



Critical Analysis of Fifth Schedule of Indian Constitution

- Mypathi Arun Kumar¹

Introduction:

Culture and identity are an integral part of Tribal people's life. Tribal forms of social organizations, tradition and customs, institutional laws and land use patterns are different from those of the mainland people..Therefore, special interest should be taken and appropriate mechanism must be provided to protect their eco-friendly practices in the areas of Tribal majority. (Inida, 2012).

The preservation of tribal autonomy, culture and to ensure the socio-economic and political justice is the purpose of the scheduled areas. Fifth schedule was dubbed as the 'Constitution within the Constitution'. Article 244 and Fifth schedule are meant to protect the constitutional perspective of the equality related to the tribes. Constitution recognizes the fact that the tribal have suffered so much injustice from the mainland people of India and colonizers both and bounded to ensure to reverse those historical wrongs. (India).

Framing the Fifth Schedule:

In almost ten states of India has tribal population as majority viz., Andhra Pradesh, Telangana, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Orissa and Rajasthan. So article 244 of the Fifth Schedule provides the administered powers of these areas. Special responsibilities and powers are given to Governors of these tribal populated

¹ Researcher is a Doctoral Scholar in Public Administration, Kakatiya University, Warangal, Telangana



states. And state like Tamil Nadu and West Bengal which have tribes but do not have tribal areas have Tribal Advisory Councils (TACs) (Inida, 2012).

The Indian Constitution defines Schedule areas as “such areas as the President may by order declare to be Scheduled Areas under the Central Act”. Dominant tribal population, underdeveloped nature of the area, compactness and marked economic disparity among people were the criteria followed to declare an area as Scheduled. The President of India, in exercise of the Constitutional provisions, after consulting the concerned state governments passed ‘the Scheduled Areas (Part A states) order and the Scheduled Areas (Part B states) order 1950. Some areas which and dominant tribal populations apart from then existing Scheduled Areas were found at the time of formulating and adopting the strategy of Tribal Sub-Plan (TSP) for socio-economic development of Scheduled tribes.(Manditoka, 2010).

The Fifth and Sixth Schedules of the Indian Constitution and Articles 15(4), 16(4), 19(5), 23, 29, 46, 164, 275(1), 330, 332, 334, 335, 338, 342, are containing main provisions relating tribal people(Manditoka, 2010). Administration of Scheduled Areas other than in Northeastern region is taken care by the provisions of the Fifth Schedule. According to the part-B of the Fifth Schedule Tribal Advisory Councils (TACs) should be created in each tribal populated states. The Fifth Schedule had given the extensive powers to Governors to direct that a law enacted by Parliament or the state legislative Assembly shall not apply to a scheduled area by a public notification. As per the Fifth Schedule the governance of the tribal areas is mainly in the hands of the Governor(Xaxa V. , 2014).

Article 244 (1) which facilitated the Fifth Schedule was incorporated because the makers of Indian Constitution believed that the tribal areas should be administered differently from other mainland areas. Article 244(1) provides the base for the establishment of “Scheduled



Areas” in any state except the North-east region. Main objective of the Schedule Areas is to *"to impose total prohibition of transfer of immovable property to any person other than to a tribal and to protect the possession, rights, titles, and interests"* of Scheduled Tribes. The state government and the Governor of the state should recommend the Schedule areas to the Central Government then the process of Scheduling starts.(Xaxa A. , 2019).

As per the Article 244 (1), the tribal areas other than the states of the North-eastern region are administered and controlled by the provisions of Fifth Schedule(Mungekar, 2009; India). It is the backbone of the legal framework in the tribal areas and provides a historical guarantee to the rights of the tribal in the country.The prevention of the land and other natural resources alienation to the non-tribal population is the most important right provided under the Fifth Schedule (fifthschedule). In many cases where the special provisions under the Fifth Schedule for the tribal people to protect their resources is challenged, the courts have reiterated that these provisions are in furtherance of article 15 (4) and article 46, to provide confidence to the tribes for the social justice. These special legislations, therefore, cannot be challenged as unconstitutional on the grounds of violation of other fundamental rights such as article 14 and article 19(1) (g).

President of India, under article 342 and paragraph 6 of Fifth Schedule, can announce a community as Scheduled Tribe by order. Debhar Commission (1960-61) reiterated that not less than fifty percent of the tribal population, reasonable size of the area and backward nature of the area is the criteria for declaring any area as Scheduled. (India; Mungekar, 2009).



Criticism on Governor reports:

The Union government takes decisions based on the annual reports of the Governor about administration in the scheduled areas, hence they very are crucial in the administration of these areas. In essence, ‘particularization, not generalization’, and ‘discretion, not rule by rote’ comprise the moving spirit of this frame (Mungekar B. , 2009).

