

SCHEDULED TRIBES UNDER INDIAN LEGAL SYSTEM: AN ANALYSIS

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Abstract: The term Scheduled Tribes refers to community of specific indigenous people whose status as such is recognised under the Constitution of India, 1950. The primary criterion adopted for delimiting Indian backward communities as STs include their traditional occupations of a whole range of tribal modes of life which is reflected in their language, customs, traditions, religious beliefs, arts and crafts, archaic traits, occupational pattern and economic development. According to the 2011 census, the number of scheduled tribes in India is 10,42,81,034 which is 8.6 per cent of the total population. Approximately 9,38,19,162 people belonging to Scheduled tribes live in rural India and 1,04,61,872 resides in urban India. In India, there exist labyrinth of laws for the protection of STs namely the Constitution of India, 1950 Articles 15, 16, 17, 19, 43, 338, 340-342 along with schedule V and VII. Beside this there exist independent Commissions, Ministry and Acts exclusively dealing with the overall development of Scheduled tribes such as National Commission for Scheduled Tribes, MOTA, TAC, PESA 1996, The Scheduled Tribes and Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 and so on. Despite activism shown by legislative and administrative authorities still there exist issue of upliftment of ST population in India. The present research work is based on secondary methods of study. The secondary methods are based upon a collection of material from various sources such as the government surveys, reporters, Indian and foreign journals, International Conventions, research articles, newswEEKlies, newsletters, internet, books newspaper clippings and various cases on the subject etc. The present research paper will try to critically analyse the limitations of existing statutory provisions and procedural implications and will explore legal possibilities of making amendment.

Key words: Commissions, MOTA, TAC, Indigenous People, Backward Communities, Scheduled Tribes

1. INTRODUCTION

In India Scheduled Tribes represent a group of tribal communities which were designated as STs during the post independence period under The Constitution of India, 1950. In simple terms ST refers to marginalised communities of specific indigenous people demarcated on the basis of geographical isolation and not based on caste system. A collective term used generally to describe these people is 'upajati' (clans/groups/tribes). The primary criterion adopted for delimiting STs in India include their traditional ancestral occupational pattern which they have inherited and their tribal mode of life reflected in their language, customs, traditions, religious beliefs, arts and crafts, archaic traits, and economic development¹. As per National Law Commission for Scheduled Tribes the Scheduled Tribes are notified in 30 States/UTs and the number of individual ethnic groups notified as Scheduled Tribes is 705.² According to the 2011 census, the number of scheduled tribes in India is 10,42,81,034 which is 8.6 per cent of the total population. Approximately 9,38,19,162 people belonging to Scheduled tribes live in rural India and 1,04,61,872 resides in urban India.³

1 Swapan Deb Barma, "Protection of STs Under Indian Constitution", The Lex – Warrier Online Law Journal; 11(2010), available at: http://www.warrierlex.in/2010/11/protection_of_scheduled_tribes_under_indian_constitution (last visited on September 27, 2019).

2 Census 2011, Office of Registrar General and Census Commissioner, India, available at <https://censusindia.gov.in> (last visited on October 17 2019)

3 Census of India, available at <http://www.censusindia.gov.in> (last visited on October 17, 2019)

2. CONCEPT

Indian Constitution also known as the fundamental law of land aims at securing for all its citizens socioeconomic justice, equality of status and opportunity, thereby assuring the dignity of the individual. Part XIX Article 366(25)⁴ of the Constitution, 1950 defines Scheduled Tribes as '*such tribes, tribal areas and tribal communities that are deemed as Scheduled Tribes under Article 342*'⁵.

2.1 Who will be included in Scheduled Castes and Scheduled Tribes

Although Constitution of India does not define as to 'who' belongs to Scheduled Castes and Scheduled Tribes but empowers the President of India to draw up a list of these Castes and Tribes under Article 341 and 342.. Under Article 341⁶ the President, after consultation with the Governor of the concerned State will specify the races, castes or tribes or of groups within these races, castes or tribes for purpose of their notification Scheduled Tribes and if such notification is concerning a state, then the Governor of the State has to be consulted. Any inclusion or exclusion from the Presidential notification of any race, caste or tribe can only be done by the Parliament by enactment of law. If any question arises with respect to status of a particular tribe as a tribe under Article 341, public notification issued under Article 340(1)⁷ has to be taken into consideration. Further Article 342⁸ explains the scope of Scheduled Tribes and provides that the President after consultation with the Governor with respect to a State or Union Territory (UT) by public notification specify the tribe/tribal community/part of/group within tribe or tribal community to be the STs in relation to that State/UT as the case may be. Further, the Parliament, by enactment of law is empowered to include or exclude any tribe/tribal community from the list of Scheduled Tribes⁹. Articles 330 to 342 of Constitution of India provides for special provisions for safeguarding the interest of Scheduled Tribes.

2.2 Bodoland Territorial Areas District

It is to be noted that a new provision has been added after Article 332 (6) by the Constitution 90th Amendment Act 2003¹⁰, which provides that the representation of Scheduled Tribes included in the Bodoland Territorial Areas District shall not affect the representation of Scheduled Tribes and Non – Scheduled Tribes in the Legislative Assembly of the State of Assam. Further the Constitution 79th Amendment Act, 1999¹¹ has substituted the word 'fifty' with the word 'sixty' in Article 334¹², thus extending the reservation of seats for Scheduled Tribes in the Lok Sabha and in the state assemblies up to 60 years from the commencement of the Constitution. Although seats are reserved but they are elected by all voters in the constituency. So there is no separate electorate Scheduled Tribes. As per Article 325 there shall be one general electoral roll which clarifies that a member of a Scheduled Tribe may contest any seat other than reserved also.

