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MINORITY RIGHTS AND AUTONOMY MOVEMENTS: LEGAL CHALLENGES AND OPPORTUNITIES IN LADAKH

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I. ABSTRACT

The Ladakh autonomy movement reflects a multifaceted struggle encompassing minority rights, environmental preservation, and the intricate dynamics of regional autonomy within India's constitutional framework. With a significant majority of its populace categorized as Scheduled Tribes, Ladakh's push for inclusion under the Sixth Schedule stems from its distinctive demographic makeup. This pursuit of tribal self-governance, however, encounters resistance from the central government, wary of establishing precedents for special status provisions and safeguarding national cohesion. Embracing the Sixth Schedule could empower Ladakh to confront urgent environmental issues and safeguard its rich cultural legacy. Yet, realizing this vision entails navigating through intricate legislative hurdles, from constitutional amendments to aligning legal frameworks and ensuring the efficacy of proposed Autonomous District Councils. As discussions unfold, striking a balance between Ladakh's autonomy aspirations and the broader national interests presents a significant challenge.

In short, this research emphasizes the need to deal with the legal issues concerning minority rights and autonomy in Ladakh. We can create a more inclusive government system by doing this. Recognizing the specific cultural and environmental needs of the area offers a great chance to empower local communities and let them play a role in deciding the future of Ladakh.

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II. INTRODUCTION

Ladakh, a high-altitude desert region in India, is home to about 300,000 people, with 97% belonging to tribal communities³ split between the predominantly Buddhist district of Leh and the Muslim-majority Kargil. Since being designated a Union Territory in 2019, which stripped it of its elected legislature, Ladakh has been a hotbed of demands for greater autonomy and statehood.⁴ The local populace, fearing cultural erosion and demographic changes, is pushing to be included under the Sixth Schedule of the Indian Constitution to gain more control over their governance, land, and resources. Additionally, Ladakh faces pressing environmental threats from climate change and increased industrial activities, intensifying the urgency for local stewardship over ecological decisions. These multifaceted challenges make Ladakh's quest for autonomy not just a political struggle, but also a fight for cultural preservation and environmental sustainability.

Since India's independence, Ladakh has navigated regional and national conflicts. Initially led by Buddhist figure Kushok Bakula, Ladakh aligned itself with India, distinct from separatist movements in Kashmir. However, grievances grew over time, especially after Ladakh was designated a separate Union Territory without its own legislature in 2019. This sparked fears of demographic changes, job losses, and land rights erosion among locals, fueling ongoing protests. Calls for greater autonomy or full statehood intensified, led by groups like the Apex Body of Leh (ABL) and the Kargil Democratic Alliance (KDA). Despite dialogue attempts, frustrations mounted, culminating in environmental activist Sonam Wangchuk's hunger strike starting March 6, 2024. The movement has bridged divides between Leh and Kargil districts, with threats of escalated protests if their demands remain unmet.

³ Ministry of Tribal Affairs, "Report of the High Level Committee on Socio- Economic, Health and Educational Status of Tribal Communities of India, Government of India, 2014, p. 35.

⁴ "Transport Statistics and Growth Figures Year-Wise of Ladakh- Indiastat" <<https://www.indiastat.com/ladakh-state/data/transport>>

This research paper will examine various dimensions of this ongoing debate. We will begin by investigating the legal ramifications of the protests linked to the Sixth Schedule and its constitutional underpinnings. Further, we will explore the legislative obstacles that impede the implementation of the Sixth Schedule in Ladakh. Following this, a comparative case study will draw insights from other Indian regions that have faced similar challenges. At the end, the paper will provide recommendations aimed at fostering effective governance in Ladakh, highlighting the importance of community involvement and institutional support.

By following this structured approach, we aim to deliver a thorough understanding of the constitutional rights and tribal governance issues in Ladakh, offering insights into potential future pathways.

III. CONSTITUTIONAL RIGHTS AND TRIBAL GOVERNANCE: ANALYZING THE DEBATE SURROUNDING LADAKH'S INCLUSION IN THE SIXTH SCHEDULE

The conversation about directly applying Sixth Schedule to Ladakh became intense after Jammu and Kashmir was bifurcated into two Union Territories in 2019. This raised concerns among the people of Ladakh, who feared a negative impact on their culture and identity due to such changes. They wanted safeguards for their cultures.

