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The Imperative of the Fifth and Sixth Schedule of the Indian Constitution in the Life of Indian Tribes

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This Article is an effort and research to explain the importance of the Indian Constitution's fifth and sixth schedules in the lives of Indian tribes. The Indian Constitution's most cryptic sections are these two schedules. There was a clear need for a different schedule for the Tribes since we are all aware of the discrimination they have endured in the past and continue to face. These two schedules were important to persuade tribal people that they are equally a part of this country, that the Indian constitution respects their rights and traditions, and that they will not be treated as outsiders, as they have been and continue to be treated. The Indian constitution's fifth schedule deals with the administration and control of socially backward classes such as scheduled caste and scheduled tribes, while the sixth schedule deals with the administration of tribal areas in four states: "Assam, Mizoram, Meghalaya, and Tripura".

Keywords: *schedules, tribes, tribal areas, socially backward classes.*

INTRODUCTION

The Indian Constitution is supplemented by a schedule. It contains information that was not possible to include in the Articles. Schedules can be found not just in the Indian Constitution,

but also in many of the Indian Constitution's legislation. The inclusion of the fifth¹ and sixth² schedules was critical for India's tribes. They needed to be given their due. It was critical to offer them independence, just as the Indian Constitution had done in other regions of the country. These two schedules deal with the administration of India's tribal people. In brief, the Indian Constitution includes a particular provision for India's tribes. When the British captured their territory, the people of the northeast fought back hard. The British did this because they realized they could readily exploit the northeast for natural resources.

The British employed specific favouring rules for them to preserve ties and avoid disputes. The British also limited them by establishing limits for them, and as a result, the tribes were unable to establish strong relations with the rest of the country. The tribal regions were separated into two sections in 1935: one where some tribes lived alongside the townspeople, and the other where the whole tribal population resided. The tribal groupings were split into smaller groups after independence, and this was done at their discretion. Tribes also sought to keep their ethnicity and culture as part of their identity. The "GopinathBardoloi Committee" recommended that the fifth³ and sixth⁴ schedules be assimilated independently after independence⁵. The constituent assembly passed India's fifth and sixth schedules on "September 5-7, 1949", only two years after the country gained independence⁶.

ABOUT FIFTH SCHEDULE

The fifth schedule⁷ lays down rules for the administration of tribal areas and their relationship with the Union of India. Every Indian citizen has a defined tribal area, but under the fifth schedule⁸ of the constitution, some states have been given powers to administer these areas as

¹Constitution of India 1950, sch. 5

²Constitution of India 1950, sch. 6

³ Constitution of India 1950, sch. 5

⁴ Constitution of India 1950, sch. 6

⁵ 'Sixth Schedule and the Autonomous Administrative Areas in North East India' (*GK Today*, 23 December 2014 <<https://www.gktoday.in/topic/karbi-longri-north-cachar-hills-liberation-front-klmlf/>> accessed 19 August 2022

⁶ Parul Amruta, 'Sixth Schedule areas - Scheduled and Tribal Areas - Indian Polity Notes' (*Prepp*, 16 March 2022) <<https://prepp.in/news/e-492-sixth-schedule-areas-scheduled-and-tribal-areas-indian-polity-upsc-notes>> accessed 19 August 2022

⁷ Constitution of India 1950, sch. 5

⁸ *Ibid*

well. The Indian government uses this provision to exercise administrative control over scheduled tribes' affairs and governance in these areas.

The founding fathers of the Constitution envisioned the Fifth Schedule⁹ as a novel tool to promote the welfare and advancement of Scheduled Tribes along with the administration of scheduled territories. Giving the governor of such states uncommon powers of governance over these scheduled areas. These extraordinary legislative and executive powers are advised to be used with suggestions of various panels, we can see in practice that these powers have scarcely been used. With little adjustments and reforms, it is believed that the Fifth Schedule¹⁰ can work as a useful tool for transforming and uplifting Scheduled Tribes¹¹.