3. SCHEDULED AREAS

'Scheduled Areas' means such areas as the President may by order declare to be Scheduled Areas¹³. The President of India is empowered to take the following steps for protection of interest of ST population

- The President can pass an order that whole or part of Scheduled Area shall cease to be a Scheduled Area only after consultation with the Governor of the concerned State/ UT.
- The President of India can increase or decrease the boundaries of Scheduled Areas.
- The President is also empowered to declare any territory not previously included in any State or UT to form part of a Scheduled Area.

In India, there exist labyrinth of laws for the protection of STs and the same have been mentioned as follows

⁴ See Article 366(25)⁴ of the Constitution of India, 1950

⁵ Mahendra P. Singh, Constitution of India, (Lucknow, Eastern Book Company 2011).

⁶ See Article 341 of the Constitution of India, 1950.

⁷ See Article 340(1) of the Constitution of India, 1950.

⁸ See Article 342 of the Constitution of India, 1950.

⁹ See Articles 342(1) & 342(2) of the Constitution of India, 1950.

¹⁰ For details see Constitution 90th Amendment Act, 2003.

¹¹ For details see Constitution 79th Amendment Act, 1999.

¹² See Articles 334 of the Constitution of India, 1950.

¹³ See Schedule Fifth, Para 6 of the Constitution of India, 1950.

3.1 The Constitution of India, 1950

Fundamental rights

Part III of the Constitution which deals with Fundamental Rights are basic human rights in consonance with the Universal Declaration of Human Rights carrying the theme of 'dignity of the individual'. They are enforceable and justifiable in nature against the State and its officials. Under Part III Articles providing safeguards to the ST population are:

Article 15¹⁴–Prohibition of Discrimination on grounds of religion, race, caste, sex or place of birth.

Article 15(1)¹⁵ prohibits the State government from discriminating against citizens of India on grounds of religion, race, caste, sex, place of birth or any of them in the matter of rights, privileges and immunities. The right is conferred on a citizen as an individual and is available whenever there is a case of discrimination against him/her.

Article 15(2)¹⁶ provides that there shall be no discrimination by the State and the private individuals against a citizen on the grounds mentioned under Article 15(1) from access to public places which includes shops, public restaurants, hotels, places of public entertainment and use of public places such as wells, tanks, bathing 'Ghats', places of public resorts maintained wholly or partly by State fund.

Article 15(3)¹⁷ empowers the State government to make special provisions for the protection of women and children which includes STs as well.

Article 15(5) was added by the 3rd Constitution Amendment Act 2005¹⁸ provides for reservation in favour of STs in Private Educational Institutions whether aided or unaided by the State, except the minority educational institutions as defined under Article 30(1).

Article 16¹⁹ – Equality of Opportunity in the Matter of Public Employment

Article 16(1) and 16(2) apply only in respect of employment or office under the State government and lays down that there shall be no discrimination against any citizen for any employment or office under the State on grounds of religion, race, caste, sex, decent, place of birth or residence but it is subjected to certain exceptions as mentioned under Article 16(3), 16(4), 16(4 – A)²⁰, and 16(4 – B)²¹. Article 16(4 – A) added by the 77th Constitution Amendment Act, 1995²² empowers the State to reserve seats in matters of promotions for STs if the State is of the opinion that they are not adequately represented in the Services under the State. It is to be noted that Article 16(4 – B) seeks to end the 50 per cent limit for Scheduled Castes, Scheduled Tribes and Other Backward Classes in backlog vacancies which could not be filled up due to the non – availability of eligible candidates of these categories in the previous year(s).

Article 17²³ – Abolition of Untouchability

Article 17 of the Constitution abolishes "untouchability" and forbids its practice in any form and makes it punishable in accordance with law. In pursuance of Article 17 the Parliament has enacted the Untouchability (Offences) Act, 1955 which was amended in 1976. Presently it is renamed as the Protection of Civil Rights Act²⁴, 1955.

Article – 19²⁵ Right to Freedom Article 19(1)²⁶ of the Constitution guarantees to the citizens of India the following six fundamental rights namely:

- a. Freedom of Speech and Expression subjected to reasonable restrictions as provided under Article 19(2),.
- b. Freedom of Assembly subjected to reasonable restrictions as provided under Article 19(3),.
- c. Freedom to form Associations subjected to reasonable restrictions as provided under Article 19(4),.
- d. Freedom to Move Freely Throughout the Territory of India; subjected to reasonable restrictions as provided under Article 19(5),.

¹⁴ See Article 15 of the Constitution of India, 1950.

¹⁵ See Article 15(1) of the Constitution of India, 1950.

¹⁶ See Article 15(2) of the Constitution of India, 1950.

¹⁷ See Article 15(3) of the Constitution of India, 1950

¹⁸ See 93rd Constitution Amendment Act, 2005.

¹⁹ See Article 16 of the Constitution of India, 1950.

²⁰ See Articles 16(4 – A) of the Constitution of India, 1950.

²¹ See Articles 16(4 – B) of the Constitution of India, 1950. Clause (4 – B) has been added to Article 16 by the Constitution 81st Amendment Act, 2000.

²² For details see Constitution 77th Amendment Act, 1995.

²³ See Articles 17 of the Constitution of India, 1950.

²⁴ See The Protection of Civil Rights Act, 1955.

²⁵ See Articles 19 of the Constitution of India, 1950.

²⁶ See Articles 19(1) of the Constitution of India, 1950.

- e. Freedom to Reside and to Settle in any Part of the Territory of India and subjected to reasonable restrictions as provided under Article 19(5),.
- f. Freedom to Practice any Profession, Occupation, Trade or Business subjected to the restrictions as mentioned under Article 19(2). subjected to reasonable restrictions as provided under Article 19(6),.

