

Centre State Relations in India

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Week 02: Administrative Relations: Distribution of the Subjects; Obligation of the Centre and the States

Lecture 07: Administrative Control of Tribal Areas

Greetings to all of you. We have discussed the relationship between Centre and the Scheduled Areas as it has been discussed in Schedule V. Now, in lecture 7 we will see that how the relationship between the Centre and administration of tribal areas in Assam, Meghalaya, Tripura and Mizoram is being discussed that will be the discussion in this in this lecture. What we will try to cover is that we will try to cover the background of Schedule VI, we will see that how the administration is been discussed under Schedule VI, what is District Councils and Regional Councils, powers of District Councils and Regional Council and issues in working of Schedule VI that what we will see and we will try to look at some of the case laws that how the Supreme Court has expressed its opinion on the functioning of Schedule VI of the Constitution. Now, when you look at the background as it has been also stated while delivering lecture on the significance of Schedule V and asymmetrical federalism that North Eastern part of this country, they are home to numerous diverse communities where you find that there is a conflict, there is a confrontation over land use, over control over as well as issues of language, identity, formation, demographic change and minority majority majoritarian relations. This is something which has been a matter of concern at the time of the making of the Constitution and that is why you find that the conditions in the tribal areas of Assam, Meghalaya, Tripura, Mizoram all are very different from other tribal areas and that is why these tribal areas are divided into fairly large districts even inhabited by single tribes or they are fairly homogenous groups of tribes with highly democratic and mutually exclusive tribal organization.

So, these areas you would find that there are being kind of governing under a pattern where they have an autonomous body and much of their governance were being done through that autonomous body. So, there has been attempt made by the framers of the Constitution to allow the governance to continue on the similar pattern and that's how you find that the framers of the Constitution in order to fulfill the aspirations of the tribal communities of that area and in order to preserve the democratic traditions and cultural diversity of that area they have provided for Schedule VI under the Constitution. Now this drafting of Schedule VI was done by a Sub-Committee on North East Frontier (Assam Tribal and Excluded Areas) of the Constituent Assembly and it was headed by Shri Gopinath Bardoloi, the then Premier of Assam. Now what this Committee look into it? This Committee looked into three factors while proposing a separate scheme of the administration.

What they looked into is that, they looked into a unique distinct social custom and tribal organizations of the different people as well as their religious beliefs because as I said that this tribal people residing in these areas, they were having their own organizational structure and because they are having their own organizational structures, they were deciding on many issues related to governance including justicing on the basis of the organization what they have established. Then the other factor what this Committee looked into which was headed by Shri Gopinath Bardoloi is that that the fear of exploitation by the peoples of plains on account of superior organization and experience of business because as I said that vulnerability is there because where they these people are residing they are very rich in minerals and mines and which are very important for the development of the country and therefore, business houses, the State they try to exploit those areas, they try to go for in extensive exploitation and that comes at the cost of not only displacement of these people, but also at the cost of destroying their culture. Other factor which has been kept in mind is that unless suitable financial provisions were made or powers were conferred upon these local council themselves the provincial government might not due to pressure of the people from the plains not devote or dedicate adequate funds which is required for the development of these areas. Therefore, what has been suggested is that let Schedule VI become a self-contained code for the governance of tribal areas.

So, I would say that this arrangement is been done not with a fear from the government which would be there in the State, but it would be more for giving a due space to the governing councils, organization which has been invoke which has been in place for generations in that area because

that is what is the again uniqueness of the Indian Constitution. Indian Constitution is very accommodative in its nature and character and Schedule VI is a true example of such accommodative nature of the Indian Constitution. So, what has been provided is that when you look at the draft Constitution, the Article 215B has been provided as Article 244(2) under the Indian Constitution and draft Constitution Schedule VI was made applicable for the administration of tribal areas in the State of Assam. It was argued by one of the members Mr. Yudhishtir Mishra that let this provision be applicable where tribals are staying in other States like Odisha or central provinces. We know very well that tribal population is good in number in Odisha, Jharkhand, Madhya Pradesh, Telangana, and Andhra Pradesh. So, that is what it was suggested, but then this idea was negated the idea was negated because of the uniqueness of the culture and custom of the people or the tribes staying in these areas. It was suggested that let this people because of their uniqueness be governed under their own pattern and if needed the tribal areas of other States can be can have a separate governance, but then let us not mix it with the Schedule VI or the requirement as let down under Schedule VI and that is how Article 244(2) was amended in 1971, wherein apart from Assam the areas of Meghalaya, Tripura, Mizoram was also added as a part of North Eastern Areas Reorganization Act. Now what this Article 244(2) provided for? Article 244(2) is to be read with Schedule VI along with Article 275 of the Constitution.

