

Nietzsche, in contrast, argues that justice is part of the slave-morality of the weak many, rooted in their resentment of the strong few, and intended to keep the noble man down. In *Human, All Too Human* he states that, “there is no eternal justice.”

### Justice as mutual agreement

According to thinkers in the social contract tradition, justice is derived from the mutual agreement of everyone concerned; or, in many versions, from what they would agree to under *hypothetical* conditions including equality and absence of bias. This account is considered further below, under ‘Justice as fairness’.

### Justice as a subordinate value

According to utilitarian thinkers including *John Stuart Mill*, justice is not as fundamental as we often think. Rather, it is derived from the more basic standard of rightness, consequentialism; what is right is what has the best consequences (usually measured by the total or average welfare caused). So, the proper principles of justice are those which tend to have the best consequences. These rules may turn out to be familiar ones such as keeping contracts; but equally, they may not, depending on the facts about real consequences. Either way, what is important is those consequences, and justice is important, if at all, only as derived from that fundamental standard. *Mill* tries to explain our mistaken

belief that justice is overwhelmingly important by arguing that it derives from two natural human tendencies: our desire to retaliate against those who hurt us, and our ability to put ourselves imaginatively in another’s place. So, when we see someone harmed, we project ourselves into her situation and feel a desire to retaliate on her behalf. If this process is the source of our feelings about justice, that ought to undermine our confidence in them.

### Institutions

In an imperfect world, institutions are required to instantiate ideals of justice, however imperfectly. These institutions may be justified by their approximate instantiation of justice, or they may be deeply unjust when compared with ideal standards – consider the institution of slavery. Justice is an ideal which the world fails to live up to, sometimes despite good intentions, sometimes disastrously. The question of institutive justice raises issues of legitimacy, procedure, codification and interpretation, which are considered by legal theorists and by philosophers of law.

Another definition of justice is an independent investigation of truth. In a Court room, lawyers, the Judge and the jury are supposed to be independently investigating the truth of an alleged crime. In physics, a group of physicists examine data and theoretical concepts to consult on what might be the truth or reality of a phenomenon.

## EFFLUX OF TIME REQUIRES RESCHEDULE OF THE SCHEDULED AREAS FOR PEACE AND GOOD GOVERNMENT — A SUMMARY

By

—NANDURI SRINIVASA RAO, B.Sc., L.L.B.  
Advocate, Bhadrachalam,  
Khammam District, A.P.

### The Exordium

The idea or the policy with regard to the special attention on the administration of the

under-developed area originated by the then British India from the ideas of Mr. “*Augustus Cleveland*” who was deputed in the earlies of 18th century to handle the revolts in certain

under-developed areas of the British India. Subsequently, the then British India administration found that, administering the under-developed areas consisting of the population of aboriginal tribals who are more attached with their own customs, by applying the general laws are not possible and recognized the need for special type of administration in these areas by applying certain special Laws.

### **The Legal History**

Accordingly, the earliest legislation in this regard was made in the year 1839, which popularly called as “the Ganjam and Vizagapatnam Act-1839. Though it can be recognized as the earliest legislation as stated above, the object of the said act appears to be for collecting the land revenue by way of entrusting the administration of civil and criminal justice by appointing an Agent of the Government in the Districts of Ganzam and Vizagapatnam, rather than developing these areas par with that of other plain areas and to develop the tribal population there in to join in main stream.

Hitherto 1874 the expression “Scheduled Areas” are unknown in the legislative history of India. The expression Scheduled Areas means the areas which are consisting of the Tribal population as well as Non-Tribal population, and altogether recognized as under-developed areas need for special attention for administering them and to collect the revenue from these areas. Accordingly, the Scheduled District Act-1874 was enacted and recognized certain areas in the various parts of British India, including the areas in the Ganjam and Vizagapatnam District, and declared them as “Scheduled Areas”. The administration of Civil and Criminal Justice, Law and order, the supervision of the collection of Land Revenue was taken under the control of the Government, including the power to declare what laws are applicable in these areas, and the authorities who are empowered to administer these areas. This

Act did not specify the preponderances which were considered in recognizing these areas as Scheduled Areas and declaring them accordingly. After enacting the Criminal Procedure Code-1898, the said code made applicable to the Scheduled Areas and the then Tahsildars and Sub-Collectors/Revenue Divisional Officers were given Second Class and First Class powers for administration of Criminal Justice. Subsequent to the enactment of Government of India Act-1919, these areas were kept under the category of “Areas of Modified Exclusions” under the head of “Backward tracts”. After the enactment of Government of India Act 1935, these areas are recognized as “Partially Excluded Areas” and the Scheduled District Act-1874 was repealed by the Adaptation Laws Order-1939.

