



CONSTITUTIONAL AND LEGAL SAFEGUARDS FOR SCHEDULED TRIBES

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ABSTRACT

India has the second largest tribal population in the world. The Government of India has always shown special concern and commitment for the welfare of the Scheduled Tribes who suffer as a group due to their social and economic backwardness and relative isolation. Accordingly more focused attention on the integrated socio-economic development of these under-privileged sections of the society were undertaken through Constitution and different other legislations. Here an attempt has been taken by the author to highlight these provisions in a nutshell.

KEYWORDS : Constitution, Scheduled Tribes, Tribal Area, Scheduled Area.

INTRODUCTION

The term 'Adi' means original and 'Vasi' means inhabitant and thus the term "Adivasi" denotes the primitive or oldest ethnological sector of population who were there long before the Aryans and other so-called civilized races set their foot on the Indian soil. They are also otherwise known as 'Scheduled Tribes'. There are over 700 Scheduled Tribes in India spread over different states and Union Territories. They were the most neglected groups of the society despite several welfare measures and legislations made for them. They have suffered from environmental deficiencies for ages and confined themselves to their own bounds, keeping themselves away from civilized societies. However that scenario has changed a bit after independence when India adopted a democratic and socialistic pattern of society. Now Indian Constitution and several other legislations protect their rights by giving such people their legitimate and proper place and importance in the changing society.

CONSTITUTIONAL SAFEGUARDS

In Indian Constitution, several provisions have been incorporated which provide social, economic and political guarantees to its people and categorically, the provisions specified for the Scheduled Tribes intend to protect these communities from all kinds of possible exploitation and thus, ensure social justice.

Article 14 of the Constitution confers equal rights and opportunities to all its citizens which include the Scheduled Tribes also. Article 15 prohibits discrimination against any citizen on the grounds of sex, religion, race, caste etc. Article 15(4) enjoins upon the State "to make special provisions for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes." Further Article 16 provides for the equality of opportunity for all citizens in matters relating to employment opportunities or appointment to any office under the State and Article 16 (4) expressly permits the State to make "provision for the reservation in appointment or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State." The expression 'backward class of citizens' in Article 16(4) includes the Scheduled Castes and Scheduled Tribes.¹ At the same time Article 16(4A) empowers the State to "make provision in matters of promotion to any class or classes of posts in the services in favour of the Scheduled Castes and the Scheduled Tribes."

Article 46 further deals with the promotion of educational and economic interest of weaker sections and says that "the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation."

Besides all these, Articles 244, 275, 330, 332, 334, 335, 338, 339 and 342 also provide specific provisions for the welfare and advancement of Scheduled Tribes. As per the provision of Article 244(1), "special provisions spelt out in the Fifth Schedule shall apply for the admin-

istration and control of Scheduled Areas and the Scheduled Tribes in any State other than the States of Assam, Meghalaya, Tripura and Mizoram" Tribes Advisory Councils are required to be set up (especially in Fifth Schedule states) to advise on such matters pertaining to the welfare and advancement of the Scheduled Tribes. Further, Article 244(2) provides that special provisions, spelt out in the Sixth Schedule shall apply for the administration of tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram by designating certain tribal areas as Autonomous Districts and Autonomous Regions and also by constituting District Councils, Autonomous Councils and Regional Councils.

Article 275 speaks about the grants from the Union to certain states for the purpose of promoting the welfare of the Scheduled Tribes or raising the level of administration of the Scheduled Areas.

Reservation of seats for the Scheduled Castes and Scheduled Tribes in the House of the People and in the Legislative Assemblies of the States respectively are dealt with under Articles 330 and 332. Besides that, reservation of seats for them are also there in every Panchayat as per the provision of Article 243-D of the Constitution.

According to Article 335, "the claims of the members of the Scheduled Castes and Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State". Again, the Article provides that "nothing in this Article shall prevent in making of any provision in favour of the members of the Scheduled Castes and the Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation for reservation in matters of promotion to any class or classes of services of posts in connection with the affairs of the Union of a State."² Article 335 should be read with Article 46 of the Constitution which speaks that "the State shall promote with special care the educational and economic interests of the weaker sections of the people and, in particular, of the Scheduled Castes and Scheduled Tribes and shall protect them from social injustice and all forms of exploitation."

