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Legal Problems of Tribal Communities within India with Special Emphasis on the Tribal-Centric Statutes and Legislations of India

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India is a breeding ground and harbours most of the worlds' tribal population. It stands second in terms of the tribal population in the world. These tribals residing in various regions of India offer a Pandora box of different cultures and diversities. However, despite being a country that breeds varieties of tribals, it grossly fails to accommodate the needs of tribals. Tribals in India are deprived of certain basic rights and amenities. They are socially, economically, and educationally ghettoized. Government and power often fail to address and resolve the grievances and concerns of tribals. The Government seems to bungle and shed away its responsibility of protecting the rights of the tribals. Although certain provisions were made to alleviate the sufferings of tribals, they failed to yield concrete benefits. Provisions like Forest Rights Act, 2006¹ gave certain rights to tribals but they failed to materialize. There is a gaping gap between the adoption of policies and their implementation in letter and spirit. Development of tribal is the issue marred in complexities. However, the problem is that the government considers the tribal development issue through the lens of poverty. The Government thinks that tribals are affected only due to poverty and hence most of the remedy programmes are aimed to eliminate poverty. Only economic aid and development would be grossly inadequate as they face several problems to protect their identity from external exigencies. This paper aims to address the legal issue plaguing the tribal communities.

¹ Forest Rights Act 2006

Keywords: *tribal communities, legal status, tribal-centric policies.*

INTRODUCTION

There have been 70 years since India became independent, the conditions and sufferings of tribals, in most cases, have not witnessed significant improvements. This can be seen in terms of development in ecological conditions and educational status. Innumerable policies have been made, time and again but these policies hardly seep into the weaker sections of the society. For example, throughout the five year plans, the government has made several policies and programmes to alleviate poverty, illiteracy, equality, unemployment, child labor, bonded labor, violence in domestic help, Naxalism, etc. But all these have remained merely on paper and not yielded substantial outcomes. Consequently, the tribal citizens of India have been practically deprived of many civic facilities, legal rights and are detached from the dynamism of city life.

LEGAL PROBLEMS PLAGUING TRIBAL COMMUNITIES

The demand for equal rights for tribes was started by Mahatma Gandhi. He started his association with people who were considered untouchable by the so-called upper caste strata of society. The most common problem amongst the tribals is land rights. Child marriage, homicide, infanticide, black magic are still prevalent among them. They also face cultural problems. The culture of Tribals is entirely different from civilized society. When civilized people do not understand tribal culture and tradition, they become suspicious of this community. Attainment of education and literacy is a problem for tribal people as they only understand their mother tongue.

The lives of tribal communities have been marred and tarnished by innumerable sufferings. Since Independence, they have been living under the shadow of underdevelopment and poverty. Implementation of policies in letter and spirit is the need of the hour to salvage their problems.

The Struggle of the tribal and marginalized groups started during colonial times. The tribals were deprived and denuded their land rights. The Indian Forest Act of 1927 was introduced which was foisted on tribals under the garb of development. After Independence, tribals expected that the government of free India would recognize and validate tribal rights over forests and get rid of the exploitation which was practiced under the garb of “forest administration”. But the government adopted the same archaic basic laws and principles which was laid down by the British administration. The colonial government enacted the Land acquisition Act of 1894 which acquires land from tribals and leads to their displacement. This leads to the detachment and exclusion of tribes from land areas. There are many consequences of land displacement:

1. **Lack of employment:** The loss of agricultural land directly impacts the employment opportunities for members related to farming activities.
2. **Loss of Market-** In the era of liberalization, globalization, and privatization various goods were available. The displacement of people leads to the loss of their potential nearby market areas. This dismantles the economic backbone of tribals rendering them into the vicious cycle of poverty, indebtedness, and loss of lives.
3. **Marginalization-** Displaced people suffer tremendously. Example- Budolika tribe of Odisha documented that displaced people lose respect and feel a sense of inferiority among the community². This also affects them psychologically.
4. **Food Insecurity-** Adivasis faces the risk of undernourishment and malnutrition due to inadequate settlement and uncertainties.
5. **Violating human Rights-** When the voices and grievances of tribals are not heard, they face the worst form of violation.

