

Introduction

Primitive, geographically isolated, shy and socially, educationally & economically backwardness these are the traits that distinguish Scheduled Tribes of our country from other communities. Tribal communities live in about 15% of the country's areas in various ecological and geo-climatic conditions ranging from plains to forests, hills and inaccessible areas. Tribal groups are at different stages of social, economic and educational development. While some tribal communities have adopted a mainstream way of life at one end of the spectrum, there are 75 Primitive Tribal Groups (PTGs), at the other, who are characterized by (a) a pre-agriculture level of technology, (b) a stagnant or declining population (c) extremely low literacy and (d) a subsistence level of economy.

There are over 500 tribes (with many overlapping communities in more than one State) as notified under article 342 of the Constitution of India, spread over different States and Union Territories of the country, the largest number of tribal communities being in the State of Orissa. The main concentration of tribal population is in central India and in the North-eastern States. However, they have their presence in all States and Union Territories except Hayrana, Punjab, Delhi, Pondicherry and Chandigarh. The predominantly tribal populated States of the country (tribal population more than 50% of the total population) are: Arunachal Pradesh, Meghalaya, Mizoram, Nagaland, Union Territories of Dadra & Nagar Haveli and Lakshadweep. States with sizeable tribal population and having areas of large tribal concentration are A.P. Assam, Chhattisgarh, Gujarat, Himachal Pradesh, Madhya Pradesh, Maharashtra, Orissa and Rajasthan.

Promotion of all round development of tribals inhabiting the length and breath of our country has received priority attention of the government. There are numerous government policies for ensuring the welfare and well being of tribals. The Govts. at State as well as Central levels have made sustained efforts to provide opportunity to these communities for their economic development by eradicating poverty and health problems and developing communication for removal of isolation of their habitats. The Constitution of India seeks to secure for all its citizens, among other things, social and economic justice, equality of status and opportunity and assures the dignity of the individual. The Constitution further provides social, economic and political guarantees to the disadvantaged sections of people. Some provisions are specific to both Scheduled Castes and Scheduled Tribes and some are specific to only Scheduled Tribes. These are:-

(a) Social

- (i) Equality before law [Article 14];
- (ii) The State to make special provisions for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes [Article 15(4)];
- (iii) Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State [Article 16];
- (iv) 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(4)];
- (v) 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 Scheduled Tribes [Article 16(4A) and 16(4B)];
- (vi) Appointment of a Commission to report on the administration of the Scheduled Areas and the welfare of the Scheduled Tribes in the States [Article 339(1)];

(vii) To specify the tribes or tribal communities to be Scheduled Tribes [Article 342].

(b) Economic

- (i) The State to promote with special care the educational and economic interests of the weaker sections of the society and in particular, of the Scheduled Castes and Scheduled Tribes and shall protect them from social injustice and all forms of exploitation [Article 46].
- (ii) Grants-in-aid from the Consolidated Fund of India each year for promoting the welfare of the Scheduled Tribes and administration of Scheduled Areas [Article 275(1)][Specific to Scheduled Tribes].
- (iii) The claims of the members of the Scheduled Castes and the Scheduled Tribes in the appointments to service 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 [Article 335]. A proviso has been added to this Article to provide that nothing in this Article shall prevent in making of any provision in favour of the members of the Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State.

(c) **Political**

- (i) Through the Fifth Schedule, the administration and control of Scheduled Areas and the Scheduled Tribes in any state, other than the States of Assam, Meghalaya, Tripura and Mizoram by ensuring submission of Annual Reports by the Governors to the President of India regarding the administration of the Scheduled Areas and setting up of a Tribal Advisory Council to advise on such matters pertaining to the welfare and advancement of the Scheduled Tribes [Article 244(1)][Specific to Scheduled Tribes].
- (ii) Special provisions through the Sixth Schedule for the administration of tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram by designating certain tribal areas as autonomous Districts and Autonomous Regions and also by constituting District Councils, Autonomous Councils and Regional Councils [Article 244(2)][Specific to Scheduled Tribes].
- (iii) Reservation of seats for the Scheduled Castes and the Scheduled Tribes in the House of People [Article 330]
- (iv) Reservation of seats for the Scheduled Castes and the Scheduled Tribes in the Legislative Assemblies of the states [Article 332]
- (v) Reservation of seats for the Scheduled Castes and Scheduled Tribes in every Panchayat [Article 243D]
- (vi) Extension of the 73rd and 74th Amendments of the Constitution to the Scheduled Areas through the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 to ensure effective participation of the tribals in the process of planning and decision.

Demographic Trends and Present Status

According to 2001 Census, **the population of Scheduled Tribes** in the country is 8.43 crores, which is 8.2% of the total population of the country. The population of Scheduled Tribes has been on the increase since 1961. The State-wise overall population, ST population, percentage of STs in the State to the total State population and the percentage of STs in the State to the total population of STs in the country is given in the statement at **Annex.3. I** to this Chapter. The decadal population growth between the Census 1981 to Census 1991 in respect of the tribal population was 31.64% which was higher than that for the entire population which was 23.51%. However, during the Census years 1991 to 2001, the decadal growth was 24.45% against the growth rate of 22.66% for the entire population. As per 2001 Census, the ST population in the State of Karnataka has witnessed the highest growth rate of 80.82 followed by Nagaland 66.23, and the lowest growth rate in respect of ST population has been recorded in Andaman & Nicobar Islands (10.08) followed by Himachal Pradesh (12.02).

The higher growth of tribal population from 1981 to 1991 in Karnataka State can be principally attributed as real effect of the Constitution (Scheduled Castes and Scheduled Tribes) Orders (Amendment) Act, 1976. By this Act, area restrictions on recognition of certain communities were removed beside comprehensive revision of the lists of Scheduled Castes and Scheduled Tribes. Many tribal communities which were included for the first time or in which case area restriction was removed might not have been enumerated in 1981 Census and were actually enumerated in 1991 Census. It is also possible that some people belonging to communities having phonetic similarity to the communities included in 1976 may have got themselves enumerated as ST. Karnataka has shown steep growth of ST population in 2001 Census also, which can not be attributed to the impact of amendment Act, 1976. In this context, a study conducted by this Commission about ST status of Maleru and Maaleru communities in Karnataka at the instance of Hon'ble Supreme Court, discussed in **para 3.8.7** revealed that people belonging to Maaleru community have reaped the benefits of reservations etc. available for STs by misrepresenting themselves as Maleru ST community in

Karnataka State. The sudden spurt in the tribal population as compared to the growth of total population in the State of Karnataka, as emerged in 2001 Census or *vice-versa* as emerged in the UTs of Dadra & Nagar Haveli and Daman & Diu needs detailed investigation. **The Commission, therefore, recommends that Ministry of Tribal Affairs and the Registrar General of India should take steps to conduct an in-depth study, particularly in the above mentioned State and UTs, to find out the reasons for the steep variation.**

As compared to the **sex ratio** for the overall population (933 females per 1000 males), the sex ratio among Scheduled Tribes, as per 2001 Census is more favourable, at 977 females per 1000 males. In all States except Andhra Pradesh, Tamil Nadu and Uttaranchal, the ST sex ratio was more women favoured.

The **literacy rate** for overall population has increased from 52.2% to 65.38% between 1991 and 2001. In case of Scheduled Tribes, the increase in literacy has been from 29.62% to 47.10%. The female literacy rate among tribals during the period 1991 to 2001 increased from 18.19% to 34.76% which is lower by approximately 20% as compared to literacy rate of the females of the general population. However, the significant point is increase in total as well as female literacy among the tribals. According to 1991 Census figures, 42.02% of the Scheduled Tribes population were main workers, of whom 54.50% were cultivators and 32.69% were agricultural labourers. Thus, about 87% of the main workers from these communities were engaged in primary sector activities. These disparities are compounded by higher dropout rates in formal education, resulting in a disproportionately lower representation in higher education. The cumulative effect has been that the proportion of Scheduled Tribes below the poverty line is substantially higher than the national average. As per a statement provided by the Planning Commission, it is observed that ST people living below poverty line in 1993-1994 was 51.94% in rural areas, and 41.14% in urban areas respectively. The percentage of ST population living below poverty line has decreased to 45.86% in rural areas and 34.75% in urban areas as per the estimation of below poverty line in the year 1999-2000. Thus there is a decrease of STs living below poverty line by about 6% in rural areas and 4.5% in urban areas during the last five years.

The Scheduled Tribes live in contiguous areas unlike other communities. It is, therefore, much simpler to have area approach for development activities and also regulatory provisions to protect their interests. In order to protect the interests of Scheduled Tribes with regard to land alienation and other social factors, special provisions in the form of "Fifth Schedule" and "Sixth Schedule" have been made in the Constitution.

Fifth Schedule

The **Fifth Schedule** under Article 244(1) of Constitution defines "Scheduled Areas" as such areas as the President may by Order declare to be scheduled areas after consultation with the Governor of that State. The **Sixth Schedule** under Article 244(2) of the Constitution relates to those areas in the North-east which are declared as "tribal areas" and provide for District or Regional Autonomous Councils for such areas. These Councils have wide ranging legislative, judicial and executive powers.

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

- (i) Preponderance of tribal population,
- (ii) Compactness and reasonable size of the area,
- (iii) A viable administrative entity such as a district, block or taluk, and,
- (iv) Economic backwardness of the area as compared to neighbouring areas.

The specification of "Scheduled Areas" in relation to a State is by a notified Order of the President, after consultation with State Government concerned. The same applies for

altering, increasing, decreasing, incorporating new areas, or rescinding any Orders relating to "Scheduled Areas". The following Orders are in operation at present in their original or amended form:-

S.No.	Name of Order	Date of Notification	Name of State (s) for which applicable
1.	The Scheduled Areas (Part A States) Order, 1950 (C.O.9)	26.1.1950	Andhra Pradesh
2.	The Scheduled Areas (Part B States) Order, 1950 (C.O.26)	7.12.1950	Andhra Pradesh
3.	The Scheduled Areas (Himachal Pradesh) Order, 1975 (C.O. 102)	21.11.1975	Himachal Pradesh
4.	The Scheduled Areas (States of Bihar, Gujarat, Madhya Pradesh and Orissa) 1977 (C.O.109)	31.12.1977	Gujarat and Orissa
5.	The Scheduled Areas (State of Rajasthan) Order, 1981 (C.O.114)	12.2.1981	Rajasthan
6.	The Scheduled Areas (Maharashtra) Order, 1985 (C.O.123)	2.12.1985	Maharashtra
7.	The Scheduled Areas (States of Chhattisgarh, Jharkhand and Madhya Pradesh) Order, 2003 (C.O.192)	20.2.2003	Chhattisgarh, Jharkhand and Madhya Pradesh

The purpose and advantages of an area being declared as Scheduled Areas are as follows:-

- (i) The Governor of a State, which has Scheduled Areas, is empowered to make regulations in respect of the following:
 - (a) Prohibit or restrict transfer of land from tribals;
 - (b) Regulate the business of money lending to the members of Scheduled Tribes 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.
- (ii) 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.
- (iii) The Governor of a State having Scheduled Areas therein, 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 and the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said area.
- (iv) Tribes Advisory Council (TAC) shall be established in States having Scheduled Areas. The TAC may also be established in any State having Scheduled Tribes but not Scheduled Areas on the direction of the President of India. The TAC consists of not more than twenty members of whom, as nearly as may be, three fourth are from the representatives of Scheduled Tribes 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 Scheduled Tribes in the State as may be referred to it by the Governor.

- (v) The provisions of the Panchayats (Extension to Scheduled Areas) Act, 1996, vide which the provisions of Panchayats, contained in Part IX of the Constitution, were extended to Scheduled Areas, also contains special provisions for the benefit of Scheduled Tribes.

Various Committees and Commissions including the Scheduled Areas and Scheduled Tribes Commission (Dhebar Commission), 1961 had observed that no instructions have been issued by the Union Government about the format and contents of the Governor's reports on the Administration of Scheduled Areas in the States with the result that the State Govts. have come to look upon them as departmental reports. It was finally agreed on the basis of the Dhebar Commission's recommendations that the preparation of the Governors' report should be the responsibility of the State Secretariat and that the views of the TACs should be incorporated in the Governors' report. The Governor's reports are expected to contain objective assessment of quality and adequacies of administration of Scheduled Areas, operationalisation of the Constitutional safeguards, Acts and regulations relating to prevention of land alienation, protection of the interests of tribals in forests and trade, abolition of bonded labour etc. These reports are also expected to make a mention of the difficulties being faced by the tribals arising out of the displacement of tribals and the steps taken by the State Government to rehabilitate them and steps taken against the atrocities detected as also the problems in relation to law and order and tribal unrest etc. It has, however, been observed that the reports of the Governors have become stereotyped and that these reports do not give requisite coverage to matters affecting the vital interests of Scheduled Tribes. The Commission, therefore, would like to recommend that the Ministry of Tribal Affairs should prescribe a uniform format (with particular reference to the contents) for preparation and submission of the reports by the Governors. The Commission further recommends that the Ministry of Tribal Affairs should also issue the following instructions to the State Governments: -

- (i) The reports should reach the Ministry within 6 months of closing of the financial year.
- (ii) The reports should be thoroughly examined on the basis of the material contained in them and the State Governments should be apprised of the assessment to enable them to take necessary follow-up action.
- (iii) The States, which have TACs, should ensure that TACs are constituted/reconstituted timely and that their meetings are held regularly as per Constitutional provisions.
- (iv) In case the reports do not contain the observations of TAC, they may be sent back to the State Governments advising them to apprise the Central Government of the observations of the TACs and action taken on the observations of TAC.
- (v) The reports should contain a detailed note on the implementation of the constitutional safeguards for promotion of the interests and rights of the tribal people with specific reference to land resources, habitats, economy, cultural affairs etc. These reports should also contain a brief on problems relating to law and order, naxal movements and tribal unrest. The reports should also make a mention about Central and State laws enacted in the State during the report period and extension/applicability of those laws to scheduled areas in the light of the powers of the Governor under Fifth Schedule. Working of PESA Act in the State should also be integral part of the Governor's report.

- (vi) The Governor should submit the report direct to the President of India instead of sending it to the Ministry of Tribal Affairs which has practically led to its routinization of entire process of the report making.
- (vii) Keeping in view the duties of National Commission for Scheduled Tribes relating to monitoring of all matters in relation to STs, a copy of the Governor's report may also be endorsed to this Commission.

The Commission also recommends that:-

- (i) All the areas covered under Integrated Tribal Development Projects (ITDPs), Modified Area Development Approach (MADA) Pockets and Clusters included in Tribal-Sub-Plan of the States should be made co-terminus with the Scheduled Areas of the respective State.
- (ii) All such revenue villages having 50% or more tribal population as per 2001 Census but presently not included in Scheduled Areas of the State (s), may be included in Scheduled Areas of the respective State.

Sixth Schedule

The Sixth Schedule of the Constitution of India under Article 244 makes provisions for the administration through Autonomous District/Regional Councils of Tribal Areas in the States of Assam, Meghalaya, Mizoram, and Tripura.

Tribal Areas generally mean areas with a preponderance of tribal population. However, the Constitution of India refers the tribal areas within the States of Assam, Meghalaya, Tripura & Mizoram as those areas as are specified in Parts I, II, IIA & III of the table appended to paragraph 20 of the Sixth Schedule. In other words, areas where provisions of Sixth Schedule are applicable are known as Tribal Areas. In these Areas, Autonomous District/Regional Councils, each having not more than thirty members, have been set up.

These councils are elected bodies and have powers of legislation, administration of justice apart from executive, developmental and financial responsibilities. The State wise details of tribal areas are as under:-

Part-I (Assam)

1. The North Cachar Hills District
2. The Karbi-Anglong District
3. The Bodo land Territorial Area District

Part-II (Meghalaya)

1. Khasi Hills District
2. Jaintia Hills District
3. The garo Hills District

[Part IIA]

Tripura Tribal Areas District

Part-III (Mizoram)

1. The Chakma District
2. The Mara District
3. The Lai District

The Autonomous District or Regional Councils are empowered to make rules with the approval of the Governor with regard to matters like establishment, construction or management of primary schools, dispensaries, markets, cattle ponds, ferries, fisheries, roads, road transport and water-ways in the District. The Autonomous Councils of the North Cachar Hills and Karbi Anglong have been granted additional powers to make laws with respect of other matters like secondary education, agriculture, social security and social insurance, public health and sanitation, minor irrigation etc. The Councils have also been conferred powers under the Civil Procedure Code and Criminal Procedure Code for trial of certain suits and offences, as also the powers of a revenue authority for their area for collection of revenue and taxes and other powers for the regulation and management of natural resources.

Administration of Scheduled Areas

Article 339 of the Constitution relates to control of the Union over the administration of Scheduled Areas and the welfare of Scheduled Tribes. This Article provides that:

- (1) The President may at any time and shall, at the expiration of ten years from the commencement of this Constitution by order appoint a Commission to report on the administration of the Scheduled Areas and the welfare of the Scheduled Tribes in the States. The order may define the composition, powers and procedure of the Commission and may contain such incidental or ancillary provisions, as the President may consider necessary or desirable.
- (2) The executive power of the Union shall extend to the giving of directions to a State as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of the Scheduled Tribes in the State.

3.5.2 In pursuance of the provisions of this Article, the first Scheduled Areas and Scheduled Tribes Commission was set up in 1960 under the Chairmanship of Shri U.N. Dhebar. The second such Commission was set up vide order dated 18 July, 2002 under the Chairmanship of Shri Dileep Singh Bhuria, Ex-MP (with ten other Members) (popularly known as Bhuria Commission) with a view to give a further thrust to the welfare and development of Scheduled Tribes. The Commission submitted its report to the President on 16 July, 2004.

Panchayats (Extension to Scheduled Areas) Act, 1996

The 73rd and 74th amendments to the Constitution of India inserted in Part IX of the Constitution gave Panchayats and Nagar Palikas not only constitutional recognition but also enhanced powers. The important features of the Panchayats are:

- (i) Panchayats at the village, intermediate and district level are to be elected
- (ii) A State Finance Commission has to make recommendations for distribution between the State and Panchayats of net proceeds of taxes, duties, tolls and fees leviable by the State
- (iii) State Election Commission has to conduct elections to the Panchayats
- (iv) The Panchayats are responsible for preparation and implementation of plans for economic development and social justice
- (v) The Legislature of a State may endow the Panchayats with such power and authority as may be necessary to enable them to function as institutions of self-government.

Article 243M of the Constitution, inter-alia, provides that the general provisions pertaining to Panchayats in **Articles 342A to 343L** in Part IX of the Constitution shall not apply to Scheduled Areas referred to in Clause (1) [which contains provisions of the Fifth Schedule relating to administration and control of Scheduled Areas and Scheduled Tribes in any State other than the States of Assam, Meghalaya, Tripura and Mizoram] and Clause (2) [which contains provisions of the Sixth Schedule relating to the administration of the tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram] of Article 244 of the Constitution (Part X). This Article (i.e. Article 243M) further provides that the Parliament may, by law, extend the provisions of Part IX to the Scheduled Areas and the tribal areas subject to such exceptions and modifications as may be specified in such law and further that no such law shall be deemed to be an amendment of the Constitution for the purposes of Article 368 [relating to power of Parliament to amend the Constitution and procedure therefor].

In pursuance of the enabling provisions mentioned in the preceding paragraph, the Parliament passed the Provisions of the Panchayat (Extension to Scheduled Areas) Act, 1996 (PESA Act, 1996). This Act seeks to extend the provisions of Part IX of the Constitution as referred to in Clause (1) of Article 244 and calls for the Legislature of a State not to make any law under that Part (i.e. Part IX) which is inconsistent with any of the features given under Section-4 of the Act, some of the important features of which are:-

- (i) The State legislation should be in tune with the customary law, social and religious practices and traditional management practices of community resources.
- (ii) Every Gram Sabha should be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and customary mode of disputes resolution.
- (iii) Every Gram Sabha should be responsible for identification or selection of persons as beneficiaries under the poverty alleviation and other programmes.
- (iv) Every Gram Sabha should have the authority to approve the plans, programmes and projects for social and economic development before such plans, programmes and projects are taken up for implementation by the Panchayats at the village level.
- (v) The reservation of seats in the Scheduled Areas at every Panchayat shall be in proportion to the population of the communities in that Panchayat area 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 a 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

- (vi) 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.

- (vii) The Gram Sabha or the Panchayat at the appropriate level should be consulted before making acquisition of land in the Scheduled Areas and before resettling or rehabilitating persons affected by such projects in the Scheduled Areas
- (viii) The recommendations of the Gram Sabha and the Panchayats at the appropriate level should be mandatory prior to grant of prospecting licence or mining lease for minor minerals in the Scheduled Areas
- (ix) The Gram Sabha and the Panchayats should
 - (a) have the power to enforce prohibition or regulate or restrict the sale and consumption of any intoxicant
 - (b) be endowed with the ownership of the minor forest produce
 - (c) be conferred the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of the Scheduled Tribes
 - have the power to manage village markets and exercise control over money-lending to the Scheduled Tribes
 - have the power to exercise control over institutions and functionaries in all social sectors
 - (d) have the power of control over local plans and resources for such plans including the Tribal sub-Plan.