Directive Principles Of State Policy

Part IV of the Constitution of India deals with the Directive Principal of State policy which although are not enforceable but are justifiable in the governance of the country. These principles comprise of certain Social, Economic and Political principals, suitable to peculiar conditions prevailing in India. Article 46²⁷ which comes within the preview of the Social Security Charter enjoins upon the State to promote with special care the education and economic interest of the weaker sections of people in particular of Scheduled Tribes and also to protect them from social injustice and of all forms of exploitation.

3.2 National Commission for Scheduled Tribes

History

Several provisions have been incorporated in the Constitution with the motive to safeguard the interests of Scheduled Tribes. Further with the objective of effective implementation of these safeguards it is must to appoint Commissioner of SCs and STs under article 338. The Commissioner must directly report the affairs of their working to the President of India. For effective working of office of the Commissioner 17 regional offices of the commissioner have been setup across the country followed by establishment of a multi-Member Commission named as Commission for Scheduled Castes and Scheduled Tribes w.e.f 21st July 1978 which was renamed as National Commission for Scheduled Castes and Scheduled Tribes w.e.f 1st September 1987. It is a national level advisory body to advice on policy matters and levels of development of SCs and STs and submits its report directly to the Central government. The Commission was given Constitutional status by the 65th Amendment to the Constitution dated 12th March 1992 and the office of the Commissioner was abolished. Later the Government of India felt that geographically and culturally ST population differs from SC population so do their problems. So they constituted separate Ministry of Tribal Affairs in October 1999 for coordinating all the activities relating to the ST population in India ²⁸ followed by the Constitution 89th Amendment Act, 2003²⁹ which amended Article 338 and added a new Article 338 – A (1)³⁰ providing for the establishment of National Commission of Scheduled Tribes. Earlier the Constitution 65th Amendment Act, 1990 amended Article 338 (a) thereby providing for National Commission for Scheduled Castes and Scheduled Tribes.

The Commission is empowered to regulate its own procedure under Article 338(4)³¹ Moreover the commission shall function by holding the sittings and meetings at any place within the country and also through its officers at the Headquarters and in the Regional offices and carries following activities namely:

- Procedure of investigation and enquiry by the Commission;
- Meetings of Commission and their frequency;
- Duties of the Regional offices ;
- Advisory role of commission ; and
- Monitoring functions.

Constitution of Commission

The Commission shall consist of a Chairman, Vice – Chairman and three other members. The members of the Commission shall be appointed by the President. The conditions of service and tenure of the members of the Commission shall be such as the President may by rule determine for Scheduled Tribes.³² The headquarter of the commission is located at New Delhi.

Duties of the Commission ³³

The following are the duties of the Commission:

- Investigating and monitoring of all matters relating to the safeguards for STs under the Constitution and in any other law or any order of Government and to evaluate the working of such safeguards.,
- Inquiring into specific complaints with respect to the deprivation of rights and safeguards of STs.,

²⁷ See Articles 46 of the Constitution of India, 1950.

²⁸ For details see Constitution 89th Amendment Act,2003.

²⁹ For details see Constitution 89th Amendment Act, 2003.

³⁰ See Articles 338 – A(1) of the Constitution of India, 1950.

³¹ See Article 338(4) of the Constitution of India,1950.

³² See Article 338—A(2) of the Constitution of India, 1950.

³³ See Article 338—A(5) of the Constitution of India, 1950.

- Participating in the planning process of socio-economic developments of STs and to evaluate the progress of their development under the Union and any State.,
- Present to the President reports upon the working of those safeguards annually and at such other times as the Commission deems fit.,
- Making recommendations as to the measures that should be taken.,
- Discharging such other functions as required for the welfare, development and advancement of the Scheduled tribes.

Moreover the commission shall function by holding the sittings and meetings at any place within the country and also through its officers at the Headquarters and in the Regional offices.

Powers of the Commission³⁴

While investigating any matter the Commission shall have the powers of a civil court as provided under the Civil Procedure Code,1908 trying a suit in respect of the following manners namely-

- Summoning and enforcing the attendance of any person from any part of India and examining him on oath.,
- Discovering and production of any document.,
- Receiving evidence on affidavits.,
- Requisitioning any public record or copy from any court or office.,
- Issuing commission for the examination of witness.,

For the purpose of investigation and inquiry the commission may adopt any one or more of the following methods

- By the commission directly.,
- By an investigating team constituted at the headquarter of the commission.,
- Through its regional offices.

It is mandatory for the Union and the State Government to consult the Commission on all the major policy matters affecting Scheduled Tribes. The commission is authorised to maintain the confidentiality of any matter. All summons and warrants issued by the commission in capacity of civil court shall bear the seal of commission. Legal process shall be issued from the legal cell of the commission. For the service of the legal process the provisions of the Code of Civil Procedure,1908 for the legal process shall be followed.

Advisory Role of the Commission³⁵

The Commission through its members, secretariat and regional offices shall interact with the state government and the planning commission at regular intervals of time by way of representations concerning the process of planning ,development and evaluation of all the programmes and schemes concerning the Scheduled Tribes. The secretariat of the commission through its concerned wings would provide necessary assistance and information to the member-in-charge of the concerned State / Union territory.

Other functions of the Commission

The commission shall undertake surveys and evaluation studies in collaborations with the Central or State Government or the Universities or Research bodies by constituting study teams comprising of professionals either at the Headquarters or at the Regional Offices so as to evaluate the impact of developmental schemes on the socio economic development of the Scheduled Tribes. The studies undertaken are compiled in the form of Annual or Special Report of the Commission.

