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TRIBES AND THE INDIAN CONSTITUTION: THE SIGNIFICANCE OF V AND VI SCHEDULE

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Abstract

India being a country with diverse population with people having their own distinct culture, religion, language and ethnicity warranting provisions for positive discrimination in order to achieve democracy; the Tribes here exponentially contribute to its diversity. After Africa, India has the second largest population of tribals in the world. According to the latest census 2011, it is estimated that tribal constitute 8.6% of the total Indian population. The tribal communities from the ancient times were categorised as a distinct group as they were not part of the larger Indian society in the socio-cultural and economic sense. They remained in their tribal edify. During the colonial times, they were subjected to partial isolation which in the later post-independence era created a chaos in the Constitution Assembly pertaining to their inclusion in the Indian Union without disturbing their Tribal equilibrium. This paper is an attempt to understand and analyse how the Indian constitution has been able to safeguard the tribal interest without disturbing their tribal edifices.

Keywords: Tribal, Indian Constitution, V and VI Schedules

Introduction

The tribal communities all across the world have for long believed in the element of ‘eminent domain’ insofar as the land is concerned; they are self-sufficient, culturally and traditionally a very close-knit community and have been very much weary of the outsiders coming into their structures. This has not changed in any significant manner even in the present. The Indian tribal community was no different from this global pattern. However, this state of equilibrium crumbled down when the British introduced their administrative and economic policies in India. It is stated by L.P Mathur;

“...early days of the British rule the policy of the British administrators was detrimental to a great extent to the economic conditions of the tribes”ⁱ

If we look back at the history of rebellions against the British administration, we see that tribal communities were the first ones to rebel against the British authority. Ever since the English East India Company grabbed political and administrative control over parts of India since the Battle of Plassey (1757) and throughout the 18th Century, the country witnessed several Tribal uprisings pertaining to various reasons such as, heavy taxation levied on them, introduction of the British agents like middle man who further exploited them, land alienation; the establishment of colonialism in India further led to a radical transformation of the tribals as their relative isolation was eroded by the penetration of the market forces and they were intergraded with the British and princely administration.ⁱⁱ

Along with these factors the imposition of the various Forest Acts introduced by the British infringed upon the natural rights of the tribal communities. These developments in the legal domain adversely affected not only the primary source of livelihood of the tribals but also inflicted upon them severe atrocities and interference from the colonial administration; hence the dissatisfaction culminated in the form of uprisings and revolts of the tribal communities.

The most influential of these rebellions being the Santhal rebellion of 1855, which gave a severe blow to the British government. Despite of the fact that the British were successful in suppressing this revolt, the aftermath appears to be extremely significant. Firstly, the revolt compelled the administrators to create a separate Santhal Pargana for the



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Santhals called *Dami-i-Koh*, pargana. With this, the government tried to recognise the distinctiveness of their tribal culture and identity.ⁱⁱⁱ Secondly, it marked a pivotal shift in British policies towards the tribal regions as they were now more careful about introducing policies in tribal regions as rest of the Indian territories and with this also the partial exclusion of the tribal areas from the rest of the Indian union became more perpetual. With this, it is not to say that the British Government completely stopped the exploitation of these tribal areas and the resources; To put it in the words of L.P. Mathur.

“After some time, the British adopted a somewhat different attitude towards the tribals. They gradually advanced the concept of the protection of tribal ethnicity. Actually, this concept was in consonance with their policy of ‘divide and rule’. Accordingly, the colonial rulers tried their level best to alienate the tribal communities with the non-tribal societies.”^{iv}

The impact of policy of “less interference” by the colonial administration, there came in a shift wherein the tribals and their rights over the land were partly recognised. This, however, was true only in a limited sense. It was accompanied by a certain isolation of the tribal people and as a consequence these regions and the people ended up lagging behind in terms of development in every sector in a sense in the yardstick led out by the so-called civilised society, in infrastructure, education and Socio-political terms; and most importantly they suffered a disassociation towards the Indian Union. Under such circumstances, the task fell upon the Independent Indian government to win the trust of these partially neglected communities, and to integrate them, organically and without any coercion, with the Indian Union.

Material and Methods

This research essentially is based on qualitative methods and analysis of the V and VI Schedules of the Indian Constitution. The sources for this study involve secondary sources, essentially the works on the subject involving and the tribal people, their culture and economy as well as works/commentaries on the Constitution in this realm.

