



INTERNATIONAL LAW  
JOURNAL

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**WHITE BLACK  
LEGAL LAW  
JOURNAL**  
**ISSN: 2581-  
8503**

**Peer - Reviewed & Refereed Journal**

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated 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

# **BEYOND ASSURANCES: LADAKH'S STRUGGLE FOR AUTONOMY AND LEGAL SAFEGUARDS**

AUTHORED BY - VANSHIKA JHA

## **ABSTRACT:**

The Ladakh region, characterised by its unique cultural heritage and strategic significance, has been subject to historical promises and constitutional provisions aimed at preserving its distinct identity and autonomy. However, the implementation of these assurances has often fallen short, raising questions about the efficacy of legal mechanisms in protecting Ladakhi rights, particularly against governmental actions, due to which the sense of fear about loss of tribal identity concerns every Ladakhi. As the Ladakhi people continue with their hunger strike, the demand for greater autonomy of Ladakh and the legal questions arising out of the same have come to light. This paper therefore, firstly traces the present concerns of the Ladakhis and assesses the rights of the Ladakhi people with respect to their claims concerning schedule VI protection under the Indian Constitution. Furthermore, it assesses the burden on the government and the duties imposed on it vis-a-vis the protection of Ladakhi territory and safeguarding of Ladakhi rights. Drawing from jurisprudential analysis, this research explores the theoretical foundations and practical applications of the Hohfeldian Analysis within the context of governmental obligations towards indigenous communities like the Ladakhis. Furthermore, the study delves into the complexities inherent in reconciling promises made to indigenous peoples with broader governmental policies and interests, especially in regions of strategic importance like Ladakh. It considers the tensions between sovereignty, governance, and indigenous rights, elucidating the challenges in ensuring meaningful protection for Ladakhi communities within the constitutional framework. Through a multidisciplinary approach integrating legal analysis, historical inquiry, and indigenous rights perspectives, this paper aims to contribute to the discourse on indigenous jurisprudence and constitutional law in India.

**Keywords:** *Ladakh, Tribal Identity, Sixth Schedule, Indian Constitution, Hohfeldian Analysis, Meaningful Protection*



## **BACKGROUND AND STATEMENT OF PROBLEM:**

Following the repeal of the article 370<sup>1</sup> of the Indian Constitution in 2019, Ladakh has been recognised as a separate Union Territory without Legislature. Following this repeal, the NDA led government made a promise in a governmental understanding between Civil Society Leaders and the Ministry of Home Affairs to mechanise a grant of Schedule Six protection to the Ladakhis. Nevertheless, in a recent meeting that witnessed several protests, the Union Minister Amit Shah declared that the government would not be carrying out extreme measures of granting Ladakh protection under the Sixth Schedule but would nevertheless take into consideration the difficulties being faced by the Ladakhis regarding employment, land and cultural identity. The problem here lies in the very fact that the government made clear commitments to the Ladakhis and assured them of a mechanisation of schedule six protection which was abruptly denied. Therefore, moving beyond the confines of administrative questions, the research problem lies in the effective implementation of protective measures assured to the Ladakhis with respect to their concerns regarding their environment, employment opportunities and a diminishing cultural identity. This paper will delve into a critical analysis of demands to determine the rights of the Ladakhi people vis-a-vis the government's obligations in light of the right-duty analysis in the present framework.

## **RESEARCH QUESTIONS**

In light of the aforementioned background, the crucial research questions that will guide the structure of the paper are as follows:-

1. What rights do the Ladakhi people hold with respect to their territory and what are the burdens on the Government of India with respect to the claims of the Ladakhi people?
2. Upon assessing the rights and duties, what is fair compromise in the given scenario?

## **RESEARCH OBJECTIVES**

By considering the aforementioned research questions, the objectives sought to be achieved by this paper are as follows:-

Research Objectives:

1. To examine the rights of the Ladakhi people concerning their territory in the context of constitutional provisions and international legal frameworks.

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<sup>1</sup> Indian Constitution of 1950, article 370



2. To analyse the obligations of the Government of India towards addressing the concerns and claims of the Ladakhi people regarding employment, land, and cultural identity.
3. To evaluate the extent to which the commitments made by the government align with the rights of the Ladakhi people and the legal obligations imposed upon the government.
3. To propose recommendations for a fair compromise between the rights of the Ladakhi people and the duties of the Government of India, considering the socio-economic and cultural dynamics of the region.

