

# OUR LAWS-OUR RIGHTS



## Module-2



**Tribal Welfare Dept.,  
Andhra Pradesh, Amaravati**

# **OUR LAWS - OUR RIGHTS**

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Module-2



Tribal Welfare Department  
Andhra Pradesh, Amaravati

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## **OUR LAWS - OUR RIGHTS....**

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## 1. Forest Rights Act

The Government of India enacted a law in 2006 recognizing the forest rights of the tribal and other traditional forest dwellers (non-tribals). Known as “The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, (in short Forest Rights Act) applies to both the Scheduled and general areas in the country.

Historically, both the tribals and other traditional forest dwellers have been subjected to injustices by successive governments by not recognizing their rights on forests. This law was enacted to correct the historic injustice done to tribals and other traditional forest dwellers. The prime objective of this law is to recognise the forest rights of these people. Broadly two sets of rights are recognised. The first is individual forest land rights and the second is Community Forest Rights. Along with these, the Act also empowers the community to conserve, generate and manage the Community Forest Resources. The Forest Rights Act 2006 came into force on 31-12-2007. The Rules were notified on 01-01-2008 onwards.

Let us know the forest rights that are recognised by the law, in brief. The tribals and Other Traditional Forest Dwellers can seek the forest land patta for the forest lands which were in their occupation prior to 13<sup>th</sup> December, 2005. In the case of Other Traditional Forest Dwellers, they need to have resided in the region for a period of 75 years, prior to the 13<sup>th</sup> December, 2005.

We know that the Scheduled Area Land Transfer Regulations 1 of 70 does not permit the non tribals to claim right over the government lands. Thus, the present Forest Rights Act also does not permit the non tribals to seek recognition of forest lands in their occupation in the Scheduled Areas of Andhra Pradesh.



The other set of rights, Community Rights, includes nistar; right of ownership, access to collect, use, and dispose of non timber forest produce, fishing in water bodies, grazing rights, access to biodiversity, intellectual property and traditional knowledge, habitat rights of Particularly Vulnerable Tribal Groups, rights over disputed lands and conversion of Pattas or leases etc issued on forest lands to titles, conversion of all forest village settlements into revenue villages, right to in situ rehabilitation including alternative land in cases where the Scheduled Tribes or other traditional forest dwellers have been illegally evicted or displaced from forest lands prior to the 13th day of December, 2005.

### **Critical wildlife:**

The forest rights recognised under this Act in critical wildlife habitats of National Parks and Sanctuaries shall not be affected for the purposes of creating inviolate areas for wildlife conservation, unless the coexistence of human population and wild life is impossible. The free informed consent of the Gram Sabha in relation to the proposed resettlement and the package is a pre condition for the relocation. No



relocation shall take place until facilities and allocation of the land at the resettlement place are complete as per the promised package and after ensuring secure livelihood.

<b>Individual Forest Rights</b>	Right to seek recognition of forest land occupations by tribals and Other Traditional Forest Dwellers for dwellings and cultivation.
<b>Community Forest Rights</b>	<ol style="list-style-type: none"> <li>1) Right to collect, use, transport, sell the non timber forest products.</li> <li>2) Right to fish in the water bodies.</li> <li>3) Right to graze Cattle.</li> <li>4) Traditional sites, sacred trees and path ways.</li> <li>5) Habitat rights of PVTGs/ Pre Agricultural communities.</li> <li>6) Right to development.</li> <li>7) Right to convert the unsurveyed lands and forest villages as revenue villages.</li> <li>8) Right to rehabilitation or alternative land for the land they parted with.</li> <li>9) The right to protect the traditional knowledge, bio-diversity, and intellectual property related to the forest resources.</li> </ol>
<b>Right to manage the Community Forest Resources</b>	Gram Sabha is to manage the forests through a committee appointed by it for the conservation of forest resources, restoration, and maintenance.

The Forest Rights Act does not recognize the hunting as a right in the forests unless it is a prior recognized rights by the State.

### **Right to Development:**

Infrastructure can be developed in villages with the permission of Grama Sabha, by removing trees not exceeding than 75 per hectare. That means forest land can be used for the development of infrastructure like schools, dispensary or hospital, anganwadi, ration shop, electricity, telephone, ponds, and drinking water facility, roads, community centres, and minor irrigation canals.

#### **Eligibility for seeking recognition of Rights on Forest Land:**

To be eligible, the claimants will have to be Scheduled Tribe in the area through community certificate while the other traditional forest dwellers will have to prove that they and their forefathers were residing in the region for three generations amounting to 75 years prior to 2005. The tribals and other traditional forest dwellers have to provide two evidences that the forest lands were in their occupation prior to the 13 December 2005.

Title deed for individual rights, not exceeding an area of four hectares (Ten Acres) of actual occupation, will be issued jointly in the name of both the spouses in the case of married persons, and in the name of the single headed person in the case of single headed family. This recognized forest land is heritable but not transferable. In the absence of direct heir to the rightful holder, the next to kin will get rights on that land. The applicants can claim right over the forest lands in their actual occupation,. In the case of Community Rights (CR) and Community Forest Rights (CFR), the title will be in the name of the Village/Gram Sabha.

### **Management of Forest lands and Conservation :**

Apart from enjoying the forest land rights, the rightful holders have certain duties in managing community forest resources. They are empowered to 1. Protect the wildlife, forests and the bio-diversity 2. Protect the bio-sphere 3. Conserve the habitats from any form of destructive practices affecting their culture and natural heritage 4. Regulate access to Community Forest Resources and take steps to prevent destruction of forests, bio diversity etc.

### **The lands that come under the meaning of Forest Lands:**

The forest rights are to be recognized on lands of any description falling within any forest area and includes un classified forests, un demarcated forests, deemed forests, protected forests, reserve forests, wildlife sanctuaries, national parks.

#### **Do You Know?**

The Government should recognise the forest rights of tribals and other traditional forest dwellers, and obtain the written consent of the Gram Sabha before diverting any forest land for non forest purposes (For example, for construction of projects)

### **Committees to determine forest rights:**

The claims of the applicants for forest rights recognition will be adjudicated at three levels. The title deeds will be issued only by the District Level Committee. They are:

1. Grama Sabha, 2. Sub-Division Level Committee
3. District Level Committee

There will be a State Level Monitoring Committee to monitor the process of recognition and vesting of forest rights and issue the guidelines if desired for the implementation of the Forest Rights Act.

### **Gram Sabha:**

Gram Sabha will be at the habitation or hamlet level the plain areas as well as Scheduled Areas. The Gram Sabha is vested with the powers to constitute a 'Forest Rights Committee' with 10-15 members. There will be a Chairman and Secretary for the Forest Rights Committee.

### **Functions of the Forest Rights Committee:**

Receiving applications from individuals who seek the recognition of forest rights, collecting relevant evidences, conducting field enquiries and placing the claims with relevant documents before the Gram Sabha for taking decision through a resolution; Further the duty of the Forest Rights Committee is to prepare maps, records, recording statements, and verifying them in the presence of the applicants.

If there are inter village/hamlet disputes that are not solved mutually by the concerned Gram Sabhas, then these are to be resolved by the Sub Division Level Committee. It has to make available all the records and information of the village to the Gram Sabha.

### **Functions of the Grama Sabha:**

Conducting enquiry on the claims received, determining forest rights and their extent, and sending them as a resolution to the Sub-Divisional Committees. Maintaining the Register of Applicants and their claims, and appointing the Management Committees of Bio-Diversity are also the duties of Gram Sabha.

The claims are accepted for a period of three months from individuals or family months from the date of notification for the determination of forest rights. The time limit for filing claims may be extended if so desired by the Gram Sabha. The rights so determined

by the Gram Sabhas are sent to the Sub Divisional Committee. Persons is aggrieved by the decision of the Gram Sabha can appeal to the Sub-Divisional Level Committees within 60 days for resolution.



