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EVOLUTION OF SCHEDULED AREAS AND CHANGES – A STUDY ON 5th AND 6th SCHEDULED AREAS

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Abstract

Tribals living in isolation in hilly and forest regions of the country in the central India and North Eastern India evolved their own systems of self governance. The Fifth Schedule of the constitution contains two important provisions for governance by the governor. They are governor can amend any law passed by parliament or by state legislature to define its applicability to schedule areas. The Sixth schedule provides for self governance through autonomous councils. In course of time there were attempts by the state itself and when these actions were challenged, the courts have passed several orders explaining the scope of the Fifth and Sixth Schedules.

Keywords: Partially Excluded Areas, Wholly Excluded Areas, Fifth Scheduled Areas, Sixth Scheduled Areas, Autonomous Councils.

Introduction

Scheduled areas are inhabited by people who are socially and economically backward. Though they constitute a part of the country, it is the responsibility of the government to make special efforts needed to improve their condition. That is why the normal administration system running across the country may not be suitable for these areas as it requires special attention and effort and that is why the government has greater responsibility for these areas. In a similar way, the Tribes of Assam, Meghalaya, Tripura, and Mizoram have not absorbed the way of life of the other people of the state with time. Somehow, the tribal areas of other states have adopted the culture of other people more or less but tribes from such northeastern states stand connected to their own traditions, culture, and custom. That is why such areas are treated differently and our constitution has provided sufficient provisions to provide them a sizable amount of autonomy to practice their own way of life without hurting the unity of the country.

Majority of communities classified as Scheduled Tribes have been living in the hilly and forest regions of the country. They have been living in isolation for generations and evolved culture of their own. They never liked interference of outsiders. Even after the kingdoms of the plains conquered their lands, their de facto rule was continued by the Hindu kings as long as their de jure rule is accepted by the tribal chiefs in the form of ceremonial submission of the bow and arrow. When the British took over, their administration percolated to these areas. Disturbances occurred in tribal areas and the British introduced a policy of separately administering by notifying them as Scheduled Districts. After independence, these areas were notified as Scheduled areas as per provisions of the constitution by with various provisions for administration.

Objectives

The objectives are:

- To explain special provisions of Fifth Schedule
- To explain special provisions of Sixth Schedule
- To explain the violations of provisions of these Schedules and orders of Courts there on

Difference Between Scheduled Areas and Tribal Areas

Article 244 of the Indian constitution deals with the administration of Scheduled Area and Tribal Areas. Scheduled areas and Tribal areas are mentioned in the fifth and sixth schedules of the constitution. Both the terms are different and treated differently under the constitution.

Scheduled Areas

Article 244(1) of the Indian constitution has mentioned scheduled areas. Special provision for the administration of such areas are mentioned in the 5th schedule of the constitution and includes certain areas in States other than Assam, Meghalaya, Tripura, and Mizoram. Scheduled areas are such areas inhabited by the tribes specified as 'Scheduled tribes' in states and union territories



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other than Assam, Meghalaya, Tripura, and Mizoram. The power to declare any area as a 'Scheduled Area' is bestowed on the President of India and the parliament is authorized to legislate.

Tribal Areas

The tribal area got mentioned in article 244(2) of the Indian constitution. Provision regarding their administration is found in the 6th schedule. It deals with the tribal areas in Assam, Meghalaya, Tripura, and Mizoram.

The polity in the hill tracts of India

In Indian sub-continent, the hill tracts, between North East Frontier Agencies (NEFA), Eastern Ghats, Western Ghats are habitats of tribal people. In these hill tracts the while the tribes used to practice barter system, resolve the disputes in village councils with consensus, transmitting their knowledge through oral tradition, whereas the kingdoms in the plains abutting the hill tracts used to rule their territory through force (Police and military) and treasury (coins and gold) and inscriptions. Some of the defeated kings used to take shelter in the hill tracts. Some of the chieftains of tribes in the hills recognized as sub-ordinate rulers, entered in to marital alliances with the kings also. There are many occasions where the kings and chieftains joined hands in opposing the onslaught of aspiring emperors. Some of the marginalized communities in the plains migrated in to the hill tracts but their social status remained the same as in the plains.

5th schedule VS 6th Schedule

The basic debate within the 5th and the 6th Schedule is that the 5th Schedule guards the tribal population's interests in all the scheduled areas excluding Assam, Meghalaya, Tripura and Mizoram. The 6th Schedule, however, covers the scheduled areas excluded in the 5th Schedule. This means the 6th Schedule safeguards the interests of the tribal population in the scheduled areas of Assam, Mizoram, Tripura and Meghalaya.

In the scheduled areas which come under the 5th Schedule, it is the governor of the state that has special powers and responsibilities when it comes to the protection of the tribal population. Responsibilities include issuing orders for the state government restricting the effect of acts of the legislature.

