

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS (ISSN 2582 – 6433)

VOLUME I ISSUE III
(SEPTEMBER 2020)

Email - editor@ijlra.com

Website - www.ijlra.com



IJLRA

INTERNATIONAL JOURNAL
FOR LEGAL RESEARCH & ANALYSIS

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume I Issue III is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA
INTERNATIONAL JOURNAL
FOR LEGAL RESEARCH & ANALYSIS

EDITORIAL TEAM

EDITORS

Ms. Ezhiloviya S.P.

Nalsar Passout

Ms. Priya Singh

West Bengal National University of Juridical Science

Mr. Ritesh Kumar

Nalsar Passout

Mrs. Pooja Kothari

Practicing Advocate

Dr. Shweta Dhand

Assistant Professor

IJLRA
INTERNATIONAL JOURNAL
FOR LEGAL RESEARCH & ANALYSIS

A WORD FROM THE TEAM

IJLRA:(ISSN: 2582-6433) is proud to complete its *Volume I Issue III*. The current issue consists of articles, short notes, case comments, legislative comments and book reviews, contributed by advocates, academicians, researchers & students from all parts of the country. Each contribution has been thoroughly examined by our editorial team to provide a filtered and quality read.

The fact that law as a subject is dynamic and ever evolving makes it imperative for lawyers, academicians, researchers, and students to stay abreast of recent developments. The same thought process has led us to develop a dedication towards providing all the contributors with a platform to express their original ideas on contemporary issues. With the same endeavour to present view on latest legal developments within and outside country we are successful in presenting diverse selection of stimulating articles.

We strive hard to stick to the core of the Journal's principles, which includes diversity and open discussion from all aspects of law while maintaining highest standards of professional integrity.

The Issue is a culmination of the efforts of several people who must be rightly acknowledged. We would like to place on record our sincere gratitude to all our contributors for their valuable work. We would also like to thank all the members of Editorial Board for their efforts in shortlisting and editing the papers to ensure that the ideas of authors are being expressed in the best possible manner; and finally the members of our technical support team for making this issue reach all our readers by way of an open access system.

We sincerely hope that the present issue will come to the expectations of its readers.

Team IJLRA

IMPACT OF THE FIFTH SCHEDULE OF THE CONSTITUTION ON TRIBAL COMMUNITIES

Marilyn Joanna Khakha¹

INTRODUCTION

In India, the Fifth Schedule of the Constitution has special provisions for the governance and administration of Scheduled Areas which are tribal dominated areas. It provides autonomy to tribal communities over their land as well as rights to govern themselves. The intent was to promote the welfare and advancement of Scheduled Tribes and enable them to develop at their own pace. The Tribes Advisory Council (TAC), which is a constitutional body of the State under the Fifth Schedule, has the role to advise the Governor of the State on matters pertaining to the welfare and advancement of Scheduled Tribes. The Governor of a State has special powers to restrict the application of legislations on Scheduled Areas under the Fifth Schedule.²

This paper deals with the protection provided to the Scheduled Areas under the Fifth Schedule of the Constitution. It delves into the Constituent Assembly debates surrounding the formation of the Fifth Schedule and the concerns relating to tribal communities raised by the members of the Constituent Assembly. An analysis of whether the existing constitutional structure of the Fifth Schedule has fulfilled its intended goal or not will be done. The aim is to determine whether the Fifth Schedule has contributed to the welfare and protection of tribal communities through an analysis of legislations, case laws and government actions after the enactment of the Constitution.

HISTORICAL BACKGROUND RELATING TO THE TRIBES IN INDIA

Several parts of India have had tribes living together. They had distinct way of life which was different from the rest of India. Tribal groups practiced shifting cultivation, jhum cultivation, settled cultivation or animal rearing. The tribal chiefs of each group enjoyed certain economic

¹ marilynjoannakhakha@gmail.com, LL.M. (Batch of 2019), National Law University, Delhi.

