

WELCOME

Constitutional provisions for protection of Scheduled Tribes



TELANGANA DEMOGRAPHY

(In lakhs, as per 2011 Census)

- Total State Population : 350.05
- Total ST Population : 31.78 (9.08%)
- Total no. of tribes : 32
- ITDAs : 5
- ST Population in ITDAs (TSP Area) : 9.12
- MADA Pockets : 37 (420 villages) (4.74 lakhs)
- Clusters : 11 (83 villages) (0.81 lakhs)
- ST Population in Plain Areas : 16.96
- PVTG population : 0.86 (8 groups)
- ST Literacy : 49.79 (General: 66.46)
 - ST Female Literacy : 39.54 (General : 57.92)
 - ST Male Literacy : 59.93 (General :74.95)

Scheduled Areas

- Covered under V schedule of Constitution of India.
- Spread over in 9 districts (Adilabad, Asifabad, Mancherial, Warangal, Mulugu, Mahbubabad, Khammam, Bhadradri-Kothagudem and Nagarkurnool)
- 85 Mandals (30 fully & 55 partly) and 1,174 villages (PESA Gram Sabha villages 1394, habitations covered 3619)

Who are Scheduled Tribes

- Art.366(25) “Scheduled Tribes” means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under article 342 to be Scheduled Tribes for the purposes of this Constitution.
- **President notifies the STs** under Art.342(1)
- Parliament may pass a law for inclusion or exclusion under Art.342(2)
- Essential characteristics first laid by Lokur Committee,1965
- Basic traits:
 - **Primitive traits and a distinctive culture**
 - **shyness of contact** with the public at large
 - **Geographical isolation**
 - **Socio-economic backwardness**

Scheduled Tribes in Telangana State

1. Andh, Sadhu Andh
2. Bagata
3. Bhil
4. Chenchu
5. Gadabas, Bodo Gadaba, Gutob Gadaba, Kallayi Gadaba, Parangi Gadaba, Kathera Gadaba, Kapu Gadaba
6. Gond, Naikpod, Rajgond, Koitur
7. Goudu (in the Agency tracts)
8. Hill Reddis
9. Jatapus
10. Kammara
11. Kattunayakan
12. Kolam, Kolawar
13. Konda Dhoras, Kubi
14. Konda Kapus
15. Kondareddis
16. Kondhs, Kodi, Kodhu, Desaya Kondhs, Dongria Kondhs, Kuttiya Kondhs, Tikiria Kondhs, Yenity Kondhs, Kuinga
17. Kotia, Benthoriya, Bartika, Dulia, Holva, Sanrona, Siddhopaiko

18. Koya, Doli Koya, Gutta Koya, Kammara Koya, Musara Koya, Oddi Koya, Pattidi Koya, Rajah, Rasha Koya, Lingadhari Koya (Ordinary), Kottu Koya, Bhine Koya, Rajkoya
19. Kulia
20. Manna Dhora
21. Mukha Dhora, Nooka Dhora
22. Nayaks (in the agency tracts)
23. Pardhan
24. Porja, Parangiperja
25. Reddi Dhoras
26. Rona, Rena
27. Savaras, Kapu Savaras, Maliya Savaras, Khutto Savaras
28. Sugalis, Lambadis, Banjara
29. Thoti (in Adilabad, Hyderabad, Karimnagar, Khammam, Mahbubnagar, Medak, Nalgonda, Nizamabad and Warangal Districts)
30. Yenadis, Chella Yenadi, Kappala Yenadi, Manchi Yenadi, Reddi Yenadi
31. Yerukulas, Koracha, Dabba Yerukula, Kunchapuri Yerukula, Uppu Yerukula.
32. Nakkala, Kurvikaran

Particularly Vulnerable Tribal Groups (PVTGs-PTGs)

(1) Chenchu, (2) Kolam, (3) Thoti and (4) Konda Reddy

Traits

- Small in number
- Have not attained any significant level of social and economic progress
- Generally inhabit remote localities
- Having poor infrastructure and administrative support
- Pre-agricultural mode of economy
- Extremely low level of literacy
- Stagnant or declining population

