i) primitive traits;
(ii) distinctive culture;
(iii) geographical isolation;
(iv) shyness of contact with the community at large; and
(v) backwardness.

Though these criteria are not spelt out in the Constitution, these have become accepted in practice and are based on the 1931 census; the reports of the first Backward Classes Commission (Kalelkar) 1955; the Advisory Committee on Revision of SC/ ST lists (Lokur Committee) 1965 and the Joint Committee of Parliament on the Scheduled Castes and Scheduled Tribes Orders (Amendment) Bill 1967 and (Chanda Committee) 1969. Members of STs who migrate from an area where the community is scheduled to another area within the same state retain the status of ST. However, if the person migrates to another state, she/he cannot claim the ST status in that state.

In June 1999, the government revised its modalities for deciding claims for inclusion in, or exclusion from, the lists of STs. The claims for inclusion in the STs list have to be first approved by the concerned State/UT Government and sent to the Registrar General of India (RGI). The RGI, if satisfied with the recommendation of the State Government, recommends the proposal to the Central Government who then refers the proposal to the National Commission for STs for their recommendation. The Cabinet then takes a decision and introduces the proposal in the form of a Bill to amend the Presidential Order for inclusion or exclusion as the case may be.

Certain groups that were identified[4] for the first time in 1975-76 and thereafter in 1993-94, were regarded as the most marginalised amongst the STs. These were included in a new category called Primitive Tribal Groups (PTGs) for the purpose of administering special schemes to them.

---

3 See the essential characteristics listed by the Ministry of Tribal Affairs available at http://tribal.gov.in/index2.asp?sublinkid=542&langid=1

4 Development of Primitive Tribal Groups, Twenty-Eighth Report, Standing Committee on Labour and Welfare (2002), Thirteenth Lok Sabha, Lok Sabha Secretariat, New Delhi 2002. Accessible at http://164.100.24.208/ls/CommitteeR/Labour&Wel/33.pdf

The criteria fixed for identification of such PTGs are:-

(i) pre-agricultural level of technology;
(ii) very low level of literacy; and
(iii) declining or stagnant population.

In all, 75 tribal communities (See Annexure 2 for the list with population figures) were identified as PTGs spread over 17 states and one UT.

Denotified Tribes

In addition to STs, there is yet another category of communities that are also referred to by the term 'tribal'. These are the denotified tribes (DNTs). These communities were originally listed under the Criminal Tribes Act of 1871[5] as Criminal Tribes and were said to be 'addicted to the systematic commission of non-bailable offences'. Once a tribe became 'notified' as criminal, all its members were required to register with the local magistrate, failing which they would be charged with a crime under the Indian Penal Code. The Criminal Tribes Act of 1952 repealed the notification, i.e. 'de-notified' the tribal communities[6]. This Act, however, was replaced by a series of Habitual Offenders Acts that asked police to investigate a suspect's criminal tendencies and whether his occupation is 'conducive to settled way of life.' The denotified tribes were reclassified as habitual offenders in 1959.[7]

According to the Eleventh Five Year Plan, 'Unfortunately, these groups still continue to be marginalized and their specific needs even today are neither adequately understood nor catered to.[8] A report by the National Commission for De-notified Tribes, Nomadic Tribes and Semi-Nomadic Tribes subsequently stated that there are roughly 110 million denotified, nomadic and semi-nomadic tribes[9] and that these communities are typically reduced to landlessness and face systematic violence and discrimination by mainstream society.

The use of the term "tribe" for the DNTs did not however necessarily imply that these communities were Adivasis. The British may have used this term for many non-Adivasi communities merely in order to imply a 'primitive' or 'savage' disposition, in keeping with the racist assumptions of the Criminal Tribes Act. In the present day, some DNTs are categorised as STs, while others are categorised as Scheduled Castes (the former untouchables), and Other Backward Castes (OBC) while some are not included in any specific category. The communities covered under this rubric include mostly landless and itinerant nomadic communities who performed various service and entertainment functions for mainstream society. Since there is some question as to whether all DNTs can be considered indigenous peoples in the international law sense, this report focuses on STs and does not discuss DNT issues in depth.

5 The Act was subsequently amended in 1897, 1911, 1923, 1924 and 1947.

6 This followed the recommendation of the All India Criminal Tribes Enquiry Committee of 1949.

7 *Denotified tribes of India,* From Wikipedia, the free encyclopedia. Accessible at http://en.wikipedia.org/wiki/Denotified_tribes_of_India#Call_for_repeal

8 Eleventh Five Year Plan 2007-12, op cit, p.1

9 Though there are no scientifically valid estimates, the First five-year Plan of the Government of India placed 198 criminal tribes estimated to be more than 4 million.

2. Brief History

2.1 Pre-colonial and Colonial history

Migrations have been a constant feature in Asia for over fifty thousand years. 'Very little is known about the relationship between Adivasis and non-Adivasis during Hindu and Muslim rule. Before colonization by the British, the Adivasi areas were 'self-governing', although notionally some of these regions were part of the kingdoms of non-Adivasi rulers. Adivasis understood that their territories were independent principalities and the imposition of any alien rule was resisted.'[10] There are stray references to wars and alliances between the Rajput kings and tribal chieftains in middle India and in the Northeast between the Ahom Kings of Brahmaputra valley and the hill Nagas. The Adivasis are traditionally considered to be *ati sudra* meaning lower than the untouchable castes.

European colonisation transformed the relationship between the mainstream communities and tribal communities of this region. Their foray into the thickly forested region rich in natural resources led to sustained revolts and resistance by Adivasis (See Box 1 below). These revolts moreover spanned almost the entire sub-continent.

Jharkhand *Photo: Chris Erni*

10 Bhengra, Retnaker, C.R Bijoy and Shimreichon Luithui. *The Adivasis of India*, Minority Rights Group International, London, 1998, p.5. Accessible at http://www.minorityrights.org/Profiles/profile.asp?ID=2

BOX 1: Some important revolts during the colonial period

- Kolis of Maharashtra (1784-85)
- Tamar of Chota Nagpur in present-day Jharkhand (1789, 1794-1795, 1801)
- Mundas of Jharkhand (1791, 1819-1820, 1832, 1867, 1889)
- Chuari Movement in Bihar (1795-1800)
- Bhumij Rebellion of Manbhum in Jharkhand (1798, 1834)
- Koyas in Andhra Pradesh (1803, 1862, 1879, 1880, 1822)
- Tribal revolts in Chotanagpur of Jharkhand (1807- 1808, 1811, 1817, 1820)
- Bhils in Western India (1809-1828, 1846, 1857-1858)
- Kols in Chotanagpur (1818, 1832-1833)
- Singphos in Assam (1825, 1828, 1843, 1849, 1869)
- Mishmis in Arunachal Pradesh (1827, 1855)
- Tribals of Assam (1828)
- Khasis of Assam and present day Meghalaya (1829)
- Kherwar uprising in Jharkhand (1832-1823)
- Lushais of Assam (1834-1841, 1842, 1850, 1860, 1871-1872, 1892)
- Daflas of Assam (1835, 1872- 1873)
- Naiks of Gujarat (1838, 1868)
- Khampti in Assam (1839-1843)
- Gonds of Bastar in Chhattisgarh (1842)
- Kondhs in Odisha (1850)
- North Kachari hills of Assam (1854)
- Santals in Jharkhand (1855, 1869-1870)
- Naikdas in Gujarat (1858)
- Syntengs of the Jaintia Hills of Meghalaya (1860-1862)
- Phulaguri uprising in Assam (1861)
- Juangs in Odisha (1861)
- Sentinel Islanders in the Andaman Islands (1867, 1883)
- Raig-mels of Assam (1868-1869)
- Sardari Andolan of Chotanagpur in Jharkhand (1875 – 1895)
- Nagas of Nagaland (1879, 1932, 1963-1971)
- Bastar tribal uprising in Chhattisgarh (1811)
- Birsa Movement in Jharkhand (1895–1900)
- Tana Bhagat rebellion in Jharkhand (1912-1914, 1920, 1921)
- Gond and Kolam revolt in Andhra Pradesh (1941)
- Koraput revolt in Odisha (1942)
- Revolts against the Japanese occupation army by the tribes of the Andaman Islands (1942-1945)

The resistance forced the colonizers to sue for peace through various arrangements enacted through special laws for tribal communities that in effect continued to acknowledge and permit the relative independent existence of the Adivasi regions. Most of these institutional and legal arrangements withdrew the application of colonial laws partially or fully in some areas. Thus, Regulation XIII of 1833 declared the central Indian region of Chotanagpur a non-regulated area.

The first major measure taken to deal with the Adivasi areas as a category was the Scheduled Districts Act of 1874 (14 of 1874) envisaging these areas to be outside the jurisdiction of the normal administration of the British. The Act enabled the executive to exclude or extend any

laws in force in any part of British India to a 'scheduled district'[11] while also providing any necessary protection. The local governments were empowered with prior permission of the Governor-General to exclude these districts from the operation of laws made for the province. An exhaustive list of such districts was provided as an appendix to the Act, and these were then described as 'Scheduled Districts'.

The administration of these 'backward areas' was also addressed by the Montague-Chelmsford Report of 1918. The report recommended that the areas where such peoples lived should be demarcated and excluded from the application of the normal laws of the province. These recommendations were incorporated into the Government of India Act 1919, empowering the Governor-General in Council to declare any territory in British India to be a backward tract and to direct that any act or any part of any Act shall not apply or shall apply to such territories with specified exceptions or modifications. The Government of India Act of 1935 empowered the Governor-General in Council through special provisions (Sections 91-92) to declare any area as excluded or partially excluded continuing the earlier arrangement. However, these legislations did not apply to' tribes', which was not a legally defined term, but to areas inhabited by such peoples.

Subsequently, for the first time, a provision was made for some representation for the backward tribes in the provincial legislatures. The British had categorised them as 'backward classes' until 1937 and were scheduled as tribes under the Government of India Act of 1935. In 1936, all the provinces except for Punjab and Bengal were notified in a list of backward tribes.

2.2 Post-colonial history

The British Crown's dominion in India consisted of four political arrangements:

1. Presidency Areas where the Crown was supreme,
2. Residency Areas where the British Crown was present through the Resident and the Ruler of the realm was subservient to the Crown,
3. Agency (Tribal) areas or the partially excluded areas where the Agent governed in the name of the Crown, but left the local self-governing institutions untouched,
4. Excluded Areas (northeast) where the representatives of the Crown were a figure head.

The Union of India was constituted around the Presidency Areas. After the transfer of power, the rulers of the Residency Areas signed the 'Deed of Accession' on behalf of the ruled and in exchange they were offered Privy Purse[12]. No deed was however signed with the independent Adivasi states and they were assumed to have joined the Union. There was resistance in some areas, leading to armed conflict in the northeast, particularly the Nagas (1947- present) and Mizos (1966-1986).

However, the erstwhile colonial arrangement of governance was carried over into the Indian Constitution in the form of Article 244 – the V Schedule and VI Schedule. The partially excluded and excluded areas were, by and large, brought under the V and VI Schedule. The term 'Scheduled Tribes' was adopted in the Constitution along with certain special privileges, protection and benefits.

These protections notwithstanding, the post-independence era was marked by intensifying state attacks on the resource and livelihood base of these communities. The first such attack was through the mechanism of the forest laws which under British rule largely did not extend to the excluded and partially excluded areas. Further, the vast areas under the control of the princely

11 Rao, B.S., *The Framing of India's Constitution*, New Delhi, Indian Institute of Public Administration, 1968, p. 569.

12 A payment made to the royal families of erstwhile princely states as part of their agreements to first integrate with India in 1947, and later to merge their states in 1949 whereby they lost all ruling rights.

states (the Residency Areas) had their own forest laws, which were frequently modeled after the British, but often incorporated their own systems of rights. After independence, with the accession of the princely states to the Union and the amalgamation of the excluded and partially excluded areas, British forest laws were — often quite literally by the stroke of a pen — extended to most of these regions overnight. Forests in the princely states were converted into government reserves and protected forests without any process of recording the rights of Adivasis and dwellers in these forests. The result was the overnight expropriation of vast territories that in fact belonged to indigenous communities thus causing much resentment and continuing revolts such as the Warli revolt of Maharashtra (1956-1958). (For more on the forest laws, see the discussion under 'forests' in Section 7. 'Land, natural resources and environment' of Part II).

The expropriation of the forests also reflected the fact that many Adivasi communities still practiced communal and territorial forms of land ownership that were not compatible with private property regimes recognized by the state. A large proportion of these communities were originally shifting cultivators (and many continue to be so), but the postcolonial Indian state continued the British policy of viewing such cultivation as a threat and attempted to forcibly 'settle' these cultivators. Moreover, in light of these communal forms of resource ownership, Adivasis often did not benefit from the process of land reform initiated after Independence. In fact many of them actually suffered further loss of resources, as common lands were divided and distributed or Adivasi lands were recorded in the names of others. Lands over which Adivasis did have recorded ownership were also subjected further to a process of alienation.

Politically, despite their insignificant numbers, the Adivasis have been able to continue resistance intermittently. Their political formations have however been restricted to regions that are Adivasi dominated, as in the northeast region or have a substantial Adivasi population, as in Jharkhand. Any sustained attempt to create political formations at the national level has been virtually absent. However, there have been successful brief attempts by local Adivasi organizations to come together at the national level on an issue basis and obtain results, such as the movements for self-rule and forest rights. In the northeast, various tribal student unions have attempted to form an umbrella organisation.

Traditionally the Adivasis in the mainland have been supporters of the Congress. However, the breakdown of the Congress party's 'umbrella' political formation in the 1970s and the subsequent rise of new political parties, in which Dalits, backward castes and regional ethnic communities created their own formations, largely left the Adivasis untouched. In most states their allegiance to political parties are seen to be shifting with the hope that one or other will attempt to address their aspirations.

The continued struggles, mostly around increasing alienation from their livelihood resources, have spread throughout the Adivasi belt. With the spread of intense disaffection during the 1970's, radical political formations began to grow among Adivasis - armed leftist guerilla movements and the "people's movements" that mobilised people but did not join electoral politics, and more recently, the fascist organisations of the far right. Thus, Adivasi areas have been the site of increasing political ferment for the past four decades.

With the expansion of people's movements, some of which took the form of armed rebellion among the Adivasis of central India in the 1980's, certain policy changes began to take place. In 1996 the Panchayats (Extension to Scheduled Areas) Act (PESA) was passed, the provisions of which are described below. Subsequently, Indian forest laws also began undergoing a slow process of change in order to respond to people's rights issues. This process is described in the discussion on 'forests' in Section 7,'Land, natural resources and environment' of Part II below.

The Northeastern part of the country is once again an exception to these general trends (see section 4.6.2. The Northeastern States below).

3. Status of Scheduled Tribes

3.1 Current Status

The ST population is estimated to be 84,326,240 or 8.2% (2001) of the total population of the country (See Annexure 3 for region and state-wise population and number of STs). As such, India, more than any other country is home to over a quarter of all indigenous peoples in the world.[13] Of the 28 states and seven Union Territories (UTs), STs are notified in all the states except Punjab, Chandigarh, Haryana, Delhi, and Pondicherry, though they are not evenly distributed among the remaining states. Of the 5,653 distinct communities in India, around 700 communities are notified as ST (See Annexure 4 for state and UT wise list of STs). Odisha has the distinction of having the largest number of notified ST communities among the states.

More than half the STs inhabit the central or the mid-Indian region and they form the overwhelming majority of the population in some of the Northeastern states. The proportion of STs to the total population in states/UTs was highest in Mizoram (94.5%) and Lakshadweep (94.5%) followed by Nagaland (89.1%) and Meghalaya (85.9%). Among major states, Chhattisgarh (31.8%) had the highest percentage followed by Jharkhand (26.3%) and Odisha (22.1%). Of the total ST population in the country, Madhya Pradesh accounted for the highest proportion of ST population (14.5%) followed by Maharashtra (10.2%), Odisha (9.7%), Gujarat (8.9%), Rajasthan (8.4%), Jharkhand (8.4%) and Chhattisgarh (7.8%). In fact, 68% of the country's ST population lives in these seven states.

Only 2.4% of the STs live in urban areas. The STs constitute 10.4 % of the total rural population. **As of 2001, o**ut of the total 5.94 lakh villages and **4,378 urban areas/towns** in the country**,** 105,295 villages and 57 urban areas/towns had an ST population of more than 50% while half of the villages and a quarter of the urban areas/towns did not have any ST population at all.

The traditional areas of habitation of the STs have often been divided among states, which were formed primarily on the basis of the languages spoken by the mainstream caste society. For instance, Jharkhandis were divided amongst the states of Bihar, West Bengal, Madhya Pradesh and Odisha; the Bihar part of this territory has now been given separate state status with the name 'Jharkhand'. The Gond region has been divided amongst Odisha, Andhra, Maharashtra and Madhya Pradesh. Similarly, the Bhil region is divided amongst Maharashtra, Madhya Pradesh, Gujarat and Rajasthan. The Naga region is divided among Nagaland, Manipur, Assam and Arunachal Pradesh. Further administrative sub-divisions within the states into districts, talukas[14], panchayats[15] and revenue villages (which are officially demarcated and therefore different from the natural habitations or villages or hamlets) have only broken up and fragmented the tribal habitations and reduced STs to minorities in many of them (the list of STs and the states and UTs where they are scheduled provided in Annexure 5 indicates their distribution across adjoining states/UTs). Despite this, and the migration of non-STs into tribal areas, STs are found in 91.6% of all districts in the country with a majority in 13.8% of the districts and significant presence[16] in 12% of the districts. There are 75 districts with more than 50% ST population and another 31 districts with between 30% and 50% ST population (See Annexure 6 for the list of these

13 Estimated at 300 million to 350 million. Accessible at http://en.wikipedia.org/wiki/Indigenous_peoples

14 Also known as tehsil, tahsil, tahasil, taluk, taluq, and mandal, these are administrative units (sub-districts) within each district. There are 5,451 Talukas in the country as of 2001.

15 *Panchayats* or *Gram panchayats* are local governments set up in villages with minimum population of 300. Sometimes two or more villages are clubbed together to form group-gram panchayat when the population of the individual villages is less than 300. There were about 265,000 gram panchayats (2002). The gram panchayat is the foundation of the Panchayat System. A Taluka is divided into a number of gram panchayats.

16 20-49.9% of population

districts). They are found in 46.5% of the villages of which they are in the majority in 38.1% and a significant presence in 16% of these villages. In urban areas/towns, STs are found in 75.1% of the urban areas with a majority in 1.7% and a significant presence in 4.9% (See Table 1 below) of urban areas.

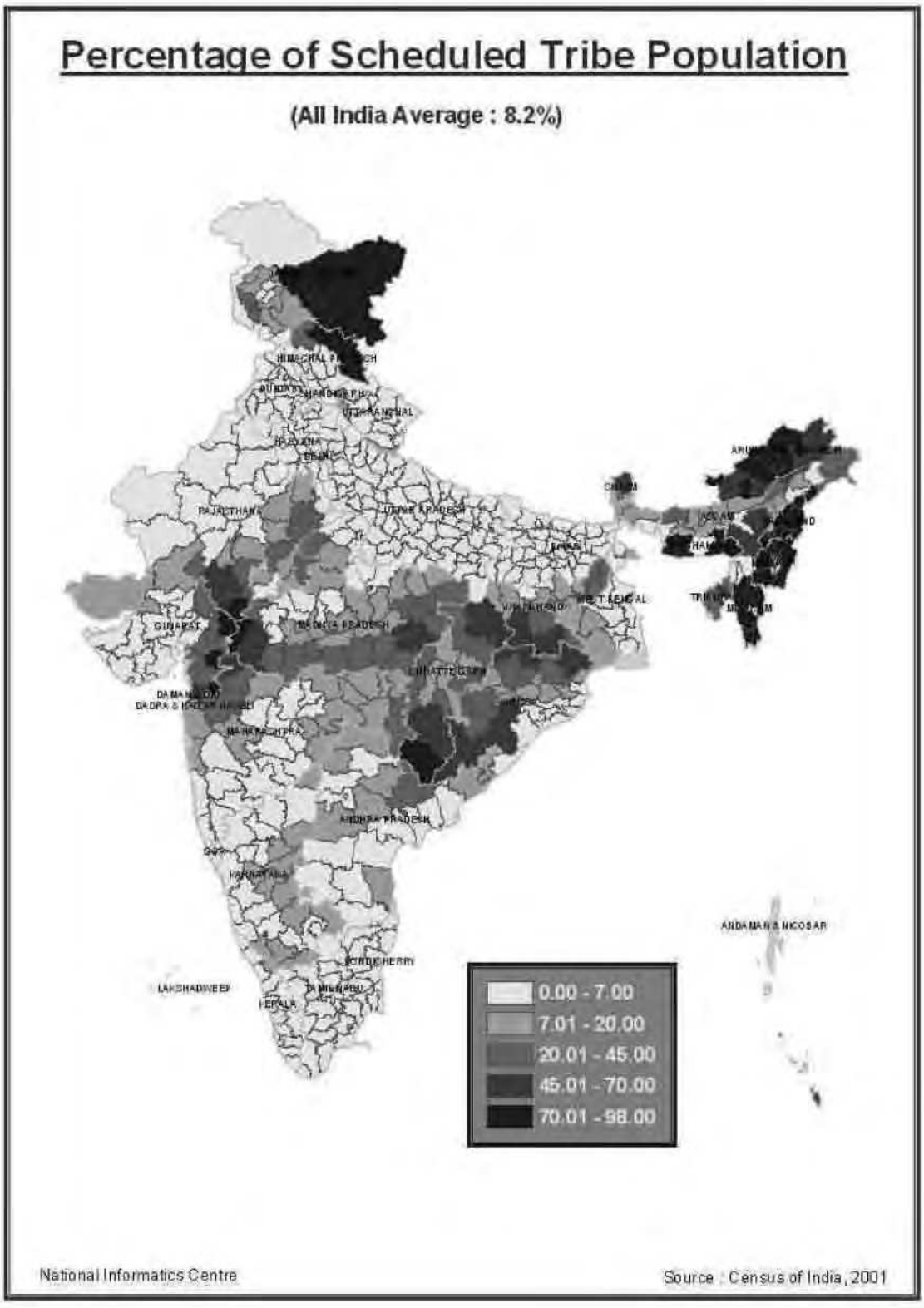
TABLE 1: Percentage of Scheduled Tribe population in districts, villages, and Urban Areas / Towns

Proportion of ST population (%)	Scheduled tribes		
	No. of Districts	No. of villages	No. of Urban Areas/ towns
Nil	50*	323,487	1,090
Upto 4.9%	278	68,189	2,420
5.0%-9.9	56	23,742	387
10.0%-19.9%	69	28,662	264
20.0%-49.9%	65	44,240	160
50.0%-74.9%	35	26,788	15
75.0% or above	40	78,507	42
Total	593	593,615	4,378

No ST list applicable.

Source: Primary Census Abstract, Census of India 2001[17]

17 Accessible at http://censusindia.gov.in/Census_And_You/scheduled_castes_and_sceduled_tribes.aspx


Percentage of Scheduled Tribe Population
(All India Average : 8.2%)
0.00 - 7.00
7.01 - 20.00
20.01 - 45.00
45.01 - 70.00
70.01 - 98.00
National Informatics Centre
Source : Census of India, 2001

Socioeconomic Status

The Planning Commission of India observed in its Eleventh Five Year Plan 2007-12[18] that 'the Scheduled Tribes are mainly landless poor forest dwellers and shifting cultivators, small farmers and pastoral and nomadic herders. 81.56% of the total ST workers, both rural and urban taken together, are engaged in the primary sector, of whom 44.71% are cultivators as compared to 31.65% of the general population, and 36.85% are agricultural labourers as compared to 26.55% of the general population. This indicates that STs are essentially dependent on agriculture. The incidence of poverty amongst STs still continues to be very high at 47.30% in rural areas and 33.30% in urban areas, compared to 28.30% and 25.70% respectively in respect to the total population in 2004–05[19]. A large number of STs who are living below the poverty line are landless, with no productive assets and with no access to sustainable employment and minimum wages. The women belonging to these groups suffer even more because of the added disadvantage of being denied equal and minimum wages. As per the UNDP India Report 2007 on Human Poverty and Socially Disadvantaged Groups in India, the HDI (Human Development Index) for STs at the all-India level is estimated at 0.270, which is lower than the HDI of Scheduled Castes (SC) and non-SC/ST for the period 1980–2000. The HPI (Human Poverty Index) for STs is estimated at 47.79, which was higher than others for the period 1990–2000[20].

Pardi tribal living in the streets of Mumbai *Photo: Sarah Webster*

In the Eleventh Five Year Plan (2007-2012), the Planning Commission of India stated that 'despite some protective measures and developmental efforts, the emerging tribal scenario characteristically continues to manifest:

- increasing tribal alienation on account of slipping economic resources like land, forest, common property resources;

18 *Inclusive Growth*, Eleventh Five Year Plan 2007-12, Volume I, Planning Commission, Government of India, 2008. Accessible at http://planningcommission.gov.in/plans/planrel/fiveyr/welcome.html

19 It should be noted that the poverty lines on which these figures are based are highly controversial and most likely constitute a gross underestimate of actual poverty, both among the general population and among STs.

20 Ibid.

- displacement and dispossession of life-support systems;
- general apathy of official machinery;
- escalating atrocities, at times related to assertion of rights;
- growing clout of market forces; and
- meager advancement through planned development efforts.[21]

Table 2 provides a list of indicators that are indicative of the status of STs as compared to the general population. Except for sex ratio that signifies better status for ST women, all other indicators indicate considerably lower levels of achievements. Even their higher land holdings are not significant as their productivity is low being lands in the hill ranges. This confirms the discrimination that STs face in all sectors of development despite a plethora of positive affirmations and special provisions through policies, plans and laws.

TABLE 2: Status of Scheduled Tribes with respect to the general population: Some indicators[22]

Sl. No.	Indicator	Scheduled Tribe	General population	
	Sex ratio (2001)	978	933	(+)
	Literacy rate (2001) Female literacy rate Male literacy rate	47.10%. 34.76% 59.17%	65.38% 53.67% 75.26%	(-) (-) (-)
	Poverty (2004–05) Rural Urban	 47.30% 33.30%	 28.30% 25.70%	 (-) (-)
	Immunization	26%	42%	(-)
	Toilet Facility (2001)	17.0%	36.4%	(-)
	Safe Drinking Water (2001)	61.7%	79.2%	(-)
	Electricity Connection (2001)	36.5%	61.4%	(-)
	Households without Electricity, Safe Drinking Water and Toilet (1991)	45.30%	21.37	(-)
	Permanent housing (2001)	24.4%	57.7%	(-)
	Drop out rates (2005-6) Primary I-V Boys Girls Elementary I-VIII Boys Girls Secondary I – X Boys Girls Gross Enrollment Ratio in higher education (2005-06)	 39.83% 40.31% 39.26% 62.95% 62.76% 63.20% 78.76% 77.99% 79.82% 6.57	 25.47% 28.53% 21.54% 48.71% 48.49% 48.98% 61.59% 60.04% 63.56% 11.0	 (-) (-) (-) (-) (-) (-) (-) (-) (-) (-)

21 Ibid, p.111.

22 Extracted from - *Report of The Task Group on Development of Scheduled Castes and Scheduled Tribes on Selected Agenda Items of The National Common Minimum Programme*, Planning Commission, Government of India, March 2005. Accessible at
http://planningcommission.gov.in/aboutus/taskforce/inter/inter_sts.pdf
Abstract. Selected Educational Statistics (2005-06). Department of Higher Education, Ministry of Human Resource Development, Government of India. Accessible at
http://www.educationforallinindia.com/SES2005-06.pdf
Higher Education. Accessible at http://www.knowledgecommission.gov.in/downloads/baseline/higher.pdf

Sl. No.	Indicator	Scheduled Tribe	General population	
	Household by asset-holding categories (2003)			
	Rural:	23.5%	9.1%	(-)
	- Less. Than Rs.30,000	37.1%	24.8%	(-)
	- Rs.300,000 and above	32.5%	23.0%	(-)
	Urban:	20.1%	33.7%	(-)
	- Less. Than Rs.30,000			
	- Rs.300,000 and above			
	Land owned (2003)			
	Rural:	0.77 ha	0.76 ha	(+)
	- Average area (ha) owned per household (rural)	0.15 ha	0.13 ha	(+)
	- Average area (ha) owned per household (urban)			
	Health and nutrition indicators (2005-06)			
	Total Fertility Rate	3.06	2.85	(+)
	Infant mortality per 1000 live births	62.1	57.0	(-)
	Under-five mortality per 1000 live births	95.7	74.3	(-)
	Child mortality rate	35.8	18.4	(-)
	Employment (2001)			
	- Percentage of working population to total population	49.1%	39.1%	(+)
	- Percentage of main workers1 to total workers	68.9%	77.8%	(-)
	- Percentage of marginal workers to total workers	31.1%	22.2%	(+)
	Occupation (2001)			
	- Cultivators	44.7%	31.7%	(+)
	- Agricultural workers	36.9%	26.5%	(+)
	- Household industry	2.1%	4.2%	(-)
	- Other occupations	16.3%	37.6%	(-)

3.2 Main human rights concerns

Scheduled Tribes face a wide variety of human rights violations. These range from individual violations of civil and political rights – such as killings and illegal detentions – to widespread violations of social, economic and political rights, including mass displacement and multiple forms of social discrimination. Many of these violations are not evident in the official statistics which – for the same reasons of discrimination and lack of access that are part of the problem – usually fail to record more than a small fraction of the incidents that occur.

Key areas of rights violations include militarisation and state repression, forced displacement and land alienation, violation of forest and resource rights, and atrocities/ discrimination. The latter three areas are dealt with in Part II in the discussions on resource rights and the right to non-discrimination, respectively. However, the first area – militarisation – receives very little attention in much of the literature and hence is discussed here separately.

Militarisation and State Repression

Large parts of the areas inhabited by STs– such as the Northeast and the states of Jharkhand and Chhattisgarh in Central India – are sites of intense violent conflict. In these areas, killings, abductions, illegal detentions, torture and sexual assault by the security forces are commonly reported, with most of those affected being STs. Until 1987 in the northeastern states, particularly Nagaland, Mizoram, Tripura and Manipur,, heavy military deployment has been a feature of everyday life for decades.

It is in the Naga areas, with the longest running armed conflict in India, where prime examples of abuses have taken place. The Armed Forces (Special Powers) Act (AFSPA), 1958, India's most

A protest in Delhi on forest rights (Campaign for Survival and Dignity, 2006) *Photo: Kai Vaara*

draconian anti-insurgency law, is an adaptation of British colonial law that was enforced in 1958 in the Naga areas of Assam and Manipur. The Act provides sweeping powers to armed forces personnel to search and destroy habitations and houses, to detain people on suspicion and to kill with impunity. It also protects them from investigation and prosecution, which can only take place with permission from the central government. This autocratic law has since been extended to most of the Northeast and also applied to the states of Jammu and Kashmir. The constitutionality of the law was upheld by a five-judge bench of the Supreme Court of India in a case filed by a Naga human rights organisation, though the Court ordered certain safeguards to be put in place (which have since largely been observed in the breach)[23].

At the beginning of the armed conflict in the Naga areas, the Assam government, in addition to the use of the AFSPA, promulgated an ordinance to allow the requisitioning of the 'services' of any man as a porter in case of 'emergencies'. This was used to extract forced labour from Nagas for the construction of military camps, carrying loads for the Army and collecting supplies etc.[24]

Military force was used against the Nagas and other indigenous communities. In 1963, the Indian government admitted that it had used Air Force bombers to attack Naga villages. In 1966, the present-day capital of Mizoram – the city of Aizawl – was briefly taken over by Mizo National Front guerrillas. In the struggle that followed, the Indian Army resorted to aerial bombing once again. Large scale displacement and destruction of livelihoods have also resulted from militarisation. In the Naga areas, huge areas of land have been taken over for Army bases

23 *Naga People's Movement for Human Rights vs. Union of India,* judgment dated 11 November 1997, (1998) 2 SCC 109.

24 Luithui, Luingam and Nandita Haksar. *Nagaland File: A Question of Human Rights*, Lancer International, 1984.

and military infrastructure. Villages have been destroyed by military action, in some cases as a method of collective punishment. In both the Naga areas and in Mizoram, the Indian military enforced a policy of forced resettlement as part of its counter-insurgency campaign in the 1950's and 1960's, removing villagers from their homes and pushing them into camps and towns.[25]

Naga Hills, Manipur *Photo: NPMHR (2010)*

Similar tactics are now being used in Central India in the areas where the armed Maoist guerilla organisations operate. In the State of Chhattisgarh, for instance, the National Crime Records Bureau reported that 138 people lost their lives when they were fired at by the police in 2006.[26] In September and October 2009, sixteen people were allegedly killed by police in 'fake encounters' (killings where the police claim to have fired in self-defense) in southern Chhattisgarh.[27] Moreover, the 'salwa judum[28]' militia in Dantewada in Chhattisgarh, a state-supported armed group has driven more than 400,000 people from their homes since 2005 and emptied 644 villages. Of those who have fled, most are surviving by hiding in the forest areas of Chhattisgarh and the neighbouring state of Andhra Pradesh (from where they are, in turn, facing harassment from police and forest officials). Around 40,000 people are residing in 'relief camps' set up by the government, which are heavily policed and surrounded by security forces, and where the living conditions are deplorable. In a public interest petition filed in 2007 before the Supreme Court of India regarding the human rights violations being committed by the Salwa Judum and the security forces in tribal areas of Chhattisgarh, the National Human Rights Commission reported that several complaints of killings, gang rape and destruction of villages by the 'Salwa Judum' and the security forces are credible, and that prosecution of the guilty is not taking

25 See for instance the chronology of the Naga history available at http://www.manipuronline.com/Manipur/December2002/nagachronology2002.htm

26 Quoted in *India Human Rights Report 2008, Chhattisgarh*, Asian Centre for Human Rights. Accessible at http://www.achrweb.org/reports/india/AR08/chhattisgarh.html#_ftn8.

27 Fact finding report by PUCL (Chhattisgarh) , PUDR (Delhi), Vanvasi Chetna Ashram (Dantewada), Human Rights Law Network (Chhattisgarh) , ActionAid (Odisha), Manna Adhikar (Malkangiri) and Zilla Adivasi Ekta Sangh (Malkangiri).

28 Meaning 'Peace March' in Gondi tribal language.

place.[29] Three years later the case remains pending, with the Supreme Court choosing to accept the argument of the State Government that the members of the *Salwa Judum* are 'Special Police Officers' appointed under the State Police Act.[30] While filing of affidavits, counter affidavits, and action taken reports continue, till date no compensation has been paid to those whose lives and homes have been destroyed, and the guilty security personnel remain unprosecuted.

3.3 Role of media and civil society

Adivasis and indigenous people continue to be highly marginalised in the Indian media and popular culture. Mainstream media – particularly, but not only the English language elite media – rarely report on Adivasi areas or issues. When they do, most coverage falls into three categories: paternalistic welfare stories on deprivation and poverty; stories of atrocities against them and stereotyped descriptions of the 'exotic' cultures and social norms of these communities. These tendencies are particularly pronounced with regard to coverage of the Northeast. Within the Northeast itself, the large presence of STs does ensure that indigenous peoples' issues receive some attention in local media.

More recently, issues of Adivasi resource rights have been receiving more mainstream media attention in the context of two debates: a smaller one around the passage of the Forest Rights Act 2006, and a wider range of discussions around the government's decision to launch an offensive against the Maoist guerrillas in Adivasi areas. These two debates have brought some issues of resource rights into media discourse, though these issues are still largely seen from the perspective of welfarist 'development' rather than as questions of rights and resource control.

Aside from mainstream political parties, a wide variety of other organisations are active in organising Adivasis and indigenous peoples across India in response to the threats to their rights and existence, though many neither accept nor use the discourse of indigenous rights to describe their work. Roughly, the country can be divided into five zones, within each of which a particular type of organisation is dominant. These are:

- The central-western region, comprising the states of Madhya Pradesh and Maharashtra. In these large states, drawing upon a history of left-wing mobilisations and people's movements, Adivasi mobilisations tend to be dominated by what are usually described as 'movement organisations' or 'mass organisations'. These are typically unregistered grassroots organisations that do not receive institutional funding. They are usually membership-based and regional in scope, organising people at the level of the village and usually focused on issues of land rights, forest rights, migrant labour issues and resistance to displacement.
- The eastern-central region, comprising the states of Jharkhand, Chhattisgarh and Andhra Pradesh. In these states, the organisation with the largest spread of influence among Adivasis (despite a recent decline in Andhra Pradesh) is the Communist Party of India (Maoist), an armed guerilla organisation that follows a path of protracted people's war aimed at the overthrow of the state. The Maoists do not use the terminology or concepts of indigenous peoples' rights, though some strands of their movement and friendly parties use the concept of the Adivasis as a separate identity / nationality. Aside from the Maoists, there are peoples' movements (in Jharkhand and Chhattisgarh particularly) largely targeting land acquisition and consequent displacement for industries, primarily mining industries, and development projects such as dams. There are also NGOs working

29 Recorded by the Supreme Court in order dated 16.12.2008 in *Nandini Sundar & Ors vs. State of Chattisgarh,* Writ Petition (Civil) No. 250 of 2007, pending.

30 See order dated 18.2.2010 passed by the Supreme Court in *Nandini Sundar & Ors vs. State of Chattisgarh* Writ Petition (Civil) 250 of 2007 wherein, inter alia, the petitioners have been directed to file a "comprehensive rehabilitation plan" for the purpose of payment of compensation "to the persons who lost their houses and belongings by the acts of naxalites".

among Adivasis in these states. The state of Jharkhand in particular has a long history of people's struggles, mostly organised around the theme of self-government and autonomy for the Adivasis of the area. The creation of the state of Jharkhand has, for the time being, led to the decline of many of these movements.

- The southern region, comprising of Tamil Nadu, Karnataka and Kerala. In Tamil Nadu and Karnataka, the most widespread organisations are funded NGOs whose approach tends to be welfare and development-oriented. Some of these NGOs have adopted the language of indigenous peoples' rights over the past two decades. The practice of these organisations, however, tends to avoid political mobilisation and confrontation with the State. Kerala is an exception to this trend, with much fewer NGOs and instead a much larger presence of people's organisations (described above). The situation in the eastern state of Odisha, meanwhile, resembles that of Tamil Nadu or Karnataka, though with a growing presence of the CPI (Maoist) in the western districts of the state.
- The Northeastern region, including the seven states of India's northeast. In these states, multiple organisational forms coexist among the indigenous population: armed national liberation organisations, mass based membership organisations (which usually describe themselves as civil society groups), such as the powerful student unions, and traditional community organisations / governance institutions. These tend to operate in general coordination with one another, though they may have other differences. It is in the Northeast that the concepts and discourse of indigenous people's rights are most widespread, particularly among communities such as the Nagas. In recent times, organizations have also emerged against various 'development' projects such as dams etc.

Other parts of the country such as Gujarat, West Bengal, Himachal Pradesh etc. tend to follow one or the other pattern of those listed above.

At the national level, as discussed in the section on post-colonial history above, there is as yet no nationwide Adivasi political formation or organisation. There are a number of coalitions and alliances, mostly people's movements and activist NGOs, which have formed at various times to take up specific issues (among them 'self-rule' [i.e. autonomy], forest rights, displacement, etc.). These coalitions have however tended to be transient in nature. There are also a few donor-driven and dependent NGO networks which are largely project and event oriented.

In addition, a different group of organisations – the '*Sangh Parivar*', or family of organisations affiliated to the *Rashtriya Swayamsevak Sangh*[31] – also has a widespread presence across central India as well as in many of the other Adivasi regions of the mainland (and parts of the Northeast, such as Arunachal Pradesh). These organisations mobolise around the theme of a 'Hindu rashtra' (or Hindu nation) and are strongly opposed both to religious minorities (such as Muslims and Christians) as well as any movement or ideology that they see as threatening the dominance of an upper caste, autocratic definition of 'Hinduism'. In this view, indigenous rights and the concept of indigenous peoples are a threat to national integrity. Hence, these organisations have repeatedly sought, often with the assistance of state authorities, to crush struggles that implicitly or explicitly talk of indigenous peoples' rights. They have even opposed the term 'Adivasi' (meaning first dweller), favouring instead their own term '*vanvasi*' (meaning forest dweller).

31 Referred to variously as a Hindu supremacist, Hindu nationalist and Hindu fascist organization; see for instance http://en.wikipedia.org/wiki/Rashtriya_Swayamsevak_Sangh#cite_note-Atkins2004-3

4.Legal and Policy Frameworks:

4.1 Introduction to legal / legislative system and its basic principles

4.1.1 Sources of law

The primary source of law recognized in the Indian legal system is:

a. The Constitution of India: This highly detailed document running into 395 Articles and Twelve Schedules forms the fundamental framework of the legal system as well as the political structure of the country. The provisions of the Constitution can be amended only by the Parliament through a specially prescribed procedure. Over the last 65 years there have been over 94 Amended laws. The Supreme Court in a far reaching judgment had held that the 'basic structure' of the Constitution cannot be amended, among other things, the Preamble also.[32]
b. Legislations by the Parliament and State Legislatures, Rules and Government Notifications: The Constitution contains detailed prescriptions for law-making, including carefully delineated boundaries for the Central and State Legislatures[33]. All legislations must also conform to the fundamental rights[34], and if found to be inconsistent, shall be declared void.[35]
c. Judicial Precedent: Judicial decisions, which are a very important source of law, are also recognized as such by the Constitution. Accordingly, decisions of the Supreme Court are binding on all High Courts and subordinate courts. Decisions of High Courts generally are binding on the state over which they have jurisdiction. Decisions of subordinate courts, however, do not constitute judicial precedent.
d. Customary law: Article 13 of the Constitution recognises 'custom or usage having in the territory of India the force of law' as part of the term 'law'. Some basic conditions for their recognition as customary law includes whether it finds its source in antiquity; is reasonable; is in conformity with statutory law; is followed openly and freely (as opposed to under coercion) and is consistent with morality and public policy. In certain aspects of personal laws, such as marriage, divorce and inheritance, religious texts are also accepted to a limited extent as an additional source of law.

4.1.2 The Court Structure

The Supreme Court of India in New Delhi, the national capital is the highest court of the land. It consists of the Chief Justice of India and 29 other judges to be appointed by the President of India in consultation with the Chief Justice. The jurisdiction and powers of the Supreme Court are very wide, and include Original Jurisdiction, Appellate Jurisdiction from decisions of the High Courts and Subordinate Courts, and Advisory Jurisdiction. It is a court of record, and the official language is English. The Supreme Court has original jurisdiction[36] to issue writ of habeas corpus, mandamus, certiorari, quo warranto and prohibition for the enforcement of the fundamental rights, and also direct redressal.

High Courts are established for every state, although in some situations the High Courts are also shared between states, such as the High Court of Guwahati which has jurisdiction over

32 *Keshavananda Bharati v. State of Kerala* (1973) 4 SCC 225.
33 In the Seventh Schedule.
34 In Chapter (Part III) of the Constitution.
35 Article 13.
36 Under Article 32.

the states of Assam, Manipur, Meghalaya, Nagaland, Tripura, Mizoram and Arunachal Pradesh. States which are geographically spread out also have one or more additional benches of the High Court located in different parts of the state, but functioning as one unit. Each High Court has a Chief Justice and such other judges appointed by the President of India from time to time. High Courts have appellate and original jurisdiction, primarily over disputes which are located within the geographical area of that particular state. Every High Court is a court of record (i.e. it can punish for contempt of itself), and the official language is English.

Like the Supreme Court, the High Courts also have original jurisdiction to entertain writ petitions regarding violations of fundamental rights, and can issue writs in the nature of habeas corpus, mandamus, certiorari, quo warranto and prohibition for the enforcement of these rights, and also direct redressal.

The Subordinate Courts function under the supervision of the concerned High Court. District level judges are appointed by the Governor in consultation with the High Court, while judicial officers below the rank of District Judges are appointed by the Governor in consultation with the Public Services Commission. Usually, the subordinate judges are allocated separately to the Civil or the Criminal side. Civil Judges and Small Cause Courts form the lowest rung of the judiciary on the civil side, while Judicial Magistrates/Metropolitan Magistrates form the lowest rung of the judiciary on the criminal side. At the next level are the Additional District Judges on the civil side, and the Additional Sessions Judges on the criminal side.

4.1.3 Nyaya Panchayats

The Nyaya Panchayats are the judicial component of the local governance system. They are the lowest rung of the judiciary, created for the purpose of dispensation of justice at the rural level. While several of the State legislations relating to Panchayat Raj institutions make provision for the appointment of Nyaya Panchayats at the village panchayat (i.e. local council) level, with limited civil as well as criminal jurisdictions, only a few states had actually set them up.[37] In recent years, there has been a renewed interest in setting up these village level judicial bodies. However, most of the states in the Northeast do not have provisions for Nyaya Panchayats, including Nagaland.

4.1.4 Human Rights Courts

The Protection of Human Rights Act 1993 (PHR Act), provides for the setting up of Human Rights Courts in each district 'for the purpose of providing speedy trial of offences arising out of violation of human rights'[38]. It also provides for the appointment of a Special Public Prosecutor for the purpose of conducting cases in this Court.[39] Apart from these two rather cryptic provisions, there are no rules or guidelines which amplify the meaning, function, and other jurisdictional issues related to such courts, nor is the establishment of these courts mandatory. Therefore, the setting up of such courts has been very slow. Such courts have been notified in the States of Andhra Pradesh, Assam, Sikkim, Tamil Nadu, Uttar Pradesh, Madhya Pradesh, Meghalaya, Himachal Pradesh, Goa and Tripura, but have actually been established only in Chennai (Tamil Nadu) and Guwahati (Assam).

The intention of the legislature to set up specialized courts to deal with criminal prosecution of perpetrators of human rights violations is no doubt significant for tribals in India given the

37 See *Ashok Mehta Committee report* or *Report of the Committee on Panchayat Raj Institutions 1978* which stated that at that time Nyaya panchayat were operational in 8 States – Bihar, Gujarat, Jammu & Kashmir, Manipur, Rajasthan, Tripura, Uttar Pradesh and West Bengal. In 3 States – Haryana, Himachal Pradesh and Punjab – the village Panchayats have also been vested with judicial powers.

38 Section 30 of Protection of Human Rights Act 1993.

39 Section 31 of Protection of Human Rights Act 1993.

widespread nature of such abuses in tribal areas. The relevance of such Human Rights Courts constituted under the PHR Act remains to be seen, which defines the term 'human rights' in the narrowest possible terms (see section 4.5 below), and further excludes human rights violations by the armed forces, including paramilitary forces of the Union government, from the purview of the Act.

Be that as it may, the reality is that discriminatory attitudes against STs in Indian society are reflected to a greater and lesser degree in the judicial system also at all levels. There is little comprehension, let alone understanding, of the customary practices, history, concerns and perspectives of STs within the judicial system. Far greater than special human rights courts, therefore, is the need to educate and sensitise the mainstream legal system at all levels to the needs and aspirations of the STs.

4.1.5 Customary dispute settlement mechanisms

Historically, tribal communities across the country have had mechanisms for settlement of disputes within and across communities, which have evolved in different forms depending on the nature of issues which they have been called upon to address. The colonial period saw a decline in the strength of these mechanisms as they were sought to be replaced by a judicial system more suited to the needs of the colonial government. As a result, these traditional mechanisms were neither nurtured by state administration, nor their decisions recognised as valid by the judicial system.

One exception to this rule is the state of Nagaland, which continues to have robust and continuously evolving customary dispute settlement mechanisms which run parallel to the mainstream legal system. These mechanisms are recognised under the provisions of Article 371 A of the Constitution, which protects 'Naga customary law and procedure'. Accordingly, the state of Nagaland has set up District Customary Courts in every district having both civil and criminal jurisdiction, alongside the mainstream judicial systems. The people have the option of going to the customary court or the state court. The judge in the customary court is known as Doobashis, and depending on the number of households, there could be one or more Doobashis for each village. A person wishing to have his/her dispute decided by the District Customary Court makes an application before the Deputy Commissioner of the District who then forwards it to the Customary Court. Apart from deciding cases on the basis of customary law, the customary court also follows procedures which are based on customary practices. The decisions of the Customary Court are legally recognised and therefore all consequences from a decision of a mainstream court also flow from the decision of the customary court.

However, in other tribal areas there is no legal recognition of the traditional dispute settlement mechanisms though these may be strong and have social acceptance. One such example is the Devta system, practiced in tribal areas of Himachal Pradesh. The Devtas are local deities or spirits which have traditionally demarcated geographical areas of jurisdiction, usually a cluster of villages. The villagers approach the devta for assistance in all manner of circumstances, from marriage proposals, to healing of illnesses, to resource sharing methods for extraction of medicinal herbs, and protection of forests. Dispute settlement is but one of the functions the devta performs. Usually, the devta communicates his decisions to the community through a medium or oracle, and in many areas it is believed that disobedience will result in ill fortune. In recent years, the role of the devtas has become increasingly important as local communities have chosen to follow the 'decision' of the devta with respect to issues of environmental conservation and resource use, such as harvesting of minor forest produce and setting up of industrial projects, in defiant opposition to the directives of the State administration.[40] In Jharkhand, the Adivasis continue with their

40 Thankur, Molu Ram. Myths, Rituals, and Beliefs in Himachal Pradesh, M.L. Indus Publishing House, New Delhi, 1997,

traditional systems such as Manki-Munda and Disum Parganah though considerably weakened.

Similarly, many tribal areas have traditional mechanisms for the settlement of disputes which remain unrecognized by the mainstream legal system but nevertheless continue to have social acceptance.

4.2 Constitutional Safeguards

As many as 209 Articles and 2 special schedules of the Constitution of India are directly relevant to STs. Table 3 below summarises some of these provisions.

TABLE: 3 Constitutional provisions relevant to Scheduled Tribes

Provision	Summary
i) *Social*	
Article 14	Equality before Law
Article 15	Prohibits discrimination on grounds of religion, race, caste, sex or place of birth
Article 15 (4)	The State is to make special provisions for the advancement of any socially and educationally backward classes of citizens or for (the Scheduled Castes) and the STs
Article 16	Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State
Article 16 (4)	The State to make provisions for reservation in appointment, posts in favour of any backward class citizens, which in the opinion of the State is not adequately represented in the services under the State
Article 16 (4A)	The State to make provisions in matters of promotion to any class or classes of posts in the services in favour of (the Scheduled Castes and) the STs
Articles 25-28	Freedom of religion
Articles 29-30	Freedom to culture and education
Article 338 A	A National Commission for Scheduled Tribes to investigate, monitor and evaluate all matters relating to the Constitutional safeguards provided for the STs
Article 339 (1)	Appointment of a Commission to report on the administration of the Scheduled Areas and the welfare of the STs in the states
Article 340	Appointment of a Commission to investigate the conditions of socially and educationally backward classes and the difficulties under which they labour and to make recommendations to remove such difficulties and to improve their conditions
Article 342	To specify the tribes or tribal communities to be Scheduled Tribes
ii) *Economic*	
Article 46	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) the STs, and protect them from social injustice and all forms of exploitation
Article 275(1)	Grants-in-Aid to be made available from the Consolidated Fund of India each year for promoting the welfare of the STs and administration of Scheduled Areas
Article 335	The claims of the members of (the Scheduled Castes and) the STs in the appointments to services and posts in connection with the affairs of the Union or of a State to be taken into consideration consistent with the maintenance of efficiency of administration
iii) *Political*	
Article 330	Reservation of seats for (the Scheduled Castes and) the STs in the House of the People

pp.130-7.

Provision	Summary
Article 332	Reservation of seats for (the Scheduled Castes and) the STs in the Legislative Assemblies of the States
Article 243D	Reservation of seats for (the Scheduled Castes and) the STs in every Panchayat
Article 243T	Reservation of seats for (the Scheduled Castes and) the STs in every Municipality
Article 243M(4)(b)	Extension of the Part IX- The Panchayats- to the Scheduled Areas through a law enacted by Parliament. This has been done by the Panchayats (Extension to the Scheduled Areas) Act, 1996.[2]
Article 243ZC (3)	Extension of the Part IX-A- The Municipalities- to the Scheduled Areas through a law enacted by Parliament. No such law has been enacted to date.
Article 244	The administration of Scheduled Areas and STs to be governed by the Fifth Schedule, and that of tribal areas in Assam, Meghalaya, Tripura and Mizoram to be governed by the Sixth Schedule (for further detail see section on Self Management in Part II)
Article 371 A	Special status to the State of Nagaland
Article 371 B	Special provisions for the State of Assam
Article 371 C	Special provisions for the State of Manipur
Article 371 F	Special provisions for the State of Sikkim
Article 371 G	Special provisions for the State of Mizoram
Article 371 H	Special provisions for the State of Arunachal Pradesh
Fifth Schedule	Provisions as to the Administration and Control of Scheduled Areas and STs
Sixth Schedule	Provisions as to the Administration of Tribal Areas in the States of Assam, Meghalaya, Tripura and Mizoram

4.3 Legislative Safeguards

From the Constitutional mandate, there are a number of legislative safeguards in the form of special laws, Rules, notifications, both at the central and at the state levels. Table 4 below gives a representative list of these laws.

TABLE 4: Legislative safeguards for Scheduled Tribes

Legislative Safeguards	
Protection of Civil Rights Act. 1976	This central statute prohibits the practice of untouchability and cites instances of such practice liable for prosecution as criminal offences.
The Scheduled Castes and the STs (Prevention of Atrocities) Act, 1989	This Central statute is aimed at checking and deterring atrocities against STs (and Scheduled Castes)
The STs and Other Traditional Forest Dwellers (Recognition of Rights) Act, 2006	A recently enacted Central law concerning the rights of STs and other forest dwellers over forests and forest resources.
Odisha Scheduled Areas Transfer of Immovable Property (by STs) Regulation, 1956	Enacted by the Odisha State legislature, this Regulation prohibits the transfer of immovable property from tribals to non-tribals in the State of Odisha, and provides mechanisms for restoration of land so alienated. Similar legislations are in place in other states as well. (*See Annexure 10*)
Odisha Land Reforms Act, 1960	This state level statute applies to land rights across Odisha's entire population; it is important because it also contains provisions regulating the transfer of land from tribals to non-tribals in non-Scheduled Areas. Most states have similar provisions in their revenue laws.

Odisha (Scheduled Areas) Debt Relief Regulation, 1967 and Odisha Scheduled Areas Moneylenders Regulation, 1967	Enacted by the Odisha State legislature, these regulations provide relief to STs from indebtedness, the control of money lending, and for the setting up of Debt Relief Courts.
Odisha Government Land Settlement Act, 1962	Although this state level statute contains a specific provision which overrides 'custom, practice or usage having the force of law', it has been an important tool for regularisation and settlement of lands among tribals in Odisha.
Odisha Gram Panchayats (Minor Forest Produce Administration) Rules, 2002	These Rules give primacy to the Gram Panchayat in the procurement and trading of 67 items of minor forest produce, whether produced in government lands and forest areas within the limits of the village or collected from the reserved forests and brought into the village.
Odisha Protection of Scheduled Castes and Scheduled Tribes (Interest in Trees) Act, 1981	This State level legislation forbids any person from entering into contracts with persons who are SC/STs for the sale of timber of specified trees unless previous written permission of the Range Officer has been obtained.
Odisha Communal Forest and Private Lands (Prohibition of Alienation) Act, 1948	This rather outdated and little used state legislation claims to prevent the alienation of communal lands and private lands over which village communities have usufructuary rights. Its significance lies in the fact that it covers not only land which is actually owned by communities, but also land which may be privately owned but over which communities have rights of user. Government forest land, however, is not covered.3
Panchayati Raj legislations	In pursuance of the enactment of PESA, State Governments across the country have amended the state level Panchayati Raj legislations to make special provisions for panchayats in Scheduled Areas. A complete list of these provisions is beyond the scope of this report.
Nagaland Village and Area Council Act, 1978	This is a state level legislation which gives statutory recognition to traditional Village Councils in the governance system.
Nagaland Communitisation of Public Institutions and Services Act, 2002	A State level legislation which enables the community to participate in the management and development of public institutions as their own. Rules have been framed under this law for bringing under its purview elementary education, grassroot health services and electricity management.
Nagaland Jhumland Act, 1970	A state level legislation enacted to safeguard and regulate the rights to *jhum* land, or lands on which shifting cultivation is traditionally practiced.
Chottanagpur Tenancy Act, 1908	This legislation was enacted subsequent to the tribal rebellion led by Birsa Munda in the Chotta Nagpur area, in order to prevent transfer of Adivasi land to the non-Adivasis. It is currently applicable in the state of Jharkhand.
Santhal Parganas Tenancy Act, 1949	A powerful legislation giving legal recognition and supremacy to the customary laws of the Adivasis in the Santhal Parganas region of Jharkhand, the applicability of this law has been considerably weakened by recent adverse judgments of the Jharkhand High Court.

4.4 Key Institutional Structures Relating to Scheduled Tribes

Both the central and the State Governments in India have a variety of agencies and government departments intended to address issues relating to STs.

4.4.1 Central Government

Ministry of Tribal Affairs

Constituted in 1999, the Ministry of Tribal Affairs is a relatively new Ministry. It has the objective of 'providing more focused attention on the integrated socio-economic development of the most under-privileged sections of the Indian society namely, the STs, in a coordinated and planned manner'. It therefore has responsibility for overall policy, planning and coordination of programmes for development of STs. In practice this has translated into administration of the various central government schemes that direct funds towards ST welfare. Recently, the Ministry had its mandate greatly expanded after it was made the nodal agency for implementation of the Forest Rights Act.

National Commission for Scheduled Tribes

The National Commission for Scheduled Tribes (NCST) was created by a Constitutional amendment in 2004, which bifurcated the then existing National Commission for Scheduled Castes and STs created in 1978, which had been preceded by the Office of the Commissioner for Scheduled Castes and Scheduled Tribes set up in 1950. Article 338A of the Constitution defines the Commission's functions and powers as essentially those of an ombudsman, with the role of monitoring measures for ST welfare, investigating atrocities and violations of rights against STs and suggesting measures to safeguard ST resource rights, livelihoods and so on. It can summon witnesses, require production of documents and so on. The central and State Governments are to consult the Commission on all policy matters relating to STs. The Commission has five members and its reports are tabled before Parliament on an annual basis.

Despite these sweeping powers and a network of regional offices, in practice the NCST is largely perceived to be ineffective. Members are frequently not appointed on time (at the time of writing, one seat was vacant), and the constitutional requirement for consultation with the Commission on policy matters is ignored or reduced to a formality. Barring some exceptions, the Commission has also rarely taken on a proactive role or sought to fulfill its mandate effectively.

Tribal Sub Plan / Integrated Tribal Development Projects

From the Fifth Five Year Plan onwards, development funds have been routed through a scheme known as the 'Tribal Sub Plan (TSP)'. Given that STs are usually found within specific geographic areas, this approach created a special plan for spending money in blocks where STs formed more than 50% of the population. The funds are to be spent through Integrated Tribal Development Agencies at the block level, which has the mandate of coordinating all development spending and activity in order to benefit STs. These are known as Integrated Tribal Development Projects. The state and central governments are to allocate funds for the Tribal Sub Plan in the same proportion as that of STs in the population. As per the guidelines of the Planning Commission, funds under the TSP are to be spent on projects that benefit STs directly, and line departments' individual projects should be coordinated by the Tribal Welfare Secretary (the top official at the State level). In the Tenth Five Year Plan, Rs. 251.8 billion was provided as 'Special Central Assistance' to State Governments for expenditure on TSP activities[41].

In addition to the TSP, new schemes were created later to address the needs of Adivasis who

41 Eleventh Five Year Plan, Chapter 6.

lived outside the TSP blocks. These included the Modified Area Development Approach (MADA) applied to areas with a population of more than 10,000 of which more than 50% are STs; the 'Cluster Approach' applied to areas with a population of 5,000 or more; and 'Micro Projects' directed at specific Scheduled Tribal communities, especially those classified as 'Primitive Tribal Groups'. Families living outside these targeted areas and communities are now also sought to be covered under Dispersed Tribal Development Projects, which are implemented by the Finance and Development Corporations (see below).

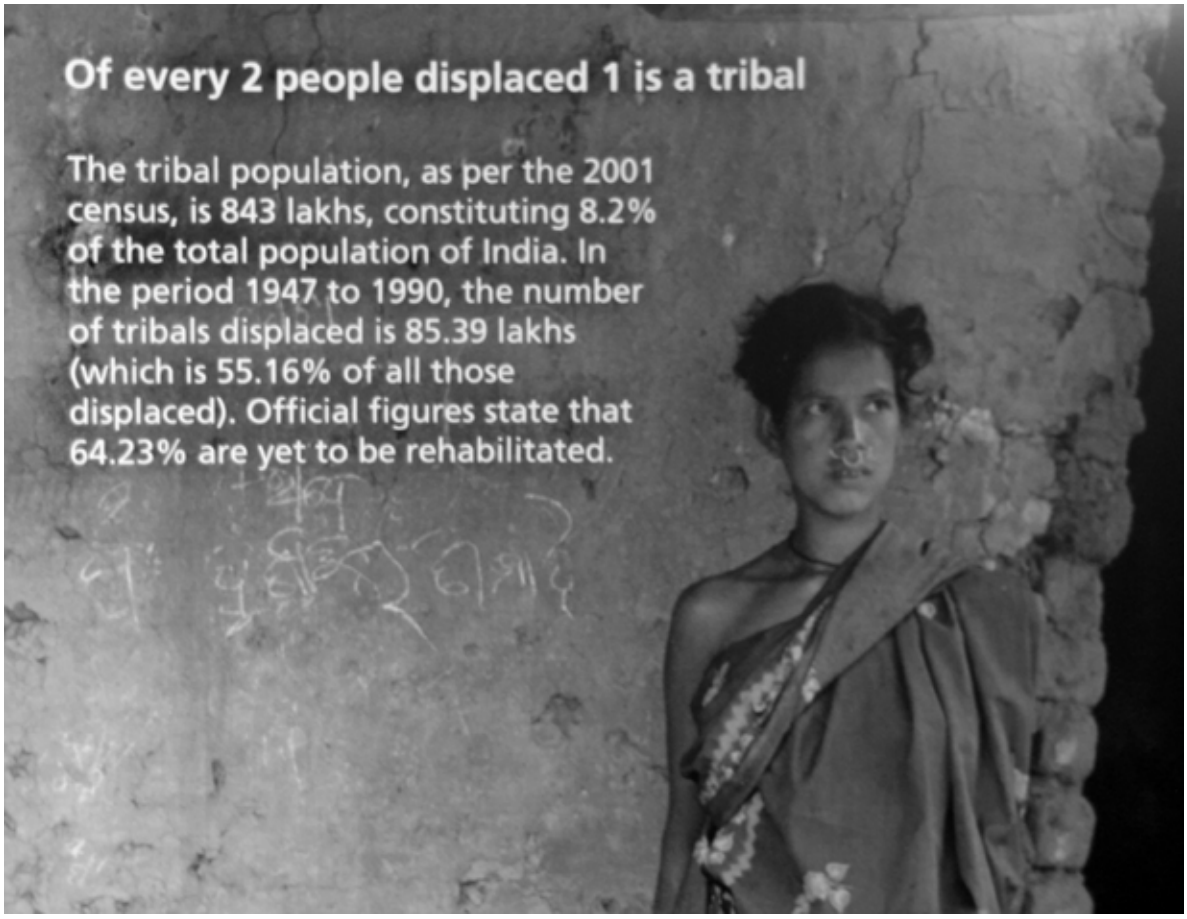


Photo: Chris Erni

The TSP strategy has been in operation in 22 states and 2 UTs. The TSP concept is not applicable to the tribal majority states of Arunachal Pradesh, Meghalaya, Mizoram and Nagaland and in the UTs of Lakshadweep and Dadra and Nagar Haveli where tribals represent more than 80% of the population, since the Annual Plan in these states/ UTs is itself a Tribal Plan. There are 192 ITDP areas, 252 MADA pockets and 82 Clusters.

Though the TSP was conceived as a way to ensure coordinated expenditure of funds on projects for STs in areas where they are the majority, in practice it has largely failed to achieve this objective. According to the Eleventh Five Year Plan; 'The implementation of ...TSP leaves much to be desired. This applies equally to the Central as well as State Governments. Though there may be several reasons for this lackluster implementation, lack of statutory or clear-cut administrative sanction is an important one.'

A study of TSP implementation in the states of Bihar, Chhattisgarh, Odisha, Haryana, Punjab, Gujarat and Tamil Nadu found a number of serious problems with the implementation of the scheme[42]. The principle of allocating proportionate funds was not followed in most

42 Research Study on Livelihood Options Assets Creation out of Special Component Plan (SCP)

of the states, except Tamil Nadu and Odisha, and in all states the "allocation" included funds allocated for general government projects that also happened to impact some STs. Even the actual allocation was often not spent. At the central level, most Ministries have ignored the TSP, claiming that their projects are "non-divisible in nature" and as such cannot be divided into ST and non-ST specific components. Despite central guidelines from the Ministry of Tribal Affairs and other agencies, most states failed to set specific targets for TSP expenditure, and all states had no field monitoring mechanism to verify how well the funds were being spent. Indeed, the states of Odisha, Chhattisgarh and Gujarat did not even engage in coordinated planning for TSP fund at the local (i.e. development block) level, basically defeating the purpose of the Sub-Plan entirely. The study found that the majority of benefits that reached STs as a result of the scheme were on education and welfare (such as old age pensions), while income generation as well as infrastructure benefits such as irrigation, agricultural schemes rarely reached STs at all. Indeed, the study found that even the allocated amounts – which are significant in nature, adding up to roughly Rs. 56,700 for every ST household in the country over the Ninth and Tenth Five Year Plans – had hardly made an impact on actual living conditions. Considering that the TSP is the primary development and welfare strategy of the Government of India for STs, this is telling of the government's commitment to ST welfare.

Commission for Scheduled Areas and Scheduled Tribes

A Commission for Scheduled Areas and Scheduled Tribes was constituted under Article 339 (1) of the Constitution. The first Scheduled Areas and Scheduled Tribes Commission was set up in 1960 (headed by U.N Dhebar). The second Commission was set up in 2002 (headed by Dileep Singh Bhuria). The Commission submitted its report to the President of India on July 16, 2004.

Committee on Welfare of Scheduled Castes and Scheduled Tribes

One of the three elected Committees in Parliament, the Committee on Welfare of Scheduled Castes and Scheduled Tribes is a joint committee consisting of twenty members from the Lok Sabha (the directly elected lower house of Parliament) and ten from the Rajya Sabha (the council of States, elected by State Assemblies – the upper house of Parliament). The Committee has the power to summon government officials and require reports on any matter relating to the welfare and rights of Dalits and Adivasis, either on its own motion or after the matter is referred to it by the Speaker of the Lok Sabha. Reports of the Committee, like those of other elected parliamentary committees, are generally treated as binding.

National Scheduled Tribes Finance and Development Corporation (NSTFDC)

Set up in 2001, the NSTFDC is a Central government financial body with the mandate of channeling Central funds towards schemes for income generation, training, skill up-gradation and procurement of minor forest produce. It operates through State Tribal Finance and Development Corporations. In practice, Central government assistance has yet to be properly channeled through the NSTFDC (and through TRIFED), with many loan schemes and other welfare operations running separately through their concerned Ministries. This has curtailed the effectiveness of this body and of TRIFED (see below)[43].

Tribal Cooperative Marketing Development Federation (TRIFED)

State Governments in many of the states have created cooperatives of Adivasis for

& *Tribal Sub Plan (TSP) Schemes and its Impact among SCs and STs in India*, Socio Economic and Educational Development Society (SEEDS), New Delhi; for Planning Commission of India. November 2007.

43 Ibid.

marketing of products made by them, particularly those based on non-timber forest produce. The Tribal Cooperative Marketing Development Federation of India Limited (TRIFED) is a national federation of these cooperative bodies, engaged in 'marketing development activities for tribal products'.

4.4.2 State Governments

Departments of Tribal Welfare

Most states with significant ST populations have separate departments and/or Ministries for tribal welfare. The states with low ST populations, such as Tamil Nadu, Kerala or West Bengal, are under the control of departments for the 'backward classes' (i.e. Dalits, Adivasis and 'other backward castes'). In practice these departments tend to have few autonomous powers or functions, being mostly charged with looking after the administration of development schemes and channeling of funds. As with the Central Ministry of Tribal Affairs, the mandate of these departments has recently been expanded by the passage of the STs and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act.

Tribes Advisory Councils

Paragraph 4 of the Fifth Schedule to the Constitution requires that every state with areas under that Schedule, or any other state whose Governor should so direct, must have a Tribes Advisory Council. The members of the Council are appointed by the Governor (See Fifth Schedule in 4.6.1 below) and these Councils are to advise the Governor on the use of his / her powers under the Fifth Schedule (see above), and to be consulted on policy matters relating to STs. In practice, these councils are rarely functional, since they are to advise the Governors, who themselves rarely exercise their powers.

Cooperatives, Marketing Federations and Finance and Development Corporations

Depending on livelihood activities followed by ST communities in a particular state, many states have set up government-organised cooperatives and marketing federations. Thus, in Madhya Pradesh, Chhattisgarh, Odisha and other States, purchase of certain kinds of non-timber forest produce – such as tendu leaves, used in beedi[44] making – has been nationalised and brought under a single government agency which acts as a monopoly purchaser. Purchases are in turn made from state-created cooperatives composed of collectors of minor forest produce. Following the recommendations of a Central government committee in 1971, many states also created what are known as Large Area Multipurpose Societies (LAMPS), which function as credit and procurement cooperatives. Funds to these various societies and cooperatives are in turn channeled through the ST Finance and Development Corporations.

Many of these institutions and organisations, however, have largely failed to fulfill their mandate. Corruption, diversion of funds and bureaucratic interference have prevented most of them from being accountable to the STs that are nominally their members and beneficiaries.

4.5 National human rights institutions

In the early 1990s, the Indian government was beginning to feel the heat of criticism by foreign governments due to the political unrest in Punjab, Jammu & Kashmir, the North East and Andhra Pradesh. Pressure was also mounting from a small but increasingly vocal and coordinated civil rights movement within the country. In response to these pressures, and in keeping with its

44 A *beedi* is a thin cigarette made of 0.2-0.3 grams of tobacco flake wrapped in a tendu (or temburini; Diospyros melonoxylon) leaf and secured with colored thread at both ends. Beedis account for over 30% of Indian tobacco consumption and are more popular than cigarettes.

commitments at the World Conference on Human Rights in 1993 which urged governments to strengthen national structures, institutions and organs of society for the promotion and safeguard of human rights, and in particular human rights commissions, the Indian Parliament enacted the Protection of Human Rights Act, 1993[45] (hereafter referred to as 'the PHR Act'). The Act describes itself as 'An Act to provide for the constitution of a National Human Rights Commission, State Human Rights Commissions in States and Human Rights Courts for better protection of human rights and for matters connected therewith or incidental thereto'.

The PHR Act provides for the setting up of an autonomous body at the Center and also similar bodies at the state levels to protect human rights in the country. However, 'Human Rights' has been narrowly defined as 'the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the international Covenants and enforceable by courts in India'.[46]

The National Human Rights Commission[47] (NHRC) comprises of a Chairperson who shall be a retired Chief Justice of India, one former judge of the Supreme Court, one former judge of a High Court, two individuals from the public who have knowledge of human rights, and other ex-officio members, including the Chairperson of the National Commission for STs constituted under Article 338A of the Constitution. At the time of writing, however, the post of the Chairperson of the NHRC has remained vacant since 1st June 2009.

The PHR Act provides for the setting up of State Human Rights Commissions in all the states in the country, headed by a former Chief Justice of a High Court, with one more judicial member and one non-judicial member.[48] The jurisdiction of the SHRC extends to 'violations of human rights in respect of matters relatable to any of the entries enumerated in List II and List III in the Seventh Schedule to the Constitution'.[49] The provisions of the Act relating to functions, powers, and procedure relating to the NHRC apply mutatis mutandis to the SHRCs.

The setting up of State Human Rights Commissions has been considerably slower than that of the NHRC, and much more uneven[50]. At the time of writing, there exist SHRCs in the states of Andhra Pradesh, Assam, Bihar, Chhattisgarh, Gujarat, Himachal Pradesh, Jammu & Kashmir, Kerala, Karnataka, Madhya Pradesh, Maharashtra, Manipur, Odisha, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal. The position of Chairperson remains vacant at the time of writing in the SHRCs of Himachal Pradesh and Manipur. The NHRC has on several occasions expressed its disappointment and displeasure with the slow pace of setting up of SHRCs.

The NHRC's functions[51] include the power to conduct an enquiry, either suo motu, or on a specific complaint, into a human rights violation, its abetment, or negligence by a public servant in prevention of such violation. It can also intervene in court proceedings relating to human rights violations, visit jails, review Constitutional safeguards, undertake research, spread awareness and literacy, and encourage NGOs, in the general area of human rights. In particular, one of its functions is to:

45 A little known fact about the PHR Act, 1993 is that it was first introduced as a Bill in Parliament in 1992, which was referred to the Standing Committee of Parliament for Home Affairs. Rather than wait for the report of the Standing Committee, the President on 28 September 1993 promulgated an Ordinance for the creation of the NHRC and SHRCs. The earlier Bill was subsequently passed with several amendments and brought into force on Jan 8th 1994.

46 Section 2(1)(e) PHR Act.

47 See in general *NHRC Annual Report 2002-2003.*

48 Section 21 PHR Act.

49 Section 21(5) PHR Act.

50 For instance, the state of Uttar Pradesh, which also accounts for more than 50% of the total number of complaints received by the NHRC, made numerous excuses for not setting up a SHRC, including lack of funds and also the aggravation of the problem of human rights violations. It was only after a public interest petition was filed before the Allahabad High Court and directions were passed to take expeditious steps, and these steps were carefully monitored, that a SHRC was set up in the State in 2001.

51 Section 12 PHR Act.

'study treaties and other international instruments on human rights and make recommendations for their effective implementation.' (Section 12(f))

The PHR Act clearly defines the role of the NHRC as recommendatory, and none of its findings or directions is of a directory nature. Section 18 makes it clear that upon completion of an enquiry which reveals the commission of a human rights violation, the NHRC can:

a. recommend payment of compensation or damages,
b. recommend the prosecution of the concerned persons,
c. approach the Supreme Court or the High Court concerned for such directions, orders or writs as may be necessary.

The NHRC on occasions has also made generalised recommendations to the State Government based on specific complaints relating to human rights violations which represent an endemic malaise in the system, concerned. Therefore, in a complaint relating to large scale fake-encounter killings by police forces of so called 'Maoists' in the tribal areas of Andhra Pradesh, the NHRC issued detailed directions to the state of AP regarding how deaths in police encounters are to be prosecuted and investigated.[52] Subsequently, these directions were addressed to the Chief Ministers of all the states in the country.[53] While these directions are followed in the breach by most State Governments, they represent an important acknowledgement of the nature and extent of the problem of fake encounters by police, and have been used extensively by civil rights organisations and public pressure groups for advocacy and awareness, and in litigation proceedings seeking issuance of suitable writs by constitutional courts in order to give them binding force.

The NHRC in its annual reports has also made several overarching recommendations to the Government as well. Some of these recommendations include:

- Ratification of the Convention Against Torture
- Improvement of the status of STs through a vast programme of social regeneration to deal with ancient wrongs
- Dialogue among policy makers, security forces and human rights proponents in dealing with insurgency and terrorism,
- direct reporting by paramilitary forces and army to the NHRC of any instance of rape or death in their custody.

Apart from the clearly narrow focus on individual civil and political rights, the term 'international covenants' has further been defined in a restrictive manner as being limited to the ICCPR, the ICESCR, and other covenants or conventions 'as the Central Government may, by notification, specify'. Since International Covenants and Conventions are not directly enforceable in Indian Courts (see section 4.7 below), this is a serious limitation. It has also recommended radical changes in the PHR Act to re-vamp its own powers and procedures.

Jurisdiction over armed forces

The most serious limitation on the jurisdiction of the NHRC and SHRCs is the removal from their direct purview the human rights violations committed by the 'armed forces' which term is defined as including 'the naval, military and air forces and includes any other armed forces of the Union'.[54]

In the case of armed forces, the power of the NHRC is restricted by Section 19 to the

52 Recommendations of the NHRC dated 5.11.1996 in the complaints filed by *Andhra Pradesh Civil Liberties Committee*, being complaint nos. 234(1)/93-94/NHRC etc.

53 *Letter to Chief Ministers regarding Procedure to be followed in cases of deaths in police encounters* issued by Justice MN Venkatachaliah, former Chief Justice of India and Chairperson, NHRC, on 29.3.1997.

54 Section 2(1) (a) PHR Act.

following actions only:

a. seeking a report from the Central Government;
b. making recommendations upon such report of the government.

After several years of functioning, the NHRC set up an advisory Committee under A.M. Ahmadi, former Chief Justice of India, and leading jurists and experts, to suggest revisions to the PHR Act. This Committee submitted its report on 19 October 1999, recommending among other things, financial autonomy for the NHRC, change in its composition, and change in the definition of armed forces in order to bring human rights violations by paramilitary personnel within its jurisdiction. While the PHR Act was amended in 2006, this last recommendation was not included.

It is too well known to reiterate that the Indian Government has refused to open up the armed forces and the paramilitary forces working under the direct control of the Centre, to scrutiny by the judicial system, through a complex web of immunity provisions in various laws[55]. These laws have been a very serious impediment to civil rights organisations across the country who have, over the years attempted to charge members of the armed forces who have committed atrocities against their own people in so called 'disturbed areas' or other areas where there are militant people's movements, several of which are in Scheduled Areas or Tribal Areas. In this context the exclusion of human rights violations committed by the armed forces from the purview of the NHRC and the SHRCs, limited though their powers are, considerably de-legitimises the role of these institutions. It has been observed[56]:

> 'Lack of jurisdiction over military and paramilitary forces has been pointed out in international forums as a serious infirmity affecting the credibility of the NHRC. The Commission has stated that it considers the present system unsatisfactory and the existing definition of armed forces which includes not only the naval, military and armed forces but also 'any other armed forces of the Union'.

It is interesting therefore, that the NHRC has on occasions, taken advantage of the limited power at its disposal with regard to armed forces under Section 19 of the PHR Act, and called for reports from the concerned officers in complaints received with regard to specific human rights violations. In some of these cases, it has been able to use the response received from the Government to establish, prima facie, a case for compensation for a limited purpose, such as illegal detention, where it is unable to investigate or establish the allegation of custodial death. Thus, on the basis of a report received from the Superintendent of Police, Dimapur, Nagaland, regarding the death of one Kheshiho Sumi in the custody of the Assam Rifles, the NHRC asked for a report from the Ministry of Defence. Based on this limited material, the NHRC was able to establish that though the Armed Forces Special Powers Act 1959 gives sweeping powers to arrest and shoot to kill, it also places a duty on the armed forces to present a person before the nearest Magistrate with 'least possible delay', judicially interpreted by the Supreme Court and the High Court to mean within 24 hours. The Commission, therefore, found that the detention of Sumi by the armed forces for three days till the time of his death, as well as taking him for 'recovery' proceedings as part of an ongoing investigation without the permission of the Magistrate, was illegal. In the absence of positive evidence of assault, the Commission noted that it was not in a position to hold that Sumi died on account of physical torture. However, the Commission pointed out that this case involved a violation of law and therefore, recommended compensation of ₹100,000 to Kheshiho Sumi's next of kin. The Commission received a report from the Ministry

55 See for instance, Sections 132 and 197(2) of the *Code of Criminal Procedure, 1973*; Section 6 of the *Armed Forces (Special Powers) Act, 1958*.

56 Agarwal, HO. 2007. *International Law and Human Rights.* Central Law Publications. At pg. 936.

of Defence indicating that its recommendation has been complied with.[57]

4.6 Scheduled Areas, Tribal Areas and Tribal States

4.6.1. Constitutional Arrangements for Scheduled Areas

Two Schedules (i.e. appendices) – the Fifth and Sixth Schedules - to the Constitution of India provide special arrangements for areas inhabited by STs. A large number of areas predominantly inhabited by Adivasis had been declared to be Excluded/Partially Excluded Areas during the British period (see above under the discussion on the colonial period). These areas came under the purview of the Scheduled Districts Act of 1874 and the Government of India (Excluded and Partially Excluded Areas) Order 1936. Following Independence, these areas were brought under the Fifth and Sixth Schedules, respectively. They are now referred to as Scheduled Areas. Subsequently, some other predominantly Adivasi areas were declared to be Scheduled Areas by the President.

The Fifth Schedule

Under the provisions of this Schedule to the Constitution, special powers and responsibilities are conferred upon the Governors of States. The Governor is the constitutional head of state in a State Government and is appointed by the Central government. Under Article 163 of the Constitution, the Governor is bound to exercise his/her powers with the 'aid and advice' of the Council of Ministers, i.e. the Cabinet of the elected State Government. In practice he/she is bound by Cabinet decisions and the policy of the elected government. There has been considerable debate as well as litigation on whether or not the powers conferred upon the Governor by the Fifth and Sixth Schedules can be exercised without explicit sanction from the State Government.

The Fifth Schedule defines 'Scheduled Areas' to be such areas as the President, by order, may declare to be Scheduled Areas after consultation with the Governor of that state and in consultation with the State Government. The President can alter, increase, decrease, incorporate new areas, or rescind any Orders relating to 'Scheduled Areas' (See Annexure 7 for the Scheduled Area and the orders).

There are certain distinct provisions in the Scheduled Areas to protect and benefit tribals:

a. The Governor of a state having Scheduled Areas is empowered to make regulations in respect of the following:
   i. Prohibit or restrict transfer of land from tribals;
   ii. Regulate the business of money lending to the members of STs.
   iii. In making any such regulation, the Governor may repeal or amend any Act of Parliament or of the Legislature of the State, which is applicable to the area in question.
b. 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 such area subject to such exceptions and modifications as he may specify.
c. The Governor of a State having Scheduled Areas, shall annually, or whenever so required by the President of India, make a report to the President regarding the administration of the Scheduled Areas in that state. The Schedule also provides that the Union may give directions to the State Government as to the administration of the said area.
d. Tribes Advisory Councils (TAC) are to be established in states having Scheduled Areas.

57 *Year 1995-96: Death of Kheshiho Sumi in the custody of the armed forces (Assam Rifles) in Nagaland*, from the website of the National Human Rights Commission, http://nhrc.nic.in/, last accessed on 10.2.2010.

Bukkarwal Dera (Kashmir) *Photo: Sarah Webster*

A TAC may also be established in any state not having Scheduled Areas but having STs, on the direction of the President of India. The TAC should consist of not more than twenty members of whom three-fourth should be from the representatives of STs in the Legislative Assembly of the state. The role of TAC is to advise the State Government on matters pertaining to the welfare and advancement of the STs in the state.

e. The Panchayats (Extension to Scheduled Areas) Act 1996 under which the provisions pertaining to panchayats (elected village councils), extended to Scheduled Areas also contains special provisions for the benefit of STs. These are discussed in Part II in the section on self-management.

The criteria for declaring any area as a 'Scheduled Area' under the Fifth Schedule are:

- Preponderance of tribal population,
- Compactness and reasonable size of the area,
- A viable administrative entity such as a district, block or *taluk*, and
- Economic backwardness of the area as compared to the neighboring areas.