## **2) Sub-Divisional Level Committee:**

The Sub-Divisional Level Committee is composed of three members of the Mandal Parishads appointed by the Zilla Parishad, and the District Tribal Welfare Officer/ Assistant Welfare Officer in non-ITDA areas as Member-Convenor and headed by the Sub-Collector as Chairpers,

### **Functions of the Sub-Divisional Level Committee:**

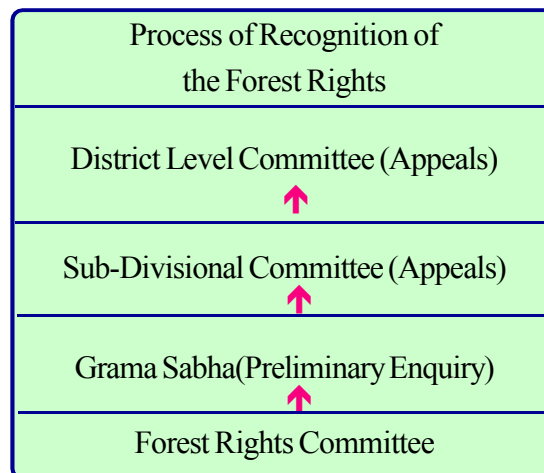
The Functions of Sub-Divisional Committees are as follows:

Sharing of the information and maps with the Gram Sabhas and Forest Rights Committees; Compilation of the resolutions of Gram Sabhas; and Verifying whether the Gram Sabha resolutions with the other documents and the maps are in order; Hearing appeals from the aggrieved and resolving them. Coordinating with the other Sub-Divisional Level Committees; Preparing the draft records on the forest rights and sending them to the District Level Committees for final decision; These are the key functions of the Sub-Divisional Committees.

The claimants who disagree with the decision of the Sub-Divisional Level Committee can file an appeal to the District Level Committees within 60 days. The Chairperson, ITDA Project Officer or the Tribal Welfare Officer as the member secretary and three members of Zilla Parishads and District Forest Officer are its members.

### **Functions of the District Level Committee:**

Taking final decisions on the draft resolutions forwarded by the Sub-Division Level Committee on the forest rights; Accepting or rejecting the resolution of the Sub-Divisional Committee or sending the resolution back to the Sub-Division Level Committee or the Gram Sabha for its review; Entertaining the petitions, or appeals against the resolution of the Sub Divisional Level Committee; Maintaining co-ordination with the other District Level Committees; Issuing orders from time to time to record the recognised forest rights in Government land records; Publication of the recognised forest rights; Issuing the Forest Rights Title Deeds (Pattas) are the functions of the District Level Committee.



### **The Evidences required for recognition of forest land rights:**

The claimants of forest rights have to submit more than one evidence along with the claim form. The evidences can be any of the

following:

Government records, gazettes, population census, survey records, maps, satellite pictures, forest enquiry reports, forest department records, pattas, lease deeds, Government committee reports,, Government orders, Government notifications, resolutions, voter identity cards, ration cards, house tax payment receipts, residential certificates, houses, huts, check-dams, court judgements, documents prepared by the Government survey institutions, the maps prepared during the erstwhile princely states, record of rights, privileges , concessions, genealogy , the proofs of residence, Statements of the elderly person etc.

### **The Evidences required to determine Community Forest Resource:**

Community Forest Resource area is the customary ara which the village has been traditionally accessing for various purposes. These include traditional grazing grounds, areas of gathering of roots, tubers, fodder, wild edible fruits, and minor forest produce, fishing grounds, irrigation structures, sources of water, places for collection of medicinal plants, remnant structures, sacred trees, groves, burial grounds, etc.

### **How do we get Forest Rights :**

We have to make a claim for the recognition of forest rights to the Gram Sabha with required evidences. The Forest Rights Committee makes an inquiry and submits their findings with the recommendation to the Gram Sabha based on which the Gram Sabha passes a resolution accepting or modifying or rejecting the claim. The claimants who do not agree with the resolution of Gram Sabha can file an appeal to the Sub-Division Level Committee within 60- days who will then hold a hearing. The date of hearing will be intimated to the concerned Gram Sabha and the claimant through a

15 days prior notice.

In case the Sub-Divisional Committee does not accept the appeal, it may remand back the claim to the Gram Sabha for its re consideration stating their observations. If the claim is accepted by the Gram Sabha within 30 days, the problem will be solved. If the Gram Sabha rejects the claim and send the resolution to the Sub Division Level Committee, then it may accept or reject it. If there are disputes in the matters of rights among the Gram Sabhas , those will be resolved by the SDLC through meetings. If any resolution is passed by the SDLC against the claim, the SDLC is to provide reasons for the rejection or modification to the claimant so they can file an appeal with the District Level Committee within 60 days. The District Level committee will hear the appeal with a 15 days prior notice to the Gram Sabha and the applicant. In case the District Level Committee does not accept the appeal then it may remand the matter back to the Sub-Divisional Committee or the Gram Sabha for its reconsideration. The decision made by the Sub-Committee may be accepted or rejected or modified by the District Level Committee. If there are differences between Sub-Divisional Committees over claim of rights, then they will be resolved through meetings. The decision of the District Level Committee is final. The DLC then directs for entering these rights in the record of rights in the Government records.

### **The duration for making claim for Forest Rights:**

Claims for forest rights can be made up to 3 months' time from the date of notification. The time may be extended by the Gram Sabha if required.

### **Appeal on the District Level Rights Committee Decisions:**

The decision made by the District Level Committee is final. There cannot be any further appeal against the decision of the District Level



Committee. The aggrieved can file writ petitions in the High Court or the Supreme Court challenging the decision.

### **Offences and Penalties:**

Any authority or committee or officer who contravenes any provision of the Forest Rights Act or rules concerning the recognition of forest rights is committing an offence under the act. The offender is liable for the punishment with fine which may extend to one thousand rupees. He/she will not be liable for the punishment if he/she proves that the offence was committed without his/her knowledge or he/she had exercised all due diligence to prevent the commission of such offence.

A Scheduled Tribe in case of a dispute relating to a resolution of a Gram Sabha, or the Gram Sabha is to give sixty days notice to the State Level Monitoring Committee through a resolution against any higher authority to initiate action. If the State Level Monitoring Committee do not proceed against such authority, then the aggrieved can go to the court for justice.

#### **Do You Know?**

1. If any member of the family is employed by the Government, the others will not forfeit their forest rights. There is no compulsion that the entire family should depend on forests only.
2. The tribals will not lose their forest rights even if they change their residence.
3. The forest rights can be given individually and collectively to the Gram Sabha.

4. The permits to transport the non timber forest produce from the recognised forest areas should be given by the Gram Sabha only.
5. Community Forest Right Titles will be issued in the name of Gram Sabha.
6. The Gram Sabha has to certify that the process for recognition of forests rights is completed, for diversion of any forest land for any project and give a written consent for diversion.
7. No claimant should be evicted from the forest land until a final decision is taken regarding his claim.
8. The Gram Sabha or the Committees have to give reasons in the case of rejections of the claims.

### **Evaluation**

#### **Key Words:**

Individual rights, Community rights, nistar, Hereditary rights, Community Forest Resources, Title deeds, Government records, habitation, lease, revenue village, survey, rehabilitation, protected forests, reserve forests, wildlife sanctuaries, national parks, bio-diversity, bio-sphere, claims, gazettes, witness, Statement, Writ petitions, Enquiry, permit, genealogy, Appeal.

Improve your Learning:

1. Explain the problem if the tribals don't have the forest land titles on forest lands in their occupation.
2. State the two set of rights ensured under the Forest land Rights Act.

