

The logo of the University of Delhi is a circular emblem with a purple and gold border. Inside the circle, there is a central figure of a person standing on a lotus flower, with a book and a lamp above their head. The text "UNIVERSITY OF DELHI" is written in a circular path around the top, and "BHIM RAO AMBEDKAR" is written around the bottom. The text is in a serif font.

Paper : Constitutional Democracy and Government In India
Chapter: Fifth and Sixth Schedule of The Indian
Constitution

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Fifth and Sixth Schedule of the Indian constitution

❖ Introduction

There has been considerable challenge and question to the role of federalism in containing diverse ethnic group or nation's with diversity of population. The collapse of Soviet Union and countries like Czechoslovakia and Yugoslavia were more because of their democratic shortcomings but it renewed the debate surrounding desirability of federalism in holding together heterogeneous society. But it has been established and the debate over the desirability or non desirability of federalism tend to be somewhat settled as over the years , longstanding multinational democracies tend to have federal system and that federal systems tend to have better systems and institution at place to accommodate diversity and avoid conflict.

The experiences felt in the countries practicing federalism who had to accommodate multi ethnic , multinational or plural societies was to evolve federalism as a tool for accommodating diversity ; thereby enabling states to 'hold together' (Stepan 2004).For this the mechanism so evolved relied on providing differential constitutional rights to one or more subunits of a federation. India is unique in terms of being one of the most culturally ,ethnically and linguistically diverse society in the world. It is often held up as an example of "Unity in Diversity" inculcating features of an important constitutionally asymmetrical federation. The existing diversity existent in the country pushes it towards the path of Federal asymmetry and innovative power sharing arrangement. In this regard the provision of Fifth and Sixth Schedule in our constitution hold an important place. My endeavor in this paper would be to understand the twin provision of the constitution and their success or failure in achieving the desired result .

❖ Federal Symmetry and Federal Assymetry Debate

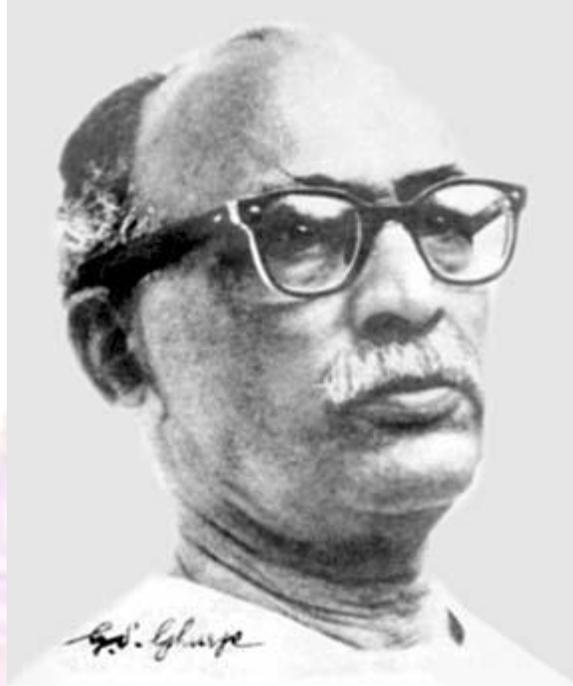
Asymmetrical federalism as a concept was introduced by Charles Tarlton in 1965.His argument was mainly directed against asymmetrical constitutional design in federations because such design had the likelihood of increasing "secession potential". He characterized asymmetrical constitution as a reason for diversity of interests among the different units of federation. The problematic of asymmetry has often been cited by leading scholars with respect to the position of Quebec in Canada, Basque and Catalonia in Spain, the European Union etc. Some commentators like Will Kymlicka, Charles Taylor have argued in favour of federal asymmetry . They have argued that status of constitutional asymmetry is necessary for protection of cultural group rights of diverse groups and recognition of their rightful cultural and political status in society. Alfred Stepan observes asymmetrical federalism and it appears to him to be associated with democratic consolidation in multinational countries. He makes the observation that "All (or all

but one [Switzerland]) of the long-standing multinational federal democracies are constitutionally asymmetrical" (Tillin,2007,46)

❖ **Evidence of Asymmetry :Special Provisions in the North-East:**

The Indian Constitution has asymmetrical features especially with regards to Jammu And Kashmir and North-East. The Fifth and Sixth Schedule of the Constitution is an innovation by the constitution makers to approach the question of Tribal identity within a constitutional framework. Innovative constitutional arrangements were introduced under the Sixth Schedule that led to the formation of Autonomous District Councils for the tribal areas of Assam, Meghalaya, Tripura, and Mizoram (Dasgupta 1997, 363). The 13th constitutional amendment aimed at framing special provision for Nagaland which was created in 1962 by an overwhelming population of Christian and Tribal. It was aimed to protect the indigenous outlook of the community regarding land relation, customary law and providing safeguard to its socio-cultural outlook. Mizoram was also treated similarly being conferred the same constitutional status. The tribal areas were given autonomy on similar lines in other parts of the region under the Sixth Schedule. The accession of Sikkim to India was also complete in 1975 with similar set of special provisions for the safeguard of the tribal population. It was always assumed that they would have a treatment which would be dissimilar to other regions of the country in terms of Central government grants and loans. (Arora 1995, 75).

During colonial period much of the remote areas of North east was not directly administered by the Colonial administration, but in the post independent India despite whole of north east being a part of the Union, the relationship with the north-east has been that of less institutionalized than what can be seen for the rest of India which is more institutionalized.(Manor 2001, 98). Security issues have dominated Due to The North-East being a border state bordering Bangladesh, Burma and China , the Central policy has often been more concerned with the prism of security. (Baruah 1999). It is sparsely populated region in comparison to other parts of India. In the words of Watts" these north-eastern states are perhaps better seen as "peripheral" units within India". Watts describes peripheral units as those which "normally involve relatively small units in terms of population". He says: "these relationships are quite distinct from those of the main body of constituent units within the major political entity"(Watts 1999, 28). He also accepts the fact that there is a great deal of innovations practiced in policymaking for the tribal population but he also sees a distinction in tribal policies in the North east and rest of India.