² Paragraph 4, Schedule V, Constitution of India, 1950.

power and were responsible for administering and controlling these areas. They also decided local rules of land and forest.³

With the arrival of the British, their administrative powers were taken away from the tribes and they had to follow the laws of the British. The tribal chiefs had to pay tribute to the British and they lost their authority over the people. The British also carried out land settlements resisting shifting cultivation practice. They took control of forests and classified certain forest areas as reserve forests, preventing tribal people from entering these areas for collecting forest produce. The Forest Act, 1878 established monopoly of the colonial State over forest resources limiting and regulating the rights of tribes who were traditionally dependent on forest produce. The Forest Rights Act, 1927 further enabled the government to exploit timber from forest by overriding of customary rights of tribes over forest produce.⁴ The labour of tribal people was also exploited as they were taken to different parts of India to work at tea plantations, cotton plantation, etc. Apart from the British, they were exploited by landowners, moneylenders and missionaries.

The British Census Reports classified them as “aboriginals” or “tribals”. The areas of habitation of these tribal groups was identified and divided into “wholly excluded areas” and “partially excluded areas” in the Government of India Act, 1919 and Government of India Act, 1935.⁵ Under the 1935 Act, it was stated that in the excluded areas, the laws of the Federal Legislature or Provincial Legislature would not apply till the Governor notifies the application of the laws in those areas. The ministers of these provinces did not have any share in the responsibility of administration and the powers were vested with the Governor. In partially excluded areas, there was modified exclusion wherein the laws of the Federal Legislature or Provincial Legislature did not apply till the Governor (in consultation with the council of minister) notified the application of the laws in that area. The intent was to provide tribal people with the autonomy to follow their traditional practices and to provide them with rights over their land. This classification laid the foundation for the constitutional scheme under the Fifth Schedule.

³ K. S. Singh, *Colonial Transformation of Tribal Society in Middle India* 13 *Economic and Political Weekly* 1221, 1221-1223 (1978).

⁴ Section 3, Forest Rights Act, 1927.

⁵ Section 92, the Government of India Act, 1935.

CONSTITUTION ASSEMBLY DEBATES ON FIFTH SCHEDULE

The Constituent Assembly Debates throw light on the issues that were raised concerning the Fifth Schedule. The draft presented by the Dr. B.R. Ambedkar was accepted by the Constituent Assembly with certain amendments. This draft provided restricted powers of the Tribes Advisory Councils (TACs) and gave more discretion to the Governor to take decisions regarding Scheduled Areas. It also made the setting up of TACs in States not having Scheduled Areas optional. The Scheduled Areas can be established under Article 244 of the Constitution in any State except Assam, Meghalaya, Tripura, and Mizoram. TAC is a 20-member Council with three fourths of the members being representatives of the Scheduled Tribes in the Legislative Assembly of the State. This body has the duty to advise the Governor on issues of welfare and advancement of Scheduled Tribes in the State.⁶

There was an intense debate with respect to establishment of TACs in States without Scheduled Areas. It was the recommendation of Jaipal Singh (who was the sole tribal representative of the Assembly) that the TACs should be established in all States. Since the Scheduled Areas had not been clearly identified, it was imperative that the tribal population across the country should be protected under the Schedule. The arguments of the members who were in favour of TACs in all States was that tribal people experience poverty and backwardness across the country irrespective of the whether they are within the definite demarcated regions of their communities or have come out and settled outside these areas. Most members of the Constituent Assembly like A.V. Thakker were in favour of having TACs only in States having Scheduled Areas. It was their argument that such a body would be futile in places where the tribal population is insignificant.⁷

It was suggested by Muniswamy Pillai and Yudhisthir Mishra that the advice of the TACs should be binding on the Governor and that the powers of the TACs should be broad enough to advice on issues of welfare and advancement of Scheduled Tribes along with advice on administration of Scheduled Areas. TACs give advice only on issues for which Governor seeks their advice hence the initiative is in the hands of the Governor. Making the advice of TACs binding on the Governor would assert the right to self-governance. The Schedule reduced the TACs to mere advisory bodies with no real powers. This argument was countered by other Assembly members like K.M. Munshi who stated that TACs will be established with

⁶ Paragraph 4, Schedule V, Constitution of India, 1950.

⁷ 9.132.95, Constituent Assembly Of India Debates (Proceedings), Volume IX, 5th September, 1949, available at https://www.constitutionofindia.net/constitution_assembly_debates/volume/9/1949-09-05 accessed on 20.07.2020.

a majority representation of tribal people who may make decision which have an adverse impact on the non-tribal population. It was argued that considering the poor conditions of the tribal population along with lack of education among the community members, they cannot be considered capable of making decisions that are binding. The discretion on part of the Governor to accept or reject the advice was considered necessary. According to some Constituent Assembly members, discretion cannot be left to TACs as the communities are not capable of self-governance and required the Centre's oversight to be able to function efficiently. This diluted the power of the TACs. TACs established under the Fifth Schedule have advisory powers on tribal issues on matters specifically referred to them by the Governor.⁸

It is unfortunate that the true potential of the Fifth Schedule was diluted at the stage of conception itself. It could have created a strong constitutional body asserting group rights of the tribal people and providing them the right to self-governance. Tribal communities have been secluded, self-sufficient and independently functioning since time immemorial. To put restrictions on their autonomy perpetuates the same kind of exploitation by the British of the tribal communities.⁹

It is evident that most of the powers in the Fifth Schedule lie with the executive. The power to declare an area as a Scheduled Area or to remove an area from the list of Scheduled Areas vests with the President. The Governor has the power to restrict or modify the extent of the application of a law in a Schedule Area. The Governor also has powers to make Regulations for the peace and good government of a Scheduled Area after consulting the Tribes Advisory Council. Such Regulation comes into force after the assent of the President. With governments in the past having interests adverse to tribal rights and in favour of developmental activities, tribal communities bore the brunt of executive complacency. Governors and Presidents in States have failed to use their powers for the welfare of tribal but have used it to their detriment.¹⁰

⁸ *Ibid* at 9.132.94.

⁹ Bhupender Singh, A lame duck Schedule of the Constitution DOWN TO EARTH, July 4, 2015 available at <https://www.downtoearth.org.in/news/a--lame-duck-schedule-of-the-constitution--46191> (last visited June 30, 2020).

¹⁰ Rahul Banerjee, *Adivasis and Unjust Laws* 42 Economic and Political Weekly 4010, 4010-4011 (2007).

ANALYSIS OF THE FIFTH SCHEDULE BY GOVERNMENT COMMITTEES

After the Fifth Schedule framework was put into place, it was considered necessary to assess the progress of tribal communities to determine its effectiveness. The Scheduled Areas and Scheduled Tribes Commission was set up in 1960 and Shri U.N. Dhebar as the Chairman of the Commission. It was the observation of the Dhebar Commission that the TACs of several States were not functioning efficiently. It was considered imperative that certain recommendations be made to create an efficient system. It was the recommendation of the Commission that TACs should be created in all States and Union Territories. The Commission also recommended that the TACs should be vested with the powers to advise on and review all matters pertaining to tribal areas and not only the matters referred to them by the Governor. The Commission also observed that there were lapses on the part of several States in submitting the annual reports to the President and most of them did not sufficiently cover the issues relating to Scheduled Tribes within their States. It was clarified by the Commission that reports are meant to enumerate the measures taken by the State on issues of tribal people relating to land, forests, labour and prevention of atrocities towards them along with the report of administration of these Scheduled Areas.¹¹ However, the recommendation with respect to the creation of TACs in all States and UTs were not taken into consideration.

The Bhuria Commission Report, 2002 (Report of the Scheduled Areas and Scheduled Tribes Commission) flagged certain issues regarding implementation of the Fifth Schedule. This Commission was cognizant of the rampant industrialization and migration which led to decrease in tribal population in Schedule Areas. The developmental activities caused large scale displacement and impoverishment of tribal people despite the Fifth Schedule to strengthen their rights. Apart from their land and forests, even their cultural rights were slowly being taken away from them. To restore the sanctity of the Fifth Schedule, several recommendations were made by the Commission.