3. A tribal is cultivating a patch of land since January 2006. Will he get the Forest Rights Title deed as per the provisions of Forest Rights Act-2006? If not state reasons.
- 4 . The forest land cultivators were displaced for construction of a project in a forest area. No compensation was paid to them. What have they to do in order to get forest land rights over that land ?
5. The authority to protect bio-diversity and the bio-sphere is vested with .....
6. ....is the primary body and ....is the committee to recognise and vest forest rights.
7. Forest Rights Committee is to be constituted by the Gram Sabha with.....members
8. A Forest Rights committee invited applications for recognition of forest rights from the forest land claimants on 12-11-2015. What will be the last date for making claims for forest rights?
9. There is a dispute in relation to forest rights among the Gram Sabhas. How to resolve this dispute?
10. A tribal has the voter identity card and the statement of an elderly person to show that he had occupied the forest land prior to the 13-12-2005. Can he secure individual forest land rights?
11. A tribal did not agree to the decision of the Gram Sabha dated 16-12-2014. To which committee can he file an appeal challenging the decision? By when should be file such appeal ?
12. If the claim is rejected by the Sub-Division Level Committee, to which committee should the claimant file an appeal ?

13. ....committee's decision is final. There will be no further appeal against such decision.
14. The tribal who seeks forest land rights have to show the evidence that the forest land was in his occupation on .....
15. In a tribal family there is the father, mother, two sons and a daughter. The elder son is in the Government service. The officers refused to give patta on the forest lands to the remaining members who were cultivating the land from 2001. Is it legal?
16. A tribal has applied for forest land rights. The application is pending for decision at the Grama Sabha. Can the forest officers evict the tribal from the land that is being cultivated?
17. A tribal family was cultivating 15 acres of forest land. He applied for forest land title for the total extent of land. To what extent of forest land is he eligible to claim for grant of title deed?
18. Wife, husband and their children are cultivating forest land. On whose names the forest land title will be issued?

**1. Fill in the relevant particulars in the table.**

Individual Forest Rights			
Functions of Forest Rights Committee			
Functions of Gram Sabha			
Functions of Sub-Divisional Committee			
Functions of District Level Committee.			
Community Forest Rights			

**2. Fill in the following Table:**

Serial Number	Committees	Indicate the priority by using 1,2,3,4,5 in the order	Who will head these bodies.
1.	Forest Rights Committee		
2.	Sub-Divisional Level Committee		
3.	Gram Sabha		
4.	District Level Committee		
5.	State Level Monitoring Committee		

**Project:**

1. Identify the following with the help of your teacher on an outline map using different colours: protected forests, reserve forests, wildlife sanctuaries, national parks etc.
2. Go to a village. Collect some individual forest land right title deeds and community forest rights title deeds. Write the particulars of these deeds on a chart and display it in your class room.

## **2. The Local Self Government Institutions - PESA**

**T**he Government of India enacted the Provisions of the Panchayats (Extension to Scheduled Areas) Act” in 1996 (PESA) for local self governance in the Scheduled Areas of the country. PESA provides village self rule by empowering the Gram Sabhas.

Andhra Pradesh amended The AP Panchayat Raj Act 1994 to incorporate PESA for extending the special provisions for the local self governance to the Scheduled Areas of the State in 1998. The rules were notified in 2011 to operationalise the Act.

Definition of Village: The village under PESA Act and the AP amendment is “A village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs”.

The Government also declared the list of villages in 2013 for the purpose of notifying the Gram Sabhas in the Scheduled Area for effective village administration. The power to declare villages lies with the Commissioner of Tribal Welfare Department. Each of these villages will have a Gram Sabha. In a Gram Panchayat there can be any number of villages.

We have to know about the powers and functions of Panchayat Raj Institutions including Gram Sabhas.

Panchayat Raj bodies are the Village Panchayats, Mandal Praja Parishads and Zilla Parishads. Let us first know about the functioning of Gram Sabha, and its powers and functions.

### **Do You Know?**

The expansion of PESA is “The Provisions of The Panchayats (Extension To Scheduled Areas)” Act.

### **Do You Know?**

The States to which PESA applies: Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan, and Telangana. It applies to only the scheduled areas of these states.

### **Gram Sabha:**

The Gram Sabha comprises of all the registered voters in the notified Village. The Village Sarpanch will be the president of the Gram Sabha. The Vice-President and Secretary should be elected from amongst the members of Gram Sabha. Vice-President and Secretary should essentially belong to Scheduled Tribes. The tenure of their post will be for 5 years.



The quorum of the Gram Sabha is 1/3 of the total members of the village. Of them 50 percent should belong to Scheduled Tribes.

Gram Sabha should be conducted at least two times a year. In addition to this, Gram Sabhas can be conducted any number of times if desired. The Gram Sabha meetings shall be conducted in a suitable place and time. The Secretary/Vice President should take the signatures or thumb impressions of the President of Gram Sabha and other members of the Gram Sabha who attended the Gram Sabha.

After the discussions in the Gram Sabha, the decisions of the Gram Sabha should be readout to the members. Every resolution should be written in full and got approved separately. The members express their approval by raising hands. The resolutions adopted by Gram Sabha should be entered in a register.

#### **Do You Know?**

The issue discussed in Gram Sabha may be one. The resolution may be entered differently. So, we have to be cautious.

Concerned Government departments/ institutions.

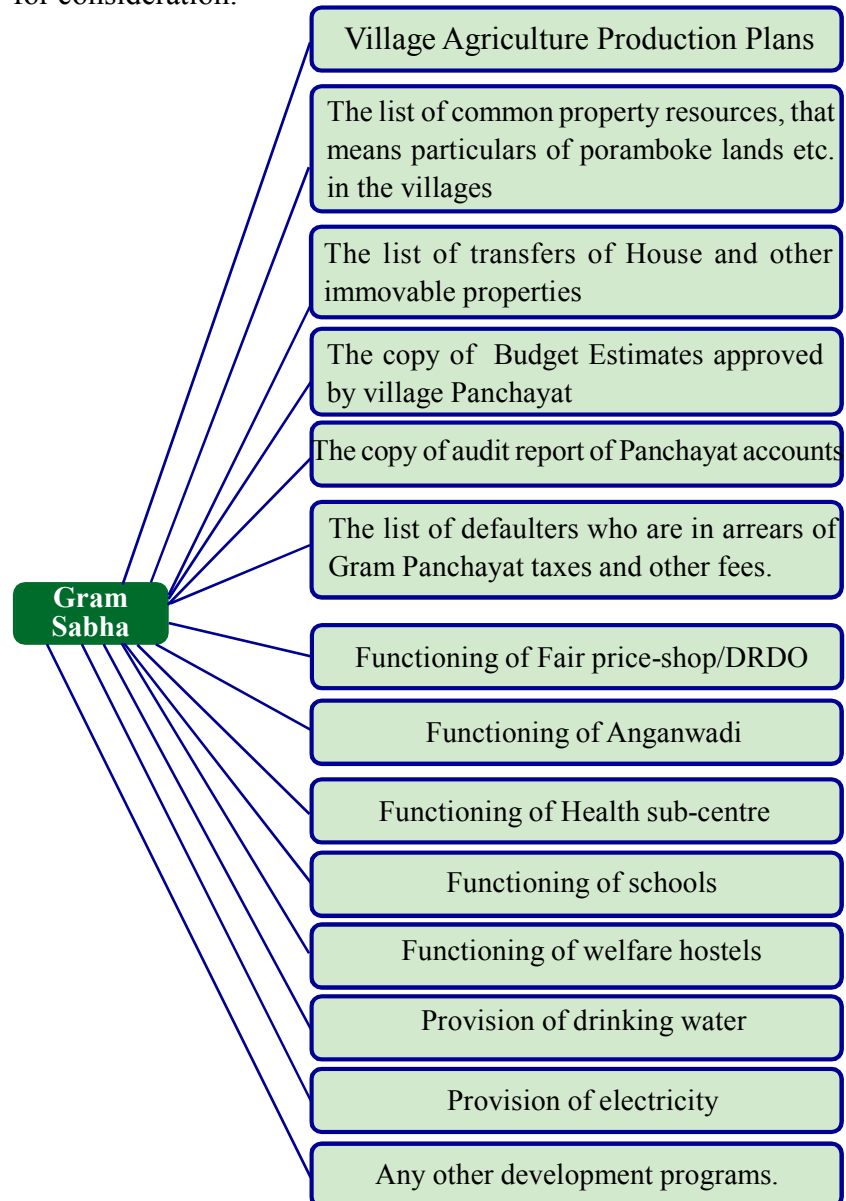
#### **Do You Know?**

The members of the Gram Sabha may be asked for thumb impressions or signatures to cheat the members. So, they need to be careful.