In 2008, a committee recommended that Ladakh should be accorded special status as it had a tribal population and rich culture that needed to be protected. After the 2019 events, this suggestion found stronger support from groups like the Ladakh Buddhist Association, which pushed for inclusion of the religious community in it as well. The belief is that this move would give locals greater control over domestic matters without destroying their traditional way of life.

Despite having a local council (LAHDC) since 1995, many believed this wasn't enough. With regard to the need for growth with identity preservation, they want the Sixth Schedule because it can provide them with more autonomy. This whole movement is

based on ensuring that citizens of Ladakh are not denied their voices while keeping their cultural history alive.

The constitutional rights and tribal governance structure in Ladakh are fundamental components of the region's unique cultural and demographic makeup. In Leh Ladakh, most of the population is from Schedule Tribe (ST). Schedule Tribe (ST) constitutes 53.10 % while Schedule Caste (SC) were 0.07 % of total population in Leh Ladakh.⁵

With over 90% of Ladakh's population comprising Scheduled Tribes, there exists a strong imperative to incorporate the region into the Sixth Schedule of the Indian Constitution.⁶

This initiative is deemed essential for enhancing Ladakh's autonomy and safeguarding its cultural legacy. Under the Sixth Schedule, Ladakh would have the capacity to establish autonomous district councils, empowering local communities to enact legislation on specific matters, oversee land revenue, and manage local infrastructure. This heightened autonomy would empower Ladakh to more effectively manage its resources and governance, which is crucial for the preservation of its cultural heritage and the protection of the rights of its tribal populace.

Furthermore, inclusion in the Sixth Schedule would facilitate targeted development funding to address Ladakh's distinct environmental challenges and delicate ecosystem, particularly in mitigating the effects of climate change. The local governance framework facilitated by the Sixth Schedule is perceived as indispensable for the efficient management of Ladakh's natural resources, ensuring their sustainable utilization and preservation.

The incorporation of Ladakh into the Sixth Schedule is regarded as a pivotal measure in upholding the region's constitutional rights and bolstering its tribal governance structure.

⁵ Office of the Registrar General & Census Commissioner, India, "Population By Religious Community," 2011

⁶ Radhakrishna S, "Civil Society Groups Rally behind Ladakh's Demand for Constitutional Autonomy" (Frontline, March 28, 2024) <<https://frontline.thehindu.com/news/statement-vikalp-sangam-general-assembly-support-ladakhis-demands-constitutional-autonomy/article68001217.ece>>

This increased autonomy and self-governance are deemed imperative for the preservation of Ladakh's diverse cultural, linguistic, and social heritage amidst broader societal and economic shifts. The augmented local control and decision-making authority conferred by the Sixth Schedule are deemed essential for Ladakh to maintain its unique identity and ensure the sustainable development of its populace.

IV. LEGAL IMPLICATIONS OF LADAKH'S SIXTH SCHEDULE PROTEST: ANALYZING CONSTITUTIONAL FRAMEWORKS

The Sixth Schedule of the Indian Constitution was created with the dual goals of acknowledging the traditional customs and laws of tribal communities, as well as integrating these groups more fully into the national fabric. Prior to independence, tribal areas had their own independent governance systems separate from colonial rule, which were crucial in preserving their distinct identities. However, during the colonial period, the autonomy of these tribal communities declined due to actions like land seizures, forced relocations, and exploitation.

The framers of the Indian Constitution incorporated the Sixth Schedule to establish a constitutional framework for governing tribal regions, including the creation of autonomous district and regional councils with legislative, executive, and financial powers. This framework has been implemented in states like Assam, Meghalaya, Tripura, and Mizoram, where the autonomous councils have played an important role in promoting local self-governance, preserving tribal culture, and addressing socioeconomic disparities. However, challenges such as inadequate devolution of powers and bureaucratic interference have hindered the effective functioning of these councils.

Ladakh is now demanding inclusion under the Sixth Schedule, driven by its unique demographic composition - over 90% of the region's population belongs to Scheduled Tribes. By seeking Sixth Schedule status, Ladakh aims to leverage the constitutional protections and enhanced autonomy that this framework provides. If granted, Ladakh would be able to establish its own Autonomous District Councils (ADCs) with legislative,

executive, and judicial powers over key areas like land management, social welfare, and infrastructure development.

In the context of governance, the powers granted to Autonomous District Councils (ADCs) play a vital role in ensuring that tribal communities have a say in their own affairs. The Autonomous District Councils are bestowed with several legislative, executive and financial powers.