It is obvious from the specific provisions of PESA Act, 1996 that the Gram Sabhas and the Panchayats have been intended to assume total responsibilities for planning and implementation of plans, programmes and projects aimed at the two objectives contained in Article 243G of the Constitution namely- (a) The preparation of plans for socio-economic development and social justice, and (b) The implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule to the Constitution. However, notwithstanding the almost plenary role assigned to the Panchayats by 73rd Amendment Act and a wide range of powers given in the PESA Act, Article 243G of the Constitution and Section 4 (n) of the PESA Act, Panchayats rely on the State Legislatures to "endow the Panchayats with such powers and authority as may be necessary to enable them to function as institution of self-government" and "such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at appropriate level". Thus in practical terms, the empowerment of Panchayats rests, by and large, with the State Governments. Although the PESA Act, 1996 prohibits the State Govts. to make any law inconsistent with the provisions given in Section 4, it has been noticed that the enactments made by the State Govts. vary from State to State and do not strictly correspond with the provisions of PESA Act. **The Commission, therefore, recommends that the State Govts. may be advised to take necessary action in terms of Section 4(n) of the PESA Act to equip Panchayats with requisite powers and authority to enable them to function as institution of self-government. Steps taken in this regard should be clearly reflected in Governor's report.**

Article 243D provides for reservation of seats for the Scheduled Castes, and the Scheduled Tribes in every Panchayat and that the number of seats so reserved will be, as nearly as may be, in the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area to the total population of that area and that such seats may be allotted by rotation to different constituencies in Panchayat. This Article further provides that offices of the Chairpersons in Panchayats at the village or any other level shall

be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law,

Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State:

Provided further that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women:

Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.

In view of the above provisions of the Constitution, Clause (g) of Section 4 of PESA Act, 1996 provides that 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. Second proviso to this Clause provides that all seats of Chairpersons of Panchayats at all levels shall be reserved for the Scheduled Tribes. All the State Govts. except NCT of Delhi, J & K, Meghalaya, Mizoram and Nagaland have enacted the State Panchayati Raj Act, inter-alia, including the provisions relating to reservation of Scheduled Tribes to the offices of the Chairpersons in the Act. As per Article 243M of the Constitution, the State of Meghalaya, Mizoram and Nagaland have been exempted from the application of the Constitution (Seventy-third Amendment) Act, 1992 and the NCT of Delhi has yet to revive the Panchayati Raj System. In Jammu & Kashmir, the State Legislature has not adopted the provisions of the Constitution (Seventy-third Amendment) Act, 1992.

A group of petitions were filed in the Hon'ble High Court of Jharkhand most of which had challenged the validity of second proviso to Clause (g) of Section 4 of PESA Act, 1996 (referred to above) as well as Section 21 (B), Section 40(B), Section 55(B), sub-section 2 to Section 17(B), sub-section 2 to Section 36(B) and sub-section 2 to Section 51(B) of the Jharkhand Panchayat Raj Act, 2001. The Hon'ble High Court of Jharkhand by their judgment dated 2 September, 2005 held that cent-percent reservation of the offices and seats of Chairpersons can not be made, being excessive, unreasonable and against the principles of equality i.e. violative of Article 14 of the Constitution of India. By the aforesaid provisions cent-percent reservation of seats of Chairpersons of Panchayats at all levels in Scheduled Areas having been made, they can not be upheld, being unconstitutional. Accordingly, the Hon'ble High Court of Jharkhand declared the 2nd proviso to clause (g) of Section 4 of PESA Act, 1996, and Section 21 (B), Section 40 (B) and Section 55(B) of Jharkhand Panchayat Raj Act, 2001 so far cent-percent reservation of seats of Chairpersons of Panchayats at all levels in favour of Scheduled Tribes is concerned, as unconstitutional and ultra-vires.

The National Commission for Scheduled Tribes could not but feel gravely concerned on the adverse implications of the verdict of the Hon'ble High Court of Jharkhand on the reservation of seats of Chairpersons of Panchayats at all levels for Scheduled Tribes in the Scheduled Areas. The matter was considered by the Commission in a special meeting held on 12 September, 2005. It was felt that the Commission should immediately take up the matter with the Ministry of Panchayati Raj, the nodal Ministry concerned with the administration of PESA Act, 1996 and advise them to file an Appeal/SLP against the judgment of the Jharkhand High Court to protect the interests of Scheduled Tribes. The Commission accordingly, took up the matter vide its d.o. letter dated 20 September, 2005 with the Ministry of Panchayati Raj requesting them to apprise the Commission of the steps

taken/proposed to be taken by them in the matter of filing appeal against the judgment of the Hon'ble High Court of Jharkhand. The Govt. of Jharkhand was also requested to inform the Commission about the action being taken by them against the judgment of the Hon'ble High Court of Jharkhand in so far as it related to Jharkhand Panchayati Raj Act, 2001. The Ministry of Panchayati Raj have informed vide their letter dated 5 January, 2006 that the SLP has since been filed by them in the Hon'ble Supreme Court of India vide Dy. No.24969/2005. The Govt. of Jharkhand. vide their letter dated 31.12.2005 has informed that the State Govt. have sought guidelines from Ministry of Panchayati Raj and the Ministry of Tribal Affairs, Govt. of India to decide the future course of action to be taken by them and that Ministry of Tribal Affairs vide its letter dated 22.9.2005 had suggested the State Govt. to prefer an appeal in the interest of the Scheduled Tribes in the State, after seeking legal advice in the matter and in consultation with the Ministry of Panchayati Raj.

The Ministry of Panchayati Raj have apprised this Commission of the judgments of the Hon'ble Patna High Court and Madhya Pradesh High Court (Jabalpur) on the issue of reservation of all seats of Chairpersons of Panchayats at all levels for the Scheduled Tribes. In the case of Bihar, the Hon'ble Patna High Court in CWJC No.3351 of 1994 and analogous cases struck down certain provisions of the Bihar Panchayati Raj Act, 1993 relating to reservation to the posts of Mukhiya of a Gram Panchayats, Pramukh of the Panchayat Samiti and Adhyaksha of a Zila Parishad on the ground that these are solitary posts and such reservation would amount to 100% reservation. The Government of Bihar has filed SLP Nos.9724-28, 9819-25 of 1996 in the Supreme Court challenging the aforesaid orders of the Hon'ble High Court, Government of India being a party. The case is still pending. In the meantime, the Hon'ble Supreme Court clarified on 29.8.2000 and 5.1.2001 that the Government of Bihar might hold Panchayat elections in the State in accordance with law "as it stands today". The interpretation of this, as given by the Supreme Court was that elections could be held but without the provision of any reservation of seats for the posts of Chairpersons. Accordingly, the Government of Bihar held Panchayat elections in April, 2001 without providing reservation for SCs/STs/Women to the offices of Chairperson at all the three levels of Panchayats.

In the case of Madhya Pradesh, reservation of seats for elections to Panchayats in excess of 50% for Scheduled Castes, Scheduled Tribes, women and backward classes in normal areas and 100% reservation of seats of Chairpersons to the Panchayats in Scheduled Areas was challenged in the High Court of Jabalpur in 1999 when the elections were about to be held. The High Court vide order dated 17.12.1999 in the Writ Petitions upheld the reservation made by the State. The Court observed that the attempt of the State and the Union of India is to encourage participation in the local self-government of hitherto suppressed classes i.e. SCs/STs and weaker sections i.e. OBCs and women who are incompetent to compete elections with the educated and wealthy sections of the society called the forward classes. In the case of 100% reservation for STs for the posts of Chairpersons at all three tiers in PESA areas also, the Court upheld the reservation provisions of the State. Consequent upon the Order of the High Court of Jabalpur dated 17.12.1999, Panchayat elections in Madhya Pradesh were held in January, 2000 providing reservation for the Scheduled Tribes as per the provisions of the Act.

The Panchayat (Extension to Scheduled Areas) Act, 1996 lays down the guidelines that the legislature of a State should follow in enacting laws for Scheduled Areas. The Commission has, however, observed that the corresponding laws passed by the State Govts. do not always conform to the provisions of PESA Act. The Commission is of the view that since practical empowerment and legitimization of Panchayats rests, by and large, with the State Govts., appropriate action should be taken by them to ensure that the State laws conform to the provisions of PESA Act both in letter and in spirit. **This Commission accordingly recommends that the Ministry of Panchayati Raj, should take up the matter with the**

State Govts. to impress upon them the need to conform the State laws to the provisions of PESA Act. Steps taken in this regard should be clearly reflected in Governor's report.

Article 243H enables the legislature of a State to enact law that authorizes the Panchayats to levy and collect taxes, assigns to the Panchayats share of taxes, duties etc. levied and collected by the State Govts. and provides for grants- in- aid to the Panchayats from the consolidated fund of State. There is also a provision in Article 243I for constitution of a State Finance Commission for distribution between the States and the Panchayats of financial resources. It has, however, been noticed that the availability of requisite finances is the most critical problem being faced by the Panchayats. The Commission has observed that since the State Govts. have, by and large, severe resource crunch, there is an irresistible tendency on their part to divert funds from development to non-development areas. It has been seen that even funds provided by the Centre like Special Central Assistance to TSP, grants-in-aid under Article 275 (1) have largely remained undisbursed or unutilized at State level or to, an extent, been used for purposes other than schemes for development of Scheduled Tribes. These have, no doubt reduced the availability of funds for tribal development at the micro level. **The Commission, therefore, is of the view that there is a need to devise a mechanism which would enable the field formations to receive funds directly instead of being routed through State Hqrs. by enforcing on them a system of accountability for proper utilization of those funds.**

The Commission further recommends that:-

- (i) **On the lines of the Ministry of Rural Development which releases funds direct to the district rural development agencies (DRDAs), the Central Ministries including the Ministry of Tribal Affairs should also consider releasing funds direct to the district authorities/District Panchayats which should earmark them for ITDPs/ITDAs, MADA pockets, clusters etc.**
- (ii) **A major percentage of total funds from State and Central budget, earmarked into TSP budget in respect of primary and secondary education, vitally important sectors for tribal development, should go direct to Zila Panchayats in Scheduled Areas and tribal areas and further the Zila Panchayats should devolve 50% of these funds on the Gram Panchayat and the remaining 50% should be shared among the Zila Panchayats, Panchayat Samities and Gram Panchayats. Further, the Gram Sabhas should be entrusted with the responsibility for universal primary education with the help of these resources, and secondary education should be the responsibility of the three other tiers as per a suitable arrangement.**

In terms of the PESA Act, 1996, the Gram Sabha or the Panchayats at the appropriate level are required to be consulted before making any acquisition of land and before making any arrangements for resettlement and rehabilitation of displaced persons. No such provision exists in the Land Acquisition Act, 1894, which is a colonial hangover. This is a provision, which necessitates suitable amendments in the Land Acquisition Act, 1894. On similar lines, suitable amendments are also required to be made in Indian Forest Act, 1927 to make it consistent with the provisions of PESA Act. For instance, the PESA Act confers ownership of minor forest produce on Gram Sabha and Panchayats. On the contrary, the Indian Forest Act, 1927 does not make any distinction between major and minor forest produce and vests the ownership of the entire range of forest produce in the State, meaning thereby the Forest Department. **In view of this, this Commission is of the view that there is an urgent need to bring about necessary amendments in the Land Acquisition Act, 1894 and the Indian Forest Act, 1927 to bring them in conformity with the provisions of the PESA Act to enable the effective functioning of the Gram Sabhas and Panchayats in terms of the PESA Act.**

Section 4(d) of the PESA Act, 1996 provides that the legislature of a State shall not make any law on Panchayats in Scheduled Areas which is inconsistent with the traditional management practices of community resources. This implies that the natural and physical resources vest in the community and hence these resources should be managed by it as per its traditions. Some States have created legal frameworks to regulate natural resources like water, forest etc. through their regulatory authorities which are at variance with the provisions of the PESA Act. There are numerous instances where traditionally villagers have been cultivating the land which has been subsequently brought under the joint forestry management programme leading, as a consequence, to virtually converting it into forest land in the books of the Forest Department and as a result necessitating the demand for 'Pattas'. This has also had the effect in some Scheduled Areas of wiping away the traditional forest village systems. The Commission feels that this situation has grave implications in terms of law and policy and until issues of such nature are resolved, eviction of tribal forest dwellers will continue unchecked. **The Commission recommends that the Ministry of Panchayati Raj, which administers the PESA Act, 1996 should address this problem and advise the State Govts. to ensure that the State legislation on Panchayats should conform with the customary law, social and religious practices and traditional management practices of community resources.**

Tribal Development Strategy and Programmes

Tribal Sub-Plan

The Tribal Sub-Plan (TSP) in a way, is the lifeline for the socio-economic development of tribal people. The Tribal Sub-Plan strategy was introduced for the first time in the Fifth Five Year Plan for the rapid socio-economic development of tribal people. This strategy was evolved on the recommendations of an Expert Committee set up by the then Ministry of Educational and Social Welfare in 1972. Its salient features are:

- (i) It falls within the ambit of a State or a UT plan meant for the welfare and development of tribals. Such a plan is a part of the overall plan of a State or UT, and is, therefore, called a sub-plan. The benefits given to the tribals and tribal areas of a State or a UT from the TSP are in addition to what percolates from the overall Plan of a State/UT.
- (ii) The TSP strategy has been in operation in 21 States and 2 UTs. These States and UTs are:- Andhra Pradesh, Assam, Bihar, Chattisgarh, Gujarat, Himachal Pradesh, Jammu & Kashmir, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Orissa, Rajasthan, Sikkim, Tamil Nadu, Tripura, Uttar Pradesh, Uttranchal, West Bengal, Andaman & Nicobar Islands, Daman & Diu. In Arunachal, Meghalaya, Mizoram & Nagaland, the TSP concept is non-applicable since in these States tribals represent more than 50% of the population.
- (iii) The Tribal Sub-Plan strategy requires to (i) identify the resources for TSP areas; (ii) prepare a broad policy framework for the development; and (iii) define a suitable administrative strategy for its implementation.
- (iv) The most significant aspect of this strategy is to ensure flow of funds for TSP areas at least in equal proportion to the Scheduled Tribes population of each of the State and UT.
- (v) The TSP fund of the State Plan with regard to TSP component of various departments/sectors of the States is put in a different demand head in the budget of the Tribal Development Department of the State.
- (vi) An amount equivalent to 10% of the total allocation under Article 275(1) is earmarked and used as an instrument to bring about changes in the institutional framework for adoption of the TSP and is to be allocated by the Central Govt. (Ministry of Tribal Affairs) only among the State/States actually releasing, in the previous financial year, more than 75% of the approved TSP funds to the implementing agencies through the budget head of the Tribal Development Department of the State. In case of the tribal majority States, utilization of 75% of the grants released under the Central Sector Schemes of the Ministry also qualifies for consideration of this incentive.

Funding of Tribal Development Programmes

Funds for socio-economic development of tribal people are sourced from the following:-

- (i) Tribal Sub-Plan component of the State Plan;
- (ii) Special Central Assistance to Tribal Sub-Plan;
- (iii) Sectoral programmes of Central Ministries/Departments, and;
- (iv) Institutional finance.

State Governments are required to quantify the funds from the state plan for tribal areas development in proportion to the percentage of tribal population in the States. Similarly, Central Ministries are also required to quantify the funds from sectoral programmes for tribal development in proportion to the percentage of the tribal population in the country. These funds are to be used for implementing development programmes in the tribal areas, primarily for the Scheduled Tribes, in the fields of education, health, agriculture, horticulture, small industries, artisans and other income generating activities.

Flow of funds from the State Plan to the TSP

As per the guidelines, the flow of funds to the TSP out of the State Plan outlays is required to be not less than the proportion to the Scheduled Tribe population in the respective State. After adoption of this approach since the Fifth Five Year Plan, the flow of funds to the TSP areas has increased significantly. The expenditure for tribal development, which was just 0.51% during Fourth Plan i.e. prior to TSP strategy increased to 9.47% during the Eighth Plan and was approximately 8% during the Ninth Plan due to adoption of TSP strategy since Fifth Plan.

As per the information furnished by the Planning Commission in June 2005, the flow of funds from the Plan outlays of the 21 State Govts. and 2 UTs has been given in the statement at **Annex. 3.II** to this Chapter. The actual amount of (i) State Plan outlay, (ii) TSP outlay, (iii) % age of outlay of TSP to the Annual Plan outlay of the State, (iv) actual expenditure of the State Plan (v) actual expenditure in the TSP, and (vi) percentage of actual TSP expenditure to the expenditure under the State Annual Plan has been given in the statement attached at **Annex. 3.III** to this Chapter.

Tribal Sub-Plan Component of Central Ministries/Departments

The TSP strategy seeks to ensure an adequate flow of funds not only from the State Plan funds, the Centrally Sponsored Schemes of the Ministry of Tribal Affairs, and other Central Ministries/ Departments but also from financial institutions. The Central Government having special constitutional responsibilities towards the Scheduled Tribes and Scheduled Areas, the role of Central Ministries/ Departments assumes significance. The Planning Commission and the Ministry of Tribal Affairs have been issuing instructions from time to time to the Central Ministries/Departments to have a clear idea of the problems of tribal people and tribal areas, to prepare specific programmes relating to their concerned sectors and adopt the programmes wherever necessary in consultation with the State Govt. In order to focus attention on tribal development, the Central Ministries were called upon by the Prime Minister in 1980 to take the following steps:

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

These guidelines have been reiterated from time to time by the then Ministry of Welfare and now the Ministry of Tribal Affairs, and the Planning Commission, particularly that the funds at least equivalent to the percentage of ST population in the country should be set apart under TSP by the concerned Central Ministries and Departments. The objective is that areas in

which Central Ministries and Departments can play distinct role are to be identified and quantified outlays projected. It is important that the Ministries and Departments of the Central Government take an integrated view of the developmental programmes undertaken by them, simultaneously with an appreciation of the special needs of the tribal socio-economic situation, in order to be able to identify schemes of relevance to the tribal areas and tribal population.

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

(Rs. in crores)

Name of the Five Year Plan	Total Outlay	Flow to TSP	% age of TSP Allocation to total Outlay	Source
Sixth Plan	7,508	912	12.10	Working Group report for Seventh Plan
Seventh Plan				NA
Eighth Plan (1992-97)	68,924	5517	8.00	Planning Commission's Ninth Plan document
Ninth Plan (1997-2002)	1,10,454	6462	5.85	Planning Commission's Tenth Plan document

The contributions of the Central Ministries have not been uniform or of satisfactory level. Nor all the concerned Ministries have come forward. According to the Tenth Plan document of the Planning Commission, earmarking of funds for TSP is being carried out in 25 Ministries/Departments of the Central Government and 20 States/UTs. Parliamentary Committee on Welfare of Scheduled Castes and Scheduled Tribes had made observations and recommendations generally on quantification of benefits and found it to be not satisfactory. On occasions the Committee has expressed unhappiness on the performance of the Ministries and urged them as well as the Planning Commission to ensure that the intended funds and benefits from the general sectors are actually availed of for their welfare. Further, the Committee suggested evaluation to be undertaken periodically to assess the extent of flow of funds and benefits with a view to rectification of shortcomings and augmentation of the provisions.

The Ministry of Tribal Affairs in their Annual Report 2004-05 have given the details of the plan budget allocations for the year 2004-05 of 35 Central Ministries/Departments and the expected 8% allocation of funds for TSP areas, which are given in the statement at **Annex. 3.IV** to this Chapter. The Ministry of Tribal Affairs has not indicated the specific percentage of the plan budget earmarked for TSP. The Table given by them which, inter-alia, indicates the expected 8% of the budget to be earmarked for TSP does not convey any information. The fact of the matter is that most of the Ministries are not earmarking the requisite percentage for TSP on one ground or the other. The Department of Posts, for example, informed this Commission that they had got exemption from the Planning Commission from the necessity of earmarking 8% of their plan budget for TSP on the ground that the facilities created/being created were meant for all people including Scheduled Tribes and that the opening of post offices in areas inhabited predominantly by Scheduled Tribes was part and

parcel of their plan. The Department of Agriculture Research & Education also informed on similar lines that they were not in a position to earmark a specific percentage of their budget to TSP having regard to the special nature of their work relating to research. The Ministry of Tribal Affairs has also stated that many Ministries/Departments have reported difficulties in segregation of the requisite component of their Plan outlays for TSP areas under the parameter fixed for flow of funds to the TSP because of their specialized activities. The Commission is of the view that the existing practice on the part of most of the Central Ministries in not implementing the instructions of the Planning Commission to earmark 8% of the budget to TSP will defeat the intended purpose and give a setback to the well-meaning and sincere efforts of the Government to accelerate the process of development of the tribals. Since TSP is an integrated area development plan, and development Ministries have several specific programmes and schemes which can directly or indirectly benefit the tribal people, tribal lands and tribal areas as a whole, the Commission, therefore, would like to suggest/recommend for developing a system of periodic evaluation to assess the extent of flow of funds and benefits with a view to rectification of shortcomings and augmentation of flow of funds to TSP. **The Commission accordingly recommends that:**

- (i) **The Planning Commission should take up the matter with the Central Ministries and Departments and make the release of funds to them conditional to the earmarking of requisite funds to the TSP from their Plan outlays in proportion to the STs population of the country. The Planning Commission in consultation with Ministry of Tribal Affairs should also review their decision whether some of the Ministries/Departments can be exempted from apportioning 8% of their Plan outlays for being spent on activities relating to tribal development in relation to the subjects being handled by them, as has been suggested by some of them having regard to their specialized nature of activities. It should be made mandatory for the Ministries/ Departments to earmark flow of funds to TSP while submitting their Annual/ Five Year Plan proposals to Planning Commission.**
- (ii) **The Ministry of Tribal Affairs should issue instructions to all the 35 line Ministries dealing with development programmes that they must indicate in their Annual Reports the specific percentage of their plan budget earmarked for Tribal Sub-Plan and the activities undertaken by them under the TSP budget for tribal development in the country.**
- (iii) **The funds allocated under TSP which are not spent at the end of the financial year by the States/UTs or Central Ministries should not be allowed to be lapsed on account of non-utilization. As in the case of the grants-in-aid to the State Govts. and UT Administrations under SCA to TSP and Article 275(1) of the Constitution, the unspent balance of funds allocated under TSP by the States/UTs and the Central Ministries should be allowed to be carried over to the next financial year for utilization on tribal development programmes.**
- (iv) **Keeping in view the Constitutional responsibility of National Commission for Scheduled Tribes to monitor all matters relating to Scheduled Tribes and also advise the Government and participate in planning process, all Ministries/ Departments of Union of India should be directed to simultaneously submit copies of their plan proposals, Annual Reports, Special Reports and papers on policy matters applicable to masses (including STs) to National Commission for Scheduled Tribes invariably.**

Special Central Assistance (SCA) to Tribal Sub-Plan

Special Central Assistance (SCA) to Tribal Sub-Plan is provided by the Ministry of Tribal Affairs to the State Governments/UT Administrations as an additive to the State Plan in areas

where State Plan provisions are not normally forthcoming to bring about a more rapid economic development of tribals in the States/UTs. The scheme was launched as early as in the Fifth Five-Year Plan. Till the end of Ninth Five-Year Plan, the SCA to TSP was meant for filling up of the critical gaps in the family-based income-generation activities of the TSP. From the Tenth Five -Year Plan period, the objective and scope of SCA to TSP has been expanded to cover the employment-cum-income generation activities and the infrastructure incidental thereto not only family-based, but also run by the Self-Help Groups (SHGs)/Community. The ultimate objective of extending SCA to TSP is to boost the demand based income-generation programmes and thus raise the economic and social status of Tribals.