According to the Ministry of Tribal Affairs, 'These criteria are not spelt out in the Constitution of India but have become well established. They embody the principles followed in declaring the `Excluded' and `Partially-Excluded Areas', as well as those contained in Schedule `B' of recommendations of the Excluded and Partially Excluded Areas Sub Committee of Constituent Assembly and those outlined by the Scheduled Areas and STs Commission 1961.'[58] When the Tribal Sub Plan (see above) was adopted during the Fifth Five Year Plan, certain areas besides Scheduled Areas also had a preponderance of tribal population. At present, the Tribal Sub-Plan areas are coterminous with Scheduled Areas in the states of Bihar, Gujarat, Himachal Pradesh, Madhya Pradesh, Maharashtra, Odisha and Rajasthan.[59]

58 Accessible at http://www.tribal.nic.in/index3.asp?subsublinkid=305&langid=1

59 Accessible at http://tribal.gov.in/index3.asp?subsublinkid=305&langid=1

The Sixth Schedule

The Sixth Schedule to the Constitution applies to the administration of certain 'tribal areas' in the states of Assam, Meghalaya, Tripura and Mizoram. These areas are governed by Autonomous Districts and Autonomous Regions and also have District Councils, Autonomous Councils and Regional Councils [Article 244(2)]. These councils have wide ranging legislative, judicial and executive powers. They are empowered to make rules, with the approval of the Governor, with regard to matters like primary schools, dispensaries, markets, cattle ponds, ferries, fisheries, roads, road transport and water-ways etc. The Autonomous Councils of the North Cachar Hills and Karbi Anglong in Assam have been granted additional powers to make laws with respect to other matters like secondary education, agriculture, social security and social insurance, public health and sanitation, minor irrigation etc. The Councils (except in Bodoland and Tripura) have also been conferred powers under the Civil Procedure Code and Criminal Procedure Code to try certain suits and offences, the powers of a revenue authority to collect revenue and taxes in their area, as well as other powers to regulate and manage the natural resources. However, the Sixth Schedule specifically excludes certain issues from the jurisdiction of the District Councils, such as reserved forests (a particular kind of government forest) and acquisition of land by the State Government. The Supreme Court has also held that these Councils do not have 'plenary' legislative powers[60]; i.e. their powers are strictly limited to the subjects specified in the Sixth Schedule, and do not, for instance, include powers over transfer of lands or levying of royalty on non-timber forest produce.

However, at present, Scheduled Areas cover only 30% of the tribal population. No tribal habitations in the states of Kerala[61], Tamil Nadu[62], Karnataka, West Bengal, Uttar Pradesh and Jammu & Kashmir have been brought under the Fifth or Sixth Schedule. Recommendations of various government-appointed Committees to include in the Schedule the remaining Tribal Sub-Plan and MADA areas (see discussion under institutional arrangements for STs), as well as similar pockets under the Scheduled Areas notification have been ignored to date[63]. In large part, the Governors have failed to use their powers. As an official committee found, 'The Governors, on their part, remained oblivious about the state of the tribal people. Even the mandatory annual Reports by the Governors to the President regarding the administration of Scheduled Areas under Para 3 of the Fifth Schedule are irregular. They comprise largely of a stale narrative of departmental programmes without even an allusion to the crucial issues in administration, the main thrust of the Fifth Schedule.'[64]

4.6.2. The Northeastern States

The Northeast spreads over a vast expanse of 255,000 sq. km with a relatively small population of less than 40 million. The situation in the seven Northeastern states (Assam, Tripura, Meghalaya, Nagaland, Mizoram, Manipur and Arunachal Pradesh), as well as the nearby state of Sikkim, is markedly different from that of the rest of the country. Assam is perhaps the only state where the conditions of indigenous peoples are even partially similar to the mainland. Except for Assam and, now, Tripura, the Northeastern states have a very high proportion of STs as compared to the other states. In addition, there is little dispute that most of their territory,

60 *District Council of United Khasi and Jaintia Hills and Ors. Etc. vs. Sitimon Sawian Etc,* 1 SCR 398.

61 Despite the written assurance of the government to the agitating Adivasis in 16 October 2001.

62 See Adi Dravida and Tribal Welfare Department, Report on Tenth Five Year Plan 2002-2007, Adi Dravida and Tribal Welfare Department, Government of Tamilnadu, 2002.

63 See for instance the *Report of MPs and Experts to make recommendations on the salient features of the law for extending provisions of the Constitution (73rd) Amendment Act, 1992 to scheduled areas*, 1994.
Accessible at http://www.odi.org.uk/projects/00-03-livelihood-options/forum/sched-areas/about/bhuria_report.htm

64 Ibid, p.14.

Naga (Nagaland) *Photo: Chris Erni*

with the exception of Assam, was once the ancestral territory of indigenous peoples, though it may not all be under their control now. Today, the indigenous peoples mostly reside in the 'hill areas', with some exceptions such as the Bodos, the Tiwas and some other communities in Assam.

At present, the Northeastern states present a number of distinct features. First, the indigenous peoples of these states enjoy a much higher degree of both de jure and de facto control over their resources, territories and governance than the indigenous peoples of the rest of India. This in turn means that the indigenous peoples of these states tend to have much higher health and social indices than those of the mainland, and in fact their inclusion in national statistics obscures the degree of deprivation suffered by the indigenous peoples of central India. For instance, Mizoram is the state with the second highest literacy rate in India. The kind of intense destitution and super-exploitation of indigenous peoples (such as bonded labour) found in central India is rare among indigenous people in the northeast.

But such positive features are not the whole story. The Northeast has also been marked by almost continuous armed conflict since India's independence in 1947, starting with the rebellion of the Nagas against the Indian takeover of their independent territory. (Some further details of the abuses of power that have taken place in these areas are discussed in the section on Militarisation and State Repression under 'Main Human Rights Issues' in 3.2 above). The government of India has always seen the northeast from the perspective of 'security interests', treating the area as a frontier region that requires policing and brutal repression of any movement seen as inimical to the Indian state. The sharp cultural, social, religious and even physical differences between the indigenous peoples of the northeast and other Indian communities has added a strong chauvinist and racist angle to this approach, with the 'loyalty' of these indigenous communities being considered suspect. The northeast is also perceived as under threat from China, a perception that greatly intensified after the 1962 war between India and China (which took place in what is now Arunachal Pradesh). The result has been a high degree of militarisation and the dominance of state structures by military and intelligence agencies (though in most areas

the normal constitutional machinery also continues to function). Various parts of the region have also been subjected to draconian laws, of which the most prominent is the Armed Forces (Special Powers) Act 1958, discussed above.

The degree of repression has increased greatly since the 1980's, when many new armed struggles have sprung up, mostly with the declared aim of attaining sovereignty. Armed organisations exist among practically all of the larger indigenous communities of the area, as well as among many non-indigenous communities (such as the Assamese and the Meiteis), though the size of these organisations and their influence vary. While most of these organisations direct their actions against the security forces, there has been a significant amount of internecine conflict as well, between different groups in the same community (such as within the Nagas), across indigenous communities and between indigenous and non-indigenous communities. The level of violence has declined somewhat since the mid 1990s, with ceasefires being declared between the government and the Naga armed organizations since 1997 as well as with some other groups, and the decline in the conflicts in Assam and Tripura. Presently, the states of Meghalaya, Mizoram (following a 1986 peace accord), Sikkim and Arunachal Pradesh are largely peaceful; the state of Nagaland is under a ceasefire, while the states of Assam, Manipur and Tripura continue to witness conflict.

In addition to state repression, another source of resource alienation in the Northeast has been large-scale migration of outsiders into the area. These include migrants from Bengal, Bihar and other parts of India, as well as the more politically explosive cross-border migrants from Bangladesh. Such migration has resulted to loss of land of indigenous communities, particularly in Assam and Tripura. In Assam further tensions have grown between the local indigenous communities and the so-called 'tea tribes', Adivasis from Jharkhand, Bihar and other areas who were brought to Assam to work on tea plantations (and who do not have ST status in Assam).

TABLE 5: Administrative Structure of Northeastern States

States	Special Constitutional Provisions	Administrative structure
Arunachal Pradesh	Article 371H	No Autonomous Councils, the State has adopted the Panchayati Raj
Assam	VI Schedule Read with Article 371B (for Scheduled Areas only)	Three Autonomous Councils: (i). Karbi-Anglong, (ii). North Cachar Hills, (iii). Bodo Territorial Council.
Manipur	Article 371C	The Manipur (V Hill Village Authority Act 1956, and Manipur Hill areas District Council Act 1971
Meghalaya	Sixth Schedule	Three Autonomous Councils: (i). Khasi Hills, (ii). Jaintia Hills, (iii). Garo Hills
Mizoram	Sixth Schedule Read with Article 371G	Three Autonomous Councils of Pawi, Lakher, Chakma, and other areas without the Autonomous Council
Nagaland	Art.371AA Article 371A	No Autonomous District Councils
Tripura	Sixth Schedule	Tripura Tribal Area Autonomous District Council, Khumulwang

In legal terms, the Northeastern states have a distinct status both in constitutional as well as statutory terms (see Table 5 above). The specific legal structures that apply in different parts of the Northeast include the following:

- The Sixth Schedule to the Constitution (see above under Scheduled Areas).
- Articles 371A and 371G, which grant special Constitutional protection to the states of Nagaland and Mizoram.

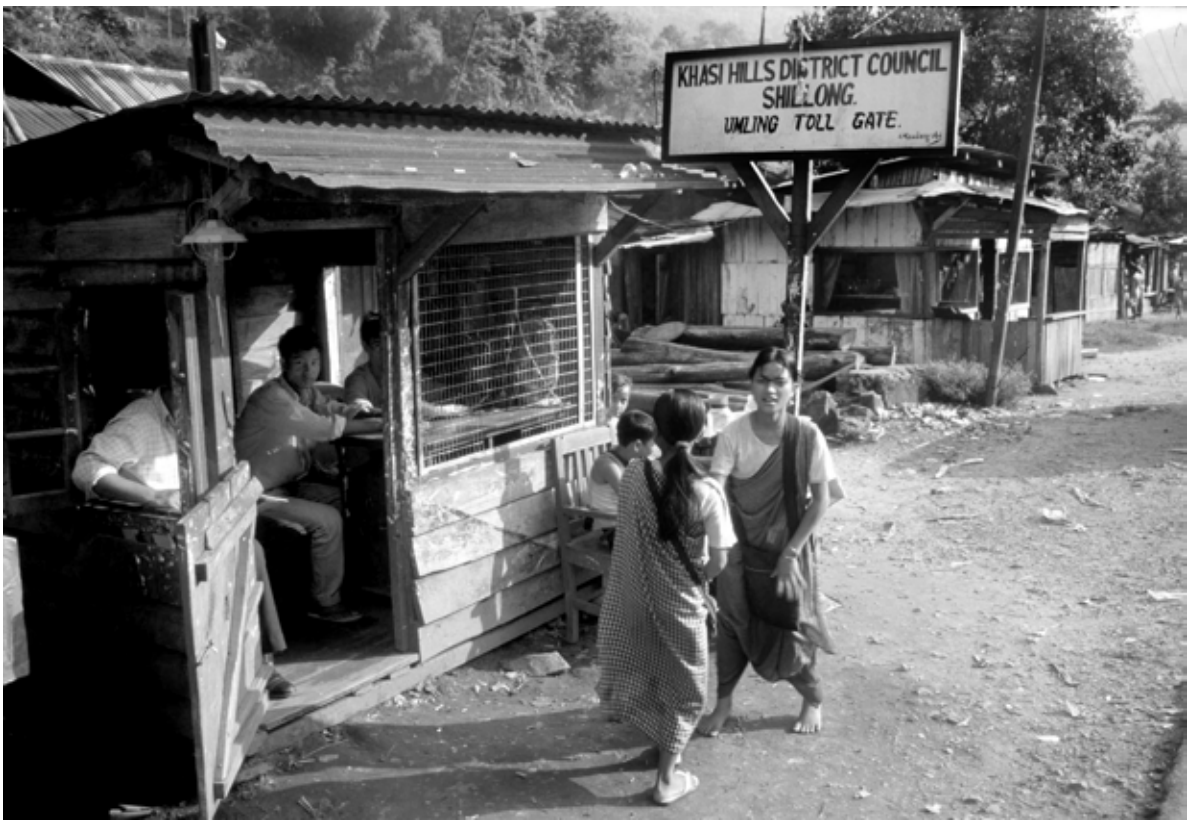
Both emerged from peace accords (in 1963 and 1986, respectively) with armed organisations, and provided more wide-ranging protection for autonomy than any other legal structure in the

country (except Article 370 for the states of Jammu and Kashmir, which in practice has been almost nullified). These two articles state that no Act of Parliament concerning:

- religious or social practices of the concerned communities;
- customary law and procedure of the concerned communities;
- administration of civil and criminal justice in areas covered by customary law; and
- ownership and transfer of land and its resources;

will apply to these two states unless the legislature of the state in question passes a resolution to that effect. The result is to grant these two states a very high degree of autonomy, which is particularly apparent in Nagaland, where large parts of Indian criminal law do not apply and a parallel system of customary courts operate alongside the 'normal' judicial courts.

- Other Constitutional provisions that provide various special arrangements for northeastern states. Thus, for instance, Article 371C provides for a special committee of the Manipur assembly to consider matters related to the hill areas, while Article 371F grants the President special powers to modify or withdraw the application of any law in the state of Sikkim. This class of provisions is however much weaker than Articles 371A and 371G.
- Customary and de facto resource rights protections, as are enjoyed in the hill areas of Manipur and in Arunachal Pradesh. In the hill areas of Manipur, for instance, there is no statute or Constitutional provision that protects indigenous rights; but the same purpose is partially served by provisions in other statutes, such as the land laws, that make them inapplicable to the hill areas, thus creating a legal vacuum that is filled by customary law. Such arrangements are naturally less secure than clear constitutional or statutory protections; for instance, indigenous control of the hill areas is constantly being contested by authorities in Manipur.



Khasi Hills *Photo: Chris Erni*

- 'Inner Line Permits' is a system of regulation on entry of outsiders that was created by the British and extended by the post-colonial State. Under this system, citizens of other parts of India can only enter Mizoram, Nagaland, hill areas of Manipur and Arunachal Pradesh with a special permit which is valid for a certain period of time. Though motivated primarily by security concerns rather than issues of indigenous peoples' rights, the system has the effect of restricting in-migration into these areas. Foreigners have to obtain Protected Area Permit (until recently called Restricted Area Permit) to enter these areas.
- Bars on land ownership. Various state level statutes in most of the Northeastern states (and in Sikkim) bar ownership of land by outsiders or residents of other parts of India.

4.6.3 Andaman and Nicobar Islands

The Andaman and Nicobar Islands, which comprise 556 islands of which only 63 are inhabited, is a Union Territory administered directly by the Central government. These islands are home to the least contacted tribes in India who are under threat of extinction. Four of the six STs are under imminent threat of extinction, namely the Great Andamanese (43 living members), the Onge (96), the Jarawa (240) and the Sentinelese (39). About 25% of the island region of nearly 1,500 sq kms is notified as four tribal reserves, one each for these particularly vulnerable tribal groups. These reserves are notified under the Andaman and Nicobar Protection of Aboriginal Tribes Regulation (ANPATR) of 1956[65]. The largest reserve is the 700 sq. kms. Jarawa Reserve on the western coasts of South & Middle Andaman islands followed by the 520 sq. kms Ian Onge Reserve on Little Andaman Island. Further, three to five kms of the sea adjoining these land areas have also been protected as included in the tribal reserves.[66] The Sentinelese, perhaps the only Paleolithic people as yet uncontacted in the world, live in the North Sentinel Island covering 60 sq. kms. The ANPATR empowers the government to prohibit and regulate the entry of outsiders, and restricts the transfer of lands to non-tribals in thereserves. These reserves are undoubtedly the key repositories of the rich biodiversity of the islands. The increasing intrusions such as the establishment of the Grand Trunk Road through the Jarawa Reserve as well as outside contacts, have led these communities to experience a spread of communicable diseases which are decimating them. About 65% of the inhabitants of Nicobar are the endangered tribals - the Nicobarese and Shompen peoples. Special permits are required for outsiders to enter and these are rarely given. A popular tourist destination, The Andaman & Nicobar Islands Registration of Tourist Trade Regulations 2009, is intended to regulate the tourism sector.

4.7 Status of international law

Article 51 of the Constitution on promotion of international peace and security provides the general obligations of India to international law by stating that: 'The State shall endeavor to

(a) promote international peace and security;
(b) maintain just and honourable relations between nations;
(c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and
(d) encourage settlement of international disputes by arbitration.'

This provision is made in Part IV of the Constitution relating to the Directive Principles of State Policy, and for that reason is not enforceable in any court of law. However, these principles have been held to be central to the governance of the country, and therefore, are definitely

65 Enacted under clause (2) of Article 243 of the Indian Constitution, the Act is accessible at http://www.andaman.org/BOOK/app-p/annex-p/annex01/annex01.htm

66 Sekhsaria, Pankaj. *Andaman's Tribal Reserves: Protecting Forests, Biodiversity and the Indigenous Peoples* accessible at http://pankaj-atcrossroads.blogspot.com/2007/09/andamans-tribal-reserves.html

important and have considerable persuasive value.

Article 253 on legislation for giving effect to international agreements also describes further the approach of the Indian state to its obligations under international law as follows: 'Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.' In addition, the Seventh Schedule vests in Parliament the power to make laws relating to international treaties etc, as follows: 'Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries.' (Entry 14 of List 1, Seventh Schedule).

The Courts of India have played an important role in restricting the operation of international law, whether customary or treaty law, at the domestic level. In an early decision in 1954, the Calcutta High Court held that 'if Indian statutes are in conflict with any principle of international law, the Indian Courts will have to obey the laws enacted by the legislature of the country to which they owe their allegiance.'[67]

Subsequently, the Supreme Court was called upon to consider the issue of application of international customary law in another case where it was reiterated that while there can be no question that nations must march with the international community and municipal law must respect rules of international law, at the same time the Court was of the view that in the event that an international law conflicts with national law, the Courts being organs of the State and not organs of international law, cannot apply it. It was observed that 'National courts cannot say 'yes' if Parliament has said 'no' to a principle of International Law.'[68]

International treaties are not binding on Indian Courts unless they have been incorporated into domestic law through legislation. This view is based on Article 253, and there are a number of cases where several High Courts have held that legislations would be expressly required to give effect to a treaty.[69] The Supreme Court has also reiterated this position and found that obligations arising under agreement or treaties are not by their own force binding upon Indian nationals, and that the power to legislate in this respect lies with the Parliament in terms of Entry 14 of List 1 of the Seventh Schedule.[70] In at least one case[71], the Supreme Court found a way around this rule when the Court found itself unable to strike down a provision in the Civil Procedure Code relating to imprisonment of civil debtors, as violative of international law. The Court, however, went on to hold that since this provision affected the right to life under Article 21, read with Article 11 of the ICCPR, it must be held unconstitutional.

In a few more recent cases relating to human rights violations, international conventions have been taken into account by the Courts where it was found that there is no inconsistency between international conventions and domestic law. Outstanding among these is a judgment of the Supreme Court[72] which arose out of a writ petition filed by a women's organization seeking the implementation of India's commitment to the Convention on Elimination of Discrimination Against Women (CEDAW) to formulate effective measures to check sexual harassment in the workplace. The Supreme Court took the view that since India has no law on the specific subject,

67 *Shri Krishna Sharma vs. The State of West Bengal* AIR 1954 Calcutta 591.

68 *Gramaphone Company of India Ltd. vs. Birendra Bahadur Pandey* (1984) 2 SCC 534.

69 See for instance *Birma vs. Sate of Rajasthan* AIR 1951 Rajasthan 127; *Shiv Kumar Sharma & Ors vs. Union of India* AIR 1968 Delhi 64.

70 *Magan Bhai vs. Union of India* (1969) 3 SCR 254. .

71 *Jolly George Varghese vs. Bank of Cochin* (1980) 2 SCC 360. This case related to the interpretation of Section 51 of the Code of Civil Procedure, 1908, which permits imprisonment in civil prison of a judgment debtor, in contrast to Article 11 of the ICCPR which provides immunity from civil imprisonment to indigent but honest judgment debtors.

72 *Vishaka vs. State of Rajasthan,* (1997) 6 SCC 241

the contents of international conventions such as CEDAW are significant for the interpretation of the guarantee of gender equality and the right to work with dignity as enshrined in Articles 14, 15, 19(1)(g) and 21 of the Constitution of India, and therefore safeguards against sexual harassment in the workplace are implicit therein.

The Supreme Court went on to observe that 'any International Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee. This is implicit from Article 51(c) and the enabling power of the Parliament to enact laws for implementing the international conventions and norms by virtue of Article 253 read with Entry 14 of the Union List in Seventh Schedule of the Constitution'.[73] Thus, the Courts in India may enforce international treaties and conventions which are consistent with Indian laws.

A number of key human rights articulated in several international conventions have in fact been incorporated into law in the Constitution of India. This is particularly true of the human rights contained in the UNDHR and the civil and political rights contained in the ICCPR. In addition, a number of rights which may not be specifically articulated in the Constitution as part of the Fundamental Rights chapter, have been regarded as fundamental rights provisions, and this includes many socio-economic rights contained in the ICESCR. The right to a speedy trial,[74] the right to humane conditions in prison,[75] the right to free legal representation,[76] and the right to monetary compensation[77] in case of illegal detention, custodial violence, or custodial death, right to means of livelihood,[78] and right to shelter[79] are only a few examples of these developments.

An interesting question regarding the application of international law arose at the time of proclamation of Emergency under Article 352 of the Constitution in the mid-1970s. In the light of widespread arrests of political opponents of the then Prime Minister, several writ petitions were filed in various High Courts challenging the suspension of the fundamental rights, including the right to move the Courts for a writ of habeas corpus, by legislative fiat during the proclamation of an emergency. In the ADM Jabalpur case[80] the Supreme Court of India, by a majority of 4 to 1, upheld the power of the President to suspend the fundamental rights during an Emergency.

Clearly, such a Presidential Order, as well as the actions taken by the government in arresting without trial hundreds of persons during the period, was in violation of numerous international covenants, particularly the ICCPR. Interestingly, Justice HR Khanna who took the courageous step of delivering the dissenting opinion, noted in his judgment that if there is a conflict between municipal law and international law, customary or otherwise, the Courts shall give effect to the municipal law.[81]

With regard to the application of international conventions and treaties on the rights of indigenous peoples to STs and Scheduled Areas, the Supreme Court in the landmark Samatha case[82] held:

---

73 Ibid, para 7, p. 249

74 *Husssainara Khatoon vs. Home Secretary, State of Bihar* AIR (1980) 1 SCC 81

75 *Charles Sobhraj vs. Superintendent, Central Jail, Tihar* (1978) 4 SCC 104

76 *Madhav Hayawadan Hoskot vs. State of Maharashtra* (1978) 3 SCC 544

77 *Rudul Sah vs, State of Bihar* (1983) 4 SCC 141

78 *Olga Tellis vs. Bombay Municipal Corporation* (1985) 3 SCC 545

79 *Chameli Singh vs. State of Uttar Pradesh* (1996) 2 SCC 549

80 *Additional District Magistrate, Jabalpur vs. Shivakant Shukla* (1976) 2 SCC 521

81 Subsequent to the lifting of Emergency in 1977, and the change of guard at the helm of affairs, Parliament amended the Constitution to include Article 359 (1-A) to the effect that the rights under Articles 20 and 21 cannot be suspended during an Emergency.

82 *Samatha vs. State of Andhra Pradesh & Ors* (1997) 8 SCC 191

'India being an active participant in the successful declaration of the Convention on the Right to Development and a party signatory thereto, it is its duty to formulate its policies, legislative or executive, accord equal attention to the promotion of, and to protect the right to social, economic, civil and cultural rights of the people, in particular, the poor, the Dalits and Tribes as enjoined in Article 46 read with Articles 38, 39, and all other related articles read with the right to life guaranteed by Article 21 of the Constitution of India. By that constant endeavour and interaction, right to life would become meaningful so as to realise its full potentiality of 'person' as inalienable human right and to raise the standard of living, improve excellence and to live with dignity of person and of equal status with social and economic justice, liberty, equality, and fraternity, the trinity are pillars to establish the egalitarian social orders in Socialist Secular Democratic Bharat Republic.'[83]

4.7.1 Ratification of UN, ILO and regional instruments

Despite being generally supportive of international law and institutions in the first decades of independence, the Government of India has always adopted a firm stand against joining any international forum or arrangement that it sees as infringing on its internal policies and institutions, particularly relating to individual rights (the World Trade Organisation is a significant exception to this rule). Thus, the government has refused to sign the Optional Protocols to the International Convention on Civil and Political Rights, or the International Convention on Economic, Social and Cultural Rights. It is also one of the few countries in the world that has categorically refused to sign the Rome Statute of the International Criminal Court. This position is consistent with the Constitutional position, whereby international agreements only apply in India when they have been implemented through domestic legislation. Over the past two decades, this position has extended itself to a general reluctance to join most international agreements on rights issues, such as ILO Convention 169, the Convention Against Torture (which India has yet to ratify), etc.

India has been a member of the ILO since 1919. Out of ILO 188 conventions, 41 are currently in force in India (See Annexure 8 for the list of Conventions ratified).

TABLE 6: Status of ratification/accession of important international instruments

Instrument	Date of deposit of ratification/accession
ICCPR	10/04/1979
ICESCR	10/04/1979
Optional Protocol to ICCPR	Not ratified
CERD	03/12/1968
Art 14 of CERD	
CEDAW	09/07/1993
Protocol to CEDAW	Not ratified
CRC	11/12/1992
Protocol to CRC- Armed Conflict	30/11/2005
Protocol to CRC - Sexual Exploitation	16/08/2005
Genocide Convention	27/08/1959
Slavery Convention 1927	18/07/1927
Supplementary Slavery Convention 1956	23/07/1960

83 *Ibid.* Judgment written by Justice K. Ramaswamy, @ para 75.

Instrument	Date of deposit of ratification/accession
CAT	Signed on 08/10/1997 but to be ratified yet.
Art 22 of CAT	
CMW	Not ratified.
Art 77 of CMW	Not ratified.
Convention on Biological Diversity	18/02/1994

Convention	Date of ratification
ILO 29 (Forced Labour)	30/11/1954
ILO 105 (Abolition of Forced Labour)	18/05/2000
ILO 100 (equal remuneration)	25/09/1958
ILO 111 (discrimination in employment and occupation)	03/06/1960
ILO 107 (indigenous and tribal populations)	29/09/1958
ILO 169 (Indigenous Peoples)	Not ratified.
ILO 138 (minimum age)	Not ratified.
ILO 182 (Worst Forms of Child Labour)	Not ratified.

4.7.2 Status of communications and state reporting

India has only ratified ILO Convention 107 but has yet to ratify Convention 169. As per its reporting obligations, India has been submitting reports to the ILO on issues related to Convention 107, and both the Committee of Experts and the Conference Committee have made observations on the same. However, the government of India has not submitted its reports regularly and has frequently failed to respond to queries from the ILO supervisory bodies. Thus, in 1993, 1995 and 2005, the Committee of Experts observed that no report had been submitted at all, while in 1991, 2001 and 2004, the government's reports were either submitted very late or were too brief for the Committee to consider. A brief report from the government was submitted on time in 2009. Overall however, the pattern seems to indicate that, as far as the rights of indigenous peoples are concerned, the government does not consider the ILO Convention process to be important.

Where reports have been submitted, the Committee of Experts has made observations only on a few very specific areas. One continuous area of concern has been the Sardar Sarovar dam project on the river Narmada, and the resulting displacement of tens of thousands of Adivasi families. The Committee of Experts has made observations on this project in every sitting since 1990, both in regard to the project itself and considering it to be an example of a larger process of displacement. The government's responses have focused on claiming that its policies are in accordance with the provisions of the Convention (which in its view are to be construed very narrowly) and benefit both non-Adivasis and Adivasis. The wider issue of forced displacement of millions of Adivasis was repeatedly raised before the Committee on Experts, but the government has dismissed all these as 'general allegations' that it cannot respond to in the absence of references to specific projects. A further typical response was that of the Government Representative at the 1997 ILO Conference Committee, who stated (in response to allegations of displacement for mining) that 'the exploitation of natural resources was unavoidable for the economic and industrial development of the country'. He emphasized that 'the rules and regulations that were in force provided adequate compensation for the affected people, including tribal people. Moreover, the Government did not follow any discriminatory policy in addressing the needs and problems of the persons affected'. The Committee of Experts has also occasionally taken up

other issues, such as Adivasi workers in a power plant in Gujarat, and requested the government for details on these issues.[84] In its 2009 observation, the Committee of Experts raised a more diverse range of issues, including, the adverse impact on the Dongria Kondh tribals in Odisha of bauxite mining and processing activities on their traditional lands; progress in adopting the National Tribal Policy and related consulation with tribal groups and their representatives in this regard; implementation of the STs and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006; issues related to education, training and employment of tribal groups and on increased cooperation with the ILO with regard to improving the situation of tribal groups[85]. In view of the lack of detailed information received in previous years, the Government has been asked to reply in detail to these comments in 2010 (rather than the usual four year cycle).[86]

In recent years, other UN treaty monitoring bodies, such as the Committee on the Elimination of all forms of Racial Discrimination (CERD), the Committee on the Elimination of Discrimination Against Women (CEDAW) and the Committee on Economic and Social Rights (CESR) have consistently raised the issue of indigenous peoples in their observations and requests.[87] In its May 2007 'Concluding Observations', the CERD Committee recommended that India 'formally recognize its tribal peoples' as distinct groups entitled to special protection under national and international law'. In the same report, it also recommended the repeal of the Armed Forces (Special Powers) Act (1958) in Northeastern states inhabited by tribal peoples and raised India's non-compliance with ILO Convention No. 107 with regard to implementation of tribal communities' rights of ownership, collective and individual, over their traditional lands. Ratification of ILO Convention No. 169 is also recommended.[88] Such cross references between Treaty Bodies is normal practice, thus emphasizing the universal position of international human rights law.

In 2008, the Committee on Economic and Social Rights, which monitors the ICESCR, raised the following issues with the government of India related to indigenous peoples; discrimination, widening disparaties in economic growth and the increased vulnerability of STs; displacement due to mega-projects and dams; educational disparities; repeal of AFSPA; violence against STs and consultation.[89] In its 2007 report, the CEDAW also drew attention to the displacement of tribal women for development projects; the need for disaggregated data (on sex, caste, ethnicicty etc) and access to legal aid for tribal women.[90] The need for detailed disaggregated data on caste and related discrimination was also one of the recommendations in the Report of the Working Group on the Universal Periodic Review (UPR) for India, 2008, as was ratification of the Convention against Torture (CAT) and its Optional Protocol.[91]

The weak enforcement mechanisms inherent in international human rights instruments

84 CEACR: Individual Observation concerning Convention No. 26, Minimum Wage-Fixing Machinery, 1928 India (ratification: 1955) Published: 1997.Accessible at: http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=3493&chapter=6&query=India%40ref&highlight=&querytype=bool

85 Contrary to the other Treaty Bodies, under the ILO supervisory system employers and workers organizations can provide comments regarding the application of ILO conventions. This implies that civil organizations can directly impact on the observations by the ILO Committee of Experts. Inputs on the Narmada dam were generated by comments from Chemicals Mazdoor Sabha, while the Dongria Kondh comments are based on inputs by the International Trade Union Confederation.

86 CEACR: Observation concerning Indigenous and Tribal Populations Convention, 1957 (No. 107), CEACR 2009/80th Session. Accessible at http://www.ilo.org/ilolex/index.htm. Also in *Monitoring Indigenous and Tribal Peoples' Rights Through ILO Conventions – A compilation of the ILO supervisory bodies' comments 2009-2010*, PRO 169, Geneva: ILO, 2010, pp.79.

87 For recent examples, see CERD/C/IND/CO/19, 5 May 2007; E/C.12/IND/CO/5, 10th May 2008 and CEDAW/C/IND/CO/3, 2 Feb, 2007, available at www.ohchr.org

88 CERD/C/IND/CO/19, 5 May 2007, available at *www.ohchr.org/english/bodies/cerd/docs/cerd.c.ind.co.19.doc*

89 E/C.12/IND/CO/5, 10th May 2008

90 CEDAW/C/IND/CO/3, 2 Feb, 2007,

91 Report of the Working Group on the UPR – India, A/HRC/8/26, 23rd May 2008,available at http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/IN/A_HRC_8_26_India_E.pdf

mean that with the exception of 'naming and shaming' of violating states, very little can be done by the UN system in the event of violation of specific articles. Nevertheless the human rights monitoring bodies do have an important role to play with regard to the protection and promotion of indigenous peoples' human rights, if only to raise awareness of these issues at the UN and the international arena. In the absence of ratification of ILO Convention No.169 by India, it is commendable that other, more mainstream and widely known, human rights treaty bodies, such as CERD and CEDAW are making substantial references to indigenous peoples' rights in the process of monitoring and supervision of human rights treaties.

Van Gujar *Photo: Chris Erni*

Van Gujar *Photo: Chris Erni*

II: Legal protection of indigenous peoples in India

While Part I of this report was largely concerned with a discussion on the socio-political status of indigenous peoples in India, this Part of the report looks more closely at the level to which STs in India are able to enjoy the rights guaranteed to them under international law. Specifically, the Indian situation is tested against the requirements contained in the three main international law instruments on indigenous people's rights – ILO Convention on Indigenous and Tribal Populations, 1957 (No. 107) (ILO C107), ILO Convention on Indigenous and Tribal Peoples, 1989 (No. 169) (ILO C169) and the United Nations Declaration on the Rights of Indigenous Peoples, 2007 (UNDRIP). In general, despite the existence of a plethora of complex institutional and legal arrangements for recognition and safeguarding of the rights of STs, the Indian situation remains very far from compliance with the requirements of international law.

1. Recognition and identification

ILO Convention 107 (ILO C107) and its replacement ILO Convention 169 on Indigenous and Tribal Peoples in 1989 (ILO C169), do not specify who are the indigenous and tribal peoples that they seek to protect. However, they offer attributes indicating who they refer to.

ILO C107 refers to 'indigenous and other tribal and semi-tribal populations' as those who are not as yet integrated with the national mainstream[92] and do not benefit from the rights available to the general population[93] because they are less advantaged than others.[94] They depend to a large extent on their own customs, traditions or special laws.[95] They are people who lived in the region prior to the colonization and conquest of the region[96] and live according to their social, economic and cultural institutions rather than the institutions of the country.[97]

ILO C169 replaced ILO C107 due to the intense criticism of the former's integrationist and assimilationist approach to both 'tribal peoples' and 'indigenous' peoples. The 'tribal peoples' are distinctly different from others in their social, cultural and economic conditions[98] and their customs or traditions or special laws regulate their status[99].

The 'indigenous peoples' are referred to as those descendents of the inhabitants of the area who inhabited prior to the conquest or colonization of the area[100] and who retain their social, economic and cultural institutions in some form or other[101].

The Convention goes one step further and defines 'self-identification as indigenous or tribal' as a fundamental criterion for determining the groups to which the provisions of this Convention

92 'not yet integrated into the national community' (Preamble); 'the term semi-tribal includes groups and persons who, although they are in the process of losing their tribal characteristics, are not yet integrated into the national community' [Article 1.2]

93 'whose social, economic or cultural situation hinders them from benefiting fully from the rights and advantages enjoyed by other elements of the population' (Preamble)

94 'whose social and economic conditions are at a less advanced stage than...other sections' [Article 1.1.a]

95 'whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations [Article 1.1(a)]

96 'regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation [Article 1.1(b)]

97 'live more in conformity with the social, economic and cultural institutions of that time than with the institutions of the nation to which they belong' [Article 1.1(b)].

98 'whose social, cultural and economic conditions distinguish them from other sections of the national community [Article 1.1(a)].

99 'whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations [Article 1.1(a)].

100 'who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries'[Article 1.1(b)].

101 'who… retain some or all of their own social, economic, cultural and political institutions' [Article 1.1(b)].

apply' with a qualification that this does not entail the rights that may be attached to this term under international law[102], i.e. self-determination as meaning independence.

The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) identifies 'indigenous peoples' as being the beneficiaries of the rights contained in the Declaration, without defining the term. The preamble of the Declaration[103], however, makes reference to certain characteristics normally attributed to indigenous peoples. The 'indigenous peoples 'consider themselves different', have faced 'historic injustices as a result of… their colonization and dispossession of their lands, territories and resources' and 'are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression'. Moreover, their 'inherent rights…derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources' and are 'affirmed in treaties, agreements and other constructive arrangements with States'. They also wish 'to maintain and strengthen their institutions, cultures and traditions', desire 'the demilitarization of the lands and territories' for 'peace, economic and social progress and development'. Their 'knowledge, cultures and traditional practices contribute to sustainable and equitable development and proper management of the environment'. They also 'possess collective rights which are indispensable for their existence, well-being and integral development as peoples'.

Moreover, similar to ILO C169, UNDRIP recognizes the rights of indigenous peoples to determine their own identity or membership according to their customs and traditions while simultaneously enjoying citizenship of the States where they live.[104]

The UN Working Group on Indigenous Populations (WGIP) developed a 'working definition' of indigenous peoples in 1986 which the UN did not officially adopt. It defined indigenous people as descendents of pre-colonial societies who consider themselves distinct from others now living in those territories. They are not the dominant sections and want to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, according to their own cultural patterns, social institutions

102 'the use of the term peoples… shall not be construed as having any implications as regards the rights which may attach to the term under international law' [Article 1.2], i.e. self-determination as meaning independence.

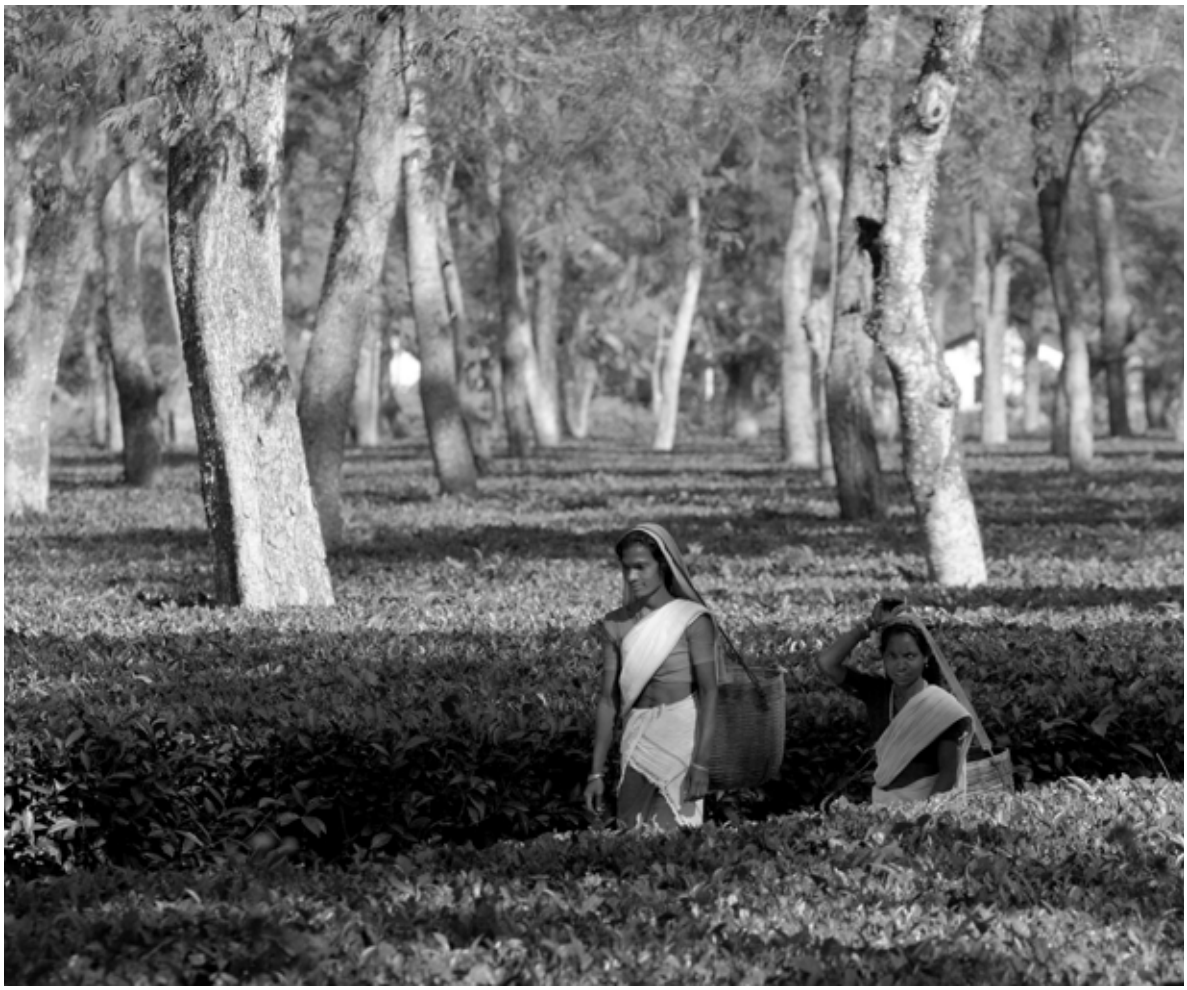
103 *The General Assembly,*
Affirming that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,
Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,
Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,
Welcoming the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,
Recognizing also the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,
Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,
Recognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,
Emphasizing the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,
Recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

104 'Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live'. [Article 33.1]

and legal systems.[105]

The WGIP's Working paper on the concept of 'indigenous people' lists the following factors that have been considered relevant to the understanding of the concept of 'indigenous' by international organizations and legal experts:

- Priority in time, with respect to the occupation and use of a specific territory;
- The voluntary perpetuation of cultural distinctiveness, which may include the aspects of language, social organization, religion and spiritual values, modes of production, laws and institutions;
- Self-identification, as well as recognition by other groups, or by State authorities, as a distinct collectivity; and
- An experience of subjugation, marginalization, dispossession, exclusion or discrimination, whether or not these conditions persist.[106]



Tea tribe in Assam *Photo: Chris Erni*

105 '*Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and precolonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems*.' in Martinez Cobo, Jose R., 1986. *Study of the problem of discrimination against indigenous populations* (E/CN.4/Sub.2/1986/7), Sub-Commission on Prevention of Discrimination and Protection of Minorities, United Nations.

106 *Working paper on the concept of "indigenous people"* of the Working Group on Indigenous Populations (E/CN.4/Sub.2/AC.4/1996/2).

The Operational Manual of the World Bank in 'OP 4.10 - Indigenous Peoples' of July 2005[107] uses the term 'indigenous peoples…in a generic sense to refer to a distinct, vulnerable, social and cultural groups' self identifying their membership and recognized by others, having collective attachment to their distinct habitats or ancestral territories and to its natural resources, and possessing institutions different from other dominant sections and their own language. Importantly the definition also recognises them as a group that has lost 'collective attachment to geographically distinct habitats or ancestral territories in the project area' because of forced severance remains eligible for coverage under this policy.'

Operationally the World Bank considers that 'Indigenous Peoples may be referred to in different countries by such terms as indigenous ethnic minorities, aboriginals, hill tribes, minority nationalities, scheduled tribes, or tribal groups. Similarly 'ADB defines 'indigenous peoples' as groups with social or cultural identities distinct from that of the dominant or mainstream society. 'Indigenous peoples' is a generic concept that includes cultural minorities, ethnic minorities, indigenous cultural communities, tribal people, natives, and aboriginals. Two significant characteristics of indigenous peoples are (i) descent from population groups present in a given area before modern states or territories were created, and (ii) maintenance of cultural and social identities separate from mainstream or dominant societies or cultures. Additional characteristics include (i) self-identification and identification by others as being part of a distinct indigenous cultural group, and the display of the desire to preserve their cultural identity; (ii) a linguistic identity different from that of the mainstream or dominant society; (iii) social, economic, and political traditions and institutions distinct from the mainstream society; (iv) an economic system oriented more toward a traditional system of production than toward the mainstream production system; and/or (v) a unique tie with and attachment to traditional habitat and ancestral territory and its natural resources.'[108] UNDP refers to 'four criteria to distinguish indigenous peoples:

a. indigenous peoples usually live within (or maintain attachments to) geographically distinct ancestral territories;
b. they tend to maintain distinct social, economic, and political institutions within their territories;
c. they typically aspire to remain distinct culturally, geographically and institutionally rather than assimilate fully into national society; and
d. they self-identify as indigenous or tribal.

Despite many common characteristics, there is no single accepted definition of indigenous peoples that captures their diversity as peoples. Self-identification as indigenous or tribal is usually regarded as a fundamental criterion for determining whether groups are indigenous or tribal, sometimes in combination with other variables such as 'language spoken,' and 'geographic location or concentration.'[109]

India's official position with regards the WGIP since 1984 has been that tribals in India do not constitute what is understood here by the term indigenous populations, as India is

107 The World Bank recognized 'the following characteristics in varying degrees:
(a) self-identification as members of a distinct indigenous cultural group and recognition of this identity by others;
(b) collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories
(c) customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; and
(d) an indigenous language, often different from the official language of the country or region' in OP 4.10 - Indigenous Peoples http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20553653~menuPK:4564185~pagePK:64709096~piPK:64709108~theSitePK:502184,00.html

108 Operational Manual Bank Policies on Indigenous Peoples Issued on 25 September 2006 accessible at http://www.adb.org/Documents/Manuals/Operations/OMF03_25sep06.pdf

109 United Nations Development Group Guidelines on Indigenous Peoples' Issues, UNDP, 2008 accessible at http://www.undp.org/partners/civil_society/indigenous/docs/UNDG_guidelines_on_Indigenous_Peoples_Issues_2008.pdf

constituted by a complex mosaic of peoples with different cultures, languages and religions and moreover is a melting pot of cultures, and all communities within India are indigenous to the country. Therefore 'the issue of indigenous peoples' rights pertained to peoples in independent countries who were regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region which the country belonged, at the time of conquest or colonization or the establishment of present State boundaries and who, irrespective of their legal status, retained some or all of their socio-economic, cultural and political institutions… that the right to self-determination applied only to peoples under foreign domination and that the concept did not apply to sovereign independent States or to a section of people or a nation, which was the essence of national integrity.'[110] However, India ratified ILO C107 much earlier, prior to the issue of indigenous populations/peoples becoming a contentious term within the WGIP.

Sections of peoples within India have been notified by its President as 'Scheduled Tribes' (ST). Just as with ILO C107/169 and UNDRIP, the term 'Scheduled Tribe', though a legal term that confers on these sections certain privileges, protection, benefits and powers, is also not defined by law. However, there is official recognition based on the following criteria adopted to identify them: (i) primitive traits; (ii) distinctive culture; (iii) geographical isolation; (iv) shyness of contact with the community at large; and (v) backwardness (Refer 1.1.1 of Part I above) which fall within the above mentioned definitions.

The recognition and identification of STs are area specific. Articles 342 and 366 (25) read with the special provisions for STs in Clauses 1 and 2 of Article 244 for Scheduled Areas and Tribal Areas respectively as also the Panchayat Raj (Extension to the Scheduled Areas) Act 1996, enabling extension of the Constitution, for Scheduled Area indicate that these categories are essentially administrative and area specific 'envisaged to reflect the level of socio-economic and development rather than ethnic status'[111] though ethnicity is a primary criterion attempted to be used. Further, by definition, the President has the powers to alter by way of deletion and addition the list of STs as well as the area in which they are notified, and the Scheduled Area, while the Governors of the concerned state can alter the area designated as Tribal Areas. The result of such ambiguity has been the allegations that communities notified in one state have not been notified as ST in another state or that non-Adivasis or non-tribals have been notified as STs or have made false claims to enjoy the corresponding benefits. There have also been strident demands by some communities for inclusion in the ST list from those who are notified in one state and not in another, as the recent demand of the Gujjar of Rajasthan who are notified in Himachal Pradesh and Jammu & Kashmir. Similarly, there are demands to notify new areas as Scheduled Area, such as in Andhra Pradesh where no Scheduled Area was previously notified. In other states, such as Jharkhand, there are demands to de-notify areas from the list of Scheduled Areas.

Self-identification as a criterion for recognition as ST is absent in law. Historically, the notifications have been initiated by the government though political demands, which have also led to administrative decisions by the government to include communities under the ST list.

STs, for all practical purposes, can be treated as indigenous peoples as understood and indicated by ILO C017/169 and UNDRIP. The Constitutional provisions and the approach include various elements in varying degrees as are found in international laws, especially those related to the protection of land and natural resources, collective attachment to geographically distinct habitats, social customs and traditions, and self-governance. While the recognition and

110 *General Assembly adopts Declaration on Rights of Indigenous Peoples; 'Major step forward' towards human rights for all, says President*, Department of Public Information, News and Media Division, UN General Assembly, New York, 13 September 2007 accessible at
http://www.un.org/News/Press/docs/2007/ga10612.doc.htm

111 Bhengra, R et al, op. cit, p.4.

identification of indigenous peoples are community specific based on ethnicity, the ST identity is partially so. Moreover, the status, by definition, is not permanent. By and large, the STs in India are indigenous peoples as understood in international law despite the absence of their existence under conquest or colonization. At the same time, official government documents are replete with official admission of neglect, discrimination and exploitation of the tribal habitations and STs. There is likewise failure of governance despite specific Constitutional provisions and protective legislations as well as a variety of specific governance structures for STs and their habitations. The tribal habitations de facto have been experiencing similar conditions that have resulted from conquest and colonization. The reality of continued unrest and their spread across all tribal habitations, the history of militancy and militarization of the Northeast and the present deployment of armed forces in large swathes of central India are symptomatic of conditions of conquest and colonization. Therefore, the formal recognition of STs as 'indigenous peoples' will reflect the resolve of the Government of India to recognise the historic injustice and their speedy resolution.

2. Non-discrimination

The ILO C107 contains several provisions specifically related to non-discrimination. Article 3 creates a requirement for adoption of 'special measures for the protection of the institutions, persons, property and labour' of indigenous people, and Article 9 prohibits the extraction of any kind of compulsory labour. More specifically, Article 15 requires the adoption of measures for protection in recruitment and conditions of employment, and prohibits discrimination with regard to admission to employment, remuneration, employment benefits, and freedom of association and formation of collectives.

Similarly, ILO C 169 also recognises the right of indigenous peoples to non-discrimination in Article 3, and Article 4 requires the State to take special measures to such purpose. Several provisions relating to recruitment and conditions of employment are also made, such as Article 20 which requires governments to adopt special measures for the protection of indigenous workers with regard to recruitment and conditions of employment and also prevent discrimination at the workplace and in employment opportunities. Special mention is made of the need to protect workers from indigenous communities, including seasonal, casual and migrant workers, in agriculture and other employment, so that they are informed about the labour laws for their protection, are not subjected to hazardous working conditions, bonded labour, and sexual harassment [Article 20(3)].

The UNDRIP contains very detailed provisions in this regard, stating in its preamble 'that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind' and 'are entitled without discrimination to all human rights recognised in international law'. The right to equality and freedom from discrimination is articulated in Article 2. The right against discrimination for exercising their right to a separate identity (Article 9), the right to combat prejudice in education and public information (Article 15), the right to establish to access all forms of non-indigenous media without discrimination, and in particular State-owned media (Article 16), and the right to improve their economic and social conditions without discrimination (Article 21) are also clearly recognised.

The Constitution of India in its Preamble bears a commitment to the concept of equality of all citizens before the law, when it commits to the vision of 'Equality of status and opportunity' as a core part of the aspiration of a newly independent state. The Right to Equality has been held to be part of the 'basic structure' of the Constitution and therefore unalterable even by

constitutional amendment.[112]

Not surprisingly, the Fundamental Rights Chapter of the Constitution (Part III) details the concept of equality at some length. Article 14 recognises the right to equality before law and equal protection of the law and makes the same available to all persons, that is, citizens as well as non-citizens. The Constitutional provisions as well as numerous judicial precedents firmly establish that a mere 'formal' equality approach has been rejected. Instead, the Constitution clearly recognises that to be completely meaningful, a 'substantive' approach to equality has to be adopted, and therefore the historical discrimination of certain groups and classes must not only be abjured by the state, but concrete steps must be taken to reverse the present consequences of such historical discrimination. It is only with such a substantive or affirmative approach will equality be achieved in a real sense. Thus the principle of substantive equality has been imported into Article 14 through numerous judicial precedents.

In keeping with this approach to Equality, the Constitution recognises the right against discrimination in Article 15 which prohibits discrimination of any citizen by the state on grounds of religion, race, caste, sex, place of birth, or any of them. The Article insists on affirmative action in the form of special provisions for 'socially and educationally backward classes of citizens or for STs' as a part of this right[113]. Similarly Article 16 prohibits discrimination in public employment on grounds of religion, race, caste, sex, descent, place of birth, or any of them, and at the same time permits reservations in employment for 'backward class of citizens'[114], as also reservations in promotions for STs[115]. Article 17 prohibits the practice of untouchability in any form, and states that such practices will be offences under criminal law.

Jharkhand *Photo: Chris Erni*

112 The principle of basic structure has been articulated in *Keshavananda Bharati v. St of Kerala* (1973) 4 SCC 225, and reiterated in numerous judicial precedents thereafter. See also *Minerva Mills Ltd vs. UOI* (1980) 3 SCC 625.

113 Article 15(4)

114 Article 16(4)

115 Article 16 (4-A), which has been inserted by the Constitution (Seventy Seventh) Amendment Act 1995.

The Directive Principles of State Policy also contain several provisions which directly and indirectly impart the right to equality as understood in the Constitution. The Supreme Court in numerous judgments has held that these principles inform the right to life and dignity under Article 21. Key among these are two provisions which are understood to articulate the concept of 'distributive justice':

- Article 38 places a duty on the state to "secure a social order in which justice, social, economic and political, shall inform all the institutions of the national life" and in particular to minimize inequalities in income and eliminate inequalities in status among individuals and amongst groups of people;
- Article 39 contains critical obligations of the state to direct its policy towards what has come to be known as 'distributive justice', with respect to adequate means of livelihood, ownership and control of material resources, minimization of concentration of wealth in the economic system, and so on.

In addition, Article 46 contains an obligation of the state to promote the education and economic interests of weaker sections, in particular the STs, and also to protect them from social injustice and all forms of exploitation.

This approach to equality, which recognises the need to right historical wrongs in order to achieve substantive equality in the present and the future, with a core commitment to distributive justice and the reduction of economic inequalities, has informed the entire constitutional dispensation with regard to STs, and it is in this context that the various constitutional provisions relating to STs must be examined.

Reservations for STs, along with Scheduled Castes (SCs) and more recently other backward classes (OBCs) in education and public employment have been part of the fabric of the Indian nation since Independence. It is only expected that in a densely populated nation where educational institutions are few and government jobs even more so, these are widely coveted and recruitment marked by intense competitiveness. The historical marginalisation of STs, SCs, and OBCs in education and employment have led to the development of a ruling elite which is marked by both class and upper caste, with the latter fiercely protecting their monopolization of these coveted positions. Opening up of education and government employment to the marginalized people of India was a condition precedent to achieving the goal of a Socialist democracy. This has been done by the Indian state through a system of reservations and quotas for SCs, STs and OBCs. Naturally, this process has been met with bitter, and often violent, opposition from the ruling elites.

While many of these battles have been fought on the street and in the political arena, some have also reached the courtrooms. On numerous occasions the Supreme Court and the High Courts have been called upon to play umpire. While one judgment after another is passed 'settling the law' once and for all, the litigations challenging reservation itself and various aspects of it, continue to accumulate. The Courts have attempted to balance the substantive equality approach in the Constitution with the rights and aspirations of youth from upper castes/classes. This aspect has been dealt with in greater detail in Section 6 below.

As discussed in detail elsewhere in this report, Article 244 of the Constitution creates a special dispensation for the governance of Scheduled Areas, Tribal Areas and STs. This is delineated in the Fifth and Sixth Schedules, which are often described as 'a Constitution within a Constitution'. When read together, these constitutional provisions create a distinct dispensation for tribal homelands which have been recognised as such through the process of scheduling of such areas.

This aspect of the law relating to special constitutional protections to STs and Scheduled Areas has also seen some important developments. A leading decision on the subject was passed

by the Supreme Court[116] when the Court was seized with a legal conundrum resulting from the grant of mining leases in forest land (usually classified as government land) to non-tribals. While interpreting a state level legislation prohibiting the transfer of land in Scheduled Areas to non-tribals, the Supreme Court took the entire constitutional framework relating to STs and Scheduled Areas into consideration before arriving at a finding that the local legislation must be interpreted to forbid transfer of government land in Scheduled Areas to non- tribals.

This far-sighted approach to legislative interpretation has not been adhered to in numerous subsequent disputes which have come before the Court. Numerous decisions of the Special Forest Bench of the Supreme Court[117] have permitted extensive industrialization and mining in forest lands which are the traditional homelands of STs, without consideration of the Constitutional framework. For instance, in the case relating to grant of forest clearance for setting up of a refinery as well as bauxite mining in the Niyamgiri Hills in Odisha State, home of the 'primitive tribal group' (PTG)[118], the Dongaria Kondhs, the Forest Bench rejected the report of its own Central Empowered Committee, widespread public opposition and opposition from the tribals themselves, and went on to grant approvals to a private multinational corporation, M/s Sterlite Industries (India) Ltd. (SIIL)[119].

The substantive approach to equality has also informed numerous protective legislations enacted and implemented in the 60 years of India's independence, concerning a gamut of marginalized groups and people. State legislations on Panchayati raj or local self-governance have been amended to bring them in conformity with the Constitutional mandate and The Panchayats (Extension to Scheduled Areas) Act 1996. While the primary focus of this Central legislation is to make special provisions relating to the extension of the Panchayati raj system to Scheduled Areas, it also contains certain key provisions relating to the right to equality. Therefore, the statute mandates reservations for STs at all levels in the Panchayats, and also provides for reservation of all posts of Chairperson of Panchayats at all levels in the Scheduled Areas for STs[120]. This provision was the subject matter of a constitutional challenge in the Supreme Court of India, in a batch of petitions from the State of Jharkhand, on the ground that it violates the Right to Equality under Article 14. The Supreme Court has recently pronounced judgment[121] upholding the constitutional validity of this provision, stating as follows:

> '…Especially in the context of Scheduled Areas, there is a compelling need to safeguard the interests of tribal communities with immediate effect by giving them an effective voice in local self-government. The Bhuria Committee Report had clearly outlined the problems faced by STs and urged the importance of democratic decentralization which would empower them to protect their own interests.' (para 34)

'There is of course a rational basis for departing from the norms of 'adequate representation' as well as 'proportionate representation' in the present case. This was necessary because it was found that even in the areas where STs are in a relative majority, they are under-represented in

116 *Samatha vs. State of Andhra Pradesh,* (1997) 8 SCC 191

117 In *TN Godavarman vs. Union of India and others,* Writ Petition (Civil) No. 202 of 1995, pending.

118 This is an administrative category used by the Government of India.

119 *TN Godavarman Thirumalpad vs. Union of India;* Judgment and order dated 23.11.2007 in I.A. Nos. 1324 and 1474 in WP (C) no. 202/1995; and judgment and order dated 8.8.2008 in I.A. No. 2134 in WP (C) 202/1995.

120 The proviso to Section 4(g) of PESA states that the seat of Chairperson of Panchayats at all levels shall be reserved for the STs.

121 *Union of India etc. vs. Rakesh Kumar & Ors etc.* Judgment and order dated 12th January 2010 (1) SCALE 281. Significantly, as a result of the pendency of this constitutional challenge, elections to Panchayati Raj institutions had not been held in Jharkhand since the formation of the State in 2000. As a result the Supreme Court in the above judgment also passed a direction to the State Government and the State Election Commission to conduct elections to the Panchayati raj institutions as early as possible

the government machinery and hence vulnerable to exploitation. Even in areas where persons belonging to the STs held public positions, it is a distinct possibility that the non-tribal population will come to dominate the affairs. The relatively weaker position of the STs is also manifested through problems such as land-grabbing by non-tribals, displacement on account of private as well as government developmental activities and the destruction of environmental resources. In order to tackle such social realities, the legislature thought it fit to depart from the norm of 'proportional representation'. In this sense, it is not our job to second-guess policy choices….' (para37).

The most recent legislation which illustrates this approach to equality is the *STs and Other Traditional Forest Dwellers (Recognition of Rights) Act, 2006* (hereafter 'the Forest Rights Act') which in its Preamble states:

> 'And whereas the forest rights on ancestral lands and their habitat were not adequately recognised in the consolidation of State Forests during the colonial period as well as in independent India resulting in historical injustice to the forest dwelling STs and other traditional forest dwellers who are integral to the fore very survival and sustainability of the forest ecosystem.'

A detailed examination of the Forest Rights Act is found in Section 7 below. Interestingly, the Forest Rights Act has been the subject matter of intense debate and its constitutional validity has been challenged in Writ Petitions before more than 7 separate State High Courts as well as in the Supreme Court of India. The ongoing articulation of arguments for and against the statute, and the rights of forest dwellers, including STs, which it seeks to protect and promote, is a jurisprudential development which needs to be tracked carefully as it evolves.

Prohibition of discriminatory practices:

In India today, Adivasis face both ethnic discrimination and violent hate crimes. Considered outside the caste system, they do not always face untouchability (unlike Dalits), but discrimination in education, employment and access to state agencies is widely reported. The general lack of familiarity with the language used which is either English, or Hindi or the regional mainstream language, legal system and formal state structures frequently leads to intensified exploitation of Adivasis by other communities. Adivasi women in particular frequently face sexual harassment by government officials and other communities.

In pursuance of the constitutional mandate prohibiting discriminatory practices (Articles 15 and 17) important Central legislations have been enacted. *The Protection of Civil Rights Act 1955* relates primarily to the prohibition of untouchability practices to which SCs have been historically subjected. However, since there are parts of the country where STs are subjected to this heinous form of discrimination, it remains an important instrument. Apart from listing the various forms of untouchability practices a criminal offence, the statute also makes provision for imposition of a collective fine on inhabitants of an area who are involved in, abetting, or harbouring persons who are concerned in the practice of untouchability. (Section 10A).

However, this enactment was found to be inadequate in addressing the increasing atrocities against STs and SCs, especially in the context of the increasing awareness among these communities and the rising assertion by them of their basic rights. The Statement of Objects and Reasons of the *Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989* notes as follows:

> '…Because of the awareness created amongst the Scheduled Castes and the Scheduled Tribes through spread of education, etc., they are trying to assert their rights and this is not being taken very kindly by the others. When they assert their rights and resist practices of untouchability against them or demand statutory minimum wages or refuse to do any bonded

and forced labour, the vested interests try to cow them down and terrorise them. When the Scheduled Castes and Scheduled Tribes try to preserve their self-respect or honour of their women, they become irritants for the dominant and the mighty. Occupation and cultivation of even the Government allotted land by the Scheduled Castes and the Scheduled Tribes is resented and more often these people become victims of attacks by the vested interests….'[122]

Accordingly, the Act creates a new criminal offence, namely, committing of atrocity against a ST or SC person, and gives a detailed definition of 'atrocity', which includes, inter alia,

- acts derogatory to human dignity [Section 3(i) to (iii) and (x)]
- wrongful occupation of or dispossession from land [Section 3 (iv) and (v)]
- forced or bonded labour [Section 3(vi)]
- assault, rape or sexual exploitation [Section 3(xi) and (xii)]
- fouling of water resource [Section 3(xiii)]
- denial of customary right of passage [Section 3(xiv)]
- dispossession from home or village [Section 3(xv)]

Conviction under this statute carries a minimum sentence of 6 months imprisonment, up to a maximum of 5 years. There is also a provision for imposition of collective fines. Rules have been framed under the statute containing detailed provisions dealing with the setting up of Special Courts, rehabilitation measures, and so on. While it is widely known that the Act has been used more extensively by the SCs, rather than STs, official data is scarce. There are numerous procedural and definitional problems in this statute which have considerably limited the scope of its implementation. The failure of the state administration to appoint special police officers, special courts and special public prosecutors, have meant acute harassment of victims of atrocities even at the stage of registration of crimes, leave alone the process of prosecution. The convictions rates are low at 25.9% in 2007.[123]

While state level legislation dealing with atrocities and untouchability is rare, several State Governments have enacted laws which advance the affirmative equality approach in the Constitution. It is not surprising that these laws have been the subject matter of intense challenge before the Courts. Laws prohibiting transfer and alienation of land from tribals to non-tribals have been challenged by dominant elites on numerous occasions as violative of the right to equality, among others. The Courts have been consistent in upholding the constitutional validity of these laws till now.

Given the historical context of discrimination against marginalized people in India, and STs in particular, it is obvious that simply putting in place anti-discrimination laws and even mechanisms for redressal is not sufficient. And this was recognised by the makers of the Constitution 60 years ago at the time of its formulation, so that the right to equality and the rights against discrimination were articulated with a core content of affirmative action, social justice and removal of economic inequalities.

3. Self-management

Self-management flows from the right to self-determination.[124] While the ILO C107 refers to 'indigenous and tribal populations', ILO C169 modifies this to 'indigenous and tribal peoples'.

122 Statement of Objects and Reasons, *The Scheduled Castes and the STs (Prevention of Atrocities) Bill, 1989*, as presented in Parliament on 9th August 1989.

123 Percentage Disposal of Court Cases For Crimes Committed Against STs During 2007, accessible at http://ncrb.nic.in/cii2007/cii-2007/Table%207.16.pdf

124 General Recommendation No. 21 of the Committee on the Elimination of Racial Discrimination on self determination recognizes the exercise of these rights by indigenous peoples and ethnic minorities. Available at http://www.unhchr.ch/tbs/doc.nsf/0/dc598941c9e68a1a8025651e004d31d0?Opendocument

The concept of 'peoples' implies recognition of the right to self-determination of 'all peoples' under Article 1 of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICECSR). 'The right to self-determination of peoples has an internal aspect, that is to say, the rights of all peoples to pursue freely their economic, social and cultural development without outside interference.[125] However, as ILO is mandated with economic and social rights, it also provides a disclaimer through Article 1(3) of ILO C169 that 'The use of the term peoples in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.' Neither ILO C107 nor 169 refers to right to self-determination per se, but C169 does provide for participation and consultation, self management and the right to decide their own priorities for development– all of which are important mechanisms for the realization of the right to self-determination, as reflected in the Declaration[126]. The UNDRIP clearly identifies indigenous peoples as 'peoples' with the right to self-determination by virtue of which 'they freely determine their political status and freely pursue their economic, social and cultural development (Article 3) and 'have the right to autonomy or self-government in matters relating to their internal and local affairs' (Article 4) without any threat to the territorial integrity of sovereign and independent states (Article 46[127]).

The principle of self-determination[128] may be expressed through[129]:

- Autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means of financing their autonomous functions. In other cases, indigenous peoples seek the conditions for self-management.
- Respect for the principle of free, prior and informed consent. This principle implies that there is an absence of coercion, intimidation or manipulation; that consent has been sought sufficiently in advance of any authorization or commencement of activities; that respect is shown for time requirements of indigenous consultation/consensus processes, and that full and understandable information on the likely impact is provided.[130]
- Full and effective participation of indigenous peoples at every stage of any action that may affect them directly or indirectly. The participation of indigenous peoples may be through their traditional authorities or a representative organization. This participation may also take the form of co-management.
- Direct or indirect consultation with the indigenous peoples concerned prior to any action that may affect them. This ensures that their concerns and interests match the objectives of the planned activity or action.
- Formal recognition of indigenous peoples' traditional institutions, internal justice and conflict-resolution systems, and ways of socio-political organization.
- Recognition of the right of indigenous peoples to freely define and pursue their economic, social and cultural development.

The general frame and provisions of the Indian state provide for the pre-eminence of the state

125 Ibid

126 Indigenous and Tribal Peoples' Rights in Practice – A Guide to ILO Convention No. 169, ILO, 2009, pp. 26

127 **Article 46 (**1). Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States

128 Articles 18, 19, 23, 32 and 38 of UN DRIP

129 *United Nations Development Group Guidelines on Indigenous Peoples' Issues*, February, 2008. Accessible at http://www.undp.org/partners/civil_society/indigenous/docs/UNDG_guidelines_on_Indigenous_Peoples_Issues_2008.pdf

130 See the *Report of the UNPFII workshop on Methodologies regarding Free Prior and Informed Consent and Indigenous Peoples* (E/C.19/2005/3). This report provides the elements of a common understanding of FPIC which are reproduced in Box 1 of these Guidelines.

in all matters that govern the social, economic and political life of its peoples. This is exercised through representative democracy, the laws, administration and judiciary. The post-colonial Indian state created various provisions in the Constitution for the Scheduled Areas, Tribal Areas and Tribal states namely Article 244 (V Schedule and VI Schedule), and Articles 371A and 371G which grant special Constitutional protection to the States of Nagaland and Mizoram respectively. The majority of the ST population falls outside the scope of the application of these constitutional and legal provisions. These provisions however present a picture of a high degree of autonomy at different levels.

Though the Indian Constitution explicitly maintains that 'the State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government' (Article 40), yet a concerted beginning was made only in 1993 through the 73rd and 74th Amendments which provided for decentralized governance rather than local self-governance for rural and urban areas. However, this did not apply to the Schedule V and VI Areas, States of Nagaland, Meghalaya and Mizoram, hill areas of the State of Manipur for which District Councils exist, and the District of Darjeeling in the State of West Bengal. The Parliament was to enact separate legislations for Schedule V and VI Areas while the legislatures of the states of Nagaland, Meghalaya and Mizoram could extend this provision.

Van Gujar *Photo: Chris Erni*

The Panchayats (Extension to Scheduled Areas) Act

In 1996 the Panchayats (Extension to Scheduled Areas) Act (PESA) was enacted by the Parliament to extend these provisions to the Schedule V Areas (See Annexure 11). The States with Scheduled Areas were required to enact state legislation within a year of the passage of PESA in the Parliament. Eight of the nine states having Scheduled Areas, namely, Andhra Pradesh., Gujarat, Himachal Pradesh, Madhya Pradesh, Chhattisgarh, Maharashtra, Odisha and Rajasthan have amended their existing Panchayat Acts to incorporate the PESA provisions. The newly constituted State of Jharkhand, however, enacted a new Panchayat Act in 2001. Elections to Panchayats have been held in all states except Jharkhand. The delay in the latter state was due

to the Jharkhand High Court striking down the second proviso of Section 4(g) that provides for reservation of 'all the seats of chairpersons of Panchayats at all levels' in the Scheduled Areas for STs as un-constitutional. In January 2010, the Supreme Court upheld the law, whose constitutionality is no longer in question.

However, in effect, PESA has not been implemented as required by law. The state legislations are not sufficiently in tune with the PESA. According to a Committee appointed by the Ministry of Panchayati Raj to draft model guidelines for PESA, some of the major problems with state laws include:

- 'While Madhya Pradesh, Jharkhand and Chhattisgarh enacted the respective state Acts envisaging 'due regard to the spirit of other relevant laws for the time being in force' thus enabling the *Gram Sabha* (village assembly) not to follow blindly every letter of relevant laws but only to honour the spirit of the law. The Odisha law envisages 'consistent with the relevant laws in force and in harmony with basic tenets of the Constitution'. There are problems in the state Acts which are either inconsistent or not adequately harmonious with PESA.
- 'Dispute resolution according to customs and tradition of the community' is basic to the scheme of governance at the village level as envisaged in PESA. This aspect has been ignored by State Governments and to date, few, if any, worthwhile steps have been taken in this regard.
- Rejection of the land as property concept in favour of the traditional 'community ownership and individual use' frame, exists as a possibility in PESA due to the power granted to the *gram sabha* in respect of 'prevention of land alienation as also restoration of illegally alienated land'. But suitable provisions in the Panchayati Raj Acts or the relevant Land Regulations have not been made with the exception of Madhya Pradesh (including the new State of Chhattisgarh). In the latter States, the Land Revenue Code empowers the *Gram Sabha* to restore unlawfully alienated lands to ST landowners; the *Gram Sabha* has the power to direct the Sub-Divisional Officer to restore possession within 3 months.
- The radical provision of Section 4(m)(i) of PESA regarding excise taxes on local goods, (especially alcohol) vested full powers in the *Gram Sabha*. However, it has been disregarded at all levels. Even the Madhya Pradesh amendment to its Excise Act, with a new Chapter entitled 'Special Provisions for Scheduled Areas', remains without rules to operationalize the inclusion.
- Forests comprise an integral part of the livelihood resources of the concerned communities. Section 4(d) and 4(m)(ii) of the law make STs the owners of Minor Forest Produce. But no State has yet taken necessary steps to make this premise fully operational.
- Consultation with *Gram Sabha* or Panchayats at appropriate level is mandatory in the case of land acquisition, as is also rehabilitation of project affected people under Section 4(i) of PESA, and in respect of grant of license etc of minor minerals under Sections 4 (k) and 4 (l) of PESA. The State laws have generally taken advantage of ambiguity of the '*Gram Sabha* or Panchayats' provision and ignored the *Gram Sabha* in the above-mentioned statutory consultation. Panchayats too are often ignored or their dissenting decisions are overturned[131] by the State Government or are coerced into granting approvals. The Ministry of Rural Development guidelines about consultation with the *Gram Sabha* in the case of land acquisition on 11 November 1998 however prescribed a procedure to be followed by the requisitioning body and the Land Acquisition authorities, with the Collector having the central role, effectively nullifying the role of the *Gram Sabha*. The Ministry of Mines also issued guidelines on 28 December 1997 about consultation

131 Nayar, Lola. The Best PR Exercise, Outlook, 9 April, 2007 available at http://www.outlookindia.com/article.aspx?234330

with the *Gram Sabha* in respect of grant of lease etc of minor minerals, making the recommendation of the *Gram Sabha* binding in cases of grant of leases of minor minerals and grant of concessions etc. However these directives have also been overlooked. The State of Madhya Pradesh (including Chhattisgarh), made elaborate rules in 2000 about consultation with concerned *Gram Sabhas* before acquisition of land but again, this has not been adequately followed.'[132]

The Committee went on to state that 'The main reasons for the non-implementation of PESA in the concerned States, on the whole, are:

i. Lack of appreciation about the place of Fifth Schedule read with PESA in tribal affairs and confusion about its legal status;
ii. (ii) The formal responsibility of (a) implementing PESA that stands for total transformation of the paradigm of governance in the Scheduled Areas and (b) dealing with tribal affairs in general is vested with two different Ministries in the Union Government, namely, the Ministry of Panchayati Raj (earlier the Ministry of Rural Development) and the Ministry of Tribal Affairs, respectively that are virtually functioning in isolation;
iii. (iii) There is lack of information and understanding about PESA in general and its radical character in particular amongst the political executive and even concerned administrators; and
iv. (iv)There is virtually no effort to convey and disseminate the message of PESA amongst the concerned people.'[133]

Since a comparatively small proportion of Scheduled Areas in the country are urbanized, the issue of self-management of towns and cities in areas falling under the Fifth and Sixth Schedules of the Constitution has received little attention. However, with the increasing trend towards urbanization in the country, this issue also needs attention.

The Constitution was amended in 1993 to include a chapter on Municipalities[134], and the mechanisms for governance of the same, very similar in its approach to the amendment earlier on Panchayats[135]. These provisions provided the basic structural guidelines for re-vamping existing municipalities across the country, the elected bodies in urban areas, requiring State Governments to amend their state-level municipal legislations in order to bring them into conformity with the constitutional design. However, the extension of this chapter to municipalities in Scheduled Areas (under Fifth Schedule) and tribal areas (under Sixth Schedule) has been expressly barred under Article 243-ZC[136] except through a special law enacted by Parliament containing necessary exceptions and modifications[137]. Over 16 years later, no such law has been enacted, even though a bill to give effect to this provision was placed before Parliament in 2001 being the *Municipalities (Extension to the Scheduled Areas) Bill*. This Bill was drawn with the objective of ensuring that urbanization of Scheduled Areas does not impose an alien governance structure upon tribal communities, and provides the space for traditional mechanisms of self-management and

132 Report of the Sub- Committee appointed by the Ministry of Panchayati Raj to draft Model Guide-lines to vest Gram Sabhas with powers as envisaged in PESA.

133 Ibid.

134 *Constitution (74th Amendment) Act, 1992*, inserting 'Part IX-A- The Municipalities' brought into force on 1.6.1993.

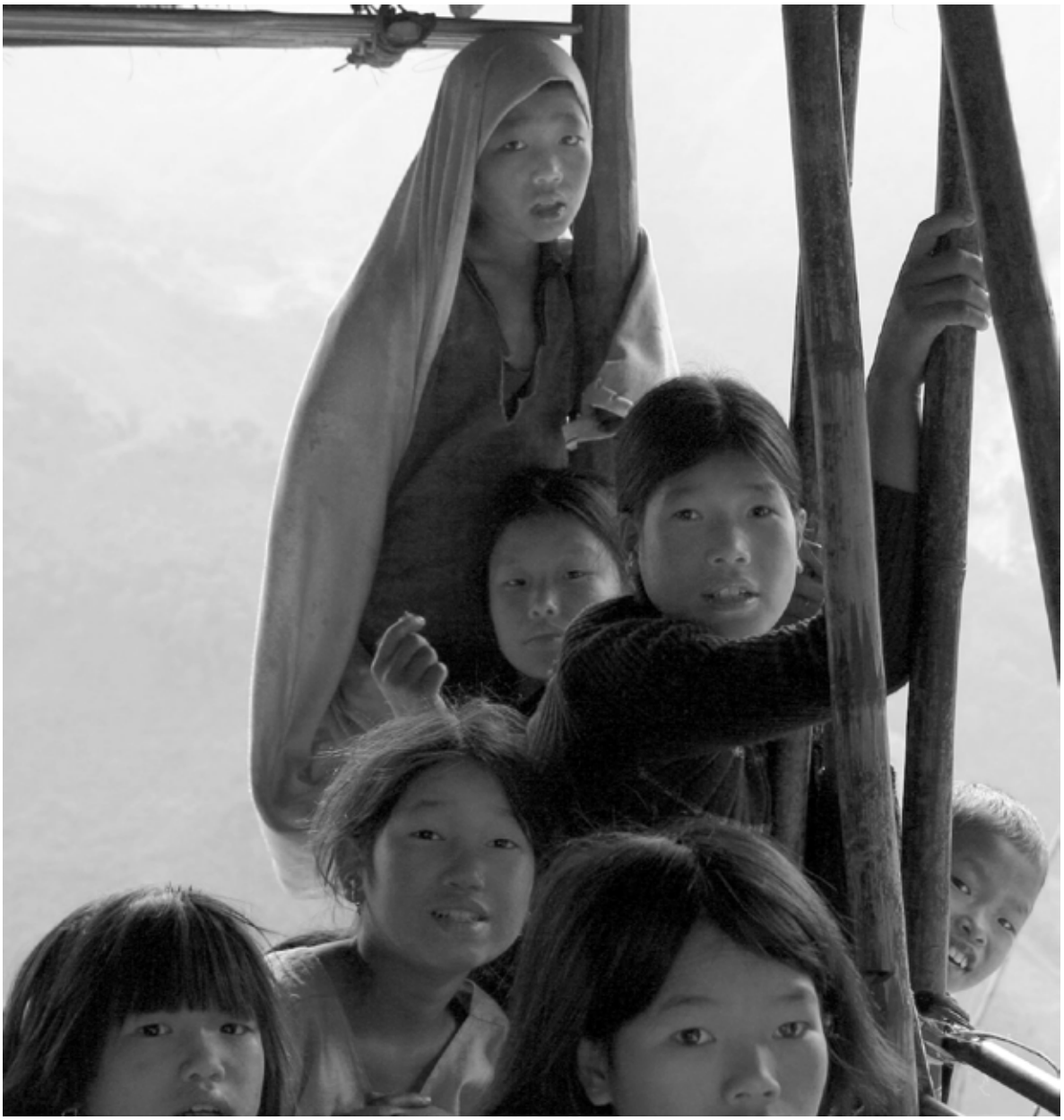
135 *Constitution (73rd Amendment) Act, 1992*, inserting 'Part IX- The Panchayats' brought into force on 24.4.1993.

136 Article 243-ZC states as follows:
'(1) Nothing in this Part shall apply to the Scheduled Areas referred to in clause (1), and the tribal areas referred to in clause (2), of Article 244….
(3) Notwithstanding anything in this Constitution, Parliament may, by law, extend the provisions of this Part to the Scheduled Areas and the tribal areas referred to in clause (1) subject to such exceptions and modifications as may be specified in such law, and no such law shall be deemed to be an amendment of this Constitution for the purposes of Article 368.'

137 A similar prohibition exists in Article 243-M of the Constitution with regard to the extension of the chapter on Panchayats to Scheduled Areas, and it is in this context that the Panchayats (Extension to Scheduled Areas) Act, 1996 was enacted. It is therefore widely viewed as a legislation which has constitutional status.

community decision-making to continue through the transition from a rural to an urban area. This Bill has long been forgotten and shelved.

Meanwhile, not only do elections to municipal bodies in Scheduled Areas continue, but new areas continue to be urbanized. Due to the unconstitutional application of existing municipal laws to these areas, little pockets of 'unscheduled areas' virtually are being created within Scheduled Areas, as the cities and towns lose touch with their traditional roots and governance systems. Challenges to these processes have met with stiff opposition in the Courts, and to date have not been successful. In a batch of petitions challenging this process in the State of Jharkhand, the Ranchi High Court reached a decision that Article 243-ZC would not apply to Municipal laws existing prior to the 74th Constitutional Amendment[138]. Appeals against this judgment are pending in the Supreme Court at the time of writing this report.



Anjaw District (Arunachal Pradesh) *Photo: Chris Erni*

138 *Uday Shankar Ojha and Ors vs. Jharkhand State Election Commission and Anr*, judgment and order dated 29.02.2008; High Court of Jharkhand; 2008 (2) JCR 249 (Jhr).

Constitutional Provisions Relating to the Northeast

The Northeastern region has certain special arrangements relating to autonomy and self-management, of which the two main ones are Schedule VI for the Tribal Areas at the district and regional levels through autonomous councils and Articles 371A and 371G for the States of Nagaland and Mizoram.[139] However the declaration of areas as 'disturbed areas', the deployment of the armed forces and their operations with impunity under Armed Forces Special Powers Act have created a situation where the democratic space to participate in self-management is severely compromised. These armed forces are also entrusted with development functions such as 'to influence every aspect of the lives of the people of the region, be it education, health, constructional activity, agricultural assistance, veterinary assistance, or assistance during natural calamities'[140]. This is an infringement into the responsibilities of the communities as well as of the state. These, in effect, deny the right to self-management.

Compliance with Law

As noted earlier, the implementation of PESA and Fifth Schedule provisions by concerned State Governments, as well as the centre has been grossly inadequate. The Schedule VI provisions are yet to be harmonized with the traditions and customs at the village and community levels and are in direct conflict with the powers of the concerned state. The Autonomous Councils in these areas have 'become ineffective over time, mainly because of non-resolution of the inherent contradiction between traditional institutions with an aura of custom and usage and formal institutions vested with paper powers under law. The District Councils in most cases have not constituted Village Councils. And where constituted, they have remained ineffective in the face of traditional Councils with unquestionable aura of custom and usage'.[141] Even the wide autonomy provided in Article 371A and 371G does not extend to the domain of economy and development decision making.

Finally, the Forest Rights Act 2006 provides for control over 'community forest resources' by the *Gram Sabha* in their use and conservation of these resources (see below under Section 7 on Land, natural resources and the environment). The Act is in the process of being implemented in various states. However many State Governments are choosing to overlook important provisions of this Act. Substantive and procedural violations are widespread.[142]

3.1 Participation and consultation

Participation and consultation are an integral component of self-determination (see above). ILO C107 only requires the government to 'seek the collaboration', 'provide opportunities for full development' and 'stimulate...the development among these populations of civil liberties and the establishment of participation in elective institutions' (Article 5). ILO C169 goes beyond this, requiring the governments to ensure participation of the peoples concerned on an equal footing with the rest of the population to promote the full realisation of the social, economic and cultural rights to attain equality with the rest of the national society (Article 2). Articles 6 and 7 are the key provisions on consultation and participation, requiring that they take place 'at all levels of decision-making in political, legislative and administrative bodies and processes which affect

139 Schedule VI is described in the section on 'Scheduled Areas' in Part I, while Articles 371A and 371G are discussed in the section on the Northeastern States, also in Part I.

140 http://assamrifles.gov.in/history.aspx

141 *Revised Draft Note for COS On Decentralised Governance in North East States*, Ministry of Panchayati Raj, N-11019/108/2006-Pol.I(Vol.II), 19 June 2009. Accessible at http://panchayat.gov.in/data/1245840840734~Draft%20Note%2019.6.2009%20final.pdf

142 For details see www.forestrightsact.com and http://fracommittee.icfre.org/

them directly'[143]. The respective governments are required to hold appropriate consultations, using mechanisms which ensure the free participation through peoples' own institutions and initiatives (Article 6), whereby indigenous peoples have the right to make their own decisions on their economic, social and cultural development (Article 7.1). The obligation of governments to consult indigenous peoples is further emphasised in legislative or administrative measures[144], before extraction of sub-surface resources[145], land acquisitions[146], relocations[147], special vocational programmes[148] and education of children[149].

Other terms are also used in the Convention indicating participation such as obligation to 'cooperate' with indigenous peoples (Articles 7, 20, 22, 25, 27, 33), obligation not to take measures contrary to the freely-expressed wishes of indigenous peoples (Article 4), obligation to seek 'free and informed consent' from indigenous peoples (Article 16) and right to be consulted through 'representative institutions' (Article 16).

