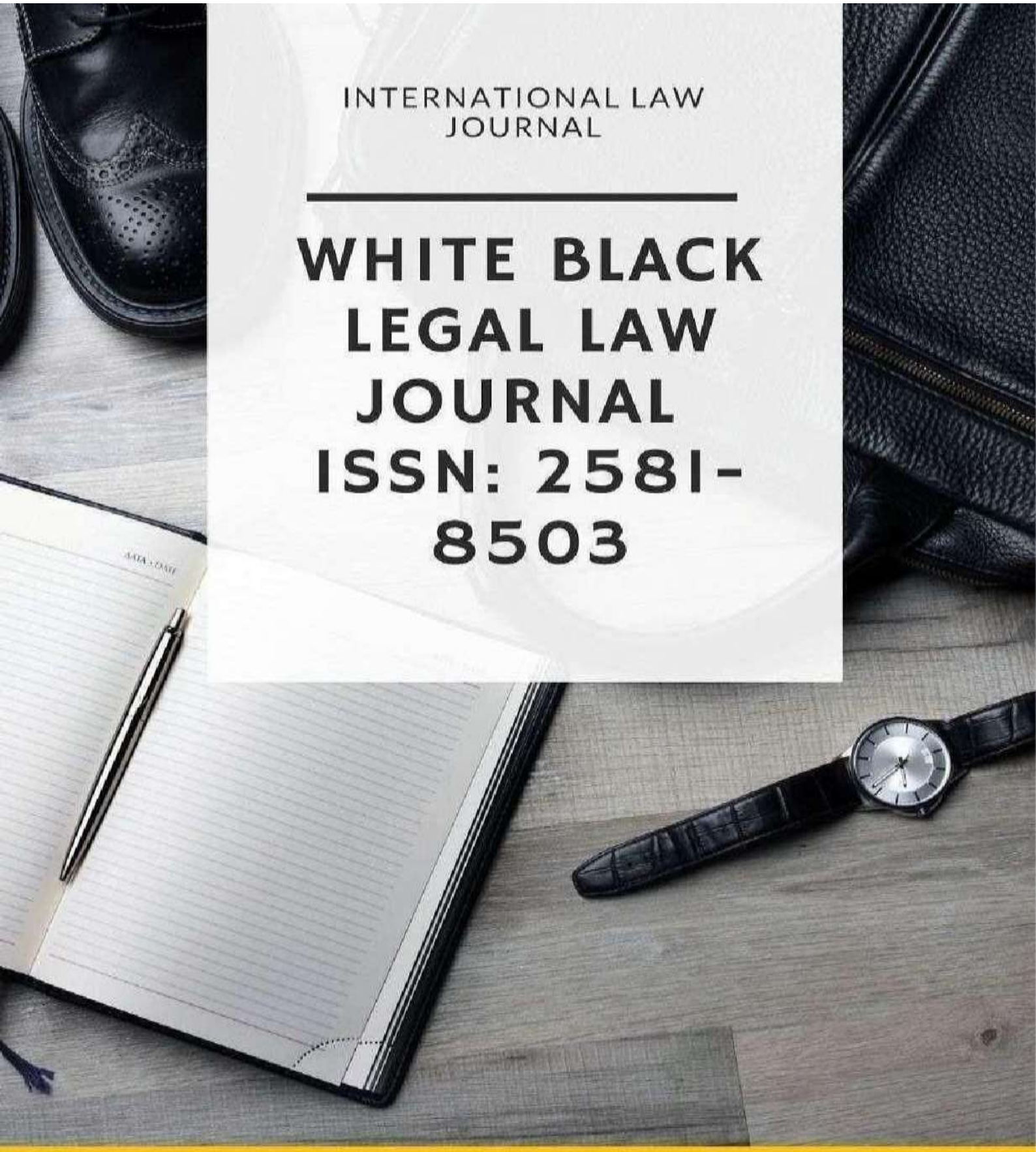

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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A STUDY ON THE CONSTITUTIONAL SAFEGUARD OF FIFTH SCHEDULE

AUTHORED BY - ARUNBABY STEPHEN & ASHIMA P A

Introduction

Scheduled tribes are defined under Article 366(25) of the Indian Constitution. It says that Scheduled tribes are those tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes. Article 342(1) states that the President may with respect to any State or Union Territory, and where it is a State, after consultation with the Governor of the State, specify the tribes or tribal communities which shall, for the purpose of the Constitution, be deemed to be Scheduled Tribes. As per the information available on the website of National Commission for Scheduled Tribes there are over 700 tribes (with overlapping communities in more than one State) that have been notified under Article 342 of the Constitution of India, spread over different States and Union Territories of the country. The largest number of main tribal communities (62) has been specified in relation to the State of Orissa. The Scheduled Tribes have been specified in relation to all the States and Union Territories except Haryana, Punjab, Chandigarh, Delhi, and Pondicherry.[1]

Our Constitution contains ample provisions to ensure that Scheduled Castes and Scheduled Tribes are protected from discrimination and exploitation. The framers were aware of these people's miserable conditions and oppressed plight and incorporated several provisions in our Constitution for their protection and advancement. Article 15(4) enables the State to make special provisions for the advancement of socially and educationally backward classes of citizens or for Scheduled Castes and Scheduled Tribes. Similarly, Article 16(4) enables the State to make any provision for the reservation of appointments or posts in favour of any backward class of citizens in India who are not adequately represented in the services under the State. Article 16 (4A) provides for reservation in matters of promotion in favour of Schedule Castes and Scheduled Tribes. Article 46 of our Constitution

[1] https://ncst.nic.in/content/frequently-asked-questions last accessed on 30/11/2023

mandates the State to promote the educational and economic interests of the weaker sections of the people with special care, especially Scheduled Castes and Scheduled Tribes. Article 243(D), which the Seventy-third Amendment Act inserted, provides for the reservation of seats for Scheduled Castes and Scheduled Tribes at Panchayats, and Article 243 T, which the Seventy-Fourth Amendment Act inserted, provides the same in the case of Municipalities. Article 330 reserves seats for Scheduled Castes and Scheduled Tribes in the House of the People, and Article 332 extends the same to state legislative assemblies. Article 335 imposes a duty on the State to take into consideration the claims of members of Scheduled Castes and Scheduled Tribes, along with the maintenance of efficiency of administration while making appointments to services and posts. Article 338A of the Indian Constitution, which the Eighty-ninth Amendment Act inserted, provides for the establishment of a National Commission for Scheduled Tribes, and Article 339 of the Constitution provides that executive power of the Union shall extend to giving of directions to a State as to drawing up and execution of schemes essential for the welfare of the Scheduled Tribes in the State. Finally, Article 244(1) provides that provisions of the Fifth Schedule shall apply to the administration and control of Scheduled Areas and Scheduled Tribes in any State other than Assam, Meghalaya, Tripura, and Mizoram and Article 244(2) provides that provisions of Sixth Schedule shall apply to the administration of tribal areas in State of Assam, Meghalaya, Tripura, and Mizoram. The historical background and context for these expansive safeguards have to be understood before we move into the intricacies of the Fifth Schedule of the Constitution.

Historical Background

The Constituent Assembly, by providing for notifying certain communities as *Scheduled Tribes*, intended the continuation of the system of *Excluded Areas* as provided for in the Government of India Act, 1935.[2] This classification was the result of recommendations made by the Indian Statutory Commission (Simon Commission), which examined in detail the different aspects related to the administration of tribal areas.[3] The commission suggested that tribal communities should be protected from economic subjugation and allowed to live according to their ancestral customs and traditions.[4]

[2] Von fürer-haimendorf, christoph. "*the aboriginal tribes of india: the historical background and their position in present-day india*." Journal of the Royal Society of Arts, vol. 98, no. 4832, 1950, pg 998.
[3] Scheduled Districts Act, 1874 was the first legislative step taken to address the problems of these areas. According to the provisions of the Act, the executive could make necessary modifications with respect to any enactment in force in British India while extending the same to Scheduled districts.
[4] *The Fifth Schedule*, Dr B.D.Sharma Volume 1, Sahyog Pustak Kuteer Trust, New Delhi, pg 28