SCA is provided to 21 Tribal Sub-Plan States and 2 Union Territories including North-eastern States of Assam, Manipur & Tripura. However, since 2003-04, the funds meant for UTs have been provided in the budget of Ministry of Home Affairs. The SCA is released for economic development of the tribals with respect to the following:

- (i) Integrated Tribal Development Project (ITDP) area (195 Nos.): These are generally contiguous areas of the size of tehsil or block or more in which the ST population is 50% or more of the total population.
- (ii) Modified Area Development Approach (MADA) pockets (259 Nos.): These are identified pockets having 50% or more ST population of a total population of 10,000 or more.
- (iii) Clusters (82 Nos.): These are identified clusters of villages, altogether having ST population of 5000 or more, which constitutes 50% or more of the total population of the cluster.
- (iv) Primitive Tribal Groups (75 Nos.): These are characterized by a low rate of growth of population, pre-agricultural level of technology and extremely low level of literacy.
- (v) Dispersed tribal population outside the categories at Sr. No.(i) to (iv) above

The SCA is released by Ministry of Tribal Affairs as 100% grants to the States and UTs having TSPs. The main features of the Special Central Assistance (SCA) to Tribal Sub-Plan (TSP) are as follows:-

- (i) Support to tribal population below the poverty line.
- (ii) 70% of the SCA is required to be used for Primary Schemes supporting family/SHG/community based employment and income generation in sectors such as agriculture/horticulture, land reforms, watershed development, animal husbandry, ecology & environment, development of forest and forest villages, development of entrepreneurship in SSI etc. The remaining 30% is to be used for development of infrastructure incidental thereto.
- (iii) Priority is to be accorded to the neglected tribals living in forest villages and synchronization with programmes of Joint Forest Management (JFM).
- (iv) 'Women's Component' is to be accorded top priority
- (v) SCA is to form an integral part of the Annual Plan of the State
- (vi) 10% of the allocation is earmarked for providing incentives to the States for effective implementation of the TSP in letter and spirit
- (vii) Funds are to be earmarked ITDP-wise

The following criteria are observed while allocating funds to the TSP States under this scheme:-

- (a) Of the total allocation under SCA to TSP, an amount of 10% is released to the States based upon a system of weighted criteria, listed below:
- (i) Adoption of the TSP approach in letter and spirit by ensuring that the entire TSP funds at least in equal proportion to the population of tribals in the State, are placed in one Budget Head under the administrative control of the Tribal Development Department of the State Government for more integrated and focused planning and implementation of projects/schemes;
 - (ii) Thereafter, at least on an average 75% of the approved Tribal Sub-Plan funds are actually utilized/released to the implementing agencies in the previous three financial years through the budget head of the Tribal Development Department of the State; and
 - (iii) Funds awarded, as incentives to the State are utilized only for employment and income generating activities benefiting the tribals.
- (b) The remaining 90% of the total allocation under SCA is then further allocated amongst the States on the basis of the share of the programmes under the broad strategy of the Tribal Sub-Plan, namely, Integrated Tribal Development Projects (ITDPs), Modified Area Development Approach Pockets (MADA), Clusters and Primitive Tribal Groups (PTGs) and is calculated in proportion to the Scheduled Tribe population under each programme.

For the purpose of **allocation of SCA to ITDPs**, the States are grouped into two categories. **Category 'A'** consists of States with substantial areas pre-dominantly inhabited by tribals. These are A.P., Chhattisgarh, Gujarat, H.P., Jharkhand, M.P., Maharashtra, Manipur, Orissa, Rajasthan and Sikkim. **Category 'B'** consists of States having dispersed population with some areas of tribal concentration such as Assam, Bihar, J& K, Karnataka, Kerala, Tamil Nadu, Tripura, U.P., Uttaranchal, West Bengal and UTs of A & N Islands, and Daman & Diu. The total allocation for ITDPs is made to these States on the basis of tribal population of the States/UTs.

As regards MADA Pockets, Clusters and Dispersed Tribal Groups, the allocation under SCA is made 100% on the basis of the ST population in these categories. **As regards Primitive Tribal Groups (PTGs)**, 70% of the amount is distributed on the basis of numerical size of Primitive Tribal communities and remaining 30% on the basis of number of PTGs in the States/UTs. After calculating the entitlement for each of the State on the basis of the norms, the amount so calculated for MADAs, PTGs, STs in Clusters and Dispersed Tribal Groups (DTGs), SCA is separately earmarked for each State and placed at the disposal of the State Governments for implementing projects/schemes for the benefits of MADAs, PTGs, STs in Clusters and DTGs in a focused and well targeted manner.

The allocation under SCA to TSP for the year 2004-05 was fixed at Rs.497 crores. The entire amount was released to the States during this year. A statement showing the release an expenditure as also the unspent balance during the first three years of the Tenth Plan is available at **Annex.3.V**. The trend of releases during the last five years is given in the Table below:-

S.No.	Financial Year	Amount released (Rupees in crores)
(i)	2000-01	400.00
(ii)	2001-02	500.00

(iii)	2002-03	500.00
(iv)	2003-04	461.30
(v)	2004-05	497.00

Source: Annual Report of Ministry of Tribal Affairs 2004-05

Grants under Article 275 (1) of the Constitution of India

Article 275(1) of the Constitution of India guarantees grants from the Consolidated Fund of India each year for promoting the welfare of Scheduled Tribes and in pursuance of this Constitutional obligation, the Ministry of Tribal Affairs provides funds through the Central Sector Scheme "Grants under Article 275(1) of the Constitution". The objective of the scheme is the promotion of welfare of Scheduled Tribes and raising the level of administration of Scheduled Areas. The scheme covers all the 21 Tribal Sub-Plan and 4 other tribal majority States of the country. Some of the guidelines for release of grants under this scheme are as follows:-

- (i) The grants are to be used essentially for creation and upgradation of critical infrastructure required to bring the tribal areas with the rest of the country. The basic purpose is to create opportunities conducive to income and employment generation. Due emphasis is given to infrastructure in sectors critical to enhancement of human development indices such as in health, education, income generation.
- (ii) The specific projects/schemes along with physical and financial plans showing sector-wise and year-wise phasing of activities for funding under Article 275(1) are required to form an integral part of the overall TSP and, therefore, are to be prepared along with Annual Plan of the State.
- (iii) Peoples' participation is the central thread around which the entire fabric of tribal development is to be woven. The approach towards tribal development should, therefore, ensure the participation of tribal population while planning and implementing the schemes out of the grants. Due regard is also to be given to the provisions of the Panchayats Act, 1992 and The Panchayats (Extension to the Scheduled Areas) Act, 1996.
- (iv) Each State, Region, ITDA, MADA and Cluster is required a specific plan, based on the felt local needs such as low literacy, poor health services, critical gaps in sectors like irrigation, roads, bridges, electricity, technical/vocational institutes, forests, sports promotion etc. Efforts are therefore, to be made to identify thrust areas for each ITDA, MADA and Cluster and on that basis for the region or the State, as a whole.
- (v) Attempts should be made to dovetail resources available so as to ensure perceptible changes in the tribal areas as against the practice of spreading resources too thin under sectoral programmes in a disintegrated fashion.
- (vi) However, an amount maximum up to 2% of the Grant may be used for project management, training, MIS, administrative expenses and monitoring and evaluation.

- (vii) The concerns/issues effecting women should occupy central position in preparation of the projects/schemes, including the involvement of women right from planning to the implementation stage. The projects should be so planned that substantial benefits, at least 30% in proportion, are targeted for women.
- (viii) On the basis of ITDA-wise integrated plans prepared through micro-planning, projects can be taken up to bridge the gap in infrastructure in critical areas such as education, health, SSIs, forests, forest villages, drinking water, electrification, communication, rural marketing, agriculture, animal husbandry, sports promotion, food processing, processing of MFPS, human resource development in technical and vocational spheres, water harvesting, resettlement of displaced persons, tribal land management, etc.
- (ix) An amount equivalent to 10% of the total allocation under Article 275(1) is retained by the Ministry of Tribal Affairs which is allocated for innovative projects amongst those States which adopt TSP approach in letter and in spirit by actually releasing at least more than 75% of the approved TSP funds to the implementing agencies through the Budget Head of the Tribal Development Department of the State.

The grants are provided to the States on the basis of ST population percentage in the State. The Ministry of Tribal Affairs, which used to release the funds without identifying the projects in earlier year, has now decided to release funds to the State Govts. against specific infrastructure development and welfare projects from the year 2000-01. This new approach, however, does not envisage screening of the proposals received from the State Govts. to see whether those proposals are in accordance with the guidelines for release of funds under Article 275(1) and this deficiency results in release of grants for a number of such activities which do not fall within the purview of the scheme. **The Commission is, therefore, of the view that the Ministry of Tribal Affairs may constitute a Committee consisting of representatives from Ministries/Departments concerned with developmental work such as Health, Rural Development, Environment and Forest, Education, Water Resources etc. and representative of National Commission for Scheduled Tribes to consider proposals received from State Govts. both under the scheme of Special Central Assistance (SCA) to Tribal Sub-Plan (TSP), and the scheme of giving grants under Article 275(1).**

With the objective of providing quality education to the tribal students, it was decided during 1997-98 to utilize a part of the funds under Article 275(1) of the Constitution, for setting up of 100 Model Residential Schools from class 6 to 12 in different States, to enable tribal students to avail of the facility of reservation in higher and professional educational courses as well as in higher levels of jobs in the Government and Public Sector Undertakings. During the Ninth Five -Year Plan period, funds have been released for the setting up of 84 Model Residential Schools, spread over 22 States in the country. The schools are to be operated in each State through an autonomous society formed for this purpose. In order to provide a uniform pattern of education in those schools and enable their students to compete effectively for higher education programmes (medical, technical, etc.) an initiative has been taken to introduce the Central Board of Secondary Education (CBSE) syllabus in these schools and affiliate these schools to the CBSE. These schools have been named as **Eklavya Model Residential Schools**. As on date 90 such schools have been sanctioned.

The annual allocation and releases made to the State Govts. since 2000-01 under the Article 275(1) of the Constitution are as given in the Table below:-

(Rs. in crores)

Year	Allocation	Grant-in-aid (Released)
2000-2001	200.00	191.29
2001-2002	300.00	300.00
2002-2003	300.00	300.00
2003-2004	300.00	252.70
2004-2005	330.00	330.00

As has been mentioned earlier, from the year 2000-01, the releases are made against specific developmental works/projects identified by the State Govts. One of the major constraints is that the State Governments often do not release the funds in time to the implementing agencies. A State-wise statement showing the Opening Balance at the beginning of the Tenth Plan, Amount Released, and Expenditure Reported for the years 2002-03, 2003-04 and 2004-05 and the cumulative Unspent Balance at the end of year 2004-05 is available at **Annex.3.VI**. It will be seen that the total amount of the Unspent Balance at the end of the year 2004-05 was more than Rs.480 crores. This is a very discouraging trend. The same position prevails in respect of the grants released to the State Govts./UT Administrations under SCA to TSP. Attention, in this connection, is invited to the total Unspent Balance of SCA to TSP releases at the end of the three financial years (i.e. 2002-03, 2003-04 and 2004-05) in Annex.3.V to this Chapter, which was of the order of Rs.259.46 crores. It has also been noticed that in some cases the grants-in-aid under SCA to TSP and under Article 275(1) are, to an extent, diverted by the States for purposes other than they were intended for. The non-utilization of the grants-in-aid coupled with diversion of funds diminishes the availability of resources for tribal development. This is a matter of concern for this Commission. The Commission would like to suggest to the Ministry of Tribal Affairs and the Planning Commission to give serious consideration to this problem of accumulation of huge funds with the State Govts. with a view to find out effective ways to ensure that the grants-in-aid released by the Central Government are spent on the projects identified for the economic development of the Scheduled Tribes. The Commission, therefore, feels that there is a need to devise procedures which would enable the field formations to receive funds directly by enforcing on them accountability for utilization of these funds. **The Commission is of the opinion that on the lines of the procedure adopted by the Ministry of Rural Development which makes direct releases to DRDAs, the Ministry of Tribal Affairs as also other Ministries should consider opening direct channels to the implementing agencies at the district levels and ensure direct flow of funds to the ITDPs or the District Panchayats.**

Development of Primitive Tribal Groups (PTGs)

There are certain tribal communities which have a low level of literacy, declining or stagnant population, a pre-agricultural level of technology and are economically backward. 75 such groups in 16 States/UTs have been identified, and have been categorized as Primitive Tribal Groups (PTGs). The total population of the PTGs as per the 1991 Census was about 24.12 lakh. Since the PTGs constitute the most vulnerable section, States/UTs need to allocate adequate funds from central sector/centrally sponsored and State Plan Schemes for their socio-economic development. It was, however, observed by the Government that adequate funds were not reaching them, and, therefore, in order to overcome this problem, a separate 100% centrally funded scheme (administered by the Ministry of Tribal Affairs) for the exclusive development of PTGs was introduced in the year 1998-99. The scheme is implemented through the Integrated Tribal Development Projects (ITDPs)/Integrated Tribal Development Agencies (ITDAs), Tribal Research Institutes (TRIs) and NGOs. The State Govt. concerned is responsible for proper execution, implementation, supervision and coordination of the schemes including the selection of NGOs. The optimum period for grants-in-aid to the implementing agencies is three years.

A Selection Committee, set up for scrutinizing and approving the proposals received from ITDPs/ITDAs, TRIs and NGOs also reviews the performance of the projects/activities as undertaken under this scheme by the implementing agencies every year. The allocation under the scheme was made for each of the State having Primitive Tribal Groups population during 2003-04 for the first time, and the State Govts. and NGOs etc. were requested to formulate projects for undertaking activities which were most essential for the survival of PTGs. The Ministry of Tribal Affairs sanctioned proposals of State Govts. and NGOs covering about 62 PTGs during the year. The proposals covering mainly the activities relating to food, security, promotion of primary education and extending basic minimum health services to the primitive tribes were approved and funds released to the State Govts. and NGOs. **The Commission is of the view that there is need to functioning of the projects undertaken for the development of PTGs under this scheme, which was launched seven years ago. This will also given opportunity to the Government to find out whether NGOs have given better results then the Government agencies in the matter of development of PTGs and, if so, such NGOs need to be encouraged by entrusting them projects in respect of other PTGs under the scheme.**

During the year (2004-05), the Government also decided to provide insurance coverage to the earning member of each PTG family throughout the country under the Janashree Bima Yojana of Life Insurance Corporation of India and cover all PTG families within the remaining 3 years of Tenth Five Year Plan. This year an amount of Rs.5.00 crores was released to 16 States to cover 1 lakh earning members of PTG families. The following benefits would be provided to the family of the life insured **at no premium payment from them:**

- (i) Payment of Rs.50,000/- to nearest kith and kin of life insured in case of accidental death or permanent disability caused;
- (ii) Payment of Rs. 20,000/-to the nearest kith and kin in case of natural death;
- (iii) Payment of Rs.20,000/- in case of partial disability, and

Educational grant of Rs.300/- per quarter for 2 children of the life insured studying in class IX and above.

The annual allocation made under the scheme since its inception in 1998-99 and the release made against the allocation are:-

Year	Allocation	Release (Rs. in lakhs)
1998-99	400	494
1999-2000	1000	663
2000-2001	1250	1071
2001-02	1450	1418
2002-03	2000	1375
2003-04	2000	1613
2004-05	2150	2116

Against the budget provision of Rs.21.50 crores for the year 2004-05, an amount of Rs.21.16 crore was released to State Governments and NGOs. The projects for which funds were released by the Ministry of Tribal Affairs, covered mostly land development programme,

minor irrigation, horticulture, watershed development, extending facilities for promotion of primary education and health care. After adoption of project mode for release of grants targeting to maximum number of PTGs under the scheme, there has been a wider coverage of PTGs under the scheme. A statement showing the name of the PTGs (State/UT-wise) and amounts released (PTG-wise) during 2003-04 and 2004-05 is attached as **Annex.3.VII**. The details of amounts released and expenditure reported under Central Sector Scheme of development of PTGs during 2001-02, 2002-03, 2003-04 and 2004-05 and cumulative unspent balance are given in the statement at **Annex.3.VIII**.

A perusal of the statement at Annex.3.VIII reveals a very depressing scenario regarding the actual expenditure of the financial assistance given by the Govt. of India under the Central Sector Scheme of Development of PTGs. It is seen that out of about Rs.4628 lakhs released to the 17 State Govts. during the year 2001-2002, 2002-03, 2003-04 and 2004-05, the actual expenditure on the schemes for development of PTGs was Rs.2601 lakhs leaving a huge unspent balance of Rs.2027 lakhs at the end of the year 2004-05. During these years, the State of Maharashtra was sanctioned financial assistance of Rs.526.36 lakhs out of which the expenditure reported is nil. The entire purpose of the scheme of developing the extremely backward PTGs is being defeated by the State Govts. by their inexplicable inertia in making use of the grants by the Central Government on raising the economic levels of the PTGs. The action of the State Govts. in non-utilization of the central grants for the desired purpose amounts blocking the resources which could have been used for other developmental work. **The Commission recommends that-**

- (i) **The Ministry of Tribal Affairs should advise these States to spend the unspent balance within a period of one year on the schemes for development of PTGs and in case any of these States do not report expenditure of the unspent balance within that period, the Ministry of Tribal Affairs should consider releasing the next grants only to such States which have spent 80-90% of the grants given during the previous years.**

The Ministry of Tribal Affairs should assess the reasons for non-utilization of funds sanctioned by the Ministry for development of PTGs and also fix accountability for non-utilization of these grants.

Recognition of Scheduled Tribes as Primitive Tribe

The Hon'ble Supreme Court of India sought the views of the Commission in Writ Petition (Civil) No.76 of 2003-A.S. Nagendra and Ors. vs. State of Karnataka & Ors. on whether the Maaleru community was the same as the Maleru which (i.e. Maleru) has been recognized as Scheduled Tribe in the Constitution (Scheduled Tribes) Order, 1950 issued under Article 342 of the Constitution. The Commission took a series of action to gather the basic information to know whether Maaleru and Maleru represented two different communities or the same community. The information received from various quarters revealed that Maaleru and Maleru were two different communities with distinct social, cultural and religious characteristics, and that while the Maalerus lived in villages and towns with their traditional occupation as 'Temple Servants' not having any characteristics associated with declaration of a community as Scheduled Tribe, the Malerus [who have been recognized as Scheduled Tribes in the Constitution (Scheduled Tribes) Order, 1950] lived in forests and on hills with their occupation as hunting and gathering of forest produce. The findings by a team of officers of the Commission headed by a Member further revealed that:

- (i) The total population of the Malerus as per 1991 Census was less than two thousand.

- (ii) Malerus are non-vegetarians and eat even the Chatni (sauce) made from roasted ants collected from the hills.
- (iii) Malerus are hunters. Their economic condition is very poor. During the lean season, they do not have anything to eat and are forced to eat roots and leaves.

The Commission recommends that in view of the low level of literacy, extreme economic backwardness, pre-agricultural level of technology, stagnant & diminishing population, and primitive characteristics of the people belonging to Maleru community (already recognized as a Scheduled Tribe) by virtue of their being hunters and living in forests and on hills and subsisting on forest produce including roots and leaves, the Maleru community from Karnataka may be included in the list of Primitive Tribal Groups (PTGs).

