



CONSTITUTIONAL RIGHTS OF THE MARGINALIZED TRIBES:A STUDY IN NAMAKKAL DISTRICT, TAMIL NADU

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Introduction

Tribal population is one of the weaker sections of the society and lies at the lowest rung of the process of development. The socio-economic status of various tribal communities is not uniform. They continue to be at various levels of techno-economic parameters. There are tribes who live in forests and are exclusively dependent on forests for their livelihood by practicing hunting and food gathering. With their primitive technology, limited skills and traditional and ritual practices, their entire lifestyle revolves round the forests. These communities live in ecologically marginal areas and belong to different races, languages, education, economy and level of socio-cultural integration. Poverty is the general bane of tribal existence in India, which arises due to economic as well as non-economic factors. Some of these factors are low agricultural productivity, shifting cultivation, land alienation, indebtedness, lack of irrigational facilities, market prices, traditional living conditions, malnutrition, disease, isolation and exploitation by traders and marginalization. The most important task in all the developmental programmes is to develop awareness and consciousness which includes diffusion of information about local administration, institutions, relevant legislations, rights of responsibilities of tribal citizens and the necessary information regarding the change programmes etc.¹

Objectives of the Study

- To take up promotional efforts such as capacity building, exposure visits, training, sensitization programmes etc.
- To assess the impact of various programmes on income and employment of beneficiary households.
- To implement sustainable livelihood programmes.
- To give suggest for further improvement in the socio-economic conditions of scheduled tribes.

Problems Faced by the Tribes

While progress made by scheduled tribes in terms of various achievements enumerated is a matter of satisfaction, yet a lot more actions have to be carried out with more focus on the following unresolved issues which are crucial to raise the status of tribes on par with the rest of the population:

1. Low literacy and High Drop-out Rates Despite the programmes for Universalization of primary education, which have been in effective operation since 1986.
2. Although, the drop-out rates have been showing a declining trend amongst scheduled tribes.
3. Inadequate and Inaccessible Health Services.
4. Agriculture and shifting cultivation
5. Water resources is a major problem
6. Deprivation of Forest Rights Forest and Tribes has symbiotic relationship
7. Land Alienation
8. Displacement of Tribal Rehabilitation of the Displaced Tribal
9. Indebtedness
10. Bonded Labour and Migrant Labour
11. Excise and Alcoholism
12. Extreme poverty, etc.,²



Tribal Participation in Development Programmes

Article 244 and 244(A) of the Constitution, the fifth scheduled and the sixth schedule provide for the mechanism of consultation and participation of tribals in the administration of their affairs. The sixth schedule provides for active participation of tribals in the administration of their affairs, development process and dispensation of justice through the mechanism of autonomous district/regional councils. However, in both the fifth and sixth schedule areas there is lot of scope to ensure active participation of tribals in the development process, which could be achieved in a number of ways-

- (i) Involvement of traditional and tribal institutions and voluntary organizations in implementation of tribal development programmes;
- (ii) Members of the tribal communities may participate actively in the administration of their affairs at various levels of the government;
- (iii) Guaranteed representation of tribals in Panchayat Raj Institutions, etc.

The Tribals Advisory Councils under the fifth schedule is a constitutional body advised for consultation with tribal representatives these councils have been set up in all the states having scheduled areas and two non-scheduled states of West Bengal and Tamil Nadu. The councils are required to advice on all matters pertaining to the welfare and development of STs may be referred to it by the Governor. The advisory role of the council has been restricted only to matters referred to it by the Governor who acts as the aid and advice of the council of ministry. The tribes' advisory councils can be made more effective if this discretion of the state government is reduced. The council may be involved in the formulation of policy, planning and overseeing the implementation of the programmes and schemes.³

Income -Cum-Employment Generating Programmes

The main tribal development programmes that are being implemented at the national and state level are as under:

