

Rights of the Tribals in India (With Reference to Indian Constitution)

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Abstract – One of the most marginalized communities in India are the tribal communities. India's population include nearly one hundred million tribal people. Tribal community in India has been most vulnerable community in the in equal, domination and exploitation ridden society. They are on the breadline of their socio-economic and political rights. As the United Nations Declaration of Human Rights has given the rights of indigenous people, the Indian constitution also has given several provision for rights of tribal communities regarding the social, economics, and education, culture, political and service. This paper highlight the provision of tribal rights that was enshrines in the Indian constitution.

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WHAT IS RIGHTS?

It is obvious that there has been considerable disagreement about what is meant precisely by the term rights. It has been used by different groups and thinkers for different purposes, with different and sometimes opposing definitions, and the precise definition of the concept, beyond having something to do with normative rules of some sort or another, is controversial. Normative rules can be moral as well as legal. Hence, rights can be natural or moral rights and legal rights.

"Rights," understood as 'what is due to a person or persons or community etc,' can be talked on two levels. First there are those natural rights derived from God or nature that exist necessarily. Those rights may not be legalized by the state. Second, there are those legal rights. In some instances, natural rights of certain person or community are denied by the law of the state.

THE UN EFFORTS FOR HUMAN RIGHTS IN GENERAL AND INDIGENOUS PEOPLES' RIGHTS IN PARTICULAR:

Before we think about tribal rights in India, it would be enlightening to look briefly at the United Nation's effort for human rights in general and for the rights of Indigenous people in particular. Let us briefly look at the Universal Declaration of Human rights and the *United Nations Declaration on the Rights of Indigenous Peoples* as these two declarations are important for all Tribals around the globe.

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR):

The World War II was as shocking to the global community and there was a new world order after the

Second World War. Human Rights became the central focus of the newly formed United Nations which felt necessary to evolve a minimum commitment for all states to fulfill their obligations in promoting universal respect for, and observance and protection of all human rights and fundamental freedom for all. Hence, the universal declaration of Human rights was adopted by the General Assembly of the UNO on the 10th December 1948 without a single dissenting vote. It is considered to be the first universally acknowledged standard of human dignity ever proclaimed. It has now become pillar of a new international system under which a nation's treatment of its own citizens in no immune from world scrutiny.

The purpose of UDHR, according to its preamble is to provide "a common understanding of human rights and fundamental freedom and to serve as a common standard of achievement for all people and all nations." Indeed it is unique in many ways from the previous charters of human rights. First, it was grounded on a genuinely universal vision, second it took the civil and political rights as well as social and cultural rights a single whole. And third, its foundation is the concept of inherent human dignity. According to one of its founding Charles Malik, the Lebanese Philosopher and diplomat, "It is the only world declaration of its kind"² Even though it is not a law, its authority is recognized on moral ground. Its moral authority is highly recognized albeit there is no legal obligation to it.

There have been a number of declarations on human rights the UDHR can be regarded as the foundation and the epitome. Articles of the UDHR are well reflected in the Fundamental Rights of the Constitution of India. Hence, Human rights are also fundamental

rights, fundamental for a dignified and free existence of all human beings.

THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES:

The Declaration on The Rights of Indigenous People (Appendix – text of DRIP) was adopted by the United Nations General Assembly during its 62nd session at UN Headquarters in New York City on 13th September 2007. Whereas the Declaration is not a legally binding instrument under international law, according to a UN press release, it does represent the dynamic development of international legal norms and it reflects the commitment of the UN's member states to move in certain direction; the UN describes it as setting an important standard for the treatment of indigenous people that will undoubtedly be a significant tool towards eliminating human rights violations against the Planet's 370 million indigenous people and assisting them in combating discrimination and marginalization.

The Declaration sets out the individual and collective rights of indigenous people, as well as their rights to culture, identity, language, employment, health, education and other issues. It also 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. It prohibits discrimination against indigenous peoples, and it promotes their full and effective participation in all matters that concern them and their right to remain distinct and to pursue their own visions of economic and social development.

As indicated, these universal declarations are not legally binding, yet it sets international legal norms on human rights. India being a member state of the United Nations is also morally bounded with these declarations. Thus, the rights of indigenous people enshrined in the UN Declaration on Indigenous People are also the rights of the tribals in India as they are indigenous people of the country.

Who are Tribals in India?

The concept of tribal in Indian Constitution is constructed with Hindu caste stratification mindset for administrative purpose. Those who are identified as tribals are those people groups who are un-obligate to the Hindu caste system but yet perceived to be the same category with the outcastes of the Hindu caste system. In other words, tribals are non-Hindu outcastes. Hence, the constitutional definition of tribal is very vague thus:

Article 342. Schedule Tribes

- (1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public

notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be scheduled Tribes in relation to that State or Union Territory, as the case may be.

- (2) Parliament may by 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 tribe or tribal community, but save as aforesaid a notification PART XVII OFFICIAL LANGUAGE CHAPTER I LANGUAGE OF THE UNION

Perhaps because of this vague definition of tribal identity the figure of tribal population in Indian census has been changing irrationally. Hence in 1931 the figure was 22 million; in 1941 it was 10 million, in 1961 some 30 million, in 1991 nearly 68 million and in 2001 it was around 84 million. Tribal's population constitutes around 8% of Indian population. It is also very difficult to accurately know how many tribal communities are there in India, because the list of tribal communities is changing and at the same in many cases one tribe is registered under three or more states: moreover, some of the tribes in the list can be considered as sub-tribe within a certain tribe. Although the constitutional definition of tribal is very vague tribals are assumed to be a homogenous people who do not belong either to Hindu or Muslim communities who are economically poor and socially marginalized. They are considered to be minorities and backward classes.

RIGHTS OF TRIBALS IN THE INDIAN CONSTITUTION:

The framers of the Constitution were aware of the fact that certain communities in the country were suffering from extreme social, educational and economic backwardness arising out of age-old practice of untouchability and certain others on account of the primitive agricultural practices, lack of infrastructure facilities and geographical isolation, and who need special consideration for safeguarding their interests and for their accelerated socio-economic development.

With a view to provide safeguards against the exploitation of scheduled castes & Scheduled Tribes and to promote and protect their social, educational, economic and cultural interests, special provisions were made in the Constitution. Due to their social disability and economic backwardness, they were grossly handicapped in getting reasonable share in elected offices, government jobs and educational institutions and, therefore, it was considered necessary to follow a policy of reservations in their

favour to ensure their equitable participation in governance.

Article 46 (directive principles of state policy) is a comprehensive provision comprising both the developmental and regulatory aspects. It provides 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 scheduled caste and scheduled Tribes, and shall protect them from social injustice and all forms of exploitation:.. In terms of these enabling provisions, various safeguards have been provided for social-economic and educational development of Scheduled Castes and Tribes in the Constitution of India. Let us cite some important constitutional provisions for tribes.

SOCIAL SAFEGUARDS:

- (i) Article 23 prohibits traffic in human beings and beggar and other similar forms of forced labour and provides that any contravention of this provision shall be an offence punishable in accordance with law. It does not specifically mention Scheduled Tribes but since majority of bonded labour belong to Scheduled Tribes, this Article has a special significance for members of Scheduled Tribes. In pursuance of this Article, Parliament has enacted the Bonded Labour System (Abolition) Act, 1976. For effective implementation of this Act, the ministry of Labour is running a Centrally Sponsored Scheme for identification, liberation and rehabilitation of bonded labour.
- (ii) Article 24 provides that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment. There are Central and State laws to prevent child labour. This Article is also significant for Scheduled Tribes (as also Scheduled Castes) as a substantial portion of child labour engaged in hazardous jobs belong to these groups.

SPECIAL ECONOMIC SAFEGUARDS FOR SCHEDULED TRIBES:

The provisions of Article 23, 24 and 46 mentioned above also form part of the Economic safeguards for Scheduled Tribes as also of Scheduled Castes. The specific safeguards provided for the Scheduled Tribes are as mentioned below:

- (i) Article 244: According to clause (1), the provisions of the Fifth Scheduled shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than the States of Assam, Meghalaya, Mizoram

and Tripura. According to Clause (2), the provisions of the Sixth Scheduled shall apply to the administration of the tribal areas in the States of Assam, Meghalaya, Mizoram and Tripura.

- (ii) The First Provision to article 275 (1) of the Constitution of India guarantees grants from the Consolidated Fund of India each year for promoting the welfare of Meghalaya, Mizoram and Tripura. And in pursuance of this Constitutional obligation, the Ministry of Tribal Affairs provides funds through the Central Sector Scheme "Grants under Article 275 (1) of the constitution". The objective of the scheme is to meet the cost of such projects for tribal development may be undertaken by the State Governments for raising the level of administration of Scheduled areas therein to that of the rest of the State. The scheme covers all the 21 Tribal Sub-Plan States and 4 other tribal majority States of the country. The grants are to be used essentially for creation and up gradation of critical infrastructure required bringing the tribal areas with the rest of the country. The basic purpose is to create opportunities conducive to income and employment generation. Due emphasis is given to infrastructure in sectors critical to enhancement of human development indices such as in health, education, income generation etc.
- (iii) Fifth Schedule contains provisions regarding the administration and control of the Scheduled Areas and Scheduled Tribes. There are nine States having Scheduled Area, Viz., Andhra Pradesh, Gujarat, Himachal Pradesh, Madhya Pradesh, Maharashtra, Orissa, Rajasthan, Chhattisgarh and Jharkhand. The Governors of these States have special responsibilities and powers. These States have Tribe Advisory Councils (TACs). (In addition, Tamil Nadu and West Bengal, which do not have any Scheduled Areas, also have statutory TACs). The Governors of these States have the power to make regulations for the peace and good governance of any scheduled Area particularly for the following purposes:-
 - (a) To prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such areas,
 - (b) To regulate the allotment of land to members of the scheduled Tribes in such areas,

- (c) To regulate the carrying on of business as money lender by persons who lend money to members of the Scheduled Tribes in such area.
- (iv) Sixth Schedule contains provisions relating to the administration of the Tribal Areas in the States of Assam (North Cachar Hill District and Karbi Anglong District), Meghalaya, Mizoram and Tripura (Autonomous Hill District). There are Autonomous District Councils and Autonomous Regional Councils in these areas which have a long tradition of self-management systems. These Autonomous Councils not only administer the various Departments and developmental programmes but they also have powers to make laws on a variety of subjects, e.g., land, forest, shifting cultivation, village or town administration including village or town police and public health and sanitation, inheritance of property, marriage and divorce and social customs.

EDUCATIONAL AND CULTURAL SAFEGUARDS:

- (i) Article 15(4) (right to equality) empowers the state to make any special provision for the advancement of any socially and educationally backward classes of citizens or for SCs and STs. This provision added to the constitution through the constitution (First Amendment) Act, 1951, which amended several Articles. This provision has enabled the state to reserve seats for SCs and STs in educational institutions including technical, eng In this Article as well as in Article 16 (4), the term backward is used as a generic term and comprises various categories of backward classes, viz., Scheduled Castes, Scheduled Tribes, Other Backward Classes, De- notified Communities (Vimukta jatiyan) and Nomadic/ Semi- nomadic communities.
- (ii) Article 29 (1) provides that “ any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same”. This Article has special significance for all the Scheduled Tribes. Santhals have a script of their own, viz., Olchiki. But this provision needs not be understood to educate Tribals only in their language and thereby making them isolated. Tribals should be educated in the language of the state as well National Language to expose them to the outside knowledge.
- (iii) Article 350 A provides that “It shall be the endeavour of every state and of every local authority within the state to provide adequate

facilities for instructions in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups, and the president may issue such direction to any state as he considers necessary or proper for securing the provision of such facilities”. Most of the Tribals communities have their own language or dialects, which usually belong to a different family of language than the one to which the state’s official language belongs.

POLITICAL SAFEGUARDS

- (i) Article 164 (1) provides that in the states of Bihar, Madhya Pradesh and Orissa there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.
- (ii) Article 330 provides for reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People.
- (iii) Article 332 provides for reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the states.
- (iv) Article 334 originally laid down that the provision relating to the reservation of seats for SCs/ STs in the Lok Sabha and State Vidhan Sabhas (and the presentation of the Anglo- Indian community in the Lok Sabha and the state Vidhan Sabhas by nomination) would cease to have effect on the expiration of a period of ten years from the commencement of the Constitution.

This Article has been amended five times, extending the said period by ten years on each occasion. This provision has now expired in January, 2010.
- (v) Article 243D provides for reservation of seats in Panchayat.
- (vi) Article 371A contains special provisions with respect to the state of Nagaland.
- (vii) Article 371B contains special provisions with respect to the state of Assam.
- (viii) Article 371C contains special provisions with respect to the state of Manipur.
- (ix) Article 371F contains special provision with respect to Sikkim.
- (x) Article 371G contains special provision with respect to Mizoram.