<http://cms.boloji.com/articlephotos/Professor%20G.S.%20Ghurye.jpg> Accessed on 30/7/2014 at 5:40 P.M Prof. G.S.Ghurye



<http://t0.gstatic.com/images?q=tbn:ANd9GcRXq15r4xQaP5HerlvwMGIIiZi0A1DuZwDduS4DP6uVUIHgQF0Y> Accessed on 30/7/2014 at 5:42 P.M

Verrier Elwin

❖ **The Early Debate of Tribal Assimilation or Integration**

The framers of the Indian Constitution has a huge challenge of incorporating a diverse population into a single political entity post independence. The issue of India's tribes was marred in diversity including three hundreds of languages within four language groups, and countless tribal divisions and religious practices among

themselves. What constitutes a tribal category? Scholars and policymakers could never agree on a definition of tribal person or tribe. In common parlance the tribal category has often been conceived as to belonging to otherness. It basically means that tribals do not practice Vedic Hinduism, they are not Muslim; they are not economically or ritually stratified and are not integrated into the "modern" economy or civilization that surrounds them. Each of these attributes are contested.(Beteille 1997,57-78)

The Commission for Scheduled Tribes and Scheduled Castes has at best been taking the basic approach of devising lists rather than definitions. On occasion, it has expressed frustration at the futility of such definitional exercises. Those communities whose names appear on the schedule of tribes (which varies by state) are scheduled tribes; those whose names do not appear, are not. The lists are only occasionally contested and, with the exception of a substantial amendment in 1976, have remained quite stable.(Stulligross 1999,499)

The turn of the 20th century brought in the scholarly analysis regarding the relation of tribes and the Indian state. Around the 1920s – two streams of thought appeared. One the one hand G. S. Ghurye advocated assimilation of all individuals into a common Indian identity; while on the other hand Verrier Elwin became the leading proponent of the "tribal distinctiveness" approach and argued for political and social autonomy of tribal communities in an independent India. Ghurye, head of Bombay University's sociology department, rejected the then-prevalent notions that tribal communities either existed in the area prior to nontribal communities or remained substantially distinct from them. In the paper published in 1943 titled "The Aborigines - So-called - and Their Future", his arguments were both sociological and political. He demonstrated that many tribal groups, whatever they might be, are neither aboriginal indigenous. He discussed the Gond tribe in contemporary Maharashtra, Madhya Pradesh, and argued that they grew to prominence centuries after a great Hindu kingdom left its mark in that region. So, he concluded that the Gonds were not the first community in the region; which means that they were not Madhya Pradesh's aboriginal society. He also cited folktales and linguistic markers that provided tales of tribes long journeys to their current locales. He argued that many are not native to the areas in which they currently live, or even to India, and hence are not indigenous.(Stulligross 1999, 499-500)

Ghurye in his observation remarked that, at the peripheries of Hindu and tribal societies, boundaries between culture, language and avowed membership are blurred. Lower-caste Hindus are in every sense (except marriage) integrated into virtually all ostensibly "tribal villages." He also found that many socially and economically mobile tribal people adjusted their cultural practices to conform with those of the Hindu communities they seek to join; this occurs not only at the individual but community level as well. The Kurmi- Mahtos of Bihar, for example, have claimed relatively high Kshtriya Hindu status for all members of their community. So he also concludes that Tribals are not necessarily more native than other Indian population groups, nor traditional settlers, nor are their cultural practices necessarily distinct from their Hindu brethren, nor do they necessarily wish for their communities to be distinct. And from this Ghurye derives the logic for his

political demand that the Indian government ought not to provide special status for any community. Cultural distinctiveness should not be ignored, but every possible institutional incentive should be provided that would encourage assimilation of marginal peoples into the Indian mainstream. For him it would not only enhance the sense of Indian national identity, but also it would also conform with the trends so clearly evidenced in the more assimilated or advanced tribal communities themselves. He sought to strengthen the Indian Multiculturalism but not by treating different differently but by bringing them into closer contact with each other and facilitating better understanding and learning of different cultures. A cultural merging would take the best from each and lead to a richer culture for all. Ghurye was in good company: he was a student of A. V. Thakkar, one of India's most famous social workers and later the chairman of the subcommittee that drafted India's constitutional protections for the tribes people of central India. He was also a colleague of Nirmal Kumar Bose, one of India's most influential anthropologists. All three were strong proponents of the assimilationist position.

Verrier Elwin, who is described as the official spokesman for Nehru's tribal policy, represented the alternative viewpoint and preferred an integrationist approach. He recognized more clearly than Ghurye that assimilation would more likely occur on the basis of social power relations rather than on the objective value of the social institutions in competition with one another. Tribes with their centuries of institutional insight would be demolished in any such competition. Elwin also directed his research to the task of demonstrating aspects of tribal social organization and cultural practices and on many counts he considered them to be superior than the Hindu or Muslim society. He argued that women enjoy more freedoms among tribal than Hindu or Muslim societies and that justice is more efficient, effective, and honest than in much of the rest of India. As Elwin wrote in 1943, Indian tribesmen do not cheat and exploit the poor and the weak. They are mostly ignorant of caste and race prejudice. They do not prostitute their women or degrade them by foolish laws and customs. They do not form themselves into armies and destroy one another by foul chemical means. They do not tell pompous lies over the radio. Many of their darkest sins are simply the result of ignorance. A few of them are cruel and savage, but the majority are kind and loving, admirable, steadfast in their tribal loyalties, manly, independent, honorable. Elwin did not seek to keep tribal communities separate from the rest of India; such a policy according to him would stifle further tribal development. Rather, he sought to integrate tribes as communities into the Indian national state. Pride in community and trust in state would lead to the continued development of both. If Ghurye was supported by some of India's leading scholars, Elwin had the ear of its senior political leaders. Each camp can see their ideas in elements of post independence institutions as well as state and central government policies. The purest form of the integrationist position is enshrined in the sixth schedule of the constitution. (Stuligross 1999, 499-503)



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❖ **Bardoloi Committee And Ratification by Constituent Assembly**

By 1946 it was becoming clear that partition of the country was imminent and fast approaching. On May 16, 1946, British Prime Minister Attlee dispatched a final Cabinet delegation to India with the intention of crafting effective post-British governing institutions. Attlee sent the delegation with a twenty- four-paragraph mission statement that contained the broad outlines of a future governance structure. Paragraph 20 was very important because it proposed for an Advisory Committee on the rights of citizens, minorities, and tribal and excluded areas. The Advisory Committee had to report to the Union Government upon the List of Fundamental Rights, clauses for minority protection and most importantly the scheme of the administration of Tribal and Excluded areas. It was also assigned the task to advise about the incorporation of these rights in Provincial group or Union constitution.

It led to formation of Sardar Vallabhai Patel's Advisory Committee on the Fundamental Rights of Minorities, Tribal Areas, etc., of the Constituent Assembly of India, whose sub- committees, headed by A. V. Thakkar and G. P. Bardoloi, submitted reports on tribal areas of India. The Five membered committee extensively toured the north-east India. They interviewed local leaders at all district

headquarters except Naga hills and Garo hills. The insurgency in Naga Hills prevented their exercise while rains prevented the committee members to tour and interview local leaders in the Garo hills. They interviewed people at Shillong, the Khasi district headquarters, but the interviews did not include leaders of any of the twenty-five Khasi tribal states that comprised the district. These leaders were in the process of negotiating an independent accommodation with the British and did not wish to "compromise these negotiations" through consultations with anticipated representatives of a country they did not wish to join. They were also confident that their concerns had been sufficiently addressed by others earlier in the committee's tour.

Bardoloi committee in its conclusion after taking the onerous task of visiting and interviewing leaders in the North-east observed that India needed to be carved out in a single representative system in the interests of all. But it also remarked that a period of substantial autonomy at the district level in Tribal areas is also required as it would aid in the task of singular nation formation and it would also offer a reasonable compromise to those elements in the North-east who sought complete independence from both India and Britain. Bardoloi recommended to craft an institution to balance two factors. One it sought to ensure protection and maintenance of their distinct social customs, tribal organization and religious beliefs. The second important factor was amelioration of fear among the tribals about their exploitation at the hands of the people from plains as these groups were considered to be better organized and had better experience to handle business. It also called for sufficient financial autonomy in order to make the issue of autonomy more meaningful. The committee also acknowledged the twin difficulty of "bringing together people of similar tribe under a common administration" and also at the same time the difficulty of maintaining tribal distinctions. It gave the Naga example to substantiate its position and said, "Though the tribes [in the Naga Hill District] are all called Naga, they speak different languages and have differing customs and practices." The Bardoloi subcommittee report also included detailed provisions for autonomous district councils in the formerly "excluded areas" of Assam. The proposed sixth schedule was presented to the Constituent Assembly for debate on September 5, 1949, and was fully ratified on September 7. It was ratified only after dialogue among all the competing factions with their different points of view of organization of administration of North-east. The competing factions included people who wished the district autonomy to be overseen directly by the Central Government. On the other hand there were people who wished more role for the state government to carry out the task while there were others who opposed autonomy as they considered that autonomy in any way would hamper the task of assimilation. There was also one faction who wished that after three days of dialogue among four competing factions: those who wished for district autonomy to be overseen more directly by the central government; those who wished for such autonomy to be more subject to the influences of the state government; those who thought that autonomy under any guise would hinder assimilation; and those who wished for such autonomy to evolve according to the changing developmental conditions of people in the districts as understood, autonomously, by those people. In the event, the draft sixth schedule based on this report was accepted almost

exactly as presented to the Constituent Assembly. (Hansaria 1983,A183-229;Cited in Stuligross 1999)

The debate in the Constituent Assembly was dominated by the Nehruvian liberals. But in reality there were no clear-cut sides to such debates as each "side" bought into, at least partially, the other "side's" arguments (just as both sides bought into, to some degree, the colonial state's justifications) . This becomes clear in the juxtaposition of the fifth and sixth schedules, both passed by the Constituent Assembly. The fifth schedule was much more towards the assimilationists blueprint than the sixth because it was perceived as a temporary measure with the ultimate goal being the assimilation of tribal into the mainstream economy. It was understood that tribals, not very aware of their own economic self-interests, would have to be protected from land-grabbing outsiders. It was conceived that the scheduled areas of the fifth schedule would become special development zones. The fifth schedule did not provide for self-government; the sixth schedule allowed for the establishment of autonomous councils. Indeed, at first glance it became very much evident that the tribals falling under the fifth schedule got short shrift by having to settle for powerless "Tribal Advisory Councils" compared with the autonomous district and regional councils in the sixth schedule. But it was worked out as a balance between the Assimilationist Approach and the Integrationist Approach.. But there was a practical reason as well for the distinction between the fifth and sixth schedules: only the tribes on the southern flank of the Brahmaputra River in Assam get autonomous councils because that is where the opposition to integration into the new Indian nation-state thrived. The sixth schedule is the result of delicate negotiations between these tribal's and the new post independence government. (Sonntang 1999,422-423)