1. Integrated Rural Development Programme (IRDP)
2. Training of Rural Youth for Self-Employment (TRYSEM)
3. Development of Women and Children in Rural Areas(DWCRA)
4. National Rural Employment Programme(NREP)
5. Rural Landless Employment Guarantee Programme(RLEGP)
6. Jawahar Rozgar Yojana (JRY)
7. Employment Guarantee Programme(EGP)⁴

Constraints in Tribal Development

There are innumerable constraints responsible for lower pace of tribal development process than desired. Some of the major constraints are:

1. Destruction of forests: The forests are not only the source of livelihood for tribals but there exists an intricate relationship between tribals and forests in forest eco-systems. The depleting forest resources are threatening imminent food security for a large percentage of the tribal population.
2. Lack of awareness: Lack of awareness among tribal population about various developmental programmes launched by Government of India and States, result in their exploitation.
3. Protection of Tribal Rights and Concessions: the tribals have been given numerous rights and concessions under various statutes of Central as well as State Governments but they remain deprived of the benefits arising out of such statutory provisions due to their ignorance and apathy of enforcing agencies.⁵



Economic Measures for Upliftment of Scheduled Tribes

1. Recognizing traditional tribal rights to land: Some states have enacted legislation to this effect. However, there is no uniform policy chalked out.
2. Legal protection against alienation of tribal land and the protection of tribals from moneylenders: Legislation has been enacted in some States whereby land belonging to STs can be transferred only to other STs and that too with the prior permission. Similarly, various State measures have been instituted to put a stop to the exploitation of the tribals by moneylenders. However, available evidence suggests that the tribals prefer to take loans from private moneylenders instead of co-operative societies, notwithstanding the lower interest charged by the latter. The main reasons for the failure of the co-operatives have been: (i) the co-operatives generally take too long to sanction the loans and have cumbersome procedures; and (ii) the co-operatives do not give loans to landless people.
3. Distribution of land to the tribals and development of land already in their possession: Surplus lands released through imposition of ceiling on land-holdings are distributed among tribals. Similarly, several schemes like provision of irrigation facilities, ploughs, bullocks, agricultural implements and distribution of improved seeds are in operation in order to help tribals improve the productivity of their land.
4. Development of cottage industries: The scheme also includes giving financial aid to the STs to set up or improve their own trade or business. Similarly, commodities sold by tribals are purchased from them at various centers and the articles they need are sold to them at fair price shops.
5. Tribal Development Blocks: Special multi-purpose Tribal Development Blocks have been established. The object of these blocks is to bring about significant changes in the economic and social life of the tribals. However, they have covered a limited population and in several cases the schemes have been launched without any benchmark data.⁶

A Review of PESA: Tribal Laws and the Impairment of Tribal Rights in a Decentralized Government

Even though PESA is projected as legislation transforming tribal representation in Fifth Schedule areas, the tribes feel as much 'culturally deprived and economically robbed' as under colonial rule. Neither PESA in the last decade, nor the Fifth Schedule before it, has helped the tribal communities "acquire the status and dignity of viable and responsive people's bodies," as Parliament had intended. Tribal local governments are often ignored in development plans and the benefits of any actual development "rarely percolate down to the local tribes," which are "subordinated to outsiders, both economically and culturally." PESA and the Fifth Schedule have also not prevented large corporations from gaining "control over the natural resources which constituted the life-support systems of the tribal communities;" neither have they made the tribes prosperous from the mineral-rich land on which they live. In fact, the tribes have "gradually lost control over community resources such as forests" to both settlers and the State; and one author would go so far as to equate non-tribal acquisitions with tribal displacement. Deceit and the active connivance of state employees with non-tribal communities is another debilitating factor reversing, in this case, the benefits of land reform legislation. The latter exercised their discretionary powers to favour non-tribes by transferring lands over which tribal communities may have had a valid claim. Even in a tribal majority state like Jharkhand in the north, the