Firstly, it was the observation of the Commission that the flimsy nature of annual reports sent by Governors to the President on administration of Scheduled Areas has reduced the importance of such a report under the Fifth Schedule. The Commission gave certain guidelines on submission of annual reports to the President. It recommended that Governors

¹¹ *Report of the Scheduled Areas and Scheduled Tribes Commission, 1960* Volume I, pp.44-62, available at <https://books.google.co.in/books?id=GVXRAAAAMAAJ&printsec=frontcover&dq=inauthor:%22India.+Scheduled+Areas+and+Scheduled+Tribes+Commission%22&hl=en&sa=X&ved=2ahUKewiYgYG7kNzqAhVC8XMBHbq9CBwQuwUwAXoECAIOBg#v=onepage&q&f=false> accessed on 20.07.2020.

were required to send detailed reports on administration of Scheduled Areas showing results backed with statistical data demonstrating the impact of programs for tribal welfare and development on tribal people. The initiatives taken to assert the socio-economic and cultural rights were required to be enumerated with steps taken by the State to provide peace and good governance.¹²

Secondly, it was the Commission's observation that though TACs were established to advise the Governor on matters of tribal development and welfare, their advice was rarely sought. Sometimes Governors acted in contravention to the advice received by them from TACs. The contribution of TACs to tribal welfare measures was negligible. The Commission made a series of recommendations for maintaining the sanctity of the Scheduled Areas like the introduction of land alienation prohibition laws in urban areas. The Commission recommended that the TAC should be allowed to tender their own advice without the matter being explicitly referred to them. Legislations must mandate consultations with the TACs for matters concerning tribal interests.¹³

Thirdly, the disappointment was expressed by the Commission with respect to the complacency shown by Governors towards legislations averse to tribal interests. The powers under the Schedule to restrict application of such laws was not utilized by the Governor. The Commission recommended an amendment to paragraph 5 of the Fifth Schedule in the following manner:

"The Governor in the discharge of his functions under the Fifth Schedule, shall after consulting the Council of Ministers and the Tribes Advisory Council where there is one, take such action as he considers necessary in his discretion."

This would make it necessary for the Governor to take the consultation of TACs into consideration in cases wherein the laws passed concerned tribal interests and acting independently in public interest based on the consultation so provided.¹⁴

In 2014, the Xaxa Committee (Report of the High-Level Committee on Socioeconomic, Health and Educational Status of Tribal Communities of India) made observations on the

¹² Report of the Scheduled Areas and Scheduled Tribes Commission Government of India, Volume I, 2002-2004 pp. 39-43, available at <https://tribal.nic.in/writereaddata/AnnualReport/BhuriaReportFinal.pdf> accessed on 19.07.2020.

¹³ Report of the Scheduled Areas and Scheduled Tribes Commission Government of India, Volume I, 2002-2004, pp. 51-55, available at <https://tribal.nic.in/writereaddata/AnnualReport/BhuriaReportFinal.pdf> accessed on 19.07.2020.

¹⁴ Ibid at pp. 63-65.

implementation of the Fifth Schedule and made recommendations accordingly. It was highlighted by the Committee that the Governors inadequately used their powers under the Fifth Schedule to limit the application of laws in Scheduled Areas. The Committee recommended that the laws by the Parliament or State Legislature should not be automatically applicable to the Scheduled Areas. The Governor should decide on whether the law should apply, or its scope should be restricted in the Scheduled Areas. It was also the recommendation of the Committee that in taking decisions pertaining to applicability of laws, the Governor should be mandated to take advice from the TACs especially for legislations concerning forests, land acquisition, conservation, mines and minerals, health, and education.

The Committee recommended significant changes to the composition of TACs. According to the recommendation, one half of the Council should comprise of elected members of State Legislature from different parties while the other half should comprise of Chairpersons of the district Panchayat bodies of the Scheduled Areas on a rotational basis. This was to ensure community participation with greater representation of the tribal communities within TACs. It was recommended that tribal development plans should be approved by the TACs before it is placed before the State legislature. These suggestions sought to strengthen the role of TACs and to convert them into the “Advisory, Protective and Developmental Council”.¹⁵

It was the observation of the Committee that the reason areas under the Sixth Schedule fared better than Scheduled Areas under the Fifth Schedule (in terms of protection of land, forest, habitat, culture and identity) is because the Sixth Schedule vested wide powers with the District and Regional Councils within these areas. This provided them with power to enact legislations, execute programs and settle disputes given to the District and Regional Councils in the Sixth Schedule. Even socio-economic, educational and health status was found to be better in these areas. Hence, it was the recommendation of the Committee that the constitutional framework of the Sixth Schedule should be extended to Scheduled Areas under the Fifth Schedule.¹⁶

