

TRIBAL PEOPLE, LAND RIGHTS AND GOVERNANCE

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ABSTRACT

The Scheduled Tribe (STs) or Adivasis consist of a number of diverse tribals groups that have historically self-identified and been identified by the British colonial and independent Indian states, as lying outside the mainstream of Hindu society, “mainstream is also created by the upper caste society” partly because of their ‘distinctive culture and way of life as a group’, and slightly because of their ‘geographical isolation’. Currently, there are 750 tribes in 27 states and 6 union territories of India.

KEYWORDS: Tribal, Land Rights, Resettlement, Forest, Schedule Tribe, Constitution, Adivasi, Tribes, Governance, Exploitation, States.

1. INTRODUCTION

India holds the unique contrast of being both the world's largest constitutional democracy and also one of its fastest growing economies. Critical to the process of India's economic development is state acquisition of land for infrastructure and industrial development. Creating a legal framework that ensures fair and systematic acquisition of land by the state, through processes that are socially inclusive and politically feasible, has proved challenging. While the Indian Constitution guarantees property rights to all, it expresses special protections for land rights of ‘Scheduled Tribes’, vis-a-vis the state and other communities, in geographically distinguishing tribal majority areas known as ‘Scheduled Areas’ under the Fifth and Sixth Schedules of the Constitution. The currently designated Fifth Scheduled areas are in the states of Andhra Pradesh, Telangana, Gujarat, Jharkhand, Chhattisgarh, Himachal Pradesh, Madhya Pradesh, Maharashtra, Orissa, and Rajasthan. The currently designated Sixth Schedule areas are in the north-eastern states of Assam, Meghalaya, Tripura, and Mizoram.

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The Constitution guarantees special protections for land rights of Scheduled Tribes in Scheduled areas because land is not only the most essential source of tribal livelihoods, but it is also key to their community identity, history and culture. Many non-Scheduled area states have also initiate legal protections for protecting land rights of tribals.

The paper will explore the National Rehabilitation and resettlement Policy, Progress and challenges of tribes around land rights and resettlement.

Tribal people constitute 8.6 percent of India's total population, about 104 million people according to the 2011 census (68 million people according to the 1991 census). This is the largest population of the tribal people in the world. One concentration lives in a belt along the Himalayas stretching through Jammu and Kashmir, Himachal Pradesh, and Uttar Pradesh in the west, to Assam, Meghalaya, Tripura, Arunachal Pradesh, Mizoram, Manipur, and Nagaland in the northeast. Another concentration lives in the hilly areas of central India (Madhya Pradesh, Orissa, and, to a lesser extent, Andhra Pradesh); in this belt, which is bounded by the Narmada River to the north and the Godavari River to the southeast, tribal people occupy the slopes of the region's mountains. Other tribals, the Santals, live in Bihar and West Bengal. There are smaller numbers of tribals in Karnataka, Tamil Nadu, and Kerala, in western India in Gujarat and Rajasthan, and in the union territories of Lakshadweep and the Andaman and Nicobar Islands. [Source: Library of Congress, 1995]

Tribal people in India are called adivasi. Adivasi is an umbrella term for a heterogeneous set of ethnic and tribal groups considered the aboriginal population of India. Although terms such as atavika, vanavasi ("forest dwellers"), or girijan ("hill people") are also used for the tribes of India, adivasi carries the specific meaning of being the original and autochthonous inhabitants of a given region and was specifically coined for that purpose in the 1930s. Over time, unlike the terms "aborigines" or "tribes", the word "adivasi" has developed a connotation of past autonomy which was disrupted during the British colonial period in India and has not been restored.

The Indian constitution, adopted in 1949, included articles that called for special treatment to be granted to Scheduled Tribes and Scheduled Castes. Groups defined as such receive special benefits and privileges that affect hundreds of millions of people. Many groups have clamoured to be classified as Scheduled Tribes and Scheduled Castes. so they could receive the privileges.

The Scheduled Castes (SCs) and Scheduled Tribes (STs) are official designations given to various groups of historically disadvantaged people. The terms are recognised in the Constitution of India and the various groups are designated in one or other of the categories. During the period of British rule in the Indian subcontinent, they were known as the Depressed Classes. In modern literature, the Scheduled Castes are sometimes referred to as Dalits. Before they were known as untouchables. The Scheduled Castes and Scheduled Tribes comprise about 16.6 percent and 8.6 percent, respectively, of India's population (according to the 2011 census). The Constitution (Scheduled Castes) Order, 1950 lists 1,108 castes across 29 states in its First Schedule, and the Constitution (Scheduled Tribes) Order, 1950 lists 744 tribes across 22 states in its First Schedule. Since independence, the Scheduled Castes and Scheduled Tribes were given Reservation status, guaranteeing political representation. The Constitution lays down the general principles of affirmative action for SCs and STs.