Land allotment and distribution

Land is one of the most crucial and vital resources of tribals, their economy being predominantly limited to land and forest. It is also an important factor determining socio-economic status and power in society. Making the tribal people owners of land can be the most effective way of empowering them. Possession of land gives status, stability and determines the life style of every community, social, economic and political equation. Land ownership by tribals enables them to stand on their own feet for the purpose of livelihood, and also deprives the rich of their free or cheap labour. Land disputes have been one of the most important causes of atrocities on tribals. A modest attempt has, therefore, been made in this section of the Chapter to present the position about Land Ceiling Laws, distribution of land to STs and maintenance of land records.

Majority of our country's population lives in rural areas among Scheduled Tribes also more than 90% belong to rural areas. Agriculture is the basic economy in the rural areas and livelihood of the people in rural areas depends on agriculture as cultivators or as agricultural labourers. As per 1991 Census 50% of the Scheduled Tribe population are engaged as cultivators and 33% are agricultural labourers. The changes trends in occupational distribution of main workers among ST population and total general population from 1961 Census to 1991 Census is as given in the Table below: -

S.No.	Category of Workers	General					Scheduled Tribes				
		1961	1971	1981	1991	2001	1961	1971	1981	1991	2001
1	2	3	4	5	6	7	8	9	10	11	12
1.	Culti-vators	52.78	43.38	41.53	39.74	33.10	68.18	57.56	54.43	54.50	50.90
2.	Agri. Labours	16.71	26.32	25.16	19.66	20.30	19.71	33.04	32.67	32.69	28.40
3.	House-hold Industry	06.38	3.55	3.99	02.56	3.90	02.47	01.03	01.42	01.04	1.80
4.	Other Workers	24.13	26.75	29.32	38.04	42.70	09.64	08.37	11.84	11.76	18.90

Source: M/o Tribal Affairs' Annual Report 2003-04

It may be recalled that soon after attainment of independence, land reforms were put into effect on a large scale with a view to eliminate intermediaries, enforcement of ceiling on holdings, distribution of ceiling-surplus land, vesting surplus land in the tenant conferment of ownership rights of ceiling-surplus land to the tenants, consolidation of holdings, compilation and updating of land records. The Dhebar Commission (1961) had observed that the schemes of land reforms were based upon land lords-tenant system and the tribal areas did not customarily have such a practice on a significant scale. In some States like Maharashtra and Gujarat, where a sizeable percentage of tribals were landless or marginal farmers, the land reforms were expected to help in the matter of acquisition of tenancy rights. However, on account of changes in the large and effective execution, much of the impact was lost. The results was that in some tribal areas about 15 to 30% of the land belonging to tenants went out of their hands. The other important reasons for the failure of the land reforms in the tribal areas were the ignorance of law by the tribals and the rights its conferred on them. As the poor tribals had no money to buy up tenancy, they were under the thumb of the land holders. A State-wise statement of distribution of ceiling-surplus land is given at **Annex.3.IX** to this Chapter.

Since inception till March, 2004 the total quantum of land declared surplus in the entire country was 73.36 lakh acres out of which about 64.97 lakh acres have been taken possession of by Government and 54.03 lakh acres have been distributed to 57.46 lakh beneficiaries of whom 36% belong to Scheduled Castes and 15% belong to Scheduled Tribes, the number of ST beneficiaries being 8.30 lakhs.

It has been general impression that land being abundant in tribal areas, average per family holding is high among the tribals. This may have been true in the earlier times when tribal population was smaller and man-land ratio was more favourable. A great deal of variability among the tribes in different States was noticed in the 44th Round of National Sample Survey conducted during July 1988- June 1989. It reveal that in the central tribal belt, a household had, on an average 1.09 hectares against the average figure of 1.58 hectares being the highest in the Central belt and the lowest average being 0.46 hectares in the West Bengal. These figures are lower than the average holdings in north-eastern region where the regional average was 1.32 hectares, the maximum average being 4.02 hectares in Arunachal Pradesh and the minimum average being 0.59 hectares in Tripura. The 44th Round further showed that, at the all-India level, despite the handicaps the average area owned by a tribal household was 1.15 hectares and that owned by non-tribal household was 1.16 hectares indicating a slight edge over the tribals. The respective figures in the Central belt were 1.20 hectares and 1.24 hectares indicating a larger hiatus, and in the north-eastern region, the position was reversed with 1.54 hectares and 0.83 hectares.

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

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

The Ceiling Laws were originally framed 38-48 years ago and some cases those laws were amended as back as 28-33 years ago. However, the implementation of these laws has not been given due importance by the State Govts. **The Commission, therefore, would like to advise the Ministry of Tribal Affairs and the Ministry of Rural Development to take up the matter with the State Govts. for urgent implementation of the Ceiling Laws.**

Large number of areas declared surplus are yet to be taken possession by the State Govts. Such areas are mainly pending in litigation in various courts. Delay in distribution of surplus land will not only cause hardships to the poor persons awaiting source of livelihood, it will also decrease the fertility of land awaiting distribution. **The State Govts. should take immediate steps for early redemption of the lands which are in litigation in the courts, by making suitable changes in the law itself. Similarly the lands which are free from encumbrances and awaiting distribution should be distributed among eligible SC & ST and other poor families so that they can make use of land at the earliest for their livelihood.**

Land Alienation

Notwithstanding the operation of anti-land alienation laws being in place for decades, legal and illegal transfer of tribal land has been taking place in various States. The State-wise information on the number of cases of alienation and restoration of tribal lands in March, 2005 has been given in the Statement attached to this Chapter as **Annex-3.X**. It will be seen from the Statement that out of total number of 3,75,164 cases filed in the Courts (involving an area of 8,55,282 acres), the number of cases disposed of by the Courts at the end of March, 2005 was 3,17,643 (i.e. 84.67%). Out of the total number of cases disposed of by the Courts (i.e. 3,17,643) 1,54,993 (i.e. 48.79%) were rejected and 1,62,650 (i.e. 51.20%) cases were decided in favour of tribals. Out of 1,62,650 cases decided in favour of tribals, land was restored to tribals in 1,58,297 (i.e.97.32%) cases. At the end of March, 2005 57,521 cases (i.e.15.33%) were pending in different courts.

From the above analysis it appears that the disposal of tribal land alienation cases is fairly high as only over 57500 cases were pending out of over 375000 cases filed in various courts. However, the Commission has every reason to believe that all the tribals dispossessed of their land may not have moved the courts of law for restoration of his land due to their ignorance, lack of general awareness, and of course, poor resources. The figures given in the preceding paragraph, therefore, do not represent the number of alienation cases in their entirety. The number of illegal and coercive transfers which are not included in the number of cases filed in the courts may also have taken a large toll of tribal lands.

A number of steps have been taken at the State and Central level to provide adequate protection to Scheduled Tribes on land and other resources. All the States in Fifth Scheduled Areas have enacted laws prohibiting transfer of tribal land to non-tribals with provision of restoration of lands to the tribals in case of unauthorized transfers. The details of these legislations in various States are given in **Annex.XI**.

The Dhebar Commission (1961) had gone into the circumstances leading to tribal land alienation. Some of their observations regarding reasons for land alienation are as follows:

- (i) ignorance of tribal people;

- (ii) lacunae in the laws. [They had examined the Chota Nagpur Tenancy Act, 1908 and found a number of loopholes which enabled shrewd merchants and money-lenders' to secure transfers in their favour];
- (iii) utilization of the machinery of the courts before which the tribals are more or less powerless;
- (iv) voluntary surrenders engineered by landlords taking advantage of the tribals' ignorance;
- (v) lack of adequate knowledge of conditions in tribal areas on the part of the authorities;
- (vi) complicated legislation;
- (vii) lack of sources of credit as an alternative to the money-lenders' usury.

The Dhebar Commission in their report had observed that there was an urgent need to scrutinize the legislations on transfer of tribal lands with a view to plugging the loopholes. The Commission observed that:

- (i) There should be a general prohibition of all transfers, whether by sale, mortgage, gift or lease under any kind of agreement or contract entered into by tribals in favour of non-tribals without the permission of the Deputy Commissioner or the Collector.
- (ii) There should be a bar against suits or applications against any order made by a Deputy Commissioner or a Collector and the courts of law should be precluded from taking cognizance of such transfers by sale, mortgage, gift or lease or any other agreement or contract unless such arrangement had been entered into with the previous permission of the Deputy Commissioner or the Collector.
- (iii) The Deputy Commissioner or the Collector should have powers suo moto or at the instance of the aggrieved tribal land-holders within a period of 12 years, to institute enquiries and restore possession of the land with or without payment of any compensation to the transferee.
- (iv) Surrender of all lands should be only to the State and the surrendered lands should be held by the State as a trustee.
- (v) A campaign should be launched to educate the tribals preferably through non-official agencies regarding laws or regulations made for their benefit
- (vi) Requisite financial and legal assistance should be given to the tribals to take advantage of the concerned laws.

Many of the above-cited recommendations of Dhebar Commission have been accepted and incorporated in the states' anti-land alienation laws. Despite all the amendments in the laws, alienation of lands belonging to tribals to non-tribals continues unchecked. It has been noticed that in a large number of cases, the administrative agencies like the Deputy Commissioner or the Collector do not exercise adequate care and vigilance in permitting transfer. An assessment made in 1974 by a study team of the Ministry of Home Affairs had found that land alienation was principally accountable to (i) Legal transfer facilitated by casual and routine approach adopted by the authorities (ii) Benami transactions in the name of servants (iii) Transfers through collusive civil proceedings (iv) Transfers in the name of tribal women taken as wives or concubines by non-tribals (v) Informal transactions in which land remains in the name of original land owner, but he is reduced to the status of a share-

cropper. The National Commission for Scheduled Tribes feels that the principal factors responsible for tribal land alienation are as follows:-

- (i) The applications filed by the members of Scheduled Tribes for restoration of their alienated lands are routinely dealt with by administrative authorities resulting in rejection of their claims by trial courts.
- (ii) In certain cases, the tribal land is forcibly occupied by the non-tribals which forces the tribals to seek legal redress which either does not bring any relief to him or if at all any relief comes, it comes after many years of legal battle.
- (iii) The fact that the tribals in many cases are not in possession of Pattas or any other relevant documents is exploited by the non-tribals.
- (iv) Some village officers play mischievous role in manipulating the land records at the time of settlement of the land records or at any other times without the knowledge of the original tribal owner.
- (v) In certain cases non-tribals marry Scheduled Tribe women and thereby get access and ownership of tribal land, although a non-tribal in such situations does not get the status of a Scheduled Tribe.

The Commission would like to make the following recommendations to reduce, if not eliminate the problem of alienation of tribal land:

- (i) There is no doubt that the State Govts. have enacted laws to regulate the transfer of tribal land to the non-tribals. Most of these laws, however, have certain loopholes which help the unscrupulous and scheming non-tribals in getting the tribal land transferred to them against the spirit of these laws. **The Commission, therefore, recommends that the Ministry of Tribal Affairs should advise all the State Govts. to undertake a thorough review of these laws with a view to plug the loopholes.**
- (ii) Section 4 (m) (iii) of the PESA Act, 1996 makes a radical departure from the current paradigm in which the tribal people depend on the State for relief and they are not able to get relief because the officials are hand in glove with the vested interests. In terms of this Section, the responsibility now unequivocally vests in the Gram Sabhas which are endowed with 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. As per the PESA Act the legislature of a State is barred from making any law inconsistent with the features given under Section 4 of the Act including Section 4(m) (iii). **The Commission recommends that the Ministry of Tribal Affairs should also advise the State Govts. to harmonize the provisions of the state laws with the provisions of the Section 4 of PESA Act including the one referred to above in respect of prevention of alienation of tribal land.**
- (iii) There is a need to make the laws more stringent to stop the illegal transfer of tribal lands to non-tribals. The competent authority to sanction transfer of tribal land to a non-tribal is generally the District Collector. It has been observed that this power is delegated by the District Collectors to the SDOs, who are generally not aware of the serious repercussions to the tribals arising from the transfer of their land. **The Commission is, therefore, of the view that the power of sanction of transfer**

of a tribal land to non-tribal should in no situation be delegated by the District Collectors to the lower functionaries of the district.

- (iv) A sizeable ST population lives outside the scheduled areas in bigger States like Andhra Pradesh, Gujarat, Madhya Pradesh, Maharashtra and Orissa. They are also liable to be exploited and, therefore, they too need protection on par with STs living within the scheduled areas. **The Commission, therefore, genuinely feels that the concerned State Govts. should consider extending the protection of relevant laws to the Scheduled Tribes residing outside the Scheduled Areas.**
- (v) It has been noticed that the actual hand-over of the land to the ST owner takes a long time even though the court judgment is in favour of the ST. This encourages the illegal owner of the land to delay matters and go in for appeal. **The Commission is of the view that the State Govts. should be advised to prescribe a reasonable timeframe within which the land should be handed over to the ST land owner.**
- (vi) **Some State Govts. have made arrangements for legal aid to tribals including monetary assistance. The other State Govts. need to be advised to take similar steps.**
- (vii) **In agreement with the Dhebar Commission, (1961), the Commission also recommends that there should be a bar against suits or applications against any order made by a Deputy Commissioner or a Collector in favour of tribals. The law made by the Govt. of Orissa provides for appeal only to one revenue court. There is a need for incorporation of similar provisions in other state laws if no such provisions already exists.**

The alienation of the tribal land is not limited to agricultural and habitational land. They have also been getting dispossessed of their forest land. According to one estimate, while 187 tribal districts cover 33.6% of the total geographical area of the country and the forest cover therein constitutes 60% of the total forest cover in the country. In other words, the tribal areas provide the bulk of forest cover and, therefore, pushing tribals out of forests for further forestry operations would by no means be fair and just from human as well as economic point of view. The Dhebar Commission, 1961 had dwelt upon the relationship between tribals and foresters. They observed that from times immemorial, the tribal people have enjoyed freedom to use the forest and this had given them a conviction that remains deep in their minds that forests belong to them. By about middle of the nineteenth century, the extension of the authority of the Government in these areas and exercise of close control over forest products disturb the tribal economy and introduced psychological conflict. That Commission concluded that a state of tension and mutual distrust existed between the tribals and the foresters and interfere with the work of forest development.

The Dhebar Commission, 1961 had explained in their report the definition of forest villages. It was stated that a large labour force required for the activities of the forest department led to the formation of colonies composed of tribals, giving rise to the concept of forest villages. According to the Tenth Five-Year Plan document, "development of 5000 forest villages and 2.5 lakh tribal families living therein continued to remain as one of the weakest links in the whole process of tribal development. The Tenth Plan will, therefore, take up the development of forest villages on priority basis and ensure extending benefits/services as in the case of Revenue Villages and reaching the comprehensive package with basic minimum services of

food, safe drinking water, health care, primary education, approach roads and other infrastructural facilities”.

The Government has been taking a consistent view on the central theme of integrating the tribal population living in and around forests into every aspect of managing forest. All policy statements including the Forest Policy, 1988 have been espousing the cause of tribal communities and emphasizing the need for putting these communities at the centre of any conservation measures, with special attention (i) replacement of contractors by tribal cooperatives, (ii) protection regeneration and optimum collection of minor forest produce with institutional arrangements for marketing of such produce, (iii) development of forest villages on par with Revenue Villages, (iv) family oriented scheme for improving the status of tribal beneficiaries and, (v) undertaking integrated area development programmes to meet the needs of tribal economy in and around forest areas. However, despite all the legislative/policy framework of the Ministry of Environment and Forests, the historical rights of the tribals living in the forests had not been recognized. It is with a view to redress the historical injustice to the tribal community and for clear assertion of their legal rights on the forest land that the Government has decided to formulate a comprehensive legislation. A Bill to this effect has been introduced by the Ministry of Tribal Affairs in Parliament, which is in the process of being finalized. The Bill proposes to recognize and vest the Forest Rights and occupation of forest land to forest dwelling Scheduled Tribes. The basic features of this Bill have been referred to in para 3.11 of this Chapter.

Rehabilitation of displaced tribals

With the attainment of the independence the need for accelerating the pace of planned development in various sectors of the economy started gaining momentum and with this, the pressure to acquire land at various places for construction of dams, hydel project, industries, mines also started building up in tribal areas and tribal people have to provide the land for the major part for the simple reason that through a natural co-incidence the tribal people have been sitting on the top of reservoirs of mineral resources and living in the catchments of streams and rivers possessing enormous irrigation and power potential. As a result of acquisition of their lands under the Land Acquisition Act, 1894 a large number of tribal population is displaced and deprived of their houses but also of their means of livelihood. As the acquisition of the tribal land is for 'public purpose' (as laid down in the Land Acquisition Act, 1894), it may not be rationale to question the rationale of such acquisitions, but while doing so, the Government cannot overlook the trauma of those who suffer the consequences of such acquisitions. It is, therefore, necessary to prescribe guidelines for providing relief, rehabilitation and resettlement of those who are displaced in the process. The National Human Rights Commission in its 2000-01 Annual Report had taken the view that resettlement and rehabilitation of persons displaced due to acquisition of land for various projects should form part of the Land Acquisition Act itself or a separate appropriate legislation should be formulated for this purpose. That Commission further observed that such a step was necessary for the reasons that the rehabilitation and resettlement package incorporated in the law will ensure systematic rehabilitation and resettlement of the affected people, help avoid litigation, cut down project cost and cost overruns and will ensure provision of relief before actual acquisition of land. **This Commission, in agreement with the National Human Rights Commission, recommends the formulation of a suitable legislation either separately or as a part of the Land Acquisition Act to provide for systematic rehabilitation of the displaced peoples to undo the disruptive effects of displacement.**

The Commission further recommends that the compensation under the Land Acquisition Act to those who are displaced should be comprehensive. In other words, it should cover the aspects such as loss of livelihood, basic natural

resources, habitation, eco-system including pastures where cattle, goats and sheeps etc. are raised and village forests which provide them fuel, timber, minor forest produce etc. and the onus for providing it to the project affected persons should lie on the acquisitioning authority directly or through governmental functionaries.

Section 4 (i) of the PESA Act, 1996 makes consultation with the Gram Sabha or the Panchayats at the appropriate level obligatory before making acquisition of land in the scheduled areas for the development projects and before re-settling or rehabilitating persons affected by such projects in the scheduled areas. In juxtaposition to these provisions, Clause 3(1) (a) of Sixth Schedule of the Constitution empowers the District Councils and Regional Councils to legislate on "the allotment, occupation or use, or the setting apart of land, other than any land which is a reserved forest for the purpose of agriculture or grazing or for residential or other non-agricultural purposes or for any other purpose likely to promote the interests of the inhabitants of any village or town. Provided that nothing in such laws shall prevent the compulsory acquisition of any land, whether occupied or unoccupied, for public purposes [by the Government of the State concerned] in accordance with the law for the time being in force authorizing such acquisition".

It will be seen from the above that while the PESA Act allows land acquisition proceedings in the Fifth Schedule Areas only in consultation with Gram Sabhas or the Panchayats at the appropriate level, the Sixth Schedule, with respect to Sixth Schedule Areas, confers the powers of the State Govts. to acquire land over-riding the powers vested in the elected autonomous Districts and Regional Councils. The Commission feels that the above-cited provisions of the Sixth Schedule must have caused suffering to the people displaced on account of acquisition of land in the Sixth Schedule Areas and **recommends suitable revision of the provisions of the Sixth Schedule to align them with the provisions of Section 4 (i) of the PESA Act, 1996 by making the consultation with the autonomous District Councils and Regional Councils obligatory before making acquisition of land in the Sixth Schedule Areas also.**

The Commission further recommends that:

- (i) **The displaced persons should be given land for land, which should be of the similar quality and of equal legal status as that of the land previously occupied by them with a view to enable them to take care of their present needs and future development. In case the affected persons express desire for compensation in cash or kind, they should be so compensated under appropriate guarantees. To ensure stable livelihood to all members of displaced tribal families, each adult person of that family should be allotted 5 acres of irrigated land in the new place of settlement, while also ensuring that all allottees from one family are given land at one place.**
- (ii) **Over and above the compensation and the allotment of replacement land, at least one person of each displaced tribal family should be given suitable employment in the industrial/mining etc. project. In case the displaced tribal family had land in more than one village before acquisition, employment should be given to one person against acquisition of their land in each village.**

Commission's visit to Kalinga Nagar (Orissa)

The National Commission for Scheduled Tribes was shocked to learn from the media reports about the death of 12 tribals in police firing on 2 January, 2006 at Kalinganagar of district Jajpur, Orissa. The press reports revealed that a crowd of over 1000 persons most of them belonging to Scheduled Tribes had assembled the place of incident to protest against construction of boundary walls by Tata Steel Company on a piece of land acquired by the State and soled to the Company for setting up two steel plants and that the trouble had arisen on account of fears of displacement looming large in their minds and the failure of the State Govt. in making adequate arrangements for their rehabilitation to their satisfaction. The Commission could not but feel gravely concerned on hearing such disturbing news and immediately addressed a letter to the Chief Secretary, inter-alia, seeking detailed information particularly in regard to the circumstances leading to police firing, details of monetary relief given/announced to the kith and kin to the deceased and to the injured, arrangements made for the treatment of the injured, whether any magisterial inquiry had been ordered by the State Govt. into the incident and action taken by the State Govt. to evolve a uniform policy of rehabilitation of the tribals displaced or likely to be displaced as suggested by the Chairman of this Commission during his discussion with the senior officers of the State Govt. of 17 September, 2005. The State Govt., inter-alia, informed the Commission vide its letter dated 12 January, 2006 that:

- (i) The land acquisition process at Kalinganagar was started in the year 1990 and most of the land acquisition work was completed in 1996 and that private land was acquired in 12 villages after obtaining the consent of the landowners under Section 11(2) of the Land Acquisition Act.
- (ii) After prolonged discussions, it was decided by the Tata Company to take up the ground levelling work on 2 January, 2006. Apprehending opposition, the necessary police arrangements were made.
- (iii) The police first resorted to tear gas and then lathi charge, followed by use of rubber bullets to disperse the mob. These did not work and, seeing no alternative, the Executive Magistrate ordered firing to disperse the assembly.

