
CONSTITUTIONAL SAFEGUARDS FOR SCHEDULED TRIBES IN INDIA: AN ANALYTICAL STUDY OF RIGHTS, PROTECTION AND SOCIAL JUSTICE

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ABSTRACT

The constitutional safeguard provides the protection for scheduled areas and scheduled tribes in India with the particular focus on rights, welfare and protection of forest rights. These community suffered the backdrop and faced various discrimination in past decades. The constitutional as well as legal framework to dedicate the rights and protection for tribals are important to preserve the rights and protect the interest of the tribals. The constitution provides the dignity and participation in nation life which mentioned under part III of the constitution. It allows the equality, dignity, participation in political life and protect from the economic deprivation. The constitution further states the special power to tribal areas for the special administrative arrangement to protect the tribal areas within the territory of India. The fifth and sixth schedule provide distinctive administration power and arrangement to protect the tribal areas. The legislative measure relating to the forest rights and local self-governance strengthens community participation and resource protection. The article examines the role of constitutional institution in protecting tribal interest and promoting their socio-economic advancement. It highlights the proper implementation and awareness and community participation and institutional accountability. The study concludes that meaningful implementation of constitutional safeguards and rights is essential to achieve the substantive equality, promoting tribal identity and promoting inclusive social justice in India.

Keywords: Scheduled Tribes, Constitutional Safeguards, Social Justice, Tribal Development.

Introduction

The Constitution of India guarantees the fundamental right in which minority and tribal rights are included to development and upliftment of tribal community such as Scheduled Tribes. Historically, tribal people faced many discriminations and suffered from social stigma, economic deprivation, limited access to education, healthcare and other facilities.

The Constitution of India guarantees the basic human dignity. It recognises the tribal people rights and inclusivity by giving them protection through various law and welfare policies. Article 46 of the Indian Constitution specifically directs the state to promote the educational and economic interest of scheduled tribes and protect them from any kind of discriminations.¹ The constitutional safeguard relating to scheduled tribe are guaranteed under Fundamental Rights and Directive Principle of State Policy. The constitutional provision recognises the equality that some time requires the special protection and affirmative measures for the tribal community to uplift from the historic discrimination.

The Constitution of India addresses the relationship between the tribal communities with their traditional territories, forest, natural resources and customary practices. The fifth schedule of the constitution provides a special administrative framework for scheduled areas, whereas sixth schedule provides autonomous arrangements for specified tribal areas in parts of North-Eastern India.² The legislative body has also enacted some of the enactment to prevent the tribal community from the land and development conflict and continues to preserve the protection and welfare of the tribal communities.

This article examines the constitutional safeguards available to scheduled tribes and analyse their significance in promoting rights, protection, participation and social justice.

Constitutional Foundation of Tribal Protection

The constitution of India safeguards the protection and dignity of scheduled tribe community. Article 14 of the constitution guarantees the equality before law and equal protection of law³, whereas Article 15 states the prohibition on discrimination under specific grounds such as caste, race, sex, age, creed, place of birth etc. it further permits the special provisions relating

¹INDIAN CONST. art. 46.

²INDIAN CONST. art. 244 & scheds. V-VI.

³INDIAN CONST. art. 14.

to advancement of socially and educationally backward classes.⁴ Article 16 of the Constitution permits the special provisions concerning reservation in public employment.⁵ These are the provisions under part III of the constitution to take affirmative measures to promote rights and welfare of scheduled tribe communities.

Article 46 of the constitution has a specific significance in the context of tribal welfare.⁶ This article puts the obligation on state to promote educational and economic interest of scheduled tribe with special care to protect from the inequality and social injustice. The welfare of tribals is not the matter of government policies so far, but it is the constitutional mandate to preserve the rights of the tribes and protect them from any social exclusivity.

In Article 330 and Article 332 of the constitution allows for the political representation and allows the reservation for the seats to scheduled tribes in the House of People and State Legislative Assemblies.⁷ These representation enables the participation of tribal communities in legislative process and contributes to political inclusivity.

Protection of Tribal Areas and Land Rights

The Fifth schedule of the constitution provides special administrative mechanism to control of specific Scheduled Areas and Scheduled Tribes in the State under the ambit of Article 244(1).⁸ It also provides the tribals advisory council and gives the governor special power concerning the administration of Scheduled Areas. The governor has authority to make regulations regarding matters which involves the restriction on transfer of land, allotment of land to the members of Scheduled Tribes and regulations on money lending activities.

It shows the close relationship between the tribal communities and land. Land is not only the source of economic asset but it is significant source of livelihood, cultural identity and community life. In *Samatha v. State of Andhra Pradesh*, the supreme court emphasised the importance of land to protecting the social, economic and cultural interest of the tribal communities. This judgement recognised the protective purpose of the fifth schedule and the

⁴INDIAN CONSTI. art. 15.

⁵INDIAN CONSTI. art. 16.

⁶INDIAN CONST. art. 46.

⁷INDIAN CONSTI. art. 330, 332.

⁸INDIAN CONSTI. art. 244(1), sched. V.

importance of preventing the land of tribal people.⁹

The sixth schedule of the constitution provides the specific model of protection for specified tribal areas in Assam, Meghalaya, Tripura and Mizoram. It provides for the autonomous district and regional council with administrative, legislative and judicial functions over specific matters. This framework recognises the local autonomy and customary practices in tribal governance.