² ‘Development and Tribal Women of Odisha’ (*The Tribal Tribune*)

<<https://www.tribaltribune.com/index.php/volume-5/mv5i2/development-and-tribal-women-of-odisha>>
accessed 10 July 2021

6. Educational problems- Education can resolve all the problems. A literate and well-educated mind is always in the position to function effectively. Education is the key to progress and success in the modern world. Despite many efforts, the literacy rate among tribals remains abysmal compared to the national average. There are a number of factors that lead to this sad state of affairs. Poverty, lack of resources, lack of awareness, traditional mindset, etc are some of the major reasons for educational backwardness in tribals. According to the Census 2011, Scheduled Tribes have literacy rates of only 59 percent.

7. Health problems- Tribal communities suffer from many chronic and life threatening diseases apart from malnutrition. Many of them still believe in superstitions and unfounded remedies to cure diseases which lead to a high mortality rate. The contamination of the environment leads to deteriorated public health.

8. Exploitation of Children- Child abuse and exploitation are daily affairs in the tribal population. Instead of sending children to school to attain education, tribal parents engage their children in various labour work. This hampers the basic growth, progress, and development of children. Consequently, children in tribal communities are denied their basic human rights.

The tribals were given lower wages by making them work on plantation areas of Tea Cultivation in the North Eastern States. Being closely tied with nature, they too are entitled to share the same rights as human beings like any other citizen. The Scheduled Tribes make up 8.2 percent of India's total population. According to some official figures and statistical data, close to 15.5 million people were displaced in India and government recognizes that around 11.5 million people need to be rehabilitated. The court and judiciary have also cautioned against the government and big corporate being complicit in gross and blatant human rights violations.

The tribal communities are often blamed for their rich traditional heritage and culture as hindrances towards development with backward, orthodox, and superstitious attitudes. With this regard, Jawaharlal Nehru introduced his vision for the development of tribals. This came

to be known as panchsheel. Under this vision, people should be encouraged to maintain and preserve their traditional heritage and art.

TRIBAL-CENTRIC STATUTES AND LEGISLATION OF INDIA

In the Constitution of India, many legal provisions protect the Scheduled tribes. Article 342 recognizes the Scheduled Tribe Communities of India. Article 164 reads for the ministry of tribal welfare in tribal-dominated states such as Bihar, Odisha, etc. These ministries look for the development and welfare of tribal communities. Article 244 has a provision called the fifth schedule for the states which have large tribal populations. Furthermore, Article 275 has a provision which reads for grant of special funds by Central Government to State Government for a better status of tribal communities. The fifth Schedule also reads for the establishment of Tribes' Advisory Council in states with a high concentration of tribal population. In the Lok Sabha and State Assemblies, seats have been reserved under Article 330 and Article 332 of the Constitution for scheduled tribes. Similarly, provision for reserved seats is made in Gram Panchayats, Block Panchayats, etc under the Panchayati Raj system³.

The Government of India has laid more gravity on equal representation of tribals in services. To achieve this objective, certain accommodations and adjustments have been made such as reservation in jobs, relaxation in age limits, reduction in eligibility criteria, etc.

Framers of the Constitution also incorporated certain provisions under the Five Year Plans. For the proper implementation of Five year Plans, funds are directed to tribal communities from the Consolidated Fund of India. After independence, the Central Government and State government made innumerable efforts for the welfare of tribal people. To achieve this avowed objective, special programmes were undertaken. Tribal and Harijan Research Institutes were established in states such as Bihar, Madhya Pradesh, and West Bengal. These institutes undertake intensive studies such as tribal arts, culture, customs, and tradition. All these measures and efforts are aimed at raising the standard and quality among the tribal communities. Our nation as a whole cannot prosper and progress if the major chunk of the

³ "Representation in Panchayats", Government of India (*PIB Delhi*, 23 Sep 2020)
<<https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1658145>> accessed 11 July 2021

population leads a wretched and marginalized life. Ergo, it is in the general interest of everybody that the socio-economic status of the tribals should significantly rise. This will result in a radical transformation of Indian society as a whole.