The Sixth Schedule of the Indian Constitution allows Autonomous District Councils (ADCs) the power to legislate. Such legislation can include rules on land use and cultural preservation by the ADCs. These powers are crucial in protecting the rights, rituals, and traditions of tribal communities.

ADCs are bestowed with executive powers, which enables them to effectively handle the local governance of their areas. They may implement programs and services for the specific needs of their people. With this power, ADCs can take up issues related to education, healthcare, and infrastructure that are important for the tribal population.

In matters of finance, the Autonomous District Councils can frame their own budget and raise local taxes. This power of the purse enables them to finance schemes which directly benefit their communities. They can also tap government grants-in-aid, thus securing additional resources for local development.

The legal implications of Ladakh's inclusion under the Sixth Schedule would be significant, as it would grant the region a higher degree of self-governance and self-determination within India's broader constitutional structure. The ADCs would have the authority to enact laws, collect taxes, and manage local resources, giving Ladakh greater control over its own affairs. From a constitutional standpoint, the Sixth Schedule is designed to safeguard the interests of tribal communities and preserve their distinct cultural, social, and economic identities - a recognition that would be extended to Ladakh if it were to be incorporated under this framework.

However, the process of including Ladakh under the Sixth Schedule is not without its challenges. It would require amending the Constitution, which can be a complex and politically contentious process. Additionally, the central government may have concerns about the potential implications of granting such a high degree of autonomy to a strategically important region like Ladakh.

Nonetheless, Ladakh's push for Sixth Schedule status reflects the region's desire to assert its identity and exercise greater control over its own affairs, mirroring a broader trend of tribal and indigenous communities across India seeking greater recognition and self-governance within the country's constitutional structure. As the debate continues, it will be crucial to balance Ladakh's aspirations for autonomy with the broader interests of the Indian state.

V. LEGISLATIVE CHALLENGES IN IMPLEMENTING THE SIXTH SCHEDULE IN LADAKH

Implementing the Sixth Schedule in Ladakh presents numerous legislative complexities that require careful attention and strategic planning. One significant challenge is amending the Indian Constitution to include Ladakh under the Sixth Schedule, requiring a two-thirds majority in both houses of Parliament as per Article 368. Concerns about setting a precedent for granting special status to regions beyond traditional Sixth Schedule areas may arise, necessitating political consensus-building.

Another obstacle is harmonizing existing legal frameworks, like the Ladakh Autonomous Hill Development Council Act, 1995⁷, with the Sixth Schedule provisions. This involves reconciling conflicts between old and new legal frameworks and specifying powers between the Union Territory administration and proposed Autonomous District Councils (ADCs).

⁷ The Ladakh Autonomous Hill Development Council Act, 1995, Act No. 1 of 1995.

Balancing autonomy for Ladakh with national interests is crucial. Crafting a framework that empowers ADCs while retaining central control over critical domains like defense requires careful deliberation. Ensuring effective governance within proposed ADCs is essential, including transparency, oversight, and capacity-building efforts.

While addressing demographic and regional concerns poses a multifaceted challenge. Balancing representation and power distribution between districts, and managing concerns about demographic changes and outsider influx, requires delicate negotiation. Acknowledging local apprehensions regarding the implications of Sixth Schedule implementation is vital for consensus and sustainable development.

A recent case involving the Union Territory of Ladakh pertains to the allotment of electoral symbols for the Ladakh Autonomous Hill Development Council (LAHDC) elections. The Supreme Court reserved judgment on a petition filed by the Ladakh administration opposing the allotment of the 'plough' symbol to the Jammu and Kashmir National Conference (JKNC). This case, highlights ongoing legal issues within the governance framework of Ladakh and the complexities of its political landscape.⁸

As of now, there are no landmark judgments specifically addressing Ladakh's autonomy under the Sixth Schedule. The situation remains dynamic, with ongoing discussions at both the local and national levels regarding the legal and constitutional implications of granting such status to Ladakh. The demand for autonomy continues to be a focal point of political discourse, reflecting the region's aspirations for self-governance and cultural preservation amidst broader constitutional challenges.

VI. CASE STUDY

Before 2019, Ladakh had a different political status within India. Ladakh was part of the former state of Jammu and Kashmir, which had a special autonomous status under Article 370 of the Indian Constitution. Under Article 370, Jammu and Kashmir had its

⁸ 2024 LiveLaw (SC) 589

own constitution, flag, and decision-making powers on all matters except defense, foreign affairs, and communications. This provided a degree of autonomy to the region.