The Making of the Schedules

The Constituent Assembly, from its very outset was concerned with this aspect and gave special attention to the tribal community and tribal areas. Concerns of this imperative were first mentioned in the Cabinet Mission’s statement of May 16, 1946 that the tribal/excluded areas as requiring the special attention of the constitution.^v It was because of the advice given by the Cabinet Mission, the Advisory committee, set up by the Constituent Assembly as early as in January 1947, had taken up the task of integration of the minorities and tribal population and set up a sub-committee for Minority Affairs right at its first meeting; another sub-committee on tribal affairs too was brought into being by the Advisory Committee. The Sub-Committee was chaired by Gopinath Bordoloi and two members of the North East who were not a Constitutional Assembly member: Rup Nath Brahma and Mayang Nokcha. The members of this Sub-Committee surveyed many tribal areas across Indian union and finally the report was submitted its report to the Chairman of the Advisory Committee on July 28, 1947.^{vi}

The report submitted to the Advisory Committee contained a detailed document concerning issues related to tribals. Hence, the report of the Sub-Committee can be considered the genesis of the V and the VI schedule of the Indian constitution which was specially curated for the tribal region. The report addressed not only the issues concerning the tribal areas but emphasized on the measures to solve them. The most important issue of the tribal people was their concern over their land rights, especially triggered by the fear of its encroachment from the non-tribals. In this regard, the Sub-Committee report stated:



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“In all the hill areas visited by us, there was an emphatic unanimity of opinion among the hill people that there should be control of immigration and allocation of land to outsiders, and that such controls should be vested in the hands of the hill people themselves.”^{vii}

To which, the Sub-Committee recommended:

“Accepting this then as a fundamental feature of the administration of the hills, we recommend that the Hill Districts should have powers of legislation over occupation or use of land other than land comprising reserved forest under the Assam Forest Regulation of 1891 or other law applicable.”^{viii}

One of the most important aspects of the report of the sub-committee was to respect the culture and tradition of the tribes. It also highlighted the importance to maintain the evolution or growth based on the old foundation of the tribes, and insisted upon giving the tribals time and space for further development from within without any force from outside agencies. The report advised against the idea of any system to be imposed from outside but recommended forming of the Tribal councils which looked after the disputes and judiciary system of the tribes. This Council was based on the political system of the tribes, and it advised the continuation of this system.

Another important aspect of concern was the question of finance and taxation. It is known, that the British Government without learning about the tribal features introduced taxation policies which resulted in dissatisfaction among the tribals. So, this issue of finance and taxation was a very sensitive issue in the tribal region. So, the Sub-Committee took cognisance of this fear.^{ix} It recommended a constitutional provision wherein the hill districts;

“...they should have all the powers which local bodies in the plains district enjoy and we recommended that in respect of taxes like taxes on houses, professions or trades, vehicles, animals, octroi, market dues, ferry due and powers to impose cesses for specific purposes within the ambit of the councils, they should have full powers”.^x

These points laid down by the Sub-Committee with the recommendations later became the blue print of the V and the VI Schedule of the India Constitution. It is to be noted that before the implementation of the V and the VI schedule in the North East Frontier there was only three existing states; Assam, Tripura and Manipur. It was later that the other four states were carved out from Assam; Nagaland was given statehood in 1962, the state of Meghalaya, Mizoram and Arunachal Pradesh was given statehood in 1971.^{xi}

The V and the VI Schedule

The V and the VI schedules have many special provisions that safeguards the tribal people and tribal regions. Talking about the V schedule, it is applied to the entire country except Tripura, Assam, Meghalaya and Mizoram. The Governors are empowered to constitute (Tribe Advisory council) which will not be more than twenty members nominated by the Governor, it is an advisory body, they do not have any judicial power and also their advice is not binding. Furthermore all enactment of the parliament and state legislature are applied to these areas. The basic function under V schedule the Tribal Advisory Council is the council is responsible to look after the affairs and issues relating to tribes, and the Governor has the power to prescribe or regulate rules in these tribal areas according to the need and welfare of the tribals, along with that the Governor has to annually report to the President of India and the President has the power to decide if a particular area is eligible to be declared Schedule area or not.

