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GUESS PAPER SERIES

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**5th Schedule & 6th Schedule
Triple Talak Bill**

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Declaration of 5th Schedule

As per the Constitutional provision under Article 244 (1) of the Constitution of India, the 'Scheduled Areas' are defined as 'such areas as the President may by order declare to be Scheduled Areas' – as per paragraph 6(1) of the Fifth Schedule of the Constitution of India. The specification of "Scheduled Areas" in relation to a State is by a notified order of the President, after consultation with the Governor of that State. In accordance with the provisions of paragraph 6(2) of the Fifth Schedule of the Constitution of India, the President may increase the area of any Scheduled Area in a State after consultation with the Governor of that State; and make fresh orders redefining the areas which are to be Scheduled Areas in relation to any State. The same applies in the case of any alteration, increase, decrease, incorporation of new areas, or rescinding any Orders relating to "Scheduled Areas". At present, Scheduled Areas have been declared in the States of Andhra Pradesh (including Telangana), Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha and Rajasthan.

Criteria for declaring Scheduled Area

The criteria for declaring any area as a "Scheduled Area" under the Fifth Schedule are:

- Preponderance of tribal population,
- Compactness and reasonable size of the area,
- A viable administrative entity such as a district, block or taluk, and
- Economic backwardness of the area as compared to the neighbouring areas.

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These criteria are not spelt out in the Constitution of India but have become well established. Accordingly, since the year 1950 to 2007 Constitutional Order relating to Scheduled Areas have been notified.

Constitutional provisions of Fifth Schedule related to declaration of Scheduled Areas

The Fifth Schedule under Article 244(1) of the Constitution contains provisions regarding administration of Scheduled Areas other than in Northeast India. The provisions of Section 6 of Part C of the Fifth Schedule of the Constitution are as follows:

Scheduled Areas :

- In this Constitution, the expression “Scheduled Areas” means such areas as the President may by order declare to be Scheduled Areas.
- The President may at any time by order

(a) direct that the whole or any specified part of a Scheduled Area shall cease to be a Scheduled Area or a part of such an area;

(b) alter, but only by way of rectification of boundaries, any Scheduled Area;

(c) on any alteration of the boundaries of a State or on the admission into the Union or the establishment of a new State, declare any territory not previously included in any State to be, or to form part of, a Scheduled Area;

(d) rescind, in relation to any State or States, any order or orders made under this paragraph, and in consultation with the Governor of the State concerned, make fresh orders redefining the areas which are to be Scheduled Areas;

and any such order may contain such incidental and consequential provisions as appear to the President to be necessary and proper, but save as aforesaid, the

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order made under sub-paragraph (1) of this paragraph shall not be varied by any subsequent order.

Administration of Tribal Areas (6th Schedule)

The Constitution, under Sixth Schedule, contains special provisions for the administration of tribal areas in the four north-eastern states of Assam, Meghalaya, Tripura and Mizoram.

The various features of administration contained in the Sixth Schedule are as follows:

1. The tribal areas in the four states of Assam, Meghalaya, Tripura and Mizoram have been constituted as autonomous districts⁴. But, they do not fall outside the executive authority of the state concerned.
2. The governor is empowered to organise and re-organise the autonomous districts. Thus, he can increase or decrease their areas or change their names or define their boundaries and so on.
3. If there are different tribes in an autonomous district, the governor can divide the district into several autonomous regions.
4. Each autonomous district has a district council consisting of 30 members, of whom four are nominated by the governor and the remaining 26 are elected on the basis of adult franchise. The elected members hold office for a term of five years (unless the council is dissolved earlier) and nominated members hold office during the pleasure of the governor. Each autonomous region also has a separate regional council.
5. The district and regional councils administer the areas under their jurisdiction. They can make laws on certain specified matters like land, forests, canal water,

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shifting cultivation, village administration, inheritance of property, marriage and divorce, social customs and so on. But all such laws require the assent of the governor.

6. The district and regional councils within their territorial jurisdictions can constitute village councils or courts for trial of suits and cases between the tribes. They hear appeals from them. The jurisdiction of high court over these suits and cases is specified by the governor.

7. The district council can establish, construct or manage primary schools, dispensaries, markets, ferries, fisheries, roads and so on in the district. It can also make regulations for the control of money lending and trading by non-tribals. But, such regulations require the assent of the governor.

8. The district and regional councils are empowered to assess and collect land revenue and to impose certain specified taxes.

9. The acts of Parliament or the state legislature do not apply to autonomous districts and autonomous regions or apply with specified modifications and exceptions.

10. The governor can appoint a commission to examine and report on any matter relating to the administration of the autonomous districts or regions. He may dissolve a district or regional council on the recommendation of the commission.

