



Governor's Role in Tribal and Scheduled Areas

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1. Constitutional Position and Reasons

- **Article 244** in **Part X** of the Constitution envisages a special system of administration for scheduled areas and tribal areas.
- The **Fifth Schedule** of the Constitution deals with the administration and control of **scheduled areas** and scheduled tribes in any state except the four states of **Assam, Meghalaya, Tripura and Mizoram**.
- The **Sixth Schedule** deals with the administration of the **tribal areas** in these four states.

Powers of Governor with respect to scheduled areas:

- The governor is empowered to direct that any particular act of Parliament or the state legislature does not apply to a scheduled area or apply with specified modifications and exceptions. He can also make regulations for the peace and good government of a scheduled area after consulting the tribes advisory council.
- Such regulations may prohibit or restrict the transfer of land by or among members of the scheduled tribes, regulate the allotment of land to members of the scheduled tribes and regulate the business of money-lending in relation to the scheduled tribes.
- Also, a regulation may repeal or amend any act of Parliament or the state legislature, which is applicable to a scheduled area. But, all such regulations require the assent of the president.
- Governor also has to submit a report to the president regarding the administration of such areas, annually or whenever required by the president.

Powers of Governor with respect to tribal areas: Since, tribal areas are more primitive vis-à-vis the scheduled area, greater decentralization has been done under the sixth schedule. In the decentralization of powers and functions, governor plays a much more important role when compared to scheduled areas.

In specific terms governor has the following powers:

- The tribal areas in the four states have been constituted as autonomous districts. The governor is empowered to organize and re-organize the **autonomous districts**. Thus, he can increase or decrease their areas or change their names or define their boundaries and so on.
- If there are different tribes in an autonomous district, the governor can divide the district into several **autonomous regions**.
- Each autonomous district has a **district council** consisting of 30 members, of whom four are nominated by the governor and the remaining 26 are elected on the basis of adult franchise. Nominated members hold office during the pleasure of the governor.
- The district and regional councils administer the areas under their jurisdiction. They can make laws on certain specified matters like land, forests, canal water, shifting cultivation, village administration, inheritance of property, marriage and divorce, social customs and so on. But all such laws require the assent of the governor.
- The district and regional councils within their territorial jurisdictions can constitute **village councils** or courts for trial of suits and cases between the tribes. The jurisdiction of high court over these suits and cases is specified by the governor.
- The district council can establish, construct or manage primary schools, dispensaries, markets, ferries, fisheries, roads and so on in the district. It can also make regulations for the control of money lending and trading by non-tribals. But, such regulations require the assent of the governor.
- The acts of Parliament or the state legislature do not apply to autonomous districts and autonomous regions or apply with specified modifications and exceptions. These are decided either by President or governor. In the case of Assam, this power lies with the Governor, both in respect of acts of Parliament or state legislature. In the case of Meghalaya, Tripura and Mizoram, the governor has this power in respect of acts of state legislature while president with respect to acts of parliament.
- The governor can appoint a commission to examine and report on any matter relating to the administration of the autonomous districts or regions. He may dissolve a district or regional council on the recommendation of the commission.

There was fierce debate regarding the provisions of the fifth and sixth schedule in the constitution. The debate was especially fierce regarding the autonomous districts and regional councils. It was apprehended that it will lead to their disassociation from the rest of the country.

- Those who wanted the **assimilation** of the tribal into the mainstream strongly advocated that the centre-state relationship should not be altered for the tribal and scheduled areas.
- Some were also in the favor of complete **isolation** of the tribal. However, the provisions of the fifth and sixth schedule aim at gradual **integration** of the tribal into the mainstream with their own pace and wish. This was further stamped when Nehru laid down the policy of **Panchsheel** for tribal.

The tribal Panchasheel as enunciated by him are as follows:

1. People should develop along the lines of their own genius and we should avoid imposing anything on them. We should try to encourage in every way their traditional art and culture.
2. Tribal rights in land and forests should be respected.
3. We should try to train and build up a team of their own people for the work of administration and development. Some technical personnel from outside will, no doubt be needed especially in the beginning. But we should avoid introducing too many outsiders into tribal territory.
4. We should not over-administer these areas or overwhelm them with a multiplicity of schemes. We should rather work through and not in rivalry to their own social and cultural institutions.
5. We should judge results not by statistics or the amount of money spent but by the quality of human character that is evolved.