There are several centrally sponsored and state-sponsored schemes for tribal development. These programmes are undertaken by the Ministries of Rural Areas and Employment and Urban Affairs and Employment nationwide. These programmes are Integrated Rural Development Programme (IRDP), Jawahar Rozgar Yojana (JRY), Prime Ministers Rozgar Yojana (PMRY), Training for Self Employment for Rural youth (TYRESM), programmes to eliminate poverty like Mahatma Gandhi National Rural Employment Guarantee Act (MNAREGA) to create viable employment opportunities for socially and economically weaker sections. Two effective laws were introduced to curb the crime rates against the Scheduled tribes- Civil Rights act (1955)⁴ and the Scheduled Caste, Scheduled Tribes (Prevention of Atrocities Act) 1989⁵.

Besides these provisions, the government also enacted and amended the 73 rd amendment of the constitution for ensuring equal representation of backward and weaker sections in Panchayati Raj Institution 1993. The Panchayati raj Institutions of India give a larger representative base for marginalized sections than any other country in the world. To give more attention to the development of scheduled Tribes, a separate ministry was established in 1999 known as the Ministry of Tribal affairs⁶. This ministry focused exclusively on social security, social insurance, tribal welfare planning, research, and development through various programmes and voluntary efforts related to tribal welfare, administration, and development. Sectoral development programmes for tribal communities, monitoring, and policy formation are the tasks undertaken by Central and State Ministries. Each Central Ministry appoints a nodal Ministry of the department under each sector. The Ministry of tribal affairs also supports and aids State governments and related administrations. The financial needs are met through banks and other institutions. The finance is managed by National Scheduled Castes

⁴ Protection of Civil Rights Act 1955

⁵ Prevention of Atrocities Act 1989

⁶ Ministry of Tribal affairs (Government of India) <<https://tribal.nic.in/>> accessed 14 June 2021

Finance and Development. (NSFDC). Central Government, state government as well as National Bank for Agriculture and Rural Development (NABARD) provide voluntary services for the development in tribal areas.

Minor forest produce (MFP) along with surplus agricultural produce (SAP) was adopted to provide marketing aid and remunerative prices were set to protect tribal communities from exploitation at the hands of middlemen and private traders.

These are some of the major and important commissions and committees for the development of tribals:

1. The Social welfare Team on the committee to plan tribal-centric projects
2. The Committee on tribal Economy in Forest Areas
3. The Scheduled areas and Scheduled Tribal Commission
4. The Dube Committee
5. The Task Force on the welfare of areas related to tribals
6. The group related to study on Relief of Indebted Land, Alienation of land and Restoration through development Agency
7. The Team related to Marketing, credit, and corporation in Tribal Areas
8. The Group which carries work related to the Development of Scheduled Tribes at the time of the 7th Five year plan.

Ministry of Tribal Affairs also focused on the education of tribals. They advocated the National Policy for this. Sarva Shiksha Abhiyan Programme⁷ under the aegis of Ministry of Human Resource and Development to elevate the literacy rate included tribal groups too.

- To facilitate the schools and hostels facilities in backward tribal areas.

⁷ “sarva shiksha abhiyan” (*Government of India*) <<http://shikshaabhiyan.org.in/index.php>> accessed 12 July 2021

- To ensure that at least one model residential school is ensured in tribal areas.
- To connect education and supplementary nutrition.
- To provide unique benefits like financial assistance, pocket allowance, free distribution of textbooks and school uniforms to weaker sections.
- To lay special emphasis on vocational education.

Most of the developmental projects took place on tribal lands or marginalized people's land. Tribals launched various movements to protect their land from the government. These were Chipko Andolan, Save the Bhagirathi, Narmada Bachao Andolan, the Appiko movement in the Western Ghats. An estimated 300 lakh people have been displaced in India since 1951 under the garb of national development. The Constitution of India provides for compensation. Section 31(A) reads for "payment of compensation at a rate which shall not be less than the market value". These policies will go a long way to improve the status of tribals.

CONCLUSION

Even after 71 years of India's independence, the condition of tribals has not seen perceptible improvements. All the developmental projects have been initiated for the tokenism development but the exorbitant cost has been paid by poor tribals. The need is for a consultative, transparent, and informed system to ensure concrete outcomes. However, the need for development and growth is equally important as the need to protect tribal communities. It would do well for us if we take look into the present scenario with regard to the tribal population in India. Although the country has progressed by leaps and bounds, still the condition of tribals has not changed significantly. They still have to grapple with challenging times.