UNDRIP recognizes that indigenous peoples have a right to maintain their distinct political, legal, economic, social and cultural institutions while retaining their right to participate fully in the political, economic, social and cultural life of the state (Article 5), and to participate in decision-making in matters affecting their rights (Article 18). The indigenous peoples can determine and develop priorities and strategies for their development (Article 23 and 32). The states are required to consult and cooperate with indigenous peoples (Article 19). Free, prior and informed consent of indigenous peoples is fundamental before adopting and implementing legislative or administrative measures that may affect them.

- *Free* should imply no coercion, intimidation or manipulation;
- *Prior* should imply consent has been sought sufficiently in advance of any authorization or commencement of activities and respect time requirements of indigenous consultation/ consensus processes;
- *Informed* – should imply that information is provided that covers (at least) the following aspects:
  a. The nature, size, pace, reversibility and scope of any proposed project or activity;
  b. The reason/s or purpose of the project and/or activity;
  c. The duration of the above;
  d. The locality of areas that will be affected;
  e. A preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risks and fair and equitable benefit sharing in a context that respects the precautionary principle;
  f. Personnel likely to be involved in the execution of the proposed project (including indigenous peoples, private sector staff, research institutions, government employees and others)
  g. Procedures that the project may entail.
- *Consent* - Consultation and participation are crucial components of a consent process. This process may include the option of withholding consent. Consent to any agreement

143 *Indigenous & Tribal People's Rights in Practice - A Guide to ILO Convention No.169*, International Labour Standards Department, ILO, 2009, p.60.

144 When considering legislative or administrative measures [Article 6(1)(a)].

145 Prior to exploration or exploitation of sub-surface resources [Article 15(2)].

146 When consideration is given to alienating indigenous peoples' lands or transmitting them outside their own communities (Article 17).

147 Prior to relocation, which should take place only with the free and informed consent of indigenous peoples (Article 16).

148 On the organization and operation of special vocational training programmes (Article 22);

149 On measures aimed at children being taught to read and write in their own indigenous language (Article 28) in *Indigenous & Tribal People's Rights in Practice - A Guide to ILO Convention No.169,* op cit, p.61.

should be interpreted as indigenous peoples having reasonably understood it.[150]

The Panchayat Raj Act for the general population which applies to the majority of the STs decentralizes the developmental and welfare functions of the state to elected bodies (panchayats) at the district, intermediate and panchayat levels. The community at the village level – *Gram Sabha* – is nominal, acting more as an appendage to the structure above. The state is, by and large, the major decision-making power. In effect, consultation and participation, especially in matters related to land and resources, are virtually absent at the level of these decentralized structures. ST representation in the political structure of the state is largely proportional to their population and this is ensured through reservation for STs in the electoral bodies. The ST representatives invariably belong to one or other political party and are bound by the decision of the concerned party. Where STs are a minority in a state, their representation in the legislature as well as in the Parliament is also small. The rest of the structure is also similar except in those areas with a predominantly ST population. In the context of weak participatory structures at the grassroots or where lower structures are in conflict or competition with the traditional structures, the ST representatives become part of the dominant structures, effectively weakening their representative character.

West Singbhum (Jharkhand) *Photo Chris: Erni*

The *Panchayats (Extension to Scheduled Areas) Act, 1996,* confers substantial powers to the community at the village level – to the Gram Sabha – particularly over land and a substantial portion of resources. The *Gram Sabha* is required to approve 'the plans, programmes and projects for social and economic development'. Consultation is mandated for acquisition of lands, resettlement or rehabilitation and for prospecting licenses or mining leases for minor minerals. PESA goes beyond consultation and participation, requiring self-governance (see above under Section 3. 'Self-Management').

150 Excerpt from the *Report of the International Workshop on Methodologies Regarding Free Prior and Informed Consent* E/C.19/2005/3, endorsed by the UNPFII at its Fourth Session in 2005.

Through the Schedule VI provisions, tribal areas in the northeast, though having the potential to act with a high degree of autonomy, have been rendered ineffective with a multiplicity of competing and conflicting state structures, and have failed to harmonise with the traditional structures. Nagaland has made significant progress to provide at least partly elected village level institutions and to bring community participation in the delivery of services through a highly successful 'Nagaland Communitisation of Public Institutions and Services Act 2002'. Mizoram has abolished the hereditary village 'chieftains' and replaced them with elected Village Councils all over the state, including in urban areas.

In non-Scheduled Areas and areas outside the Northeast, the recently passed Forest Rights Act also confers the *Gram Sabha* the right to determine the forest rights, requires 'free, informed consent' in case of resettlement and also requires consent for any handover of forest land by the government. However, these important components are often not adhered to in the implementation of this Act[151].

4. Access to justice

The right to legal aid is considered non-derogable in international law. Thus Article 14 of the ICCPR provides: 'All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent independent and impartial tribunal established by law.' Article 14 requires that a person shall be entitled to free legal assistance assigned to him in the event he does not have the means to pay for it.

The ILO C107 in Article 10[152] requires safeguard against improper application of preventive detention, effective protection of their fundamental rights through legal proceedings, consideration of their degree of cultural development while imposing penalties, and rehabilitation rather than confinement in prison is preferable. The ILO C169 in Article 12[153] stipulates that they should be protected from abuse of their rights for which they shall be able to take legal proceedings which they should be able to understand through effective means, such as interpretation. Further, Article 40[154] of the UNDRIP talks of right to access, fair procedures and prompt decision for resolution of conflicts and disputes for infringement of rights by the state or other parties giving due consideration to their customs, rules and legal systems as well as international human rights.

Numerous other international conventions require a commitment to access to justice as a core element to the special rights they seek to protect. Thus, for instance, the Convention on the Elimination of All Forms of Racial Discrimination (CERD) in Article 6 places an obligation on nation states to provide effective remedies in competent tribunals against acts of racial discrimination, and also for adequate reparation. The concept of fair trial is central to the Universal Declaration on Human Rights.

---

151 For a state wise situation on implementation of the Forest Rights Act, including its rampant violations see *The Current Situation, The Forest Rights Act*, accessible at http://forestrightsact.com/current-situation

152 Article 10 of ILO C 107: 1. Persons belonging to the populations concerned shall be specially safeguarded against the improper application of preventive detention and shall be able to take legal proceedings for the effective protection of their fundamental rights.
2. In imposing penalties laid down by general law on members of these populations account shall be taken of the degree of cultural development of the populations concerned.
3. Preference shall be given to methods of rehabilitation rather than confinement in prison

153 Article 12 of ILO C169: The peoples concerned shall be safeguarded against the abuse of their rights and shall be able to take legal proceedings, either individually or through their representative bodies, for the effective protection of these rights. Measures shall be taken to ensure that members of these peoples can understand and be understood in legal proceedings, where necessary through the provision of interpretation or by other effective means.

154 Article 40 of UNDRIP: Indigenous peoples have the right to access to prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

Jharkhand *Photo Chris: Erni*

Legal representation in criminal proceedings

These principles and commitments find special mention in the Constitution of India as well as in statutory domestic law. The efforts around informing criminal proceedings with fair trial standards in India have largely been focused around ensuring legal representation to accused persons in criminal proceedings. Article 46 enjoins upon the state to promote the educational and economic interests of the weaker sections, in particular the STs, and also places a duty on the state to protect them from social injustice and all forms of exploitation. The 1976 Constitutional Amendment inserted Article 39-A in Part IV (Directive Principles of State Policy) which places an obligation on the state to provide free legal aid in order to ensure that 'no opportunities for securing justice are denied to any citizens by reasons of economic or other disabilities.' Although the Directive Principles as such are not enforceable in Court, the Supreme Court has held that the right to free legal aid is part of the right to life with dignity in numerous cases.[155] This followed serious indictment by several scholars as well as the Law Commission of India and government appointed Expert Committees[156] that there was a systemic denial of justice to the poor, in particular the SCs and the STs, as a result of lack of access to effective legal representation in the Courts. In several cases, the failure of the Courts to appoint a defence attorney in criminal trials was regarded as a miscarriage of justice and the accused persons were acquitted in appeal.

Therefore, in 1987 the central government enacted the *Legal Services Authorities Act.* Among other things, the statute provides for the setting up of legal services authorities at the District Courts and High Courts across the country, with a system of empanelment of capable lawyers who provide their services for a highly subsidized fee borne entirely by the state. The 1987 Act in Section 12 describes the criteria for giving legal services as a member of an SC or an ST,

155 *Suk Das vs. UT of Arunachal Pradesh* (1986) 2 SCC 401; *MH Hoskot v. State of Maharashtra* (1978) 3 SCC 544*; State of Maharashtra v. MP Vashi* (1995) 5 SCC 730

156 See for instance Krishna Iyer, VR. *Processual Justice to the People: Report of the Expert Committee on Legal Aid,* 1973.

victim of human trafficking, forced labour, mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster, and receiving less than an amount prescribed by the government for cases in the High Court or Supreme Court.[157]

Many of the State Governments have also enacted Rules under the 1987 Act for the setting up of Legal Services Authorities in their jurisdiction. Legal Aid Committees have, accordingly, been set up across the country and the mechanisms for providing indigent persons, including STs, are in place.

In reality, the spread of the legal aid machinery has been extremely uneven.[158] While some states as well as High Courts have taken up the provision of effective legal aid almost at a campaign level, it is unfortunate that the old criticism that 'legal aid for the poor means poor legal aid' remains true in other states. The location of the Legal Aid Committees at the district centres where the district level courts are located means that access to these is largely restricted to the urban poor, while remaining inaccessible to those located in rural areas, and certainly to a large proportion of tribal populations located in hilly forested areas inaccessible even by road. There are numerous examples of tribals arrested for petty offences under the Forest laws, involving minor fines of a few rupees, being incarcerated in prisons for long periods of time for the simple reason that contact between them and their family members, located deep within forest areas is broken. In several cases, the Courts have even granted bail but the prisoners are unable to return home as they are unable to provide sureties.

While official data on this subject is hard to come by, as per the National Crime Records Bureau, in 2007 there was a total of 5,532 crimes *against* STs reported in the country, a drop of 5.4% from the previous year[159]. Rape (627 cases), murder (140 cases) and 'hurt' (i.e. assault) (855 cases) were the other types of cases that were commonly recorded. The inability of STs to access justice is reflected by the fact that only 29% of criminal cases involving ST victims resulted in conviction, as compared to 42.3% for crimes against the general population (and, in fact, 86% for crimes tried under special laws). In this Adivasis even fared marginally worse than Dalits (31% rate of conviction).

One writer has observed[160]:

> *'There is a need to acknowledge that those who are economically and socially disadvantaged regard the entire legal system as irrelevant to them as a tool of empowerment and survival. Since it operates to oppress and disempower them, they have to device ways of avoiding it rather than engage with it. Without fundamental systemic changes, if legal aid attempts at getting people to engage with the system, however promising the results may seem, it is bound to be viewed with suspicion.'*

Access to justice and economic, social and political rights

Article 32 of the Constitution confers the right to move the Supreme Court for enforcement

157 Sec. 12 of Legal Services Authorities Act: 'Every person who has to file or defend a case shall be entitled to legal services under this Act if that person is –
(a) a member of a Scheduled Caste or a Scheduled Tribe;
(b) a victim of trafficking in human being or *begar* referred to in Article 23 of the Constitution;
...
(e) a person under circumstances of underserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or
...
(h) in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government, if the case is before a court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court.'

158 Murlidhar, S, 2004. *Law, Poverty and Legal Aid: Access to Criminal Justice*, Butterworths.

159 All data in this paragraph is taken from Crimes in India, 2007, National Crime Records Bureau accessible at http://ncrb.nic.in.

160 Ibid, p.390.

of fundamental rights, and notably, this right is itself a part of the Fundamental Rights chapter. Till the 1980s, this right was governed by the traditional rules of procedure which required that the victims must approach the Court. This rule of locus standi was relaxed by the Supreme Court in a gamut of cases in the post-Emergency period, and Public Interest Litigation (PIL) came about.

This device has been used extensively by concerned individuals, organizations and non-governmental organisations to bring before the Supreme Court as well as the High Courts instances of violation of fundamental rights of marginalized groups of citizens who may be in situations where they are unable to voice their opposition to these violations themselves. One such early case in which this device was employed by the Court was a case relating to bonded labour.[161] While there is no doubt that this device has enabled the articulation of rights of marginalized groups including STs in the Supreme Court and in the High Courts, in recent years there has been a concerted effort to restrict the expansive access to the Courts which the relaxation of the rule of locus standi had allowed. Therefore, in an indictment of a mass organisation which had approached the constitutional courts articulating the rights of thousands of tribals and non-tribals to be displaced by submergence as a result of the Sardar Sarovar Dam, the Supreme Court observed:[162]

> *'Public interest litigation (PIL) was an innovation essentially to safeguard and protect the human rights of those people who were unable to protect themselves. With the passage of time PIL jurisdiction has been ballooning so as to encompass within its ambit subject such as probity in public life, granting of largesses in the form of licenses, protecting environment and the like. But the balloon should not be inflated so much that it bursts. Public interest litigation should not be allowed to degenerate to becoming publicity interest litigation or private inquisitiveness litigation." (para 230)*

Paradoxically, in the last decade, while the aforesaid argument has been used to restrict the access to justice of numerous marginalized groups including STs, through PIL, the Courts have also increasingly employed the device of continuing mandamus[163] in similar PIL petitions to extend the control of the judiciary over the executive domain. One such example is the 'Forest Case'[164] where a letter petition by a disgruntled ex-landlord regarding destruction of forests in his former estate in Tamil Nadu was converted into a PIL regarding forest cover across the country, and has today taken on mammoth proportions.[165] Since most of the orders passed by the Supreme Court in this case are of an 'interim' nature, they remain unreported in the regular law journals, and little, if any, information regarding these proceedings trickles down to the large number of tribal and non-tribal forest dwelling communities in the country, while far reaching decisions regarding the use of their homelands are made.

Although the Legal Services Act does not make a distinction between legal representation in

161 *Bandhua Mukti Morcha vs. Union of India* (1984) 3 SCC 161; see also (1988) 4 SCC 226.

162 *Narmada Bachao Andolan vs. Union of India* (2000) 10 SCC 668.

163 'Continuing mandamus' is a procedural device evolved by the Supreme Court, and subsequently adopted by some of the High Courts, whereby a public interest litigation is kept pending before the Court for monitoring of compliance with orders passed from time to time, and often the person who originally filed the PIL practically hands over the case to the Court, which then appoints one or more Amicus Curiae or 'friend of the Court' to assist in conducting the proceedings. New issues and applicants come before the Court through the filing of Intervention Applications. In the Godavarman case, for instance, the IAs filed has exceeded 2500, there are 5 Amicus Curiae, and the Special Bench conducts hearings every Friday afternoon for 2 hours.

164 *TN Godavarman vs. Union of India and other,* Writ Petition (Civil) No. 202 of 1995, Supreme Court of India, pending.

165 Rosencranz, Armin, Edward Boenig and Brinda Dutta *The Godavarman case: The Indian Supreme Court's Breach of Constitutional Boundaries in Managing India's Forests*; see also Shomona Khanna, Naveen TK *Contested Terrain: Forest Cases in the Supreme Court of India* and Shomona Khanna *Exclude and Protect: The Supreme Court on Wildlife Conservation*.

civil and criminal proceedings, it is a reality that the legal aid mechanisms are ill equipped to deal with the special needs of tribals in the arena of economic, social and political rights violations. Legal proceedings in these areas do not bear scrutiny when evaluated for adherence to fair trial standards. There have been numerous instances where tribal forest dwelling populations have remained unaware of acquisition proceedings initiated by the state under the Land Acquisition Act 1894 long after the statutory period for raising objections and making claims has elapsed. It is not unusual to find that tribals have remained unaware of even proceedings initiated under the Indian Forest Act 1927 or the Wildlife Protection Act 1972, for declaration of forested areas as Reserve Forests or Protected Areas, until the very day when forest officials arrive, accompanied by police forces, in order to evict them.[166] Patent irregularities and illegalities in the adopted procedures remain unaddressed due to the inability of the tribal populations to access the courts of law and claim redress or restitution. In a climate where there is intense assault on the legal rights of tribals and forest dwellers to their ancestral domains through the inroads of mining corporations, industries, large dams, national parks and so on, it is a matter of grave concern if the tribals will be able to assert their legal rights over these lands, limited as they are. Liberalization has meant that corporate concerns enter into the terrain over which tribal populations have extensive legal rights, and violate these rights with scant respect for the rule of law. In rare cases where they are made, attempts to articulate these violations in courts of law are met with battalions of the best legal minds in the country arrayed against the tribals. In some areas, there have been attempts to encourage young tribal men and women to take up law as a profession, but these efforts are few and far between, and it is indeed an uphill task to build teams of well trained professional litigators who will be able to articulate the rights of tribals inside the courts. The widespread use of these laws by the state to take over the traditional homelands of tribals and forest dwelling communities, with communities being presented with fait accompli has led to widespread political unrest in tribal areas across the country.

It is in consonance with this reality that the Forest Rights Act has taken a different approach to the articulation of forest rights through a mechanism which locates the village level Gram Sabha at the centre to determine rights process. The initial processes under this law are initiated at the village level, and in certain situations at the hamlet level, in order to make these rights accessible through transparent decision making processes. However, it remains a matter of concern whether forest dwelling tribals and non-tribals will be able to protect the decisions made under the Forest Rights Act by the village level Gram Sabhas, once the Committees at the Divisional and District Level are seized of the matter.

The experience of Nagaland is unusual in that considerable effort has been invested in the development of the District Customary Courts, which have legal recognition. These Courts, having both criminal as well as civil jurisdiction, follow customary procedures as well as customary law, and are also conducted in the local language. Therefore, the assessment of the functioning of these Courts, based on well-established principles of fair trial, may not necessarily be appropriate. There is, however, an emerging trend towards the mainstream courts, presumably on issues relating to contract and statutory interpretation which the Customary Courts are not equipped to deal with.

5. Culture and language rights

Along with rights over natural resources, cultural and language rights are clearly among the key basic rights of indigenous communities. In acknowledgment of this, all three international instruments on indigenous rights give these rights special importance, though there is a marked difference in how they approach these rights.

166 *Endangered Symbiosis*, Campaign for Survival and Dignity, 2005.

Thus, C107 takes a stand in favour of protective discrimination 'so long as the social, economic and cultural conditions of the populations concerned prevent them from enjoying the benefits of the general laws of the country to which they belong' (Article 3). Article 4 requires State parties to take 'due account… of the cultural and religious values and of the forms of social control existing among these populations' when applying the Convention on matters related to 'integration' of these communities. Article 4(b) says that 'appropriate substitutes' can be made for values and institutions that are 'disrupted', with the consent of the community concerned.

This emphatically assimilationist approach – predicated on the belief that indigenous cultures, values and institutions are hangovers that will vanish with 'integration' – is sharply at odds with the approach of C169 and the UNDRIP. C169 requires that indigenous cultures, values and institutions be respected by State parties, subject to compatibility with human rights and nationally recognized fundamental rights. It also specifically requires respect for indigenous methods of dispute resolution (Article 9) and for the special cultural values of indigenous people in cases of imposition of punishment (Article 10). The UNDRIP goes further still and stresses that indigenous people have the 'right of self-determination' (Article 3), and in direct opposition to the approach of Convention 107, states that indigenous communities cannot be subjected to forced assimilation or to 'any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities' (Article 8). Further, it provides specific protection to indigenous control over educational institutions, cultural heritage, intellectual property, traditional medicines, etc.

Naga (Nagaland) · *Photo: Chris Erni*

At the policy level in India, a few statutes and legal instruments provide some minimal broad protection to the cultural and language rights of Adivasis and STs. Yet these provisions, limited and vague as they are, have themselves been mostly honored in the breach. Overall, the Government of India has not seen cultural rights of indigenous communities as a separate policy priority.

The only area which is a partial exception to this trend is the Northeast. Constitutional protections have enabled some degree of protection for cultural rights in some of these states. As mentioned earlier, Articles 371A and 371G – which apply to Nagaland and Mizoram respectively – state that no Central law concerning:

- religious or social practices of the concerned communities;
- customary law and procedure of the concerned communities;
- administration of civil and criminal justice in areas covered by customary law; and
- ownership and transfer of land and its resources

shall apply to these states without the consent of the state legislature. This has allowed Nagaland, for instance, to maintain a parallel system of customary law courts alongside the formal courts.

The Sixth Schedule to the Constitution, which governs the Autonomous District Councils of the States of Mizoram, and Meghalaya, also provides some special protections related to cultural rights. Paragraphs 3(g) to 3(j) of the Schedule give these Autonomous Councils powers to legislate on appointment of chiefs, social customs, inheritance, marriage and divorce, etc. Some of the Councils, such as the Bodo council in Assam, have been given further powers in this regard. The extent to which these provisions have been used varies with the Council concerned.

In other parts of the country, no specific Constitutional provisions provide any protection to the cultural and language rights of STs and Adivasis. Article 29 of the Constitution provides a general protection to 'any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own', stating that they 'shall have the right to conserve the same'. It is unclear as to whether this protection has been fully tested with respect to STs. In one case known to the authors, the Supreme Court upheld a regulation by the Jaintia Hills Autonomous District Council that barred any person belonging to a non-indigenous religion from becoming chief of one of the administrative subdivisions of the Autonomous District Council.[167] Though the area fell within the Sixth Schedule, the Court upheld the regulation, not on those grounds but because of the general protection offered by Article 29 to the cultural rights of minorities (the post in question having both administrative and religious functions).

At the statutory level, there are certain protections for the cultural rights of STs outside of the Northeast. One set of such protections is contained in the domain of "personal law", i.e. law relating to marriage, divorce, adoption, succession (inheritance) and other matters associated with the family. In India, personal laws vary across communities; Hindus are subject to special statutes enacted for Hindus, Muslims to Muslim customary law, Christians to laws enacted for their community etc. For those STs who are not Christian, Muslim or within one of the non-Hindu religions, the law --in this case the Hindu Marriage Act 1955, the Hindu Succession Act 1956, the Hindu Minority and Guardianship Act 1956 and the Hindu Adoption and Maintenance Act 1956 – specifically states that statutory law will not apply to STs and they will, therefore, be subject to their customary law.[168]

A second protection, though an unimplemented one, is provided by the Panchayats (Extension to Scheduled Areas) Act of 1996. This law (discussed above under 'Self-Management') specifically

167 *Ewanlangki-e-Rymbai with Elaka Jowai Secular Movement vs. Jaintia Hills District Council and Ors.*, (2006) 4 SCC 748.

168 Mahmood, Tahir. *Are all tribals Hindus?*, Hindustan Times, 28-1-1999 accessible at http://www.indowindow.com/sad/article.php?child=28&article=25.

requires that State laws on local governance should 'be in consonance with the customary law, social and religious practices and traditional management practices of community resources' [s. 4(a)]. Section 4(d) of the same law gives the *gram sabha* the power to 'safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution'. In practice, however, no State Government has actually implemented these provisions as they relate to cultural rights. Customary modes of dispute resolution in particular have been basically ignored.

A major area of further cultural distinctiveness of STs in India is their religious practices, which are often distinct from those of the mainstream. There is no specific protection for ST religions in the Constitution or in statutory law, though the Constitution contains several provisions on the freedom of religion in general. Article 25 of the Constitution guarantees freedom of conscience and the right to freely profess, practice and propagate any religion. Article 26 ensures the right to manage religious institutions, religious affairs, subject to public order, morality and health. Article 26 guarantees right to manage religious institutions, religious affairs, subject to public order, morality and health. Official policy implicitly recognises ST faiths as distinct from those of the mainstream population, though it does not provide them with the same status or recognition as that given to the mainstream faiths. The exemption of STs from Hindu personal law (noted above) is one instance of recognising religious difference. Moreover, the Census of India records ST religions under 'Other Religions and Persuasions', (the Census counts religious status under eight different heads namely (i) Hindus, (ii) Muslims, (iii) Christians, (iv) Sikhs, (v) Buddhists, (vi) Jains, (vii) Other Religions and Persuasions and (viii) Religion not stated. In 2001 this category included 0.6% of the population[169].

However, there remains a mismatch between this implicit recognition and actual administrative practice. One indicator is the fact that the small number of people counted in the Census as declaring themselves in this category is not consistent with the results from more detailed surveys by the National Sample Survey Organisation, which found the following distribution of STs by religion:

TABLE: 7 Distribution of ST population by Religion

All India-2004-05

Religion/Caste	STs
Hindu	9.1
Muslim	0.5
Christians	32.8
Sikhs	0.9
Jains	2.6
Buddhists	7.4
Zoroastrians	15.9
Others	82.5
Total	8.5

Source: Distribution obtained from merged sample of Schedule 1 and Schedule 10 of NSSO 61st Round Survey[170]

If 82% of STs fall within the 'Other' category, the Census results should show at least 6% of

169 Census Data 2001 accessible at http://www.censusindia.gov.in/Census_Data_2001/India_at_glance/religion.aspx

170 As reported in Social, Economic and Educational Status of the Muslim Community of India, A Report. Prime Minister's High Level Committee, Cabinet Secretariat, Government of India, New Delhi, November, 2006, p.7 accessible at http://minorityaffairs.gov.in/newsite/sachar/sachar_comm.pdf

India's population within the category. That the actual figure is ten times less indicates the degree to which identification with other religions has come to be seen as the official norm.

Indeed, since ancient times, Adivasis have repeatedly had their faiths included within the rubric of Hinduism, a process assisted by the nebulous boundaries and definition of the Hindu faith itself. In many parts of the country, Adivasi deities and temples have been assimilated into and taken over by caste Hindu society of the area (some of which have since become major pilgrimage centres, such as Sabarimalai in Kerala and the Jagannath temple in Puri, Odisha). Since the colonial period, meanwhile, conversion to Christianity took place on a large scale in some areas of the country. This has led to almost the entire ST population of Nagaland and Manipur and a large majority of tribals in Mizoram, and Meghalaya, a quarter of tribals in Assam and a sixth of tribals in Arunachal Pradesh to become Christians. Meanwhile, almost all the tribals of Sikkim are Buddhists, as are small sections in Arunachal Pradesh, Mizoram and Tripura (partly due to the arrival of Buddhist Chakmas from Bangladesh). The far right Hindu organizations have been active in halting the growth of Christianity over the last few decades, with their opposition translating into pogroms, riots and killings of missionaries in the last twenty years. A small number of STs have also joined Islam, such as the tribals of Lakshdweep.[171] In general, most STs today follow belief systems and practices which are syncretic in nature, with a mixture of traditional tribal religions and mainstream religious practices. Of late, there have been strident demands for greater official recognition of the distinct tribal religions.[172]

On the issue of language, no specific statutory or Constitutional protections exist for the protection of STs' language rights. The Eighth Schedule of the Constitution, which lists 'official languages' that citizens are entitled to use in some forms of communication with the government, includes only two ST languages – Bodo and Santhali. However, several State Governments with large ST populations have allowed the use of ST languages in official documents (such as Mizo in Mizoram, Kokborok in Tripura, Khasi in Meghalaya etc.). This is particularly true in the Northeastern States, where the higher degree of autonomy and resource control has also meant that STs are able to insist on their language rights.

In addition to these official provisions, most State Governments have created government institutes – usually under the name of 'Tribal Research Institute' - which are charged with researching, recording and propagating Adivasi languages. The Jharkhand government has set up a separate department for the purpose of propagating Adivasi languages. Outside of the government, organisations working among Adivasis, including NGOs, people's movements, and the CPI (Maoist), have made efforts to print textbooks, produce newspapers and journals, and otherwise promote and protect Adivasi and ST languages. Some states also have small programs for promoting the use of Adivasi languages in primary schools (see section on Education).

Thus, the protections provided in international instruments have at best been implemented on a patchy and partial basis in some parts of India. No specific provisions for consultation or consent of indigenous communities on cultural and linguistic matters have been provided for in most government policies. Perhaps the best indicator of the government's stand is its approach to the right to self-determination (discussed above), which it has long maintained is limited 'to peoples under foreign domination and … [not] to sovereign independent States or to a section of people or a nation, which was the essence of national integrity'.[173] In keeping with this approach, the government has followed policies that are in practice assimilationist and culturally destructive in nature.

171 See for instance the discussion on tribal and religion in Chaube, S K. *The STs and Christianity in India*, Economic and Political Weekly February 27, 1999, pp.524-6.

172 Tribals appeal for separate religion code in census, February 24, 2010 accessible at http://sify.com/news/tribals-appeal-for-separate-religion-code-in-census-news-national-kcysObgiged.html

173 Statement by the Permanent Representative of to the General Assembly during the passing of the Declaration on Rights of Indigenous Peoples. Available at http://www.un.org/News/Press/docs/2007/ga10612.doc.htm.

6. Education

Education has been a critical issue for many indigenous peoples around the world. International instruments, and in particular ILO C107 and 169, as well as the UNDRIP, seek to guarantee three general types of rights in this regard:

- *Access* to education for indigenous communities. Provision of training / education is among the basic rights guaranteed by these Conventions. Parts IV and VI of both ILO C 107 and 169 require such provision. Article 6 of Convention 107 says that '[The] level of education of the populations concerned shall be given high priority in plans for the over-all economic development of areas inhabited by these populations,' while Article 21 states that indigenous people should be enabled to reach the same educational levels as the national community (the same language is used in Article 26 of Convention 169). Articles 14(2) and 21 of the UNDRIP guarantee indigenous people the right to education without discrimination.
- *Appropriateness / sensitivity* in education. This is stressed most by Convention 107, which adopts an 'integrationist' approach, stressing repeatedly that education and training should be provided in a manner that 'will help [indigenous] children to become integrated into the national community' (Article 24). Parts IV and VI of the Convention, on vocational training and education respectively, also require that education and training programs should be adapted to the special needs of indigenous communities, while also stating that special programs and even education in the mother tongue can be discontinued at higher levels [e.g. Articles 17(3), 23(2)]. Convention 169 and the UNDRIP, which no longer adopt the integrationist approach, retain the emphasis on meeting the specific needs of indigenous communities [e.g. Articles 22, 23 and 27 (1) of ILO C 169]. However, they no longer include any reference to integration with the 'national community' or to special programs being terminated at any point.
- *Control* over the nature, methods and institutions of education. With the trend away from assimilationism, the principle of 'integration' has been replaced with the principle of giving indigenous communities control over their educational and training institutions. Thus Article 14 of UNDRIP states that 'Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.' Convention 169 also provides a similar right [Article 27(3)]. Unlike Convention 107, moreover, all provisions that relate to training and education rights in Convention 169 also state that any such program has to be designed in consultation with, or with the cooperation of, indigenous communities.

The Indian state has however largely failed to fulfill all three sets of obligations with respect to STs. At the policy level, instruments with a reasonable degree of implementation exist to protect the right of access to education; instruments with a lesser degree of effectiveness exist to protect the right to appropriate education; and there is no national provision for indigenous communities to control their educational institutions and methods. These issues are explored in more detail below.

Access to Education

In mainland India (i.e. outside the Northeast), STs remain among the most disadvantaged sections of Indian society in terms of educational levels. According to the 2001 Census, STs had a literacy rate of 47.1% (59.0% among men and 34.76% among women). This compares to a national literacy rate, in 2001, of 61% (73% for men and 48% among women). A 2005 study by the Social and Research Institute, Delhi, estimated that about 9.54% of ST children were out

Lohit Distract (Arunachal Pradesh) *Photo: Chris Erni*

of school, the highest among all communities, with the exception of Muslims (9.97%). This level of educational deprivation is, however, not true of most of the Northeast; Mizoram, a state with a 95% ST population, is also the State with the second highest literacy rate, while all the ST-majority States in the Northeast except Arunachal Pradesh have literacy rates above the national average. In fact, the higher figures for the Northeast skew the national averages, which thus do not reflect the extremely high levels of deprivation in central India.

The reasons for this low rate of educational access in central India are manifold. On the issue of infrastructure, the Eleventh Five-Year Plan notes that 'the problem of adequacy of the school buildings, both in number and in facilities, still remains. The lack of education in the mother language or dialect in primary classes, ignorance of non-tribal teachers about tribal languages and ethos, delay in distribution of scholarships, textbooks and uniforms, continue to be sources of worry.' This situation has both resulted in, and continued in spite of, a range of welfare schemes run by the Central and State Governments. Almost all central educational schemes, including *Sarva Shiksha Abhiyan* (India's main education universalisation program), the Mid-Day School Meal Program, and the District Primary Education Program (a central scheme aimed at marginalised areas), have special components directed at STs. Almost all State Governments have specific incentive schemes for ST students, including free uniforms and books.

These welfare schemes have also included special funding and policy arrangements aimed at expanding infrastructure in ST areas. The National Policy on Education 1986 states that building of primary schools will take place on a 'priority basis" in ST areas. Several states, such as Andhra Pradesh, Madhya Pradesh and the Northeastern States, have relaxed population norms to allow schools to be set up even in the smaller settlements that characterise Adivasi areas. The Sarva Shiksha Abhiyan encourages the creation of *balwadis* / *anganwadis* (forms of crèches and playschools) for smaller children in ST areas to allow older girls to attend school. Most State Governments also operate state-run residential schools in Adivasi areas to allow children from more remote areas to stay in hostels while attending school. In terms of physical infrastructure,

these schemes have shown some results, and the state educational system has thus extended into a majority of Adivasi areas. According to the Seventh All India Educational Survey (2002), 89% of ST majority habitations had a primary school within a distance of 1 kilometer (as compared to 94% of habitations in the general population).

At higher educational levels, a stronger system with constitutional backing is in place to provide educational access to STs. Article 46 of the Constitution, one of the 'directive principles of state policy'[174], requires that 'The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the STs, and shall protect them from social injustice and all forms of exploitation.' Article 15(4) of the Constitution further specifically empowers the state to make special provisions, even in violation of the principles of formal equality, for the advancement of SCs, STs and other 'socially and educationally backward classes of citizens'. This Constitutional mandate has in turn been the basis for an extensive scheme of affirmative action in favour of Scheduled Castes and STs since independence, which has mostly taken the form of admissions quotas in higher educational institutions (as well as in the legislatures, local government bodies and in government employment). All central government funded institutions are thus required to reserve 7.5% of their seats for STs, while State Governments reserve seats in their institutions in proportion to the share of STs in their population (subject to an overall ceiling, imposed by the Supreme Court in *Indira Sawhney & Ors v. Union of India,* 1993, whereby at least 50% of seats must be open for general competition). Admissions requirements for STs to these institutions are relaxed to allow easier access.

In practice, few of the initiatives at the school level have been a success, and as a result quotas at the higher educational levels have also largely remained unfulfilled. The reasons are not limited to lack of funding or lack of infrastructure, but relate to the deeper political marginalisation of Adivasis and their resulting lack of ability to influence state institutions. This is accompanied by discrimination by other communities and high caste teachers, resulting in very high rates of absenteeism and state neglect. A further economic reason is the high rates of migration among many Adivasi communities in central India (which makes it difficult for children to stay in school). In turn, at the root of all of these problems with education for STs is the fact that the other two main educational rights of indigenous communities – to an appropriate educational system and, more importantly, to control over educational institutions have not been adequately recognized or put into practice.

Appropriate Educational Systems

The National Policy on Education (NPE) of 1986 followed, to some extent, the principles of ILO C 107. Paragraph 4.6 of the NPE stated that educational materials would be prepared in Adivasi languages at the primary level, with a 'switchover' to the regional language at higher levels (a requirement of Article 23(2) of the Convention). In addition, it stated that 'educated and promising ST youths will be encouraged and trained to take up teaching in tribal areas', while the curriculum would include 'awareness of the rich cultural identity of the tribal people as also of their enormous creative talent'. This approach has remained in subsequent policy documents, including the Programme of Action on Education (1992) and the *Sarva Shiksha Abhiyan*. The *Abhiyan* policy document largely uses the same language as the NPE 1986, further adding a provision for 'bridge language instruction' for teachers so they can teach in the community's language. Finally, Article 350A of the Constitution now also requires that every State Government should ensure that primary school instruction for children of 'linguistic minorities' should be in

174 These are provisions of the Constitution that are not judicially enforceable but are intended to provide a guide to state policymaking. The Supreme Court has held that fundamental rights and other Constitutional provisions have to be read with these principles in mind.

their mother tongue.

In practice most of these principles have not been implemented effectively. After the mid 1990's, in some ST areas in the states of Maharashtra, Assam, Madhya Pradesh, Karnataka, Odisha, Kerala, Andhra Pradesh, Gujarat and Bihar, some educational materials have been prepared in Adivasi languages. In the same period several State Governments also began a process of recruiting contract-based 'para-teachers' from within Adivasi communities to join the formal permanent teachers (who were often non-Adivasis). More recently, five UN agencies and the Government of India have begun collaboration on special educational programmes for STs in the states of Andhra Pradesh, Jharkhand, Chhattisgarh, Karnataka, Madhya Pradesh, Maharashtra, Odisha, Rajasthan and Uttar Pradesh[175]. Under this '*Janshala*' programme, many of the principles of Convention 107 and the NPE are being sought to be implemented.

It should however be noted that the shift in emphasis in Convention 169 and the Declaration on the Rights of Indigenous Peoples – away from integration and towards consultation and community control – has not been reflected in Indian policy. Aside from general attempts by the state to make school education more localised and more participatory, there appears to have been no specific policy initiative aimed at consulting Adivasi communities in either the formulation of educational curricula or in the operation of schools. This is of course even truer of the final area of rights recognised in international law – for indigenous communities to control their schools and educational methods.

Control over Educational Systems

India has no national policy that specifically recognises the right of indigenous / Adivasi communities to control the methods and/or institutions of education in their areas. This concept has yet to enter the Indian policy frame, which remains firmly within the approach of ILO C 107.

However, spaces for indigenous community control over education do exist in certain specific circumstances. Thus, as per the Sixth Schedule to the Constitution, Autonomous District Councils in the Northeast have control over primary education (and in some cases over secondary education). In Nagaland, the 'communitisation' process launched by the State Government has put many village government schools under the control of the Village Councils, the traditional village governing institutions. There are also small efforts by various people's organisations and non-governmental organizations to create alternative schools in ST areas that would be under community control.

Finally, Article 30 of the Constitution guarantees the right of minorities (particularly those linguistic and religious in nature) to establish and administer their own educational institutions. It is unclear, however, whether any ST communities have ever sought to utilise this protection, and it hence appears that its applicability to ST communities remains judicially untested.

7. Land, natural resources and environment

ILO C107 in Article 11 recognises '(t)he right of ownership, collective or individual, of the members of the populations concerned over the lands which these populations traditionally occupy shall be recognised". The Convention goes on to affirm the right of indigenous populations not to be removed from these lands without their free consent except as an exceptional measure in accordance with law, 'for reasons relating to national security, or in the interest of national economic development or of the health of the said populations' and recognises the right to compensation with alternative lands of at least equal quality (Article 12). It further states that

175 See Gautam, Vinoba. *Education of tribal children in India and the issue of Medium of Instruction: A Janshala experience*, 2003, published online.

Lohit Distract (Arunachal Pradesh) *Photo: Chris Erni*

the customs of the indigenous populations with respect to transmission of rights and use of land shall be respected, and places a burden on the state to prevent persons who do not belong to such communities from taking advantage of such customs to procure land belonging to indigenous people (Article 13). Recommendation 104 amplifies these commitments considerably.

ILO C 169 in Article 7 states 'Governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit'. Various other provisions are contained in Part II on Land, which reinforce the notion of traditional homeland which indigenous communities have customarily occupied and/or used for their subsistence and traditional activities (Articles 13, 14). Participation in decision-making on the use, management and conservation of the resources these lands represent, is specifically recognised; particular mention is made of the right to be consulted with regard to mining operations (Article 15). Again, while removal from these lands is prohibited, relocation for the purpose of developmental activities in exceptional circumstances is permissible, and then only with free informed consent and compensation, and the right to return. (Article 16). Protection of lands from alienation to non-indigenous persons is a further duty placed on the state. (Article 17).

The UNDRIP further amplifies these provisions, and in addition re-iterates in its preamble the historical fact that indigenous peoples have suffered injustices as a result of colonisation of their lands, territories and resources, and therefore the need to enable them to exercise their right to development in accordance with their needs and interests. Accordingly, Article 26 recognises the right of indigenous peoples to the lands, territories and resources they have traditionally owned/ occupied, or which they possess by reason of traditional ownership, and further places a burden on the state to provide legal recognition to these rights. The state is also duty bound to establish a fair, independent and transparent process in consonance with custom, to recognise and adjudicate the rights of indigenous people to their lands (Article 27). Where lands have

been unjustly taken away or damaged, the indigenous peoples have right to restitution (Article 28) and they also have the right to conserve and protect the environment and the productive capacity of their lands, territories and resources (Article 29). Military activities are prohibited on indigenous peoples' lands, unless specifically agreed to (Article 30) and further the state is under an obligation to consult the communities concerned before undertaking any project affecting these lands, and obtain their free and informed consent (Article 31).

The Preamble to the Constitution of India makes a commitment to 'Justice social, economic, and political'. The Right to life under Article 21 of the Constitution has been interpreted in a catena of judgment to include the right to a life of dignity, which includes therefore a host of other rights which are necessary and important to ensure that this life is holistic and complete. Therefore the right to livelihood,[176] the right to shelter, the right to a clean environment, the right to water,[177] and numerous other rights which are of a socio-economic nature, have been held by judicial precedent to be part of the fundamental right under Article 21.

The Directive Principles of State Policy include numerous commitments to a polity and an economic structure which respects equality and distributive justice. Therefore, Article 38 places an obligation on the state to promote the welfare of the people by 'securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life'. The Article places a duty on the state to reduce inequalities in income as well as in status, facilities and opportunities. Article 39 requires the state to ensure that its policies provide adequate means of livelihood, and also that the ownership and control of material resources of the community are so distributed as best to serve the common good. In addition, it is obliged to ensure that its economic policies do not result in the concentration of wealth and means of production.

Scheduled Areas and Tribal Areas

As discussed elsewhere in this report, the recognition of the Fifth Schedule and Sixth Schedule areas as having a special status under the Constitution in terms of autonomy in governance, administration, and even legislation, followed the creation of the Excluded and Partially Excluded Areas in the 1935 Government of India Act. Article 244 of the Constitution, therefore, provides that administration and control of Scheduled Areas and STs in any state other than Assam, Meghalaya, Tripura and Mizoram, shall be governed by the Fifth Schedule, and that tribal areas in Assam, Meghalaya, Tripura and Mizoram (all in northeast India) shall be governed by the Sixth Schedule. Article 244-A relates to the creation of an autonomous region within the state of Assam comprising certain tribal areas, and the creation of a separate Legislature for it. The Constitution also creates special dispensation for the states of Nagaland (Article 371-A), Sikkim (371-F), Mizoram (371-G), and Arunachal Pradesh (371-H). A copy of the Fifth and Sixth Schedules of the Constitution are annexed as Annexure 9.

The *Panchayats (Extension to Scheduled Areas) Act, 1996* contains several key provisions which give statutory recognition to some of the key rights elucidated in the international conventions, as well as the Constitution of India, with regard to rights of indigenous people to their traditional homelands and resources, and to decision-making processes regarding developmental activities. This statute has been discussed in detail elsewhere in this report. Suffice to say that the enforcement of this statute, dependent as it is on amendments to state level Panchayati raj legislations by State Legislatures, has been considerably hampered in its implementation, both in letter and spirit.

176 *Olga Tellis vs. Bombay Municipal Corporation* (1985) 3 SCC 545, *Narendra Kumar vs. State of Haryana* (1994) 4 SCC 460, *State of Himachal Pradesh v. Raja Mahendra Pal* (1999) 4 SCC 43

177 BL Wadhera vs. Union of India (1996) 2 SCC 594.

Land Alienation and Acquisition

Loss of land remains the single biggest cause of deprivation of the livelihoods, lives and homelands of STs across India. The mechanisms for such expropriation of land vary, but included are the forest laws (for which see the section on 'forests' below) and major development projects that result in displacement of people. The power of the Indian state to forcibly acquire private property (and to divert common property to any use it sees as appropriate) has been used with particular ferocity against Adivasi communities, who have suffered disproportionate displacement and loss of livelihoods as a result of repeated seizure of their resources in this manner. Indian law provides very few institutional or statutory protections for common resources and homelands (see below in this section and the discussion on 'Self-Management' in Section 3 of Part II above). The protection accorded to private property was also weakened by an amendment to the Constitution in 1951, which removed the right to property from the list of fundamental rights in order to ease land reform. Ironically, this is now being used by the state to ease takeovers of lands of marginal communities.

The resulting devastation wreaked on Adivasi communities has also been acknowledged in official documents. According to the Eleventh Five Year Plan, 'Ancestral land, villages, habitations and environs belonging to the tribal people have been made available for various development projects as tribal areas possess 60–70% of the natural resources of the country. In such cases, though primary displacement appears small due to low population density, secondary displacement has been extensive, encompassing common property resources that provided supplemental livelihoods, particularly to those with low or no dependence on farming. Estimates of STs displaced on account of acquisition over the past six decades vary between 8.5 and 10 million (roughly about 40% of all oustees) from 1951 to 1990. Of them, only 21.20 lakh ST persons have been rehabilitated during the period. The widespread secondary displacement in the zone of influence has neither been measured nor was provided for'[178].

The courts have also largely failed to provide any relief in this regard. Ironically, in a judgment relating to displacement of tribals in large numbers in the Sate of Gujarat as a result of submergence in the Sardar Sarovar project, as well as more recently in a case relating to the restoration of illegally alienated lands to their original tribal owners in the State of Kerala, the Supreme Court has chosen to rely upon a provision[179] in the ILO C169 to arrive at a finding that displacement of tribals for the purpose of 'development' is unavoidable and therefore cannot be held to be in violation of the obligations of the Indian State under the said Convention.[180]

Moreover, as noted above, STs have, by and large, enjoyed traditional and customary rights over vast swathes of land. However, the process of recognition of traditional rights of STs to land is significantly uneven and incomplete (the process of recording their rights in the forest areas has just commenced). Over time, the state and non-tribals have deprived them of their access to their lands by appropriating these lands. Of the recorded land rights, despite the constitutional and legislative safeguards at the central and state levels, land alienation has been widespread. In compliance of Paragraph 5(2)(a) of the Fifth Schedule, most states have enacted legislations

178 *Social Justice. Scheduled Castes, STs, Other Backward Classes, Minorities, and Other Vulnerable Groups*, Eleventh Five Year Plan 2007-12, Government of India, Vol.6, p.112. Available at http://planningcommission.gov.in/plans/planrel/fiveyr/11th/11_v1/11v1_ch6.pdf

179 The Supreme Court has relied upon the following two sub-sections of Article 16 of ILO C 169:
1. Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.
2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.';

180 *Narmada Bachao Andolan vs. Union of India* (2000) 10 SCC and also *State of Kerala vs. Peoples Union for Civil Liberties & Ors* (2009) 8 SCC 46.

restricting/prohibiting the transfer of land from tribals to non-tribals. The restrictions/prohibitions are intensified in their application to Scheduled Areas. Annexed as Annexure 10 is a list of the state level legislations relating to alienation of tribal land in different states.

However, the extent to which these legislations have been able to fulfill the constitutional objective of ensuring that tribals retain control over their homelands, is a matter of debate. The excessive dependence of these statutes on the existing judicial system, bound as it is by procedural rules such as that of limitation and locus standi, has been detrimental. Indeed, the majority of land alienation cases do not reach courts of law due to reasons as ignorance of the law and procedures, inaccessibility to the court, non-affordability of the cost of litigation, and enormous delays. The actual restoration and physical possession, even in the cases in favor of STs, is yet another problem. A Report of the Ministry of Rural Development reveals that in March 2005

- 3.75 lakh cases of tribal land alienation were registered covering 8.55 lakh acres of land;
- Out of the above, 1.62 lakh cases (43.2%) were disposed off in favour of tribals covering a total area of 4.47 lakh acres (58.28%);
- 1.55 lakh cases covering an area of 3.63 lakh acres were rejected by the courts on various grounds; and
- 57,521 cases involving 0.44 lakh acres of land are pending in various courts of the country[181].

Thus, the small proportion approaches the legal system for restoration of their lands, but find, after many years of litigation, that they are unable to secure possession despite a court victory simply because of the superior socio-economic status of the person in possession. While Courts have been fairly consistent in ensuring that tribals who approach them for restoration of their alienated lands do find relief, they are unable to ensure that possession is restored in the face of entrenched marginalisation and disempowerment of tribal communities.

Forests:

As discussed above in the section on post-colonial history, possibly the largest expropriation of Adivasi resources that has taken place in India after independence has occurred in forest areas and in the areas classified as 'forest lands'. India's forests are governed under a legal architecture created by the British, in which the central law is the Indian Forest Act of 1927. The British wanted

Forest home (South West Karnataka) *Photo: Kai Vaara*

181 Ibid, p.112.

to undertake unhindered exploitation of timber, which required that the government assert its ownership over forests and suppress the traditional systems of community forest management that existed in most of the country. The Forest Act empowered the government to declare its intention to notify any area as a reserved or protected forest, following which a 'Forest Settlement Officer' supposedly would enquire into claims of rights (to land, forest produce, pasture, etc.).

Since the primary intention of this law was precisely to take over lands and deny the rights of communities, this 'settlement' process was in a sense destined to fail – which is exactly what happened. Surveys were often incomplete or not done (82.9% of Madhya Pradesh's forest blocks had not been surveyed as of 2003, while in Odisha more than 40% of state forests are 'deemed' reserved forests where no settlement of rights took place). Where the claims process did occur, the rights of socially weaker communities – particularly Adivasis – were rarely recorded. These communities were unable to access the settlement process. The problem became worse after Independence, when the lands declared 'forests' by the Princely States, zamindars and private owners were transferred to the Forest Department through blanket notifications. As the Ministry of Environment and Forests put it in an affidavit filed before the Supreme Court in July 2004;

> *'For most areas in India, especially the tribal areas, record of rights did not exist due to which rights of the tribals could not be settled during the process of consolidation of forests in the country. Therefore, the rural people, especially tribals who have been living in the forests since time immemorial, were deprived of their traditional rights and livelihood and consequently, these tribals have become encroachers in the eyes of law.'*

After independence in 1947, during the formation of the Union of India by amalgamation of princely states, the State Governments/UT administrations continued with the consolidation process and the lands of ex-princely states and the zamindari – lands have been proclaimed as Reserved Forests on many occasions without settlement of tribal rights as the records of rights never existed for tribals.'

In short, what government records call 'forests' often include large areas of land that are not and never were forest at all.[182] According to the Forest Survey of India, in 2003 the total recorded forest cover of the country was only 774,740 sq km or 23.57% of land area. Of the total area at least 12.4% of the land recorded as forest area in government records has no actual forest cover. Moreover, those areas that are in fact forest include Adivasi homelands. All those who live in these lands, whether they are forest or not, overnight became 'encroachers' in their own homes, while all those who depend on these lands for their livelihood were deemed to be illegal trespassers. Community rights and livelihood activities not built on private property relations – for instance, shifting cultivation, minor forest produce collection and community forest protection – were not given any legal recognition at all.

The same architecture was incorporated into India's other main forest legislation, the Wildlife (Protection) Act 1972, which provided for the creation of national parks, sanctuaries and other forms of protected areas for wildlife protection.[183] The process of creating these protected areas followed the Forest Act model, with a single official (in this case the District Collector, head of the district administration) empowered to 'survey and settle' rights in the proposed protected areas. The result was similar expropriation and denial of rights. Indeed, as per data submitted to the Supreme Court in 2005, 60% of sanctuaries and 62% of national parks had not even completed the required process of rights settlement, though many had been declared more than

182 Sarin, Madhu. *STs Bill: A Comment.* Economic and Political Weekly, 40(21), 21 May 2005.

183 There are 508 wildlife sanctuaries covering 3.60% of the total geographical area with 217 more sanctuaries proposed. There are 97 national parks covering 1.16% of the geographical area with 74 more national parks proposed. There are an estimated 3.7 to 4.3 million people living inside these protected areas.

two decades earlier. The Tiger Task Force of the Government of India summed up the situation when it declared that 'in the name of conservation, what has been carried out is a completely illegal and unconstitutional land acquisition programme'.[184]

Simultaneously, control over forests has become more centralised within the government structure itself. In the Constitution as originally framed, the protection of the natural environment did not find a central mention. A provision was made in the Chapter on fundamental duties in Article 51-A (g) placing a duty on the citizens to 'Protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures'. The power to make legislation on the subject of forests and wildlife was vested in the State Legislative Assemblies with the then Entry 19 and 20 respectively of List II- State List of the Seventh Schedule.

A critical turning point in the constitutional dispensation regarding protections of the environment and forests came about with the Constitution (42nd Amendment) Act 1976 that which made some key changes in the constitutional approach to forests and environment. Two new provisions were added to the Constitution, namely Article 48-A in Part IV (DPSP) which provides for the protection and improvement of the environment and safeguarding of the forests and wildlife of the country, and Article 51-A (g) in Part IV-A (Fundamental Duties) placing a duty on the citizens to 'Protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures'. In addition, the legislative power to make laws relating to forests and wildlife was removed from the State list, and added to List III- Concurrent List[185], thereby vesting power in both the Central and the State Legislatures.[186]

Consequent upon this amendment, Parliament enacted the Forest (Conservation) Act 1980 which considerably altered the balance of power between the Centre and the State Governments with respect to management of forests. Where earlier sole power was vested in the State Governments to take decisions on how to manage forests, and where required, alter land use, with the passage of the 1980 Act, permission had to be sought from the Central Government for the diversion of forest land by State Governments across the country. The initial struggle by the State Governments to not let go of the power to change land use of forests, very soon achieved a quietus after several judgments of the Supreme Court put the matter to rest.[187] However, illegal mining, timber smuggling, and rampant destruction of the forests, which constitute the homelands of the tribals, continued.

Ostensibly taking note of this situation, the Supreme Court in a pending public interest litigation passed certain far-reaching judgments which have completely altered the face of forest management in the country. A detailed examination of these proceedings is beyond the scope of this report[188], but suffice it to say that the Supreme Court has used the device of converting this PIL into a continuing mandamus which comes up for consideration before a specially constituted three judge bench headed by the Chief Justice of India every Friday, where Amicus Curiae appointed by the Court itself assist in consideration of the applications seeking permission of the Court for all manner of activities in and around forest lands. The Court has also appointed a Central Empowered Committee which has been vested with special powers, whose recommendations it

184 Tiger Task Force, Ministry of Environment and Forests. *Joining the Dots: The Report of the Tiger Task Force*, June 2005.

185 Vide Entry 17-A and 17-B respectively.

186 It may be pointed out that according to Article 254, laws made by the Central Legislature have precedence over laws made by the State Legislature in case of any inconsistency, unless the repugnant provision/ law is specifically assented to by the President of India.

187 Such as *State of Bihar vs. Banshi Ram Modi (*1985) 3 SCC 645, *Ambika Quarry Works vs. State of* Gujarat (1987) 1 SCC 213, and *TN Godavarman Thirumalpad vs. Union of* India (1997) 2 SCC 267.

188 Rosencranz, Armin, Edward Boenig and Brinda Dutta *The Godavarman case: The Indian Supreme Court's Breach of Constitutional Boundaries in Managing India's Forests.*

heavily relies upon while adjudicating the numerous intractable issues which arise before it.

Interestingly, while the debates within the court room rage around various issues relating to the diversion of forest land for all manner of non-forest activity, such as mining, industries, large dams and so on, the voices of the people who inhabit these lands - the tribals - remain faint. Rarely have communities affected by these orders approached the Forest Bench, and when they do, they either find themselves ignored[189] or not permitted to address arguments[190] at all. Information regarding orders passed in this case, which often has life and death implications for the tribals living in a particular forest, rarely, if ever, trickle down to them. Instead, the primary result of the case has been to put national forest management policies under the control of the court and its appointed committees, which are out of the reach of Adivasi communities.

However, decades of prolonged struggles have resulted in some shifts in power relations. In 2006, following a particularly intense mobilisation after a national eviction drive targeting Adivasis, Parliament passed India's first law on forest rights – the STs and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act (See Annexure 12). The key elements of this new law are:

- An attempt to define a comprehensive list of forest rights, including rights to land under occupation, minor forest produce, grazing rights, water bodies, habitat for pre-agricultural communities, etc.
- Laying down who is eligible for status as a 'forest dweller' entitled to these rights, namely STs and 'other traditional forest dwellers' (those living in and dependent on forests for 75 years);
- Creating the foundations of a democratic framework for, first, recognising rights; second, deciding on inviolate areas for wildlife conservation; and, most importantly, for conservation and forest/wildlife protection.

While the recognition of forest rights is itself a major step forward, the most politically significant part of the law is the last point – the new procedures and institutions it set in place. These are rooted in the *gram sabha*, the village assembly (see above under 3.1 Participation and Consultation in Part II), which is given the critical role in the determination of rights as well as the power to issue directions for forest, wildlife and biodiversity protection.

The implementation of this law has proceeded since 2006 in a partial and compromised fashion. State authorities have shown a tendency to attempt to reduce the law to the recognition of individual land titles alone, ignoring the community rights recognised under the Act. They have also consistently attempted to undermine the powers of the *gram sabha*, either through sabotage of its function or by overriding its decisions. The result is an ongoing struggle between communities and the State over their legal rights.

Mining

As elsewhere in the world, mining represents one of the most serious threats to the lives, livelihoods and homelands of Adivasi communities in India. Official data does not quantify the amount of mining that takes place in ST areas or the number of STs affected in the process. However, some estimates have been made: that, out of 4,175 mines in the country in 1991,

189 For instance, there are a number of applications pending before the Supreme Court in this case relating to the regularisation of land rights of tribals and forest dwellers, being IA 703 etc. in WP 202 of 1995, and challenging the attempts by various State Governments to label them as 'encroachers' and evict them. However, these have not come up for hearing since February 2004.

190 For instance, the Forest Bench refused to permit counsel to address arguments to advance the writ petition filed challenging the grant of forest approval to Vedanta for bauxite mining and refinery in the Niyamgiri Hills in Odisha, which threatens the ancestral domain of the Dongaria Kondhs tribal group. Instead, they were told to address arguments only through the Amicus Curiae. Interestingly, such restrictions are never placed on counsel representing corporate interests, large or small.

Jharkhand *Photo: Chris Erni*

3,500 were in Adivasi areas, while minerals found in Adivasi areas reportedly contributed more than half of national mining production[191]. Another estimate states that, between 1950 and 1991, at least 2,600,000 people were displaced by mining projects, of whom only 25% received any resettlement whatsoever. Of those displaced, an estimated 52% were STs[192].

The geographical concentration of minerals in Adivasi areas has often been noted. Yet, mining policies in India have generally overlooked the existence of Adivasi communities – let alone the Constitutional provisions for protection of Adivasi land and resource rights. There is a direct parallel between mining laws and forest laws, with both built around a model of predatory resource extraction that works precisely because it denies the rights and powers of Adivasis and other local communities.

Indian law assumes that all minerals found underground are state property. Ownership of the land is irrelevant, and indeed the owner of the affected land is not even granted preference in the grant of mining leases. The rules framed under India's main law on mining, the Mining and Minerals (Regulation and Development) Act, 1957, provide detailed procedures for a company or individual to obtain permission to search for minerals and to mine them. All powers to grant such permission rest with the State Government (though in some cases Central government approval is required). The affected community need not even be informed, leave alone consulted, before mining leases are granted. No mention of Adivasi rights or protections is made in any of the procedures. The National Mineral Policy only refers to Adivasis in the context of the need to ensure effective rehabilitation of displaced persons; no mention of resource rights is made except a vague recommendation that STs should be given preference in granting mining leases for small scattered deposits of minerals.

191 Bijoy, C.R. *The Adivasis of India – A History of Discrimination, Conflict and Resistance*, Indigenous Affairs, International Working Group of Indigenous Affairs. Copenhagen, Denmark. March 2001.

192 Centre for Science and Environment (2008). *Rich Lands, Poor People: Is 'Sustainable' Mining Possible? State of The Environment Report 6,* Centre for Science and Environment, New Delhi.

The minerals themselves are not the only issue; the grant of a mining lease is often followed by efforts to hand over the concerned land to the mining company. As most minerals are also found in forest areas and often under lands that are classified as 'forest', handing over such land only requires diversion under the Forest (Conservation) Act (see above), though as discussed later, this has recently become an opening for Adivasi communities to demand legal rights. In the case of private lands being involved, proceedings under the Land Acquisition Act, 1894, are often initiated in order to acquire these lands. This notorious legislation also allows the government to acquire lands upon payment of cash compensation for any 'public purpose', which mining is often deemed to be. Indeed, a recent Bill seeking to amend this Act would explicitly include all mining projects in the definition of 'public purpose'[193].

As noted by a Planning Commission expert group[194], there is in fact no need to hand over land to mining companies at all – the term 'mining lease' should be taken to mean precisely a lease, with the company obligated to restore and return the land when mining is complete. Despite repeated discussions on such proposals in the press, the practice of seizing and handing over land has not changed.

Moreover, even existing legal instruments for the protection of Adivasi rights are simply ignored by government agencies in many mining projects. For instance, the Andhra Pradesh State Government has recently awarded a franchise to the Jindal group of companies to mine bauxite over vast tracts in the agency areas of Visakhapatnam district. The State Government has blatantly ignored the statutory provisions relating to consultation with the local *Gram Sabhas* and the Tribes Advisory Council.[195]

The result of such policies and actions is that, with little warning and almost no recourse, Adivasi communities in mineral rich areas are often literally confronted with physical destruction. They lose their land, forests and water sources, even as the area is ravaged, particularly in the case of open cast mining projects. Those with private title may receive some meagre cash compensation, but those living on forest lands or without title receive nothing.

Given this reality, Adivasi communities have often put up fierce resistance to mining projects. Although such resistance usually adopts democratic means, in many instances it has been met with brutal repression by the state[196].

Policy Responses to Resistance on Mining

The conflict over mining projects has not gone unnoticed at the level of policy, though the strength of the nexus between mining companies and the state has so far proved too strong to permit any radical overhaul of mining policies. However, this does not mean that policy changes have not taken place. The changes summarised below under 'Spaces for Resource Control' have often reflected the impact of anti-mining struggles.

Specifically related to mining, two developments are worthy of note. First, the Panchayats (Extension to Scheduled Areas) Act of 1996 provided that control over 'minor minerals' – a category decided by the Central government and which typically includes the least valuable minerals – will rest with the *gram sabha*. In practice, implementation of this provision by State

193 The Land (Acquisition) Amendment Bill, 2008.

194 *Report of the Expert Group to the Planning Commission on Development Challenges in Extremist Affected Areas*, April 2008.

195 Sarma, EAS, *The Adivasi, the State and the Naxalite: Case of Andhra Pradesh*, EPW April 15, 2006.

196 Some examples include the shooting dead of three Adivasi anti-mining protesters in Maikanch village, Kashipur, Odisha on 15th December 2001; the arrest of hundreds of protesters in Nagarnar, Chhattisgarh, when they resisted a steel plant; the death of 12 Adivasi protesters in police firing during another steel plant protest in Kalinganagar, Odisha, on January 2nd, 2006; the use of private mafias and police against protesters in Lanjigarh, Odisha, who were opposing bauxite mining; and so on.

Governments has been inconsistent and varies widely between states.[197]

Second, the following year, a three judge bench of the Supreme Court delivered a landmark judgment in the case *Samatha vs. State of Andhra Pradesh*[198], which has been referred to several times in this report. The Court was asked to rule on whether the grant of a mining lease in a Scheduled Area to a non-ST was in violation of laws preventing alienation of Adivasi lands. The specific context for the case was the Andhra Pradesh Scheduled Areas Land Transfer Regulation 1 of 1970, which explicitly prohibited any person in a Scheduled Area from transferring lands to anyone other than a ST. The premise of the regulation was that all land in Scheduled Areas is presumed to have been Adivasi land; hence, not only should no land now pass into the hands of non-Adivasis, but any land presently owned by non-STs should, if being transferred, be returned to STs. The question before the Court was whether the grant of a mining lease on government land to a non-ST violated this principle.

In a detailed ruling, relying on the Fifth Schedule of the Constitution, the Court held that the government is a 'person' within the meaning of the Regulation and that the grant of a mining lease amounted to transferring the land to a non-ST, violating the provisions of the law and the spirit of the Fifth Schedule. The Court did not rely purely on the specific clauses of the Regulation and instead held that the Constitution itself requires that land in Scheduled Areas should remain with the Adivasis to preserve their autonomy, culture and society. The Regulation hence should be interpreted 'expansively' in order to fulfill this mandate. As a result, the grant of the mining lease was held to be illegal, and the Court ruled that henceforth mining leases in Scheduled Areas in Andhra Pradesh could only be granted to the State Government's mining company or cooperatives of STs. In the meantime, the Andhra Pradesh government had amended the Mines and Minerals Act as far as it applied to that state to specifically include such a bar, and the Court also ordered other State Governments to constitute committees to look into the passage of similar regulations and laws.

There has since been considerable debate on whether or not the reasoning laid out in the *Samatha* judgment would apply to other states as well. The Central and other State Governments have taken the stand that it does not in light of the fact that the other states do not have laws barring transfer of government lands to non-STs (the only restriction is that ST land has to be transferred only to other STs). The Committees set up in the wake of the *Samatha* ruling produced no result. Unfortunately the Supreme Court itself took a similar stand in the *BALCO Employees Union* case[199]. In this case the Court held that:

> *'While we have strong reservations with regard to the correctness of the majority decision in Samatha case, which has not only interpreted the provisions of the aforesaid Section 3(1) of the A.P. Scheduled Areas Land Transfer Regulation, 1959 but has also interpreted the provisions of the Fifth Schedule of the Constitution, the said decision is not applicable in the present case because the law applicable in Madhya Pradesh is not similar or identical to the foresaid Regulation in Andhra Pradesh' (para 71)….In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus of change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy of the same is contrary to law or malafide, a decision bringing about change cannot per se be interfered with by the court' (para 92).*

This argument, which has restricted the *Samatha's* ruling's applicability to the state of Andhra Pradesh, rests on a very narrow reading of the *Samatha* judgment and moreover overlooks the fact

197 See discussion under section 3 on 'Self-Management',pp.58

198 (1997) 8 SCC 191.

199 *BALCO Employees Union vs. Union of India and Ors.* (2002) 2 SCC 333,

that the Court found the source of its decision not in the Regulation but in the Fifth Schedule to the Constitution. Despite these limitations on its impact, the *Samatha* case still stands as a landmark; not only because it is one of the few instances where the land and resource rights of STs were upheld by the courts, but because the Court's reasoning has served as a precedent for arguing for STs' resource rights in many other contexts.

Environmental Damage and Destruction of Livelihoods

A further cause for loss of resources to ST communities in India is the widespread environmental devastation wreaked on their lands by rampant industrialisation. No other ethnic group in India has seen so much of their lands suffer such intense environmental damage. Such devastation has resulted in resources being destroyed or degraded, and those whose livelihoods and existence depend on these resources find themselves reduced to destitution. Despite a complex system of environmental laws and jurisprudence that is meant to cover such issues, in practice the forums and institutions meant to enforce these principles are inaccessible to marginalised communities in general and to Adivasis in particular.

There are three main forms that such devastation takes:

Desertification and destruction of water resources: Overuse of water resources, both underground and overground, is rampant in many of the industrial and mining clusters of the country. Iron ore mining, for instance, used 77 million tonnes of water in 2005 – 2006, much of it in Adivasi areas; this amount of water would be sufficient for the needs of 3 million people[200]. Similarly, the controversial Coca Cola plant in Plachimada, Kerala, released toxic effluents in a fertile agricultural area while draining the groundwater table. Indeed, the company sold its waste

Santhal (Jharkhand) *Photo: Roger Begrich*

200 Centre for Science and Environment (2008). *Rich Lands, Poor People: Is 'Sustainable' Mining Possible? State of The Environment Report 6,* Centre for Science and Environment, New Delhi.

material to the local farmers as fertiliser. The Adivasis around the plant found their wells polluted with toxins forcing them to depend on water a few kilometers away[201]. They eventually mounted a protest that has so far been successful in having the plant closed, though compensation for the destruction and a final resolution to the problem remain distant.

Deforestation: The close relationship between Adivasis and forests makes them particularly vulnerable to the consequences of wholesale forest destruction for mining, dam or industrial projects. The rights of Adivasis to forest resources were not legally acknowledged until the passage of the 2006 Forest Rights Act. Therefore, the destruction of forests was treated as a matter purely within the domain of the Central government, which exercised the power to grant permission for such destruction under the Forest (Conservation) Act of 1980 (such permission is referred to as 'diversion' of forest land). In total, between 1980 and 2005, around 1.3 million hectares of forest was diverted for various projects; on average, between 2002 and 2008, roughly 78,000 hectares of forest was diverted annually. Moreover, between 1998 and 2005, an average of 216 mining projects were granted forest clearance every year[202]. Moreover this does not include the very large areas lost to illegal forest destruction by industries, mines, plantations and large landholders.

Pollution: The final form of environmental destruction is through air, water, land and soil pollution that accompanies mining and industrial projects. Despite the fact that such pollution is supposed to be taken into account during the environmental impact assessment process (see next sub-section below), in practice it is rarely accounted for in planning and even more rarely addressed after the projects come up. Maintenance and counter-measures against even deadly pollution are extremely poor. In one example, the Jadugoda uranium mine, the largest source of uranium in India, has seen its tailings pipeline burst no less than four times between 2006 and 2008. This has spread radioactive wastes among the Adivasi communities in the area[203].

The machinery of environmental law is of little assistance to Adivasi communities in halting such destructive activities. The two main instruments of enforcing these laws are the State Pollution Control Boards (which are empowered to enforce the Air, Water and Environment Protection Acts) and the courts, which hear many public interest litigations on environmental issues. The Boards tend to be inaccessible and unaccountable, rarely taking action in the absence of either prolonged public agitations or court orders. The situation in the courts, meanwhile, is described below. It should be noted in particular that environmental jurisprudence in the Indian courts has, in recent years, taken on an increasingly stark class character, equating environmental protection with cleanliness, 'beautification' and wilderness while ignoring issues of pollution, workers' health, destruction of livelihoods and loss of common property resources (all of which are often justified in the name of 'development'). One key example is the Godavarman case discussed above under forests in Section 7 on Land, natural resources and environment of Part II.

Policy Spaces for Resource Control

While a textual analysis of the Constitution and the statutory laws relating to rights of tribals with respect to land, forests and environment indicates that there is a high level of compliance with international law on indigenous rights, actual practice belies this impression. Under the law, there appear to be several spaces for STs and Adivasis to resist resource grabbing. Some of these are the result of legal instruments explicitly directed at STs, while others are general measures that have also impacted STs.

In the former category lie two laws – the Panchayats (Extension to Scheduled Areas) Act

201 Bijoy, C.R. *Kerala's Plachimada Struggle. A Narrative on Water and Governance Rights*, Economic and Political Weekly October 14, 2006, pp. 4332-39. Accessible at http://www.epw.in/uploads/articles/9348.pdf

202 Centre for Science and Environment (2008). *Rich Lands, Poor People: Is 'Sustainable' Mining Possible? State of The Environment Report 6,* Centre for Science and Environment, New Delhi.

203 Please see www.jadugoda.net for more details.

1996 and the STs and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 – which have also been discussed elsewhere in this report (under Self-Management and Forests respectively). In connection with resource grabbing, the former law explicitly requires that the *gram sabha* must be consulted before land acquisition proceedings are initiated, a provision that has been largely been honoured in the breach (and at times by forging of *gram sabha* resolutions and the use of police to intimidate villagers, as occurred in the case of a Tata project in Lohandiguda, Chhattisgarh). The latter law has also recently become a significant weapon in struggles to stop the seizure of forest land for industrial projects. In July 2009, after prolonged demands, the Ministry of Environment and Forests issued new orders that require State Governments to certify that the implementation of the Act is complete, all rights have been recognised and the consent of affected forest dwelling communities has been taken prior to any diversion of forest land. This law applies primarily to STs, and is so far the only legal instrument to specifically require the consent of ST communities before their resources are taken over.

There are also some general legal spaces that are meant to favour public consultation and community involvement. Thus, in 1994, the Central government issued a notification under the Environment Protection Act that required public hearings to take place before environmental clearance is granted to large projects. In practice these hearings are often compromised, with documents and information not submitted on time. Where resistance is known to be present, public hearings are often held under heavy police 'protection' and at locations distant from the project site in order to prevent people from attending. The Environment Minister also recently revealed that more than 95% of projects that apply for environmental clearance are granted permission.

The second general space is the courts. The higher judiciary, empowered under the Constitution to hear 'public interest litigations' on violations of fundamental rights, have on a few occasions been useful forums for Adivasis to assert their resource rights. The *Samatha* judgment discussed in the Mining section is one such instance. But in recent years in particular, such rulings have become rarer.

A good example is proceedings relating to the state of Andhra Pradesh (AP). This was probably the first state in the country to enact a land regulation law forbidding transfer to land to non-tribals, in the form of the Agency Tracts and Land Transfer Act of 1917. Subsequently, the AP Scheduled Areas Land Transfer Regulation 1959 was enacted, and it was in a case interpreting provisions of this statute that the *Samatha* judgment was given. The AP government has however recently embarked on an ambitious scheme to take up large irrigation projects across the major rivers in the state. Among the largest of these is the Polavaram Project which will impound water from Godavari River. Apart from irrigating the coastal districts, it would also divert a portion of the stored water to the Krishna. This project is expected to irrigate 291,114 hectares in the plains, and will also submerge 300 villages and displace more than 175,000 people, mostly Adivasis. While complex debates rage in the AP High Court as well as the Supreme Court of India regarding violations in the grant of environmental clearances, forest approvals, and the like, discussion on the blatant violation of the Constitutional provisions relating to Scheduled Areas has taken a back seat.

In recent years, the Courts have also displayed a disturbing facility in legal interpretation running counter to the rights of tribals as recognised by the Constitution. The Supreme Court in a landmark judgment[204] relating to the Sardar Sarovar Project, while dealing with the serious objections to the project raised by organisations regarding the environmental as well as socio-economic impact of the dam, took note of the detailed articulation by the petitioner of the right to life under Art. 21 of the Constitution read with Article 12 of ILO C107. While accepting the

204 *Narmada Bachao Andolan vs. Union of India* (2000) 10 SCC 668.

legal proposition that international treaties and covenants can be read into domestic laws, the Court went on to dismiss the contention of the petitioners regarding specific violation of Article 12 as follows:

> *'The said article clearly suggested that when the removal of the tribal population is necessary as an exceptional measure, they shall be provided with land of quality at least equal to that of the land previously occupied by them and they shall be fully compensated for any resulting loss of injury. The rehabilitation package contained in the award of the Tribunal as improved further by the State of Gujarat and the other States prima facie shows that the land required to be allotted to the tribals is likely to be equal, if not better than what they had owned' (para 58).*

More recently, in a litigation arising out of the failure of the state of Kerala to implement its own commitments to restore lands to tribals which had been alienated through sale to non-tribals, the Supreme Court examined Article 21 of the Constitution, the ILO conventions 107 and 169 and the UNDRIP, and arrived at the following finding[205]:

> *'It is now accepted that the Panchsheel doctrine[206] which provided that the tribes could flourish only if the State interfered minimally and functioned chiefly as a support system in view of passage of time is no longer valid. Even the notion of autonomy contained in the 1989 convention has been rejected by India.'*

The Court went on to note that there is cogent evidence that the tribals in Kerala are far better off than their counterparts in other states, and therefore thought it safe to conclude that many of them have been absorbed into various institutions in the state of Kerala and in other parts of the country, even though there was no such evidence placed before it. The Court further concluded:

> *'Indisputably, the question of restoration of land should be considered having regard to their exploitation and rendering them homeless from the touchstone of Article 46 of the Constitution of India. For the aforementioned purpose, however, it may be of some interest to consider that the insistence of autonomy and the view of a section of people that tribals should be allowed to remain within their own habitat and not be allowed to mix with the outside world would depend upon the type of ST category in question. Some of them are still living in jungle and are dependant on the products thereof. Some of them, on the other hand, have become a part of the mainstream. The difference between STs of the North-East and in some cases the Islands of Andaman and Nicobar, on the one hand, and those who are on the highlands and plains of the Southern regions must be borne in mind.'*

Clearly, the process of usurpation of the rights contained in the Constitution and the various protective legislations enacted by the state, has gained momentum over the last few years.

---

205 *State of Kerala vs. Peoples Union for Civil Liberties & ors* (2009) 8 SCC 49

206 This is a set of five fundamental principles that India's first Prime Minister enunciated for tribal development -
People should develop along the line of their own genius and we should avoid imposing anything on them. We should try to encourage in every way their own traditional arts and culture.
Tribal rights to land and forest should be respected.
We should try to train and build up a team of their own people to do the work of administration and development. Some technical personnel from outside will no doubt, be needed, especially in the beginning. But we should avoid introducing too many outsiders into tribal territory.
We should not over administer these areas or overwhelm them with a multiplicity of schemes. We should rather works through, and not in rivalry to, their own social and cultural institutions.
We should judge results, not by statistics or the amount of money spent, but by the quality of human character that is evolved.

8. Socio-economic rights

A summary of the provisions in the ILO conventions relating to socio-economic rights of indigenous people has already been made in sections 2 and 8 above, and therefore is not being repeated.

The Constitution of India in Article 23 prohibits traffic in human beings, *begar* or forced labour. This fundamental right is re-enforced by several provisions in the Directive Principles of State Policy, including Article 38 (promotion of a just social order) Article 39 (distributive justice) Article 41 (right to work) Article 43 (securing a living wage for all workers) and Article 46 (promotion of economic interests of SCs and STs).

Exploitation of labour extends across sectors and regions, but it tends to take particularly brutal forms in the case of STs. For Adivasi and tribal communities in central and mainland India (i.e. outside the Northeast), the loss of land and common resources over the past century (see section on Land, Natural Resources and the Environment above) has meant that access to forest produce – such as wild fruits and vegetables, medicinal herbs, etc. - has greatly declined. These or equivalents now have to be purchased from the market, forcing Adivasis to resort to wage labour, if available. One study for instance found that only 12% of Bhil Adivasis in Gujarat could survive based on their agricultural land holdings alone[207].

Jharkhand *Photo:Chris Erni*

207 David Mosse, Sanjeev Gupta, Mona Mehta, Vidya Shah, Julia fnms Rees, and KRIBP Project Team. *Brokered livelihoods: Debt, Labour Migration and Development in Tribal Western India*. Journal of Development Studies, 38 (June 2002.): 59-88.

The resulting desperation forces Adivasis in most parts of Central India into seasonal migration for wage labour, which is often in addition to or combined with debt bondage to particular employers. The same study on Bhils in Gujarat found that 85% of families were forced to migrate every year to earn enough to survive, while a report from Maharashtra put the figure for Adivasis in that state at 80%[208]. There are no official figures on how many people engage in seasonal migration in India, but estimates say that around 30 million people migrate every year, and the figure is rising.[209] Conditions of work for such migrant workers are abysmal in many areas, with hardly any shelter provided, food and water in short supply, and work days that are often 14 to 16 hours long. Sexual abuse of women is particularly common, as well as brutal violence against those who resist exploitation.[210] Adivasi women are also often forced to become sex workers, sometimes at or near migrant worksites and sometimes in their home areas[211].

Debt bondage is also particularly severe among Adivasis. Bonded labour – where a worker is 'tied' to a particular employer as a result of a debt to that employer, a debt that often continues across generations – has largely ceased to exist among most segments of Indian society but continues to occur with Adivasis (and to a lesser extent with Dalits). This occurs despite the fact that bondage was outlawed in the Constitution under Article 23 and is the subject of a specific Central legislation (Bonded Labour System (Abolition) Act, 1976) that makes such forced labour a criminal offence[212].

Even where actual debt bondage does not occur, violations of labour laws are rife. India has a number of protective labour laws. In recognition of the reality that the working class, drawn as it is from sections of society which are already marginalized as a result of historical domination by the upper castes and ruling elites, the Central government has enacted a number of key legislations in this area :

a. Minimum Wages Act, 1948
b. Contract Labour (Prohibition and Regulation) Act 1970
c. Bonded Labour System (Abolition) Act, 1976
d. Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979
e. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act 1996
f. The Building and Other Construction Workers Welfare Cess Act 1996

The provisions of the Constitution as well as the statutory framework have also been established in the law through judicial precedent in several far reaching decisions of the Supreme Court wherein it has been held that forced labour of any kind is prohibited by Article 23, and it has further been articulated that wherever it is found that workers are employed for a wage that is below the minimum wage prescribed by statute, the same shall be an offence under the Bonded Labour Abolition Act.[213]

Despite these laws, violations continue to occur. An inquiry by the Bombay High Court found that, out of 51 salt pans in Raigad, Maharashtra (90% of whose workers were Adivasis),

208 Bulsara, Shiraz and Sreenivasa, Priyadarshini. *Driven to bondage and starvation*, Combat Law, Volume 2, Issue 5.

209 Deshingkar, Priya, and Daniel Start. *Seasonal Migration for Livelihoods in India: Coping, Accumulation and Exclusion*. Working Paper. London: Overseas Development Institute, August, 2003.

210 For one example, see Breman. *Seasonal Migration and Co-operative Capitalism: Crushing of Cane and of Labour by Sugar Factories of Bardoli*, Economic and Political Weekly, Vol.13, no. 31/33, August, , Jan. 1978: 1317-1360.

211 For an example, see Shetty, Sukanya. *Steeped in Ignorance and Nowhere to Flee from Stigma*, Indian Express, Mumbai edition, January 18, 2009.

212 cf. Gopalakrishnan, Shankar and Sreenivasa, Priya. *The Political Economy of Migrant Labour*. Delhi: Aakar Books, 2009.

213 See for instance: *Bandhua Mukti Morcha vs. Union of India*(1997) 10 SCC 549; *Peoples Union for Democratic Rights vs. Union of India*(1982) 3 SCC 235; *Sanjit v. State of Rajasthan* (1983) 1 SCC 525

38 paid less than half the prescribed minimum wage. The same inquiry found that 'the employers do not maintain any records and workers are often denied payment of earned wages; under conditions of migrant labour it is difficult to prosecute and recover any wages'.[214] The rights to fair labour conditions and to protection in case of disputes, protected under the Industrial Disputes Act, are not available to most migrant workers because the law is limited to enterprises with 20 workers or more.

Moreover, Indian labour laws suffer from a fundamental flaw in that they are built around state paternalism rather than facilitating and supporting workers' right to organise. In the case of marginalised communities such as the Adivasis, the state structure rarely performs its legally mandated role, and such legal assumptions then in fact become an obstacle to their ability to fight for their rights. Thus, the two laws with the most relevance to migrant labour – the Contract Labour (Regulation and Abolition) Act and the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act – both do not permit workers to directly file police complaints for offences by employers. Only government inspectors can do so. Such inspectors are of course easily bought off by employers, when they inspect sites at all, and the result is an abysmal rate of prosecution and even more abysmal rate of punishment. The High Court enquiry quoted above, for instance, found that only 26 prosecutions had ever been launched against salt pan employers in Raigad, and the total fines imposed came to the paltry sum of ₹900 per convicted employer.

Moreover, labour laws do not cover some major segments of work in which Adivasis are engaged. For instance, minimum wage rates for collection of various kinds of non-timber forest produce (NTFPs) are not notified under the Minimum Wages Act. Even where they are notified, they are often fixed on a piece–rate basis with little or no connection to what a minimum time-rated minimum wage for basic subsistence would require. The rate fixed has no relationship to the labour or work performed but rather is linked to the price declared by the contractor or the state agency purchasing or marketing the product. Self employed or own-account collectors of NTFPs who form the start of a value chain that often ends in large-scale manufacture, sale and export (*beedi*, bamboo furniture, medicines) are unable to obtain the true value of their work in such waged or disguised sale-purchase arrangements. Permanent employees of the forest departments get covered under the Industrial Disputes Act, but this is usually not available to causal and non-muster roll workers. Self employed, own-account workers in this sector, as elsewhere, face an uphill task in registering their organisations as trade unions.[215]

This is despite the fact that NTFPs account for 40% of official forest revenue and 55% of forest-based employment in India; in states like Odisha it accounts for 90% of forest revenues given the stagnation in timber revenues. Further, this collection is largely undertaken by women and the poorest among forest dwellers and the return for their labour are often abysmally low.[216]

Thus we find that the impressive fabric of labour law in India comes rarely, if ever, to the aid of tribals who are engaging with the market economy at its lowest rung, whether in urban or rural contexts. Their rights under international law – both as indigenous people and as workers – receive hardly any protection.