It is evident from the abovementioned reports that the state of tribal population in Scheduled Areas under the Fifth Schedule is pitiable and the constitutional framework hasn't been implemented in letter and spirit. The Governors in the States having Scheduled Areas are

¹⁵ *Report of the High Level Committee on Socioeconomic, Health and Educational Status of Tribal Communities of India* Ministry of Tribal Affairs, Government of India, May, 2014, p.390, available at <http://www.indiaenvironmentportal.org.in/files/file/Tribal%20Committee%20Report,%20May-June%202014.pdf> accessed on 19.07.2020.

¹⁶ *Ibid* at p.391.

complacent and the TACs are dysfunctional. Government reports have repeatedly recommended that in order to prevent further exclusion and poverty among tribal people in Scheduled Areas under the Fifth Schedule, it is essential to provide them with greater autonomy and vest TACs with more power.

Entrusting TACs with great power was resisted by the Constituent Assembly members on the ground that the population was backward and incapable of governing themselves. The decision to vest these powers with the executive instead has resulted in complacency of Governors and President in performance of their roles under the Fifth Schedule. Issues of tribal welfare and development have been ignored and neglected. It was also asserted by the Constituent Assembly members that greater autonomy will lead to separatist attitude among the people. But complacency towards tribal issues by the Central and State Governments have created several other problems such as poverty, displacement, and severe law and order problems in Scheduled Areas under the Fifth Schedule. The lack of response of State Government toward the concerns raised by Scheduled Tribes has given rise to Naxalites in Scheduled Areas. There has also been minimal effort by the State to integrate tribal people and bring them at par with the mainstream society. On the contrary, tribal people have borne the brunt of all the developmental activities across India.

IMPACT OF OTHER LEGISLATIONS ON THE FIFTH SCHEDULE

AREAS

Panchayats (Extension to the Scheduled Areas) Act, 1996, (PESA) extended Part IX of the Constitution to the Schedule Areas under the Fifth Schedule. It provides self-governance rights to tribal communities and ensures greater political participation by them. It gives them control over their land, forest and other resources. Section 3 of the Act makes the Gram Sabha competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and their customary mode of dispute resolution. Under the Act, State Legislatures cannot make laws contrary to these tradition and practices. The two-fold responsibilities of the Gram Sabha included: (i) approval of the plans, programmes and projects for social and economic development before it is implemented by the Panchayat and (ii) identification/selection of beneficiaries under the poverty alleviation programmes and other programmes. The Act also mandated consultation of the Gram Sabha before acquisition of land in the Scheduled Areas for development projects and before re-settling or rehabilitating persons affected by such projects.

Unfortunately, the Act has been rendered redundant because of the lack of implementation of the provisions of this Act. Gram Sabhas have to go through revenue offices for their work and are frequently either denied the required sanctions or their work is delayed due to non-cooperation by government offices.¹⁷ The Gram Sabha's power over ownership of community resources is not recognized by States despite PESA explicitly granting it. The Gram Sabhas are not consulted for village development plans. The traditional systems of dispute resolutions are no longer used by people as they now approach courts. Land disputes in courts are rarely settled in favour of these tribes. There has also been an effort to dilute the effect of PESA by States. States like Orissa have amended their legislations relating to panchayats to circumvent PESA by giving the power of Gram Sabha to the State bureaucracy.¹⁸

Gram Sabha is given a limited role when it comes to land acquisition process. Gram Sabha consultations are a precondition to transfer of land for developmental projects in Scheduled Areas. Forged and manipulated Gram Sabha resolutions are used by companies and government officials to expedite the process of land acquisition. Companies involved in development projects often bribe some of the Gram Sabha members with the aim to receive consent for development projects. This also creates a division between the accepters and refusers of the project that inevitably disrupts the social harmony. The collusion between politicians, the bureaucracy and the private companies has also created severe law and order problems in Scheduled Areas. Even assertion of their rights by tribal groups is considered as rebellion towards the State.¹⁹ The Act aimed to encourage democratic participation, deepen democracy in Fifth Schedule Areas and reduce alienation of these Scheduled Areas. The non-implementation and misuse of the Act has caused further exclusion and impoverishment of tribal people.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 sought to provide a comprehensive scheme of resettlement and rehabilitation for the people affected by developmental projects. The Act has special provisions for Scheduled Areas under Sections 41 and 42. The Act mandates acquisition of land in Scheduled Areas as the last resort only. In the case of acquisition, there is a

¹⁷ Mahi Pal, *Panchayats in the Fifth Schedule* 35 Economic and Political Weekly 1602, 1602-1606 (2000).