To conclude, the policy of isolation was neither possible nor desirable. Assimilation as advocated by some was not accepted because it would mean imposition. Only therefore, the policy accepted which would make available to the tribes the benefits of modern society and yet retain their separate identity was integration.

2. Evaluation of Implementation of these Provisions in Different Areas

Fifth Schedule: Fifth Schedule applies to an overwhelming majority of India's tribes in nine States. But, Fifth Schedule has failed to create the desired impact because it has never been applied the way it should have been. In particular, following have been the limitations:

- Recent parliamentary moves to provide greater autonomy within the Fifth Schedule have not had the desired results.
- PESA was considered the most logical step in the Fifth Schedule areas to ensure tribal welfare and accountability. But, it has not been properly implemented.
- Tribal communities have progressively been denied self-government and rights to their communities' natural resources that should have been provided under the legislation.
- In **1997 Samatha decision**, SC ruled that the Fifth Schedule enjoined Governors to bar purchase of tribal land for mining activity by any entity that was not state-owned. This judgment however, led to an opposite reaction from the Ministry of Mines claiming that Samatha would have an adverse effect not only on the mining sector but also on non-agricultural activities especially industrial activity and hence would impact the economic development throughout the country. In response, the Governors were then given unfettered authority in the transfer of Scheduled Tribe land to the government and allotment to non-tribals, altering the balance of power and undermining the stated goal of tribal autonomy.
- Other examples abound, including the Scheduled Tribes and Other Traditional Forest Rights Act of December 2006, which ostensibly recognises the right of communities to protect and manage their forests (as does PESA), but only if the state decides whether a certain region is denoted as Village Forest or Reserved Forest. In this process, many communities are evicted without a proper channel of rehabilitation.

Sixth Schedule: Some experts have criticised the concept of Sixth Schedule which they say has encouraged ethnic divisions. Others have also highlighted shortcomings such as lack of courts at village and other levels in some District Councils, dependence on state governments for financial grants, and allotments, etc.

Bhuria Committee in 1994 had pointed out following problems with the functioning of sixth schedule:

- Focuses entirely on the district tier resulting in no sub-district level tiers in some north-eastern areas.

- Power of dissolution of District Councils not accompanied by a mandate for reconstitution resulting in possibility of misuse.
- No express provision for holding election within six months of the date of the dissolution of a District Councils.
- No real autonomy conferred on District Councils with relation to discussion on estimated receipts and expenditure.

3. Recent events and issues

- **Inner Line Permit System (ILPS):** It is an official travel document issued by the centre to allow inward travel of an Indian citizen into a protected area for a limited period. It is obligatory for Indian citizens from outside those states to obtain permit for entering into the protected state. The document is an effort by the government to regulate movement to certain areas located near the international border of India.
 - It is currently applicable to states of Arunachal Pradesh, Nagaland and Mizoram. There are ongoing demands for the introduction of ILP in Assam and Manipur to regulate entry of outsiders into the state. These demands are also now being supported by Muslims in these states as to protect the indigenous population.
- **Manipur Bills:** After few months of protests of Meitei for Inner Line Permit system to prevent "outsiders" from buying land or settling in the state, the state assembly passed three bills to give more rights to indigenous groups. This was followed by counter protests by the Kukis and Nagas to withdraw the bills resulting in violence and deaths. The tribal groups claim that the new bills, would allow Meiteis to buy land in the hill districts of Manipur where the Nagas and Kukis live. Further they argue that these bills were passed without consulting them. This has led to a tense situation till now.
- **AFSPA:** A bit over 18 years after the Armed Forces Special Powers Act (AFSPA) was enforced in Tripura, the state government in May this year decided to withdraw the Act. In view of the significant taming of terrorism in Tripura and considering the reports of the security forces the council of ministers decided to withdraw the AFSPA from the entire state in May. AFSPA has been a major irritant in the north-east states and there is continued demand in other states as well regarding the withdrawal of AFSPA.
- **Naxalism:** Naxalites are active in Chhattisgarh, Orissa, Andhra Pradesh, Maharashtra, Jharkhand, Bihar, Uttar Pradesh, and West Bengal states which are termed as "liberated zones" by them. Out of these states they control more than 40% of the land area in Chhattisgarh and Jharkhand states. Today Naxalites have approximately 20000 well armed cadres. In addition they have more than 30000 cadres committed to the movement active in the states mentioned above. However, the influence of Naxalism is on a decline. Government with a combination of development, amnesty and armed offensive has been able to reduce the threat of Naxalism. But, Naxal attacks still occur now and then. Poor implementation of the Fifth Schedule and PESA plague the community led development of the tribal region and continues to be an obstacle in creating a serious dent upon the movement.
- **Bodoland:** The powerful **All Bodo Students' Union (ABSU)** has begun to once again raise the demand for a separate state of Bodoland carving out of Assam. The movement has been gathering pace since the creation of Telangana. It got further impetus after the talks between centre and NSCN (IM). It has got support from some politicians of the region as well. Although not violent yet, ABSU has been recently blocking highways in the region to demand Bodoland which they deem necessary to ensure protection and all-round development of the indigenous people.