9. Gender equality

Gender issues have historically received less attention in the international law instruments dealing with indigenous peoples, though concerns for gender equality and empowerment have

214 Bulsara and Sreenivasa, Op. Cit.

215 *Report of the Forest Workers Consultation*, August 9, 2008, New Delhi, organised by WIEGO.

216 See generally, N.C. Saxena, *Livelihood Diversification and Non-Timber Forest Products in Odisha: Wider Lessons on the Scope for Policy Change?*, Working Paper 223, Overseas Development Institute, London, August 2003.

Munda family (Jharkhand) *Photo: Roger Begrich*

been present in many international discussions on the issue. The three main international agreements do not contain any separate gender-specific rights or language. Thus, Convention 107 does not refer to the issue at all, while Convention 169 makes only one reference – in Article 3 – to indigenous women's rights, in this case to equal work opportunities and protection from sexual harassment. Articles 21 and 22 of the UNDRIP refer to the 'rights and special needs' of indigenous women, but only as part of a general reference to the rights of marginal sections such as the elderly, children, etc. Article 22(2) however specifically protects indigenous women and children against 'all forms of violence and discrimination' and directs state parties to take measures in this direction, in consultation with indigenous communities.

In the Indian context, there is a similar lack of specific policies on gender issues in relation to indigenous people. Almost all statutes and constitutional provisions on ST and Adivasi rights make no reference to gender issues. Possibly the only exception is the STs and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, which contains a few provisions providing for joint property titles (in the name of both spouses) and requiring participation of women in the rights determination and recognition process. At the policy level, the National Policy on Education, the *Sarva Shiksha Abhiyan* and other education-related policies have incorporated a specific focus on ST girls, aiming to increase school enrolment and literacy levels. However, the measures adopted under these policies have typically consisted of recruitment quotas and increased funding allocations alone, rather than any effort to address the specific problems of ST girls and women. Aside from these policies, it is difficult to find any other reference to indigenous women's rights in other government policies; even the National Policy for the Empowerment of

Women, 2001, refers specifically to ST women only in the context of educational access.

In Indian law in general, the domain of 'personal law' (i.e. marriage, divorce, succession [i.e. inheritance], adoption and other family-related matters) is not governed by universal civil law but by separate laws for each religious community (Hindu, Muslim Christian, Zoroastrian etc.). These laws cover several of the most crucial areas for gender relations. Several states – such as Maharashtra, Jharkhand, Madhya Pradesh and others – specifically exempt Adivasis from the operation of Hindu personal law (into which Adivasis would normally otherwise be categorised). As a result, gender relations on matters such as marriage, personal relations and property are governed by Adivasi customary law in these states. (See above under Cultural and Language Rights).

In general, such customary law does empower Adivasi women to a greater degree than women in other sections of Indian society. Adivasi women enjoy much greater freedom from patriarchal control on work, movement and personal relations than do women in most other sectors of society. Marriage and divorce are much freer than they are in mainstream society.

But gender inequality is not absent among Adivasis, and socioeconomic changes are increasingly prevalent. Domestic violence is common in many Adivasi communities. Moreover, as in other communities, men control key areas of public life, such as access to and engagement with state institutions and public facilities (which is reflected in the low literacy rate among ST women). Traditional institutions in many Adivasi communities also often exclude women from direct participation. Finally, in most Adivasi communities – with some notable exceptions such as the Khasi tribe in Meghalaya – property passes down the male line.

Framing policy in regard to such issues is complicated by the fact that there is a tension between application of standard norms of gender equality (such as equal rights to property and equal representation in institutions) and the right to autonomy and self-management of the community in question. This issue was highlighted in India by a major Supreme Court ruling, given in 1996.[217] In this case, two petitions – one by a feminist activist and the other by an Adivasi woman – were clubbed by the court. Both petitions sought to challenge a provision of the Chotanagpur Tenancy Act, a major self-governance and land rights legislation in the then state of Bihar (now the state of Jharkhand). The said provision restricted inheritance of property to the male line; in case of a man's death his wife would have no rights, as all property rights would pass to sons or other male relatives. The Act provided that women had a secure right of use to their father's property until marriage and to their husband's property thereafter, but no right to alienate or transfer any property, and no right in case of the husband's death.

The petitioners challenged these provisions on the grounds that they are inconsistent with the Hindu Succession Act, which provides equal rights to male and female heirs, and with the right to equality under the Constitution. In turn, the government of Bihar constituted a committee of Adivasi Ministers and other Adivasi political representatives, who took the stand that equal land rights would result in alienation of Adivasi lands to other communities (presumably on the grounds that Adivasi women may marry out of the community). The majority of the Supreme Court finally chose to take an intermediate position, holding that the right to livelihood is a fundamental constitutional right and hence women cannot simply be denied all rights in land and property upon the death of their husbands. The Court therefore held that the succession to the husband's male relatives would only come into effect after female dependents had either passed away or ceased to depend on the land for their livelihood. However, the Court did not interfere with the statute's provisions on inheritance as such, and upheld the general requirement that property would pass down the male line. The Court however did direct the government of Bihar to constitute a committee to look into bringing these communities under the Hindu Succession

217 In the case *Madhu Kishwar and Ors. vs. State of Bihar and Ors,* 1996 5 SCC 125

Act, and asked the government to examine the question 'on the premise of our constitutional ethos. It left the final decision in that regard to the government.

Such conflicts are arising more frequently with accelerating social change in and around Adivasi societies. In particular, the exclusion of women from decision making in many Adivasi societies can translate into increasing disempowerment and impoverishment when it is coupled with state and market pressures on common property resources. Thus, many studies of Joint Forest Management programmes – a Forest Department-driven 'participatory' scheme – have shown that the male-dominated JFM Committees tend to close off common forests for timber 'protection' without considering the impact on women in their community, who are forced to look for other sources of firewood and forest produce.[218]

Further, the two key sources of livelihood in most indigenous communities today, namely wage labour and private land holdings, are largely controlled by men. Adivasi women who migrate for work – a key source of cash income in most ST and Adivasi communities, as discussed in the section on socio-economic rights – face lower wages, sexual exploitation and violence. Labour bondage is considerably more prevalent among women. In many cases, families migrate as units, and employers may pay only the 'head of the household' (the man) a wage.[219] Even in non-migrant labour, Adivasi women face the same problems as other working class women, including wage discrimination and irregular employment. Patrilineal norms of inheritance also become more oppressive than they were earlier with the increasing collapse of common property resources. As these two sources of livelihood are increasing in importance, the result is further disempowerment of women.

Finally, a critical threat to the rights of Adivasi women is the state of intense armed conflict in many Adivasi and ST areas. As in other armed conflict zones, in these areas, women's bodies come to be treated as symbolic of their community, with assaults and abuse of women being a key method of asserting dominance over the community. The result is widespread, frequent and brutal sexual atrocities, particularly by state security forces and private militias.

In this context, even fulfilling the limited mandate of the international legal instruments on gender equality requires more specific policy measures. In addition to specific measures to protect indigenous women, these would need to be aimed at mitigating the trends that are increasing patriarchy and gender oppression. The struggles to protect indigenous rights over common property resources and for greater protection of migrant workers are key areas which can have a positive impact on gender relations.

10. Indigenous children

The Convention on the Rights of the Child in its preamble takes 'due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child'. While the essential rights to a life free from violence, discrimination and exploitation, the right against trafficking, and to special procedures in criminal proceedings are specifically acknowledged, the Convention also recognises the right of the child to a family and a community (Article 5) and to preserve his/her identity (Article 8(1)). In particular, the right to the highest attainable standard of health and to access such facilities for health care is also articulated (Article 24). In this regard, the State is under an obligation to:

a. reduce infant and child mortality
b. ensure access to health care
c. combat disease and malnutrition

218 See Yadama, Gautam N; Pragada, Bhanu N., and Pragada. *Forest dependent survival strategies of tribal women: Implications for joint forest management,* Food and Agriculture Organisation, United Nations, 1997.

219 See Gopalakrishnan, Shankar and Sreenivasa, Priya. *The Political Economy of Migration.* Aakar Books, 2009.

Oroan Children (Jharkhand) *Photo: Roger Begrich*

d. ensure pre-natal and post-natal care for mothers
e. ensure information to communities on health issues
f. develop preventive health care.

Special mention is made of the right of the child to an education directed towards 'the development of the child's personality, talents and mental and physical abilities to their fullest potential' (Article 29(1)). Article 30 specifically states that a child belonging to an indigenous community 'shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language'.

ILO C107 in Article 23 notes the right of indigenous children to learn to read and write in their mother tongue and for a progressive transition from the mother tongue to the national or official language. In Article 24 it goes on to state that the aim of primary education to the populations of indigenous people shall be to impart general knowledge and skills in order to help children to become integrated into the national community. In Recommendation 104, however, this integrationist approach begins to disintegrate, as it places in paragraph 29 a duty on teachers working among indigenous populations to obtain training in order that they can adapt to the cultural characteristics of these populations. Paragraph 32 goes on to state as follows:

> *'The primary education of the populations concerned should be supplemented, as far as possible, by campaigns of fundamental education. These campaigns should be designed to help children and adults to understand the problems of their environment and their rights and duties as citizens and individuals, thereby enabling them to participate more effectively in the economic and social progress of their community.'*

While ILO C169 has only a few provisions related directly to children (Articles 28 and 29) and these focus on the preservation of the indigenous language and on the objective of

education, when read in its entirety, it is clear that the departure this Convention makes from ILO C 107 has far-reaching significance for indigenous children. Rather than an integrationist approach, the Convention approaches the rights of indigenous people from the perspective of autonomy in decision-making, preservation of distinct language and cultural practices, and control over community resources such as land, water, and forests, as well as over development initiatives which govern these resources, combined with equality of opportunity to compete with the mainstream. When looked at from the perspective of children, these rights are profoundly important with regard to the preservation of a caring and cohesive community, healthy and well-educated mothers, health care at the neo-natal and post-natal stages, as well as during the critical growing years, educational opportunities, development of self-esteem, and the growth of well rounded personalities with every opportunity to attain their fullest potential.

The UNDRIP while taking this approach even further, makes certain additional provisions for the protection of indigenous children. Article 14 deals with the right of indigenous people to establish and control educational institutions, and adopt appropriate teaching methods, even as it provides for protection against discrimination in mainstream educational institutions. Article 17(2) states that specific measures will be taken by States 'to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment'. While Article 21 requires states to take effective measures to ensure improvement in economic and social conditions with particular attention to the needs of indigenous children, Article 22 requires that measures be put in place to protect indigenous children from violence and discrimination.

The Constitution of India in Article 39(e) places an obligation on the state to ensure that young children are not abused, and sub-clause (f) requires that children be given opportunities and facilities to develop in a healthy manner, and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and moral and material abandonment. Article 45 requires the state to provide for early childhood care, and for education for all children until the age of six years. In the Constitution as originally drawn, a time limit of 10 years from the date of independence was provided, but seeing as the state was unable to fulfill this obligation, in 2002 the provision was amended by way of a constitutional amendment.[220] The Courts have interpreted Article 21 of the Constitution to include a right to a life of dignity, free from exploitation. Therefore, where labour and welfare laws are enacted by the State to implement these directive principles, these must be strictly applied. In particular, the Supreme Court has directed that children must not be employed in hazardous jobs such as factories which manufacture match boxes and fireworks[221] and requiring strict compliance of the *Child Labour (Prohibition and Regulation) Act 1986*[222] which includes rehabilitation of the parents to ensure that the children are not pushed back into exploitative forms of labour. Similarly, the Indian government has enacted the *Juvenile Justice (Care and Protection of Children) Act 2000* which mandates that accused persons who are minors are treated differently and incarcerated separately from other accused in criminal proceedings, and also provides for the care and rehabilitation of such juveniles in state-run institutions.

As in many other cases, the impact of this progressive legislation has so far been minimal. According to the Bulletin on Rural Health Statistics, 2005 produced by the Ministry of Health and Family Welfare, the Infant Mortality Rate for ST children in the same year was 84.2 per

220 Vide section 2 of the Constitution (Eighty-sixth Amendment) Act, 2002.

221 *MC Mehta vs. State of Tamil Nadu,* (1991) 1 SCC 283

222 *Bandhua Mukti Morcha vs. Union of India* (1997) 10 SCC 549

thousand, as compared to the national average of 70. The under-5 mortality rate was 126.6 per thousand as compared to the national average of 94.9. As per the 2001 Census, the 2001 literacy rate for STs was 47.1% (male 59.17% and female 34.76%) as compared to the national average of 64.84% (male 75.26% and female 53.67%). More recently, the Eleventh five year plan took serious note of the appalling conditions of children of ST populations in the country. It notes the high proportion of out-of-school children among STs (9.54%) of whom an overwhelming majority are concentrated in five states, namely, Bihar, Uttar Pradesh, West Bengal, Madhya Pradesh, and Rajasthan. Drop out rates for ST children for the years 2004-05 for the Primary (I–V) and Elementary (I–VIII) categories stood at 42.3% and 65.9%, respectively, comparing miserably to the national average of 29 % and 50.8% in the same categories. The drop out rate is even more acute in the case of girl children. Two-thirds of the tribal students do not go beyond class VIII.

The Eleventh Five Year plan also notes that a staggering percentage of babies in India are born with low birth weight, a problem that began in utero. This problem is compounded with widespread malnutrition in the growing years, leading to stunted growth. Bihar, Jharkhand, MP, Chhattisgarh, and Uttar Pradesh, all with high ST populations, are the states with malnutrition rates well above the national average of 46%. It is also seen that children born to mothers who were illiterate or who belonged to scheduled castes/tribes were more likely to be anaemic than their counterparts. Further, children born to moderately and severely anaemic mothers were also anaemic, reflecting the consequences of poor maternal health status on the health of the children. Research studies have suggested that severe IDA during the first two years of life, when the brain is still developing, may cause permanent neurological damage. To compound the problem, India has the lowest child immunization rate in South Asia. Major disparities between regions and socio-economic groups have been found in the proportion of children immunized. Therefore, while for a child born in Tamil Nadu, the chance of being fully immunized by age one is around 90% (compared to 42% for the average Indian child), this percentage drops to 26% for the average ST child, and a shocking 11% for the average child from Bihar. When different sources of disadvantage (relating, for instance, to class, caste, and gender) are combined, immunization rates dip to abysmally low levels. Therefore, among ST children in Bihar only 4% are fully immunized and 38% have not been immunized at all.[223]

A number of schemes have been put in place by the Government to address this emerging crisis. One such is the Village Grain Bank Scheme, with the objective to establish Grain Banks in chronically food-scarce areas, and to provide safeguards against starvation during the lean period. The scheme is also to mitigate drought induced migration and food shortages by making food grains available within the village during such calamities. During 2006–07, there was a budget provision of ₹50 crore for setting up 8591 Village Grain Banks in food-scarce areas. Other Schemes include the Mid-day meals scheme in schools, schemes for providing health care and nutritional supplements to expectant mothers, and so on.

However, none of these Schemes have been able to ameliorate the devastating impact of displacement on the lives of STs in the face of appropriation and exploitation of their homelands, comprising the forests and lands from which they draw their sustenance and the resulting destruction of their community and cultural roots. As stated elsewhere in this report, it is the ST populations which have borne and continue to bear the brunt of the development paradigm adopted by the Indian state, a paradigm that at best affords them monetary compensation for the loss of their homelands and livelihood, but in the majority of cases ends in their cultural

223 *Stumbling from the start*, InfoChange News & Features, June 2007 (Excerpted from Focus on Children Under Six (FOCUS), published by Citizens' Initiative for the Rights of Children Under Six) available at http://infochangeindia.org/200706166474/Agenda/Child-Rights-In-India/Stumbling-from-the-start.html

destruction and economic destitution. Children of indigenous communities are most vulnerable. The principles and standards contained in the various international instruments, the Constitution, various pronouncements of the Courts and budgetary allocations towards government schemes seem to have had a very limited impact on the situation of most of India's STs.

The conditions of indigenous children are compounded by the fact that several parts of the country which have high concentrations of tribal populations are also in the midst of militant political unrest. Numerous portions of the Northeast have been declared as 'disturbed areas' and placed under virtual military rule under the Indian armed forces, which are provided with statutory powers and immunity under the *Armed Forces Special Powers Act 1958*. Civil and political rights are for all practical purposes suspended, even though this is expressly prohibited by the Constitution of India. In Manipur, the AFSPA has been in operation since 1980, thus no child under the age of 18 years has ever known peace, but instead has spent his or her entire childhood in an environment of political unrest.[224]

The recently launched 'Operation Greenhunt' against Maoists[225] in various parts of central India has seen unparalleled atrocities on vast populations of tribal people, and children are directly affected. For example, it has been reported that subsequent to police operations in villages in Koraput District of Odisha on 20 November 2009, more than 15 tribal children have been confined in Koraput Jail on charges of conspiracy to wage war against the State. The youngest of these is 12 year old Bheema, who has not once been produced before the Juvenile Court. At the time of writing, these children had been incarcerated for over two months.[226]

That children are exploited in times of civil unrest is further illustrated by the experience in the State of Chhattisgarh, which has witnessed debilitating operations by security forces in the name of fighting 'Maoists'. In a writ petition filed before the Supreme Court, it has been pointed out that minors are being recruited as so-called Special Police Officers in the state-sponsored private militia, *Salwa Judum*[227], in blatant violation of constitutional prohibitions and the Child Labour (Prohibition and Regulation) Act, 1986.[228] That no sanctions have been passed by the Court till date against the State Government for the heinous practice of arming children with weapons and training them to fight against their own people, is indeed a sad reflection of the apathy of the legal system to the rights of indigenous children.

11. Indigenous peoples in border areas

Convention 169 and the UNDRIP take special note of the conditions of indigenous communities who straddle or live near borders. These communities have the right to 'maintain contacts and cooperation', particularly across international borders, including 'activities for spiritual, cultural, political, economic and social purposes', and States must take steps to protect these rights (Article 32 of Convention 169 and Article 36 of the UNDRIP). Both instruments adopt roughly the same language for this purpose, with the UNDRIP stating that State actions in this regard have to be in consultation with the communities concerned.

The Government of India has no specific policy related to STs and Adivasis in border areas. Most STs and indigenous communities in India do not live near international borders, except

224 See *Discrimination Against Indigenous Children in India: Race, Culture and Class*, First Periodic Report submitted to the Committee on the Rights of the Child by the Centre for Organisation Research and Education, Manipur.

225 Belonging to the Communist Party of India (Maoist), a revolutionary political party currently banned.

226 *Tribal children getting traumatised in Odisha jails*, 9th Feb. 2010, accessible at http://www.merinews.com/article/tribal-children-getting-traumatised-in-Odisha-jails/15797292.shtml

227 Meaning 'Peace March' in Gondi tribal language.

228 *Nandini Sundar & ors vs. State of Chattisgarh* Writ Petition (Civil) No. 250 of 2007, pending in the Supreme Court of India.

Nagas in Delhi *Photo: NPMHR (2010)*

those who live in the Northeastern region and in Ladakh in Jammu and Kashmir. For those in these areas, however, border issues are important. Some examples of communities that straddle borders are the Garos, who are divided between the Indian State of Meghalaya and Bangladesh, the Santhals, who are also divided at several locations by the Indo-Bangladesh border, and the Nagas and Mizos, who are divided by the Indo-Burma border. Given the absence of any policy on such matters, ordinary law applies and severely restricts any contact and cross-border travel. This has particularly serious implications for those who may cross borders as refugees. Geopolitical tensions, such as those between India and Bangladesh (which the Government of India regularly accuses of sheltering leaders of armed tribal organisations), or between India and China, exacerbate such problems and result in extremely tight security, arbitrary detention of those who cross over, as well as torture and killings by security forces. However, it is known that in some such instances as in the case of the Nagas in Nagaland, informal arrangements have evolved whereby the state authorities tolerate cross-border contacts within communities (in this case within 20 km of the border).

Aside from these international border issues, the federal nature of the Indian Union means that border issues also arise with respect to state boundaries. Under the federal division of powers, many of the key policy areas – land, forests, agriculture, education, etc. - that impinge on Adivasi rights fall within the domain of the State Governments; further, Indian states are larger than most countries in the world and each have their own distinct political dynamics. Finally, as with international boundaries, the Government of India has no policy regarding Adivasi communities which straddle State borders. Provisions for consultation, self-management, etc., such as those within the Fifth and Sixth Schedules, all refer only to contiguous territories within a State.

As a result, communities divided across state boundaries may be living under very different policy and political regimes, and are therefore rendered unable to exercise self-management or maintain their traditional community institutions. Hence the issue of 'unification' of indigenous communities divided into multiple states has at times become a point of political struggle. The Jharkhand movement, for instance, advocated the formation of a state consisting of the Adivasi-inhabited areas of the then states of Bihar, Madhya Pradesh, West Bengal and Odisha (the present-day Jharkhand State however only includes the territories that were part of Bihar, while

Chhattisgarh State was formed out of Madhya Pradesh and the Adivasi areas of West Bengal and Odisha remained within those states). Similarly, the Naga liberation movement has long included a demand for the unification of all Naga territories (presently divided, within India, between the states of Nagaland, Assam, Manipur and Arunachal Pradesh and the neighbouring Myanmar) under one sovereign authority. This has triggered fierce opposition from non-indigenous communities in Assam and Manipur particularly.

III: Conclusion and recommendations

Conclusion

It is difficult to describe the situation of indigenous peoples in India as anything less than dismal. Destitution, brutality, repression and injustice mark their existence in most parts of the country, leading one historian to say that; 'It is ... Adivasis who have gained least and lost most from six decades of electoral democracy.'[229] With tens of millions of Adivasis uprooted from their homelands by civil war, security operations, industrial projects, dams, mines and land grabbing, and millions more reduced to a state of impoverishment so severe that their survival hangs by a thread, the protections of international law seem a distant dream.

Jharkhand *Photo Chris Erni*

229 Guha, Ramachandra. *Ambedkar's Desiderata*, *Outlook*, February 1, 2010.

But the story of India's indigenous peoples is not just one of defeat and loss. For more than 150 years, the subcontinent has seen numerous mass struggles against injustice by indigenous peoples. These struggles have left their mark in the intricate, often inconsistent and incomplete framework of laws for Adivasi rights in India, laws that in some areas – such as gender or socioeconomic rights – are far behind international law, while in others – such as autonomy in the Sixth Schedule or Articles 371A and 371G – seem to have been decades ahead. The experience of these policies, their formation and their operation, both at the level of policy and at the level of implementation, thus has much to teach both those interested in India's indigenous peoples and those working for indigenous rights elsewhere.

This report has tried to summarise and present some of these points in a very brief form. The authors of this report, however, believe that if there is one lesson that emerges from the Indian experience, it is that the most critical areas of indigenous rights are those concerning political autonomy and, concomitantly, control over resources. Structures that can protect these rights in turn offer the space for more effective protection of the others. It is this approach that we have sought to reflect in our recommendations below.

Recommendations

I. Fundamental:

- The provisions under Article 244, namely the Fifth and Sixth Schedules should be extended to suitably cover all ST and Adivasi majority habitations in the country.
- The structures of governance as in Sixth Schedule in the Fifth Schedule Areas should be created
- The Sixth Schedule Areas and their autonomous councils should be harmonized with the traditional village governance structures on the lines of PESA, in all areas.

Assessment of all legal and administrative provisions, whether central or state legislations, for inconsistencies with the provisions of Article 244, Fifth Schedule, Sixth Schedule and PESA, Article 371 A and 371 G and rectification of inconsistencies including amendment to the laws where necessary.

- Within the Autonomous Council structures created under these Schedules, there should be greater empowerment of local communities for control over resources and services, on the lines of Nagaland's communitisation model.
- The provisions of the Forest Rights Act with regard to habitat and community forest resources should be used as a model, and extended to all indigenous peoples and broadened to also cover land, water, forests and other resources on all types of land. This should be given statutory form as a system of community rights to resources. The concept of 'ancestral domain' should thus be operationalised in Indian law.
- The ILO and other international organisations and mechanisms for ensuring conformity with international conventions and commitments by nation states, must diligently pursue the Government of India for its serious violations of its international commitments. Since Indian citizens do not have recourse to an international dispute settlement mechanism (as do other continents such as Africa, Latin America and Europe), there is a need to pursue the process for setting up an Asian Court for Human Rights, and for ensuring the Government of India's acceptance of its jurisdiction.

II. Discrimination

- State level legislations must be interrogated to identify specific provisions which militate against PESA and suitable amendments be brought in a time bound manner. The right to take decisions on specific developmental initiatives, as well as on the development

paradigm adopted by the state in general, as contained in the UNDRIP, must be incorporated in Indian law, through strengthening of the processes of consultation, informed consent, and democratic decision making.

- Sensitisation of law enforcement agencies and the administrative structures across the spectrum to the multiple forms of discrimination against STs. Apart from this, the mechanisms for the implementation and enforcement of special laws, such as the 1986 Prevention of Atrocities Act must be ensured, and the Government of India should be held accountable for its failure to do so. The 1986 Act must be extended to cover also the Denotified and Nomadic Tribes.
- Disaggregated data on the status of offences under anti-discrimination laws must be collected, collated, and made publicly available, annually.
- III. Self Management
- Laws such as the AFSPA and other security legislations must be repealed. Any kind of autonomy or special constitutional status to States such as Nagaland is reduced to a nullity in the face of such law.
- Immunity provisions in criminal and other legislations against prosecution of armed forces, paramilitary forces, and police, must be suitably amended, and responsibility fixed for those responsible for the policy of state repression being practiced in differing forms across tribal areas in the country. Any statutory amendments and policy changes which are not accompanied by such amendments in the criminal process are unlikely to have any impact.
- Self-governance becomes a reality only with the extension of the domain of control over the land and natural resources to the village communities directly through the recognition of rights to all lands that fall within their domain of life. Therefore, irrespective of the category of land, existing laws should be suitably amended and modeled on the lines of the Forest Rights Act, but extending beyond the forest areas.
- The standards for consultation and democratic decision-making, which have found statutory status under the Forest Rights Act, must be incorporated in other laws as well to ensure that such consultative processes are not reduced to mere manufacture. Where the state falls short of these standards, mechanisms must be put in place to ensure prosecution and affixation of responsibility.
- A special law for extension of constitutional provisions relating to self-governance in urban areas (or municipalities) in Scheduled Areas and Tribal areas must be enacted, and municipal laws at the state level be thoroughly examined for inconsistencies with this law and amended accordingly.
- Since affixation of responsibility after the fact is more often than not insufficient as a deterrent where exploitation of natural resources by large corporation is concerned, in a situation where it is established that devastation of tribal homelands and resources has taken place in violation of the letter and spirit of the law, provision must be made for criminal prosecution accompanied by payment of reparation and punitive damages, and not merely compensation.

IV. Access to justice

- Recognition and strengthening of the community-centered customary justice system to cover all tribal areas. Strengthening of judicial component of local governance system.
- Sensitisation of law enforcement and administrative machinery on the provisions in law for STs along with spreading of legal awareness among STs to the level of consciousness raising.
- Extension of free legal aid to all cases where tribals are litigants/ affected parties,

whether civil or criminal or public interest. Failure to provide adequate and quality legal representation to tribals in the conduct of litigation must be treated as vitiating the proceedings entirely.

- Particulars of relevant provisions of the ILO Conventions, the Constitution, and statutory laws should be made available to tribal communities in their languages in simple form.

V. Education

- Educational policies must be reconfigured to ensure that indigenous communities have control over the educational systems in their areas, including through consultative mechanisms and decentralisation of control over syllabus, administration and finances. *Sarva Shiksha Abhiyan* and State Government educational programs should be restructured to ensure that indigenous communities are represented in decision-making on curriculum and syllabus. Administrative and financial matters should be devolved to local governance bodies, to be accountable to the *gram sabha*.
- Traditional methods of teaching, such as the *Morungs* of Nagaland, must be encouraged and provided with facilitation, through state funds and awareness-raising. Such education methods should be given protection in the manner of the fundamental protection to educational rights of minorities under Article 30.

VI. Resources

- A thorough revamp of the administration of forest areas, presently operating under a colonial legal regime and by administrative mechanisms which trace their roots to the colonists, and their replacement with legal and administrative regimes centered around community governance structures based on the rights of indigenous people and forest dwellers, including their right to ancestral domain. The Forest Rights Act is one step in this direction.
- Mining, forest and land policies should be comprehensively amended at the State and Central levels to make them consistent with the letter and spirit of STs and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 and the Panchayats (Extension to Scheduled Areas) Act 1996. In particular, decisions on diversion of forest land, allocation of mining leases, handover of other government lands, and acquisition of private property must be made in consultation with and with the prior informed consent of the *gram sabhas*.
- The recording of the individual and community rights of forest dwelling communities under the Forest Rights Act should be completed in accordance with the law and with full respect for the power of *gram sabhas* of the community to determine rights and manage their resources. A similar statutory process should be instituted by State Governments to record the community and collective rights of STs and Adivasis over other lands.
- Amendment of environment protection legislation in order to ensure proper consultation and control over decision-making by indigenous peoples where developmental projects are concerned. Processes to amend existing laws and rules in order to weaken environment protection checks, such as amendments to the Environment Impact Assessment Regulation, must be reversed. An evaluation of the efficacy of legislation relating to prevention/ prohibition of land alienation, and for restoration of alienated lands, needs to be conducted, and specific statutory amendments carried out. In addition, and even more importantly, barriers within the administrative process, judicial process, and law enforcement process which prevent these laws from being implemented must be identified and addressed.

VII. Cultural and Language Rights

- There is a need to ensure that democratic governance structures for ST areas – i.e. autonomous district councils and *gram sabha* / village level institutions – are given powers to also amend laws that relate to cultural issues, such as dispute resolution, punishment of criminals and application of customary law to disputes. The Nagaland system of parallel courts can be studied further in that respect. The provisions of PESA, which provide for customary dispute resolution at the village level, need to be enforced by providing for such a structure.
- Major Adivasi languages should be included in the Eighth Schedule to the Constitution, and provision should be made for schooling and education in Adivasi languages.
- Formal recognition of tribal religion if the concerned tribals so desire should be accorded. This includes enumeration procedure such as through the decadal census.
- VIII. Indigenous peoples in border areas
- India's very strict laws on entry into the country should be relaxed in the case of indigenous communities whose ancestral domains straddle state and national boundaries. The provision for interaction between Nagas on the Indo-Burmese border can be studied in this respect.
- Within India, the desire of indigenous communities to live under a single State Government should be respected. Administrative boundaries, whether at the village, taluka, district and state boundaries be redrawn accordingly if required. In addition, provisions for self-management and special management institutions having cross-border jurisdiction and powers over certain areas – such as resources, ancestral domains and cultural issues – should be made that allow for such institutions to be set up across state boundaries in the interim.

Naga (Nagaland) *Photo: Chris Erni*

Naga (Nagaland) *Photo: Chris Ev*

CASE STUDIES

I: The Indian Constitution, Law and the Nagas: A case study of Nagaland

Chonchuirinmayo Luithui

1. Background

1.1 Historical

The traditional Naga homeland covering over 120,000 sq. km.[230] lies between the Chindwin in the east and Brahmaputra valley in the west while the international boundary dividing India and Burma runs through this land from north to south. Estimated to be around three to four million, the Nagas are spread in four states of Manipur, Nagaland, Assam and Arunachal Pradesh. Thus, geographically they are at the fringes of India.

Before the British occupation, each Naga tribe[231] had their own specific territory divided into independent villages loosely bound together by a set of customary laws, traditional institutions and governance structure. Though to a large extent, the Nagas have retained this 'independence', the character has changed with the imposition of a system extraneous to them.

British raids into the Naga country began as early as 1825 when its troops, the Manipur Levy, marched from Cachar to Manipur kingdom.[232] According to the State-Dairy of Manipur,[233] between 1826 and 1833, the Manipur Levy under Gambir Sing raided many Naga villages taking hundreds of Nagas as war captives and looted the villages of its domestic animals and food grain. To cite a few instances, Ukhrul and villages in its neighbourhood were raided and destroyed by the Manipur Levy in 1827.[234] In January 1833 they raided Thibomai (Kohima) and took away over 400 bullocks after killing Nagas.[235]

When the British left the Indian sub-continent, Naga territory was left divided between and within India and Burma against the Nagas' expressed will to live as a people. The Nagas were moreover not represented in the discussion on the transfer of power. Though the boundaries of the spheres of interest were never defined in any document, India and Burma claimed that their international boundary line passing through the lands of the Nagas as defined by the British was the line of the spheres of interests. In this regard L.A.C. Fry observed: 'as presumptive Indo-Burma frontier which ... has never been defined let alone demarcated.'[236]

230 Iralu, Kaka D. *The Naga Saga: A Historical Account of the Sixty-two Years Indo-Naga War and the Story of Those Who Were Never allowed to tell It,* 3rd Edition, 2009, p.3.

231 There are more than sixty Naga tribes including Anal, Angami, Ao, Chakesang, Lotha, Konyak, Maram, Phom, Pochury, Poumai, Rengma, Sumi, Tangkhul, Tarao and Zeliangrong

232 Roy, Jyotimoy. *The History of Manipur*, Royal Art Press Calcutta, 1973; (First Published in 1958), pp.77 – 78. The troopers were Manipuri conscripts led by Gambir Sing and his cousin Nur Sing, and Lieutenant Pemberton, one of the two English officers attached to this Levy at the time, entered Manipur Valley in 1825 with the main column. [Roy 77-78]

233 This is the translation of the Manipur Royal Annals (type written) made at the Manipur State Office by Nithor Nath Banerjee in 1904. A hand written note by T.C. Hodson pasted on the cover of the Diary says, 'the Meithei title of this document is *Meithei Ningthouro'*

234 Manipur State- Dairy of Manipur, pp.160-61.

235 Ibid. p.172

236 Fry, L.A.C. *Confidential note* (FL. 10114/11), Foreign Office, S.W.1. London, 7th March 1950

1.1.1 Under British Colonial Subjugation

Between 1845 and 1880, the British took control of a substantial number of Naga villages covering approximately a third of Naga territory and attached them to Assam and Manipur.[237] In 1866, the British government established the district of Naga Hills and set up its headquarters in Samaguting (present Chumukedima) marking the beginning of colonisation of the Naga territory. Simultaneously, this was part of the strategy to prevent the Nagas from launching retaliatory raids in the plains.[238] However, British Nagaland remained under the Foreign Department of Colonial India throughout the British rule. Neither the Provincial Assembly of Assam nor Darbar[239] of the Indian Princely State of Manipur had authority over Nagaland.[240] Fry recorded in his 'Confidential Note' that the 'Traditional Naga Village Council continued as the only legitimate/representative authority throughout the British controlled Nagaland'.[241] For all practical purposes, the Nagas and their homelands remained a nominal part of the British Empire.

Nagaland *Photo: Chris Erni*

The Manipur State Sanad, by which the British re-established the Manipur kingdom, maintained the distinction between the 'territories' of the kingdom and those of 'the hill tribes'. The Sanad states:

237 Luithui, Luingam and Welman, Frans. *Naga History: Chronology of Recent Events*, 2002 http://www.manipuronline.com/Manipur/December2002/nagachronology2002.htm accessed on 22-02-2010.

238 Allen, B.C. *Gazetteer of Naga Hills and Manipur*, 1905; Photographic reproduction by Mittal Publications, 2009, p.19.

239 Court of the state with the king as the judge.

240 Luithui and Welman, op cit.

241 Fry, L.A.C. op cit.

'Further, you are informed that the permanence of the grant conveyed by this Sanad will depend upon the ready fulfillment by you and your successors of all orders given by the British Government with regard to the administration of your territories, the control of the hill tribes, dependents on Manipur, the composition of the armed forces of the State, and any other matters in which the British Government may be pleased to intervene."[242] (Emphasis added)

Assam and areas associated with it had an area of approximately 100,000 sq. miles.[243] The large hill areas were *de jure* demarcated as excluded areas to be administered by the Governor in his discretion, 'but *de facto* they are treated as tribal areas in which the administration is carried on by the Governor not in his discretion but as Agent to the Governor General in Council'.[244]

The British administration enacted the Scheduled Districts Act, XIV of 1874 which empowered the government to declare which law could be in force from time to time in areas including British administered Naga territories. Further, under the Bengal Eastern Frontier Regulation (V of 1873), the Provincial Government could prescribe an 'Inner Line' in the region including Naga territory which could not be crossed by none other than the inhabitants of the Naga territory without a pass from the Chief Executive Officer. Under this Regulation, it was also unlawful to acquire any interest in land by non-natives beyond the 'inner line' without the sanction of the Provincial Government or by any official who had been so authorised.[245]

In 1921, under the Indian Home Rule Act, 1919, the Naga areas in Assam were classified as 'Backward Areas' of Naga Hills district and remained outside the purview of the Assam Provincial Assembly set up under the said Act.[246]

On 10 January 1929, the Naga Club in a memorandum to the British Indian Statutory Commission, called the Simon Commission, asserted that joining India was not an option for the Nagas because of the difference in language and the lack of social affinities with the Hindus and the Muslims who looked down upon them for consuming beef and pork.[247]

In 1935, the Government of India Act was enacted introducing the federal principle, with its corollary of provincial autonomy, and the principle of popular responsible government in the provinces. All the British Indian provinces were to join the federation automatically, and provisions were made for developing mechanisms of accession to the Union by individual states. Provisions were there for states to negotiate their accession to the federation.[248] No Act of the Federal Legislature or of the Provincial Legislature was applicable to an excluded area or a partially excluded area, unless the Governor so directs in a public notification.[249]

Since the introduction of the Government of India Act 1935, the State of Manipur immediately joined the negotiation for hammering out the terms of federation with the Government of India. One of the main subjects of the controversy was the administration of the Hills which cover over 7,000 square miles out of the state's total area of 8,000 square miles. The British adjudged it unsafe to leave their administration in the jurisdiction of the Manipur Government. After a lengthy negotiation, on 21 July 1939 the Manipur Government agreed 'to federate on terms which covered the exclusion of the Hills from his direct control'.[250]

242 Extract from Reid, Sir Robert, *The Manipur State Sanad* in *History of the Frontier Areas Bordering Assam 1883-1941,* Government Press, Shillong, 1942; p.71.

243 *The Excluded and Partially Excluded areas of Assam,* Assam Government Press, Shillong, 22 March 1949, p.1.

244 Ibid, p. 2.

245 Ibid, p.9

246 Luithui and Welman, op cit.

247 Memorandum of the Naga Hills to the Simon Commission.

248 See Sections 5 and 6 of the Government of India Act, 1935.

249 Section 92(1); Government of India Act.

250 Reid, op cit, p.95.

In 1946, the first all–Naga political organisation, the Naga National Council (NNC), was set up to work out terms of relationship once the British withdrew.[251] As part of the arrangement for the transfer of power, Britain wanted the Dominion Government of India and the Naga National Council (NNC) to meet and work out the terms of their relationship once the British were gone.[252]

On 20 February 1947, the NNC proposed for an Interim Government in Naga areas with India as the Guardian Power for ten years.[253] On 26 June 1947, the Interim Government of India represented by Sir Akabar Hydari, the Governor of Assam, and the NNC reached The Nine Points Agreement, popularly known as 'Hydari Agreement'. The Agreement envisaged a Protected State under NNC with India as the Guardian Power for ten years at the end of which NNC will be asked to renew or make a new agreement. The Indian Constituent Assembly concluded that the Nine Points Agreement was merely 'district autonomy within the Indian Constitution' and began preparations to occupy Nagalim by force.[254] The NCC announced its decision to declare their 'independence' on 14 August 1947 and communicated it to Britain, the Interim Government of India, the Commonwealth Relations Office and the United Nations Office.

1.1.2 Indian independence and after: In Search of Justice

After the declaration of their independence, many Nagas were arrested without trial. The NNC asked India to ascertain the decision of the majority of the people in a plebiscite to clear any possible doubt. It was conducted on 16 May 1951 under the aegis of the NNC. 99.9% voted for Naga independence and none for joining India.[255] India refused to respect the outcome of the plebiscite and set out to conduct the first Indian general election in 1952. The Nagas boycotted the election in spite of the heavy military presence. To drive out the military from their land, the NNC set up the Federal Government of Nagaland (FGN) in March 1956 with a military wing. In the next three months Naga army drove out the Indian forces from Nagalim barring a few points.[256] India brought in large re-enforcement and occupied Nagalim. It was reported that there was nearly one security troop for every adult male Naga in the Naga Hills Tuensang District.[257]

From 1964 to 1966, there was a cease fire between the NNC and India without any result. In 1972, the international boundary between India and Burma was officially drawn dividing the Naga people between two nations. In some cases that border ran through villages and houses. The NNC and its government were declared as 'unlawful'. The affairs of Nagaland State were transferred from the Ministry of External Affairs to the Ministry of Home Affairs in an effort to project the Naga struggle for political rights as a 'law and order problem'.[258]

The Central Government passed the Armed Forces (Special Powers) Act in 1958 giving wide power to the Army to the extent of killing. The military set up 'camps' to confine the Nagas; men were rounded up, tortured and killed; women were raped and physically assaulted; neither were the children spared; houses were burnt down and people were relocated from their villages. Militarisation was the biggest cause of human rights violations in the Naga areas. There was not

251 Verrier Elwin defined NNC as 'a natural extension of the traditional system of the Naga village/tribe to the ultimate scale-the whole of the Nagas'. Elwin, Verrier (Ed.). *The Nagas in the Nineteenth Century*, London, 1969, pp. 71-72.

252 Luithui and Welman, op cit.

253 IOR: L/PJ/7/10635: Private and Top Secret letter from Lord Mount Batten to Lord Listowel, dated 24th April 1947. For the full text of NNC proposal see February 1947 issue of *The Naga Nation*

254 Luithui and Welman, op. cit.

255 Iralu, Kaka D. op. cit. p.61.

256 Luithui and Welman, op cit.

257 Mullik, B.N. *My years with Nehru 1948 – 1964*, Delhi, 1972, pp.312-14.

258 Luithui and Welman, op cit.

a single Naga family who was spared from army atrocities.

In 1980, dissatisfied with the NNC, the National Socialist Council of Nagalim (NSCN) was formed to carry forward the struggle for self determination. It was led by Isaac Swu, Th. Muivah and Khaplang. In 1988, NSCN broke up into NSCN (IM) led by Swu and Muivah and NSCN (K) led by Khaplang.

In 1997, the Government of India and the NSCN (IM) entered into a cease-fire effective 1 August. They agreed to have an 'unconditional peace talk'. On 11 July 2002 the Government of India in a Joint Communiqué with the NSCN, recognized the unique history and situation of the Nagas. Though the ceasefire had entered its 13th year, and numerous rounds of peace talks have been conducted, a political resolution was nowhere in sight.

1.2 Traditional council system[259]

The Nagas' system of governance is based on the active participation of the community, including children, through the Traditional Council System. The system may be broadly divided into:

- The Village General Body (all the adult male members)
- Council of family-clan representatives under a nominal hereditary chief or elected by the village public for a given term of office
- Youth Centre (of girls and boys) which has sub-groups based on age-groups from age eight/nine and upwards
- Shared Labour Group
- Elders

The first three in the structure are often engaged in formal roles and duties, the roles played by the Shared Labor Group and the Elders tend to be informal. As the executive head, the Council takes up issues in the manner of a facilitator to achieve consensus and not as the enforcer of authority and power. In carrying out its judicial duty, it acts as a wise and concerned mediator between the parties in the dispute, to reconcile and encourage healing. For the Nagas, justice means building amity and unity through consultation and mentoring. Retribution too occurs on some occasions; but is considered a failure of the entire community. Thus, when faced with issues of a grave nature, it is natural for the Council to go through a process of informal consultation and mediation that cuts across the structures identified above or family or clan affiliations. The Youth Centre[260] is where the main learning takes place, learning traditional values, customary laws and practices, rituals and their meaning, history, community living, team work, social etiquette and decency, fair play, and building skills in taking social responsibility, art of group sharing and discussion, carpentry, weaving, and personal hygiene. In short, all the knowledge and skills of the community are handed down to the youth from the elders through the Centre. Specific responsibilities are given to individual age-groups by the Village General Body or by the Council to maintain the integrity of the community. Elders mentoring the community leaders and the youth strengthen them in their search for knowledge, skills, and balancing their power within. As possessors of important knowledge and wisdom, and as the link to the non-physical world, the presence of Elders is considered very essential to the functioning of the system. People with special skills, knowledge or power, emulate Elders' example of humility and humble themselves as persons entrusted by nature with special duties to serve the community. This is a way of organizing society where the informal and the formal constantly overlap to create a healthy

259 Adapted from Luithui, Luingam. *Indigenous Council System of Governance: The Case of Nagalim*, An Independent Study Submitted In Partial Fulfillment of the Requirement for the Diploma in Community-Based Development, Coady International Institute, St. Francis Xavier University, Canada, 2003.

260 Known as Morung, Long Shim, etc. depending on the tribes

outcome. Members of an association/structure attend to the needs of one another so that they can all participate actively in the community life.

The ultimate objective of this system of governance is to create strong social security by building up the social bond. Every member is held responsible for the community as well as the individual self. The community here consists of all the beings who have passed away, who are present and who are yet to be born.

1.3 Creation of Nagaland State

With their lands occupied by the Indian Military since the winter of 1956,[261] many Nagas participated in the Naga People's Convention (NPC) which was created and controlled by the Intelligence Bureau of India.[262] The proposal from the NPC consisted of Sixteen Points, mainly asking for replacement of the Union Territory created in 1957 with Nagaland State with provisions for enabling 'other Nagas inhabited contiguous areas to join the new State'.[263] India recognised the constitutional capacity of the NPC proposal by pointing out Articles 3 and 4 of the Constitution of India regarding the formation of new states but expressed its inability to comply with the proposal at that stage.[264] In 1960, the Agreement was signed for the formation of statehood for the Nagas comprising of the Naga Hills and Tuensang Frontier division.

To give effect to the Sixteen Points Agreement, the State of Nagaland Act 1962 was enacted and Article 371A was inserted to the Constitution of India by the Constitution (thirteenth Amendment) Act 1962. They came into effect on 1 December 1963. Article 371A is a special provision designed to address subjects, unique to the State of Nagaland as cited in Clause (a) of Article 371A (1).

Nagaland *Photo Chris Ern*

261 Mullik, op cit, p. 312. Mullik admits that: '… nearly two divisions of the army and thirty-five battalions of Assam Rifles or armed police were in operation in the Naga Hills and the Tuensang Frontier Division and adjoining areas'.

262 Ibid, pp.315 – 21. Detailed account has been given on how the Intelligence Bureau created and manipulated it.

263 Clause 13 of the Agreement as proposed by the Convention.

264 Point 13, Sixteen Points Agreement.

Article 371A (1) states as follows:

(a) Notwithstanding anything in this Constitution,- (a) no Act of Parliament in respect of—

i. religious or social practices of the Nagas,
ii. Naga customary law and procedure,
iii. administration of civil and criminal justice involving decisions according to Naga customary law,
iv. ownership and transfer of land and its resources, shall apply to the State of Nagaland unless the Legislative Assembly of Nagaland by a resolution so decides;

(b) the Governor of Nagaland shall have special responsibility with respect to law and order in the State of Nagaland for so long as in his opinion internal disturbances occurring in the Naga Hills-Tuensang Area immediately before the formation of that State continue therein or in any part thereof and in the discharge of his functions in relation thereto the Governor shall, after consulting the Council of Ministers, exercise his individual judgment as to the action to be taken:

Provided that if any question arises whether any matter is or is not a matter as respects which the Governor is under this sub-clause required to act in the exercise of his individual judgment, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in the exercise of his individual judgment:

Provided further that if the President on receipt of a report from the Governor or otherwise is satisfied that it is no longer necessary for the Governor to have special responsibility with respect to law and order in the State of Nagaland, he may by order direct that the Governor shall cease to have such responsibility with effect from such date as may be specified in the order;

(c) in making his recommendation with respect to any demand for a grant, the Governor of Nagaland shall ensure that any money provided by the Government of India out of the Consolidated Fund of India for any specific service or purpose is included in the demand for a grant relating to that service or purpose and not in any other demand;

(d) as from such date as the Governor of Nagaland may by public notification in this behalf specify, there shall be established a regional council for the Tuensang district consisting of thirty-five members and the Governor shall in his discretion make rules providing for—

(i) the composition of the regional council and the manner in which the members of the regional council shall be chosen:

Provided that the Deputy Commissioner of the Tuensang district shall be the Chairman ex officio of the regional council and the Vice-Chairman of the regional council shall be elected by the members thereof from amongst themselves;

(ii) the qualifications for being chosen as, and for being, members of the regional council;

(iii) the term of office of, and the salaries and allowances, if any, to be paid to members of, the regional council;

(iv) the procedure and conduct of business of the regional council;

(v) the appointment of officers and staff of the regional council and their conditions of services; and

(vi) any other matter in respect of which it is necessary to make rules for the constitution and proper functioning of the regional council.

Article 371A (2) is a special provision for the administration of Tuensang District in the first ten years of Nagaland. Article (3) empowers the President to modify or adapt any provisions in

the Constitution because of the difficulty in giving effect to the provisions of Clauses (1) and (2) of Article 371 A within three years of the insertion of the Article.

Thus, Article 371 A is a constitutional guarantee that no Act of Parliament can be made applicable in respect of customary law, management of land and its resources, traditional judicial system and culture unless the State Assembly decides in its favour. As set out in the Statement of Objects and Reasons to the 13th Amendment Act, since, 'these matters are peculiar to the proposed new State of Nagaland, provisions with respect thereto has to be made in the Constitution itself'.[265]

1.3.1 Implication of Article 371A

The Article has an overarching effect on Nagaland's governance, legislations, socio-economic policies, etc. All these have to pass the litmus test of Article 371A. The implication of this article would include:

1. The opening words '*Notwithstanding anything in this constitution*' give overriding effect to the provisions of Article 371A over the remaining provisions of the Constitution of India.[266] Therefore, the State has the power to legislate on matters mentioned in Article 371A (1) (a) and this will prevail over any laws made by the Parliament which would otherwise be applicable where no such constitutional guarantee is available.
2. The land and its resources belong to the people rather than the State.
3. The expression the 'land and its resources' include natural resources of the land and extend to mines and minerals.[267]
4. Recognition of customary law.
5. Criminal and civil disputes can be settled through the Naga customary law in the State court as well as the dispute settlement mechanism/judicial system of the community instead of applying the available law .
6. Ownership and transfer of property have to be based on the customs and practices.
7. Article 371A implies fully the significance of traditional institutions which are germane for the continuation of the customary laws, social and cultural practices, decision making process and the general way of life.
8. The provision is limited only to Naga area in Nagaland and to deny the same recognition to the rest of the Nagas leaves a big question mark on the integrity and commitment of the Indian state with regard to the rest of the Nagas.
9. The Governor is made responsible for law and order[268] which underplays the role of the various social institutions which are responsible for administering the criminal and civil justice according to Naga customary law. There is an assumption that the Governor is a person that has thorough knowledge of the life of the people whereas there is no guideline to ensure that the governor will carry out this responsibility as expected of his office.

Although, Article 371A is a proof of the fact that the Constitution has recognised a certain historical reality, the rights specified in Article 371A are discarded as soon as the national interest becomes the point of discussion. This evidently suggests lack of proper comprehension of the importance of the Article. It appears as if the Article is against national interest. When

265 Paragraph 3, Statement of Objects and Reason, Constitution (Thirteenth Amendment) Act, 1962

266 Opinion given by M. Hidayatullah in Legal Opinion and Interpretation of Article A (1) (a) of the Constitution of India and Related Documents, Department of Justice and Law, Government of Nagaland; 1986, p.53 (The Government of Nagaland has come out with the document to examine the interpretation of Article 371 A (1) with regard to the State Legislative power on 'mines, minerals, oil and like matters' soliciting legal opinion from eminent jurists including H.M. Seervai, F.S. Nariman. R.C. Sarkar and M. Hidayatullah, J.)

267 Opinion as given by F.S. Nariman in Legal Opinion and Interpretation of Article A (1) (a) of the Constitution of India and Related Documents; 1986, p.30

268 Article 371A (2)

rights recognised in Article 371A are repressed to maintain law and order, it also means the destruction of traditional institutional capacity, since nothing is provided to protect those institutions when Central laws are in force. As of now, experience seems to indicate that India is not adequately equipped to reconcile its national security perception with the rights of the people in Nagaland as articulated in Article 371A.

Application of Article 371A may be looked at from the following points:

1. Central legislation not applicable per se: law which relates to the subjects in Article 371A (1) and therefore, it is not applicable without the approval of the Nagaland State Legislative Assembly. E.g.: Mines and Minerals Regulation and Development Act 1957 which directly relates to the land and natural resources. The State Legislative Assembly has not consented to it.
2. Central legislation applicable after approval or amendment by the State Legislative Assembly E.g.: Forest Conservation Act, 1980. Though it directly relates to land and natural resources, it has been approved by the State Legislative Assembly and therefore, applicable in the State of Nagaland.
3. Central legislation beyond the purview of the Article: law which does not relate to the matters laid down in Article 371A (1). E.g.: Advocates Act, 1961, it is an Act created for legal practitioners and for formation of bar Councils. Since it is not related to any of the subject matters in Article 371A (1), it becomes enforceable when State of Nagaland came into being.
4. Central legislation enforced with clear violation of Article 371A: law which has been enforced by the Central government by-passing the State Legislative Assembly on matters that fall under Article 371A.
5. E.g. Armed Forces (Special Powers) Act, 1958 has suspended the power of the State Government to administer civil and criminal justice which is a state subject under Article 371 A (1) (a) (iii) as 'public order' is put in the hands of the Governor.

Source: http://gis.nic.in/atlasnew/nagaland.htm

1.3 The state

The state of Nagaland with an area of 16.8 thousand square km. is divided into 11 districts. The state is bounded by Myanmar on the east, Assam on the west, Arunachal Pradesh and a part of Assam on the north and Manipur on the south. There are 16 tribes with a population of 1.99 million as per the 2001 census.[269] Altogether there are 1,317 villages. It has sixty seats of Legislative Assembly. Nagaland is a tribal majority state with 89.15% comprising 2.1% of the total ST population of the country. There are also settlers from mainland India. The division of Nagaland into districts is largely drawn on the distribution of each tribe's population, though there could also be more than one tribe in some districts as the table indicates.

269 The 2001 census has been disputed as being inaccurate. As per the 1991 census, it was 1.21 million.

TABLE 1: District and tribes in Nagaland

	Districts	Name of the tribes living in the district4
1.	Dimapur	Represented by all tribes
2.	Kiphere	Sangtam (Eastern), Yimchunger and Sumi
3.	Kohima (State Capital)	Angami, Rengma and Zeliangrong
4.	Longleng	Phom
5.	Mokokchung	Ao
6.	Mon	Konyak
7.	Peren	Zeliang, Kuki
8.	Phek	Chakesang, Pochury
9.	Tuensang	Chang, Khiamniungan, Phom, Sangtam and Sumi Yimchunger
10.	Wokha	Lotha
11.	Zunhebuto	Sema

2. Legal Status

Some of the findings on the legal protection guaranteed to the indigenous peoples in the state of Nagaland in the forms of laws and policies are discussed briefly below:

2.1 Recognition and identification

By India's own intercession in the United Nations (UN) General Assembly during the passing of the UNDRIP, there is no doubt that Naga people are indigenous peoples according to the understanding of that term under international law. Nagas are descendents of the population of a geographical region prior to its colonisation by the British and subsequent extension of sovereignty by India and Myanmar, and later division into various states within India against the stated wishes of the Nagas. Further the Indian State recognises them as STs though refusing to acknowledge the term 'indigenous', claiming instead that all of its inhabitants are 'indigenous' to India. According to the UN, indigenous peoples' existence does not depend on whether the state recognises them as people or not as 'self-identification' as indigenous being a major factor. However, it *is* the state's duty to respect them as human beings.

Conquest and colonisation represent imposition which took place when foreign powers established themselves over the land in different ways. In ILO and the broader UN understanding, it does not have to be a military conquest, but it could be a blanket claim over the sovereignty over the indigenous peoples' land and enforced through the extension of state laws and armed forces as was the case with the Nagas, both by Myanmar and India. For the indigenous peoples, what matters is whether they are still living in conformity with their socio-economic, cultural and traditional institutions.

Article 371A was born out of distinct status of indigeneity of Naga people without really referring to it. The Government of India has notified Naga, Kuki, Kachari, Mikir and Garo as STs from Nagaland. However, except for the first two names, no mention is found of the latter

Naga (Nagaland) *Photo: Chris Erni*

three names in the Nagaland Government listing of people in Nagaland.[270] On the other hand, the last three tribes had been mentioned in advertisement for jobs on the condition they are 'indigenous inhabitants of Nagaland'.[271]

Any citizen, who claims to belong to an ST,[272] has to prove so by showing an ST Certificate issued by the Deputy Commissioner's Office. The Government of Nagaland also issues 'Indigenous Inhabitant Certificates'[273] to the traditional inhabitants which are issued to the individuals who have been residing in Nagaland before the State came into being. The certificate is for the purpose of employment.

2.2 Non-discrimination

In general, the condition of the indigenous peoples from the northeast region is noticeably better than the indigenous peoples in the rest of the country. One reason for this is the distance from the mainstream society and the independent control they maintain over their natural resources. However, when they enter other parts of India, they are often discriminated against, based on their facial features which are distinct from most other groups. There is also discrimination between different tribes and against women in indigenous societies; for example, among the Nagas, women do not have equal freedom and rights concerning inheritance (discussed in 2.9 below).

The Nagaland government has created a number of schemes and programs for socio-economic growth of people from Mon, Kiphere, Longleng and Tuensang who are socially and economically at a disadvantage as compared to the rest of the tribes in the states, including reservation of 25% of seats in government jobs.

270 www.nagaland.nic.in

271 For example, see http://www.nagaland.nic.in/citizenservices/advr.htm.

272 Recognised as STs under the Tribe last (Modification) order 1950 read with Bombay Re-organisation Act. 1960 and the Public Re-organisation Act, 1960

273 Issued under Govt. order No. APPT- 16.6.1967 dated 6.7.1973 Annexure to notification No. AR 8.8.76 dated 28.4.1977

2.3. Self-management, Participation and consultation

2.3.1 Nagaland Village and Area Council Act, 1978

Traditionally, the Nagas practise consensus decision-making where opinions of all are taken into account rather than following a few people's view. As mentioned earlier, each Naga village lived as an independent state having its own system of governance. A village means and includes the area recognised as such by the Government of Nagaland. This necessarily requires that:

a. The land in the area belongs to the population of that area or given to them by the Government of Nagaland, or if the land in question is a Government land or given to them by the lawful owner of the land and
b. The Village is established according to the usage and customary practices of the population of the area.[274]

Every village has a Village Council (VC) which is the supreme body of the village.[275] The village chief, whether hereditary or elected, is the head of the administration. Every activity within the village comes under purview of the respective VC. Even today there are few changes in the village administration. The VC was given legal recognition when the State of Nagaland enacted the Nagaland Village and Area Council Act 1978 (Village Council Act hereafter).

The members to the VC are to be chosen by the villagers in accordance with the prevailing customary practices and usages, the same being approved by the State Government. The hereditary Village Chiefs, *Gaon Burrahs*[276] and *Angs*[277] are the Ex-officio members of the Councils and they are given voting rights (Section 4). Each VC is to choose a member as a Chairman (Section 7). The tenure of the VCs is five years.

VCs have a very important role in the matter of governance in Nagaland. The main function of the VC, among others, is to formulate development schemes in the village and oversee maintenance of welfare activities including water supply, forest, power and education [Section 12 (1)]. The Council is auxiliary to the administration and has full powers to deal with internal administration of the village including maintaining of law and order [Section 15 (1) (a)]. One of the important roles played by VCs is in supervision of immovable property within the village. It is mandatory for them to maintain written records [Section 15 (1) (g)].

2.3.2 Village Development Model Rules 1980

Under the Nagaland Village and Area Council Act 1978, the State Government enacted the Village Development Model Rules in 1980. Under the rules, the Village Development Board (VDB) was constituted in 1982 all over Nagaland. It was created to facilitate decentralised development programmes by involving the VDBs at the grassroot level. The VDB, subject to the directives issued by the VC, is to formulate schemes, programmes of action for the development and progress of the village [Rule 3]. All permanent residents of a village are members of the VDB [Rule 4 (a)]. For the management of the VDB, every village has a Management Committee of VDB whose members are selected by the VC. One-fourth of the Management Committee members have to be women [Rule 4 (b)].

All the schemes of the Department of Rural Development are implemented by the VDBs. It is mandatory for the VDBs to have a fixed deposit account which is the main basis for the existence of the VDBs. The VDBs are accountable for all the funds received by the village either

274 Explanation to Section 3, Nagaland Village Council Act.

275 Venuh, Neivetso. *British Colonization and Restructuring of Naga Polity*; Mittal Publication, 2005.,p.21

276 *Gaon burrahs* are chieftains representing the various clans in the village.

277 The chief is referred to as *Ang* or *Angh* among the Konyaks. It is based on hereditary and sons can inherit the chieftainship.

as grant-in-aid, matching cash grant and other financial aids. The funds are allotted reciprocal to the number of households in each village.

Creation of VDBs has enabled the people to participate directly in development projects which are directly related to them. The VDB is based on people's participation in the process of decision-making as well as facilitating self-management of resources.

Some of the drawbacks that often came up during the discussions included the lack of accountability on the part of the VDB and VC and misuse of funds and the level of control the DC has over the VDB.

2.3.3 Nagaland Communitisation of Public Institutions and Services Act 2002

This Act is a clear example of the change in the utilisation of services where the community is made the main stake holder. In 2000, the State of Nagaland invited the citizens to discuss the future of Nagaland. An urgent need to improve the delivery system of government services at the grassroots was a recurrent theme in the discussion. Taking a cue from this and also recognising that the community spirit is very strong in Naga society and working through traditional institutions,[278] the process to communitise the welfare services was initiated.

Nagaland Communitisation of Public Institutions and Services Act (called Communitisation Act hereafter) was passed in 2002. It is a first of its kind in India where the whole public services has been communitised so as to deliver better service to the beneficiaries. The Act's main driving force is the participation of the communities in the running of public institutions and services. In the beginning, the main focus was given to the three very important areas: Elementary education, Grassroot health services and Electricity management.[279] The Act enables the community to participate in the management and development of the public institutions, as their own.

Section 3 empowered the State Government to constitute authorities for a village or two to exercise the powers and to discharge the functions as provided in the Act.

Nagaland Communitisation of Elementary Education Institutions and Services Rules 2002.

The Nagaland Communitisation of Elementary Education Institutions and Services Rules, 2002 was notified soon after the passage of the Communitisation Act. It covers all the Primary and Middle Schools which the Government declared by notification to be communitised. This entails the handing over of responsibility of its management to the community. The VC is empowered to elect a Village Education Committee (VEC) or Common Education Committee (CEC) in the case of more than one village.[280] The VEC has the responsibilities to manage, direct, supervise and control the schools and to ensure their participation in the community and to create a sense of ownership and belongingness (Rule 4). The VEC is empowered to grant leaves to teachers and take disciplinary actions. Their recommendation has to be taken into consideration while transferring or retaining of teachers within their jurisdiction. They are also empowered to appoint substitute teachers for a period of three months to one year (Rule 6).

In the first year of its implementation, the Communitisation was reported to be a huge success. The Education Department compiled reports of 199 VECs covering 400 communities. It came out with a booklet 'VEC Speaks' in 2004. The inference drawn from the reports indicates:

278 Statements of Objects and Reasons of the Nagaland Communitisation of Public Institutions and Services Bill, 2002.

279 *Communitisation in Nagaland: A Unique Experiment in Empowering People* available at http://www.nenanews.com/ANE%20June%201-15,%2007/special%20report1.htm

280 Where more than one village share a communitised Middle School in an area, a CEC is to be constituted.

TABLE 2: Exracts from VEC Speaks [281]

Enrolment	90% villages reported improvement
Academic performance	80% villages reported improvement
Dropouts	75% villages reported reduction
Student attendance	90% villages reported improvement
Teachers attendance	80% villages reported improvement
Receipt of government grants	100% villages reported receipt
Community contribution	100% villages reported receipt in cash, kind or labour.

Nagaland Communitisation of Sub-health Centres Rules 2002

The Health Centre Managing Committee (HCMC) is to be constituted by every communitised Community Health Centre or Primary Health Centre of the constituent villages or towns. The HCMC is responsible for the overall health needs of the constituent villages, which the Health Centres serve, including the management of Health Centres. The Committee is empowered to supervise, direct, guide and support the Health Centre staff; make assessment of the overall health need of the constituent villages on the basis of annual plans made by the Village Health Committee; procure medicines for the health centres; build infrastructure; and mobilise resources and disburse salaries. One significant provision is the empowerment given to the committee to devise ways and means to popularise the traditional and herbal medical system as well as to recognise and utilise the services of its practitioners in the area. After its implementation, there have been reports on improvement in the staff attendance, re-deployment of staff for posting to all communitised health centres and better maintenance of infrastructure.

The recurring theme in the communitisation of public services is the space given to the people to manage and control available facilities. In June 2008, the government of Nagaland was awarded the UN Public Service Awards for communitisation programme in recognition of its innovative use of rich social capital.[282]

2.3.4 Consultation on Biological Diversity Rule

The Biological Diversity Act, 2002 was enacted by the Government of India. One of the directions under the Act was for the state to frame its own rule. In pursuance of this, the Nagaland government is in the process of creating the Nagaland Biological Diversity Rules taking into consideration the customary laws and practices governing the biodiversity, traditional knowledge and the land tenure system. It has invited the communities for their opinions with a set of questions.[283]

The Nagaland Biological Diversity Rules is still in the process of being framed and therefore, it is difficult to ascertain how far its impact is going to be on the customary practices of the people.

2.4. Access to justice

Access to justice includes having access to effective remedy for the violation of one's right as well as the right to defend oneself before the court of law; to be treated fairly as a person before law as an equal with the rest of fellow human beings. It also requires efficient and timely

281 Adapted from Bansal, Rajiv. *Communitisation of Elementary Education in Nagaland - A Novel Initiative* available at **http://mdoner.gov.in/storiesdetails.asp?sid=18**

282 *Success story of Nagaland communitisation plan* available at http://news.indiainfo.com/2008/05/29/0805291211_communitisation.html

283 http://nagaland.nic.in/NBR/questionaire.pdf

settlement of disputes, accountability; and easy accessibility in terms of distance, affordability, procedures and language. It is required of any democratic state to administer justice equally to everyone.

There are two forms of court of law in Nagaland. The first is the state-sponsored Court and the second is the Customary Court. Under the state-sponsored Court, all the laws that have been extended to Nagaland apply, including the Legal Services Authorities Act, 1987 which mandates the state to provide legal aid to defendants who are unable to afford legal counsels due to indigence.

2.4.1 District Customary Court

Naga people have been following a traditional system of administering civil and criminal justice. Their way of settling disputes are not adversarial; rather they are reconciliatory to regain the social bonding between the parties in dispute. Article 371A (1) (iii) guarantees protection to their customary law.

Likewise, the state of Nagaland has set up a District Customary Court in every district. The people have the options of going to the customary court or the state court. Anyone who wishes to be heard before the district Customary Court has to file the case addressed to the Deputy Commissioner of the district who then forwards it to the customary court. The judge in the customary court is known as *Doobashis*. Depending on the number of households, there could be one or more *Doobashis* from each village. The Deputy Commissioner then forwards the case to the customary court where procedures are according to the customary law. All the consequences, as available in ordinary court apply to the customary court. Most of the cases that are preferred before the customary court are civil in nature. On the other hand, most of criminal cases are registered by the police and therefore, they are heard before the state sponsored courts. Cases which are not registered with the police are pursued by the village council.

2.4.2 Human rights

Human right violations, including developmental onslaught, torture and extra judicial killings, violence against women and fratricidal killing, are part of the Naga history. A number of oppressive laws have been created to manage the 'law and order' problem in the state. Among them are Armed Forces (Special Powers) Act 1958 (AFSPA), Assam Maintenance of Public Order (Autonomous District) 1953, Disturbed Area (District Court) Act 1976 and National Security Act 1980.

AFSPA came into force in Nagaland as an ordinance and then, it became a law in 1958. The Act gives special powers to the Armed Forces to aid civil power where there is 'such a disturbed or dangerous condition' (Section 3). The law gives unfettered power to 'any commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank' in the armed forces to use force, fire upon to the extent of causing death if he is of the opinion that the person is acting in contravention of any law or order for the time being in force. They can destroy properties, arrest, enter and search any property without warrant (Section 4). The Act requires prior sanction of Central Government for instituting legal proceedings against any person in respect of anything done in exercise of the powers conferred by the Act (Section 6). Some of the consequences of AFSPA are:

- Legalising extra-judicial killing which is a clear violation of the right to life
- Giving discretionary power to the Governor to declare the whole or part of the State or as a disturbed area without consulting the duly elected representative and in effect a de facto imposition of emergency.
- Violating the rights guaranteed by the Constitution under Article 371A by taking away

Naga Hills (Manipur) *Photo: NPMHR, 2010*

the right of the people to administer criminal justice in accordance with their customary law.

- Depriving people of legal remedy with the imposition of the requirement of prior sanction from the Central Government for any legal proceeding against any member of the armed forces for anything done in exercise of the powers conferred by the Act. It is not about helping the civil administration but it is more about installing martial law.
- Denial of the fundamental right to judicial remedy under Article 32 of the Constitution.

In Naga People's Movement for Human Rights v. Union of India (1998) 2 SCC 109, the Supreme Court of India laid down a number of directives which are to be followed in the exercise of powers under AFSPA. It is yet to be seen whether the armed personnel have been following the directives. The excesses that stem from the imposition of AFSPA have, to a large extent, irreparably changed Naga society. Protected by this law, some members of the military personnel have committed murder, rape,[284] torture, destroyed properties and imposed curfews for indefinite periods, thereby disrupting the livelihood of the people. Many families have been destroyed by the loss of their kin.[285] The Central Government appears to remain indifferent to this misuse of power and when cases are raised, almost unanimously sides with the armed forces. For example, under AFSPA, the Ministry of Home Affairs had overruled the decision of the State Assembly on the findings of Retd. Judge Sen on the incidents of 5th March 1995. With the exception of a few cases, the courts have also been reluctant to take action against human rights violations by the armed forces.[286]

284 One of the worst forms of military atrocities is seen in the sexual exploitation of women to put pressure and create fear psychosis amongst the people. This has been the case in many Naga areas.

285 There is a long list of atrocities committed by the members of armed forces in the areas declared 'disturbed'. For details, please see : NPMHR Fact Finding Report on Lungdoram Incident on 4th December, 2009; (Unpublished); Naga People's Movement For Human Rights; *People and Gun: Naga Peoples' Struggle for Peace*, 2009; Naga People's Movement for Human Rights; *Annual Activities Report,* April 2008 – March 2009; Committee for the Repeal of the Armed Forces Special Powers Act, Delhi; *End Army Rule: A Report on the working of theArmed Forces Special Powers Act in the North East.*

286 For example in *Sebastian Hongray* v. *Union of India*, (1984) 1 SCC 339, the Supreme Court directed the defendant, Union of India to pay compensation for the disappearance of two persons who were detained by the army.

2.5. Culture and language rights

Many of the indigenous languages are passed down orally which makes them highly vulnerable to extinction. Nagas have a rich tradition that has been passed down from generation to generation in the form of songs, folklores, dance and stories. Their knowledge of the forest and land has been acquired from thousand years of experience as reflected in their strong affiliation to their traditional institutions.

Sixteen languages are spoken in the state. There is, however, no common Naga language and English is the official language of the state. Administrative as well as judicial communications are in English. Nagamese287 is used for casual communication.

2.5.1 Youth Centre: the house of learning

The Youth Centre (Discussed in 1.2 above) is central to the Naga way of living. Unfortunately it is slowly becoming a thing of the past. The advent of Christianity and modern form of education are mainly responsible for its weakening. The introduction of Christianity has greatly altered the traditional belief system as well as traditional institutions in Naga areas.

Some of the NGOs are attempting to teach children through the traditional system. In Tuensang district, Eleutheros Christian Society, an NGO in partnership with *Sarva Siksha Abhiyan*[288] has set up a Morung[289] where the children learn weaving, farming and other vocational courses. The elders tell stories in the evening. Such practices are important for the overall growth of the child and the continuation of Naga traditions and culture.

Naga (Nagaland) *Photo: Chris Erni*

2.6. Education

The Central Government announced in 2004 under its National Common Minimum Programme that it would ensure that all northeastern states will be given special assistance to upgrade and expand infrastructure.[290] Some of the issues that need attention include:

- Ways of improving vocational courses
- Improvement of the infrastructure
- Development of technical education, which is still at its nascent stage
- Low qualification of teachers
- Lack of good institutes for higher learning

Though culture, customs and traditional way of life are strongly practiced, there is no course in this regard in the formal education system except for a course on Nagaland politics and geography at high school level.

2.6.1 Community ownership of schools

Marked improvement has been observed in the level of education where the community has been made partners in the administration of the educational institution as the study indicates (Table 2). *Sarva Shiksha Abhiyan* (SSA) was initiated by the Government of India in 2000 to universalise elementary education by community-ownership of the school system. The communities are responsible for providing quality basic education to their children. The states have to formulate the programme in their own context. The programme encourages public-private partnership in running educational institutions.[291] The setting up of Morung in Tuensang (mentioned above) is an example where the state and a non-state body have come together to impart quality education that covers learning traditional way of life. SSA gives fund to the VEC for the running of the schools.

The teachers are answerable to the VEC. The policy of 'no work, no pay' is followed. Before VECs were set up, the deployment of the teachers were not organised and even though the teacher/student ratio was about 1:25 in the state, there was great disparity in the distribution of teachers. In some schools there were no teachers whereas in others there was high concentration of teachers. After VEC was established, the teachers were redeployed depending on the actual teacher/student ratio.

Thus, while establishing partnership between the state and the community through the communitisation process, there is a transfer of decision making power and management of schools to the community. There is a substantial gap in localizing the formal education system, however, there are efforts to move in this direction as in the case of the initiative to encourage the Morung system.

2.6.2 Medium of Instruction

The State Government seems to be wrestling with the issue of which particular local language can best serve as common language in particular schools. The medium of instruction in Nagaland schools is English. There is a direction from the Education Department that English is the compulsory medium of instruction and the teachers are liable to punitive action in case of deviation from the direction.292 Clear distinction has been made between medium of instruction and language to be taught as a subject which 'includes English, Hindi and Naga Languages'.293

290 National Common Minimum Programme of the UPA Government, announced in May 2004. Extracts relating to Education is available at http://www.education.nic.in/ncmp.asp

291 http://www.education.nic.in/ssa/ssa_1.asp#1.0

292 Notification No. EDS/MIN-15/2004; Education Department, Government of Nagaland; issued on 27th February, 2008

293 Ibid, para 3

Even though Kuki has been recognised as a tribe in Nagaland, there is no mention of the language in the direction.

2.7. Land, natural resources and environment

Historically, Nagas have established themselves in the present geographical region for the longest time and have no factual historical account of having migrated from elsewhere or memory of being uprooted from their land at any point of time. Further, they have never surrendered their rights over their land and have stayed on in their land in spite of hardships suffered by military agression. They have continued to maintain a relationship with their ancestral land, and there is no power other than the community who has control over it. No political body has by-passed the people in claiming exclusive ownership of their land. The rights and control over land by the community is managed through a complex relationship between the individual, family, clan, village, tribe and the outsider.

Photo: Chris Erni

Article 371A is the constitutional recognition of this historical reality; ie. of the community controlling the land according to their respective customs. To date, the Nagas have not surrendered their rights to a power that has evolved either into a state, nor a power that was recognised as a state. According to H.M. Seervai[294], 'land and its resources' mean that rights to major and minor mining of minerals and oil - which belong to the owners of the land - are outside the purview of Central legislations.

It may be relevant to mention here that Nagaland had not consented to the Mines and Minerals Regulation and Development Act, 1957. However, in 1972, the Nagaland State Government gave license for oil exploration to Oil and Natural Gas Corporation (ONGC) without the consent of the people. This was opposed by the people but ONGC had gone ahead with the exploration apparently for non-commercial purpose. When it was found out that it was

294 His opinion in *Legal Opinion and Interpretation of Article A (1) (a) of the Constitution of India and Related Documents*; Department of Justice and Law, Government of Nagaland, 1986, p.27

for commercial purposes, it was challenged by the Naga civil society led by the Naga Students' Federation (NSF) in the early 1990s.[295] The ONGC stopped exploration in May 1994. However, in 2008, they made an attempt to resume exploration and drilling. An agreement was arrived at with a Canadian company, Canoro Resources Ltd (ONGC's principal exploration partner) in Champang located at Wokha District. It was reported that the company was given permission to explore with the agreement that its oil ambitions are in consonance with the wishes of the people and that it would fulfill the wishes of the people including 'employment generation, good roads and infrastructure and company-initiatives toward growth of local economy, particularly of the areas in concern'.296

2.7.1 Land Ownership System

Land ownership can be divided into (i) community land, (ii) clan land, (iii) lineage land and (iv) individual land. In spite of these differences in ownership, the Village Council retains a very important role in the administration of the property within the village.

1. Community land: Community land comprises of undivided land[297] including Morung, forests, roads, village playground and building, burial grounds, church and water bodies. The village community is the trustee of the village.
2. Clan Land: The clan has the absolute control over the clan land. The oldest member of the clan is the custodian or head, and he exercises titular rights over the land.
3. Lineage Land: In a clan, there are different lineages or kin groups who control a specific portion of land. The usage of the land is up to the kin group and they are free to transfer titles of the land to people who are citizens of the village.
4. Individual Ownership: Individually-owned property includes residential areas, farm land and tree plantation. It could be owned by an individual or a family. However, the land is still open to the public for collection of food. The land is closed to the public only when crops are growing. Once the harvest is over, the land is opened to the public again.
5. In general terms it is the required labour that is recognized and valued. Residential areas or a house can be sold in the sense that one tries to pay or compensate the value of the labour invested. Equating with market value of the material and land is more of a recent trend. Terrace fields and homestead are the only ones in many areas that become more or less properties, i.e. hereditary properties because they have been used over centuries.

There is another form of individual right which is an exception to the tribes of *Konyak.* They have an autocratic form of governance. Their hereditary chief of the village (*Ang* for *Konyak)* , unlike in other tribes has wide power in the control over land and in the administration of the village and its relationship with the rest. He is assisted by a council of elders.

One of the most refined customs seen in the maintenance of terraced field is the water sharing or the irrigation system. The canal has to be built with certain limitation on the height, so as to maintain stability of the embankment. To avoid wasting water, the terraced field must let the water flow to the next field or in such a way that the immediate field can make use of the water.

2.7.2 Laws and Regulations

By virtue of Article 371A (1) (d), none of the central legislations are applicable to the

295 Lonkumer, Lanu and Wongtong, Toshi. *Preliminary survey-cum-Report on ONGC/ Border Issue and legal Interpretations of 16-point Agreement and Article 371A of the Constitution of India*, in Vashum, R. et al (ed), *Nagas at Work,* Naga Students' Union, Delhi,1996, pp.116-133.

296 Ngullie, Al and Hungyo, Thannganing. ***Champang Oil: US$ 115 million for Nagaland government*** available at http://www.stockhouse.com/Bullboards/MessageDetail.aspx?p=0&m=23397534&l=0&r=3&s=CNS&t=list

297 Shimray, U.A, *Ecology and Economic Systems: A Case of the Naga Community.* New Delhi: Regency Publications, 2007, p.81.

ownership and transfer of land and its resources unless the State Legislative Assembly gives its assent to it. Going by the spirit of the Article, the people should be the sole owners of their land. However, a number of laws and policies including legislations from the pre-colonial era, setting up of Special Economic Zones (SEZs), exploration of the land for mining purpose are nullifying the ownership of land by the people.

1. Bengal Eastern Frontier Regulation (V of 1873): (Mentioned above) The Regulation belongs to the British colonial era and it has continued to exist in spite of Article 371A. Among others, the Regulation makes it unlawful to acquire any interest in land by non-natives beyond the areas demarcated as 'inner line'.
2. Nagaland Land (Requisition and Acquisition) Act, 1965: The Act was enacted to consolidate the law for requisition and speedy acquisition of premises and land for certain public purpose.[298] 'Public purposes' has not been defined by the act but it has been stated to include:[299]

- maintaining supplies and services essential to the life of the community,
- providing proper facilities for accommodation, transport, communication, irrigation, flood control and anti-erosion measures including embankment and drainage,
- providing land individually or in groups, to landless, flood affected or displaced persons, or to a society registered under any law for the time being in force, or a company incorporated under any law for time being in force, formed for the benefit and rehabilitation of landless, flood affected or displaced persons.

The State Government or the authorised person can requisition any land by order in writing making further orders where it appears to 'it' or to him to be necessary or expedient in connection with the requisitioning (Section 3).

Place of worship cannot be requisitioned.[300] No requisition is to be made where the owner of the land has not been given the chance to make his representation against such requisition.[301] Where the requisition has been made, the owner has to deliver the possession to the appropriate authority (Section 4).

Notice has to be given to the owner and any person whom the government deems to be interested to show cause why the requisitioned land should not be acquired. And accordingly, the government can pass such order as it deems fit.[302] Once there is order for acquisition, the State Government has to publish in the Official Gazette a notice to that effect.[303] Subject to the provisions of this Act, on such vesting, the provisions of the Land Acquisition Act, 1894 and its rules apply to such lands.[304]

1. Nagaland Forest Act, 1968: The introduction to the Act states that it is 'an Act to amend and consolidate the law relating to forest, produce and the duty leviable on the timber in Nagaland'. The Act empowers the State Government to 'continue any land at the disposal of the Government as a reserved forest'. According to Section 2(6) 'land at the disposal of the Government' means land in respect of which no person has acquired-
    a. a permanent, inheritable and transferable right of use and occupancy under any law for the time being in force; or
    b. any right created by grant or lease made or continued by, or on behalf of, the Government not being land vested in the Government for the purposes of the Central

298 Introduction to the Nagaland Land (Requisition and Acquisition) Act, 1965
299 Section 3 of the Nagaland Land (Requisition and Acquisition) Act
300 Proviso to Section 3
301 Second Proviso to Section 3
302 Proviso too Section 6 (1)
303 Section 6 (1)
304 Section 6 (3).

Government.'

The implication of this provision would mean the Government can declare any forest land which has been acquired by any person as reserved forest including land belonging to the village and clan. This provision does not recognise the collective ownership of the land by the community whereas collective ownership is the crux of community control over their land.

Further, the Act declares that: '(T)he practice of jhum cultivation shall in all cases be deemed to be a privilege subject to control restriction and abolition by the State Government, and *not to be a right*.'[305] (Emphasis added) By stating that jhum cultivation is not to be enjoyed as a matter of right but a privilege controlled by the State Government, the customary right of the community over their land is being curtailed.

1. Nagaland Jhumland Act 1970: The Act was enacted to safeguard and regulate the rights to jhumland. Seventy per cent of the population in Nagaland is engaged in agricultural activity of which majority practise *jhum* cultivation.[306] Jhumland has been defined as such lands which any member or members of a village or community in a permanent location 'have a customary right to cultivate by means of shifting cultivation or to utilise by clearing jungle or for grazing livestock and includes any beds of rivers' [Section 2 (7)]. A village or a community right to jhumland is established where such village has enjoyed the right according to the local custom for not less than 30 years [Section 3(1)].

Jhumland cannot be transferred to another village or community except on the authority of the Deputy Commissioner at the recommendation of the Village Council [Section 4(1)]. Similarly, individuals having customary right over jhumland cannot transfer outside the community or village except on the authority of the Deputy Commissioner at the recommendation of the Village Council [Section 4 (2)]. Jhumland cannot be leased without the approval of the Deputy Commissioner at the recommendation of the Village Council. However, a person who has right over the jhumland but by reason of age or infirmity cannot cultivate the land, can then lease it. (Section 5). Improper transfer or lease is liable to forfeiture of right over the jhumland (Section 6). Penalties can be imposed where there is violation of orders or directions passed by a competent authority.

Jhumland Act is a clear case of how, in the guise of protecting the interest of the people, their rights are, instead, being denied. Transfer of land can be made on the recommendation of the Village Council. However, by conferring the power to the Deputy Commissioner to approve the transfer or lease of the land, the final authority resides with him and not with the village council or community. This defeats the independent control over their land by the village council and community.