There is huge criticism on Governors that they do not send reports to the Union governments regularly. Even when they have sent the report, they are repetitive and mere copy of the tribal development reports. And these reports mostly spell out the names of the schemes and programmes but nothing will be reported on the implementation issues of the programmes. The Governor reports contain quantitative data without any critical analysis of the data. The Governor reports which supposed to analyse the implementation of the tribal development critically instead they chose to just spell out what is given by the state governments (Xaxa V. , 2014).

The National Commission for Scheduled Tribes had sent a confidential report to the President of India on the failure of the Governor’s in ensuring social justice for the tribes and in performing their administrative duties. The Governors have failed to stop the implementation of the laws that contradict with the Constitutional protection for tribal. The powerful non-tribal bureaucracy is unwilling to acknowledge the tribal rights over lands and forest and encourage the breaches in the Constitutional protection measurement for tribes. Governors have never intervened in case of land conflict, acquisition for mineral extraction and police atrocities against the tribal communities.



Non-Implementation of Fifth Schedule:

The tribal communities have a very strong relationship with natural resources such as forest, land, water (*Jal, Jangal, Jameen*). The Multi-national corporations through their mining activities, alienating the rights of Tribal. The development policies of the Governments like mining, large hydroelectric projects, industrialization, rails, roads and evictions from unregularized land are the main alienating sources of tribal populations. The governments are diluting the purpose of the Constitutional provisions for tribal and systematically denying their rights by using the legal loopholes (Xaxa A. , 2019).

The NDA-II government passed the Mines and Minerals (Development and Regulation) Amendment Act, despite knowing that this act will cause massive displacement, destruction of natural habitats and land alienation of the tribal community (Xaxa A. , 2019). Policy reports talk so much about the government's efforts regarding tribal development but still tribal are at the bottom of most of the socio-indicators. Since the British rule various legislations such as the land Acquisition Act, 1894 and the Indian Forest Act, 1927 adversely affected the lives and livelihoods of Tribal communities, and denied their economic, social and cultural rights. After independence the Indian government continued these colonial laws which adversely affect the tribal. The Mines and Minerals (Development and Regulation) Act, 1957 made tribal lives in the forest much worse to the extent that they had to take the sidewith the left wing extremist groups (Xaxa A. , 2019).

On documents Indian is the most celebrated country in the protection of tribal rights but practically India has one of the worst records of implementing and enforcing the laws meant to protect the tribal rights because of the lack of political will of the ruling class. Two special Schedules and almost twenty articles in the Constitution which are concerned with the Tribal



welfare. (Xaxa A. , 2019).India's unwillingness giving tribes an 'indigenous people' status weakened their claims over natural resources such as land and forest.(Xaxa A. , 2019).

The government is transferring mining lease to non-tribal companies and corporations which is void of Constitution of India. The ministry of mines, in 2000, drafted a secret note to the Committee of Secretaries proposing an amendment to the Fifth Schedule to facilitate the Multi-national mining companies. If the Fifth Schedule of the Constitution amended for the sake of mining companies there will be justifications to acquire tribal lands for the sake development (Unknown).The tribal history of Chhota Nagpur reveals the tragic story of land acquisition and displacement in the name of 'national interest'. Governments always misguided tribes in the name of compensation, rehabilitation and employment in industries set up on their lands (Lakra, 2019).

Conclusion:

Constitutional provisions in Schedule Fifth are giving special status to the Scheduled Areas which meant to protect the tribal rights over natural resources is started to crumble (India). The threat of tribal displacement constantly increasing due to breaches in the Fifth Schedule causing the anger and unrest in the tribal areas (Mungekar B. , 2009). Applying all the laws routinely to the Scheduled areas should stopped, instead try adapt laws as per their customs and traditions.The Governor offices in the Schedule areas should be well-staffed and well-equipped to take care of the tribal areas. Mungekar report (2009) suggest for "administrative reorganization of these areas within the concerned states should be taken up and completed within two years so that compact tribal areas are brought under the same administrative units at an appropriate level."



The Fifth Schedule and the other Constitutional provisions that protect tribal rights are under imminent threat of being amended which may facilitate the transfer of tribal lands to non-tribal and corporations. This will have serious implications to the 80 million tribal and to their rights over land, forest and other natural resources. All the Gram Sabha's should get into action to prevent the tribal land alienation in the Scheduled Areas and restore the any unlawful alienation of land. The Government should provide the financial assistance to the tribal to exploit the minerals in the Scheduled Areas either individually or through the cooperative societies.



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