

Tribal Laws And Welfare Concepts In India- Historical Perspectives

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Abstract

“The Adivasis are the original inhabitants whose materials position is perhaps no better than that of Harijans and who have long been victims of neglect on the part of the so-called high classes. They are like the indigenous medicine, of the soil, and their roots lie deep there”

Mahatma Gandhi¹

India has the largest concentration of tribal people in world, next to Africa. Tribal villages are located in remote and inaccessible forest regions. The tribes are said to be the original inhabitants of India. They are called different names. Adivasis, tribes, primitive tribal groups, indigenous people, Scheduled tribes, aboriginals etc. In addition, there are hundreds of de-notified tribes, nomadic tribes, semi-nomadic tribes and other tribes that have not been included in the Scheduled list. In tribal dominated regions, and the poor socio-economic conditions of the tribes were attributed to their geographical and social isolation. The schedule caste (SCs) and scheduled tribes (STs) are two groups of historically disadvantaged people recognized in the constitution of India. The tribals are deprived of their right in each and every sphere of society. In recent years the resources like land, forest and water of the scheduled has mounted and they have been displaced. The key issue today is the protection of tribal people against exploitation, guaranteeing their rights in their resources so that they are able to develop according to their genius and aspiration. A number of domestic as well as international instruments are constructed to uplift these backward classes of people. The constitution made provisions for socio economic development of tribals.

Keywords: Scheduled Tribes, Adivasis, nomadic, constitution, tribal area, privileges, vulnerable community, rehabilitation legislations, land laws, Reservation policies, and tribal rights, Forest Dwellers, Empowerment, Policies,

Introduction:

India has the largest concentration of tribal population anywhere in the world except perhaps in Africa. 1 tribe man for every 13 Indians. They occupy around 15% of the total geographical area of the country, sally in difficult and inhospitable terrain in the hills and valleys. Scheduled tribes in India are broadly composing of 250 tribal groups speaking about 105 languages and 225 subsidiary dialects. Though there may be variations within the tribal community in India. Aboriginal people in India comprise 705 ethnic groups notified as Scheduled Tribes (STs) spread across 30 States and Union Territories in India.¹ In adding up, there are hundreds of de-notified tribes, semi-nomadic tribes that have not been included in the scheduled list. According to 2011 census, the ST population was 104.3 million accounting for 8.6 percent of the total population of India.² The tribals in India are traditionally known as Adivasis, the aborigines of the country. They remained completely isolated from the national life due to their long stay in thick forests. They were traditionally nomadic and were in the habit of doing shifting cultivation, the self-governing system of administration. Their traditional habits and customs and

¹ Denzel Fernandez, (2018). Social Action—A quarterly review of social Trends Vol. Published by Denzel Fernandez New Delhi, p.19.

² Joshi .K.C. (2012) .International law & human rights, Eastern Book Company Luck Now, p.488

their indigenous laws, and separate dialect keep them aloof from the main currents of national life. Both the state and central government have been making every effort towards the upliftment of tribe people. This includes measures both executive and legislative.³

Tribes and Scheduled Tribes

The tribal groups may be considered as oldest ethnological sector of the national population. The term 'Adivasi' is also used for a tribal which means (Adi=original+ vasi=inhabitant), the original inhabitant of the country. Thus, the tribal are the original inhabitants of India. However, the Scheduled tribes could be defined in general as the oldest strong kinship bonds with district customs moral codes, religious beliefs and virtual and low level of technological development. It would be difficult to satisfy all these criteria for a number of communities to term them as scheduled tribes.⁴

The term "scheduled tribes" (ST). This was introduced for first time by Simon commission in 1928. The constitution of India has accepted the term. Article 366 (25) defined the scheduled tribes as under; "Scheduled tribes' means such tribes or tribal communities or parts of or groups within tribes or tribal communities as are deemed under Article 342 to be Scheduled tribes for the purpose of our constitution." The constitution of India has accepted the term. Article 366 (25) defined the scheduled tribes as under; "Scheduled tribes' means such tribes or tribal communities or parts of or groups within tribes or tribal communities as are deemed under Article 342 to be Scheduled tribes for the purpose of our constitution."⁵

Tribal welfare Legislations under British Rule

The constitutional safeguards to the tribes under Indian British history was started from the time of consolidation of British position in the country, which came finally to be established in 1858 when government of India Act, 1858. The queens Proclamation of 1858 declared.

