



INDIAN WAYS OF HANDLING TRIBAL AFFAIRS

DR. NUPUR TIWARI
ASSOCIATE PROFESSOR
Indian Institute of Public Administration,
IIPA Delhi

INTRODUCTION

- The constitution makes special provisions for the Scheduled Caste and Scheduled Tribes, the backward classes, the minorities and Anglo-Indian.
- Under Article 342 the president has the power to specify the tribes or tribal communities or parts or groups within them as Scheduled Tribes in relation to a state or Union Territory.
- In the case of state the president must consult to governor of the state.
- In 1999, a new Ministry of Tribal affair was created to provide a sharp focus to the welfare and development of the STs.
- The ministry should co-ordinate all activities relating to the STs.

- In order to safe-guard the interests of the STs, under 89th Constitutional Amendment Act of 2003, a separate National Commission set up.
- It consists of a chairperson, a vice-chairperson and three other members.
- They are appointed by the President of India by warrant under hand and seal.
- Under Sixth Scheduled, the constitution has provided the special provisions for the four north-eastern states of Assam, Meghalaya, Tripura and Mizoram.
- These four states constituted as autonomous district.

Constitutional Provisions and Legislative Measures

The constitutional provisions for STs can be categorised into five categories, viz.

I. Educational and Cultural Rights (Articles 14, 15, 15(4), 16, 17, 29, 46 and 350.)

ii. Social Rights (Articles 21, 21A, 23, 24, 16(4), 335)

iii. Economic Rights (Articles 244, 244A and 275)

iv. Political Rights (Articles 164, 330, 332, 243D and 243T, 338A, 341 & 342)

v. Employment Rights (Articles 15(5), 16(4) and 16(4A).)

Educational and Cultural Rights (Articles 14, 15, 15(4), 16, 17, 29, 46 and 350):

Article 14:

Equality before law and equal protection law.

Article 15:

Prohibition of discrimination on the ground of religion, race, caste, sex or place of birth.

Article 15(4):

The State is permitted to make any special provision for the advancement of the SCs/ STs.

Article 15(5):

The state is empowered to make any special provision for the advancement of the SCs/STs regarding their admission to educational institutions (including STs) both in public or private, aided or unaided school by the state, except the minority educational institutions.

Article 16:

Equal opportunity in matters of public employment.

Article 17:

Abolition of untouchability and prohibition of its practice.

Article 29:

Protection of language, script, and culture of minorities through educational institutions including STs.

Article 46:

Directive Principle of State Policy directed to the leaders in future to promote educational and economic interests of STs and protect them from social injustice and types of exploitation.

Article 350:

The Constitution also gives right to every person to submit a representation for the redress of grievance to any officer or authority of the Union or a State in any of the languages used in the Union or in the States as the case may be.

Social Rights (Articles 21, 21A, 23, 24, 16(4), and 335):

Article 21:

Protection of life and personal liberty (including STs).

Article 21A:

Right to elementary education (Including STs).

Article 23:

It prohibits the system of bonded labor in human being and forced labor.

Article 24:

It prohibits employment of children below the age of 14 years in factories and hazardous employment.

Article 16(4) and Art. 335:

Reservation of seats by ST in public services and in employment under the State. Under article 335, belonging to SCs/ STs can claims to services and posts.

Economic Rights (Articles 244, 244A and 275):

Article 244:

Article 244 in part X of the Constitution envisages a special system of administration for certain areas designated as 'scheduled areas' and 'tribal areas'.

Article 244A:

It deals with the formation of an autonomous state comprising certain tribal areas in Assam and creation of local legislature or council of ministers or both.

Article 275:

The union Government can provide the special grants for the welfare of STs.

Political Rights (Articles 164, 330, 332, 243D and 243T, 341 and 342):

Article 164:

It empowers the State to establish special Ministry for welfare of the Scheduled Tribes in Bihar, Madhya Pradesh, and Orissa.

Article 330:

Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the people (Lok Sabha).

Article 332:

It deals with the reservation of seats for Scheduled Castes and Scheduled Tribes in the State Legislative Assembly.

Article 243D and 243T:

It deals with the reservation of seats in Panchayatiraj Institutions and Municipality for SCs/STs respectively.

Article 338A:

Under 89th Constitutional Amendment Act of 2003 a new article 338A is added to form a separate National Commission for STs. The separate National Commission for STs came into existence in 2004.

Article 342:

The president has the power to specify the tribes in relation to a State or Union Territory.

Employment Rights (Articles 15(4), 16(4) and 16(4A)):

Article 15(5):

It provides reservations to scheduled tribes in the educational institutions.

