CHAPTER III

CONSTITUTIONAL PROVISIONS FOR THE SCHEDULED CASTE AND THE SCHEDULED TRIBES
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India is a welfare state, committed to the welfare and development of its people in general and of down trodden sections in particular. The Constitution provides a number of safeguards for the welfare of the scheduled castes and the scheduled tribes.

In order to empower the weaker and socio-economically deprived sections of the society, the Ministry of Welfare constituted on 25 September 1985 was renamed as the Ministry of Social Justice and Empowerment on 25 May 1998. The development of the Scheduled Tribes is now being looked after by the Ministry of Tribal Affairs which was created on 13 October 1999¹.

According to 2001 Census, the population of Scheduled Castes is 16.66 crores constituting 16.23 per cent of the country’s population which is 102.64 crore. Persons belonging to this category are regarded socially, educationally and economically backward sections in the society.²

The Tribal people of India, who come under the category of ‘Scheduled Tribes’ (STs) in terms of the provisions of the constitution of India, number 8.43 crores—constituting 8.2 per cent of the population of the country.³

¹ India 2006, a Reference Annual, Ministry of information and broadcasting, Government of India p.867
² Ibid. P.867
³ Ibid.P. 867
Scheduled Castes and Scheduled Tribes

The Scheduled Castes (SC) and Scheduled Tribes (ST) wherever they live, are faced with many and diverse problems, which are of social, economic, political and educational in nature. It is a common knowledge how the Scheduled Castes and Scheduled Tribes suffer from times immemorial for no fault of theirs. These problems have aggravated the situation over years and pushed the unfortunate SC/ST masses to total subjugation and exploitation. One thing is certain that in a caste-ridden society like ours, social and economic status are the necessary prerequisites for any individual to progress.4

The SCs and STs, throughout the country occupy the lowest rank in the caste hierarchy. In a hierarchy of unequal relationships, the SCs and STs are at the bottom and hence socially inferior to all others in the community.5

Scheduled Areas and Tribal Areas.

Scheduled Tribes live in contiguous areas unlike other communities. It is therefore, much simpler to have an area-approach for developmental activities and also regulatory provisions to protect their interests.6

In order to protect the interests of Scheduled Tribes with regard to land alienation and other social factors, provisions of “Fifth Schedule” and “Sixth Schedule” have been enshrined in the Constitution.7

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.8

4 Parvathamma, C, Scheduled Castes and Tribes, A Socio Economic Survey, Ashish Publishing House, New Delhi, p. 1
5 Ibid, p. 1
6 India 2006, a Reference Annual, p. 872
7 Ibid, p. 872
The Sixth Schedule under Article 244(2) of the Constitution relates to those areas in the states of Assam, Meghalaya, Tripura and Mizoram which are declared as “Tribal Areas” and provides for District Councils and/or Regional councils for such Areas. These councils have been conferred with wide ranging legislative, judicial and executive powers.9

The Fifth Schedule- Scheduled Areas:

The criteria for declaring any area as a “Scheduled Area” under the Fifth Schedule are: (a) Preponderance of tribal population (b) Compactness and reasonable size of the area, (c) A viable administrative entity such as a district, block or taluk, and (d) Economic backwardness of the area as compared to neighbouring areas.10

The specification of “Scheduled Areas” in relation to a state is by a notified Order of the President, after consultation with the state Governments concerned. The same applies for altering, increasing, decreasing, incorporating new areas, or rescinding any Orders relating to “Scheduled Areas”.11

The advantages for Scheduled Areas

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 tribal people; (2) Regulate the business of money lending to the members of Scheduled Tribes.12

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9 Ibid, P. 872
10 Ibid, P. 872-873.
11 Ibid, P. 873.
12 Ibid, P. 873.
In making 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.

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.  

The Governor of 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 executive power of the Union shall extend to the giving of directions to the State as to the administration of the said area.

The Sixth Schedule- Tribal Areas:

The Sixth Schedule under Article 244 of the Constitution of Assam, Meghalaya, Tripura and Mizoram. It also makes provisions for recognition of Autonomous Regions within these Autonomous Districts. These have been specified in Parts I,II,IIA, and 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.
Scheduled Area and Scheduled Tribes Commission

To give a further thrust to the welfare and development of the Scheduled Tribes, a Scheduled Areas and Scheduled Tribes Commission had been set up in terms of Article 339(1) of the constitution vide Order dated 18th July 2002 under the Chairmanship of Sri Dileep Singh Bhuria, ex-M.P. with ten other Members. Prior to that the last such commission had been set up in 1960.16

The Commission’s term expired on 16th July 2004. The commission submitted its report to the President of India on 16th July 2004. The recommendations made by the Commission have been circulated to all Ministers and State Governments concerned for their comments.17

Elaborate arrangements have been made for protecting the interests of the people belonging to Scheduled Castes and Scheduled Tribes in Part XVI of the Constitution. The definitions of the Scheduled Castes and Scheduled Tribes are given in part XIX of the constitution. Thus, Art.366 (24) defines Scheduled Castes as “such castes, races or tribes or parts of groups within such castes, races or tribes as are deemed under Art.341 to be the Scheduled Castes for the purposes of this Constitution.” 18

Article 341 of the Constitution Says:

"1. The President may with respect to any State or Union Territory and where it is a State after consultation with the Governor there of by a public notification specify the castes, races or tribes which shall, for the purposes of this

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16 Ibid. P. 875.
17 Ibid. P.875.
Constitution, be deemed to be Scheduled Castes in relation to that State or Union Territory as the case may be.”