- (i) All people in India shall alike enjoy the equal and partial and partial protection of the law.
- (ii) All subjects of whatever caste, tribe, race or creed shall be freely and impartially admitted to offices in British services.
- (iii) In framing and administration the law, due regard will be paid to the ancient rights, usages and customs of people belonging to different caste, tribe and race in India and
- (iv) The British government will not interfere with the religious belief or worship of any of the British subjects.⁶

The Scheduled District Act 1874 enabled the executive to any enactment in force in any part British India to a scheduled district with such modifications as might need. In the various province of s of British India most parts inhabited by the tribal and aboriginal population isolated from the main stream of Indian society. Particularly in the provinces of Madras, Bengal, Bihar, Orissa, the Central provinces and Assam, inhabited by Primitive and tribal population following their traditional agriculture and social customs and their own animistic and tribal faiths.⁷ The tribal tabulation was a permanent feature of census report 1872. In the first ever census arranged the names of castes, tribes and races separately for each province and classified them by respective occupations and various castes rather than by stereotyped four folded classification of Manu. During the 1911 census it was

³ Leela Krishnan.P (1985), Tribal welfare; law and practice. Matrubhumi Publishing company Ltd, Cochin, p.237

⁴ Ram Singh Meena (2006), Tribal Development Programmes-A critical appraisal, Ritu Publications, Jaipur, p.2

⁵ The President may with respect to any State or Union territory and where it is a state after consultation with the governor hereof by public notification specify the tribes or tribal communities or parts of or groups within tribes or tribal's communities which shall for the purposes of this constitution be deemed to the scheduled tribes in relation that State or Union territory, as the case may be.

Parliament may by the law include in or exclude from the list of scheduled tribes specified in a notification issued under clause (1) any tribe or Tribal community or part of or group within any tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

⁶ Piarey Lal Mehta, (1991), Constitutional Protection to scheduled tribes in India-In Retrospective and Prospects. Published by H.K. publishers & Distributors Delhi, p.73

⁷ Ibid, p.78

decide that the tribal table would contain statistics only for the more important tribes and include any other tribes or make a complete tabulation.⁸ The Government of Bengal decided to include only those caste and tribes that accounted for twenty five thousand or more in any single district, and any other caste, tribe or race of local importance.⁹

The Montesque-Chelms Report of 1918 made that the typically backward tracts should be excluded from the jurisdiction of the reformed provincial governments and administered personally by the heads of the province. In 1919 newly promulgated Government of India Act, the Governor-General-in Council was authorized to declare any territory in British India to be 'Back ward tract'¹⁰ During 1921-31 The Madras Government appointed a commissioner of labour entrusted with the task of encouraging the depressed class, guaranteed right to enforce the rights admission of tribal into all public as well as private school, to open special schools and Hostels for them. The Government of India notification under which the census of 1931 was taken the collection of information conducive to a better knowledge of the Scheduled tribes and the problem involved in their present and future Welfare.¹¹

A survey of the socio-economic and educational conditions of the tribes under British regime clearly reveals that nothing tangible was done for the welfare of the tribes. Yet another defect of the British policy was the assumption that tribals were politically backward, incapable of exercising franchise. With this idea in mind, the tribal kept away from the pale of political institutions and were deprived of their participation in the national life of the country.¹²

The government of India 1919, made provisions to the people belonging to Depressed Classes i.e. tribes to find place in the legislative assembly, which formed the lower House. The government of India Act.1935 took special measure for the protection of tribals in India. The Government of India Act 1935 The Genesis of the Fifth and Sixth Scheduled of the Constitution can be traced to certain provisions of the Government of India Act 1935. The tribal areas were reclassified in to 'Total' and 'Partially' excluded Areas which were self-governed units. It was taken for granted that the tribes were politically backward. But the safeguards provided to the tribes were not satisfactory.¹³

Nehrus Panchashil of Tribal Development

Nehru led a campaign for the development the tribal area in the field of economics, social, political and intellectual. For the purpose, he laid down certain guidelines or instructions for the upliftment of tribal people which would later be helpful for the framing of government policies towards tribal areas.

[a] People should develop along the lines of their own genius and we should avoid imposing anything on them. We should try to encourage, in every way, their own tribal arts and culture.

[b] Tribal right in land and forests should be respected.

[c] we should try to train and build up a team of their own people to do the work of administration and development; we should avoid introducing too many outsiders into tribal territory.

[d] We should not over-administer these areas or overwhelm them with multiplicity of schemes. We should rather work through, and not in rivalry to, their own social and cultural institutions.

⁸ Ibid 7 p.79

⁹ Ibid, p.80

¹⁰ Ibid, p.81

¹¹ Ibid, p.80

¹² Ibid, p.84

¹³ Ibid, p.88

[e]we should judge results, not by statistics or the amount of money spent, but by the quality of human character that is evolved.

