

RIGHTS OF TRIBALS IN INDIA WITH RESPECT TO ACCESS TO JUSTICE

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India has the second largest tribal concentration in the world spread across various parts of the country mainly in forests and hilly regions. The characteristics of these communities are their particular geographical location, distinct culture, economic backwardness and aloofness from the society at large.

Article 366(25) refers to Scheduled Tribes as such tribes or tribal communities or groups as are deemed under Article 342 of the Constitution. According to Article 342 of the constitution, the Scheduled tribes are the tribes or tribal communities which have been declared as such by the President through a public notification. It is given in Article 14 of the Indian Constitution: "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." In India, since these people are considered low and are not treated well the Constitution of India provides several rights to these people for safeguarding their interests. There are a number of social problems which are associated with these people like untouchability, illiteracy etc. Article 17 of the Constitution of India states: "Untouchability is abolished and its practice in any form is forbidden."

Various other provisions are also made by the Constitution of India to improve the life of the Scheduled Tribes. This paper explores the concept of rights available to the scheduled tribes in India and also carries out the analysis of these rights along with the contribution of Supreme Court and the social activists who helped in improving the condition of Scheduled Tribes and safeguarding their rights

Introduction:

The word 'Tribe' denotes a group of people living in primitive and ruthless conditions. These tribes are a social group living in a fixed territory having no such specialization of functions and the people living in these social groups are known as tribes or tribal people. Tribes also have several sub groups and collectively they are known as 'Tribal Society'. Tribes are the inhabitants of forests since pre history and even in this modern world this trend is followed by many people. Tribes constitute around 8.6 percent of the total Indian population, and of

the total tribal population around 80 percent are found in Central India[1].

India has the second largest tribal population in the world. In India, Scheduled Tribes are mainly spread across the forests and hilly regions of India. Tribes in India are mainly characterised by their geographical location and distinct culture. In India, tribes are treated very low, are execrated and are even treated as untouchables by the prevailing adherence to social norms and caste system. The tribal people were compelled to perform duties which were considered inferior because of their economic backwardness and illiteracy. Since, these people were ill treated and were not enjoying equal status with other people which is guaranteed to all the citizens of India by Article 14 of The Constitution of India[2] i.e., " The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India", so there was a need to provide these tribal people some rights for their welfare and development. In earlier times, Mahatma Gandhi fought for the rights of the tribal people and recognized them as Girijans or the Children of the Forest God and after Independence in 1947, the Government of India spent lot of resources to improve the standard of living of tribal people and also helped them through legislations and developmental programmes and in safeguarding their rights.

Historical Background

Back in history, the tribal people were in fact self governing first nations. These subjugated tribal groups were forced by the people belonging to upper castes to perform menial jobs like small household works, sweeping, cleaning of excreta, leather works, removal of dead bodies etc. The tribal people were considered untouchables and they were not even allowed to sit along with the people of upper caste. Their sovereign existence outside the mainstream led to the preservation of their socio-religious and cultural practices as there was no interference by the mainstream society.

The tribal people were considered unclean by most of the people of Indian society and they were socially distanced and often used to face violence from the society. Apart from the encounter of the tribes with the various civilizations, there was also the influence of the foreign missionaries in the past and of the dominant society through the fundamentalist forces in the recent past. In the past, there were several human rights violations and brutality, particularly on tribal women. Tribal

communities also used to face isolation and social discrimination from the mainstream society which always used to oppress them.

Initially the demand for the rights of tribes and equal status in society in India was started by Mahatma Gandhi. He considered these people as Girijans or the Children of God and treated them equally in the society. Gandhi started working with these people who were seen as untouchables by the mainstream society and when it was seen by the other people it became a revolt but situation did not change much.

After Independence in 1947, Government of India passed various resolutions and a ministry was made to safeguard the rights of tribal people. Even in the Constitution special rights are guaranteed to the people belonging to the Scheduled Castes and Scheduled Tribes.

Problems Related to Scheduled Tribes

The most common problems relate to the tribal people living in peninsular India and the north-eastern tribes. The separate systems were approved by the Constituent Assembly formed at the time of independence after receiving recommendations that the distinct 'community structures' and 'attitudes' of the tribes in the two regions could be treated in a common law.[3] Under the 2006 Forest Rights Act, providing land rights to forest-dwelling communities of the country, only 15 lakh complainants out of the 39,56,262 cases filed; were given the legal recognition to their property.[4] The tribes have their own social problems. They are traditional and bound by customs. Due to lack of education and development they are superstitious and believe in outmoded and meaningless practices which can be harmful at times.

Child marriage, infanticide, homicide, animal sacrifice, exchange of wives, black magic and other detrimental practices are still prevalent among them. They believe in supernatural powers and have a keen desire to maintain these practices. They don't want to change their significant tribal character and hence it's said that "tribes are the tribesmen first, the tribesmen last, and the tribesmen all the time. "

Geographical Separation

The tribes are of special concern in Indian society in view of their general economic backwardness, low technological development and complex problems of socio-cultural adjustment to distinctive cultural identity. As the tribal communities are spread in different areas of India, the development of tribal people is very challenging for the Government of India. Most of the tribal people living in India are geographically separated

from the rest of the population. It becomes very difficult for them to establish relations as some of them live in remote areas like dense forests, mountains, hills, deep valleys etc. and hence they cannot correlate with the modern society. This kind of social as well as physical separation or seclusion has declined the tribal development. The welfare schemes, programmes and projects undertaken by the Government, sometimes do not even reach these people because of this isolation. So, the tribal people must be protected from leading an isolated and segregated life away from the mainstream society living in cities, towns and villages.

Land Alienation

Rights of tribals over forests is an inalienable and irrefutable historical fact. But the problem of alienation of land from the tribal to non-tribal is there from the time of British colonialism in India when the Britishers started interfering in the tribal region to exploit the rich tribal resources. Along with Britishers, money lenders, zamindars and traders started encroachments on tribal lands. As the tribal people had no legal rights over their land, it became easier for non-tribal people to acquire their land.

Forest policy of Britishers was inclined towards commercial purposes and was not for the tribal people, so it led to displacement of tribal people from forests. Britishers even reserved some forests with rich natural resources where only Government officials and authorized contractors were allowed to cut the timber which was used by the Britishers and the tribal people were kept isolated even in their own habitat.

Tribal people are mainly dependent upon the forest products for their livelihood and many tribes including their women are involved in agriculture, hunting and food gathering. But when outsiders or non-tribes start interfering and exploiting the natural resources, the life cycle of tribal life is greatly disturbed. The tribes have gradually lost control over community resources such as forests. Tribal lands in the northern state of Uttar Pradesh revealed a nexus between traditionally influential nontribal landowners and corrupt government officials. The latter exercised their discretionary powers to favour non-tribes by transferring lands over which tribal communities may have had a valid claim. Even in a tribal majority state like Jharkhand in the north, the tribes are the worst affected in the entire population since the state government's mining operations and hydroelectric power projects exploit natural resources in the resource-rich tribal areas, thus making the tribes outsiders in their own land.[5]

Many people have tried to acquire the tribal lands by marrying the tribal women and there are ample proves that these people were non-tribal and belonged to upper caste and ruling class of coastal Andhra.

The tribal people have been living and cultivating on these land from ages and suddenly they are deprived of their land displaced. In Attappady, Kerala alone, over 10,796.19 acres land had been alienated from tribes between 1960 and 1980[6]. Often law declares these unregistered lands as national parks, sanctuaries or reserved forests. In some forests the tribal people are not given access to forest produce and grazing of cattle is rendered illegal by the Government. These people live under the continuous threat of being ousted from their homes. They do not have any legal right and the only legal protection they have is the due process of law. Their demands for their rights is often subdued by the forest authorities and whenever they try to protest for their demands they are trampled to the extent that their right to life is taken away.

Cultural Problems

The culture of the Tribal communities is entirely different from the mainstream or civilized society. The customs, practices and traditions followed by the civilised people are not understood by the tribal people and they become suspicious of the civilised people. Different religions are trying to influence these tribal people by their religion and this is being done from the British colonial period. Some foreign Christian missionaries in British rule attempted to proliferate their religion in some of the Tribal areas.

"In several tribal areas, mass conversion to Christianity had taken place during the British period. While the missionaries have been the pioneers in education and opened hospitals in tribal areas, they have also been responsible for alienating the tribes from their culture. Christian missionaries have many a time instigated the tribes to revolt against the Indian government." [7]

On the other hand, R.S.S., Vishwa Hindu Parishad, The Ramakrishna mission has tried to spread their ideology of Hinduism in many parts of tribal regions of India. The tribal leaders have also started popularizing their tribal religion and culture. These different ideologies and propagandas have created a huge confusion and even conflicts between the tribal people. The cultural gap between tribal people and civilised people is widening day by day and this gap can only be filled by the joint efforts of Central Government, State Government and leaders of tribal region. This gap is coming in way of

integration of the tribal people and the mainstream society of India.