Article 16(4) and 16(4A):

It provides reservations to scheduled tribes in the employment and promotions.

Constitutional Amendment Acts for empowerment of STs

Fifty-First Constitutional Amendment Act, 1984:

51st Constitutional Amendment Act provided for the reservation of seats in the Lok Sabha for STs in Meghalaya, Arunachal Pradesh, Nagaland and Mizoram as well as in the Legislative Assemblies of Meghalaya and Nagaland.

Fifty-Seven Amendment Act, 1987:

57th Constitutional Amendment Act of 1987 provided the reserved seats for the STs in the Legislative Assemblies of the states of Arunachal Pradesh, Meghalaya, Mizoram and Nagaland.

Sixty-Fifth Amendment Act, 1990:

The Act provided for the establishment of a multi-member National Commission for SCs/STs in the place of a Special Officer for SCs/STs.

Seventy-Second Amendment Act, 1992:

This Act provided for reservation of seats for the STs in the Legislative Assemblies of Tripura.

Seventy-Seventh Amendment Act, 1995:

The Act provided for reservation in promotions in government jobs for SCs/STs.

Eighty-Second Amendment Act, 2000:

The Act provided for making of any provision in favour of the SCs/STs for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to the public services of the centre and the states.

Eight-Third Amendment Act, 2000:

The Act provided that no reservation in Panchayats need be made for SCs in Anunachal Pradesh. The total population of the state is tribal and there are no SCs.

Ninety-Third Amendment Act, 2005:

The Act empowered the state to make special provisions for the socially and educationally backward classes or the SCs or STs in educational institutions including private educational institutions (Whether aided or unaided by the state), except the minority educational institutions (Clause (5) in Article 15). The Supreme Court declared that reservation in private, unaided educational institutions was unconstitutional.

LEGISLATIVE MEASURES

I. Forest Rights

The Recognition of Forest Rights Act, 2006 to recognize and vest the forest rights and occupation in forest land to forest dwelling Scheduled Tribes.

The Indian Forest right's act- 2006



II. Fair Compensation

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 safeguards against displacement of Scheduled Tribes.



III. PESA Act

The Panchayats (Extension to Scheduled Areas) Act, 1996 , provides that the Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas.



V. Legal Services

The Legal Services Authorities Act, 1987 provides for legal services to members of Scheduled Tribes.

VI. Prevention of Atrocities Act

The SCs and the STs (Prevention of Atrocities) Act, 1989” has been introduced to prevent the commission of offences of atrocities.

It aims to provide for the trial of such offences and for the relief of rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto.

Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989



Tribal Welfare and Development in India

- The governmental programmes implemented in India for the uplift and rehabilitation of tribals have not been able to achieve their goals and tribal proletarianisation has persisted since independence.
- After Independence, provisions were made in the Constitution to safeguard tribal interests and promote their developmental and welfare activities.

The National Commission for Scheduled Tribes

- Like the National Commission for SCs, The National Commission for STs is also a Constitutional body in the sense that it is directly established by Article 338A of the Constitution.
- The National Commission for SCs & STs Came into being consequent upon passing of 65th Constitutional Amendment Act of 1990.
- The Commission was established under Article 338 of the Constitution with the objective of monitoring all the safeguards provided for the SCs & STs under the constitution.
- Geographically and culturally, the STs are different from the SCs and their problems are different from those of SCs.
- In 1999, a new Ministry of Tribal affair was created to provide a sharp focus to the welfare and development of the STs .

- In order to safe-guard the interests of the STs, under 89th Constitutional Amendment Act of 2003, a separate National Commission set up.
- This act amended Article 338 and inserted a new article 338A in the constitution. The separate National Commission for STs came into existence in 2004.
- It consists of a chairperson, a vice-chairperson and three other members.
- They are appointed by the President of India by warrant under hand and seal.
- Under Sixth Scheduled, the constitution has provided the special provisions for the four north-eastern states of Assam, Meghalaya, Tripura and Mizoram.
- The governor places annual report before the state legislature along with a memorandum explaining the action taken on the recommendations of the commission.

Vth Schedule

The fifth schedule under Article 244 (1) of the constitution of India essentially provides a historic guarantee to tribal people in the country and is the backbone to the legal framework in the tribal areas.

The makers recognized the need for protection and special administration of areas predominantly inhabited by tribal/ adivasi people due to their cultural uniqueness, vulnerability to external exploitation and development gaps between these communities in comparison to the mainstream regions.