- (iv) 12 persons were killed and 25 injured in the police firing. The State Govt. had announced payment of ex-gratia of Rs.5.00 lakhs to the next- of- kin of the deceased and Rs.50,000 of cash assistance to every injured person. This was apart from the treatment in the hospitals at the cost of the Government.
- (v) The State Govt. had decided to employ one person each from the families of the deceased, either in Government or public sector undertakings.
- (vi) The State Govt. had announced judicial inquiry into the incident by a sitting judge of the Hon'ble High Court of Orissa.
- (vii) The State Govt. had constituted a Group of Ministers to go into details of all the existing Resettlement and Rehabilitation policies to review them and to furnish the recommendation within one month.

Shri Kunwar Singh, Chairman and Smt. Prem Bai Mandavi, Member (NCST) accompanied with Joint Secretary and other officers of the Commission also visited the State from 11-13 January, 2006. On the evening of 11 January, 2006, the Hon'ble Chairman and Hon'ble Member visited SCB Medical College Hospital, Cuttack to know about the health conditions of the injured tribals and the treatments being given to them and met all the 18 injured tribals admitted in the various wards of the Hospital. All the injured under treatment expressed their satisfaction over the medical attention being paid to them and stated that they were getting free treatment. Hon'ble Chairman also met the four injured police persons admitted in the same Hospital. This was followed by detailed discussion with Principal, SCB Medical College, Supdt. of the Hospital and the attending doctors who were suggested to ensure that the tribals who were undergoing treatment were not discharged from the Hospital unless and until they had fully recovered.

On 12 January, 2006 the Hon'ble Chairman and Member and the officers of the Commission visited Kalinganagar of Jajpur district to enquire into the incident of police firing. The team first visited the firing spot at Nuagaon and enquired from the police officials about the incident. The District Magistrate and Supdt of Police explained in detail about the circumstances leading to the police firing. From the firing spot, the Hon'ble Chairman and Member along with the officers proceeded to Ambagadia village, where mass cremation of all the 12 tribals, killed in police firing, had been done in the afternoon of 4.1.2006. Hon'ble Chairman and Member paid floral tributes. Thereafter the Hon'ble Chairman and Member visited the tribal villages and met the family members of all the 12 deceased persons to know about their family condition. Chairman intimately interacted with them and consoled them. The soothing words of Chairman acted as applying healing balm to the family members suffering from the trauma of the loss of their dear ones in the police firing. During the interactions, the family members while ventilating their grievances, inter-alia, stated that unless the Government fulfilled their demands including raising the payment of ex-gratia amounts to Rs.20.00 lakhs and cash assistance to every injured to Rs.10.00 lakhs, total ban on displacement in Kalinganagar, allotment of 5.00 acres of agricultural land to the persons already displaced, release of their 3 leaders namely Rabindra Jarika, Rajendra Tomsoo and Chakradhar Halda who were in jail, they would not stop the agitation and would continue blockade of Daitari-Paradeep Express Highway. As per their version, they had gone to work site to stop the work undertaken by the Tata Steel Limited in a peaceful manner because their earlier demands regarding payment of compensation towards acquisition of land had not been fulfilled. The Commission was further informed that of the 12 deceased persons, 3 were females and 1 was a boy of 12 years age named Govinda, who was reading in Class-VII. The Commission also noted that the economic conditions of all the families of the deceased were very poor and most of the deceased were the bread-earners of their family.

During the field visits, the tribals also alleged that land settlement in the area had not been done since long due to which their right over the land, under their possession have not been established. They also expressed their discontentment over the compensation paid to them earlier for acquisition of land. Some tribals also stated why the industries were not set up immediately when their land was acquired. They further alleged that all the displaced persons had not yet been provided jobs in the industries set up in Kalinganagar as promised to them. They also stated that they should be given compensation as per the present market value of the land.

Before leaving Kalinganagar, Hon'ble Chairman held discussions with the new Collector and District Magistrate and Supdt. of Police, Jajpur who had recently joined on transfer of the then Collector and Supdt. of Police immediately after the incident of police firing. During the discussions the Collector, inter-alia, mentioned that out of 12 Industries, 3 Industries namely Nilachal Ispat Nigam Limited (MINL), MISL and Visa Industries Limited have become operational, Zindal Stainless Limited had started trial production and K.J. Ispat Ltd. would start operating soon. Collector further mentioned that MINL had provided employment to 182 displaced families out of 639 and MISL to 47 families out of 53 and Zindal Stainless Limited to only 12 out of 59.

On 13.1.2006 Hon'ble Chairman held meeting with the sr. officers of the State Govt., prominent among them being Development Commissioner; Principal Secretaries, Home; Industries and Revenue Departments; Commissioner-cum-Secretary; SC/ST Development Department; Managing Director; IDCO; Director General of Police and Additional DG of Police, HRPC, Orissa in the Conference Hall of the State Secretariat on 3rd Floor. Chairman expressed deep concern over the incident of police firing leading to death of 12 tribals and stated that it could have been averted, had the State Govt. taken timely steps by holding dialogue with the tribals on their demands. The observations made by the Chairman included the following:-

- (i) The State Govt. should formulate a uniform and comprehensive Resettlement and Rehabilitation policy after consulting the tribal leaders and the experts working on the problems relating to displacement. MoU should contain 20% of the project cost for the development of the displaced persons and should contain categorical provisions about the Rehabilitation and Resettlement package and the R&R policy should not go against the interest of the displaced tribals and should ensure their livelihood by providing them land in lieu of land and job. He cited the example of Rajasthan Government where the compensation paid towards acquisition of land was much higher than the prevailing market rate for which people were coming forward, suo moto, to give their land for Industries.
- (iii) During his interactions with the family members of the deceased, he had received allegations of chopping of palms etc. of some of the deceased during postmortem and requested the State Govt. to look into these allegations and find out the truth.
- (iv) A number of displaced tribals had not yet got job in the Industries in Kalinganagar area and emphasized the need for providing employment to them at the earliest.
- (v) A survey should be conducted in the area and tribals should be given their rights over the permissible encroachment to enable them to get compensation.
- (v) There should be a time limit on submission of report by the judicial inquiry and its terms of reference should be expanded to also find out the reason behind the incident.

On conclusion of discussion with the officers of the State Govt. on 13.1.2006 on the Kalinganagar incident, Chairman had a Press conference.

Scheduled Tribes (Recognition of Forest Rights) Bill, 2005

Forest dwelling tribal people and forests are inseparable. One cannot survive without the other. The conservation of ecological resources by forest dwelling tribal communities have been referred to in ancient manuscripts and scriptures. The colonial rule somehow ignored this reality for greater economic gains and probably for good reasons prevalent at that time. After independence, in our enthusiasm to protect natural resources, we continued with colonial legislation and adopted more internationally accepted notions of conservation rather than learning from the country's rich traditions where conservation is embedded in the ethos of tribal life. The reservation processes for creating wilderness and forest areas somehow ignored the bona fide interests of the tribal community in respect of the legislative framework in the regions where tribal communities primarily inhabit. The simplicity of tribals and their general ignorance of modern regulatory frameworks precluded them from asserting their genuine claims to resources in areas where they depended upon. The modern conservation approaches also advocate exclusion rather than integration. It is only recently that forest management regimes have in their policy processes realized that forests have the best chance to survive if the tribal communities living in them participate in its conservation and regeneration measures.

It is a well known fact that the forest dwelling scheduled tribes have been residing on their ancestral land from times immemorial and that there exists a symbiotic relationship between the forest dwelling scheduled tribes (FDSTs) and the biological resources in India. They are integral to the very survival and sustainability of the forest eco-systems, including wild life. The non-recognition of the rights of the FDSTs over the land on which they have been living in forests since ages has been attracting public attention since pre-Independence period. The non-recognition of their rights have come to be erroneously looked upon as encroachers of forest lands and the threat of eviction has always been looming large in their psyche. Insecurity of tenure and fear of eviction from these lands where they have lived and thrived for generations are perhaps the biggest reasons why tribal communities feel emotionally as well as physically alienated from forests and forest lands. All these factors have resulted in historical injustice to them.

Inadequate implementation of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996, by non-transfer of control/ownership over the natural resources, including the Minor Forest Produce to the local communities and by non-extension of PESA Act to the entire scheduled areas, including forest areas, have further compounded their miseries. Although the provisions of the Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA) gives the rights of ownership of MFP to the respective local communities, the collection and trade of most of the high value MFP is largely monopolized by the Corporations of the Forest Department of the States and poor FDSTs are just employed by the contractors only as wage earners.

The above-mentioned scenario relating to non-recognition of the rights of the scheduled tribes over the land on which they have been living for generations is in existence notwithstanding the Government taking a consistent view on the central theme of integrating FDSTs living in and around forests into every aspect of managing forest and, all policy statements, including Forest Policy, 1988, circulars, guidelines and Govt. Orders issued by the Ministry of Environment and Forests have been espousing the cause of tribal communities and emphasizing the need for putting these communities at the centre of any conservation measures. It was in this background that the historical rights of the FDSTs have not been recognized despite all the legislative/policy framework of the Ministry of Environment and

Forest, the Government (Ministry of Tribal Affairs) have decided to formulate a comprehensive Central legislation to redress the historical injustice done to the tribal communities and for clear assertion of their legal rights on the land. Accordingly, a Technical Support Group (TSG), comprising the representatives of the Ministries concerned and some reputed experts having rich experience and deep association with the cause of environmental protection and welfare of tribal people, was constituted, under the Chairpersonship of Secretary (Tribal Affairs) to formulate the Scheduled Tribes and Forest Dwellers (Recognition of Forest Rights) Bill. Director General (Forests), Ministry of Environment & Forests was also one of the members of the Group. After a series of meetings of the TSG, a draft Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 has been formulated by the Ministry of Tribal Affairs and circulated amongst the Ministries concerned for their comments. A copy of the proposed Bill was also put on the website of the Ministry of Tribal Affairs inviting suggestions from members of public, tribal associations, NGOs working in the area of tribal development etc. The Bill is presently in the process of being finalized having regard to the comments/suggestions received.

Section 2 of the Bill deals with definitions of the key words appearing in the different sections of the Bill such as 'forest land', 'forest villages', 'Scheduled Areas' etc. Section 2 (h) of the Bill defines "minor forest produce". It says that '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.

The Bill in its present form in Section 4 seeks to recognize and vest Forest Rights to forest dwelling Scheduled Tribes, where they are scheduled. Such Forest Rights as defined in Section 3, are in respect of recognition of occupation of FDSTs on forest land and their habitat where they have been living for generations and include:

- (i) 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 Tribes;
- (ii) rights such as nistar, by whatever name called, and used in erstwhile princely States, Zamindari or such intermediary regimes;
- (iii) other rights of uses or entitlements such as grazing (both settled and transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;
- (iv) right of habitat and habitation for primitive tribal groups and pre-agricultural communities;
- (v) rights for conversion of pattas or leases or grants issued by any local authority or any State Government on forest lands to titles;
- (vi) right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving;
- (vii) rights which are recognized 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 any State;

- (viii) any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes which are not mentioned in clauses (a) to (l) of the Bill but excluding the right of hunting.

Section 4 (2) of the Bill provides that the recognition and vesting of forest rights under this Act to forest dwelling Scheduled Tribes in relation to any State or Union Territory in respect of forest land and their habitat shall be subject to the condition that such tribes or tribal communities had occupied forest land before the 25th day of October, 1980 or such other date as the Central Government may, by notification in the Official Gazette, specify. Certain other provisions of this Section are:

- (i) A right conferred by Section 4 (1) shall be heritable but not alienable or transferable [sub-section (3)].
- (ii) Save as otherwise provided, no member of a forest dwelling Scheduled Tribe shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is completed in such manner as may be prescribed [sub-section (4)].
- (iii) Where the forest rights recognized and vested under Section 4 (1) are in respect of land, such land in no case will exceed an area of 2.5 hectares per nuclear family of forest dwelling Scheduled Tribes [sub-section 5 (i)].
- (iv) The forest rights recognized and vested under sub-section (1) in the forest dwelling Scheduled Tribe shall (1) be exercised only for bonafide livelihood purposes and not for exclusive commercial purposes and, (2) include the responsibility of protection, conversion and regeneration of forests [sub-section (7)].

The duties of forest right holders have been defined in Section 5 of Chapter III of the proposed Bill which include responsibility of not carrying out any activity that adversely affects the wild life, forests and biodiversity in the area including clearing of forest land or trees which have grown naturally on that land for any non-forestry purposes including reafforestation. The forest right holders are also required to ensure that:

- (i) catchment areas, water sources and other ecologically sensitive areas are adequately protected;
- (ii) the habitat of forest dwelling Scheduled Tribe is preserved from any form of destructive practices affecting their cultural and natural heritage;
- (iii)** any activity that adversely affects the wild life, forest and the biodiversity is intimated to the Gram Sabha and to the forest authorities;
- (iv) appropriate measures taken in the Gram Sabha to regulate access to community forest resource and stop any activity which adversely affects the wild life, forest and the biodiversity are complied with.

The Authorities, including their functions, have been defined in Section 6 of Chapter IV of the proposed Bill. This Section, inter-alia, provides that:

- (i) The Gram Sabha shall be the authority to initiate any action for determining the extent of forest rights that may be given to the forest dwelling Scheduled Tribes within the local limits of its jurisdiction under this Act.
- (ii) A Sub-Divisional Level Committee shall examine the decision taken by the Gram Sabha.

- (iii) Any person aggrieved by the decision of the Gram Sabha may prefer any appeal to the Sub-Divisional Level Committee in such manner as may be prescribed and the Sub-Divisional Committee shall consider and dispose of such appeal. Provided that no such appeal shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to represent his case.
- (iv) There shall be constituted a District Level Committee with such composition and functions as may be prescribed to consider the record of forest rights prepared by the Sub-Divisional Level Committee for its final approval.
- (v) Any person aggrieved by the decision of the Sub-Divisional Committee may prefer an appeal to the District Level Committee in such manner as may be prescribed and the District Level Committee shall consider and dispose of such appeal. Provided that no such appeal shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to represent his case.

Chapter V of the proposed Bill provides for penalty for contravention of the provisions of the Act and also the offences by Government authorities under this Act. It provides for a fine which may extend to one thousand rupees if any holder of any forest right conferred by or under the proposed act or any other person (i) contravenes or abets the contravention of any of its provisions or, (ii) commits a breach of any of the conditions of the forest right vested or recognized under the Act, or (iii) engages in unsustainable use of forest or forest produce; or (iv) destroys wildlife, forests or any other aspect of biodiversity; or (v) fells trees for any commercial purpose. The Bill also provides for de-recognition the forest rights in case the offence is committed more than once. The Bill further provides that where any authority or member of such authority contravenes any provisions of this Act or any rule made thereunder shall be deemed to be guilty of an offence under this Act and shall be liable to be proceeded against and punished with imprisonment which may extend thirty days or with fine which may extend to five thousand rupees, or with both. The penalties provided under other legislation including Indian Forest Act, 1927, the Forest Conservation Act, 1980 are not barred by this Act.

The National Commission for Scheduled Tribes welcomes the proposal of the Government to formulate a legislation to recognize the rights 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 and several other rights connected therewith. The Commission feels that the proposed Bill is a step in the right direction as it addresses the long standing and genuinely felt need of granting a secure and inalienable right to those communities whose right to life depends on right to forests.

The National Commission for Scheduled Tribes has not so far been formally consulted on the provisions of the proposed Bill in terms of Clause (9) of Article 338A of the Constitution of India. **The Commission would, therefore, like to advise the Ministry of Tribal Affairs to seek the comments of this Commission on the proposed Bill before it is finalized and introduced in the Parliament.**

Minor Forest Produce (MFP)

It is universally recognized that the tribals for generations have been dependent on forests for their livelihood requirements. Studies have shown that Minor Forest Produce (MFP) account for 50 to 70% of the food requirements of certain tribal communities. They collect a variety of MFP for their own use and to sell them in the market either for cash or kind. Traditionally the tribals were forced to sell their MFP to private traders at very unremunerative prices. In order to overcome this problem, cooperative societies and

corporations were set up to protect the tribals from exploitation. These corporations/cooperatives were meant to protect the tribals from their exploitation by middleman. These steps, however, have so far met with limited success only on account of a number of factors arising from inadequate working capital, imperfect organization, poor management, and lack of participation of Scheduled Tribes. The tribal corporations purchase forest produce from the tribals at reasonable prices and provide them with necessities like Ragi, rice, salt, kerosene, cloth etc. at fair prices. The LAMPS (Large- Size Multi-Purpose Societies) were also created during the Sixth Five Year Plan period for procurement of MFP and surplus agricultural produce, supply of essential commodities, agricultural inputs, provision of credit facilities for production and consumption either by converting the existing primary agricultural cooperative societies or by organizing new LAMPS at block levels so as to cover a population of at least 10,000 in a compact group of villagers with minimum coverage of 10,000 acres of agricultural land and annual short term credit potential of Rs.51.00 lakhs. This experiment also met only with a very limited success on account of LAMPS running into losses due to poor recovery of loans provided by the National Bank for Agricultural and Rural Development (NABARD) for further disbursement among the tribals.

The Tribal Cooperative Marketing Development Federation (TRIFED) was set up as an apex body of cooperatives by Government of India (under the administrative control of Ministry of Tribals Affairs) to ensure fair economic price for the produce grown/collected by the tribals and to check their exploitation by the vested interests. TRIFED has its network for collection, processing and marketing of forest and agricultural commodities of tribals. The management of the TRIFED has taken certain new initiatives in the recent past (i.e. 2002-2003) by way of shifting the focus from trading activities concerning procurement and sale to the marketing and development of tribal products. However, the TRIFED has not come up to the expectations of the Government both in its earlier role connected with procurement and sale of Minor Forest Produce and in its new role of market developers for tribal products in providing effective assistance to the tribals. The limited success of this organization is principally accountable to diverse factors including poor management. A diagnostic study commissioned by TRIFED in January, 2002 detailed the following reasons for the Federation's unsatisfactory performance:-

- (i) Organizational deficiencies, arising out of limited focus on procurement, lack of market intelligence, ad hoc approach to project execution and poor work culture.
- (ii) Systemic failure, resulting from a lack of planning framework, monitoring procedures, and the ad hoc nature of purchase and selling operations.
- (iii) Operational weaknesses, brought about by poor storage facilities, high inventory costs, huge fixed expenses and unprofitable procurement activities.

The study, in view of the above factors, suggested that the TRIFED needed a complete overhaul. The performance of the TRIFED was also discussed in one of the meetings of this Commission and it was observed that another important reason for less effective performance of TRIFED was the procurement of Minor Forest Produce by them from the contractors/middlemen and not directly from the tribals as was envisaged by the Government while creating this organization. The Commission strongly recommends the following measures for rejuvenation of TRIFED:-

- (i) **TRIFED must purchase MFP through the Van Samities (Forest Committees) and, under no circumstances, from the contractors/middlemen with a view to ensure fair and reasonable price to the tribals.**

- (ii) **TRIFED should continue to focus its activities on direct procurement of MFP and AP (Agricultural Produce) from the tribals and their sale and the marketing development of the tribal products should be left to the other agencies which are working in this field.**

The first formal proposal to confer ownership rights in respect of MFP to the Scheduled Tribes was passed in a Conference of Tribal and Forest Ministers held in 1976 as a part of the Tribal Sub-Plan strategy adopted during the Fifth Five Year Plan. Madhya Pradesh was the only State, which followed up this recommendation and formally declared that the tribal was the 'owner' of MFP. This decision was, however, operationalised only in case of tendu patta, which is a nationalized item through a Government resolution. No decision has been taken by the State in respect of other minor forest produce. No other State Govts. took any action in pursuance of the 1976 recommendations of the Government of India. The next major step was taken in 1996 with the enactment of the Provisions of Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA) which, inter-alia, envisages conferral of ownership under Section 4(m) (ii) which is reproduced below:-

"(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 the ownership of minor forest produce"

Most of the States have simply defined the MFP products as per Indian Forest Act, 1927. Only a few States like Gujarat and Maharashtra have made legal provisions regarding ownership of MFP in pursuance of the above-cited provisions of PESA Act, 1996. Gujarat has preferred to confer the ownership rights on district Panchayats in total disregard of the Gram Sabha which represents the collectivity of the tribal people in the Scheduled Areas. In Maharashtra, the ownership of MFP has been given to Gram Sabha and State Panchayats. The ownership of MFP in the Scheduled Areas leaving aside national parks and sanctuaries has been vested with the Panchayats. **The Commission recommends that the Ministry of Tribal Affairs may advise all the Fifth Schedule States to make legal provisions in their respective State Acts relating to Panchayats regarding ownership of MFP on the tribals in conformity with the, provisions, both in letter and in spirit, of Panchayats (Extension to Scheduled Areas) Act, 1996. While making requisite provisions regarding ownership of MFP in their respective Panchayat Acts, the State Govts. may also be advised to take note of the fact that the role of Panchayats at all levels in the scheme of PESA Act, which places the community in the form of Gram Sabha at the centre of stage in the governance at the village level under Section 4(b), has to be subservient to it as for the Gram Panchayat or supportive to that of the Gram Sabha in case of Panchayats at the intermediate level of district Panchayats.**

The issue about the definition of Minor Forest Produce will be resolved after the proposed Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 (which has been referred to in more details in the previous para) is passed by the Parliament. The definition of MFP in that Bill includes tendu patta and bamboo.

