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### **Safeguards to Tribal People in India - A Human Rights Perception**

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#### **ABSTRACT**

Tribal society in India has been most in jeopardy society in the in equal, control and misuse ridden society. They are on the poorest condition of their socio, economic and political rights. Yet, after decades the unchanged form of Tribal societies is leading in India. The infringement of basic human rights and the state rough treatment has been carried out on them. Tribal societies have faced remoteness and social prejudice from the mainstream society. Understanding of present Tribal societies need a basic reverence to the historical practices which have resolute the course of successive varies in political, economic and socio cultural life of the Tribal societies. Both in International level and in Indian state deals a number of statutes in the constitution where the rights of Tribal societies are protected. On the other hand, those statues and various developmental activities have not been successful in this respect. Consequently, there is a rush forward of Tribal movements in the country for their rights. The present paper explores International and Indian constitutional framework of human rights.

**KEYWORDS** - Human Rights, Constitution of India Indian, Tribal Rights, Tribal Societies.

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## 1. INTRODUCTION

India is a country having the largest concentration of tribal people from all over the world except Africa. In India's 90 million belong to the indigenous communities known as adivasis or tribals. Most of the tribal communities live in central India and some live in the northeastern parts of India. Tribals have developed sophisticated knowledge systems related to the folklore, ecology, agriculture, healthcare, art forms, and craft styles of their regions. Due to the developmental policies India followed during the last 50 years, the forest in the tribal belt is left devastated.<sup>1</sup> State-sponsored forestation has favored monocultural forests and agricultural policies that leave little room for biodiversity and indigenous agriculture.

Today, neither biodiversity nor human diversity in the form of the languages and dialects spoken by tribals is recognized. The varied cultures of the tribal communities are threatened by the rapid migration of tribal people to urban industrial centers.<sup>2</sup> According to prehistorians and cultural anthropologists ancient India was the homeland of tribals.

Later more dominant and invading people in their land subjugated and suppressed them in the past 20-30 centuries.<sup>3</sup> It is imperative that we acknowledge this culture and give sufficient justice to the tribal society by giving them opportunities for their social and economic emancipation in the light of protecting their human rights through the International Conventions, Indian Constitution and various other governmental policies for them. In this article the author endeavors to highlight the limitations and atrocities caused to economic, social and cultural rights of tribal people which amounts to gross violation of not only their human rights but also their rights to be human.<sup>4</sup>

## 2. INTERNATIONAL SCENARIO AND HUMAN RIGHTS OF TRIBES

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.<sup>5</sup> Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>6</sup> Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.<sup>7</sup>

### 2.1. *Indigenous and Tribal Populations Convention, 1957*

Indigenous and Tribal Populations Convention, 1957 convention concerning the protection and integration of indigenous and other tribal and semi-tribal populations in independent Countries. It is an International Labour Organization Convention within the United Nations that was established in 1957. It was adopted at Geneva, 40th ILC session on 26th Jun 1957 and Entry into force on 02nd

Jun 1959. Its primary focus is to recognize and protect the cultural, religious, civil and social rights of indigenous and tribal populations within an independent country, and to provide a standard framework for addressing the economic issues that many of these groups face.<sup>8</sup>

## ***2.2. Convention Concerning Indigenous and Tribal Peoples in Independent Countries, 1989***

This convention was adopted at Geneva, 76th ILC session on 27th Jun 1989, Entry into force on 05th Sep, 1991 and this Convention may be denounced on 05th Sep, 2021 - 05th Sep, 2022. This is an update to Convention of Indigenous and Tribal Populations Convention, 1957 and provides more protections for indigenous populations by seeking to improve their living conditions through education, employment, land rights, etc. while preserving their identity and culture as a separate group. Only 20 nations have ratified this document to date.<sup>9</sup>

## ***2.3. United Nations Declaration on the Rights of Indigenous Peoples, 2007***

This declaration was adopted by the United Nations Human Rights Council on June 29, 2006 and was passed by the United Nations General Assembly on September 13, 2007 with a vote of 144 members in favor. The Declaration emphasizes the rights of indigenous peoples to maintain and strengthen their own institutions, cultures and traditions and to pursue their development in keeping with their own needs and aspirations.<sup>10</sup>

## **3. THE INDIAN CONSTITUTIONAL PROVISIONS FOR THE TRIBES**

The Indian Constitution has certain special safeguards to protect the tribal community from exploitation to ensure social justice as follow...