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Comparison of alternate/special governance mechanisms for tribal zones in the Constitution of India (as of Aug 15, 2017)

Schedule 5 Article 244(1)	Schedule 6 Articles 244(2) and 275(1)
It includes all the states except Assam, Meghalaya, Mizoram & Tripura	This is only for the states Assam, Meghalaya, Mizoram & Tripura
Executive power of a State extends to the Scheduled Areas	Limited executive power/control of state.
Governor has to send reports to the President regarding the administration of Scheduled Areas	In this case it is not required(as it has governing body).
Tribal Advisory council can be formed (Advisory body and no elected members)	Autonomous districts councils and for those districts, regional councils can be formed (Governance body with elected members)
“ Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA, 1996)” is applicable (as of now to the tribal areas of nine States, namely, Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Maharashtra, Madhya Pradesh, Orissa & Rajasthan)	As of now PESA act is not applicable to Schedule 6 areas. (because of their own Autonomous councils for governance.)
Scheduled Areas of Article 244(1) are notified as per the Fifth Schedule	Tribal Areas of Article 244(2) are notified as per the Sixth Schedule .

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President can notify/modify a scheduled area in any part of the india(not in the schedule 6 states)	Governor(of schedule 6 states) can form/alter autonomous districts and autonomous regions.
They can't make laws/rules, but governor has to check the applicability of the central/state laws to the schedule areas.	District or the Regional Council may after its first constitution make rules with the approval of the Governor.
Prior recommendation of Panchayats (Under PESA act) for exploiting/leasing of minor minerals.	All the minerals or in case some activities can be performed by state governments only after the approval of district/regional councils.

	PP(ESA)A	Schedule.V	Schedule.VI				
			Assam	Tripura	Mizoram	Meghalaya	
Area Covered	(Scheduled Area) Notified districts or parts thereof in 10 States: Himachal Pradesh, Rajasthan, Gujarat, Maharashtra, Andhra Pradesh, Telangana, Odisha, Jharkhand, Chhattisgarh and Madhya Pradesh		(Tribal Area) North Cachar Hills District & Karbi Anglong District	(Tribal Area) Bodoland Territorial Areas District	(Tribal Area) Tripura State, except Shillong Municipal and Cantonment Area	(Tribal Area) Chakma District, Mara District & Lai District	(Tribal Area) Khasi Hills District, Jaintia Hills District & Garo Hills District

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Irregular functions of President/Governor	N.A.	Similar to Art.339, but scope is wider than mere planning-execution of Schemes and covers "Administration of Scheduled Areas." Laws and Executive Action may be adapted for special needs of Scd. Areas through Notification and Regulation (no mention of discretion).	Governor's power of determining any dispute over sharing of royalty or fees pertaining to mining between District Council and the State is discretionary. All other powers of Governor are discretionary, after he has consulted Council of Ministers and District Council.	Governor's power of determining any dispute over sharing of royalty or fees pertaining to mining between District Council and the State is discretionary.	Governor's power of determining any dispute over sharing of royalty or fees between District Council and the State is discretionary, after he has consulted Council of Ministers and District or Regional Council.	Governor's power of determining any dispute over sharing of royalty or fees pertaining to mining between District Council and the State is discretionary.
Type of Special Body	Gram Sabha	(State) Tribes Advisory Council	(Autonomous) District Council & (Autonomous) Regional Council	Bodoland Territorial Council	(Autonomous) District Council & (Autonomous) Regional Council	

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Type of Special Body	Gram Sabha	(State) Tribes Advisory Council	(Autonomous) District Council & (Autonomous) Regional Council	Bodoland Territorial Council	(Autonomous) District Council & (Autonomous) Regional Council
Domain of Legislative Power of Special Body	Power of subordinate legislation with respect to consumption of intoxicants, minor forest produce, land-alienation, village markets, money-lending, control over institutions and functionaries in social sector, control over local plan and resources for them, if and when endowed by State Legislature.	N.A. (may advise on Regulations to be made at initiative of and by Governor)	On subjects as enumerated in clauses (a) to (j) of Para 3 and (a) to (o) of para 3A	On subjects as enumerated in clauses (a) to (j) of Para 3 and (i) to (xl) of para 3B	On subjects as enumerated in clauses (a) to (j) of Para 3

