

Constitutional Provision for Tribals: A Critical Perspective

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Preamble:

The tribal communities represent an important social category of Indian social structure. The tribal population in India according to the 2011 census is 8.2 per cent. However, distinct vulnerability arises from their inability to negotiate and cope with the consequences of their integration with the mainstream economy, society, cultural and political India because they are poor, asset-less and illiterate compared to the general population.

Objectives:

To study the constitutional provisions made by the Government with regard to empower to the tribals in Indian context.

To review the protective mechanism for tribals

Methods:

Historical and field method are employed

Findings:

It is found that, the special provisions have been enshrined in the constitution of India for development of Schedule Caste and Schedule Tribes and the other weaker sections. The constitution has laid responsibility on the shoulders of both the state government as well as central government so far as development of Schedule Tribes is concerned. But over the years the tribes, some of whom had at one point of time even been rulers of their domain, had been pushed back, marginalized and deprived of their resources and human rights.

Conclusion:

The gap between the status of tribal communities and other communities has been wide enough to warrant a special concern for their empowerment.

INTRODUCTION:

The tribal communities represent an important social category of Indian social structure. According to 2011 census they constitute 8.2 percent of total population. The Anthropological Survey of India under the 'people of Indian Project' identifies 573 tribal and sub tribal communities in India. However they have historically been among the poorest and most excluded and disadvantaged social sectors in the world. While, the founding father of our constitution desired to secure justice, social, economic and political for all citizens. They realized that the inequitable forces embedded in the socio- economic system and also political organizations, had resulted in deprivation and disadvantages for the poor and the weaker sections of the society. They, therefore, considered it necessary to provide specific safeguards in the constitution for the Scheduled Castes and Schedule Tribes, who, due to tradition and a combination of circumstances, were the most deprived, weak and vulnerable amongst the various sections of society. The various safeguards and protective measures sought to ensure for them all round development and freedom from exploitation and social injustice so that they could form part of the mainstream of the society.

CONSTITUTIONAL SAFEGUARDS:

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 schedule castes and scheduled tribes and shall protect them from social injustice and all forms of exploitation". To facilitate implementation of the above directive principles, the constitution of India provides for a number of safeguards for the scheduled caste and scheduled tribes, these safeguards can broadly be grouped into five categories as mentioned below:

1. Social Safeguards,
2. Economic Safeguards,
3. Educational and Cultural Safeguards,
4. Political Safeguards,
5. Service Safeguards

CONSTITUTIONAL SAFEGUARDS FOR THE TRIBAL:

Such a new welfare-oriented approach of development finally came to match with the Indian constitution's spirit of protection and promotion to the citizen of India, specially the weaker sections of the society. First of all in Article 16 (4) the term 'backward classes' is used as a generic term and comprises various categories of backward classes, viz, Scheduled Castes, Scheduled Tribes, Other Backward Classes, De-notified Tribes (Vimuktajatiyan) and Nomadic/ semi-nomadic Tribes. As well as equality before law (Article 14), Equality of opportunity in matters of employment (Article 16), Prohibition of discrimination on grounds of religion, race, etc. (Article 15) and protection of life and liberty (Article 21) are some of the Fundamental Rights to mention. While, the Directive Principles make provisions for the State to secure a social order to promote welfare of the people. They direct the State to strive for minimising inequalities in status, facilities and opportunities (Article 38(2)); to direct its policy towards securing that the ownership and control of material resources of the community are so distributed to subserve the common good (article 39); to promote with special care the educational and economic interest of the weaker sections particularly the Schedule Caste and Schedule Tribes. Besides, India also accords constitutional protection and affirmative action to its Schedule Caste and Schedule Tribes through Special Provisions as contained in the Fifth Schedule, Sixth Schedule, Article 275 (10), Article 338 and Article 339 (1), etc.¹

In consonance with the views expressed in the constituent assembly debates, special provisions have been enshrined in the constitution of India for development of Schedule Caste and Schedule Tribes and the other weaker sections. The constitutional has laid responsibility on the shoulders of both the state government as well as central government so far as development of Schedule Tribes is concerned. Article 46 states that the State shall promote with special care the educational and economic interests of the people and in particular of the Scheduled Castes and Schedule Tribes and shall protect them from social injustice and all other forms of exploitation. Article 16(4) and 16(4 A) empowers the State to make provision for reservation in the appointments for posts in favours of Schedule Tribes along with other special categories, both in direct recruitments and in promotions. Article 164(1) provides that in the states of Bihar, Madhya Pradesh and Orissa there shall be a

¹Neeta Tapan, (2004), "Tribal Rights in the Global Development Paradigm", pp. 244 to 245, edit. book by Sah and Sisodia (2004), " Tribal Issues in India" , Rawat Publication, New Delhi.