## **RESEARCH METHODOLOGY**

The paper involves a doctrinal synthesis of primary sources such as legal statutes and enactments, judicial precedents, etc. and secondary sources of the law such as Legal Journals, Periodicals and Commentaries on the statutes. By critically examining the burdens on the government vis-à-vis Ladakhi peoples' rights under the Sixth Schedule, it seeks to provide insights into the complexities of indigenous rights protection and avenues for addressing legal and socio-political challenges in safeguarding indigenous autonomy and cultural heritage. By assessing relevant constitutional provisions, legislative enactments, and judicial precedents, the paper evaluates the extent to which such burdens and duties can be applied to enforce commitments made by the government regarding Ladakhi autonomy and cultural preservation.

## **INTRODUCTION**

The schedule 6 of the Indian Constitution<sup>2</sup> provides for protection of tribal populations through the creation of autonomous development councils which have a legislative power to regulate land, public health and agriculture. The resource base and the natural landscape of Ladakh is of utmost value to the ladakhi people who feel that allowing for unregulated entry of population from the mainland will not only lead to an erosion of the natural bounty but also put a strain on the existing resources which will have a direct effect of actively taking away the portion of resource base that the ladakhis have depended on for years. Added to that, the Ladakhi people, isolated from the mainland, have a distinct culture which is a cornerstone of the identity of these individuals. The MHA formed a high power committee headed by Nityananda Rai in order to look into ways to protect this culture. A crucial point brought up by the committee in its discussions was measures for inclusive development and employment generation to ensure

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<sup>2</sup> Indian Constitution of 1950, article 244

not only an equitable distribution of resources but also a regional empowerment which trickles down to increase the quality of life of an average Ladakhi.<sup>3</sup> This demand for a good quality of life is not something that is new to the Indian legal-political ethos and yet what burns the heart of each Ladakhi is a threat to the natural and economic landscape that these people have depended upon for generations. This has the effect of disturbing the equilibrium of the coming generations as it enables more demographic diversity which threatens the security of the original inhabitants. Therefore, the key stakeholders in the current paradigm therefore, are not only the Ladakhi people but the future generations of the same. The major flaw in the current paradigm is the sheer ignorance of the long term effects that the denial of the protection under the sixth schedule can have on their livelihoods. Therefore, this paper will go on to analyse these very flaws through a jurisprudential analysis of rights and duties and propose an alternative paradigm to the existing one.

## **THE RIGHTS OF THE LADAKHI PEOPLE & BURDEN ON THE GOVERNMENT**

The cornerstone of Indian polity is democracy which is also a part of the basic structure doctrine as laid down in the case of *Kesavananda Bharati v. State of Kerala*. When the Government in 2019 revoked article 370, it was viewed as a momentous occasion for the Ladakhis who were misled into believing that this action would be followed by greater autonomy to Ladakh. However, what happened instead was that it was made a Union Territory with much of the decision making power residing with the centre. The ability to bring about an abrupt alteration between the relation of a state's population with its own administration denotes the power at the disposal of the Center which exercises control over the Union Territory. This power usage becomes malevolent owing to the fact that it has no proximate nexus to the welfare of the state for the following reasons:-

1. The Center operating from New Delhi simply is not equipped with the knowledge about the Ladakhi culture, demographic and terrain the way that any regional council/body would equip, which can only be established under the sixth schedule,
2. The lack of knowledge of the centre in the present paradigm would have the effect of silencing many concerns that the people in Ladakh have with respect to culture, land,

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<sup>3</sup> The Hindu, MHA constitutes high powered committee to ensure protection of land and employment for Ladakh (2023) <https://www.thehindu.com/news/national/mha-constitutes-high-powered-committee-to-ensure-protection-of-land-and-employment-for-ladakh>

employment, etc.,

3. The geographical isolation of the region from the mainland necessitates a comfortable forging of relationships which can only be brought about through greater autonomy to the region to administer its relations.

Having established a lack of nexus between centre control and Ladakhi welfare, it can be stated that the aforementioned pointers are basic prerequisites to transparent and efficient governance. Instead, in the present scenario the Centre has deprived the Ladakhis of a source of appropriate representation that demonstrates an understanding that the Ladakhis expect. This by itself is contrary to democratic values enshrined in the constitution of India itself which accords sanctity to “the voice of the people” who are now too weak to raise a voice, fighting imposition of power with starvation.

Another crucial factor which denotes a prioritisation of power over welfare is the environmental threat which Ladakh faces. Having been denied protection under the sixth schedule has also allowed for an unregulated movement of people into a climate sensitive region. An influx of people has put pressure onto the existing resources. Moreover the Government itself aims to boost tourism and exploit the natural resources of the region which has instilled a sense of fear and insecurity on the residents.