As on date the tribals are not entitled to collect the different items falling under the minor forest produce from the protected forests or covered under the wild life sanctuaries. **The Commission recommends that the tribals should be allowed to collect the minor forest produce from such forests also, which have been declared 'protected'.**

Safeguarding Rights of the Tribal Communities over Mineral Resources, Water Resources etc.

(a) Mineral Resources

The interface between the tribal people and mining activities was first considered in the Tribal Sub-Plan strategy in 1974. The guidelines issued by the Government of India (MHA) and the Planning Commission acknowledged that adequate benefits from these projects had not flown to the tribals. These guidelines emphasized the need for identification of the zones of influence of the existing industries and also those likely to be established. It was further envisaged that the future policy should be so evolved that the local community became co-sharer in the benefits of mining and industrial activity in the region. In pursuance of this policy, the Union Government while clearing the Malanjkhand Copper Project in Madhya Pradesh in 1976 made it a pre-condition that a plan for the zone of influence shall be prepared and implemented as an integral part of the project. This policy has, however, not been pursued systematically. **This Commission recommends that the Ministry of Tribal Affairs should take up the matter with all the State Govts. to ensure issuance of instructions by them for proper and systematic implementation of the guidelines issued by the Government of India in 1974.**

The issue was next considered in the formulation of National Mineral Policy, 1993 which acknowledged that the mineral bearing areas were also inhabited by tribal population and that the exploitation of mineral resources had not always contributed adequately to their economic development. It was further acknowledged that a major thrust needed to be given for development of infrastructural facilities in mineral bearing areas following an integrated approach for mineral development, regional development and also social and economic uplift of the local population including tribal population. Although this policy of 1993 conceded that in grant of mineral concessions for small deposits in Scheduled Areas, preference shall be given to the Scheduled Tribes, no clear guidelines have been issued by the Government of India nor there are general provisions in this regard in the mineral concession rules. **The Commission recommends that the Ministry of Tribal Affairs may advise the Department of Mines (Ministry of Coal and Mines) to issue clear guidelines for giving preference to Scheduled Tribes in the grant of mining concessions in Scheduled Areas.**

The next major attempt to deal with this issue was that of Bhuria Committee (1995) appointed by the Government of India in terms of Clause 3 of Article 243ZC of the Constitution to suggest suitable 'exceptions and modifications' while extending the provisions of Part IX A of the Constitution regarding Municipalities to the Scheduled Areas. The Committee recommended that in all industrial enterprises set up in the Scheduled Areas (other than small ventures), the community should be deemed to be the owner with 50% shares in its favour by virtue of its allowing the industry to use local resources and getting established. The Committee also called for the preparation of a Master Plan for the zone of influence, which should make specific provisions- financial, institutional and legal, for

- (a) ensuring a place of honour to all those whose lands are taken or who are indirectly affected by the new economic activity; and
- (b) integrating the economy of the people living in the zone of influence of the industry with the core economy,
- (c) No project hereafter should be cleared without such a Master Plan.

No action appears to have been taken by the Government on the above-mentioned crucial recommendations of the Bhuria Committee with the result that all urban bodies, including most of the mining establishments in the Scheduled Areas constituted under the provisions of Part IX A of the Constitution have been functioning for more than a decade now without any authority of law for the simple reason that the provisions of Part IXA have not been extended to the Scheduled Areas. **The Commission recommends that the Ministry of Tribal**

Affairs should take immediate action to introduce a bill to give effect to the recommendations of the Bhuria Committee.

Section 4(d) of Provisions of Panchayats (Extension to Scheduled Areas) Act, 1996 accepts the competence of the Gram Sabha to 'safeguard and preserve..... community resources.....'. Moreover, specific provisions have also been made under sub-section (k) and (l) of the Acts, which make it mandatory to consult Gram Sabha before granting prospecting license or mining lease for minor minerals in the Scheduled Areas. The Ministry of Mines (now the Department of Mines under the Ministry of Coal and Mines) had issued guidelines in this regard in 1997 which called for getting approval of Gram Sabha mandatory. No action appears to have been taken by the State Govts. on these guidelines except the State Government of Madhya Pradesh which have made necessary rules with reference to these guidelines in the Mines and Minerals (Regulation & Development) Act. The Government of Andhra Pradesh has amended the Mining rules and made a clear provision that 'notwithstanding anything contained in this Act, no prospecting license or mining lease shall be granted in the Scheduled Areas to any person who is not a member of a Scheduled Tribes subject to the provision that the same shall not apply to an undertaking owned or controlled by the State or Central Government or a society which is composed solely of members of Scheduled Tribes. In its historic judgment in Samatha case, the Hon'ble Supreme Court held that "the State Govt. also stands prohibited to transfer by way of lease or any other form known to law, the government land in Scheduled Area to a non-tribal person". While the mining leases in Andhra Pradesh have been cancelled, no action has been taken in other States in pursuance of the verdict of the Supreme Court, nor has the Government of India issued any directions or guidelines in this regard. **The Commission recommends that:-**

- (i) **The Ministry of Tribal Affairs should take up the matter with the Department of Mines (Ministry of Coal & Mines) and advise them to issue necessary instructions to all the State Govts., other than the Government of Andhra Pradesh to comply with the directions of the Hon'ble Supreme Court not to transfer by way of lease etc. the government land in Scheduled Areas to a non-tribal person.**
- (ii) **The Ministry of Tribal Affairs should also advise all the State Govts. to make specific legal provisions in their Acts relating to mines and minerals making it mandatory for them to consult Gram Sabhas before grant of any lease about minor minerals.**

(b) Water Resources

Apart from the general provisions concerning community resources under section 4(d) of the Provisions of Panchayats (Extension to Scheduled Areas) Act, 1996 section 4 (j) envisages that 'Planning and management of water bodies shall be entrusted to Panchayats at the appropriate level'. The M.P. Panchayati Raj and Gram Swaraj Adhiniyam, 1993 mentions ten 'community resources' used in PESA Act as natural resources including land, water and forest within the area of the village. Jharkhand Panchayat Act has also adopted similar provisions. The Gram Panchayats in Madhya Pradesh have also been further endowed with powers regarding management of water resources, subject to general superintendence, control and direction of the Gram Sabha as cited below:

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- (iii) to plan, own and manage minor water bodies up to a specified water area situated within the territorial jurisdiction.
- (iv) to lease out any water body up to a specified area for the purpose of fishing and other commercial purposes.

- (v) to regulate the use of water of rivers, streams, minor water bodies for irrigation purpose;

The intention of the law to empower the community has not been realized in the absence of any guidelines for the functioning of Gram Sabhas in according to their customs and traditions. **The Commission recommends that the Government of India (Ministry of Water Resources) should issue the guidelines to all the State Governments about safeguarding the rights of the Tribal people over water and other resources in the Scheduled Areas.**

Tribal Health and Medical Services

It is widely accepted that malnutrition among tribals is wide spread, which is largely attributable to abject illiteracy, environmental conditions, difficult terrain, traditional beliefs and customs and, above all, the non-availability of basic health services. The ill-nourished tribals live in an environment, which has been degraded, and, as a result, diseases such as malaria, malarial, tuberculosis, and goiter are endemic in most of the tribal areas. The tribal people, however, in the course of their isolated existence, have developed alternative systems of medicines. They have a rich store of knowledge of various herbs, plants, insects and animals, which have medicinal value. These drugs and practices have sustained the tribal communities for generations. Now due to change in medical system, the modern method of medicine has also made inroads into the tribal areas. But the tribals being rooted to their culture, generally prefer to have their own system of medicine and only when they find that it is ineffective, they go in for the allopathic system of medicine. Once the tribals decide to make use of allopathic medicines, they face another problem, which relates to non-availability of doctors and other paramedical personnel. It is commonly known that posting of doctors and other paramedical staff in tribal areas are treated as punishment posting with the result that most of the posts in the centres and sub-centres are generally vacant in tribal areas. There are no private practitioners in these areas as it is not lucrative due to non-viability of this profession in the interior tribal areas.

There is a general lack of hygiene and sanitation which aggravates the health problems of the tribals and, therefore, on the whole, tribal people have a lower level of health as has been seen by various health indices like low birth-weight, life expectancy at birth, maternal mortality rate, infant mortality rate and prevalence rate of various communicable diseases, genetic disorders, alcoholism and drug addiction.

It has to be accepted that the traditional system of using herbal medicines and the tribal medicine man is not sufficient to take care of all health problems of the tribal people and they have to get access to the modern system of medicine. It is also true that more and more numbers of the tribals are taking to the allopathic and other systems of medicines. However, on account of several factors health and medical care services are not easily accessible and affordable and, wherever they are available, tribals have not been able to take full benefit of these health services due to illiteracy, ignorance and innate shyness of tribal communities. In order to improve the situation, the delivery system and functioning of the health care institutions has to be fashioned in such a way as to conform to the unique conditions in tribal areas.

The norms for health care provide for setting up of a sub-center for a population varying between 3000-5000 depending upon terrain and location; a Primary Health Center (PHC) for a population between 20,000-30,000 and a Community Health Center (CHC) for every four PHCs. Keeping in view the far flung areas, forest land, hills and remote villages, where most of the tribal habitations are concentrated, the population coverage norms have been relaxed as under;-

Centre	Population Norms	
	Plain Area	Hilly/Tribal Area
Sub-Centre	5,000	3,000
Primary Health Centre	30,000	20,000
Community Health Centre	1,20,000	80,000
Multipurpose Workers (MPWs)	5,000	3,000

The States have been advised to set up at least 7.5% of their annual targets in tribal areas. The State Government have been advised to give further relaxation for setting up Sub-Center/Primary Health Center in the case of tribal hamlets are 5 kms. away from the existing Health and Family Welfare delivery point. The State Govts. have also been advised to introduce schemes for compulsory annual medical examination of Scheduled Tribe (as also of Scheduled Caste) population in rural areas. Under the Minimum Needs Programme, 21,513 Sub-Centers, 3610 Primary Health Centers and 604 Community Health Centers have been established in tribal areas as on 31.03.2003. The following Centrally Sponsored Schemes and Central Sector Schemes are being implemented in areas inhabited by weaker sections particularly Scheduled Castes and Scheduled Tribes:

Centrally Sponsored Schemes:-

- (i) The National Vector Borne Diseases Control Programmes approved in 2003-2004 by convergence of three ongoing programmes of Malaria, Filariasis, Kala-azar and inclusion of Japanese encephalitis and Dengue/DHF is proposed to be implemented by States/UTs with 50% Central Assistance for spraying insecticides, supply of anti-malarial drugs etc. including tribal areas under TSP. 100% assistance is provided to N.E. States dominated by tribal population as against 50% assistance to other States. The Enhanced Malaria Control Project (EMCP) with World Bank assistance covers 1045 tribal PHCs in all the districts of eight of the Nine Fifth Schedule States namely- Andhra Pradesh, Chhatisgarh, Gujarat, Jharkhand, Madhya Pradesh, Maharashtra, Orissa and Rajasthan.
- (ii) National Leprosy Eradication Programme is being implemented in all the districts of the country for providing free diagnostic and treatment facilities. Leprosy services are now available in all the General Health care facilities including PHCs and Sub-Health Centers on all the working days of the week. These services are available to all the people including Scheduled Tribes. 100% assistance is provided to the States under this programme.
- (iii) National Tuberculosis Control Programme is being implemented with 100% central assistance for supply of anti-TB drugs, equipments etc. in tribal areas under TSP. Norms have been relaxed and following steps are being taken for facilitating service delivery in rural tribal areas:-
 - (a) Providing STs and STLs for 2.5 lakh population against established norms of 5 lakhs;
 - (b) Opening of microscopic centers for 50,000 population against established norms of 1 lakh;
 - (c) Opening of more DOTs centres; and
 - (d) Provision to reimburse the travel claims of patients and attendants for taking treatment of DOTs centre.

- (iv) National Programme on Control of Blindness is being implemented with 100% assistance for strengthening of ophthalmic infrastructure training of personnel etc. in tribal and SC areas for treatment of eye ailments and control of blindness under TSP and SCP. Under this programme schemes for non-recurring grant-in-aid to NGOs for setting up or expansion of eye care units in tribal-remote areas is being implemented to develop infrastructure for eye care in such areas.
- (v) National AIDS Control Programme, is being implemented with 100% assistance in tribal and SC areas.

Central Sector Schemes:-

- (i) Due to poor economic condition of parents, the students belonging to SCs and STs community face great difficulty in purchasing textbooks. In order to overcome the difficulties, book banks in medical courses for students belonging to Scheduled Castes and Scheduled Tribes have been set up under purely centrally aided schemes in Central Institutions like PGIMER, Chandigarh; JIPMER, Pondicherry; AIIMS, New Delhi; University College of Medical Sciences, Delhi and Lady Harding Medical College, New Delhi etc.
- (ii) The Central Institute of Psychiatry, Ranchi is providing health care facilities to the neighbouring areas of Ranchi pre-dominantly inhabited by tribal people in the Chhota Nagpur belt of Jharkhand. During the Tenth Plan Period an amount of Rs.50.0 crores was allocated to the Institute while during 2004-2005 an amount of Rs.8.0 crores has been allocated to meet expenses on medical services and strengthening of the Institute.
- (iii) One of the reasons cited for tardy improvement in health status of the tribal population is poor and incomplete understanding about their health problems, both general and specific to certain tribes. In order to bridge this gap, the Indian Council of Medical Research, through its network of disease oriented National Institutes and Regional Medical Research Centres (RMRCs) has conducted several surveys and studies. ICMR has conducted various focused studies on general morbidities, genetic diseases and viral markers in tribal areas. Results of ICMR study showing prevalence of sickle cell anemia, thalassaemia and G-6-PD deficiency among primitive tribes of 7 districts is at North Tripura and Dhalai district in Tripura, Dindori district in Madhya Pradesh, Jaspur district in Chhattisgarh, Palamau and Sahibganj district in Jharkhand and Great Andamans and Onges district in A&N Island. Plan schemes (i) research on diseases to which SC/ST are generally prone and (ii) medical care for remote and marginalized tribal and nomadic communities were in operation in 9th plan and are continuing during the 10th plan. Various steps have been taken to extend the outreach of health care services to the tribal population by involvement of local people for transfer of modern health technology as well as for adaptation of local technology.

- (ii) **The Commission recommends that the following measures be taken to ensure proper medical facilities in the tribal areas:-**
- (iii) **As recommended by National Health Programme (NHP), 1983, a Health Guide should be made available for each village with a view to educate the tribals to avail of the modern system of medicine for treatment of such diseases for which their traditional system based on herbal medicines is not sufficient.**

- (iv) Each village should have at least one trained birth attendant (i.e. dai) equipped with a delivery kit aseptic liquid and scissors for cutting cords. She should be paid a fixed remuneration say Rs.250 per delivery attended by her.
- (v) There is a need to devise a very credible and effective system of giving incentives to the doctors and the paramedical staff in the form of good accommodation, facilities for their children's education, out of turn promotions etc. to overcome their reluctance to work in the tribal areas.
- (vi) All the villages should be provided with safe drinking water through taps and regular chlorination should be done to prevent communicable diseases
- (vii) Requisite information and awareness regarding the family planning, various communicable diseases and genetic disorders should be provided by documentaries, advertisements, posters and lectures at regular intervals.
- (viii) All the sub-centres should have Government building with residential accommodation for female/male health workers. These should also be provided with the laboratory facilities for urine, albumin and sugar tests, which can easily be carried out by health workers.
- (ix) Local ST girls and boys should be trained and given priority in appointment as multi-purpose male/female health workers.
- (x) At Community Health Centre (CHC) level, all doctors who want to pursue PG courses should be allowed to do so only after serving full tenure in the tribal areas.
- (xi) All CHCs should have operational theatres well equipped with requisite facilities.
- (xii) Arrangements should also be made to provide one ambulance vehicle in each CHC.
- (xiii) The Primary Health Centre and the Community Health Centres should be delegated financial powers to purchase essential medicines in emergency cases.
- (xiv) As most of the tribals live in forests, they are constantly exposed to the risk of being bitten by snakes. It is, therefore, essential that anti-snake-venom is made available at each PHC and to preserve it, arrangements for refrigerator should also be made available at each PHC. Similarly, anti-rabies injection should also be easily available at the Centres to save the victims of dog-bites.
- (xv) On account of superstitious beliefs, ignorance and illiteracy, the tribals do not make use of the campaigns launched by the Government from time to time for polio vaccination of the infants as also of chicken-pox inoculations. There is, therefore, an urgent need to educate the tribals about the vital utilities of the programmes through block and district authorities with the help of the tribal leaders.

Housing

As per the provisional estimates made available by 2001 Census, the housing shortage in the rural areas is about 149 lakhs as compared to 137 lakhs housing shortage as per 1991 Census. Under the Indira Awaas Yojana, during the last three years, on an average, about 14-15 lakhs houses are being constructed every year whereas the annual requirement is about 30 lakhs house per annum as per the 2001 Census. In addition to this, it is estimated that about 10 lakhs shelterless households are being added every year. Thus, against the total requirement of about 40 lakhs houses, only 14-15 lakhs houses are being constructed leaving a gap of about 25 lakhs houses every year in the rural areas.

The Ministry of Rural Development is implementing Indira Awaas Yojana (IAY) with a view to providing financial assistance for shelter to the rural poor living below the poverty line (BPL). This scheme is being implemented since 1985-86 at national level with the objective of providing dwelling units free of costs to the below poverty line families living in rural areas mainly belonging to Scheduled Castes and Scheduled Tribes and freed bonded labourers. The number of dwelling units constructed during 2002-03, 2003-04 and 2004-05, the number of Scheduled Tribes benefited and their % age to the total under this scheme is as under:

Year	Total number of dwelling units constructed	No. of Scheduled Tribes benefited	% age
2002-03	1,548,308	195,032	12.60%
2003-04	1,361,334	255,014	18.73%
2004-05	1,516,187	276,998	18.27%

This is a 100% subsidized centrally sponsored programme with the resources being shared between the Central Government and the respective State Govt. in the ratio of 75:25. The funds allotted to States/UTs under the scheme are distributed to the districts in proportion to the SC/ST population of the district to the total SC/ST population of the States and housing shortage. The ceiling on construction assistance under the IAY has been enhanced with effect from 1.4.2004 from Rs. 20,000 to Rs.25,000 per unit for the plain areas and from Rs.22,000 to Rs.27,500 for the hilly/difficult areas. The fund ceiling on upgradation of unserviceable kutcha house to pucca/semi-pucca house has also been enhanced from Rs.10,000 to Rs..12,500 for all areas from the same date i.e. 1 April, 2004. As the need for upgradation of unserviceable kutcha houses in the rural areas is acutely felt, with effect from 1.4.2004, upto 20% of total funds can be utilized for conversion of unserviceable kutcha houses into pucca/semi-pucca houses and for providing subsidy to the beneficiary availing loan under the credit-cum subsidy scheme of rural housing. Further, in order to provide social security to women, the dwelling units are required to be invariably allotted in the name of a female member of the beneficiary household. Alternatively, it can be allotted in the name of both husband and wife.

Indira Awaas Yojana is being implemented through District Rural Development Agencies (DRDAs) (specially set up in each district of the country for implementation of the rural development programmes) or through Zila Parishads (ZP). On the basis of allocations made and targets fixed, the District Rural Development Agencies/Zila Parishads decide Panchayat-wise number of houses to be constructed under IAY and intimate the same to the concerned Gram Panchayat. Thereafter, the Gram Sabha selects the beneficiary, restricting its number to the target allotted, from the list of eligible household. No approval of other authorities is required. However, the Panchayat Samities/Zila Parishads/DRDAs are provided with a list of selected beneficiaries for their information. At the field level, the block development machinery has been entrusted with the responsibility for implementing the programme at village level. Construction of sanitary latrines and the fuel efficient chulahs form integral part of houses constructed under IAY.

In addition to the assistance provided under the IAY, loan for construction of IAY houses or for upgradation of unserviceable kutcha houses can also be obtained from the Banks/other financial institutions if the concerned State Governments/DRDAs take the responsibility to coordinate with the financial institutions to make available the credit facilities to the interested beneficiaries. Further, to meet the housing requirement of economically weaker sections in rural areas and to improve the outreach of housing finance in rural areas, equity support to HUDCO is being provided. During the first two years of the Tenth Five Year Plan, the equity support to HUDCO by the Ministry of Rural Development was as under:-

Year	Equity Support to HUDCO (Rs. in crores)
2002-2003	50.00
2003-2004	10.00
2004-2005	5.00

From the year 1993-94, the scope of the Scheme (i.e. IAY) was extended to cover the non-SC and non-ST rural BPL poor subject to the condition that the benefits to non-SC/ST would not be more than 40% of the total IAY allocation. The benefits of the Scheme have also been extended to the families of EX-servicemen of the armed and paramilitary forces killed in action. 3% of the houses are reserved for the rural Below the Poverty Line (BPL) physically and mentally challenged persons.