SCHEDULED AREAS

- Para (6) of Fifth Schedule and Article 244 (1) of Constitution of India defines Scheduled Areas as such as the President may by order declare to be Scheduled Areas; the criteria area
 - ✓ Preponderance of tribal population.
 - ✓ Compactness and reasonable size of the area.
 - ✓ Available administrative entity such as a district, block or taluk.
 - ✓ Economic backwardness of the area as compared to neighboring areas.

- In exercise to the powers conferred by sub-paragraph (1) of Paragraph 6 of the Fifth Schedule to the Constitution of India, the President made the Scheduled Areas (Part-A) States Order 1950 dated 26.01.1950 and Scheduled Areas (Part-B) States Order 1950 dated 07.12.0950.

SCHEDULED AREAS IN THE STATE OF TELANGANA

Sl. No.	District	No. of Mandals situated			No. of Sch. villages
		Wholly in Sch. Areas	Partly in Sch. Areas	Total	
1.	Khammam	2	3	5	41
2.	Bhadradri-Kothagudem	16	6	22	365
3.	Warangal	0	3	3	5
4.	Mulugu	3	6	9	231
5.	Mahbubabad	2	3	5	95
6.	Adilabad	4	12	16	243
7.	Komram Bheem - Asifabad	3	10	13	150
8.	Mancherial	0	8	8	21
9.	Nagarkurnool	0	4	4	23
Total:		30	55	85	1174

Law applicable to V Schedule Areas

- **Role of Governor in scheduled areas:**
 - The Governor may make regulations for the peace and good governance of the Scheduled Areas.
 - The Governor may repeal or amend any Act of Parliament or of the Legislature or any existing law applicable to the scheduled areas in consultation with TAC.
 - The Governor shall annually or whenever so required by the President make a report to the President regarding the administration of the scheduled areas.
- **Tribes Advisory Council:**
 - Tribes Advisory Council consisting of 20 members of whom three-fourths shall be representatives of STs in the legislative assembly of the State.
 - TAC to advice on matters pertaining to the welfare and advancement of the STs in the State referred to them by Governor.
- **Directions to the State:**
 - The executive power of the Union shall extend to the giving of directions to the State as to the administration of the said areas.

REASONS FOR LAND ALIENATION

“Poverty is the worst form of violence”
..... Mahatma Gandhi

**"All men are born equal and free" is
not Nature's law in the literal sense.
Economic equality is the master-key
to nonviolent independence”**
.....Mahatma Gandhi

THE AGENCY TRACTS INTEREST AND LAND TRANSFER ACT, 1917 (14-08-1917)

- Regulate rate of interest and transfer of the land in Agency Tracts of Ganjam, Visakhapatnam and Godavari Districts.
- Compound interest was abolished.
- Rate of simple interest was reduced to 24% per annum and in any case the total interest should not exceed the principal amount.
- Transfer of immovable property without written consent of Agent was made absolutely null and void unless it was in favour of another member of Hill Tribe.

Tribal Areas Regulation 1356 Fasli (1946 A.D)

This Regulation empowered the government to make rules for improved administration of any notified tribal area in respect of the tribals and of their relations with non-tribals. The substance of this regulation was incorporated in the Tribal Areas Regulation 1359 Fasli (1949 AD) and the rules giving effect to its provisions were issued by the Revenue Department as Notified Tribal Area Rules 1359 Fasli on November 16, 1949.

TELANGANA TRIBAL AREA REGULATION, 1359 FASLI

(31-8-1359 F. – 16.11.1949)

- Prohibiting the grant of Pattas over any land in notified tribal areas to a non-tribal.
- The Agent or Assistant Agent vested with Civil and Revenue jurisdiction.
- Prohibiting any person from engaging in business of money lending without license.
- To expel from a notified tribal area any non-tribal whose presence in notified area is likely to be detrimental to the interests of tribals.
- To abolish Patel and Patwari Watans.
- Barring jurisdiction of Courts of law.
- To transfer all suits or proceedings pending before any Court of Law or Revenue Authority to Agent for the eviction of any tribal from lands or house site in notified area.

A.P. Scheduled Areas Land Transfer Regulation, 1959

- Transfer of immovable property by a member of Scheduled Tribe to a member of non-Scheduled Tribe is null and void.
- Where a transfer of immovable property is made in contravention to the non-tribal; may restore it to the transferor or his heirs.
- No land in the Scheduled Area owned by a member of a Scheduled Tribe shall be attached and sold in execution of a money decree.
- Provisions of the A.P. Scheduled Areas Land Transfer Regulation, 1959 were extended to the Scheduled Areas of Telangana districts repealing Telangana Tribal Area Regulation, 1359 F with effect from 1.12.1963.

Amendment 1/70 (3.2.1970)

- Transfer of immovable property situated in the Agency tracts by a person, whether or not such person is a member of a Scheduled Tribe, shall be absolutely null and void, unless such transfer is made in favour of a person who is a member of a Scheduled Tribe or a Society registered or deemed to be registered under the A.P. Co-operative Societies Act, 1964, which is composed solely of members of the Scheduled Tribes. (transfer of immovable property from tribal to non-tribal and non-tribal to non-tribal is also prohibited).
- Until the contrary is proved, any immovable property situated in the Agency tracts and in the possession of a person who is not a member of a ST, shall be presumed to have been acquired by such person or his predecessor in possession through a transfer made to him by a member of a S.T.

Amendment 1/1971

- Any person, whether or not such person is a member, of a Scheduled Tribe, may subject to the provisions of clause (2), mortgage without possession, any immovable property situated in the Agency tracts, to any co-operative society including a Land Mortgage Bank, or to any Commercial Bank or other financial institution approved by the State Government.
- In the event of the immovable property so mortgaged or any part thereof being brought to sale in default of payment of the mortgage money or the interest thereof or for any other purpose, the said property shall be sold only to a member of a Scheduled Tribe or a society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 which is composed solely of members of the Scheduled Tribes.

Amendment 1/1978

- No document relating to transfer of immovable property situated in the agency tracts shall be registered by any registering officer, unless the person presenting the document furnishes a declaration by the transferee that the transferee is a member of a Scheduled Tribe or a society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964, which is composed solely of members of the Scheduled Tribes.
- All offences under this Regulation shall be cognizable.
- To punish with rigorous imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees or with both for acquiring any immovable property in contravention of the provisions of this Regulation; or continues in possession of such property after a decree for ejectment is passed.

TRANSFER UNDER LTR

- Forcible dispossession or encroachment
- Exchange of land in Scheduled Area
- Contract to sell
- Pasupukunkuma means a gift to daughter
- Other dealings including allotment of shops in Bus Stands in Agency Areas. The word license can be read under general expression “other dealings” under LTR.

Validity of Regulation 1 of 1970

The provisions of the Andhra Pradesh Scheduled Area Land Transfer Regulations 1 of 70 are constitutionally valid. A legislation, which in essence and substance aims at restoration of land to the 'tribals' that originally belonged to them but which passed into the hands of 'non-tribals', certainly cannot be characterized as unreasonable. True, transfer by 'non-tribals' to 'non-tribals' would not diminish the pool. As a matter of fact, it would be unjust, unfair and highly unreasonable merely to freeze the situation, instead of reversing the injustice and restoring the status-quo-ante.

*(Supreme Court in the P. Ramireddy vs. State of Andhra Pradesh
(AIR 1988 SC 1626))*

Burden of Proof always lies on Non Tribal in LTR cases

Property situated in the Agency tracts is found to be in the possession of a person who is not a member of scheduled tribe such a person should be presumed to have acquired such land through a transfer made to him by a member of a scheduled tribe unless and until contrary is proved -whether the writ petitioner has the evidence to dispel the presumption incorporated in Clause (b) or not is not the concern of the Court at this stage and it is for the Special Deputy Collector(T.W) to decide that question on merits of the matter holding enquiry and after giving opportunity to both sides.