<http://www.google.co.in/imgres?imgurl=http://www.livemint.com/rf/Image-621x414/LiveMint/Period1/2014/03/19/Photos/ambedkar.jpg&imgrefurl>. Accessed on 30/7/2014 at 5:40 P.M

❖ **Ambedkar's Words For Sixth Schedule In The Constituent Assembly**

Ambedkar hailed as one of the founding fathers of Indian Constitution while explaining the rationale of sixth schedule for north east had remarked that the tribal population outside Assam have more or less assimilated themselves into the culture amidst which they live. In his words they have been largely "Hinduised". But the condition of the tribal population with regards to Assam is different. They continue to have their roots in their own civilization and culture. They have continued to practice their laws of inheritance, marriage, customs which are different to that of Hindus. This is primarily the reason that there has to be different scheme of policies for tribal population in the north east and rest of India. (quoted in Tillin 2007, 56-57).

❖ **FIFTH AND SIXTH SCHEDULE OF THE CONSTITUTION**

The basic thrust of the Fifth and Sixth Schedule of the constitution is the protection of cultural distinctiveness of Tribal. It also provides protection to the tribals on account of their economic disadvantages so that they could maintain their tribal identity without any coercion or exploitation. The interests of Schedule Tribes outside the North east is protected by Fifth Schedule The fifth schedule designates "Schedule areas" in large parts of India in which the interests of the "Scheduled Tribes" are to be protected. The Scheduled area has more than 50 percent tribal population.

The Sixth Schedule is related to the administration of the states of Assam, Meghalaya, Tripura and Mizoram in the North-east. It has provisions for the formation of autonomous districts and autonomous regions within the districts as there are different schedule tribes within the district.

❖ **The Fifth Schedule (Article 244(1))**

The Fifth Schedule being a very important provision of the constitution deals with the control and administration of the Schedule Areas. Some of the important features of the Schedule are:

- It deals with provision for the constitution of a Tribes Advisory Council
- The Governor has the power to adapt laws passed by Parliament and State legislature in such a way that it suits these areas.
- It provides Governor with the power to make regulation for good governance and peace for the area.
- The Fifth Schedule also deals with the extension of direction by the Union to a State for the administration of the Schedule Areas.

Under Fifth Schedule, the most important institution is the Tribes Advisory Council. In the Tribes Advisory Council, Scheduled Tribe MLA's in the state consists of its three-fourth membership. Since Tribes Advisory Council is formed by the provisions of the Fifth Schedule it has the status of a constitutional body. The Schedule is aimed towards making the State responsible towards the promotion of educational and economic interests of Tribals . It also aims to provide social justice to the tribals and prevent them from exploitation of any kind. The Central Government also provides special financial assistance to the states under Article 275 for the implementation of schemes that would lead to the development of Schedule Tribes. (Bakshi 2009, 338-340)

❖ **Powers of Governor under Fifth Schedule**

The Powers of Governor are important in the application of the provision of Fifth Schedule. He enjoys the power to modify, annul or limit the application of any law made by Parliament or State legislature in the areas designated as Schedule Areas. For good governance of the area he has the power to make regulations. He regulates land allotments to members of Schedule Tribes. He is also authorized to regulate business like money lending in the Fifth Schedule area.

Tribes Advisory council

The Fifth Schedule provides the provision of a Tribes Advisory Council. It deals with the provision of establishment of Tribes Advisory Council consisting of not more than twenty members . Three-fourth of its representatives would consist of Schedule tribes members of the State Assembly. In case the number of such representatives are less than the number of seats which are to be filled than the remaining seats shall be filled by other members of the tribe. The Fifth Schedule also provides the establishment of Tribes Advisory Council in states which have Schedule Tribes population but do not have Schedule Areas if the President so directs for the formation of Tribes Advisory Council in those areas.

Tribes Advisory Council advise on matters related to the welfare and advancement of the Scheduled Tribes in the state which are referred to the council by the Governor.

The Governor has the power to make rules prescribing or regulating, the number of members of the Council, the mode of their appointment and the appointment of the Chairman of the Council etc..

❖ **Laws Applicable to the Schedule Areas**

The Governor has the power to direct about non-application of any act which has been passed by Parliament or Legislature of the State to a Scheduled Area or any part thereof in the state or shall apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification and any direction given under this sub-paragraph may be given so as to have retrospective effect.

The Governor has the power to make regulation for peace and good governance of any area in a state which is a Scheduled Area. Those regulations include prohibiting or restricting the transfer of land by or within members of the Scheduled Tribes in Scheduled areas; regulating the allotment of land to members of the Scheduled Tribes in those areas; regulating the money lending business by those who lend money to people of the Scheduled Tribes in such area. In the process of making such regulation discussed above, the Governor may repeal or amend any Union or State law. The Governor can make such regulation only after consultation with the Tribes Advisory Council of the state. It is to be understood that all such regulation will have effect only after being submitted to and accepted by the President of India.

❖ **President and the Schedule Areas**

Schedule Areas are those areas which the President may direct to be Scheduled Areas with respect to the Fifth Schedule of our Constitution. The President has the power to direct that the whole or any part of a Scheduled area has ceased to be a Scheduled area. He can after consultation with the governor of that state increase the area of any Scheduled Area. In this way he possesses the power to alter the boundaries of any Schedule area. The regulations made by the Governor come into effect only when they are accepted by the President. Governor is required to submit annually the reports regarding administration of the Scheduled areas to the President.

❖ **Amendment of the Schedule**

Parliament through a law can amend any of the provisions of this Schedule by way of addition, variation or repeal . Any such law is not deemed to be an amendment under Article 368 of the Constitution.

