
INDIGENOUS PEOPLES' RIGHTS: AN INCEPTION ON RIGHTS AND STATUS OF TRIBALS IN INDIA

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ABSTRACT

In India tribal people are in charge of the forest and its resources. The 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) provides a framework for international efforts to advance indigenous peoples' rights. The rights, status, relationship to environment, and human rights abuses committed against Indian tribal people are all examined in this research. The overreaching idea behind this paper is to focus on distinctiveness of Indigenous Peoples' rights and other issues considering the ongoing violations they are suffering where, it tends to reflect on the narrative of the International Customary Law (ICL) and to how extent it impacts on Indian laws. It will also provide the overview on the evaluation of tribals in India under the Constitution and the domestic laws, as well as the human rights violations rampantly met out against tribal people in India will be articulated with the support of various sources. In order to defend the human rights of India's tribal people, it would also assess the existing legal and constitutional frameworks.

Introduction

Tribals are the custodians of the forest and its resources. India has its own reservation towards forest and they have occupied an important position from ancient times. It has second largest gatherings of tribal population. The tribes in India have been notified under its Constitution as Schedule Tribe (ST),¹ and these are considered as Indian Indigenous People. The constitution of India also recognizes STs as the communities within tribes as follows to Art. 342.² There are approximately 705 ethnic groups as STs in India and according to the census of 2011, there exist 8.6% of total population.³ The Indian Constitution consists of two parts for the Schedule tribes that are Fifth Schedule, which is for STs plain and Sixth Schedule confers to STs hills i.e., North-Eastern (seven sisters) part of India. As India consists several legislations and constitutional provisions to protect and promote the rights of STs (indigenous peoples) but their execution is not competent enough.⁴ The United Nations Declaration on the Rights of Indigenous Peoples, 2007 (UNDRIP), provides international structure to endeavor the development of indigenous peoples' rights.⁵ However, UNDRIP is applicable to India because the government has voted in its favour during adoption by United Nation General Assembly (UNGA) in the year 2007.⁶

Approach towards this paper is to examine the rights and status of the Tribals in India along with their connection with environment. It will be contemplated how far the government has achieved to promote and protect the welfare to the Indian tribals. This paper will also reflect human rights violations against the tribals in India. After examining the whole situation my main concern will be towards government policy regarding tribals, whether it is just or unjust and also evaluate the existing laws and constitutional provisions that how far it protects the human rights of the tribals in India. As this topic is broad, paper tends to be very precise and not to consider it too vast, my analysis would be reflected on recommendations and conclusion.

¹ Art. 366, The Constitution of India, 100th Amendment Act, 2015

² Art. 342, The constitution of India, 100th Amendment Act, 2015

³ Statistical Profile of Schedule Tribe in India 2013, Ministry of Tribal Affairs Statistical Division, Government of India, p.1, available at: <https://tribal.nic.in/ST/StatisticalProfileofSTs2013.pdf> (Last visited on 28.05.2023)

⁴ Ibid

⁵ OHCHR, The United Nations Declaration on the Rights of Indigenous Peoples, A Manual for National Human Rights Institutions, (APF) 2013,p.iii, available at:

<https://www.ohchr.org/documents/issues/ipeoples/undripmanualforhris.pdf> (Last visited on 28.05.2023)

⁶ The Indigenous World 2016, Copenhagen, p.328, available at:

https://www.iwgia.org/images/publications//0740_THE_INDEGENOUS_ORLD_2016_final_eb.pdf (Last visited on 02.06.2023)

International Labor Organization Convention (ILO)

ILO was the first international organization globally in the discourse of indigenous or tribals affair to promote and protect their rights.⁷ With regard to indigenous and tribal people, ILO advanced The Protection and Integration of Indigenous and other Tribal and Semi-Tribal Population, 1957 (No.107)⁸ and Indigenous and Tribal Peoples Convention, 1989 (No. 169)⁹. Convention No. 169 is core apprehension for non-discriminations, and it initiated a structure to protect the indigenous peoples within the purview of international law. India has not yet ratified the Convention No. 169, as per the report on India's National Commission for Scheduled Tribes of 2012¹⁰, the government says that the concept of 'indigenous peoples' is irrelevant to India thus, it violates the ownership of State regarding the land resources. They don't want any external evaluation due to its fair redressal.¹¹ Whereas, India has ratified the Convention No. 107 due to its assimilationist goals and government views this as not violative of State ownership.