¹⁸ Abhijit Mohanty, *Armed With a Toothless Law, the Plight of the Adivasi Worsens* THE WIRE, (12 April 2017) available at <https://thewire.in/politics/pesa-tribal-advansi-rights> (last visited on 20 July, 2020).

¹⁹ Soumitra De & Arun K. Jain, *Democratic Decentralisation, Alleviation of Poverty and Administration of Scheduled Areas : A Focus On PESA* 68 The Indian Journal of Political Science 21, 21-40(2007).

requirement under the Act to obtain prior consent of the Gram Sabha. The aim was to make the process more informative and encourage participation of the people who are to be displaced by providing them an opportunity to represent themselves. A Development Plan has to be created by the company for whom the acquisition is made in case the acquisition does not require consultation process. Such a plan enumerates the settlement and rehabilitation procedure for the Scheduled Tribes along with program for development of alternative fuel, fodder, and non-timber forest produce to meet the requirement of the tribal communities. The Act mandates resettlement of the tribal population within the same Scheduled Area, in a compact block for the preservation of their ethnicity and identity.²⁰

It is acknowledged that the Act takes steps to protect the Scheduled Areas and Scheduled Tribes but significant number of tribes have already suffered displacement under the previous land acquisition laws. States have acquired land for “public purposes” and such acquisition has been upheld by the Apex Court stating that State is the “sovereign dominant owner”²¹ of land and water. The scope of public purpose was widened through judicial interpretation and tribal communities became impoverished. The problem with the 2013 Act is that it expands the power of acquisition of land in Scheduled Areas for projects of private companies as well as the State. The public consultation process is carried out hurriedly in a day’s notice without any sufficient publicity. This deprives people to be displaced of their right to represent themselves and show opposition. It is to be noted that lack of attendance is assumed as consent. In some cases, the project work started without a mandatory public hearing. The people affected by the project were not informed about their displacement. The resettlement houses were poorly built without proper ventilation and foundation.²² This reflects that even legislative framework which asserts the rights of tribal people is not properly implemented.

The Supreme Court in the landmark judgement of *Samatha v. State of Andhra Pradesh*²³ held that it was necessary to protect and preserve the land and other rights of Scheduled Tribes in Scheduled Areas. In this case, the reserved forest areas in Scheduled Areas were leased by the State to private individuals for the purpose of mining. The court took note of the plight of tribal people who had to face adverse circumstances due to mining activities.

²⁰ Palla Trinadha Rao, *Politics of Tribal Land Rights: Notes from Andhra Pradesh* 49 *Economic and Political Weekly*, 67, 67-70 (2014).

²¹ *Tekaba AO v. Sakumeren AO*, (2004) 5 SCC 672.

²² Ram Babu Mallavarapu, *Development, Displacement and Rehabilitation: An Action Anthropological Study on Kovvada Reservoir in West Godavari Agency of Andhra Pradesh, India* 1 *International Journal of Human and Social Sciences* 34, 35-41 (2006).

²³ (1997) 8 SCC 191.

The court held that it was contrary to the spirit of the Fifth Schedule to lease land to non-tribal people in Scheduled Areas for exploitative activities like mining operations. All mining leases and renewals challenged were in violation of Fifth Schedule. Paragraph 5(2), Fifth Schedule allows Governor to make regulations to ensure peace and good governance and to regulate the allotment of land to members of the Scheduled Tribes in Scheduled Areas. The court did a purposive interpretation of the term “regulate” and held that the purpose of the Schedule was to prevent exploitation of tribal people by non-tribal people. It was observed that the Schedule should be interpreted to elongate socio-economic justice to the Scheduled Tribes. The court held that the word "regulates" in paragraph 5(2), Fifth Schedule would not only control allotment of land to the Scheduled Tribes in Scheduled Areas but also prohibit transfer of land in such areas to the non-tribal people.