### 1) Powers and Functions of Gram Sabha

The following subjects have to be placed before the Gram Sabha for consideration.



### **Other Functions and Powers of Grama Sabha:**

#### **Village development Schemes:**

Prior approval of the Grama Sabha is needed for taking up any development schemes/programs at the village level by the Panchayats. Gram Sabha will be responsible for identification and selection of beneficiaries under poverty alleviation programmes and other developmental programs.

The Utilisation Certificates for the money spent by Gram Panchayats on developmental activities have to be obtained from the Gram Sabhas. The Gram Sabhas shall be involved in identifying the individual and community developmental activities, and implementing them.

The Utilisation Certificates have to be submitted to the department or institution concerned from which funds have been released to the Gram Sabha and panchayat.

#### **Do You Know?**

Gram Sabha can submit Utilisation Certificates even without spending funds released. So, we need to be cautious.

#### **Women and Child Welfare:**

Gram Sabha has to approve the budget estimates of Anganwadi centres.

#### **Dispute Resolution:**

The Gram Sabha has the power to protect the traditions and customs of communities, and customary mode of dispute resolutions without violation of the laws in force.

### **Management of minor water bodies:**

Gram Sabha is to manage the minor water bodies of the village. Minor water body means the natural water reserves used for fetching drinking water, and check dams irrigating up to 40 hectares of land.

### **Management of minor forest produce:**

Ownership and mode of disposal of the minor forest produce vests in the Gram Sabha. Whenever disputes arise in the matters of access to collection, use and disposal of minor forest produce, the collectors have to bring to the notice of Gram Sabha for its settlement. We have thoroughly discussed the functions of Gram Sabha in determining the forest rights of individual and community under the Forest Rights Act in the earlier chapter.



### **Excise matters:**

Gram Sabha has the power to enforce prohibition, or regulate or restrict the sale of consumption of any intoxicant. The decisions of the Gram Sabha in respect of permitting the establishment of a unit for manufacturing liquor, or grant of licences to open liquor

shop/ bars is final and binding on the Excise Department. The decision of the Gram Sabha is to be communicated within 4 weeks to the concerned officers. The Gram Sabha has also the power to permit brewing traditional liquor for the consumption of tribals during the marriage, social and other religious ceremonies, but not for sale.

### **Protection of Tribal Land Rights:**

Alienation of tribal land is another problem in the Scheduled Areas. We know that the Land Transfer Regulations were promulgated prohibiting the transfer of lands in favour of non tribals, either by tribals or non tribals. Gram Sabha has the power to prevent alienation of tribal land and restoration of alienated lands of tribals wherever their lands are either encroached or alienated. It can pass a resolution in the cases of violation of Land Transfer Regulations and send to the Special Deputy Collector (Tribal Welfare)/Revenue Divisional Officer for action.

### **Appeal and review:**

Anyone who does not accept the decision of the Gram Sabha can prefer an appeal to the Commissioner of Tribal Welfare within 60 days. The Commissioner may examine the decision as to its correctness or legality and pass orders. Any person aggrieved by the decision of Commissioner of Tribal Welfare can also file a petition for its review within in 90 days and suitable orders.

## **2) Powers and Functions of Gram Panchayat and Mandal Parishad:**

### **Minor Minerals:**

The Grama Panchayat is vested with the powers to grant prospecting license, mining lease for minor minerals, and concessions through public auction. The local Scheduled Tribes/Tribal Societies and Tribal Mining Corporation are the only eligible for obtaining licences, leases and concessions. The decision of the Gram Panchayat

is final and binding on the mining department. It shall communicate its decision, either rejecting or accepting the grant of leases/licenses, within 4 weeks to the Excise officers.

### **Management of Village Markets:**

Grama Panchayat will act as the Market Committee to manage the Village Markets and grant licenses to local tribals. As a part of the management of village markets it has power to regulate and maintain the market yards, enforce conditions of licenses, implementation of sale agreements or its cancellation, and take measures to prevent adulteration and curb malpractices in the weighments, delivery of goods and payments etc.

### **Women & Child Welfare:**

The Grama Panchayat has the power to recruit anganwadi workers and helpers in its jurisdiction and initiate disciplinary action against them.

### **Management of Minor Water bodies**

The Gram Panchayat has the responsibility to manage the minor water bodies located in more than one village in the Gram Panchayat for the benefit of people. The management of water bodies includes planning and maintaining. This is on the Mandal Parishad if the water bodies are located across GPs in the Mandal. If the minor water bodies are located in two or more Mandals, then the responsibility of maintaining such resources will lie on the Zilla Parishad. These Panchayat raj Institutions will have power to collect water rates and share it with water users associations. The management of water bodies includes repair, restoration, maintenance, fixing ayacut seasons wise, levy of water rate, its collection and utilisation.

### **Implementation of Tribal Sub-Plan:**

The Mandal Parishad Development Officer has to inform the Gram Panchayats on allocations in terms of both physical and financial as per the Tribal Sub-Plan within a month from the date of commencement of the Financial Year. Both the Gram Panchayat and Mandal Parishad shall have to review the progress of implementation of Tribal Sub Plans within its jurisdiction. The Mandal Parishads and Gram Panchayats have to send their reports on the implementation of Tribal Sub-Plan through the District Collector concerned.

### **Health:**

Panchayat Raj institutions shall support, review and guide the Hospitals within their jurisdictions. The Gram Panchayats in villages, Mandal Parishads in Mandals and Zilla Parishad in districts is to review the implementation of health programs, supply of medicines, and their utilisation, and prevention of diseases. These institutions is to follow the suggestions given by the Health Institutions in respect of hygiene, sanitation, safe water and other matters concerning the health. The budgets of Primary Health Centres and Sub-Centres have to be approved by the Mandal Parishad. The Mandal Parishad is to call for administrative reports from these Health Centres within one month from the commencement of the financial year.

### **Land Acquisition in the Scheduled Areas:**

The concerned officers of Land Acquisition and Rehabilitation are to place their proposals and plans with full details before the Mandal Parishad for their decisions. The Land Acquisition officers shall consider the recommendations of the Mandal Parishad or send back them for their reconsideration. If the authorities disagree with the recommendation, they shall have to pass an order giving reasons for it. If the Mandal Parishad, in their opinion, decides that the authorities are not following the suggested measures, they can make a complaint against

them to the State Government, and it will be mandatory for the Government to take action against the officers concerned.

### **Control over Institutions and functionaries in all Social Sectors:**

#### **Education:**

The Education Budgets of all educational institutions are to be approved by 31st May before the commencement of the academic year. Mandal Parishad is to monitor the attendance and regularity of teachers and to report on disciplinary issues to the concerned officers against erring teachers. The concerned officer has to intimate the action taken on such reports. It shall have power to call for administrative reports from all the education institutions within its jurisdiction.

#### **Maintenance of Welfare Hostels:**

Mandal Parishad has power to monitor the activities of the Welfare Hostels. It shall call for administrative reports on the management of hostels twice a year from the Hostel Welfare Officers. They can recommend admission of students to Hostels. The Mandal Parishad can recommend for suitable action against the Hostel Welfare Officers and staff if they are found to be absent or indulging in mal practices. The concerned officer has to intimate the action taken on such recommendations.

#### **Women and Child Welfare:**

Mandal Parishad has the power to call for the administrative reports from the Project Officers, and ICDS Project Officer within a month from the commencement year.

## Evaluation

### Key Words:

PESA, Grama Sabha, Minor Water Bodies, Quorum, Common Property Resources, Poramboke Lands, Budget, Audit, Angawadi, Utilization Certificate, Compensation, Rehabilitation plan, Minor Minerals, lease, license, Minor Forest Produce, Market Yard, Academic year, check-dam, Displacement, Rehabilitation, Mining lease and Auction.