The commission was of the opinion that the responsibility of tribal tracts should be left to the Centre since the Provincial governments would not be in a position to spare financial resources for the same.[5] The commission suggested that tribal areas be divided into categories, *Excluded* and *Partially Excluded* Areas. This classification and a scheme of administration for these areas were adopted in the Government of India Act of 1935.[6] Sections 91 and 92 of the Government of India Act, 1935, discussed the administration of excluded and partially excluded areas where the Governor had a very important role. Section 91(1) stated that His Majesty may, by Order in Council, declare certain areas as excluded or partially excluded. Section 91(2) dealt with the alteration of boundaries of excluded areas and the creation of new excluded areas in case of the formation of a new province or alteration of boundaries of a province. Section 92 (1) stated that even though the executive authority of a Province extended to an excluded or partially excluded area within its territory, no act of the Federal legislature or of the Provincial Legislature shall apply to an excluded area or a partially excluded area unless the Governor by public notification directed so. While giving such direction, the Governor could modify it or subject it to exceptions. Section 92(2) of the Act gave the Governor power to make regulations for peace and good government in any Excluded or Partially Excluded area, and such regulations could repeal or amend any federal or provincial legislation subject to the assent of the Governor-General. Section 92(3) granted the Governor power to act in his discretion with respect to excluded and partially excluded areas.

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The Constituent Assembly, while adopting a Constitution for our nation, discussed two reports submitted by North East Frontier (Assam) Tribal and Excluded Areas Sub-Committee and Excluded and Partially Excluded Areas (Other than Assam) Sub-Committee. These sub-committees were set up by the Advisory Committee on Minorities and Fundamental Rights in their meeting held on 27th February 1947, and these two sub-committees submitted their report after undertaking extensive tours of provinces and interacting with representatives of the people and the provincial governments.[7] The report of the Sub-Committee on Excluded and Partially Excluded Areas (Other than Assam) contains

[5] Id pg 29

[6] The Commission realized that only central government can efficiently address the issues of backward classes. At the same time it did not want these areas to be separated from the provinces. Hence it suggested a system where by Governor would act as an agent of the central government in administration of these areas and the degree of backwardness of each area would determine how far the governor would act in consultation with his ministers. However the Govt of India act,1935 did not adopt this suggestion of centralized administration. See *B.Shiva Rao, The Framing of India's Constitution* Volume 5 cited in *Samatha v State of Andhra Pradesh & Ors.* (1997) 8 SCC 191

[7] Appendix C, Annexure I, Constituent Assembly Debates, Volume 7, Thursday, 4th November, 1948

the details regarding the geographical extent of these categories. The report notes that the excluded areas are few in number and consist of Laccadive islands, the Chittagong Hill tracts in Bengal and the Waziris of Spiti and Lahoul in the Punjab.[8] In the case of Partially Excluded Areas, the committee observed that they were not altogether excluded from the scope of Provincial Ministries like the excluded areas, nor were their expenditure outside the scope of the legislature. The committee noted that the administration of areas, especially in Central Province and Bombay, has not been different from the rest of the province, and different systems prevailed only in Agency Tracts of Madras and Orissa and in Santal Parganas.[9] Committee pointed out that although exclusion or partial exclusion has been in force for a period of time the benefits of the same are not noticeable. In the case of excluded areas, where the sole responsibility of administration was with the Governor and provincial legislatures had no vote on the revenues earmarked for these areas, no definite program for the development of these areas was formed. Similarly, partially excluded areas also indicated no visible change. The scheme's greatest weakness was highlighted as the weak representation of these areas in legislative assemblies along with no special financial provisions. The report concluded that partial exclusion or exclusion has been of no practical value.[10] The committee stated that land is the only thing left to the aboriginals and suggested that, atleast in certain areas, laws of the provincial legislature which cater to the needs of the majority should not be automatically extended. The subcommittee proposed that these areas should be known as *Scheduled Areas* in the future. Subcommittee proposed the establishment of Tribes Advisory Council for the proper administration of tribal areas.[11] The committee suggested that, at least in certain subjects, laws passed by the Provincial Legislature should not be applied in Scheduled Areas if the Tribes Advisory Council did not consider them suitable and also suggested that in other subjects, the Provincial Government should have the power to withhold or modify legislation on the advice of Tribes Advisory Council.[12] The Subcommittee also suggested that since the development of these areas is likely to attract heavy expenditure in all schemes approved by the Central Government, it should contribute funds wholly or in part. They also recommended that there should be a statutory provision by which the Central

[8] Appendix D, Annexure III, Interim Report of the Excluded and Partially Excluded Areas (Other than Assam) Sub-Committee, Constituent Assembly Debates, Volume 7, Thursday, 4th November, 1948
[9] Id
[10] Id
[11] Id
[12] Id