“2. Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race, or tribe, but save aforesaid notification issued under the said clause shall not be varied by any subsequent notification.”

It is clear, therefore, that the President's Order shall specify the lists of castes included in this category and any other caste may be included in it if sufficient evidence is produced in its favour. It is permissible to specify a caste as a Scheduled Caste in relation to a part of a State. It is possible that before including a name in the list, the President may hold some kind of inquiry into the matter. But the presidential notification is not open to judicial scrutiny. A person belonging to a scheduled Caste must be either a Hindu or a Sikh. Thus, this privilege is not available to the Christians, Muslims, Buddhists, Parsis, etc. And in any case a person belonging to a Scheduled Caste becomes a Muslim or a Christian or a Buddhist, he cannot have the benefit of the provision of protective discrimination. If, however, there is no proof of conversion to a religion other than the Hindu religion but a mere acceptance of certain ideological tenets, the person does not lose his status as a member of the Scheduled Caste. Thus, the President's Scheduled Castes Order promulgated in 1950, as amended subsequently, should be looked into for ascertaining whether a particular caste is included in it or not."
Procedure for Declaration as Scheduled Tribes

It has earlier been mentioned that the term "Scheduled Tribes" is defined in the Constitution of India under Article 366(25) 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.22

In terms of Article 342(1) 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 thereof 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/Union Territories.23

Thus in terms of Article 342(1), only those communities who have been declared as such by the President through an initial public notification will be considered as Scheduled Tribes. Any further amendment in the list is to be done through an Act of Parliament (Article 342(2)). Parliament may by law, include in or exclude from the list of Scheduled Tribes, any tribe or tribal community or parts of thereof.24

It is also worth noting that the above Article also provides for listing of Scheduled Tribes State-wise/Union Territory-wise and not on an all-India basis.

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22 India 2006, a Reference Annual, p.875
23 Ibid. P. 875
24 Ibid.P.875
Thus the list of Scheduled Tribes is State-Specific. In other words, a community declared as Scheduled Tribe in a State need not be so in another State.25

Article 366(25) provides the same for the Scheduled Tribes. The Presidential Order enlisting such tribes is the final authority in this regard. But the Parliament has the power to make any change in it. That is, the Parliament by its law may either include in or exclude from this list the name of any tribe. The mere act of migration of a person from one state to another cannot deprive him of the privilege allowed to a member of the Scheduled Tribes.25

Article 342 authorizes the President to specify the tribal communities or parts of or groups within tribes or tribal communities which shall be deemed as scheduled tribes.27

The scheduled castes referred to in Article 341(1) have been specified in the following orders and Acts:

1. The Constitution (Scheduled Castes) Order, 1950
2. The Bombay Reorganisation Act, 1960
3. The Punjab Reorganisation Act, 1966
5. The North-Eastern Areas (Reorganisation) Act, 1971
6. The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976
7. The (Jammu & Kashmir) Scheduled Castes Order, 1956
8. The Constitution (Dadra and Nagar Haveli) Scheduled Castes Order, 1962

25 Ibid, P. 875
10. The Constitution (Goa, Daman and Diu) Scheduled Castes Order, 1968

11. The Constitution (Sikkim) Scheduled Castes Order, 1978

In addition to the items mentioned at 2, 3, 4, 5 and 6 above the scheduled tribes referred to in Article 342(1) have been specified in the following orders and Acts also:

1. The Constitution (Scheduled Tribes) Order 1950

2. The Constitution (Scheduled Tribes) (Union Territories) Order, 1951


5. The Constitution (Dadra and Nagar Haveli) Scheduled Tribes Order, 1952


7. The Constitution (Goa, Daman and Diu) Scheduled Tribes Order, 1968


Now, whereas the power of specification of scheduled castes and scheduled tribes has been vested in the President, who can do so in consultation with the Governor of the state concerned where it is a state and suo motu where it is union territory. In Articles 341(2) and 342(2), the parliament has been authorized to make law to include in or exclude from the aforesaid lists any caste, race or tribe or part of or group within any caste, race or tribe or any tribe or tribal community.\textsuperscript{28}

It has further been provided in Articles (2) and 342(2) that save as aforesaid, a notification issued under the said clause shall not be varied by any subsequent notification. In other words, the list once issued shall be irrevocable except by a public notification issued by the parliament.\textsuperscript{29}

It is clear from the wordings of Article (1) and Article 342(1) that the list of scheduled castes specified under the former may include a tribe or tribal community or a part or group thereof, but the list of scheduled tribes issued under Article 342(1) shall not include a scheduled caste or part or group thereof.\textsuperscript{30}

As for the list of scheduled caste and scheduled tribes issued in pursuance of Article 341(1) and 342(1) as shown above, the list runs into nearly 100 pages and contains several hundred names.\textsuperscript{31}

**Creation of the Ministry of Tribal Affairs.**

The Ministry of Tribal affairs was constituted in October, 1999 by bifurcation of the Ministry of Social Justice and Empowerment with the objective of more focused attention on integrated socio-economic development of the most underprivileged section of the Indian society, the scheduled tribes (ST's) in a coordinated

\textsuperscript{28} Ibid, P. 40
\textsuperscript{29} Ibid, p. 40
\textsuperscript{30} Ibid, p.40
\textsuperscript{31} Ibid, p. 40
and planned manner. During the period prior to the formation of the Ministry of Tribal Affairs, matters concerning tribal welfare and development were dealt with by different Ministries of the Government of India at different points of time as stated below:\textsuperscript{32}

(1) As a Division of the Ministry of Home Affairs: known as the TD Division since after Independence to September 1985.