### Improve Your Learning :

1. The Government of India enacted the PESA Act in .....year.
2. Andhra Pradesh implemented special provisions for the local governance in the scheduled Areas in.....year.
3. When did PESA rules come into force ?
4. The officer having the power to declare villages in scheduled Area is.....(Panchayatraj Commissioner/ Tribal Welfare Commissioner)
5. The people who are eligible to participate in Grama Sabha are.....
6. Can the people whose names are not in the Voter's list participate in Grama Sabha ?
7. The Vice-President and the Secretary of Grama Sabha should belong to .....sections. Their tenure is for .....years.



8. There was only one Grama Sabha meeting in a year. Is it legally valid? If not, how many meetings should be held minimum.....and ..... maximum times.
9. What is the quorum for conducting a Grama Sabha meeting ?
10. The population of a village is 206. But there are only 155 voters in the village. Of these two numbers, which group will be eligible to participate in the Grama Sabha meeting?
11. There are 90 members of Gram Sabha in the village. Of them, how many members need to attend the meeting for fulfilling the quorum requirement? How many ST members should be among them to conduct the Gram Sabha.
12. How to express the opinion of the Gram Sabha through passing a.....
13. The resolutions adopted by the Gram Sabha should be sent to the concerned excise officers with in .....weeks.
14. Show a table of type of issues discussed and dealt in Gram Sabha in your area.
15. Which Schemes of Gram Panchayat require the approval from Gram Sabha? The responsibility identify beneficiaries is with.....
16. The budget of Anganwadis has to be placed before.....for its approval.
17. Some tribals are cultivating the lands with the help of a check-dam constructed by ITDA which has an ayacut of 42 hectares. Can this be considered as Minor Water Body as per the PESA provisions? If not Why?

18. Management of Minor Forest Produce vests in .....
19. The power to decide grant of licence to open a liquor shop is vested in.....only
20. A tribal can approach the..... saying that his land is in the occupation of a non-tribal and request to restore that to him.
21. The problem of alienation of tribal land can be addressed by by.....
22. If someone wants to contest the decision of Grama Sabha, he can make an appeal to .....officer.
23. The power to grant mining lease is vested with..... and .....are only eligible to seek minor mineral leases.
24. In the management of Village Markets, the .....will act as the Market Committee.
25. In the implementation of Tribal Sub-Plan, the .....will have involvement.
26. .... has the power to review the progress of health programmes and activities.
27. The Land Acquisition Officer shall place the proposals before ..... for its decision.
28. Control over Educational Institutions and Hostels will be vested with .....

**Fill in the Table:**

State the subjects on which the Gram Sabha can pass resolutions.

<b>01.</b>	
<b>02.</b>	
<b>03.</b>	
<b>04.</b>	
<b>05.</b>	
<b>06.</b>	
<b>07.</b>	
<b>08.</b>	
<b>09.</b>	
<b>10.</b>	

**2)** Compare the particulars in the table and mark a ‘tick’ in the opposite box.

S.No	Particulars	Grama Sabha	Grama Panchayati	Mandal Praja Parishad
01.	Identification and selection of beneficiaries			
02.	Anganvadi budget			
03.	Minor Forest Products			
04.	Minor Minerals.			
05.	Implementation of prohibition			
06.	Management of Village Markets			
07.	Restoring alienated lands to tribals			
08.	Land acquisition, and Rehabilitation Plans			
09.	Educational Institutions			
10.	Welfare Hostels			

### **Project:**

Based on the subjects that can be taken up by Gram Sabha, collect the details of the resolutions passed by Gram Sabha in your area for last two years. And also note the status of the resolution passed. Record the figures in a bar diagram.

### **3. Issue of Community Certificates Act**

**T**he Constitution of India has provided special privileges and reservation benefits for different communities. Andhra Pradesh enacted the A.P (S.Cs, S.Ts, and B.Cs) Regulation of Issue of Community Certificates Act 1993 for issuing community certificates to the Scheduled Castes, Scheduled Tribes and Backward Classes and prevent the issue of fraudulent certificates.

But the fact is that many who do not originally belong to the Scheduled Castes, Scheduled Tribes and Backward classes are fraudulently obtaining these community certificates thereby usurping the privileges and benefits accorded to by the Constitution and the laws denying the genuine SC,ST and BCs persons their due. Therefore, the Government made this special law for protecting the interests of genuine Scheduled Castes, Scheduled Tribes and Backward Classes candidates. The rules were notified in 1997 for implementing this Community Certificates Act.

The persons belonging to Scheduled Castes and Scheduled Tribes or Backward Classes can apply for community certificates. But they need to prove that they really belong to the community they claim to belong to for which they have to submit the relevant documents in support of their claims. That means the burden of proof lies on the claimant.

The tribals living in the Scheduled Areas can obtain community certificates from the Mandal Revenue Officer who is the competent officer to issue certificates. The tribals who live in general areas can obtain community status certificates from Revenue Divisional Officer (RDO) or Sub-Collector.

### **Documents and information required?**

School Records, Nativity certificates, Birth Certificates, Family Trees, Community certificates obtained earlier, Court orders, traditions and customs of the tribes and statements of elderly persons from the claimed community.

If the claim for community certificate is not supported by valid evidences, the Officers can reject the claim to grant community certificates. We will now know some more facts about the community certificates to tribals.

### **Documents and information required?**

After an enquiry by the competent authorities, the community certificates can be issued through Mee Seva Centres.



If the community certificate issuing authorities have any doubt about the veracity of the claim by any person, they can refer the case to the District Tribal Welfare Officer to get the facts. They can also seek assistance from the Tribal Culture, Research and Training Institute to arrive at the truth of the claim for community certificate.

### **Scrutiny Committee:**

There is a District Level Scrutiny Committee (DLSC) headed by the Joint Collector as chairperson to hold an enquiry on any case referred to them by the District Collector suomotu or on a written complaint. The DLSC is to give its findings after an enquiry and submit it to the District Collector. The District Collector is the final authority, either to uphold the community certificate issued as valid or to cancel it.

### **Appeal and Reviews:**

If any claim seeking community certificate is rejected, the aggrieved person can file an appeal before the District Collector within 30 days. Similarly, those who do not agree with the decision of the District Collector can file an appeal within 30 days to the Government which can confirm or set aside the order given by the District Collector.

The Government can review its own order if passed by them wrongly by mistake of facts or law or in ignorance of any material evidence on any application filed by the aggrieved person.

### **Penalties:**

If anyone obtains a community certificate by furnishing false information, or by any fraudulent means, the offender is liable for a minimum 6 months up to 2 years imprisonment, and a fine of Rs 1000/ to Rs.5000/. The court can reduce the punishment if there are valid reasons.

If any person secures admission in education institution or job in the Government services by producing a false Community Certificate, he will be debarred or discharged from such institutions. If any person receives any financial benefit on the basis of false

caste certificate, then that amount would be recovered from him. The education certificates shall also stand cancelled.

Such persons shall also be liable for the punishment of 6 months to 2 years imprisonment and with fine of Rs 1000 to Rs 5000. Similar punishment will be given to the persons who secured a political posts on fake community certificates. Similar punishment will also be given to the persons who secured protection under Fifth Schedule to the Constitution on the basis of false community certificates as ST. Any officer who intentionally issues a false community certificate shall also be liable for the similar punishment.

#### **Do you know?**

- ❖ Any deviation in the list of Scheduled Tribes as declared by the President is not valid. No Government can alter it.
- ❖ Courts will not take up any cases that seek a change to the STs list notified by the President of India.
- ❖ Only the District Collector is the competent authority to confirm the community certificate issued or cancel it.
- ❖ Once the community certificate is issued, it will be in force and valid till it is cancelled.
- ❖ The caste of a non-tribal will not change if he/she marries a tribal.
- ❖ Offspring born out of wedlock of inter-caste marriages cannot claim the social status of either mother or father automatically. The specific context of the birth of the child, traditions, , and the community acceptance are also crucial to determine such cases.
- ❖ The notified STs in one state cannot become STs of another State.



