

Analysis of Constitutional Rights of Indigenous People in India

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Abstract

Entitlement, privilege, birth right, liberty, permission are just some synonym for the word Right. Rights are just the liberty or entitlement given to people by authority of law. But many times some peril section of society needs some more rights than reasonable person are entitled to. Indigenous people are those peril section of the society which needs rights in order to protect them from the long undertaken discrimination done to them from colonial period. Indigenous people are provided various rights under constitution of India and also special provision are formed in order to uplift them from their current situation. What are those rights entitled to them? Are they implemented to their best extent? The author has tried to analyse these question taking in consideration rights granted to Indigenous people and what is the ground reality. The author has gone through various statutory enactment, reviews, report and surveys of various ministries having numerous factors in order to draw an analysis regarding rights of indigenous people.

Keywords: Constitutional rights, indigenous people, India, Socio-economic factor, scheduled tribes

INTRODUCTION

Rights are most exquisite as well as most contempt idea in human life. Even if rights are disregarded, they are demanded by all people in any country. Do all people get rights in their life? What about people who are distinct and less civilised in comparison to the major population? Yes we are talking about Indigenous people. Before pondering the question of rights of Indigenous people, we must answer the question that what or who are Indigenous people?

The word Indigenous people does not have a well-defined, exact or undisputed meaning or definition. According to United Nations Permanent Forum on Indigenous people (UNPFII) which is an advisory body to the Economic and Social Council states that “indigenous people are people who inhabited a country or a geographical region at the time when people of different cultures or ethnic origins arrived [1].” Also the United Nations Department of Economic and Social Affairs says that “Indigenous people are inheritors and practitioners of unique cultures and ways of relating to people and the environment [2].” The World Bank has a definition different from United Nations, “Indigenous peoples are distinct social and cultural groups that share collective ties to the lands and natural resources where they live, occupy or from which they have been displaced”.

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Apart from United Nations, international organisations like International Labour Organisation (ILO) felt the need for protection of indigenous people over the globe. In year 1989, ILO adopts a convention no. 169 (revision of convention no. 107) viz. Indigenous and Tribal

People Convention. In this convention under Article 1(b) indigenous people have defined as “people in independent countries who are regarded as indigenous on account of their descent from the populations which occupied the nation, or a geological locale to which the nation has a place, at the hour of triumph or colonization or the foundation of present state limits and who, independent of their legal status, retain some or all of their own social, economic, cultural and political institutions [3].”

Apart from universal international definition of Indigenous people, Indian legislature does not define Indigenous People directly. In 1960 under the U.N. Dhebar Commission Report, Government of India formed for investigating and reporting on the problems of the Scheduled Tribes, it is was said that “the term ‘Tribe’ is nowhere defined in the Constitution of India and indeed there is no satisfactory definition anyplace. To the common man the word proposes straightforward society living in slopes and timberlands; to individuals who are a little better informed it implies vivid people renowned for their dance and tune; to an administrator, it implies a gathering of citizens who are the exceptional obligation of the President of India; to an anthropologist, it shows a unique field for study of a social phenomenon. In their own particular manner this large number of impressions are right [4]”.

India is a vast country out of which 8.6% or 104 million people are estimated to Indigenous [5]. But only certain percentage of population of indigenous people is considered as scheduled tribe. The constitution lists some tribes but does not define anywhere scheduled tribes. Section 366 clause (25) [6] defines scheduled only to those which are deemed under article 342 of the Indian Constitution under which it is stated president has power to select who are tribes and who are not and selected will be deemed to be scheduled tribes. It includes tribes, community of tribal, etc. [7].

As these groups are presumed to form oldest ethnological sector of population, the term ‘Adivasi’ (‘Adi’=original and ‘Vasi’=inhabitant) has become current among certain people. In classifying them, different and sometimes contradictory criteria tend to be used by administrators, anthropologists or social workers who may take as a basis for their designation, colour of the skin, language, customs or living conditions or other considerations that they consider necessary. The International Labour Organisation has classified such people as “Indigenous” [8]. But on the other hands, many other legislative bodies have tried to define Scheduled tribe and related it to indigenous people for their purpose. The Lokur Committee Report, the Advisory Committee formed in 1965 for the Revision of the Lists of Scheduled Tribes and also Scheduled Castes have defined apparently that Indigenous People lead a separated, excluded existence and are groups which are often characterized by aspects like “primitive traits, distinctive culture, geographical isolation, shyness of contact with the outside world of majority and backwardness” [9].