2. Forest (Conservation) Act, 1980: The State Government has partially extended the application of 'Forest Conservation Act, 1980' (No 69 of 1980) to the state of Nagaland (state forest), vide Government notification No. FOR-58/82 dated 3.7.1986. The Act can be enforced only in the Reserved Forest, Wildlife Sanctuaries and National Park areas.[307]

1.1.1 Status of Nagaland Forest as of 31 January 2001[308]

Out of the total land area of 16,57,583 hectares, forests occupy an area of approximately 8,62,930 hectares.

---

305 Section 9 (4) of the Nagaland Forest Act.

306 Jhum cultivation is also known as shifting cultivation mostly practiced on the hills and slopes where the trees and undergrowth are set on fire increasing soil fertility. The land is cultivated for a few years and then, it is left fallow for a number of years after which the cycle begins again.

307 http://nagaforest.nic.in/Legislation.htm

308 http://nagaforest.nic.in/Statistics.htm

TABLE 3: Statistics of Forest

	Legal Status	Forests Areas (Ha)	% of Total Forest Area
(a)	Reserved Forests	8583	1
(b)	Purchased Forests	19247	2.3
(c)	Protected Forests	50756	5.9
(d)	Wildlife Sanctuary and National Park	22237	2.6
(e) i. ii.	Village Forests Virgin Forests Degraded Forests	 477827 284280	 55.4 32.9`
	Total	862930	100

TABLE 4: Reserved Forests

	Name of the Division	Area (in ha)
a	Kohima Division (Rangapahar)	6,226.00
b	Mon Division (Singphan)	2,357.00
	Total	8,583.00

TABLE 5: Wildlife Sanctuaries and National Park

	Name	District	Area (in ha)
a	Intanki	Kohima	20,202
b	Puliebadze	Kohima	923
c	Fakim	Tuensang	642
d	Rangaphar	Dimapur	470
		Total	22,237

TABLE 6: Protected Forest

	Name	District	Area (in ha)
A	Jaluki Protected Forest	Kohima	414.00
B	Shilloi	Phek	8,857.00
C	Sangtam-kuki	Phek	8,401.97
D	Athumza	Phek	1,472.00
E	Chipoketami	Phek	2,000.00
F	Aochaklimi	Zunheboto	62.16
G	Suruhoto	Zunheboto	138.57
H	Lizatomi	Zunheboto	146.00
I	Sapotami	Zunheboto	32.00
J	Khamannbato	Zunheboto	266.77

K	Chubi	Mokokchung	134.68
L	Mingkong	Mokokchung	275.32
M	Longsa	Mokokchung	18.00
N	Wokha	Wokha	323.75
O	Aitepyong	Wokha	233.10
P	Yikhum	Wokha	42.00
Q	Chessore	Tuensang	160.58
S	Saramati	Tuensang	362.60
T	Konya	Tuensang	450.00
		Total	2,3791.70

2.8. Socio-economic rights

As compared to other indigenous peoples in India, Nagas have a better standard of living. This could be due to their independent control over their land and natural resources and long established social system. They are generally egalitarian with strong community spirit which is

Naga (Nagaland) *Photo: Chris Erni*

opposed to centralised decision making and social segregation such as the caste system, which is widely prevalent in other parts of the sub-continent. Their traditional institutions, which are highly developed, have provided them strong social security and a fervent belief in the benefits of the community system.

Article 371A does not include economy and development *per se.* However, custom is recognised in Article 371A and since it governs to a great deal the Nagas' socio-economic set up, the State has a mandate to legislate where custom and socio-economy are directly linked. An example could be the VDB mentioned above which had been established for managing developmental activities in the village.

The introduction of cash economy and western education by the British has greatly changed the social dynamics. This put pressure on the traditional land ownership system,[309] with the result that individuals have started claiming ownership of land. This has severely affected the Naga way of life which traditionally revolves around the village and the available village territory that determines the limit of the economic activity.

Further change has been brought about by acquisition of land by the State for office buildings, mining, road, parks and developmental projects. In 2007, the Prime minister announced the creation of two Special Economic Zones (SEZs). A total of 50.70 hectares at Ganeshnagar under Dhansiri Sub-Division, Dimapur District has been accorded the status of a Special Economic Zone (SEZ) for setting up Agro food processing under the SEZ Act.[310] The SEZ has been created on individually owned land through a Memorandum of Understanding (MoU). It has come up in the discussion that the MoU is still in skeletal form and the state has not started implementing it. There is high rate of unemployment. The majority of the workforce of the State is either in the rural areas or in the unorganised urban sector. Agriculture (27.48%), construction (15.43%), transport and communication (18.14%) and public administration (12.73%) comprise three-fourths of the State's Nagaland State Development Programme (NSDP).[311] As in other parts of the country, large numbers of youths are shifting to urban cities like Delhi and Mumbai in search of employment.

Communitisation of the public services and institutions in the village has brought about a lot of changes. However, this explanation alone appears insufficient to address the increasing socio-economic problems such as unemployment and drug abuse.

2.9. Gender equality

Naga is a patrilineal and patriarchal society in spite of the presence of relative egalitarianism vis-à-vis other parts of India. Women in Nagaland enjoy a far better position than the women belonging to the caste society in other parts of India. However, their position within the Naga community can be inferred from the fact that they have little say in the decision making process and have no right to inheritance of hereditary property. The literacy rate of women and the enrolment rates for girls in Nagaland are higher than the national average.[312]

Women comprise 47% of the population in Nagaland according to the 2001 census. Of this, 72% are engaged in agricultural activity. They take care of the sowing and planting till the harvesting while men clear the land for farming. Rice is the staple food of Nagas but besides rice, the women grow different vegetables. In the tertiary sector, the women work at the lower

309 Shimray, U.A, Ibid p.89.

310 *Special Economic Zone for Nagaland: The first in NE*, published on 22/07/2009 available at http://www.mydimapur.com/content/view/413/2/

311 *Nagaland State Human Development Report,* 2004, p.4.

312 Ibid, p.8. According to the 2001 census, the literacy rate is 61.92 %. This is much lower than that of males which is 71.77%.

Naga (Manipur) *Photo: Chris Erni*

rung in the employment scale.[313] The leading role of parents, especially women, in the education of children and transmission of ancestral values must be highlighted, given that women are the holders of know-how and knowledge that is bound to disappear if not transmitted to future generations.

2.9.1 Governance and women

The representation of women in governance is negligible. Since the formation of the State of Nagaland, Nagaland Legislative Assembly has not witnessed even a single woman legislator. This speaks volumes about their position in decision making whereas she is affected by the policies of the government, but has no voice in the decision making process.

The present State Government, commonly known as Democratic Alliance of Nagaland (DAN) has been trying to pass a Bill known as the Women Reservation Bill to make way for women in governance. The Bill aims to create 33% reservation of seats in the Town and Municipal Council and State Legislative Assembly. The Bill has come under much opposition, mostly from the men folk. Ironically, one reason for opposition is that the Bill is against Naga custom and therefore violates Article 371A. Custom is not static and it has to evolve with time. It is rooted in the concept of fair terms of cooperation between individuals which means custom cannot exist if one group has been denied the chance to express.

Under Rule 4 (b) of the Village Development Model Rules 1980 (Revised), 25% women representation in the Village Development Board is compulsory. Such provisions, whether the Village Development Rules or the Reservation could remain in name if proper mechanism are not framed for their application. There is evidence that women are slowly moving into the governance. For example, a woman is holding the post of Chief in the Village Council in Dimapur. Women's participation in the VC has also been reported from Longitham village in Wokha district.

313 *Nagaland State Human Development Report*, p. 151

2.9.2 Violence against women

Traditionally the Naga society never accepted violence against women. However, the marked increase in the frequency of violence committed against women in recent years is a matter of concern. Many of them go unreported. There is no female foeticide or dowry harassment amongst the Naga society. However, there are other forms of violence including domestic violence, rape, molestation and murder. Protection of Women from Domestic Violence Act, 2005, a central legislation, is enforced in Nagaland to tackle domestic violence. Its effectiveness is yet to be seen as there is no proper mechanism to efficiently use it. For example, there are no Protection Officers appointed.

Military personnel have also been perpetrators of violence against women in Naga areas. Rape and assault on women are part of the tactics used by the military to repress the Nagas' struggle for their self determination. The women have to live with the constant fear psychosis borne out of the atrocities committed by the armed forces.

2.9.3 Health

The sex ratio in the state at 900 female against 1000 male[314] is lower than the national average of 933. During the course of discussion with the women in Nagaland, it has been observed that the mortality rate of men caused by military excesses, and factional killings amongst others is much higher than that of women. There is low maternal mortality and no female foeticide or dowry death. Yet, the sex ratio still remains very low in the state. One explanation for this could be mortality due to lack of access to health care. The Nagaland State Human Development Report, 2004 reported that there is strong gender bias when it comes to the use of contraceptives. Anaemia caused by worm infestations and frequent pregnancies, is common among women of childbearing age.[315] Adding to the problem, most of the deliveries take place at home.

Another important cause would be the social trauma due to prolonged militarisation and the adverse consequences such as violence, drug abuse and alcoholism.

2.9.4 Land rights

Land rights in Naga society are transmitted through the men. The pattern of inheritance is closely related to their social identity and group membership which are derived from the father. A woman's place in her father's agnatic group lasts until her marriage. It is general belief that the husband will take care of the woman once she is married. Another reason is that giving land rights to a woman would imply giving away the land of the community to an outsider once the woman marries.

There is slow shift in the concept of owning land in the Naga society. Earlier individual ownership would mean having certain rights over the land which cannot be enjoyed by others. This right is not absolute and as mentioned above, people could have access to the land for collecting fruits, herbs, etc. People are acquiring property over which they have absolute rights.

Though a woman has no inheritance rights to ancestral property, acquired property can be given to her and she can also acquire property. Among the Chakesang community, there is the practice of giving land, known as *lüna*, to the daughter by her mother. The property is passed down till the third generation and then, it reverts back to the mother's family from whom the land was first given to the daughter.

314 www.nagaland.nic.in

315 Ibid, p.149

Photo: Chris Erni

2.10 Indigenous children

There is no policy or programme focusing directly on child rights. Juvenile Justice (Child Care and Protection) Act, 2000 has been enforced in the state. The Act has been created to address juveniles in conflict with law and children in need of care and protection. However, none of the bodies under the Act has been set up.

There have been increasing reports of child trafficking in the state. Though most of the victims are reported to be from non-indigenous communities, this needs to be looked into. Concerned with the condition of the children in the State, a committee, Nagaland Child rights Committee, was formed in 2008 with members from seventeen organisations comprising of government departments, NGOs and lawyers. It is to be noted that it is not a government agency but a platform for dialogue on child rights.

While dealing with child labour in the context of indigenous children, it is important to keep in mind the difference between the labour primarily for extraction of surplus which is exploitative and non-exploitative labour as part of the collective production (often for family consumption) and sharing process found amongst indigenous peoples. The same is true for Nagas. Engaging children in labour activities is part and parcel of their learning process into becoming productive members of the community. As long as the child's education is not prejudiced and no harm is caused to the child, it should not be considered as child labour.[316]

2.11. Indigenous peoples in border areas

Naga people have been divided by international boundaries as well as by internal boundaries. Thus, they are subjected to different laws and governance even though they belong to the same community. There is stark difference between the people living within Nagaland and the rest of the three states as well as those living in Myanmar (formally Burma). There is a wide gap

316 ILO, *Guidelines for Combating Child Labour Among Indigenous and Tribal People*, 2006

between the Nagas living in Nagaland and outside Nagaland in terms of governance, economy and employment, management of their land and resources, the access to and management of public services. The State as whole, including the citizens and the executive with an exception of few bureaucrats, are Nagas and they are not subjected to governance by other groups of people and this is, to a large extent, responsible for their greater control and the better development of the various institutions. These are advantages not enjoyed by Nagas living outside Nagaland. The latter have less access to facilities that by right should have been theirs including education, employment, health care, the management of their land and resources.

India and Myanmar share an international border covering 1,624 kms (975 miles). The states in India that share boundaries with Myanmar are Arunachal Pradesh, Manipur, Nagaland and Mizoram. Some parts of Arunachal Pradesh and Manipur and the whole of Nagaland are areas inhabited by Nagas. There is no formal agreement between the two countries that deals specifically with the Naga people. However, there is an agreement to permit free movement within 20 km on either side of the Indo-Burma boundary for the people living in the border areas.[317] Nagas from India have been able to visit their families in Myanmar with recommendation letter from the respective village chief endorsing that the 'guest' has a family living in Burma. However, it is easier for Nagas from Myanmar to visit India because of the porous border patrol on the Indian side. On the other hand, the Burmese Army patrols are more frequent which makes it a lot more inconvenient to visit the Burma side. The people still actively practise traditional barter system which remains an important part of their economy in the border areas. The Nagas from the Myanmar side bring semi-precious stones, domesticated animals, baskets, etc to trade for food, clothes, etc.

There are also reports of Tangkhul Nagas from Somra area in Myanmar who are engaged as domestic and agricultural labourers by the Nagas on the Indian side.

Nagas in Delhi *Photo: Chris Erni*

317 http://conflict-prevention.net/page.php?id=45&formid=72&action=show&articleid=77

3. Conclusion

Article 371A, for all intent and purpose, has been inserted in the Constitution of India, recognising the inimitable system around which the Naga society has evolved. It is a recognition of the people's sovereign right over their land and natural resources. However, there is gradual dilution of the Article with the introduction of different laws which are in contravention of Article 371 A. For example, the imposition of Armed Forces (Special Powers) Act which is clearly a law that validates human rights violation. There are also laws such Nagaland Land (Requisition and Acquisition) Act, Nagaland Forest Act and Nagaland Jhumland Act which have a direct implication on the land holding system.

For Naga people, customary law and tradition still remain the basis of their governance, management of land and natural resources, administration of justice and their social relationship. Decision-making is based on consensus, taking into account the interest of everyone in the community. There is attempt on the part of the state to involve the community in the decision- making process through its communitisation process. So far this has ostensibly increased the efficiency of the respective department where communitisation has taken place. However, there is still need for greater involvement of the concerned people, especially women in the decision making process.

Bid Sasang Diri – khunt Munda family leneage stone (Munda family leneage stone) *Photo: Bineet Mundu*

Jharkhand *Photo: Chris Erni*

II: The Indian Constitution, Law and the Adivasis: A case study of Jharkhand

Bineet J. Mundu

1. Background

Jharkhand, meaning the 'forest tract', is the heartland of the Adivasis in the Chhota Nagpur Plateau and Santhal Parganas of central eastern India. The Jharkhand state, a part of the region generally referred to as Jharkhand, is 74,677 square kilometres or 7.46 million hectares. It was carved out of the southern part of Bihar on 15 November 2000 after more than half a century of people's struggles around the *Jharkhandi* identity where the Adivasi identity formed the core. It is home to Adivasi communities such as Santals, Oraons[318], Mundas, Khonds, Hos, Kharias, Bhumij, Birhors, etc and many more. Jharkhand state shares its border with the states of Bihar to the north, Uttar Pradesh and Chhattisgarh to the west, Odisha to the south, and West Bengal to the east. It has a population of 26,945,829 (2001) of whom 26.3% are STs which is 8.4% of the total ST population of the country. Jharkhand has the sixth highest proportion of STs within states and tenth highest percentage of STs amongst the States and Union Territories in the country.

1.1 Historical

1.1.1 Pre-colonial Period

Aryan[319] and Muslim[320] chroniclers called the whole of the region or sometimes part of it as 'Jharkhand'. The first recorded reference of the name is from the 13th century in a copper plate[321]. There are references to one Jaysingh Deo, a king of northern Odisha declaring himself as the King of Jharkhand in the 13th century; *Bhavishya Purana* (around 1200 AD) refers to '*Jharikhanda*' (probably the modern Santal Parganas district) as one of seven *desas*[322] forming the *Pundra Desa*. Though 'Jharkhand' is referred to during the Muslim rule, the word '*Kokrah*' was more prevalent. *Akbarnama*[323] refers to Jharkhand as the tract from Birbhum and Pachet to Ratanpur in Central India and from Rohtasgarh in South Bihar to the frontier of Odisha. Largely the whole of the Chotanagpur Plateau is historically denoted by the word 'Jharkhand.[324]

The region has been inhabited since the Stone Age as indicated by the macrolithic sites all along the river valleys, especially Subarnarekha, Koel, Sankh and their tributaries. However, Mundas speaking the Mundari language, a branch of Austro-Asiatic language group, are believed to be the original inhabitants in the region. They are believed to have migrated from the Southeast Asia, probably taking a circuitous route, entering the Chotanagpur plateau from the northwest.

318 Sometimes referred to as Uraons.

319 Aryans' immigration into India, according to Duker as referred by S.C. Roy (1912:21) is about 2000 B.C.

320 Mogul invasion in Jharkhand started from 1510 A.D. when Sher Shah Suri, the Mogul Emperor sent an expedition against the Raja of Jharkhand to rescue the possession of an elephant, according to the manuscript chronicle attribute to Ahmad Yadgar as referred by S.C. Roy (1912: Appendix-iv-Li).

321 A grant of Nrisngha-deva II, King of Utkala given to certain pious Brahmin on 19th September 1295 AD (See Journal of the Asiatic Society of Bengal, Vol.LXV, 1896, pp.229-71.)

322 Fiefdom or kingdom.

323 The Akbarnāma literally means Book of Akbar, an official biographical account of Akbar, the third Mughal Emperor (1556–1605), written in Persian.

324 Areeparampil, Mathew. *Historical Basis of the Name 'Jharkhand'* in R.D Munda and S. Bosu Mullick (Ed.) *The Jharkhand Movement, Indigenous Peoples' Struggle for Autonomy in India*, IWGIA Document No.108, 2003, pp.348-51.

Rock painting at Isco, Hazaribagh district, Jharkhand *Photo: Anup Tigga*

Asuras, the early iron smelters, entered during the period of the Mauryan Empire in the fourth to the second centuries B.C or later. The Dravidian speaking Oraons or Kurukhs, claiming descent from Ravana,[325] entered Chotanagpur from the northwest with one section moving to the Rajmahal Hills and adopted the Munda social organisation. The Munda *Khuntkhatti* system of communal land ownership based on lineage (*Khunt*) expanded into villages and complex of villages, eventually giving way to the beginning of state formation in the form of chiefdoms. These progressed into a kingdom with the establishment of the Chotanagpur kingdom of Nagavamsi dynasty about the eighth century A.D. Phani Mukut Rai, the first Raja of Chotanagpur, founded the Nagavamsi dynasty though himself not a Munda but an alien adopted by the *Manki* (Munda Chief). The dynasty extended its reign over most of Chotanagpur by the end of twelfth century. The clan based control over territories (*Khuntkatti*) weakened considerably. The superimposition of a feudal state over Adivasi society progressed along with the internal differentiation within the Adivasis. The Adivasis retained their weaker self-governing system such as the Parha Patti, Manjhi Parganait, Pir-Patti, Doklo Sohor etc. However, the availability of vast lands and forest created newer Khuntkattis.[326]

The Mughals attacked the Jharkhand region in 1385 and 1616. Diamond mining attracted the Mughal Emperor Jehangir to the region, then known as Khokhara, and subjugated the area leading to taxation and increased exploitation. The region became a part of the larger province of Bihar and later of Bengal as a quasi-independent tributary-paying subordinate fiefdom of the Mughal Empire. However, Mughals did not covet the region due to the general low productivity

325 Ravana is depicted as the villain in the ancient mythical epic 'Ramayana'.

326 Thapar, Romila and Majid Hayat Siddiqi. *Chotanagpur: The Pre-Colonial and Colonial Situation* in R.D Munda and S. Bosu Mullick (Ed.) *The Jharkhand Movement, Indigenous Peoples' Struggle for Autonomy in India*, IWGIA Document No.108, 2003, pp.31-42.

of the region. The *jagirdari*[327] system that emerged for increasing revenue collection led to the triumph of the feudal landlordism, with the first recorded land grant to aliens from Bihar in 1676[328]. The Marathas had also attacked the region. Their occupation was for brief periods.

1.1.2 Under British Colonial Subjugation

The inclusion of Chotanagpur in the British East India Company's dominions and the introduction of regular revenue payment system changed the internal social structure substantially with increasing landlordism.[329] The right of revenue collection (*dewani*) in Bengal, of which Chotanagpur was a part, was ceded to the company in 1765 by the declining Mughal Empire after the battle of Plassey. The British first entered the region in 1772 when the Maharaja of Chotanagpur requested their help in the collection of revenue. The Chotanagpur ruler, Drip Nath Sahi, unable to pay the revenue began issuing land grants leading to increased incursion of aliens to the region. For instance, the Maharaja of Chotanagpur was repeatedly in arrears between 1785 and 1805, and the Collector of Ramgarh tried to recover the balance from him without success.[330] The British established the Ramgarh Hill Tract in 1780. The 1793 Permanent Settlement Act of Cornwallis introduced in Bengal was extended to Chotanagpur introducing systematic taxation for the first time. The low productivity of the region moreover intensified the conflict and animosity between the *bumihars* (original settlers) and the *zamindars* (feudal land lords). The introduction of *zamindari* police in 1809 by the government, manned mostly by Biharis and Bengalis, brought further ruthlessness that incurred the wrath of Adivasis against the Hindu *zamindars*. Direct administration by the British was introduced when an area of 32,500 sq. km was created as the South-West Frontier Agency in 1834 under a 'benign paternalistic agent' but strengthening the landlords. The judicial and police system came along with this change.

The Assam Tea Company founded in 1839 impoverished the Adivasis, mostly Mundas and Oraons, particularly from Lohardaga and Manbhum, as they were enticed and recruited by licensed labour recruiters with false promises and taken to Assam as labourers.[331] A usurious money-lending class ascended, bringing under their clutches the traditional levy payers. The transformation resulted in a series of revolts (See Box 1 for the major revolts) against the alien Indian and British exploiting class. The *Chotanagpur Unnati Samaj*, the first pan-Adivasi organisation was started in 1915 focusing on education and economic uplift. The organisation was restructured into a political organisation in 1938 under the leadership of Jaipal Singh[332] in 1938 and named *Adivasi Mahasabha* contesting in the 1946 elections without much success.

327 A feudal system of political and revenue administration based on *jagir*, literally meaning a fief or grant of land received from the sovereign or a vassal owing fealty and obedience to him.

328 Thapar, Romila et al. op cit.45.

329 Thapar, Romila et al. op cit.43.

330 Tete, Peter. *A Missionary social Work in India: Fr J.B. Hoffmann*, Satya Bharati, Ranchi, 1986, p.8.

331 One estimate puts the figure at 123,000 or 21% of Mundas in 1921 mentioned by a *Handbook of Castes and Tribes Employed on Tea Estates in North-East India* (1924) quoted in Thaper, Romila, op cit, p.63. These people, referred to as 'tea tribes' in Assam, are demanding ST status in that state which has been denied them. Conflicts over land and resources often manifest in violent clashes between them and the Boro tribe for instance.

332 An Oxford educated captain of the winning Indian hockey team in the 1928 Olympics held in England, he was one of the prominent members of the Constituent Assembly involved in drafting the Constitution of India.

BOX 1: Major Revolts

The Paharias of Rajmahal Hills, 1767-80
The Chuar Rebellion, 1769-84
The Rajas of Dalbhum, 1769-74
The Santhal revolt under the leadership of Tilka Manjhi, 1781-84
The Munda Uprising of Bundu led by Bisnu Manki, 1797
The Bhumij Revolt of Manbhum, 1798-99
The Chuar Tribe of Midnapur, 1799
The Chero Uprising of Palamu led by Bhukan Singh, 1800-10
The Munda Uprising of Tamar led by Dukhan Manki, 1807
The Munda Uprising of Tamar led by Rudu and Konta, 1819-20
The Tana Revolt of 1820
The Kol Rebellion led by Singhrai Manki and Bindrai Manki, 1831-33
The Hos and Mundas of Chotanagpur, 1831-32
The Munda Uprising of Tamar led by Rudu and Konta, 1833
The Bhumij Revolt led by Ganganarayan, 1834
The Santals Rebellion led by Siddhu and Kanhu, 1855-57
The Bhokta Uprising and Rai Movement of 1857
The Sardari Larai or Mulki Larai, 1858-95
The Kherwar Movement among the Santals and Bhagat Movement among the Uraons, 1872-79
The Sardar Movement, 1875-95
The Birsa Uprisings, 1895-1900
The Bhagat Movement, 1902
The Tana Bhagat Movement led by Jatra Oraon, 1914-15
The Kisan Revolt in Surguja led by Labur Kisan, 1917
The Adivasi Mahasabha led by Jaipal Singh 1938
Kherwar Movement in Palamu, 1948

BOX 2: The British Response

1780: Augustus Cleveland' Hill Assembly (precursor of the Non-regulation Acts)
1793: Bengal Permanent Settlement Regulation Act
1837: The Wilkinson's Rule
1833: Formation of the Non-Regulation Province of the South West Frontier Agency vide Regulation XIII of 1833 after abolishing the Military Collectorship of Ramgarh Hill Tract
1854: The South West Frontier Agency Administration abolished Vide Act XX of 1854, and powers of the Agency vested and placed directly under the Lieutenant Governor of Bengal; continues to be the Non-Regulation Province with a new name, Chutia Nagpur Division consisting of the districts of Birbhum, Lohardaga, Hazaribagh, Manbhum, Singhbhum and the Tributary States of Chang-Bhakar, Korea, Surguja, Jashpur, Udaipur, Gangpur and Banai
1855: Santal Parganas formed into a separate Non-Regulation District vide Act XXXVII of 1855 under a separate Commissioner of the Bhagalpur Division
1859: Introduction of the State and Rent Law in the Chutia Nagpur Division
1869: The Chotanagpur Tenures Act
1870: The Chotanagpur Landlord and Tenure Procedure Act
1872: The Santal Pargana Settlement Regulation
1874: Non-Regulation districts changed to Scheduled Districts vide the Scheduled Districts Act
1879: The Chotanagpur Landlords and Tenants Act
1886: The Santal Pargana Rent Regulation Act
1908: The Chhotanagpur Tenancy Act
1908: The Santal Parganas Settlement (Amendment) Regulation introduced restriction on transfer of land
1912: Separation of Bihar and Odisha from Bengal
1919: Scheduled Districts were named Backward Tracts
1935: Backward Tracts were changed into Excluded and Partially Excluded Areas
1936: Separation of Odisha from Bihar 1919: Government of India Act
1935: Government of India Act

The British responded to these revolts through a policy of containment and appeasement (See Box 2). Paharia (Parhaiya) archers were provided with arms as the regular police and given cash. The Adivasis were encouraged to sell their produce in the *haat* or local market. These decisions were taken by Augustus Cleveland, the Collector of Bhagalpur in 1780. The Wilkinson's Rule 1837 came about specifically for the Hos of Singhbhum granting continuance of the traditional system of governance after the failure of the British to subjugate the Hos in 1834. Act XXXVII of 1855 resulting from the Santhal insurgency freed the Damin-e-koh district and other Adivasi districts from the purview of common rules of British India, and created the Santhal Parganas district. This was followed by the Police Act of 1856 in which the customary heads of the village were recognized as village functionaries, given administrative powers and could adjudicate civil and criminal cases. The formation of Chotanagpur Tenure Act 1869 and Chotanagpur Landlord and Tenure Procedure Act 1870 came after the Sardar Movement of 1859-65. These were to ensure settlement of the title to *bhuinharis* (original settlers) but largely failed to fulfill the task. The Governor General had special powers to free some Adivasi areas from the colonial rules. Special rules were formulated to help prevent the transfer of Adivasi lands to non-Adivasis. The policy of non-intervention in the Adivasi customs was adopted in the Act of 1870. The formation of the Santhal Pargana District and the Santhal Pargana Settlement Regulation 1872 followed the Santhal Insurrection of 1855. The original Survey Settlement of 1901 and the Chotanagpur Tenancy Act 1908 was the result of the Birsa Movement between 1885-1900 which was an offshoot of the Kol Rebellion, the Munda rebellion of Bundu, the Bhumij rebellion of Manbhum, the Charo rebellion of Palamu, and again the Munda rebellion of Tamar. This Act was passed to stop the transfer of Adivasi land to the non-Adivasis. Chotanagpur Landlords and Tenants Act 1879 provided for demarcation, mapping, and registration of the *Bhuinhari* and private lands. The land system of the Munda and the organization of Khunt-katti villages were however not covered in this Act. The Chottanagpur Tenancy Act 1908 was intended to stop Adivasi land alienation, chiefly the *khuntkatti* and the *bhuinhari* lands of the Mundas and the Oraons respectively.

The Scheduled District Act 1874 brought together Adivasi areas in the country as a special category to be kept outside the normal administration of the British where the normal laws could be extended, or modified as necessary while providing protection. This was incorporated into the Government of India Act of 1919 and later the Government of India Act of 1935 as 'Excluded and Partially Excluded Areas' where the Governor General had enormous powers in relation to their administration. The demand for separation of the Jharkhand area from Bihar was raised with the Simon Commission when it visited Chotanagpur in 1929 which was rejected. But instead Chotanagpur was declared a Partially Excluded Area.

1.1.3 Indian independence and after: In Search of Justice

The *Adivasi Mahasabha,* renamed Jharkhand Party in 1950, won 32 seats[333] in the Bihar Assembly in the first general election held in 1952. The demand for a separate Jharkhand state was again raised by the Jharkhand Party as well as the *Chotanagpur Samjukta Sangh* when the State Reorganising Committee visited the area in 1955. This demand was rejected as economically unviable and lacking in a specific link language besides the tribals being a minority group. In the meanwhile, parts of the area were notified as Scheduled Area under Article 244 read with the Fifth Schedule of the Constitution by the Scheduled Areas (Part A States) Order of 1950. The Bihar Tribal Advisory Council was constituted in 1951. The inability to forward the agenda of a separate state led the Jharkhand Party to merge with the Congress Party in 1963 hoping to make it an agenda of the larger national party. However, this move proved disastrous for the party

333 Out of 325 seats.

Youths at a Rally (Jharkhand) *Photo: Bineet Mundu*

which disintegrated. The Santhals formed their own *Hul Jharkhand Party* while the Jharkhand Party was resurrected under the leadership of N.E Horo. *Birsa Sewa Dal*, a more radical group emerged during 1967-68. In 1967 the revolt in Naxalbari,[334] a Santhal village in West Bengal, led to the formation of the Communist Party of India (Marxist-Leninist) – the predecessor to, among other formations, the present day Communist Party of India (Maoist) which soon spread the revolutionary ideologies to different parts of the country, including the Jharkhand region.

In 1973 the *Jharkhand Mukti Morcha* (JMM) was formed giving spur to the demand for separate statehood. In 1978 the Kolan-Porahat area experienced an outbreak of a well organized and formidable movement known as *Jungal Kati Andolan,* meaning 'cut the forest movement'. They argued that their land once belonged to them and was illegally taken by Forest Department. The *Kolhan Raksha Sangh* emerged in 1981 and proclaimed that the ancestral domain of the Hos in Kolhan, Singhbhum district, was a free nation not having ceded to the Indian union. The Wilkinson Rules were cited as proof of this. Two of their leaders attempted to take the issue to the British Commonwealth and the United Nations but were promptly jailed for sedition on their return to India.

As the JMM spread its influence across the region, it also entered the electoral arena becoming a major opposition party in the Bihar Legislative Assembly in the 1980s. The Chotanagpur and Santhal Parganas Development Authority were constituted in 1980 to focus on the development of the area but without result. The Jharkhand statehood demand spread to the contiguous areas of West Bengal, Odisha and Madhya Pradesh. The state demand became an electoral agenda, but

334 The term 'Naxalite' has its origin from this village. It is now a popular generic term used to refer to all the radical revolutionary communist groups, whether involved in parliamentary electoral politics or guerilla actions.

failed to proceed to its logical end of formation of the state. The widespread perception was that the various political factions were ineffective or compliant.

The emergence of the All Jharkhand Students Union (AJSU) in 1986 and the Jharkhand Coordination Committee in 1987, to coordinate the various political factions, gave a new impetus and militancy to the struggle that took various forms including blockades. The Government of India constituted the Committee on Jharkhand Matters (COJM) in 1989 and included representatives of the movement. The Report of the Committee was submitted on 18 May 1990 offering three solutions viz. statehood, status of Union Territory or creation of Jharkhand General Council. The Bihar government responded by enacting a toothless Jharkhand Development Council in 1991 which was, however, withdrawn due to strong opposition to it, including the threat of self-declaration of statehood by JMM, and a thousand hour *bandh*[335] by AJSU and Jharkhand People's Party. In 1994 the Jharkhand Accord was brought out by the Bihar Chief Minister followed in the same year with the Jharkhand Area Autonomous Council Act covering 18 districts of Chotanagpur and Santal Parghana limited to the Bihar state. The Act, a badly truncated version of the *Jharkhand Swayatta-Shasi Kshetra* (Jharkhand Autonomous Territory) proposed by COJM, dealt with few administrative, development and supervisory functions.[336] Following this, the Jharkhand movement went into a downward slide.

Meanwhile the context too changed with the Government of India liberalizing its economy and aggressively pursuing growth. The vast wealth in its natural resources, particularly mineral wealth, untapped by the industrial and corporate complex, made Jharkhand region a strong candidate for aggressive investment and development. Conferring statehood could hasten the industrialization of the region giving direct and easy access to the natural resources. As a result, the State of Jharkhand was carved out of Bihar, leaving out the Adivasi areas of West Bengal (Purulia, Bankura and Midnapore), Odisha (Keonjhar and Rairampur) and Madhya Pradesh[337] (Raigarh and Surguja); it became the 28th state of the country on 15th November 2000[338]. Most of the state lies on the Chota Nagpur Plateau, which is the source of the Koel, Damodar, Brahmani, Kharkai, and Subarnarekha rivers, whose upper watersheds lie within Jharkhand. Much of the state is still covered by forest.

Though on the face of it, the dream of many generations of Adivasis of this region has been fulfilled; its realisation in fact continues to remain nominal despite the Chief Minister's post being held by a ST. The assault on its land and natural resources intensified manifold, particularly by mining companies and industries. Widespread displacement, land alienation, deprivation and loss of livelihood have led to a new wave of local unrest and resistances while the CPI (Maoists) holds sway over large tracts of Jharkhand. Aggressive development inducing conflicts mostly with the state apparatus, and the state repression in the name of combating the Maoists have intensified the turmoil, reminding the Jharkhandis to recast their dreams.

1.2. The state

Jharkhand has an area of 79,714 square kilometers and a population density of 338 persons per square kilometer. 22% of its population is in urban areas. The ST population of Jharkhand State is 7,087,068 (2001) constituting 26.3% of the total population (26,945,829) of the state,

335 Meaning 'closed', used to refer also to a form of protest by political activists, a political party or a community declares as part of a general strike.

336 Ekka, Alex. *Whither Jharkhand?* in R.D Munda and S. Bosu Mullick (Ed.) *The Jharkhand Movement, Indigenous Peoples' Struggle for Autonomy in India*, IWGIA Document No.108, 2003, pp.319-30.

337 Chhattisgarh state was subsequently carved out of Madhya Pradesh which includes these districts.

338 On 11 August 2000, the Parliament approved the formation of Jharkhand when the Rajya Sabha passed the Bihar Reorganisation Bill 2000 by voice - vote to carve out the new state out of Bihar's southern region. On August 25, the then President K.R. Narayanan approved the bill. On October 12, the Center issued the gazette notification stating November 15 to be the appointed date for the formation of new Jharkhand Government.

lower than the 27.76% registered in 1991. The ST population growth was 17.3% which is lower by 6% compared to the growth of the state's total population (23.3%) during 1991-2001. An overwhelming 91.7% of the STs live in rural area.

A total of 32 communities have been declared STs by the Constitution (STs) Order, 1950[339] (See Annexure 4 for the list) which include nine primitive tribal groups (Refer Annexure 2 for the list) of whom Birjia, Savar, Birhor and Asur are threatened with extinction. Santhals are the most numerous (34%) followed by the Oraons (19.6%), Mundas (14.8 %) and Ho (10.5 %). Together with Kharia, Bhumij, Lohra and Kharwar, they constitute 89.1% of the total Adivasi population. They are of Austric and Dravidian stocks. The Mundas, the Hos, the Santhals, the Kharias etc. speak languages belonging to the Austro-Asiatic language family, whereas the Oraons and the Paharias speak Dravidian languages.

The majority of STs in the state, 45.1% have identified themselves as belonging to 'other religions and persuasions' followed by 39.8% as Hindus, 14.5% Christians and 0.4% as Muslims. Over half the total population (56.6%) amongst Santal, a major tribe, professes Hinduism while over half the population of Oraon and Munda follow 'other religions and persuasions' followed by Christianity. Ho tribe tops the list of tribes professing 'other religions and persuasions' with 91%.

The sex ratio of Jharkhand at 941 females per thousand males is higher than the national average of 933. The sex ratio of the ST population of Jharkhand is 987 females per 1000 males which is higher than the national average of 978 for the total ST population. Females amongst the Kharia and Ho outnumber the males in their total population. The overall sex ratio of the Munda, Oraon, Santhal and Bhumij communities was above the national average, while it was below the national average for the Lohra and Kharwar communities.

Presently, the state has 24 districts: Ranchi, Lohardaga, Gumla, Simdega, Palamu, Latehar, Garhwa, West Singhbhum, Seraikela Kharsawan, East Singhbhum, Dumka, Jamtara, Sahebganj, Pakur, Godda, Hazaribagh, Chatra, Koderma, Giridih, Dhanbad, Bokaro, Deoghar, Khunti and Ramgarh. Santhals have the highest population in Dumka district followed by East Singhbhum, Pakaur and Sahibganj districts but they constitute the highest proportion of the total ST population in Giridih (90.8%), followed by Dumka (89.7%) and Pakaur (85%) districts. Oraons have returned the highest population in Ranchi district followed by Gumla. They have the highest percentage share in the total Adivasi population (81%) in Lohardaga district. Other six major Adivasi groups, namely Munda, Ho, Kharwar, Lohra, Bhumij and Kharia are concentrated in Ranchi, West Singhbhum, Palamu, Ranchi, East Singhbhum and Gumla districts respectively.[340]

TABLE 1: District-wise Scheduled Tribes Population in Jharkhand

Sl. No.	District	Total ST Population	Percentage of ST population
1.	Gumla	920,597	68.36
2.	Lohardaga	203,053	55.70
3.	W. Singhbhum	1,111,322	53.36
4.	Pakur	312,838	44.59
5.	Ranchi	1,164,624	41.82
6.	Dumka	701,903	39.89
7.	Sahibganj	270,423	29.15
8.	East Singhhum	552,187	27.85

339 As amended up to date, the last amendment being vide the Bihar Re-organisation Act, 2000.

340 Office of the Registrar General, India.

Sl. No.	District	Total ST Population	Percentage of ST population
9.	Godda	247,538	23.62
10	Palamau	392,325	18.70
11.	Garhwa	158,959	15.35
12.	Bokaro	218,600	12.30
13.	Deoghar	142,717	12.25
14.	Hazaribagh	268,333	11.78
15.	Giridih	184,469	09.69
16.	Dhanbad	202,729	08.46
17.	Chatra	30,384	03.84
18.	Koderma	4,067	00.81
	Total	7,087,068	26.30

Source: Census 2001

Note: Six new districts were created namely Latehar, Ramgarh, Jamtara, Khunti, Simdega and Saraikela-Kharsawan from Palamau, Hazaribagh, Dumka, Ranchi, Gumla and West Singhbhum respectively.

Gumla district has the highest proportion of ST (See Table 1 for the district wise distribution of ST population) followed by Lohardaga, West Singhbhum, Pakur and Ranchi districts. Kodarma district preceded by Chatra has the lowest proportion of the ST population.

1.2.1 Current Status

The two historical divisions of Jharkhand are the Chotanagpur Plateau and the Santhal Parganas. The state is divided into five Administrative Divisions (North Chotanagpur, South Chotanagpur, Dumka, Palamau, and Kolhan) and 24 Districts. It is further divided into the Scheduled and the non-Scheduled Areas.

The present Scheduled Areas as per the Order of 1977 are the Districts of Ranchi, Lohardaga, Gumla, Simdega, East Singhbhum, West Singhbhum, Jamtara, Pakur, Dumka, Sahibganj, (the 2003 Notification left out two blocks viz Mandro and Udhwa), Latehar District, (the 2003 Notification left out two Panchayats Rabda and Bokoria), Bhandaria Block of Garwa District, Sundar Pahari and Boarijor blocks of Godda District (See Table 2). To this were added the new Districts of Khunti and Simdega in 2007. The rest of the areas come under the non-Scheduled Areas. They are Hazaribagh, Palamau, Dhanbad, Bokaro, Koderma and the new District of Ramgarh.

TABLE 2: Scheduled Area Districts and Population in Jharkhand

S.N.	Name of District	No. of Blocks	ST Population	ST %
1.	Ranchi (including Khunti District)	20	1,164,624	41.82
2.	Lohardaga	05	203,053	55.70
3.	Gumla (including Simdega District)	18	920,597	68.36
4.	West Singhbhum (including Saraikela-Kharsawan District)	23	1,111,322	53.36
5.	East Singhbhum	09	552,187	27.85
6.	Latehar	07	211,580	45.30

S.N.	Name of District	No. of Blocks	ST Population	ST %
7.	Garhwa (Bhandaria Block)	01	26,047	60.55
8.	Dumka	14	701,903	41.37
9.	Sahibganj	07	228,990	33.08
10.	Pakur	06	312,838	44.59
11.	Godda (Barijor and Sundarpahari Blocks)	02	99,769	68.87
	Total	112	5,532,910	44.57

Source: Census 2001

The areas covered under the Fifth Schedule do not cover the whole of Chotanagpur Division and Santhal Pargana district, the areas covered under Scheduled District Act 1874[341]. In Hazaribag district for example, in 1901 the ST population was 11.11% and went up to 13.44% in 1931 and by 1971 came down to 10.99%. The district was removed from the list of Scheduled Areas in 1948. Noteworthy is the fact that this district has also the highest coal deposit. In Singhbhum district, which is also mineral rich, the ST population was 68.16% in 1901 but declined to 46.12% in 1971. Immigration into this district has been the highest increasing from 0.46% in 1901 to 7.38% in 1931 and 8.53% in 1971. Ranchi district saw its population increase from 56.51% in 1901 to 61.93% in 1931 and then declined to 53.50% in 1971. Correspondingly it can be seen that the immigration rate increased from 0.21% in 1901 to 0.56% in 1931 and 3.09% in 1961. These increases can be partially attributed to the establishment of industries in these districts[342].

In the 112 Blocks under the Fifth Schedule, the percentage of ST population has declined substantially over the years. Likewise the land holdings of STs have also declined over the years with per capita landholding declining from 0.71 hectare in 1971 to 0.51 hectare in 2001 and average landholding of Adivasi households declining from 4.67 hectares in 1971 to 3.05 hectares in 2001. Adivasi landholdings declined by 50% in 1971 and 2001 in districts like Dumka, Godda, Latehar, Ranchi, Lohardaga and Sahibganj. The major causes of this decline are fragmentation of land due to increase in population and displacement due to land acquisition for development projects such as mining, industry, construction of major dams and other public purposes.

1.2.2 Socio-economic status

Out of 32,615 villages, only 14,667 villages have electricity and 8,484 villages are connected by road. Most Adivasi villages remain neglected. Cultivatable land in Jharkhand is 3.8 million hectares in which net sown area is only 1.8 million hectares and net irrigated area is only 0.16 million hectares. 29% of Jharkhand is forest area. Per capital income of the state is ₹4,161.[343]

The Work Participation Rate (WPR) of the ST population is 46.3% which is lower than that of all STs at the national level (49.1%). Male WPR declined from 53.4 to 51.9 per cent while female WPR increased from 38.3% up to 40.6% from 1991-2001. 59.4% of the total workers

341 Jaipal Singh, in the Minutes of Dissent – Scheduled Areas – in the Drafting Committee of the Constitution on 19th August 1947 protesting the removal of the three districts out of the five from Chotanagpur division said '*I regret I must submit a minute of dissent in regard to the 'Scheduled areas' for the Chhota Nagpur Plateau. I cannot agree to the elimination of the Districts of Manbhum, Hazaribagh and Palamau which, even according to the unreliable 1941 Census, contain 678, 126; 478, 253 and 323,106 Adibasis respectively, that is, a total of 1,479,485 Adibasis for the three Districts. I cannot see how I can agree to the demolition of the economic, geographical and ethnic unity and entity of the Chhota Nagpur Division. It is not right that we should give an ex parte verdict and change the status quo of these three Districts.*' Constituent Assembly of India – Volume VII (19th August 1947).

342 Corbridge, Stuart. *The Ideology of Tribal Economy and Society: Politics in Jharkhand* in *The Jharkhand Movement*, 2003, Ed. Munda, R.D. and Mullick S. Bosu, IWGIA Document Number. 108. P155

343 Census of India (Series II), Jharkhand, 2001.

Jharkhand Photo: *Chris Erni*

were main workers and was quite below that of the national average for all STs (68.9%). Among the major Adivasi groups, only Kharia has over all WPR (51.6%) higher than the national average whereas other seven major Adivasi groups have recorded WPR lower than the national average. 'Cultivators' make up over half of the total workers and is significantly higher than the national average of 44.7% for all STs in this category. 'Agricultural Labourers' account for 31% which is lower than 39.6% that was recorded for all STs at the national level. 'Other Workers' constitute 13.5% which is lower than the national average of 16.3% whereas workers engaged in Household Industry (HHI) constitute 3% which is marginally higher than that of the national average (2.1%). Among the major tribes, Oraon, Munda and Kharia have 62-71% workers engaged as 'Cultivators' followed by Kharwar and Santhal. Bhumij and Lohra have recorded the highest proportion of 'Agricultural Labourers' in their total working population. Lohra also registered the higher percentage of 'Other Workers' as well as 'HHI' workers in comparison to other major tribes.

TABLE 3: Health Status of Jharkhand

S.No	Health Indicators	ST	SC	OBC	Others
1.	Total Fertility Rate (TFR) (in %)	2.30	2.86	3.05	2.62
2.	Higher order birth (4+) (in %)	39.2	29.9	30.3	31.6
3.	Birth interval of 24-35 mothers since Previous Birth (in %)	33.5	36.2	29.5	26.9
4.	Percentage of women who do not want more children after two	38.8	36.6	44.0	56.0
5.	Total demand for Family Planning service by women (in %)	35.9	49.1	51.1	66.4
6.	Percentage of ever Married Women who have heard about AIDS	4.8	16.1	15.7	35.0
7.	Percentage of Initiation of Breast Feeding within one hour of child birth	13.9	7.9	7.0	6.6
8.	Nutritional Status of Women				

S.No	Health Indicators	ST	SC	OBC	Others
	-Women with Anemia (5)	85.6	75.5	67.8	59.8
	-Below 145cm of Height (in %)	18.5	26.3	18.6	14.6
	-With BMI below 18.5kg/m2	40.9	45.0	43.5	30.9
9.	Place of Delivery (in %) *Institution*				
	-Public	0.6	3.6	-	12.2
	-NGO	1.4	0.0	-	0.0
	-Private	2.6	8.4	-	19.1
	Home				
	- Own	90.2	77.1	-	16.0
	- Parents	3.3	8.8	-	7.7
10.	Assistance during delivery (in %)				
	Doctor	2.6	5.9	4.6	12.5
	ANM/Nurse/LHV	2.6	5.9	4.6	12.5
	Dai (TBA)	65.7	48.5	75.2	44.0
11.	Reproductive health problems (in %) Any Vaginal Discharge or Urinary Tract Infection	28.1	28.3	24.8	25.4
	Any other reproductive problems	43.3	50.5	44.8	41.4
12.	Child Health Nutritional of Children under Age 3 yrs (in %)				
	-Weight for age below - 2 SD	61.0	57.9	54.3	37.8
	-Wight for age – 2SD	57.2	50.5	48.3	34.7
	-Weight for Height – 2SD	32.7	28.3	24.5	12.1
13.	Anemia among Children (6.35 months) (in %)	95.7	80.2	78.4	72.4
14.	Prevalence of common Diseases of Children in >3 years				
	-Acute Respiratory Infection	25.3	23.6	18.7	21.7
	-Fever	32.4	31.1	24.4	28.4
	-Diarrhoea	22.4	26.1	18.8	23.5

Source: International institute for Population Science (Feb 2002) National Family Health Service (NFHS-2: India, (1998-90), Jharkhand, IIPS, Mumbai, India (based on several Tables), Health Policy Issues in Jharkhand

The above table indicates that the health status of STs is generally lower than other sections of the population. The nutritional status of Adivasi women is very alarming with 85.6% of Adivasi women having some type of anemia, much more than other sections of the population. The health profile of Adivasi women and children demand particular attention.[344] The people of Jharkhand are marginalized and poor though the state itself is most rich in natural and mineral resource amongst states in the country. This is in spite of the protective legislations, the Fifth Schedule, and the special focused development through the Tribal Sub Plan (TSP). According to the government estimates, around 2.32 million families in the rural areas live below poverty line, out of which 0.88 million belong to the ST. Of the 61.57 % families living in the rural areas below poverty line, 75.83 % of the families belong to STs and Scheduled Castes. According to the 55th Round of National Sample Survey Organisation, the incident of both rural and urban

344 Ekka Benni A., *Family Planning and Reproductive Health in India* in the Jharkhand Journal of Development Studies Volume -3 No.1. January-March 2005

poverty is higher in Jharkhand as compared to India as a whole, even higher than rural Bihar. Among the STs, rural poverty rate (between 1999-2000) was 60.62 % and urban poverty rate was 46.7 % which is significantly higher than the all India figure. This is a reflection of deprivation STs of Jharkhand.[345]

1.2.3 Main human rights concerns

The Jharkhand region has seen its share of human rights violations, both before and subsequent to the formation of the separate State in 2000. In recent years, apart from what are commonly recognised as human rights abuses, such as atrocities, particularly on Adivasi women, poverty and poor health care system, the state has also seen an increase in the violation of human rights emerging from conflict between armed groups and the state, and displacement and land alienation as a result of development projects. This is discussed in Section 2.

Photo: Chris Erni

Neglect, rapacious exploitation of natural resources and discrimination have led to disappearing forests, contaminated water sources, barren farmlands, rising displacement and poverty, all of which have resulted in growing discontent manifested in the spread of localised struggles to protect livelihood and the rising influence of Maoists. The state has responded to all these forms of protests and resistance uniformly, as a law and order problem that requires strong actions of the armed forces of the state.

According to the Asian Centre for Human Rights report, since the inception of the new state (Jharkhand from 2000) until 2005, more than 500 people have been killed in the state by the militant groups.[346] Since 2005 there has been a total of 215 fatalities in as many as 381 incidents of Maoist related violence, including 18 major incidents (involving three or more killings) in

345 Sharan, Ramesh., *Fifth Schedule and Tribal Development in Jharkhand: Issue and Challenges* in Jharkhand Journal of Developmental and Management Studies, Volume .3 no. 3 July- September 2005

346 *Alarm in Bihar, Jharkhand after killing of SP*, The Economic Times, 7 January 2005

2009 (till December 25, according to the South Asia Terrorism Portal database). In terms of fatalities, 2009 was the bloodiest year in the state, and Jharkhand retained the dubious distinction of being second only to Chhattisgarh among the states worst affected by 'Left Extremism', among a total of 20 afflicted states.[347] It might get worse as the state and central government have launched 'Operation Green Hunt' to exterminate the Maoists in Jharkhand, and the three other neighbouring states. The scale of casualities and violence are steadily increasing in the whole mid-Indian region; most of those being killed and injured are innocent villagers.

The development projects in the state have made the Adivasis victims rather than beneficiaries. A study by the People's Union for Civil Liberties (PUCL), a national human rights organisation, showed that over 7.4 million Adivasis were displaced in Jharkhand by different projects between 1950 and 1990. Only 1.8 million were rehabilitated and the rest, 5.6 million, over two-thirds of the displaced, have been left to fend for themselves. Industries had displaced 0.26 million Adivasis while projects such as wildlife sanctuaries have forced about half a million Adivasis to leave their homes.[348] Adivasis have been victims also of land alienation through transfer of land to non-Adivasis in violation of the Chotanagpur Tenancy Act, 1908 and the Santhal Parganas Tenancy Act, 1949. The most popular method was by marrying Adivasi girls, buying Adivasi land in their names and acquiring the land by non-Adivasis after dumping their Adivasi wives. In 2005, the government of Jharkhand identified 1,500 tribals in Ranchi who had lost their land to outsiders and decided to regain physical possession of their land under an action plan drawn up by the land revenue department.[349] Cases against illegal land transfers are registered by the victims in different courts in Jharkhand for restoration under the Scheduled Areas Regulation. According to government sources, there were 2,522 cases for restoration pending in different courts. Moreover, the illegal transfers are 'settled' by giving compensation to the land owner, most often under pressure or threats, instead of restoration. As of 1 April 2009 there were 2,344 cases pending with an average increase of 188 cases every year.[350]

The institutions of human rights redressal which the government is obligated to set up such as the State Human Rights Commission and also the State Women's Commission have not been set up.

1.2.4 Militarization and State Repression

Militarisation in Jharkhand could be seen at three levels (i) establishment and expansion of the military in different parts of the state; (ii) human rights violations by the state police; (iii) deployment of police and paramilitary forces for combating Maoists leading to violence and torture of the civilian Adivasis and local communities.

Military suppression in the Jharkhand region was first used in 1765 to bring the Paharias of Rajmahal Hills in Santal Parganas Paraganas under British rule. In the following years it was used to quell the people's uprising, rebellions and revolts (see Box 1. Major Revolts). It was after these suppressions that a trend of migration of the Adivasis in very large numbers to Assam's tea gardens and also to Andaman Islands as timber fellers and such occupations were noted. The greatest expansion of militarization of the area took place during World War II , Ranchi being the headquarters of the Eastern Command. Large areas of lands were acquired. In Ranchi alone Namkom, Hatia, the Booti Morh area, and land for airport in Hinoo were taken on a temporary basis (the same is being expanded today to which people owning those lands have put

347 Ajit Kr Singh's report in *South Asia Intelligence Review*, Weekly Assessments & Briefings, Volume 8, No. 25, December 28, 2009

348 *Homeless in rush for progress - Alarm over displacement*, The Telegraph, 25 April 2005.

349 *Tribals to get back lost land - Task force formed, 1500 identified*, The Telegraph, 7 June 2005.

350 *Dainik Jagaran,* 12 April 2010.

Women at a protest rally *Photo: Chris Erni*

up a strong resistance). These led to displacements without adequate compensation according to peoples' testimonies. Netarhat in Gumla district was made a firing range field for the army. People strongly resisted further expansion from 1993-94. In Amra Para block of Santal Pargana, the military set up its establishment in the areas which were home to the Paharaias and Santals. Freedom of movement was affected because of military presence and interference.

The Indian government, and before it the British Indian government, knew well that Adivasis value freedom from domination. Attempts to subjugate them have been invariably resisted, as seen from the continuous history of resistances and revolts through history. For this reason, Adivasis and their habitations were treated as security zones with good number of military camps.

Soon after the formation of the Jharkhand state, the youth raised a slogan of '*Bihari Police Jharkhand Chhoro*' (the policemen from Bihar must leave Jharkhand). The police recruits in Jharkhand were mostly from Bihar as the state was under Bihar till then. The Bihar police was known for their prejudice and suppression of the Adivasis. The police administrative system dominated by such Bihari or Bojpuri language speaking people led to their reputation as being biased against the Jharkhand movement. The strong protests by *Jharkhand Mukti Morcha* and later by All Jharkhand Student's Union since 1973 and 1980s were confronted with brutal police repression which was one of the reasons for Maoist expansion in the villages of Jharkhand. The police was used to suppress movements against exploitation of natural resources by the state.

The state has reasons for militarization. Going back a decade before the formation of the state of Jharkhand, the government of India opened up its economy as a part of liberalization- opening up avenues for industrialisation. This included mining, expansion of industrial estates and infrastructural development. Given the history of neglect and weak institutional structure of the newly created state of Bihar, it was considered to be one of the poorest and most backward states in the country. Some stronger security measures were considered necessary to ensure development projects in the context of discontented and resisting communities, and sufficient enough to ensure law and order. In this regard, the deployment of the paramilitary force, the CRPF and the Rapid Action Force were considered necessary by the government. The Adivasis' strong relationship

with their traditional home lands, their dependence on the natural resources for their livelihood and their exclusion from the development efforts initiated by the government and private sector made them resist attempts to expropriate their livelihood resources. The government showed commitment to the ideology of liberalization and privatisation rather than any serious desire to meet the growing aspirations of the Adivasis. This led to inevitable confrontation which the government contained by the use of police and other armed forces of the state. The abundant natural and mineral wealth in the state moreover exacerbated the situation.

The extreme left armed groups are supporting the people threatened with further deprivation and this has heightened the state's security measures with increased militarization to control the people's resistance. The central government launched Operation Green Hunt in the central Indian tribal belt to take control of the so called 'extremist inflicted areas'. This is also perceived as an attempt of the government to deprive the Adivasis of their rights and to take control of the natural resources which the Adivasis are claiming as theirs. This spiral of increased militarization has destabilised normal life, transforming the large parts of the state into a conflict zone.

1.2.4 Role of media and civil society

The media in Jharkhand today are mostly in the hands of those who come from non-Adivasi cultural background, largely insensitive to the aspirations of the Adivasis. The Adivasis resent this domination. However, the media no doubt cover both the broader and specific issues, and have tried their best to provide a balanced and objective coverage. Hindi media are basically controlled by people from Bihar thus, though the coverage is adequate, the problem lies in the manner of interpretation which reflects the bias. In the '90s decade, for instance, the media opposed the Jharkhand movement but today, they do not openly say anything against Adivasi struggles or against the Adivasis.

Most civil society organizations, including non-governmental organizations, are paternalistic at best and biased at worst in understanding and dealing with Adivasi issues as they 'work *for* the empowerment, upliftment, development of the Adivasis, the poor and the marginalized'.

The issue with media and the civil society bodies is not the question of being Adivasi or non-Adivasi, but the perspective with which they see, understand and interpret Adivasi issues, which is often in an ahistorical and apolitical manner.

2. Legal Status

This section assesses the manner in which the institutional mechanisms deal with the major issues that Adivasis face.

2.1 Non-discrimination

Large scale discrimination and atrocities in Jharkhand are experienced in different districts of the state. In the absence of the Human Rights Commission and the Women's Commission, it is only the people's organisations, social movements, political parties and non-governmental organisations that articulate and take up cases of discrimination and atrocities in Jharkhand. Be it the issue of displacement or multi-displacement in the absence of State Rehabilitation and Resettlement policy, or issue of reservation in government jobs because of unclear domicile policy, or of governance rights, discrimination is experienced by Adivasis. Many cases relate to dispossession of land (owned individually or communally) belonging to STs leading to expropriation of the traditional means of livelihood, forcing Adivasis to migrate in search of livelihood. The discrimination of the STs is rampant in the unorganised sector as they are treated as cheap labourers, casual workers and daily wage earners. Women in the unorganised sector, in addition, face discrimination on the basis of their gender. Even the basic requirements such

as minimum wages, safe means of commuting / public conveyance and other requirements are absent, leave aside the special requirements. Destitution, sexual exploitation and trafficking of Adivasi girls are also becoming a serious problem in Adivasi communities.

Adivasis of Jharkhand faced discrimination during the colonial rule, be it in the matter of tax collection by non-Adivasi landlords, land alienation or in getting justice through the judicial system.[351] At present discrimination and atrocities against the Adivasis mainly takes place in the context of large-scale development projects, owned or sanctioned by the government. The avenues for registering their protest against such dispossession has become much narrower (for example, on receiving a notice for acquisitions of private land, the time-frame for taking up the matter legally has been reduced to six months from two years). The leaders are arrested for their action as a strategy to break the resistance movements and are often charged with being supported by the Maoists. In this context, a common justification by the police and state authorities for using excessive force is that the resistance movements are orchestrated by the Maoists.

The constitutional obligation of the state to ensure equality and remove historical injustices through the proper implementation of both anti-discrimination laws, as well as through substantive laws and schemes for the advancement of the marginalised, are violated in Jharkhand. In recent years, the onslaught of aggressive development projects on one hand, and the state operations against so called Maoists on the other, has meant that the Adivasi communities, who have special protected constitutional status, are being crushed under the weight of this double spell.

2.2 Self-management, Participation and consultation

The traditional system of self-governance based on communal land ownership among the Adivasis is called the *patti* system among the Mundas, the *parha* system among the Oroans, the *manjhi parganait* system among the Santhals, the *munda manki* system among the Hos and the *doklo sohor maha samiti* among the Kharias. The Adivasis' traditional institution of governance has been a composite body of cultural practices, social organizations, political institutions through which they, not only have governed themselves, but also managed their resources. This is true amongst almost all the Adivasi communities who have, through historical continuity, retained some or all of their traditional practices to date. The influences of the dominant societies, different religions and cultural practices have however brought changes to their social and cultural lives, but essentially these institutions have served as their key institutions.

Generally, there are three levels of the key traditional Adivasi institutions with small variations amongst different Adivasi communities. Areeparampil referred to different accounts that establish the existence of these institutions in the Vedic era, also at the time of Buddha, and Mahavira states that 'the inhabitants of Bihar appear to have been non-Vedic with the Adivasi social structure and non-Vedic customs, like the *suranakkata* (drinking festival) and the *salabhanjika* (a Sal tree festival). These non-Vedic tribes enjoyed political autonomy and had not yet been socially absorbed into the caste system.' [352]

Regarding the autonomous village communities, particularly of the Mundas and their ethnic brothers like the Santhals, Hos and Kharias, it is stated that 'each family of settlers made in this virgin forest its own clearance that became a *hatu* or a village. The boundary of the village was well recognized and sacrosanct. They were guarded by *simana bongako* (boundary deities). Each village had its own *sarna* (sacred grove) where the *hatu bongas* (village gods) were lodged.'[353] The

351 References of which could be found in Peter Tete's book *A Missionary Social Work in India: Fr J.B. Hoffmann* Satya Bharati, Ranchi, 1986.

352 Areeparampil, Matthew, Struggle for Sawaraj, TRTC, 2002, p.38.

353 Ibid. p.39.

Munda (Jharkhand) *Photo: Roger Begrich*

village from then on came to be known as *Khuntkatti hatu.* The religious head, called the *Pahan,* takes care of the *Sarna* and carries out religious rituals. The village community was organized in the line of the *kili* (sept) and the head of the village is called the *Pahan*.

At the village level is the village assembly, the primary unit of decision making traditionally called the *hatu dunub*. In each village there is a head/chief who is known by different names amongst different Adivasi communities. Among Mundas it is the *Munda, Manjhi* among Santhal*, Munda* among Ho, *Sohor* among Kharias and *Mahto* among Oraons.

At the next level is the cluster of villages, the *Parha.* The village clusters are known by different names as five *parha* among Oraons and, *parha* among Mundas (12 *mauja Sanga Parha*, 24 *mauja Guria parha*, 22 *mauja topno parha* and so on). Among Mundas, the Parha system is based on *Kili* (sept) i.e. a sept or clan is *parha,* which includes many villages. Among Ho community it is called *Manki Pir*, the *Pargana* among Santhal, and *Dhoklo* among Kharia.

The third is the regional level where the community is organized as a federation known by different names such as *Raji Parha* among *Oraon* with the chief called as the *Raji parha*, the 22 *Parha Munda Sangh* among Munda community with *Munda Disum Raja* holding the rein, *Manki Sangh* among Hos with *manki munda* at its head, *Disum Pargana* among Santhals with *Disum Parganait* as its head, and *Kharia Maha Doklo Sohor* among Kharias with *Doklo Sohor* in charge. These traditional officials have a number of assistants.[354]

354 Information taken from Elina Horo's unpublished paper, referred to in AIPP preparatory meeting in UN Mechanisms and Procedures Relating to Indigenous Peoples, March 1-4, 2010 AIM Igorot Lodg, Camp John Hay Baguio City, Philippines

The land itself for example, is of different categories depending on their usage. Besides the family (*khunt*) owned land, there are collective and common lands in all the Adivasi villages. In a village community, the custom of *madait* (help in the literal sense, but is mutually practiced amongst them as part of community living) either in cultivation of individual family owned lands or building of house etc. was an obligation paid back in kind for such occasions, either from surplus production or through labour. The basic principle of self-management was built-in in the customary system of governance and management of their resources. However, this aspect of *madait* is also becoming insignificant with the eroding customary practices of self-governance and self-management. With the implementation the provisions of the Panchayat (Extension to Scheduled Areas) Act, 1996 (PESA), the recognition of these traditional systems could restore an understanding of self-management among the Adivasis.

These customary institutions are given statutory recognition by the PESA, which mandates that laws made by the State Government are:

'(a) in consonance with the customary law, social and religious practices and traditional management practices of community resources;

(d) every *Gram Sabha* shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution'.

The state is therefore bound by law to recognise the traditional governance system to enable the community to empower themselves to exercise their rights.

In the absence of monarchy amongst them, the Adivasis of Jharkhand lived an independent life and traditionally managed their lands and forest through their customary and traditional institutions. These institutions also managed the natural resources. This system however was altered as the hereditary system left out women, and also as the customary heads were made agents of the British system, i.e. of Tamar, Porahat etc. In areas where landlordism was introduced as in parts of Lohardagga and Saraikela-Kharsawa and where urbanization has taken place, the customary practices were almost completely uprooted.

Jharkhand is the only Indian state yet to conduct panchayat elections. For nearly 30 years there has been no democratic governance at the village level. The government development funds have been distributed at the whim of politicians, petty bureaucrats and contractors. Further, much of the countryside is in turmoil under the influence of the Communist Party of India (Maoist) and related counter-insurgency measures.

Panchayat elections have not been held in Jharkhand as the Jharkhand high court struck down the provisions of the PESA, 1996 and the provisions of the Jharkhand Panchayati Raj Act (JPRA) 2001in September 2005 where hundred per cent of seats of chairpersons for panchayats at all levels in the Scheduled Areas were reserved for the STs. However, the Supreme Court set aside the judgment of the Jharkhand High Court in January 2010 paving the way for Panchayat elections in the state. But political opposition by a section of the non-Adivasi continues. A section of the Adivasis too are agitated that there are no provisions for reservation in non-scheduled areas and that the Panchayats are so drawn to make the Adivasis a minority.

Of the 14 Parliamentary seats allocated to the state, only 5 of them are reserved for STs which is lower than the ST percentage in the state, and of the 82 legislative assembly seats, 28 are reserved for STs which is higher than the ST percentage in the state.

2.3. Access to justice

The justice system of the Adivasis has been part of their customary laws (referred to in the section of self-management). The Santhal Pargana Tenancy Act, 1949 and the Chotanagpur Tenancy Act, 1908 also acknowledge the historicity of the Adivasi system of self-governance

Women in a public meeting (Jharkhand) *Photo: Chris Erni*

and for justice delivery. In practice five major groups from amongst the 32 different Adivasi groups in Jharkhand, even though coming from two different language families, follow similar administrative system with slight variations.[355] However, since independence, this system is losing ground. Nor are the modern justice system satisfactorily in place or accessible or affordable. The following illustrations are indicative of the justice system that people experience.

In keeping with its obligation under Article 39-A and the Legal Services Authorities Act, 1987, the State Government set up a Legal Services Authority and extended its services to different Districts of Jharkhand. Apart from providing legal representation to persons in ongoing litigation, including to the STs, the legal services authorities also undertake legal awareness camps, and provide quick justice to the litigants by organizing *Lok Adalat*[356] at regular intervals. Legal Awareness Camps and Legal Literacy Camps were organized in the periphery of the various districts to create awareness on various legislations of relevance to the targeted communities. Fifteen Lok Adalats were organized in 2006 in Ranchi district where 1,909 cases relating to petty crimes, banks, motor vehicle claims and other civil matters were disposed of and 1,950 persons benefited.[357]

However, there is a need to simplify the processes, and also make the Legal Services Authority more accessible to the STs. The legal profession is dominated by lawyers belonging to the elite, and since the lawyers on the legal aid panels are drawn from the same group, they are unlikely to be sensitive to issues which concern the STs, no matter how well-intentioned they may be. Anecdotal evidence abounds of Adivasi lawyers exerting their efforts to join the bar and the

355 Mundu, Bineet. *Indigenous Traditional Administrative Systems: Case of Adivasis of Jharkhand Home Land*, VDM Germany, 2009.

356 Lok Adalat, or People's Courts, are in fact a formal alternative dispute resolution (ADR) mechanism which is overseen by the judiciary, and often steered by judicial officers themselves, where litigants are encouraged to settle disputes and end litigation which may go on for many years. It is arguable how much these ADR mechanisms are geared towards facilitating justice for the litigants, or whether they are focused on reducing judicial backlogs.

357 http://civilcourtranchi.nic.in/dlsa_ranchi.pdf

legal aid panels thwarted in many different ways. An Adivasi lawyer who was appointed into the panel by the Chief Justice (name not disclosed here) was forced to leave the panel and not to be involved in any activity of the Legal Service Authority. Moreover the lawyer was notified in writing that he would be suspended from the Bar Association if he did so. It seems that the anti-Adivasi lobby is more powerful in blocking or controlling the processes.

A key statute which attempts to address the problem of access to justice for marginalized communities, including STs, is the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. This law contains numerous provisions for the protection of the rights of STs, including economic and social rights. However, the implementation of the statute depends upon the setting up of special structures and mechanisms, which is often not done. Thus, the law requires the setting up of special *Thanas* (Police Stations) in each district of the state for the purpose of registering crimes related to atrocities under the Act, and also requires the appointment of special investigating officers not below the rank of Deputy Superintendent of Police (DSP), and the designation of a special judge (Additional Chief Judicial Magistrate) in the respective district to try these cases. Any remiss on the part of the State Government in setting up these mechanisms, effectively reduces the rights contained in the statute to a nullity.

The problems with the 1989 Act are illustrated with the case of Amrit Guria, an ex-army man who was part of the anti-displacement movement in Koel Karo Dam's displacement area. He was brutally beaten up by patrolling police when he objected to the police removing the barricade put up by people to check any outsider passing without notice. Thousands of villagers conducted a peaceful *dharna* (protest) outside the police post but the police indiscriminately fired at them, killing nine persons and injuring several others[358]. This case was registered under Section 3 (1) (I)/2 VII of the 1989 Act, and investigation was directed as a preliminary step towards prosecution of the guilty police personnel.[359] Ironically, the Deputy Superintendent of Police who was the officer in-charge when the shooting was carried out was made the Investigating Officer for the case. When an accused becomes the investigating officer of his own men on duty, there can be no doubt that the process of justice will be vitiated.

2.4. Culture and language rights

In Jharkhand, the 32 groups of STs are linguistically a part of two major language groups: the Austro-Asiatic group and the Dravidian group. Five amongst them are the major groups, and nine are the 'Primitive Tribes' groups. Culturally, almost all the groups share the same socio-cultural traditions with some variations depending on the regions and language groups. Festivals are more or less the same. However, conversion to Christianity and Hinduism has influenced their social and cultural lives in varying degrees.

2.4.1 Cultural Rights

To protect and promote cultural heritage, the Jharkhand government has adopted the Bihar Ancient Monument and Ancient Archaeological sites and Treasure Trove Act 1976. The Ministry of Sports, Culture and Youth Affairs so far has organized one state level cultural event, the *Jharkhand Mahoutsav* in Ranchi in 2008, and one District level Cultural meet recently. This is indicative of the importance the government actually gives in promoting the local indigenous

358 http://chotanagpurinus.tripod.com/tapkara/ and http://www.narmada.org/samachar/12.feb.2001.html
Also in: Economic and Political Weekly, March 3, 2001. Massacres of Adivasis – A preliminary Report, P 717; http://www.adivasi-koordination.de/dokumente/Diplomarbeit_%20Koel%20Karo_AKD.pdf
(article in German language of Adivasi Ko-ordination in Germany).

359 The case was registered (against the two accused police personals namely Akshay Kr Ram and R.N. Singh by Amrit Guria -the victim) in the Khunti Court -Government Record (GR) number 79/2001; Case Diary being of Torpa Police Station (PS) Case no. 4/2001. The Investigation reference being: Torpa PS 3/2001; GR Case no. 53/2001

cultures. Whatever cultural heritage that exists is what the people have preserved in spite of the incursion and distortions made to their lives.

2.4.2 Language Rights

The Department of Tribal Regional Languages was set up in the early 80s to promote Adivasi languages. It was later called The Tribal and Regional Language Department tasked to develop curricula, publish and republish/revise earlier published books in Adivasi languages; document, standardise language and literature studies; compile dictionaries and work towards the promotion of these languages. The Syllabus Advisory Board under the purview of the university comprised of prominent and learned persons from all the major language groups. They developed the curricula focused on particular language groups. These were sidelined and the focus shifted to regional languages instead. The Board became defunct for several reasons. The syllabus designed then still remains the guide for the curricula as further modifications or improvements have not been done. The syllabus was developed in the department without defined standards or process and this has affected the level of education of language studies which is on its decline.

The Jharkhand Education Board (JEB) seems to have kept the Adivasi language education issue in cold storage. It implements the Central Board of Secondary Education (CBSE) and the Indian Certificate of Secondary Education (ICSE) syllabus. The JEB was supposed to include the Adivasi literature in the curricula but it did not include Adivasi legends, freedom fighters and noble persons. Neither are Adivasi cultural practices, festivals, places, mythologies, customs etc. included in the study.

The Tribal Academy authorized by the government asked the Tribal Research Institute (TRI) in 1987-88 to publish books and literature of Adivasi writers and researchers from all the Adivasi communities in the state. Some publications did come out with focus on particular language groups, but it expanded its scope to regional language groups and ran out of its allocated budget. Adivasi groups demanded that the focus be on Adivasi languages but to no avail.

Learning materials on the Adivasi languages up to the tenth standard are available, but there are no available teachers in schools to teach the respective languages. For the intermediate and graduate levels, the learning materials are outdated and were designed in 1985-86. Most students are self-taught, using their own reading materials from four to six generation photocopy of the books and use these when taking the examination. No appointments have been made at the university level so far and mentoring the Adivasi language studies are self-initiated efforts. *Jharkhand Siksha Paryojana* under the Human Resource Development is responsible in promoting and facilitating the Adivasi language studies in the state.

There are different levels of language learning and teaching of the major Adivasi languages. For the primitive Adivasi groups such as Paharias, Birhors, and Souras, basic education itself is a problem. Government programs are mostly for their rehabilitation (some being hunter and gatherer nomadic communities) and livelihood. There are some special residential schools such as Bir Kharia High School but there are no students. For the Birhors and Paharias, the schools are there but these are run badly.[360]

The syllabus has not been developed systematically but randomly put together. Whatever comes from Delhi as the guiding framework of the study materials is not translated into the Adivasi context. Although text books published by the government in Adivasi languages are available, there are no teachers to teach in those languages in any of the schools. There is much to be desired in the government's effort to appoint teachers.

There are some positive examples such as that of the Anthropological Survey of India which

360 According to Dr. Ganesh Murmu, an educationist in Adivasi languages, Department of Tribal and Regional Languages, Ranchi.

initiated audio-video documentation of Adivasi languages. The National Council for Educational Research and Technology (NCERT) is supportive of the Adivasi languages. However, the Department of Education and Special Needs seems to have shifted its focus away from the Adivasi languages.

However, there are initiatives from amongst the Adivasis. Among the Hos, the Training Institute based in Jhikpani has produced some training materials. *Kurukh Katkhera* and the *Kurukh Bhasa Parishad* (an association of teachers) are also active among the Oraons. *Hodo Senra Samiti* was active with Mundari language during the early 80s, publishing some literature then, and at present the *Senra Sateng* and the *Munda Sabha* are active. The Munda youth too have been active with poetry readings. The Kharias have the *Kharia Maha Sabha* and have compiled a Kharia dictionary. Publications are also available in Kharia language. The Payara Kerketta Foundation is committed towards this end. All India Writers Association and Adivasi Social and Cultural Association have contributed to the Santhali language and literature.

The oral traditions, customary practices and their meanings, folk songs, folktales, and prayers - these are important. With some exceptions such as *bansri baj rahi hai*, folk songs in Adivasi language and the *Adi-Dharm*, the prayers and its meanings, most others in different languages are not documented. Neither has the Governor, who is constitutionally empowered to protect STs responded to petitions from Adivasi organizations in this regard. Moreover, the question of Adivasi languages and cultures is directly related to the control over their ancestral territories and resources. The community's geographical landscapes, land and natural environment form the basis for the growth of language and culture.[361]

2.5. Education

According to the report of the World Bank,[362] secondary education in India is an 'under-performer'. Referring to the variation of enrolment of students in the secondary level, the report goes on to illustrate that enrolment secondary education in Jharkhand was 4% as compared to 92% in Kerala and 44% in Tamilnadu.

More than half the population in the age of seven years and above amongst the numerically larger Adivasi groups like the Oraon and Kharia are literates while for the Mundas, the literacy rate is almost equal to that of all STs at the national level. Remaining five larger Adivasi groups have overall literacy rates lower than that of the national average. Among the total Adivasi literates of 33.6 %, the proportion of literates who have attained education up to primary level and middle level are 28.6 % and 17.7 % respectively. Only 6.5% of them reached the matric / secondary / higher secondary level. This implies that every sixth Adivasi literate is a matriculate. Only 3.5% are graduates and above while non-technical and technical diploma holders constitute only a negligible 0.1 %.[363] The literacy rate of ST women is as low as 22.11%.

The educational levels of the major Adivasi communities at different levels are given in Table 4 below.

361 Interview with Dr.Ganesh Murmu and Birender Soy, Department of Tribal and Regional Languages, Ranchi.

362 As covered in the National Daily News, *Deccan Herald,* 8 October, 2009.

TABLE 4: Levels of Education among the major Scheduled Tribes[364]

Names of STs	Literate without educational level	Below Primary	Educational levels attained				
			Primary	Middle	Matric/Secondary Higher Secondary/ Intermediate etc.	Technical and non technical diploma etc.	Graduate and above
All STs	3.0	30.6	28.6	17.7	16.5	0.1	3.5
Santhal	3.5	34.3	30.0	17.0	13.2	0.1	2.0
Oraon	2.4	26.9	25.3	18.5	20.8	0.2	5.9
Munda	2.8	27.9	29.6	18.9	17.1	0.1	3.7
Ho	2.4	26.4	28.4	19.9	19.7	0.1	3.1
Kharwar	5.5	38.2	32.3	11. 3	10.8	0.1	1.8
Lohra	3.5	35.5	30.5	16.1	12.5	0.1	1.9
Bhumij	2.9	36.1	32.8	15.7	11.1	0.0	1.4
Kharia	2.0	26.0	26.5	18.3	21.4	0.1	5.6

Amongst the age group between 5-14 Oraons have the highest rate with 55% followed by the Kharias which is 53.3%, Mundas 50.1%, Bhumij 46.6%, Lohras 44.1%, Hos 37.6%, Santhals 36.3% and Kharwars 28.6%.[365]

364 Source: Office of the Registrar General, India 2001.

365

Photo: Chris Erni

Photo: Chris Erni

2.6. Land, natural resources and environment

Jharkhand is richly endowed with forest, mineral and water resources but paradoxically, it is also the poorest region of the country.

2.6.1 Forest

Forests form a third (29.61%) of Jharkhand's geographical area. Almost all forests in Jharkhand are classified as either Reserved Forests (18.3%) or Protected Forests (81.14%). Sections 3 and 29 of the Indian Forest Act 1927 allow only lands that are government property or where government has some proprietary rights to be declared Protected Forest or Reserved Forest. Sections 7 and 29 require an inquiry into pre-existing rights of villagers before such declaration. Sections 6, 21 and 31 specify that a vernacular notification of intent is essential. All these sections of the Indian Forest Act 1927 were violated with the creation of these categories of forest. The state has one National Park, ten Wildlife Sanctuaries (covering 0.21 million hectares or 2.62% of state's area) and one Tiger Reserve (covering 102,600 ha). Palamu Tiger Reserve, with about 36 to 38 tigers, has three Adivasi villages, Ramandag, Latoo and Kujrum with a population of 630 in the core area with another 161 villages in the buffer zone of the Reserve and 35 around it within a radius of five kms. The total human population in these villages had been projected at over 105,000 with a cattle population of 87,000. The State Government had not yet prepared any relocation plan, even for villages inside the core zone.[366]

Several hundred years old abandoned village sites and burial grounds (*sasandaris*) found inside Reserved Forests are evidences of abandoned Adivasi villages. No inquiry was undertaken to record these rights, nor was there any vernacular notification before declaring these areas as Reserved Forests or Protected Forests. The owners received no compensation, nor were

366 According to the Audit Report (Civil & Commercial), Jharkhand for the Year 2005-2006 accessible at ttp://cag.nic.in/html/cag_reports/jharkhand/rep_2006/civ&com_chap_3.pdf

proper demarcation done. After independence, more than 20,000 sq km were declared Private Protected Forests in Bihar, most of it in Jharkhand which were *zamindari* lands on which tenants had rights. Legal procedures were most often violated during this process. These lands were common forests of Adivasis prior to British settlements. Some parts of these continued to have user rights and were designated '*bahar*' or '*katat*' jungle while parts were kept by the *zamindars* as '*bhitar*' or '*rakhat*' jungle for their own use and future sale. The government took over the management of these lands under the Private Protected Forests Act, 1947 while recognising proprietary rights of *zamindars* and all existing user rights. The *zamindars* received an allowance and the entire net revenue realised from these forests. The z*amindars* opposing this Act destroyed large areas of forests. These forests were ultimately taken over completely by the state under the Bihar Land Reforms Act, 1950 without due inquiry or settlement of pre-existing rights of the original rights holders, the Adivasis. *Mundari khuntkatti* forests where the Munda original settlers had considerable customary rights were also not recognized in many cases as *zamindari* forests and were appropriated. Some of them were reclaimed through the Bihar High Court, with the argument that *Mundari khuntkattidars* were not *zamindars* under customary law, but only trustees managing land on the community's behalf. The illegal appropriation of forest rights of Adivasis continues even today when village records of rights are getting destroyed while new land settlements ignore such records[367].

However, these traditional rights can now be claimed under The STs and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006. But even this Act is not being implemented effectively. So far only 29,551 claims have been obtained of which only 9,115 claims have been disposed of out of which 6,079 titles have been issued while the remaining 3,036 claims have been rejected making the state one of the worst amongst states in the country in terms of implementation[368]. Implementation of the Act only began in Jharkhand in October 2008, due to the lack of elected *panchayats* in the state. The State Government claimed that it was not able to implement the Act since this requires elected members in the Sub-divisional and District Level Committees, while the Rules require the *panchayats* to summon a gram sabha. The Ministry of Tribal Affairs was requested to make clarification on this and had, in July 2008, informed the Jharkhand government that the State Government can, in consultation with the *gram sabhas*, appoint members to fill these positions.

In many cases the titles given under the Act are for lesser area than that claimed but no reasons have been given for the same. The claims of other traditional forest dwellers are being ignored. There have been almost no claims for community forest rights (454 claims only of which 57 community claims were only issued titles). In one area, the Birhors claimed the right to collect non-timber forest produce where they were granted over a 150 acre forest area. The Forest Department refuses to accept claims in most wildlife sanctuaries, national parks and in the tiger reserves on the grounds that rights in reserve forests were recognised only during the colonial period. However, some individual land titles have been issued in Hazaribagh wildlife sanctuary. No effort has been made to convert forest villages (there are 28 forest villages in the state) into revenue villages although individual titles have been issued in one. Bamboo and Tendu leaves continue to be managed as nationalized minor forest produce by the forest department despite the local community's ownership of these resources under the Forest Rights Act.[369]

The natural resources have been identified as the term 'community asset' in section 4 (a) of

367 Sharan, Ramesh. Alienation and Restoration of Tribal Land in Jharkhand. Current Issues and Possible Strategies, Economic and Political Weekly, 8 October 2005.

368 As on 31st May 2010, more than 2.82 million claims have been filed and more than 910,000 titles have been distributed as per the Ministry of Tribal Affairs web site accessible at: http://tribal.nic.in/writereaddata/mainlinkFile/File1210.pdf

369 Extracted from http://forestrightsact.com/current-situation

PESA.[370] PESA authorizes[371] traditional management practices of community resources but state legislation of Jharkhand does not permit the village council, the Gram Sabha and the *Panchayat* to do this. The provisions of PESA have not been incorporated to the state law as it should be.