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<p>General Administration (Executive Functions) by Special Body</p>	<p>Its approval is mandatory for implementation of local plans, its recommendation is mandatory with respect to minor minerals, and consultation with it is mandatory for land-acquisition and rehabilitation associated with development projects.</p>	<p>N.A.</p>	<p>(In Assam, with respect to subjects as enumerated in clauses (a) to (o) of Para 3A and (i) to (xl) of para 3B, by respective District Council.) With respect to subjects enumerated in clauses (a) to (j) in para 3, by respective Council. On subjects like primary healthcare/ education, cattle-fish and transport, with previous approval of Governor to District Council. Other functions of Community Development and State's executive power, upon assignment to District Council, with mutual consent. Regulation of Money-Lending and Trading by respective District Council, though making of law and its enforcement.</p>
<p>Taxing Power and Finances of Special Body</p>	<p>N.A. Although it would issue utilization certificate to Panchayat for projects and plans of economic development and social justice.</p>	<p>N.A.</p>	<p>Assessment and collection of land revenue, levy of taxes on land-buildings and tolls on persons resident therein, by respective Council. District Council to levy and collect taxes on Professions, modes of transport, entry of goods in market for sale and for maintenance of public utilities. Establishment of Fund for respective Council, operational rules of it to be made by Governor, and its audit report to be prepared by CAG and laid before Council by the Governor.</p>

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**Extension of
Legislative Acts
Of State and Union**

All State and Union Acts (including CPC, CrPC, IPC etc.) extend automatically to Scheduled Areas, but Governor may prohibit their application or adapt these laws, after commencement (It is disputed as to who is to initiate and affirm such adaptation).
Panchayati Raj and Municipalities Act not to extend automatically.

No Legislative Act of Legislative Assembly of State, relating to subjects as enumerated in clauses (a) to (j) of para 3 [and in clauses (a) to (o) of Para 3A and clauses (i) to (xl) of para 3B, in State of Assam] and relating to consumption of non-distilled alcoholic liquor, shall extend automatically to an autonomous district/region unless notified by its respective Council.

Laws made by Legislature of Meghalaya shall prevail over laws made by respective Council under para 3, 8 or 10.

Governor may notify that any law of Parliament (except laws referred to, above) shall not apply at all to an autonomous district/region, or shall apply with specified adaptation.

Governor may notify that any law of State Legislature (except in Meghalaya or laws referred to, above) shall not apply at all to an autonomous district/region, or shall apply with specified adaptation.
President may notify that any law of Parliament shall not apply at all to an autonomous district/region, or shall apply with specified adaptation.

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MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE), BILL 2019

Triple Talaq is the process of divorce under Sharia Law (Islamic law) where a husband can divorce his wife by pronouncing 'Talaq' three times.

- This is also called oral talaq.
- There are three types of divorce under Islamic law, namely,
 - a) Ahsan,
 - b) Hasan
 - c) Talaq-e-Biddat (triple talaq).
- While the former two are revocable, the last one is irrevocable.
- It is mainly prevalent among India's Muslim communities that follow the Hanafi School of Islamic Law.

Under this law, wives cannot divorce husbands by the means of triple talaq. Women have to move a court for divorcing her husband under the Muslim Personal Law (Shariat) Application Act 1937. (This Act was passed to make provisions for the application of Shariat or Islamic personal law to Muslims in India.)

Past rulings:

- In the Shah Bano case in 1985, the SC granted Shah Bano, a 62-year old woman the right to alimony from her husband.
- But in 1986, the government passed the Muslim Women (Protection of Rights on Divorce) Act which diluted the positive impact created by the Shah Bano case.

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- In 2001, in the Danial Latifi & Anr versus Union of India case, the SC upheld the validity of the Shah Bano judgement.
- In August 2017, a five-judge bench of the SC declared the triple talaq as unconstitutional in a majority 3:2 judgement. This was the culmination of a petition filed by Shayara Bano, whose husband of 15 years had divorced her through a letter where he pronounced talaq three times, to declare the divorce as void.

What's the issue all about- A brief history:

The case dates back to 2016 when the Supreme Court had sought assistance from the then Attorney General Mukul Rohatgi on pleas challenging the **constitutional validity of "triple talaq", "nikah halala" and "polygamy", to assess whether Muslim women face gender discrimination in cases of divorce.**

Opposing the practice of triple talaq, **the Centre told the top court that there is a need to re-look at these practices on grounds of gender equality and secularism.**

The Supreme Court later announced the setting up of **a five-judge constitutional bench to hear and deliberate on the challenges against the practice of 'triple talaq, nikah halala' and polygamy.**

The issue gained political momentum on March 2017 when the All India Muslim Personal Law Board (AIMPLB) told the Supreme Court that **the issue of triple talaq falls outside the judiciary's realm and that these issues should not be touched by the court.**

However, on August 22, **the Supreme Court set aside the decade-old practice of instant triple talaq saying it was violative of Article 14 and 21 of the Indian Constitution.**

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A bill in this regard:

In September, the government had proposed **the Muslim Women (Protection of Rights on Marriage) Bill** in the Parliament and sought to make triple talaq a punishable offence under the law.