## Evaluation

### Key Words:

Community Certificate, Scrutiny committee, Revision, Appeal, culture.

### Improve your learning:

1. Explain the disadvantages of STs not having community certificate?.
2. The tribals who live in scheduled areas can apply to.....for obtaining community certificates.
3. The tribal claimants who live in general areas have to apply to..... for obtaining caste certificates.
4. The person who obtains community certificate by furnishing false information will be liable for punishment .....
5. Explain the consequences of obtaining a degree certificate by producing fake community certificate.
6. If doubts arise in issuing the caste certificate to the MROs, what is to be done?
7. A District Collector refused to issue caste certificate to a tribal. What can the tribal do then?
8. If community certificates is to be false, is the officer issuing the certificate liable for the punishment ? If so what is the punishment?
9. The burden of proof lies with.....

10. Community Certificate once issued is ..... till it is cancelled.

11. The list of STs notified by the President of India, cannot be .....by the Government/ Court.

**Fill in the Table: :**

1. Tick against the applicable appropriate punishments if a person obtained the community certificate fraudulently and/or secured benefits etc.

The person who committed fraud	imprisonment	Fine	Secured seat / job	Cancellation of degree certificates.	Criminal Cases
Illiterate					
Literate					
Secured job					
Secured seats in Education institutions					
Monitory benefits					

**Project:**

Collect the list of tribals notified by the President of India.. From the list, find how many tribes are there in your locality. Observe whether all of them were issued caste certificates. Display them in the table

#### 4. A.P. SC Sub plan and ST Sub-Plan Act

The intention of the SC Sub Plan and ST Sub Plan (Planning, Allocation, and Utilisation of Financial Resources) Act is to accelerate the development of Scheduled Caste and Scheduled Tribes by earmarking funds from the total budget in proportion to the population of SCs and STs in the State. This Act is to achieve equality in all sectors including economic, social, human development, social security and social dignity of SC and STs.

The SC, ST Sub-Plan Act was enacted in 2013. The rules to implement the Act were made in 2015. The Act will be in force for next 10 years until any further decision is taken to alter it.

##### **Do you know?**

The main reason that led to the enactment of this legislation is the diversion of funds allotted to SCs and STs sub plans. The Act ensures that the funds earmarked for the SC plan and TSP shall be spent for the purpose for which they are allocated, for the development of Scheduled Castes and Scheduled Tribes only.

The funds earmarked for the implementation of Sub-Plans will have to be spent to secure direct and quantifiable benefits of these communities. There is need to identify the development gaps in SCs and STs, and prioritize their needs and formulate the Schemes accordingly to promote equity among the various social groups.

Health, education, development, sex ratio, population growth, infant mortality etc are few indicators that identifies gaps in development. Plans are to be developed to bridge these gaps

### **Do you know?**

SC/ST habitation means where population of SCs or STs, or their combined population is not less than 40 percent of the total population of that habitation.

Each department has to prepare sub plans for the development of these SC&ST communities, and appraise the Nodal Department. The Tribal Welfare Department is the nodal department for the TSP. The Nodal Department shall, in turn, scrutinize the plans, and is satisfied, shall place before the Nodal Agency for their recommendations for approval of the State Council as the pre budget process. The Nodal agency is set up under the chairmanship of the Minister for Tribal Welfare for the Tribal Sub Plan. After approval by the State Council headed by the Chief Minister, the Nodal Agency is to communicate to the concerned departments requesting that the plan and its budget be included in the overall annual budget plans for the next financial year. Once the budget is approved by the Legislaure, the budgets will be released department wise. The TSP/SC Sub Plan funds shall not be allocated to general schemes which are in any case accessible to these communities.

In the case of non divisible infrastructure works, 7 percent to SC Sub plan and 3 percent to TSP are to be allocated. If there is no village with 100 percent SC or ST population, then the funds to be allocated are to be according to their proportional population in that village.

There will be District Monitoring Committee at the District level for the SC sub plan/TSP headed by the District Collector as chairperson to monitor the implementation of plans. Project Officer, ITDA, will act as the Vice-Chairman and the Deputy Director, Tribal Welfare will be the convener of the TSP monitoring committee. Similar committees will

be set up for the SC Sub plan.

The District Monitoring Committee is to review the implementation of plans in terms of allocation, expenditure and implementation in the district will all line departments in conformity with the provisions of this Act. The implementation of the Sub-Plan should be transparent and the details of the SC subplan /TSP are to be displayed in a Webportal. Steps are to be taken for conducting social audit, identification of gaps in development, and their analysis with the human development indicators of the District and the State. The information with regard to these plans shall be made accessible to the general public.

### **Evaluation:**

#### **Key words:**

Accelerated Development, Annual budget, Development indicator, plan, sub-plan, Nodal Department, Nodal Agency, State Council, TSP, SC subplan, infant mortality rate, development gaps.

#### **Improve your learning:**

- 1) What is the basis for allocation of funds to Tribals in the State budget?
- 2) What are the main objectives of the SC Sub Plan and TSP Act?
- 3) What is the percentage of Tribal Population in the State? How much funds are to be earmarked for the Tribal Sub Plan from the total State outlay?
- 4) What are development indicators ? State three important indicators?
- 5) Explain in detail how the schemes should be implemented, according to the SC, ST Sub-Plan?

- 6) Can the funds allocated to the SC and ST plan be spent for other sections in the village?
- 7) Since the Tribal Sub-plan is implemented, can the funds from the general schemes be stopped for tribal development?
- 8) Whose approval is finally needed for the schemes of the sub-plans and fund allocation to those schemes?
- 9) .....(%) and ..... of funds will be allocated to the tribals and SCs respectively in non divisible infrastructure works.
- 10) The Nodal Department for the TSP is .....
- 11) The Nodal Agency for TSP will be headed by .....minister.
- 12) The State Council for SC Sub plan and TSP will be headed by .....minister.
- 13) District Monitoring Committee will be headed by.....
- 14) Write any two responsibilities of District Monitoring Committee.

**Fill in the Table.**

Items	Importance of the item
Tribal Sub-Plan Act	
Development gaps	
Tribal Sub-Plan Allocations	
Nodal Department	
Nodal Agency	
3 percent of allocation to TSP	
District Monitoring Committee	
Social Audit	
District Collector	

**Project:**

List out the different programmes to improve tribal education and health department wise. Observe the State Budget allocations for the Education and Health, and see how much budget is allocated for the TSP. Discuss in the class room whether the schemes are implemented in conformity with the provisions of the Act.

## 5. Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act

**T**his Act is to ensure prompt punishment to those who are not Scheduled Castes and the Scheduled Tribes (SCs and STs) committing atrocities on SCs and STs which also acts as a deterrent for the commission of offences of atrocities against the members of the SCs and STs by other communities. The Act provides for the establishment of Special Courts for trial of offences and also relief and rehabilitation to the victims.

Intervention to prevent the exercise of legal rights or implicating in false cases by the persons other than the SCs or STs are also offences under this Act. Treating SCs and STs as untouchables, and abusing them verbally in the name of caste are also punishable offences under this Act. The Act came into force in 1990. This act was amended time to time as of 2017.

### Do you know?

The SC, ST Atrocities Act was enacted in 1989. After 25 years the amendment of 2014 provided for its effective implementation.

### Which Acts are considered Atrocities?

1. Forcing SCs and STs to eat or drink inedible or obnoxious substances.
2. Dumping any filthy material/obnoxious substance at the entrance of residential premises of SCs and STs.
3. Dumping any filthy material/obnoxious substance in his neighbourhood with intent to cause insult and annoyance etc.



