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## **Constitutional provisions for tribal safeguard**

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### **Abstract**

The Constitutional Law is a philosophical legal document. It is replete with ideologies having binding force. Constitutional provisions are living instruments to safeguard the interests of people in general and special provisions for tribal people in particular. Special Constitutional provisions are not arbitrary discrimination but are protective discrimination that is indispensable for tribal development in India. The special provisions are aimed to prevent discrimination against the tribal people to protect their rights. It improves the standard of living of tribal people socially and economically to see them in the mainstream of the society. The National Commission for Tribal and Ministry of Tribal Affairs are the leading organizations to provide and implement various schemes and policies for safeguard the life of the tribal people with a view to protecting them from social injustice and all forms of exploitation. This paper is made as an attempt to explore the constitutional provisions for tribal safeguards and their development in India.

**Keywords:** constitution, reservation, acts, schedule, commission, ministry

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### **Introduction**

The framers of the Indian constitution with their prescience provided special status for socio-economic development of tribal people. Many laws, schemes and policy have been devised and separate administrative system has been created to bring the tribal people to the main stream of an ideal democratic set up. The tribal law and administration provides not only constitutional safeguards and privileges but also legal acclamation to the tribal people.

The Constitution of India seeks to secure to all its citizens, among other things, social and economic justice, equality of status and opportunity and assures the dignity of the individual. All rights available to the citizens of India, enshrined in the Constitution or any law of the land or any order of the Government are equally available to the scheduled tribe. The Constitution of India has several provisions to prevent discrimination against the people belonging to scheduled tribes and to protect their rights. Dr. B.R. Ambedkar in drafting committee drafted Constitution of India in 1950. In order to balance cast system in the society, they represented certain rights, duties, safeguards, privileges, reservation for scheduled tribes.

Consequently there was a need to provide these tribal people some rights for their welfare and development. Pre-independence, Mahatma Gandhi fought for the rights of the tribal people and recognized them as Girijan or the children of the forest God and post-independence, the Government of India spent lots of resources to improve the standard of living of tribal people and also helped them through legislations and developmental programmes in safeguarding their rights.

### **Constitutional Provisions for Tribal Protective and Developmental Safeguards**

There are 700 tribes in 17 states; Scheduled Tribes were declared by the President of India under Article 342 clause 9 (i) of the Constitution. The entire citizens enjoy the rights provided by law

in general but Scheduled Tribes have been provided special safeguards which may be summed up as follows:-

### **Definition and specification of tribes**

Article 342 Scheduled Tribes

(1).The President may with respect to any State or Union Territory and where it is a State after Consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that or Union Territory as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (2) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

Article 366 Definition

In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say; 366(25) "Scheduled Tribes" means such tribes or tribal communities or parts of groups within such tribes or tribal communities as are deemed under article 342 to be Scheduled Tribes for the purposes of this constitution.

Various safeguards have been given by the Constitution of India for protection and development of the tribal people. The Constitutional provisions relating to safeguards are of two kinds i.e. (1) Protective Safeguards and (2) Developmental Safeguards.

### **Protective Safeguards**

1. Educational and Cultural Safeguards
2. Social Safeguards

3. Political Safeguards
4. (iv) Service or Employment Safeguards

### **Developmental Safeguards**

1. Economic Safeguards

### **Protective Safeguards**

#### **Educational and Cultural Safeguards**

Article 15: Prohibition of discrimination on the grounds of the religion, race, cast, sex or place of birth.

Article 15(4): The state is permitted to make any special provision for the advancement of the Scheduled Tribes who are socially and educationally backward. This is the fountain head of all the provisions regarding compensatory discrimination for Scheduled tribes and Scheduled Castes.

Decision of the Supreme Court in *State of Madras V. Champakam Dorairanjan* that state forms any special provisions for any socially and educationally backward classes of citizens for the Scheduled Castes and Scheduled Tribes.

Article 15(5): The State is empowered to make any special provision for the advancement of the Scheduled Tribes regarding their admission to educational institutions both in public and private, aided or unaided schools by the State, except the minority educational institutions. This Article is partly restatement guaranteed under Article 15(4) by the 1<sup>st</sup> Amendment in 1951.

Article 19: Protection of certain rights regarding freedom of speech and expression.

In *Ramesh Thapar V. State of Madras, Patanjali Sashtri, C. J.* Observed-“Freedom of speech and the press lay at the foundation of all democratic organizations for without free political discussion no public education which is so essential for the proper functioning of the process of popular government is possible.”

Article 19(5): Rights of free movement and residence throughout the territory of India are guaranteed to every citizen, special restriction may be imposed by the state for protection of the interests of the members of Scheduled Tribes.

In the case *N.B. Khare V. State of New Delhi*, The Supreme Court stated on the following grounds;

- a. In the interest of general public.
- b. For the protection of the interests of any Scheduled tribe.

Article 29: Protection of language, script and culture of minorities through educational institutions including Scheduled Tribes. This Article provides protection to Scheduled tribes communities to preserve their language, dialects and cultures. The state not by law enforce upon it in any other culture or language.

In *D.A.V. College, Jullundur V. State of Punjab*, the Supreme Court held that the setting up of the Guru Nanak Dev University at Amritsar to promote, inter alia, the studies and research in Punjabi language and literature and to language and culture did not infringe Article 29 Right of a citizen to admission to educational Institutes.

Article 46: The state should promote with special care in educational and economic interests of the Scheduled Tribes and protect them from social injustice.

Article 350: The Constitution also gives right to submit a representation for the redress of grievance to any officer or authority of the Union or a State in any of the languages used in the Union or in the states as the case may be.

Article 335: Allows relaxation in qualifying marks for admission in educational institutions for Scheduled Tribes and Scheduled castes.

### **Social safeguards**

Article 14: Equality before law and equal protection of law.

In *Indira Nehru Gandhi V. Raj Narain*, the majority of the Supreme Court held that the right to equality conferred by Article 14 is a basic structure of the constitution and an essential feature of democracy or rule of law.

Article 17: Abolition of untouchability and prohibition of its practice. Article 17 prohibits hostile treatment of Harijans or Dalits. Scheduled Castes and Scheduled Tribes (Prevention and Atrocities Act, 1989) has been passed by Indian Parliament to prevent the offences of atrocities against them. It provides special Courts for trial such offences and for relief and rehabilitation of the victims of such offences and matters connected therewith or incidental thereto and duty has been imposed on the state government to ensure effective implementation of the provisions of the Act.

It has been held by the Supreme Court in *Peoples' Union for Democratic Rights V. Union of India* that whenever a fundamental right contained in Article 17, 23 or 24 was being violated by a private individual, it would be the Constitutional obligation of the state to take necessary steps to interdict such violations and ensure that such person should respect that right.

Article 21: Protection of life and personal liberty including Scheduled Tribes.

In *Meneka Gandhi V. Union of India* case the Supreme Court gave a new dimension to Article 21. It held that the right to live is not merely confined to physical existence but it includes within its ambit the right to live with human dignity.

Article 21(A): Right to elementary education including Scheduled Tribes. This Article is inserted by the Constitution 86<sup>th</sup> Amendment Act, 2002.

It states that the state shall provide free and compulsory education to all children of the age 6 to 14 years in such manner as the state may, by law, determine in the case; *Mohini Jain V. State of Karnataka*

Article 23: It prohibits the system of bonded labour in human being and forced labour.

This Article protects the individual not only against the State but also private citizens. It imposes a positive obligation on the state to take steps to abolish evils of “traffic in human beings” and beggar and other similar forms of forced labour wherever found. In *Sanjit Roy V. State of Rajasthan*, it has been held that the payment of wages lower than minimum wages to the person employed on famine relief work is violate of Article 23.

Article 24: It prohibits employment of children below the age of 14 years in factories and hazardous employment.

The Supreme Court in *People's Union for democratic Rights V. Union of India* held that building construction work was such hazardous employment where children below 14 years should not be employed and prohibition contained in Article 24. The Parliament of India enacted the Child Labour (Prohibition and Regulation Act, 1986), which specially prohibits the child labour in any working place.

### Political Safeguards

Article 164: It empowers the State to establish special special Ministry of welfare of the scheduled tribes in Jharkhand, Madhya Pradesh and Odisha.

Article 330: Reservation of seats for Scheduled Tribes and Scheduled Castes in the House of the people ( Lok Sabha).

Article 332: It deals with reservation of seats for Scheduled Tribes and Scheduled Castes in the legislative Assembly of States.

Article 334: 10years period for reservation (Amended several times)

Article 371: Special provisions in respect of North Eastern States and Sikim. Article 371(A), 371(B), 371(C) fifth and sixth schedules of the Constitution have been mentioned the tribal areas like Nagaland, Assam and Manipur.

Article 40: Organization of village Panchayats. Provides reservation in 1/3 seats in panchayats to Scheduled tribes and Scheduled Castes.

Article 243D: It deals with the reservation of seats in Panchayati raj institutions.

Article 243T: Municipality for Scheduled Tribes and scheduled Castes.

### Service or Employment Safeguards

Article 16(1): Equality of opportunity for all the citizens in employment to any office.

In Balaji V. State of Mysore, Supreme Court declared that reservation exceeding 50% would be unconstitutional and invalid. The Court stated that such reservation had the effect on equality of opportunity in Article 16(1).

Article 16(4) Reservation in appointment any backward class in the service under state and they are not adequately represented in the public services.

In T. Devananda V. Union of India, the Supreme Court carry forward rule regarding reservation for candidates belonging to Scheduled Tribes and Scheduled Castes.

Article 16(4A): Promotion to the Scheduled Tribes in the service under central or state government. This Article empowers the state to reserve appointments or posts in favour of any backward class of citizens in employment.

Article 16(4B): Allowed reservation in promotion to breach the 50% ceiling set on regular reservations. This is known as carry forward Rule.

Article 335: Scheduled Tribes claim in the appointment to the service with the maintenance of efficiency of administration.

Article 320(4): Functions of the Public service Commission. It shall be duty of the union and state public Service Commission to conduct examinations for appointment in the services.

### Developmental Safeguards

#### Economic Safeguards

Article 46: Directive Principle of State Policy directed to the leaders in future to promote educational and economic interests of Scheduled Tribes and protect them from social injustice and all forms of exploitation.

Article 244: The Constitution envisages a special system of administration for certain areas designated as "Scheduled areas" and Tribal areas".

Article 244 (A): It deals with the formation of an autonomous state comprising certain tribal areas in Assam and creation of local legislature or council of ministers or both.

Article 275(1): The Union Government can provide the special grants for the welfare of Scheduled Tribes.

Article 339(2): Empowers the Union Executive to issue directive to states to draw up and execution of schemes for the welfare of the Scheduled Tribes.

### Fifth Schedule of the Constitution

Article 244:

The fifth schedule, the administration and control of Schedule Areas and the Scheduled Tribes in any state except Assam, Meghalaya, Tripura and Mizoram by ensuring submission of Annual Report by the Governor to the President of India regarding the Administration of Scheduled Areas and setting up of a Tribal Advisory Council to advice on such matters pertaining to the welfare and advancement of Scheduled Tribes.

### Sixth Schedule of the Constitution:

The sixth schedule special provisions for the administration of Tribal Areas in the states of Assam, Meghalaya, Tripura and Mizoram by designating certain tribal areas as Autonomous Districts and Autonomous Regions by constituting District Councils, Autonomous Council and Regional Councils.

### Eighth Schedule of the Constitution:

There are 22 official languages in India under the 8<sup>th</sup> schedule of the Indian Constitution. Santali, Maithili, Bodo and Dogri were added in 2003 by 92<sup>nd</sup> Amendment Act.

### Important Constitutional Amendment Acts for Empowerment of Tribes

#### 45<sup>th</sup> Constitutional Amendment Act, 1985

45<sup>th</sup> Constitutional Amendment Act, 1985 extended reservation for Scheduled Castes and Scheduled Tribes by another 10years till 1990.

#### 51<sup>st</sup> Constitutional Amendment Act, 1984

51<sup>st</sup> Constitutional Amendment Act provided for the reservation of seats in the Lok Sabha for Scheduled Tribes in Meghalaya, Arunachal Pradesh, Nagaland and Mizoram as well as in the Legislative Assemblies of Meghalaya and Nagaland.

#### 57<sup>th</sup> Constitutional Amendment Act, 1987

57<sup>th</sup> Constitutional Amendment Act of 1987 provided the reserved seats for the Scheduled Tribes in the legislative Assemblies of the states of Arunachal Pradesh, Meghalaya, Mizoram and Nagaland.

#### 65<sup>th</sup> Constitutional Amendment Act, 1990

The Act provided for the establishment of a multi-member National Commission for Scheduled tribes and Scheduled Castes.

#### 72<sup>nd</sup> Constitutional Amendment Act, 1992

72<sup>nd</sup> Constitutional Amendment Act, 1992 provide for reservation of seats in the Legislative Assemblies of Tripura for Scheduled Tribes.