(iii) Ministry of Social Justice and Empowerment from May 1998 to September 1999.\textsuperscript{33}

**Mandate of the Ministry**

The following is the mandate of the Ministry of Tribal Affairs:

(1) Social security and social insurance with respect to STs.

(ii) Tribal Welfare-Planning, Policy formulation, Research and Training.

(iii) Tribal development including scholarships to STs.

(iv) Promotion of voluntary efforts in development of STs.

(v) Administrative Ministry with respect to matters concerning

- Scheduled Areas.

- Autonomous districts of Assam excluding roads and bridge works and ferries thereon:

- Regulations framed by Governors of State for Scheduled Areas and for Tribal Areas specified in part A of Table appended to paragraph 20 of the Sixth Schedule to the Constitution:


\textsuperscript{33} Ibid. P. 12
Scheduling and De-Scheduling of Tribes

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. The above Article also provides for listing of Scheduled Tribes State-wise/Union Territory wise and not on an all-India basis. The order can be modified subsequently only through an Act of Parliament.

The criteria generally adopted or specification of a community as a Scheduled Tribe are: (a) Primitive traits; (b) Distinctive Culture; (c) Shyness of contact with the public at large; (d) Geographical isolation.

These are 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 (Kalekar)1955, The Advisory Committee on Revision of SC/ST lists (Lokur Committee) 1965 and the joint Committee of Parliament on the Scheduled Castes and Scheduled Tribes Orders (Amendment) Bill 1967, (Chanda Committee) 1969. There are over 600 tribes (with many of them

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34 Ibid P. 13
35 India 2006, a Reference Annual, p.875
36 Ibid.P.876
overlapping 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.  

**Issue of Scheduled Tribe Certificates**

The candidates belonging to Schedule Tribes may get Scheduled Tribe certificates, in the prescribed form, from any one of the following authorities: (1) District Magistrate/ Additional District Magistrate/ Collector/ Deputy Commissioner/ Additional Deputy Commissioner etc. ...

**Procedure for inclusion in or exclusion from the list of Scheduled Tribes.**

In June 1999, the Government approved modalities for deciding claims for inclusion in or exclusion from the lists of Scheduled Tribes. According to these approved guidelines, only those claims that have been agreed to by the concerned State Government, the Registrar General of India and the National Commission for Scheduled Castes and Scheduled Tribes will be taken up for consideration.

Whenever representations are received in the Ministry for inclusion of any community in the list of Scheduled Tribes of a State/ Union Territory, the Ministry forwards that representation to the concerned state government/ Union Territory. Administration for recommendation as required under Article 342 of the Constitution. If the concerned State Government recommends the proposal, then the same is sent to the Registrar General of India (RGI).

If RGI is satisfied with recommendation of the State Government and, recommends the proposal to the Central Government, the government refers the proposal to the National Commission for Scheduled Tribes for their

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37 Ibid. P. 876  
38 Ibid. P. 877  
39 Ibid. P. 877  
40 Ibid. P. 877
recommendation. If the National Commission for Scheduled Tribes also recommends the case, the matter is processed for the decision of the Cabinet after consulting the concerned administrative Ministers. Thereafter the matter is put up before the Parliament in the form of a Bill to amend the Presidential Order.\textsuperscript{41}

There are various provisions in the constitution which provide safeguards for Scheduled Castes / Scheduled Tribes.. The relevant articles from the constitution are reproduced below.

**Article 14: Equality before law**

The State shall not deny to any person equality before the law or equal protection of the laws within the territory of India\textsuperscript{42}.

**Art.15. Prohibition of discrimination on Grounds of Religion, Race, Caste, Sex or Place of Birth.**

(1) The State shall not discriminate any citizen on grounds only of religion, race, caste, sex, and place of birth or any of them.

(2) No citizen shall, on grounds of religion, race, caste, sex, place of birth or any of them, be subjected to any disability, liability, restriction or condition with regard to-

(a) access to shops, public restaurants, hostels and places of public entertainment; or

(b) the use of wells, tanks bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

\textsuperscript{41} Ibid. P. 877
\textsuperscript{42} Naidu RVK, (2004) \textit{Empowerment of Scheduled Cases}, Kalpaz Publications Delhi, p. 27.
(3) Nothing in this article shall prevent the state from making any special provision for women and children.

(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.\(^4\)

Article 16: Equality of opportunity in matters of public employment

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office (under the Government of, or any local or other authority within, a State or Union Territory, any requirement as to residence within that State or Union Territory) prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotions to any class or classes of posts in the

\(^4\) Ibid p.27-28
services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.

**Article 17: Abolition of Untouchability**

Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of “Untouchability” shall be an offence punishable in accordance with law.