While the 6th Schedule covers the areas which depend on self-governance. The tribal communities themselves have been given significant control over their conditions also including the autonomy to make laws and receive funds from the central government with respect to the social and infrastructural developments. Unlike the 5th Schedule, the local government and the governor have limited control, power and hence responsibilities.

The main difference which distinguishes the 5th and 6th schedules is the autonomy reliance. In the case of areas under the 5th schedule, the autonomy of making a decision for good relies upon the local government or the governor. However, in the case of the 6th Schedule covering areas excluded in the 5th Schedule, the autonomy relies upon the local government and the governor, therefore, following the principle of self-reliance.

Role of the President of India

The President of the country by the order is authoritative to decide which parts of the nation can come under scheduled areas. Article 244 (1) of the constitution gives the president of the country the power to do so.

The president is entitled to decide the following based on the criteria for declaring an area as a scheduled area. The criteria for the same include the following:

Nature of the Area; underdeveloped or significantly developed

Pre-existence of tribal population

A substantial disparity among the general population within the area.

A reasonable area size with respect to its compactness

Role of Governor

There are two views on the issue: whether the Governor can act independent of council of ministers in respect to the V Scheduled areas. One view was that the Governor's powers are intended to be exercised in his discretion while the other view was that the Governor should exercise such powers only on the advice of the Council of Ministers. The following report of Governors Committee makes it clear that the Governor can act only on the advice of the cabinet of ministers duly consulting the TAC.



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The fifth Schedule of the Constitution dealing with the administration and control of Scheduled Areas and Scheduled Tribes envisages a specific role for the Governors of States in the administration of these areas. It empowers the Governor to direct by public notification that any particular Act of Parliament or State Legislature or any part thereof shall apply with modifications or shall not apply to any Scheduled Area. It also empowers the Governor to make regulations for peace and good governance in the Scheduled Areas. The general feedback on the role of the Governor is that despite the existence of these provisions in the Constitution, the role of the Governor in this context has remained very marginal in the last half century of the Indian Republic. The present experience in all States is that the Governors have not exercised any significant role under the fifth Schedule and wherever this has been so exercised it has been on the advice of the Council of Ministers. Prominent persons who have considerable experience with regard to Scheduled Tribes had suggested that in view of the special provisions in the fifth Schedule the Governor should play a pro - active role. They have strongly urged a more positive role of the Governor who should act in his own discretion and not on the advice of the Council of ministers for the welfare of the Scheduled Tribes and the administrators of the Scheduled Area.

In support of the second view some persons cited the Andhra Pradesh High Court Judgment in A.V. Rao and others v/s Government of Andhra Pradesh (AIR 1955, AP 275). In this case the court had discussed the extent of powers of the Governor under the Fifth Schedule and had referred to the discussion in the Constituent Assembly when the provisions relating to the administration and control of Schedule Areas and Schedule Tribes were taken up for consideration. In that debate Dr. K. M. Munshi had said that in the exercise of his powers under the Fifth Schedule the Governor is bound by the advice of the Council of Ministers and the debate was closed by Dr.B. R. Ambedkar, Chairman of the Drafting Committee endorsing the views of Dr. K.M.Munshi.

The relevant extracts from Shri Sorabjee's Attorney General of India vides his letter dated 21 March 2001 are as follows.

"Under our Constitutional scheme, as a general rule the Governor acts on the aid and advice of the Council of Ministers and not independently of it. The general rule is departed from in respect of certain functions to be performed by the Governor may act in his. There are certain functions which from their very nature necessitate departure from the general rule, e.g. report of the Governor to the president under Article 356 of the Constitution.

"There is no provision in the V Schedule or the Constitution which expressly empowers a Governor to act in his discretion independently of or contrary to ministerial advice. The Sixth Schedule of the Constitution contained such a provision in para18 (3) – which has been subsequently deleted – and para 9(2) of the Sixth Schedule provides that the matters mentioned therein will be determined by the Governor "in his discretion" The omission of any such provision in the Fifth Schedule empowering the Governor to act his discretion or in his individual Judgment is significant.

"The supreme court had occasion to consider the provision of the Sixth Schedule with respect to the exercise of the powers conferred on him by para 1(3) of the Sixth Schedule. The Supreme Court rejected the submission of Shri Setalvad that a Governor in exercising his powers conferred on him by para1(3) of Sixth Schedule function in his own individual character as a Governor and observed that the power has to be exercised on the advice of Council of Ministers. [Edwingson Barch V. State of Assam & Ors 1966(2) SCR 770 at page 788]. "In my view, The Governor in discharging of his functions under the Fifth Schedule is rejected to act under ministerial advice and not independently of it."

