Chapter – III
Constitutional Safe Guards,
Welfare Scheduled Tribes in India
The term Scheduled Tribes first appeared in the Constitution of India. Article 366 (25) defines Scheduled Tribes as such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of this Constitution. Article 342 prescribes the procedure to be followed in the matter of specification of Scheduled Tribes.

Empowered by Clause (1) of Article 342, the President may with respect to any State or Union Territory and where it is a State after consultation with the Governor thereof notify tribes or tribal communities or parts of these as Scheduled Tribes. This confers on the tribe or part of it a Constitutional status invoking the safeguards provided for in the Constitution to these communities in their respective States/UTs.

Clause (2) of the Article empowers the Parliament to pass a law to include in or exclude from the list of Scheduled Tribes, any tribe or tribal community or parts of these. Thus, the first specification of Scheduled Tribes in relation to a particular State/Union Territory is by a notified order of the President, after consultation with the State Governments concerned. These orders can be modified subsequently only through an Act of Parliament. The above article also provides for listing of Scheduled Tribes State/Union Territory wise and not on an all India basis.
The criteria followed for specification of a community as a Scheduled Tribe are.

1. Indications of primitive traits
2. Distinctive Culture
3. Geographical isolation
4. Shyness of contact with the community at large and
5. Backwardness.

This criteria is not spelt out in the Constitution but has become well established. It takes into account the definitions in the 1931 Census, the reports of the first Backward Classes Commission (Karekar, 1955),¹ the Advisory Committee on Revision of SC/ST lists (Lokur Committee, 1965)² and the Joint Committee of Parliament on the Scheduled Caste and Scheduled Tribes Orders (Amendment Bill, 1967)³ (Chanda Committee, 1968).⁴

In exercise of the powers conferred by Clause (1) of Article 342 of the Constitution of India, the President after Consultation with the State Governments concerned had promulgated so far 9 Orders specifying the Scheduled Tribes in relation to the States and Union Territories. Out of these, eight are in operation at present in their original or amended form. One Order, namely the constitution (Goa, Daman and Diu) Scheduled Tribes order 1968 has become defunct on account of the reorganization of Goa, Daman and Diu in 1987. Under the Goa, Daman and Diu Reorganization Act in 1987 (18 of 1987) the list of scheduled Tribes of Goa has been transferred to part XIX of the Schedule to the Constitution (Scheduled Tribes) Order, 1950
and that of Daman and Diu to part II of the Scheduled to the Constitution (Scheduled Tribes) (Union Territories) Order, 1951.

Scheduled Areas

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 the Scheduled Tribes with regard to land alienation and other social factors, provisions of Fifth schedule and Sixth Schedule have been enshrined in the institution.

The Fifth Schedule under Article 244 (1) of the 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 slates to those areas in the north east, which are declared as tribal areas and provides for a District or Regional Autonomous Councils for such areas. These councils have wide ranging legislative, judicial and executive powers.

Fifth Schedule Areas

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

Preponderance of tribal population

Compactness and reasonable size of the area

Available administrative entity such as district, block or taluk. And economic backwardness of the area as compared to neighbouring areas.
The specification of Scheduled Arenas 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:

Sl. No. Name of Order Date of Notification Name of State(s) for which applicable.


Purpose and advantage of Scheduled Areas

The advantage of Scheduled Area is that:

a. The Governor of a State which has Scheduled Areas is empowered to make regulations in respect of the following:
   1. Prohibit or restrict transfer of land from tribals 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 to or of the Legislature of the State which is applicable to the area in question.

b. The Governor may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled
Area or any part thereof in the State or shall apply to such area subject to such exceptions and modifications as he may specify.

c. The Governor of a State having Scheduled Areas 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 Scheduled Areas.

d. 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 advice 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.

e. The Panchayats (Extension to Scheduled Areas) Act 1996, 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.

Scheduled Areas and Scheduled Tribes Commission (STC)

To give a further thrust to the welfare and development of the Scheduled Tribes a Scheduled Areas and Scheduled Tribes emission has been set up vide order dated 18th July 2002 under i.e., Chairmanship of Shri Dileep Singh Bhuria, Ex. MP with ten other members. The last such Commission was set up in 1960. The Commission shall examine the development strategies
followed so far for the welfare and development of the Scheduled Tribes and suggest an outline of a viable comprehensive tribal policy.