These principles are very fundamental in character and have ever lasting values.¹⁴

Dr.B.R.Ambedkar on Tribal justice

Dr.B.R.Ambedkar had suggested the reservation for improving their social lot because people are subjected to social discrimination and segregation for thousands of years. The reservation will provide them a base to create their own employment and to improve their economic condition. The Harijan and Adivasis are trying to assert their rights in getting their employments in various fields, i.e., education, agriculture, industry, administration, etc. Dr.B.R.Ambedkar was unhappy over the plight of the downtrodden and people living in poor conditions. Even today poverty exists in the society and the Adivasis still live in deplorable conditions as their forefathers had lived thousands of years ago.¹⁵

The constitution and Tribes: The constitution of India has devoted more than 20 Articles on the redress and uplift of the underprivileged following the policy of positive discrimination and affirmative action. Particularly with reference to the STs, in order to protect these communities from all the possible exploitation and thus ensure Social Justice. Indian Constitution has accepted the ideas of equality and justice both in the Social and Political fields. Accordingly it abolishes any discrimination to any class of persons on the ground of religion, race or place of birth. Our Constitution, therefore, provides certain temporary measures to help the backward sections to come up to the same level with the rest of the nation, as well as certain permanent safeguards for the protection of the cultural, linguistic and similar rights of any section of the community.

Constituent assembly Debates on Tribal issues: Constituent Assembly had elaborate deliberated on incorporating certain specific provisions regarding upliftment of Scheduled caste and scheduled tribes. The Constituent Assembly declared India as an Independent Sovereign Republic guaranteed and secured to all the people of the India justice. Wherein adequate safeguards shall be provided for minorities, backward and tribal areas and depressed and other classes.¹⁶

The constitution (scheduled tribes) Order, 1950: The president has authority to specify, by notification, the tribes or tribal communities which shall for the purpose of the constitution be deemed to be scheduled tribes in particular states. After coming in to force of the constitution, the president in “The constitution (scheduled tribes) Order, 1950.

The directive principles of state policy: It is a Directive Principles of State policy that the State shall promote with Special care the educational and interest of weaker section of people, and in particular of Scheduled Tribe and shall protect them from social injustice and all forms of exploitations.¹⁷

Protective discrimination concept: The constitution of India grant to all the person right to equality, special protection to some of the special group for their development, scheduled caste, scheduled tribe, socio-economic

¹⁴ Ravishankar Prasad, Promod Kumar Sinha, (2012), Cultural Heritage Of Indian Tribes, Anmol Publications PVT, Ltd New Delhi p.50

¹⁵ Purane (2000), Untouchability and the law, the ground reality (law, political science, sociology), Gyana Publishing home New Delhi, p.255

¹⁶ . Ajay Kumar Jaitly (2017) Impact of Modernization of tribal life, Shakti Printers & Publishers Bengaluru, p.150

¹⁷ Ibid, p.172

backward class, other backward etc. which need extra protection is provided by the constitution of India, which is called protective discrimination.¹⁸

Tribal Welfare commissions: A number of commissions and committees were appointed to look in to the problems of tribal to remove the socio-economic imbalance. The important commissions and committees appointed so far are.

1. The Social welfare terms of the committee as plan projects 1959.
2. The Verrier Elwin Committee on tribal Development
3. The Committee on Tribal economy in Forest Areas-1967
4. The Scheduled areas and scheduled Tribal commission (Dhebar Committee 1961)
5. The task force on Development of Tribal areas-1972
6. The Dube Committee 1972
7. The study term on corporative structure in tribal Development Project areas-1976.
8. The Study Group on Relief an individual's land, Alienation and Restoration in Development Agency Area-1973 (Sri P.S Appu as its chairman)
9. The team marketing, credit and co-operation is tribal areas-1978 (Sri K.S Bawa Committee)
10. The term Group on movement of scheduled tribes during the 7th five year plan 1935-90) (The Dhebar commission 1961)¹⁹

Legal provisions for upliftment of Tribals; The Constitution as well as a revenue laws provides that agricultural lands of tribals cannot be transferred to non-tribals. But moneylenders and traders have taken possession of the fields, though it continues to be recorded in the name of tribals in record of rights maintained by the revenue department.²⁰

Legislations under the Fifth Schedule; Regulations promulgated by the State Governments under the Fifth Schedule regarding land so far have covered largely alienation parts and have ignored other aspects. The tenancy laws framed by various states prohibit sale / transfer of tribal land to non-tribal except in Orissa and Bihar where it can be transferred after obtaining permission from the competent authority. The Indian Constitution specifically provided certain Articles in the Constitution for the upliftment of tribals and also to protect them from the oppressions caused by the other people in the society. The protective rights granted by the Indian Constitution, 1950 to the tribal people can be classified under the following heads.²¹

1. Educational and Cultural Rights (Articles 15(4), 29, 46 and 350)
2. Social Rights (Articles 23 and 24)
3. Economic Rights (Articles 244 and 275)
4. Political Rights (Articles 164(1), 243, 330, 334 and 371)
5. Employment Rights (Articles 15(4), 16(4) and 16(4A)).