The word ‘untouchability’ has not been defined either in the Constitution or in the Act. It is assumed that the expression has a well-known and widely prevalent connotation.\(^{44}\)

**Art.19. Protection of certain rights regarding freedom of speech etc...**

(1) All citizens shall have the right,-

(a) to freedom of speech and expression;
(b) to assemble peacefully and without arms;
(c) to form associations or unions;
(d) to move freely throughout the territory of India
(e) to reside and settle in any part of the territory of India; and
(f) to practice any profession, or to carry on any occupation, trade or business.

(2) Nothing in sub-clause (a) of (1) shall effect the operation of any existing law or prevent the State from making any law, in so far as such law

\(^{44}\) Ibid. P.28
imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interest of (the sovereignty and integrity of India or) public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, in the interests of (the sovereignty and integrity or) public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(5) Nothing in sub-clause (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the state from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause,
and, in particular (nothing in the sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to:

(1) the professional or technical qualifications necessary for practicing any Profession or carrying on any occupation, trade or business, or

(2) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.\textsuperscript{45}

According to the provisions of this Article 19, the State can impose reasonable restrictions on the freedom of movement and residence of people, in the interest of Scheduled Tribes.\textsuperscript{46}

\textbf{Article 23: Prohibition of Traffic in Human Beings and Forced Labour}

(1) Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.\textsuperscript{47}


Art.29. Protection of Interests of Minorities

(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State funds on grounds only of religion, race, caste, language or any of them.\(^9\)

Art.46. Promotion of Educational and Economic Interests of Scheduled Castes, Scheduled Tribes and Other weaker Sections.

The State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.\(^9\)

This Article did not give any power to the government to take or adopt any specific measure for educational development of scheduled castes and scheduled tribes. Article 15 of the Constitution was, therefore, amended through the Constitution (first Amendment), Act, 1951 and clause (4) added to it. This empowered the State to make special provisions for the educational development of SCs/STs and as a result the Government reserved seats for them in educational institutions including technical and professional institutions like medical and engineering colleges.\(^0\)

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Article 275: Grants from the Union to Certain States.

(1) Such sums as Parliament may by law provide shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of such States as Parliament may determine to be in need of assistance, and different sums may be fixed for different States: Provided that they shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of a State such capital and recurring sums as may be necessary to enable that State to meet the costs of such schemes of development as may be undertaken by the State with the approval of the Government of India for the purpose of promoting the welfare of the Scheduled Tribes in that State or raising the level of administration of the Scheduled Areas therein to that of the administration of the rest of the areas of the State.\(^5\)

Art 330. Reservation of Seats for Scheduled Castes and Scheduled Tribes in the House of the People

(1) Seats shall be reserved in the House of the People for:

(a) the Scheduled Castes;

(b) the Scheduled Tribes except the Scheduled Tribes in the Autonomous districts of Assam; and

(c) the Scheduled Tribes in the autonomous districts of Assam.

(2) The number of seats reserved in any ‘State or union Territory’ for the Scheduled Castes and the Scheduled Tribes under clause(1) shall bear, as

\(^5\) Ibid. P.42-43.
nearly as may be, the same proportion to the total number of seats allotted to that State or Union Territory in the House of the people as the population of the Scheduled Castes in the State or Union Territory or of the Scheduled Tribes in the State or part of the State or Union Territory as the case may be, in respect of which seats are so reserved, bears to the total population of the State or Union territory.

(3) Notwithstanding anything contained in clause (2), the number of seats reserved in the House of the people for the Scheduled Tribes in the autonomous districts of Assam shall bear to the total number of seats allotted to that State a proportion not less than the population of the Scheduled Tribes in the said autonomous districts bears to the total population of the State.\textsuperscript{52}

(Explanation - In this Article and in Article 332,\textsuperscript{3} the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published.\textsuperscript{53}

**Art.332. Reservation of Seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States.**

(1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes, except Scheduled Tribes in the autonomous districts of Assam, in the Legislative Assembly of every State....

(2) Seats shall be reserved also for the autonomous districts in the Legislative Assembly of the State of Assam.


(3) The number of seats reserved for the Scheduled Castes or Scheduled Tribes in the Legislative Assembly of any State under clause (1) shall bear, as nearly as may be the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State or part of the State, as the case may be, in respect of which seats are so reserved, bears to the total population of the State.

(4) The number of seats reserved for an autonomous district in the Legislative Assembly of the State of Assam shall bear to the total number of seats in that Assembly in a proportion not less than the population of the district bears to the total population of the State.

(5) The constituencies for the seats reserved for any autonomous district of Assam shall not comprise any area outside that district...

(6) No person who is not a member of the Scheduled Tribe of any autonomous district of the State of Assam shall be eligible for election to the Legislative Assembly of the State from any constituency of that district...

On the preventive and punitive side, the Government of India have been seized of the matters of preventing atrocities and crimes against the scheduled castes and scheduled tribes and for this purpose the Ministry of Home Affairs has desired that crimes against the scheduled castes coming under the following sections of the Indian Penal Code (IPC) may be included for reporting to the central government.54

54 Ibid. P.42-43.
Art.334 Reservation of Seats and Special Representation to Cease after Fifty Years.

Notwithstanding anything in the foregoing provisions of this part, the provisions of this Constitution relating to: (a) the reservation of seats for the Scheduled Castes and the Scheduled Tribes in the House of the people and in the Legislative Assemblies of the State; and (b) the representation of the Anglo-Indian community in the House of the People and in the Legislative Assemblies of the States by nomination, shall cease to have effect from the commencement of this Constitution:

Provided that nothing in this article shall affect any representation in the House of people or in the Legislative Assembly of a State until the dissolution of the then existing House or Assembly, as the case may be.55

Art.335. Claims of Scheduled Castes and Scheduled Tribes to Services and Posts.

