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UNDERSTANDING TRIBALS IN NATIONAL AND INTERNATIONAL SCENARIO: A HISTORICAL PERSPECTIVE

AUTHORED BY - YASHRAJ SINGH PARIHAR

Abstract:

The following article defines the tribals and it mention about the historical background of them. It mentions about the characteristics and behavior of tribals, the similarities and differences between the tribals and definition provided in the Constitution of India about the tribals. The article also mentions about the international declaration about the indigenous people and how tribals of India is also indigenous. The article also compares the pre and post independent India's approach with respect to tribals and comparison and discussion of legislations along with various cases decided by the Supreme Court of India. The article mainly focuses upon the development of tribals and related laws and legislation and importance of development for all.

Keywords: Tribals, Indigenous, Development, Constitution, Right to Development, Conflict of Rights.

Who are Tribals in India?

According to 2011 census, there are more than hundred million tribals in India.¹ The tribals are mainly concentrated in central and south India Parts of Rajasthan, Madhya Pradesh, Odisha, Chhattisgarh, Jharkhand, Andhra Pradesh which constitutes about 80% of the total tribal population of India², and in north- eastern India, mainly Assam, along with some part of Andaman & Nicobar Islands. They have lived for centuries in these areas. The following are some of the characteristics of the tribals³:

- (a) Relative geographic isolation of the community;
- (b) Reliance on forest, ancestral and water bodies within the territory of the community for

¹ *Joint Stakeholders' submission on the Situation on rights of indigenous people in India*, 3rd Cycle of the Universal periodic Review (UPR) of India, 27 Session of Human Rights Council 1, 1 (2017).

² B.H. Mehta, *Historical Background of Tribal Population*, IJSW Online, Sir Dorabji Tata Memorial Library 236, 236, <http://ijsw.tiss.edu/collect/ijsw/index/assoc/HASH018b/22b1969f.dir/doc.pdf> (last seen 26 October, 2021).

³ V. Xaxa, *Tribes as Indigenous People of India*, 34 Economic and Political Weekly 3589, 3589 (1999).

food and their necessities;

(c) A distinctive culture which is community oriented and gives primacy to nature;

(d) Relative freedom of women within their society;

(e) Non-existence of caste system or system of division of labor;

(f) Lack of food taboos.

However, there are diversities within the tribals of India. For example, the tribals who are settled in central and southern India are different from north eastern tribals mainly in following ways:

- Ethnicity;
- Greater influence of Indian mainstream society and impact of mainstream society culture over tribal culture;
- Relatively less isolated than north eastern tribals.

However, these are some regional dissimilarities of the tribals in India, and it have a huge impact over the characteristics of the tribals, as stated earlier, the tribals settled in the parts of India, the tribals who remain in comparatively more isolation are quite different in their approach regarding mainstream society, this is due to their less interaction with the mainstream society, if we compare the Jarawa tribe of Nicobar islands, they are purely hostile toward the outside society or influence. So, one can't describe the behavior of a tribal community in an accurate way.

According to Dr. B. H. Mehta⁴, the tribal population can be classified into following heads:

- Forest dwellers;
- Ruralized tribals;
- Acculturised tribals;
- Assimilated tribals.

So, it is important to note that for the better understanding of tribals, one must consider all of these factors which is quite difficult because the common conception for the tribals is scheduled tribes which includes inclusion of tribes under Article 342 of Constitution of India, which provides for addition or removal of status of scheduled tribes. The Constitution of India gives status of Scheduled tribes to over four hundred communities as provided in Article 366 (25) and more than 170 tribes as unrecognized tribal groups. and Article 342 of the Constitution of India. This article says that only those communities who have been notified as Scheduled Tribes (STs)

⁴ *Supra* note 2 at 237.