### **The Administration in the Scheduled Areas**

After independence, the public conscience about the tribal population was considered and accordingly it is reflected in the Constitution of India under Art. 244. The erstwhile Partially Excluded Areas under the Government of India Act are declared and recognized as “Scheduled Areas” and the provisions of V Schedule to the Constitution is made applicable for the administration of these areas, and accordingly, the areas which are solely comprised of the Scheduled Tribes and were declared as Excluded Areas under the Government of India Act-1935 are declared as “Tribal Areas” and the provisions of 6th Schedule is made applicable for the administration of these areas. Therefore, the administration of Scheduled Areas cannot be equated with that of the administration dealt in the Tribal Areas. The purpose, spirit and object of this type of administration should be for providing peace and good Government in the Scheduled Areas by giving special attention to the interest and development of the Scheduled Tribes with in the ambit and scope of the V Schedule of the Constitution. For the purposes stated, the Governor is empowered to enact Regulations

after consulting with the Tribes Advisory Council.

### **The role of Governor under V Schedule**

According to Part-A, para-3 of the V Schedule of the Constitution, the Governor of each state comprised with the Scheduled Area annually shall make a report to the President of India, and the Executive power of the Union shall extend to the giving of directions to the State as to the administration of these areas. Under Part-B, para-5 of the V Schedule, the Governor is empowered to direct that, any particular Act of the Parliament or of the legislature of the State shall not apply to a Scheduled Areas or any part thereof or shall apply or any part thereof to a Scheduled Area or any part thereof. Therefore he is the sole legislative of the Scheduled Areas. A combined reading of Para-3 of Part-A and the para-5 of Part-B of the V Schedule to the Constitution, it appears that the intention is that, while making annual reports by the Governor to the President of India, he may come across the need for exercising his powers under Paragraph-5 of Part-B of the V Schedule for the best interest of the Scheduled Tribes and accordingly he may alter, amend, apply or declare not applicable any particular Act of the Parliament or State legislature or other executive instructions of the Central Government or State Government, and thereby to process the administration in the Scheduled Areas with peace and good.

### **The role of the President of India under V Schedule:**

Under Part-C, paragraph-6 of the V Schedule of the Constitution, the President of India is vested with the power to declare any area as part of the Scheduled Area and like wise empowered to declare that any area ceased to be the part of the Scheduled Area. The provisions of V Schedule of the Constitution also did not specify with regard to the preponderances of Tribal populations

and other aspects and measures to be considered by the President of India in declaring any area as Scheduled Area and like wise in declaring any area ceased to be the part of the Scheduled Area. Accordingly, in the year 1950, the President of India, under the powers conferred under Part-C paragraph-6 of the V Schedule of the Constitution issued Part-A & Part B State Orders declaring the areas in the State of A.P., included in the Schedule as Scheduled Areas. And also declared certain category of people as Scheduled Tribes by issuing the Constitution (Scheduled Tribes) Order 1950 under Art. 342(1) of the Constitution.

Under the provisions of Government of India Act-1935 the Secretary of State indicated that, to classify any area under the category of "Partially Excluded Areas" the preponderances of tribal population which was of sufficient size to make possible the special legislations and special administrative treatment has to be considered.

### **Whether the preponderances of Tribal population to be considered for declaring an area as Scheduled Area:-**

The Sub Committee of the Constituent Assembly when invited the State Government of A.P., and the Union Government with regard to the criteria that may be adopted in recognizing and declaring any area as Scheduled Area, the Government of Andhra Pradesh answered that "the preponderance of tribals as a first and necessary condition. The Central Advisory Board of Tribal Welfare suggested that "the concentration of the tribals should be at least 50 percent "for declaring any area as Scheduled Area".