The schedule deals with the administration and control of specified areas termed as scheduled areas and the tribes living in these areas.

- The most important right provided under this schedule is the prevention of land alienation through land transfer regulation where no land or immovable property in these areas can be transferred by way of sale or lease to persons other than the tribals.
- For the adivasi women, the Fifth Schedule of the constitution provided protection of their lands and natural resources from being alienated to outsiders.
- even if it does not directly provide for legal entitlements to the women, they enjoy a fair degree of control and access to these resources within their traditional social norms as long as the lands are within their community fold.

Features of The V 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.

Dhebar Commission

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.

Important Provisions of vth 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 moneylender 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)].

Sixth Schedule

The Sixth Schedule of the Constitution makes separate arrangements for the tribal areas of Assam, Meghalaya, Mizoram, and Tripura.

Article 244A was added to the constitution through the 22nd Constitutional Amendment Act, 1969.

It empowers Parliament to establish an autonomous State comprising certain tribal areas of Assam and for local Legislature or Council of Ministers or both can create.

Features of The VI Schedule in Constitution Of India

According to Dr. Ambedkar, the tribal people of Assam differed from the tribals of other areas.

He felt that the position of the tribals of Assam was somewhat analogous to that of the Red Indians (Now referred to as American Indians) in the United States, who are a Republic by themselves in that country, and were regarded as a separate and independent people.

He agreed that Regional and District Councils have been created to some extent on the lines which was adopted by the United States for the purpose of the Red Indians.

This schedule provides for two kinds of governing units in the Tribal Areas:

The Autonomous District

Councils and the Autonomous Regions

A. The Governor has the Power to include, exclude or diminish any of these areas or define their boundaries [S 1].

B. There shall be a District Council for Each Autonomous District comprising not more than 30 members and a Regional council for the Autonomous Regions.

C. The powers of administration shall be vested in these Districts and Autonomous Council [S 2(4)].

The Governor shall be entitled to make rules for the constitution of the Councils, its Composition, and terms of office, appointment of officers and staff and procedure and conduct of business.

- a. The Elected members of the council shall have normal term of five years [S 2(6&7)].
- b. The District and the Regional Council have the power to make rules in respect of lands other than the Reserved Forest, management of forest, other than reserved forest, use of canal or water courses for agriculture, Regulation of jhum other forms of shifting cultivation, establishment of village or town committees, appointment or succession of chief or headmen, inheritance of property, marriage and divorce and social customs with the prior approval of the government [S 3].
- c. The District and the Regional Council are also empowered to constitute village councils for trial or suits and cases between the except those, which has been excluded otherwise. They may similarly prescribe and lay down their procedures for trial and enforcement of their decisions [S 4].
- d. The Governor may delegate the additional powers under the code of civil procedures and code of criminal procedures.
- e. The District Councils may establish and manage primary schools, agriculture, animal husbandry and other community projects [S 6].

f. They have their own district and their regional funds and may assess and collect land

revenue and impose taxes, grant licenses and leases for minerals [S 9], make regulations for control of money lending and trading by non-tribals [S 10], Regulate publications [S 11], etc.

g. The Governor has the powers to direct the exclusion or modification of any act of the State Legislature of the Arunachal Pradesh, Assam, Manipur, Mizoram, Meghalaya, Nagaland, Tripura relating to the consumption of non-distilled alcoholic liquor [S 12, 12A to 12B]. The Council shall prepare their Annual financial Statement and the same shall be placed before the Commissions to enquire State Legislature [S 13].

h. The Governor has powers to appoint Commissions to enquire into the affairs of any Council [S 15] annul or suspend any office acts or resolutions and dissolve the Council and direct general elections subject to the prior approval of the State Legislature [S 16].

Conclusion

- Today tribal development is highly challenging and the same time a very difficult process. The development of tribal people is possible only when the health of the tribals is sound and ideal. Health care, therefore, can't be visualized in isolation and has to be linked with the overall development of the tribal villages. While developing comprehensive models, efforts should be made to have multi-disciplinary approach, which should include health care, provision of safe drinking water, drainage system, etc.
- The scenario of change and development is really a matter of grave concern today. It needs greater attention than before. The tribal leaders who are at the helm of affairs, the machinery of development administration and the well-wishers of tribes have to rise to the occasion and reformulate the tribal policy and redesign the development strategy for the tribal areas and the people

The background is a blurred photograph of a busy outdoor market. In the foreground, a person is pushing a metal shopping cart. The market is filled with people, some wearing hats, and various stalls or structures. The overall scene is vibrant and active, though the details are softened due to the blur effect.

Thank you