by the President of India through a public notification or through a subsequent amending act of the Parliament are the Scheduled Tribes of India. So, it can be deduced that there is no universal way in determining the status of tribals in India, though it is very possible that the tribals are mentioned above as 'forest dwellers' etc. have been listed as scheduled tribes but it is important to note that there are many criteria for the declaration of particular community to be declared as scheduled tribes. The Government still follows Lokur Committee Report of 1965 which describe scheduled tribes as the group of indigenous people who are characterized by, "primitive traits, distinctive culture, geographical isolation, shyness of contact with the community at large and backwardness."⁵

Concept of Right to Development

Since the advent of human-beings, one thing that has been a constant force, is development, from a caveman to modern homo-sapiens, the humans have seen from stone-age to nuclear-age, and some inventions are beyond imagination, humans have reached moon and mars due to development. So, we can say that the concept of development is now wholly anthropocentric in nature.

However, it is to be understood that human development means higher productivity. A well-nourished, healthy, educated, skilled, alert labor force is the most important productive asset. It can also be assumed that reduction in poverty, increase in education contributes to a healthy civil society, democracy, and greater social stability. So, the human development consists of all the components of the basic human rights such as education, livelihood etc. so right to development is also included in the human rights in various human rights institutions.

After the Second World War, the United Nations was formed with General Assembly as one of its organs which in turn adopted Universal Declaration of Human Rights in 1948 which is one of the land-mark declarations of Human Rights. It was adopted on 10th December 1948 in Third Session of General Assembly as Resolution 217 in Paris. This resolution paved way for the universal nature of human rights with its adoption by 48 Nations out of 58. It was the first step towards the International Bill of Human Rights.

⁵ *Observations on the State of Indigenous Human Rights in India*, 3rd Cycle of the Universal periodic Review (UPR) of India, 27 Session of Human Rights Council 1, 1 (2016).

The international community wanted to negotiate one overall single covenant in order to include the rights provided in UDHR (Universal Declaration of Human Rights) so as to give these rights, validity as an international treaty, however post Second World War, the situation changed, Cold War and division of countries in their support of different human rights proved an obstacle for a single unified covenant of human rights.⁶

So, it paved way for two important instruments:

- ICCPR (International Covenant on Civil and Political Rights)
- ICESCR (International Covenant on Economic Social and Cultural Rights)

However, there had been dissatisfaction among the international community regarding the separation of these rights which in turn led to adoption of two separate instruments. However, in many declarations it has been emphasized that both of these covenants are equally important.⁷ It was during the 1970s it has been realized that right to development is also deemed to be human right and it must be included in both the covenants.

However, due to many differences between developed and developing nations, the universal acceptance of the concept of right to development was hindered. It was during 1980s, the said concept re-emerged and the UN General Assembly adopted Declaration on the Right to Development (RTD Declaration) in 1986.

The development basically in its literal sense means about change, it means a definite improvement; a change for betterment. Today, right to development is a principle of public international law and human rights law after the International Community adopted the Declaration on right to development in 1986.

This right to development led to the highlighting of issues which are needed to be addressed like relation between economic growth and well-being of an individual; problem of alienation, and non-participation of the people to be affected is now the issue of right to development.

⁶ A. Sengupta, *On the Theory and Practice of the Right to Development*, 24 HUMAN RIGHTS QUARTERLY 837, 839 (2002).

⁷ *Id.*

According to oxford's learner dictionary⁸ development means the gradual growth of something so that it becomes more advanced, stronger, etc. with respect to construction, development means the process of using an area of land, especially to make a profit by building on it, etc.⁹ this term usually refers to up-gradation from any initial position to final position. According to Hugo Slim in the Article 'What is Development?'¹⁰ he stated that, "*the development is not only a matter of wealth, economics or growth; it is much more than that.*" The development is basically about change, it means a definite improvement; a change for betterment. The development must be continuing in nature and must be according to the values of the people, it should include all the values namely cultural, social, economic, environmental and technological.¹¹ Similarly according to Gunnar Myrdal, development means, "*movement upward of the entire social system.*"¹² According to him this social system consists of various economic and non-economic factors like consumption of every kind by various groups of people, educational and health facilities etc.¹³ it may also include the political, institutional and geographical aspect of a nation also. The development of nation includes all these factors cumulatively, that is all of these factors must be present for the proper development of a society or a nation. As we all know about the developed, developing and under-developed countries. The various resolutions and declarations of organizations of United Nations have made this unified or integrated approach for the development of a nation.

The Right to development is process which lead to realization of human rights and which has to be carried out in a right based manner and according to the international human rights standards which are participatory, transparent, non-discriminatory etc. and these values must be made explicit in international law on human rights. The paragraph 1 of article 1 of RTD Declaration states, "The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized."¹⁴

⁸ <https://www.oxfordlearnersdictionaries.com/definition/english/development> (last visited on April 17, 2019).

⁹ *Id.*

¹⁰ Hugo Slim, *What Is Development?*, 5 DEVELOPMENT IN PRACTICE 143, 143 (1995).

¹¹ *Id.*, at 144-145.

¹² Gunnar Myrdal, *What Is Development?*, 8 JOURNAL OF ECONOMIC ISSUES 729, 729 (1974).

¹³ *Id.*

¹⁴ A/RES/41/128, Declaration on the Right to Development, 4 December 1986 <https://www.un.org/documents/ga/res/41/a41r128.html> (last seen 26 October, 2021).

It is important to note that the adoption of RTD Declaration was based on majority of Nations but not on consensus. However, in 1993, the Vienna Declaration and Program of Action finally reached to a political consensus and it recognized right to development as universal and inalienable right for a human. The time taken by the international institutions proved very detrimental for the vulnerable section of the world like tribals (in international conventions the word indigenous people is used for the tribals). It was only after a working group under Mr. Jose R. Martinez Cobo prepared a *Draft Declaration on the Rights of Indigenous Peoples*.¹⁵ UN General Assembly proclaimed year 1993 as the *International Year of the World's Indigenous People*, and in 1994 proclaimed International Decade of the World's Indigenous Peoples till 2004 and started to give some importance regarding the rights of the indigenous people.

However, in the end it was on 13th September 2007, UN Declaration on the Rights of Indigenous People (UNDRIP) was adopted by a majority of 144 states favoring it including India, 11 abstentions and 4 voting against it (U.S., Canada, New Zealand & Australia).¹⁶

There is United Nations Declaration on the Rights of Indigenous People (UNDRIP) which has adopted by General Assembly in 2007 under Resolution 61/295. The objective of this declaration is to recognize the rights of indigenous people and to treat them equally; and it recognized that these rights are free from discrimination from any kind and India also voted in favor of this declaration. However, despite recognizing the UNDRIP, Indian Government do not call Indian tribals as indigenous people, which also constitute one of the major problems of UNDRIP, despite the fact UNDRIP provides for the rights of indigenous people, it didn't define it. It has been reasoned that it is due to the diversity of indigenous people in various countries, it hasn't been defined. However, with the advent of time there were consideration for terms like *adivasis*, *janjaati*, which are existent in India, it is to be noted that these terms can also be used for the word indigenous people interchangeably. It was in case of *Kailas & Others v. State of Maharashtra*¹⁷ it was held that Scheduled Tribes (Indigenous Peoples) are the original inhabitants, in this case it was made with respect to a particular tribe, namely, *Bhils*.

The court stated, "*Bhils are probably the descendants of some of the original inhabitants of India known as the 'aborigines' or Scheduled Tribes (Adivasis), who presently comprise of only about*

¹⁵J.K. DAS, HUMAN RIGHTS AND INDIGENOUS PEOPLE 51 (S.P. Nangia, A.P.H. Publishing Corporation 2001).

¹⁶ S.N. Variava, *New Direction in the Human Rights Movement*, HUMAN RIGHTS YEAR BOOK, UNIVERSAL LAW PUBLISHING CO. PVT. LTD. 13, 13 (2010).

¹⁷ (2011) 1 SCC 793.

8% of the population of India. The rest 92 % of the population of India consists of descendants of immigrants. Thus, India is broadly a country of immigrants like North America.” However, the case was decided with respect to particular scheduled tribe, but it can be deducted that it has included all the tribals as indigenous people.

The problem occurs when there is conflict between human rights and development. Development can be of many types the problem will arise that is, the term development differs from person to person, community to community or from states to states and their goals, the development goals of a person living in city may be different from the person living in a village, the same thing can be stated about developed, developing or under-developed nations.

The concept of development is also now become very restricted and limited as it usually means the change or we can say the betterment on all spheres of an individual but now, the definition of development is confined only to economic or industrial development, the other spheres are either been neglected or not given preference by the people and the Government. The things become even more complicated in case of tribals.

In case of India, during British rule, the tribals are exploited to a great extent as these tribal people were never conquered over by the Muslim rulers, they were ruled by them indirectly through their local chieftains or princes as vassals, and they had their own laws so they never came in contact with these civilizations. Initially, the British were also ignorant of tribal customs and their existence as they lived in inaccessible areas in remote hills or marshy forests, they were exploited to a great extent under British Rule, they were in clutches of moneylenders and various contractors; the tribal interests were subordinated to British Interest. There was a big resentment among the tribal community regarding the exploitation and taking away of their rights of the land they were living for centuries which was coupled with some resentment among the tribals in India, many tribals become rebel and started to do some crimes ranging from petty to serious ones like from being petty thieves to being a thug. They also revolted against the regime due to the policies which were detrimental to the tribals. There was controversial Criminal Tribes Act, 1871, which made some intense provisions regarding the tribals, the history of enactment of this act was regarding the tribals who usually deviated from the mainstream society and the lack of desire or ability to be settled in life, the problem started to get bigger when the colonial powers started to exploit the resources from the forests, as these tribals were the residents of the forest

areas which were resource rich and when the British tried to explore these places for the search of raw materials and resources, the British formulated the Forest Policy of 1884 which limited the rights of tribals over the forests, the tribals thought it as an encroachment on their forest rights and it led to many tribal revolts against the British, to name a few some of the revolts are Tamar Revolts, Munda Revolt, Devi Movement in Gujarat etc. in order to curb these uprisings the Criminal Tribes Act was further amended in 1897, 1911 and 1924 which further made the situation more miserable for the tribals. This act provided for the many restrictions over a particular group of tribals who were involved in some crime, this act indirectly punished even the innocent tribals who were not related to the crimes. It restricted the movements of the tribals to a great extent. This Act was repealed only after independence as Constitution of India provided that no man should be considered guilty unless proven under the valid procedure in the Court of law, the act was repealed on 30th August 1952 from all the states of India.¹⁸

Conflict of Rights:

The conflict of rights still hasn't stopped between the tribals and development, during 18th to mid of 20th century, there was domination of European Nations over many African and Asian Nations and it led to development of those colonial nations and exploitation of colonies, the mentality of development have now been infected with this developing and under-developed nations, one reason of this relation is that because now many developing nations are doing that in their own lands which is just exploitation of peoples who are weak or unaware and just the exploitation of these people.

In fact, the nations that were the colonies of western powers during this time were compelled to think that they are not developed and that thing was not true, if larger picture is seen they were not developed in industrialization or in industrial mode of production but they may be developed in other spheres of development say in environment or economically or even culturally but it has been incorporated in the mind of people that industrial or infrastructural development is the only form of development.

As it can be stated that the earlier definitions of development focus more on industries and not on people which led to poverty alongside the development though it was claimed that

¹⁸ *Supra* note 2 at 243-244.

development will automatically uplift the condition of the people.

Generally, in the human rights literature, to have a right means to have a claim to something of value on other people, institutions, a State or the international community, which in turn have the obligation to provide or help to provide that something of value. "Rights are entitlements that require, in this view, correlated duties. If person A has a right to some x, then there has to be some agency, say B, that has a duty to provide A with x."¹⁹ Recognition of the right will obligate the duty holder to fulfill or enable the fulfillment of right.

So, this means if one is claiming the right to development then it is the duty of the person who has claimed his right to development to provide some value to the people against whom this right to development is exercised which was not present during the colonial times.

Even in modern times after independence, the development of tribals were compromised for the infrastructural development, like construction of dams, mines or even protected forest areas. The post-independent period was reckoned as the period of infrastructural development, many dams were built during this time which include dams like Bhakra Nangal, Hirakud Dam in which a numerous people were displaced, as at that time this was considered as the service of the nation and the people were made to vacate their places anytime for public purposes without any proper provisions of compensation.²⁰

"If you are to suffer, you should suffer in the interest of the country."

The most affected people due to displacement were also tribals, according to report of Working Group on Development and Welfare of Scheduled Tribes during the Eighth Five-Year Plan (1990-95), Government of India, which was based on the comprehensive study of 110 projects, concluded that among all the people who were displaced due to these projects, half of the affected people were tribal people. Such proportion is constantly increasing after 1990 in India; he gave example of 20 dams above 50 meters that are under construction or being constructed, in that scenario also, among the people who were displaced 59% were tribals.²¹

¹⁹ A. Sen, *Development as Freedom* (New York, Alfred A. Knopf, 1999), at. 228.

²⁰ S. Kothari, *Whose Nation? The Displaced as Victims of Development*, 31 *ECONOMIC AND POLITICAL WEEKLY* 1476, 1476 (1996).

²¹ W. Fernandes, *Singur and the Displacement Scenario*, 42 *ECONOMIC AND POLITICAL WEEKLY* 203, 203-04 (2007).

After 1990s, tribals were made aware about their rights by various NGOs and Social workers, which led to various cases and disputes before the Supreme Court of India. However, Supreme Court refused to bring right of tribal people to not to leave their lands as it is against their right to life and liberty as per Article 21 of Constitution of India, according to the Court if this issue is to be read with fundamental rights, then it will be next to impossible to acquire the lands belonging to tribal people. So, the displaced people may have right of rehabilitation but the right to not to vacate their land is not to be read under the Article 21 of the Constitution.²² The Supreme Court also stated that the development should not be one dimensional, development should not be at the cost of the rights of indigenous population.²³ However, the Supreme Court also held that if the rehabilitation of the displaced population is properly planned and executed, the displacement of people from a particular place can't be considered as infringement of their fundamental rights.²⁴ The Supreme Court also refused to interfere in the policy decision of the Government regarding the relocation of the displaced persons in *High Court of Judicature for Rajasthan v. Veena Verma*²⁵, in the words of Court, “Judiciary cannot strike down a policy decision taken by the government merely because it feels that another decision would have been fairer or more scientific or logical or wiser. The wisdom and advisability of the policies are ordinarily not amenable to judicial review unless the policies are contrary to statutory or constitutional provisions or arbitrary or irrational abuse of power.”

It can be deduced that the Supreme Court too have a passive approach with regard to the conflict of rights of tribals as in most of the decisions the Supreme Court only emphasized upon the fact that it is the policy decision of Government to take care of the rights of the tribals.

Concluding Remarks:

The main aim of the article is to enlighten the position of development of tribals, in a historical perspective. The position of tribals has changed to a great extent, after the independence and their rights are now being considered more vigilantly than previously. The tribals are quite complex to define and to protect their rights are even more difficult. This paper has tried to provide information about the behavior of tribals and to provide the light upon the fact that the tribes in India are not limited to the umbrella of Scheduled Tribes (STs) but also to greater subsets. The tribals too have right to development and there is a need to protect the rights of the

²² State of Kerala v. Peoples Union for Civil Liberties, Kerala State Unit, AIR 1998 SC 1703.

²³ Nadini Sundar v. State of Chattisgarh

²⁴ Naramda Bachao Andolan-I Case, (2009) 8 SCC 46.

²⁵ AIR 2009 SC 2938.

tribals.

The paper does mention about the various hardships faced by the tribals during the pre-independence period and how the tribal rights are now being one of the most discussed topics in the World. India, as a nation is a home of many tribal community. The stand of the Government with respect to the tribals is also changed to a great extent. Various legislations and tribal friendly procedures in order to protect the rights of the tribals is now giving hope towards the development and protection of tribals in India.

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