

HUMAN RIGHTS FOR THE DEPRIVED CLASS OF TRIBAL COMMUNITY: INDIGENOUS AND TRIBAL RIGHTS ISSUES

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Delegation to the 1st International Congress on Human Rights & Duties

(Regd: 23ICHRD2015)

Abstracts:

This paper deals with the fact that what are the rights of tribal and how they are deprived of it. And how their “Traditional Home” or “Ancestral Land” is being exploited on the name of national development. Therefore the conception of national development should not be based on the theory of “Rich and Poor people” but should be considered on the basis of “Human Rights”.

Keywords: *Human, Rights, Tribal, Indigenous, India*

The Indian sub-continent is known for its vastness and well defined geographical entity. India has the second largest concentration of tribal population, after that of African Continent. The total Scheduled Tribe population in India (as per 2011 Census) is 104, 281, 034, which constitutes 8.6 per cent of the total population.¹ The tribes are the autochthonous people of the land who are believed to be the earliest settlers in Indian Peninsula. They are generally called the *adivasis*, implying original inhabitants.²

The Constitution of India does not specify the tribes which are to be called as the Scheduled Tribes. It leaves the power to list these castes and tribes to the President, i.e., the Central Executive. The Supreme

Court has expressed in *Milind*³ that the words “castes” or “tribes” in the expression “Scheduled Castes” and “Scheduled Tribes” have not been used in the ordinary sense of the terms but are used in the sense of definitions contained in Article 366 (24) and 366 (25). In this view, a caste is a “Scheduled Caste” or a tribe is a “Scheduled Tribe” only if they are included in the President’s Orders issued under Article 341 and 342. Therefore, Scheduled Tribes, according to Article 366 (25) read with Article 342, are those tribes or tribal communities, or parts or groups thereof, as the President may notify. The list has been modified from time to time. In 1950, the list contained names of 212 tribes which in the year 1971 increased to 427 and currently has reached to figure 560.⁴

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tribal.nic.in/WriteReadData/archiveDoc/201410170113319773837STProfileataGlance (Last Visited: October 23, 2015)

² Verma, R C, *Indian Tribes Through the Ages*, Publication Division, Ministry of Information and Broadcasting Government of India, 1995, p-2

³ State of Maharashtra v. Milind, AIR 2001 SC 393: (2001) 1 SCC 4

⁴ Sharma, M.L. and Sharma, D.D., *Sociology*, Sahitya Bhavan Publication, Agra, 2012, p-3



1. Tribal Administrations

The tribal people are associated with a territory and have strong and living tradition of self governance. Accordingly, special provisions have been incorporated in the Constitution relating to the administration of the tribal areas. The relevant areas in the States of Assam, Meghalaya, Tripura and Mizoram have been formally designated as “Tribal Areas” while the other tribal tracts of the country are known as “Scheduled Areas”. The provisions of the Fifth and the Sixth Schedule apply to the administration and control of the “Scheduled Areas” and “Tribal Areas” respectively.

The Fifth Schedule has been described as “*Constitution within the Constitution*”. It gives a lot of autonomy to Scheduled Areas in the matter of administration. In the case of Scheduled Areas, the governor has a special responsibility in respect of administration and control of the area. The Governor has power to direct non-applicable or application with suitable adaption of Acts of Parliament or State Assemblies to Scheduled Areas. Moreover, the Governor can make regulations for peace and good administration of the Scheduled Areas in consultation with the Tribal Advisory Council, subject to their approval by the President. The executive power of the State in respect of the Scheduled Areas is subject to the provisions of the Fifth schedule and the executive power of the Central Government extends to the giving of directives as to the administration of the said areas. The financial outlays necessary for raising the level of administration to that of the rest of the state are not voted but are charged on the Consolidated Fund

of India under Article 275 (1) of the Constitution.

A unique feature of the Sixth Schedule is establishment of autonomous District Councils with legislative, judicial and executive functions, all rolled into one. The legislative functions under paragraph 3 of the Sixth Schedule cover management of land, water courses, forest not being a reserved forest, regulation of *Jhum*, village/town administration including police, inheritance, social customs. No law of the State Legislature shall extend to a District Council Area without its consent. The District Council can modify or adapt with exceptions such laws if it so desire.

2. International Instruments to safeguard the Tribals Interest

Tribes have some International Organizations to defend their rights, The UN, with its tradition of defense of human rights, has been at the forefront of defending tribal right.⁵ The roots of the United Nation’s support for tribes Human Right can be found in the *United Nation Universal Declaration of Human Right (1948)*. Article 15 (1)⁶, states, “Everyone has the right to nationality”, and Article 27⁷, demand specific cultural protection, it states, “Everyone has the right to freely participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits”.

⁵ Viswanathan, V.N., *Human Rights Challenges of 21st Century*, Kalpaz Publications, 2008, p-140

⁶ United Nation Universal Declaration of Human Right (1948)

⁷ United Nation Universal Declaration of Human Right (1948)



The rights of tribals have to be understood in the light of three international human rights instruments/ documents adopted on the rights of indigenous, tribals and semi-tribal people- two ILO Conventions and the UN Declaration. The important conventions that emphasize the tribes (Indigenous people) rights are:

- i) *ILO: Indigenous and Tribal People Convention, 1989* (This was the first international convention to address the specific needs for Indigenous Peoples' human rights. The convention outlines the responsibilities of governments in promoting and protecting the human rights of Indigenous Peoples) and
- ii) *UN Draft Declaration on the Rights of Indigenous People*

In 1954 and 1969, International Labour Organization adopted Convention No. 107 and 169. While the basic premise of the former was 'gradual assimilation' of the tribal people in the national mainstream, the latter underscores the identity of tribal communities and the right of self-definition and self-determination.

On 13th September 2007, the UN General Assembly adopted "*United Nations Declaration on the Rights of Indigenous Peoples*". This historic Declaration was debated at the UN forums for almost 20 years. The Declaration recognizes⁸

Indigenous peoples' right to self-determination, including their right freely to determine their political status and pursue their economic, social and cultural development;

Right to autonomy or self-government;

The collective right to live in freedom, peace and security as distinct peoples;

They shall not be subjected to any act of genocide or any act of violence;

The right not to be subjected to forced assimilation or destruction of their culture;

The right not to be forcibly removed from their lands or territories;

The right to practice and revitalize their cultural traditions and future manifestations of their cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature;

The right to establish and control their educational systems and institutions providing education in their own languages;

The right to the dignity and diversity of their cultures, traditions, histories and aspirations;

The right to their traditional medicines and to maintain their health practices;

The right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired; and

The right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as manifestations of their sciences, technologies and cultures.

⁸ Notes on Human Rights in India, Indira Gandhi National Open University School of Law, CHR-12, Module 5, p-71



3. Protection of Scheduled Tribes under Constitution of India

“On the social plane, we have in India, a society based on the principles of graded inequality, which means elevation of some and degradation of others. On the economic plane, we have a society in which there are some who have immense wealth and some who live in abject poverty.”

-Dr. B.R. Ambedkar

The Constitution of India have taken the spirit of Universal Declaration, which can be seen in its preamble and is elaborated in the provisions concerning. The preamble to the Constitution of India provides for securing to all the citizens, social, economic and political justice and equality of status and opportunity. The Directive Principles as contained in **Article 46** of the Constitution provide that “the State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular of the Scheduled Castes and Scheduled Tribes and shall protect them from social injustice and all forms of exploitation”. To facilitate the implementation of the above Directive Principles, the Constitution of India provides for a number of safeguards for the Scheduled Castes and Scheduled Tribes. These safeguards can broadly be grouped into five categories as mentioned below:

(i) Social Safeguards

Article 17: abolition of untouchabilities

Article 23: prohibition of traffic in human beings and forced labour

Article 24: prohibition of employment of children in factories, etc

(ii) Economic Safeguards

The provisions of article 46, 23 and 24 also form part of the economic safeguards. The specific safeguards for the Scheduled Tribes are:

Article 244 (1): provisions of Fifth Schedule shall apply to the administration & control of the Scheduled Areas and Scheduled Tribes in any State other than the states of Assam, Meghalaya, Mizoram and Tripura which are covered under Sixth Schedule, under Clause (2) of this Article.

Article 275 (1): Grants in-Aid to specified States (STs & SAs) covered under Fifth and Sixth Schedules of the Constitution.

(iii) Educational and Cultural Safeguards

Article 15 (4): Special provisions for advancement of other backward classes (*which includes STs*);

Article 29: Protection of Interests of Minorities (*which includes STs*)

Article 350 A: Instruction in Mother Tongue

(iv) Political Safeguards

Article 164 (1): Provides for Tribal Affairs Ministers in Bihar, MP and Orissa;

Article 330: Reservation of seats for STs in Lok Sabha;

Article 332: Reservation of seats for STs in State Legislatures

Article 334: 10 years period for reservation (*Amended several times to extend the period.*);

Article 243: Reservation of seats in Panchayats



Article 371: Special provisions in respect of NE States and Sikkim

Article 371 A, 371 B, 371 C, 371 F, 371 G, 371 H.

(v) Service Safeguards

Article 335, Article 320 (4), Article 16 (4A)

4. Natural Resources and Tribals

In the past, the tribals enjoyed considerable freedom in the use of natural resources. They were virtually lords of water, forest and land (*Jaal, Jungle and Zameen*). They are peace loving people. Their attachment to the land traditionally occupied either for habitation or cultivation is unmatched. They have

gallantly resisted invasions on their territory.⁹ With the introduction of State management of the forests, particularly since the close of the 19th century, the relationship between the tribals and the forests has undergone considerable change. The first national policy on forest was formulated in 1894. It introduced State control over forests in public interest which resulted in the curtailment of rights and privileges of the tribals over the forest resources.¹⁰ The primitive Tribal-Culture is naturalistic-culture. In this culture there is a symbiotic relationship with nature which is based on the ideal of nutrition, not on exploitation. The relation between nature and naturalistic tribal community is of “Mother and Infant”. The tribal ideology is to derive minimum from nature, for the fulfillment of their basic necessities of life. The child has the natural right on mother. So the tribal community believes that they

have the natural right on- water, forest and land- which are the integral parts of their natural habitat. Mahatma Gandhi called them as ‘the Children of the Forest God’.

The recognized rights of the forest dwelling Scheduled Tribes and other traditional forest dwellers include the responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance and thereby strengthening the conservation regime of the forests while ensuring livelihood and food security of the forest dwelling Scheduled Tribes and other traditional forest dwellers.¹¹ Whereas the forest rights on ancestral

lands and their habitat were not adequately recognized in the consolidation of state forests during the colonial period as well as in independent India resulting in historical injustice to the forest dwelling Scheduled Tribes and other traditional forest dwellers who are integral to the very survival and sustainability of the forest ecosystem.¹² The British made serious efforts to penetrate into the tribal areas mainly for laying communication network with a view to strengthen their administrative control and their interest was not the development of the tribal areas but they wanted to open up the same for consolidating their position.¹³

The command over resources and other means of production is the central point in all social formations beginning with the primitive communities in the Stone Age to

the most modern age of industrial and post- industrial societies. The tribal people

⁹ *Supra* 2, p-38

¹⁰ *Ibid*, p-79

¹¹ The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (No. 2 of 2007

¹² *Ibid*

¹³ *Supra* 9, p-38



and even agricultural communities have been traditionally associated with a geographical tract, the habitat of the community, on whose resources all members thereof depend for their living.¹⁴

Although, now-a-days in the tribal areas there is no rebellion as far as the authority of the state is concerned but the maoist-ideals regarding water, forest and land are prevalent predominately. Currently in between the exploitation of natural resources for national economic growth and maoist ideals - the security of tribal welfare, the tribal life is passing through a very critical juncture. Hence their slogan is "Human Rights". The tribals do not desire to exploit the natural resources to

establish Industries and Mines but they wish to live their lives as siblings of nature by using only the naturalistic gifts for their livelihood.