(Special Deputy Collector, (TW), Palwancha Vs. Gummadapu Mohan Rao& another. 2002(4) ALD 132 (DB)

Non-application of Principle of Resjudicata

Orders passed in the first proceedings initiated under the Regulation will not operate as Resjudicata if the later proceedings were initiated by third party or by the same party on the basis of any further material.

(N. Durga Rao & another Vs. Special Deputy Collector (TW) Kota Ramachandrapuram W.G.Dist. & others. 2003(6) ALD (NOC) 68)

Land Transfer Regulation prevails on other Laws

The Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 have overriding effect over all other laws applicable to the Scheduled Areas of the State.

(G.O.Ms.No.68 SW (LTR.1) Dept., dated 09.07.2002)

Any dealing

The expression 'transfer' in 'Transfer of immovable property' by STs includes any 'dealing' with such property. The word 'deal with' is not defined in the Statute. Its dictionary meaning, taken as safe guide, can be extended to achieve the legislative object of the Act: transaction or dealing with immovable property having effect of extinguishing title of a member of aboriginal tribe and vesting the same with the non-ST. This can be construed as 'transfer of immovable property.

(Amrendra Prapat Singh, Appellant vs. Tej Bahadur Prajapati and others, AIR 2004 Supreme Court 3782)

LISENCE

A.P. Scheduled Areas Land Transfer Regulation, 1959 - Section 2(g) - “**Other dealing**”- Allotment of shops in Bus stands in Agency Areas by means of tenders in the form of licence - Falls within the expression “other dealing” and hence prohibited - The word ‘licence’ can be read under the general expression ‘**other dealings**’ used in Section 2(g) of the Regulation.

(Adarsha Adivasi Mahila Samithi & others Vs. Agent to the Govt. Khammam & others. 2003 (5) ALD 284)

Pasupu Kunkuma

‘Pasupu Kunkuma means a gift, settlement or assignment of land to daughter-said transaction amount to a gift.

(Gandevalla Jayaram Reddy Vs. Mokkal Padmavathamma and others.
AIR 2002 A.P.75 (Full bench) AIR 1980 A.P. 139, Overruled.)

Pruning of trees not amounting to word “transfer” of immovable Property

A.P.Scheduled Area Land Transfer Regulations.-Section 3 and 2(g) - Abnus (Beedi) leaves of standing trees - Whether immovable property - Section 3 relating to transfer of immovable property be construed liberally - Sale of Beedi leaves by Government - Pruning of the trees which is for the benefit of the members of the Scheduled Tribes by itself not amounting to transfer of immovable property - Abnus leaves when they fall down from tree cease to be immovable property though they are part of immovable property when they are on tree - Tenderer has nothing to do with plucking of leaves from tree - Restriction in the Regulation do not therefore apply.

(Andhra Pradesh Tribal (Girijan) Welfare (Abhyudaya) Union (Sangam) rep. by its President and others Vs. State of AP Energy, Forests, Environment, Science and Technology Dept. and others; (Satyabrata Sinha, CJ and S.R. Nayak, J.); 2001(3) ALT 411=2001 ALT (Rev.) 259=2001(3) ALD 189 (DB)

Exchange

The word 'exchange' in the definition of 'transfer' also includes exchange of shared immovable property among family members in the Scheduled Areas. Partition of family property is permitted but not exchange of property during the division of inherited family property by non-STs.

(Ashok Vs. Baba Rao and Another. 2002(6) ALT 296.)

Contract to sell

The word 'transfer' includes 'contract to sell'.

(Kakarla Nageswara Rao and other Vs. Government of A.P. 1995(3) ALT 164.)