Variorum Multi-Disciplinary e-Research Journal
Vol,-05, Issue-IV, May 2015

Minister in charge of Tribal Affairs who may in addition be in charge of welfare of Scheduled Castes and backward classes or any other work. Article 244 (1) provides that the provisions of Fifth Schedule shall apply to the administration and control of Schedule shall apply to the administration and control of Scheduled Areas and Scheduled Tribes. The Fifth schedule to the Constitution empowers the Governors of States having Scheduled Areas therein to make regulations for good government and to modify the state and central legislations regarding their applicability. Paragraph 4 of the Fifth Schedule provides for setting up of a Tribes Advisory Council which shall advice on such matters pertaining to welfare and advancement of Scheduled Tribes which are referred to it by the Governor. Under article 244 (2) the Sixth Schedule to the Constitution which is applicable to the states of Assam, Meghalaya, Mizoram and Tripura, provides a mechanism of administering the local issue by the tribals themselves. Article 275(1) provides that grant-in-aid would be provided out of consolidated Fund of India to the states to meet the cost of such schemes of development as may be undertaken by them with the approval of Government of India for the purpose of promoting the welfare of Schedule Tribes or raising the level of administration of the Scheduled Areas. Articles 330 and 332 provide reservation for Schedule Tribes and Schedule Caste in Lok Sabha and state Legislative Assemblies respectively. Under Amended Article 338 a National Commission for Scheduled Castes and Scheduled Tribes has been constituted which acts as a watchdog for safeguarding the interest of Scheduled Castes and Scheduled Tribes. Article 339 provides for setting up of a Commission to report on the administration of scheduled areas and welfare of Schedule Tribes, under clause(2) of the same article there is a provision for the Union Government to give directions to the states for schemes regarding welfare of Scheduled Tribes. Finally, the constitution also empowers the state to appoint a commission to investigate the conditions of the socially and educationally backward classes (Article 340) and to specify those tribes or tribal communities deemed to be as Scheduled Tribes (Article 342) and recently the 73rd and 74th Amendment of the constitution has provided for mandatory reservation for Schedule Tribes in Panchayati Raj Institution (PRIs) and the provisions of the Panchayati Raj (Extension to the Scheduled Areas Act), 1996 (hereinafter referred to as the Extension Act) has sought to give even more special powers to the PRIs in the Fifth Scheduled Areas.²

It is argued that having accepted the new concept of development to providing opportunities to all people for a better life, the state has tried to match it with constitution's spirits. Notwithstanding a number of provisions, tribal interest has remained secondary to development interventions since independence. The process may further deteriorate tribal interest. This may be seen especially in the form of pressures from multinationals to acquire illegally their traditional knowledge, their resource base, and their traditional medicine, in conclude say that a safety net requires multidimensional approach should be in the vulnerable atmosphere.³

Whatever may be the history or origin of various tribes in India; the fact is that at the time of independence, there was a great concern to provide for special measures for their

²HoojaMeenakshi (2004), "Policies and Strategies for Tribal Development", pp.21-22., Rawat Publication, new Delhi.

³Neeta Tapan, (2004), "Tribal Rights in the Global Development Paradigm", pp.245, eds. Sah and Sisodia (2004), " Tribal Issues in India" , Rawat Publication, New Delhi.

development. Over the years the tribes, some of whom had at one point of time even been rulers of their domain, had been pushed back, marginalised and deprived of their resources (Rima Hooja, 1988). The gap between the status of tribal communities and other communities was wide enough to warrant a special concern for their development. This thread runs through the discussions and debates of the Constituent Assembly which had the responsibility of drafting the Constitution. Additionally, the commission has been concerned a great deal about the inclusion/ exclusion of communities in the Schedule Caste and Schedule Tribes lists and the resultant flow of statutory and non- statutory benefits. The founding father of the constitution adopted well accepted criterion for defining communities as Schedule Caste and Schedule Tribes. Accordingly the lists were notified under presidential orders in 1950. Subsequently changes have been made in these lists whereby communities have been added and area restriction removed. Many of these changes have led to certain communities gaining entry into the Schedule Caste and Schedule Tribes lists, who do not suffer from the disabilities and deprivations which were basic consideration for inclusion in the Schedules.

Apart from this at the root level of the problems is the marginalisation of tribals and their access-failure to natural resources, especially land, forest and water. Low productivity, dispersed habitation, shifting cultivation, weak co-operative and marketing infrastructure, continued tribal land alienation leading to their dispossession and exploitation, remoteness to state, etc., are some of the manifest features which characterise the tribal areas. All these and many other issues, which have been deeply rooted in the tribal areas, attracted the attention of the Government and various strategies have been adopted for tribal development since independence. The tribal development approach attempted to remove disparities between tribal and other developed areas and also to improve the quality of their life.

In conclusion it can be said that there are different approaches and perspectives to view the tribal community development in India. And it is also seen that there are different measures adopted to solve the tribal problems but unfortunately their problems can't get solved because of various reasons. There are two kinds of tribal problems. Those mundane problems which arise from their traditional way of living in the present surrounding, and other problems emerge from the government's tribal development projects or programmes which are launched for tribal mobility and development because they appear to be non-implementable. Thus the tribals become victims of their own environment due to their illiteracy and unskilled labour giving meagre returns and due to the general people involved in implementing programmes creating problems for them.

Constitutional Amendment Acts for Empowerment of Schedule Tribes:

1 Fifty-First Constitutional Amendment Act of 1984

The fifty-first Constitutional Amendment Act provided for the reservation of seats in the Lok Sabha for schedule tribes in Meghalaya, Arunachal Pradesh, Nagaland and Mizoram. It also provided reservation of seats in state Legislative Assemblies of Meghalaya and Nagaland.

2. Fifty-Seventh Amendment Act of 1987

The fifty-seventh Constitutional Amendment Act of 1987 provided the reserved seats for the schedule tribes in the Legislative Assemblies of more states now being Arunachal Pradesh, Meghalaya, Mizoram and Nagaland.

3. Sixty-Fifth Amendment Act of 1990

The Act provided for the establishment of a multi-member National Commission for schedule castes and schedule tribes in the place of a Special Officer for schedule castes and schedule tribes.

4. Seventy-Second Amendment Act of 1992

This Act provided for reservation of seats for the schedule tribes in the state Legislative Assembly of Tripura.

5. Seventy-Seventh Amendment Act of 1995

The Act provided for reservation in promotions in government jobs for schedule castes and schedule tribes.

6. Eighty-Second Amendment Act of 2000

The Act provided for making of any provision in favour of the schedule castes and schedule tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to the public services of the centre and the states.

7. Eight-Third Amendment Act of 2000

The Act provided that no reservation in Panchayats need be made for schedule castes in Anunachal Pradesh because the total population of the state is tribal and there are no schedule castes.

8. Ninety-Third Amendment Act of 2005

The Act empowered the state to make special provisions for the socially and educationally backward classes or the schedule castes or schedule tribes in educational institutions including private educational institutions (whether aided or unaided by the state), except the minority educational institutions (clause (5) in article 15). The Supreme Court declared that reservation in private, unaided educational institutions was unconstitutional.⁴

CRITIQUE ON CONSTITUTIONAL PROVISIONS

Human societies are changing throughout the world because of use of science and technology for social and economic development. In the current economic order the international concern for the indigenous people is of equal importance. The aims of development were spelled out on the same lines in 1970s in the preamble of the International Development Strategy for the second United Nations Development Decade. Within the UN which have bearing on the indigenous people's rights. These are: i) The UN Charter; ii) The Universal Declaration of Human Rights; iii) Human Rights Covenants of 1966-I; iv) Human Rights Covenants of 1966-II; v) The complaint filing procedure to enforce the covenant; vi) 1966 International Convention on the Elimination of all forms of Racial Discrimination; vii) The 1948 Convention on the Prevention and Punishment of the Crime of Genocide; viii) the 1960 Declaration on the Granting of the Independence to Colonial Countries and People; and, ix) International Convention on the Suppression and Punishment of the Crime of Apartheid.