3.3The Provisions of the Panchayats (Extension to the Scheduled Areas) Act 1996 [hereafter referred to as PESA, 1996]³⁶

The PESA Act, 1996 provides for the extension of the provisions of the Part IX of the Constitution relating to the establishment of Panchayats to the Scheduled Areas under Section 4³⁷ subjected to the following exceptions-

- The State legislation on Panchayats which is to be implemented in Scheduled Areas must be in consonance with the customary law, social and religious practices and traditional management practices of the areas concerned.,

³⁴ See Article 338—A(8) of the Constitution of India, 1950.

³⁵ For details see National Commission for Scheduled Tribes, Handbook 2016.

³⁶ For details see PESA Act, 1996.

³⁷ For details see section 4 of PESA Act, 1996.

- Village for the application of PESA Act,1996 must consist of a habitation, group of habitations or a hamlet or group of hamlets comprising a community managing its affairs according to its traditions and customs.,
- Every village shall have a Gram Panchayat consisting of persons whose names are included in the electoral roll.,
- Every gram sabha shall be competent to safeguard traditions and customs, cultural identity, community resources and customary mode of dispute resolution.,
- The reservation of seats in the scheduled areas at every panchayat shall be in proportion to the population of the communities in that panchayat for whom reservation is sought to be given of constitution provided that all the seats of the Chairpersons of the Panchayats at all levels shall be reserved for the Scheduled Tribes. Moreover it is mandatory that half seats shall be reserved for the STs out of the total number of seats.,
- The State government is empowered to nominate persons from tribal community having no representation in Panchayat at the intermediate level or district level provided such nomination shall not exceed one –tenth of the total number of members to be elected in that panchayat.,
- Panchayat shall perform the function of planning and management of the minor water bodies in the scheduled areas at the appropriate level and must be consulted before making any acquisition of land in scheduled areas for developmental projects, re settling and rehabilitation projects.,
- Recommendations of gram sabha and panchayats at the appropriate level shall be mandatory before granting any mining lease or license in the scheduled areas or grant of concession for the exploitation of minor minerals by auction.,

Powers of the Panchayats and Gram Sabhas with respect to the scheduled areas

- Power to enforce prohibition, to regulate or to restrict the sale and consumption of any intoxicant.,
- Ownership of minor forest produce.,
- Power to prevent alienation of land in scheduled areas .,
- Power to manage village markets.,
- Power to exercise control over money lending in scheduled Tribes.,
- Power to exercise control over institution and functionaries in all social sectors.,
- Power to control over local plans and resources and tribal sub plans.,and
- Endow the Panchayats with powers and authority as may be necessary to enable them to function as self government.

3.4 The Scheduled Tribes and Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

Chapter II Section 3³⁸ of the said Act deals with forest rights of forest dwelling scheduled tribes and other traditional forest dwellers which are as follows-

- Right to hold and live in the forest land under individual or common occupation for habitation or for self cultivation for livelihood by member (s) of forest dwelling scheduled tribes
- Community rights such as nistar including those rights which were used in princely states and zamindari regimes.,
- Right of ownership, collect, use and dispose of minor forest produce.,
- Communities rights of entitlements such as fishery, other products of water bodies , grazing and traditional resources access to pastoralist and nomadic communities.,
- Communities tenures of habitat and habitants for primitive tribal groups and pre- agricultural communities.,
- Rights over disputed lands under any nomenclature in any state where claims are disputed.,
- Rights of conversion of pattas or leases or grants issued by any local authority or any state government on forest lands to titles.,
- Rights of settlement and conversion of all forest villages, old habitations, unsurveyed villages and other villages in forests whether recorded , notified or noted into revenue villages.,
- Right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting for sustainable use.,

³⁸ See section 3 of The Scheduled Tribes And Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

- Right of access to biodiversity, intellectual property and traditional knowledge related to biodiversity and cultural diversity.,
- Any other traditional right customarily enjoyed by forest dwelling scheduled tribes and other traditional forest dwellers.,
- Right to in situ rehabilitation including alternative land in cases of illegal eviction or displacement from forest land of scheduled tribes and other traditional forest dwellers.,

CHAPTER V Sections 7 and 8 of the Act deals with offences and penalties. Section 7³⁹ provides that if any authority or committee or officer or member of such authority or committee contravenes any of the provision of this act or any rule made there under shall be guilty of an offence under this act and shall be punished with fine extending to one thousand rupees. Section 8⁴⁰ provides that no court shall take cognizance of any offence under section 7 unless any forest dwelling schedule tribe in case of a dispute relating to a resolution of a gram sabha or the gram sabha through a resolution against any higher authority gives a notice of not less than sixty days to the State Level Monitoring Committee and the later has not proceeded against such authority.

3.4 The Scheduled Castes And The Scheduled Tribes (Prevention Of Atrocities) Act, 1989

This Act was enforced on 11th September 1949 with the objectives of prevention of atrocities against the members of Scheduled Castes and Scheduled Tribes, for the establishment of special court for the trial of such offences and providing for the relief and rehabilitation of the victims of such offences,

Section 3⁴¹ of the act deals with the kinds of atrocities against the scheduled tribes-

