

## **Scheduled Tribes of India and Their Constitutional Safeguards**

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### **Abstract:**

There are over 700 Scheduled Tribes notified under Article 342 of the Constitution of India, spread over different States and Union Territories of the country. Many tribes are present in more than one state. The population of Scheduled Tribes (STs) in the country, as per census 2011 is 10.45 crore. STs constitute 8.6 percent of the country's total population and 11.3 percent of the total rural population. Several provisions have been incorporated in the Constitution of India for safeguarding and promoting the interests and rights of the Scheduled Tribes in various spheres so as to enable them to join the national mainstream. The Constitution of India has several provisions to prevent discrimination against people belonging to Scheduled Tribes and to protect their rights.

**Key Words:** Constitution, Development, Principles, Provision, Welfare.

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### **I. INTRODUCTION**

Etymologically the term "tribe" derives its origin from the word "tribes" meaning a divining (or a pronged divining) of the roman people. Initially the term had no such pejorative as came to be assigned it later on. It is difficult to define the term judiciously it has been defined in different manner at different point of the time. The Oxford dictionary vol.xi,1933 defined a tribe as race of people now applied especially to a primary aggregate of people in a primitive or barbarous condition, under a headman or chief (p.39.). Contrary to this, many other present day dictionaries conceptualize a tribe. The Collins dictionary (1987) defines a tribe as a group of people of the same race, who share the same customs religion, language or land, especially when they are not considered to have reached a very advanced level of civilization (P.156) Webster dictionary (1966) mentions that a tribe is a social group comprising numerous families, clans or generations together with slaves dependents or adopted strangers (P.945). In India to the Indian tribal's the terms like barbarous, primitive are not relevant. In case the tribal population of India in terms of their level of development; historical past and rich cultural heritage reflect vast divergence. This diversity among the Indian tribes pose a challenge to define tribe in the Indian context. According to Dube in the Indian context the term has never been defined precisely and satisfactorily. It was used, at time, to demote a bewildering variety of social categories that were either Analogous or comparable.

The aborigines in Indian language are known as "Adibasi"- Adi and basi standing for "original" and "habitant" respectively. Constitutionally these human groups Scheduled Tribes (ST), are known by different local names "AnusuchitJati", "Vanjati", "Vanvasi", "Pahari", and "Adimjati" etc. According to Art.342 of the Indian Constitution 'The scheduled tribes are the tribes or tribal communities, which may be notified by the President of India.' As per 2011 Census the tribal population of India was 10,42,81,034 persons constituting 8.6 per cent of the country's population.

### **II. CONSTITUTION AND SCHEDULED TRIBES**

Constitution provides various safeguards for promotion and protection of the interests of the Scheduled Tribes. Provisions contained in Articles 19,46,164,244,275,330,332,334,338,339,342 and 5<sup>th</sup> and 6<sup>th</sup> Schedules of the Indian Constitution are relevant in this regard. The Government of India's responsibility in relation to the development of Scheduled Tribes and the Schedule areas extend not only to the provision of Article 275 for their development but also to evolving policies and programmes for their rapid and harmonious development in consultation with and cooperation of the State Government.

Preamble of the Indian Constitution and the Directive Principles of State Policy amply demonstrate that of a welfare State, pledged fully to raise the level of the standard of living, to improve public health, to promote the educational and economic interests of "the weaker sections of the society."

Term 'tribe' is nowhere clearly defined in the Constitution and in fact there is no perfect or foolproof definition anywhere. To the ordinary man the word suggests simple folk living in hill and forests with their 'exotic' culture, it signifies 'colourful' folks known for their dance, songs and folk medicine. Constitution has defined a 'tribe' to the extent that the Scheduled Tribes are "the tribes or the tribal communities or parts of or groups within tribe or tribal communities" which the President may specify by public notification through the Article 342.

With the dawn of the Independence and adoption of the Constitution of free India, responsibility for their welfare and development was placed on the popular government through the President and Governors of the state. In pursuance of the Directive Principles, special articles have been provided for the welfare of the Scheduled Castes and Scheduled Tribes. Most of the them are common to both of these categories while a few exclusively meant for either of these. These Constitutional provisions may be divided into two groups underlying the following themes:

- 1. Protection**
- 2. Development**

The protective provisions provide them protection from the social and economic exploitation and injustice. Provisions relating to the development of the scheduled tribes are meant for providing them positive steps for their socio-economic development. Following is the summarized narration of these constitutional provisions.