4. Way forward and Suggestions

All the issues mentioned above have arisen out of the developmental deficit in the region and the poor implementation of the constitutional provisions. Hence, the need of the hour is to address the issues with a holistic approach rather than a piecemeal approach.

Following suggestions have been made in this regard:

Fifth Schedule: There is increasing complain that the schedule has failed to fulfill the expectations because of limited autonomy provisions and poor implementation. Hence the demand has been to move the Fifth Schedule Areas to Sixth Schedule. The Sixth Schedule gives tribal communities considerable autonomy. The District Council and the Regional Council under the Sixth Schedule have real power to make laws, possibility on the various legislative subjects, receiving grants-in-aids from the Consolidated Fund of India to meet the costs of schemes for development, health care, education, roads and regulatory powers to state control. The mandate towards Devolution, deconcentration and divestment determines the protection of their customs, better economic development and most importantly ethnic security.

Otherwise the implementation of PESA needs to be done earnestly. It has been suffering from severely poor implementation, with states showing disdain towards the act. Full-fledged implementation of PESA will give about Rs. 50,000 crore to tribal communities to develop themselves among the several other benefits like people led and people centric development, safeguard of culture and traditions, autonomy in various social matters and greater devolution of funds and functions.

Sixth Schedule: To improve the effectiveness of Sixth Schedule following recommendations have been made:

By Venkatachaliah Commission, 2002:

- Have safeguards for minorities and use central funding for Plan expenditure instead of routing funds through state governments.
- Allow District Councils to implement centrally funded projects from various government departments.
- Revive village councils with audits by the Comptroller and Auditor-General of India.
- Make the Anti-Defection Law (with the Commission's recommendation) applicable to the Sixth Schedule areas.
- Make issuance of multi-purpose identity cards for all citizens mandatory.
- Set up a National Immigration Council to report on matters related to work permits, National Migration law, and the Citizenship Act.

Ramachandran Committee, 2007:

- The minimum extent of powers of a District Council need to be spelled out.
- Engagement of all stakeholders, including women, in participatory planning and implementation required.
- Remove overlaps in functional responsibilities between the states and District Councils.
- Need to set up democratically chosen Village Development Committee (VDC) of about 10-20 members to undertake decentralized participative planning from the village and habitation level.
- Need to constitute State Finance Commission for recommending ways to devolve funds to DCs and Regional Councils.
- Need a system for ensuring accountability through continuous monitoring, audit and reform.
- Governor should lead a high level review committee of state government and district council to periodically review the functioning of the various bodies in the Sixth Schedule area, maintain oversight and report to the Union government.

However, these provisions still remain to be implemented. There needs to be greater focus for tribal regions which are always disturbed due to untoward events, now and then. The need is for participative development by, for and of the tribal communities. It will curb the sense of delineation of the tribals and integrate them in the task of nation making.

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