Now Article 244(2) as I said it was provided for administration of tribal areas in the States of Assam and in 1971, three more States were added Meghalaya, Tripura and Mizoram. Addition to that Article 275 provides for grants in aid the first proviso which was added with Article 275 it provided that grants in aid shall be paid out of Consolidated Fund of India for the purpose of promoting the welfare of the Scheduled Tribes in that State or raising the level of administration in the Scheduled Area. So, you can very well look that the constitutional scheme is in presented where it has been suggested that let there be no discretion be made available let it be a mandate of the Constitution that necessary grants be made available from Consolidated Fund of India for the developmental need of these areas. People staying in this area should not be deprived of the benefits of the development and therefore a provision has been added under the Article 275 which talks about grants in aid. Second proviso with Article 275 provided that grants in aid of the revenues of the State of Assam in respect of administration of tribal areas as specified in Part I of the table appended to paragraph 20 of the Schedule VI which I will be discussing later.

So when you look at it the Constitution itself is providing for the necessary funding be made available which shall ensure that the developmental need of the people are being fulfilled. It has not left on the discretion of the government or the State government. There is a special provision carved out under the Constitution where it is suggested that let there be a funding made available through Consolidated Fund. So, this is what administration under Schedule VI. Part I requires the establishment of Autonomous Districts for the tribal areas which are mentioned in Part I, II, IIA and III which is appended to Para 20 of the Schedule. The districts are identified, for example in Assam, it is North Cachar Hills District, Karbi Anglong District and Bodoland Territorial Areas in Part I and then in Meghalaya, districts of Khasi Hills, Jaintia Hills and Garo Hills. Part 2A talks about Tripura where you find Tripura Tribal Areas District and Mizoram you have a district of Chakma, Mara and Lai. Now if an autonomous district has a different Schedule Tribes, then Governor under Para 2 may divide the regions into autonomous regions.

So, look at it the way arrangement is done. It says there could be District Council, Autonomous District or there can be an autonomous region also and all this is been done with a very idea that going by their specific requirement plan can be made for their socio economic development and necessary power has been given to the Governor under Para 3 of Schedule VI where Governor he is been empowered to include, to exclude, to create increase, diminish, unite, alter and define the boundaries of any autonomous district. So power has been given to the Governor to do so and the Governor's order of creating increasing diminishing or uniting autonomous districts must be issued only after considering the report of a Commission appointed under Para 14. So, there is a scheme which is been suggested where things must not be done unilaterally by the Governor there has to be a consultative process, process through which the views of tribal people are to be known, views of the tribal people is to be understood and accordingly a decision has to be taken. Governor has got a power to dissolve District Council and Regional Council. There is an exception created in 2003 with a demand of Bodoland as a separate state a separate area is been demarcated as Bodoland Territorial Area District by the Schedule VI to the Constitution and under Para 20 the Parliament has been given power to amend the Schedule so that the local political, developments local political pressures must not unnecessarily disturb the functioning of a Schedule VI on this matter. So Schedule VI talks about the establishment of District Councils and Regional Councils.

Now this District Councils and Regional Councils consists of 30 members elected on the basis of adult suffrage including not more than 4 persons nominated by the Governor with a term of 5 years. So, District Council and Regional Council constitute the backbone of the tribal people. They are to be seen as a direct representative and they are the one who has been given voice for flagging their issues and for ensuring that that welfare scheme is being made and implemented in their areas so that they need not remain always marginalized. So, the administration of autonomous district is not vested under Schedule VI in any Regional Council, it is vested in the District Council for such district. The administration of autonomous region shall be vested in Regional Council for such region. So, if it is a region then Regional Council has been given the necessary administrative power if the district then it is a District Council which has been given power and you look at it this District Councils and Regional Councils they have been empowered to make rules.

So, it says that they can make rules after approval of the Governor but they can also create the Local Councils. So, this provisions clearly establishes that they can look at their local requirement and they can really make the laws they can make the rules which to cater the local requirement. So, what are the powers of District Councils and Regional Councils? So whatever area is notified to be administered by District Council the jurisdiction or with regard to marriage, land use, social custom, property this is something where the District Councils have been given a legislative power. So, this is very important and that is how we need to understand that how the federalism in India is different from the traditional understanding of Centre State relation.

So, if you look at it here you have a body which got a responsibility to make laws, make laws which are in the interest of tribes and such laws cannot be altered or cannot be nullified by the parliamentary legislation or by the State laws. The kind of autonomy has been given to these Councils. However, it says that laws must made must be assented by the Governor of the State and Para 4 also provides for the power to administer justice in autonomous districts. So, this power becomes very important and you can very well say that here you would find that justice delivery power is also been given to the District Councils because these District Councils and Regional Councils they have got a power to establish village council or courts for the trial of suits and cases between the parties all of whom belong to Scheduled Tribes. So, you find in this people residing in Schedule VI they are being governed under a separate judicial system and which is based on their customary practices and they resolve their disputes which are more of interpersonal nature

through that forum which is been created by themselves. This is again uniqueness of the federal structuring of the Indian Constitution.