Educational Problems

Literacy rate among tribes is 58.96% (2011 census). While in 1961, it was 18.53 per cent, in 1991 it increased to 29.60 per cent which compared to general literacy rate of 52.21 per cent in the country is very low (1991 census), because while the growth of literacy rate in the past three decades in the country was 28.21 per cent, among the STs it was only 11.7 per cent {The Hindustan Times, July 11, 1995). Though tribal literacy rate in Mizoram is 82.71 per cent and in Nagaland, Sikkim and Kerala it is between 57 per cent and 61 per cent, lack of literacy among tribal people has been identified as a major development problem[8].

The exploitation of the tribal people by the Government, money lenders, landlords can mainly be related to the illiteracy and their ignorance towards education. Obtainment of literacy is very difficult for the tribal people who speak only their mother tongue and live in their familiar areas because it is coupled with learning of a new language. The main problem is that when some teachers are appointed by the Government to teach the tribal people, there is a communication gap between them because most tribal people do not know any other language except their mother tongue so there should be some literate tribes in the tribal communities who can interact with the teachers and the Government officials. Another main problem is that the tribal people do not consider education as necessary, since tribal people are poor and live in a remote place they are not very aware of education. Education appears to be a luxury for them and they do not feel any urge to educate their children also. These people are far away from the influence of the modern society and do not have any faith in formal education. They do not consider it a primary responsibility to give education to their children and want them to work either in field or at home.

Another main problem is that the curriculum of education is not suited to the tribal people and do not have any relevance to them. So the Government should take some initiative to teach them and make them able to lead a prosperous life. Education is the only way out by which the tribal people can be made aware of their rights otherwise they would be of no use, so the main focus of the Government should be to provide them education.

Economic Problems

The tribal people are economically one of the most backward communities in the country. According to the

reports of Lakdawala committee and Tendulkar committee for the year 2004-2005 27.5% and 37.2% of scheduled tribes population respectively comes under below poverty line. These people are often exploited at the hands of outsiders, landlords and money lenders due to their innocence and illiteracy. The British policies exploited the tribes to the core by benefitting the zamindars, money lenders, forest contractors and revenue officials.

The tribes have been involved in the agriculture of the crudest type since ages. Their participation in tertiary and secondary sector is negligible. Due to the lack of resources and uneconomical land holdings this practice has proved to be futile for them. Many times their land holdings are transferred to the non tribal people and despite their continuous demand for the return of their land they are left empty handed. The demands of the tribes are suppressed by the authorities and they have to lead a life of poverty.

The literacy rate of tribes in India is quite less and has led to the under development of these groups. The people are either unemployed or underemployed. They are in search of jobs which can keep them employed throughout the year. They need to be helped in developing secondary source of income.

Due to the lack of banking facilities in the tribal areas tribes have to depend on money lenders who exploit them by charging high rate of interest on the loans they provide to the tribal people. The tribes suffer indebtedness due to exorbitantly high rate of interest and often it leads to dispossession of land. Land alienation is the major cause of indebtedness, also family income and social compulsions lead to it.

The poverty stricken tribes due to the lack of employment opportunities agree to work as bonded labourers in agriculture sector, brick kilns, stone queries, power looms and hand looms. They are irregularly paid and are made bonded without workplace protection.

Health and Sanitation Problems

Health and sanitation is becoming a huge problem for tribal people because of illiteracy and ignorance and they are not ready to welcome the modern concepts of health and sanitation. Tribal people have another problem that they still believe in superstitions and super natural powers and believe that diseases are caused by these super natural powers. They do not even appreciate the modern ways of diagnosis and have their own traditional means of cure.

Alcoholism is one of the major problems existing in tribal regions. Brewing of alcohol from traditional

methods like from rice, fruits, millets and flowers is practiced on daily basis and consequently they get cheap alcohol. This not only affects their health but also increases crime rate. Blood borne diseases like Hepatitis B virus infection is likely to be high in the tribal population because of the common social practice of tattooing. This together with alcoholism may result in increased number of chronic active hepatitis and cirrhosis of liver cases.[9]

The modifications in the environment and the ecological aspects of the habitat increase the risk of communicable diseases. Some of them get transferred through direct contact like the venereal diseases whereas diseases like tuberculosis get transferred through indirect contact. The communicable diseases prevalent among tribes are dysentery, diarrhoea, filariasis, sexually transmitted diseases, etc.

The non-communicable diseases like liver cirrhosis, cancer, hypertension, chronic respiratory diseases, hypertension and malnutrition are common in the Indian tribes. The high infant and child mortality are a result of lack of literacy and poor sanitation facilities. This can be curbed by educating the illiterate mothers. The genetic disorders like sickle cell anaemia and glucose-6 phosphate dehydrogenase enzyme deficiency affect the human health adversely and act as silent killers.

The lack of knowledge and proper sanitation has made the tribes vulnerable to these diseases. Moreover the dearth of medical facilities and the reluctance of the doctors to work in rural areas has aggravated the situation.

There is a need to open up medical units in the areas inhabited by tribes. Regular medical awareness camps need to be organized and regular medical checkups should be there. The tribes should be provided with economic and social support to combat the communicable and non-communicable diseases.

Water borne diseases are also very prevalent in tribal regions as there is no such proper facility of drinking water. Sometimes due to scarcity of water in remote tribal regions, people are forced to drink contaminated water giving rise to a number of diseases like amoebiasis, helminthiasis, giardiasis and diarrhoea. These water borne diseases have claimed many lives of Tribal people in various places like Odisha, Chhattisgarh where ladies have to travel long distances holding pots in their hand to get water. Government has made hand pumps and wells but either they are not working or the water is contaminated.

It is observed that the Thodas of Niligiri hills have been suffering from some modern diseases like venereal diseases, diabetes, blood pressure, etc. after coming in touch with British who made Niligiri hills one of their summer resorts. These diseases take a heavy toll on tribal life. Suspicion of tribal people and lack of faith in modern doctors have made them not to avail themselves of the modern medical facilities[10]. So the problem of Health and Sanitation is a very serious issue and steps should be taken by the Government in tribal regions for spreading awareness on healthy environment in tribal areas.

Welfare Programmes and Projects for Tribal People

Tribal population consist of 8.6% percent of the total population of India (2011 census). It is the duty of Government to take care of their interests and ensure them equal rights in the society. In India not only the Central Government, State Government or authorities are helping the tribes to ensure their rights but other voluntary organisations like The Bhil Seva Mandal, The Indian Red Cross Society, The Vishwa Hindu Parishad, The Bharatiya Adim Jati Sevak Sangh, The Rashtrereya Swayam Sevak Sangh, The Vanavasi Kalyanasharma, The Ramakrishna Mission and other various independent organizations are also working in this regard and have undertaken various steps.

Constitutional Rights to Tribal People

The Constitution of India has provided special provisions to the tribal people to safeguard their interests.

1. Article 15 of the Indian Constitution[11] states that the state shall not discriminate any citizen on grounds of religion, race, caste, sex, place of birth or any of them. This explains that every citizen of India is provided equal rights and opportunities without any discrimination.
2. Government of India has made reservation for the tribes in employment under Article 16(4) of the Constitution of India[12].
3. The Government of India has reserved seats in The House of People (Lok Sabha) and The State Legislative Assemblies under Article 330 and 332 of The Constitution of India.
4. Article 19(5)[13] of the Constitution of India guarantees the tribal people right to own property and enjoy it in any part of the country.
5. Article 338[14] of The Constitution of India grants the right to appoint a Commissioner to look after welfare activities of tribes.

6. Article 46[15] of the Constitution of India states that, The State shall promote with special care the educational and economic interests of the weaker sections of the people and in particular, the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.
7. Under Article 275(i) of the Constitution of India the Centre Government is required to give grants-in-aid to the State Government for approved Tribal Welfare Schemes.

Land Rights to Tribals

Schedule 5 of the Constitution of India and other state laws prohibits any transfer of property belonging to tribal communities or the land which is being cultivated by these people for a long time. Rights of tribes over Forest is an inalienable and irrefutable historical fact. But in the colonial rule the tribal people were deprived of their land rights and many people started encroaching lands of the tribal people but encroachments on forestlands was made an offence under the Indian Forest Act, 1927. After Independence, the forest department ingenerated the right of tribal people to the forest land and passed the Forest Conservation Act, 1980 which regularised the encroachments of forest lands.