The framers of the Constitution felt that unless special provisions were made for protection of the rights of the scheduled castes and scheduled tribes to secure fair representation in public employment in proportion to their population, it would never be possible for them to catch up and compete successfully for securing public employment. In order to secure their fair representation, special provisions for reservation in services and posts under the state in favour of the scheduled castes and scheduled tribes were made under Article 335.56


The claim of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to the services and posts in connection with the affairs of the Union or of a State.\footnote{Naidu RVK, (2004) \textit{Empowerment of Scheduled Castes}.Kalpaz Publications Delhi, p. 27}

Art.338 National Commission for Scheduled Castes and Scheduled Tribes.

(1) There shall be a commission for the Scheduled Castes and Scheduled Tribes to be known as the National Commission for the Scheduled Castes and Scheduled Tribes.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-Chairperson and five other members and the conditions of service and tenure of office of the Chairperson and Vice-Chairperson and other Members shall be such as the President may by rule determine.

(3) The Chairperson, Vice-Chairperson and other Members of the commission shall be appointed by the President by warrant under his hand and seal.

(4) The Commission shall have the power to regulate its own procedure.

(5) It shall be the duty of the commission:

(a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;
(b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes and Scheduled Tribes;

c) to participate and advice on the planning process of socio-economic development of the Scheduled Castes and Scheduled Tribes and to evaluate the progress of their development under the Union and any State;

d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

e) to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementing of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes and Scheduled Tribes; and

(f) to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes and Scheduled Tribes as the President may, subject to the provisions of any law made by Parliament, by rule specify.

(6) The President shall cause all such reports to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations.

(7) Where any such reports, or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be
forwarded to the Governor of the State who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of such recommendations.

(8) The Commission shall, while investigating any matter referred to in sub-clause (a) or inquiring into any sub-clause(b) of clause(5) have all the power of a civil court trying a suit and in particular in respect of the following matters, namely:

(a) summoning and enforcing the attendance of any document;
(b) requiring the discovery and production of any document;
(c) receiving evidence on affidavits;
(d) requisitioning any public record or copy thereof from any court or office;
(e) issuing commissions for the examination of witnesses and documents;
(f) any other matter which the President may, by rule, determine

(9) The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Castes and Scheduled Tribes.

(10) In this article, references to the Scheduled Castes and Scheduled Tribes shall be construed as including references to such other backward classes as the president may, on receipt of the report of a Commission appointed
under clause(1) of article 340, by order specify and also to the Anglo-
Indian community.\textsuperscript{58}

(The commission shall consist of a Chairperson, Vice-Chairperson
and five other Members. It shall be the duty of the commission to
investigate and monitor all matters relating to the safeguards provided for
the Scheduled Caste and Scheduled Tribes under the Constitution or
under any order of the Government and to evaluate the working of such
safeguards).\textsuperscript{59}

**Article.339. Control of the Union over the Administration of Scheduled Areas
and the Welfare of Scheduled Tribes**

(1) The President may at any time 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 Castes and 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
direction to a State as to drawing up and execution of schemes


\textsuperscript{59} Naidu RVK, (2004) Empowerment of Scheduled Castes, Kalpaaz Publications Delhi, p. 27
specified in the direction to be essential for the welfare of the Scheduled Tribes in the State.\textsuperscript{60}

Thus, the Constitution enjoyed special responsibility on the central Government as a whole and State Government in particular to make earnest endeavour for the development of the Scheduled Tribes and the areas inhabited by them. To sustain all the Constitutional safeguards Central Government and State Government launched various plans and programmes through the departments specially set up for the purpose and different ministries and agencies.\textsuperscript{61}

**Article 371A. Special provisions with respect to the State of Nagaland-**

(1) Notwithstanding anything in this Constitution-

(a) No Act of Parliament in respect of:

(i) Religious or social practices of the Nagas,

(ii) Naga customary law and procedure,

(iii) Administration of civil and criminal justice involving decisions according to Naga customary law,

(iv) Ownership and transfer of land and its resources, shall apply to the State of Nagaland unless the Legislative Assembly of Nagaland by a resolution so decides;\textsuperscript{62}


\textsuperscript{62} Sharma Usha and Sharma S.K. (2006) *Documents on North-East India* Vol. 9, Mittal publication, New Delhi P.236
(b) The Governor of Nagaland shall have special responsibility with respect to law and order in the State of Nagaland for so long as in his opinion internal disturbances occurring in the Naga Hills-Tuensang Area immediately before the formation of that state continue there in or in any part thereof and in the discharge of his functions in relation thereto the Governor shall, after consulting the council of Ministers, exercise his individual judgement as to the action to be taken.\textsuperscript{63}

Provided that if any question arises whether any matter is or is not a matter as respects which the Governor is under the sub-clause required to act in the exercise of his individual judgment the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in the exercise of his individual judgment.\textsuperscript{64}

Provided further that if the President on receipt of a report from the Governor or otherwise is satisfied that it is no longer necessary for the Governor to have special responsibility with respect to law and order in the State of Nagaland, he may by order direct that Governor shall cease to have such responsibility with effect from such date as may be specified in the order.\textsuperscript{65}