Also judicial machinery of the country has tried to define the relation meaning of scheduled tribe with indigenous people. In case of *Kailas & Others v. State of Maharashtra* [10], the Supreme Court of India while dismissing the appeal said that “Scheduled Tribes are Indigenous people of India”.

Now after such a chaos, what should we considering as definition for Indigenous People? Terms like tribes, first people, ethnic groups, Adivasi (the term commonly used in India for describing Indigenous People), aboriginals are used to defines indigenous people. But the author has tried to interpret all the definition and give a universal definition indigenous people, i.e.

“Indigenous People are those distinct social, cultural and non-dominant groups of people who are inheritors and practitioners of unique cultures and languages from time immemorial having collective ties to land where they live but are separated and have excluded existence from the outside world”.

WHY RIGHTS TO INDIGENOUS PEOPLE/NEED FOR RIGHTS FOR INDIGENOUS PEOPLE

To know the rights of Indigenous People or Scheduled Tribe, we must first understand that why they are so endangered and why do they need these rights. The tribal population of the country as per census of 2011 is 10.43 crore, including 8.6% of the total population of the country. Around 89.97% of them are living in rural and backward areas and 10.73% in urban or a little above backward areas. The decadal population growth of the tribal's from Census of 2001 to 2011 has 23.66% against the 17.69% of the entire population [11]. But many tribal groups are present but still are struggling for them to be recognised and get Scheduled Tribe status.

Broadly the STs inhabit two distinct geographical area, i.e. the Central India and the North-Eastern Area. The greater part of the Scheduled Tribe populace is packed in Central India, for example Madhya Pradesh (14.69%), Chhattisgarh (7.5%), Jharkhand (8.29%), Andhra Pradesh (5.7%), Maharashtra (10.08%), Orissa (9.2%), Gujrat (8.55%) and Rajasthan (8.86%). The distinct area is the North East (Assam, Nagaland, Mizoram, Manipur, Meghalaya, Tripura, Sikkim and Arunachal Pradesh) [12].

Sex Ratio in the examination of the population assumes a vital part and it is a trademark that features the social consideration given to women. In case of tribal population, as compares to all population, the same has been good and promising. From Census 2001 to 2011 there has been an increase from 978 to 990 females per 1000 males [13].

In term of population, indigenous people are getting on the right path but other leading factors like education, health, employment were in resistance to indigenous people. Education shapes a significant component in sprouting of generally people, giving them admittance to more noteworthy mindfulness, the better handle of their political, social and social climate and working within the improvement of their financial circumstances.

EDUCATION FACTOR

Taking into consideration factors like Literacy rates, Enrolment in education system, Dropout rate will provide a deep view in area of education status in indigenous people. Literacy rates is defined as percentage of literates among the population ages seven years and above and literates means a person ages seven and above who can both read and write with understanding in any language is treated a literate [14]. According to the census of 2011 proficiency or literacy levels of STs have improved, the gap of education levels both for indigenous people has not declined fundamentally. Truth be told the gap expanded somewhere in the range of 1971 and 1991, falling from that point to somewhat over the 1971 level.

Another factor of enrolment in education system comes which is directly proportional to the Literacy rates. As the enrolment in education sector of indigenous people increase the literacy rates on the other hand will also grow up. But the truth is indigenous people are considered as marginalized groups and they are in fact. India's education system might have gained critical improvement and headway however the education of the STs and enrolment has been a matter all of the time of concern even after such countless long stretches of autonomy.