### ***3.1. Safeguards under Fundamental Rights***

- Equal rights and opportunities to all;
- Prohibits discrimination against any citizen on the grounds of sex, religion, race, caste etc.;
- The State can make special provisions for the advancement of any socially and educationally backward classes;
- The State to make provisions for reservation in appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State;<sup>11</sup> and
- The State to promote, with special care, the educational and economic interests of the weaker sections of the people and, in particular, the STs and promises to protect them from social injustice and forms of exploitation.<sup>12</sup>

### ***3.2. Other safeguards under Indian Constitution***

- State promises grant-in-aid for promoting the welfare of STs and for raising the level of administration of the Scheduled Areas;<sup>13</sup>
- Reservation of seats for STs in the Lok Sabha, in the State Legislative Assemblies and in the services;
- The Constitution empowers the State to appoint a Commission to investigate the conditions of the socially and educationally backward classes;<sup>14</sup> and
- The Constitution empowers the State to appoint a Commission to specify those Tribes or Tribal Communities deemed to be STs.<sup>15</sup>

### ***3.3. Safeguards under Constitutional Schedules***

- The Constitution lays down certain prescriptions in regard to the Scheduled Areas as well as the Scheduled Tribes in States other than Assam, Meghalaya, Tripura and Mizoram through submission of Annual Reports by the Governors to the President of India regarding the Administration of the Scheduled Areas and the setting up of Tribal Advisory Councils to advise on matters pertaining to the welfare and advancement of the STs.<sup>16</sup>
- The Constitution refers to the administration of Tribal Areas in the States of Assam, Meghalaya, Tripura and Mizoram by designating certain tribal areas as Autonomous Districts and Autonomous Regions and also by constituting District Councils and Regional Councils.<sup>17</sup>
- To ensure effective participation of the tribals in the process of planning and decision-making, the 73rd and 74th Amendments of the Constitution are extended to the Scheduled Areas and Priority was also given to the welfare and development of tribals right from the beginning of the First Five Year Plan.<sup>18</sup>
- Regarding scheduled tribes and scheduled areas there is inadequate comprehension among those concerned in the implementation of the Fifth and Sixth Schedules in constitution for special provisions for Scheduled Areas in five and six Schedules to the Constitution. The Governors of the States have special responsibility and powers to protect the interests of Tribals. By anticipation, He may execute application of any law to a Scheduled Area or any part thereof or any part of the State or may modify application of laws to Tribals after consulting Scheduled Tribes Advisory Board.<sup>19</sup>

Despite the concern reflected in the Constitution and the developmental efforts initiated for the welfare of the Scheduled Tribes, much more needs to be done in this direction, including strengthening their empowerment of educational, social, economic and political. Keeping in the view

of their special identity in culturally, habitationally, traditionally and in terms of the tribal's age old rights and customs. All these aspects pertain to human rights. Human rights are those which are available to all human beings by virtue of his being member of human race. They are innate, universal and inalienable and are essential for the survival.<sup>20</sup>

#### **4. EMPOWERMENT OF THE TRIBAL COMMUNITY AND FINANCIAL STATUS**

Tribal's economic status is very poor and they are dependent for majority of their activities on forests. Some of them survive only on the collection of minor forest produce. The general problems include:

- The tribal's living in the villages outside the Tribal Sub Plan areas
- The tribal's living in the villages outside the Tribal Sub Plan areas are not covered with any kind of developmental programmes inspite of their proximity to the scheduled areas;
- The artisans and craftsmen belonging to tribal community are experiencing difficulties in collecting the raw material;
- Inadequate awareness of availability of abundant medicinal plants and aromatic plants in Tribal Areas;
- Non-availability of appropriate and suitable technology for processing cottage and small scale industries to supplement income;
- Low-levels of agricultural yields due to non-adoption of improved agricultural methods;
- Poor marketing infrastructure reflecting in low-income levels to tribal's;
- Lack of knowledge in taking up alternative avenues of employment other than agriculture;
- Continued dependency on moneylenders and middle-men for financial assistance;
- Supply of poor quality of seeds, pesticides and raw materials to tribal beneficiaries;
- Landlessness has been growing amongst Scheduled Tribes and the proportion of ST agricultural labour to ST cultivators is increasing.