Forcible dispossession and encroachment'

'Dealing with immoveable property', includes acts of 'forcible dispossession and encroachment'. Thus a dispossessed ST is entitled to restoration of possession of his land.

(M. Suresh Bhargava & Another vs. State of AP & Others.1989 (2) ALT 516)

SADA BAINAMA

- Rights of tribals cannot be defeated by recourse to hyper-technicalities
- Unregistered sale deed cannot be taken into account, while examining nature of rights under Regulation – Apart from prohibition contained in Section 3 of A.P. Scheduled Areas Land Transfer Regulation, 1959 as amended from time to time alleged sale deed was invalid on account of embargo contained in Section 38-E of Act – (A.P (T.A) Tenancy and Agricultural Lands Act 1950,,; Registration Act 1908, Section 17(1)}.

(Vemula Bhaskar Rao and another Vs. Government of Andhra Pradesh and others W.P.No. 23669/2000, dated 11-12-2008, (2009 (2) ALD 500)

Entry of Patwari in Jamabandi

Supreme Court of India held that based on the entry of the Patwari in PB Jamabandi "Tassawar Tabadla" (as a result of exchange), without any further evidence, does not entitle for the land.

(Jattu Ram vs Hakam Singh and Others on 15 September, 1993)

Testamentary Disposition

“Will” in favour of a stranger- Not permissible

(Katta Yesuratnam Vs. Commissioner, Land Revenue, A.P Hyderabad and others (Mr. B.Subhashan Reddy, J.) 1997(6) ALT 829)

LTR prevails over RoR Act

- In view of overriding effect given to Section 3 (1)(a) of A.P. Scheduled Areas Land Transfer Regulation, 1959 as amended by Regulation 1 of 1970, over all other enactments in force in the agency tracts, enquiry contemplated under Regulation, an independent Enquiry Authority empowered under Section 3(1)(a) of Regulation, has to arrive at an independent conclusion on the parameters of law contained in Regulation and he is not bound by finding, if any, recorded under any other enactment with regard to such transfer. Therefore, mere fact that competent authority under ROR Act had regularized sale in favour of petitioner, will not operate as a bar to make an independent enquiry - Protection, if any, given under Section 5-A(4) of ROR Act, not available to petitioner so far as enquiry under Section 3(1)(a) is concerned.
- Transfer if found in contravention of provisions of Section 3(1)(a) of Regulation, such transfer will not be saved by virtue of validation under provisions of ROR Act - (A.P Rights in Land and Pattadar Pass Books Act 1971, Section 5-A(4)).

{Pathipati Rangamma Vs. Agent to Govt. Khammam and others. W.P 22643 of 2005. (2010 (4) ALD 769)}

Restoration of land

The Andhra Pradesh High Court held that in the case of a transfer of land situated within the scheduled area by a non-tribal in favour of another non-tribal which is absolutely null and void under the provisions of sub-section (1) of Section 3, the non-tribal transferor is not entitled to have the land restored to him and that Clause (a) of subsection (2) of Section 3 of Regulation I of 1959, as amended by Regulation I of 1970, has no application to such a transfer. Even the transferee-non-tribal is also not entitled to retain the property.

(Vemana Somalamma and Others vs Deputy Collector, TW ...
on 17 February, 1993)

Agency Courts have alone Jurisdiction in Agency Areas

The Hon'ble Supreme Court in its order dated 25.09.2012 dismissed the Civil Appeal Nos 5030-5036 of 2004 filed by Nagarjuna Grameena Bank and others and clarified that those persons who have decrees, orders or judgments in their favour passed by the Civil Courts may lay their claim before the Agency Courts. In the event of such claims being laid before the Agency Courts; the same shall be decided by the Agency Courts uninfluenced by any judgment, decree or order passed by the Civil Courts.