With regard to the protection of the tribal rights over community forests and other lands, following the central legislation introduced in 1996, the Gram Sabha (Village Assemblies) in the tribal areas has been entrusted to protect the community rights over community land and forest. The Environment Ministry of India has also tried various measures to curb the problem of encroachments. In the guidelines issued by the Environment Ministry on September 18, 1990, State Governments were asked to evict all ineligible category of pre 1980 settlers and encroachers after October 25, 1980. The Scheduled Tribe and Other Traditional Forest Dwellers Act in 2006 recognizes the ownership rights of tribes and other forest dwellers who are living or cultivating a specific land for a very long period of time. UNDP (United Nations Development Programme) in partnership with the Ministry of Law and Justice, Government of India, is helping the poor and marginalized to access justice and demand and access entitlements.[16] In 2011, a forty year old man Naran Majhi applied for the regularization of the Scheduled Tribe and Other Traditional Forest Dwellers Act in 2006 on his land to be recognized legally as the owner of the land which his family used to farm for over 200 years.

The Government of India also ensures equal land rights to the tribal women as tribal men have. In the Case of Madhu Kishwar & Ors. Etc v. State Of Bihar & Ors[17], it was held by the court that the Scheduled Tribe women succeed to the estate of their parent, brother, husband as heirs by intestate succession and inherit the property with equal share with male heir with absolute rights as per the general principles of Hindu Succession Act 1956, as amended and interpreted by this Court and equally for the Indian Succession Act to tribal Christian.

The 20 point programme:

The point 11 (b) of 20-point programme is to provide economic assistance to the scheduled tribe families to enable them to rise above poverty line. The ST families are assisted through various schemes implemented by departments of agriculture, rural development, horticulture, animal husbandry, sericulture, forestry, small cottage industries, etc. The ministry fixes the targets for 22-states/union territories and also monitors the progress of achievements on monthly basis. The officers of the ministry inspected more than 75 projects in the states of Andhra Pradesh, Assam, Manipur, Meghalaya, Orissa, West Bengal, Jharkhand, Maharashtra and Madhya Pradesh.[18]

Formation of PESA (Panchayats Extension to Scheduled Areas) Act, 1996:

PESA Act is a law enacted by the Government of India to enable the Gram Sabhas of the tribal regions to self govern and protect their natural resources. PESA was made applicable to 9 states viz. Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha and Rajasthan and not to other Scheduled Areas including those in Manipur. PESA imposed restriction on the State Legislature and decentralized more power in the hands of the Gram Sabha or Panchayat. It may be observed that the powers that can be exercised by the Gram Sabha under this Act relate to the tribes' customs, traditions, religion, land and mineral resources.[19] The act made the Gram Sabhas independent and competent to preserve and safeguard the customs and the traditions of the people and community resources.

The act gave the power to the Gram Sabhas to commend the programmes, plans and projects made for the development of the tribal people and they should be consulted before making any acquisition of land in Scheduled Tribe areas for the development programmes. Overall this act provided the people the right to preserve their land and natural resources and recommendation of

the Gram Sabha at appropriate levels for any developmental programme in the tribal area.

Conclusion

Central Government and State Governments have shown a great deal of interest and have worked towards the development of tribes but the progress achieved so far is just satisfactory. Government of India has undertaken and implemented many tribal welfare programmes and policies but none of them have been effective and welfare of tribal people is a concerned issue as they constitute 8.6 percent of the total population of India and it is the duty of the Government to take care of every citizen and work towards their welfare. Government has failed to implement these policies due to lack of political will and inadequacy of administrative machinery, procedural delays and lack of proper monitoring. Today, tribal people are not even able to demand their rights due to poor response of the authorities. Moreover when they approach the authorities to claim their rights they are asked to produce certain documents which they generally do not have and thus they fall a prey to corruption.

We have the opinion that the government programmes and plans fail because of the lack of interest shown by the authorities and the undue haste shown in the policy implementation. We think that welfare of the tribes should be the main aim of the government and no politics should be played on this issue. Development is possible through education so, first of all the government should take steps in this direction because a country cannot develop unless its citizens are educated and well aware of their rights. Government should also try to make judicial proceedings faster and easily accessible for the tribes. Also for the proper implementation of the welfare schemes and policies for the tribal benefit the tribes should be made aware about them through awareness and training programmes, the authorities should be well trained in this regard and proper constitution of the Gram Sabhas should be there because they act as a connecting link between tribes and the authorities.

The issues and the problems of the Tribes cannot be neglected and isolated from the main development agenda of the Government. The Sixth five year plan document stated that "three decades of the development have not had the desired impact on the socially, economically, educationally handicapped section." Despite so many efforts made by the Government, the Tribal people are still deprived of a life which they are

entitled to. We believe that Government and all the political parties should work together towards the welfare of the Tribes and should not be diplomatic on this sensitive issue.

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