Currently, Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan, and Telangana are the ten states with Fifth Schedule Areas.¹² It is responsible for the management and regulation of Scheduled Areas and Scheduled Tribes in states other than Assam, Meghalaya, Tripura, and Mizoram. Tribal habitations in Kerala, Tamil Nadu, Karnataka, West Bengal, Uttar Pradesh, and Jammu & Kashmir are still not covered by the Fifth or Sixth Schedules. In Article 244(1)¹³, the President declares the areas as Scheduled Areas by an order. The President can order any or whole part of the Scheduled area shall cease to be a scheduled area, he can order any scheduled area to increase the area of the scheduled area in the state and he can alter any area of the scheduled area¹⁴.

Criteria of Declaring Scheduled Area: The criteria have not been mentioned in the constitution as such but are well established.

1. The majority of tribal people are in a particular area.

⁹ *Ibid*

¹⁰ *Ibid*

¹¹ Bhupinder Singh, 'A Critique - The Fifth Schedule of the Constitution' (2019) 54(4) *Economical and Political Weekly* <<https://www.epw.in/journal/2019/4/perspectives/fifth-schedule-constitution.html>> accessed 20 August 2022

¹² 'Fifth Schedule Areas' (*Vikaspedia*, 4 December 2017) <<https://vikaspedia.in/social-welfare/scheduled-tribes-welfare/fifth-schedule-areas>> accessed 20 August 2022

¹³ Constitution of India 1950, art. 244(1)

¹⁴ *Ibid*

2. Underdeveloped nature and keeping in mind how that particular area is doing economically.¹⁵

Special Provisions for the fifth Schedule are as follows:

- Whenever required by the President, the Governor of each state has to prepare and present an annual report of the Scheduled Area regarding their administration.
- Having executive powers, the union government can give directions to the state as to how to administer the Scheduled Areas.
- Tribal Advisory Council (TAC) comes under Para 4¹⁶ of the fifth schedule, it was established for any state with Scheduled Area. The role of the Tribal Advisory Council is to advise on matters about the welfare and advancement of the Scheduled Tribes in the state and those are referred to the Governor.
- There are many rules prescribed by the Governor to regulate the matters of Scheduled Areas.
- In making any regulations, the Governor may take assent from the President.
- No new regulations should be made by the Governor of the Tribal Advisory Council exists, Tribal Advisory Council must be consulted.¹⁷

ABOUT SIXTH SCHEDULE

Schedule Sixth¹⁸ of The Indian Constitution gave rise to the formation of Autonomous District Councils (ADC) in the four states of North-East India - "*Assam, Tripura, Mizoram, and Meghalaya*". These ADCs focus on protecting and preserving the tribal culture. The point behind the ADCs is that their relationship to the land is the basis of tribal or indigenous identity. The ways, customs, and traditions of the indigenous people of these states can be preserved by allowing them to have rights over the natural resources of their region. This is important because the livelihood and lifestyle of these people are dependent on the land and

¹⁵Bhupinder Singh (n 11)

¹⁶Constitution of India 1950, sch. 5, para 4

¹⁷*Ibid*

¹⁸Constitution of India 1950, sch. 6

resources they've been using for years¹⁹. Though this system was meant to ensure the safety and preservation of the tribal people and their culture, it gave rise to feelings of fear and insecurity among the non-tribal people of the states, due to the excess power given to the tribal community and the undue advantage being taken by them due to these powers.²⁰

Features of the Sixth Schedule:

The following are administrative aspects stated in the sixth schedule:

- Autonomous districts were established in tribal areas of four states, Assam, Meghalaya, Tripura, and Mizoram. They still fall under the state's executive authority.
- The governor has the power to divide the district into several autonomous regions if the district contains several autonomous regions.
- Each of these autonomous districts shall have a separate regional and district council. This council consists of a maximum of 30 members wherein 4 of these members are appointed by the Governor and the remaining are elected by the public franchise.
- Unless the council is dissolved earlier the elected members serve for a five-year term, the nominated members serve at the Governor's pleasure²¹.

Administration of tribal areas:

- Autonomous district councils and regional councils with legislative, administrative, judicial, and financial authority are established as per the sixth schedule. These administrative authorities have different powers and functions depending upon the states²².

Legislative functions under the sixth schedule:

- One of the most essential characteristics of the Sixth Schedule is the ability of District Councils to enact laws.