Government can require Provincial Governments to draw up schemes.[13] During the Constituent Assembly Debates on the Fifth Schedule, there was considerable support for the idea that all tribal areas should be under the jurisdiction of the Centre government. Prof.Shibban Lal Saksena felt that the existence of scheduled tribes and scheduled areas was a stigma on our nation; hence, these things should become a thing of the past as fast as possible. He suggested replacing the Governor with the President in the proposed Fifth Schedule.[14] Mr. Brajeshwar Prasad also expressed the same sentiments. He was not in favour of Tribes Advisory Council and demanded that land in Scheduled Areas belonging to Adibasis should not be allowed to be sold or mortgaged without official sanction along with the prohibition of moneylending activities in those regions.[15] Mr.Babu Ramnarayan Singh stated that there ought to be only one administration in every part of the country. He believed that the British practice of having separate administration for separate areas did not benefit anyone and warned the Assembly that if they proceeded like the British, they would fail in the future.[16] Mr.Bishwanath Das criticized the Fifth Schedule as creating a new racial virus. His view was that after providing for the protection of essential and necessary rights as Fundamental Rights in our Constitution, there is no justification for creating cleavages and gaps in the form of partially excluded areas and Tribes Councils. He suggested that these distinctions should not be perpetuated since they can encourage separatist tendencies.[17] Shri K.M. Munshi, who answered these apprehensions, pointed out that the idea behind Fifth Schedule is to ensure that Scheduled Tribes does not become isolated communities or little republics but are to be encouraged to take a larger role in the life of their country. He did not support the suggestion that the Governor should be bound by the advice given by Tribes Advisory Council since such a provision would lead to disaster for the tribes.[18] Eventually, the Fifth Schedule, as moved by Dr. Ambedkar, was adopted as part of the Constitution.

An Outline of the Fifth Schedule Provisions

Tribals who were the original inhabitants of our country were pushed back into forests and hills by subsequent settlers. They lived in isolation from other people, with the forest providing them with a natural barrier. Successive governments permitted them to live in isolation, following their own

[13] Id
[14] Constituent Assembly Debates, Volume 9, Monday, 5th September, 1949
[15] Id
[16] Id
[17] Id
[18] Id

tradition and culture without subjecting them to regular laws.[19] The reasons for the same are, firstly, due to their illiteracy and ignorance, their agricultural land could pass to other sections of society, and secondly, they were likely to be cheated by moneylenders.[20] The social customs of these tribes were to be protected without their being subjected to exploitation, and along with it, their educational and living standards were also to be raised so that they could be assimilated with the rest of the population. The Fifth Schedule provides a way for these objectives to be achieved based on the assumption that due to their backwardness and primitiveness, the tribal population cannot safeguard their welfare.

Paragraph IV of the Fifth Schedule provides for establishing Tribes Advisory Council in each State having a Scheduled Area. In other states having scheduled tribes, but no Scheduled Area Tribes Advisory Council can be formed upon the recommendation of the President. The committee shall consist of not more than twenty members, and three-fourths of them shall be representatives of Scheduled Tribes in Legislative Assembly of State.[21] The Tribes Advisory Council has the duty to advise on such matters relating to the welfare and advancement of scheduled tribes as referred to it by the Governor.[22] Paragraph 5 of the Fifth Schedule provides that the Governor may, by public notification, direct that any particular Act of Parliament or of the State Legislature shall not apply to a Scheduled Area. He can also direct that such laws will apply to a Scheduled Area or any part thereof subject to such exceptions and modifications.[23] Any direction given by him can be provided with retrospective effect as well. Paragraph 5 also provides the Governor with the power to make regulations for the peace and good government of a Scheduled Area. Through such regulations, he can prohibit or restrict the transfer of land by or among members of Scheduled Tribes, regulate the allotment of land to scheduled tribes, and regulate the carrying on of moneylending business.[24] Paragraph 6 provides that the expression Scheduled Areas means such areas as the President may declare, and it also provides him with the power to direct that an area or a part of it has ceased to be a scheduled area, increase the scheduled area, alter the boundaries of any scheduled area, etc.[25] Paragraph 7 provides Parliament the power to amend the Fifth Schedule by way of addition, variation

[19] *Samatha v State of Andhra Pradesh & Ors* (1997) 8 SCC 191 ¶136
[20] B. Shiva Rao, *The Framing of India's Constitution* Volume V as cited in *Samatha v State of Andhra Pradesh & Ors* (1997) 8 SCC ¶140
[21] Paragraph 4(1) Fifth Schedule
[22] Paragraph 4(2) Fifth Schedule
[23] Paragraph 5(1) Fifth Schedule
[24] Paragraph 5(2) Fifth Schedule
[25] Paragraph 6(1) and 6(2) Fifth Schedule

or repeal of any provisions. It is also clarified that no such law shall be deemed an amendment for the purposes of Article 368.[26]