4. Garlands with foot wear or parades naked/semi naked a member of SCs/STs.
5. Indulging in acts as forcibly removing clothes, tonsuring of head, removing moustache, painting face etc which are derogatory to human dignity.
6. Wrongfully occupying or cultivating or transferring the lands of SCs and STs.
7. Wrongfully dispossessing the SCs and STs from their lands or interfering with their rights on land or forest or water resources or destroying their crops, or snatching away the agricultural products etc.
8. Except the services which are made compulsory by the Government, if any person makes SCs / STs to do *begar*, or other forms of forced or bonded labour etc.
9. Compelling SCs/ STs to carry dead bodies, carcasses of animals or making them to dig graves for burying dead bodies.
10. Making SC/STs to do manual scavenging, employ or permit the employment for such purposes.



11. Promoting or dedicating SC/ST women to a deity, temple etc. boards or other religious institutions as '*devadasi*' or permitting to perform such practices.
12. Forcing or intimidating or preventing the members of SCs/STs not to vote or vote a particular person, not to file nomination or withdrawal of nomination, not to propose or second the nomination of members of SC/ST as a candidate in elections.
13. Forcing or intimidating or obstructing a member of SCs/STs from discharging their functions as the official members of the Panchayat Raj institutions.
14. After poll, causing hurt/assault or threatens or impose social/economical boycott on SCs/STs or prevent them from availing benefits from the Government which is due to them.
15. Any offence committed against SCs/STs for having voted or not having voted for a particular candidate or having voted as per law.
16. Instituting false, malicious or vexatious cases against the members of SCs and STs.
17. Giving false information to the public servant and thereby causing him to use it to cause injury or annoyance to any member of SCs STs.
18. Intentionally insulting or intimidating with intention to humiliate any member of the SCs /STs in any place within public view.
19. Abusing any member of SCs/STs in the name of caste in any place within public view.
20. Destroying or damaging any object (Photos/Statue) which are said to be sacred for the members of SCs/STs.
21. Promoting or attempting to promote feelings of enmity or hatred

against the members of SCs/STs. by talking and writing or showing signs etc.



22. Speaking or writing disrespectfully any person who is no more now, held in high esteem by the members of SCs/STs.
23. Intentionally touching a woman belonging to SC/ ST knowing that she belongs to SCs/STs when such act of touching is sexual in nature and without her consent. Similarly using words or gestures of sexual nature towards woman of SCs/STs
24. Corrupts or fouls any spring/water resources being used by the members of SCs/STs so as to render the water less fit for the purpose for which it is ordinarily used by them.
25. Denying a member of the SCs/STs any customary right of passage to a place of public resort or obstructing them to access to such places.
26. Forcing the members of SCs, STs to leave their houses, villages or residence. Nothing will be an offence if such

actions are carried out by the government officers as per their duty.

27. Denying access to SCs and STs to the common property resources or burial or cremation grounds or obstructing/preventing the usage of tanks, rivers, streams, wells, bathing ghats, ways, public conveyance or road or passage etc
28. Obstructing/Preventing the members of SCs/STs from riding bicycles or motor cycles or wearing footwear or new clothes in public places or taking out wedding procession etc.
29. Obstructing/Preventing entry to any place of worship which is open to the public or religious processions (jataras etc)
30. Obstructing/Preventing the entry to educational institution, hospitals, or place of public entertainment or using any utensils or articles meant for public use.
31. Obstructing/Preventing practicing of any profession or the carrying on of any occupation, trade or business or employment in any job as any other members of the public does.
32. Causing physical harm or mental agony of a member of SCs/STs on the allegation of practicing witchcraft or being a witch; or imposing or threatening a social or economic boycott of members/family/Group of SCs/STs .

### **Do you know?**

Atrocities like tonsuring of head and removing moustache of members of SCs/STs have been added in the 2015 Amendment.

### **Trial and Punishments:**

Any person committing any offence listed above shall be punishable with imprisonment for a term which shall not be less than six

months but which may extend to five years and with fine. If damage is caused to the properties of members of SCs/STs, the punishment for such offence is six months to seven years imprisonment. Special Courts are established to try the offences in the District.

### **Do you know?**

The Amended Act of 2015 states that interfering with the enjoyment of forest land rights of tribals or evicting them the forest lands unlawfully will also be considered as atrocity.

### **Some More Severe Punishments:**

1. If false or fabricated evidence is provided by anyone who is not an SC or ST against a SC/ST so as to secure capital conviction, then the offender shall be liable for the imprisonment for life and with fine. In case if any innocent SC/ST is convicted and executed consequent to such false case, the person shall be liable for death penalty
2. If false or fabricated evidence is provided by anyone who is not an SC or ST against a SC/ST so as to secure conviction which is not a capital punishment but punishment of seven years or upwards shall be liable for imprisonment not less than six months upto 7 years or more and fine.
3. If anyone who is not an SC or ST commits mischief by fire or any explosive substance intending to cause damage to any property belonging to SCs/STs shall be imprisoned for a term not less than six months but may extend to seven years, and with fine;
4. If anyone who is not an SC or ST commits mischief by fire or any explosive substance intending to cause destruction of a place of worship or houses or place for custody of the

property of SCs/STs shall be punishable with imprisonment for life and with fine;

5. If anyone who is not an SC or ST commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property shall be punishable with imprisonment for life and with fine;
6. If anyone who is not an SC or ST knowingly or having reason to believe that an offence has been committed under this Chapter, causes disappearance of any evidence with an intention to screen the offenders from punishment, or giving false information which he knows or believes to be false, shall be punishable with the punishment provided for that offence; Or being a public servant, commits any offence under this section, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.

### **Punishment for neglect of duties**

A public servant who is not an SC/ST wilfully neglects his duties (Registration of First Information Report (FIR), Investigation etc) shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to one year. Provided that the charges in this regard against the public servant shall be booked on the recommendation of an administrative enquiry. The Special Court can take cognizance of any dereliction of duty by a public servant and give direction for penal proceedings against such public servant.

### **Enhanced punishment subsequent conviction:**

If any one who has already been convicted of an offence under this Chapter is convicted again a second time for the second

offence or further offences, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.

**Forfeiture of property of certain persons:**

The Court can direct that the movable or immovable property belonging to the person who has committed an offence to forfeit the same to the Government in addition to any punishment.

**Removal of person likely to commit offence:**

If the Special Court is satisfied upon a complaint or a police report that a person is likely to commit an offence in any area included in Scheduled Areas may direct by order to remove him beyond the limits of such area/ route and within such time, and not to return to that area not exceeding three years. The order passed can be modified also.

District Magistrate, Sub-Divisional Magistrate or Executive Magistrate or a police officer not below the rank of Deputy Superintendent of Police (DSP) has the power to take preventive measures to prevent commission of offences against the members of SCs/STs. There is no provision to seek anticipatory bail for the offences committed under this Act. The Government has to provide necessary legal assistance and financial help to the victims whenever atrocities are perpetrated.

As per the Act, the police officers not below the rank of DSP will have the power to conduct investigation and file the charge sheet.

**Do you know?**

The courts felt that the laws made to prevent commission of offences against the members of SCs/STs should not be misused

by filing false cases against the innocents to take revenge or cause inconvenience, or get money as a compromise. If they do so, they will have to face the consequences that arise in the course of law.

### **The Rights of the Victims and Witnesses:**

The Government has to protect the victims and the witnesses of the incidents. The petitions filed by the accused should not be taken up by court for hearing without serving notice on such petitions. The Government has to rehabilitate the victims and provide economic assistance, education, food, shelter and other arrangements, and also give information on the details of the case, the steps taken by the Government to the victims or their dependents. The victims have every right to get help from organisations or lawyers. Victims can also request the Government to appoint a Special Public prosecutor to argue their case in court.

### **Evaluation :**

#### **Key Words:**

Social Justice, Obnoxious, inedible, Atrocities, Offence, Rehabilitation, Untouchability, eviction from lands, interfering in rights, false or fabricating evidence, Devadasi, Nomination, bonded labour, social boycott, Indian Penal Code, forfeit, DSP, CI, SI, FIR, IPC, Public Prosecutor, District Magistrate.