2.6.2 Mining

Jharkhand is rich in mineral wealth and forest cover. The State has about 29% of India's coal reserves and 14% of its iron ore reserves; in 2005 – 2006, it produced about 13% of the country's output of chromite and bauxite. It also produces roughly 9% of India's fuel minerals. The importance of mining to the state's economy can be gauged from the fact that mineral royalties alone accounted for 13% of government revenue in 2004-2005 (up from 10.8% in 2002-2003). Almost a quarter of India's mine workers are employed in Jharkhand. [372]

Three laws are mainly used to acquire land for mining purposes: the Land Acquisition Act 1894 (LLA) for acquiring land in general, the Coal Bearing Areas (Acquisition and Development) Act 1957 for coal mining and the Atomic Energy Act 1964 for mining of uranium.[373] Coal in particular is found in the following areas of Jharkhand:

- Damodar Valley Coal Area
- Barakar Basin Area
- Ajay Basin Area
- Rajmahal Coal Area
- North Coal Basin Area

In these areas land alienation, displacement and multi-displacement, environmental degradation, forest degradation in different ways have impacted on Adivasis and other local communities.

Agriculture in most of the mining areas is in a dire state or ruined due to environmental degradation and the imbalance in the water table of the region. Further damage has been caused by dust released by removal of overburden and by the transportation system, not only in the core zone of the mining areas but in all of its buffer zones. Employment of Adivasis and local communities tends to be in the form of contract and uncertain daily wage labour. There is no social security for the Adivasi and local communities in these areas, as their traditional sources of livelihoods have nearly vanished. Many of the local communities have become involved in selling cycle loads of baked coal, travelling fifty to sixty kilometres in a day.

Case Study: The Damodar Basin

The Damodar sub-basin is one of oldest mining sub-basins. The area has witnessed mining prior to independence. The river has a catchment area of 990,780 hectares, starting from Chulhapani in Latehar district. The major tributaries of the Damodar are the Konar, Barakar, Haharo, Devnad, Dhopdhab, Marmaha and Jamunia rivers.

At the confluence of the Bokaro and Konar rivers, two thermal power stations – one of which was closed following orders of the Supreme Court – were and are disposing of ash in the Konar. The fly ash from the plants is also being transported to fill the open cast mines. The

370 In PESA Act 4 (a) and (d) explain very clearly that state legislation on the panchayats shall be in consonance with the customary laws, social, religious and traditional management practices. Also 4 (d) explains about safeguarding their traditions and customs that include their cultural identity, community resources and customary mode of dispute resolution. The gram Sabha has the right to approve the plans and projects for social and economic development before these are taken up for implementation by the Panchayat at the village level.

371 In section 10, sub sec. (5) of the Jharkhand Panchayati Raj, 2001 (JPRA).

372 Centre for Science and Environment (2006). *Rich Lands, Poor People: Is Sustainable Mining Possible?* State of the Environment Report.

373 Sundar, Nandini. 2009. *Legal Grounds Natural Resources, Identity, and the Law in Jharkhand*, New Delhi, Oxford University Press

Bokaro river catchment area further has a number of coal fields, namely the West Bokaro, Ghato, Lalpania and Parej coal fields. Within the catchment area there are coal washeries at Basantpur and Kedla, with a number of coal loading points dotting the landscape. The river caters mostly to industries, and no major or minor irrigation projects have been constructed on it. Most of the area under open cast mines have severely disturbed the ecosystem, changed the water flow regime, increased in-migration and consequent land use changes, and there has been a detrimental effect on agriculture.

Indiscriminate and unscientific mining and the absence of post mining treatment and management of mined areas are making the fragile ecosystems of the area more vulnerable to environmental degradation, leading to large scale land cover/land use changes. The current modus operandi of surface mining in the area generates huge quantity of mine tailings or overburden (consolidated and unconsolidated materials overlying the coal seam) in the form of gravel, rocks, sand, soil, etc., which are dumped over a large area adjacent to the mine pits. The dumping of overburden and coal destroys the surrounding vegetation and leads to severe soil and water pollution. Large scale denudation of forest cover, scarcity of water, pollution of air, water and soil, degradation of agricultural lands, and loss of terrestrial as well as aquatic biodiversity are some of the environmental implications of coal mining. The ecology of the area has also been threatened by the unprecedented rise in human population.

The shrinking of agricultural land due to acquisition for mining, the undulating topography and non remunerative agriculture has added to people's difficulties. Smaller streams and rivers of the area, which had served as lifelines for the people, are either completely disappearing or becoming seasonal. Consequently, the area is facing an acute shortage of clean drinking and irrigation water. Further, a study of zooplankton and benthic micro invertebrate diversity in the Damodar River done by Dr. Gopal Sharma (Zoological Survey of India) found that due to high levels of pollution and very low lean season flow, the biodiversity in the river had dropped alarmingly below the Bokaro steel plant.[374]

Legal Issues

The Jharkhand High Court in a 2005 decision[375] held that the provisions of the *Land Acquisition Act, 1927* and the *Coal Bearing Areas (Acquisition and Development) Act, 1957* override the provisions of the *Santhal Areas Tenancy (Supplementary Provisions) Act, 1949*. In that case, extensive acquisition of lands falling in the Pachwara region of Rajmahal was undertaken by the State government in order to provide captive coal mines for a private corporation, Panem Coal Mines Ltd. This was challenged by Adivasi leaders and human rights organisations by way of writ petitions, on various grounds, including the fact that the 1949 Act forbids the transfer of land or any right in the land by an Adivasi owner to anyone except another bonafide cultivating Adivasi under Section 20. The petitioners further invoked Section 41 of the 1949 Act, which forbids the transfer of vacant land holding or wasteland in a Paharia village to any non-Paharia person. In addition, considerable extent of forest lands were also transferred to the company and statutory requirements relating to consultation with the local community, as well as environmental clearances were not complied with. The judgment of the Supreme Court in the *Samatha case*[376] was relied upon.

The relevant portions of Section 20 of the 1949 Act state as follows:

'(1) No transfer by *raiyat* of his right in his holding or any portion thereof, by sale, gift,

374 Information in this section –the Damoder Basin is based on Sharad Singh's unpublished paper. Ranchi. February 2010

375 *Rajmahal Pahad Bachao Andolan vs. Union of India* judgment dated 19.8.2005 in WP (PIL) 6348 of 2003, Jharkhand High Court

376 *Samatha vs. State of Andhra Pradesh Ors* (1997) 8 SCC 191

mortgage, will, lease or any other contract or agreement, express or implied, shall be valid unless the right to transfer has been recorded in the record-of-rights, and then only to the extent to which such right is so recorded;

(2) Notwithstanding anything to the contrary contained in the record-of-rights, no right of an aboriginal *raiyat* in his holding or any portion thereof which is transferable shall be transferred in any manner to anyone but a bona fide cultivating aboriginal *raiyat* of the *pargana* or *taluk* or *tappa* in which the holding is situated.'

Section 41 of this 1949 Act states as follows:

'No vacant holding and no waste land in a Paharia village within the *Damin-i-Koh* Government estate shall be settlement with a person who is not a Paharia.'

Similar provisions in the Samatha case relating to the state of Andhra Pradesh had been interpreted to preclude the transfer of government lands in Scheduled Areas for the purpose of mining. However, the Jharkhand High Court took the view that 'in view of the recent decision of the Hon'ble Supreme Court in the *Balco case*[377]…it must be held that the ratio of the majority decision in *Samatha's case* has been watered down to a large extent.'[378] It accordingly held as follows:

'the State Government in exercise of its right of eminent domain is entitled to acquire land falling within the ambit of the Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949, and that such acquisition and allotment for captive mining purposes would not be hit by the provisions of S. 20 of the said Act.'

Given the serious implications of this decision, it was appealed to the Supreme Court. However, at that stage the petitioners entered into a settlement, and therefore the appeal was disposed of without any decision on the substantive issues arising.[379] Therefore, the law laid down by the High Court decision continues to operate as judicial precedent in the State of Jharkhand, not only in areas governed by the 1949 Act, but also undermining the force of similar provisions contained in the Chotanagpur Tenancy Act, 1908, which operates in other Scheduled Areas of the state. The state, on the other hand, in the name of eminent domain, is left free to override the constitutional, statutory and customary laws protecting the rights of Adivasi communities to their ancestral domains, and convert these lands to a development paradigm which the STs have neither sought, nor acquiesced to.

2.6.3 Displacement and resource alienation

A study on land acquisition for development projects in Jharkhand from 1951-1995[380] gives a conservative estimate of 625,889 hectares of total land acquired for various development projects. This consists of 344,805.643 hectares of private land, 141,165.841 hectares of common land and 139,651.086 hectares of forest land. Together this amounts to 7.96% of the land area of the state. Of this, 32.86% has been used for water resource schemes and 11.37% for industries. The issue of displacement and alienation of land and forest resources of people whose livelihood

377 *Balco Employees Union (Regd.) vs. Union of India* (2002) 2 SCC 33.

378 At para 43.

379 Vide order dated 4.12.2006 in *Rajmahal Pahad Bachao Andolan & Ors vs. Union of India* SLP (C) 1318 of 2006, Supreme Court of India.

380 Ekka, Alexius and Mohammed Asif. 2000. *Development-Induced Displacement and Rehabilitation in Jharkhand*, Indian Social Institute, New Delhi, 2000.

Photo: Chris Erni

depend on it has resulted in a number of major struggles. The conflict is around the right to use and exploit these natural resources. This has been in the guise of development and public purpose. The questions asked are: are the lands more productive under mining or agriculture, under forest or mining, under cereals or bio-fuels?[381]

The above mentioned study states that between 1951 and 1995, 1.55 million acres of land had been alienated or were proposed to be alienated for various schemes in Jharkhand – water resources, industries, thermal power, mines, defence establishment etc. Among these, mining and large dam projects accounted for 34% approximately. Another half a million acres have gone into national parks and sanctuaries from which people are no longer allowed to access their customary rights. Of all the land that was acquired, 55.10% was private land, 22.6% common land, and 22.3% forests.[382]

It is however, difficult to estimate the number of those displaced during this period due

381 Sundar, Nandini. *Legal Grounds Natural Resources, Identity, and the Law in Jharkhand*, New Delhi, Oxford University Press, 2009.

382 Ekka, Alexius and Asif Mohammed. op cit. p. 68. See also Sundar, Nandini. *Legal Grounds Natural Resources, Identity, and the Law in Jharkhand*, New Delhi, Oxford University Press, 2009.

to lack of records, multiple displacement etc. All that can be said is that there has been large scale displacement of Adivasis from their traditional home and resources. The process of industrialisation has been one of the main causes of displacement in Jharkhand.

Major industries in Jharkhand are broadly distributed in eight areas in both Scheduled and non-Scheduled areas of Jharkhand namely:

1. The Palamu Garhwa Industrial Area,
2. The Lohardagga Industrial Area,
3. The Koderma-Hazaribag Industrial Area,
4. Ranchi Industrial Area,
5. The Dhanbad Bokaro Industrial Area,
6. The Singhbhum Industrial Area,
7. The Ghatshila Industrial Area and
8. Deoghar Industrial Area[383]

The Jharkhand Industrial Policy 2001 and the Jharkhand Vision Document 2010 promised rapid industrialisation and the exploitation of the state's natural resources. The Jharkhand Industrial Policy aims at making Jharkhand a more investor friendly state by providing various concessions and government assistance to industrialists such as the acquisition of land for private industrial estates and making it available at the acquisition cost, and creating a land bank in each district for easy identification of government land. In the eyes of the government and industry, minerals are where the action is. A Confederation of Indian Industry - McKinsey report revealingly titled *Turning the Minerals and Metals Potential of eastern India into a Goldmine* outlined the tremendous opportunity for investment in mining in the states of Chhattisgarh, Jharkhand and Odisha.

The Constitutional provisions, including Article 244, Fifth Schedule and various fundamental rights, Directive Principles of State Policy, as well as the provisions of ILO C.107, (also arguably ILO C.111 Discrimination (Employment and Occupation) have been violated with impunity. These violations are a direct result of the political economy where the enclosure and expropriation of resources for the urban-industrial complex supersedes the general welfare of the people.

3. Conclusion

The struggles of the Adivasi compelled the colonial government to enact several regulations and legislations in the interest of Adivasis. This was to distinguish these areas from the rest of the areas governed by the general laws. However, these protective legislations were amended soon after Independence, making certain exceptions and modifications for transfer of land. Acquisition of land through Land Acquisition Act 1894, and Coal Bearing Areas (Acquisition and Development) Act 1957 were used instead of the process of acquisition specified in the protective Acts.

Unfair treatment of this region was marked by the denial of statehood status to the Adivasis demand (which was first raised at the Simon Commission in 1928) for a separate state of Jharkhand, where their rights over their lands and territories would be protected.Even with the formation of the state of Jharkhand, the interest of the so-called 'national mainstream' and the corresponding need to exploit natural and mineral resources for 'development' continues to dominate; infact even more so after the formation of the new state. The new state, instead of enforcing constitutional and protective rights of the indigenous communities, and restoring their alienated lands and resources, has signed over a hundred MoUs to industries, causing widespread discontent and anger among the people. Correspondingly, the state resembles a scarred land with

383 Singh, Sunil Kr. *Inside Jharkhand*, Crown Publications, Ranchi, 2006.

numerous struggles and protests dotted all over. Large parts are steadily becoming battlegrounds between the Maoists and the various armed forces of the State, adding violence to poverty and deprivation. The Constitutional provisions and protective legislations have been made redundant with unfettered resource grabbing, along with failure in governance, as the norm.

Annexure 1: **List of notifications issued by the President identifying certain communities as Scheduled Tribes at different times.**

The Constitution (Scheduled Tribes) Order 1950 [For Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Gujarat, Goa, Himachal Pradesh, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Mizoram, Odisha, Rajasthan, Tamil Nadu, Tripura and West Bengal.]
The Constitution (Scheduled Tribes) (Union Territories) Order, 1951 Daman & Diu, Lakshdweep.
The Scheduled Castes and Scheduled Tribes Lists (Modification) Order, 1956 and as inserted by Act 81 of 1971 for Mizoram.
The Scheduled Castes and Scheduled Tribes Lists (Modification) Order, 1956 and the Laccadive, Minicoy and Amindivi Islands (Alteration of Name) (Adaptation of Laws) Order, 1974 for Lakshadweep.
The Scheduled Castes and Scheduled Tribes Lists (Modification) Order, 1956 and as inserted by Act 69 of 1986 for Arunachal Pradesh.
The Constitution (Andaman And Nicobar Island) Scheduled Tribes Order, 1959 [For Andaman & Nicobar Islands]
The Constitution (Dadra & Nagar Haveli) Scheduled Tribes Order, 1962 [For Dadra & Nagar Haveli]
The Constitution (Uttar Pradesh) Scheduled Tribes Order, 1967 [For Uttar Pradesh]
The Constitution (Scheduled Tribes) (Uttar Pradesh) Order, 1967 and as inserted by Act 29 of 2000 for Uttaranchal.
The Constitution (Goa, Daman and Diu) Scheduled Tribes Order, 1968 and as inserted by Act 18 of 1987 for Daman & Diu.
The Constitution (Goa, Daman and Diu) Scheduled Tribes Order, 1968 and as inserted by Act 18 of 1987 for Goa
The Constitution (Nagaland) Scheduled Tribes Order, 1970 [For Nagaland]
The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 for the states of Andhra Pradesh, Bihar, Madhya Pradesh.
The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 and as inserted by Act 39 of 1991 for Karnataka.
The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 and as inserted by Act 30 of 2000 for Jharkhand.
The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 and as inserted by Act 28 of 2000 for Chhattisgarh.
The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 and The Constitution (Scheduled Tribes) Order (Amendment) Act, 1987 Meghalaya.
The Constitution (Sikkim) Scheduled Tribes Order, 1978 [For Sikkim]
The Constitution (Jammu & Kashmir) Scheduled Tribes Order, 1989 and The Constitution (Scheduled Tribes) Order (Amendment) Act, 1991 [For Jammu & Kashmir]

Annexure 2: List of Approved Primitive Tribal Groups[384]

Sl. No.	State/Union Territory	Primitive Tribal Groups	Population
1.	Andhra Pradesh	1. Chenchu 2. Bodo Gadaba 3. Gutob Gadaba 4. Dongria Khond 5. Kultia Khond 6. Kolam 7. Konda Reddi 8. Kondasavara 9. Bondo Porja 10. Khond Porja 11. Parengi Porja 12. Thoti **Total**	49,232 36,078 - 85,324 - 45,671 83,096 - - 32,669 - 2,074 **334,144**
2.	Bihar	13. Asur 14. Birhor 15. Birjia 16. Hill Kharia 17. Korwa 18. Mal Paharia 19. Paharias 20. Sauria Pahariya 21. Savar **Total**	181 406 17 1,501 703 4,631 2,429 585 420 **10,873**
3.	Gujarat	22. Kathodia 23. Kotwalia 24. Padhar 25. Siddi 26. Kolgha **Total**	5,820 21,453 22,421 8,662 48,419 **106,775**
4.	Jharkhand	27. Asur 28. Birhor 29. Birjia 30. Hill Kharia 31. Korwa 32. Mal Paharia 33. Parhaiya 34. Sauria Paharia 35. Savar **Total**	10,347 7,574 5,365 164,022 27,177 15,093 20,786 31,050 6,004 **287,358**
5.	Karnataka	36. Jenu Khurba 37. Koraga **Total**	29,828 16,071 **45,899**
6.	Kerala	38. Cholanaickan 39. Kadar 40. Kattunayakan 41. Kurumbas 42. Koraga **Total**	- - 2,145 14,715 2,174 1,152 **20,186**

384 http://www.jansamachar.net/display.php3?id=&num=1127&lang=English

Sl. No.	State/Union Territory	Primitive Tribal Groups	Population
7.	Madhya Pradesh (including Chhattisgarh)	43. Abujh Maria 44. Baiga 45. Bharia 46. Hill Korwa 47. Kamar 48. Sahariya 49. Birhor **Total**	- 332,936 - - 2,424 450,217 143 **785,720**
8.	Maharashtra	50. Katakaria (Kathodi) 51. Kolam 52. Maria Gond **Total**	235,022 173,646 - **408,668**
9.	Manipur	53. Maram Naga	1,225
10.	Odisha	54. Birhor 55. Bondo 56. Didayi 57. Dongria-Khond 58. Juang 59. Kharia 60. Kutia Khond 61. Lanjia Saura 62. Lodha 63. Mankirdia 64. Paudi Bhuyan 65. Saura 66. Chuktia Bhunjia **Total**	702 9,378 7,371 - 41,339 - - - 8,905 1,050 - - - **68,745**
11.	Rajasthan	67. Saharias	76,237
12.	Tamil Nadu	68. Kattunaickans 69. Kotas 70. Kurumba 71. Irula 72. Paniyan 73. Todas **Total**	4,5227 625 5,498 155,606 9,121 1,560 **217,937**
13.	Tripura	74. Reangs	165,103
14.	Uttar Pradesh	75. Buksa 76. Raji **Total**	4,367 998 **5,365**
15.	Uttaranchal	77. Buksa 78. Raji **Total**	46,771 517 **47,228**
16.	West Bengal	79. Birhor 80. Lodha 81. Toto **Total**	1,017 84,996 - **85,983**
17.	Andaman & Nicobar Islands	82. Great Andamanese 83. Jarawa 84. Onge 85. Sentinelse 86. Shompen **Total**	43 240 96 39 398 **816**
	All India	***Grand total***	***2,592,085***

Source: Annual Report, 2005-06, Ministry of Tribal Affairs, Government of Indian, New Delhi, p.136 accessible at http://tribal.gov.in/writereaddata/mainlinkFile/File1155.pdf

Annexure 3: Scheduled Tribe Population in India (2001)

Region/State	ST Population	Number of notified Scheduled Tribes	% in total population of the State/UTs	% of total ST population
Central Region	**44,271,468**			**52.51**
Andhra Pradesh	5,024,104	33	6.59	5.96
Bihar	758,351	30	0.91	0.9
Jharkhand	7,087,068	30	26.30	8.4
Madhya Pradesh	12,233,474	46	20.27	14.51
Chhattisgarh	6,616,596	42	31.76	7.85
Odisha	8,145,081	62	22.13	9.66
West Bengal	4,406,794	38	5.50	5.23
North Eastern Region	**10,465,898**			**12.41**
Sikkim	111,405	2	20.60	0.13
Arunachal Pradesh	705,158	12	64.22	0.84
Nagaland	1,774,026	5	89.15	2.1
Manipur	741,141	29	39.96	0.88
Mizoram	839,310	14	94.46	1.0
Tripura	993,426	19	31.05	1.18
Meghalaya	1,992,862	17	85.94	2.36
Assam	3,308,570	14	12.41	3.92
North Western Region	**1,714,658**			**2.03**
Jammu & Kashmir	1,105,979	12	10.90	1.31
Himachal Pradesh	244,587	8	4.02	0.29
Uttaranchal	256,129	5	3.02	0.3
Uttar Pradesh	107,963	5	0.06	0.13
Western Region	**23,307,930**			**27.64**
Rajasthan	7,097,706	12	12.56	8.42
Gujarat	7,481,160	29	14.76	8.87
Daman & Diu	13,997	5	8.85	0.02
Dadra & Nagar Haveli	137,225	7	62.24	0.16
Maharashtra	8,577,276	47	8.85	10.17
Goa	566	5	0.04	-
Southern Region	**4,479,496**			**5.31**
Karnataka	3,463,986	49	6.55	4.11

Region/State	ST Population	Number of notified Scheduled Tribes	% in total population of the State/UTs	% of total ST population
Kerala	364,189	35	1.14	0.43
Tamil Nadu	651,321	36	1.04	0.77
Island Region	**86,790**			**0.11**
Andaman & Nicobar Islands	29,469	6	8.27	0.04
Lakshadweep	57,321	Inhabitants both of whose parents, were born in Lakshadweep are treated as Scheduled Tribes	94.51	0.07
All India	***84,326,240***	*577*		***8.2***

Source: Census of India 2001

Annexure 4: List of notified Scheduled Tribes

Region/State	Notified Scheduled Tribes
Central Region	
Andhra Pradesh	1. Andh, Sadhu Andh 2. Bagata 3. Bhil 4. Chenchu, 5. Gadabas, Bodo Gadaba, Gutob Gadaba, Kallayi Gadaba, Parangi Gadaba, Kathera Gadaba, Kapu Gadaba 6. Gond, Naikpod, Rajgond, Koitur 7. Goudu (in the Agency tracts) 8. Hill Reddis 9. Jatapus 10. Kammara 11. Kattunayakan 12. Kolam, Kolawar 13. Konda Dhoras, Kubi 14. Konda Kapus 15. Kondareddis 16. Kondhs, Kodi, Kodhu, Desaya Kondhs, Dongria Kondhs, Kuttiya Kondhs, Tikiria Kondhs, Yenity Kondhs, Kuvinga 17. Kotia, Bentho Oriya, Bartika, Dhulia, Holva, Paiko, Putiya, Sanrona, Sidhopaiko 18. Koya, Doli Koya, Gutta Koya, Kammara Koya, Musara Koya, Oddi Koya, Pattidi Koya, Rajah, Rasha Koya, Lingadhari Koya (ordinary), Kottu Koya, Bhine Koya, Rajkoya 19. Kulia 20. Malis (excluding Adilabad, Hyderabad, Karimnagar, Khammam, Mahbubnagar, Medak, Nalgonda, Nizamabad and Warangal districts) 21. Manna Dhora 22. Mukha Dhora, Nooka Dhora 23. Nayaks (in the Agency tracts) 24. Pardhan 25. Porja, Parangiperja 26. Reddi Dhoras 27. Rona, Rena 28. Savaras, Kapu Savaras, Maliya Savaras, KhuttoSavaras 29. Sugalis, Lambadis, Banjara 30. Thoti (in Adilabad, Hyderabad, Karimnagar, Khammam, Mahbubnagar, Medak, Nalgonda, Nizamabad and Warangal districts) 31. Valmiki (in the Scheduled Areas of Vishakhapatnam, Srikakulam, Vijayanagram, East Godavari and West Godavari districts) 32. Yenadis, Chella Yenadi, Kappala Yenadi, Manchi Yenadi, Reddi Yenadi 33. Yerukulas, Koracha, Dabba Yerukula, Kunchapuri Yerukula, Uppu Yerukula 34. Nakkala, Kurvikaran 35. Dhulia, Paiko, Putiya (in the districts of Vishakhapatnam and Vijayanagaram)

Region/State	Notified Scheduled Tribes		
Bihar	1. Asur, Agaria	2. Baiga	3. Banjara
	4. Bathudi	5. Bedia	6. Omitted
	7. Binjhia	8. Birhor	9. Birjia
	10. Chero	11. Chik Baraik	12. Gond
	13. Gorait	14. Ho	15. Karmali
	16. Kharia, Dhelki Kharia, Dudh Kharia, Hill Kharia		17. Kharwar
	18. Khond	19. Kisan, Nagesia	20. Kora, Mudi-Kora
	21. Korwa	22. Lohara, Lohra	23. Mahli
	24. Mal Paharia, Kumarbhag Paharia		25. Munda, Patar
	26. Oraon, Dhangar (Oraon)		27. Parhaiya
	28. Santal	29. Sauria Paharia	30. Savar
	31. Kawar	32. Kol	33. Tharu
Jharkhand	1. Asur	2. Baiga	3. Banjara
	4. Bathudi	5. Bedia	6. Binjhia
	7. Birhor	8. Birjia	9. Chero
	10. Chick Baraik	11. Gond	12. Gorait
	13. Ho	14. Karmali	15. Kawar
	16. Kharia	17. Kharwar	18. Khond
	19. Kisan	20. Kol	21. Kora
	22. Korwa	23. Lohra	24. Mahli
	25. Mal Pahariya	26. Munda	27. Oraon
	28. Parhaiya	29. Santhal	30. Sauria Paharia
	31. Savar	32. Bhumij	

Region/State	Notified Scheduled Tribes
Madhya Pradesh	1. Agariya 2. Andh 3. Baiga 4. Bhaina 5. Bharia Bhumia, Bhuinhar Bhumia, Bhumiya, Bharia, Paliha, Pando 6. Bhattra 7. Bhil, Bhilala, Barela, Patelia 8. Bhil Mina 9. Bhunjia 10. Biar, Biyar 11. Binjhwar12. Birhul, Birhor 13. Damor, Damaria 14. Dhanwar 15. Gadaba, Gadba 16. Gond; Arakh, Arrakh, Agaria, Asur, Badi Maria, Bada Maria, Bhatola, Bhimma, Bhuta, Koilabhuta, Koilabhuti, Bhar, Bisonhorn Maria, Chota Maria, Dandami Maria, Dhuru, Dhurwa, Dhoba, Dhulia, Dorla, Gaiki, Gatta, Gatti, Gaita, Gond Gowari, Hill Maria, Kandra, Kalanga, Khatola, Koitar, Koya, Khirwar, Khirwara, Kucha Maria, Kuchaki Maria, Madia, Maria, Mana, Mannewar, Moghya, Mogia, Monghya, Mudia, Muria, Nagarchi, Nagwanshi, Ojha, Raj, Sonjhari Jhareka, Thatia, Thotya, Wade Maria, Vade Maria, Daroi 17. Halba, Halbi 18. Kamar 19. Karku 20. Kawar, Kanwar, Kaur, Cherwa, Rathia, Tanwar, Chhatri 21. Omitted 22. Khairwar, Kondar 23. Kharia 24. Kondh, Khond, Kandh 25. Kol 26. Kolam 27. Korku, Bopchi, Mouasi, Nihal, Nahul Bondhi, Bondeya 28. Korwa, Kodaku 29. Majhi 30. Majhwar 31. Mawasi 32. Omitted 33. Munda 34. Nagesia, Nagasia 35. Oraon, Dhanka, Dhangad 36. Panika [in (i) Chhatarpur, Panna, Rewa, Satna, Shahdol, Umaria, Sidhi and Tikamgarh districts, and (ii) Sevda and Datia Tehsils of Datia district] 37. Pao 38. Pardhan, Pathari, Saroti 39. Omitted 40. Pardhi, Bahelia, Bahellia, Chita Pardhi, Langoli Pardhi, Phans Pardhi, Shikari, Takankar, Takia[In (i) Chhindwara, Mandla, Dindori and Seoni districts, (ii) Baihar Tahsil of Balaghat district, (iii) Betul, Bhainsdehi and Shahpur tahsils of Betul district, (iv) Patan Tahsil and Sihora and Majholi blocks of Jabalpur district, (v) Katni (Murwara) and Vijaya Raghogarh Tahsils and Bahoriband and Dhemerkheda blocks of Katni district, (vi) Hoshangabad , Babai, Sohagpur, Pipariya and Bankhedi Tahsils and Kesla Block of Hoshangabad district, (vii) Narsinghpur district, and (viii) Harsud Tahsil of Khandwa district] 41. Parja 42. Sahariya, Saharia, Seharia, Sehria, Sosia, Sor 43. Saonta, Saunta 44. Saur 45. Sawar, Sawara 46. Sonr.
Chhattisgarh	1. Asur, Agaria 2. Baiga 3. Banjara 4. Bathudi 5. Bedia 6. Binjhia 7. Birhor 8. Birjia 9. Chero 10. Chik Baraik 11. Gond 12. Gorait 13. Ho 14. Karmali 15. Kharia, Dhelki Kharia, Dudh Kharia, Hill Kharia 16. Kharwar 17. Khond 18. Kisan, Nagesia 19. Kora, Mudi-Kora 20. Korwa 21. Lohra 22. Mahli 23. Mal Paharia, KumarbhagPaharia 24. Munda, Patar 25. Oraon, Dhangar (Oraon) 26. Parhaiya 27. Santal 28. Sauria Paharia 29. Savar 30. Bhumij 31. Kawar 32. Kol

Region/State	Notified Scheduled Tribes
Odisha	1. Bagata, Bhakta 2. Baiga 3. Banjara, Banjari 4. Bathudi, Bathuri 5. Bhottada, Dhotada Bhotra, Bhatra, Bhattara, Bhotora, Bhatara 6. Bhuiya, Bhuyan 7. Bhumia 8. Bhumij, Teli Bhumij Haladipokhria Bhumij, Haladi Pokharia Bhumija, Desi Bhumij, Desia Bhumij, Tamaria Bhumij 9. Bhunjia 10. Binjhal, Binjhwar 11. Binjhia, Binjhoa 12. Birhor 13. Bondo Poraja, BondaParoja, Banda Paroja 14. Chenchu 15. Dal 16. Desua Bhumji 17. Dharua, Dhuruba, Dhurva 18. Didayi, Didai Paroja, Didai 19. Gadaba, Bodo Gadaba, Gutob Gadaba, Kapu Gadaba, Ollara Gadaba, Parenga Gadaba, Sano Gadaba 20. Gandia 21. Ghara 22. Gond, Gondo Rajgond, Maria Gond, Dhur Gond 23. Ho 24. Holva 25. Jatapu 26. Juang 27. Kandha Gauda 28. Kawar, Kanwar 29. Kharia, Kharian Berga Kharia, Dhelki Kharia, Dudh Kharia, Erenga Kharia, Munda Kharia, Oraon Kharia, Khadia, Pahari Kharia 30. Kharwar 31. Khond, Kond, Kandha, Nanguli Kandha, Sitha Kandha Kondh, Kui, Buda Kondh, Bura Kandha, Desia Kandha, Dungaria Kondh, Kutia Kandha, Kandha Gauda, Muli Kondh, Malua Kondh, Pengo Kandha, Raja Kondh, Raj Khond 32. Kisan, Nagesar, Nagesia 33. Kol 34. Kolah Laharas, KolLoharas 35. Kolha 36. Koli, Malhar 37. Kondadora 38. Kora, Khaira, Khayara 39. Korua 40. Kotia 41. Koya, Gumba Koya, Koitur Koya, Kamar Koya, Musara Koya 42. Kulis 43. Lodha, Nodh, Nodha, Lodh 44. Madia 45. Mahali 46. Mankidi 47. Mankirdia, Mankria, Mankidi 48. Matya, Matia 49. Mirdhas, Kuda, Koda 50. Munda, Munda Lohara, Munda Mahalis, Nagabanshi Munda, Oriya Munda 51. Mundari 52. Omanatya, Omanatyo, Amanatya 53. Oraon, Dhangar, Uran 54. Parenga 55. Paroja, Parja, Bodo Paroja, Barong Jhodia Paroja, Chhelia Paroja, Jhodia Paroja, Konda Paroja, Paraja, PongaParoja, Sodia Paroja, Sano Paroja, Solia Paroja 56. Pentia 57. Rajuar 58. Santal 59. Saora, Savar, Saura, Sahara Arsi Saora, Based Saora, Bhima Saora, Bhimma Saora, Chumura Saora, Jara Savar, Jadu Saora, Jati Saora, Juari Saora, Kampu Saora, Kampa Soura, Kapo Saora, Kindal Saora, Kumbi Kancher Saora, Kalapithia Saora, Kirat Saora, Lanjia Saora, Lamba Lanjia Saora, Luara Saora, Luar Saora, Laria Savar, Malia Saora, Malla Saora, Uriya Saora, Raika Saora, Sudda Saora, Sarda Saora, Tankala Saora, Patro Saora, Vesu Saora 60. Shabar, Lodha 61. Sounti 62. Tharua, Tharua Bindhani

Region/State	Notified Scheduled Tribes		
West Bengal	1. Asur	2. Baiga	3. Bedia, Bediya
	4. Bhumij	5. Bhutia, Sherpa, Toto, Dukpa, Kagatay, Tibetan, Yolmo.	
	6. Birhor	7. Birjia	8. Chakma
	9. Chero	10. Chik Baraik	11. Garo
	12. Gond	13. Gorait	14. Hajang
	15. Ho	16. Karmali	17. Kharwar
	18. Khond	19. Kisan	20. Kora
	21. Korwa	22. Lepcha	23. Lodha, Kheria, Kharia
	24. Lohara, Lohra.	25. Magh	26. Mahali
	27. Mahli	28. Mal Pahariya	29. Mech
	30. Mru	31. Munda	32. Nagesia
	33. Oraon	34. Parhaiya	35. Rabha
	36. Santal	37. Sauria Paharia	38. Savar
	39. Limbu (Subba)	40. Tamang	
North Eastern Region			
Sikkim	1. Bhutia (including Chumbipa, Dopthapa, Dukpa, Kagatey, Sherpa, Tibetan, Tromopa, Yolmo)		
	2. Lepcha	3. Limboo	4. Tamang
Arunachal Pradesh	All tribes in the State including : -		
	1. Abor	2. Aka	3. Apatani
	4. Nyishi	5. Galong	6. Khampti
	7. Khowa	8. Mishmi, Idu, Taroan	9. Momba
	10. Any Naga tribes	11. Sherdukpen	12. Singpho
	13. Hrusso	14. Tagin	15. Khamba
	16. Adi		
Nagaland	1. Naga	2. Kuki	3. Kachari
	4. Mikir	5. Garo	
Manipur	1. Aimol	2. Anal	3. Angami
	4. Chiru	5. Chothe	6. Gangte
	7. Hmar	8. Kabui	9. Kacha Naga
	10. Koirao	11. Koireng	12. Kom
	13. Lamgang	14. Mao	15. Maram
	16. Maring	17. Any Mizo (Lushai) tribes	
	18. Monsang	19. Moyon	20. Paite
	21. Purum	22. Ralte	23. Sema
	24. Simte	25. Suhte	26. Tangkhul
	27. Thadou	28. Vaiphui	29. Zou
	30. Poumai Naga	31. Tarao	32. Kharam
	33. Any Kuki tribes		

Region/State	Notified Scheduled Tribes		
Mizoram	1. Chakma	2. Dimasa (Kachari)	3. Garo
	4. Hajong	5. Hmar	6. Khasi and Jaintia, (Including Khasi, Synteng or Pnar, War, Bhoi or Lyngngam)
	7. Any Kuki tribes, including:		
	(i) Baite or Beite	(ii) Changsan	(iii) Chongloi
	(iv) Doungel	(v) Gamalhou	(vi) Gangte
	(vii) Guite	(viii) Hanneng	(ix) Haokip or Haupit
	(x) Haolai	(xi) Hengna	(xii) Hongsungh
	(xiii) Hrangkhwal or Rangkhol		
	(xiv) Jongbe	(xv) Khawchung	(xvi) Khawathlang or Khothalong
	(xvii) Khelma	(xviii) Kholhou	(xix) Kipgen
	(xx) Kuki	(xxi) Lengthang	(xxii) Lhangum
	(xxiii) Lhoujem	(xxiv) Lhouvun	(xxv) Lupheng
	(xxvi) Mangjel	(xxvii)Missao	(xxviii) Riang
	(xxix) Siarhem	(xxx) Selnam	(xxxi) Singson
	(xxxii) Sitlhou	(xxxiii)Sukte	(xxxiv)Thado
	(xxxv) Thangngeu	(xxxvi)Uibuh	(xxxvii)Vaiphei
	8. Lakher	9. Man (Tai-speaking)	10. Any Mizo (Lushai) tribes
	11. Mikir	12. Any Naga tribes.	13. Pawi
	14. Synteng.	15. Paite	
Tripura	1. Bhil	2. Bhutia	3. Chaimal
	4. Chakma	5. Garoo	6. Halam, Bengshel, Dub, Kaipeng, Kalai, Karbong, Lengui, Mussum, Rupini, Sukuchep, Thangchep
	7. Jamatia	8. Khasia	
	9. Kuki, including the following sub-tribes:-		
	(i) Balte	(ii) Belalhut	(iii) Chhalya
	(iv) Fun	(v) Hajango	(vi) Jangtei
	(vii) Khareng	(viii)Khephong	(ix) Kuntei
	(x) Laifang	(xi) Lentei	(xii) Mizel
	(xiii) Namte	(xiv) Paitu, Paite	(xv) Rangchan
	(xvi) Rangkhole	(xvii) Thangluya	
	10. Lepcha	11. Lushai	12. Mag
	13. Munda, Kaur	14. Noatia, Murashing	15. Orang
	16. Riang	17. Santal	18. Tripura, Tripuri, Tippera
	19. Uchai		

Region/State	Notified Scheduled Tribes		
Meghalaya	1. Chakma	2. Dimasa, Kachari	3. Garo
	4. Hajong	5. Hmar	6. Khasi, Jaintia, Synteng, Pnar, War, Bhoi, Lyngngam
	7. Any Kuki tribes, including:-		
	(i) Biate, Biete	(ii) Changsan	(iii) Chongloi
	(iv) Doungel	(v) Gamalhou	(vi) Gangte
	(vii) Guite	(viii) Hanneng	(ix) Haokip, Haupit
	(x) Haolai	(xi) Hengna	(xii) Hongsungh
	(xiii) Hrangkhwal, Rangkhol		(xiv) Jongbe
	(xv) Khawchung	(xvi) Khawathlang, Khothalong	
	(xvii) Khelma	(xviii) Kholhou	(xix) Kipgen
	(xx) Kuki	(xxi) Lengthang	(xxii) Lhangum
	(xxiii) Lhoujem	(xxiv) Lhouvun	(xxv) Lupheng
	(xxvi) Mangjel	(xxvii) Misao	(xxviii) Riang
	(xxix) Sairhem	(xxx) Selnam	(xxxi) Singson
	(xxxii) Sitlhou	(xxxiii) Sukte	(xxxiv) Thado
	(xxxv) Thangngeu	(xxxvi)Uibuh	(xxxvii) Vaiphei
	8. Lakher	9. Man (Tai Speaking)	10. Any Mizo (Lushai) tribes
	11. Mikir	12. Any Naga tribes	13. Pawi
	14. Synteng	15. Boro Kacharis	16. Koch
	17. Raba, Rava		
Assam	***I.In the autonomous Districts of Karbi Anglong and North Cachar Hills.*		
	1. Chakma	2. Dimasa, Kachari	3. Garo
	4. Hajong	5. Hmar	6. Khasi, Jaintia, Synteng, Pnar, War, Bhoi, Lyngngam
	7. Any Kuki tribes, including:-		
	(i) Biate, Biete	(ii) Changsan	(iii) Chongloi
	(iv) Doungel	(v) Gamalhou	(vi) Gangte
	(vii) Guite	(viii) Hanneng	(ix) Haokip, Haupit
	(x) Haolai	(xi) Hengna	(xii) Hongsung
	(xiii) Hrangkhwal, Rangkhol		(xiv) Jongbe
	(xv) Khawchung	(xvi) Khawathlang, Khothalong	
	(xvii) Khelma	(xviii) Kholhou	(xix) Kipgen
	(xx) Kuki	(xxi) Lengthang	(xxii) Lhangum
	(xxiii) Lhoujem	(xxiv) Lhouvun	(xxv) Lupheng
	(xxvi) Mangjel	(xxvii) Misao	(xxviii)Riang
	(xxix) Sairhem	(xxx) Selnam	(xxxi) Singson
	(xxxii) Sitlhou	(xxxiii)Sukte	(xxxiv)Thado
	(xxxv) Thangngeu	(xxxvi) Uibuh	(xxxvii)Vaiphei
	8. Lakher	9. Man (Tai speaking)	10. Any Mizo (Lushai) tribes
	11. Karbi	12. Any Naga tribes	13. Pawi14. Syntheng
	15. Lalung		
	***II. In the State of Assam including the Bodo land territorial Areas District and excluding the autonomous districts of Karbi Anglong and North Cachar Hills :*		
	1. Barmans in Cachar	2. Boro, Borokachari	3. Deori
	4. Hojai	5. Kachari, Sonwal	6. Lalung
	7. Mech	8. Miri	9. Rabha
	10. Dimasa	11. Hajong	12. Singhpho
	13. Khampti	14. Garo	
North Western Region			

Region/State	Notified Scheduled Tribes
Jammu & Kashmir	1. Balti 2. Beda 3. Bot, Boto 4. Brokpa, Drokpa, Dard, Shin 5. Changpa 6. Garra 7. Mon 8. Purigpa 9. Gujjar 10. Bakarwal 11. Gaddi 12. Sippi
Himachal Pradesh	1. Bhot, Bodh 2. Gaddi 3. Gujjar 4. Jad, Lamba, Khampa 5. Kanaura, Kinnara 6. Lahaula 7. Pangwala 8. Swangla 9. Beta, Beda 10. Domba, Gara, Zoba
Uttaranchal	1. Bhotia 2. Buksa 3. Jannsari 4. Raji 5. Tharu
Uttar Pradesh	1. Bhotia 2. Buksa 3. Jannsari 4. Raji 5. Tharu 6. Gond, Dhuria, Nayak, Ojha, Pathari, Raj Gond (in the districts of Mehrajganj, Sidharth Nagar, Basti, Gorakhpur, Deoria, Mau, Azamgarh, Jonpur, Balia, Gazipur, Varanasi, Mirzapur and Sonbhadra) 7. Kharwar, Khairwar (in the districts of Deoria, Balia, Ghazipur, Varanasi and Sonbhadra) 8. Saharya (in the district of Lalitpur) 9. Parahiya (in the district of Sonbhadra) 10. Baiga (in the district of Sonbhadra) 11. Pankha, Panika (in the districts of Sonbhadra and Mirzapur) 12. Agariya (in the district of Sonbhadra) 13. Patari (in the district of Sonbhadra) 14. Chero (in the districts of Sonbhadra and Varanasi) 15. Bhuiya, Bhuinya (in the district of Sonbhadra)
Western Region	
Rajasthan	1. Bhil, Bhil Garasia, Dholi Bhil, Dungri Bhil, Dungri Garasia, Mewasi Bhil, Rawal Bhil, Tadvi Bhil, Bhagalia, Bhilala, Pawra, Vasava, Vasave 2. Bhil Mina 3. Damor, Damaria 4. Dhanka, Tadvi, Tetaria, Valvi 5. Garasia (excluding Rajput Garasia) 6. Kathodi, Katkari, Dhor Kathodi, Dhor Katkari, Son Kathodi, Son Katkari 7. Kokna, Kokni, Kukna. Koli dhor, Tokre Koli, Kolcha, Kolgha 9. Mina 10. Naikda, Nayaka, Cholivala Nayaka, Kapadia Nayaka, Mota Nayaka, Nana Nayaka 11. Patelia 12. Seharia, Sehria, Sahariya.

Region/State	Notified Scheduled Tribes
Gujarat	1. Barda 2. Bavacha, Bamcha 3. Bharwad (in the Nesses of the forests of Alech, Barada and Gir) 4. Bhil, Bhil Garasia, Dholi Bhil, Dungri Bhil, Dungri Garasia, Mewasi Bhil, Rawal Bhil, Tadvi Bhil, Bhagalia, Bhilala, Pawra, Vasava, Vasave. 5. Charan (in the Nesses of the forests of Alech, Barada and Gir) 6. Chaudhri (in Surat and Valsad districts) 7. Chodhara 8. Dhanka, Tadvi, Tetaria, Valvi 9. Dhodia, Dhodi. Dubla, Talavia, Halpati 11. Gamit, Gamta, Gavit, Mavchi, Padvi 12. Gond, Rajgond 13. Kathodi, Katkari, Dhor Kathodi, Dhor Katkari, Son Kathodi, Son Katkari 14. Kokna, Kokni, Kukna 15. Omitted 16. Koli Dhor, Tokre Koli, Kolcha, Kolgha 17. Kunbi (in the Dangs district) 18. Naikda, Nayaka, Cholivala Nayaka, Kapadia Nayaka, Mota Nayaka, Nana Nayaka 19. Padhar 20. Omitted 21. Pardhi, Advichincher, Phanse Pardhi (excluding Amreli, Bhavanagar, Jamnagar, Junagadh, Kutch, Rajkot and Surendranagar districts) 22. Patelia 23. Pomla 24. Rabari (in the Nesses of the forests of Alech, Barada and Gir) 25. Rathawa 26. Siddi (in Amreli, Bhavnagar, Jamnagar, Junagadh, Rajkot and Surendranagar districts) 27. Omitted 28. Varli 29. Vitola, Kotwalia, Barodia 30. Bhil, Bhilala Barela, Patelia 31. Tadvi Bhil, Bawra, Vasave, 32. Padvi.
Daman & Diu	*Throughout the Union territory:-* 1. Dhodia 2. Dubla (Halpati) 3. Naikda (Talavia) 4. Siddi (Nayaka) 5. Varli.
Dadra & Nagar Haveli	1. Dhodia 2. Dubla including Halpati 3. Kathodi 4. Kokna 5. Koli Dhor including Kolgha 6. Naikda or Nayaka 7. Varli

Region/State	Notified Scheduled Tribes
Maharashtra	1. Andh 2. Baiga 3. Barda 4. Bavacha, Bamcha 5. Bhaina 6. Bharia Bhumia, Bhuinhar Bhumia, Pando 7. Bhattra 8. Bhil, Bhil Garasia, Dholi Bhil, Dungri Bhil, Dungri Garasia, Mewasi Bhil, Rawal Bhil, Tadvi Bhil, Bhagalia, Bhilala Pawra, Vasava, Vasave 9. Bhunjia 10. Binjhwar 11. Birhul, Birhor 12. Omitted 13. Dhanka, Tadvi, Tetaria, Valvi 14. Dhanwar 15. Dhodia 16. Dubla Talavia, Halpati 17. Gamit, Gamta, Gavit, Mavchi, Padvi 18. Gond, Rajgond, Arakh, Arrakh, Agaria, Asur, Badi Maria, Bada Maria, Bhatola, Bhimma, Bhuta, Koilabhuta, Koilabhuti, Bhar, Bisonhorn Maria, Chota Maria, Dandami Maria, Dhuru, Dhurwa, Dhoba, Dhulia, Dorla, Gaiki, Gatta, Gatti, Gaita, Gond Gowari, Hill Maria, Kandra, Kalanga, Khatola, Koitar, Koya, Khirwar, Khirwara, Kucha Maria, Kuchaki Maria, Madia, Maria, Mana, Mannewar, Moghya, Mogia, Monghya, Mudia, Muria, Nagarchi, Naikpod, Nagwanshi, Ojha, Raj, Sonjhari Jhareka, Thatia, Thotya, Wade Maria, Vade Maria. 19. Halba, Halbi 20. Kamar 21. Kathodi, Katkari, Dhor Kathodi, Dhor Kathkari, Son Kathodi, Son Katkari 22. Kawar, Kanwar, Kaur, Cherwa, Rathia, Tanwar, Chattri 23. Khairwar 24. Kharia 25. Kokna, Kokni, Kukna 26. Kol 27. Kolam, Mannervarlu 28. Koli Dhor; Tokre Koli, Kolcha, Kolgha 29. Koli Mahadev, Dongar Koli 30. Koli Malhar 31. Kondh, Khond, Kandh 32. Korku, Bopchi, Mouasi, Nihal, Nahul, Bondhi, Bondeya 33. Koya, Bhine Koya, Rajkoya 34. Nagesia, Nagasia 35. Naikda, Nayaka, Cholivala Nayaka, Kapadia Nayaka, Mota Nayaka, Nana Nayaka 36. Oraon, Dhangad 37. Pardhan, Pathari, Saroti 38. Pardhi, Advichincher, Phans Pardhi, Phanse Pardhi, Langoli Pardhi, Bahelia, Bahellia, Chita Pardhi, Shikari, Takankar, Takia 39. Parja 40. Patelia 41. Pomla 42. Rathawa 43. Sawar, Sawara 44. Thakur, Thakar, Ka Thakur , Ka Thakar, Ma Thakur, Ma Thakar 45. Omitted 46. Varli 47. Vitolia, Kotwalia, Barodia
Goa	1. Dhodia 2. Dubla (Halpati) 3. Naikda (Talavia) 4. Siddi (Nayaka) 5. Varli. 6. Kunbi 7. Gawda 8. Velip
Southern Region	

Region/State	Notified Scheduled Tribes
Karnataka	1. Adiyan 2. Barda 3. Bavacha, Bamcha 4. Bhil, Bhil Garasia, Dholi Bhil, Dungri Bhil, Dungri Garasia, Mewasi Bhil, Rawal Bhil, Tadvi Bhil, Bhagalia, Bhilala, Pawra, Vasava, Vasave 5. Chenchu, Chenchwar 6. Chodhara 7. Dubla, Talavia, Halpati 8. Gamit, Gamta, Gavit, Mavchi, Padvi, Valvi 9. Gond, Naikpod, Rajgond 10. Gowdalu 11. Hakkipikki 12. Hasalaru 13. Irular 14. Iruliga 15. Jenu Kuruba 16. Kadu Kuruba 17. Kammara (in South Kanara district and Kollegal Taluk of Mysore district) 18. Kaniyan, Kanyan (in Kollegal Taluk of Mysore District) 19. Kathodi, Katkari, Dhor Kathodi, Dhor Katkari, Son Kathodi, Son Katkari 20. Kattunayakan 21. Kokna, Kokni, Kukna 22. Koli Dhor, Tokre Koli, Kolcha, Kolgha 23. Konda Kapus 24. Koraga 25. Kota 26. Koya, Bhine Koya, Rajkoya 27. Kudiya Melakudi 28. Kuruba (in Coorg district) 29. Kurumans 30. Maha Malasar 31. Malaikudi 32. Malasar 33. Malayekandi 34. Maleru 35. Maratha (in Coorg District) 36. Marati (in south Kanara district) 37. Meda Medari, Gauriga, Burud 38. Naikda, Nayaka, Chollivala Nayaka, Kapadia Nayaka, Mota Nayaka, Nana Nayaka, Naik, Nayak, Beda, Bedar and Valmiki. 39. Palliyan 40. Paniyan 41. Pardhi, Advichincher, Phanse Pardhi, Haranshikari 42. Patelia 43. Rathawa 44. Sholaga 45. Soligaru 46. Toda 47. Varli 48. Vitolia, Kotwalia, Barodia 49. Yerava 50. Siddi (in Uttar Kannada district)
Kerala	1. Adiyan 2. Arandan , Aranadan 3. Eravallan 4. Hill Pulaya, Mala Pulayan, Kurumba Pulayan, Karavazhi Pulayan, Pamba Pulayan 5. Irular, Irulan 6. Kadar , Wayanad Kadar 7. *Omitted* 8. Kanikaran, Kanikkar 9. Kattunayakan 10. Kochuvelan 11. *Omitted* 12. *Omitted* 13. Koraga 14. *Omitted* 15. Kudiya, Melakudi 16. Kurichchan, Kurichiyan 17. Kurumans, Mullu Kuruman, Mulla Kuruman, Mala Kuruman 18. Kurumbas, Kurumbar, Kurumban 19. Maha Malasar 20. Malai Arayan, Mala Arayan 21. Malai Pandaram 22. Malai Vedan, Malavedan 23. Malakkuravan 24. Malasar 25. Malayan, Nattu Malayan, Konga Malayan (excluding the areas comprising the Kasargode, Connanore, Wayanad and Kozhikode districts) 26. Malayarayar 27. Mannan 28. *Omitted* 29. Muthuvan, Mudugar, Muduvan 30. Palleyan, Palliyan, Palliyar, Paliyan 31. *Omitted* 32. *Omitted* 33. Paniyan 34. Ulladan , Ullatan 35. Uraly 36. Mala Vettuyan (in Kasargode and Kannur districts) 37. Ten Kurumban, Jenu Kurumban 38. Thachanadan, Thachanadan Moopan 39. Cholanaickan 40. Mavilan 41. Karimpalan 42. Vetta Kuruman 43. Mala Panickar

Region/State	Notified Scheduled Tribes
Tamil Nadu	1. Adiyan 2. Aranadan 3. Eravallan 4. Irular 5. Kadar 6. Kammara (excluding Kanyakumari district and Shenkottah Taluk of Tirunelveli district) 7. Kanikaran, Kanikkar (in Kanyakumari district and Shenkottah and Ambasamudram Taluks of Tirunelveli district) 8. Kaniyan, Kanyan 9. Kattunayakan 10. Kochu Velan 11. Konda Kapus 12. Kondareddis 13. Koraga 14. Kota (excluding Kanyakumari District and Shenkottah Taluk of Tirunelveli District) 15. Kudiya, Melakudi 16. Kurichchan 17. Kurumbas (in the Nilgiris District) 18. Kurumans 19. Maha Malasar 20. Malai Arayan 21. Malai Pandaram 22. Malai Vedan 23. Malakkuravan 24. Malasar 25. Malayali (in Dharmapuri, North Arcot Pudukottai, Salem, South Arcot and Tiruchirapali districts) 26. Malayekandi 27. Mannan 28. Mudugar, Muduvan 29. Muthuvan 30. Palleyan 31. Palliyan 32. Palliyar 33. Paniyan 34. Sholaga 35. Toda (excluding Kanyakumari district and Shenkottah Taluk of Tirunelveli district) 36. Uraly
Island Region	
Andaman & Nicobar Islands	1. Andamanese, Chariar, Chari, Kora, Tabo, Bo, Yere, Kede, Bea, Balawa, Bojigiyab, Juwai, Kol 2. Jarawas 3. Nicobarese 4. Onges 5. Sentinelese 6. Shom Pens
Lakshadweep	Throughout the Union territory:- Inhabitants of the Laccadive, Minicoy and Aminidivi Islands who, and both of whose parents, were born in those islands. 'Provided that the children who are born to inhabitants of Lakshadweep in any other place in the mainland of India shall be deemed to be inhabitants born in the islands if such children settle permanently in the islands'. Explanation: - The term "settle permanently" shall have the same meaning as defined under Clause 3(I) (d) of the Lakshadweep Panchayat Regulation, 1994.
All India	

***NB: The Constitution (Scheduled Tribes) Order (Amendment) Act 2003 dated 19.9.2003*

Source: Annual Report 2008-09, Ministry of Tribal Affairs, Government of India, p.47-58 accessible at http://tribal.gov.in/writereaddata/mainlinkFile/File1155.pdf

Annexure 5: Scheduled Tribes and the State/ Union Territory where they are scheduled

S. No.	Scheduled Tribe (in alphabetical order)	State/ Union Territory Where Scheduled
1.	Abor	Arunachal Pradesh
2.	Adiyan	Karnataka, Kerala, Tamilnadu
3.	Advichincher	Gujarat, Karnataka, Maharashtra
4.	Agaria	Madhya Pradesh, Chhattisgarh, Maharashtra
5.	Agariaya	Madhya Pradesh, Chhattisgarh
6.	Aimol	Manipur
7.	Aka	Arunachal Pradesh
8.	Anal	Manipur
9.	Andh	Andhra Pradesh, Madhya Pradesh, Chhattisgarh Maharashtra
10.	Andamanese	Andaman & Nicobar Islands
11.	Angami	Manipur
12.	Apatani	Arunachal Pradesh
13.	Arakh	Madhya Pradesh, Maharashtra, Chhattisgarh
14.	Aradan	Kerala, Tamilnadu
15.	Arrakh	Madhya Pradesh, Maharashtra, Chhattisgarh
16.	Asur (Gond)	Bihar, West Bengal, Madhya Pradesh, Maharashtra, Jharkhand, Chhattisgarh
17.	Baiga	Bihar, Madhya Pradesh, Maharashtra, Odisha, West Bengal, Jharkhand, Chhattisgarh
18.	Baite (Kuki)	Mizoram
19.	Bakarwal	Jammu & Kashmir
20.	Balawa (Andamanese)	Andaman & Nicobar Islands
21.	Balte (Kuki)	Tripura
22.	Balti	Jammu & Kashmir
23.	Bamcha (Bavacha)	Gujarat, Karnataka, Maharashtra
24.	Banjara	Bihar, Odisha, Jharkhand
25.	Banjari (Banjara)	Odisha
26.	Barda	Gujarat, Karnataka, Maharashtra
27.	Barela (Bhil)	Madhya Pradesh, Rajasthan, Chhattisgarh
28.	Barmans	Assam
29.	Barodia (Vitolia)	Karnataka, Maharashtra
30.	Bartika (Kotia)	Andhra Pradesh
31.	Bathudi	Bihar, Odisha, Jharkhand
32.	Bauacha	Gujarat, Karnataka, Maharashtra
33.	Bea	A & N Islands
34.	Beda	Jammu & Kashmir, Karnataka
35.	Bedar	Karnataka
36.	Bedia	Bihar, West Bengal, Jharkhand

S. No.	Scheduled Tribe (in alphabetical order)	State/ Union Territory Where Scheduled
37.	Bediya (Bedia)	West Bengal
38.	Belalhut (Kuki)	Tripura
39.	Bentho Oriya (Kotia)	Andhra Pradesh
40.	Bhagalia (Bhil)	Gujarat, Karnataka, Maharashtra, Rajasthan
41.	Bhaina	Madhya Pradesh, Maharashtra, Chhattisgarh
42.	Bhar (Gond)	Madhya Pradesh, Maharashtra, Chhattisgarh
43.	Bharia (Bharia Bhumia)	Madhya Pradesh, Chhattisgarh
44.	Bharia Bhumia	Madhya Pradesh, Maharashtra, Chhattisgarh
45.	Bharwad	Gujarat
46.	Bhatola (Gond)	Madhya Pradesh, Maharashtra, Chhattisgarh
47.	Bhattra	Madhya Pradesh, Maharashtra, Chhattisgarh
48.	Bhil	Madhya Pradesh, Maharashtra, Andhra Pradesh, Gujarat, Karnataka, Rajasthan, Tripura, Chhattisgarh
49.	Bhil Garasia (Bhil)	Gujarat, Karnataka, Maharashtra, Rajasthan
50.	Bhil Mina	Madhya Pradesh, Rajasthan, Chhattisgarh
51.	Bhillala (Bhil)	Gujarat, Karnataka, Madhya Pradesh, Maharashtra, Rajasthan, Chhattisgarh
52.	Bhimma (Gond)	Madhya Pradesh, Maharashtra, Chhattisgarh
53.	Bhine Koya (Koya)	Andhra Pradesh, Karnataka, Madhya Pradesh, Maharashtra
54.	Bhoi (Khasi)	Assam, Meghalaya, Mizoram
55.	Bhot	Himachal Pradesh
56.	Bhotia	Uttar Pradesh
57.	Bhottada	Odisha
58.	Bhuinhar Bhumia (Bharia Bhumia)	Madhya Pradesh, Maharashtra, Chhattisgarh
59.	Bhuiya	Odisha
60.	Bhuiya	Bihar, Odisha, West Bengal, Jharkhand
61.	Bhuta (Gond)	Madhya Pradesh, Maharashtra
62.	Bhumiya (Bharia Bhumia)	Madhya Pradesh, Chhattisgarh
63.	Bhumia	Odisha
64.	Bhunjia	Madhya Pradesh, Maharashtra, Odisha, Chhattisgarh
65.	Bhutia	Sikkim, Tripura, West Bengal
66.	Bhuyan (Bhuiya)	Odisha
67.	Biar	Madhya Pradesh, Chhattisgarh

S. No.	Scheduled Tribe (in alphabetical order)	State/ Union Territory Where Scheduled
68.	Biate (Kuki)	Assam, Meghalaya, Mizoram
69.	Biete (Kuki)	Assam, Meghalaya, Mizoram
70.	Birhor (Birhol)	Madhya Pradesh, West Bengal, Chhattisgarh
71.	Binjhal	Odisha
72.	Binjhia	Bihar, Odisha, Jharkhand
73.	Binjhoa (Binjhia)	Odisha
74.	Binjhwar	Madhya Pradesh, Maharashtra, Chhattisgarh
75.	Birhor	Bihar, Madhya Pradesh (Birhol), Maharashtra (Birhul), Odisha, West Bengal, Jharkhand
76.	Birhul	Madhya Pradesh, Maharashtra, Chhattisgarh
77.	Birjia	Bihar, West Bengal, Jharkhand
78.	Bisonhorn Maria (Gond)	Madhya Pradesh, Maharashtra, Chhattisgarh
79.	Biyar (Biar)	Madhya Pradesh, Chhattisgarh
80.	Bo (Andamanese)	A & N Islands
81.	Bodh (Bhot)	Himachal Pradesh
82.	Bojigiyab (Andamanese)	A & N Islands
83.	Bondeya (Korku)	Madhya Pradesh, Maharashtra, Chhattisgarh
84.	Bondhi (Korku)	Madhya Pradesh, Maharashtra, Chhattisgarh
85.	Bondo Poraja	Odisha
86.	Bopchi (Korku)	Madhya Pradesh, Maharashtra, Chhattisgarh
87.	Boro	Assam
88.	Barodia (Vitola)	Gujarat, Maharashtra
89.	Borokachari (Boro)	Assam, Meghalaya
90.	Bot	Jammu & Kashmir
91.	Boto	Jammu & Kashmir
92.	Buksa	Uttar Pradesh
93.	Bada Maria (Gond)	Madhya Pradesh, Maharashtra
94.	Badimaria (Gond)	Madhya Pradesh, Maharashtra
95.	Bagata	Andhra Pradesh, Odisha
96.	Behelia (Pardhi)	Madhya Pradesh, Maharashtra
97.	Bahellia (Pardhi)	Madhya Pradesh, Maharashtra
98.	Brokpa	Jammu & Kashmir
99.	Chaimal	Tripura
100.	Chakma	Assam, Meghalaya, Mizoram, Tripura, West Bengal
101.	Changpa	Jammu & Kashmir
102.	Changsan (Kuki)	Assam Meghalaya, Mizoram
103.	Charan	Gujarat
104.	Chari (Andamanese)	A & N Islands

S. No.	Scheduled Tribe (in alphabetical order)	State/ Union Territory Where Scheduled
105.	Chariar (Andamanese)	A & N Islands
106.	Chattri (Kawar)	Madhya Pradesh, Maharashtra, Chhattisgarh
107.	Chaudhri	Gujarat
108.	Chenchu	Andhra Pradesh, Karnataka, Odisha
109.	Chenchwar (Chenchu)	Andhra Pradesh, Karnataka
110.	Chero	Bihar, West Bengal, Jharkhand
111.	Cherwa (Kawar)	Madhya Pradesh, Maharashtra, Chhattisgarh
112.	Chhalya (Kuki)	Tripura
113.	Chik Baraik	Bihar, West Bengal, Jharkhand
114.	Chiru	Manipur
115.	Chitapardhi (Pardhi)	Madhya Pradesh, Maharashtra, Chhattisgarh
116.	Chodhara	Gujarat, Karnataka, Maharashtra
117.	Cholivalanayak (Naikda)	Maharashtra
118.	Cholivalanayaka (Naikda)	Karnataka, Rajasthan, Gujarat
119.	Chongloi (Kuki)	Assam Meghalaya, Mizoram
120.	Chotamaria (Gond)	Madhya Pradesh, Maharashtra, Chhattisgarh
121.	Chothe	Manipur
122.	Chumbipa	Sikkim
123.	Dafla	Arunachal Pradesh
124.	Dal	Odisha
125.	Damaria (Damor)	Madhya Pradesh, Rajasthan, Chhattisgarh
126.	Damor	Madhya Pradesh, Rajasthan, Chhattisgarh
127.	Dandami Maria (Gond)	Madhya Pradesh, Maharashtra, Chhattisgarh
128.	Dard	Jammu & Kashmir
129.	Daroi (Gond)	Madhya Pradesh, Chhattisgarh
130.	Desaya Konda (Kondhs)	Andhra Pradesh
131.	Deori	Assam
132.	Desua Bhumij	Odisha
133.	Dhangad (Oraon)	Madhya Pradesh, Maharashtra, Chhattisgarh
134.	Dhanka (Oraon)	Gujarat, Madhya Pradesh, Maharashtra, Rajasthan, Chhattisgarh
135.	Dhanwar	Madhya Pradesh, Maharashtra, Chhattisgarh
135.	Dharua	Odisha
136.	Dhoba (Gond)	Madhya Pradesh, Maharashtra, Chhattisgarh
137.	Dhodia	Gujarat, Maharashtra, Dadra & Nagar Haveli, Goa, Daman & Diu

S. No.	Scheduled Tribe (in alphabetical order)	State/ Union Territory Where Scheduled
138.	Dholi Bhil (Bhil)	Gujarat, Karnataka, Maharashtra, Rajasthan
139.	Dhor (Koli)	Maharashtra
140.	Dhora	Andhra Pradesh
141.	Dhor Katkari (Kathodi)	Rajasthan, Gujarat, Karnataka, Maharashtra
142.	Dhor Kathodi (Kathodi)	Gujarat, Karnataka, Maharashtra, Rajasthan
143.	Dhotada (Bhottada)	Odisha
144.	Dhulia (Gond)	Madhya Pradesh, Maharashtra, (Kotia), Andhra Pradesh, Chhattisgarh
145.	Dhuru (Gond)	Madhya Pradesh, Maharashtra, Chhattisgarh
146.	Dhurwa (Gond)	Madhya Pradesh, Maharashtra, Chhattisgarh
147.	Didayi	Odisha
148.	Dimasa	Assam, Meghalaya, Mizoram
149.	Dongar Koli (Koli)	Maharashtra
	Dongria Konds (Kondhs)	Andhra Pradesh
150.	Dopthapa	Sikkim
151.	Dorla (Gond)	Madhya Pradesh, Maharashtra, Chhattisgarh
152.	Doungel (Kuki)	Assam, Meghalaya, Mizoram
153.	Drokpa	Jammu & Kashmir
154.	Dubla	Gujarat, Karnataka, Maharashtra, Dadra & Nagar Haveli, Goa, Daman & Diu
155.	Dulia	Andhra Pradesh
156.	Dukpa (Bhutia)	Sikkim, West Bengal
157.	Dungri Bhil	Gujarat, Karnataka, Maharashtra, Rajasthan
158.	Dungri Garasia(Bhil)	Gujarat, Karnataka, Maharashtra, Rajasthan
159.	Eravallan	Kerala, Tamilnadu
160.	Fun	Tripura
161.	Gadaba	Madhya Pradesh, Odisha. Chhattisgarh
162.	Gadabas	Andhra Pradesh
163.	Gadba (Gadaba)	Madhya Pradesh, Chhattisgarh
164.	Gaddi	Himachal Pradesh, Jammu & Kashmir
165.	Gaiki (Gond)	Madhya Pradesh, Maharashtra, Chhattisgarh
166.	Gaita (Gond)	Madhya Pradesh, Maharashtra, Chhattisgarh
167.	Galong	Arunachal Pradesh
168.	Gamalhou (Kuki)	Assam, Meghalaya, Mizoram
169.	Gamit	Gujarat, Karnataka, Maharashtra
170.	Gamta (Gamit)	Gujarat, Karnataka, Maharashtra
172.	Gandia	Odisha

S. No.	Scheduled Tribe (in alphabetical order)	State/ Union Territory Where Scheduled
173.	Gangte (Kuki)	Assam, Meghalaya, Manipur, Mizoram
174.	Garasia	Rajasthan
175.	Garo	Assam, Meghalaya, Mizoram, Nagaland, West Bengal
176.	Garoo	Tripura
177.	Garra	Jammu & Kashmir
178.	Gatta (Gond)	Madhya Pradesh, Maharashtra, Chhattisgarh
179.	Gatti (Gond)	Madhya Pradesh, Maharashtra, Chhattisgarh
180.	Gavit (Gmit)	Gujarat, Karnataka, Maharashtra
181.	Ghara	Odisha
182.	Gond	Andhra Pradesh, Bihar, Gujarat, Karnataka, Madhya Pradesh, Jharkhand, Maharashtra, Odisha, West Bengal, Chhattisgarh
183.	Gond Gowari	Madhya Pradesh, Maharashtra, Chhattisgarh
184.	Gando	Odisha
185.	Gorait	Bihar, West Bengal, Jharkhand
186.	Goud	Andhra Pradesh
187.	Goudu	Andhra Pradesh
188.	Gowdalu	Karnataka
189.	Gujjar	Himachal Pradesh, Jammu & Kashmir
190.	Guite (Kuki)	Assam, Meghalaya, Mizoram
191.	Hajang	West Bengal
192.	Hajango (Kuki)	Tripura
193.	Hajong	Assam, Meghalaya, Mizoram
194.	Hakkipikki	Karnataka
195.	Halam	Tripura
196.	Halba	Madhya Pradesh, Maharashtra, Chhattisgarh
197.	Halbi	Madhya Pradesh, Maharashtra, Chhattisgarh
198.	Halpati (Dubla)	Gujarat, Karnataka, Goa, Daman & Diu
199.	Hanneng (Kuki)	Assam, Meghalaya, Mizoram
200.	Haokip (Kuki)	Assam, Meghalaya, Mizoram
201.	Haolai (Kuki)	Assam, Meghalaya, Mizoram
202.	Hasallaru	Karnataka
203.	Haupit (Kuki)	Assam, Meghalaya, Mizoram
204.	Hengna	Assam, Meghalaya, Mizoram
205.	Hill Maria (Gond)	Madhya Pradesh, Maharashtra, Chhattisgarh
206.	Hill Pulaya	Kerala
207.	Hill Reddis	Andhra Pradesh
208.	Hmar	Assam, Manipur, Meghalaya, Mizoram
209.	Ho	Bihar, Odisha, West Bengal, Jharkhand
210.	Hojai	Assam

S. No.	Scheduled Tribe (in alphabetical order)	State/ Union Territory Where Scheduled
211.	Holva (Kotia)	Andhra Pradesh, Odisha
212.	Hongsungh (Kuki)	Assam, Meghalaya, Mizoram
213.	Hrangkhwa (Kuki)	Assam, Meghalaya, Mizoram
214.	Irulan (Irular)	Kerala
215.	Irular	Karnataka, Kerala, Tamilnadu
216.	Iruliga	Karnataka
217.	Jad	Himachal Pradesh
218.	Jaintia (Khasi)	Assam, Meghalaya, Mizoram
219.	Jamatia	Tripura
220.	Jangtei	Tripura
221.	Jarawas	A & N Islands
222.	Jatapu	Odisha
223.	Jatapus	Andhra Pradesh
224.	Jaunsari	Uttar Pradesh
225.	Jenu Kuruba	Karnataka
226.	Jongbe (Kuki)	Assam, Meghalaya, Mizoram
227.	Juang	Odisha
228.	Juwai	A&N Islands
229.	Kabui	Manipur
230.	Kacha Naga	Manipur
231.	Kachari	Assam (Dimasa), Meghalaya, Nagaland
232.	Kadar	Kerala, Tamilnadu
234.	Kadu Kuruba	Karnataka
235.	Kagatay (Bhutia)	Sikkim, West Bengal
236.	Kalanga (Gond)	Madhya Pradesh, Maharashtra, Chhattisgarh
237.	Kamar	Madhya Pradesh, Maharashtra, Chhattisgarh
238.	Kammara	Andhra Pradesh, Karnataka, Kerala, Tamilnadu
239.	Kanaura	Himachal Pradesh
240.	Kandh (Kondh)	Madhya Pradesh, Maharashtra¸ Chhattisgarh
241.	Kandha (Khond)	Odisha
242.	Kandha Gauda	Madhya Pradesh, Maharashtra
243.	Kanikkar (Kanikaran)	Kerala, Tamilnadu
244.	Kaniyan	Karnataka Tamilnadu
245.	Kannikaran	Kerala, Tamilnadu
246.	Kanwar (Kawar)	Madhya Pradesh, Maharashtra, Chhattisgarh
247	Kanyan (Kaniyan)	Karnataka Tamilnadu
248.	Kapadia Nayaka (Naikda)	Gujarat, Karnataka, Maharashtra, Rajasthan

S. No.	Scheduled Tribe (in alphabetical order)	State/ Union Territory Where Scheduled
249.	Kapu Savaras (Savaras)	Andhra Pradesh
250.	Karku	Madhya Pradesh, Chhattisgarh
251.	Karmili	Bihar, West Bengal, Jharkhand
252.	Ka Thakar (Thakur)	Maharashtra
253.	Ka Thakur (Thakur)	Maharashtra
254.	Kathodi	Gujarat, Karnataka, Maharashtra, Dadra & Nagar Haveli, Rajasthan
256.	Katkari (Kathodi)	Gujarat, Karnataka, Maharashtra, Rajasthan
257.	Kattunayakan	Andhra Pradesh, Karnataka, Kerala, Tamilnadu
258.	Kaur (Munda)	Tripura
259.	Kaur (Kawar)	Madhya Pradesh, Maharashtra, Chhattisgarh
260.	Kawar	Madhya Pradesh, Maharashtra, Odisha, Chhattisgarh
	Kede (Andamanese)	A & N Islands
261.	Keer	Madhya Pradesh
262.	Khairwar	Madhya Pradesh, Chhattisgarh
263.	Khampa (Jad)	Himachal Pradesh
264.	Khampti	Arunachal Pradesh
265.	Khareng (Kuki)	Tripura
266.	Kharia	Bihar, Madhya Pradesh, Maharashtra, Odisha, (Lodha) West Bengal, Jharkhand, Chhattisgarh
267.	Kharian (Kharia)	Odisha
268.	Kharwar	West Bengal, Jharkhand
269.	Khasi	Assam, Meghalaya, Mizoram
270.	Khasia	Tripura
271.	Khatola (Gond)	Madhya Pradesh, Maharashtra, Chhattisgarh
272.	Khawchung (Kuki)	Assam, Meghalaya, Mizoram
273.	Khawatholang (Kuki)	Assam, Meghalaya, Mizoram
274.	Khelma (Kuki)	Assam, Meghalaya, Mizoram
275.	Khephong (Kuki)	Tripura
276.	Kheria (Lodha)	West Bengal
277.	Khirwar (Gond)	Madhya Pradesh, Maharashtra, Chhattisgarh
278.	Khirwara (Gond)	Madhya Pradesh, Maharashtra, Chhattisgarh
279.	Kholhou (Kuki)	Assam, Meghalaya, Mizoram
280.	Khond	Bihar, (Kondh) Madhya Pradesh, (Kondh) Maharashtra, West Bengal, Odisha, Jharkhand, Chhattisgarh
281.	Khothalong (Kuki)	Assam, Meghalaya, Mizoram
282.	Khowa	Arunachal Pradesh
283.	Khutto Savaras (Savaras)	Andhra Pradesh

S. No.	Scheduled Tribe (in alphabetical order)	State/ Union Territory Where Scheduled
284.	Kipgen (Kuki)	Assam, Meghalaya, Mizoram
285.	Kinnara (Kanaura)	Himachal Pradesh
286.	Kisan	Bihar, Odisha, West Bengal, Jharkhand
287.	Koch	Meghalaya
288.	Kochu Velan	Kerala, Tamilnadu
289.	Kodaku (Korwa)	Madhya Pradesh, Chhattisgarh
290.	Kodhu (Kondh)	Andhra Pradesh
291.	Kodi (Kondhs)	Andhra Pradesh
292.	Koilabhuta (Gond)	Madhya Pradesh, Maharashtra, Chhattisgarh
293.	Koilabhuti (Gond)	Madhya Pradesh, Maharashtra, Chhattisgarh
294.	Koirao	Manipur
295.	Koireng	Manipur
296.	Koitar (Gond)	Madhya Pradesh, Maharashtra, Chhattisgarh
297.	Kokna	Gujarat, Karnataka, Maharashtra, Rajasthan, Dadra & Nagar Haveli
298.	Kokni	Gujarat, Karnataka, Maharashtra, Rajasthan
299.	Kol	Madhya Pradesh, Maharashtra, Chhattisgarh
300.	Kol Laharas (Kolah Loharas)	Odisha
301.	Kolah Loharas	Odisha
302.	Kolam	Andhra Pradesh, Madhya Pradesh, Maharashtra, Chhattisgarh
303.	Kolcha (Kolidor)	Gujarat, Karnataka, Maharashtra, Rajasthan
304.	Kolgha (Kolidhor)	Gujarat, Karnataka, Maharashtra, Rajasthan, Dadra & Nagar Haveli
305.	Kolha	Odisha
306.	Koli	Gujarat, Odisha
307.	Koli Dhor	Gujarat, Karnataka, Maharashtra, Rajasthan, Dadra & Nagar Haveli
308.	Koli Mahadev	Maharashtra
309.	Koli Malhar	Maharashtra
310.	Kom	Manipur
311.	Kond (Khond)	Odisha
312.	Kondadora	Odisha
313.	Konda Dhoras	Andhra Pradesh
314.	Konda Kapus	Andhra Pradesh, Karnataka, Kerala, Tamilnadu
315.	Kondar (Khairwar)	Maharashtra, Chhattisgarh
316.	Kondareddis	Andhra Pradesh, Kerala, Tamilnadu
317.	Kondh	Madhya Pradesh, Maharashtra, Chhattisgarh
318.	Kondhs	Andhra Pradesh
319.	Kora	Bihar, Odisha, West Bengal (Andamanese), A & N Islands
320.	Koraga	Karnataka, Kerala, Tamilnadu
321.	Korku	Madhya Pradesh, Maharashtra¸ Chhattisgarh

S. No.	Scheduled Tribe (in alphabetical order)	State/ Union Territory Where Scheduled
322.	Korua	Odisha
323.	Korwa	Bihar, Madhya Pradesh, West Bengal, Jharkhand, Chhattisgarh
324.	Kota	Karnataka, Kerala, Tamilnadu
325.	Kotia	Andhra Pradesh, Odisha
326.	Kottu Koya (Koya)	Andhra Pradesh
327.	Kotwalia (Vitolia)	Gujarat, Karnataka, Maharashtra
328.	Koya (Gond)	Andhra Pradesh, Karnataka, Madhya Pradesh, Maharashtra, Odisha, Chhattisgarh
329.	Kucha Maria (Gond)	Madhya Pradesh, Maharashtra, Chhattisgarh
330.	Kuchaki Maria (Gond)	Madhya Pradesh, Maharashtra, Chhattisgarh
331.	Kodiya	Karnataka, Kerala, Tamilnadu
332.	Kuki	Assam, Meghalaya, Mizoram, Nagaland, Tripura
333.	Kukna (Kokna)	Gujarat, Karnataka, Maharashtra, Rajasthan, Dadra & Nagar Haveli
334.	Kulia	Andhra Pradesh
335.	Kulis	Odisha
336.	Kuki	Assam, Meghalaya, Mizoram, Nagaland, Tripura
337.	Kunbi	Gujarat
338.	Kuntei (Kuki)	Tripura
339.	Kurichchan	Kerala, Tamilnadu
340.	Kuruba	Karnataka
341.	Kurumbas	Karnataka, Kerala, Tamilnadu
342.	Kuttiyakondhs (Kondhs)	Kerala, Tamilnadu
343.	Kuttiyakondhs (Kondhs)	Andhra Pradesh
344.	Lahaula	Himachal Pradesh
345.	Laifang (Kuki)	Tripura
346.	Lakher	Assam, Meghalaya, Mizoram
347.	Lalung	Assam
348.	Lamba (Jad)	Himachal Pradesh
349.	Lambadia (Sugalis)	Andhra Pradesh
350.	Lamgang	Manipur
351.	Langoli (Pardhi)	Madhya Pradesh, Maharashtra, Chhattisgarh
352.	Lengthang (Kuki)	Assam, Meghalaya, Mizoram
353.	Lentei (Kuki)	Tripura
354.	Lepcha	Sikkim, Tripura, West Bengal
355.	Lhangum (Kuki)	Assam, Meghalaya, Mizoram
356.	Lhoujem (Kuki)	Assam, Meghalaya, Mizoram

S. No.	Scheduled Tribe (in alphabetical order)	State/ Union Territory Where Scheduled
357.	Lingadhari Koya (Koya)	Andhra Pradesh
358.	Lodha	Odisha (Shabar), West Bengal
359.	Lohara	Bihar, West Bengal
360.	Lohra (Lohara)	Bihar, West Bengal, Jharkhand
361.	Lhouvun (Kuki)	Assam, Meghalaya, Mizoram
362.	Lupheng (Kuki)	Assam, Meghalaya, Mizoram
363.	Lushai	Tripura
364.	Lyngngam Khasi	Assam, Meghalaya, Mizoram
365.	Madia (Gond)	Madhya Pradesh, Maharashtra, Odisha, Chhattisgarh
366.	Mag	Tripura
367.	Magh	West Bengal
368.	Mahali	Odisha, West Bengal
369.	Maha Malasar	Karnataka, Kerala, Tamilnadu
370.	Mahli	Bihar, West Bengal, Jharkhand
371.	Majhi	Madhya Pradesh, Chhattisgarh
372.	Majhwar	Madhya Pradesh, Chhattisgarh
373.	Malai Arayan	Kerala, Tamilnadu
374.	Malaii Pandaram	Kerala, Tamilnadu
375.	Malai Vedan	Kerala, Tamilnadu
376.	Malaikudi	Karnataka
377.	Malakkuravn	Kerala, Tamilnadu
378.	Malasar	Kerala, Tamilnadu, Karnataka
379.	Malayali	Tamilnadu
380.	Malayan	Kerala
391.	Malayarayar	Kerala
392.	Malayekandi	Karnataka, Tamilnadu
393.	Maleru	Karnataka
394.	Malis	Andhra Pradesh
395.	Maliya Savaras (Savaras)	Andhra Pradesh
396.	Malpaharia	Bihar, West Bengal, Jharkhand
397.	Man	Assam, Meghalaya, Mizoram
398.	Mana (Gond)	Madhya Pradesh, Maharashtra, Chhattisgarh
399.	Mangjel (Kuki)	Assam, Meghalaya, Mizoram
400.	Mankidi	Odisha
401.	Mankirdia	Odisha
402.	Manna Dhora	Andhra Pradesh
403.	Mannan	Kerala, Tamilnadu

S. No.	Scheduled Tribe (in alphabetical order)	State/ Union Territory Where Scheduled
404.	Mannervarlu (Kolam)	Andhra Pradesh, Maharashtra
405.	Mannewar (Gond)	Madhya Pradesh, Maharashtra, Chhattisgarh
406.	Mao	Manipur
407.	Maram	Manipur
408.	Maratha	Karnataka
409.	Marati	Karnataka, Kerala
410.	Maria (Gond)	Madhya Pradesh, Maharashtra, Chhattisgarh
411.	Maring	Manipur
412.	Mavchi (Gamit)	Karnataka
413.	Mru	West Bengal
414.	Ma Thakar (Thakur)	Maharashtra
415.	Ma Thakur (Thakur)	Maharashtra
416.	Muthuvan	Kerala, Tamilnadu
417.	Matya	Odisha
418.	Mavchi (Gamit)	Gujarat, Maharashtra
419.	Mawasi	Madhya Pradesh, Chhattisgarh
420.	Mech	Assam, West Bengal
421.	Meda	Karnataka
422.	Melakudi (Koya)	Karnataka, (Kudiya) Kerala, (Kudiya) Tamilnadu
423	Mewasi Bhil (Bhil)	Gujarat, Karnataka, Maharashtra, Rajasthan
424.	Mikir	Assam, Meghalaya, Mizoram, Nagaland
425.	Mina	Madhya Pradesh, Rajasthan
426.	Mirdhas	Odisha
427.	Miri	Assam
428.	Mishmi	Arunachal Pradesh
429.	Misao (Kuki)	Assam, Meghalaya
430.	Missao(Kuki)	Mizoram
431.	Mizel (Kuki)	Tripura
432.	Mizo	Assam, Manipur, Meghalaya
433.	Moghya (Gond)	Madhya Pradesh Maharashtra, Chhattisgarh
434.	Mogia	Madhya Pradesh Maharashtra, Chhattisgarh
435.	Momba	Arunachal Pradesh
436.	Mon	Jammu & Kashmir
437.	Monghya (Gond)	Madhya Pradesh, Maharashtra, Chhattisgarh
438.	Monsang	Manipur
439.	Mota Nayaka (Naikda)	Gujarat, Karnataka, Maharashtra, Rajasthan
440.	Mouasi (Korku)	Madhya Pradesh, Maharashtra, Chhattisgarh