Effects, Challenges and Impacts

In *Amarendra Nath Dutta and Ors v State of Bihar and Ors,*[27] the validity of the Amendment Act of 1976, which amended Paragraph 6(2) of the Fifth Schedule, was challenged. Parliament, using the power conferred on it under Paragraph 7, amended the Fifth Schedule, and the Amendment Act was challenged as ultra vires of Article 14 on the ground that it conferred upon the President unguided power to add any new territory to the Scheduled Areas.[28] The Court concluded that power under Paragraph 7(1) is a power to amend the Constitution, and Paragraph 7(2) was only meant to ensure that Parliament did not need to follow the special procedure prescribed in Article 368.[29] Relying on the decision in *Kesavananda Bharati's*[30] case wherein it was held that the expression law in Article 13(2) refers only to the exercise of ordinary legislative power and did not include an amendment of the Constitution, it was stated that an amendment of Fifth Schedule could not be tested with reference to Article 13(2).[31] It was contended that the Constitution's basic structure is damaged by the Amendment Act since the inclusion of a territory in a Scheduled Area was to curtail the power of the elected representatives of that area to make laws for inhabitants of that place.[32] However, the Full Bench decided that whether any particular area shall or shall not be included within the Scheduled Area depends on the President's discretion, which is a power conferred upon by him by the original Constitution and not by the Amendment Act. Hence, the Amendment Act was held as not destroying the basic structure of the Constitution.[33]

The major function of the Tribes Advisory Council is to advice the Governor in matters pertaining to the welfare and advancement of Scheduled Tribes. However, such advice is given only when the Governor seeks it and not suo motu. In *B.K.Manish and Ors v State of Chhattisgarh and Ors*[34] , the

[26] Paragraph 7(1) and 7(2) Fifth Schedule
[27] AIR 1983 Pat 151 (FB)
[28] Id ¶25
[29] Id ¶28
[30] AIR 1973 SC 1461
[31] AIR 1983 Pat 151 (FB) ¶30
[32] ¶36
[33] ¶37
[34] AIR 2013 Chh 19

Chhatisgarh High Court had to decide whether the Governor can act according to his discretion while framing the rules under paragraph 4(3) of the Fifth Schedule. The High Court held that the framing of the rules under this paragraph is something that has to be performed with advise of the cabinet ministers.[35] It was also held that rule 10, which provided that the quorum of the council shall be five members, including the chairperson, was a valid one.[36]

Paragraph 5(2) of the Fifth Schedule empowers the Governor of the State to make regulations for the peace and good government of the Scheduled Areas. One such instance of legislation was *A.P. Scheduled Areas Land Transfer Regulation* 1959. The regulation made by the Governor prohibited the transfer of immovable properties situated in the Scheduled Areas from a member of scheduled tribes to non-tribals without the previous sanction of the state government. In order to facilitate the implementation of these regulations, they were amended by way of the Andhra Pradesh Scheduled Areas Land Transfer (Amendment) Regulation, 1970. The amended regulation stated that all transfers made except those in favour of a tribal would be null and void. This was challenged in the Supreme Court on the grounds that the regulation is void to the extent it controls or restricts the right to transfer immovable property by a non-tribal person.[37] However, the Supreme Court held that a legislation meant for the restoration to the tribals, lands which they had succumbed to non-tribals due to the dubious devices employed by the non-tribals cannot be considered unreasonable.[38] The court pointed out that it is not unreasonable to restore to the tribals what was originally theirs but which they lost because of the exploitative invasion on the part of the non-tribals. The economically stronger non-tribes would, in the opinion of the Court, devour all the available lands and wipe out the identity of tribals if not for the protection guaranteed under Paragraph 5(2) of the Fifth Schedule. The court dismissed the appeal and upheld the regulations. In *Samatha v State of Andhra Pradesh and Ors,*[39] the appellant society approached the Supreme Court challenging the decision of the State government to grant mining leases in favour of non-tribals in Scheduled Areas in violation of the regulation which prohibits Scheduled Area land being transferred to non-tribals. The decision of the Division Bench of the High Court was in favour of transfer. It held that regulation prohibits transfer only by natural