### **What the Scheduled Areas and Scheduled Tribes Commission suggested about the preponderances of Tribal population for declaring an area as Scheduled Area:-**

The Scheduled Areas and Scheduled Tribes Commission headed by Sri U.N. Dhebar

considered the point with regard to the preponderances of tribal population for declaring an area as Scheduled Area, and in his report dated 4.10.1961 opined that “the percentage of the concentration in any area proposed for declaration as a Scheduled Area should not be less than fifty percent”, apart from other measures for consideration.

### **Whether preponderances of Tribal population considered at any point of time :**

A perusal of the Scheduled Areas under (Part-B States) Order discloses that, the ideology of preponderances might have been considered by the President of India in excluding the villages of Paloncha, Burgampahad, Ashwaraopeta, Dammapeta, Kukurunur and Nellipaka Villages of Paloncha Taluk, and the villages of Yellandu, Singareni, Sirpur and Kothagudem of Yellandu Taluks from the Scheduled Areas of the State of Andhra Pradesh while including the other villages in the said Taluks. But a perusal of the Scheduled Areas under (Part A States) Order-1950 appears that, the ideology of preponderances might have not considered.

### **Whether de-schedule of any scheduled area considered at any time**

Prior to the issue of Scheduled Areas (Part-B States) Order-1950, the then Governor General Sri *Rajagopalachary* considering the Tribal preponderances and the Tribal lands, by exercising his powers under Sec.91 of the Government of India Act-1935, *vide* Notification No. S.O. 31, dated. 23.1.1950, passed “The Madras Partially Excluded Area (Cesser) Order 1950, excluded the villages of Itikalakota, Thotakondi, Mamidigondi and Devaragonda Villages of East Godavari District forming part of the Scheduled Districts under Scheduled District Act-1874”.

After enactment of the Constitution, the President of India, while exercising powers under sub-paragraph-2 of Paragraph 6 of V

Schedule to the Constitution of India, issued “The Madras Scheduled Areas (Cesser) Order 1951 in C.O. No.30 and published with the Ministry of Law in Notification No. C.O. 30 dated 22.6.1951 in Gazette of India (Ext.) 1951 part-II Sec. 3 page 843, and declared that, the villages of Agency Lakshmipuram, Chidikada, Konkasingi, Kumarapuram, Krishnadevipeta, Picigantikothagudem, Goilugondapeta, Gunupudi, Gummudukonda, Sarabhupalapatnam, Vadurupalli and Pedajaggampeta of Visakhapatnam Scheduled Area cease to be part of the Scheduled Area under the Scheduled Areas (Part A States) Order-1950 .

It is not known that, except the above two occasions, since 1874 till date, the Government made any efforts to reschedule the Scheduled Areas by considering the preponderances suggested by the Secretary of State while enacting the Government of India Act-1935, or the report of the Scheduled Areas and Scheduled Tribes Commission in the year 1961” and also not reviewed the situation of increasing disputes between the Non-Tribals, Scheduled Tribals, and the attitude and administration of the Government machinery.

### **The Administration in the Scheduled Areas up-surgings unrest rather than peace:**

According to the V Schedule of the Constitution, the administration of the Scheduled Areas in the State of A.P. under the administrative control of the Governor of the State through his Executive, should be dealt with purely for purpose of providing peace and good Government. But in practice, establish that, it is not being dealt with accordingly and on the other hand the peace in the Scheduled Areas areas are becoming invisible due to the increased disputes with regard to the land between Tribals and Non-Tribals, the Extremist Problem, backwardness, exploitations of money lending agencies, and *prima-facie* it appears to the plains people “Scheduled Area” means

an area which is not in peace, and the Government is not at all concentrating on the sensitive issues keeping in view of the interest of the Scheduled Tribes. There are instances of going of thousands of acres of Government Land in the Scheduled Areas, into the non-tribal hands despite of the specific instructions of the Government as well as under the special legislations, due to arbitrary and inconsistent instructions of the higher Administrative authorities throwing the several tribal land less poor persons into dark. The steps of reviewing such inconsistent instructions by the Government according to Law and for taking back such Government land is not whispering in the coming future.