¹⁹ 'Sixth Schedule Areas' (*Drishti IAS*, 19 December 2020) <<https://www.drishtias.com/daily-news-editorials/sixth-schedule-areas>> accessed 20 August 2020

²⁰ *Ibid*

²¹ 'Sixth Schedule' (*Byjus*) <<https://byjus.com/free-ias-prep/sixth-schedule/>> accessed 20 August 2022

²² *Ibid*

- The District Councils have the authority to enact laws on subjects like marriage, divorce, property inheritance, land, and forest management, among others.
- As a result, any legislation enacted under this section must first receive the governor's approval before taking effect, otherwise, they will be null and void²³.

Executive functions under the sixth schedule:

- District and Regional Councils have the authority to establish, construct, and manage roads, canals, marketplaces, primary schools, and dispensaries, among other things.
- These councils also have the authority to determine the language and approach used in the delivery of primary school instruction.

Judicial authority under the sixth schedule:

- The District and Regional Councils also have the jurisdiction to create Village and District Council Courts to hear Scheduled Tribe cases.
- The Supreme Court and the High Courts are the only courts with jurisdiction over Council Court cases.
- Furthermore, these councils lack the authority to deal with matters requiring the death penalty or imprisonment for five years or more²⁴.

Financial authority under the sixth schedule:

- The District and Regional Councils also have the authority to set their respective councils' budgets.
- These councils also have the right to issue licenses or leases within their jurisdiction to permit mineral mining.
- These Councils also have the authority to set and collect land revenue, as well as impose taxes on trade, vehicles, professions, and tolls on passengers and goods, among other things²⁵.

²³ *Ibid*

²⁴ *Ibid*

²⁵ *Ibid*

The extent of power under the sixth schedule:

The Sixth Schedule²⁶ was meant for tribal regions (with a tribal population crossing 90%) of undivided Assam, called “excluded areas” in the “*Government of India Act, 1935*”²⁷. These areas were under the control of the Governor. The Sixth Schedule of the Indian Constitution gives the administration of tribal areas in “*Assam, Mizoram, Meghalaya, and Tripura*”²⁸ the right to protect the rights of the tribal population:

- This special provision is provided under Article 244(2)²⁹ and Article 275(1)³⁰ of the Constitution.
- These councils have the right to make laws in the interest of the tribal community in the areas falling under their jurisdiction. They also have the power to collect certain revenues in the interest of the tribal causes.
- These ADCs are like special states within the bigger states, having the power to serve the tribal population by using the arms of the governance: Legislature, Executive, and Judiciary.

DRAWBACKS OF THE SIXTH SCHEDULE

- This schedule does come off as unfair to the non-tribal community of these regions. The right to equality before the law (Article 14)³¹, the Right against discrimination (Article 15)³², and even the right to settle anywhere (Article 19)³³ are often contradicted because of this schedule.
- There are several power centres as a result of this schedule, which comes off as a hindrance in the proper execution of laws and schemes across the nation, as one body often crosses the other³⁴.

²⁶ Constitution of India 1950, sch. 6

²⁷ Government of India Act 1935

²⁸ ‘Sixth Schedule’ (n 21)

²⁹ Constitution of India 1950, art. 244(2)

³⁰ Constitution of India 1950, art. 275(1)

³¹ Constitution of India 1950, art. 14

³² Constitution of India 1950, art. 15

³³ Constitution of India 1950, art. 19

³⁴ ‘Sixth Schedule Areas’ (n 19)

ANALYSIS OF THE SIXTH SCHEDULE

The idea behind the sixth schedule of the Indian Constitution sounds noble and proper on the surface. But, in digging deeper we would know that there are flaws in it resulting in inequalities for the non-tribal minorities of the region. For example, The European Ward in Meghalaya disallows non-tribal citizens from buying a plot of land or property, despite being honest tax-paying citizens. Whereas the very tribal population of the state is free to buy property across the nation, even in regions with a non-tribal majority. This is stark inequality and comes in contradiction to Article 19³⁵.

The government jobs are largely reserved for the Tribal population in Meghalaya, leaving less hope for tax-paying, law-abiding non-tribal citizens of the state. This is in contradiction to Article 15.³⁶In Meghalaya, the already discriminated non-tribal population pays higher taxes than the tribal population, and in return gets lesser jobs and no right to buy property in the central/posh areas of the state. This is unfair, to say the least. Therefore, this schedule needs to be revisited and updated, given the problems it is causing.