The Article 15(4) prohibits any form of discrimination on grounds of religion, race, caste, sex and place of birth maintained by state or dedicated for the use of the general public. Clause 4 of this Article empowers the state to make any special provision for the advancement of socially and educationally backward classes or for the scheduled communities. Through amendment the state has reserved seats for SCs and STs in educational institutions including technical, engineering and medical colleges, and in scientific and specialized courses.

Article 16(4) under Fundamental Rights is another exception to the right of equality of opportunity in the matters of public employment. The term “Backward Classes” is used as a generic term and comprises various categories of backward classes, viz. Scheduled Castes, Scheduled Tribes, Other Backward Classes, Denotified Communities and Nomadic and semi-Nomadic Communities. The scheduled Tribes who are specifically mentioned in Article 15(4) are not specified in 16(4) but are covered under backward classes. The state can make provisions for the reservation of seats and an appointment in favour of backward classes if not represented adequately. Though the state cannot reserve unreasonable percentage of the posts for the backward classes, a member of a backward class can be appointed to non-reserved posts if found eligible after such competition.
As per Article 17, all citizens shall have the right to freedom of speech and expression, to assemble peacefully and without harm, to form association or unions, to move freely throughout the territory of India, to reside and settle in any part of the territory of India, to acquire, hold and dispose of property, and to practice any profession, or to carry on any occupation, trade or business. However, important exceptions have been made to some of the fundamental rights for protection of the interest of the members of the scheduled Tribes.

Under Provision (s) of the Article 17, the State has been authorized to make reasonable restrictions on the exercise on any of the rights relating to movement, acquisition of land, and settlement for the protection of the interest of the Scheduled Tribes. In fact, the problem of alienation of tribal land in Assam has very close relations arising out of the restrictions exercised mainly on two fundamental right, namely (1) to reside and to settle in any part of the territory of India, and (2) to acquire, hold and dispose of property.

In effect of this Article, Parliament of India has made an enactment viz. Untouchability (Offences) Act 1955. In later period, the Protection of Civil Right Act, 1955 was enacted in 1976 to rename and amend the Untouchability (Offences) Act 1955, making the punishments under this Act more stringent by setting up of special cells, special courts, mobile squads, provision of legal aid, etc., In spite of this, prevalence of untouchability has not been abolished, rather has taken different shapes and sizes. The cases registered under the Act have been declining as observed that there were 3,148 cases registered during
1992 which has been reduced to 778 registered during 1998 (Annual Report of Ministry of Social Justice and Empowerment 1999-2000). One of the major reasons for non-registration of such cases as observed in the tribal areas is largely due to delay in investigation, low conviction and low acquittals (Acharya et al., 2000).

Parliament passed another important Act in 1989 for taking measures to prevent the atrocities. This Act known as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 became effective from 30th January 1990.

Article 19(5) while it provides free movements, residence and acquisition or sale of property to all its citizens in the Indian territory, however, it reserves the right to protect the interest of the members of Scheduled Tribes by arresting the transfer of property particularly from tribal communities to non-tribal, except under special conditions. In order to check the alienation of tribals from their age-old land and land-based resources, the State has formulated various regulations like Regulation 2 of 1956 and OLR Act 1960. The details of achievements of these regulations both in controlling land alienation and restoring alienated land has been practically perfect.

Article 23 elements the system of serfdom, bondage and other forms of forced labour and provides that any contravention of this provision shall be an offence. Though the Act does not mention SCs and STs but since the majority of the bonded labour belong to SCs and STs this Article has a special significance for these communities. Following this provision, the Bonded
Labour System Abolition) Act 1976 was enacted after a lapse of 26 years in 1976, with a view to abolish this evil practice by making this offence punishable. Under centrally sponsored programmes launched in 1978-79 grant-in-aid was provided to the State Government and UTs for the administration on 50/50 basis for identification, liberation, and rehabilitation of the bonded labourers. The achievement of three State Governments including Orissa in this respect seems to be tardy and lack proper implementation.

Article 29(2) that provides for Cultural and Educational Rights, is controlled by clause 4 of Article 15, incorporated in the Constitution by the First Amendment Act, 1951. This has also brought Articles 15 and 29 in line with Articles 16(4) 46 and 140 and made it Constitutional for the State to reserve seats for the backward classes of citizens in public educational institutions. This ensures the minority groups to preserve their language, dialect and cultures. The State would not by law enforce upon it any other culture or language. All the educational institutions under direct control or receiving grant-in-aid follow the reservation policy of 15 percent for SCs and STs in matter of admission. The Government of India also initiated a number of centrally sponsored Schemes/Non-Plan Schemes for the benefit of these students. In spite of this, the literacy rate of the members in these communities has not changed remarkably as compared to the general communities. The poor educational achievement of these groups also
indicates large number of drop-outs who leave the schools at different levels of their education, particularly at primary level.