The attitude of the authorities in dealing with the sensitive issues of land problems between the Tribals and non-tribals, and the need for restoration of the tribal land to the tribals *etc.*, is not with the object of peace and good governance by applying various special enactments in force in these areas. The authorities who are silent and almost ignored the implementation of several special laws in the Scheduled Areas for more than three decades from the dates of their commencements. Whenever certain unrest or certain demands arises, the authorities taking to steps to implement the special laws in their own accord in certain villages, towns without appreciating that in such villages or towns the tribal population is less than 10% and tribal lands also less than 2% and that, at the time of inclusion of certain villages or towns the preponderances of Tribal population not at all considered, and that even 98% of non-tribal population villages comprised of 98% non-tribal lands were included in the Scheduled Areas, the existing peace in such villages are going far and the said attitude leading for division of habitants in to two major groups under the categories of Tribals and Non-Tribals. Though it is obligatory on the part of the authorities under the provisions of V Schedule of the

Constitution, to submit their reports to the Governor of the State about these areas and the need for de-scheduling them from the list of Scheduled Areas, instead of doing so in order to curb the up-surging situations of the unrest, these authorities, who are vested with the quasi judicial powers for adjudicating the disputes under the special enactments, started implementing them bluntly and partially by passing orders without any enquiries against the interest of the term "Justice" itself. This type of lack of impartial attitude of the Government machinery is not only leading to create unrest in the Scheduled Areas instead of suppressing the unrest but also increasing the litigation in a considerable manner.

### Why reschedule is required

It appears that, the Government not recognized, appreciated and considered that, subsequent to the declaration of the Scheduled Tribes Order 1950 by the President of India, by recognizing certain category as Scheduled Tribes, during recent demands and needs of several other category of people like Banjaras *etc.*, they were included in the said order and declared them as "Scheduled Tribes", but their areas are not declared and included in the "Scheduled Areas" of the State. With the result, though they are recognized as Scheduled Tribes, the fruits and benefits and protections which are provided to the Scheduled Tribes in the Scheduled Areas under various special enactments and Regulations are not extended to them, except mere recognition as "Scheduled Tribe". It is obligatory on the part of the Government, to bring the fruits of the special legislations and regulations to those Scheduled Tribes who are declared subsequent to the Scheduled Tribes Order 1950, and unless and until their vicinities are habitations are included in the list of Scheduled Areas, it is not possible to reach the legislative benefits of the special Laws and Regulations applicable to the Scheduled Areas to them.



### **Developmental Activities in the Scheduled Areas – lacking of uniformity**

The State Government not at all declared any uniform policy of the developmental activities of the Scheduled Tribes and the Scheduled areas. With the result the development activities are being declared by the authorities themselves according to their own means and that whatever activities the head of the institution whose hands the funds are reaching declares as Development Activity of the Scheduled Tribes or the Scheduled Areas, will be considering as the Tribal Development during his tenure. The developmental activities of the Scheduled Tribes by the Tribal Welfare Department, by forming the Societies likes “Integrated Tribal Development Agencies” are also not being done with any uniformity basis and the huge funds allotted to the said agencies are not at all reaching to the Scheduled Tribes, and no uniformity disbursement and expenditure of these funds are monitored by the Government, and the funds are being spent at the *whims* and *Frances* of the head of the Agencies, and it is very regret to point out that, though several publications are made with regard to the misappropriation of the tribal funds by the Agencies and their heads, the Governor of the State or the Government made any attempts to get the said expenses audited and made attempts to recover the misappropriated or wrongly spent amounts from the concerned responsible authorities/employees.