“5. Law applicable to Scheduled areas: (1) The Governor may, if so, advised by the Tribes Advisory Council for the State, by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to or any part thereof in the State subject to such exception and modifications as he may with the approval of the said Council specify in the notification.”^{xii}



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Not only that under the V Schedule the customary laws of the tribes, their land rights, are given special protection and dealt with precaution by the government of India and it is cautiously curated for the tribal minority across India:

“Provided that where such Act relates to any of the following subjects, that is to say-

- (a) Marriage;
- (b) Inheritance of property;
- (c) Social custom of the tribes;
- (d) Land, other than lands which are reserved forest under the Indian Forest Act, 1927 or under any other law for the time being in force in the area in question, including rights of tenants, allotment of land and reservation of land for any purpose;
- (e) any matter relating to village administration including the establishment of village panchayats;”^{xiii}

The provisions under the VI schedule, which are specifically applied to the states of Tripura, Assam, Meghalaya and Mizoram are that the Governor is empowered to constitute (district and regional council) which will not have more than thirty members and addition to that the Governor can nominate four members, it is an elected body and have some limited judicial powers based on customary laws and their advice is binding and unlike in the provision of the V schedule, all enactment of parliament and the state legislature are not applied to this areas.

The VI schedule is relevant only in the four northeast states, namely Assam, Meghalaya, Tripura and Mizoram. This schedule provides autonomy and rights to the tribes with the formation of Autonomous District Councils. For e.g., in Assam there are three Autonomous District Councils which are: Bodoland Territorial Council, Dima Hasao Autonomous District Council and Karbi Anglong Autonomous District Council. In Meghalaya, like Assam, there is also three Autonomous District Councils: Garo Hills Autonomous District Council, Khasi Hill Autonomous District Council and Jaintia Hill Autonomous District Council. In Mizoram: Lai Autonomous District Council, Mara Autonomous District council and Chakma Autonomous District Council and in Tripura there is one called Tripura Tribal Areas Autonomous District Council. Under the VI Schedule the Governor has the ultimate power to create the autonomous district, increase the area of the autonomous district, diminish the area of autonomous district and unite two or more autonomous districts to form another/new autonomous district according to the needs and requirements of the tribal people and region^{xiv}, unlike in the V schedule the Governor had the ultimate power regarding above mentioned provisions and we see how in the VI schedule the Governor has the ultimate say in the tribal majority areas:

“...the Constitution has delegated to the Governor a part of the power conferred on Parliament itself by pare 21. Hance, once the Governor issues a notification in exercise of the power, it takes effects without any legislation by parliament providing for the creation of an autonomous district.”^{xv}

All these provisions under the V Schedule and VI schedule have helped in gaining the confidence of the tribals in the newly formed post- Independent Indian Constitution which had given them many Constitutional rights. It is a matter of debate as to how much the V and VI Schedule have been successful in safeguarding the tribal rights in India and its working, but we can definitely say that, it was the hard work and willingness of the makers of our Constitution, as they had paid attention to the tribals concerns and grievances and curated special provisions according to the needs of the tribals with the intention to maintain tribal equilibrium yet brought them under the Constitutional fold without any coercion and major conflict.



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Conclusion

India today has emerged as one of the most diverse nations. This unique diversity is further amplified by the presence of various tribal communities scattered all over India, with their own culture, tradition, language, and customs, today they are an intrinsic part of the Indian Union. However, this was not the case during the Pre-British and British era. In the pre-independence era they were isolated socially, economically, politically and most importantly psychologically due to their natural structure and further more with the policies implemented by the British Government. After Independence, two major tasks that rested upon the newly formed Indian Union regarding Tribal affairs was firstly, to integrate them within the union of India without coercion and secondly, uniting them without disturbing their tribal uniqueness/eccentricity. This difficult task was upon the makers of the Constitution and the special provisions mentioned above were meticulously drafted with the aim of providing a safe space for the tribal within the Constitutional realm. With these the V and the VI schedules of the Indian Constitution – the tribals spread across the Indian Union got Constitutional rights in terms of their land, customs and tradition which helped in a huge way to win the trust of the tribals in the government of India. In addition to this, the provisions also have scope for the empowerment and development of the tribal people in their own rights with the presences of Tribal Councils. This, along with the provisions for the tribal people that guarantee them reservations in both the field of education and employment have served achieve the concerns in a historical sense. The employment of them in major sectors of economy again resulted in the upliftment of the tribal people in the social front. The Indian Constitution in the form of V and the VI Schedule therefore provided the tribals with a room for development, potential for expansion, opportunity for advancement and capacity for growth without any act of force and most importantly this gave the tribals the confidence and sense of security in the Indian Union.

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