In addition to these rights Fifth and Sixth Schedule of the Indian Constitution completely deals with the welfare of the tribal people.

To Protect Educational and Cultural Rights of Tribals

¹⁸ Deepak Kachal , (Sept, 2020) ,Yojana. Published by Ministry of information and broadcasting, New Delhi p.98

¹⁹ Vishwanatha Gupta,P.Dhananjay Lokhade. (2014), Transformation of Tribes and Sustainable Development. Anmol Publication PVT LTd New Delhi p.16.

²⁰ 20 Narwani G.S.(2004),Tribal law in India, Rawat Publications New Delhi, p.83

²¹ Ibid pp.84-85

Article 15(4): It states that reservations should be provided to the socially and educationally backward classes (including Scheduled Tribes). It also empowers state to make special laws for relaxations minimum qualifying marks for admission for scheduled castes and scheduled tribes.²²

Tribal Land Protective legislations

The laws preventing land alienation can be listed as under which declare such transfers/sale/land acquisition/mortgage/lease/any other mode as null and void and the non-tribals will be evicted. In some states, there is provision for imposing penalty also for illegal transfer;

(i) Andhra Pradesh Scheduled Area Land Transfer Regulation Act, 1977.

(ii) Bihar Scheduled Area Regulation, 1969.

(iii) Gujarat Land Revenue Code, Section 73 (A) applicable to all villages in the Scheduled Area and notification dated 4th April, 1961.

(iv) Karnataka Sc/ST (prohibition of Transfer of certain lands) Act, 1978.

(v) Madhya Pradesh Land Revenue Code, 1959, Section 170-A and 170-B. No transfer of land of tribal to non-tribal in tribal area is permissible. In other areas also, it cannot be transferred without specific permission of the collector.

(vi) The Maharashtra Land Revenue Code and Tenancy Laws (Amendment Act, 1974) and The Maharashtra Restoration of Lands to Scheduled Tribes Act, 1964.

(vii) Rajasthan Tenancy Act, 1955, Section 42 prohibiting such transfer, section 183 (B) for summary and notification dated 17 April, 2002, empowering Block Panchayat for summary ejectment of non-tribal and restoration of alienated land to tribal.

Anti-Exploitative Measures

There are various Acts have been passed by Parliament which aim at addressing the issues concerning tribal's of the country. For example, the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989; Forest Rights Act, 2006, Protection of Civil Rights, 1955, Protection of Civil Rights Rules, 1977, SC/ST (Prevention of Atrocities) Rules, 1995; the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA), and the Constitution (Eighty-Ninth Amendment) Act, 2003. Responsibility of implementing the Acts concerning the STs lies primarily with the Ministry of Tribal Affairs, which have a component of schemes meant for the STs.²³

Protection of Civil Rights Act, 1956: In pursuance of Article 17 of the Constitution of India, the Untouchability (offences) Act, 1955 was enacted. Subsequently, it was amended and renamed in 1976 as Protection of Civil Rights Act, 1955, rule under this Act, viz, The Protection of Civil Rights Rules, 1977 were notified in 1977. The Act extends to the whole of the country and provides punishment for the practice of Untouchability. It is implemented by the respective State governments and Union territory administrations.²⁴

²² Supra note 16, p.151

²³ Roma Chatterjee India (2018), *A reference Annual* New Media Wing India Publication Division Ministry of Information and Broadcasting Government of India. New Delhi, p.407

²⁴ .Supra Note 23, p.562

Bonded Labour System (Abolition) Act, 1976: The central Government Passed the bonded labour Abolition) Act, 1976²⁵ the purpose of this Act was to prevent the economic and physical exploitation of weaker section of the people. Bonded labour system means the system of forced or partly forced, labour under which a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor, either in consideration of money taken or in pursuance of any customary or social obligation or because of birth or succession loses his right for free honorable existence.²⁶