The objectives of the Fifth Schedule and the Notification and Regulations made there under are to protect the tribals against exploitation by others and for peace and good governance in the Scheduled Areas, For this purpose the Governor has been empowered to issue Notifications directing any Act of Parliament or State Legislature not to apply or to apply with suitable modifications in Scheduled Areas. He has also been vested with powers to make Regulations, subject to assent by the president, to repeat or amend any Act of Parliament or State Legislature, Inter alia, to protect the interests of tribals in their lands and prevent exploitation by money enders. Such sweeping powers vested in the Governor in the Constitution have given rise to expectations from many tribal leaders and groups that the Governors will be able to act independently and decisively top protect tribals interests, without being bound by the advice of the Council of Ministers.

In the light of the Attorney General's view and in the absence of a provision similar to paras 20 BB an 20BA in the Sixth Schedule (inserted by amendments in 1988 and 1955), conferring powers in the governor to act as considered "necessary in his discretion", the general principle of acting on the advice of the Council of Ministers seems to binding on the actions the Governor under the Fifth Schedule.



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Evolution of Governance in the present day Fifth Scheduled areas:

While the Hindu Rajahs performed the tribal rites and rituals, they also participated in social functions and festivals of tribals, even though the tribals resented the exploitation of Oriya elite. For example, in 1836, a military campaign was waged against the refractory Rajah of Gumsur, who was one of the oldest hill Zamindars of Ganjam (present day Odisha), belonging to Bhanja Family. The British Government came into conflict with his tribal subjects (the Khonds) also because of this relationship. The British Government's hunt for the Rajah, sheltered by the tribals escalated into a full scale war against the tribesmen. The Gumsur war that broke out in 1836 has expedited the action on the part of the Government as can be seen from Mr. Russel's further report in 1836, in which he suggested the need for removing the existing causes of irritation on the part of hill Zamindars by exempting the areas from ordinary laws. He suggested for placing the areas exclusively under the Collectors of the district who should be vested the entire civil administration of government and also criminal justice. His reports and the observations of Governor have resulted in enactment of Ganjam and Vishakapatnam Act, 1839. In this Act the District collectors were designated as Agents to the government.

The British introduced individual property rights and registration of the transfers and judicial Courts to adjudicate both civil and criminal disputes. The decrees of Courts used attach the property of indebted tribes. Such actions unknown before provoked them to rebel.

Mr. Sullivan the first member of Revenue Board in Madras presidency enquiring in to the causes of tribal revolt in Rampa country in the present East Godavari of Andhra Pradesh, observed that 'the tribal' dares to enter in to a den of tiger but not in to the judicial court of Rajahmundry. To transport the military troops to suppress the rebellions in the disturbed areas, British laid roads deep in to the hill tracts and this infrastructure accelerated the integration of tribal economy in to market economy.

Confronted with struggles, fituries and revolts, the British introduced several protective measures for the tribal areas in the hill tracts and started the process of identifying the tribal communities. In 1874, the Scheduled Districts Act XIV (Central Act) was Passed, under which, Scheduled Districts were defined to mean the territory mentioned in the First Schedule and Parts thereof and would include any other territory to which the Secretary of State for India by resolution in Council may declare. The provincial Government issued rules prescribing the procedure to be followed by the officers appointed there under to administer Agency Tracts. Likewise, the British identified such Scheduled Districts in almost all parts of the country.

Bihar, for instance had a substantial tribal population largely located in its plateau region (now Jharkhand state). The colonial administration brought in the Wilkinson Rules 1839, the Chotanagpur Tenures Act, 1869 and the Santal Parganas Act, 1855, creating a legal frame work for the protection of the land belonging to tribals following recurrent rebellions in the tribal area. The Regulation I of 1796 laid down the foundations of the preset Santhal Policy, which continues to this date without much alteration. Such protectionary legislation existed in other states as well such as the States of Assam including what was then called the North East, Central India and tribal areas of the Bombay and Madras Presidencies Though spatially covering different regions, all these Acts and rules exhibited certain common features. The areas covered by these Acts and rules were removed from the general administration and were placed in a special category, in the recognition of the facts that the tribal people constituted a special category and that they could not be administered along with the general populace. The Deputy Commissioners are entrusted with the administration of tribal people and areas inhabited by them.

