**Class note**

**ADIVASI STUDIES**

**M.Phil. II Semester 2020**

**Course Code- ADS 121 Course Name : Tribes in India**

**Lecture Topic: Constitutional Safeguards for Scheduled Tribes (STs)**

**Teacher: Dr. Sumahan Bandyopadhyay**

The Constitution of India was adopted, enacted and given to ourselves on 26th November, 1949 in the Constituent Assembly of India. The Constitution came into effect from 26th January in 1950. The Indian constitution is a huge tome. Originally it was divided into 22 Parts with 395Articles and 8 Schedules. The numbers of Parts, Articles, and Schedules have been increased over the years through amendments. The Constitution clearly defines the Scheduled Tribes in Article 342 in following words:

“The President 3 [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 or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State [or Union territory, as the case may be].”

There are a number of provisions in the Constitution that gives adequate safeguards to the STs. The provisions of the Constitution have been grouped into certain sections and discussed below:

**I. Educational & Cultural Safeguards**

**Art. 15(4):-** ThisArticle is included in Part III which deals with Fundamental Rights. It has  Special provisions for advancement of other backward classes which include STs. It states that The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them[ART.15(1)]. The Clause 4 mentions that nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

Article 15(5) ensures the admission of ST children in educational institutions. It reads that Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.

**Art.17.** This Article prohibits any form of discrimination. It is stated in the Article that “Untouchability” is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of “Untouchability” shall be an offence punishable in accordance with law.

**Art. 29:-**ThisArticle is also included in Part III which deals with Fundamental Rights. It deals with the protection of interests of Minorities which includes STs. The Article in its two clauses mentions that any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same. No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

**Art. 46:**- This Article is included in Part IV which contains the directive principles. In this Article, it is stated that the State shall promote, with special care, the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes, and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

**Art. 350:-** Right to conserve distinct Language, Script or Culture.

**II. Social Safeguard**

**Art. 23:-**Itprohibits the traffic in human beings and beggar and other similar form of forced labour. In two clauses of this Article it is stated that: “(1) Traffic in human beings and beggary and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. (2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.”

**Art. 24:-**It deals withforbidding Child Labour. No child under 14 years can be employed to work in any factory or mine or engaged in any other hazardous employment.

**III. Economic Safeguards**

**Art.244:-** Clause(1) Provisions of Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than the states of Assam, Meghalaya, Mizoram and Tripura which are covered under Sixth Schedule, under Clause (2) of this Article.

**Art. 275:-** It deals with Grants in-Aid to specified States (STs & SAs) covered under Fifth and Sixth Schedules of the Constitution. It is clearly stated in this Article that –

“… there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of a State such capital and recurring sums as may be necessary to enable that State to meet the costs of such schemes of development as may be undertaken by the State with the approval of the Government of India for the purpose of promoting the welfare of the Scheduled Tribes in that State or raising the level of administration of the Scheduled Areas therein to that of the administration of the rest of the areas of that State.”

**IV. Political Safeguards**

**Art. 164(1):-**In this Article it is provided that in the States of Chhattisgarh, Jharkhand, Madhya Pradesh and Orissa, there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.

**Art. 243:-** Part IX of the Constitution of India deals the matters of the Panchayat. Article 243 is included in this part and it deals with the reservation of seats in Panchayats. Article 243D (1) reads as:

“Seats shall be reserved for— (a) the Scheduled Castes; and (b) the Scheduled Tribes, in every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat. (2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes. (3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.”

In this Article, provision for the reservation of the seat for the Chairperson has been kept.

**Art. 330:-** In Article 330 of the Part XVI of the Constitution, there is provision for the Reservation of seats for STs in Lok Sabha. It is also stated here that notwithstanding anything contained in clause (2), the number of seats reserved in the House of the People for the Scheduled Tribes in the autonomous districts of Assam shall bear to the total number of seats allotted to that State a proportion not less than the population of the Scheduled Tribes in the said autonomous districts bears to the total population of the State.

**Art. 334 -**It provides the reservation of seats for STs in State Legislatures.

**Art.338 -** There shall be a Commission for the Scheduled Castes to be known as the National Commission for the Scheduled Castes.

**Art. 371:-** There are Special provisions in respect of NE States namely Assam, Manipur, Nagaland for the internal administration of the tribals in line with their customary laws.

**V. Safeguards in Service and Employment**

**Art. 16(4),16(4A)** - Article 16 guarantees equality in opportunity in the case of public employment, however, the constitution also stipulates for special provision for the STs. The article reads:

“Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

…Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class] or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.”

**Art.335:-** The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State. It is provided that nothing in this article shall prevent in making of any provision in favour of the members of the Scheduled Castes and the Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State.

From the above description of provisions for STs, it can be said that there are mainly two types of safeguards for them against any discrimination. These types are :

1. Protective – The provisions that give the safeguard against any exploitation. It includes provisions like protection against any sort of exploitation on the grounds of race as in Article 15.
2. Promotional – This keeps provisions for the reservation for the STs in educational institutions, protection of their language and culture, reservations in job and legislatures etc. It aims at ensuring their proper representation and participation in the affairs of the state.

Therefore, the aim of the constitution safeguards for the STs, as it appears, is to protect them against any sort of exploitation and ensure development of these communities.