Census of 2011 shows that from 1996 the percentage of enrolment of ST students in primary, upper primary and secondary has just increased to 11%, 8.7% and 6.4% from 8.8%, 6.1% and 4.9% of 1996 respectively [15]. This shows that enrolment of secondary category has just increased 1.5% throughout a time-frame of 15 years. Gross Enrolment Ratio (GER) is characterized as level of the enrolment in that stage to the assessed child population in the particular age bunch. According to statistics of School Education 2010–2011 the GER for St children at the rudimentary level (class-VIII) contrasts well and All India Level however it falls radically at the optional level with a hole of

just about 12 when contrasted with the all India Level and the GER at the post-matric level falls further to 28.8 for example 10.5 focuses lower than the All India Level.

Now according to the data shown above it seems good that ST children GER is good at elementary level but the fact that it drops drastically at secondary level and post-metric level cannot be ignored. The increased dropout rates of ST children immediately preceding Class 7th and 10th can only be improved by states addressing their educational statistic and enabling them to take advantage of development in economy [16].

Now one more factor that Statistics of School Education of 2010–2011 [17] is Dropout rates. Dropout rates is the extent of pupils/students who leaves school during the year as well as the people who complete the grade/year however level yet neglect to sign up for the following grade/year level the accompanying school year to the absolute number of understudies/understudies selected during the past school year. It is a basic pointer reflecting the absence of instructive turn of events and failure of a given gathering to finish a particular degree of schooling [18].

As per the said statistics in case of tribals, dropout rates are still very high i.e. 35.6% in classes I to V, 55% in classes I to VIII and 70.9% in Classes I to X in 2010–11. Every 100 ST students who entered class-I, almost 67 came out class V, only 41.9 completed class VIII and 13.9 studied up to class XII only [19]. Now to add on to this detrimental fact, Gender Parity index (GPI) which is calculated as the quotient of the number of females by the number of males enrolled in given stage of education (primary, secondary, etc.), for STs is the lowest in classes XI-XII [20].

There are many other factors other than education which shows that Indigenous people are drowning in the growing modern economy and there is a need for rights and awareness for indigenous people to get them uplifted.

HEALTH FACTOR

Factors under Health like Infant and child mortality are very high among the STs. The National Family Health Survey (NFHS)-3 estimates that under-five death or mortality rate and the child death or mortality rate are a lot higher for STs than any other gathering castes groups whatsoever youth ages.

Focusing of Indigenous group new generation, they are lacking almost everything but also the parents of those children are not having any awareness of their rights. Maternal mortality and maternal health has been an area of concern for all countries across the globe but in India Antenatal Care (ANC) which the pregnancy related health care usually provided by a doctor to monitor any signs of complications, etc. according to evaluations of NFHS-3 the probability of having gotten care from a specialist is most minimal for booked clan moms for example about just 32.8%. Diving into subtleties, the level of ST women consuming Iron Folic Acid (IFA) for somewhere around 90 days and who look a medication for gastrointestinal parasites during their pregnancy was distinctly around 17.6 and 3.7 percent respectively.

Only 17.7% of births of ST mothers are conveyed in wellbeing offices and however obstetric consideration from a prepared professional during delivery or birth is perceived as basic for the decrease of maternal and neonatal mortality, just 17.1% of births to ST women were helped by a specialist or doctor.

Even after successful and uncomplicated birth of the child, only 31.3% of ST children were viewed as completely inoculated and 11.5% of St Children have no immunization by any means. Just of 61.4% of all ST women and 64% of ST women with ongoing or recent births had some awareness of ORS packs [21].

49.9% of ST children got administrations at an Anganwadi centre and 33.1% of ST children got any inoculation through an Anganwadi centre in the beyond a year. Coming to ST men and their wellbeing, a big part of the ST men who knew about TB have misinterpretation about the transmission of TB and 13.7% of women and 17% men who had known about TB, help that they would need the TB positive status of a relative to stay confidential. Just 2.6% of ST families have a part with health care coverage [22].

Regardless of whether they know about their right, something are not in their control. The ST women were viewed as generally kept from seeking clinical treatment from a wellbeing office for themselves, because of distance and 28.4% of ST women report worry that no female supplier was accessible at the middle [23].

Among ST women between ages of 20–49 the median age at first marriage is 16.5 years. The increment in the median at first marriage is procedures at an exceptionally sluggish speed, an impressive extent of women actually wed underneath the legitimate least age of 18. Practically all ST men wed prior to achieving the base age at marriage for men (21 years) set by the Child Marriage Registration Act of 1978.

The NFHS-3 additionally shows a few different realities that there is the high pervasiveness of healthful inadequacy promotion ongoing energy lack are seen among ST ladies demonstrating wholesome issue being more not kidding for this classification. Among all social groups, the ST children were least in devouring food varieties plentiful in vitamin An in the day or late evening continuing the overview. 76.8% of youngsters having a place with ST class are frail, including 26.3% who are mildly anemic, 47.2% are moderately anemic and above 3.3% are severely anemic.

INFRASTRUCTURE FACTOR

Infrastructure ignorance by authority in rural areas is huge matter of concern. Unsafe and unhygienic birth practices, unclean water, poor nutrition, subhuman habitats and degraded and unsanitary environments are characteristics of the rural areas, making the rural habitats the first victim of epidemics. They have no money left to spend on wellbeing/health and are taking on a consistent conflict for survival and health [24]. The availability of Sub Centres, PHCs and CHCs in tribal areas across all states shows that there is shortage of total 5638 Sub-centres, 1086 PHCs and 268 CHCs [25].

EMPLOYMENT FACTOR

The most important factor comes here is employment percentage of Indigenous people. Age of useful and profitable work with good working circumstances on an adequate scale to ingest the developing workforce is a basic component in technique plan for comprehensive development [26]. Participation of the ST in service sector was significantly less as compared to other social groups.

RIGHTS OF INDIGENOUS PEOPLE IN INDIA

Now after getting to realize and understand the need for rights for indigenous people in India, we can now finally conclude our topic by taking on board the topic of rights given to indigenous people in India and whether are they sufficient. After defining indigenous people, the major concerns comes of what rights are granted to them by Constitution of India or any other special legislation formed over time. The answer is that there is no right given to Indigenous people directly, but rights are given under name of Scheduled tribes. But are scheduled tribes and indigenous people same?

As already stated above that I.L.O. has already classified ‘tribes’ as ‘Indigenous’. Also, The Indian Council of Indigenous & Tribal People (ICITP) formed in 1987 affiliated to the World council of Indigenous People at the 8th session of U.N. Working Group on Indigenous People on 31st July 1998 under Agenda Item No. 5 stated that Scheduled Tribes of India are part of the term Indigenous people in India. The ICITP states that:

“While planning such people groups as “tribes” in the Constitution and entrusting the President of India as the caretaker with an exceptional obligation regarding their security, it was obviously assumed that such individuals structure the most established ethnological area of the populace. Furthermore denying the most seasoned ethnological beginning of such individuals, how could it be the case to set up a schedule? It was not only the shade of the skin, the state of the skull, customs or livings conditions, however parentage or organic component of a plummet from individuals from the most established local populace, culture-its effortlessness and crudeness, Indigenous dialects-which are as yet undefined and unnoticed, in light of the fact that they don't comprehend our language, but Group Consciousness and Territorial Consciousness, both with respect to the Indigenous Peoples and the Government, this multitude of various standards were also applied to decide the planning of the clans. In this way Adivasi, Indigenous People, or Scheduled Tribes are equivalent [27].”

Indian Constitutional Framework guarantees various rights to every class of people or group of certain people, likewise constitution guarantees rights to Indigenous People. Part IV of the Indian Constitution which lays down the DPSP i.e. Directive Principle of State Policy which are known or work as ‘fundamental to the governance of the country’, includes many specific rights for indigenous people. They include, under Article 46 of Constitution of India [28], Advancement of instructive and financial interests of Scheduled Tribe, Scheduled Castes and other more vulnerable segments, which guides states to advance the instructive and monetary interest of more fragile part of individuals for example Scheduled Tribes with extraordinary consideration and will safeguard them from social treachery and all types of clarification.

Article 29 of the Constitution of India [29] in broad manner provides protection of interests of minorities by stating that any section of the citizens having any kind of distinct language, content or culture of its own will reserve the option to preserve something similar and furthermore they ought to be denied entrance into any sort of instructive foundation keep up with by state only on grounds of religion, race, caste, religion, language or any of the.