Under the Credit-Cum-Subsidy Scheme, rural families having annual income upto Rs.32,000/- are provided subsidy upto Rs.10,000/- and a maximum loan of Rs.40,000/-. The DRDAs are responsible for making arrangements for loan for the beneficiaries from commercial banks/Regional Rural Banks, housing finance institutions etc. From the year 2002-2003, the Central allocation under the IAY and CCSS has been combined. The 80% of the total funds are allocated for new construction and the remaining 20% funds are allocated for upgradation of existing kutcha houses under this Scheme.

A National Mission for Rural Housing and Habitat has been set up by the Ministry of Rural Development to facilitate the induction of science and technology inputs, on a continuous basis, in the sector and to provide convergence to technology, habitat and energy-related issues in order to provide affordable shelter for all in the rural areas, within a specified time-frame, and through community participation. Towards this end, an Executive Council under the Chairmanship of the Minister of Rural Development and an Empowered Committee under the Chairmanship of Secretary (Rural Development) has been constituted. A Working Group has also been constituted by the Empowered Committee to specify the aims and objectives of the Mission, firm up specific time framework to achieve these aims and objectives, formulate a road map to facilitate the entry of private capital in Housing development in the rural areas, shortlist the agencies which could undertake the task of preparing a techno-legal regime for rural planning.

The State-wise financial, and physical performance under Indira Awaas Yojana for the year 2003-2004 as on 24 May, 2004 with specific reference to Scheduled Tribes are given in the Statements at **Annex.3.XII & 3.XIII** respectively. It is seen that out of total allocation of Rs.2492.75 crores, an amount of Rs. 2925.48 crores (including the Opening Balance) was released to the various States and UTs under the scheme out of which an amount of Rs.2220.88 crores was actually spent. The overall percentage of utilization of the released amount was 75.92%. It is further seen that the out of the total released amount including the Opening Balance of Rs.2925.48 crores released during 2003-2004, an amount of Rs.400.29 crores was spent under the scheme on construction/upgradation of houses for members of Scheduled Tribes which constitutes about 13.67% of the total expenditure. It is observed that in Gujarat, West Bengal and Goa, the utilization of available resources was

between 50% and 60%. The utilization was not very satisfactory (i.e. less than 80%) in the States of Assam, Himachal Pradesh, Jharkhand, Karnataka, Orissa and Pondicherry. The utilization was far from satisfactory (i.e. less than 50%) in the States of Manipur, Nagaland, A & N Islands, Dadra & Nagar Haveli and Daman & Diu. As regards physical achievements i.e. number of houses completed during the year 2003-2004 it will be seen from the figures given in Annex.3.XIV that against the annual target of 14,84,554 for the year 2003-2004, the total number of houses completed was 11,78,201 out of which 2,12,860 houses were for the members of Scheduled Tribes which constitutes 18.06% of the total houses constructed during 2003-2004.

About 121 lakh houses have been constructed under IAY since inception of the scheme with an expenditure of Rs.21, 419.64 crores during the year 2004-2005 (upto 31 December, 2004). Against the allocation of Rs.2,900 crore, an amount of Rs.2,422.86 crore was spent during the 2004-2005. A target of 17.76 lakhs houses was fixed for the year 2004-2005. The small schemes under Rural Housing namely Innovative Stream for Rural Housing & Habitat Development, Samagra Awaas Yojana and Rural Building Centres (RBCs) have been discontinued and merged with the main scheme i.e. Indira Awaas Yojana with effect from 1.4.2004.

The Commission recommends that-

- (i) To give better access to the allocations under IAY, there is a need to create a separate component for Scheduled Tribes (as also for Scheduled Castes) to meet their housing requirements.**
- (ii) Utilization of funds under this Scheme has not been fully satisfactory in many of the States. This needs to be improved. Ministry of Rural Development may advise those States to devise effective ways and means for better utilization of the resources under the scheme.**
- (iii) The amount of construction assistance per dwelling unit may be enhanced from Rs.25,000/- to Rs.27,500/- per unit for plain areas and from Rs.30,000/- to Rs.32,500/- for hilly/difficult areas with effect from 1 April, 2006 to offset the effect of escalation in the cost of construction materials during the last two years.**

Public Distribution System (PDS)

The Public Distribution System (PDS) in the country facilitates the supply of food grains to the poor at subsidized price. It is one of the most important initiatives of the Government of India to ensure food security to the poor people. This programme was started initially in the 60s to maintain buffer stocks of the food grains to meet the demand in the lean period of production. Till recently this scheme was available to all consumers without any target groups. The PDS, in its original form, was widely criticized for its failure to serve the below poverty line population, its urban bias, negligible coverage in the States with the highest concentration of the rural poor and lack of transparent and accountable arrangements for delivery. The increases in the minimum support prices effected over the years led to corresponding increase in the consumer prices in the PDS which adversely affected economic access of the poor to the PDS food grains. It was observed that in a system with access to all i.e. rich and poor alike, PDS subsidies reached the rich while the poor had to be satisfied with an inadequate quantity of the food grains. Realizing these deficiencies, the Government streamlines the system by issuing special cards to BPL families and selling food grains under PDS to them at specially subsidized prices with effect from 1 June, 1997.

Under this Targeted Public Distribution System (TPDS) each poor family was entitled to 10 kg. of food grains per month at specially subsidized prices on the basis of the number of families living below the poverty line. The non-BPL families were entitled to food grains on the same pattern as in the existing PDS. The TPDS was expected to benefit about 60 million poor people. The identification of the poor is done by the States. The emphasis was on including only the really poor and vulnerable sections of society in the rural areas and slum dwellers and daily wagers in the informal sector (porters, rickshaw pullers and handcart pullers etc.) in the urban areas. From 1 April, 2000, the Government increased the quantum of food grains to BPL families from 10 kg. to 20 kg. per family per month at 50% of economic cost. The quantum of food grains for above poverty line was retained at the same level as June, 1997 but the Central Issue Prices (CIP) was fixed at 100% of economic cost from that date so that entire consumer subsidy could be directed towards the BPL population.

The number of BPL families increased with effect from 1 December, 2000 because the base was shifted from the population projections of 1995 to the population projections of the Registrar General of India as on 1 March, 2000. The change has resulted in increasing the number of BPL families to 65.2 million as against 59.6 million estimated when the TPDS was introduced. The allocation of food grains for the BPL category has thus increased to 147 lakh tons per annum.

In order to reduce the excess food grains stock with the FCI, the Government took the following measures under the TPDS from 12 July, 2001:-

- (i) The BPL allocation of food grains was increased from 20 kg. to 25 kg. per family per month. At Rs.4.15 per kg. for wheat and Rs.5.65 per kg. for rice, the CIP for BPL families is 48% of the economic cost.
- (ii) It was decided to allocate food grains to APL families at the discounted rate of 70% of the economic cost. The CIP of wheat was reduced from Rs.830 per quintal to Rs.610 per quintal and CIP of rice was reduced from Rs.1,130 per quintal to Rs.830 per quintal. In addition, 25 kg. of food grains was to be provided to the poorest of the poor families under the Antyodaya Anna Yojana at a highly subsidized rate of Rs.2 per kg. for wheat and Rs.3 per kg. for the rice.

Cumulatively, the off take under TPDS between April and June 2002 has been 23.54 lakh tons for rice and 16.09 lakh tons for wheat against 18.46 lakh tons and 9.87 lakh tons respectively for the corresponding period in 2001. Thus, there is a clear indication that off take under TPDS has improved at the national level. However, the situation is not uniform across states and there are certain States where conditions need to be improved. For instance, between April 2001 and March 2002, total off take of rice in Bihar was only 13.8 per cent of total allocation and in the case of wheat this was only 27.9 per cent.

It has been observed that a large number of ration cards are not genuine and a large quantity of supplies meant for Public Distribution System (PDS) particularly, in respect of kerosene oil land up in black market. As long as these loopholes persist, the rural poor particularly STs, will continue to suffer. **The Commission, therefore, is of the view that there is a need to devise effective ways and means to prevent black marketing of the PDS items of food grains to ensure adequate supply to the poor families.**

Drinking Water Supply

One of the vital requirements for human resource development is an equitable access to the basic civic services to all sections of society, particularly to members of Scheduled Tribes who

generally live in forests or isolated habitations. The Minimum Needs Programme (MNP) was launched during the Fifth Five Year Plan with the objective of providing basic services to all the sections of people. Initially, the programme had eight components- (i) Elementary Education, (ii) Rural Health, (iii) Rural Water Supply, (iv) Rural Electrification, (v) Rural Roads, (vi) Rural Housing, (vii) Environment Improvement of Urban Slums, and (viii) Nutrition. Later, the programme was widened with the inclusion of Adult Education, Rural Domestic Energy, Rural Sanitation and Public Distribution System. In this para we shall look at the progress made in meeting the basic need of providing safe drinking water to the rural poor with particular reference to Scheduled Tribes.

Drinking Water Supply is a State subject, and the States and the Union Territories have been taking up projects and schemes for the provision of safe drinking water from their own resources. The Govt. of India supplements efforts made by the States by providing financial assistance to the State Govts. under the Centrally Sponsored Scheme namely, 'Accelerated Rural Water Supply Programme' (ARWSP). Under this programme, 100% grants-in-aid is given to the States and Union Territories for implementing drinking water supply schemes in villages. The coverage norms of the scheme include (i) One Hand Pump or standpost for every 250 persons; and (ii) Availability of water source in the habitation or within 1.6 km. in the plains and 100 metres elevation in hilly areas.

ARWSP guidelines provide, inter-alia, that the States/UTs have to earmark a minimum of 10 per cent for Scheduled Tribes for taking up schemes exclusively for them. Diversion of funds to other sectors is not permitted. As per these guidelines, the first source of drinking water has to be provided in SC/ST localities and at the time of the implementation of the schemes, coverage of SC/ST habitations has to be given first preference and the highest priority so as to ensure that they have easy access to water supply facilities. This earmarking in the scheme has been built in to ensure a maximum coverage of SC/ST habitations.

The Xth Plan accords the highest priority to providing the "Not Covered" (NC) habitations with sustainable and stipulated supply of drinking water. It is envisaged to cover all the rural habitations including those, which might have been slipped back to NC/PC category by the end of Xth Plan. The Tenth Plan emphasizes the participatory approach where PRIs should be the key institutions for convergence of drinking water supply programmes at the ground level. Considerable success has been achieved in meeting drinking water needs of the rural population and 95.34% rural habitations are Fully Covered with stipulated level drinking water facilities. The Partially Covered habitations are 4.28%. The Not Covered habitations are about 0.38%. As per the latest report received from the States/UTs, the coverage status as on 1.11.2004 based on comprehensive Action Plan, 1999 and coverage reported by States/UTs thereafter is as under:-

Type of coverage	No. of habitations	Percentage of total
Not covered (NC)	5368	0.38
Partially Covered (PC)	60884	4.28
Fully Covered (FC)	1356031	95.34
Uninhabited/migrated	381	
Total	1422664	

A Table showing State-wise coverage of habitations regarding the position of rural water supply as on 1.11.2004 is given at **Annex.3.XIV**

The strategy to achieve the Tenth Plan objectives can be briefly summarized as:-

- (i) Accelerating coverage of the remaining Not Covered and Partially Covered habitations, including those slipped back from Fully Covered to Partially and Not Covered categories, with safe drinking water systems.
- (ii) To tackle problems of water quality in affected habitations and to institutionalize water quality monitoring and surveillance systems.
- (iii) To promote sustainability, both of systems and sources, to ensure continued supply of safe drinking water in covered habitations.

Despite respectable coverage in terms of access to drinking water, proper upkeep of water supply schemes has been a problem. Many factors like sources going dry, increase in quality problems, systems becoming defunct due to poor maintenance, demand from other competing sectors like agriculture, industry, etc. pose threat to sustainability of drinking water supply schemes. Putting in place an effective operation and maintenance system calls for huge investments. The total estimated cost of Operation and Maintenance of the water supply networks created so far is estimated at Rs.6750 crore per annum, whereas the total funds being utilized for Operation and Maintenance (O & M) purposes under ARWSP are approx. Rs.450 crore only. As such, as a part of the strategy to ensure sustainability of systems, reforms were introduced in 1999 with approval of the Cabinet which meant a paradigm shift from supply driven, norms based, centralized form of funding to one based on the principles of demand responsiveness, community leadership and decentralized mode of management.

Initially, the reforms were introduced in 67 pilot districts as Sector Reform Projects. Based on the experience gained, the reforms initiative was scaled up through out the country with the launching of **Swajaldhara** by the Prime Minister in December, 2002. All the States across the country are implementing Swajaldhara schemes now. Under the Sector Reform and Swajaldhara, the individual water supply schemes are planned, designed, implemented, operated and maintained by the community through the village level committees. The community bears at least 10% of the capital cost and, after completion of the schemes, entire O & M responsibility is that of the community. Up to 90% of the capital cost is borne by the Government of India. A major thrust of the reforms initiative in the rural water supply sector is on empowerment of Panchayati Raj system, for not only operating and maintaining drinking water schemes but also managing the entire rural water supply sector.

As per the guidelines issued in June 2003, Swajaldhara will have two Dharas. First Dhara (Swajaldhara-I) will be for a Gram Panchayat (GP) or a group of GPs or an intermediate Panchayat (at block/Tehsil level) and the second dhara (Swajaldhara-II) will have a District as the project area. Funds under Swajaldhara are now allocated to the States/UTs and the allocated amount is intimated to the States/UTs. The States/UTs make district wise allocation and furnish the details to the Department of Drinking Water Supply. State-wise allocation and releases under Swajaldhara for the year 2004-2005 may be seen at **Annex.3.XV**.

The Hon'ble Prime Minister in his Independence Day Address (15.8.2002) announced three programmes viz. Installation of one lakh Hand Pumps, providing drinking water facilities to one lakh Primary Schools and revival of one lakh traditional source of Water. The guidelines for implementation of the programmes have since been prepared and circulated to all the States. The programmes were to be completed in two years i.e. 2003-2004 and 2004-2005. The total cost involved was Rs.800 crores out of which Rs.80.00 crore (10%) was to be the community contribution. **The Commission recommends that the Department of Drinking Water Supply may furnish the details of the progress in regard to the implementation of these programmes in their Annual Report 2005-2006 with specific reference to the areas covered by tribal population.**

The Commission further recommends that the Department of Drinking Water Supply may undertake a survey of water supply facilities available in rural habitations in respect of Scheduled Area States and other States where tribal population is in large numbers, with reference to the 2001 Census figures in the following format:-

Sl. No.	State/UT	Rural Population as per 2001 Census		Total ST habitations covered up to 2004-05	% age coverage of ST population upto 2004-05
		Total	General		

Rural Electrification

The rural electrification programme is one of the important components in rural development and as important as rural drinking water supply, health, nutrition, primary education, shelter and rural connectivity. The availability of power in rural areas will lead to economic development and its attendant spin-off benefits like food security, better health, literacy, etc. With this in view, the Government has been focusing on village electrification since the beginning of the planning process. While this has resulted in the electrification of around 86 per cent of the country's villages, the use of electricity in villages for productive and subsistence needs is still very limited. About 70 per cent of the rural households are yet to get electric connections and, therefore, power-based economic activities in the electrified villages are minimal. The actual benefits of the investments made in the rural electrification programme can only be realized if the people are in a position to use electricity for their day-to-day activities as well as for industrial and commercial activity. Therefore, the second phase of the rural electrification programme, apart from seeking 100 per cent electrification, must also ensure more widespread use of electricity by the rural people in a time-bound manner. The existing definition of an electrified village is not in order as it does not meet the requirements of the rural people. The existing definition states that 'A village will be deemed to be electrified if electricity used in the inhabited locality within the revenue boundary of the village for any purpose whatsoever.' **The Commission is of the view that this definition needs to be changed so as to declare a village as electrified only if a minimum number of households, say 50%, in that village are provided with electricity connections.**

Around 80,000 villages in the country are yet to be electrified even on the basis of the current definition of village electrification. Thirteen States have declared 100 per cent electrification of their villages. The villages yet to be electrified are mostly in Assam, Arunachal Pradesh, Bihar, Jharkhand, Madhya Pradesh, Meghalaya, Orissa, Rajasthan, Uttar Pradesh, Uttaranchal and West Bengal. Of these 80,000 villages, it may be feasible to electrify only around 62,000 through the conventional grid expansion. The balance 18,000 villages are located in remote areas, hilly terrains, islands, deserts etc. and are also thinly populated. Such villages can be electrified more economically through decentralized and non-conventional energy sources like solar, wind, small hydro and biomass.

Several schemes are being implemented by the Govt. of India (Ministry of Power) for electrification of households of rural poor families below the poverty line including adivasi families. The details of these schemes are given in the succeeding paragraphs.

Kutir Jyoti Programme

This programme was launched in 1988-89 for extending single point light connections to households of rural poor families below the poverty line including adivasi families. This programme was merged into programme for 'Accelerated Electrification of One lakh villages and One crore households in May, 2004'. Under this programme, one time cost of internal wiring and service connection charges were provided by way of 100% grants to the States. The norms for grant per connection was changed from time to time as following:-

1988-90	Rs.180
1992-94	Rs.400
1996-1998	Rs.800 for un-metered connections and Rs.1000 for metered connections

March 2002 Rs.1500
 Rs.1800 for special category States which include Jammu and Kashmir, Himachal Pradesh, Uttaranchal, Sikkim and North-Eastern States.

Accelerated Rural Electrification Programme (AREP)-

This scheme was introduced in the year 2003-04 under which interest subsidy of 4% is to be provided on loans availed by State Governments/Power Utilities from Financial Institutions like Rural Electrification Corporation (REC), Power Finance Corporation (PFC), Rural Infrastructure Development Fund (RIDF), National Agricultural Bank and Rural Development (NABARD) etc. for carrying out rural electrification programme. The assistance is limited to electrification of un-electrified villages, electrification of hamlets/dalit bastis/tribal villages and electrification of households in villages through both conventional and non-conventional sources of energy.

Accelerated Electrification of One lakh villages and One crore households-

This scheme was launched in February, 2004 by merging the interest subsidy Scheme-AREP (Accelerated Rural Electrification Programme) and Kutir Jyoti Programme. Under this scheme, there is a provision for providing 40% grant from Govt. of India for rural electrification projects and the balance through loan assistance on soft terms from REC.

Rajiv Gandhi Grameen Vidyutikaran Yojana (RGGVY)

This scheme, which was introduced in April, 2005, inter-alia, provides for free connection to BPL families including SC/ST and weaker sections of society. The scheme aims at electrifying all the villages and habitations and providing access to electricity to all households over a period of four years. Rural Electrification Corporation (REC) is the nodal agency for implementing this scheme. Till now, REC has received 417 proposals from 24 States, covering un-electrified as well as electrified villages (where rural households are un-electrified). Out of these, 191 projects have been approved. The total projects in operation under this scheme, as on date (i.e. by the end of January,2006), are 186 which cover States of Andhra Pradesh, Bihar, Rajasthan, Uttar Pradesh, Uttaranchal and West Bengal. 191 projects cover 69.29 lakh rural households, out of which 45.15 lakh are BPL households including SC/ST and weaker sections of society. The detailed break up of BPL Households being covered under the projects sanctioned is given in the statement at **Annex.3.XVI**. The target is to electrify around 7.8 crore rural households. The target is to electrify around 7.8 crore rural households. More BPL households will be covered, once the proposals, which are under examination, or those which will be received or sanctioned.

Rural Sanitation

The Central Rural Sanitation Programme (CRSP) was launched in 1986 with the objective of improving the quality of life of rural people and to provide privacy and dignity to the women. The programme provided 100% subsidy for construction of sanitary latrines for Scheduled Castes, Scheduled Tribes and landless labourers and subsidy as per the prevailing rates in the States for the general public. The guidelines stipulated that a minimum of 20% of the total funds should be earmarked for providing subsidy to individual households from SCs and STs below poverty line. Where the SC/ST population below poverty line was more than 20% of the total population, earmarking should be enhanced at least to match the percentage SC/ST population. The programme was supply-driven, highly subsidized and gave emphasis for a single construction model. Based on the feed back from various

agencies, the programme was revised in March, 1991 to make some changes in the subsidy pattern and also to include village sanitation as one of the component. It was again revised in September, 1992 with a view to adopt an integrated approach for rural sanitation. Since its inception and upto the end of Ninth Plan, 94.5% lakh latrines were constructed for rural households under this scheme as well as corresponding State MNP. The total investment made has been Rs.61 crore under CRSP and Rs.1045 crore under the state sector MNP. This has led to only a marginal increase (only 1%) in the rural sanitation coverage. The CRSP was restructured in 1999 and was replaced by the Total Sanitation Campaign (TSC). The restructured scheme i.e. TSC moves away from the principle of State-wise allocation primarily based on poverty criterion to a "demand-driven approach". It also gives emphasis on school sanitation and hygiene education for changing the behaviour of the people from younger age itself. This programme is being implemented in 451 districts of the country. The project outlay for 451 TSC projects sanctioned so far is Rs.4413.19 crore. The central, state and beneficiary contribution are Rs. 2620.89 crore, Rs. 979.90 crore and Rs.812.40 crore respectively. During the year 2004-05, 50 projects were sanctioned.