(C) In making his recommendation with respect to any demand for a grant, the Governor of Nagaland shall ensure that any money provided by the Governor of Nagaland shall ensure that any money provided by the

\textsuperscript{63} Ibid. P. 236.
\textsuperscript{65} Ibid. P. 61.
Government of India out of the Consolidated Fund of India for any specific service or purpose is included in the demand for grant relating to that service or purpose and not in any other demand, \(^{66}\)

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

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

Provided that the Deputy Commissioner of the Tuensang district shall be the Chairman Ex-officio of the regional council and the Vice-Chairman of the regional council shall be elected by the members thereof from amongst themselves. \(^{67}\)

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

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

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

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

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

\(^{66}\) Ibid. P.62

\(^{67}\) Ibid. P.62
(2) Notwithstanding anything in this Constitution, for a period of ten years from the date of the formation of the State of Nagaland or for such further period as the Governor may, on the recommendation of the regional council, by public notification, specify in this behalf.\textsuperscript{68}

(a) The administration of the Tuensang district shall be carried on by the Governor:

(b) Where any money is provided by the Government of India to the Government of Nagaland to meet the requirements of the State as a whole, the Governor shall in his discretion arrange for an equitable allocation of that money between the Tuensang and the rest of the State:

(c) No Act of the Legislature of Nagaland shall apply to the Tuensang district unless the Governor, on the recommendation of the regional council, by public notification so directs and the Governor in giving such direction with respect to any such Act may direct that the Act shall in its application to the Tuensang district or any part thereof have effect subject to such exceptions or modifications as the Governor may specify on the recommendation of the regional council.\textsuperscript{69}

Provided that any direction given under this sub-clause may be given so as to have retrospective effect;

(d) The Governor may make regulations for the peace, progress and good government of the Tuensang district and any regulations so

\textsuperscript{68} Ibid. P. 63

\textsuperscript{69} Ibid. P. 63
made may repeal or amend with retrospective effect, if necessary, any Act of Parliament or any other law which is for the time being applicable to that district;

(e) (i) One of the members representing the Tuensang district in the Legislative Assembly of Nagaland shall be appointed Minister for Tuensang affairs by the Governor on the advice of the Chief Minister and the Chief Minister in tendering his advice shall act on the recommendation of the majority of the members as aforesaid;

(ii) The Minister for Tuensang affairs shall deal with, and have direct access to the Governor on all matters relating to the Tuensang district but he shall keep the Chief Minister informed about the same;

(f) Notwithstanding anything in the foregoing provisions of this clause, the final decision on all matters relating to the Tuensang district shall be made by the Governor in his discretion;

(g) In article 54, 55 and clause (4) of article 80, reference to the elected members of the Legislative Assembly of a State or to each such member shall include reference to the members or member of the Legislative Assembly of Nagaland elected by the Regional Council established under this article;

(h) In article 170-

(i) clause (1) shall, in relation to the Legislative Assembly of Nagaland, have effect as if for the word 'sixty', the words 'forty-six' has been substituted;
(ii) In the said clause, the reference to direct election from territorial constituencies in the State shall include election by the members of the regional council established under this article;

(iii) In clause (2) and (3), references to territorial constituencies shall mean references to territorial constituencies in the Kohima and Mokokchung districts.

3. If any difficulty arises in giving effect to any of the foregoing provisions of this article, the President may by order do anything (including any adoption or modification of any other article) which appears to him to be necessary for the purpose of removing that difficulty;\textsuperscript{70}

Provided that no such order shall be made after the expiration of three years from the date of the formation of the State of Nagaland.

Explanation: In this article, the Kohima, Mokokchung and Tuensang districts shall have the same meanings as in the State of Nagaland Act, 1962.\textsuperscript{71}

\textsuperscript{70} Ibid. P 64-65
\textsuperscript{71} Ibid. P 65.
The Naga Hills-Tuensang Area Act, 1957

(Act 42 of 1957)

An Act to provide for the formation of the Naga Hills-Tuensang Area of Assam as an administrative unit.

Be it enacted by Parliament in the Eight Year of the Republic of India as follows:

1. **Short title and commencement**—(1) This Act may be called the Naga Hills-Tuensang Area Act, 1957. (2) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

2. **Formation of the Naga Hills-Tuensang Area**—As from the commencement of this Act, there shall be formed a new administrative unit in the State of Assam by the name of Naga Hills-Tuensang Area comprising the tribal areas which at such commencement were known as the Naga Hills district and Tuensang Frontier Division of the North East Frontier Agency.

3. **Amendment of the Sixth Schedule to the Constitution**—In the Sixth Schedule to the Constitution, in paragraph 20,-

   (a) after sub-paragraph(2A), the following sub-paragraph shall be inserted, namely:-

   “(2B) The Naga-Hills Tuensang Area shall comprise the Areas which at the commencement of this Constitution were known as the Naga Hills district and the Naga Tribal Area.”

   (b) in sub-paragraph (3) after the words “administrative area”, the brackets and words “(other than the Naga Hills-Tuensang Area)” shall be inserted.