[35] Id ¶29
[36] Id ¶42
[37] *P.Rami Reddy and Ors v State of Andhra Pradesh and Ors* (1988) 3 SCC 433
[38] Id ¶18
[39] (1997) 8 SCC 191

persons and the government was competent to lease its land to non-tribals. The state was holding a large area of land in Scheduled Areas which were rich in mineral deposits. The question to be decided was whether the State Government was exempt from the regulation.[40] The court was of the opinion that there is no reason to consider the word *person* in a narrow sense and held that the executive power of the state to dispose of its property is subject to the provisions of the Fifth Schedule of the Constitution.[41] Court refused to accept the contention that if the impugned regulations are upheld rich mineral wealth of the country will remain unexploited and thus national development will be inhibited. It suggested that minerals could be exploited through tribals or through cooperative societies composed solely of tribes without disturbing the ecology and the forests.[42] The court clarified that the objective of the Fifth and Sixth Schedule is not only to prevent the acquisition, holding, or disposal of land in Scheduled Areas by the non-tribals but it is also to ensure that tribals remain in possession and enjoyment of lands in Scheduled Areas for their economic empowerment, social status and dignity of their person.[43] Except for the mining lease granted in favour of an instrumentality (A.P.S.M.D) of the State all other mining leases or renewals were held as violative of the Fifth Schedule and hence void.[44] The transfer or lease towards A.P.S.M.D was upheld on the ground that the transfer of government land in favour of its instrumentality is only an entrustment in the eye of the law. Since a public corporation acts in the public interest and not for private gain, transfer towards the corporation was excluded from the prohibition under Paragraph 5(2) of the Fifth Schedule and Section 3(1) of Regulation.[45]

In *Chebrolu Leela Prasad Rao and Ors v State of Andhra Pradesh*[46] the decision in *Samatha* was affirmed. The scope of Paragraph 5(1) was under discussion in this case, along with the question of whether fundamental rights can be overridden by the exercise of power under Paragraph 5 of the Schedule. The Government of Andhra Pradesh issued GOMs dated 10/01/2000, which provided for 100% reservation to Scheduled Tribes in respect to appointment to the posts of teachers in Scheduled Areas, which was challenged in this case. It was clarified that Paragraph 5(1) of the Schedule does

[40] Id ¶50
[41] Id ¶87
[42] Id ¶109
[43] Id ¶110
[44] Id ¶126
[45] Id ¶116
[46] (2021) 11 SCC 401

not confer on the Governor power to enact a new law, and it only enables him to modify or exempt certain provisions of the legislation from applying in the Scheduled Areas.[47] Paragraph 5(2) confers plenary powers on the Governor to make regulations for the peace and good government in a Scheduled Area, and such power is subject to the rider that if the Tribes Advisory Council is constituted in a State, the Governor has to consult with the Tribes Advisory Council. Prior assent of the President is mandatory for any such regulation to be put into effect. Governor was held as the repository of faith with respect to deciding the necessity, and it was also pointed out that he could repeal or amend any Act of Parliament or State Legislature in the exercise of making regulations under Paragraph 5(2) of Fifth Schedule.[48] It was clarified that the provisions in the fifth paragraph do not override the fundamental rights guaranteed under Part III and that the Governor is subject to the same limitations applicable to the legislative assemblies.[49] It was also held that the absolute discretion of the Governor to make modifications and exceptions regarding the applicability of laws cannot be exercised arbitrarily since the Constitution does not vest arbitrary power in any constitutional functionary.[50] It was held that by providing 100% reservation to Scheduled Tribes, the impugned order deprived Scheduled Castes and Other Backward Classes of their due representation along with the rights of tribals who are not residents of the Scheduled Areas.[51] GOM's No.3 of 2000 was held constitutionally invalid since it was irrational and violative of the fundamental rights guaranteed under Part III of the Constitution.[52]

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73rd Constitutional Amendment provided for the addition of Part IX to the Indian Constitution. Article 243-B provides for the creation of the Panchayats at village, intermediate, and district levels. However, Article 243-M provided that the particular part will not be applicable to Scheduled and Tribal areas. A committee was appointed under the Chairmanship of Shri.Dilip Singh Bhuria to undertake a study and make recommendations on extension of Panchayat Raj system to Scheduled Areas. Based on the recommendations made by the committee Panchayats (Extension to the Scheduled Areas) Act, 1996 was passed by the Parliament in 1996.[53] The P.E.S.A. Act in Section

[47] Id ¶39.1
[48] Id ¶40
[49] Id ¶63
[50] Id ¶64
[51] Id ¶137
[52] Id ¶145
[53] Committee recommended that Panchayats at different levels in Scheduled Areas should have a majority of members from Scheduled Tribes and also suggested that Chairman and Vice-Chairman should also be Scheduled Tribes.