Rural Self-employment of STs

As majority of tribals live in abject poverty, the Ministry of Rural Development plays a vital role in raising their status above the poverty line through implementation of various poverty alleviation programmes and providing them with financial and other support for taking up self-employment and income-generation activities. In addition to the poverty-alleviation programmes, this Ministry also provides basic amenities like housing, drinking water, etc. Under the Integrated programme of Swarnajayanti Gram Swarozgar Yojana (SGSY), 50 per cent of benefits were earmarked for STs along with SCs. Under SGSY, 7.49 lakh ST swarozgaris, accounting for 13.2 per cent of the total number of swarozgaris, were benefited during the Ninth Plan.

Under the Jawahar Gram Samridhhi Yojana (JGSY), which provides wage employment, 22.5 per cent of Plan allocations were earmarked for STs/SCs. During the Ninth Plan, 220 million man-days were provided for STs accounting for 15.9 per cent of total employment under this scheme. Under the Employment Assurance Scheme (EAS), which is open to all rural poor including STs, 308 million man-days were provided for STs, accounting for 20.8 per cent of the total employment under this scheme during the Ninth Plan. The two schemes of JGSY and EAS were brought under the purview of the mega scheme of Sampoorna Grameen Rozgar Yojana (SGRY) in September 2001. The SGRY focuses on generation of wage employment, creation of durable rural assets and infrastructure and provision of food security to the rural poor including STs.

Other Welfare Schemes for rural Scheduled Tribes

Under the National Old Age Pension Scheme, 2.4 million STs were covered during the Ninth Plan, accounting for 7.4 per cent of the total beneficiaries. Similarly, while 1 lakh ST families were benefited under the National Family Benefit Scheme accounting for 10.2 per cent, 4 lakh ST women were benefited under the National Maternity Benefit Scheme (NMBS) accounting for 7.4 per cent of the total beneficiaries during the Ninth Plan (NMBS now stands transferred to the Department of Family Welfare with effect from 2001-2002).

Grants-in-Aid to State Tribal Development Cooperative Corporations (STDCCs) and other such organizations

The Ministry of Tribal Affairs implements a scheme "Grant-in-aid to State Tribal Cooperative Corporations (TDCCs), Forests Development Corporations (FDCs), Minor Forests Produce (Trading & Development) Federations (MFPTDFs) for Minor Forests Produce Operations" since

the year 1992-93 under this scheme 100% grant-in-aid for taking up the collection of MFP, on non-Tribal Forests Produce (NTFP). The objectives of this scheme include (i) increasing the quantum of MFP collection, (ii) strengthening their share capital and, (ii) establishing processing industries for value addition to MFPs for the tribals. The scheme covers all the States where MFP collections are being carried out by TDCCs, FDCs, MFPTDFCs are such similar bodies. The grants-in-aid under the scheme are provided against their proposals that meet the criteria prescribed by the Ministry of Tribal Affairs.

The allocation under the scheme for the tenth plan has been fixed at Rs.78.31 crores, which represents a considerable enhancement over to earlier plan allocations. The allocation under the scheme for the 2004-05 was Rs.8.00 crores. During the year 2004-05, the entire allocated amount of Rs.8.00 crores was disbursed to TDCCs/FDCs/MFTDFs working in the States of Andhra Pradesh, Chhattisgarh and Madhya Pradesh.

Shri Buduru Srinivasulu, Member, National Commission for Scheduled Tribes had a review meeting with the Girijan Cooperative Corporation in the State of Andhra Pradesh at Vishakhapatnam on 12 August, 2005, established in the year 1956 for socio-economic upliftment of tribals in the State and, which serves around 4.2 million tribals as against a total tribal population of 5.3 million in the State. Based on the report furnished by the Hon'ble Member, this Commission makes the following recommendations for strengthening the functioning of the State Tribal Development Cooperative Corporations:

- (i) To ensure food security to tribals, the Girijan Cooperative Corporation (GCC) has submitted a proposal to the Ministry of Tribal Affairs, Govt. of India for minimum Support Price mechanism for Minor Forest Produce to the tribals on par with agricultural farmers with a view to enable it to pay better prices to tribals even during adverse market conditions. The Ministry of Tribal Affairs may consider the proposal favourably with respect to GCC in particular and other TDCCs.
- (ii) Minor Forest Produce is the only source of income to many tribals and they depend on this activity for their sustenance. However, procurement of MFP is not a continuous activity since the period from July to October is a lean period during which only meagre MFP can be harvested. **The Commission recommends that one of the thrust areas to get some employment for the tribals in the lean period could be value addition to MFP by establishing insitu Processing Centres for conversion of MFP into process products in all the divisional areas wherever MFP for conversion is freely available.**
- (iii) DR supply points may be set up at more number of places, at least, within a radius of 526 kms. from the important tribal habitats. The Commission has observed that the DR depots are not adequately equipped. Some of the depot buildings are in thatched sheds without electrification. There is need to strengthen these depots in phased manner by taking up construction of pucca buildings.

Scheme of Assistance to State Scheduled Tribes Finance and Development Corporations (STFDCs)

The scheme of assistance to the State Scheduled Castes and Scheduled Tribes Finance and Development Corporations was introduced in the year 1978-79 as a centrally sponsored scheme. These Corporations were catering to the needs of both Scheduled Castes and Scheduled Tribes, however, with the formation of the Ministry of Tribal Affairs in October, 1999, the scheme has been bifurcated from the Ministry of Social Justice & Empowerment

from April, 2000. At present Scheduled Tribes Finance and Development Corporations are functioning in States and UTs with a sizeable Scheduled Tribe population.

These Corporations act as guarantors and promoters for providing margin money loans and subsidy to the target groups. They play a useful role in the mobilization of finances for economic development of Scheduled Tribes living below the poverty line. The State Corporations mainly take up employment- oriented schemes in the areas of (i) Agriculture and allied sector (ii) Minor irrigation (iii) Trades and Services (iv) Transport and (v) Self Employment schemes. The Ministry of Tribal Affairs provides financial assistance to the State Corporations as 49% share capital investment, the remaining 51% being borne by the State Governments.

A person belonging to a scheduled tribe upto double the poverty line is eligible to get assistance under the scheme. The allocation made and the expenditure incurred under this scheme during the year 2002-03, 2003-04 and 2004-05 are as under:-

(Rs. In lakhs)

Sl.No.	Year	Allocation	Expenditure Incurred
1.	2002-2003	2000.00	2020.00
2.	2003-3004	379.00	379.00
3.	2004-2005	450.00	475.00

National Scheduled Tribes Finance and Development Corporation (NSTFDC)

The National Scheduled Tribes Finance and Development Corporation (NSTFDC) was set up in April, 2001 as a governmental company under Section 25 of the Companies Act, 1956 (A company not for profit) following the decision of the government to bifurcate the erstwhile National Scheduled Castes and Scheduled Tribes Finance and Development Corporation (NSFDC). It is a fully Government of India owned Undertaking under the Ministry of Tribal Affairs and is an apex organization for providing assistance for schemes / projects for economic development of Scheduled Tribes. It is located at Indira Gandhi Indoor Stadium, Indraprastha State, New Delhi – 110002. It has the following five Zonal Offices:

1. National Scheduled Tribes Finance and Development Corporation, 103/79, Meera Marg, Mansarovar, Jaipur-302020
2. National Scheduled Tribes Finance and Development Corporation
RCC Building
Ist Floor (Near Bridge) Hengrabari Road, Dispur
3. National Scheduled Tribes Finance and Development Corporation, 4th Floor, Telugu Samkshema Bhavan, Masab Tank, Hyderabad-500028
4. National Scheduled Tribes Finance and Development Corporation,
2nd Floor, Rajiv Gandhi Bhavan Parisar II, 35, Shyamala Hills, Bhopal
5. National Scheduled Tribes Finance and Development Corporation,
Plot No.396, Ist Floor, Garage Chhak, Rajarani Nagar, Old Town, Bhubaneswar

The broad objectives of NSTFDC include (i) identification of economic activities of importance to the Scheduled Tribes so as to generate employment and raise their level of income, (ii) upgradation of skills and processes used by the Scheduled Tribes through providing both institutional and on-the-job training, and (iii) to provide financial support for meeting the working capital requirement of the Central/ State Government owned agencies and National Level Federations such as TRIFED, for undertaking procurement and/or marketing of minor forest produce / agricultural produces collected/grown by the Scheduled Tribes and / or related products/services.

The Corporation finances viable income generating schemes / projects through State Channelising Agencies (SCAs) for economic development of Scheduled Tribes and grants (through SCAs) for undertaking training programmes for their skill and entrepreneurial development. As per the eligibility criteria, the annual family income of the beneficiary should not exceed double the poverty line income limit (presently Rs. 39,500 per annum for the rural areas and Rs. 54,500 per annum for the urban areas). A list of State Channelising Agencies (SCAs) of NSTFDC is given in **Annex.3.XVII**

The Corporation provides the following loans for financing programmes for economic development of Scheduled Tribes:-

(i) **Term Loan :** This loan is for schemes / projects upto Rs. 10 lakhs per unit / profit centre and covers 90% of the cost subject to the condition that SCAs contribute their share of assistance as per the scheme and provide the required subsidy. The entire working capital requirement per unit / profit centre costing upto Rs. 1 lakh is treated as a part of the project cost. For unit / profit centre costing above Rs. 1 lakh, working capital requirement upto 30% of the cost of the schemes/projects, subject to a maximum of Rs. 3.00 lakhs is considered as the cost of the project. Promoter's contribution is not insisted upon the scheme / project costing upto Rs. 1 lakh. Only 2% of the promoter's contribution (as percentage of the cost of project) is required for schemes costing above Rs. 1.00 lakh, and upto Rs. 2.5 lakhs, 3% for schemes costing above Rs. 2.50 lakhs and upto Rs. 5.00 lakhs, and 5% for schemes costing above Rs. 5.00 lakhs. The rates of interest for this loan is 3% and 5% from SCAs upto Rs. 5.00 lakhs and above Rs. 5.00 lakhs respectively, and 6% and 8% respectively from the beneficiary / beneficiaries. The loan is to be repaid in quarterly / half-yearly instalments, as the case may be, within a maximum period of 10 years including suitable moratorium period.

(ii) **Bridge Loan:** Bridge Loan is provided through SCAs to meet the gap in fund requirement of the schemes / projects against subsidy and capital incentives etc available to them. The rates of interest are the same as for the Term Loans.

(iii) **Adivasi Mahila Sashaktikaran Yojana:** This is an exclusive highly concessional scheme for the economic development of Scheduled Tribes women beneficiaries. There is no ceiling on the allocation of funds for this scheme within the overall notional allocation of funds for each year made by NSTFDC. Under this Scheme, NSTFDC provides Term Loan upto 90% of the cost of the schemes/projects upto a maximum of Rs. 50,000 per unit / profit centre subject to the condition that the SCAs contribute their share of assistance as per this scheme and provide the required subsidy. The rates of interest are 2% per annum from the SCAs. The SCAs may charge maximum interest at the rate of 4% per annum from the ultimate women beneficiaries. The loan is to be repaid in quarterly / half-yearly instalments within a maximum period of 10 years including suitable moratorium period.

(iv) **Working Capital Assistance :** It is provided as financial support for meeting the working capital requirement of the Central / State Governments owned agencies and national level federations such as Tribal Cooperative Marketing Development Federation of India Ltd. (TRIFED), for undertaking procurement and / or marketing of minor forest produces/agricultural produces collected/grown by the Scheduled Tribes and/or related products/services. Financial assistance is routed through the SCAs . NSTFDC charges interest @ 4% per annum from SCAs and , SCAs, in turn, may charge interest upto 7% per annum from the implementing agencies/ultimate beneficiaries. In case of financial assistance being provided directly to the Central / State / UT owned organizations, the interest is at the rate of 7% per annum. Repayment is required to be made in quarterly / half-yearly instalments within a maximum period of 10 years including suitable moratorium period.

The budgetary allocations and actual sanctions against them made by the Corporation during the years 2001-02, 2002-03 and 2003-04 are as given in the Table below:-

Fin. Year	Budgetary Allocations	Actual Sanctions (NSTFDC's Share (Rs. in crores)		
		Income generating activities	Working (Marketing support)/Cash Credit Assistance	Capital Total
2001-02	60.00	60.25	3.00	63.25
2002-03	80.00	93.98	5.00	98.98
2003-04	100.00	66.15	13.00	79.15
Grand Total	240.00	220.38	21.00	241.38

The year-wise details of the **gross funds disbursed** to the various agencies working for tribal development with reference to the actual sanctions indicated above is as given in the following Table:-

(Rs. in crores)

Fin. Year	Income generating activities	Working (Marketing support)/Cash Assistance	Capital (Marketing Credit)	Total
2001-02	27.51	-		27.51
2002-03	34.16	8.00		42.16
2003-04	22.73	13.00		35.73
Grand Total	84.40	21.00		105.40

On the request of the National Commission for Scheduled Tribes, the NSTFDC made a presentation before the Members and the officers of this Commission on 4 February, 2005 to apprise them of the various schemes being implemented by the Corporation. During interactions with the officers of the Corporation, the Commission suggested that the NSTFDC should consider providing concession to the ST victims of atrocities in sanctioning of loans by providing relaxed eligibility criteria. The Commission felt that this would help the ST victims of the atrocities and their families to rehabilitate themselves. **Based on the recommendations made by the Commission, the NSTFDC have advised all the SCAs on 18 March, 2005 to give priority under NSTFDC- assisted schemes to the victims of atrocities belonging to the Scheduled Tribes.**

The Commission has observed that the members of Scheduled Tribes across the country are not aware of the various schemes being implemented by NSTFDC and,

therefore, they are not in a position to avail of the benefits of these schemes. The Commission, therefore, recommends that NSTFDC may devise suitable ways and means to give adequate publicity in the tribal States about the schemes being implemented by them and also about the procedure to avail of the benefits under those schemes.

Tribal Cooperative Marketing Development Federation of India Ltd. (TRIFED)

The Tribal Cooperative Marketing Development Federation of India Limited known as TRIFED was set up by the Government of India, in the year 1987, as an apex. Level Cooperative Federation with the following broad objectives:

- (i) To organize and plan the growth and development of natural products collected by tribals;
- (ii) To strive to ensure higher earning and larger employment opportunities of the tribal population;
- (iii) To ensure full utilization of natural products by improving their marketability;
- (iv) To boost up the economic and commercial viability of the TDCCs, FDCs and other State level agencies;
- (v) To arrange finances for its activities;
- (vi) To identify items of Minor Forest Produce (MFP) in different States/and promote their marketing.

TRIFED's Head Office is situated at NCUI Building, 2nd Floor, 3 Siri Institutional Area, August Kranti Marg, New Delhi and it operates throughout the country through its network of 11 Branch Offices/Field Offices. It also promotes sale of tribal handicrafts/handlooms and organic foods through Tribes Shop at 9, Mahdeo Road, (Behind Parliament Street, New Delhi) and duty free shop at Indira Gandhi International Airport, New Delhi.

The price of minor forest produce (MFP) and surplus agriculture produce (SAP) are subject to fluctuations. For meeting the unforeseen contingencies of losses because of such fluctuations in the prices and to ensure remunerative prices to the tribal farmers for their produce, the Ministry has been giving financial assistance to TRIFED to set off a part of such losses. In the year 2002-03, TRIFED reoriented its activities and shifted the focus from direct procurement & sales of MFP & AP commodities to its basic mandate of marketing development of tribal products. Under the new role, TRIFED has to basically play the role of a service provider and market developer of tribal products. Under the new role direction, the Management has initiated a series of measures to focus the role of TRIFED towards that of a market developer for tribal products rather than undertaking trading activities of procurement and sales. Towards this end, the Federation has embarked upon the following projects on a limited scale keeping in view the expertise available in terms of skills, human and financial resources:

- (i) Implementation of Babasaheb Ambedkar Hastshilp Vikas Yojana (AHVY).
- (ii) Value addition of Sal/Siali leaves into moulded plates and bowls (Dona Pattals).
- (iii) Demonstration project on cultivation of safed Musli and Amla.
- (iv) Training to tribals of Karnataka State (LAMPS) for producing of AGMARK quality of honey.
- (v) Project for vocational training programme at Jagdalpur (Bastar).
- (vi) Nutrition Project on setting up of training & food processing centres in State of Karnataka, Jharkhand, Maharashtra & Orissa.
- (vii) Mobilization of self help groups across the country and arranging their livelihood Micro-Finance for their social and economic empowerment.

The price of Minor Forest Produce (MFP) and Surplus Agricultural Produce (SAP) are subject to fluctuations. For meeting the unforeseen contingencies of losses because of such fluctuations in the prices and to ensure remunerative prices to the tribal farmers for their produce, the Ministry has been giving financial assistance to the TRIFED to set off part of such losses. The scheme was initially launched during 1990-91 with an allocation of Rs.1.00 crore. The tenth plan outlay of the scheme is Rs.33.58 crores. During the year 2004-05 the entire approved outlay of Rs.6.00 crores has been spent. The year-wise releases made under the scheme, since inception, are given below:-

(Rs. in lakhs)

Year	Allocation	Expenditure
1997-98	50.00	50.00
1998-99	100.00	100.00
1999-2000	500.00	297.00
2000-2001	400.00	4.00
2001-2002	400.00	400.00
2002-03	600.00	595.00
2003-04	600.00	600.00
2004-05	600.00	600.00

Under the existing system, the grants are released directly to the State Tribal Development Cooperative Corporations, and thereafter there is no monitoring by the Ministry of Tribal Affairs on the actual utilization of these grants for ensuring remunerative prices to the tribal farmers for their produce. **The Commission recommends that the Ministry of Tribal Affairs should evolve some monitoring mechanism on utilization of the grants by the various Tribal Development Cooperative Corporations.**

Delimitation of Parliamentary/Assembly Constituencies

In its meeting held on 15 June, 2005 the Commission noted that the Delimitation Commission had undertaken and exercise for delimitation of the Parliamentary and Assembly Constituencies on the basis of 2001 Census. It was also brought to the notice of the Commission through reports published in the print media that certain tribal bodies in the State of Assam had been agitating against the decision of the Delimitation Commission to reduce the number of seats reserved for Scheduled Tribes in the State Assembly. The Commission recalled that a number of tribal communities had been included in the list of Scheduled Tribes in respect of various States (including the State of Assam) vide the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 2002. The 17 States in respect of which new communities were recognized as Scheduled Tribes vide this Act are- Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Goa, Gujarat, Himachal Pradesh, Karnataka, Jharkhand, Kerala, Manipur, Mizoram, Orissa, Sikkim, Tripura, Uttar Pradesh and West Bengal. As decided by the Commission, the matter was taken up with the Delimitation Commission. The Commission was requested to take into consideration the tribal communities which had been included in the list of Scheduled Tribes in the year 2002 and which were shown against non-tribal categories in the Census report 2001.

The Delimitation Commission informed this Commission that they had to delimit the Parliamentary and Assembly Constituencies of the country on the basis of 2001 Census figures as published by the Registrar General and Census Commissioner of India. That Commission further observed that for extending the benefits of reservation to the communities declared as Scheduled Tribes vide SCs & STs Orders (Amendment) Act, 2002 in Parliament and Legislative Assemblies, an enabling provision would be required to be made by the Parliament and that the Delimitation Commission could not on its own take into account any other unpublished figures for the purpose of delimitation. The observations of the Delimitation Commission have been brought to the notice of the Ministry of Tribal Affairs

vide the Commission's letter dated 28 July, 2005. The Ministry has been requested to take necessary action on the advice of the Delimitation Commission for making an enabling provision in the Delimitation Act, 2002 so that the communities included in the ST categories after 2001 Census could also be taken into account for the delimitation of Parliamentary and Assembly Constituencies. The Commission's letter stated that the next Census would be held in the year 2011 and if the delimitation of the Parliamentary and State Assembly constituencies took place only on the basis of figures of obtained from 2001 Census, the communities which have been included in the list of Scheduled Tribes subsequent to 2001 Census would not be counted for the purpose of delimitation for the next 6-7 years in any Parliamentary election, bye-election or State Assembly election etc. and they will continue to be deprived of the benefits of reservation on the basis of their population in the matter of delimitation. **The Commission recommends that the Ministry of Tribal Affairs should initiate action at an early date to draft a suitable bill for introduction in Parliament for making an enabling provision in the Delimitation Act, 2002 for taking into account for the purpose of delimitation of the constituencies with respect to Lok Sabha, State Assemblies and Panchayats such tribal communities which were recognized as Scheduled Tribes after 2001 Census and such other tribes which might be recognized in future subsequent to the submission of Census report by the Registrar General and Census Commissioner of India.**

State-wise number of constituencies reserved for Scheduled Castes and Scheduled Tribes in respect of Lok Sabha and Legislative Assemblies is given in the Statement at **Annex.3.XVIII**. Another Statement showing State-wise number of elected representatives from amongst general category, Scheduled Castes, Scheduled Tribes and women at Gram Panchayat (GP), Intermediate Panchayat (IP) and District/Zila Panchayat (ZP) levels is placed at **Annex.3.XIX**.