Al Jazeera documented the contentions of a Leh-based student who said that “It’s very crucial for us being tribal and sparsely populated to stand for our rights.”<sup>4</sup> The ignorance of their concerns and lack of representation has rendered these people helpless. The lack of recognition of an endangered and diminishing cultural identity necessitates a review of the rights as already mentioned above with the duties on the government to fulfil such claims.

The principles which find its roots in the Indian constitution are that of Democracy and Federalism which is not existent in the present context. The legislative intent of the drafters of the constitution of India whilst framing article 1 of the constitution which reads “India, that is Bharat, shall be a Union of States” was to accord significant power to the states that constitute the Indian Territory. Further drawing upon broader principles as underlined by the Universal Declaration of Human Rights and International Covenant of Civil and Political

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<sup>4</sup> Al Jazeera, Why are people in India’s Ladakh protesting against central government?  
<https://www.aljazeera.com/news/2024/3/11/why-are-people-in-indias-ladakh-protesting-against-central-government>



Rights, the minority groups ought to have a right to autonomy within states.

The Indian Judiciary through various precedents has established the trend for supporting autonomy of states and espousing values of federalism and democracy through cases such as *State of Karnataka v. Union of India* (1977)<sup>5</sup>, *Kesavananda Bharati v. State of Kerala* (1973)<sup>6</sup>, *Nagaland Assembly v. Deputy Commissioner* (1976)<sup>7</sup>, *I.R. Coelho v. State of Tamil Nadu* (2007)<sup>8</sup>, etc. all of which underscores the judiciary's role in safeguarding the fundamental principles of federalism and decentralisation of powers.

Therefore, while the Ladkhi people have the right to democratic representation and protection of their territory and culture, the duty holder in this scheme of things naturally becomes the state which is the guardian of its citizens. Therefore the government ought to fulfil the following burdens:-

1. The government bears the burden of restoring autonomy to Ladakhis and ensuring adequate representation for Ladakhis in decision-making processes.
2. The government is burdened with the duty to recognize and respect the rights of Ladakhis, including their right to self-governance, representation, and cultural preservation.
3. The government has the burden of exercising its powers, such as altering administrative structures and regulating movement and resource exploitation, in a manner that respects the rights and welfare of the Ladakhis.
4. The government is burdened with the duty to mitigate any adverse impacts of its centralised decision-making and regulatory powers on the welfare and rights of Ladakhis.

### **AN ALTERNATIVE PARADIGM**

A new paradigm requires the principles of democracy and federalism to be respected whilst maintain due respect for the sovereignty of the Indian territory which has been the core concern for the government of India. Therefore, this equilibrium may be achieved through the broader ideas of:-

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<sup>5</sup> 1978(2) ELT564 (KAR)

<sup>6</sup> 1973 4 SCC 225

<sup>7</sup> 1967 AIR 212

<sup>8</sup> 1999 7 SCC 580

1. **Restoration of Autonomy with Enhanced Representation:** By establishing a legislative assembly or council again, the government can give Ladakh more autonomy and the ability to manage some local concerns. This assembly might have the authority to decide on matters like employment, land use, and culture within the bounds of national legislation. It is important to increase representation in this assembly so that Ladakhi citizens can participate as much as possible. This could entail setting up procedures for direct engagement and consultation with regional stakeholders or allocating seats with special status for Ladakhi populations.
2. **Safeguarding Cultural and Environmental Concerns:** To preserve Ladakh's distinct cultural character and ecosystem, special laws should be passed. This could involve taking steps to protect cultural heritage, control tourism to lessen its negative effects on the environment, and guarantee the sustainable use of natural resources. To create and execute policies that meet the unique difficulties Ladakh faces, the government should work with regional communities and environmental specialists like Sonam Wangchuk himself. These policies should include measures for mitigating and adapting to climate change.
3. **Dialogue and Consultation:** To resolve complaints, share ideas, and work together on policy execution, a forum for continuous communication and consultation between the federal government, local government representatives, and community representatives should be developed. To guarantee that decisions are taken with the best interests of the community in mind, mechanisms for responsible and transparent governance should be established.

## **CONCLUSION**

While the struggles of the Ladakhi people continue this paper proves the necessary right-duty relationship that acts as a burden on the government to be an actor upon. The active denial of specific protection to the Ladakhi people has the potential impact of generating separatist tendencies which can only be countered by envisioning a paradigm shift through policy measures and pacification. The Indian government can show that it is committed to protecting the ideals of democracy, federalism, and minority rights while honouring the rights and ambitions of the Ladakhi people by accepting this reasonable solution. This paradigm shift will eventually improve the general well-being of Ladakh and the country as a whole by fostering better trust, cooperation, and prosperity in the region.