Table 1

List of States with Schedule V areas in India

1. Andhra Pradesh
2. Jharkhand
3. Gujrat
4. Himachal Pradesh
5. Madhya Pradesh
6. Chattisgarh
7. Maharashtra
8. Orissa
9. Rajasthan

Table 2

List of States with Scheduled Tribes but not Fifth Schedule Areas(Excluding Sixth Schedule States)

1. Bihar
2. Goa
3. Jammu And Kashmir
4. Karnataka
5. Kerala
6. Sikkim
7. Tamil Nadu
8. Uttar Pradesh
9. West Bengal
10. Andaman And Nicobar Island (UT)
11. Dadar And Nagar Haveli (UT)
12. Daman And Diu (UT)
13. Lakshadweep (UT)

❖ Provisions Of Sixth Schedule Of The Constitution (Article 244(2) and 275(1))

The Sixth Schedule is different from the Fifth Schedule as it deals with the details of the mechanism and institutions essential for governance of the autonomous districts in Assam, Meghalaya, Tripura and Mizoram. These autonomous districts are directly administered by the Governor. The Sixth Schedule deals with the constitution, powers and functions of District Councils and Regional Councils in these autonomous districts.

These Councils enjoy legislative powers on specific subjects and are also allotted certain sources of taxation. These councils also have the powers powers to set up and administer their system of justice and maintain administrative and welfare services in respect of land, revenue, forests, education, public health etc..

These Autonomous District Councils are in existence in the states of Assam, Mizoram, Tripura, and Meghalaya. The Indian Constitution provides funds under Article 275(1) to both Schedule Fifth and Schedule Sixth areas for the purpose of promoting the welfare of Scheduled tribes or raising the level of administration of the Schedule Areas.

The Autonomous districts are the mechanism to safeguard the traditional heritage of the Tribals, their customary practices and usages and also maintaining economic security. This is achieved by conferring on them Executive, Legislative and judicial powers along with development and financial powers and functions.

Sixth Schedule envisages the powers of the Autonomous District Councils within the autonomous areas, to make laws of the land, management of forests(except reserved forests),regulation on trade by persons not being local schedule tribes, appointment of

traditional chiefs and headmen, inheritance of property, marriage, divorce, social customs, establishment and maintenance of primary schools, markets, taxation, issue of lease for extraction of minerals etc..

❖ **Role Of Governor**

The Governor under the provision of the Sixth Schedule of the Constitution is empowered to determine areas under the administration of the council. He has the authority to form new autonomous districts. He can increase or reduce the area of any autonomous districts or Districts Councils. He is also empowered to unite two or more districts or its parts to carve out one autonomous district from it. The Governor can also define the boundaries or alter the name of any autonomous district. But it should be noted that such changes can only be brought in the composition of the territory of Autonomous District Councils by the Governor after the submission of report of the appointed commission for that purpose. Eg: If the Governor of Manipur has to issue such order than he has to take the consultation of the Hill Area Committee. There has been some differences observed in designation of the Administrative areas of the District Councils from one place to another. Eg: In some states like Assam and Meghalaya the District Council has been constituted at the District level. But in Mizoram it exists both at the district and sub-divisional level.

❖ **Composition of District Councils and regional Councils**

The Sixth Schedule provides provision for a District Council or Regional Council by the name of the District or region. The Councils usually consists of not more than thirty members. Twenty-Six members are elected on the basis of adult franchise from a single member constituency while not more than four persons are nominated by the Governor in consultation with the Chief Executive member of the council.. It is usually seen that the members who are nominated basically are representatives of the minorities and unrepresented communities and holds office at Governor's pleasure. There is a variation in number of seats in each District Councils and as a result of it there is also a variation in the number of elective constituencies in each district council. For Eg: Lai Autonomous District Council in Mizoram has 27 members (23 elected,7 nominated) while Tripura Tribal Areas Autonomous District Council has 30 members.(28 elected and 2 nominated).

District Council is elected for a five year term. The term can be extended for a period not exceeding one year in case of national emergency or situation in which it is impossible to hold elections.

The sessions of the Council is presided by Chairman and in his absence a Deputy Chairman. They are elected by the elected members of the District Councils. The election of then Chairman is presided by Deputy Commissioner or any other officer authorized by governor. The Chairman is elected by a simple majority.

The function of Chairman and Deputy Chairman is similar to Speaker and Deputy Speaker of a legislature. The Chairman has been endowed with legislative functions like calling meetings for the council, preside over the session and also regulate the proceedings of the session. He allows time for discussion and also admits question and motions.Like the speaker he also has a casting vote in case of a tie. (Bakshi 2009,241-261)

❖ **Executive Committee**

The executive functions of the council is carried by an Executive committee. It consists of the Chief Executive Member and Executive members. The Chief Executive Member (CEM) is elected by the elected members of the District Council. The other members are appointed by Governor on the recommendation of CEM. It's functioning is akin to the prevalence of cabinet system in Parliamentary democracy. At the district level it works like a miniature government.

Executive Committee prepares budget of the District Council and get it passed, makes appointments with District Council's approval, allocates to look after subjects to its members. In short it is collectively responsible for all policies and orders issued in the name of District council. The EC is automatically dissolved when CEM resigns. The provision in Sixth Schedule places the civil administration of the autonomous districts in two authorities; Deputy Commissioner representing the state and Executive committee representing District council. Thus it could be seen that Sixth Schedule has created two authorities with consequent overlap and anomalies.

Legislative functions

The Legislative function of the District Council ranges from making laws for allotments and use of land other than reserved forests for agricultural purpose, for grazing and also residential or non-residential purpose. It also looks after the management of unreserved forests. It also regulates the use of canals for the purpose of agriculture, shifting cultivation .It carries the task of public health and sanitation, regulates inheritance, marriage and divorce. It also regulates money lending and business by non-tribals within the area of the council. Governor acts as the head of the Autonomous District Council as he enjoys the power to alter any law passed by the council which is in contravention to the Sixth Schedule.