2. BACKGROUND

Government policies on forest reserves have affected tribal peoples profoundly. Wherever the state has chosen to exploit forests, it has seriously undermined the tribes' way of life. Government efforts to reserve forests have precipitated armed (if futile) resistance on the part of the tribal peoples involved. Intensive exploitation of forests has often meant allowing outsiders to cut large areas of trees (while the original tribal inhabitants were restricted from cutting), and ultimately replacing mixed forests capable of sustaining tribal life with single-product plantations. Where forests are reserved, non tribals have proved far more sophisticated than their forest counterparts at bribing the necessary local officials to secure effective (if extralegal) use of forestlands.

The Constitution of India seeks to secure for all its citizens, among other things, social and economic justice, equality of status and opportunity and assures the dignity of the individual. The Constitution further provides social, economic and political guarantees to the disadvantaged

sections of people. Some provisions are specific to both Scheduled Castes and Scheduled Tribes and some are specific to only Scheduled Tribes. But in a process of marginalization today, the total forest cover in India is reported to be 765.21 thousand square kilometers of which 71% are Adivasi areas, of these 416.52 and 223.30 thousand square kilometers are categorized as reserved and protected forests respectively. About 23% of these are further declared as Wild Life Sanctuaries and National Parks which alone has displaced some half a million Adivasis. And finally, Forest Policy of 1952, Indian Forest Act of 1972, Wildlife Protection Act of 1972 and Forest Conservation Act of 1980 downgraded these privileges of the people to concessions of the state in the post-colonial period. The rights of Adivasis Were reduced to mere privileges conferred by the state.

3. DISPLACEMENT AND RESETTLEMENT:

Displacement of people from traditional habitations causes much trauma to the affected people. Compulsory acquisition of land for construction of dams and roads, quarrying and mining operations, location of industries and reservation of forests for National Parks and environmental reasons forces tribal people to leave their traditional abodes and land their chief means of livelihood.

Nearly 85.39 lakh tribals had been displaced until 1990 on account of some mega project or the other, reservation of forests as National Parks etc. Tribals constitute at least 55.16 percent of the total displaced people in the country. Cash payment does not really compensate the tribals for the difficulties they experience in their living style and ethos¹.

Displacement of tribals from their land amounts to violation of the Fifth Schedule of the Constitution as it deprives them of control and ownership of natural resources and land essential for their way of life. The National Policy for Tribals, therefore, stipulates that displacement of tribal people is kept to the minimum and undertaken only after possibilities of non-displacement and least displacement have been exhausted. When it becomes absolutely necessary to displace Scheduled Tribe people in the larger interest, the displaced should be provided a better standard of living.

4. TRIBAL RIGHTS IN INDIA:-

At the time of independence the Indian Government inherited a large tribal population. The Govt. of India has made a number of plans to protect the rights of the tribals and to integrate them into national developmental planning. The Minority Commission, the National Human Rights Commission etc., is there to prevent atrocities against them and to bring their plight to national lime light. Above all, in the Constitution of India the rights of the tribals were explicitly recognized and clauses were included to permit positive discrimination in their favour.

"Displacement and Rehabilitation of Tribals Author(s) - TERI SAS." 30 May. 2018, https://terisas.ac.in/ckfinder/userfiles/files/ResearchPaper_SamplePaper.pdf. Accessed 6 Feb. 2020;

But the evaluation reports have pointed out that these special provisions have so far failed to bring about any positive gains to the tribal population. As per the Planning Commission Document 1973, "Reviewing the policies and programmes of the proceeding Five Year Plans we are of the opinion that the efforts so far made for social and economic development of the scheduled tribes have not brought an appreciable change in their condition." There can be a number of explanations for the failure of the governmental programmes for tribal development. However, the oppression and appropriation of the tribal people by the economically and politically more powerful groups have led to tribal movements or tribal unrest. For instance, the Santal rebellion, the revolt by Birsa Bhagwan, the Praja Mandal Movement, the Tana Bhagat Movement, the Naxalbari Movement, the

Jharkhand Movement etc., are all attempts by the tribal people to shake off the yoke of exploitation.

In recent times the traditional territories of the tribal people have been subjected to incursions. Their lands are taken away in the name of economic advancement of the country. But in return they receive landlessness, impoverishment and long term degradation of the environment on which they totally depend. For almost two centuries now, tribal communities, like many other non-tribal peasants and forest dwellers, have been witness to the collapse of their multiple relationships with the land, the forest and among themselves. The basis of their cultural ethos, their systems of meaning have faced the collective onslaught of outsider exploiters, the disruptive impact of proselytizing Christianity, and of foreign models of economic betterment which have been conceived without their participation and implemented without their consent. Laws like Land Acquisition Act and the Indian Forest Act legitimise the continuing decline in access and control over forest resources that are the basis of their subsistence economy.

Initiatives from the Bharat-Jan-Andolan, Shosit Jan Andolan, the Indian Council of Indigenous and Tribal Peoples, