



Tribal Problems and their Rights in India

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Abstract : With India attaining Independence, the British policy of isolation and non-interference was replaced by a policy of integration through development. In perusal of this policy several provisions were made in the Indian Constitution. The Indian democratic state accords several statutes in the constitution where the rights of Tribal communities are protected and social justice is determined for. However, the democratic experiment has not been successful in this respect. Therefore, there is a surge of Tribal movements in the country for their rights. All tribal people of India have a thing in common- they all share a history of injustice. Many special provisions were made in Schedule V to the Constitution in the interests of the Tribal areas. Clause 6 of the Schedule V empowered the President of India to declare any area where there is predominant concentration of tribal people as Scheduled area. The present paper explores within the larger framework of constitutional (human) rights in India.

Key words: Constitution of India, Indian Society, Tribal Communities

Introduction

The tribes in India form an important part of the total population. It represents an element in Indian society which is integrated with the culture mosaic of our civilisation. The tribal population of India constitutes nearly 8 percent of the total population. Tribal community in India has been most vulnerable community in the in equal, domination and exploitation ridden society. They are on the breadline of their socio-economic and political rights. Even after centuries, the unchanged condition of Tribal communities is leading in India. The violation of fundamental human rights and the state brutality has been perpetrated on them, particularly on tribal women. Tribal communities have faced isolation and social discrimination like that of Dalits from the mainstream society. Understanding of current Tribal societies need a basic respect to the historical

processes, which have determined the course of consecutive changes in ideological, political, economic and socio cultural life of the Tribal communities. The Indian democratic state accords several statutes in the constitution where the rights of Tribal communities are protected and social justice is determined for. However, the democratic experiment has not been successful in this respect. Therefore, there is a surge of Tribal movements in the country for their rights. All tribal people of India have a thing in common- they all share a history of injustice. The present paper explores within the larger framework of constitutional (human) rights in India.

Constraints in Tribal Development

There are innumerable constraints responsible for lower pace of tribal development process than desired even the government taking steps regarding development of the tribal



community. Some of the major constraints are (wiki.answers.com):

- (i) **Destruction of forests:** The forests are not only the source of livelihood for tribals but there exists an intricate relationship between tribals and forests in forest Eco-systems. The depleting forest resources are threatening imminent food security for a good portion of the tribal population.
- (ii) **Lack of awareness:** There exists lack of awareness among tribal population about various developmental programmes launched by Government of India and States, resulting in their exploitation.
- (i) **Protection of Tribal Rights & Concessions:** The Tribals have been given numerous rights and concessions under various statutes of central as well as State Governments but they remain deprived of the benefits arising out of such statutory provisions due to their ignorance and apathy of enforcing agencies.
- (ii) Tribes largely engage in shifting agriculture also called SLASH AND BURN agriculture. However there has been a large scale encroachment on their already limited land. The government has declared a large part of the land as forest area for conservation. The traditional food security is thus being threatened.
- (iii) The tribes spend heavily on customs and rituals. With limited income such expenditure leads to indebtedness, bonded labour and penury.
- (iv) Education is not encouraged by parents. There are different dialects for several communities which makes educating even more difficult. The local calendars are different from the school calendars a

fact that needs special attention while educating them.

- (v) The large development projects undertaken by the government also encroaches upon their land. Large scale displacements and unsatisfactory compensation and rehabilitation are common place, leading to further backwardness and seclusion. Because of their diversity they lack a common voice to bargain collectively
- (vi) Employment and government services: after independence, some of them have been employed in government services like sweepers, watchman, peons' etc. Some of them have received higher education and asre well placed. But majority of them have survive as agricultural labourers, where they are exploiting in the payment of wages.
- (vii) Illiteracy, poverty, ill-health, malnutrition, hunger and starvation continue to be higher among the scheduled tribes than among any other section of the population.