Scheduled castes and the Scheduled Tribes (Prevention of atrocities) Act, 1989: The scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was enacted with a view to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes and to provide for Special courts and exclusive Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences. The said Act was amended in 2015 and 2016 with an objective to deliver grater justice to members of the Scheduled Caste and the Scheduled Tribes.²⁷ Relief amount for 47 offences of atrocities is provided for the phasing of payment of relief amount rationalized. Relief amount is enhanced between Rs 85,000 to 8, 25,000/ depending upon the nature of the offences. The admissible relief is to be paid, within seven days. Investigation and filing of Charge sheet is to be done within sixty days.²⁸

The Panchayat (Extension to Scheduled Areas) Act, 1996 ; (herein after PESA) ensuring self-governance through traditional Grama Sabha for people living in the Scheduled Area. The Act enables the Panchayats and Grama Sabhas to implement a system of self-governance. It mandates that every village shall have its own Grama Sabhas to manage as per this Act it is mandatory for consulted to Grama Sabha in the land acquisition, resettlement and rehabilitation of displaced persons.²⁹ The Act empowers the Grama Sabha to prevent unlawful alienation of land in the Scheduled Areas and take appropriate action.³⁰

Common Law & Procedural law perspective on Tribes : Article 372 provides for the validity of laws before the commencement of the constitution. Moreover, Article 15, 16, 19 makes possible, while legislating on any matter to take into consideration the special conditions of the tribes in the matter of enforcing the provisions relating to the equality of all citizens. The Hindu Succession Act, 1956 under sec. 2 (2) leave open the door of the tribal customary laws. Section 3 (a) of the Hindu adaptation and Maintenance Act, 1956 recognizes custom and usage. Indian Evidence Act, 1872 provides various means by which the existence of customs can be proved. The procedural laws of India are the Code of civil Procedure, 1908 and Code of Criminal procedure, 1973, Section 1(3) of the civil procedure Code, 1908 lays down that the code does not extend to Nagaland and Tribal areas, provided that the concerned Government may apply by notification to Nagaland and tribal areas. Section 1(2) of the Criminal procedure, 1973 exclude the application in Tribal areas.³¹

Besides these, there are number of land legislations namely. Santa Paraganas Tenancy (Supplementary Provisions) Act, 1949, the Chotanagapure Tenancy Act, 1908, The West Bengal Land Reforms Act, 1955, The

²⁵ Bonded Labour System (Abolition) Act, 1976 Act No. 19 of 1976

²⁶ S.2 (g)

²⁷ Scheduled castes and the Scheduled Tribes (Prevention of atrocities) Act, 1989 Central Act.33 of 1989

²⁸ supra note 23, p.563

²⁹ Sec, 4(i) of the PESA Act

³⁰ Sec, 4(m)(iii) of the PESA Act

³¹ Denzil Fernandez, (2018). Social Action – A quarterly review of social Trends Vol. 67, Published by Denzel Fernandez New Delhi, p.247

Rajasthan Tenancy Act, 1955, The Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978, The Protection of Civil Rights Act, 1955 and the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 also provides safeguards in the event of various atrocities against SCs and STs.³²

Forest Right Act, 2006: It is not only an environmental legislation, but an economic and social one, and one that belonging to a particular political conjuncture, representing both the limitations, and more importantly its liberatory possibilities.³³ FRA recognizes 14 types of pre-existing rights of forest dwellers on all categories of forestland, including protected areas. The most significant rights include: (1). Individual rights over cultivation and homesteads in forest lands that is individual forest rights (2). Community forest right for use and access to forestland and resources. These include right to firewood, grazing and other products for subsistence; right over minor forest products water bodies and fish, right to access biodiversity, intellectual property and traditional knowledge, etc. (3). Community forest resources (CFR) rights to use, manage and govern forests within the traditional boundaries of villages, and (4). The empowerment of right-holders and or Grama Sabhas for conservation and protection of forests, wildlife, biodiversity, and their natural and cultural heritage.

Conclusion

Indian Constitution has accepted the ideas of equality and justice both in the Social and Political fields. Accordingly it abolishes any discrimination to any class of persons on the ground of religion, race or place of birth. "It would have been a blunder on the part of the makers of the constitution if, on a logical application of the above principles they have omitted to make any special provisions for the advancement of those who are socially and economically backward, for the democratic march of nation would be impossible if those who are handicapped are not aided at the start. The principle of democratic equality, indeed can work only if the nation as a whole is brought on the same level as far as that is practicable. Our Constitution, therefore, provides certain temporary measures to help the backward sections to come up to the same level with the rest of the nation, as well as certain permanent safeguards for the protection of the cultural, linguistic and similar rights of any section of the community who might be said to constitute "minority" from the numerical, not communal point of view in order to prevent the democratic machine from being used as an engine of oppression by the numerical majority.

³² Ibid.p.248

³³ Economic and political weekly, August 2017 vol. L11 No 13 p.71