Economic backwardness amongst STs when compared to the general population is depressingly obvious as more than half of the ST population (51.14%) lived below poverty line (in 1993-94) as against the percentage of 35.97 amongst the general population. The National SC & ST Finance Development Corporation - an apex level Organization for both SCs & STs was bifurcated in 2001 allowing the birth of an exclusive working Corporation at national level for ST with an Authorized share capital of Rs.500 crores.

Thus, Corporation in collaboration with the State ST Corporations is expected to work as the catalytic agent besides extending both forward and backward linkages of credit and marketing facilities to the micro-level agencies to improve the economic lot of STs.<sup>21</sup> In addition to the programmes of the Corporation, the nodal Ministry also extended Special Central Assistance as an additive to State Tribal Sub Plan to promote family based income generation activities to improve the economic conditions of STs. The impact of various poverty alleviation programmes put into action during the last two developmental decades has brought down the incidence of poverty from 63.14 in 1983-84 to 51.14 in 1993-94 in respect of STs as against 44.48 to 35.97 in respect of general category for the same period. The declining trend in the poverty rate amongst STs has been quite encouraging as the percentage decline of STs stood at 12.00, while it was 8.51 for the general category. However, the incidence of poverty amongst STs still continues to be very high as almost half of their population live below poverty line.<sup>22</sup>

Forest Rights of Tribals Tribal's age-old symbiotic relationship with forests is well known. The National Forest Policy of 1988 recognizes the symbiotic relationship between the tribals and forest. Yet, they have been victimized under the forek laws such as the Forest Act of 1927 and the Forest Conservation Act of 1980. Due to Forest Conservation Act 1980, hundreds of thousands of indigenous/tribal peoples became illegal residents on land over which they have been living for generations. In order to do away with the historical injustice committed against the tribal and indigenous peoples by recognizing their traditional forest and land rights and to provide protection to them the Government of India passed the 2006 Act.<sup>23</sup> The present law has only diluted the interests of the forest dwelling Scheduled Tribes by adding the other traditional forest dwellers who are non-tribals. However the Government of India has failed to implement the law.<sup>24</sup>

## **5. TRIBAL WELFARE ACTIVITIES AND DEVELOPMENT PROJECTS**

The Fifth Schedule to the Constitution of India protects the land rights of the tribals in mainland India and the 6th Schedule authorizes some of the Autonomous District Councils in the North East India to make appropriate laws against land alienation subject to approval by the Governor of the concerned State. In addition, there are State level laws to protect the land rights of the tribal and indigenous peoples. The non-tribals have also illegally occupied hundreds of thousands of acres of land belonging to tribals by force, allurements and acquiring tribal lands in the name of tribal wives after marrying them. The State government of Andhra Pradesh informed the State Assembly in March 2006 that non-tribal individuals have adopted dubious methods to illegally occupy tribal lands in the names of tribal women after marrying them. As many as 57,367 acres of

land earmarked for the tribals in the Scheduled Areas was under illegal occupation of non-tribal individuals in West Godavari district.<sup>25</sup>

According to the 2004-2005 Annual Report of Ministry of Rural Development of the government of India, 3,75,164 cases of tribal land alienation have been registered covering 85,52,82 acres of land in 10 States of Andhra Pradesh, Assam, Bihar (undivided), Gujarat, Karnataka, Madhya Pradesh (undivided), Maharashtra, Orissa, Rajasthan, and Tripura as of March 2004. Out of these, 1,62,650 cases had been disposed in favour of tribals covering a total area of 4,47,314 acres while 1,54,993 cases covering an area of 3,63,493 acres of land had been rejected by the Courts on various grounds. In the name of economic development through industrialization, the State has often been alienating tribal lands to private industries and for mining, hydroelectric schemes, tourism and even for schools where no tribal child is admitted. Research studies, NGOs and local tribal campaigns have outlined the evidence that these projects have hardly resulted in economic, social or political empowerment or progress of the tribal communities affected by such projects. There are several complex issues which need to be resolved in this behalf.<sup>26</sup>