   (c) in part A of the Table, item 4 shall be omitted; and

   (d) in part B of the Table, for item 2, the following item shall be substituted, namely:-
“2. The Naga Hills- Tuensang Area”. 72

The Sixth Schedule to the Constitution originally enacted was applied to the ‘Naga Hills District’ which appeared as item no.4 of Part A of the table appended to paragraph 20 and to ‘Naga Tribal Area” occurred as item no.2 of the part B of the table appended to Paragraph 20. Thus the entire State of Nagaland was theoretically part of Sixth Schedule to the Constitution at the commencement of the constitution: though, in practice no part of the State of Nagaland has ever been governed by its provisions. 73

The State of Nagaland was established by the State of Nagaland Act 1962 comprising of the territories ‘Naga Hills Tuensang Area’ and this area was taken out of the purview of the Sixth Schedule. Accordingly sub-paragraph (2B) and Item No.2 in Part B of the table appended to Paragraph 20 was omitted. 74

Article 371-A, inserted by Constitution (13th Amendment) Act, 1962, provides that no Act of Parliament in respect to religious or social practices of the Nagas. Naga customary law and procedure, administration of civil and criminal justice involving decisions according to Naga customary law and ownership and transfer of land and its resources shall apply to the State of Nagaland unless the Legislative Assembly of Nagaland, by a resolution so decides. The Governor of Nagaland has been given special responsibility with respect to law and order in the State of Nagaland, so long as internal disturbances’ occurring in continues.

73 Ibid. P. 148
74 Ibid . P. 148
However the President has been authorized to direct that the governor shall cease to have such responsibility with effect from such date as may be specified.75

Thus the provisions of the Sixth Schedule, as of now are not applicable to the State of Nagaland. As a matter of fact these provisions were never applied to any part of the State of Nagaland75.

The Naga Hills and the Indian Constitution

The Sixth Schedule of the Indian Constitution enumerated in detail the administrative set up of all the hill districts of Assam. The Schedule was divided into two parts. While part A dealt with the excluded areas of the hill districts of Assam such as United Khasi-Jaintia hills, the Lushai hills, and the Naga hills, Part B dealt with the North Eastern Frontier including Balipara Frontier Tract, Tirap Frontier Tract, Abore Hill district and the Naga Tribal Area. The constitution made the hill districts, which were placed under Part A, autonomous with District Councils for their respective areas comprising not more than twenty-four members. The hill districts were made autonomous with a view to protecting the culture, religion and economic interests of the hill people. The composition of the District Council was based on democratic principles. Three-fourths of the members of the District Council were to be elected on the basis of adult franchise. The tribal area had been placed under Part B of the Sixth Schedule and were declared autonomous regions and separate Regional councils were constituted for them. The members of the Regional councils were also elected on the democratic principle. The Governor was empowered to make rules for the constitution of the District Councils and the Regional Councils in consultation with the existing Tribal Councils or other

75 Ibid. P. 149
76 Ibid P. 149
representative tribal organizations within the autonomous districts or regions concerned. 77

Councils were granted power to make rules for the composition of subordinate local councils or boards, the appointment of officers and staff of the District Councils and Regional Councils, the procedure of conduct of business in the District and Regional Councils, and the term and conditions for election of the District Councils and Regional Councils and qualifications of their members. Further, these councils were given the authority to regulate agriculture, the allotment of occupation of Land other than reserved forests, cottage industries, the management of forests, the use of any canal or water course for agricultural purposes and the establishment of village or town committees or councils and their powers. They were also given power to manage affairs concerning elections of the civil chiefs or village headmen. For the welfare of the people and the growth of the hill areas, the District and Regional Councils were given enormous powers in matters, such as inheritance of property, marriage laws and social customs, maintenance of trade and education, construction of roads and bridges, hospitals, dispensaries, markets, etc. The Councils were empowered to impose and collect taxes and to make necessary expenditure. 78

The autonomous hill districts were given representation in the State legislature of Assam where some of the hill representatives were appointed as Ministers and Deputy Ministers for the affairs of the hill people in the Assam Government. 79

78 Ibid.P. 15.
79 Ibid P. 15
Though the autonomous districts were given representation in the Assam Government, the legislature of Assam had no power to interfere in the local affairs of these autonomous districts or regions. The Sixth Schedule provided that "no Act of State legislature in respect of the tribal affairs should apply to any autonomous districts unless the District Councils so direct."80

Thus the Sixth Schedule of the Indian Constitution provided autonomy for the tribal areas of Assam in their local matters. But for their supervision, control and direction of the District and Regional Councils, the Governor of Assam was given some discretionary powers. It was provided that the "Governor may, by public notification, direct that any act of the parliament or of the legislature of the State shall not apply to an autonomous district or shall apply to such district, or may part thereof subject to such exception or modifications as he may specify in the notification." The Governor was entrusted with the authority to appoint a commission at any time to examine and report on any matter specified by him relating to the administration of the autonomous district and autonomous regions. Further the Governor was empowered to annul and suspend an act or resolution of the District Council or Regional Council if, in the opinion of the Governor, such an act would endanger the safety of India. The Governor had power to dissolve the District Councils and the Regional Councils on the report of the Commission appointed by him. 81

The Sixth Schedule of the Indian Constitution made provisions which partly met the Naga demands to manage those affairs which concerned them. In a way the Naga demand of autonomy in cultural, religious and economic matters were met.