India’s Constitution provides special protection and assistance to vulnerable groups in India including Indigenous People in order to help alleviate extreme levels of poverty, illiteracy, disease and early mortality [30]. Very specifically the Indian Constitution provides under Part X namely ‘The Scheduled and Tribal Areas’, under Article 244 and 244A [31] ‘Administration of Scheduled Areas and Tribal Areas’ and ‘Formation of an independent State involving specific tribal areas of Assam and making of local legislature or council of Ministers or both therefore separately. Formation of special bodies is a major step towards protection of indigenous people and this was understood by the Indian legislative bodies in 1969 and Article 244A was added by the 22nd Constitutional Amendment.

Likewise, Part III as talked before gives and recognizes Fundamental rights and disallowance of regulations that battle segregation and advance "equality before the law or the equal protection of laws, non-oppression any resident on grounds just of religion, race, caste, sex, place of birth or any of them, unique arrangement for the progression of any socially and instructively in backward class of residents as well as Scheduled Tribes, governmental policy regarding minorities in society through the booking of arrangements or posts for any retrogressive class of residents which, according to the State isn't sufficiently tended to in the organizations of the State and annulment of Untouchability.

Fifth Schedule and Sixth Schedule of the Indian Constitution [32] is an addition along with the various articles provided under the Constitution of India empowering states to administer and control STs and there areas to uplift them.

Indian Constitution is not the sole legislation providing some rights to indigenous people but some specific legislation has been enacted in order to protect the indigenous people. The Scheduled Castes and Scheduled Tribe (Atrocities Prevention) Act of 1989 empowers legitimate denial against

segregation mentalities however as result, monstrosities go on towards Scheduled Tribes and solid biases from regulation implementation, particularly security powers.

But these list of rights are mere on paper are there implementation is far from reality. To a much extent on first hand, by data to various surveys of government of India, it looks like the situation of indigenous people are improving but the ground reality is pretty much different:

- Article 23 and 24 provides the prohibition of forced or bonded labour and employment of children below 14 years of age in any of establishment specifically hazardous places and factories respectively.
- The indigenous people's distinct languages, script and culture is what makes making them unique and hence its protection is given under Article 29 of the Constitution of India.
- Promotion and upliftment of weaker section which includes the Indigenous People by way of promotion of education, etc. is provided under Article 46.
- Article 164(1) enable and gives power to states to form special ministry for STs.
- Lok-Sabha and Panchayat has reservation for Scheduled Tribes or recognised Indigenous People and guidelines for the same has been provided in Article 243, 330 and 334.
- The administration of Tribal areas including indigenous people is dealt under Article 244.
- Article 244-A gives the parliament the right and power to form any kind of authority or local legislature or council for tribal areas.
- Article 275 gives the parliament power to make grants for the wellbeing, upliftment and welfare of Scheduled Tribes or tribal people in any state.
- The Constitution's Fifth and Sixth specifically provides for the control of scheduled tribal area in all states excluding Assam, Tripura and Mizoram along with administration of the same.

DIFFERENT ACTS IN PLACE

- The Untouchability (Offences) Act, 1955 was passed long back in order to abolish untouchability.
- The Scheduled tribes and Scheduled Castes (Prevention of Atrocities) Act, 1989 protects indigenous people or tribal people from various forms of discrimination.
- The Scheduled Tribes bonded Labour Abolition Act, 1976 was passed in order to safeguard exploitation of indigenous people or adivasi people in field of wages for their work.
- The Forest Conservation Act, 1980 is piece of legislation which provide and prohibit the use of timber land or forest land by any person except the tribal inhabitant on the land as home.

There are many rights conceded and many acts authorized by the union as well as state, there are numerous settlements marked however the execution and strategy making needs with regards to the activity on the part of the legislature. The place of Indigenous individuals is dumbfounding to the numerous arrangements we have marked regardless they stay the most under favoured local area of this country.