Apart from above provisions or rights, in reality there are incidents which suggest that all these schemes of provisions to protect are on papers and people from schedule tribes still suffer. According to crime reports by NCRT 2006, the crimes committed against members of the schedule tribes under the P.C.R. Act, of a total pendency of 217 cases, trials were completed in only 70 cases and only 2 cases ended in conviction in the year 2006 and as many as 145 cases were pending trial, at the end of 2006. For crimes committed against the members of the schedule tribes under the provisions of the schedule castes and schedule tribes Prevention of Atrocities Act, out of 5621 cases pending trial, 40 cases were

⁴Dr.Badal Sarkar, (2014)“Constitutional Provisions for Tribal Development in India”, Volume: 3, Issue : 2, Feb 2014, ISSN - 2250-1991, P.281.

compounded by the government, only 255 ended in conviction and as many as 4565 cases were still pending trial in the courts at the end of the year 2006⁵.

The main problem, while dealing with conflicts concerning the tribal population, is that the existing constitutional provisions and laws designed to protect them are not optimally used. In certain areas, the State has been perceived to be not prompt and insensitive in protecting the interests of the tribals and the situation is further aggravated by the absence of government functionaries at their place of posting. A significant section of the tribal population has gradually been weaned away from the mainstream by the extremists. Tribal populations have been antagonised by the manner in which they have been alienated from their land and forests by the enforcement agencies. In such situations what is required is the task of State building in the literal sense of the term. It is necessary that the administration takes special care to exercise its basic functions and provide core services in the tribal areas. It is also necessary that government posts such as police, revenue, forest and development officials must be required training and commitment to work in tribal areas and empathise with the tribal people. Officials also need to be motivated to work in such areas. One way of doing this would be to select officials for specific posts in tribal areas providing hardship pay, preferential treatment in accommodation and education etc. all of which would induce officials to volunteer for such posting.

It is argued that having accepted the new concept of development to providing opportunities to all people for a better life, the State has tried to match it with Constitution's spirits. Notwithstanding a number of provisions, tribal interest has remained secondary to development interventions since independence. The process may further deteriorate tribal interest. This may be seen especially in the form of pressures from multinationals to acquire illegally their traditional knowledge, their resource base, and their traditional medicine. Further Neeta Tapan suggests that a safety net requires multidimensional approach which should be in the vulnerable atmosphere.⁶

Another fact about the tribal is that whatever may be the history or origin of various tribes in India, at the time of independence, there was a great concern to provide for special measures for their development. Over the years the tribes, some of whom had at one point of time even been rulers of their domain, had been pushed back, marginalised and deprived of their resources (Rima Hooja, 1988). The gap between the status of tribal communities and other communities was wide enough to warrant a special concern for their development. This thread runs through the discussions and debates of the Constituent Assembly which had the responsibility of drafting the Constitution. The commission has also been concerned a great deal about the inclusion/ exclusion of communities in the SC/ST lists and the resultant flow of statutory and non- statutory benefits. The founding father of the constitution adopted well accepted criterion for defining communities as schedule castes and schedule tribes. Accordingly, the lists were notified under presidential orders in 1950. Subsequently changes have been made in these lists whereby communities have been added and area restriction removed. Many of these changes have led to certain communities gaining entry into the SC

⁵Source : *Crime in India, 2006; NCRB.*

⁶Neeta Tapan, (2004), "Tribal Rights in the Global Development Paradigm", pp.245, edit. book by Sah and Sisodia (2004), "Tribal Issues in India", Rawat Publication, New Delhi.

and ST lists, who do not suffer from the disabilities and deprivations which were basic consideration for inclusion in the schedules.