#### **Protective Provisions**

##### **Article 15 (4) Promotion of Social, Economic and Educational Interests:**

Though Article 15 prohibits any discrimination on grounds of religion, race, caste, sex or place of birth but the Clause (4) of this Article provides an exception to this. It empowers the state to make any special provision for the advancement or socially and educationally backward classes of the citizens or for the Scheduled castes and Scheduled tribes. This provision is in accordance with the policy envisaged in Article 46 that the state should promote with special care educational and economic interests of the weaker sections of the people and protects them from social injustice.

##### **Article 16 (4) Reservation in posts and services and Article 19 (5)- Safeguard of Tribal Interest in Property:**

While the right of free movement and residence throughout the territory of India and of acquisition and disposition of property are guaranteed to every citizen, special restrictions may be imposed by the State for the protection of the interests of the members of the scheduled tribes under Article 19 (5).

##### **Article 23: Prohibition of Traffic in Human Beings and Forced Labour, etc.**

It prohibits traffic in human being, beggar or forced labour. This is a very important provision because the scheduled tribes being much vulnerable to the economic exploitation it may be made bonded. In fact a substantial number of the tribal population in the country has been leading a miserable life as bond labour.

##### **Article 29: Cultural and Educational Rights:**

###### **Article 29 (2) is controlled by the Clause 4 of Article 15,**

Incorporated in the Constitution by the First Amendment Act 1951. This has brought Article 15 and 29 in line with Articles 16 (4), 46 and 340 and made it constitutional for the state to reserve seats for the backward classes of citizens, in public educational institutions. According to Article 29 a cultural or linguistic minority has a right to conserve its language or culture. This article provides protection to Scheduled Tribe communities to preserve their languages, dialects and cultures.

##### **Article 46: promotion of Educational and Economic Interests of Scheduled Castes, Scheduled Tribes and other weak sections:**

###### **Article 164: Minister Incharge of Tribal Welfare in the State of Bihar, Orissa and Madhya Pradesh:**

This Article provides for a Minister Incharge of tribal welfare in the states of Bihar, Orissa and Madhya Pradesh. These states have substantial tribal populations and special provision of a Minister looking after tribal welfare is an evidence of the concern of the framers of the Constitution to safe guard the interests of the Scheduled Tribes.

###### **Article 330, 332 and 334: Reservation in the Lok Sabha and the Vidhana Sabhas,**

###### **Article 335: Describes Limits of the Reservation,**

###### **Article 338: Special Officer:**

There shall be a special officer for the Scheduled Castes and Scheduled Tribes to be appointed by the President of India. It shall be the duty of the special officer to investigate all the matters relating to the

safeguards provided for the Scheduled Castes and Scheduled Tribes under the Constitution. He shall report to the President upon the working of these safeguards at such intervals as the President may direct. The President shall call all such reports to be laid before each house of the Parliament. Such an officer has been designated as commissioner for Scheduled Castes and Scheduled Tribes. By virtue of the Constitutional 65<sup>th</sup> Amendment Act, 1990, the post of the 'special officer' has been substituted by the National Commission for Scheduled Castes and Scheduled Tribes. Commission shall consist of a chairperson, vice-chairperson and five other members to be appointed by the President of India.

**Provision meant for the Economic Development, Article 275 and 339:**

Provisions relating to economic development of Scheduled Tribes are mainly contained in Articles 275 and 339. Article 275 of the Constitution provides for the assistance of the states for the implementation of the provisions of the Constitution. Article 339 lays down that the 'executive' power of the Union Government extends to the giving of directions to a state as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of the scheduled tribes in the state.

**SCHEDULED AREAS**

Scheduled Tribes live in contiguous areas unlike other communities. It is, therefore, much simpler to have an area approach for development activities as well as regulatory provisions to protect their interests. In order to protect the interests of Scheduled Tribes with regards to land and other social issues, various provisions have been enshrined in the Fifth Schedule and the Sixth Schedule of the Constitution. The Fifth Scheduled under Article 244 (1) of the Constitution defines "Scheduled Areas" as such areas as the President may by order to be Scheduled Areas after consultation with the Governor of the states of Assam, Meghalaya, Tripura and Mizoram which are declared as "tribal areas" and provides for the District or Regional Autonomous Councils for such areas. These councils have wide ranging legislative, judicial and executive powers, (Constitution of India).

**FIFTH SCHEDULED AREAS:**

The criteria for declaring any area as a "Scheduled Area" under the Fifth Scheduled are:

- Preponderance of tribal population,
- Compactness and reasonable size of the area,
- A viable administrative entity such as a district, block or taluk, and
- Economic backwardness of the area as compared to the neighboring areas.

The specification of "Scheduled Areas" in relation to a state is by a notified order of the President, after consultation with the state Government concerned. The same applies in the case of any alteration, increase, decrease, incorporation of new areas, or rescinding any orders relating to "Scheduled Areas" (Annual Report 2012-13: 39).