Promotion and Protection of Rights of Scheduled Tribes

According to ILO Convention No. 169, "*tribal people in independent countries who are descendants of population that inhabits the geographical region at the time of establishment of current state in order to retain their own social, economic, cultural and political institution are considered as indigenous*"¹².

Rights of Indigenous people are interlinked with the rights of minority in order to promote and protect their welfare. Although, indigenous people need remedy in numerous problems and

⁷ Supra note 4, p.3

⁸ Office of the United Nation High Commissioner for Human Rights, Indigenous Peoples and the United Nations Human Rights System, Fact Sheet No. 9 (rev.2), p.9, available at: <http://www.ohchr.org/Documents/Publications/fs9Rev.2.pdf> (Last Visited on 03.06.2023)

⁹ Ibid

¹⁰ The Situation of the Rights of Indigenous Peoples in India, 3rd cycle of the Universal Period Review (UPR), India, 27th Session of the Human Rights Council, 2017, para. 4, p. 1, available at: https://www.upr-info.org/sites/default/files/document/india/session_2017/js46_upr27_ind_emain.pdf (Last Visited on 03.06.2023)

¹¹ National Commission for Scheduled Tribes, Special Report on Good Governance for Tribal Development and Administration (2012), pp.8-13, available at: [https://tribal.nic.in/DivisionsFiles/NCST/18SpINCSTReport\(mainReport\).pdf](https://tribal.nic.in/DivisionsFiles/NCST/18SpINCSTReport(mainReport).pdf) (Last visited on 05.06.2023)

¹² Art. 1 (1) (b), Indigenous and Tribal People Convention, 1989 (No. 169), Adopted by the General Conference of the International Labour Organisation, 27 June 1989, Entered into forces on 5 September 1991, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/Indigenous.aspx> (Last visited on 05.06.2023)

their claims are specifically based on colonization and alienation of their tradition.¹³ As India voted for ILO Convention No. 107, it ensures that the provisions of the developing framework promotes and protects the rights of vulnerable and Schedule tribes. Under which it has implemented reservations systems in the field of educations and employments. They are conferred with the right to fair compensation and transparency in Land Acquisition, Rehabilitation and Resettlement (LARR) Act, 2018.¹⁴ Government cannot acquire the tribal land for its own purpose but if in case it is in use for public welfare, the tribals have rights to avail the compensation. They are conferred with the right to self-determination, cultural rights under which they can practice their own choice of customary practice in religion, own community language and land rights. The government has passed laws for the rights of the Schedule Tribes inconsistent with constitutional safeguard even though there are some lacunas which exist.

Interlink between tribal and the forest

Tribals are people who live in forest and that is the basic reason they are so closely related to them. They not only consider the forest as one of the most important part of their life but the whole environment *per se*¹⁵. Tribals are the people who lives on the basic elements provided by the natural phenomena. If we emphasis at current position of very interior tribal area they are still dependent on sunlight as their basic source in terms of light and energy and other light they know is the light from firewood.¹⁶ Their lives are centered within nature itself, surrounded by the forests, rivers, hills, and mountains. The amount of importance they put forth towards the environment is likely to God and they worship the sun, air, river, trees, and land.¹⁷ Likewise, by these activities they protect the environment. According to my confrontation with an old man well known as Padma Shree Simon Oraon of Jharkhand (waterman)¹⁸, who belongs to tribal community and contributed on the sustainability of environmental conservation by saving the forest of Bero¹⁹ district by constructing water resources like well, pond and dams due to which that district is not going to face any water scarcity in future. His contribution

¹³ Rhona K.M. Smith, 2013, "Indigenous People and their Rights" in Texts and Materials on International Human Rights, 3rd Edition (London and New York: Routledge), p. 430.

¹⁴ Supra note 10, para 11, p. 2

¹⁵ Verma, Mahendra Mohan, Tribal Development in India: Programmes and Perspective, Mittal Publication 1st ed, 1996.

¹⁶ Ibid

¹⁷ Ibid 16

¹⁸ Confrontation with Padma Shree Simon Oraon (Tribal) 2022, Jharkhand, India

¹⁹ District in Jharkhand

made his district as an agricultural hub from where the larger amount of 25,000 metric tonnes²⁰ of vegetables are being supplied to various districts of Jharkhand.

The tribal peoples are attached with the land traditionally whether in terms of habitation or cultivation. They resisted invasions on their territory and if we look back in history, a series of struggles waged by tribals against the British as well as Indian land exploiters for their survival. They follow their own traditional law, legal systems and customary practice in any issues within the village.

Lacunae on provision for protection of tribals and their displacement

There are lacunae on provisions with regard to protection of tribals which leads to their displacement. Even though, there are several legislations along with Constitutional provisions, it is not properly implemented or even if it does then denied by the government. According to an author G.S. Ghurye, who has explained in his book about the intentions of the farmers, that how they were originally associated with their land and forest. He has also brought forth that the Forest Act was to safeguard the imperial and feudal interest.²¹ If we talk about the constitutional provision regarding protection and development to the Scheduled Tribes, there has been in consideration that for development of the Scheduled Tribe must be first essentially protected their interest. The provisions under Fifth and Sixth Schedule are Arts. 164, 275 (1), 330, 332, 334, 335 and 338-A, 339(1), 339 (2), 372-A, 371-B, 371-C.²² There are certain exceptions related to the fundamental rights of equality and freedom guaranteed under the Part-III of the constitution i.e., Arts. 15(4), 16(4) and 19(5).²³ As per the provisions empowers the Union Executives to issue directives to the states to essentialized for welfare of the Schedule Tribes, notwithstanding the state government has been failure in order to issue the directives by not utilizing the provisions. Under Art. 243 A Gram Sabha has right to exercise its powers at village levels if any disputes arises.²⁴ Though they are empowered, but they are abided by the power of state government to exercise its power and their resources are alienated. In India there are still many states which do not allows the Gram Sabha to function in their villages even regarding the major issues like land acquisition, resettlement, and rehabilitations.²⁵

²⁰ Supra note 19

²¹ G.S. Ghueye, *The Schedule Tribes* (Popular Prakash & Bombay, 3rd Edition), 1995

²² Supra note at 2

²³ Ibid

²⁴ Ibid at 2

²⁵ Ministry of Tribal Affairs, Annual Report 2017-18, Government of India, p.9, available at: <https://www.tribal.nic.in/writeraddata/AnnualReport/AR2017-18.pdf> (Last visited on 06.06.2023)

Though they are conferred with the power they are not allowed to exercise even to restore their alienated land. There are limping in the provision and must be taken into account by the government for proper implementation.

Human rights violations against Schedule Tribes

Atrocities against tribal people have increased substantially from past years in terms of racism, rape, homicide, and unlawful detention. To prevent such atrocities the Parliament of India enacted ST and SC Prevention of Atrocities Act, 1989, under which issue will consider if atrocities committed by the non-tribal and it is not applicable to the security forces even if they violate the Human Rights. In consideration to the State of Chhattisgarh, the police forces forcibly raped teen girls and arrested males members of the villages in distrust of being Naxalites. These unethical activities by police forces are gross violations of human rights against the vulnerable indigenous. As per day-to-day experience, the North-Eastern tribals face racism which hurts the sentiment of an individual.²⁶ In tribal prohibited areas police intervenes without the prior permission from the Panchayat head or Gram Sabha and randomly arrest youths in false accusations of being part of the Naxalites²⁷. Due to illiteracy in many villages tribals are still unaware of their rights, and it has been observed in many states for example Jharkhand: to hold and election is unconstitutional in the tribal prohibited region despite that government has full power to violate the human rights as well as constitutional rights against the tribal people. In spite to provide proper education or to conduct an awareness program to vulnerable tribal people, the government even abides the people who are interested to promote the awareness in tribal prohibited regions. For example, 'Pathalgari movement'²⁸ in India which was very effective in the state of Chhattisgarh and Jharkhand, where Chhattisgarh government did not intervene in this movement, whereas the Jharkhand government intervened and this intervention turned into the gross violation of human rights against the Scheduled Tribes.²⁹ If one individual from tribal community acquires a higher education and tries to spread awareness among his/her village, though the government has no authority to intervene on, still they arrest the person in accusation of 'anti-national' and detained unlawfully with no

²⁶ Hindustan Times, Let's talk about racism, Don't call us 'chinky,' 2017, available at: <https://www.hindustantimes.com/...racismnortheastern.../story-SJckp4InptNV6Te29...> (Last visited on 06.06.2023)

²⁷ Confrontation with 'Pahaan' Kishore of (Dantewada District) Chattisgarh, 2022

²⁸ Vincent Ekka, 'Pathalgadi': Tribal Assertion for Self-Rule, 2018, available at: https://www.academia.edu/38505169/Pathalgadi_pdf (06.06.2023)

²⁹ The Telegraph, Pathalgadi Leader Nabbed from Delhi, India, 19 March 2018, available at: <https://www.telegraphindia.com>state>Jharkhand>. (Last visited on 06.06.2023)

proper grounds. This is a huge question on the part of government that it manipulates the rights and interests of the tribals and this is gross violation of human rights. There are many innocent vulnerable tribal males are killed during illegal encounter by the police force for being suspected as Naxalites. But when the concept of naxalism has been emerged, has anyone emphasized that who are actual naxalies and who combated them. It is just unfair policy of the government leading the individuals towards the path of joining the naxals. It is also inefficient because it does not address the underlying problem which gives rise to the insurgency.

Recommendation and Suggestion

Indian government should take immediate initiative towards the ratification of the ILO convention No. 169, which will bring fair compensation and more transparency in land acquisition issues.

Gram Sabha must be constituted in every tribals village under the provision of Indian Constitution, which will deal the issues among tribal communities and police cannot intervene.

Unjust policies should scrutinize, and fair policy must be implemented regarding tribal women under the recommendations of Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) convention, in order to bring equality and promote and protect the rights of the Tribals.

As tribals are the real conservator of the forest and real citizens of the country, so we must cooperate them in conserving the forest in order to achieve the environment sustainability.

Pathalgari movement in tribal prohibited areas must not be intervened by government, at they are trying to preserve their customs.

Violation of human rights against tribals should be considered in positive manner and unlawful detention should not be done.

Conclusion

If we look the map of India, the minerals, forest and the tribals all stacked up on top of each other. It has been into account the economic, social and cultural injustice which has been done to the tribals. We can see the enormous resources unprecedent land grabs and mineral resources

in tribal areas. The struggle for survival for tribals for their livelihood existences as people have today intensified and spread never before in Indian history. In their survival for struggle against the social and international mining exploitations have been reflected in its inception. In reality, larger part of India tribal people are making control over land, resources and society through struggles. My question here is what is life? Most importantly a long-term struggle projecting a different type of living. In order to sustainable development, peoples' friendly education, growing emancipation of women, a halt to domination of exploiters, a new culture that rebuilds tribal traditions as a new instead of mocking them. There are loopholes in the part of government policies and in their implementations. It seems clear in the present situation of tribals in India that they are fighting for their rights with the government in regard to proper implementation. Government must stop this unjust means against them and instead respect their aspirations and attend their demands under the Constitutional provision. I would conclude by open statement, that the government policies are unjust and unfair in order to promote and protect the rights of the Tribals in India. Even in case of atrocities committed by any forces would not be penalized, these are violative of human rights of the Scheduled Tribes. Therefore, there is need to specify their rights and implement a proper policy to support the tribals to secure their rights. The reason to securing their rights are just not limited to them but it also comes to the protection of the forest and land.

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