Apart from such root level problems, there are problems of the marginalisation of tribals and their access-failure to natural resources, especially land, forest and water. Low productivity, dispersed habitation, shifting cultivation, weak co-operative and marketing infrastructure, continued tribal land alienation leading to their dispossession and exploitation, remoteness to state, etc. are some of the manifest features which characterise the tribal areas. All these and many other issues of the tribal are as attracted the attention of the government and various strategies have been adopted for tribal development since independence. The tribal development approach attempted to remove disparities between tribal and other developed areas and also to improve the quality of their life.

In conclusion, there are different approaches and perspectives to view the tribal community development in India. And it is also seen that there are different constitutional measures adopted to solve the tribal problems but unfortunately their problems can't get solved because of various reasons. There are two kinds of tribal problems. Those mundane problems which arise from their traditional way of living in the present surrounding, and other problems emerge from the government's tribal development projects or programmes which are launched for tribal mobility and development because they appear to be non-implementable.

PRESENT STATUS OF THE SCHEDULED TRIBES:

From the beginning of the planning era (1951) efforts were made through various developmental plans. Policies, special strategies and programmes, have registered a definite quantifiable improvement in the socio- economic status of the tribals. However, the progress made by them could not bring them anywhere nearer to the mainstream of society as the gap in their socio-economic status continued to prevail.

As per the information available, the percentage of Schedule Tribe population marginally increased from 7.83 percent in 1981 to 8.2 percent in 2001. The sex ratio of 972 (per 1000 males) amongst Schedule Tribes in 1991 was much higher than that of the general population which was 927. Yet, it started showing a declining trend. This adverse sex ratio and its decline could be attributed to higher mortality amongst females and their limited access to health services. This calls for a deeper analysis of gender issues amongst Schedule Tribe.

Although, the efforts taken by state and in the given article 46 of the directive principles of state policy provides that 'the state shall promote with special care the educational and economic interest of the weaker section of the people, and in particular of the Schedule Caste and Schedule Tribes shall protect them from social injustice and all forms of exploitation'. So there has been a substantial increase in the literacy rates of Schedule Tribes during the last three developmental decades, the gap between the literacy rate of the Schedule Tribes and those of the general population is not only persisting, but also found to be widening. Adding to this, there are the problems of intra and inter-state/ district variations in the literacy rates among Schedule Tribes.

The strategy of promoting employment- cum income generating activities to alleviate poverty amongst Schedule Tribes has proved to be effective in raising a large member of Schedule Tribes families above the poverty line. Along with the general population the percentage of Schedule Tribes families living below the poverty line has also shown a

declining trend during 1993-94 and 2004-05. However, it is discouraging to note that the rate of decline in respect of Schedule Tribes is much lower than that of the general population. Also the gap between the poverty rates of the general population and of the Schedule Tribes has increased during the same period. The incidence of poverty amongst Schedule Tribes still continues to be very high with about 45 and 35 percent living below the poverty line in rural and urban areas respectively. This is primarily due to a large number of Schedule Tribes who are landless with no productive assets and with no access to sustainable employment and minimum wages.

CONCLUSION

Like adivasis the tribals claim to be original inhabitants of India, yet for centuries they have been treated as second class citizens. They have remained the poorest of poor, illiterate, ignorant and isolated from modern economic activity. They are still at mercy of the money lenders, petty official's middlemen, and commercial force and subject to gross exploitation in selling of forest produce and in purchase of essential commodities. Land alienation, widespread indebtedness, bondage, discriminatory policies and many times pathetic attitude of the government officials are some of the major problems of the tribes in common. These miseries are compounded by high rate of population growth, small size of land holdings and their fragmentation, low rate of literacy, fast depleting forest wealth, insufficient infrastructure and low level of social services. The conditions of the schedule tribes at national level remains tragic and neglected due to lack of development of proper infrastructural facilities including transport, housing, safe drinking water, education, primary health care etc. The resettlement of the tribals is needed at present in the conducive environment in order to improve their socio economic and political situations. The empowerment from the point of view of social, economic and social justice is needed, for which the government and voluntary organization have to initiate necessary measures which are provided by the constitution of India. Only then it is feasible to see the overall development of the schedule tribes at the national and state levels.

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