SERVICE SAFEGUARDS

The main objective for providing reservation for Scheduled Tribes (as also for SCs & OBCs) in civil posts and services of the Government is not just to give jobs to some persons belonging to these communities and thereby increase their representation in the services but to uplift these people socially and educationally with a view to empower them to join the national mainstream. The relevant Articles of the Constitution which govern the entire reservation set-up are mentioned below:

- (i) Article 16(4) This Article provides that “ Nothing in this Article shall prevent the State from making any provision for the reservation in appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State”
- (ii) Article 16 (4A); This Article was added in the year 1995 to provide for that “ Nothing in this Article shall prevent the State from making any provision for reservation in the matters of promotion to any class or classes of posts in this service under the state in favor of the Scheduled Castes & Scheduled Tribes which, in the opinion of the state.” [Constitution (Seventy- seventh Amendment) Act, 1995]
- (iii) Amended Article 16 (4A): Article 16 (4A), inserted by the Constitution (77th Amendment) Act, 1995, was further amended in the year 2001 to substitute the words “in matters of promotion to any class” by Words ‘in matters of promotions, with consequential seniority, to any class” vide the Constitution (Eighty-fifth Amendment) Act 2001. This amendment was made operative retrospectively from 17th June 1995, i.e, the date of addition of this Article vide the Constitution (Seventy-seventh Amendment) Act, 1995.
- (iv) Article 16 (4B): This Article provides that “ Nothing in this Article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty percent reservation on total number of vacancies of that year”. [Constitution (Eighty- first Amendment) Act, 2000].
- (v) Article 335: This Article provides that “The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into

consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the union or of a state”. The following provision was added to this Article by the constitution (Eighty-second Amendment) Act, 2000- “Provided that nothing in this article shall prevent in making of any provision in favour of the members of the Scheduled Castes and Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State”.

- (vi) Article 320 (4) : Clause (3) of Article 320 of the constitution, inter alia, provides that the Union Public Service Commission or the State Service Public Commission, as the case may be, shall be consulted on all matters relating to methods of recruitment to civil services and for civil posts, and on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers. Clause (4) of this Article, however, provides that “ Nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manners in which any provision referred to in clause (4) of article 16 may be made or as respects the manners in which effect may be given to the provisions of article 335”.

CONCLUSION:

The paper pointed out constitutional provisions of the rights of tribals in India. It may not competent enough to explicate those provisions that provide rights of different kinds for Tribals in India. A major question is how far those rights have been materialized?

The Constitution of India itself seems to be very good for minorities. But the philosophy behind the Constitution is derogatory as it is the Hindu-caste stratification mindset which dominates the constitution; it is this mindset that dehumanizes tribal to the level of outcaste even though they are outside of the system.

In spite of constitutional provisions (especially the part of Fundamental Rights) the attitudes of the dominant groups towards the subaltern communities has been almost not changing. Hence, in spite of land rights of tribals people till today tribals are the most displaced people and their land has been acquired for development projects etc. So, the question is how shall

we fight for our rights, what is legally and morally due to us?

REFERENCE:

[http://en.wikipedia.org/wiki/Forest_Rights_Act_\(India\)](http://en.wikipedia.org/wiki/Forest_Rights_Act_(India)).

Charles Malik, "The Drafting of the Declaration of Human Rights", UN Bulletin of Human Rights 1986 as quoted in Youssef K. El-Hage, "Human Rights: A Western Christian Invention" in theological Review XXV/2 (November 2004),8.

National Human Rights Commission Report (2002-2003), New Delhi, 2003.

Rajindar Sachar, Justice. Human Rights, Perspectives and Challenges. New Delhi. Gyan Publishing House. 2004. pp. 58, 59.

Subash C. Kashyap, Constitution of India and International Law, in Binell N. Patel (ed.), India and International Law, Leiden/Boston, 2005.

The 44th Constitution Amendment Act 1978.

The Protection of Human Rights Act,1993, [As amended by the Protector of Human Right (Amendment) Act 2006-No.43 of 2006], p.1

The Scheduled Tribes and Other Traditional Forest Dwellers(Recognition of Forest Rights) Act, 2006.

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