In order that safeguards and other measures provided for the Scheduled Castes and Scheduled Tribes are effectively implemented, the Constitution (89th Amendment) Act has inserted Article 338-A to provide for the appointment of National Commission for these Castes and Tribes separately, by the President. The 'National Commission for the Scheduled Tribes' thus formed has the duty to investigate and monitor all matters relating to the safeguards provided for the Scheduled Tribes under this Constitution and any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards. The Union and every state government is required to consult the Commission on all major policy matters affecting Scheduled Castes and Scheduled Tribes.³

Regarding administration of Scheduled Areas and the welfare of the Scheduled Tribes, Article 339(1) speaks that "the President may at any time and by order appoint a Commission to report on the administra-

tion of the Scheduled Areas and the welfare of the Scheduled Tribes in the States." Article 342 on the other hand prescribes the procedure to be followed in the matters of specification of Scheduled Tribes. Accordingly, the President may with respect to any State or Union Territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the Tribes or tribal communities or parts of or groups within tribes or tribal communities.

Further Schedule V and VI of the Constitution deal with the administration of 'Scheduled Areas' and 'Tribal Areas' respectively. The Fifth Schedule appended to the Constitution is divided into four parts which deal with provisions as to the "Administration and Control of Scheduled Areas and Scheduled Tribes." Such special provisions are made because they are culturally backward and their social and other customs are different from the rest of the country. The Sixth Schedule under Article 244(2) of the Constitution relates to areas in the States of Assam, Meghalaya, Tripura and Mizoram which are declared as 'Tribal Areas' and provides for District or Regional Autonomous Councils for such areas.

LEGISLATIVE PROVISIONS

Some laws have also been enacted by the Central Government like the Protection of Civil Rights Act, 1955,⁴ The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989,⁵ The Panchayats (Extension to Scheduled Areas) Act, 1996 and The Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006.⁶

Further the State Governments have also enacted laws relating to the prevention of alienation and restoration of tribal land, money lending, and reservations and so on. The Ministry of Tribal Affairs had also prepared a Draft Tribal Policy covering all the important issues that concern the tribes. While all these legislations somehow or other are related to tribal welfare, the law mentioned above in the last, better known as the Forest Rights Act concerns the rights of the forest dwelling communities to land and other resources, denied to them over decades. The Act intends to 'recognise and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations whose rights could not be recorded.'

Thus the Act grants the right to hold and live in the forest land under the individual or common occupation for habitation or self cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers. The Act grants the right of ownership, access to collect, use and dispose of minor forest products that have been traditionally collected within or outside village boundaries. This legislation has been held to be one of the important laws intended to protect the rights of the Tribes as well as extending certain rights to them.

Besides all these, as far back as in 1958 the then Prime Minister of India, Pandit Jawaharlal Nehru, had laid down five fundamental principles known as '*Panchsheel Neeti*', that are to be pursued in regard to administration of tribal areas. With the passage of time, these principles, have also gained more force and validity.

THE NAKED TRUTH

It is a matter of regret that despite all efforts for the welfare and protection of Scheduled Tribes, not only the human rights of these people are grossly violated in various fields of life but discrimination also continues rampantly. They are not paid required attention. Although some developments of these people on the socio-economic front may be noticed, still they are far away from the mainstream of the society.

CONCLUSION

To conclude, this much can be said that law alone could not do everything. Only constitutional or legal provisions will not solve the problem. Rather, we must change our attitude and work with a positive thinking. More realistic and positive approach is the need of the hour. In a welfare state like ours it is the utmost duty of the policy makers, the social scientists and others involved in the process to take stock of the situation and act accordingly. Then only we can achieve the goal, otherwise all the plans and programmes including legislations for the protection of the Tribes will be a myth.

REFERENCES

1. *E.V. Chinniah v. State of A.P.*, 2005 (1) SCC 394.
2. See The Constitution 81st Amendment Act, 2000.
3. See Clause (9) of Article 338.
4. Act No, 22 of 1955.
5. Act No.33 of 1989. The Act intends to prevent the commission of offences of atrocities against the members of the Scheduled Castes and Scheduled Tribes and to provide for special courts for the trial of such offences and also for the relief and rehabilitation of victims of such offences.
6. Act No.2 of 2007 which came into effect from 31st December 2007.