ANALYSIS OF RIGHTS OF INDIGENOUS PEOPLE

In term of general rights like health and related rights are somewhat fulfilled by providing such facilities time to time but the major concerns are never addressed. Land rights of indigenous people are most endangered rights among every other right. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 offered back the conventional forest occupants or the traditional forest dwellers including indigenous people, their privileges to get to, oversee and administer timberland terrains and assets inside town limits, which had been obliged by the backwoods office since provincial times. The act's preamble signifies that the forest rights act in an antidote to the injustice done to tribal and indigenous people related to non-recognition of their forest rights. The act purpose was to get the forest right back to tribal and indigenous people that will result in decrease of exploitation caused by forest officers, governance and management.

But again the materiality is different from the purpose. This Act though state of the art was not able to solve the common and prevalent problem of non-implementation. Implementation of the provisions of this act and recognition of community land rights took place in few states only becoming the shortcoming of this Act.

Forced evictions also causes chaos in the daily life of indigenous people when lands vesting with them for more than two generation is suddenly taken control by government or private entities in name of development. In 2015 eviction notices were dispersed to more than 1200 Indigenous families in 13 towns in Tripura by the State Government to procure land to set up a discharging range for the Assam Rifles. FPIC was led, dismissing the Indigenous People's on the whole correct to self-assurance, the land was gained without following system, and no dislodged individual got appropriate remuneration. Additionally disregarding the privileges of Indigenous People in 2014 a concrete plant was proposed which caused a huge number of Indigenous Persons from almost 27villages in Manavar Tehsil of Dhar region in Madhya Pradesh to be dislodged because of procurement of their farming area [33].

Section 4(5) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 gives that no individual from timberland staying Scheduled Tribe or other customary woods occupant will be expelled or eliminated from land until the acknowledgement and check technique for settlement of backwoods freedoms is finished [34], but Indigenous people are denied their rights and they face the threat of removal in the name of forest conservation.

Even the government and its official are violating the rights of indigenous people. In addition to the government regular violation of right, private entities also violates right of free, prior and informed consent for acquisition of indigenous people forest. The Coal Bearing Areas (Acquisition and Development) Act doesn't need a free, earlier and informed assent of the impacted networks nor a social effect appraisal. Anyway under India' Panchayat (Extension to Scheduled Area) Act, Coal India is expected to counsel through village assemblies in safeguarded Indigenous locales prior to gaining or acquiring land, or settling on restoration and resettlement measures, however no interviews were made for any of Coal India's three mine destinations. The coal India's Failure to concede ancestral and native individuals freedoms is the resonation of powerlessness of government to uphold and appropriately execute worldwide basic liberties and inclusivity during improvement.

CONCLUSION

After all the above discussion about what are right, who are indigenous people, what are their rights, are they implemented to the fullest, it is clear that granted rights to indigenous people are sufficient in order to prevent them from discrimination caused to them from colonial time, or discrimination caused to them now or to uplift them from current situation. Yet, the authoritative lack of care keeps on being the greatest barricade in compelling execution of the provisi^e of the constitution or some other special acts or statutes. Illegal displacement continue to take place on indigenous people land, and their claims for land right are wither rejected on the first hand or takes eternity to get a decision by litigation.

Apart from the factor of ill-enforcement, awareness plays a very vital role in effective implementation of their rights. The absence of mindfulness or awareness among indigenous people as well as at the degrees of organization has been shocking. In order conclude, lands rights becomes the most crucial part and pressing concern for the indigenous people of India. Other rights of health, education, etc. are slowly and steadily going on the right path, not able to match the level majority population has, but still a little focus by authorities will make these certain rights available to all, but securing lands rights by the indigenous people is still a problem and a half-hearted attempt to correct and end the historical injustices meted out to the long oppressed community is not sufficient. To bear that this uninterested methodology towards the indigenous people doesn't proceed, the government

needs to find some kind of harmony between its improvement plan and the privileges of the Indigenous people. Aside from established constitutional rights, the freedoms ensured under the forest act were a welcome piece of regulation that gave the native individuals the option to get to and deal with the forest lands which was heavily influenced by the backwoods authorities since pioneer times. Yet, the regulatory lack of care has been an obstruction in the powerful execution of the demonstration. To guarantee that the land cases of the native individuals are heard and handled appropriately, the slips in the administration must be revised right away. Final to rest the statement, better implementation of the provided legislations and provisions of law, will single handily provide enough improvement that there will be no requirement for such issue to raise.

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