- Forcing a member of Scheduled Tribe to drink or eat any inedible or obnoxious substance.,
- Acts with the intention to cause injury, insult , annoyance to the member of Scheduled Tribes and to parade him naked or with painted face or body or to commit any similar act derogatory to human dignity.,
- Wrongfully occupying or cultivating any land which is owned by, allotted to, notified by any competent authority to the Scheduled Tribes or gets the land allotted to him transferred.,
- Wrongfully disposing a member of the scheduled tribes from his land or premises or interferes with his enjoyment of any land , premises or water.,
- Compels or entices a member of Scheduled Tribes to be a beggar or other similar forced labour.,
- Forces or intimidates any member of the Scheduled Tribes not to vote or to vote to a particular candidate.,
- Intentionally insults or intimidates with the intent to humiliate a member of Scheduled tribes in any place within public view.,
- Assaults or uses force against any women belonging to the scheduled tribes.,
- Being in a position to dominate the will of the women belonging to the scheduled tribes and intentionally uses that position to exploit her sexually.,
- Corrupts or fouls the water of any spring, reservoir or any other source used by the Scheduled tribes community.,
- Denies the member of scheduled tribes any customary right to passage to a place of public resort or to obstruct such members.,
- Forces a member of scheduled tribes to leave his house, village or other place of residence.,
- Section further provides that the person committing the above mentioned offence against any member of the scheduled tribes shall be punished with imprisonment not less than six months which may be extended up to five years and fine.
- The act further provides that whoever not being the member of the Scheduled Tribes gives or fabricates false evidence intending thereby to cause or knowing it to be likely to cause any member of Scheduled Tribe⁴²-
- to be convicted of an offence which is capital shall be punished with imprisonment for life and with fine and if an innocent member of the Scheduled tribes is convicted and executed ,the person responsible for it shall be punished with death.,

³⁹ See section 7 of The Scheduled Tribes And Other Traditional Forest Dwellers (Recognition of Forest Rights)Act,2006

⁴⁰ See section 8 of The Scheduled Tribes And Other Traditional Forest Dwellers (Recognition of Forest Rights)Act,2006

⁴¹ See section 3(1) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

⁴² See section 3(2) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

- to be convicted of an offence which is not capital but punishable with imprisonment for seven years or upward shall be punishable with imprisonment for six months which can go up to seven years and with fine.,
- commits mischief by fire or any explosive substance with intention or knowledge that such act is likely to be causing destruction of any building used as place of worship, dwelling by members of scheduled tribes shall be punished with imprisonment for life and with fine.,
- commits mischief by fire or any explosive substance with intention or knowledge that such act is likely to be causing destruction to any property belonging to any members of scheduled tribes shall be punished with imprisonment for six month which can extend up to seven years.,

Section 4⁴³ further provides that if a public servant not a member of Scheduled Tribes wilfully neglects his duties, he shall be punished with imprisonment for a term of six months extendable to one year and on second conviction of any person under this act for the same offence shall be punished with imprisonment for one year which can be further extended to such duration as provided under the offence committed.⁴⁴ In order to provide speedier justice to the scheduled tribes under the Act the state government in consonance with the Chief Justice of the state concerned by official notification shall specify for each district a court of session to be considered as a special court for the offences under the act followed by the appointment of an advocate in practise for not less than seven years as special public prosecutor for conducting cases under this act⁴⁵

4. ADMINISTRATION OF SCHEDULED AREAS AND TRIBAL AREAS

- Article 244(1)⁴⁶ provides that the Scheduled Areas and Scheduled Tribes in any State other than the States of Assam, Meghalaya, Tripura and Mizoram will be administered and controlled in accordance with the provisions of the Fifth Schedule .The Fifth schedule provides that the executive power of the State extends to the Scheduled Areas.
- Article 244 – A⁴⁷ was added to the Constitution in order to meet the demands of the hill tribes of Assam for a separate State. This Article empowers the Parliament to form an autonomous State comprising certain Tribal Areas of Assam and creates local legislature and Council of Ministers for such a State. It may by law, lay down constitution, power and functions of the legislature and Council of Ministers.

Fifth Schedule⁴⁸

The Fifth Schedule provides that the executive power of the State shall extend to the Scheduled Areas. But the Governor has a special responsibility regarding such areas. In the sense that he/she is required to make an annual report to the President or whenever required by the President regarding administration of these areas. The Union will exercise its executive power over these areas to the extent of giving of directions to the State regarding administration of the said areas. There exists a Tribal Advisory Council in each State having Scheduled Areas, consisting of not more than 20 members as representatives of the Scheduled Tribes in the State which has no Scheduled Council. The Council shall advise on matters pertaining to the welfare and advancement of Scheduled Tribes in the State referred to them by the Governor.

Sixth Schedule⁴⁹

The Sixth Schedule⁵⁰ of the Constitution identifies Autonomous Districts in Tribal Areas in the states of Assam, Meghalaya, Tripura and Mizoram and also recognizes Autonomous Regions within these Autonomous Districts which in turn are specified in Part I ,II, III and IIA of paragraph 20 of 6th Schedule. With respect to matters like fisheries, ferries, ponds, roads, transport, waterways, market, schools and dispensaries in the concerned district, the District or Regional Councils are empowered to make rules with the approval of the Governor and lays down its constitution and powers. These Councils are empowered to make laws for the administration of justice in the autonomous districts and the tribal areas. The Councils may constitute Village Council or Court for the trial of suits between parties belonging to Scheduled Tribes. The High Court shall have such jurisdiction over these areas as the Governor may by order specify. There is a

⁴³ See section 4 of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

⁴⁴ See section 5 of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

⁴⁵ See sections 15 and 16 of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

⁴⁶ See Article 244(1) of the Constitution of India,1950.

⁴⁷ See Articles 244 – A of the Constitution of India, 1950.

⁴⁸ For details see the Fifth Schedule of the Constitution of India, 1950.

⁴⁹ For details see the Sixth Schedule of the Constitution of India, 1950.

⁵⁰ For details see Sixth Schedule of Constitution of India, 1950.