So these are the laws under Schedule VI you find that Para 11, 12, 12A, 12AA provide for publication of laws made and application of Acts of Parliament and the State laws in that area and at the same time Para 12 also says that laws made by the State Legislature of Assam shall not apply to the autonomous district unless there is a specific notification issued by the District Council. So, what we have studied in relation to Schedule V is applicable here also that laws made by the State Assembly are not applicable immediately or instantly. There has to be a separate notification done by the District Council which would assess that what are the viability of such laws how far the laws are not going to destroy the culture and going to be aligned with the prevailing culture and custom and accordingly District Council would be notifying the same. Para 12 also states that the application of laws made by the Parliament or the State Legislature by notification issued by the Governor. So again, it is similar to what we have studied in Schedule V that Governor has got a power that what laws to be made applicable in those regions – laws made by the Parliament or laws made by the State Assemblies. Para 13 again say something similar with regard to Meghalaya it says that law made by the State Legislature of Meghalaya shall prevail in case of repugnancy in law made by District Councils.

So, in case of repugnancy, in case of conflict it is the laws made by the State Assembly which had been made applicable and then Para 12 which states that the application of laws made by the Parliament by notification issued by the President. So, President has also been given a power where to notify the applicability of the laws made. Looking further you find that Para 12AA deals with the non-application of law in autonomous regions made by Tripura Legislative Assembly. So, as I said there is a possibility of having a separate law within the State if the autonomous region decides so. So whatever laws are made by the State Assemblies may not be made applicable.

Para 12AA also states that the application of an act of Parliament or the State Legislature in the autonomous region can be done only when the President or the Governor decides so. So, it is not applicable in a in a natural flow there has to be a specific notification given by the President or the Governor. Para 12B deals with non-application of law in autonomous region made by the Mizoram Legislative Assembly and Para 12B further says that application of an Act of Parliament or a State

Legislature in the autonomous region may be done again by the President or the Governor as the case may be in relation to Mizoram. Now what are the issues in working of Schedule VI of the Constitution? Issues are that though they are they are having a kind of a very long tradition but they have failed to establish a very healthy ecosystem of maintaining a parliamentary character and therefore they lose the sanctity.

So, they have not maintained the healthy parliamentary environment and practices and therefore Governor intervenes and dissolves the District Councils. So, there is a lack of coordination among the various stakeholder or constituents on the matter of the functioning of the District Councils and the Regional Councils. Another important aspect which is important for functioning to examine the functioning of these Councils are the factor of political instability because we see that these States always go through a kind of political turbulence there is a no stable government and there is always a conflict among the tribes and therefore what happens is that it affects the kind of stability of District Councils and Regional Councils. Also, there is no power given to the Central government to look into the functioning of the Schedule VI. Although the power to amend is given upon the Parliament but per say when you look at it, Central government has been deprived of that power where they can look into the functioning and then make necessary changes and advisory on this matter. Let us look at some of the cases which have come before the court of law on the functioning of a Schedule VI.

Constitution bench in the case of Dist. Council of United Khasi and Jaintia Hills v. Sitimon Sawian, here the court says that District Councils unlike the Parliament and the State Legislature are not intended to be clothed with plenary power of legislation. Though they have been given exclusive power but that should not be seen that they are something having a similar status or same status as of Parliament or the State Legislature. So that is something which is not part of the scheme of the Constitution. The power to make laws is expressly limited by the provisions of the Schedule VI. So, whatever is given under Schedule VI that should be only the ambit and scope of the power given the District Council. There should not be any mistake done by conferring a power conferring the status similar to the Parliament or the Legislature. Again, in the case of Edwingson v. State of Assam it was said that Article 244(2) would be governed not only by other provisions of the Constitution which are applicable to other parts of the country but also with the provisions of Schedule VI. So, there is a kind of clarity that other provisions of the Constitution also become

pertinent for getting a kind of understanding and scheme for governing those areas in addition to Schedule VI. It is not to be seen as a completely segregated unit, completely disconnected governance pattern, when it comes to governance of tribal areas under Schedule VI.

Further, it has also said that the Governor and the Parliament may exercise concurrent power to rearrange the boundaries of within the autonomous areas under Para 20. So, it is not that the power is given only to the Governor, power is given to the Governor and the Parliament. Both the institutions can rearrange the boundaries within the autonomous areas which is given. There is another case of *Pu Myllai Hlychho v. State of Mizoram* where again it has been said that Governor can exercise discretionary power on the advice of the Council of Ministers and with the consultation of District Council is optional. So, necessary constitutional positioning has been given to the District Council and it is to be seen that these regions they get governed with that distinct administrative set up as a District Council and Regional Council and they develop as per the aspirations of the people. These District Councils are being interested with the responsibility that the people of these regions are not to be unduly exploited in the name of developmental discourse. That what is important and that is what is the essence of Schedule VI of the Constitution.

These are the references for this lecture. Thank you very much.