Ladakh itself did not have full statehood, but as part of Jammu and Kashmir, it enjoyed some of the protections and autonomy granted to the state. The people of Ladakh had long been demanding UT status to boost development and improve administration. Many welcomed the move in 2019 to separate Ladakh from Jammu and Kashmir and grant it UT status.

However, the reality since 2019 has been disappointing for many in Ladakh. The region lost the special protections it had under Article 370, such as land rights and job reservations for locals. Ladakh is now directly ruled by the central government through a Lieutenant Governor, without an elected legislature of its own⁹. This has led to a sense of political marginalization and loss of autonomy compared to its previous status as part of Jammu and Kashmir.

In August 2019, Ladakh was separated from the former state of Jammu and Kashmir and made a Union Territory directly ruled by the central government in New Delhi. This move was initially celebrated in Ladakh, but the celebratory mood soon turned to anger and desperation.

In 2020, the BJP government won the local hill council election in Ladakh with a majority, but four years later, the people's demands remain unfulfilled.

Since December 2023, representatives from the Apex Body Leh (ABL) and Kargil Democratic Alliance (KDA) have had four rounds of talks with the High Powered Committee set up by the Union government to address the issues of Ladakhis.

⁹ Sharma N and Sharma N, “‘Celebrated Too Soon’ – Ladakh Fights for Identity, Autonomy More than 3 Yrs after Article 370 Move” (The Print, February 9, 2023) <<https://theprint.in/india/celebrated-too-soon-ladakh-fights-for-identity-autonomy-more-than-3-yrs-after-article-370-move/1362553/>>

On February 3, 2024, the ABL and KDA called for the *Leh Chalo*¹⁰ protests which brought everyday life to a standstill. On March 6, 2024, environmentalist Sonam Wangchuk started a 21-day "climate fast" to highlight the protesters' demands and the need to protect Ladakh's fragile ecology.

VII. TESTIMONIES

People's testimony regarding the Ladakh autonomy movement:

- Protesters rallied on April 7, 2024 to bring attention to the plight of herders who raise Pashmina goats, whose soft coats are used to produce cashmere. These herders are now losing pastures to industrial development projects, such as solar power facilities, and to Chinese encroachment as part of a territorial dispute between India and China in the remote border regions.¹¹
- Syed Zafar Mehdi, a protester who came from Turtuk, the last village on the India-Pakistan border in Ladakh, said: "I understand the importance of issues such as the Sixth Schedule and statehood because our community lives in front of the enemy. I fully support the demands of LAB and KDA."
- Asgar Ali, a Master's student from Kargil, shared his feelings of disillusionment regarding the promises made by the government post-2019. He remarked, "It didn't take much time for everyone in Ladakh to realize that the promises of development and jobs which were made to us were not being fulfilled." His statement reflects a growing sentiment among the youth in Ladakh who feel let down by the lack of opportunities and support from the central government, emphasizing the need for local governance and representation.¹²

¹⁰ Akhter Z, "SAV Explainer: People's Movement to Include Ladakh under the Sixth Schedule" (South Asian Voices, March 27, 2024) <<https://southasianvoices.org/pol-sec-in-r-sav-6th-schedule-for-ladakh-03-22-2024/>>

¹¹ Godbole T, "India's Ladakh Region Demands Autonomy" dw.com (April 22, 2024) <<https://www.dw.com/en/indias-ladakh-region-demands-autonomy-to-deal-with-climate-change/a-68873382>>

¹² Raina S and Zahid AM, "Disillusioned, Ladakh Turns to Protests" The Diplomat (February 15, 2023) <<https://thediplomat.com/2023/02/disillusioned-ladakh-turns-to-protests/>>

- During the protests, elderly women were often seen at the forefront, chanting prayers for peace and unity. One elderly woman, holding a mane (prayer wheel), expressed her hopes, saying, "We are here to pray for our land and our future. We want our voices to be heard."¹³ This spiritual aspect of the protests highlights the deep cultural connection the people of Ladakh have to their land and their desire for a peaceful resolution to their demands.
- Thupstan Chhewang, a former BJP member and a veteran politician from Ladakh, has been a steadfast advocate for the region's rights. At a recent protest, he stated, "I will fight for Ladakh's cause till my last breath."¹⁴ His commitment underscores the importance of political leadership in the movement and the generational ties to the struggle for autonomy and recognition. Chhewang's presence at the protests serves as a reminder of the long-standing political aspirations of the people of Ladakh.
- Cheering Dorjay, a former Jammu and Kashmir minister and one of the members of the Apex Body Leh (ABL), said the large gathering of protesters is a "clear message" to the Union government. "We are demanding anything extra-constitutional. Tribal status is the right of the people of Ladakh. The Centre should respect our sentiments," Dorjay, who resigned as Ladakh BJP chief in 2020, said.
- Sonam Wangchuk, a Magsaysay award winner, recalled in his speech how several Union ministers of the BJP government had promised to include Ladakh in the Sixth Schedule after Article 370 was abrogated in 2019. He mentioned election manifestos¹⁵ released by the BJP for the 2019 General elections and the 2020 Leh