Executive Functions

The Executive functions performed by the District Council includes the power to manage markets, roads, waterways, ferries etc. It also prescribes the medium of instruction and manner of education in primary schools within its jurisdiction. It has no legislative or regulatory power over the latter subjects.

❖ **Judicial Functions**

The Sixth Schedule's Para 4 gives power to the council to carry certain judicial functions. The council can constitute Village and District Council Courts in its area to deal with cases of customary laws in which both the parties are tribal. These courts cannot adjudicate cases in which punishment ranging to death sentence, life imprisonment or five year imprisonment is involved. These courts act as a court of appeal for all suits and cases tried under Village council courts and The District Council Courts. It should be noted that no other court than

the High court and Supreme court have jurisdiction over suits and cases decided by the council courts.

Financial Functions

The Financial function of the District and Regional council ranges from its power to collect land revenues, levy and collect taxes on shops, holdings etc. The other financial power to tax includes collection of tolls within their jurisdiction. It also has concurrent powers over professions, trade, animals, goods carried by ferries etc. The royalty on the licenses for extraction of minerals within the autonomous districts goes to the District Council. The Tax on motor vehicle within the area is assigned and collected by the state government on behalf of the Council. Other sources of income for District and Regional Council include Grants in aid, loans and advances from the state government. The District Councils have autonomous status and parliamentary or state acts do not normally apply on the subjects under their authority. Such acts can only be extended with required exception and modification which are considered necessary by the concerned District Regional Council. (Prasad 2004)

Facts to Know

There are provision for certain classes of Courts in District Council of Khasi and Jaintia Hills.

Presently there are fifteen District Councils in the North-East-two in Assam, three in Meghalaya, three in Mizoram, one in Tripura and Six in Manipur.

❖ The Unique case of Darjeeling

The instrument of Sixth schedule was designed primarily for the North-Eastern states and its application has been confined to the regions of North-East India only. But over the years a simmering discontent was witnessed among the hill people of Darjeeling which led the Government to devise innovative mechanisms to deal with the discontent and their socio-economic as well as political aspiration.

The Government of West Bengal enacted Darjeeling Gorkha Hill Council Act ,1988 to set up Darjeeling Gorkha Hill Council . The act came up after the signing of the Gorkha Accord in 1988 between Central Government, Government of West Bengal and Shri Subhash Ghising (President, Gorkha National Liberation Front). The DGHC comprised of 42 members with 28 elected and nominated members with a term of five years.

But the Darjeeling Accord proved insufficient in fulfilling the aspiration of the people. A memorandum of settlement was signed in 2005 between The Darjeeling Accord could not fulfill the aspiration of the hill people of Darjeeling. So in 2005 a memorandum of settlement was signed between the government of India, Government of West Bengal and Administrator DGHC for the creation of an autonomous self- governing council under the

provision of sixth schedule to the constitution for the hill areas of Darjeeling district within the state of West Bengal. But opposition from several sources prevented the implementation of this agreement.

❖ **Gorkhaland Territorial Administration**

In 2008 Subhash Ghising had to resign after losing public support and popularity of Bimal Gurung led Gorkha Janmukti Morcha grew. A tripartite agreement was signed between Gorkha Janmukti Morcha, state of West Bengal and central government on 18 July 2011 to fulfill the demand for the formation of the Gorkhaland Territorial Administration (GTA) in the Darjeeling hills. The Agreement outlines that the GTA Sabha shall consist of 45 elected members and 5 members would be nominated by the Governor for providing representations to Scheduled Castes, Scheduled Tribes and Minority Communities. The Sabha will function for a term of five years. It was also outlined that MPs, MLAs and chairpersons of municipalities shall be ex-officio members of the GTA Sabha. (The Hindu 2011, 18th July)

The demand for a separate state of Gorkhaland has gained prominence. The issue of Gorkha identity has been raised and it is said that their fight should not be seen as a hatred towards Bengal or Bengalis. Their movement has also drawn attention to the fact that demand for a separate state of Telangana, Vidharbha and Bundelkhand have been raised on the issue of development but their demand is purely an issue of identity; which is the identity of Gorkha. They also hope that the identity of Gorkhas as Indians and not foreigners will be secured once and for all.

Facts to Know

There has been an exception made for Bodoland Territorial Council within the state of Assam. The area has been accorded Sixth Schedule Status despite the fact that the population of the Schedule Tribe in the area is only 38 percent. So the constitution has to be duly amended to provide safeguards to tribals in areas where they are in minority. For non-tribals residing there certain safeguards has been also drawn.

The demand for separate Gorkhaland state has been led by Subhash Ghising, prominent leader of Gorkha National Liberation Front. Gorkhaland in their demands has to be carved out of the hills of Darjeeling and areas of Dooars and Siliguri terai contiguous to Darjeeling. Around 1200 people lost their lives in the agitation for the demand that continued from 1986-1988

❖ **Panchayats (Extension to Schedule Areas) Act,1996**

The Panchayats(Extension to schedule Areas)Act, 1996 was passed by the Parliament for extending the provision of 73rd Constitutional Amendment to Schedule Five areas. The Fifth Schedule is applicable to tribal areas of nine states of the country.(See Table 1)

The Gram Sabha has been vested with wide ranging powers under PESA. The Gram Sabha has been vested with Ownership of minor forest produce. They have been assigned the task of selecting beneficiaries under various governmental schemes. In the issue of Land Acquisition they have been bestowed with powers of consultation. They have also been given management over minor water bodies and control over mineral leases for minor minerals.