The court observed that object of Fifth and Sixth Schedules is to ensure that the Scheduled Tribes remain in possession and enjoyment of the lands in Scheduled Areas for their economic empowerment, social status and dignity of their person. The Fifth Schedule was interpreted to prohibit transfer of land of the Scheduled Tribes to the non-tribal people/entities in Scheduled Areas and create provisions for allotment of the land in these Scheduled Areas to the people of the Scheduled Tribes community. However, despite protection of Scheduled Tribes through this judgement, the activities carried out in Schedule Areas are averse to tribal welfare.

Legislations and policies concerning forests have an impact on tribal population due to their heavy dependence on forest lands and forest produce for their livelihood. Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 was enacted to protect the Scheduled Tribes and strike a balance between right to livelihood and right to environment. Under the Act, the Gram Sabha receives claims from the forest dwellers and verifies these claims to provide title rights to them along with forest and community rights of the Scheduled Tribes and other forest dwellers. Section 6(2) provides that a reasonable opportunity should be given to a person before rejecting his claims. Other rights such as rights over minor forest produce and rights of community forest rights were recognized under the Act. The Supreme Court in *Wildlife First v. Ministry of Forest and Environment*²⁴ ordered eviction of forest dwellers belonging across 16 States. This decision was based on the States' reports which showed rejection of claims of lakhs of forest dwellers most of whom were Scheduled Tribes. There was no clarity in these reports about whether the claims were

²⁴ Writ Petition (Civil) No(s). 109/2008 order dated 13.02.2019.

rejected after following due process. It was unclear whether an opportunity to give proper representation and reply was provided to the forest dwellers. This shows insensitivity of States and the court which failed to acknowledge that most of these people are illiterate and do not possess the resources to understand the procedure of filing claims. Under the Act, Gram Sabha has to verify the claims but, in most cases, even the Gram Sabha was ignorant of the verification procedure. Further, rejection of claims was not even communicated to forest dwellers sought to be evicted. The Supreme Court also said that the eviction should strictly be carried out within the stipulated time. In less than a month, the order of the Supreme Court was stayed as it was necessary to examine whether due process was followed by the Gram Sabhas and the States under the Act before the claims of the forest dwellers were rejected.²⁵ The previous order of the Supreme Court nonetheless reflects their perception of the tribal population as encroachers and not protectors of forests (which they have been since time immemorial). They have echoed the same views of colonizers in viewing tribal people as encroachers of the forests.

CONCLUSION

Entrusting TACs with greater powers was resisted by the Constituent Assembly members on the ground that the population was backward and incapable of governing themselves. But powers to the Governors under the Fifth Schedule have been utilized inadequately. Issues of tribal welfare and development have been ignored and neglected. It was asserted by the Constituent Assembly members that greater autonomy will lead to separatist attitude among the people. But the complacency towards tribal issues by the Central and State Governments have led to poverty, displacement, and severe law and order issues within the Scheduled Areas under the Fifth Schedule. There has been no effort by the State to bring Scheduled Tribes at par the mainstream society. On the contrary, tribal people have borne the brunt of all the developmental activities across India.

It is evident from the government committee reports that the state of tribal population in Scheduled Areas under the Fifth Schedule is pitiable and the constitutional framework has not been implemented in letter and spirit. Governors of States use their powers inadequately and TACs are dysfunctional because their advice is rarely sought or taken into consideration. Commissions set up by the Government through their reports have repeatedly recommended that it is essential to provide TACs with greater autonomy.

²⁵ Wildlife First v. Ministry of Forest and Environment, Writ Petition (Civil) No(s). 109/2008 order dated 27.02.2019.

Legislations to protect the interests of Scheduled Tribes in Scheduled Areas have not been implemented in letter and spirit. The legislative intent shows the sensitivity of law makers towards the plight of tribal communities and their intent to improve socio-economic conditions of Scheduled Tribes. In contrast to this, the implementation shows a resistance to tribal development and welfare. This shows that the law makers have not been successful in protecting and upholding rights of Scheduled Tribes.