Under the Presidential order certain tribal areas have been declared as scheduled areas in the state of Andhra Pradesh, Bihar, Gujarat, Madhya Pradesh, Maharashtra, Orissa, Rajasthan and Himachal Pradesh. The main features of the Fifth Schedule are the (a) Special legislative powers of the Governor (b) Governor's Report to the President and (c) Constitution of a Tribes Advisory Council.

**SIXTH SCHEDULE:**

Sixth Schedule applies to the tribal areas within the States of Assam, Meghalaya, Mizoram and Tripura. Among the main features of the tribal areas are (a) their full autonomy in respect of the matters falling within their jurisdiction. In other words these areas may be described as 'states within a state' (b) power of self management to the tribals through autonomous district and autonomous regions and (c) autonomy of these areas to such an extent that the writ of the Parliament or the state legislature does not seem automatically unless the Acts in the whole or part are specifically extended to the Tribal Areas by notification of the Governor.

**Special Provisions with Respect to Tribal Areas and Hill Areas of Nagaland, Assam and Manipur: Article 371-A (Nagaland):**

As per provisions of this Article, no act of the Parliament in respect of the (a) religious or social practices of Nagas (b) Naga customary laws and procedures (c) administration of civil and criminal justice involving decisions according to Naga Customary Law and (d) ownership and transfer of land and its resources, shall not apply to the state of Nagaland unless allowed by a special resolution of the Nagaland Assembly.

**ARTICLE 371-B (ASSAM):**

The President may provide for the Constitution and function of a committee of the legislature assembly of the state consisting of members of that assembly elected from the tribal areas as specified in the Sixth Schedule and such other members of that assembly as may be specified in the order. The committee has been provided to look after the interests of Tribal Areas at the state level.

**ARTICLE 371-C (MANIPUR):**

Article 371-C provides for the Constitution and functions of a committee through a Presidential order. Committee shall consist of the members of the legislative assembly elected from hill areas of the state. Governor has been required to submit an annual report to the President regarding the administration of the Hill Areas in the state of Manipur. Union executive has been empowered to issue directions to the state as to the administration of the said areas.

Constitution of India contains number of important provisions relating to tribal issues. These include statutory recognition of the tribal communities; their proportionate representation in legislatures, right to have own language for education and other purposes.

To meet the impediments faced in the tribal areas on the basis of 73<sup>rd</sup> Amendment in 1996 Panchayats Extension to Scheduled Areas. PESA 1996 is a law enacted by the Government of India (GOI) for ensuring self-governance through traditional Gram Sabha for people living in the Scheduled Areas of India. In this act vast powers have been given to the Gram Sabha (GS) and the three tier Panchayati Raj Institutions (PRIs). Gram Sabha as an institution of direct democracy empowered to permit the outsiders to use or not to use the land and other natural resources in the area. It is also authorized to decide the issues related to the Minor Forest Products (MFP). In deciding the development plans GS and PRIs have been given special rights. In tribal areas further reservation has been given to the women and Schedule Castes. In provisions of the PESA it has been observed on the basis of secondary data collected by NGOs, government agencies and other organizations that even after enactment of the PESA the system in tribal society has not improved much. Still the institutions of the Gram Sabha and PRIs are not effective. People are not aware about their rights given in the Act. Government and the non tribal entrepreneurs encroach their rights, they misuse their lands and natural resources, in case of Maharashtra the irrigation departments procuring tribal land for irrigation project on meager rates, hence seven villages in Dharma tehsil of Maharashtra raised their voice against the project and demanded work to be stopped till their demands met. Panchayat members said that the work started without taking the Gram Sabha's consent. This indicates the violation of provisions of the PESA Act 1996 which provides the status of legislature to Gram Sabah (Panchayati Raj update, March 2012). The ground reality reflects that none of the states having tribal areas under Schedule (v) have effective Gram Sabha due to various reasons such as: ignorance, apathetic attitude of state governments, Lack of will on the parts of bureaucracy and political leadership. In tribal societies also there are inequities based on the caste and class which were prevalent during the colonial period. The warrior and aristocrat class enjoy better status while tenants were considered to be low in status. The independence in most of the tribal pockets the system becomes rigid and gradually caste evolved in these societies.

**III. CONCLUSION**

'Scheduled Tribes of India and Their Constitutional Safeguards' aimed to understand the conditions of the tribes those constitute 8.6 per cent of the total population of the country. Development indicators: literacy rate, employment and mortality is an evidence it is the third most vulnerable section of the society after the women and children. According to the Indian Constitution each and every one in the country should have liberty, equality and get social justice. After seven decades of the independence, it is imperative to understand the present position of the tribes and try to find out the effective remedies to get rid off the existing problems of the tribes.

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