They have to prevent alienation of Schedule Tribes and also work to restore unlawfully alienated lands. Their task also ranges from management of the village market to controlling the business of money lending to Schedule Tribes. to give certificate of utilisation of funds for various plans and programme. The Gram Sabha has also been made owners of minor forest produce through the act. (Pal 2000,1603)

The act also mentions about the safeguards for the gram Sabha with respect to Panchayats. It is mentioned that any state legislation that would endow Panchayat with greater powers to function as Institution of self- governance shall contain requisite safeguards so that powers of Gram sabha are not usurped.

❖ **Working of The Fifth Schedule**

The working of the provision of fifth Schedule demonstrates a big gulf between its promise and practice. There has been continuous breach of law by the forest department although policies and laws exists to ensure peace and good governance in tribal areas. The indigenous settlements around rich mineral resources have constantly seen marginalization of the tribal voices and loss of autonomy over their indigenous rights and land. This has led to the development of a historical distrust between the state and its indigenous communities. Land has been acquired for the developmental process without any say of the tribal population and the worst consequences of those acquisition has been displaced communities because of the government's poor rehabilitation record. The tribal way of life has been heavily undermined because of illegal mining , deforestation and land encroachment . The tribes have a relationship of symbiosis with the forest and it is very harmful to detach the tribal-forest link. The forests are a means of livelihood for the tribes and the traditional practice of the tribes in turn conserve forests. The negligence and marginalization of the community has been one of the foremost reason of the community hitting back through left wing terrorism.

The Fifth Schedule is severely limited in its scope to enable tribes to effectively participate in the system of governance. Indeed, in most of the Scheduled Areas, the TAC is rarely constituted thus giving the Governor free reign over the area. What is more, even where the TAC is present the Governor is not bound to abide by its advice. (Nongbri 2001,4)

Sonam G. Malhotra interviewed some MP's whose constituency has Fifth Schedule areas to get an account of administration of these areas. The interview offers a useful insight into the issue of governance in the tribal area.

Ramesh Rathod, an MP from Andhra Pradesh, represents Adilabad district, which is a Scheduled Area says" the provisions under the Fifth Schedule have failed to properly administer tribal areas. The laws are created to monitor, regulate and implement policies, but have further marginalised indigenous communities. Village level bodies have never been given the right to make decisions".

He further brings the issue of Vishakapatnam where illegal and rampant mining continued despite laws that prohibited private companies to hold or lease land in the region .So as a result the tribals have been left out and large corporate houses continued to loot the resources. Rathod also shared about a scheme under Tribal sub-plan. He says" The Reserve

Bank of India in Scheduled Areas of Andhra Pradesh has planned to reward children who complete a certain level of education. The reward can only be claimed if they show property papers, which most do not own. Scheduled tribes have their own laws and traditions that are distinct from ones observed by the rest. Moreover, property papers are certified documents based on individual ownership, and most tribes believe in community ownership." As a result they were left out of the scheme as well.

Vishnu Deo , an MP from Chattisgarh's Raigarh District said,

" The Panchayati Raj does not function or make adequate decisions on governing roles, neither are powers devolved within state rural economies. The dilution of state policies by politicians lessen the chances for devolution rather than the involvement of local leaders. Neither does Panchayati governance consist of tribal population or appropriate representation of the tribal perspective."

Faggan Singh Khulaste, Rajya Sabha MP observed that "decisions on industries, minor forest produce or infrastructural should be based on Gram sabha decisions but it has neither the authority nor capacity to make such decisions." He further said, "We believe that devolution will only come about if the system works well, but if the system does not have a meaningful application for its people, then on what grounds are decisions made in Scheduled Areas". Further speaking he said "The Ministry of Tribal welfare and Ministry of Social Welfare regulate and decide on tribal grants. These grants go directly to the state, and it is the state government that makes sure that these grants are spent on tribal communities. The system needs to change, and that funds for tribal welfare should not be clubbed with grants for other schemes. The tribal grants should only be used for the purpose they were allocated for. An agency like the Planning Commission needs to look into matters concerning state funds, as these get directed to a general fund pool. "Ultimately he observed that "it is the lack of political will that has marginalised the tribal people further" (Malhotra,2014)

❖ **Samatha Judgement**

PESA was conceived as a most logical tool to ensure welfare of the tribals in the Fifth Schedule area with accountability. But it could never be properly implemented. The Supreme Court in its 1997 Samatha Judgement 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 judgement was never taken in the right spirit by the political class. The Ministry of mines and other state governments especially Andhra Pradesh claimed that it would lead to an adverse impact on the mining as well as industrial activity leading to a downfall of economic activity throughout the country. So the Government responded by giving unfettered powers to the Governor in the transfer of Schedule Tribe land to the government and subsequent allotment to non-tribals undermining the objective of PESA for Tribal welfare and autonomy. (The Hindu,2013)

If one looks at the Scheduled Tribes and Other Traditional Forest Rights Act of December 2006, popularly known as Forest Act , we find that it recognizes the rights of the forest dwellers to protect and manage their forest (as does PESA), but this right can only be exercised if the state decides that certain region is denoted as Village Forest or Reserved

Forest. As a result of it many communities have been evicted with no clear road map for any rehabilitation.

There is a great need for accountability regarding implementation of laws in tribal areas and a strong political will to devolve the authority to the grassroots. It is also evident that PESA and the Fifth Schedule have failed in their endeavor to achieve welfare and security of the Tribals and it needs serious rethinking.

❖ **Working Of The Sixth Schedule**

The provision of Sixth Schedule deals with Autonomous District Council and they were designed for being more than an agent of economic change. Their main function was intended to be integration of tribal communities into the Indian political system without undue external pressures on well-functioning social systems. The substance of tribal culture need not change as a result of instituting Autonomous District Councils, but tribal processes were expected gradually to become more consistent with broader Indian political institutions. As noted above they were granted the powers to design primary school curricula and run schools, try cases in district court, and codify customary law through legislation. In short they were allotted powers to develop themselves socially, economically and politically. Each of these powers has left its mark on the tribes, Autonomous District Councils and the State.