The Montague-Chelmsford Reforms (1918) considered the tribal question and excluded them from the Provincial Governments. The Government of India Act, 1919 categorized to the excluded territories into two parts the wholly and the partially excluded. The wholly excluded areas were small while the latter were more extensive and were entrusted to the joint responsibility of the Governor and the Governor-General-in-Council. The Montague-Chelmsford Reforms had suggested that the areas inhabited by the Primitive Tribe Groups should be excluded from the proposed political reforms and should be administered by the Governor of the Province. The tribal issue also attracted the attention of the Indian Statutory Commission (Simon Commission), which considered the inhabitants of their areas being politically not "advanced". They required security of land tenure, protection from subjugation and freedom to pursue their traditional livelihood and customs. The Simon Commission felt that the duty of educating these people could not be left to the missionaries or the individual officials. The Government should earmark funds for such educational and welfare activities. The Commission suggested the whole or partial exclusion of these areas form the ambit of generally administered areas in the recognition of these Principles. The Government of India Act, 1935, treated the Scheduled Districts as wholly or partially excluded. A notification to this effect was issued Under Sections 91 of the Government of India Act, 1935. Under Sections 92(1) & (2) of this Act, the administration of these areas was exclusively vested into the Governor of the Province [S.92 (1), (2) & (3)].



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Features of the V & VI Schedule in the Constitution of India

Administratively and legally the habitat of the tribes is divided into three groups. The first group comprises the areas declared as the Scheduled Area under Clause 6(1) of Schedule V of the Constitution. Under Section 6(2) of Schedule V, the President of India may, at any time, order either deleting an area from the Scheduled Areas in consultation with the Governor of the State. Thus, the specification of Scheduled area in relation to a particular State/ Union Territory is notified by an Order of the President, after consultation with the State Governments concerned. Same procedures would apply while altering, increasing or rescinding any order(s) relating to Scheduled Areas.

No criteria seemed to have been followed in declaring the V& VI Scheduled areas and most of the areas notified as Partially Excluded Areas under 1935 Act were declared as V Scheduled Areas and the Wholly Excluded Areas mostly became VI Scheduled Areas. Dhebar Commission pointing out this fact commented that the law-and-order approach followed by British to exclude the tribal areas from normal administration continued after independence. However, the Government evolved a criteria to be followed followed for declaring an area as Scheduled Area which includes

1. Preponderance of tribal population
2. Compactness and reasonable size of the areas.
3. Under – developed nature of the area and
4. Marked disparity in economic standard of the people.

These criteria have become well established over the course of the time. They embody principles followed in declaring ‘Excluded’ and ‘Partially – Excluded areas’ under the Government of India Act 1935, Schedule ‘B’ of recommendations of the Excluded and partially Excluded Areas, the Sub Committee of Constituent Assembly and the Scheduled Area and Scheduled (Dhebar) Commission, 1961. The orders in operation relating to the scheduled Areas are provided at the end of the Unit.

Important Provisions of Fifth Schedule

The Governor of a state has been entrusted with special responsibilities in the administration of the Scheduled Areas in the state. The governor has been vested with legislative powers.

- i. He/she is required to prepare a special report annually, or whenever required and submit to the President regarding the administration of the Scheduled Areas. [Section 3 of Schedule V].
- ii. The Union Government can issue appropriate directives to the State Governments as to the administration of the Scheduled Areas.
- iii. This Schedule also provides for constitution of the Tribes Advisory Council with 20 members of whom $\frac{3}{4}$ should be the scheduled tribe members of the state legislature to advice on such matter pertaining to the welfare and advancement of the Schedule Tribes as may be referred to them by the Governor [S 4(2)].
- iv. The Governor may make rules regarding the number of members of the Tribes Advisory Council, its conduct, meeting and other incidental matters [S4 (2)].
- v. The Governor may further direct, by public notification, that a particular Act of the Parliament or of the State Legislature shall not apply to a Scheduled Areas or to its parts with such exceptions as may be directed [S 5(1)].
- vi. The Governor may make Regulations for peace and good governance in the Scheduled Areas by which she/he may, among other things, prohibit or restrict the transfer of land by the members of the Schedule Tribes amongst themselves; regulate the allotment of land to members of the Scheduled Tribes in such areas; and regulate the business as money- lender by persons who lend money to members of the Schedule Tribes, etc., [S 5(2)]. While making such regulations the Governor may, in consultation with the Tribes Advisory Council, repeal or amend any Act of parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question [S 5(3)]. The Governor shall submit all regulation, which applies to such Scheduled Areas forthwith to the President, and these shall be effective only with the assent of the president [S 5 (4)]

Conclusion

The Constitution of India circumscribes the structure, code, procedure, fundamental rights, the duties of the citizens of the country and the government institutions as to how they should function and leads the country filled with diversity in a way that they can live with harmony. The Constitution mentions various articles and schedules as to how the country should function. Under these schedules come the 5th and the 6th schedule. The main difference which distinguishes the 5th and 6th schedules is the autonomy reliance. In the case of areas under the 5th schedule, the autonomy of making a decision for good relies upon the local government or the governor. However, in the case of the 6th Schedule covering areas excluded in the 5th Schedule, the autonomy relies upon the



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local government and the governor, therefore, following the principle of self-reliance

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