### **Conclusion**

The Scheduled Areas though first time recognized under the Scheduled District Act-1874, and according to the versions of the Government huge funds have been spent for developing these areas and the Scheduled Tribes there in, till date these areas are never subjected for rescheduling by way of inclusion of certain new areas or by way of deleting certain areas either on the ground that, the tribal population is very less or the particular scheduled area and the scheduled

tribal there in are well developed, par with that of plains area or plains people. Thus it appears, among the Scheduled Areas first declared under the Act-1874, (One hundred thirty four years ago) no part of the said areas developed by the Government despite spending the huge amounts, so as to reschedule them and to delete them from the list of the scheduled areas. Further though there is demands from the political parties, voluntary organizations, and even Members of Parliament and the legislature requesting the Government to reschedule the Scheduled Areas so as to extend the benefits and protection to the Scheduled Tribes in those areas where in, the tribal percentage is though more than 50% and omitted to include them in the Scheduled Areas, the Government is putting deaf ear. On the other hand, except extending the powers of administration of civil justice to the Executive by issue of Notification that, the Civil Courts Act-1972 is not extended to the Scheduled Areas, almost all the laws of the State Legislature as well as the Parliament are being extending to the Scheduled Areas from time to time soon after their enactments, like wise all most all the Government Orders (G.Os) are made applicable to these areas by the Government machinery, without appreciating that the provisions of certain laws or certain instructions of the Government are, inconsistent with the existing special laws and regulations applicable in the Scheduled Areas, and their extension to the scheduled areas are detrimental to the interest of the Scheduled Tribes and the protections assured them under the special laws. Further, though the V Schedule of the Constitution provides for protection of the people of the Scheduled Areas more particularly the Scheduled Tribes from the exploitations by the Money Lenders but in practice several money lending agencies, chit fund companies, auto finances, micro finances, gold scheme and chain scheme business *etc.*, are functioning and collecting high rate of interest than specified in the Money lenders Regulation Act. All most all

the establishments under shops and establishments Act, Tourism Hotels, Lodges *etc.*, running against the provisions of A.P. Scheduled Areas Land Transfer Regulation 1/1970, and it is not out of place to note that, the very process of inclusion of non-tribals in the voters list are going absolutely contrary to the provisions of Regulation 1/1970 by the very authorities who are vested with the power of implementing the said Law. There are several instances of the Government itself allotting the land contrary to the Land Transfer Regulations, and also allowing several non-tribal employees into the scheduled areas ignoring that the existing laws in the scheduled areas are not permitting such non-tribal employees to reside on any immovable property under whatsoever nature. The co-ordination between the various departments of the Government with in the four corners of the special laws applicable in the Scheduled Areas is totally lacking and ignored. It is also not out of place to note here that, the Government though giving special allowances like Bad Climate allowance, agency allowance *etc.*, to its employees working in the Scheduled Areas, no subsidies are providing to the habitants of these areas in the amenities like, Water, Electricity, House Tax, Sales Tax, Income Tax, Stamp Act, Registration Fee *etc.*, and the consumption charges, assessment *etc.*, is par with that of the developed plains people residing in the non-scheduled Areas.

Though under the provisions of V

Schedule to the Constitution of India, the Governor of the State is under obligation to report annually with regard to the administration of the Scheduled Areas in the State, it is unknown to the people in the Scheduled Areas whether the Executive of the State are sending such reports to the Hon'ble Governor with regard to the administration of the Scheduled Areas, so as to enable him to know whether the administration is running strictly adhering to the purposes envisaged under the V Schedule to the Constitution and send his annual reports accordingly with necessary recommendations and suggestions to the Hon'ble President of India.

Therefore it is high time cure the administrative defects in the Scheduled Areas and to go a head for the developmental activities of the Scheduled Tribes and the Scheduled Areas with certain and uniform policy by rescheduling the Scheduled Areas considering the preponderances of the Scheduled Tribe population and other reasons, by inclusion of several new areas in the list of the Scheduled Areas, and by way of extending the powers of implementing the special laws applicable in the Scheduled Areas to the Judiciary under the administrative control of the Hon'ble High Court of Judicature from the hands of the Executive, including the powers of the Civil Administration of justice, for the effective administration and development of these areas for forming peace and good Government with in the four corners of the V Schedule to the Constitution of India.

### **DISAPPEARANCE OF JUDICIAL APPROACH IN THE QUASI JUDICIAL FORUMS - NEED FOR REFORMS — A CRITICAL SUMMARY**

*By*

**—NANDURI SRINIVASA RAO, B.Sc., L.L.B.  
Advocate, Bhadrachalam,  
Khammam District, A.P.**

There are various statutes which empowers the Executive of the State with

the decision making power with-in-the four corners of respective statutes, which are