(Civil Appellate Jurisdiction-Civil Appeal Nos 5030-5036 of 2004, Nagarjuna Grameena Bank & others Vs. Medi Narayana and others Supreme Court order -Sep 25th 2012)

SAMATHA JUDGEMENT

- Para 5.2 of the V Schedule of the Constitution of India has a predominant object of imposing total prohibition on transferring immovable property in a scheduled area to any person other than a tribal.
- Article 244 (1) read with Schedule V of the Constitution of India, the expression “person” applies to the Government also and therefore, it would be impermissible for the Govt. to transfer its land (Govt. land) to non-tribals. Govt. lands, forest lands and tribal lands in scheduled area cannot be leased out to non-tribals or to private industries.
- All industrialists be they natural or juristic persons to stop forthwith the scheduled areas except where the lease has been granted to the State undertaking i.e., A.P. Mineral Development Corporation.

G.Os BENEFITING NON-TRIBALS STRUCK DOWN BY HIGH COURT

1. G.O.Ms.No.41 Revenue dated 12-1-1971 directing the authorities concerned not to evict the Sivai Zamandar in occupation of Govt. lands up to an extent of 2.50 Ac. Wet or 5.00 Ac. Dry if they are in continuous possession of those lands for a period of not less than 10 years.
2. G.O.Ms.No.951 Emp. & Social Welfare Dept., dated 4.12.1974 directing authorities concerned not to evict Sivai Zamandars belonging to S.C. in occupation of Govt. lands up to an extent of 2.50 Ac. Wet or 5.00 Ac. Dry land if they are in occupation of those lands sine 1969.
(P.Gangamma Vs. Vasudha Misra & another. 1998(2) ALD 35.)
3. G.O.Ms.No.129 dated 13-8-1979 directing the Officers concerned not to evict non-tribal landless poor persons in occupation of Govt. lands in Scheduled Areas up to an extent of 5.00 Ac wet land or 10.00 Ac dry land.
(A.P.Girijan Welfare Students and Youth Union Vs. State of A.P.W.P.No 1755/80 dated 5.12.1984)

A.P.(SCHEDULED AREAS) MONEY LENDERS REGULATION, 1960 (4-1-1960)

- Money lending in Scheduled Areas without license is prohibited.
- Money lender has to renew his license once in a year.
- Interest shall be simple and shall not exceed 12% if loan is unsecured, if the loan is otherwise than on pledge the rate of interest should not exceed 9% simple interest per annum.
- **Rule 8 (v) of (PESA) Rules, 2011** No Money Lending License shall be granted to Private Money Lending Agencies in Scheduled Areas.

A.P.(SCHEDULED TRIBES) DEBT RELIEF REGULATION, 1960 (27-1-1960)

- (i) (a) All interest outstanding on 1-1-1957 on debts incurred before 1-1-1957 shall be deemed to be discharged and only the principal or such portion thereof as may be outstanding may be repayable.
- (b) Where any member of Scheduled Tribe has paid to any creditor twice the amount of the principal such debt shall be deemed to be wholly discharged.
- © Where the sum repaid falls short of the twice the principal such amount only as would make up shortage shall be repayable.
- (ii) On debts incurred on or after 1-1-1957, interest shall be calculated up to commencement of this Regulation @ 5% per annum simple.
- (iii) (a) On debts incurred after commencement of this Regulation, interest rate shall not exceed 9% per annum simple, if it is secured debt.
- (b) 12% per annum simple interest, if it is an unsecured debt.

(SCHEDULED TRIBES) DEBT RELIEF REGULATION, 1970

(13-8-1970)

- ❖ Loans advanced by unlicensed money lenders null and void and unenforceable in any Court.
- ❖ (I) Amount of debt shall be limited to the amount of principal only. Principal or outstanding portion thereof is payable.
- ❖ (ii) No interest shall be payable.
- ❖ (iii) Where any member of a Scheduled Tribe has paid to any creditor any amount in excess or equal to the amount of the principal shall be deemed to be wholly discharged.
- ❖ (iv) Where the sums repaid by way of principal or interest or both fall short of the amount of the principal such amount as would make up the shortage shall be repayable.

THANK YOU