80 Ibid P.16.
81 Ibid. P. 16
Here we find a reflection of the policy enumerated by the Indian leaders after Independence. The policy was to provide autonomy and freedom in local matters to different regions of India and at the same time to maintain the unity and integrity of the country. The Sixth Schedule of the Indian constitution was definitely based on this very principle. The Nagas were given the District Council and Regional Council and representation in the Government of Assam. This indicates that the Nagas were given autonomy in matters of local administration. The Naga Hills area was, however, kept within the Indian Union. The founding fathers of the Indian Constitution had expected that the creation of the District Council and the Regional Council would give the Nagas a sense of participation in the administration and they would gradually come within the mainstream of India.  

These expectations of the Indian leaders however were not based on a realistic assessment of the situation obtaining in Nagaland at that time. The Nagas far from being satisfied with the provisions of the Indian constitution became all the more irritated and dissatisfied. The Nagas had been demanding a government of their own, of course, within the Indian Union for the time being but contrary to their expectations they were tagged with Assam which they had consistently opposed. They felt that they had been betrayed. Even the provisions of the Hydari Agreement which had provided some form of an interim Government for the Naga hills area also could not be made available to them. The extremist Nagas had all along advocated for an independent Naga State. The moderates were, however, prepared to cooperate with the Indian Government, had the constitution provided them a separate Government of their own within the Indian Union as stated in the Hydari

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Ibid.P.18
Agreement. But now they also felt that they had been let down by the Government of India. The dissatisfaction of the moderates provided an opportunity to the extremists to create an anti-Indian feeling throughout the Naga Hills. This resulted in the boycott of the elections of the District Council of the Naga Hills district and the general election of 1952. So the Sixth Schedule to the Constitution never applied to the state of Nagaland.

The tribal people of India are differently termed in different parts of India. They are also disturbed by the other sections of the people. They are also classified in terms of their language, race, and also in terms of their technology and economy. The socio-economic and cultural life of the tribal groups of India varies from tribe to tribe and region to region. They belong to various ethnic stocks, and have distinct pattern of economy, religious behaviour and speak large number of dialects. Though there is lot of differences but there exists a good deal of similarity in their socio-cultural and psychological level. Till today they are trying to retain their separate social identity, customs and regulations. As a whole they are isolated and backward in almost all the activities from the rest of the world.

Tribals are an integral part of Indian civilization. The tribals enjoyed autonomy until the beginning of medieval period. By the end of 16th century they were harassed by the Mohammedan rulers and gradually lost their status. After independence, the Government of India thought of and planned for the upliftment of the tribal peoples. The Constitution of India contains many provisions for the protection and welfare of the tribal people. To sustain the constitutional safeguards given to them, Government also adopted many programmes throughout the years.

83 Ibid. P. 18.
The constitutional perspective relating to Scheduled Castes and the scheduled Tribes is to be gathered from the following articles. Fundamental rights to Equality are spoken in many articles that is Articles 14, 15, 16 and 17. We will see right against exploitation in Articles 23 and 24. Another very important part which gives lot of safeguards to the deprived people is enumerated in Articles 38, 39, 39A, 41, 43 Etc...

A minister in charge of Tribal welfare in States is included in Article 164(1). Administration of the scheduled areas and tribal areas are mentioned in Articles 244, 244A. Grants from the Union to certain states is mentioned in Article 275. Special provisions for the scheduled caste and scheduled tribes especially for reservation of seats for them in the House of the people. Article 332, speaks of reservation of seats for the Scheduled caste and scheduled tribes in the Legislative Assemblies of the States.

Article 335 points out the claims of Scheduled castes and Scheduled tribes to services and posts. Article 338 clearly speaks of a National Commission for Scheduled Castes and Scheduled Tribes. Control of the Union over the Administration of Scheduled Areas and the welfare of Scheduled Tribes is explained well in Article 339. Under the provisions of this Article President may appoint any time and shall at the expiration of ten years from the commencement of this constitution a commission to report on the administration of the Scheduled areas and welfare of the Scheduled Tribes. A National commission for the Scheduled Castes and Scheduled Tribes has since been appointed. This Article also empowered the union to give directions to any state in regard to drawing up and execution of schemes for the welfare of the Scheduled Castes and the Scheduled Tribes.
Special Provisions with respect to the State of Nagaland is mentioned in Article 371A. Article 371B, 371C, 371G, 371H speaks Assam, State of Manipur, State of Mizoram, and State of Arunachal Pradesh respectively. Fifth Schedule and the Sixth Schedule to the Constitution mainly deal with the Administration of the Scheduled Areas and the Scheduled Tribes. The Sixth Schedule Deals with the administration of the tribal areas in Assam, Meghalaya, Tripura and Mizoram. The Fifth Schedule deals with the administration of other Scheduled Areas and Tribes.

Prior to the constitution, the term “Scheduled Tribes” was not use, but the tribes were variously termed as aboriginals, Adivasis, forest tribes, hill tribes, primitive tribes. Up to 1919, the tribes were included under the head of “Depressed Classes”. The term Scheduled Tribes was inserted in the constitution through Article 342(1). This Article gave the power for the President to specify the tribes and the tribal communities.

Thus the Constitution makers were well aware about the situation of the tribals especially the backwardness of the people. And the isolationist approach of the British towards the tribals of North East. So they have made many special provisions for them in the constitution. Thus the constitution enjoyed special responsibility on the Central government as a whole and state government in particular to make earnest endeavour for the development of the scheduled Tribes and the areas inhabited by them. To sustain all the Constitutional safeguards Central Government and State Government launched various plans and Programmes through the Departments specially set up for the purpose and different Ministries and agencies.