At first, the Bill was passed in the Lok Sabha but it failed to secure a majority in the Rajya Sabha. The Bill was postponed till the winter session of Parliament. Following this, **an ordinance was issued by the government** after the bill failed to get cleared in Rajya Sabha amid protests by the Opposition.

Key provisions of the bill:

The Bill makes all declaration of talaq, including in written or electronic form, to be void (i.e. not enforceable in law) and illegal.

Definition: It defines talaq as talaq-e-biddat or any other similar form of talaq pronounced by a Muslim man resulting in instant and irrevocable divorce. Talaq-e-biddat refers to the practice under Muslim personal laws where pronouncement of the word 'talaq' thrice in one sitting by a Muslim man to his wife results in an instant and irrevocable divorce.

Offence and penalty: The Bill makes declaration of talaq a cognizable offence, attracting up to three years' imprisonment with a fine. (A cognizable offence is one for which a police officer may arrest an accused person without warrant.) The offence will be cognizable only if information relating to the offence is given by: (i) the married woman (against whom talaq has been declared), or (ii) any person related to her by blood or marriage.

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The Bill provides that the Magistrate may grant bail to the accused: The bail may be granted only after hearing the woman (against whom talaq has been pronounced), and if the Magistrate is satisfied that there are reasonable grounds for granting bail.

The offence may be compounded by the Magistrate upon the request of the woman (against whom talaq has been declared). Compounding refers to the procedure where the two sides agree to stop legal proceedings, and settle the dispute. The terms and conditions of the compounding of the offence will be determined by the Magistrate.

Allowance: A Muslim woman against whom talaq has been declared, is entitled to seek subsistence allowance from her husband for herself and for her dependent children. The amount of the allowance will be determined by the Magistrate.

Custody: A Muslim woman against whom such talaq has been declared, is entitled to seek custody of her minor children. The manner of custody will be determined by the Magistrate.

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Arguments favouring the bill:

- Bill is needed so that even Muslim women also get **equality on par** with other Muslim men.
- Triple talaq adversely impact rights of women to a life of dignity and is against constitutional principles such as gender equality, secularism, international laws etc.
- The penal measure acts as a **“necessary deterrent”**
- It significantly empowers Muslim women.

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- The practice of triple talaq has continued despite the Supreme Court order terming it void.
- The practice is arbitrary and, therefore, unconstitutional
- The law is about justice and respect for women and is not about any religion or community
- It protects the rights of Muslim women against arbitrary divorce
- Instant triple talaq is viewed as sinful and improper by a large section of the community itself.
- The fine amount could be awarded as maintenance or subsistence.

Arguments opposing the bill:

- It is well established that criminalising something does not have any deterrent effect on its practice.
- Since marriage is a civil contract, the procedures to be followed on its breakdown should also be of civil nature only.
- Civil redress mechanisms must ensure that Muslim women are able to negotiate for their rights both within and outside of the marriage
- The harsh punishment defies the doctrine of proportionality.
- Three years in prison of the convicted husband will end up penalising the already aggrieved wife and children too.
- The punishment will aggravate the insecurity and alienation of the Indian Muslim community

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- In the recent Supreme Court judgement, it never said that triple talaq is to be criminally punished.
- Invoke a secular law that already exists: Protection of Women from Domestic Violence Act (PWDVA), 2005.
- Parliament should have passed a law stating that the utterance of the words “talaq, talaq, talaq” would amount to “domestic violence” as defined in the PWDVA.
- The PWDVA was conceived as a law that ensures speedy relief — ideally within three months — to an aggrieved woman
- While PWDVA is civil in nature, it has a reasonably stringent penal provision built into it

Issues with the bill:

1. The bill introduced in Parliament proposes a three-year jail term for a man divorcing his wife through triple talaq. Although most Muslim women feel it is time to end the practice, they are wary of *the slipshod manner in which the government has passed the bill in the Lok Sabha.*
2. If the aim of the law is to protect the rights of women, how is that possible with their husbands in prison? If they have children under the age of 18, who will take care of their education, health, financial and other needs? The woman will not be protected but instead be vulnerable to more abuse.
3. The Bill does not provide the victimised woman *any additional benefits in terms of her rights in marriage and divorce.*
4. Since the Bill says that triple talaq is cognizable and non-bailable, *married Muslim man become vulnerable target* as policemen can arrest and investigate the accused with or without the complaint from wife or any other person.

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Way ahead:

The legislation brings India at par with other Muslim majority states including Pakistan and Bangladesh. This was long overdue for a country that has taken pride in its adherence to the principles of secularism, democracy, and equality. Personal laws of other religious communities, Hindus and Christians, have gone through renditions to address some concerns relating to gender equality in matters of inheritance and polygamy. Despite the gains, gender equality does not permeate all aspects of civil law. This legislation presents an opportunity to put in place a civil code that steeped in equality—across faiths and gender.

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