S. No.	Scheduled Tribe (in alphabetical order)	State/ Union Territory Where Scheduled
441.	Moyon	Manipur
442.	Mudia (Gond)	Madhya Pradesh, Maharashtra, Chhattisgarh
443.	Mudugar (Muthuvan)	Kerala, Tamilnadu
444.	Muduvan (Muthuvan)	Kerala, (Mudugar) Tamilnadu
445.	Mukha Dhora	Andhra Pradesh
446.	Munda	Bihar, Madhya Pradesh, Odisha, Tripura, West Bengal, Jharkhand, Chhattisgarh
447.	Munda Lohara (Munda)	Odisha
448.	Munda Mahalis (Munda)	Odisha
449.	Mundari	Odisha
450.	Muria (Gond)	Madhya Pradesh Maharashtra, Chhattisgarh
451.	Naga	Assam, Arunachal Pradesh, Meghalaya, Mizoram, Nagaland
452.	Nagarchi (Gond)	Madhya Pradesh, Maharashtra, Chhattisgarh
453.	Nagasia(Nagesia)	Madhya Pradesh , Maharashtra, Chhattisgarh
454.	Nagasia	Madhya Pradesh, Maharashtra, West Bengal, Chhattisgarh
455.	Nagwanshi (Gond)	Madhya Pradesh, Maharashtra, Chhattisgarh
456.	Nahul(Korku)	Madhya Pradesh, Maharashtra, Chhattisgarh
457.	Naik	Karnataka
458.	Naikda	Gujarat, Karnataka, Maharashtra, Rajasthan, Dadra & Nagar Haveli, Goa, Daman
459.	Ojha(Gond)	Madhya Pradesh, Maharashtra, Chhattisgarh
460.	Omanatya	Odisha
461.	Onges	A. & N. Islands
462.	Oranga	Tripura
463.	Oraon	Bihar, Madhya Pradesh, Maharashtra, Odisha, West Bengal, Jharkhand, Chhattisgarh
464.	Oriya(Kotia)	Andhra Pradesh
465.	Padhar	Gujarat
466.	Padvi(Gamit)	Gujarat, Karnataka, Maharashtra
467.	Paiko	Andhra Pradesh
468.	Paite(Kuki)	Manipur, Tripura
469.	Paitu	Tripura
470.	Palihal (Bharia Bhumia)	Madhya Pradesh, Chhattisgarh
471.	Palleyan	Kerala, Tamil Nadu
472.	Palliyan	Karnataka, Kerala, Tamil Nadu
473.	Palliyar	Kerala, Tamil Nadu

S. No.	Scheduled Tribe (in alphabetical order)	State/ Union Territory Where Scheduled
474.	Pando (Bharia Bhumia)	Madhya Pradesh, Chhattisgarh
475.	Pangwala	Himachal Pradesh
476.	Panika	Madhya Pradesh
477.	Paniyan	Kerala, Karnataka, Tamil Nadu
478.	Pao	Madhya Pradesh, Chhattisgarh
479.	Paradhi	Gujarat
480.	Parangiperja	Andhra Pradesh
481.	Pardhan	Andhra Pradesh, Madhya Pradesh, Maharashtra, Chhattisgarh
482.	Pardhi	Gujarat, Karnataka, Madhya Pradesh, Maharashtra¸ Chhattisgarh
483.	Parenga	Odisha
484.	Parhaiya	Bihar, West Bengal, Jharkhand
485.	Parja	Andhra Pradesh, Madhya Pradesh, Maharashtra, Chhattisgarh
486.	Paroja	Odisha
487.	Patelia	Gujarat, (Bhil), Karnataka (Bhil), Madhya Pradesh (Bhil), Chhattisgarh, Maharashtra, Rajasthan
488.	Pathan	Maharashtra
489.	Pathri(Pardhan)	Maharashtra
490.	Patharisaroti (Pradhan)	Madhya Pradesh, Chhattisgarh
491.	Pawi	Assam, Meghalaya, Mizoram
492.	Pawra(Bhil)	Gujarat, Karnataka, Maharashtra, Odisha, Rajasthan
493.	Pentie	Odisha
494.	Phanspardhi (Pardhi)	Madhya Pradesh, Maharashtra, Chhattisgarh
495.	Phansepardhi (Pardhi)	Gujarat, Karnataka, Maharashtra
496.	Pnar(Khasi)	Assam, Meghalaya, Mizoram
497.	Pomla	Gujarat, Maharashtra
498.	Porja	Andhra Pradesh
499.	Potiya	Andhra Pradesh
500.	Purigpa	Jammu & Kashmir
501.	Purum	Manipur
502.	Putiya	Andhra Pradesh
503.	Raba	Meghalaya
504.	Rabri	Gujarat
505.	Rabha	Assam , West Bengal
506.	Raj(Gond)	Madhya Pradesh, Maharashtra, Chhattisgarh
507.	Rajgond(Gond)	Andhra Pradesh, Gujarat, Karnataka
508.	Raji	Uttar Pradesh

S. No.	Scheduled Tribe (in alphabetical order)	State/ Union Territory Where Scheduled
509.	Rajah(Koya)	Andhra Pradesh
510.	Rajkoya(Koya)	Andhra Pradesh, Karnataka, Maharashtra
511.	Rajuar	Odisha
512.	Ralte	Manipur
513.	Rangchan	Tripura
514.	Rangkhol(Kuki)	Assam, Meghalaya, Mizoram
515.	Rangkhole(Kuki)	Tripura
516.	Rasha Koya(Koya)	Andhra Pradesh
517.	Rathawa	Gujarat, Karnataka, Maharashtra
518.	Rathia(Kawar)	Madhya Pradesh, Maharashtra¸ Chhattisgarh
519.	Rava	Meghalaya
520.	Rawa Bhil	Gujarat, Karnataka, Maharashtra, Rajasthan
521.	Reddi Dhoras	Andhra Pradesh
522.	Rena(Rena)	Andhra Pradesh
523.	Riang	Assam, Meghalaya, Tripura, Mizoram
524.	Rona	Andhra Pradesh
525.	Sahara(Saora)	Odisha
526.	Saharia(Sahariya)	Madhya Pradesh, Chhattisgarh
527.	Sahariya	Madhya Pradesh(Saharia), Rajasthan
528.	Sairhem(Kuki)	Assam, Meghalaya, Mizoram
529.	Sanarna(Kotia)	Andhra Pradesh
530.	Santal	Bihar, Odisha, Tripura, West Bengal, Jharkhand
531.	Saonta	Madhya Pradesh, Chhattisgarh
532.	Saora	Odisha
533.	Saroti(Pardhan)	Maharashtra
534.	Saunta(Saonta)	Madhya Pradesh, Chhattisgarh
535.	Saur	Madhya Pradesh, Chhattisgarh
536.	Saura(Saora)	Odisha
537.	Sauria Paharia	Bihar, West Bengal, Jharkhand
538.	Savar	Bihar(Saora), Odisha, West Bengal Savaras Andhra Pradesh, Jharkhand
539.	Sawar	Madhya Pradesh, Maharashtra, Chhattisgarh
540.	Sawara(Saware)	Madhya Pradesh, Maharashtra, Chhattisgarh
541.	Seharia(Sahariya)	Madhya Pradesh, Rajasthan, Chhattisgarh
542.	Sehria(Sahariya)	Madhya Pradesh,(Saharia) Rajasthan, Chhattisgarh
543.	Selnam(Kuki)	Assam, Meghalaya, Mizoram
544.	Sema	Manipur
545.	Sentinelese	A. & N. Islands
546.	Shabar	Odisha

S. No.	Scheduled Tribe (in alphabetical order)	State/ Union Territory Where Scheduled
547.	Sherdukpen	Arunachal Pradesh
548.	Sherpa	Sikkim, West Bengal
549.	Shikari(Pardhi)	Madhya Pradesh, Maharashtra, Chhattisgarh
550.	Shir	Jammu & Kashmir
551.	Sholaga	Karnataka, Tamil Nadu
552.	Shom Pens	A. & N. Islands
553.	Siddi	Gujarat
554.	Siddi(Nayaka)	Goa, Daman & Diu
555.	Sidhopaiko(Kotia)	Andhra Pradesh
556.	Simte	Manipur
557.	Singpho	Arunachal Pradesh
558.	Singson (Kuki)	Assam, Meghalaya, Mizoram
559.	Sippi	Jammu & Kashmir
560.	Sitha Kandha (Khond)	Odisha
561.	Sitlhou	Assam, Meghalaya, Mizoram
562.	Soligaru	Karnataka
563.	Sonjhari	Madhya Pradesh, Maharashtra, Chhattisgarh
564.	Son Katkari (Kathodi)	Gujarat, Karnataka, Maharashtra, Rajasthan
565.	Sonkathodi (Kathodi)	Gujarat, Karnataka, Maharashtra, Rajasthan
566.	Sonr	Madhya Pradesh, Chhattisgarh
567.	Sonwal (Kachari)	Assam
568.	Sor (sahariya)	Madhya Pradesh, Chhattisgarh
569.	Sosia (Sahariya)	Madhya Pradesh, Chhattisgarh
570.	Sounti	Odisha
571.	Sugalis	Andhra Pradesh
572.	Suhte	Manipur
573.	Sukte (Kuki)	Assam, Meghalaya, Mizoram
574.	Swangla	Himachal Pradesh
575.	Synten (Khasi)	Mizoram
576.	Synteng (Khasi)	Assam, (Khasi) Meghalaya, Mizoram
577.	Syntheng	Assam
578.	Tabo	A. & N. Islands
579.	Tadvi (Dhanka)	Gujarat, Maharashtra, Odisha, Rajasthan
580.	Tadvi Bhil (Bhil)	Gujarat, Karnataka, Maharashtra, Odisha, Rajasthan
581.	Takankar (Pardhi)	Madhya Pradesh, Maharashtra, Chhattisgarh
582.	Takia (Pardhi)	Madhya Pradesh, Maharashtra, Chhattisgarh
583.	Talavia (Dubla)	Gujarat, Karnataka, Maharashtra, Goa, Daman & Diu

S. No.	Scheduled Tribe (in alphabetical order)	State/ Union Territory Where Scheduled
584.	Tangkhul	Manipur
585.	Tanwar (Kawar)	Madhya Pradesh, Maharashtra, Chhattisgarh
586.	Tetaria (Dhanka)	Gujarat, Maharashtra, Odisha, Rajasthan
587.	Thado (Kuki)	Assam, Meghalaya, Mizoram
588.	Thadou	Manipur
589.	Thakar (Thakur)	Maharashtra
560.	Thakur	Maharashtra
561.	Thangluya (Kuki)	Tripura
562.	Thangngeu (Kuki)	Assam, Mizoram, Meghalaya
563.	Tharu	Uttar Pradesh
564.	Tharua	Odisha
565.	Thatia (Gond)	Madhya Pradesh, Maharashtra, Chhattisgarh
566.	Thoti	Andhra Pradesh, Maharashtra
567.	Thotya (Gond)	Madhya Pradesh, Maharashtra, Chhattisgarh
568.	Tibetan (Bhutia)	Sikkim, West Bengal
569.	Tikiria Kondhs	Andhra Pradesh
570.	Tippera (Tripura)	Tripura
571.	Toda	Karnataka, Tamilnadu
572.	Tokre Koli (Koli Dhor)	Gujarat, Karnataka, Maharashtra
573.	Toto (Bhutia)	West Bengal
574.	Tripura	Tripura
575.	Tripuri (Tripura)	Tripura
576.	Tromopa	Sikkim
577.	Uchai	Tripura
578.	Uibuh	Assam, Meghalaya, Mizoram
579.	Ulladan	Kerala
580.	Uraly	Kerala, Tamilnadu
581.	Vade Maria (Gond)	Madhya Pradesh, Maharashtra, Chhattisgarh
582.	Vaghri	Gujarat
583.	Vaiphei (Kuki)	Assam, Meghalaya, Mizoram
584.	Vaiphui	Manipur
585.	Valmiki	Andhra Pradesh, Karnataka
586.	Valvi (Dhanka)	Karnataka, Maharashtra, Rajasthan
587.	Varli	Gujarat, Karnataka, Maharashtra, Goa, Daman & Diu, Dadra & Nagar Haveli
588.	Vitolia	Karnataka, Maharashtra
589.	Vasava (Bhil)	Gujarat, Karnataka, Maharashtra, Rajasthan
590.	Vasave	Gujarat, Karnataka, Maharashtra, Rajasthan

S. No.	Scheduled Tribe (in alphabetical order)	State/ Union Territory Where Scheduled
591.	Vitola	Gujarat
592.	Vitolia	Maharashtra
593.	Wade Maria (Gond)	Madhya Pradesh, Maharashtra, Chhattisgarh
594.	War (Khasi)	Assam, Meghalaya, Mizoram
595.	Yenadis	Andhra Pradesh
596.	Yenity Kondhs (Kondhs)	Andhra Pradesh
597.	Yerava	Karnataka
598.	Yere (Andamanese)	A. & N. Islands
599.	Yerukulas	Andhra Pradesh
600.	Yolmo (Bhutia)	Sikkim, West Bengal
601.	Zou	Manipur

Source: http://tribal.gov.in/writereaddata/mainlinkFile/File939.pdf

Annexure 6: 75 Districts having more than 50% of Scheduled Tribe Population (2001)

No.	State	District Name	% of ST Population
1	Mizoram	Serchhip	98.0858
2	Meghalaya	West Khasi Hills	98.0189
3	Mizoram	Champhai	96.8005
4	Meghalaya	East Garo Hills	96.5417
5	Nagaland	Phek	96.4790
6	Mizoram	Saiha	96.2100
7	Nagaland	Zunheboto	96.0768
8	Nagaland	Tuensang	96.0301
9	Meghalaya	Jaintia Hills	95.9683
10	Meghalaya	South Garo Hills	95.6784
11	Manipur	Ukhrul	95.5355
12	Nagaland	Wokha	95.5093
13	Mizoram	Lawngtlai	95.4007
14	Manipur	Tamenglong	95.3811
15	Mizoram	Lunglei	95.2960
16	Lakshadweep	Lakshadweep	94.5111
17	Nagaland	Mon	93.9264
18	Mizoram	Mamit	93.8919
19	Nagaland	Mokokchung	93.7816
20	Gujarat	The Dangs	93.7610
21	Mizoram	Aizawl	93.2341
22	Manipur	Churachandpur	93.2327

No.	State	District Name	% of ST Population
23	Manipur	Chandel	91.9308
24	Nagaland	Kohima	90.5410
25	Arunachal Pradesh	Lower Subansiri	90.0941
26	Mizoram	Kolasib	89.7832
27	Arunachal Pradesh	Upper Subansiri	89.5313
28	Jammu & Kashmir	Kargil	88.3242
29	Meghalaya	Ri Bhoi	87.0268
30	Madhya Pradesh	Jhabua	86.8457
31	Arunachal Pradesh	East Kameng	86.7189
32	Arunachal Pradesh	Tirap	83.6672
33	Jammu & Kashmir	Leh (Ladakh)	82.0373
34	Arunachal Pradesh	West Siang	81.7202
35	Chhattisgarh	Dantewada	78.5186
36	Manipur	Senapati	78.4542
37	Arunachal Pradesh	Upper Siang	78.2124
38	Gujarat	Narmada	78.0814
39	Meghalaya	East Khasi Hills	77.4904
40	Meghalaya	West Garo Hills	76.6153
41	Arunachal Pradesh	Tawang	74.9949
42	Himachal Pradesh	Lahul & Spiti	72.9533
43	Rajasthan	Banswara	72.2749
44	Gujarat	Dohad	72.2614
45	Himachal Pradesh	Kinnaur	71.8309
46	Arunachal Pradesh	East Siang	69.1328
47	Jharkhand	Gumla	68.3561
48	Assam	North Cachar Hills	68.2841
49	Madhya Pradesh	Barwani	67.0157
50	Chhattisgarh	Bastar	66.3125
51	Maharashtra	Nandurbar	65.5308
52	Rajasthan	Dungarpur	65.1371
53	Madhya Pradesh	Dindori	64.4787
54	Chhattisgarh	Jashpur	63.2371
55	Andaman & Nicobar	Nicobars	63.1478
56	Dadra & Nagar Haveli	Dadra & Nagar Haveli	62.2364
57	Nagaland	Dimapur	60.6988
58	Odisha	Malkangiri	57.4255
59	Madhya Pradesh	Mandla	57.2330
60	Odisha	Mayurbhanj	56.5992
61	Arunachal Pradesh	Papum Pare	56.5617
62	Chhattisgarh	Kanker	56.0780

No.	State	District Name	% of ST Population
63	Odisha	Rayagada	55.7590
64	Jharkhand	Lohardaga	55.7041
65	Assam	Karbi Anglong	55.6937
66	Odisha	Nabarangapur	55.0301
67	Gujarat	Valsad	54.7590
68	Chhattisgarh	Surguja	54.5952
69	Madhya Pradesh	Dhar	54.4974
70	Tripura	Dhalai	54.0251
71	Jharkhand	Pachim Singhbhum	53.3572
72	Sikkim	North	53.0636
73	Odisha	Kandhamal	51.9606
74	Odisha	Gajapati	50.7820
75	Odisha	Sundargarh	50.1948

31 Districts having Scheduled Tribe Population between 30% and 50% (2001)

No.	State	District Name	% of ST Population
1	Odisha	Koraput	49.6198
2	Arunachal Pradesh	West Kameng	49.5328
3	Gujarat	Navsari	48.0831
4	Rajasthan	Udaipur	47.8649
5	Assam	Dhemaji	47.2941
6	Arunachal Pradesh	Dibang Valley	46.4865
7	Jharkhand	Pakaur	44.5852
8	Odisha	Kendujhar	44.5035
9	Madhya Pradesh	Shahdol	44.4772
10	Chhattisgarh	Koriya	44.3507
11	Madhya Pradesh	Umaria	44.0439
12	Jharkhand	Ranchi	41.8168
13	Chhattisgarh	Korba	41.4983
14	Jammu & Kashmir	Punch	39.9927
15	Jharkhand	Dumka	39.8899
16	Madhya Pradesh	Betul	39.4149
17	Maharashtra	Gadchiroli	38.3076
18	Arunachal Pradesh	Lohit	38.1817
19	Tripura	South Tripura	37.7253
20	Madhya Pradesh	Seoni	36.7822
21	Arunachal Pradesh	Changlang	36.1587
22	Madhya Pradesh	West Nimar	35.4848
23	Chhattisgarh	Raigarh	35.3767
24	Odisha	Nuapada	34.7135

No.	State	District Name	% of ST Population
25	Madhya Pradesh	Chhindwara	34.6848
26	Odisha	Sambalpur	34.4982
27	Assam	Kokrajhar	33.6716
28	Odisha	Debagarh	33.6010
29	Jammu & Kashmir	Rajauri	33.1170
30	Gujarat	Bharuch	32.3964
31	Odisha	Jharsuguda	31.3424

Annexure 7: State-wise List of Scheduled Areas

I. ANDHRA PRADESH

1. Balmor, Kondnagol, Banal, Bilakas, Dharawaram, Appaipali, Rasul Chernvu, Pulechelma, Marlapaya, Burj Gundal, Agarla Penta, Pullaipalli, Dukkan Penta, Bikit Penta, Karkar Penta, Boramachernvu, Yemlapaya, Irlapenta, Mudardi Penta, Terkaldari, Vakaramamidi Penta, Medimankal, Pandibore, Sangrigundal, Lingabore, Rampur, Appapur, Malapur, Jalal Penta, Piman Penta, Railet, Vetollapalli, Patur Bayal, Bhavi Penta, Naradi Penta, Tapasi Penta, Chandragupta, Ullukatrevu, Timmareddipalli, Sarlapalli, Tatigundal, Elpamaehena, Koman Penta, Kollam Penta, Mananur, Macharam, Malhamamdi, Venketeshwarla Bhavi, Amrabad, Tirmalapur, Upnootola, Madhavanpalli, Jangamreddi Palli, Pedra, Venkeshwaram, Chitlamkunta, Lachmapur, Udmela, Mared, Ippalpalli, Maddimadag, Akkaram, Ainol, Siddapur, Bamanpalli, Ganpura and Manewarpalli Villages of *Achempeth Taluq of Mahbubnagar district.*
2. Malai Borgava, Ankapur, Jamul Dhari, Lokari, Vanket, Tantoli, Sitagondi, Burnoor, Navgaon, Pipal Dari, Pardi Buzurg, Yapalguda, Chinchughat, Vankoli, Kanpa, Avasoda Burki, Malkapur, Jaree, Palsi Buzurg, Arli Khurd, Nandgaon, Vaghapur, Palsikurd, Lingee, Kaphar Deni, Ratnapur, Kosai, Umari, Madanapur, Ambugaon, Ruyadee, Sakanapur, Daigaon, Kaslapur, Dorlee, Sahaij, Sangvee, Khogdoor, Kobai, Ponala, Chaprala, Mangrol, Kopa Argune, Soankhas, Khidki, Khasalakurd, Khasalabuzurg, Jamni, Borgaon, Sayedpur, Khara, Lohara, Marigaon, Chichdari, Khanapur, Kandala, Tipa, Hati Ghota, Karond Kurd, Karoni Buzurg, Singapur, Buranpur, Nagrala, Bodad, Chandpelli, Peetgain, Yekori, Sadarpur, Varoor, Rohar, Takli and Ramkham villages of *Adilabad taluq of Adilabad district.*
3. Ambari, Bodri, Chikli, Kamtala, Ghoti, Mandwa, Maregaon, Malborgaon, Patoda, Dahigaon, Domandhari, Darsangi, Digri, Sindgi, Kanakwari, Kopra, Malakwadi, Nispur, Yenda, Pipalgaon, Bulja, Varoli, Anji, Bhimpur Sirmeti, Karla, Kothari, Gokunda, Gogarwudi, Malkapur, Dhonora, Rampur, Patri, Porodhi, Boath, Darsangi, Norgaon, Unrsi, Godi, Sauarkher, Naikwadi, Sarkani, Wajhera, Mardap, Anjenkher, Gondwarsa, Palaiguda, Karalgaon, Palsi, Patoda, Javarla, Pipalgaon, Kanki Singora, Dongargoan, Pipalsendha, Jurur, Minki, Tulsi, Machauder Pardhi, Murli, Takri, Parsa, Warsa, Umra, Ashta, Hingni, Timapur, Wajra, Wanola, Patsonda, Dhanora, Sakur and Digri villages of *Kinwat taluk of Adilabad district.*
4. Hatnur, Wakri, Pardhi, Kartanada, Serlapalli, Neradikonda, Daligaon, Kuntala, Venkatapur, Hasanpur, Surdapur, Polmamda, Balhanpur, Dharampuri, Gokonda, Bhotai, Korsekal, Patnapur, Tejapur, Guruj, Khahdiguda, Rajurwadi, Ispur, Ghanpur, Jaterla, Khantegaon, Sauri, Ichora, Mutnur, Gudi Hatnur, Talamedee, Gerjam, Chincholi, Sirchelma, Mankapur, Narsapur, Dharmpur, Harkapur, Dhampur, Nigni, Ajhar Wajhar, Chintalbori, Chintakarvia, Rampur, Gangapur and Gayatpalli villages of *Boath taluk of Adilabad district.*
5. All villages of *Utnur taluq of Adilabad district.*
6. Rajampet, Gunjala, Indhani, Samela, Tejapur, Kannargaon, Kantaguda, Shankepalli, Jamuldhari, Gundi, Chorpalli, Saleguda, Wadiguda, Savati, Dhaba, Chopanguda, Nimgaon, Khirdi, Metapipri, Sakra, Sangi, Devurpalli, Khotara-Ringanghat, Nishani, Kota Parandoli, Mesapur, Goigaon, Dhanora, Pardha, Surdapur, Kerineri Murkilonki, Devapur, Chinta Karra, Iheri, Ara, Dasnapur, Kapri, Belgaon, Sirasgaon, Moar, Wadam, Dhamriguda, Dallanpur, Chalwardi, Ihoreghat, Balijhari, Sakamgundi, Ara,

Uppal Naugaon, Anksorpur, Chirakunta, Illipita Dorli, Mandrumera, Dantanpalli, Deodurg, Tunpalli, Dhagleshwar, Padibanda, Tamrin, Malangundi, Kandan Moar, Geonena, Kuteda, Tilani, Kanepelli, Bordoum Telundi, Maugi Lodiguda, Moindagudipet, Chinnedari, Koitelundi, Madura, Devaiguda, Areguda, Gardepalli, Takepalli, Choutepalli, Rane Kannepalli, Sungapur, Rala Samkepalli, Chopri, Doda Arjuni, Serwai, Rapalli, Tekamandwa and Meta Arjuni villages of *Asaifabad taluq of Adilabad district.*

7. Gudam, Kasipet, Dandepalli, Chelampeta, Rajampet, Mutiempet, Venkatapur, Rali, Kauwal, Tarapet, Devapur, Gathapalli, Rotepalli, Mandamari, Dharmaraopet Venkatapur, Chintaguda and Mutiempalli villages of *Lakshetipet taluq of Adilabad district.*
8. Bendwi, Chincholi, Goigaon, Hirapur, Sakri, Balapur, Manoli, Antargaon, Wirur, Dongargaon, Timbervai, Sersi, Badora, Vmarjeeri, Lakarkot, Ergaon, Kirdi, Sondo, Devara, Khorpana, Kanargaon, Chenai, Kairgaon, Samalhira, Dhanoli, Marnagondi, Yellapur, Katalbori, Isapur, Devti, Panderwani, Wansari, Perda, Wargaon Nokari, Mirapur, Pardhi, Kutoda, Parsewara, Mangalhra, Karki, Nokari, Manoli, Sonapur, Inapur, Mangi, Uparwai, Tutta, Lakmapur, Kirdi, Injapur, Jamni, Hargaon, Chikli, Patan, Kosundi, Kotara and Sonorli villages of *Rajura taluq of Adilabad district.*
9. Ralapet, Kistampet, Takalapalli, Chakalpalli, Anaram, Bhepalli, Korsni Isgaon, Chintaguda, Ankora, Usurampalli, Arpalli, Bophalpatnam, Balasaga, Pardhi, Tumrihati, Chintalmanopalli, Chintam, Gullatalodi, Damda, Dhorpalli, Kanki Garlapet, Gudlabori, Gurmpet, Lomveli, Mogurdagar, Wirdandi and Chilpurdubor villages of *Sirpur taluq of Adilabad district.*
10. Kannaiguda, Ankannaguda, Raghavpatnam, Medarmiola, Koetla, Parsa Nagaram, Muthapur, Motlaguda, Venglapur, Yelpak, Kaneboenpalli, Medaram, Kondred, Chintaguda, Kondaparthi, Yelsethipalli, Allvammarighunpur, Rampur, Malkapalli, Chettial, Bhupathipur, Gangaram, Kannaiguda, Rajannapet, Bhutaram, Akkela, Sirvapur, Gangaram Bhupathipur, Pumbapur, Rampur, Ankampalli, Kamaram, Kamsettigudam, Ashnaguda, Yellapur, Allaguda, Narsapur, Puschapur, Bhattupalli, Lavnal, Vadduguda, Kothur, Pegdapalli, Srvapur, Bhussapur, Chelvai, Rangapur Govindraopet, Ballapali, Dhumpallaguda, Kelapalli, Lakhanavaram, Pasra, Gonepalli, Padgapur, Narlapur, Kalvapalli, Uratam, Kondia, Maliat, Aclapur, Dodla, Kamaram, Tadvai, Boodiguda, Bannaji, Bandam, Selpak, Kantalpalli, Sarvai, Gangaguda, Tupalkalguda,
11. Akulvari, Ghanpur, Shahpalli, Gagpelli, Chinna-beonnplli, Venkatapur, Narsapur, Anvaram, Lingal, Ballepalli, Bandal and Thunmapur villages of *Mulug taluq of Warrangal district.*
12. Vebelli, Polara, Bakkachintaphad, Ganjad, Thirmalguda, Gopalpur, Khistapur, Tatinari Venpalli, Pattal Bhoopati, Chandelapur, Battalpalli, Advarampet, Satiahnagar, Dutla, Mothwada, Mangalawarpet, Karlai, Arkalkunta, Kodsapet, Gunderpalli, Masami, Battavartigudem, Mamidigudam, Pangonda, Roturai, Satreddipalli, Konapur, Kondapuram, Pogulapalli, Govindapuram, Makadapalli, Pagulapalli, Murraigudem, Yelchagudem, Tummapurm, Jangamvartigudem, Rangagudem, Peddalapalli, Yerravaram, Kundapalli Neelampalli Daravarinampalli, Karnegund, Mahadevagudem, Marrigudem, Jangalpalli, Bavarguda, Oarbak, Gangaramam, Mucherla Amaroncha, Kamaraam, Chintagudem, Nilavancha, Kangargidda, Madagudem, Dalurpet, Kothagudem, Kotapalli, Durgaram,Dubagudem, Rudravaram, Narsugudam, Komatlagudem, Katervam, Semar Rajpet, Marepalli, Goarur, Radhiapur, Gazalgudem, Rajvepalli and Bollypalli villages of *Narsampet taluk of Warrangal district.*
13. All the villages of Yellandu taluq of Warrangal district (excluding the Yellandu, Singareni and Sirpur villages and the town of Kothaguda).

14. (i)All the villages of Palocha taluq of Warrangal district excluding Palondha, Borgampad, Ashwaraopet, Dammapet, Kuknur and Nelipak villages and (ii) Samasthan of Paloncha.
15. Visakhapatnam Agency area 1[excluding the areas comprised in the villages of Agency Lakshmipuram, Chidikada, Konkasingi, Kumarapuram, Krishnadevipeta, Pichigantikothagudem, Golugondapeta, Gunupudi, Gummudukonda, Sarabhupalapatnam, Vadurupalli, Pedajaggampeta]2[Sarabhupathi Agraharam, Ramachandrarajupeta Agraharam, and Kondavatipudi Agraharam in Visakhapatnam district.]
16. East Godwari Agency area2 [excluding the area comprised in the village of Ramachandrapuram including its hamlet Purushothapatnam in the East Godavari district.]
17. West Godawari Agency area in West Godavari district.

**The Scheduled Areas in the State of Andhra Pradesh were originally specified by the Scheduled Areas (Part A States) Order, 1950 (C.O.No.9) dated 23.1.1950 and the Scheduled Areas (Part B States) Order, 1950 (C.O.No.26) dated 7.12.1950 and have been modified vide the Madras Scheduled Areas (Cesser) Order 1951 (C.O. 50) and the Andhra Scheduled Areas (Cesser) Order, 1955 (C.O.30)*

1. Inserted by the Madras Scheduled Areas (Cesser) Order, 1951
2. Inserted by the Andhra Scheduled Areas (Cesser) Order, 1955

II. GUJARAT

1. Uchchhal. Vyara, Mahuwa, Mandvi, Nizar, Songadh, Valod, Mangrol and Bardoli talukas in Surat district.
2. Dediapada, Sagbara, Valia, Nandod and Jhagadia talukas in Bharuch district
3. Dangs district and taluka
4. Bansda, Dharampur, Chikhali, Pardi and Umbergaon talukas in Valasad district
5. Jhalod, Dohad, Santrampur, Limkheda and Deogarh Baria talukas in Panchmahal district
6. Chhotaudepur and Naswadi talukas and Tilakwada mahal in Vadodora district
7. Khedbrahma, Bhiloda and Meghraj talukas, and Vijayanagar mahal in Sabarkantha district.

The Scheduled Areas in the State of Gujarat were originally specified by the Scheduled Areas (Part A States) Order, 1950 (Constitution Order, 9) dated 23.1.1950 and have been respecified as above by the Scheduled Areas (States of Bihar, Gujarat, Madhya Pradesh and Odisha) Order, 1977 (Constitution Order, 109) dated 31.12.1977 after rescinding the Order cited first so far as that related to the State of Gujarat.

III. HIMACHAL PRADESH

1. Lahaul and Spiti district
2. Kinnaur district
3. Pangi tehsil and Bharmour sub-tehsil in Chamba district

Specified by the Scheduled Areas (Himachal Pradesh) Order, 1975 (Constitution Order 102) dated 21.11.1975

IV. MAHARASHTRA#

1. The following in Thane district:
(a) Tahsils of Dhahanu, Talasari, Mokhando, Jawher, Wada and Sahapur
(b) (i) The one hundered forty four villages of Palghar tahsil as mention below:

Palghar Tahsil

(1) Tarapur	(2) Kudan	(3) Dahisar-tarf-Tarapur	(4) Ghiwali
(5) Wawe	(6) Akkarpatti	(7) Kurgaon	(8) Parnali
(9) Vengani	(10) Patharwali	(11) Newale	(12) Shigaon
(13) Gargaon	(14) Chinchare	(15) Akegawhan	(16) Naniwali
(17) Ambedhe	(18) Barhanpur	(19) Salgaon,	(20) Khutad,
(21) Khaniwade,	(22) Rawate,	(23) Akoli,	(24) Asheri,
(25) Somate,	(26) Pasthal,	(27) Boisar,	(28) Borsheti
(29) Mahagaon,	(30) Kirat,	(31) Wade,	(32) Khadkawane,
(33) Mendhwan	(34) Vilshet,	(35) Kondgaon	(36) Karsood
(37) Betegaon,	(38) Warangade	(39) Lalonde,	(40) Ghanede
(41) Kampalgaon	(42) Man	(43) Ghaneghar,	(44) Wedhe
(45) Chari Budruk	(46) Birwadi	(47) Kallale,	(48) Padghe
(49) Pole,	(50) Nandore,	(51) Girnoli,	(52) Borande,
(53) Devkhope,	(54) Sagawe,	(55) Kosbad	(56) Kokaner,
(57) Nagzari	(58) Chari Khurd	(59) Velgaon	(60) Khutal,
(61) Chilhar,	(62) Bhopoli,	(63) Nihe,	(64) Damkhand,
(65) Kondhan,	(66) Awandhan,	(67) Bangarchole,	(68) Shil,
(69) Loware,	(70) Bandhan,	(71) Nand-gaon-tarf-Manor,	(72) Shilshet,
(73) Katale,	(74) Ambhan,	(75) Wasaroli	(76) Kharshet,
(77) Manor,	(78) Takwahal,	(79) Sawarkhand,	(80) Nalshet,
(81) Kev,	(82) Wakadi,	(83) Maswan,	(84) Wandiwali,
(85) Netali	(86) Saye,	(87) Ten,	(88) Karalgaon,
(89) Gowade,	(90) Tamsai,	(91) Durves,	(92) Dhuktan,
(93) Pochade,	(94) Haloli,	(95) Khamloli,	(96) Bahadoli,
(97) Bot,	(98) Embur irambi,	(99) Danisari-tarf-Manor,	(100) Kude,
(101) Gundave,	(102) Satiwali,	(103) Vehaloli,	(104) Saware,
(105) Warai,	(106) Jansai	(107) Khaire,	(108) Dhekale,
(109) Ganje,	(110) Jayshet,	(111) Shelwade,	(112) Veur,
(113) Ambadi,	(114) Nawali,	(115) Morawali,	(116) Varkhunti,
(117) Kamare,	(118) Tokrale,	(119) Bandate,	(120) Zanjaroli,
(121) Chahade,	(122) Wasare,	(123) Khadkoli,	(124) Sakhare,
(125) Rothe,	(126) Lalthane,	(127) Navaze,	(128) Tandulwadi,
(129) Girale,	(130) Pargaon,	(131)Nagawe-tarf-Manor,	(132) Umbarpada Nandade,
(133) Uchavali,	(134) Safale,	(135) Sonawe,	(136) Makane Kapse,
(137) Karwale,	(138) Wadhiv Sarawali,	(139) Penand,	(140) Kandarwan,
(141) Dahiwale,	(142) Darshet,	(143) Navghar (Ghatim)	(144) Umbarpada-tarf-Manor.

(ii) The forty five villages of Vasai (Bassein) Tahsil as mentioned below:

Vasai (Bassein) Tahsil

(1) Dahisar,	(2) Koshimbe,	(3) Tulinj,	(4) Sakawar,
(5) Chimane,	(6) Hedavade,	(7) Kashidkopar,	(8) Khaniwade,
(9) Bhaliwali,	(10) Kavher,	(11) Shirsad	(12) Mandvi
(13) Chandip,	(14) Bhatane,	(15) Shivansai	(16) Usgaon,
(17) Medhe,	(18) Vadghar,	(19) Bhinar,	(20) Ambode,
(21) Kalbhon,	(22) Adne,	(23) Sayawan,	(24) Parol,
(25) Shirvali,	(26) Majivali,	(27) Karanjon,	(28) Tilher,
(29) Dhaviv,	(30) Pelhar,	(31) Achole,	(32) Valiv,
(33) Sativali,	(34) Rajavali,	(35) Kolhi,	(36) Chinchoti
(37) Juchandra	(38) Bapane	(39) Deodal	(40) Kamam
(41) Sarajamori	(42) Poman	(43) Shilottar	(44) Sasunavghar
(45) Nagle			

(iii) The seventy two villages of Bhiwandi tahsil as mentioned below:

Bhiwandi tahsil

(1) Bhivali,	(2) Gancshpuri,	(3) Vadavali Vajreshwari,	(4) Akloli,
(5) Savaroli,	(6) Khatrali	(7) Usgaon,	(8) Ghotgaon,
(9) Vadhe,	(10) Vareth,	(11) Chane,	(12) Asnoli-tarf-Dugad
(13) Dugad,	(14) Manivali,	(15) Vadwali-tarf-Dugad,	(16) Malbidi,
(17) Mohili,	(18) Nandithane,	(19) Depoli,	(20) Sakharoli,
(21) Supegaon,	(22) Pilanze Khurd,	(23) Pilanze Budruk,	(24) Alkhivali,
(25) Vaghivale,	(26) Devehole,	(27) Sagoan,	(28) Eksal,
(29) Chinchavali-tarf-Kunde,	(30) Dudhani,	(31) Vape,	(32) Ghadane,
(33) Kunde,	(34) Ghotavade,	(35) Mainde,	(36) Karmale,
(37) Kandali Budruk,	(38) Kelhe,	(39) Kandali Khurd,	(40) Dighashi,
(41) Newade,	(42) Ambadi,	(43) Dalonde,	(44) Jambhiwali-tarf-Khambal,
(45) Umbarkhand,	(46) Ashivali,	(47) Zidake,	(48) Kharivali
(49) Base,	(50) Gondade,	(51) Pahare,	(52) Shedgaon,
(53) Pachhapur,	(54) Gondravali,	(55) Jambhiali-tarf-Kunde,	(56) Asnoli-tarf-Kunde,
(57) Shirole,	(58) Dabhad,	(59) Mohandul,	(60) Shirgaon,
(61) Pimpal Sehth Bhusheth,	(62) Khadki Khurd,	(63) Khadki Budruk,	(64) Chimbipade,
(65) Kuhe,	(66) Dhamne,	(67) Lakhiwali,	(68) Palivali,
(69) Paye,	(70) Gane,	(71) Dahyale,	(72) Firangpada,

(iv) The seventy seven villages of Murbad Tahsil as mentioned below:

Murbad Tahsil

(1) Kasgaon,	(2) Kisal,	(3) Wadawali,	(4) Sakhare,
(5) Khutalborgaon,	(6) Ambele Khurd	(7) Sayale,	(8) Inde,
(9) Khedale,	(10)Talawali-tarf-Ghorat,	(11) Eklahare,	(12) Chafe-tarf-Khedul,
(13) Pimpalghar,	(14) Dahigaon,	(15) Parhe,	(16) Kandali,
(17) Dhasai,	(18) Alyani,	(19) Palu,	(20) Deoghar,
(21) Madh,	(22) Sonawale,	(23) Veluk,	(24) Alawe,
(25) Bursunge,	(26) Mandus,	(27) Khed,	(28) Vanote,
(29) Shai,	(30) Shelgaon,	(31) Shiroshi,	(32) Talegaon,
(33) Fangalkoshi	(34) Merdi,	(35) Walhivare,	(36) Mal,
(37) Jadai,	(38) Ambiwali,	(39) Dighephal,	(40) Diwanpada,
(41) Kochare Khurd,	(42) Kochare Budruk,	(43) Chosale,	(44) Khutal Bangla,
(45) Nayahadi,	(46) Moroshi,	(47) Fangulgawhan,	(48) Sawarne,
(49) Thitabi-tarf-Vaishakahre,	(50) Kudhset,	(51) Fangane,	(52) Khapari,
(53) Hedawali,	(54) Karchonde,	(55) Zadghar,	(56) Udaldoha,
(57) Mhorande,	(58) Tokawade,	(59) Balegaon,	(60) Talawali (Baragaon),
(61) Waishakhare,	(62) Maniwali-tarf-Khedul,	(63) Pendhari,	(64) Umaroli budruk,
(65) Ojiwale,	(66) Mandwat,	(67) Mahaj,	(68) Padale,
(69) Koloshi,	(70) Jaigaon,	(71) Kalambad (Bhondivale),	(72) Kheware,
(73) Dudhanoli,	(74) Umaroli Khurd,	(75) Khopwali,	(76) Milhe,
(77) Gorakhagad,			

2. The following in Nasik district:

(a) The tahsils of Peint, Surgana and Kalwan

(b) (i) The one hundred six villages of Dindori tahsil as mentioned below:

Dindori Tahsil

(1) Mokhanal,	(2) Bhanwad,	(3) Dehare,	(4) Karanjali,
(5) Gandole,	(6) Palasvihir,	(7) Vare,	(8) Vanjole,
(9) Ambad,	(10) Vanare,	(11) Titve,	(12) Deothan,
(13) Nanashi	(14) Charose,	(15) Deoghar,	(16) Kaudasar,
(17) Vani Khurd,	(18) Pimpalgaon Dhum,	(19) Joran,	(20) Mahaje,
(21) Sadrale,	(22) Nalwadi,	(23) Oje,	(24) Golshi,
(25) Jalkhed,	(26) Nigdol,	(27) Kokangaon Budruk,	(28) Umbrale Khurd,
(29) Ambegan,	(30) Chachadgaon,	(31) Vaghad,	(32) Pophal wade,
(33) Dhaur,	(34) Umbale Budruk,	(35) Jambutke,	(36) Pimpraj,
(37) Nalegaon,	(38) Vilwandi,	(39) Rasegaon,	(40) Kochargaon,
(41) Tilholi,	(42) Ravalgaon,	(43) Deher Wadi,	(44) Dhagur,
(45) Deosane,	(46) Sarsale,	(47) Karanjkhed,	(48) Pingalwadi,
(49) Eklahare,	(50) Chausale,	(51) Pimpri Anchla,	(52) Ahiwantwadi,

(53) Goldari,	(54) Haste,	(55) Kolher,	(56) Jirwade,
(57) Chamdari,	(58) Maledumala,	(59) Mandane,	(60) Koshimbe,
(61) Punegaon,	(62) Pandane,	(63) Ambaner,	(64) Chandikapur,
(65) Bhatode,	(66) Dahivi,	(67) Mulane,	(68) Kokangaon Khurd,
(69) Malegaon,	(70) Pimparkhed,	(71) Phopasi,	(72) Vani Kasbe,
(73) Sangamner,	(74) Khedle,	(75) Mavadi,	(76) Karanjwan,
(77) Dahegaon,	(78) Vaglud,	(79) Krishnagaon,	(80) Varkhed,
(81) Kadvamhalungi,	(82) Gaondegaon,	(83) Hatnore,	(84) Nilwandi,
(85) Pimpalgoan Ketki,	(86) Rajapur,	(87) Dindori,	(88) Jopul,
(89) Madki jamb,	(90) Palkhed,	(91) Indore,	(92) Korhate,
(93) Chinchkhed,	(94) Talegaon Dindori,	(95) Akrale,	(96) Mohadi,
(97) Pimpsalanare,	(98) Khatwad,	(99) Ramsej,	(100) Ambe Dindore,
(101) Dhakambe,	(102) Janori,	(103) Manori,	(104) Shivanai,
(105) Varwandi,	(106) Jaulke Dindori,		

(ii) The ninety three villages of Igatpuri tahsil as mentioned below and one town Igatpuri: Igatpuri Tahsil

(1) Dhadoshi,	(2) Bhilmal,	(3) Pahine,	(4) Zarwad Khurd,
(5) Tak-Harsha,	(6) Aswali Harsha,	(7) Samundi,	(8) Kharoli,
(9) Kojoli,	(10) Avhate,	(11) Kushegaon,	(12) Metchandryachi,
(13) Alwand,	(14) Dapure,	(15) Met Humbachi,	(16) Zarwad Budruk,
(17) Mhasurli,	(18) Shevgedang,	(19) Wanjole,	(20) Deogaon,
(21) Ahurli,	(22) Nandagaon,	(23) Vavi Harsha,	(24) Nagosali,
(25) Dhargaon,	(26) Ondli,	(27) Saturli,	(28) Awalidumala,
(29) Karhale,	(30) Rayambe,	(31) Takedeogaon,	(32) Metyelyachi,
(33) Biturli,	(34) Walvihir,	(35) Bhavli Badruk,	(36)Pimpalgaon Bhatata,
(37) Kopargaon,	(38) Kurnoli,	(39) Dhamoli,	(40) Waki,
(41) Chinchale, (Khaire),	(42) Tringalwadi,	(43) Adwan,	(44) Awalkhede,
(45) Parderi,	(46) Balayduri,	(47) Khambala,	(48) Take Ghoti,
(49) Ghoti Budruk,	(50) Talegaon,	(51) Girnare,	(52) Titoli,
(53) Bortembhe,	(54) Taloshi,	(55) Nandgaon sade,	(56) Pimpri Sadaroddin,
(57) Talegha,	(58) Kanchangaon,	(59) Shenwad Budruk,	(60) Fangulgavan,
(61) Borli,	(62) Manwedhe,	(63) Bhavali Khurd,	(64) Kaluste,
(65) Jamunde,	(66) Gahunde,	(67) Bharvaj,	(68) Karungwadi,
(69) Nirpan,	(70) Maniargaon,	(71) Ambewadi,	(72) Khadked,
(73) Indore,	(74) Umbarkon,	(75) Somaj Ghadga,	(76) Ubhade, (Vanjulwadi),
(77) Megare,	(78) Belgaon Tarhale,	(79) Dhamangaon,	(80) Deole,
(81) Khairgaon,	(82) Pimpalgaon Mor,	(83) Dhamni,	(84) Adasare Khurd,
(85) Adasare Budruk,	(86) Acharwad,	(87) Taked Khurd,	(88) Taked Budruk,
(89) Khed,	(90) Barshingve,	(91) Sonoshi,	(92) Maidara Dhanoshi,
(93) Wasali,			

(iii) The seventy villages in Nasik tahsil as mentioned below and one town Trimbak:

Nasik tahsil

(1) Sapte,	(2) Kone,	(3) Kharwal,	(4) Varasvihir,
(5) Vaghera,	(6) Rohile,	(7) Nandgaon,	(8) Gorthan,
(9) Hirdi,	(10) Malegaon,	(11) Welunje,	(12) Ganeshgaon Waghera,
(13) Pimpri Trimbak,	(14) Met Kawara,	(15) Brahmanwade Trimbak,	(16) Toanangan,
(17) Dhumbdi,	(18) Bese,	(19) Chakore,	(20) Amboli,
(21) Ambai,	(22) Shirasgaon,	(23) Talwade Trimbak,	(24) Pimpalad Trimbak,
(25) Khambale,	(26) Sapgaon,	(27) Kachurli,	(28) Arianeri,
(29) Talegaon Trimbak,	(30) Pogalwadi Trimbak,	(31) Vacholi,	(32) Ubbrande,
(33) Kalmuste,	(34) Trimbak (Rural),	(35) Harshewadi,	(36) Metgherakilla Trimbak,
(37) Mulegaon,	(38) Ladachi,	(39) Naikwadi,	(40) Vele,
(41) Sadgaon,	(42) Vadgaon,	(43) Manoli,	(44) Dhondegaon,
(45) Dari,	(46) Gimate,	(47) Dugaon,	(48) Deorgaon,
(49) Nagalwadi,	(50) Ozarkheda,	(51) Chandashi,	(52) Gangamhalungi,
(53) Jalalpur,	(54) Sawargaon,	(55) Goverdhan,	(56) Shivangaon,
(57) Pimpalgaon Garudeshwar,	(58) Rajewadi,	(59) Gangawarhe,	(60) Ganeshgaon Trimbak,
(61) Ganeshgaon Nashik,	(62) Wasali,	(63) Dudgaon,	(64) Mahrawani,
(65) Talegaon Anjaneri,	(66) Jategaon,	(67) Sarul,	(68) Pimplad Nashik,
(69) Rajur Bahula,	(70) Dahigaon,		

(iv) The fifty seven villages in Baglan tahsil as mentioned below:

Baglan tahsil

(1) Borhate,	(2) Mohalangi,	(3) Jaitapur,	(4) Golwad,
(5) Hatnoor,	(6) Maliwade,	(7) Ambapur,	(8) Jad,
(9) Visapur,	(10) Shevare,	(11) Kharad,	(12) Vade Digar,
(13) Deothan,	(14) Kondharabad,	(15) Antapur,	(16) Raver,
(17) Jamoti,	(18) Aliabad,	(19) Ajande,	(20) Mulher,
(21) Babulne,	(22) Morane-Digar,	(23) Bordaivat,	(24) Bhimkhet,
(25) Waghambe,	(26) Manoor,	(27) Salher,	(28) Katarwel,
(29) Bhilwad,	(30) Tungan,	(31) Daswel,	(32) Jakhod,
(33) Mungase,	(34) Bhawade,	(35) Dasane,	(36) Malgaon Khurd,
(37) Salawan,	(38) Pisore,	(39) Kerasane,	(40) Vathod,
(41) Pathwedigar,	(42) Talwade Digar,	(43) Morkure,	(44) Kikwari Khurd,
(45) Kelzar,	(46) Tatani,	(47) Bhildar,	(48) Kikwari Budruk,
(49) Joran,	(50) Sakode,	(51) Karanjkhed,	(52) Dang Saundane,
(53) Nikwel,	(54) Bandhate,	(55) Dahindule,	(56) Sarwar,
(57) Wadichaulher.			

3. The following in Dhule District:

(a) Tahsils of Nawapur, Taloda, Akkalkuwa and Akrani.

(b) (i) The eighty villages in Sakri tahsil as mentioned below:

Sakri tahsil

(1) Choupale,	(2) Rothod,	(3) Jamkhel,	(4) Khuruswade,
(5) Sutare,	(6) Dhaner,	(7) Amale,	(8) Machmal,
(9) Khandbare,	(10) Raikot,	(11) Burudkhe,	(12) Pangaon,
(13) Lagadwal,	(14) Raitel,	(15) Brahmanwel,	(16) Amkhel,
(17) Jambore,	(18) Varsus,	(19) Jamki,	(20) Runmali,
(21) Vaskhedi,	(22) Damkani,	(23) Saltek,	(24) Dahiwel,
(25) Bhongaon,	(26) Badgaon,	(27) Maindane,	(28) Dapur,
(29) Rohan,	(30) Jebapur,	(31) Amode,	(32) Kirwade,
(33) Ghodade,	(34) Surpan,	(35) Korde,	(36) Valwhe,
(37) Vitave,	(38) Kasbe Chhadwell,	(39) Basar,	(40) Isarde,
(41) Petale,	(42) Pimpalgaon,	(43) Mohane,	(44) Tembhe, Pargane Warse,
(45) Shirsole,	(46) Umarpata,	(47) Malgaon Pargane Versa,	(48) Khargaon,
(49) Kalambe,	(50) Chorwad,	(51) Lakhale,	(52) Warse,
(53) Shenwad,	(54) Kudashi,	(55) Manjari,	(56) Mapalgaon,
(57) Dangshirwade,	(58) Bopkhel,	(59) Shiv,	(60) Khatyal,
(61) Vardoli,	(62) Kaksad,	(63) Pankhede,	(64) Samode,
(65) Mhasadi, Pargane Pimpalner,	(66) Pimpalner,	(67) Chikase,	(68) Jirapur,
(69) Kokangaon,	(70) Shevage,	(71) Dhamandhar,	(72) Virkhel,
(73) Pargaon,	(74) Mandane,	(75) Balhane,	(76) Deshirvade,
(77) Kadyale,	(78) Dhongaddigar,	(79) Shelbari,	(80) Degaon,

(ii) The eighty two villages in Nandurbar tahsil and town Nandurbar as mentioned below:

Nandurbar tahsil

(1) Bhangade,	(2) Mangloor,	(3) Vasalai,	(4) Arditara,
(5) Dhanora,	(6) Pavale,	(7) Kothede,	(8) Umaj,
(9) Kothali Khurd,	(10) Vadajakan,	(11) Nimbone Budruk,	(12) Jalkhe,
(13) Shirvade,	(14) Ranale Khurd,	(15) Natawad,	(16) Karanjwe,
(17) Shejwe,	(18)Pimplod-tarf-Dhanore,	(19) Loya,	(20) Velaved,
(21) Vyahur,	(22) Dhulawad,	(23) Gujar Bhavali,	(24) Gujar Jamboli,
(25) Karankhede,	(26) Phulsare,	(27) Umarde Budruk,	(28) Narayanpur,
(29) Ghirasgaon,	(30) Dhekwad,	(31) Biladi,	(32) Khairale,
(33) Khamgaon,	(34) Nagasar,	(35) Virchak,	(36) Tokartale,
(37) Waghale,	(38) Ozarde,	(39) Ashte,	(40) Thanepada,
(41) Amarave,	(42) Patharai,	(43) Dhamdai,	(44) Varul,

(45) Adachhi,	(46) Lonkhede,	(47) Karajkupe,	(48) Nalave Khurd,
(49) Sundarde,	(50) Nalave Budruk,	(51) Dudhale,	(52) Nandarkhe,
(53) Dhane,	(54) Vasadare,	(55) Wawad,	(56) Chakle,
(57) Dahindule Budruk,	(58) Dahindule Khurd,	(59) Athore Digar,	(60) Umarde Khurd,
(61) Chaupale,	(62) Akrale,	(63) Vadbare,	(64) Akhatwade,
(65) Hatti alias Indi,	(66) Palashi,	(67) Ghuli,	(68) Rakaswade,
(69) Waghode,	(70) Patonde,	(71) Hol-tarf-Haveli,	(72) Khodasgaon,
(73) Shahade,	(74) Shinde,	(75) Kolde,	(76) Bhagsari,
(77) Dhamdod,	(78) Savalde,	(79) Korit,	(80) Sujatpur,
(81) Tishi,	(82) Dhandhane.		

(iii) The one hundred forty one villages in Shahada tahsil as mentioned below:

Shahada tahsil

(1) Akaspur,	(2) Nawagaon (Forest Village),	(3) Virpur,	(4) Dara,
(5) Bhuta,	(6) Kansai,(Forest Village),	(7) Nandya Kusumwade	(Forest Village, Rampur,
(8) Chirade,	(9) Nagziri (Forest Village),	(10) Kusumwade,	(11) Nandya (Forest Village),
(12) Pimprani,	(13) Ranipur, (Forest Village),	(14) Fattepur,	(15) Lakkadkot (Forest Village),
(16) Kotbandhani (Forest Village),	(17) Pimplod,	(18) Kuddawad,	(19) Lachhore,
(20) Kanadi-tarf-Haveli,	(21) Shirud-tarf Haveli,	(22) Amode,	(23) Alkhed ,
(24) Padalde Budruk,	(25) Budigavan,	(26) Umarati,	(27) Pimpri,
(28) Mhasavad,	(29) Anakwade,	(30) Sulwade,	(31) Tavalai,
(32) Mubarakpur,	(33) Velavad,	(34) Kalmadi-tarf-Boardi,	(35) Wadi,
(36) Sonawadtarf-Boardi,	(37) Thangche,	(38) Javadetarf-Boardi,	(39) Tarhadi-tarf-Boardi,
(40) Vardhe,	(41) Pari,	(42) Kothali-tarf-haveli,	(43) Aurangpur,
(44) Chikhali Budruk,	(45) Karankhede,	(46) Nandarde,	(47) Vaijali,
(48) Vaghode,	(49) Parakashe,	(50) Dhamlad,	(51) Katharde Budruk,
(52) Katharde Khurd,	(53) Kalsadi,	(54) Dhurkhede,	(55) Bhade,
(56) Pingane,	(57) Ganor,	(58) Adgoan,	(59) Kharagaon,
(60) Kochrare,	(61) Biladi-tarf-Haveli,	(62) Bahirpur,	(63) Bramhanpur,
(64) Sultanpur,	(65) Raikhed,	(66) Khed Digar,	(67) Navalpur,
(68) Chandsaili,	(69) Godipur,	(70) Padalde Khurd,	(71) Bhagapur,
(72) Javkhede,	(73) Sonwai-tarf-Haveli,	(74) Kavalith,	(75) Tuki,
(76) Sawkhede,	(77) Karjot,	(78) Lohare,	(79) Gogapur,
(80) Kurangi,	(81) Tidhare,	(82) Damalde,	(83) Kalamad-tarf-Haveli,
(84) Chikhali Khurd,	(85) Bhortek,	(86) Shrikhede,	(87) Ozarte,

(88) Ukhalshem,	(89) Vagharde,	(90) Jam,	(91) Javade-tarf-Haveli,
(92) Titari,	(93) Hol Mubarakpur (Forest Village),	(94) Vadgaon,	(95) Pimparde,
(96) Asalod,	(97) Mandane,	(98) Awage,	(99) Tikhore,
(100) Untawad,	(101) Hol,	(102)Mohide-tarf-Haveli,	(103) Junwane,
(104) Lonkhede,	(105) Tembhali,	(106) Holgujari,	(107) Asus,
(108) Bupkari,	(109) Maloni,	(110) Dongargaon,	(111) Kothal-tarf-Shahada,
(112) Matkut,	(113) Borale,	(114) Kamravad,	(115) Kahatul,
(116) Vadchhil,	(117) Londhare,	(118) Udhalod,	(119) Nimbhore,
(120) Dhandre Budurk,	(121) Chirkhan (Forest Village),	(122) Asalod (New) (Forest Village),	(123) Jainagar,
(124) Dhandre Khurd (Forest Village),	(125) Manmodya (Forest Village),	(126) Dutkhede (Forest Village),	(127) Bhongara (Forest Village),
(128) Vadali,	(129) Kondhawal,	(130) Bhulane (Forest Village),	(131) Chandsaili (Forest Village),
(132) Ubhadagad (Forest Village),	(133) Kakarde Khurd,	(134) Khaparkhede (Forest Village),	(135) Malgaon (Forest Village),
(136) Langadi Bhavani (Forest Village),	(137) Shahana (Forest Village),	(138) Kakarde Budruk,	(139) Abhanpur Budruk,
(140) Katghar,	(141) Nimbardi (Forest Village),		

(iv) The sixty two villages in Shirpur tahsil as mentioned below:

Shirpur tahsil

(1) Borpani (Forest Village),	(2) Malkatar (Forest Village),	(3) Fattepur (Forest Village),	(4) Gadhad Deo (Forest Village),
(5) Kodid (Forest Village),	(6) Gurhadpani (Forest Village),	(7) Bhudaki (Forest Village),	(8) Waghpade (Forest Village),
(9) Saigarpada (Forest Village),	(10) Manjriburdi (Forest Village),	(11) Chondi (Forest Village),	(12) Bhudaki (Forest Village),
(13) Chandsurya (Forest Village),	(14) Boradi (New) (Forest Village),	(15) Kakadmal (Forest Village),	(16) Vakawad (Forest Village),
(17) Umarda (Forest Village),	(18) Durabadya (Forest Village),	(19) Mohide (Forest Village),	(20) Dondwada (Forest Village),
(21) Tembha (Forest Village),	(22) Kharikhan (Forest Village),	(23) Boaradi,	(24) Wasardi,
(25) Nandarde,	(26) Chandase,	(27) Wadi Budruk,	(28) Wadi Khurd,
(29) Jalod,	(30) Abhanpur Khurd,	(31) Tarhad,	(32) Ukhalwadi,
(33) Mukhed,	(34) Nimzari,	(35) Varzadi,	(36) Waghabarda,
(37) Samryapada,	(38) Lauki,	(39) Sule,	(40) Fattepur,
(41) Hedakhed,	(42) Arunapuri Dam (Deforested),	(43) Sangavi,	(44) Hated,
(45) Zendya Anjan,	(46) Palasner,	(47) Khambale,	(48) Panakhed (Forest Village),

(49) Khairkhuti (Forest Village),	(50) Joyada (Forest Village),	(51) Chilare (Forest Village),	(52) Lakdya Hanuman (Forest Village),
(53)Mahadeo Dondwade (Forest Village),	(54) Malapur (Forest Village),	(55) Rohini,	(56) Bhoiti,
(57) Ambe,	(58) Khamkhede Pargane Ambe,	(59) Hiwarkhede, (Forest Village),	(60) Higaon,
(61) Vadel Khurd,	(62) Kalapani (Forest Village)		

4. The following in Jalgaon district:

(a) (i) The twenty five villages in Chopda tahsil as mentioned below:

Chopda Tahsil

(1) Maratha (Forest Village),	(2) Mordhida (Forest Village),	(3) Umarti (Forest Village),	(4) Satrasen (Forest Village),
(5) Krishnapur (Forest Village),	(6) Angurne,	(7) Kharya Padav (Forest Village),	(8) Vaijapur (Revenue),
(9) Mulyautar (Forest Village),	(10) Vaijapur (Forest Village)	(11) Borajanti (Forest Village),	(12) Malapur (Forest Village),
(13) Bormali (Forest Village),	(14) Karajane (Forest Village),	(15) Melane (Forest Village),	(16) Vishnapur (Forest Village),
(17) Devhari (Forest Village),	(18) Deoziri (Forest Village),	(19) Kundyapani (Forest Village),	(20) Ichapur Pargane Adwad,
(21) Badhawani,	(22) Badhai,	(23) Andane,	(24) Moharad,
(25) Asalwadi (Forest Village),			

(ii) The thirteen villages in Yaval tahsil as mentioned below:

Yaval Tahsil

(1) Manapuri,	(2) Tolane,	(3) Khalkot,	(4) Ichakhede,
(5) Malod,	(6) Haripura (Forest Village),	(7) Vaghazira (Forest Village),	(8) Parasade Budruk,
(9) Borkhede Khurd,	(10) Langda Amba,	(11) Jamnya (Forest Village),	(12) Gadrya (Forest Village),
(13) Usmali (Forest Village)			

(iii) The twenty-one villages in Raver tahsil as mentioned below:

Raver Tahsil

(1) Mahumandali (Forest Village),	(2) Pimparkund (Forest Village),	(3) Andharmali (Forest Village),	(4) Tidya (Forest Village),
(5) Nimdya (Forest Village),	(6) Garbardi (Forest Village),	(7) Janori,	(8) Chinchati,
(9) Pal,	(10) Marwhal,	(11) Jinsi,	(12) Sahasraling (Forest Village),
(13) Lalmati (Forest Village),	(14) Abhode Budruk	(15) Lohare,	(16) Kusumbhe Budruk,

(17) Kusumbe Khurd,	(18) Pimpri,	(19) Mohagan Budruk,	(20) Padale Budruk,
(21) Mahumandali (old) Deserted)			

5. The following in Ahmednagar district

(a) The ninety-four villages in Akole tahsil as mentioned below:

Akole Tahsil

(1) Tirdhe,	(2) Padoshi,	(3) Mhajungi,	(4) Ekdare,
(5) Sangavi,	(6) Keli Rumhanwadi,	(7) Bitaka,	(8) Khirvire,
(9) Kombhalne,	(10) Tahakari,	(11) Samsherpur,	(12) Savargaon Pat,
(13) Muthalane,	(14) Bari,	(15) Waranghusi,	(16) Ladagaon,
(17) Shenit,	(18) Pabhulwandi,	(19) Babhulwandi,	(20) Ambevangan,
(21) Deogaon,	(22) Pendshet,	(23) Manhere,	(24) Shelvihire,
(25) Panjare,	(26) Chinchond,	(27) Waki,	(28) Titavi,
(29) Pimparkane,	(30) Udadawane,	(31) Kodani,	(32) Ghatghar,
(33) Shinganwadi Rajur,	(34) Murshet,	(35) Shendi,	(36) Samarad
(37) Bhandardara,	(38) Ranad Budruk,	(39) Ranad khurd,	(40) Malegaon,
(41) Kohondi,	(42) Digambar,	(43) Guhire,	(44) Katalapur,
(45) Ratanwadi,	(46) Mutkhel,	(47) Terungan,	(48) Rajur,
(49) Vithe,	(50) Koltembhe,	(51) Kelungan,	(52) Jamgaon,
(53) Shirpunje Budruk,	(54) Savarkute,	(55) Kumshet,	(56) Shirpunje Khurd,
(57) Dhamanvan,	(58) Ambit,	(59) Balthan,	(60) Manik Ozar,
(61) Puruchawadi,	(62) Maveshi,	(63) Shiswad,	(64) Wapjulshet,
(65) Gondoshi,	(66) Khadki,	(67) Sakirwadi,	(68) Pachanai,
(69) Chinchavane,	(70) Padalne (80)	(71) Shelad,	(72) Pimpri,
(73) Ghoti,	(74) Paithan,	(75) Lavali Kotul,	(76) Waghdari,
(77) Shilvandi,	(78) Kohone,	(79) Lavali Otur,	(80) Tale,
(81) Kothale,	(82) Somalwadi,	(83) Vihir,	(84) Shinda,
(85) Ambit Khind,	(86) Palsunde,	(87) Pisewadi,	(88) Phopsandi,
(89) Satewadi	(90) Keli Otur,	(91) Keli Kotul	(92) Khetewadi,
(93) Esarthav,	(94) Karandi,		

6. The following in Pune District

(a) (i) The fifty-six villages in Ambegaon tahsil as mentioned below:

Ambegaon Tahsil

(1) Don,	(2) Pimpargaane,	(3) Aghane,	(4) Ahupe,
(5) Tirpad,	(6) Nhaved,	(7) Asane,	(8) Malin,
(9) Nanawade,	(10) Amade,	(11) Warsawane,	(12) Kondhare,
(13) Adivare,	(14) Borghar,	(15) Patan,	(16) Kushire Khurd,
(17) Panchale budruk,	(18) Kushire Budruk,	(19) Digad,	(20) Panchale Khurd,
(21) Mahelunge-tarf-Ambegaon,	(22) Savarali,	(23) Megholi,	(24) Vachape,

(25) Sakeri,	(26) Pimpari,	(27) Ambegaon	(28) Jambhori,
(29) Kalambai,	(30) Kondhawal,	(31) Phulavade,	(32) Phalode,
(33) Koltavade,	(34) Terungaon,	(35) Dimbhe Budruk,	(36) Mahalunge-tarf-Ghoda,
(37) Rajpur,	(38) Chikhali,	(39) Rajewadi,	(40) Supeghar,
(41) Taleghar,	(42) Mapoli,	(43) Dimbhe Khurd,	(44) Pokhari,
(45) Gohe Budruk,	(46) Nigadale,	(47) Gohe Khurd,	(48) Apati,
(49) Gangapur Khurd,	(50) Amondi	(51) Kanase,	(52) Gangapur Budruk,
(53) Shinoli,	(54) Pimpalgaon-tarf-Ghoda,	(55) Sal,	(56) Dhakale

(ii) The sixty-five villages in Junnar tahsil as mentioned below:

Junnar Tahsil

(1) Chilhewadi,	(2) Ambehavhan,	(3) Jambhulshi,	(4) Khireshwar,
(5) Mathalane,	(6) Kolhewadi,	(7) Kopare,	(8) Mandave,
(9) Singanore,	(10) Alu,	(11) Khubi	(12) Pimpalgaon Joga,
(13) Karanjale,	(14) Mach,	(15) Pangri-tarf-Madh,	(16) Kolwadi,
(17) Pargaon-tarfModh,	(18) Taleran,	(19) Sitewadi,	(20) Wathale,
(21) Nimgir,	(22) Anjanwale,	(23) Hadsar,	(24) Devale,
(25) Khaire,	(26) Ghatghar,	(27) Jalwandi,	(28) Hirdi,
(29) Undekhadak,	(30) Rajpur,	(31) Khatkale,	(32) Manikdoh,
(33) Khad kumbe,	(34) Ursan,	(35) Vevadi,	(36) Tejpur,
(37) Phangalghavan,	(38) Chavand,	(39) Pur,	(40) Khangaon,
(41) Mankeshwar,	(42) Surale,	(43) Amboli,	(44) Shiroli-tarf-Kukadner,
(45) Wanewadi,	(46) Aptale,	(47) Koli,	(48) Shivali,
(49) Utchil,	(50) Botarde,	(51) Dhalewadi-tarf-Minher,	(52) Bhivade Budruk,
(53) Ingaloon,	(54) Bhivade Khurd,	(55) Ghangaldare,	(56) Sonavale,
(57) Tambe,	(58) Hivare-tarf-Minher,	(59) Hatvij,	(60) Ambe,
(61) Pimparwadi,	(62) Sukalewdhe,	(63) Godre,	(64) Khamgaon,
(65) Somatwadi,			

7. The following in Nanded District:

(a) The one hundred fifty-two villages and town Kenwat in kinwat tahsil as mentioned below:

Kinwat Tahsil

(1) Takli,	(2) Padsa,	(3) Sayepal,	(4) Murli,
(5) Wadsa,	(6) Koli,	(7) Ashta,	(8) Gondegaon,
(9) Madnapur (Mahore),	(10) Bondgavan,	(11) Umra,	(12) Machandra Pard,
(13) Karalgaon,	(14) Sawarkhed,	(15) Digdi (Kutemar),	(16) Wai,
(17) Hardap,	(18) Naikwadi,	(19) Hingani,	(20) Wazra,
(21) Tulshi,	(22) Gondwadsa,	(23) Anjankhed,	(24) Bhorad,
(25) Chorad,	(26) Dhanora (sindkhed),	(27) Rampur,	(28) Pathri,

(29) Khambala,	(30) Pardi,	(31) Sindkhed,	(32) Cinchkhed,
(33) Hatola,	(34) Waifani,	(35) Dhundra,	(36) Gouri,
(37) Both,	(38) Sailu,	(39) Karanji (Sindkhed),	(40) Bhagwati,
(41) Wazra Budruk,	(42) Umri,	(43) Unakdeo,	(44) Chais,
(45) Pimpalsenda,	(46) Sarkhani,	(47) Delhi,	(48) Nirala,
(49) Noorgaon,	(50) Titvi,	(51) Lingi,	(52) Nagapur,
(53) Jununi,	(54) Digadwazra,	(55) Darsangvi (Sindkhed),	(56) Singoda,
(57) Sirpur,	(58) Tembhi,	(59) Patoda Budruk,	(60) Mandvi,
(61) Jawarla,	(62) Palsi,	(63) Belgaon,	(64) Kanki,
(65) Kothari, (Sindkhed),	(66) Pimpalgaon (Sindkhed),	(67) Dongargaon (Sindkhed),	(68) Jarur,
(69) Minki,	(70) Pachunda,	(71) Wanola,	(72) Sakur,
(73) Mendki,	(74) Digdi (Mohanpur),	(75) Dhanora (Digdi),	(76) Mohapur,
(77) Mungshi,	(78) Singdi (Kinwat),	(79) Malborgaon,	(80) Nejpur,
(81) Rajgad,	(82) Wadoli,	(83) Anji,	(84) Kanakwadi,
(85) Loni,	(86) Dhamandhari,	(87) Pandhara,	(88) Bellori (Kinwat),
(89) Maregaon,	(90) Kamthala,	(91) Ambadi,	(92) Kherda,
(93) Malkapur,	(94) Ghoti,	(95) Sirmetti,	(96) Bhimpur,
(97) Pipalgaon (Kinwar),	(98) Ghogarwadi,	(99) Gokunda,	(100) Mandva,
(101) Digdi (Mangabodi)	(102) Nagzari,	(103) Kothari (Chikhli),	(104) Pradhan Sangvi,
(105) Bendi,	(106) Amadi,	(107) Madnapur (Chikhli),	(108) Shaniwar Peth,
(109) Dabhadi,	(110) Chikhli,	(111) Hudi (Chikhli),	(112) Endha,
(113) Bhulja,	(114) Darsangvi (Chikhli),	(115) Malakwadi,	(116) Penda,
(117) Pardi Khurd,	(118) Karla,	(119) Degaon,	(120) Lingdhari,
(121) Pardi Budruk,	(122) Bodhadi Khurd,	(123) Bodhadi Budruk,	(124) Sindgi (Chikhli),
(125) Andbori (Chikhli),	(126) Kopara,	(127) Piperphodi,	(128) Patoda (Chikhli),
(129) Pipri,	(130) Dhanora (Chikhli),	(131) Sawari,	(132) Thara,
(133) Poth Redy,	(134) Singarwadi,	(135) Anjegaon,	(136) Bhandarwadi,
(137) Jaldhara (Chandrapur),	(138) Belori (Chikhli),	(139) Malkolari,	(140) Digras,
(141) Dongargaon(Chikhli),	(142) Shivoni (Chikhli),	(143) Paroti,	(144) Sawargaon,
(145) Jaldhara (Islapur),	(146) Kothari,	(147) Hudi (Islapur),	(148) Karanji (Islapur),
(149) Kupti Khurd,	(150) Kupti Budruk,	(151) Wagdhari,	(152) Talari,

8. The following in Amravati district:
(a) The tahsils of Chikhaldara and Dhani
9. The following in Yavatmal district
(a) (i) The one hundred thirty villages in Maregaon tahsil as mentioned below:

Maregaon Tahsil

(1) Ghoguldara,	(2) Shionala,	(3) Buranda,	(4) Phapal,
(5) Kanhalgaon	(6) Khepadwai,	(7) Ghodadhara,	(8) Narsala,
(9) Dhamani,	(10) Madnapur,	(11) Bori Khurd,	(12) Pisgaon,
(13) Wadgaon,	(14) Phiski (Forest Village),	(15) Bhalewadi,	(16) Pathari,
(17) Chinchala,	(18) Pan Harkawala,	(19) Kharda (Forest Village),	(20) Pimprad (Forest Village),
(21) Phaparwada,	(22) Salabhatti (Forest Village),	(23) Doldongargaon,	(24) Machindra,
(25) Pandwihir,	(26) Jalka,	(27) Pandhardevi (Forest Village),	(28) Ambora (Forest Village),
(29) Chinchoni Botoni,	(30) Awalgaon (Forest Village),	(31) Kanhalagaon,	(32) Khairgaon,
(33) Sarati,	(34) Buranda,	(35) Durgada,	(36) Wagdhara,
(37) Mendhani,	(38) Ghanpur,	(39) Hatwaniri,	(40) Khapri,
(41) Uchatdevi (Forest Village),	(42) Maregaon (Forest Village),	(43) Khandani,	(44) Mhasdodka,
(45) Palgaon,	(46) Botoni,	(47) Girjapur (Forest Village),	(48) Pachpohar,
(49) Ambezari,	(50) Rohapat,	(51) Raipur,	(52) Sagnapur,
(53) Hiwara Barsa,	(54) Rampur	(55) Katli Borgaon,	(56) Pardi,
(57) Shibla,	(58) Chiali (Forest Village),	(59) Boargaon (Forest Village),	(60) Pendhari,
(61) Arjuni,	(62) Kagaon,	(63) Rajani,	(64) Majara,
(65) Gangapur (Forest Village),	(66) Bhoikund (Forest Village),	(67) Wadhona,	(68) Susari,
(69) Surla,	(70) Godani,	(71) Nimani,	(72) Darara,
(73) Asan,	(74) Jaglon,	(75) Zamkola,	(76) Isapur,
(77) Kilona,	(78) Umarghat,	(79) Wallasa,	(80) Junoni (Forest Village),
(81) Lenchori,	(82) Chinchghar,	(83) Ambizari, Khurd,	(84) Ambezari Badruk,
(85) Kargaon Khurd,	(86) Nimbadevi,	(87) Tembhi,	(88) Kundi,
(89) Mandiv,	(90) Junoni,	(91) Parambha,	(92) Pokharni (Forest Village),
(93) Piwardol,	(94) Bhorad, (Forest Village),	(95) Chikhaldoh,	(96) Mulgawaan,
(97) Bhimnala,	(98) Chatwan,	(99) Araiakwad,	(100) Gawara,
(101) Matharjun,	(102) Mahadapur,	(103) Pandharwani,	(104) Demad Devi,
(105) Mandwa,	(106) Dongargaon (Forest Village),	(107) Dabhadi,	(108) Umari,

(109) Mudhati,	(110) Parsodi,	(111) Kodpakhindi,	(112) Mangrul Khurd,
(113) Mangrul Badruk,	(114) Gopalpur,	(115) Rampeth,	(116) Chalbardi,
(117) Jamani,	(118) Shirola,	(119) Adkoli,	(120) Khalakloh,
(121) Birsapeth,	(122) Muchi,	(123) Marki Budruk,	(124) Marki Khurd,
(125) Ganeshpur,	(126) Pawnar (Forest Village),	(127) Krishnapur (Forest Village),	(128) Khekadi (Forest Village),
(129) Shekapur,	(130) Yeoti.		

(ii) The forty-three villages in Ralegaon tahsil as mentioned below:

Ralegaon Tahsil

(1) Lohara,	(2) Eklara,	(3) Sonerdi	(4) Watkhed,
(5) Jalka,	(6) Wama,	(7) Pimpari Durga,	(8) Mandawa,
(9) Kolwan,	(10) Soit,	(11) Varud,	(12) Bukai,
(13) Zargad,	(14) Khadki Sukli,	(15) Dongargaon,	(16) Tejani,
(17) Anji,	(18) Loni,	(19) Borati (Forest Village),	(20) Sarati,
(21) Khairgaon Kasar,	(22) Wardha,	(23) Bhulgad,	(24) Pimpalshenda (75)
(25) Atmurdi	(26) Sawarkhed,	(27) Chondhi,	(28) Wadhoda,
(29) Khemkund,	(30) Pardi (Forest Village),	(31) Umarvihir,	(32) Adni,
(33) Khatara,	(34) Munzala,	(35) Palaskund,	(36) Vihirgaon,
(37) Khairgaon,	(38) Deodhari,	(39) Singaldip,	(40) Sonurli,
(41) Shindola,	(42) Zotingdara,	(43) Sakhi Khurd.	

(iii) The one hundred three villages in Kelapur tahsil as mentioned below and town Pandharkawada:

Kelapur Tahsil

(1) Mohdari,	(2) Jogin Kohla,	(3) Mira,	(4) Jira,
(5) Ghoddara (Forest Village),	(6) Sakhi Budruk,	(7) Wadhona Khurd,	(8) Zolapur (Forest Village),
(9) Karanii,	(10) Wadhona Budruk	(11) Tiwsala (Forest Village),	(12) Kothada,
(13) Surdevi,	(14) Chanai,	(15) Asoli,	(16) Mohada,
(17) Karegaon,	(18) Chikhaldara,	(19) Krishnapur,	(20) Dabha,
(21) Morwa,	(22) Khairgaon,	(23) Wagholi,	(24) Kusal,
(25) Chopan,	(26) Malkapur (Forest Village),	(27) Kgaon,	(28) Vadner,
(29) Zuli,	(30) Bhad umari,	(31) Patoda,	(32) Pahapal,
(33) Nagazari Khurd,	(34) Bahattar,	(35) Susari,	(36) Naiksukali, (Forest Village),
(37) Pedhari,	(38) Pilpali,	(39) Dongaragaon,	(40) Both,
(41) Malegaon Khurd (Forest Village),	(42) Hiwardari (Forest Village),	(43) Malagaon Budruk (Forest Village),	(44) Daryapur,
(45) Pilwahari,	(46) Arli,	(47) Hiwari,	(48) Pimpalshenda,
(49) Karagaon,	(50) Wadwat,	(51) Khairi,	(52) Ghubadi,

(53) Konghara,	(54) Sakhara Budruk,	(55) Dharna,	(56) Mangi,
(57) Dhaki,	(58) Wai,	(59) Pimpalapur,	(60) Ganespur,
(61) Khairgaon	(62) Pah,	(63) Niljai,	(64) Margaon,
(65) Ambhora	(66) Dongargaon	(67) Pimpari,	(68) Khairgaon,
(69) Muchi,	(70) Mangurda,	(71) Pandharwani Budruk (Forest Village),	(72) Kondhi,
(73) Wedad,	(74) Baggi,	(75) Ghanmode,	(76) Nandgaon,
(77) Ganeshpur (30)	(78) Tatapur,	(79) Zunzapur,	(80) Gondwakadi,
(81) Chalbardi,	(82) Beluri,	(83) Tadumari,	(84) Bargaon,
(85) Acoli Budruk,	(86) Mahandoli,	(87) Sakhara,	(88) Marathwakadi,
(89) Dhoki,	(90) Ballarpur,	(91) Tokwanjari,	(92) Wanjari,
(93) Khairgaon Budruk,	(94) Tembhi,	(95) Radhapur (Forest Village),	(96) Pikhana (Forest Village),
(97) Wasari,	(98) Andharwadi,	(99) Yellapur (Forest Village),	(100) Chanakha,
(101) Nimdheli,	(102) Rudha,	(103) Sukli	

(iv) The fifty-five villages in Ghatanji tahsil as mentioned below:

Ghatanji Tahsil

(1) Marweli,	(2) Rajurwadi,	(3) Lingi,	(4) Koli Khurd,
(5) Koli Budruk,	(6) Rampur Undharni,	(7) Kapshi,	(8) Datodi,
(9) Gudha,	(10) Warud (240)	(11) Zaparwadi,	(12) Umri (242)
(13) Palodi,	(14) Kopri (244)	(15) Ghoti,	(16) Bodadi,
(17) Mudhati (Forest Village),	(18) Jalandri,	(19) Manusdhari,	(20) Ayate,
(21) Kap,	(22) Kavatha Budruk,	(23) Bilayat,	(24) Khadki,
(25) Chimta,	(26) Kopri Khurd,	(27) Chincholi (268)	(28)Kindhi (Forest Village)
(29) Gawara (Forest Village),	(30) Titwi,	(31) Muradgavhan (Forest Village)	(32) Pimpal Khuti (Forest Village),
(33)Kharoni (Forest Village),	(34) Wadhona,	(35) Dorli,	(36) Rahati,
(37) Rasa (Forest Village),	(38) Zatala,	(39) Chikhalwardha,	(40) Tad-Sawali,
(41) Saifal,	(42) Nagezari Budruk,	(43) Kawatha (Forest Village),	(44) Parwa,
(45) Majhada,	(46) Pardi,	(47) Jamb,	(48) Kaleshwar,
(49) Sherad,	(50) Dhunki (Forest Village),	(51) Mathani (Forest Village),	(52) Rajagaon (Forest Village),
(53) Khapri (Forest Village),	(54) Honegaon	(55) Ganeri	

10. The following in Gadchiroli district:-

(a) The tahsils of Ettapalli, Sironcha, Aheri, Dhanora, Kurkheda.