4(d) provides that the Grama Sabha shall be competent to safeguard and preserve the traditions, customs, cultural identity, and community resources of Scheduled Tribes. Under Section 4(m), the grama sabha has the power to prevent land alienation in Scheduled Areas, and they can take suitable action to restore unlawfully alienated land. The Act in Section 4(g) provided that reservation of seats in Scheduled Areas at every panchayat shall be in proportion to the population of communities in that panchayat for whom reservation is sought to be given under Part IX of the Constitution and also mandated that the post of Chairperson of Panchayats at all levels shall be reserved for the Scheduled Tribes. The constitutional validity of this provision was challenged in *Union of India and Ors v Rakesh Kumar and Ors*[54] wherein along with Section 4(g) of P.E.S.A. Act, certain provisions of Jharkhand Panchayat Act which was enacted to implement the P.E.S.A., was also challenged. The High Court held the second proviso to Section 4(g) as unconstitutional, which provided for cent percent reservation of seats of Chairpersons of Panchayats at all levels in favour of Scheduled Tribes, and an appeal was preferred to Supreme Court. Relying on the decision in *Indra Sawhney v Union of India*,[55] it was argued for the respondents that the maximum reservation that is permissible is 50%.[56] However, the Supreme Court held that principles of reservation, which are used in public employment and for admission into educational institutions, cannot be applied in this particular scenario and clarified that in panchayats located in Scheduled Areas, the exclusive reservation of posts of chairperson for members of Scheduled Tribes is permissible.[57]

CONCLUSION

The Fifth Schedule of the Indian Constitution relies a lot on the Governors of states with Scheduled Areas for its implementation. Even though wide powers have been conferred on the Governors, it has been reported that they have not put those powers into effective use.[58] It was observed that there is hardly a situation where the Governor had initiated a proposal for regulation, and in almost all the situations, the States have either modified the form of an applicable legislation or they have enacted a separate legislation.[59] Conventional practice has been to pass such regulations using Article 163 of the Constitution, which renders the Governor insignificant. This, in turn, renders the extraordinary

[54] (2010) 4 SCC 50
[55] 1992 Supp (3) SCC 217
[56] Id ¶23
[57] (2010) 4 SCC 50 ¶31
[58] Report of the Scheduled Areas and Scheduled Tribes Commission, Govt of India, Volume I, 2002- 2004, pg 56
[59] Id pg 57

powers conferred on the Governor under the Fifth Schedule of the Constitution useless. The Governor is not constitutionally incompetent to act independently for the protection of tribal interests without the aid and advice of the council of ministers. There is nothing that prevents the Governor from having a consultation with the council of ministers before acting in his own discretion under Paragraphs 5(1) and 5(2), but such a step is not a constitutional necessity. It must be remembered that the executive power of the State is subject to the provisions of the Fifth Schedule. Hence, only an interpretation that recognizes the discretionary nature of the Governor's powers flowing from the Fifth Schedule would be truly in consonance with the spirit of the Constitution. The responsibility of the Governor to make a report to the President has to be undertaken very seriously detailing the special efforts and the impact of the special efforts on the overall development of the Scheduled Tribes. The Constitution recognizes the Union government's power to give directions regarding the administration of the Scheduled Areas, which has not been resorted to much, and like other provisions of the Fifth Schedule, it remains scarcely relied on. The Fifth Schedule only covers 30% of the tribal population in the country, and tribal habitations exist in states like Kerala, Tamil Nadu, Karnataka, West Bengal, and Uttar Pradesh that are not covered either by the Fifth or Sixth Schedule.[60] Their demand to be brought under the ambit of the Fifth Schedule continues even today. At the heart of the Fifth Schedule is the goal of peace and good governance in Scheduled Areas. However, with the Fifth Schedule remaining unexplored and its full potential being unrealized, the protection offered by our Constitution to these areas remains an illusion.

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[60] Land and Governance under the Fifth Schedule, An Overview of the Law, Ministry of Tribal Affairs Govt of India, pg 16