**77<sup>th</sup> Constitutional Amendment Act, 1995**

77<sup>th</sup> Constitutional Amendment Act, 1995 provide for reservation in promotion in governmental services for the Scheduled tribes and Scheduled Castes.

**82<sup>nd</sup> Constitutional Amendment Act, 2000**

82<sup>nd</sup> Constitutional Amendment Act, 2000 provide making provisions for relaxation in qualifying marks in any examination of central and states governmental service and promotions for the Scheduled tribes and Scheduled castes.

**83<sup>rd</sup> Constitutional Amendment Act, 2000**

83<sup>rd</sup> Constitutional Amendment Act, 2000 provide that there is no reservation of seats for Scheduled Castes in Panchayats in Arunachal Pradesh, because there are no Scheduled Tribes and the state is Tribal populated.

**89<sup>th</sup> Constitutional Amendment Act, 2003**

89<sup>th</sup> Constitutional Amendment Act, 2003 added Article 338A and provides for the creation of National Commission for Scheduled Tribes.

**93<sup>rd</sup> Constitutional Amendment Act, 2005**

93<sup>rd</sup> Constitutional Amendment Act, 2005 provide the state to make special provisions for socially and educationally backward classes, Scheduled Castes and Scheduled Tribes in governmental and private educational institutions.

**94<sup>th</sup> Constitutional Amendment Act, 2006**

94<sup>th</sup> Constitutional Amendment Act, 2006 pertained to provision of a separate Minister of Tribal Affairs for states of Jharkhand, Madhya Pradesh and Odisha. This Amendment stipulated that Article 164 of the constitution in clause (1), in the provision for the word "Bihar", the word "Chhattishgarh", "Jharkhand" shall be substituted.

**95<sup>th</sup> Constitutional Amendment Act, 2009**

95<sup>th</sup> Constitutional Amendment Act, 2009 extended the reservation of seats for Scheduled Tribes and Scheduled castes in Lok Sabha for another 10 years in Article 334 of the Constitution for the words seventy years was substituted.

**Agency for monitoring safeguards****National Commission for Scheduled Castes and Scheduled Tribes**

The Constitution of India under Article 338A provides for the establishment of a National Commission for implementing welfare schemes for Scheduled Castes and Scheduled tribes and to safeguard their interests. This Commission is guarding the rights and privileges of the backward people. Commission was passed in 65<sup>th</sup> Constitutional Amendment Act of 1990.

- a. It investigates and monitors all matters relating to safeguards and about violation of tribal rights. It inquires specific complaints with respect to deprivation of rights and safeguards of Scheduled Tribes.
- b. It is to advice the government for planning process of socio-economic development. It serves as a nominee of the central government and manages the non-official agencies for amelioration of the conditions of Scheduled Tribes and Scheduled castes.

**Ministry of Tribal Affairs**

A new Ministry of tribal Affairs was formed in 1999 to provide a sharp focus on the welfare and development of the Scheduled Tribes. Under 89<sup>th</sup> Constitutional Amendment Act, 2003, a separate National Commission was set up. This Act amended Article 338 and added a new Article 338A. It came into existence in 2004. Ministry of Tribal Affairs has been implementing several programmes/schemes for empowerment of the tribal people. It has adopted overall development and mainstreaming the tribal people in the country. It includes education, health, sanitation, skill development, livelihood and infrastructures. Under the sixth schedule the Constitution has provided special provisions for North-eastern states like Assam, Meghalaya, Tripura and Mizoram. The report of the Commission is placed before the parliament by the President and before the state legislatures by the Governor.

**Conclusion/Suggestions**

The framers of the Indian Constitution were concerned about the problems of tribes. Article 32 of the Constitution provides the right to Constitutional remedies. All the Articles discussed in the content are in favour of tribe preservation, upliftment, safeguard and socio-economic development. The framers of the Constitution wanted to build an egalitarian Indian society through these Articles. Both the Central government and State government have the responsibility to take measure for wellbeing of tribes and towards that end create social consciousness.

Today, tribal people are not even able to demand their rights due to poor response of the authorities. Moreover when they approach the authorities to claim their rights, they are asked to produce certain documents which they generally do not have and thus they fall prey to corruption. Consequently the fate of the tribal people is yet to be up to the mark despite there being a rich legislation because of poor or improper implementation.

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