(b) (i) The sixty-two villages in Gadchiroli tahsil as mentioned below:

Gadchiroli Tahsil

(1) Nawgaon,	(2) Chak Churchura,	(3) Kurhadi,	(4) Chak Maushi,
(5) Murmadi,	(6) Botheda,	(7) Palandur,	(8) Gilgaon,
(9) Chak Kharpurdi,	(10) Japra,	(11) Chak Dhibhana,	(12) Marumbodi,
(13) Kurkheda,	(14) Khursa,	(15) Visapur,	(16) Sonapur,
(17) Mondha,	(18) Sawrgaon,	(19) Kanri,	(20) Pulkhal,
(21) Mudza Budruk,	(22) Mudza Tukum,	(23) Krupala,	(24) Masli,
(25) Ranbhumi,	(26) Chandala,	(27) Ranmul,	(28) Kumbhi Patch,
(29) Kumbhi Mokasa,	(30) Made Mul,	(31) Maroda,	(32) Kosamghat,
(33) Raipur,	(34) Rawanzora,	(35) Pekinkasa,	(36) Sawela,
(37) Suimara,	(38) Sakhera,	(39) Karkazara,	(40) Kanhalgaon,
(41) Keligatta,	(42) Tohagaon,	(43) Gajanguda,	(44) Banoli,
(45) Suryadongri,	(46) Salaitola,	(47) Bitantota,	(48) Potegaon,
(49) Rajoli,	(50) Madras,	(51) Jaller,	(52) Devapur,
(53) Ramgad	(54) Gavalheti,	(55) Deoda,	(56) Kharadguda,
(57) Talguda,	(58) Jamgaon,	(59) Kadsi,	(60) Korkuti,
(61) Nagweli,	(62) Jalegaon.		

(ii) The seventy-four villages in Armori tahsil as mentioned below:

Armori Tahsil

(1) Koregaon	(2) Kalamgaon,	(3) Kural,	(4) Selda Tukum,
(5) Selda Lambe,	(6) Kasari Tukum,	(7) Kasarigaon,	(8) Shivrajpur,
(9) Potegaon,	(10) Vihirgaon,	(11) Pimpalgaon,	(12) Arat-tondi,
(13) Dongargaon (Halbi),	(14) Palasgaon,	(15) Navargaon,	(16) Pathargota,
(17) Mangewada,	(18) Armori,	(19) Salmara,	(20) Thanegaon,
(21) Patanwada,	(22) Puranawairagad,	(23) Deulgaon,	(24) Sukala,
(25) Mohazari alias	Sakharbodi,	(26) Chak Kernada,	(27) Lohara,
(28) Chak Sonpur,	(29) Hirapur,	(30) Dongartamsi,	(31) Shiani Khurd,
(32) Chavhela,	(33) Mohatala Chak Kukodi,	(34) Mendha,	(35) Dongartamsi Patch,
(36) Nagarwadi,	(37) Chak Naroti,	(38) Chak Kurandi	(39) Wadegaon,
(40) Thotebodi,	(41) Dellanwadi,	(42) Manapur,	(43) Kosari,
(44) Mangoda,	(45) Tultuli,	(46) Chaknagarwahi,	(47) Vihirgaon,
(48) Kurandi,	(49) Umari,	(50) Yengada,	(51) Pisewadadha,
(52) Paraswadi,	(53) Dawandi,	(54) Khadaki,	(55) Bhakarandi,
(56) Naroti Malgujar,	(57) Koregaon,	(58) Warkheda,	(59) Kharadi,
(60) Bhansi,	(61) Dorli,	(62) Wanarchuwa,	(63) Jambhali,
(64) Mendha,	(65) Narchuli,	(66) Khairi,	(67) Maregaon Patch,
(68) Maregaon	(69) Chak Maregaon	(70) Chak Chicholi,	(71) Mousi Khamb,

(72) Belgaon,	(73) Chicholi,	(74) Wankheda	

(iii) The one hundred thirty-two villages in Chamorshi tahsil as mentioned below:

Chamorshi Tahsil

(1) Saganpur,	(2) Bandhona,	(3) Gilgaon,	(4) Bhendi Kanhal,
(5) Thatari,	(6) Chite Kanhar,	(7) Kalamgaon,	(8) Kurud,
(9) Maler,	(10) Kulegaon,	(11) Nachangaon,	(12) Bhadbhid,
(13) Walsara,	(14) Chak Visapur,	(15) Jogana,	(16) Murmuri,
(17) Rawanpalli,	(18) Sonapur,	(19) Darli,	(20) Rekhagaon,
(21) Yedanur,	(22) Pailsanpeth,	(23) Pandhri Bhatal,	(24) Rajangatta,
(25) Chak Amagaon No. 1,	(26) Mutnur,	(27) Abapur,	(28) Murandapi,
(29) Lenguda,	(30) Adyal,	(31) Karkapalli,	(32) Chak Karakapalli,
(33) Jangamkurul,	(34) Fuser,	(35) Dhekani,	(36) Chak Mudholi No.2,
(37) Lakshamanpur,	(38) Saganapur,	(39) Amboli,	(40) Gahubodi,
(41) Chak Narayanpur No. 1,	(42) Chak Narayanpur No. 2,	(43) Rajur Budruk,	(44) Bhadbid,
(45) Manger,	(46) Chichpally,	(47) Wanarchuwa,	(48) Jairampur,
(49) Waigaon,	(50) Narayanpur,	(51) Rajur Khurd,	(52) Haladwahi,
(53) Mudholi,	(54) Kothari,	(55) Bamhani Deo,	(56) Somanpalli,
(57) Kanhalgaon,	(58) Singela,	(59) Belgatta,	(60) Pethtala,
(61) Chak Pethtala No. 1,	(62) Pardideo,	(63) Yadavpalli,	(64) Rajpur,
(65) Jambhalirith,	(66) Meteguda,	(67) Chak Belgatta,	(68) Manjigaon,
(69) Machhalighot,	(70) Chak Makepalli No. 4,	(71) Darpanguda,	(72) Chak Makepalli No. 2.
(73) Chak Makepalli No. 3,	(74) Garanji,	(75) Chak Made Amgaon,	(76) Chak Made Amgaon No. 1,
(77) Chak Made Amgaon No. 2,	(78) Tumdi,	(79) Regadi,	(80) Makepalli Malgujari,
(81) Borghat,	(82) Ashti Nokewada,	(83) Bramhanpeth,	(84) Venganur,
(85) Nokewada,	(86) Allapalli,	(87) Rengewahi,	(88) Kolpalli
(89) Ambela (Forest village),	(90) Gatta (Forest Village),	(91) Adgepalli,	(92) Surgaon (Forest Village),
(93) Yellur,	(94) Thakari,	(95) Rajgatta,	(96) Lohara,
(97) Mukaritola,	(98) Bholkhandi (Forest Village),	(99) Hetalkasa,	(100) Bolepalli,
(101) Pulligudam,	(102) Kunghada,	(103) Kunghada,	(104) Kalapur,
(105) Gangapur,	(106) Chandankhedi	(107) Malera,	(108) Basarwada,
(109) Chaprala,	(110) Chaidampatti,	(111) Mukadi (Forest Village),	(112) Singanpalli,
(113) Dhamanpur,	(114) Kothari (930)	(115) Ambatpalli,	(116) Gomani,
(117) Lagamhetti,	(118) Damapur,	(119) Bandukpalli,	(120) Kodigaon,
(121) Chichela,	(122) Nagulwahi,	(123) Chintugunha,	(124) Tumugunda,
(125) Machingatta,	(126) Yella,	(127) Tikepalli,	(128) Marpalli,
(129) Jamgaon,	(130) Kultha,	(131) Rampur,	(132) Lagam Chak.

11. The following in Chandrapur district:-
The one hundred eighty-two villages in Rajura tahsil as mentioned below:

Rajura Tahsil

(1) Parasoda,	(2) Raipur,	(3) Kothoda Khurd,	(4) Govindpur,
(5) Kothoda Budruk,	(6) Mehandi,	(7) Pardi,	(8) Jewra,
(9) Chanai Khurd,	(10) Akola,	(11) Korpana,	(12) Durgadi,
(13) Rupapeth,	(14) Chanai Budruk,	(15) Mandwa,	(16) Kanergaon Budruk,
(17) Katlabodi,	(18) Shivapur,	(19) Chopan,	(20) Kerambodi,
(21) Kukulbodi,	(22) Tippa,	(23) Mangulhira,	(24) Khadki,
(25) Jamuldhara,	(26) Borgaon Budruk,	(27) Borgaon Khurd,	(28) Asapur,
(29) Tangala,	(30) Khairgaon,	(31) Hatloni	(32) Yergoan,
(33) Umarzara,	(34) Yellapur,	(35) Singar Pathar,	(36) Lambori,
(37) Shedwai,	(38) Narpathar,	(39) Kodapur,	(40) Gharpana,
(41) Nokewada,	(42) Gudsela,	(43) Wani,	(44) Kokazari,
(45) Mohda,	(46) Pudiyal Mohda,	(47) Kamalapur,	(48) Chickhkhod,
(49) Wansadi,	(50) Paramba,	(51) Devghat,	(52) Kusal,
(53) Dahegaon,	(54) Sonurlo,	(55) Kargaon Khurd,	(56) Dhanoli,
(57) Piparda,	(58) Chincholi,	(59) Kargaon Budruk,	(60) Markagondi,
(61) Belgaon,	(62) Zulbardi,	(63) Sawalhira,	(64) Khiragaon,
(65) Pandharwani,	(66) Jambuldhara,	(67) Dhanak Devi,	(68) Yermi Isapur,
(69) Sarangapur,	(70) Jiwati	(71) Nagapur,	(72) Markalmotta,
(73) Dhonda Arguni,	(74) Dhondha Mandwa,	(75) Teka Arjuni,	(76) Teka Mandwa,
(77) Rahpalli Budruk,	(78) Chikhili	(79) Patan,	(80) Hirapur,
(81) Isapur,	(82) Asan Khurd,	(83) Asan Budruk,	(84) Pipalgaon,
(85) Palezari,	(86) Borinavegaon,	(87) Nanda,	(88) Bibi
(89) Dhunki,	(90) Dhamangaon,	(91) Kakhampur,	(92) Wadgaon,
(93) Injapur,	(94) Chandur,	(95) Kukadsat,	(96) Khirdi,
(97) Thutra,	(98) Behlampur,	(99) Manoli Khurd,	(100) Jamani,
(101) Nokari Budruk,	(102) Sonapur,	(103) Upparwai,	(104) Bhurkunda Khurd,
(105) Kaadki,	(106) Nokari Khurd,	(107) Nagrala,	(108) Palezari,
(109) Kakban,	(110) Dongargaon,	(111) Chikhali,	(112) Bhurkhunda Budruk,
(113) Pachgaon,	(114) Sengaon,	(115) Tatakohadi,	(116) Bhendvi,
(117) Sukadpalli,	(118) Markagondi,	(119) Titvi,	(120) Nadpa,
(121) Yergavan,	(122) Kawadgondi,	(123) Sorakasa,	(124) Kusumbi,
(125) Jankapur,	(126) Punaguda (Navegaon),	(127) Dewada,	(128) Khadki Raipur,
(129) Govendpur,	(130) Maraipatan,	(131) Umarzara,	(132) Rahpalli Khurd,
(133) Dharamaram,	(134) Bhoksapur,	(135) Bambezari,	(136) Bhari,
(137) Pandarwani,	(138) Sindolta,	(139) Sondo,	(140) Belgaon,
(141) Kakadghat,	(142) Ganeri,	(143) Khirdi,	(144) Sedwai,
(145) Babapur,	(146) Hirapur,	(147) Sakhari,	(148) Manoli Budruk,

(149) Goyegaon,	(150) Hardona Khurd,	(151) Hardona Budruk,	(152) Winirgaon,
(153) Magi,	(154) Wangi,	(155) Pandharpouni,	(156) Aheri,
(157) Kochi,	(158) Goraj,	(159) Warur,	(160) Raniwcli,
(161) Bhedoda,	(162) Tembhurwahi	(163) Chirud,	(164) Chinchbodi,
(165) Kawthala,	(166) Sonurli,	(167) Sirsi,	(168) Berdi,
(169) Bhendala,	(170) Kelzari,	(171) Navegaon	(172) Chinchala,
(173) Wirur,	(174) Siddheshwar,	(175) Ghotta,	(176) Dongargaon,
(177) Subai,	(178) Kostala,	(179) Lakadkot	(180) Ambezari,
(181) Antargaon	(182) Annur.		

The Scheduled Areas in the State of Maharashtra 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 and have been re-specified under the Scheduled Areas (Maharashtra) Order, 1985 (C.O. 123) dated 2.12.1985 after rescinding the Orders cited earlier in so far as they related to the State of Maharashtra.

V. ODISHA

1. Mayurbhanj district
2. Sundargah district
3. Koraput district
4. Kuchinda tahsil in Sambalpur district
5. Keonjhar and Telkoi tahsils of keonjhar sub-division, and Champua and Barbil tahsils of Champua sub-division in Keonjhar district.
6. Khondmals tahsil of Khondmals sub-division, and Balliguda and G. Udayagiri tahsils of Balliguda subdivision in Boudh-Khondmals district
7. R. Udayagiri tahsil, and Guma and Rayagada Blocks of Parlakhemundi Tahsil of Parlakhemundi subdivision, and Surada tahsil, exlcluding Gazalbadi and Gocha Gram Panchayats of Ghumsur sub-division, in Ganjam district
8. Thuamul Rampur Block of Kalahandi Tahsil, and Lanjigarh Block, falling in Lanjigarh and Kalahandi tahsils, in Bhawanipatna sub-division in Kalahandi district.
9. Nilgiri Community Development Block of Nilgiri tahsil in Nilgiri Sub-division in Balasore district.

The Scheduled Areas in the State of Odisha were originally specified by the Scheduled Areas (Part A States) Order, 1950 (Constitution Order, 9) dated 23.1.1950 and the Scheduled Areas (Part B States) Order, 1950, (Constitution Order, 26) dated 7.12.1950 and have been re-specified as above by the Scheduled Areas (States of Bihar Gujarat, Madhya Pradesh and Odisha) Order, 1977, (Constitution Order, 109) dated 31.12.1977 after rescinding the Orders cited earlier in so far as they related to the State of Odisha.

VI. RAJASTHAN

1. Banswara district
2. Dungarpur district
3. The following in Udaipur district :-

(a) Tahsils of Phalsia, Kherwara, Kotra, Sarada, Salumbar and Lasadia.

(b) The eighty one villages of Girwa tahsils as mentioned below:

(i) Sisarma Devali, Baleecha, Sethji Ki Kundal, Rayta, Kodiyat and Peepliya villages of Sisarma panchayat,

(ii) Bujra, Naya Gurha, Popalti and Naya Khera villages of Bujra Panchayat,
(iii) Nai village of Nai Panchayat,
(iv) Dodawali Kaliwas, Kar Nali Surna, Borawara Ka Khera, Madri, Bachhar and Keli villages of Dodawali Panchayat,
(v) Bari Undri, Chhoti Undri, Peepalwas and Kumariya Kherwa villages of Bari Undri Panchayat,
(vi) Alsigarh, Pai and Aar Villages of Alsigarh Panchayat,
(vii) Padoona Amarpura and Jawala villges of Padoona Panchayat,
(viii) Chanawada village of Chanawada panchayat,
(ix) Saroo and Baran villages of Saroo Panchayat
(x) Teeri, Borikuwa and Gojiya villages of Terri Panchayat.
(xi) Jawar, Rawan, Dhawari Talai, Nayakhera, Kanpur and Udaiya Khera villages of Jawar Panchayat
(xii) Barapal, Torana Talab and Kadiya Khet villages of Barapal Panchayat,
(xiii) Kaya and Chandani Villages of Kaya Panchayat
(xiv) Teetardi, Phanda, Biliya, Dakankotra, Dholiya Ki Pati and Saweena Khera villages of Teetardi Panchayat,
(xv) Kanpur village of Kanpur Panchayat
(xvi) Wali, Boodel, Lalpura, Parawal, Kheri and Jaspur vllages of Wali Panchayat.
(xvii) Chansada, Damaron Ka Guda, Mamadeo, Jhamar Kotra, Sathpura Gujaran, Sathpura Meenan. Jali Ka Gurha, Kharwa, Manpura and Jodhipuriya villages of Chansada Panchayat.
(xviii) Jagat village of Jagat Panchayat
(xix) Dateesar, Runeeja, Basu and Rodda villages of Dateesar Panchayat,
(xx) Lokarwas and Parola villages of Lokarwas Panchayat
(xxi) Bhala Ka gurha, Karget, Bhesadha and Bichhri villages of Bhala Ka Gurha Panchayat.

4. Pratapgarh tahsil in Chittaurgrah district.
5. Abu Road Block of Abu Road tahsil in Sirohi district.

The Scheduled Areas in the State of Rajasthan were originally specified under the Scheduled Areas (Part B States) Order, 1950 (C.O. 26) dated 7.12.1950 and have been re-specified vide the Scheduled Areas (State of Rajasthan) Order, 1981 (C.O. 114) dated 12.2.1981 after rescinding the Order cited earlier in so far as it related to the State of Rajasthan.

VII. JHARKHAND

1. Burmu, Mandar, Chanho, Bero, Lapung, Ratu, Namkom, Kanke, Ormanjhi, Angara, Silli, Sonahatu, Tamar, Bundu, Arki, Khunti, Murhu, Karra, Torpa and Rania blocks in Ranchi district
2. Kisko, Kuru, Lohardaga, Bhandra and Senha blocks in Lohardaga district
3. Bishunpur, Ghagra, Chainpur, Dumri, Raidih, Gumla, Sisai, Bharno, Kamdara, Basia and Palkot blocks in Gumla district
4. Simdega, Kolebira, Bano, Jaldega, Thethaitangar, Kurdeg and Bolba blocks in Simdega district
5. Barwadih, Manika, Balumath, Chandwa, Latehar, Garu and Mahuadarn blocks in Latehar district
6. Bhandaria block in Garhwa district
7. Bandgaon, Chakradharpur, Sonua, Goelkera, Manoharpur, Noamundi, Jagannathpur, Manghgaon, Kumardungi, Manjhari, Tantnagar, Jhickpani, Tonto, Khutpani and Chaibasa blocks in West-Singhbhum district.

The Scheduled Areas in the composite State of Bihar were originally specified by the Scheduled Areas (Part A States) Order, 1950 (Constitution Order, 9) dated 23.1.1950 and thereafter they had been re-specified by the Scheduled Areas (States of Bihar, Gujarat, Madhya Pradesh and Odisha) Order, 1977 (Constitution Order, 109) dated 31.12.1977 after rescinding the Order cited first so far as that related to the State of Bihar. Consequent upon formation of new State of Jharkhand vide the Bihar Reorganisation Act, 2000 , the Scheduled Areas which were specified in relation to the composite State of Bihar stood transferred to the newly formed State of Jharkhand. The Scheduled Areas of Jharkhand have been specified by the Scheduled Areas (States of Chhattisgarh, Jharkhand and Madhya Pradesh) Order , 2003 (Constitution Order, 192) dated 20.2.2003 after rescinding the order dated 31.12.77 so far as that related to the State of Bihar.

VIII. MADHYA PRADESH

1. Jhabua district
2. Mandla district
3. Dindori district
4. Barwani district
5. Sardarpur, Dhar, Kukshi, Dharampuri, Gandhwani and Manawar tahsils in Dhar district
6. Bhagwanpura, Segaon, Bhikangaon, Jhirniya, Khargone and Meheshwar tahsils in Khargone (West Nimar) district
7. Khalwa Tribal Development Block of Harsud tahsil and Khaknar Tribal Development Block of Khaknar tahsil in Khandwa (East Nimar) district
8. Sailana and Bajna tahsils in Ratlam district
9. Betul tahsil (excluding Betul Development Block) and Bhainsdehi and Shahpur tahsils in Betul district
10. Lakhanadone, Ghansaur and Kurai tahsils in Seoni district
11. Baihar tahsil in Balaghat district
12. Kesla Tribal Development Block of Itarsi tahsil in Hoshangabad district
13. Pushparajgarh, Anuppur, Jaithari, Kotma, Jaitpur, Sohagpur and Jaisinghnagar tahsils of Shahdol district
14. Pali Tribal Development Block in Pali tahsil of Umaria district
15. Kusmi Tribal Development Block in Kusmi tahsil of Sidhi district
16. Karahal Tribal Development Block in Karahal tahsil of Sheopur district
17. Tamia and Jamai tahsils, patwari circle Nos. 10 to 12 and 16 to 19, villages Siregaon Khurd and Kirwari in patwari circle No. 09, villages Mainawari and Gaulie Parasia of patwari circle No. 13 in Parasia tahsil, village Bamhani of Patwari circle No. 25 in Chhindwara tahsil, Harai Tribal Development Block and patwari circle Nos. 28 to 36, 41, 43, 44 and 45B in Amarwara tahsil Bichhua tahsil and patwari circle Nos. 05, 08, 09, 10, 11 and 14 in Saunsar tahsil, Patwari circle Nos. 01 to 11 and 13 to 26, and patwari circle No. 12 (excluding village Bhuli), village Nandpur of patwari circle No. 27, villages Nikanth and Dhawdikhapa of patwari circle No 28 in Pandurna tahsil of Chhindwara district.

The Scheduled Areas in the State of Madhya Pradesh were originally specified by the Scheduled Areas (Part A States), Order, 1950 (Constitution Order, 9) dated 23.1.1950 and the Scheduled Areas (Part B States) Order, 1950. (Constitution Order 26) dated 7.12.1950 and had been re-specified as above by the Scheduled Areas (States of Bihar, Gujarat, Madhya Pradesh and Odisha) Order, 1977, (Constitution Order, 109) dated 31.12.1977 after rescinding the Orders citied earlier in so far as they related to the State of Madhya Pradesh. Consequent upon the formation of new State of Chhattisgarh by the Madhya Pradesh Reorganisation Act, 2000 some Scheduled Areas stood transferred to the newly formed State of Chhattisgarh. Accordingly, the Scheduled Areas have been

re-specified by the Scheduled Areas (States of Chhattisgarh, Jharkhand and Madhya Pradesh) Order , 2003 (Constitution Order, 192) dated 20.2.2003 after rescinding the Order dated 31.12.77 so far as that related to the States of Madhya Pradesh.

IX. CHHATTISGARH

1. Surguja district
2. Koria district
3. Bastar district
4. Dantewara district
5. Kanker district
6. Marwahi, Gorella-I, Gorella-2 Tribal Development Blocks and Kota Revenue Inspector Circle in
7. Bilaspur district
8. Korba district
9. Jashpur district
10. Dharmjaigarh, Gharghoda, Tamnar, Lailunga and Kharsia Tribal Development Blocks in Raigarh district
11. Dondi Tribal Development Block in Durg district
12. Chauki, Manpur and Mohla Tribal Development Blocks in Rajnandgaon district
13. Gariaband, Mainpur and Chhura Tribal Development Blocks in Raipur district
14. Nagri (Sihawa) Tribal Development Block in Dhamtari district

The Scheduled Areas in the State of Madhya Pradesh were originally specified by the Scheduled Areas (Part A States), Order, 1950 (Constitution Order, 9) dated 23.1.1950 and the Scheduled Areas (Part B States) Order, 1950. (Constitution Order 26) dated 7.12.1950 and had been re-specified as above by the Scheduled Areas (States of Bihar, Gujarat, Madhya Pradesh and Odisha) Order, 1977, (Constitution Order, 109) dated 31.12.1977 after rescinding the Orders citied earlier in so far as they related to the State of Madhya Pradesh. Consequent upon the formation of new State of Chhattisgarh by the Madhya Pradesh Reorganisation Act, 2000 some Scheduled Areas stood transferred to the newly formed State of Chhattisgarh. Accordingly, the Scheduled Areas have been re-specified by the Scheduled Areas (States of Chhattisgarh, Jharkhand and Madhya Pradesh) Order , 2003 (Constitution Order, 192) dated 20.2.2003 after rescinding the Order dated 31.12.77 so far as that related to the States of Madhya Pradesh.

Source: Annual Report, 2005-06, Ministry of Tribal Affairs, Government of Indian, New Delhi available at http://tribal.gov.in/writereaddata/mainlinkFile/File784.pdf

Annexure 8: List of ILO Conventions Ratified by India

Convention	Ratification date	Status
C1 Hours of Work (Industry) Convention, 1919	14:07:1921	ratified
C2 Unemployment Convention, 1919	14:07:1921	denounced on 16:04:1938
C4 Night Work (Women) Convention, 1919	14:07:1921	ratified
C5 Minimum Age (Industry) Convention, 1919	09:09:1955	ratified
C6 Night Work of Young Persons (Industry) Convention, 1919	14:07:1921	ratified
C11 Right of Association (Agriculture) Convention, 1921	11:05:1923	ratified
C14 Weekly Rest (Industry) Convention, 1921	11:05:1923	ratified
C15 Minimum Age (Trimmers and Stokers) Convention, 1921	20:11:1922	ratified
C16 Medical Examination of Young Persons (Sea) Convention, 1921	20:11:1922	ratified
C18 Workmen's Compensation (Occupational Diseases) Convention, 1925	30:09:1927	ratified
C19 Equality of Treatment (Accident Compensation) Convention, 1925	30:09:1927	ratified
C21 Inspection of Emigrants Convention, 1926	14:01:1928	ratified
C22 Seamen's Articles of Agreement Convention, 1926	31:10:1932	ratified
C26 Minimum Wage-Fixing Machinery Convention, 1928	10:01:1955	ratified
C27 Marking of Weight (Packages Transported by Vessels) Convention, 1929	07:09:1931	ratified
C29 Forced Labour Convention, 1930	30:11:1954	ratified
C32 Protection against Accidents (Dockers) Convention (Revised), 1932	10:02:1947	ratified
C41 Night Work (Women) Convention (Revised), 1934	22:11:1935	denounced on 27.02:1950
C42 Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934	13:01:1964	ratified
C45 Underground Work (Women) Convention, 1935	25:03:1938	ratified
C80 Final Articles Revision Convention, 1946	17:11:1947	ratified
C81 Labour Inspection Convention, 1947	07:04:1949	ratified
C88 Employment Service Convention, 1948	24:06:1959	ratified
C89 Night Work (Women) Convention (Revised), 1948 (and its Protocol)	27:02:1950	ratified
C90 Night Work of Young Persons (Industry) Convention (Revised), 1948	27:02:1950	ratified
C100 Equal Remuneration Convention, 1951	25:09:1958	ratified
C105 Abolition of Forced Labour Convention, 1957	18:05:2000	ratified
C107 Indigenous and Tribal Populations Convention, 1957	29:09:1958	ratified
C108 Seafarers' Identity Documents Convention, 1958	17:01:2005	ratified

Convention	Ratification date	Status
C111 Discrimination (Employment and Occupation) Convention, 1958	03:06:1960	ratified
C115 Radiation Protection Convention, 1960	17:11:1975	ratified
C116 Final Articles Revision Convention, 1961	21:06:1962	ratified
C118 Equality of Treatment (Social Security) Convention, 1962	19:08:1964	ratified
C122 Employment Policy Convention, 1964	17:11:1998	ratified
C123 Minimum Age (Underground Work) Convention, 1965	20:03:1975	ratified
C127 Maximum Weight Convention, 1967	26:03:2010	ratified
C136 Benzene Convention, 1971	11:06:1991	ratified
C141 Rural Workers' Organisations Convention, 1975	18:08:1977	ratified
C142 Human Resources Development Convention, 1975	25:03:2009	ratified
C144 Tripartite Consultation (International Labour Standards) Convention, 1976	27:02:1978	ratified
C147 Merchant Shipping (Minimum Standards) Convention, 1976	26:09:1996	ratified
C160 Labour Statistics Convention, 1985	01:04:1992	ratified
C174 Prevention of Major Industrial Accidents Convention, 1993	06:06:2008	ratified

Ratified: 41 Conditional ratification: 0 Declared applicable: 0 Denounced: 2

Source: ILOLEX - 13. 12. 2009 available at http://www.ilo.org/ilolex/english/newratframeE.htm

Annexure 9: Administration of Scheduled Areas and Tribal Areas

PART X

THE SCHEDULED AND TRIBAL AREAS

244. (1) 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.

(2) The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the States of Assam Meghalaya, Tripura and Mizoram.

244A. (1) Notwithstanding anything in this Constitution, Parliament may, by law, form within the State of Assam an autonomous State comprising (whether wholly or in part) all or any of the tribal areas specified in 7[Part I] of the table appended to paragraph 20 of the Sixth Schedule and create therefore—

(*a*) a body, whether elected or partly nominated and partly elected, to function as a Legislature for the autonomous State, or

(*b*) a Council of Ministers, or both with such constitution, powers and functions, in each case, as may be specified in the law.

(2) Any such law as is referred to in clause (1) may, in particular,—

(*a*) specify the matters enumerated in the State List or the Concurrent List with respect to which the Legislature of the autonomous State shall have power to make laws for the whole or any part thereof, whether to the exclusion of the Legislature of the State of Assam or otherwise;

(*b*) define the matters with respect to which the executive power of the autonomous State shall

extend;
(*c*) provide that any tax levied by the State of Assam shall be assigned to the autonomous State in so far as the proceeds thereof are attributable to the autonomous State;
(*d*) provide that any reference to a State in any article of this Constitution shall be construed as including a reference to the autonomous State; and (*e*) make such supplemental, incidental and consequential provisions as may be deemed necessary.
(3) An amendment of any such law as aforesaid in so far as such amendment relates to any of the matters specified in sub-clause (*a*) or sub-clause (*b*) of clause (2) shall have no effect unless the amendment is passed in each House of Parliament by not less than two-thirds of the members present and voting.
(4) Any such law as is referred to in this article shall not be deemed to be an amendment of this Constitution for the purposes of article 368 notwithstanding that it contains any provision which amends or has the effect of amending this Constitution.

FIFTH SCHEDULE

[Article 244(1)]

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

PART A

GENERAL

1. ***Interpretation.***—In this Schedule, unless the context otherwise requires, the expression "State" does not include the States of Assam, Meghalaya, Tripura and Mizoram.
2. ***Executive power of a State in Scheduled Areas.***—Subject to the provisions of this Schedule, the executive power of a State extends to the Scheduled Areas therein.
3. ***Report by the Governor 5 to the President regarding the administration of Scheduled Areas.***—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 the said areas.

PART B

ADMINISTRATION AND CONTROL OF SCHEDULED AREAS AND SCHEDULED TRIBES

4. ***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 filled 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.
5. ***Law applicable to Scheduled Areas.***—(1) 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.

(2) 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.

PART C

SCHEDULED AREAS

6. ***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 the 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 order 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 (1) of this paragraph shall not be varied by any subsequent order.

PART D

AMENDMENT OF THE SCHEDULE

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

(2) No such law as is mentioned in sub-paragraph (1) of this paragraph shall be deemed to be an amendment of this Constitution for the purposes of article 368.

SIXTH SCHEDULE

[Articles 244(2) and 275(1)]

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

1. ***Autonomous districts and autonomous regions.***—(1) Subject to the provisions of this paragraph, the tribal areas in each item of Parts I, II and IIA and in Part III of the table appended to paragraph 20 of this Schedule shall be an autonomous district.

(2) If there are different Scheduled Tribes in an autonomous district, the Governor may, by public notification, divide the area or areas inhabited by them into autonomous regions.

(3) The Governor may, by public notification,—

(*a*) include any area in any of the Parts of the said table,

(*b*) exclude any area from 3[any of the Parts] of the said table,

(*c*) create a new autonomous district,

(*d*) increase the area of any autonomous district,

(*e*) diminish the area of any autonomous district,

(*f*) unite two or more autonomous districts or parts thereof so as to form one autonomous district,

(*ff*) alter the name of any autonomous district,

(*g*) define the boundaries of any autonomous district:

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

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

2. ***Constitution of District Councils and Regional Councils.***—(1) There shall be a District Council for each autonomous district consisting of not more than thirty members, of whom not more than four persons shall be nominated by the Governor and the rest shall be elected on the basis of adult suffrage.

(2) There shall be a separate Regional Council for each area constituted an autonomous region under sub-paragraph (2) of paragraph 1 of this Schedule.

(3) Each District Council and each Regional Council shall be a body corporate by the name respectively of "the District Council of (*name of district*)" and "the Regional Council of (*name of region*)", shall have perpetual succession and a common seal and shall by the said name sue and be sued.

(4) Subject to the provisions of this Schedule, the administration of an autonomous district shall, in so far as it is not vested under this Schedule in any Regional Council within such district, be vested in the District Council for such district and the administration of an autonomous region shall be vested in the Regional Council for such region.

(5) In an autonomous district with Regional Councils, the District Council shall have only such powers with respect to the areas under the authority of the Regional Council as may be delegated to it by the Regional Council in addition to the powers conferred on it by this Schedule with respect to such areas.

(6) The Governor shall make rules for the first constitution of District Councils and Regional Councils in consultation with the existing tribal Councils or other representative tribal organisations within the autonomous districts or regions concerned, and such rules shall provide for—

(*a*) the composition of the District Councils and Regional Councils and the allocation of seats therein;

(*b*) the delimitation of territorial constituencies for the purpose of elections to those Councils;

(*c*) the qualifications for voting at such elections and the preparation of electoral rolls therefor;
(*d*) the qualifications for being elected at such elections as members of such Councils;
(*e*) the term of office of members of 1[Regional Councils;
(*f*) any other matter relating to or connected with elections or nominations to such Councils;
(*g*) the procedure and the conduct of business (including the power to act notwithstanding any vacancy) in the District and Regional Councils;
(*h*) the appointment of officers and staff of the District and Regional Councils.
(6A) The elected members of the District Council shall hold office for a term of five years from the date appointed for the first meeting of the Council after the general elections to the Council, unless the District Council is sooner dissolved under paragraph 16 and a nominated member shall hold office at the pleasure of the Governor:
Provided that the said period of five years may, while a Proclamation of Emergency is in operation or if circumstances exist which, in the opinion of the Governor, render the holding of elections impracticable, be extended by the Governor for a period not exceeding one year at a time and in any case where a Proclamation of Emergency is in operation not extending beyond a period of six months after the Proclamation has ceased to operate:
Provided further that a member elected to fill a casual vacancy shall hold office only for the remainder of the term of office of the member whom he replaces.
(7) The District or the Regional Council may after its first constitution make rules with the approval of the Governor] with regard to the matters specified in sub-paragraph (6) of this paragraph and may also make rules with like approval] regulating—
(*a*) the formation of subordinate local Councils or Boards and their procedure and the conduct of their business; and
(*b*) generally all matters relating to the transaction of business pertaining to the administration of the district or region, as the case may be:
Provided that until rules are made by the District or the Regional Council under this sub-paragraph the rules made by the Governor under sub-paragraph
(6) of this paragraph shall have effect in respect of elections to, the officers and staff of, and the procedure and the conduct of business in, each such Council.
3. ***Powers of the District Councils and Regional Councils to make laws.—***(1) The Regional Council for an autonomous region in respect of all areas within such region and the District Council for an autonomous district in respect of all areas within the district except those which are under the authority of Regional Councils, if any, within the district shall have power to make laws with respect to-
(*a*) the allotment, occupation or use, or the setting apart, of land, other than any land which is a reserved forest for the purposes of agriculture or grazing or for residential or other non-agricultural purposes or for any other purpose likely to promote the interests of the inhabitants of any village or town:
Provided that nothing in such laws shall prevent the compulsory acquisition of any land, whether occupied or unoccupied, for public purposes by the Government of the State concerned in accordance with the law for the time being in force authorising such acquisition;
(*b*) the management of any forest not being a reserved forest;
(*c*) the use of any canal or water-course for the purpose of agriculture;
(*d*) the regulation of the practice of jhum or other forms of shifting cultivation;
(*e*) the establishment of village or town committees or councils and their powers;
(*f*) any other matter relating to village or town administration, including village or town police and public health and sanitation;
(*g*) the appointment or succession of Chiefs or Headmen;

(*h*) the inheritance of property;
(*i*) marriage and divorce;
(*j*) social customs.
(2) In this paragraph, a "reserved forest" means any area which is a reserved forest under the Assam Forest Regulation, 1891, or under any other law for the time being in force in the area in question.
(3) All laws made under this paragraph shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect.
4. ***Administration of justice in autonomous districts and autonomous regions.—***
(1) The Regional Council for an autonomous region in respect of areas within such region and the District Council for an autonomous district in respect of areas within the district other than those which are under the authority of the Regional Councils, if any, within the district may constitute village councils or courts for the trial of suits and cases between the parties all of whom belong to Scheduled Tribes within such areas, other than suits and cases to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply, to the exclusion of any court in the State, and may appoint suitable persons to be members of such village councils or presiding officers of such courts, and may also appoint such officers as may be necessary for the administration of the laws made under paragraph 3 of this Schedule.
(2) Notwithstanding anything in this Constitution, the Regional Council for an autonomous region or any court constituted in that behalf by the Regional Council or, if in respect of any area within an autonomous district there is no Regional Council, the District Council for such district, or any court constituted in that behalf by the District Council, shall exercise the powers of a court of appeal in respect of all suits and cases triable by a village council or court constituted under sub-paragraph (1) of this paragraph
within such region or area, as the case may be, other than those to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply, and no other court except the High Court and the Supreme Court shall have jurisdiction over such suits or cases.
(3) The High Court shall have and exercise such jurisdiction over the suits and cases to which the provisions of sub-paragraph (2) of this paragraph apply as the Governor may from time to time by order specify.
(4) A Regional Council or District Council, as the case may be, may with the previous approval of the Governor make rules regulating—
(*a*) the constitution of village councils and courts and the powers to be exercised by them under this paragraph;
(*b*) the procedure to be followed by village councils or courts in the trial of suits and cases under sub-paragraph (1) of this paragraph;
(*c*) the procedure to be followed by the Regional or District Council or any court constituted by such Council in appeals and other proceedings under sub-paragraph (2) of this paragraph;
(*d*) the enforcement of decisions and orders of such councils and courts;
(*e*) all other ancillary matters for the carrying out of the provisions of sub-paragraphs (1) and (2) of this paragraph.
(5) On and from such date as the President may, after consulting the Government of the State concerned, by notification appoint in this behalf, this paragraph shall have effect in relation to such autonomous district or region as may be specified in the notification, as if—
(*i*) in sub-paragraph (1), for the words "between the parties all of whom belong to Scheduled Tribes within such areas, other than suits and cases to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply,", the words "not being suits and cases of the nature referred to in sub-paragraph (1) of paragraph (5) of this Schedule, which the Governor may specify in this

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

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

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

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

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

or unconditionally to that Council or to its officers functions in relation to agriculture, animal husbandry, community projects, co-operative societies, social welfare, village planning or any other matter to which the executive power of the State extends.

7. ***District and Regional Funds***.—(1) There shall be constituted for each autonomous district, a District Fund and for each autonomous region, a Regional Fund to which shall be credited all moneys received respectively by the District Council for that district and the Regional Council for that region in the course of the administration of such district or region, as the case may be, in accordance with the provisions of this Constitution.

(2) The Governor may make rules for the management of the District Fund, or, as the case may be, the Regional Fund and for the procedure to be followed in respect of payment of money into the said Fund, the withdrawal of moneys therefrom, the custody of moneys therein and any other matter connected with or ancillary to the matters aforesaid.

(3) The accounts of the District Council or, as the case may be, the Regional Council shall be kept in such form as the Comptroller and Auditor-General of India may, with the approval of the President, prescribe.

(4) The Comptroller and Auditor-General shall cause the accounts of the District and Regional Councils to be audited in such manner as he may think fit, and the reports of the Comptroller and Auditor-General relating to such accounts shall be submitted to the Governor who shall cause them to be laid before the Council.

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

(1) The Regional Council for an autonomous region in respect of all lands within such region and the District Council for an autonomous district in respect of all lands within the district except those which are in the areas under the authority of Regional Councils, if any, within the district, shall have the power to assess and collect revenue in respect of such lands in accordance with the principles for the time being followed by the Government of the State in assessing lands for the purpose of land revenue in the State generally.

(2) The Regional Council for an autonomous region in respect of areas within such region and the District Council for an autonomous district in respect of all areas in the district except those which are under the authority of Regional Councils, if any, within the district, shall have power to levy and collect taxes on lands and buildings, and tolls on persons resident within such areas.

(3) The District Council for an autonomous district shall have the power to levy and collect all or any of the following taxes within such district, that is to say—

(*a*) taxes on professions, trades, callings and employments;

(*b*) taxes on animals, vehicles and boats;

(*c*) taxes on the entry of goods into a market for sale therein, and tolls on passengers and goods carried in ferries; and

(*d*) taxes for the maintenance of schools, dispensaries or roads.

(4) A Regional Council or District Council, as the case may be, may make regulations to provide for the levy and collection of any of the taxes specified in sub-paragraphs (2) and (3) of this paragraph 2[and every such regulation shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect.

39. ***Licences or leases for the purpose of prospecting for, or extraction of, minerals.—***(1) Such share of the royalties accruing each year from licences or leases for the purpose of prospecting for, or the extraction of, minerals granted by 4[the Government of the State] in respect of any area within an autonomous district as may be agreed upon between the Government of the State] and the District Council of such district shall be made over to that District Council.

(2) If any dispute arises as to the share of such royalties to be made over to a District Council, it shall be referred to the Governor for determination and the amount determined by the Governor

in his discretion shall be deemed to be the amount payable under sub-paragraph (1) of this paragraph to the District Council and the decision of the Governor shall be final.

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

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

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may—

(*a*) prescribe that no one except the holder of a licence issued in that behalf shall carry on the business of money-lending;

(*b*) prescribe the maximum rate of interest which may be charged or be recovered by a money-lender;

(*c*) provide for the maintenance of accounts by money-lenders and for the inspection of such accounts by officers appointed in that behalf by the District Council;

(*d*) prescribe that no person who is not a member of the Scheduled Tribes resident in the district shall carry on wholesale or retail business in any commodity except under a licence issued in that behalf by the District Council:

Provided that no regulations may be made under this paragraph unless they are passed by a majority of not less than three-fourths of the total membership of the District Council: Provided further that it shall not be competent under any such regulations to refuse the grant of a licence to a money-lender or a trader who has been carrying on business within the district since before the time of the making of such regulations.

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

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

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

12. ***Application of Acts of Parliament and of the Legislature of the State of Assam to autonomous districts and autonomous regions in the State of Assam.—***

(1) Notwithstanding anything in this Constitution—

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

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

(2) Any direction given under sub-paragraph (1) of this paragraph may be given so as to have retrospective effect**.**

12A. ***Application of Acts of Parliament and of the Legislature of the State of Meghalaya to***

autonomous districts and autonomous regions in the State of Meghalaya.—Notwithstanding anything in this Constitution,—

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

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

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

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

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

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

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

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

application to such district or region or any part thereof, have effect subject to such exceptions or modifications
as it thinks fit;
(*b*) the Governor may, by public notification, direct that any Act of the Legislature of the State of Mizoram to which the provisions of clause (a) of this sub-paragraph do not apply, shall not apply to an autonomous district or an autonomous region in that State, or shall apply to such district or region, or any part thereof, subject to such exceptions or modifications, as he may specify in the notification; (*c*) the President may, with respect to any Act of Parliament, by notification, direct that it shall not apply to an autonomous district or an autonomous region in the State of Mizoram, or shall apply to such district or region or any part thereof, subject to such exceptions or modifications as he may specify in the notification and any such direction may be given so as to have retrospective effect.

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

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

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

(1) The Governor may at any time appoint a Commission to examine and report on any matter specified by him relating to the administration of the autonomous districts and autonomous regions in the State, including matters specified in clauses (*c*), (*d*), (*e*) and (*f*) of sub-paragraph (3) of paragraph 1 of this Schedule, or may appoint a Commission to inquire into and report from time to time on the administration of autonomous districts and autonomous regions in the State generally and in particular on—
(*a*) the provision of educational and medical facilities and communications in such districts and regions;
(*b*) the need for any new or special legislation in respect of such districts and regions; and
(*c*) the administration of the laws, rules and regulations made by the District and Regional Councils; and define the procedure to be followed by such Commission.
(2) The report of every such Commission with the recommendations of the Governor with respect thereto shall be laid before the Legislature of the State by the Minister concerned together with an explanatory memorandum regarding the action proposed to be taken thereon by the Government of the State.
(3) In allocating the business of the Government of the State among his Ministers the Governor may place one of his Ministers specially in charge of the welfare of the autonomous districts and autonomous regions in the State.

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

(1) If at any time the Governor is satisfied that an act or resolution of a District or a Regional Council is likely to endanger the safety of India 2[or is likely to be prejudicial to public order], he may annul or suspend such act or resolution and take such steps as he may consider necessary (including the suspension of the Council and the assumption to himself of all or any of the powers vested in or exercisable by the Council) to prevent the commission or continuance of such act, or the giving of effect to such resolution.
(2) Any order made by the Governor under sub-paragraph (1) of this paragraph together with the reasons therefor shall be laid before the Legislature of the State as soon as possible and the

order shall, unless revoked by the Legislature of the State, continue in force for a period of twelve months from the date on which it was so made:
Provided that if and so often as a resolution approving the continuance in force of such order is passed by the Legislature of the State, the order shall unless cancelled by the Governor continue in force for a further period of twelve months from the date on which under this paragraph it would otherwise have ceased to operate.

16. ***Dissolution of a District or a Regional Council.—***

(1)] The Governor may on the recommendation of a Commission appointed under paragraph 14 of this Schedule by public notification order the dissolution of
a District or a Regional Council, and—
(*a*) direct that a fresh general election shall be held immediately for the reconstitution of the Council, or
(*b*) subject to the previous approval of the Legislature of the State assume the administration of the area under the authority of such Council himself or place the administration of such area under the Commission appointed under the said paragraph or any other body considered suitable by him for a period not exceeding twelve months:
Provided that when an order under clause (*a*) of this paragraph has been made, the Governor may take the action referred to in clause (*b*) of this paragraph with regard to the administration of the area in question pending the reconstitution of the Council on fresh general election:
Provided further that no action shall be taken under clause (*b*) of this paragraph without giving the District or the Regional Council, as the case may be, an opportunity of placing its views before the Legislature of the State.
(2) If at any time the Governor is satisfied that a situation has arisen in which the administration of an autonomous district or region cannot be carried on in accordance with the provisions of this Schedule, he may, by public notification, assume to himself all or any of the functions or powers vested in or exercisable by the District Council or, as the case may be, the Regional Council and declare that such functions or powers shall be exercisable by such person or authority as he may specify in this behalf, for a period not exceeding six months:
Provided that the Governor may by a further order or orders extend the operation of the initial order by a period not exceeding six months on each occasion.
(3) Every order made under sub-paragraph (2) of this paragraph with the reasons therefor shall be laid before the Legislature of the State and shall cease to operate at the expiration of thirty days from the date on which the State Legislature first sits after the issue of the order, unless, before the expiry of that period it has been approved by the State Legislature.

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

For the purposes of elections to the Legislative Assembly of Assam or Meghalaya or Tripura or Mizoram, the Governor may by order declare that any area within an autonomous district in the State of Assam or Meghalaya or Tripura or Mizoram, as the case may be, shall not form part of any constituency to fill a seat or seats
in the Assembly reserved for any such district but shall form part of a constituency to fill a seat or seats in the Assembly not so reserved to be specified in the order.
Paragraph 18 omitted by s. 71(*i*) and Eighth Sch., *ibid.* (w.e.f. 21-1-1972).

19. ***Transitional provisions.—***

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

the areas within such district instead of the foregoing provisions of this Schedule, namely:—
(*a*) no Act of Parliament or of the Legislature of the State shall apply to any such area unless the Governor by public notification so directs; and the Governor in giving such a direction with respect to any Act may direct that the Act shall, in its application to the area or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit;
(*b*) the Governor may make regulations for the peace and good government of any such area and any regulations so made may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to such area.
(2) Any direction given by the Governor under clause (*a*) of sub-paragraph (1) of this paragraph may be given so as to have retrospective effect.
(3) All regulations made under clause (*b*) of sub-paragraph (1) of this paragraph shall be submitted forthwith to the President and, until assented to by him, shall have no effect.

20. ***Tribal areas.—***

(1) The areas specified in Parts I, II , IIA and III of the table below shall respectively be the tribal areas within the State of Assam, the State of Meghalaya, the State of Tripura and the State of Mizoram.
(2) Any reference in Part I, Part II or Part III of the table below to any district shall be construed as a reference to the territories comprised within the autonomous district of that name existing immediately before the day appointed under clause (*b*) of section 2 of the North-Eastern Areas (Reorganisation) Act, 1971:
Provided that for the purposes of clauses (*e*) and (*f*) of sub-paragraph (1) of paragraph 3, paragraph 4, paragraph 5, paragraph 6, sub-paragraph (2), clauses (*a*), (*b*) and (*d*) of sub-paragraph (3) and sub-paragraph (4) of paragraph 8 and clause (*d*) of sub-paragraph (2) of paragraph 10 of this Schedule, no part of the area comprised within the municipality of Shillong shall be deemed to be within the Khasi Hills District.
(3) The reference in Part IIA in the table below to the "Tripura Tribal Areas District" shall be construed as a reference to the territory comprising the tribal areas specified in the First Schedule to the Tripura Tribal Areas Autonomous District Council Act, 1979.

TABLE

PART I

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

PART II

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

PART IIA

Tripura Tribal Areas District.

PART III

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

20A. ***Dissolution of the Mizo District Council.—***

(1) Notwithstanding anything in this Schedule, the District Council of the Mizo District existing immediately before the prescribed date (hereinafter referred to as the Mizo District Council) shall stand dissolved and cease to exist.
(2) The Administrator of the Union territory of Mizoram may, by one or more orders, provide

for all or any of the following matters, namely:—
(*a*) the transfer, in whole or in part, of the assets, rights and liabilities of the Mizo District Council (including the rights and liabilities under any contract made by it) to the Union or to any other authority;
(*b*) the substitution of the Union or any other authority for the Mizo District Council, or the addition of the Union or any other authority, as a party to any legal proceedings to which the Mizo District Council is a party;
(*c*) the transfer or re-employment of any employees of the Mizo District Council to or by the Union or any other authority, the terms and conditions of service applicable to such employees after such transfer or re-employment;
(*d*) the continuance of any laws, made by the Mizo District Council and in force immediately before its dissolution, subject to such adaptations and modifications, whether by way of repeal or amendment, as the Administrator may make in this behalf, until such laws are altered, repealed or amended by a competent Legislature or other competent authority;
(*e*) such incidental, consequential and supplementary matters as the Administrator considers necessary.
Explanation.—In this paragraph and in paragraph 20B of this Schedule, the expression "prescribed date" means the date on which the Legislative Assembly of the Union territory of Mizoram is duly constituted under and in accordance with the provisions of the Government of Union Territories Act, 1963.
120B. ***Autonomous regions in the Union territory of Mizoram to be autonomous districts and transitory provisions consequent thereto***.—
(1) Notwithstanding anything in this Schedule,—
(*a*) every autonomous region existing immediately before the prescribed date in the Union territory of Mizoram shall, on and from that date, be an autonomous district in that Union territory (hereafter referred to as the corresponding new district) and the Administrator thereof may, by one or more orders, direct that such consequential amendments as are necessary to give effect to the provisions of this clause shall be made in paragraph 20 of this Schedule (including Part III of the table appended to that paragraph) and thereupon the said paragraph and the said Part III shall be deemed to have been amended accordingly;
(*b*) every Regional Council of an autonomous region in the Union territory of Mizoram existing immediately before the prescribed date (hereafter referred to as the existing Regional Council) shall, on and from that date and until a District Council is duly constituted for the corresponding new district, be deemed to be the District Council of that district (hereafter referred to as the corresponding new District Council).
(2) Every member whether elected or nominated of an existing Regional Council shall be deemed to have been elected or, as the case may be, nominated to the corresponding new District Council and shall hold office until a District Council is duly constituted for the corresponding new district under this Schedule.
(3) Until rules are made under sub-paragraph (7) of paragraph 2 and sub-paragraph (4) of paragraph 4 of this Schedule by the corresponding new District Council, the rules made under the said provisions by the existing Regional Council and in force immediately before the prescribed date shall have effect in relation to the corresponding new District Council subject to such adaptations and modifications as may be made therein by the Administrator of the Union territory of Mizoram.
(4) The Administrator of the Union territory of Mizoram may, by one or more orders, provide for all or any of the following matters, namely:—
(*a*) the transfer in whole or in part of the assets, rights and liabilities of the existing Regional

Council (including the rights and liabilities under any contract made by it) to the corresponding new District Council;
(*b*) the substitution of the corresponding new District Council for the existing Regional Council as a party to the legal proceedings to which the existing Regional Council is a party;
(*c*) the transfer or re-employment of any employees of the existing Regional Council to or by the corresponding new District Council, the terms and conditions of service applicable to such employees after such transfer or re-employment;
(*d*) the continuance of any laws made by the existing Regional Council and in force immediately before the prescribed date, subject to such adaptations and modifications, whether by way of repeal or amendment, as the Administrator may make in this behalf until such laws are altered, repealed or amended by a competent Legislature or other competent authority;
(*e*) such incidental, consequential and supplementary matters as the Administrator considers necessary.
20C. ***Interpretation***.—Subject to any provision made in this behalf, the provisions of this Schedule shall, in their application to the Union territory of Mizoram, have effect—
(1) as if references to the Governor and Government of the State were references to the Administrator of the Union territory appointed under article 239, references to State (except in the expression "Government of the State") were references to the Union territory of Mizoram and references to the State Legislature were references to the Legislative Assembly of the Union territory of Mizoram;
(2) as if—
(*a*) in sub-paragraph (5) of paragraph 4, the provision for consultation with the Government of the State concerned had been omitted;
(*b*) in sub-paragraph (2) of paragraph 6, for the words "to which the executive power of the State extends", the words "with respect to which the Legislative Assembly of the Union territory of Mizoram has power to make laws" had been substituted;
(*c*) in paragraph 13, the words and figures "under article 202" had been omitted.
21. ***Amendment of the Schedule***.—(1) Parliament may from time to time by law amend by way of addition, variation or repeal any of the provisions of this Schedule and, when the Schedule is so amended, any reference to this Schedule in this Constitution shall be construed as a reference to such Schedule as so amended.
(2) No such law as is mentioned in sub-paragraph (1) of this paragraph shall be deemed to be an amendment of this Constitution for the purposes of article 368.

Special provision with respect to the State of Nagaland

Article 371A.

(1) Notwithstanding anything in this Constitution,—
(a) no Act of Parliament in respect of—
(i) religious or social practices of the Nagas,
(ii) Naga customary law and procedure,
(iii) administration of civil and criminal justice involving decisions according to Naga customary law,
(iv) ownership and transfer of land and its resources, shall apply to the State of Nagaland unless the Legislative Assembly of Nagaland by a resolution so decides;
(b) the Governor of Nagaland shall have special responsibility with respect to law and order in the State of Nagaland for so long as in his opinion internal disturbances occurring in the Naga Hills-Tuensang Area immediately before the formation of that State continue therein or in any part thereof and in the discharge of his functions in relation thereto the Governor shall, after consulting the Council of Ministers, exercise his individual judgment as to the action to be taken:

Provided that if any question arises whether any matter is or is not a matter as respects which the Governor is under this sub-clause required to act in the exercise of his individual judgment, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in the exercise of his individual judgment:
Provided further that if the President on receipt of a report from the Governor or otherwise is satisfied that it is no longer necessary for the Governor to have special responsibility with respect to law and order in the State of Nagaland, he may by order direct that the Governor shall cease to have such responsibility with effect from such date as may be specified in the order;
(c) in making his recommendation with respect to any demand for a grant, the Governor of Nagaland shall ensure that any money provided by the Government of India out of the Consolidated Fund of India for any specific service or purpose is included in the demand for a grant relating to that service or purpose and not in any other demand;
(d) as from such date as the Governor of Nagaland may by public notification in this behalf specify, there shall be established a regional council for the Tuensang district consisting of thirty-five members and the Governor shall in his discretion make rules providing for—
(i) the composition of the regional council and the manner in which the members of the regional council shall be chosen: Provided that the Deputy Commissioner of the Tuensang district shall be the Chairman ex officio of the regional council and the Vice-Chairman of the regional council shall be elected by the members thereof from amongst themselves;
(ii) the qualifications for being chosen as, and for being, members of the regional council;
(iii) the term of office of, and the salaries and allowances, if any, to be paid to members of, the regional council;
(iv) the procedure and conduct of business of the regional council;
(v) the appointment of officers and staff of the regional council and their conditions of services; and
(vi) any other matter in respect of which it is necessary to make rules for the constitution and proper functioning of the regional council.
(2) Notwithstanding anything in this Constitution, for a period of ten years from the date of the formation of the State of Nagaland or for such further period as the Governor may, on the recommendation of the regional council, by public notification specify in this behalf,—
(a) the administration of the Tuensang district shall be carried on by the Governor;
(b) where any money is provided by the Government of India to the Government of Nagaland to meet the requirements of the State of Nagaland as a whole, the Governor shall in his discretion arrange for an equitable allocation of that money between the Tuensang district and the rest of the State;
(c) no Act of the Legislature of Nagaland shall apply to Tuensang district unless the Governor, on the recommendation of the regional council, by public notification so directs and the Governor in giving such direction with respect to any such Act may direct that the Act shall in its application to the Tuensang district or any part thereof have effect subject to such exceptions or modifications as the Governor may specify on the recommendation of the regional council:
Provided that any direction given under this sub-clause may be given so as to have retrospective effect;
(d) the Governor may make regulations for the peace, progress and good Government of the Tuensang district and any regulations so made may repeal or amend with retrospective effect, if necessary, any Act of Parliament or any other law which is for the time being applicable to that district;
(e) (i) one of the members representing the Tuensang district in the Legislative Assembly

of Nagaland shall be appointed Minister for Tuensang affairs by the Governor on the advice of the Chief Minister and the Chief Minister in tendering his advice shall act on the recommendation of the majority of the members as aforesaid1;

(ii) the Minister for Tuensang affairs shall deal with, and have direct access to the Governor on, all matters relating to the Tuensang district but he shall keep the Chief Minister informed about the same;(f) notwithstanding anything in the foregoing provisions of this clause, the final decision on all matters relating to the Tuensang district shall be made by the Governor in his discretion;

(g) in articles 54 and 55 and clause (4) of article 80, references to the elected members of the Legislative Assembly of a State or to each such member shall include references to the members or member of the Legislative Assembly of Nagaland elected by the regional council established under this article;

(h) in article 170—

(i) clause (1) shall, in relation to the Legislative Assembly of Nagaland, have effect as if for the word "sixty", the word "forty-six" had been substituted;

(ii) in the said clause, the reference to direct election from territorial constituencies in the State shall include election by the members of the regional council established under this article;

(iii) in clauses (2) and (3), references to territorial constituencies shall mean references to territorial constituencies in the Kohima and Mokokchung districts.

(3) If any difficulty arises in giving effect to any of the foregoing provisions of this article, the President may by order do anything (including any adaptation or modification of any other article) which appears to him to be necessary for the purpose of removing that difficulty:

Provided that no such order shall be made after the expiration of three years from the date of the formation of the State of Nagaland.

Explanation.—In this article, the Kohima, Mokokchung and Tuensang districts shall have the same meanings as in the State of Nagaland Act, 1962.

Special provision with respect to the State of Assam

Article 371B

Notwithstanding anything in this Constitution, the President may, by order made with respect to the State of Assam, provide for the constitution and functions of a committee of the Legislative Assembly of the State consisting of members of that Assembly elected from the tribal areas specified in Part I of the table appended to paragraph 20 of the Sixth Schedule and such number of other members of that Assembly as may be specified in the order and for the modifications to be made in the rules of procedure of that Assembly for the constitution and proper functioning of such committee.

Special provision with respect to the State of Manipur

Article 371C

(1) Notwithstanding anything in this Constitution, the President may, by order made with respect to the State of Manipur, provide for the constitution and functions of a committee of the Legislative Assembly of the State consisting of members of that Assembly elected from the Hill Areas of that State, for the modifications to be made in the rules of business of the Government and in the rules of procedure of the Legislative Assembly of the State and for any special responsibility of the Governor in order to secure the proper functioning of such committee.

(2) The Governor shall annually, or whenever so required by the President, make a report to the President regarding the administration of the Hill Areas in the State of Manipur and the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said areas.

Explanation.—In this article, the expression "Hill Areas" means such areas as the President may,

by order, declare to be Hill areas.

Special provision with respect to the State of Mizoram

Article 371G.

Notwithstanding anything in this Constitution,—

(a) no Act of Parliament in respect of—

(i) religious or social practices of the Mizos,

(ii) Mizo customary law and procedure,

(iii) administration of civil and criminal justice involving decisions according to Mizo customary law,

(iv) ownership and transfer of land, shall apply to the State of Mizoram unless the Legislative Assembly of the State of Mizoram by a resolution so decides:

Provided that nothing in this clause shall apply to any Central Act in force in the Union territory of Mizoram immediately before the commencement of the Constitution (Fifty-third Amendment) Act, 1986;

(b) the Legislative Assembly of the State of Mizoram shall consist of not less than forty members.

Special provision with respect to the State of Arunachal Pradesh

Article 371H.

Notwithstanding anything in this Constitution,—

(*a*) the Governor of Arunachal Pradesh shall have special responsibility with respect to law and order in the State of Arunachal Pradesh and in the discharge of his functions in relation thereto, the Governor shall, after consulting the Council of Ministers, exercise his individual judgment as to the action to be taken:

Provided that if any question arises whether any matter is or is not a matter as respects which the Governor is under this clause required to act in the exercise of his individual judgment, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in the exercise of his individual judgment:

Provided further that if the President on receipt of a report from the Governor or otherwise is satisfied that it is no longer necessary for the Governor to have special responsibility with respect to law and order in the State of Arunachal Pradesh, he may by order direct that the Governor shall cease to have such responsibility with effect from such date as may be specified in the order;

(*b*) the Legislative Assembly of the State of Arunachal Pradesh shall consist of not less than thirty members.

Annexure 10: Legislations for Protection of Tribal Land

S No	State	Legislation in force	Main features
1	Andhra Pradesh	(a) The Andhra Pradesh (Scheduled Areas) Land Transfer Regulation, 1959, amended by The Andhra Pradesh (Scheduled Areas) Land Transfer (Amendment) regulation, 1970, 1971, and 1978.	Prohibits all transfer of land to non-tribals in Scheduled Areas. Authorizes government to acquire land in case a tribal purchaser is not available. There is, however, no legal protection to ST land outside the scheduled areas.
2	Assam	The Assam Land and Revenue Regulations 1886, amended in 1981.	Chapter X of regulation prohibits alienation of land in tribal belts and blocks.
3	Arunachal Pradesh	Bengal Eastern Frontier Regulation, 1873, as amended.	Prohibits transfer of tribal land
4	Andaman & Nicobar Islands	Andaman and Nicobar islands (protection of aboriginals' tribes) regulation, 1956.	Protects tribal interest in lands.
5	Bihar Jharkhand	(a) Chhota Nagpur Tenancy act, 1908. (b) Santhal Pargana Tenancy Act, (supplementary provision) 1940. (c) Bihar Scheduled Areas Regulation, 1969.	Prohibits alienation of tribal land and provides for restoration of alienated land.
6	Chhattisgarh	(a) Sec 165 & 170 of Madhya Pradesh Land Revenue Code, 1959. (b) Madhya Pradesh Land Distribution Regulation Act, 1964.	Sections 165 and 170B of the code protect STs against land alienation. The 1964 Act is in force in the scheduled areas.
7	Dadra & Nagar Haveli	Dadra & Nagar Haveli Land Reform Regulation, 1971.	Protects tribal interest in lands
8	Gujarat	Bombay Land revenue (Gujarat Second Amendment) Act, 1980.	Prohibits transfer of tribal land and provides for restoration of alienated land.
9	Himachal Pradesh	The Himachal Pradesh Transfer of Land (Regulation) Act, 1968.	Act prohibits transfer of land from tribals to non-tribals.
10	Karnataka	The Karnataka Scheduled Caste and Scheduled Tribes(Prohibition of Transfer of Certain Lands)Act, 1975.	Act prohibits transfer of land assigned to SCs and STs by government. No provision to safeguard SC/ST interest in other lands.
11	Kerala	The Kerala Scheduled Tribes (Regulation of Transfer of Land and Restoration of Alienated land) Act, 1975.	Act of 1975 made applicable with effect from 1st June, 1982 by notification of January, 1986 prohibits transfer of land of tribals and provides for its restoration.
12	Lakshadweep	Lakshadweep(Protection of Scheduled Tribes) Regulation, 1964	Prohibits transfer of tribal land.
13	Madhya Pradesh	(a) Sec 165 & 170 of Madhya Pradesh Land Revenue Code, 1959. (b) Madhya Pradesh Land Distribution Regulation Act, 1964.	Sections 165 and 170B of the code protect STs against land alienation. In the scheduled area of Madhya Pradesh and Chhattisgarh, the 1964 act is in force.

S No	State	Legislation in force	Main features
14	Maharashtra	(a) The Maharashtra Land Revenue Code, 1966, as amended in 1974. (b) The Maharashtra (Restoration of Lands to Scheduled Tribes) Act, 1974.	Prohibits alienation of tribal land and provides for restoration of both illegally and legally transferred lands of a ST.
15	Manipur	The Manipur Land Revenue and Land Reforms Act, 1960.	Section 153 forbids transfer of land of STs to non-STs without permission of DC. Act has not been extended to hill areas and hill area tribals not covered.
16	Meghalaya	Meghalaya Transfer of Land (Regulation) Act, 1971.	Prohibits alienation of tribal land.
17	Nagaland	Bengal Eastern Frontier Regulation, 1873 and Assam Land and Revenue Regulation, 1866, as amended vide Nagaland Land and Revenue Regulation (Amendment) Act 1978.	Prohibition of land transfer of tribals.
18	Odisha	The Odisha Scheduled Areas Transfer of Immovable Property(STs) Regulation, 1956. The Odisha Land Reforms Act, 1960,	Prohibits transfer of ST land and provides for its restoration.
19	Rajasthan	The Rajasthan Tenancy Act, 1955, The Rajasthan Land Revenue Act, 1956.	Sections 175 and 183B specifically protect tribal interest in land and provides for restoration of alienated land to them.
20	Sikkim	Revenue Order no. 1 of 1917 The Sikkim Agricultural Land Ceiling and Reform Act, 1977	Order of 1917 still in force. Chapter 7 of 1977 restricts alienation of lands by STs but is not in force.
21	Tamil Nadu	Standing Orders of the Revenue Board BSO 15-40. Law against land alienation not enacted.	BSO 15-40 applies only to Malayali and Soliga tribes. Prohibits transfer of assigned land without approval of DC.
	Tripura	Tripura Land Revenue and Land Reform Act, 1960, as amended in 1974.	Act prohibits transfer of ST land to others without permission of DC. Only lands transferred after 1.1.1969 are covered under restoration provision.
22	Uttar Pradesh/ Uttarakhand	U.P. Land Laws (Amendment) Act, 1981, amending Uttar Pradesh Zamindari Abolition and Land Reforms act, 1950.	Provide protection of tribal land. But amending act is not applied and stayed by Allahabad High Court in Swaran Singh Vs State Govt 1981.
23	West Bengal	West Bengal Land Reforms Act, 1955, as amended	Chapter II-A prohibits alienation of tribal land and provides for restoration.

Source: Report of the Committee On State Agrarian Relations and Unfinished Task of Land Reforms, Department of Land Resources, Ministry of Rural Development, Government of India, New Delhi, 2009

Available at http://dolr.nic.in/agrarian.htm

Annexure 11: PESA,1996

THE PROVISIONS OF THE PANCHAYATS (EXTENSION TO THE SCHEDULED AREAS) ACT, 1996No.40 OF 1996

(24th December, 1996)

An Act to provide for the extension of the provisions of Part IX of the Constitution relating to the Panchayats to the Scheduled Areas.

Be it enacted by Parliament in the Forty-seventh Year of the Republic of India as follows:-

Short title

1. This Act may be called the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996

Definition

2. In this Act, unless the context otherwise requires, "Scheduled Areas" means the Scheduled Areas as referred to in Clause (1) of Article 244 of the Constitution.

Extension of part IX of The Constitution

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

Exceptions and modifications to part IX of The Constitution

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

(a) a State legislation on the Panchayats that may be made shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources;

(b) a village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs;

(c) every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls for the Panchayat at the village level;

(d) every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution;

(e) every Gram Sabha shall

i. approve of the plans, programmes and projects for social and economic development before such plans, programmes and projects are taken up for implementation by the Panchayat at the village level;

ii. be responsible for the identification or selection of persons as beneficiaries under the poverty alleviation and other programmes;

(f) every Panchayat at the village level shall be required to obtain from the Gram Sabha a certification of utilisation of funds by that Panchayat for the plans, programmes and projects referred to in clause (e);

(g) the reservation of seats in the Scheduled Areas at every Panchayat shall be in proportion to the population of the communities in that Panchayat for whom reservation is sought to be given under Part IX of the Constitution;

> Provided that the reservation for the Scheduled Tribes shall not be less than one-half of the total number of seats;
>
> Provided further that all seats of Chairpersons of Panchayats at all levels shall be reserved for the Scheduled Tribes;

(h) the State Government may nominate persons belonging to such Scheduled Tribes as have no representation in the Panchayat at the intermediate level or the Panchayat at the district level:
Provided that such nomination shall not exceed one-tenth of the total members to be elected in that Panchayat;
(i) 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;
(j) planning and management of minor water bodies in the Scheduled Areas shall be entrusted to Panchayats at the appropriate level;
(k) the recommendations of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory prior to grant of prospecting license or mining lease for minor 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;
(m) 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-

(i) the power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant;
(ii) the ownership of minor forest produce;
(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;
(iv) the power to manage village markets by whatever name called;
(v) the power to exercise control over money lending to the Scheduled Tribes;
(vi) the power to exercise control over institutions and functionaries in all social sectors;
(vii) the power to control over local plans and resources for such plans including tribal sub-plans;

(n) the State Legislations that may endow Panchayats with powers and authority as may be necessary to enable them to function as institutions of self-government shall 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;
(o) the State Legislature shall endeavour to follow the pattern of the Sixth Schedule to the Constitution while designing the administrative arrangements in the Panchayats at district levels in the Scheduled Areas.
Continuance of existing laws on panchayats:
5. Notwithstanding anything in Part IX of the Constitution with exceptions and modifications made by this Act, any provision of any law relating to Panchayats in force in the Scheduled Areas, immediately before the date on which this Act receives 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;

Provided that all the Panchayats existing immediately before such date shall continue till the expiration of their duration unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having Legislative Council, by each House of the Legislature of that State.

K.L. MOHANPURIA,
Secy. To the Govt. of India

Annexure 12: THE SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS) ACT, 2006 (ACT NO. 2 OF 2007)

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

WHEREAS the recognised rights of the forest dwelling Scheduled Tribes and other traditional forest dwellers include the responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance and thereby strengthening the conservation regime of the forests while

ensuring livelihood and food security of the forest dwelling Scheduled Tribes and other traditional forest dwellers;

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

AND WHEREAS it has become necessary to address the long standing insecurity of tenurial and access rights of forest dwelling Scheduled Tribes and other traditional forest dwellers including those who were forced to relocate their dwelling due to State development interventions.

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

CHAPTER I
PRELIMINARY

1. *Short title and commencement.*—
(1) This Act may be called the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.
(2) It extends to the whole of India except the State of Jammu and Kashmir.
(3) It shall come into force on such date as the Central Government may,
by notification in the Official Gazette, appoint.
2. *Definitions.*—
In this Act, unless the context otherwise requires,—
(a) "community forest resource" means customary common forest land within the traditional or customary boundaries of the village or seasonal use of landscape in the case of pastoral communities, including reserved forests, protected forests and protected areas such as Sanctuaries and National Parks to which the community had traditional access;
Section 2(b) "critical wildlife habitat" means such areas of National Parks and Sanctuaries where it has been specifically and clearly established, case by case, on the basis of scientific and objective criteria, that such areas are required to be kept as inviolate for the purposes of wildlife conservation as may be determined and notified by the Central Government in the Ministry

of Environment and Forests after open process of consultation by an Expert committee, which includes experts from the locality appointed by that Government wherein in representative of the Ministry of Tribal Affairs shall also be included, in determining such areas according to the procedural requirements arising from sub-sections (1) and (2) of section 4;
(c) "forest dwelling Scheduled Tribes" means the members or community of the Scheduled Tribes who primarily reside in and who depend on the forests or forest lands for *bona fide* livelihood needs and includes the Scheduled Tribe pastoralist communities;
(d) "forest land" means land of any description falling within any forest area and includes unclassified forests, undemarcated forests, existing or deemed forests, protected forests, reserved forests, Sanctuaries and National Parks;
(e) "forests rights" means the forest rights referred to in section 3;
(f) "forest villages" means the settlements which have been established inside the forests by the forest department of any State Government for forestry operations or which were converted into forest
villages through the forest reservation process and includes forest settlement villages, fixed demand holdings, all types of *taungya* settlements, by whatever name called, for such villages and includes lands for cultivation and other uses permitted by the Government;
(g) "Gram Sabha" means a village assembly which shall consist of all adult members of a village and in case of States having no Panchayats, Padas, Tolas and other traditional village institutions and elected village committees, with full and unrestricted participation of women;
(h) "habitat" includes the area comprising the customary habitat and such other habitats in reserved forests and protected forests of primitive tribal groups and pre-agricultural communities and other forest dwelling
Scheduled Tribes;
(i) "minor forest produce" includes all non-timber forest produce of plant origin including bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and the like;
(j) "nodal agency" means the nodal agency specified in section 11;
(k) "notification" means a notification published in the Official Gazette;
(l) "prescribed" means prescribed by rules made under this Act;
(m) "Scheduled Areas" means the Scheduled Areas referred to in clause (1) of article 244 of the Constitution;
(n) "sustainable use" shall have the same meaning as assigned to it in clause (o) of section 2 of the Biological Diversity Act, 2002 (18 of 2003);
(o) "other traditional forest dweller" means any member or community who has for at least three generations prior to the 13th day of December, 2005 primarily resided in and who depend on the forest or forests land for *bona fide* livelihood needs.
Explanation.—For the purpose of this clause, "generation" means a period comprising of twenty-five years;
(p) "village" means—
(i) a village referred to in clause (b) of section 4 of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (40 of 1996); or
(ii) any area referred to as a village in any State law relating to Panchayats other than the Scheduled Areas; or
(iii) forest villages, old habitation or settlements and unsurveyed villages, whether notified as village or not; or
(iv) in the case of States where there are no Panchayats, the traditional village, by whatever name called;

(q) "wild animal" means any species of animal specified in Schedules I to IV of the Wild Life (Protection) Act, 1972 (53 of 1972) and found wild in nature.

CHAPTER II

FOREST RIGHTS

3. *Forest rights of Forest dwelling Scheduled Tribes and other traditional forest dwellers.*—

(1) For the purposes of this Act, the following rights, which secure individual or community tenure or both, shall be the forest rights of forest dwelling Scheduled Tribes and other traditional forest dwellers on all forest lands,

namely:—

(a) right to hold and live in the forest land under the individual or common occupation for habitation or for self cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers;

(b) community rights such as *nistar*, by whatever name called, including those used in erstwhile Princely States, Zamindari or such intermediary regimes;

(c) right of ownership access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries;

(d) other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;

(e) rights, including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities;

(f) rights, in or over disputed lands under any nomenclature in any State where claims are disputed;

(g) rights for conversion of *Pattas* or leases or grants issued by any local authority or any State Government on forest lands to titles;

(h) rights of settlement and conversion of all forest villages, old habitation, unsurveyed villages and other villages in forests, whether recorded, notified, or not, into revenue villages;

(i) right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use;

(j) rights which are recognised under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribals under any traditional or customary law of the concerned tribes of any State;

(k) right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity;

(l) any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers, as the case may be, which are not mentioned in clauses (a) to (k) but excluding the traditional right or hunting or trapping or extracting a part of the body of any species of wild animal;

(m) right to *in situ* rehabilitation including alternative land in cases where the Scheduled Tribes and other traditional forest dwellers have been illegally evicted or displaced from forest land of any description without receiving their legal entitlement to rehabilitation prior to the 13th day of December, 2005.

(2) Notwithstanding anything contained in the Forest (Conservation) Act, 1980 (69 of 1980), the Central Government shall provide for diversion of forest land for the following facilities managed by the Government which involve felling of trees not exceeding seventy-five trees per hectare, namely:—

(a) schools;

(b) dispensary or hospital;

(c) anganwadis;
(d) fair price shops;
(e) electric and telecommunication lines;
(f) tanks and other minor water bodies;
(g) drinking water supply and water pipelines;
(h) water or rain water harvesting structures;
(i) minor irrigation canals;
(j) non-conventional source of energy;
(k) skill upgradation or vocational training centres;
(l) roads; and
(m) community centres:
Provided that such diversion of forest land shall be allowed only if,—
(i) the forest land to be diverted for the purposes mentioned in this sub section is less than one hectare in each case; and
(ii) the clearance of such developmental projects shall be subject to the condition that the same is recommended by the Gram Sabha.

CHAPTER III
RECOGNITION, RESTORATION AND VESTING OF FOREST RIGHTS AND RELATED MATTERS

4. *Recognition of, and vesting of, forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers.—*
(1) Notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Act, the Central Government hereby recognises and vests forest rights in—
(a) the forest dwelling Scheduled Tribes in States or areas in States where they are declared as Scheduled Tribes in respect of all forest rights mentioned in section 3;
(b) the other traditional forest dwellers in respect of all forest rights mentioned in section 3.
(2) The forest rights recognised under this Act in critical wildlife habitats of National Parks and Sanctuaries may subsequently be modified or resettled, provided that no forest rights holders shall be resettled or have their rights in any manner affected for the purposes of creating inviolate areas for wildlife conservation except in case all the following conditions are satisfied, namely:—
(a) the process of recognition and vesting of rights as specified in section 6 is complete in all the areas under consideration;
(b) it has been established by the concerned agencies of the State Government, in exercise of their powers under the Wild Life (Protection) Act, 1972 (53 of 1972) that the activities or impact of the presence of
holders of rights upon wild animals is sufficient to cause irreversible damage and threaten the existence of said species and their habitat;
(c) the State Government has conducted that other reasonable options, such as, co-existence are not available;
(d) a resettlement or alternatives package has been prepared and communicated that provides a secure livelihood for the affected individuals and communities and fulfils the requirements of such affected individuals and communities given in the relevant laws and the policy of the Central Government;
(e) the free informed consent of the Gram Sabhas in the areas concerned to the proposed resettlement and to the package has been obtained in writing;
(f) no settlement shall take place until facilities and land allocation at the resettlement location are complete as per the promised package:

Provided that the critical wildlife habitats from which rights holders are thus relocated for purposes of wildlife conservation shall not be subsequently diverted by the State Government or the Central Government or any other entity for other uses.

(3) The recognition and vesting of forest rights under this Act to the forest dwelling Scheduled Tribes and to other traditional forest dwellers in relation to any State or Union territory in respect of forest land and their habitat shall be subject to the condition that such Scheduled Tribes or tribal communities or other traditional forest dwellers had occupied forest land before the 13th day of December, 2005.

(4) A right conferred by sub-section (1) shall be heritable but not alienable or transferable and shall be registered jointly in the name of both the spouses in case of married persons and in the name of the single

head in the case of a household headed by a single person and in the absence of a direct heir, the heritable right shall pass on to the next-of-kin.

(5) Save as otherwise provided, no member of a forest dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is complete.

(6) Where the forest rights recognised and vested by sub-section (1) are in respect of land mentioned in clause (a) of sub-section (1) of section 3 such land shall be under the occupation of an individual or family or community on the date of commencement of this Act and shall be restricted to the area under actual occupation and shall in no case exceed an area of four hectares.

(7) The forest rights shall be conferred free of all encumbrances and procedural requirements, including clearance under the Forest (Conservation) Act, 1980 (69 of 1980) requirement of paying the 'net present value' and 'compensatory afforestation' for diversion of forest land, except those specified in this Act.

(8) The forest rights recognised and vested under this Act shall include the right of land to forest dwelling Scheduled Tribes and other traditional forest dwellers who can establish that they were displaced from

their dwelling and cultivation without land compensation due to State development interventions, and where the land has not been used for the purpose for which it was acquired within five years of the said acquisition.

5. *Duties of holders of forest rights.*—The holders of any forest right, Gram Sabha and village level institutions in areas where there are holders of any forest right under this Act are empowered to—

(a) protect the wild life, forest and biodiversity;

(b) ensure that adjoining catchments area, water sources and other ecological sensitive areas adequately protected;

(c) ensure that the habitat of forest dwelling Scheduled Tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage;

(d) ensure that the decisions taken in the Gram Sabha to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity are complied with.

CHAPTER IV
AUTHORITIES AND PROCEDURE FOR VESTING OF FOREST RIGHTS

6. *Authorities to vest forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers and procedure thereof.*—

(1) The Gram Sabha shall be the authority to initiate the process for determining the nature and extent of individual or community forest rights or both that may be given to the forest dwelling Scheduled Tribes and other traditional forest dwellers within the local limits of its jurisdiction under this Act by receiving claims, consolidating and verifying them and preparing

a map delineating the area of each recommended claim in such manner as may be prescribed for exercise of such rights and the Gram Sabha shall, then, pass a resolution to that effect and thereafter forward a copy of the same to the Sub-Divisional Level Committee.
(2) Any person aggrieved by the resolution of the Gram Sabha may prefer a petition to the Sub-Divisional Level Committee constituted under subsection (3) and the sub-Divisional Level Committee shall consider and dispose of such petition:
Provided that every such petition shall be preferred within sixty days from the date of passing of the resolution by the Gram Sabha:
Provided further that no such petition shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to present his case.
(3) The State Government shall constitute a Sub-Divisional level Committee to examine the resolution passed by the Gram Sabha and prepare the record of forest rights and forward it through the Sub-Divisional Officer to the District Level Committee for a final decision.
(4) Any person aggrieved by the decision of the Sub-Divisional Level Committee may prefer a petition to the District Level Committee within sixty days from the date of decision of the Sub-Divisional Level Committee and the District Level Committee shall consider and dispose of such petition:
Provided that no petition shall be preferred directly before the District Level Committee against the resolution of the Gram Sabha unless the same has been preferred before and considered by the Sub-Divisional Level Committee:
Provided further that no such petition shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to present his case.
(5) The State Government shall constitute a District Level Committee to consider and finally approve the record of forest rights prepared by the sub-Divisional Level Committee.
(6) The decision of the District Level Committee on the record of forest rights shall be final and binding.
(7) The State Government shall constitute a State Level Monitoring Committee to monitor the process of recognition and vesting of forest rights and to submit to the nodal agency such returns and reports as may be called for by that agency.
(8) The Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee shall consist of officers of the departments of Revenue, Forest and Tribal Affairs of the State Government and three members of the Panchayati Raj Institutions at the appropriate Level, appointed by the respective Panchayati Raj Institutions, of whom two shall be the Scheduled Tribe members and at least one shall be a woman, as may be prescribed.
(9) The composition and functions of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee and the procedure to be followed by them in the discharge of their functions shall be such as may be prescribed.

CHAPTER V
OFFENCES AND PENALTIES

7. *Offences by members or officers of authorities and Committees under this Act.*—Where any authority or Committee or officer or member of such authority or Committee contravenes any provision of this Act or any rule made thereunder concerning recognition of forest rights, it, or they, shall be deemed to be guilty of an offence under this Act and shall be liable to be proceeded against and punished with fine which may extend to one thousand rupees:
Provided that nothing contained in this sub-section shall render any member of the authority or Committee or head of the department or any person referred to in the section liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.
8. *Cognizance of offences.*—No court shall take congizance of any offence under section 7 unless

any forest dwelling Scheduled Tribe in case of a dispute relating to a resolution of a Gram Sabha or the Gram Sabha through a resolution against any higher authority gives a notice of not less than sixty days to the State Level Monitoring Committee and the State Level Monitoring Committee has not proceeded against such authority.

CHAPTER VI
MISCELLANEOUS

9. *Members of authorities, etc., to be public servants.*—
Every member of the authorities referred to in Chapter IV and every other officer exercising any of the powers conferred by or under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

10. *Protection of action taken in good faith.*—(1) No suit, prosecution or other legal proceeding shall lie against any officer or other employee of the Central Government or the State Government for anything which is in good faith done or intended to be done by or under this Act.

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

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

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

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

13. *Act not in derogation of any other law.*—Save as otherwise provided in this Act and the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (40 of 1996) the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

14. *Power to make rules.*—(1) The Central Government may, by notification, and subject to the condition of previous publication, make rules for carrying out the provisions of this Act.

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

(a) procedural details for implementation of the procedure specified in section 6;

(b) the procedure for receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim for exercise of forest rights under sub-section (1) of section 6 and the
manner of preferring a petition to the sub-Divisional committee under subsection (2) of that section;

(c) the level of officers of the departments of Revenue, Forest and Tribal Affairs of the State Government to be appointed as members of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee under sub-section (8) of Section 6;

(d) the composition and functions of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee and the procedure to be followed by them in the discharge of
their functions under sub-section (9) of section 6 :

(e) any other matter which is required to be, or may be, prescribed.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be

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