Forest Rights and Community Participation

The forest is an important source of life. It is significant to livelihood and cultural rights of many tribal communities. The Forest Rights Act, 2006 recognises the forest rights and in forest dwelling for the scheduled tribes and other traditional forest dwellers.¹⁰ The Act provide the recording and protecting the rights which recognises the individual and community forest rights.

The Act also gives a significant role to gram sabha in the recognition and determination of forest rights. This provision strengthens the community participation and recognises the role of tribal communities in managing the natural resources available in the forest which is connected to their traditional habitat.

In Orissa Mining Corporation Ltd. v. Ministry of Environment and Forest, the Supreme court held that, the participation gram sabha in the matters affecting the religious and cultural rights of the tribal community.¹¹ This judgement signifies the community participation when development projects affect the land, forest resources of the tribals to practice cultural sacraments guaranteed under various legislation.

The relationship between development and tribal rights requires to seek the balance between economic objectives and constitutional protection. The development project such as mining, redevelopment projects, industries and infrastructure has enough potential to affect the tribal lands and violates the rights of the tribals through displacement and loss of livelihood. The constitutional and legislative framework ensure that the development would not hamper or

⁹Samatha v. State of Andhra Pradesh, (1997) 8 SCC 191

¹⁰The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, No. 2 of 2007, pmbl., India code (2007).

¹¹Orissa Mining Corporation. Ltd v. Ministry of Environment and Forests, (2013) 6 SCC 476 (India).

disregard the rights of the tribal people and the dignity of the affected communities.

Political and Institutional Safeguard

The constitutional provisions provide the institutional framework to protect schedule tribe interest. Article 338A provides for the National Commission for Scheduled Tribes which is the constitutional body entrusted with significant functions regarding the investigation and monitoring the matters relating to rights of the Scheduled Tribes.¹² The Commission inquire the compliant regarding the deprivation of rights and safeguards and participate into planning and process to develop the standards of ST community with socio-economic development.

Article 339 provides for the Union to control over the administration of Scheduled Areas and welfare of the Scheduled Tribes.¹³ The provision ensures the President to appoint a Commission to report on the administration of Scheduled Areas and welfare of the Scheduled Tribes. These institutional arrangements reflect the intention of constitutional makers to maintain the continuous governmental attention towards tribal welfare.

The Panchayat (Extension to the Scheduled Areas) Act, 1996 make the provisions for democratic participation in Scheduled Areas.¹⁴ This act extends the framework of panchayat raj to scheduled areas while recognising the role of gram sabha and traditional community institutions.

Constitutional Protection and Social Justice

The constitutional safeguards represent to seek a transform equality into meaningful social justice. These safeguards recognise the historical discrimination faced by the Scheduled Tribes and further guarantees the special measures for education, employment, political participation and protection of tribal areas.

The fifth and sixth schedules provide special arrangements for tribal arrangements, whereas the laws to protect land, forest and local governance strengthen the protection of tribal communities and traditional resources.¹⁵

¹²INDIAN CONSTI. art. 338A.

¹³INDIAN CONSTI. art. 339

¹⁴The Provisions of the Panchayats (Extension to the Scheduled Areas) Act, No. 40 of 1996, India Code (1996).

¹⁵INDIAN CONST. art. 244, scheds. V-VI.

Contemporary Challenges

The constitutional safeguards provide extensive legal and fundamental protection, still the practical challenges continue to affect the livelihood of the tribals. There are various challenges such as land alienation, migration, inadequate education and healthcare facilities, inadequate implementation of forest rights, poverty and more precisely accessing the legal remedies in the tribal areas remains an important concern.

The migration and displacement are another major concern which related to development induced displacement. The developmental infrastructure like mining and industrial projects frequently raises the concern of land, forest and livelihood and cultural rights of the tribal people. The constitutional framework requires to address such issues and examined through principles of equality, dignity, participation and protection of vulnerable communities.

Suggestions

The implementation of these constitutional safeguards will necessitate increased cooperation between Central and State Governments. Tribes Advisory Councils and the National Commission for Scheduled Tribes require proper institutionalization so that these constitutional provisions become real safeguards.

Legal consciousness is another area that requires further consideration. Information regarding rights to land, forests, reservations, government schemes and legal measures should be provided in accessible regional languages. Legal aid institutions and local administrative institutions can do much in this regard in terms of enhancing access to justice.

The functions of Gram Sabha should be recognized adequately in Scheduled Areas. The involvement of tribals in decision-making about lands, forests, natural resources, and development projects is very important for good governance and helps tribal communities take part in decision-making on matters directly related to their life.

The protection of land and livelihood of tribes will necessitate efficient enforcement of already existing safeguards. Administrative institutions should keep record transparently, resolve issues of unlawful transfer of lands and enforce properly the relevant acts relating to forests and lands. Rehabilitation and livelihood protection should be incorporated in development policies.

Conclusion

The Constitution of India provides a comprehensive framework for protecting the rights and interests of Scheduled Tribes. The guarantees of equality and affirmative action, political representation, special administration of tribal areas, protection of land and forest interests, autonomous governance and constitutional institutions together create a distinctive system of tribal protection. The Fifth and Sixth Schedules demonstrate the constitutional recognition of the importance of territorial protection and community autonomy, while Articles 46 and 338A strengthen the broader objectives of social justice and institutional protection.

The constitutional approach towards Scheduled Tribes reflects a movement from formal equality towards substantive equality. Protection of tribal communities requires more than reservation or welfare measures; it also requires respect for land, forests, culture, customary practices, community participation and human dignity. The Forest Rights Act and PESA supplement the constitutional framework by strengthening community participation and recognition of traditional rights.