For national development excavation and exploitation of natural resources is essential for economic growth which gives employment but the hard-fact reality is that it will uproot and de-establish the tribal community from their traditional livelihood which is their birth-right. Therefore the tribals are psychologically and emotionally attached to their natural rights. The states have the legal rights on natural resources. But the tribal primitive conception is that "God Created the Earth We are Children of God Pray, wherefrom

has the Government Appeared?"¹⁵ During Colonial rule approximately 81 series of

big and small revolts were seen between the year 1778 to 1942¹⁶, where several sections of the tribal people revolted against the British rules and regulations.

5. Resources, National Development and Tribal Displacement

For National development natural resources are essential. On Tribal belts there are vast stocks of various minerals. So keeping in view of the national progress the opening of the tribal belts are considered to be requisite. If in one way the natural gifts are necessary for tribal living then in the other way their exploitation is essential for national development and economic growth. Hence the natural resources are necessary in either way for tribal existence and national

progress. Since independence, development projects of the five year plans have displaced lakh of persons each year primarily as a direct consequence of administrative land acquisition. This does not include displacement by non-plan projects, changes in land use pattern, acquisition for urban growth, and loss of livelihood caused by environmental

degradation and pollution. Hydroelectric and irrigation projects are the largest source of displacement and destruction of habitat. In the scenario of development and displacement the majority of the affected are obviously tribals and other economically marginal rural populations

¹⁴ Sharma, B.D., *Tribals Affairs in India- The Crucial Transition*, Sahyog Pustak Kuteer, 2001, p-116

¹⁵ From the letter of the Chief of Seattle to the President of United States in 1854

¹⁶ Hasnain, Nadeem, *Tribal India*, Palaka Prakashan, 2002, p-558



who have been dependent on the natural resource base for their subsistence.¹⁷

Tribal areas of our country are hydel and mineral rich. Tribals have paid the highest price of national development because their regions are resource rich: 90 percent of all coal and around 50 percent of the remaining minerals are in their regions. Also the forest, water and other sources abound in their habitat. The indigenous/tribal peoples who constituted 8% of the total population of India at 1991 census make up 55% of the total displaced persons due to development projects up to 1990. According to the Ministry of Tribal Affairs (MTA) nearly 85 lakh tribals were displaced until 1990 on account of mega developmental projects like dams, mining, industries and conservation of forests etc. Lakh of tribals have been displaced from 1990 onwards (due to the so-called economic liberalization policies of the Center under pressure from the Western lenders) without proper rehabilitation.¹⁸ And for infrastructural development or damming and mining of the land, this wealth is exploited which results into large scale displacement of the tribal population. And this dire consequence not only affects the tribals but also harm the environment. In recent years this activity has seen to be increased. Mining not only affects the tribal people by displacing them from their natural habitat but also disturbs the ecological balance like forest cover is destroyed, agricultural land is damaged. Displacement from original habitats many times leads to a breakdown of a land based

community organization. Such instances lead to families getting marginalised and morbidity level going up. Cultural and religious practices which are aspects of the social dimensions of displacement are seriously affected. The land-for-land approach adopted for rehabilitation, often does not reflect a holistic perspective.¹⁹ The impact of displacement is that they

lose their house, land, farm, base for earning their livelihood which is gross human right violation.

Displacement from their traditional habitations leaves them under acute trauma and uncertainty – there is institution in India that is interested in alleviating indescribable human sufferings of the tribals left to struggle for survival with any dignity.