#### **Improve your learning:**

1. State the prime objective of the Scheduled Castes, and Tribes Atrocities (Prevention of Atrocities) Act.
2. The year in which the SCs/STs (Prevention of Atrocities) Act came into effect. (1989/1990)



3. Can the offenders be tried in ordinary courts, according to the Act?
4. State some atrocities perpetrated on SCs/STs.
5. List the atrocities for which 6 months to 5 years imprisonment can be awarded.
6. A person gave false evidence against a tribal for which a death penalty was awarded to the tribal. What is the punishment he is liable to receive for such offence.
7. A person who is not an SC/ST sets fire to a tribal's house. What punishment can the Court give to that person if the case filed against him is proved.
8. A person who is not an SC/ST obstructs the entry of a tribal into a temple. If so, what kind of punishment can be awarded ?
9. Will the Government employees be punished if they commit crimes against tribals ? If punished, what might be extent of the punishment?
10. Under what circumstances can the court ask any individual to leave the place they are in?
11. If there is a suspicion that atrocities may be committed on SCs and STs, the power of taking preventive measures is vested with.....
12. Can an accused in a case committed under SC, ST (Prevention of Atrocities) Act approach the court to seek anticipatory bail?
13. Whenever an atrocity is committed on victims, the Government has to arrange .....and .....assistance during the trial.

14. In the cases of SC, ST atrocities, the competent officer to enquire into the matter and file charge sheet is.....

Can the following be considered atrocities? Put a 'Tick' mark against what you think are atrocities. Put a 'X' mark that you think are not.

Statement	Is it an atrocity?
Cases booked against the tribal on false information.	
Treating as untouchables and, abusing in the name of caste	
Forcing to eat or drink obnoxious material	
Wrongfully cultivating the lands of tribals.	
Wrongfully getting transfer of tribal lands.	
Forcing the members of ST to do bonded labour.	
Paying wage and making them to carry dead human bodies and animal carcasses	
Tahsildar evicting a tribal from the land as per the order of the court	
Interfering with enjoyment of forest rights.	
Touching a tribal woman which is in sexual nature without her consent.	
Offering money for engaging tribals in bonded labour	

Causing damage to the water bodies which are being used by tribals.	
Parading tribal in semi naked.	
Destroying the crops of tribals.	

### **Project:**

1. Collect the particulars of different crimes committed against SCs and STs during the past one year from the news papers in the library, and list them. Show the severe crimes in a table. Prepare a crime-wise Bar Diagram showing different crimes. Discuss the means to control these crimes with your teacher.
2. What are the economic and other benefits provided to any victim of atrocities in your area. And list them out.

## **ANNEXURE-1**

### **LIST OF SCHEDULED TRIBES OF ANDHRA PRADESH THE SCHEDULED CASTES AND SCHEDULED TRIBES ORDERS (AMENDMENT) ACT, 2002**

#### **a) List of Scheduled Tribes of Andhra Pradesh**

1. Andh, Sadhu Andh
2. Bagata
3. Bhil
4. Chenchu
5. Gadabas, Bodo Gadaba, Gutob Gadaba, Kallayi Gadaba, Parangi Gadaba, Kathera Gadaba, Kapu Gadaba
6. Gond, Naikpod, Rajgond, Koitur
7. Goudu
8. Hill Reddis
9. Jatapus
10. Kammara
11. Kattunayakan
12. Kolam
13. Konda Dhoras, Kubi
14. Konda Kapus
15. Kondareddis
16. Kondhs, Kodi, Kodhu, Desaya Kondhs, Dongria Kondhs, Kuttiya Kondhs, Tikiria Kondhs, Yenity Kondhs, Kuvinga
17. Kotia, Benthoriya, Bartika, Dulia, Holva, Sanrona, Sidhopaiko
18. Koya, Doli Koya, Gutta Koya, Kammara Koya, Musara Koya, Oddi Koya, Pattidi Koya, Rajah, Rasha Koya, Lingadhari Koya (ordinary), Kottu Koya, Bhine Koya, Rajkoya

19. Kulia
20. Malis
21. Manna Dhora
22. Mukha Dhora, Nooka Dhora
23. Nayaks
24. Pardhan
25. Porja, Parangiperja
26. Reddidora
27. Rona, Rena
28. Savaras, Kapu Savaras, Maliya Savaras, Khutto Savaras
29. Sugalis, Lambadis, Banjara
30. Valmiki
31. Yenadis, Chella Yenadi, Kappala Yenadi, Manchi Yenadi, Reddi Yenadi
32. Yerukulas, Koracha, Dabba Yerukula, Kunchapuri Yerukula, Uppu Yerukula
33. Nakkala, Kurvikaran
34. Dhulia

**b) List of Particularly Vulnerable Tribal Groups**

1. Chenchu
2. Gadabas, Bodo Gadaba, Gutob Gadaba, Kallayi Gadaba, Parangi Gadaba, Kathera Gadaba, Kapu Gadaba
3. Kondareddis
4. Kondhs, Kodi, Kodhu, Desaya Kondhs, Dongria Kondhs, Kuttiya Kondhs, Tikiria Kondhs, Yenity Kondhs, Kuvinga
5. Porja
6. Savara

Source: Census of India 2011

## ANNEXURE-2

### United Nations Declaration on the Rights of Indigenous Peoples

**Article 1 :** Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights<sup>4</sup> and international human rights law.

**Article 2 :** Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

**Article 3 :** Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

**Article 4 :** Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

**Article 5 :** Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

**Article 6 :** Every indigenous individual has the right to a nationality.

**Article 7 :** (1) Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person. (2) Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of

genocide or any other act of violence, including forcibly removing children of the group to another group.

**Article 8 :** (1) Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture. (2) States shall provide effective mechanisms for prevention of, and redress for: (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities; (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources; (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights; (d) Any form of forced assimilation or integration; (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

**Article 9 :** Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

**Article 10 :** Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

**Article 11 :** (1) Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature. (2) States shall provide

redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

**Article 12 :** (1) Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains. (2) States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

**Article 13 :** (1) Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons. (2) States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

**Article 14 :** (1) Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning. (2) Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination. (3) States



shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

**Article 15 :** (1) Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information. (2) States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

**Article 16 :** (1) Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination. (2) States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

**Article 17 :** (1) Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law. (2) States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment. (3) Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

**Article 18 :** Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

**Article 19 :** States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

**Article 20 :** (1) Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities. (2) Indigenous peoples deprived of their means of subsistence and developments are entitled to just and fair redress.

**Article 21 :** (1) Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security. (2) States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

**Article 22 :** (1) Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration. (2) States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the

full protection and guarantees against all forms of violence and discrimination.

**Article 23 :** Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

**Article 24 :** (1) Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services. (2) Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

**Article 25 :** Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

**Article 26 :** (1) Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. (2) Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. (3) States shall give legal recognition and protection to these lands, territories and resources. Such

recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

**Article 27 :** States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

**Article 28 :** (1) Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent. (2) Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

**Article 29 :** (1) Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination. (2) States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent. (3) States shall also take effective measures to ensure, as needed, that programmes for monitoring,

maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

**Article 30 :** (1) Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned. (2) States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

**Article 31 :** (1) Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions. (2) In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

**Article 32 :** (1) Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources. (2) States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly

in connection with the development, utilization or exploitation of mineral, water or other resources. (3) States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

**Article 33 :** (1) Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live. (2) Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

**Article 34 :** Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

**Article 35 :** Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

**Article 36 :** (1) Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders. (2) States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

**Article 37 :** (1) Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors

and to have States honour and respect such treaties, agreements and other constructive arrangements. (2) Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

**Article 38 :** States in consultation and cooperation with indigenous peoples shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

**Article 39 :** Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

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

**Article 41 :** The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

**Article 42 :** The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

**Article 43 :** The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

**Article 44 :** All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

**Article 45 :** Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

**Article 46 :** (1) Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States. (2) In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society. (3) The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.