District Fund to which all money received by the District Council and Regional Council shall be credited. The Governor may make rules for the management of the District Fund. The District Council and Regional Council shall have the power of imposing taxes. The Governor may by public notification direct that any Act of Parliament or of the Legislature of Assam shall apply or shall not apply to the autonomous district or region or shall apply with such modifications as he/she may specify through the notification. The Governor may annul or suspend acts and resolutions of the District Council and Regional Council if he/she is satisfied that such act is likely to endanger the safety of India or is likely to endanger public order. Moreover the Governor may take such steps as he/she may consider necessary (including suspension of Council) and assume to himself/herself all or any power(s) exercisable by the Council. It is to be noted that the Sixth Schedule may be amended by law from time to time. No such law shall be deemed to be the amendment of Constitution of India for the purpose of Article 368.

4.1 Ministries/Departments/Committees⁵¹

Under the Constitution the following ministries, departments and committees have been constituted for welfare and development of tribal community

- Ministry of Law and Justice
- Ministry of Minority Affairs
- Ministry of Tribal Affairs

Ministry of Law and Justice

The Ministry of Law and Justice is the backbone of the Government of India, dating back to the Charter Act, 1833, followed by Government of India Act 1919, 1935 and finally the Constitution of India, 1950. As the main source of the Indian Constitution, Statutes (legislations), Customary Laws and Case Laws, they are taken into account by the Constitution in India while administering justice in certain spheres⁵².

Ministry of Minority Affairs

The Government of India, through Department Justice (DoJ) and Ministry of Law and Justice, in collaboration with United Nations Development Programme (UNDP) has implemented access to justice for marginalized people 2008 - 2017. This access to justice has been extended to the following UNDAF states namely Bihar, Chattisgarh, Jharkhand, Madhya Pradesh and Odisha with the main objective of developing strategies for breaking barriers to accessing justice to marginalized groups in legal/social and economic domains. The following are the achievements of this programme:

- Legal literacy initiatives over 20 lakh people from marginalized communities making them aware of their legal rights.
- Inclusion of legal literacy in Adult Literacy Programme under Sakshar Bharat Abhyyan.
- Training over 7,000 paralegals from various backgrounds for this purpose.
- Providing for the legal aid clinic run by the Law Schools, so as to enable a better understanding of the problems faced by marginalized communities in access to justice⁵³.

Ministry of Tribal Affairs⁵⁴ (MoTA)

This ministry was setup in 1999 when the Ministry of Social Justice and Empowerment bifurcated. It is the Nodal ministry for overall development of Scheduled Tribes and performs the following functions

- Work related to the welfare of tribal people such as planning, policy formation, research and training.,
- Encouraging development of tribal people and providing them scholarships
- Protection to the interest of tribal communities with regard to land alienation
- Administration of Scheduled Areas as per the guidelines of “Fifth Schedule⁵⁵,” and “Sixth Schedule” under Article 224(1) and Article 224 (2)

Under the Fifth Schedule the criteria for declaring any area as “Scheduled Area” include:

- Preponderance of Tribal Population,
- Size and compactness of the Area under consideration,
- Available administrative entity such as district, block or *taluk*,

⁵¹ List of Ministries/Departments is based on information given under Allocation of Business Rules, 1961 as amended time to time by Cabinet Secretariat, available at <http://cabsec.nic.in>

⁵² Ministry of Law and Justice, available at <http://lawmin.nic.in>

⁵³ Increasing Access to Justice for Marginalized People, available at http://www.in.undp.org/content/india/en/home/operations/projects/democratic_governance/access_to_justice.

⁵⁴ Ministry of Tribal Affairs, Government of India, available at <http://www.tribal.nic.in/Content/scheduledtribes.aspx>.

⁵⁵ For details see Fifth Schedule of the Constitution of India, 1950.

- Economic backwardness of the Area,

It is to be noted that a particular area is specified as the Scheduled Area with respect to a State by the President's Notified Order after consultation with the concerned state government. The same is applicable to alteration, increase, decrease and incorporation or rescinding any order relating to "Scheduled Areas".

Moreover with respect to any particular Scheduled Area, the Governor of the concerned State, where the area is located, exercises the rights to prohibit transfer of land from tribal people and right to regulate the business of money lending to members of Scheduled tribes.

In addition the Governor of such a state has the power to repeal any Act of Parliament or State Legislature applicable to the area in question and can through public notification notify the authority and community concerned. He shall make an annual report regarding administration of Scheduled Areas in the State to the President.

Further the executive power of the Union Government shall extend to giving direction to the State concerned as the administration of said area.

Organizations under the Ministry

Following are the organizations under the ministry

- National Commission for Scheduled Tribes, NCST
- National Scheduled Tribes Finance and Development Corporation, NSTFDC
- Tribal Co-operative Marketing Federation of India, TRIFED

4.2 Role Of Tribes Advisory Council⁵⁶ (TAC)

TAC advises the State Government on matters pertaining to the welfare and advancement of Scheduled Tribes in State as referred to by the Governor.

Composition of TAC

TAC consists of twenty members out of which 3/4th are MLAs representing the scheduled tribes. TAC can also be established with the permission of the President of India in those States where Scheduled Tribes are present and living but not demarcated Scheduled Area. Moreover, the provision of **Panchayat (Extension to Scheduled Areas) Act, 1996 [PESA]**⁵⁷ contained in Part IX of the Constitution has been extended to Scheduled Areas for benefit of the Scheduled Tribes. It is to be noted that the Councils have been conferred power under the Civil Procedure Code, 1908 and Criminal Procedure Code, 1973 for trial of certain suits and also the power of revenue authority for collection of revenue and taxes from their areas along with additional powers to make laws with respect to other matters like secondary education, agriculture, social security and social insurance, public health, sanitation and management of natural resources.⁵⁸

Special Officer for Scheduled Castes, Scheduled Tribes etc

Article 338(1)⁵⁸ provides that there shall be a special officer for the Scheduled Castes and Scheduled Tribes to be appointed by the President. Article 338(2)⁵⁹ provides that it shall be the duty of the special officer to investigate all matters relating to the safeguards for the Scheduled Castes and Scheduled Tribes under the Constitution and submit a report concerning the working of those safeguards at such intervals as directed by the President and the latter is under duty to cause all such reports to be laid before each house of the Parliament.