The other part of the story of displacement is that when non-tribals come into development project areas, they either permanently settle or settle there for a long period of time which is in the midst of tribal habitation. Many a times when displacement is for state owned small infrastructural work they are not even compensated which make their condition miserable.

¹⁷ *Ibid*, p-222

¹⁸ socialissuesindia.files.wordpress.com/2012/09/tribal-displacement-in-india.pdf (Last Visited: October 25, 2015)

¹⁹ Paswan, Sanjay and Jaideva, Paramanshi, *Encyclopedia of Dalits in India*, Kalpaz Publication, Volume 12, 2003, p-33



6. Initiatives taken by Government

The Government of India has drafted a National Policy for Rehabilitation of persons displaced as a result of acquisition of land, addressing primarily the needs of the disadvantaged communities. Though the Draft was prepared in consultation with NGOs and some prominent activists, forums such as this are required to deliberate on the character and content of the draft policy and examine how it respects the right to a life with dignity for the tribal people. Basic to all the developmental efforts for the uplift of the SCs/STs is a respect for their human rights; respect for their right to equality and equal opportunity; a right to life with

dignity; a right to enjoy the rights guaranteed by our Constitution. Statues and schemes are of course important, but they are rendered meaningless in the absence of a commitment to enforce or

implement them. Projects and programmes for the uplift of the SCs and STs would remain on paper, or they would get derailed unless the agencies charged with the responsibility of implementing them are not only sensitized but also made effective.²⁰

The role of human rights organization and activists in the sensitization of government functionaries is of great significance in this regard. This would also call for according to these functionaries a greater degree of importance and standing in the administrative hierarchy than they enjoy at present. Let the message spread that the ablest and the best are picked up for this

very important task of social uplift and economic development of the poorest of the poor and the weakest of the weak.²¹

7. Conclusion and Solutions

Human Right is the natural right which every human being acquires from the time of birth. The first and foremost duty of the democracy is to make it ensure that this natural right is allowed and enjoyed by everyone of the society. Thus, democracy

safeguards the human rights and strengthens the basic ideal of republic. As the Human Rights are the basis of life and existence. Therefore, they are of primary importance.

The displacement of tribal's which takes place in tribal and scheduled areas for the purpose of development leads not only to them economic problems but also emotional problem as they are psychologically and emotionally attached to their land which is the human right violation. By continuous intrusion of non-tribals in their areas is threatening the sovereignty of tribal communities. And they are also denied their legal right on their land.

The tribal community with their rights resides in the woodlands which are far-off from the formal administrative set up fully ignorant of the complexities of the legal version and its implications. Even the representatives of the formal institutions are not well informed about the human rights. The primitive group is also not well versed of the legal interpretations of the judicial matter. The more tender part of the problem is that the tribals are not in a

²⁰ *Supra* 18

²¹ *Ibid*



position to approach the concerned institutions or officers and get their help and directions in this regard.

I believe that in any democratic set up Right to Information and human right are important but what is more important is that these rights should be availed by each and every citizen residing in different parts of the country. As far as the right of information is concerned relative cells are

opened at various levels, such as (a) Districts, (b) Tehsil, (c) Janpad panchayats and etc, where one can apply and get the information required by him. But the sad part is that no such provisions are made and available to the public in the dimensions of the vital issues, Human birth rights and its utilisation and preservations, without which there is no earthly life. Hence it is urgent and essential.

I would like to underline that the human right institutions should be empowered by judicial endowment. Human Right Organisation and human right activist should be given more power to reach the Janpad (Block) Panchayat level of Scheduled Area. There is need that these institutions and activist should be active.

At present we boast that India is the largest democracy of the world. We will have to keep in mind that the essence of Republic India is manifested with twin approach application of Right to Information and Human Rights directions simultaneously. Therefore while making the tribals conscious of their rights the human rights schools and activist network should also be in a condition to give a

coverage to the tribal belt and make the atmosphere resounded by it. Then only the meaningfulness of the largest democracy will be recorded in history.