Constitutional safe-guards for Tribals

With India attaining Independence, the British policy of isolation and non-interference was replaced by a policy of integration through development. In perusal of this policy several provisions were made in the Indian Constitution. Many special provisions were made in Schedule V to the Constitution in the interests of the Tribal areas. Clause 6 of the Schedule V empowered the President of India to declare any area where there is predominant concentration of tribal people as Scheduled area. The Constitution of Scheduled areas has two clear objectives. One to assist the tribals in enjoying their existing rights unhindered or unobstructed by others; Two to develop the areas and promote



economic, educational, and social progress among them. In this scheme, protection of their rights and interests come first. The Fifth Schedule also gave wide powers to state Governors empowering them even to modify the existing enactments and made regulations for the welfare of the Scheduled Tribes. Article 338 of the Constitution provides for instituting a Commissioner for Scheduled Castes and Scheduled Tribes.

The National Commission for Scheduled Caste (NCSC) classifies different safeguards in the following broad heads .

Social safeguards:

Articles 17, 23, 24 and 25(2) (b) of the Constitution enjoins the State to provide social safeguards to Scheduled Castes. Article 17 relates to abolition of untouchability being practiced in society. The Parliament enacted the Protection of Civil Rights Act, 1955 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to tackle the problem of untouchability, which is being practiced against Scheduled Castes. Article 23 prohibits traffic in human beings and 'begar' and other similar forms of forced labour and provides that any contravention of this provision shall be an offence punishable in accordance with law. Although there is no specific mentions about the SCs in this Article but majority of the bonded labours comes from SCs. Thus, this Article has a special significance for them.

The Parliament enacted Bonded Labour system (Abolition) Act, 1976 for identification, liberation and rehabilitation of bonded labourers. Article 24 provides that no child below

the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment. Even in this Article, there is no specific mention about the SCs but substantial portion of child labour engaged in hazardous employment belong to SCs. Article 25(2)(b) provides that Hindu religious institutions of a public character shall be opened to all classes and sections of Hindus. The term Hindu includes persons professing Sikh, Jain and Buddhist religion.

2. Economic Safeguards: Articles 23

24 and 46 form part of the economic safeguards for the Scheduled Castes and Scheduled Tribes, the provisions of Articles 23 and 24 have already been discussed in earlier paragraphs. Article 46 provides, "The States 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 the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation."

3. Educational and cultural safeguards: Articles 15(4)

empower the State to make special provisions for the advancement of any socially and educationally backward classes of citizens and for SCs. This provision has enabled the State to reserve seats for SCs in educational institutions in general and professional courses etc.

4. Political safeguards: Reservation of seats for SCs/STs in the local bodies of the States/UTs, Legislative Assemblies of the State and in Parliament is in practice. **Article 243D** assures the reservation of seats for Scheduled Castes and Scheduled Tribes in every Panchayat according to the proportion of



population. Such seats may be allotted by rotation to different constituencies in a Panchayat. No less than one third of reserved seats should be allotted to women. Article 243T assures the reservation of seats in Municipality area. The rule is same. Article 330 assures reservation of seats for SCs and STs in the House of the People. The allotment of seats is based on the number of the seats and proportion of SCs and STs in the state or Union Territories. **Article 332** assures reservation of seats in the state legislative assembly. The allotment of seats is based on the number of the seats and proportion of SCs and STs in the state or Union Territories.

5. Service safeguards: The allotment of seats is based on the number of the seats and proportion of SCs and STs in the state or Union Territories. The effect of this amendment is that the SCs/STs promoted earlier than their counter-part in general category by virtue of reservation policy shall be senior to general category in the promoted scale/post.