5. RESERVATION IN SERVICES.

As per Article 335⁶⁰, all the claims of the members of the Scheduled Castes and Scheduled Tribes shall be taken into consideration, in making appointments to services and posts in connection with the affairs of the Union or of a State keeping in mind the efficiency of administration. Constitution 81st Amendment Act, 2000 has added a new provision to Article 335 which provides that 'nothing' in this Article shall prevail in making of any provision in favour of members of Scheduled Castes and Scheduled Tribes for relation in qualifying marks in any examination or lowering the standard of equivalence for reservations in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State.

The Constitution of India, 1950 provides for reservation of seats for the Scheduled Tribe Community in the Lok Sabha and the State Legislative Assemblies under Articles 330 and 332 of the Constitution⁶¹.

⁵⁶ Tribes Advisory Council, available at ://www.pib.nic.in/newsite/PrintRelease.aspx?relid=89727

⁵⁷ For details see Panchayat (Extension to Scheduled Areas) Act, 1996 (PESA).

⁵⁸ See Articles 338(1) of the Constitution of India, 1950.

⁵⁹ See Articles 338(2) of the Constitution of India, 1950.

⁶⁰ See Articles 335 of the Constitution of India, 1950.

⁶¹ See Section 330 & Section 332 of the Constitution of India, 1950.

Article 330⁶² provides for reservation of seats for the Scheduled Castes and Scheduled Tribes except the Scheduled Tribes in the autonomous district of Assam⁶³.

Article 332⁶⁴ provides for the reservation of seats for the Scheduled Castes and Scheduled Tribes except the Scheduled Tribes in the autonomous district of Assam in the Legislative Assemblies in every State. The number of seats to be reserved in any state or union territory for such castes and tribes will be made on population basis⁶⁵. Initially this reservation was provided for a period of ten years only but the Constitution (One Hundred Ninth Amendment) Bill, 2009⁶⁶ which has extended this time period for further ten years has been passed by both houses of Parliament, assented to by the President in January 2010 and enacted as Constitution (Ninety Fifth Amendment) Act, 2009⁶⁷.

Representation of People (Amendment) Bill, 2010 and the rights of Scheduled Tribes

It is to be noted that the rights of Scheduled Tribes are also protected by the Representation of People (Amendment) Bill, 2010 which amended the Representation of People Act of 1950⁶⁸. The Act now provides that every citizen of India (including Tribes) whose name is not in the electoral roll or who has not acquired citizenship of any other country or who is absenting himself from his ordinary place of residence in India owing to employment, education or otherwise, or is outside India, whether temporary or not shall be entitled to have his name registered in electoral roll in the constituency named in his passport after thorough verification by Electoral Registration Officer and Central Government after consultation with the Election Commission of India.

Reservation For Scheduled Tribes In Various Kinds Of Services

The Constitution of India also provides for the reservation of seats for Scheduled Tribes in All India Services. The number of seats in direct recruitment by open competition is 7.5 per cent of the total seats. In case of Group C & D posts, the percentage of reservation for Scheduled Tribes is fixed in proportion to their population in respect of State/Union Territory, provided, total reservation of seats for them remains within the limit of 50 per cent. It is to be noted that reservation for the Scheduled Tribes in India is by mode of vertical reservation. Reservation for Scheduled Tribes is provisioned for:

- AIS (All India Services)
- PSUs (Public Sector Undertakings including Nationalized Public Sector Banks.)
- Autonomous Bodies
- Statutory Bodies
- Semi Government Bodies such as voluntary agencies receiving grant of two lakh or more from Consolidated Provident Fund and employing more than 20 persons on regular basis and at least 50 per cent of its recurring expenditure is met from grant – in – aid from Central Government.
- State governments have also provided for reservations of posts for the Scheduled Tribes⁶⁹.

⁶² See Article 330 of the Constitution of India, 1950.

⁶³ The 51st Amendment Act clarifies that the reservation of seats in Assam Assembly for the Scheduled Tribe will be made from the entire State except the Autonomous District of Assam. Seats shall be reserved also for the Autonomous District in the Legislative Assembly of the State of Assam.

⁶⁴ See Article 332 of the Constitution of India, 1950.

⁶⁵ The expression 'population' refers to population as ascertained at the last preceding population census of which the relevant figures have been published. The Constitution 84th Amendment Act has amended the explanation to Articles 330 and 332 and substituted '2000' with '2026', thus the expression population means the population as ascertained on the basis of 199 census. The Constitution 87th Amendment 2003 has amended the provision to Article 330 and substituted '2001' in place of '1991'. This means that the expression 'population' for this purpose will be ascertained on the basis of 2001 census. The allocation of seats in the Lok Sabha for Scheduled Castes and the Scheduled Tribes shall be frozen till the year 2026.

⁶⁶ See Constitution 109 Amendment Bill, 2009.

⁶⁷ See Constitution 95th Amendment Act, 2009.

⁶⁸ For details see, The Representation of People Amendment Bill, 2010. Also see, the Representation of People's Act, 1950.

⁶⁹ The policy of Reservation to SCs, STs and OBCs is available at http://persmin.gov.in/...Reservation.../Ch_02_2014.pdf

6. PERSONAL LAW

It is to be noted that due to diversity of population in India and very rich cultural heritage consisting of people of different religions and faith, there exist different sets of personal laws in respect of matters relating to family affairs, such as marriage, divorce, succession, adoption, wills etc. These Personal Laws are the subject matter of the Concurrent List (List III), Entry 5, Schedule 7 of the Constitution of India, 1950. Therefore, the Union Legislature and the State legislature are equally entitled to regulate it and make laws in this field⁷⁰.