DIFFERENCE BETWEEN FIFTH AND SIXTH SCHEDULE

We know that the basic thrust of the Fifth³⁷ and Sixth³⁸ Schedules is designed to protect the cultural distinctiveness of Tribes, by securing them from economic disadvantages and exploitation. To enhance our understanding, we must take a brief look at the major differences between these Schedules and learn more about their functionality.

Jurisdiction:

- Schedule fifth³⁹ designates the interest of the tribes of the entire country, leaving out four states, Mizoram, Meghalaya, Tripura, and Assam. Covering out the larger part of India in which the interests of tribal communities are to be protected, the schedule deals with administration.

³⁵ Constitution of India 1950, art. 19

³⁶ Constitution of India 1950, art. 15

³⁷ Constitution of India 1950, sch. 5

³⁸ Constitution of India 1950, sch. 6

³⁹ Constitution of India 1950, sch. 5

- Schedule sixth⁴⁰ covers 4 states in the North-Eastern part of India, “Mizoram, Meghalaya, Tripura, and Assam”⁴¹. The schedule is exclusively made for these states and it provides provisions for the formation of autonomous districts.

Declaration:

- In the fifth Schedule⁴², the declaration is made by the President in consultation with the Governor, he can increase, decrease and redesignate the area of the districts.
- In the sixth Schedule⁴³, the Governor is empowered to organize and reorganize the autonomous districts by increasing or decreasing the area.

Executive Power:

- The state’s executive power extends to the areas under the fifth schedule⁴⁴, Centre’s powers extend to giving direction to the states.
- Under the sixth schedule⁴⁵, tribal areas are considered autonomous districts but they fall under the state’s executive authority.

Tribal Advisory Council:

- Under the Fifth Schedule⁴⁶, Tribal Advisory Council is nominated and constituted by the Governor with a maximum of 20 members. Thus, making this an Advisory body with non-binding advice.
- Under the sixth schedule⁴⁷, the Governor is empowered to constitute DNRC (District and Regional Council) with a maximum of 30 members out of which 4 can be nominated by the Governor. Thus, making this an elected body, a body with binding advice⁴⁸.

⁴⁰ Constitution of India 1950, sch. 6

⁴¹ ‘Sixth Schedule’ (n 21)

⁴² Constitution of India 1950, sch. 5

⁴³ Constitution of India 1950, sch. 6

⁴⁴ Constitution of India 1950, sch. 5

⁴⁵ Constitution of India 1950, sch. 6

⁴⁶ Constitution of India 1950, sch. 5

⁴⁷ Constitution of India 1950, sch. 6

⁴⁸ ‘5th and 6th Schedule of the Constitution’ (IAS Abhiyan) <<https://www.iasabhiyan.com/difference-between-5th-and-6th-schedule/>> accessed 22 August 2022

Applicability of Law:

- Under the Fifth Schedule⁴⁹, all the enactments of Parliament and the state legislature are applied to the area covered. The Governor can make regulations with the Tribal Advisory Council, the Governor can amend or repeal any act of Parliament with the President's assent.
- Under the sixth schedule⁵⁰, all enactments of Parliament and the state legislature are not applied to this autonomous area, unless otherwise notified by the Governor⁵¹.

CONCLUSION

The fifth and sixth schedules provided tribes with a light of optimism. Scheduled castes and tribes make up a significant portion of the country's total population, if not the majority. It is our responsibility to treat them with the same respect and decency that we treat ourselves. As a result, our country's government should take additional efforts to ensure equality. The most essential objective in tribes' life is to achieve equality and equity. The major focus should be on treating them like we would other Indian citizens. And we can only do that if we provide them with equal opportunities to demonstrate their worth. We should also work to create a sense of belonging in them, which may be accomplished by emphasizing their heritage and culture. Stop treating them as though they were from another country. However, it is also the government's responsibility to tell them that their primary identity is Indian. This will avoid the establishment of several authoritative bodies and will instead contribute to the country's progress through a single administration. Tourism should be promoted to provide them with a greater representation. It would not only benefit India's tribes but will also contribute to the country's growth. As a result, the government and other authorities should take care of this sensitive matter to gain the tribal people's trust and give them a sense of belonging.

⁴⁹ Constitution of India 1950, sch. 6

⁵⁰ Constitution of India 1950, sch. 5

⁵¹ 5th and 6th Schedule of the Constitution' (n 48)