Five year plans and development initiatives for Scheduled Tribes:

An analysis of five year plans show that the schemes under tribal development programmes have ranged from infrastructure building to empowerment. The schemes range from collective welfare to family and beneficiary oriented programmes. Though the thrust areas have undergone change from one plan to another, some of the important issues like providing food security and nutrition, improving health services and checking morbidity, and education have been given priority during all the planning periods

The first plan (1956 -61) emphasised the equitable distribution of development inputs. It emphasises the importance of providing special provision for weaker section of Indian population. *The second plan (1956 – 61)* emphasises on reducing economic inequalities between Tribals and others. It showed the sensitivity to their cultural and mental life. 43 multipurpose tribal blocks were set up. Later these blocks were termed as Tribal Development Blocks (TDB). *The third plan (1961 – 66)* continued with the same principle of reducing economic and other inequalities. The number of TDB increased to 489, each of which covered 25000 people. *The fourth plan (1969 – 1974)* focused on the rapid increase in the standard of Tribal people's living. Six pilot projects were set up in Andhra Pradesh, Bihar, Madhya Pradesh and Orissa for the benefit of tribals. *The fifth plan (1974 – 78)* launched the concept of Tribal Sub Plans (TSP) which is aimed at providing direct development incentives additional to overall state and/or central budget. TSP took two strategies, first, promotion of development initiative to raise their standard of living and second, protection of tribal interest through legal and administrative support. *The sixth plan (1980 – 85)* has seen high degree of devolution of funds to help tribals crossing the poverty line. *Seventh plan (1985 – 90)* showed substantial increase in the flow of funds for the development of STs through infrastructure facilities and enlargement of coverage. Tribal Cooperative Marketing Development Federation (TRIFED) to provide credit and marketing facilities to the Tribals is set up. National Scheduled Castes and Scheduled Tribes Finance and Development Corporation (NSFDC) is set for employment generation activities. *The eighth plan (1992 – 97)* efforts to



minimise the gap between levels of development between Tribals and Non tribals. *The ninth plan (1997 - 2002)* emphasises the issues of empowerment. It recognises the importance of creating an environment where STs can lead a life of self-reliance and dignity. It puts emphasis on three vital components, viz. i) Social Empowerment, ii) Economic Empowerment, iii) Social Justice. *The tenth plan* and eleventh plan largely follow the same procedures with an emphasis on tackling unresolved issues. The eleventh plan has created a working group which will look into the empowerment issues.

Measures to check atrocities against SCs and STs

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, came into force on 30 January 1990, specifies offences which are considered as atrocities and provides for deterrent punishments for commission of the same. It also envisages preventive measures, and states have to evolve schemes, among others, for economic and social rehabilitation of such victims. All States and Union Territories except Arunachal Pradesh and Nagaland have specified special courts for trial of offences under this Act. Exclusive special courts have been set up in Andhra Pradesh, Madhya Pradesh, Rajasthan, Gujarat and Karnataka. Under the Centrally-sponsored scheme for implementation of the Act, State governments are funded on 50:50 basis and Union Territories are given cent-percent assistance.

Scheduled Tribes (Recognition of Forest Rights) Bill, 2005: It is in this background that the proposed Scheduled

Tribes (Recognition of Forest Rights) Bill 2005 or the Tribal Bill is scheduled to be introduced in the Parliament shortly. The Bill seeks to provide rights to the forest dwelling tribal people whose rights have been extinguished after the Supreme Court stayed the regularization of tribal villages in forest areas on 23 November 2001 in the case of Godavarman Thirumalpad v. Union of India (Interlocutory Application No.703 in Writ Petition No. 202/95). The draft Bill spells out 12 rights to tribals ranging from inheritable rights to forestland, rights of ownership to minor forest produce, and rights to traditional knowledge.

Conclusions: Human rights are the birthrights of every human being and they form an integral part of the socio-cultural fabric of humanity all over the world. However, they are vulnerable to abuse and violation. Human rights can be understood as abstract norms and values protected in laws, constitutions, and international conventions. At the same time, human rights are cultural concepts that are slowly evolving in response to social change or contestation. The constitutional guarantee, which governs and protects the rights and sovereignty of Tribal communities, need an immediate implementation. Otherwise, this would lead to a disappearance of the various Tribal communities from the human picture. The Tribal communities 'sovereignty is at stake by the intervention of non-tribes in their area. Therefore, there is an immediate need to constitute Tribal autonomy councils so that the Tribal communities themselves can look after the rules, implementation and development of the localities.



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