¹³ Staff AJ, "Why Are People in India's Ladakh Protesting against Central Government?" Al Jazeera (March 11, 2024) <<https://www.aljazeera.com/news/2024/3/11/why-are-people-in-indias-ladakh-protesting-against-central-government>>

¹⁴ Akhter Z, "SAV Explainer: People's Movement to Include Ladakh under the Sixth Schedule" (South Asian Voices, May 12, 2024) <<https://southasianvoices.org/pol-sec-in-r-sav-6th-schedule-for-ladakh-03-22-2024/>>

¹⁵ Bharatiya Janata Party, "Sankalp Patra Lok Sabha 2019," 2019, p. X, <https://www.bjp.org/en/manifesto2019>.

Hill Council election, in which the BJP "advocated constitutional safeguards for Ladakh and its inclusion in the Sixth Schedule."¹⁶

So, before 2019, Ladakh had a degree of autonomy as part of the former state of Jammu and Kashmir, which it lost when it was made a Union Territory directly under central rule. This has fueled the current demands for greater autonomy and constitutional safeguards by the people of Ladakh, which have intensified in recent years, especially since 2019.

VIII. RECOMMENDATIONS AND CONCLUSION

Tackling the legislative hurdles in implementing the Sixth Schedule in Ladakh demands a multifaceted strategy. The government should establish a Joint Parliamentary Committee (JPC) composed of members from both Houses of Parliament, alongside representatives from Ladakh's political parties, civil society organizations, and leading intellectuals. This committee would be tasked with conducting a comprehensive study of Ladakh's specific needs, proposing necessary amendments to the Constitution, and drafting a suitable framework for the implementation of the Sixth Schedule, thereby ensuring a transparent and inclusive process. In addition, it is crucial to facilitate dialogue and consultation among stakeholders beyond formal parliamentary mechanisms. The government should create a platform for regular dialogue, allowing for open discussions between the central government, local political leaders, community representatives, and civil society organizations.

This platform would acknowledge key issues related to the Sixth Schedule while promoting consensus on the way forward. Furthermore, to amplify the voices of all Ladakhis, a "Ladakh Specific" outreach program should be implemented. This program would include visits to villages and communities in Ladakh, engaging with local residents to conduct surveys that gauge their concerns and aspirations regarding the

¹⁶ NewsClick, "Huge Rally in Ladakh to Demand Statehood and Inclusion in Sixth Schedule" NewsClick (February 5, 2024) <<https://www.newsclick.in/huge-rally-ladakh-demand-statehood-and-inclusion-sixth-schedule>>

Sixth Schedule. Conducted in a participatory manner, this outreach initiative would ensure that all perspectives are valued and integrated into the decision-making process. Building political consensus among stakeholders is crucial, involving rallying support from political parties, civil society, and community leaders.

Harmonizing existing legal frameworks with the Sixth Schedule requires meticulous review and proactive legal reform. Striking a balance between autonomy and national interests is essential to safeguard core concerns like defense and security while empowering local governance. Ensuring effective governance and accountability within proposed Autonomous District Councils (ADCs) involves investing in capacity-building, oversight mechanisms, and participatory decision-making. Addressing demographic and regional concerns requires nuanced policies to foster social cohesion and equitable representation. Together, these strategies can lay the groundwork for sustainable and inclusive governance in Ladakh within the Indian constitutional framework.

The Ladakh autonomy movement is not merely a political struggle, but a fight for cultural preservation and environmental sustainability. As the region's people continue to voice their demands for greater self-determination, the courts and the central government must navigate this delicate balance, upholding the constitutional rights of minority communities while safeguarding the broader national interests. The outcome of this journey will not only shape the future of Ladakh, but also set precedents for how India reconciles its diversity and regional aspirations within the framework of a unified, democratic nation.