Displacement or forced eviction of tribals from their lands and natural habitats has for long been a serious problem. Displacement takes place because of development projects, which include large irrigation dams, hydroelectric schemes, open cast and underground coalmines, super thermal power plants and mineral based industrial units.<sup>27</sup> In these projects, tribals lose their lands not only to the project authorities but also to non-tribals who converge into these areas and corner both land and the emerging economic opportunities.<sup>28</sup> Surveys show that the number of displaced tribals till 1990 was about 85.39 lakhs (55.16% of the total displaced) of whom 64.23% are yet to be rehabilitated. (Source: Walter Fernandes, 1994).<sup>29</sup> Although accurate figures of displacement vary, it is clear that many of those displaced have not been rehabilitated and that those displaced have been forced to migrate to new areas and have often encroached on forest lands and are, on record, considered illegal. It is also known that displacement has led to far-reaching (and negative) socio-economic consequences, not to mention the simmering disturbance and extremism in tribal pockets.<sup>35</sup> Economic planning cannot ignore these consequences. Inadequate rehabilitation of the displaced tribals further compounds their woes making them assetless, unemployed, trapped in debt bondage and even destitution. Effective steps have, therefore, to be taken towards effective systems of relief and rehabilitation.<sup>30</sup>

## **6. SUPREME COURT ON THE JARAWAS (ANDAMAN TRUNK ROAD ISSUE)**

In 2002, the Supreme Court directed the government to close down the Andaman Trunk Road that runs along and through the Jarawa Tribal Reserve in Andaman and Nicobar Island threatening the survival of the Jarawas, whose population as per 1991 statistics was only 89 persons.<sup>31</sup> The construction of Andaman Trunk Road and rapid encroachment of tribal land by settlers have been pushing the Jarawa tribe to extinction. According to a report presented to the Planning Commission of India in August 2006, the Jarawas faced the dual challenges of losing their habitat and saving themselves from sexual exploitation from the outsiders.<sup>32</sup>

## **7. SCHEDULED CASTES AND TRIBES (PREVENTION OF ATROCITIES) ACT**

In 1989, the Government of India enacted the Scheduled Castes and Tribes (Prevention of Atrocities) Act in order to prevent atrocities against SC/STs. The purpose of the Act was to prevent atrocities and help in social inclusion of Dalits into the society, but the Act has failed to live up to its expectations.<sup>33</sup>

The Act came into force with effect from 30.1.1990. This legislation aims at preventing commission of offences by persons other than Scheduled Castes and Scheduled Tribes against Scheduled Castes and Scheduled Tribes. The Act provides for punishment for offences of atrocities committed against Scheduled Castes and Scheduled Tribes. Comprehensive Rules under the Act were notified in the year 1995, which inter-alia provides norms for relief and rehabilitation. The Act extends to whole of India except Jammu & Kashmir. The respective State Governments and Union Territory Administrations, which are provided due central assistance under the Centrally Sponsored Scheme for effective implementation of the provisions of the Act, implement the Act.<sup>34</sup>

## **8. CONCLUSION**

In spite of having different International Laws and provisions under the Indian Constitution for the welfare of human rights of the tribal and indigenous people the situation has grown worse especially in the northeastern states of India. The tribes there are victims of naxalite attacks due to least concern by the Indian Government towards protections of their basic economic, political and social rights. The government of India shows scant regard for the Supreme Court and a number of judgments have not been implemented. The government of India has also created many national mechanisms to protect the rights of the tribals but they have been a failure.



The National Commission for Scheduled Tribes was established in 2004 to address violations and ensure the rights of the tribals. But it has miserably failed to live up to its mandate because of inherent flaws including in appointment procedures, lack of powers to enforce its rulings or recommendation, and lack of resources. Most surprisingly, the NCST has also adopted such rules of procedures which made the Commission subservient to the State authorities. Today tribal/ adivasi India is facing difficulty in protecting their basic human rights. Hence, it is an urgent need of the time to protect their overall tribal human rights with the help of techniques like social engineering against assimilation and in favour of their social or tribal identity.

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