tribes are the worst affected in the population since the state government's mining operations and hydroelectric power projects exploit natural resources in the resource-rich tribal areas, thus making the tribes "outsiders in their own land." Faced with this onslaught, many tribes have resisted settlers, the government and private enterprises, and sought to reassert their identity. Similarly, in the south, Kerala's tribal population has recently begun to defend its rights by banding together in various political groups at the state and local community levels in order to compel the administration to review land alienation, poverty, and exploitation by private enterprises. It is far too easy to dismiss these incidents as mere consequences of "misplaced development strategies" and lack of interest among state administrations. The critics of tribal governance in India see the dangers in an extremely narrow compass, criticizing provisions in PESA as "impracticable" or the states as legislatively ignorant. In sum, they believe that good civil administration alone will assuage tribal woes. To begin with, PESA only marginally altered the power balance between state governments and the tribes because of ineffectual participation by the former, and the "general tendency at the state level to monopolize power rather than share power with people at large." This apathetic attitude has manifested itself in two forms. First, the majority of the states with tribal populations procrastinated in their decentralization programs. Although all states with Scheduled Areas have now enforced PESA, their past dilatory performance has led to the risk of delays in future amendments necessary to reflect changed circumstances. Second, when they did legislate, the states either ignored tribal "customary law, social and religious practices and traditional management practices of community resources" or enacted incomplete laws.⁷

Future Development Strategy

The development of weaker sections in the country in general and tribal segment in particular requires closer look. The management of tribal development programmes has to be more vigorous effective and more rewarding. The community has to develop and grow through proper guidance and support and through proper motivation rather than by simply providing beneficial dosages through development schemes. There is a urgent need to adopt a strategy to strengthen the base of tribal sector in the economy. The strategies include:

1. Effective Family planning,
2. Creation of productive asset and check the transfer of assets,
3. Effective Implementation of Development Programmes, and
4. Reduction in expenditure and encouragement for saving.

Malayali Tribes in Namakkal District

The tribal people of the Javadi hills are known as Malayali. These people live on the plateaus and sloppy regions of the Javadi hills. The main occupations of these people are agriculture and collection of forest produces. They do not wear any distinct tribal wear but are clad in regular dhoti and sarees. Malayali construct mud walled thatched houses with an elevation at the top for storing grains. They lead a very simple life with almost everyone dependent on agriculture. They cultivate different kinds of grains, ragi, bhajra, maize and fruit bearing trees. A cattle breeding is also widely popular. All farmers own small pieces of land and most of the agricultural produce are utilized for consumption and a little is taken to the market for trading. Another main occupation of the tribal woman is collecting forest produces and selling them in the market. The government has established a co-education school especially for the tribal children. The initiative aims at improving the standard of living of the tribal people.⁸

Sherring (1909) says, "The Malayali tribe consist of cultivators, woodmen and shepherds, and are not as uncivilized as many other hill tribes." Thus, these legends and comments reveal that they were originally a caste group who became Malaialis (hillmen) after migration from Kanchipuram to the hills of different



districts. Malayali speak Tamil among themselves and with other communities. The Malayali are constitutionally a Scheduled Tribe. The Malayali also differentiate among themselves on the basis of social and economic hierarchy and also on territorial level. In Salem and Namakal District, the Malayali of Yercaud considers themselves socially higher than their people in the Koli, Kalvarayan, Pachamalai and Arunoothumalai hills.

Problems of Malayali Tribes

1. The children have to walk for around 5 kms to reach the elementary school. Because of this, school enrollment is not much and the drop out for, the schools are very high. Very few children are going to school beyond 8th standard.
2. Around 80% of the tribal people are living below the poverty line. Agriculture is their major occupation. Rain water cultivation is possible. There are no check dams and so water is a major problem during summer.
3. More than 80% of the adults are the liquor addicts and exhaust all money on the consumption of liquor. This is one of the attributing factors of tribal poverty.
4. Adult men and women have venereal diseases.
5. Suicides rate has been increased drastically for the last one decade is mostly due to poverty induced hunger, unemployment, increased alcoholism, family disorganization and migration.
6. Thick forest trees were cut down by the politicians with the help of local tribals. People do not have much awareness on tree plantation and cut the trees for firewood purposes. Alternative energy use is not known to them.
7. Grave human rights violation exists among the tribal community.⁹

Role of NGOs in Empowering the Tribes

NGOs are fighting for the betterment of all citizens. In this respect, they are trying hard to empower tribes. There are several NGOs mainly for the development of tribal areas and unity among tribal people. The various steps that should be taken and the role of NGOs in the various programmes are listed below:

1. The Tribe's rights should be protected and better socio-economic safeguards should be provided to them. NGOs working for the tribal people, should supervise these programmes. Then the impact may be positive and substantial.
2. Better training of tribal people is essential to build-up a team of their own people to do the work of administration and development. NGOs can run such training programmes.
3. The small scale enterprise based on special skills and tribal knowledge should be encouraged.
4. NGOs should often organize various medical camps for providing proper treatments for various health problems encountered by tribes.
5. The special counseling programmes should be started to stop the alcoholism.
6. Rights of tribes regarding forest land should be respected.
7. The number of primary schools and teachers in tribal areas should be increased.
8. The infrastructural facilities like roads, electricity, transportation, water, health centers, and bank should be promoted in tribal areas; so that they can approach the civilized society. These programmes should be prepared and implemented only through NGOs, which are working for them.
9. NGOs should shoulder this useful work and help tribes in starting SHGs, which are very powerful for social and economic empowerment of tribes and other marginalized people.¹⁰

Constitutional Safeguards for Scheduled Tribes



The constitution recognized the ground realities between castes and communities in India and given protection in education, government's social welfare measures and government jobs since 1950 to Scheduled Tribes. Action plans are included in the budgets since independence. The plan expenditure on tribal welfare to total plan outlay increased from 1.2 per cent in the first plan to 13.3 percent in Eighth plan and about 15 per cent in Tenth plan.

The constitution of India contains a number of important provisions for the protection of tribal community; these includes statutory recognition of tribal communities, their proportionate representation in legislature, right of using their own language for education, and other purposes, etc. Besides, the Directive Principles of state policies envisage the promotion of education and economic interest of scheduled castes and scheduled tribes and other weaker sections and protection to them from social injustice and all forms of exploitation. Also the constitution includes an enabling article authorizing the state to make provisions for the reservations of appointment or posts in favor of any backward class of citizens, which is not adequately represented in the services under the state.

In addition to the above, the fifth schedule of the constitution provides for the delineation of scheduled areas in respect of the administration of which, the executive power of the union shall extend, to the giving of directions to the state. The fifth schedule imposes the special responsibility on the state for peace and good governance of the tribal areas. The regulation making powers conferred by the fifth schedule on the Governor is a unique device designed to help imparting flexibility to the union and state laws applicable to the scheduled areas. So far, however, the provisions of the fifth schedule have not been utilized to the full extent by the states. The sub para – 2 of paragraph – 5 of the fifth schedule specially visualizes making regulations specifically for (a) prohibiting or restricting transfer of land by or among members of scheduled tribe; (b) regulating allotment of lands to members of such tribes; and (c) regulating carrying on of the business of money lending.

The constitution of free India is committed to the welfare and development of tribal people in a big way. The tribal sub -area approach which came in to existence in the 5th plan is a land mark in the development of Scheduled Tribes. It aims at providing health in economic and social sectors. The second important development is the special recommendations made in the National Policy on Education. The policy suggested opening of the primary schools in tribal areas , providing incentive schemes for school going children etc., The Ministry of Tribal Affairs ,set up in October 1999 is the nodal ministry for the overall policy, planning and cooperation of programmes for the development of scheduled tribes, scheduled areas (5th and 6th schedules). The tribal development initiatives focus on areas such as income generation, infrastructure development in tribal areas, educational development, employment-oriented training, ensuring fair price and food security, promoting voluntary efforts, development of primitive tribal groups, support to tribal development and Finance Corporation at the national and state levels and so on.

Article 46 of the constitution declares that “the state shall promote, with special care, the educational and economic interests of the weaker sections of the people, and, in particular, of scheduled castes and the scheduled tribes, and shall protect them from social injustice and all forms of exploitation”.

Article 244 empowers to declare any area, where there is a substantial population of tribal people, as a scheduled area under the fifth schedule or in Assam, as a Tribal Area under the Sixth Schedule.



Article 339 lays down that “the executive power of the union government extends to the giving of directions to a state as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of the scheduled tribes in the state”.

Article 275 of the constitution provides for assistance to the states for the implementation of the provisions of the constitution.

Article 330, 332 and **334** provide for reservation of seats for scheduled tribes in the house of the people and the state legislatures.

Article 335 provides for reservation in the services.

Article 15, 16 and **19** make it possible while legislating on any matter to take into consideration the special conditions of the tribals in the matter of enforcing the provisions relating to the equality of all citizens.

The fifth schedule of the constitution gives certain powers and lays certain duties on the Governor of every State that has scheduled areas. Part B, Para 5 of the fifth schedule says. Paragraph 4 provides the fifth schedule, part B, for the compulsory setting up to Tribes Advisory Council in each state, having or not having scheduled areas but containing scheduled tribes.

Article 338 is one of the most important provisions in the constitution prescribing the machinery for implementing the safeguards of the Scheduled Tribes and the programs for their development.

A few important provisions of **Article 332** are: (1) Seats shall be reserved for the Scheduled Castes and (2) Scheduled Tribes, except the Scheduled Tribes in the tribal areas of Assam, in the Legislative Assembly of Every State. (3) Seats shall be reserved also for the autonomous districts in the Legislative Assembly Assam. (4) No person who is not a member of a Scheduled Tribe of any autonomous district of the State of Assam shall be eligible for election to the Legislative.

There are three special provisions common to all the Scheduled Tribes living within the scheduled areas or outside. The state shall promote with special care the educational and economic interests of the Scheduled Tribes and protect them from social injustice and all forms of exploitation. Thus at a general level, we may divide these safeguards as being of two kinds: (1) Protective and (2) Government concrete show of respect of the customary laws of the tribes concerned provisions are there not to intervene in their customary marriage and succession rules. The protection of tribal land by stopping its transfer to the non-tribal has also been a generally adopted policy in order to put an effective check on land alienation.

Suggestions

1. Special planning and political groups are made, to change their attitudinal character with their culture sustainable programmes.
2. Development indicators like education, health, income should be given utmost care.
3. In denoting the priorities of development areas the participation of the tribes of the areas or the representatives selected by them be encouraged.



4. Before the implementation of development projects, proper infrastructure provision, i.e. roads, water facilities, transport, health and medical facilities are made available in the area.
5. The plan development is yet to generate “people’s participation” in the development programmes.

Conclusion

The change in attitude and approach can come when the government servants, Politian’s, NGOs and others develop a sensitivity and concern towards the tribal groups, who have survived over the centuries, but some of whom are facing even survival threats and deprivation today. This is the only way how the main problem of education, health, land alienation, displacement can be faced squarely. Also in the overall policy, strategy and administration, tribal and non-tribal harmony, rather than conflict and exploitation has to be built in. while the tribal communities of India do share some of the concerns and problems with those of the indigenous peoples of other parts of the world, the solutions need to be found and worked out in the Indian context. Unfortunately many good plans have failed at the implementation level, because persons concerned with implementation are generally unsympathetic to them. Moreover, it is necessary to understand the real problems of tribal people. Unless important aspects of tribal life are well understood, it is believed that the programmes however good and useful cannot yield fruitful results.

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