Marriage

In India, the law regulating Marriage and Divorce has been subjected to different enactments based on people of different religions, castes and tribes such as:

- Divorce Act, 1869
- The Indian Christian Marriage Act, 1872
- The Kazis Act, 1180
- The Anand Marriage Act, 1909
- The Indian Succession Act, 1925
- The Parsi Marriage and Divorce Act, 1936
- The Dissolution of Muslim Marriage Act, 1939
- The Special Marriage Act, 1954
- The Hindu Marriage Act, 1955
- The Foreign Marriage Act, 1969
- The Muslim Women (Protection Rights on Divorce) Act, 1986

The marriages among the Scheduled Tribes are regulated by the Special Marriage Act, 1954⁷¹. This Act provides for special forms of marriages and their registration extending to all of India except the state of Jammu and Kashmir. Persons governed by this Act include the tribal communities belonging to different religious faiths. Thus marriage celebrated under any other form can be registered under The Special Marriage Act, 1954, if it satisfies the requirements of this Act. No doubt effort are being made to codify customary law which are prevalent among Hindus by enacting the Hindu marriage Act, 1955⁷². But this Act is not applicable to the Scheduled Tribes unless the Central Government notifies in this context by notification in the Official Gazette.

Maintenance

The status of marriage automatically provides the wife the right of maintenance against her husband. Right to maintenance forms a part of the personal laws and extends not only to the wife and dependent children, but also to indigent person and divorced wives irrespective of cast, tribe and communities. Right to maintenance has been provided under Code of Criminal Procedure, 1973 (Amended) Act, 2001 [No. 50 of 2001]⁷³ so as to make this remedy speedier and inexpensive. It is to be noted that divorced wives who had received money payable as maintenance under Cr. P.C, 1973.

The Indian Succession Act, 1925⁷⁴ provides for both intestate and testamentary succession. The Indian Succession Act 1925 (Amended) Act, 1991 applies two schemes. One relating to property of persons married under the Special Marriage Act, 1954 and the other relating to succession rights in case of intestate succession only for the Parsi Community. Finally, the Hindu Succession Act, 1956⁷⁵ [30 of 1956] extending to the whole of India except the state of Jammu and Kashmir. The remarkable feature of this Act is that now a woman can inherit an intestate equally with men and life estate of female heirs has been abolished. Recently, the Hindu Succession (Amendment) Act, 2005 was passed providing for equal share to a coparcener daughter in a joint family property.

⁷⁰ For details see, Constitution of India, 1950.

⁷¹ For details see, Special Marriage Act, 1954.

⁷² For details see, Hindu Marriage Act, 1955.

⁷³ For details see, Criminal Procedure Code, 1973 (Amended) 2001.

⁷⁴ For details see The Hindu Succession Act, 1925.

⁷⁵ For details see The Hindu Succession Act, 1956 (Amended) 2005.

7. WELFARE SCHEMES FOR THE SCHEDULED TRIBES

India is a welfare state working on the principal of Rule of Law and Natural Justice. Earlier the Tribal Development Division was under the Ministry of Social Justice and Empowerment but in October 1991 it was separated and made a separate Ministry with the objective of providing more focused approach on the integrated socio-economic development of the Scheduled Tribes (STs).^[1] There are various schemes run by the centre government for the upliftment of scheduled tribes namely

- Pre matric scholarship schemes for ST students.,
- Post matric scholarship schemes for ST students.,
- National overseas scholarship for ST students studying abroad.,
- National fellowship and scholarship for higher education of ST students.,
- Grant-in-aid to voluntary organizations working for welfare of STs.,
- Strengthening Education among ST girls in low literacy districts.,
- Special central assistance to Tribal Sub Schemes (TSS).,
- Grant –in-aid to tribal research institutes.,
- Development of particularly vulnerable tribal groups(PVTGs)
- Support to national/state scheduled tribe finance corporations.,
- Minor forest produce (MFP).,
- Pradhan mantra Van Dhan Yojana (PMVDY).,
- Eklavya Model Residential Schools(EMRS).,
- E-Governance initiative for ST Welfare schemes.,etc

8. CONCLUSION

Despite effective legislation and administration followed by judicial activism in cases related to tribal population in India still we are unable to achieve success in overall development of tribal communities. Major issues which are being noticed related to tribal population is low literacy rate especially among females, lack of awareness regarding their legal rights and welfare schemes, health issues as tribes usually inhabit with their cattles residing in traditional houses making use of stored water for drinking , economically weaker section of society because of less or nil knowledge about new techniques in agriculture and animal husbandary as they are still dependent on traditional methods of cultivation and breeding animals. In this context following suggestion can be made

- There should be harmony between Centre and State sponsored welfare schemes for tribal population for effective implementation .,
- Licensing system should be implemented for making use of forest wood no matter for making furniture or constructing tribal house so that everyone should be equally benefited.,
- NGO,s should come forward for carrying out community programmes for tribal people making them aware of their socio-legal rights. For this purpose legal aid cells should turn up and organize legal aid clinics on regular basis in tribal areas.,
- There should be proper transport facility provided to the tribal areas so that they are not cut from other regions of the state.,
- Household industries should be encouraged in tribal areas followed by establishment of cooperative societies and banks wherein facility for loans at lower rate and longer period of return should be provided.,
- The traditional knowledge and biodiversity of tribal communities of any form must be protected .For that the NGO,s and government must work in coordination.,
- Lastly we should remember that each tribal community is different from other in terms of their heritage and geographical conditions, thus it is mandatory for the state government to understand their needs and provide need based schemes to them.

9. AUTHORS BIOGRAPHY

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