The Sixth Schedule tends to suffer from various drawbacks that has crippled its functioning. Though the underlying objective of the Sixth Schedule is to provide maximum autonomy to tribes in their governance but it has failed to achieve its desired objective because of inherent limitations in its provisions.

Issue of Financial Autonomy : On the one hand the Sixth schedule assigns powers to the District Councils to initiate and even carry developmental activities at the level of grass roots but on the other hand the issue of financial autonomy stands completely neglected. They have to depend upon the state government for their funds. So resource allocation becomes a major bone of contention between the state government and ADC's. In the state of Meghalaya matters took a serious turn when salaries of primary school teachers could not be paid regularly due to the non receipt of funds from the government. Interestingly, the government withheld the funds on the charge that the Khasi Hills ADC indulged in corrupt practices and failed to comply with prescribed procedures.

Issue Of Legislation : In matters of legislation the act says that the legislation requires the consent of the Governor. It is only after his consent the legislation would have the force of a law. It has also been seen that there have been instances when the ADCs have lacked the requisite machinery to implement their legislation. There have been instances when it could not pressurize an accused to appear before its courts. Even attempts to overcome these hurdles have been made but they are always thwarted as they fail to get the assent of the Governor . Khasi Hills District Council tried to establish its own police force but the attempt failed as the Bill could not receive the Governor's assent. While there is no concrete evidence to prove that the government is instrumental in stalling the Governor's assent to the Bill, the incident substantiates the claim that in a conflict of interest between the ADC

and the state government the Governor often tilts in favour of the latter. What needs to be noted is that in this dual structure the state government exercises considerable leverage of power over the ADCs which severely restricts its autonomy. Thus the legislation passed by the ADCs amounts to nothing more than recommendations which the state government may reject. In Meghalaya particularly, the autonomy of the ADCs has further been eroded by the insertion of paragraph 12A in the Constitution, which makes the legislations passed by the ADC subordinate to those passed by the state legislature. (Nongbri 2001,4-5)

Panchayati Raj And The Sixth Schedule: A comparative analysis of the 73rd Amendment which has conferred Panchayati Raj and Sixth Schedule brings out the limitation of the power assigned for self government in Sixth Schedule. Under the Seventy Third Constitutional Amendment Act, the Panchayats have been assigned subjects on civic, regulatory and developmental activities and assured of funds from a separate Finance Commission, unlike the ADC which has to depend upon the state government. There has been no provision of a mandatory time limit for reconstitution of ADCs once in case of its dissolution but it is mandatory to reconstitute Panchayats within six months of their dissolution. The Seventy Third Constitution Amendment Act also contains one of the most revolutionary provisions which stipulates that 33 percent seats at all levels of the Panchayat shall be reserved for women, in addition to those prescribed for the Scheduled Castes and the Scheduled Tribes. For tribal women, this provision is of immense significance because the Fifth and Sixth Schedules are completely silent on issues relating to women. But, where as Parliament has taken steps to extend the provisions of the Seventy Third Constitutional Amendment to the Fifth Scheduled areas vide the Panchayats (Extension to the Scheduled Areas) Act, 1996, the same has not been done in the case of the Sixth Schedule areas.

The Political Impact of Autonomous District Councils : We have seen that ADCs are more or less functionally weak but they play a very substantial and positive role in the deepening of the democratic process. It has succeed in creating a new layer India's federal polity and has provided increased positions to those aspiring for political leadership. Many ADC leaders use the experience gained at the ADC level as a springboard to higher political office. Both as a political institution and as a formal link to state political institutions, the ADC eases pressures by ethnic communities to resort to violence in pursuit of their political objectives. Such mitigation, however, is far from perfect.

❖ **Conclusion**

Even in today's India it is clear that democracy has yet to be a reality for all section of tribes. Despite the attempts made through some laudable measures by the constitution of India ,democracy remains illusionary and has failed to reach people located at the grassroots. A fundamental factor responsible for this state of affairs is the unequal distribution of power between the political cum administrative centre and the peripheries. The working of the Fifth and the Sixth Schedule clearly demonstrates the centralization of power, which dilutes the democratic intent of the constitutional provisions. In all administrative and legislative matters the powers of the Fifth and Sixth Schedule are subservient to those of the central and state legislatures. This has considerably eroded the autonomy of the ADC and renders the protective powers assigned to it severely ineffective.

The democratic organ created by Fifth and sixth schedule have not succeeded to adequately mirror and articulate the needs and aspirations of the people. Among the most seriously affected by this system of governance are women, who are not only disadvantaged by their ideological subordination within the tribal community but also by their isolation from the mainstream society.

Participation is the key to democracy. Hence, at a time when the national policies are giving a major thrust to grassroots empowerment and decentralization, it is opportune to reexamine the viability of both the Fifth and Sixth Schedule arrangements within the prevailing system. Tribal culture, custom, tradition and autonomy are serious issues and the provisions of Fifth and Sixth Schedule have tried to address these issues but at the moment its inadequate. The flow of power to the grassroots is incomplete and till then autonomy would suffer.

Exercises

- ❖ Find out the existing constitutional apparatus to inculcate Tribal Diversity
- ❖ What were the two prevailing approaches that prevailed in the pre and post-independence era with regards to tribal question
- ❖ How far has been the Fifth and Sixth Schedule of the Indian Constitution successful in addressing the issue of Tribal autonomy.
- ❖ Why has the demand for a separate Gorkhaland grown in recent years.

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