Article 30(1) guarantees the minorities the right to establish educational institutions of their choice and to continue with them.

Article 39 says that the State shall, in particular, direct its policy towards securing adequate means of livelihood for all; and the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

Article 45 notes that the State shall Endeavour to provide for free and compulsory education for all children until they complete the age of fourteen years. At the beginning of this protective measure, it has been indicated that it should be for a period of ten years from the commencement of the Constitution.

Article 46 looks at the promotion of educational and economic interests of weaker sections of the people and in particular, of the Scheduled Castes and Scheduled Tribes and shall specially protect them from social injustice and various forms of exploitation. In order to give effect to this Article, the Constitution Act of 1951 has amended Article 15 and 29 on Fundamental Rights. However, the fact is that it also envisages the tribals be protected from all forms of exploitation which seems to have been given due importance over the years. N.K. Bose, one of the most knowledgeable anthropologist and close associate of Mahatma Gandhi, has rightly mentioned this fact.
Bose viewed that this (protection from all forms of exploitation) has unfortunately not taken place so far. The reason is simple. Exploitation arises out of a system, or the social arrangement in the productive organization under which people live in. If we have to end the exploitation of one class by another, it cannot be done separately for either the Scheduled Castes or Scheduled Tribes, so long as the productive organization itself continues to remain in its old condition, and so long the society itself is divided into those who provide labour and produce wealth, but do not enjoy the full fruits of their labour and another class which enjoys privileges in excess of what they contribute by means of their own labour. One particular section among the people cannot be freed from all forms of exploitation as long as their co-workers do not belong to their caste or tribe continues in their old condition.

Article 164 provides for the provision of a Minister of Tribal Welfare in Orissa, Madhya Pradesh (undivided) and Bihar (undivided) to look after the tribal welfare which points to the concern of the Constitution for safeguarding the interest of Scheduled Tribes.

Article 275(1) provides grants from the Union to certain States for tribal development. The creation of Sixth Schedule for the formation of autonomous regions and regional councils as regards the management of resources according to the customs also receives directions under this Article. Thus, the entire welfare programmed for the Scheduled Tribes is based on Article 46, whereas, the required funds are provided under Article 275(i). This Article also envisages provisions for grant-in-aid for meeting the cost of such
schemes of development as may be undertaken by a State with the approval of Government of India for the purpose of promoting welfare of tribal people or for raising the level of administration in the Scheduled Areas. Provisions of Special Central Assistance (SCA) have been made to the States having Scheduled Tribes population against specific schemes for their welfare. During the English Five-year plan, an amount of Rs. 54,000 lakh was released to the State Government under this provision. The amount released during 1997-98, 1998-99 and 1999-2000 was Rs. 25,000 lakh. A similar provision exists in the Article for paying special grants to the States under Sixth Schedule out of the Consolidated Fund of India.

Article 320(4) provides that Public Service Commission need not be consulted in respect of the manner in which any provisions referred to in Clause 4 of Article 16 may be made or as regards the manner in which effect may be given to the provisions of Article 335.

Article 330, 332, 334 and 335 ensure reservation the Scheduled Castes and Scheduled Tribes in the Lok Sabha (Article 330) and State Legislative Assemblies (Article 332). Through such reservation were to be ceased but on the expiry of a period of 40 years from the commencement of the Constitution, i.e., in 1990 (Article 334) it has been repeatedly amended and the duration has been extended. The original provisions were for a period of 10 years. However, it has been amended for 30 years up till 1990 and again amended for ten years that is up to 2000 and for another ten years that is up to 2010.
Article 335 on the limits of reservation explains that the claims of the members belonging to Scheduled Castes and Scheduled efficiency of administration. The quota was fixed keeping in mind the population size of the two groups at the rate of 15 percent for the SCs and 7.5 percent for the STs. Though a change in population size has been observed in both the groups the reservation share of these Groups have not changed over a time.

With this provision, filling up of the quota of SCs and STs as fixed by the government and semi-government services is a problem even today. The problem is far more in case of upper levels of the government. The reasons put forward range from apathy and indifference of the government to the unavailability of suitable candidates from the SC and ST categories on account of their social, economic and educational backgrounds.

However, this provision empowers both Union and State Government to take steps to ensure that the claims of the SCs and STs are duly considered in making the appointments to services and posts under the central as well as the State Government with relaxation of age limits, reduction in examination fees, lowering down of educational and other qualification and in providing pre-examination coaching.

It is a fact that due to the reservation policy there has been a considerable increase in the representation of SCs and STs in various posts and services under the Central Government and State Government. In spite of this, there have been significant distortions in the implementation of the reservation policy and the progress in this regard has not been made very
satisfactory. It is largely because a large section of this population is much below the educational level even required for a post of peon.

Another dimension of poor achievements of these provisions is that by and large only few ethnic communities known as creamy layer have always been representing. For example, in Orissa, not even a dozen persons from the tribal communities like Jaunga, Bonda, Didayi, Khadia, Mankiridia, etc., have passed high school education to be appointed as a clerk in the government jobs, whereas the members of few tribal groups like Santhal, Munda, Oraon and Khond have been well represented in government services. In such a situation, it has been proposed that the facilities of reservation should only be confined to the members of first generation of the family. However, State attempt for the spread of education in tribal areas should be made quantitative than qualitative and it is the duty of the State to ensure quality education to this section of population.

Article 338 explains about the appointment of Special Officer, which clearly spells out, that the President of India will appoint a Special Officer for the Scheduled Castes and Scheduled Tribes to assess their welfare activities. The primary responsibilities of the Special Officer are to investigate all matters relating to the implementation of safe guards provided for them in the Constitution. He is expected to report to the President of India on the working of these safeguards to be laid before each House of the Parliament. This institution was renamed in 1996 as National Commission for Scheduled Castes and Scheduled Tribes.
Article 339(1) provides for the appointment of a Commission the President of India at any time after the expiration of 10 years in the commencement of the Constitution, to report on the ministration of the Scheduled Areas and welfare of the Scheduled tribes of the state.

Article 339(2) further empowers the Union Executive to issue directives to a State as to the drawing up and execution of schemes specified in the directives to be essential for the welfare of the Scheduled Tribes in the states.

Article 340 envisages that the President of India by order may appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their conditions. Clause 2 of the Article explains about the duties of the Commission to investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.

The first Backward Class Commission known as Kaka Kalekar Commission was appointed in 1953 which submitted its report in 1955. The second Backward class commission was appointed in 1979 under the chairmanship of Sri B.P. Mandal. The National Commission for Backward Classes 1993 was enacted on the direction of the Supreme Court to set up a permanent body for entertaining, examining and recommending upon
requests for inclusion and complaints of over and under-inclusion in the list of OBCs of citizens. The Commission was constituted on 14 August 1993 and the Government of India have so far specified more than 3000 communities as OBCs in various States and UTs.

The Indian Constitution has never defined the terms Scheduled Tribe and Scheduled Caste in any part of the Constitution, the article 341 simply says that the President may with respect to any State or Union Territory and where it is a State after consultation with the Governor, thereof, by public notification specify the castes races of tribes or parts or groups within castes, races or tribes which shall for the purposes of this constitution be deemed to deemed to be Scs in relation to the State Union Territory.

While Article 342 specifies that the President of India may with regard to any State or Union Territory after consultation with the Governor by public notification specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this constitution be deemed to be scheduled tribes in relation to the State. Clause 2 of this Article explains that Parliament may by law include or exclude from the list of scheduled tribes in the notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as a foresaid a notification issued under the said clause shall not be varied by any subsequent notification.
Even Article 366 which deals with the definition does not go beyond what has been stated in Article 341 and 342 about these terms. Since the Constitution (ST) Order 1950 was notified, there are nit Presidential Orders that have so far been issued specifying the list of 640 ST communities in different States and UTs. The criteria followed for specifying STs in 1950 was primitiveness district culture, geographical isolation, shyness of contact with the community at large, social, education and economic backwardness.

Article 350 B makes the provision of a Special Officer for Linguistic Minorities. President of India can appoint a Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under this Constitution and report to the President upon those matters as the President may direct and the President shall cause all such reports to be placed before each house of Parliament and sent to the Government of the States concerned.

Most of the tribal communities have their own language or dialects, which usually belong to different family of languages.

Article 336 (25) defines the term Scheduled Tribe, which means such tribes or tribal communities or parts of groups within such tribes or tribal communities or parts of groups within such tribes or tribal communities as are deemed under 342 designated as to be Scheduled Tribes for the purposes of the Constitution.
REFERENCES:


2. No. F.12/3/65-SCT. IV New Delhi, the 1st June 1965, Gazette of India for general information.
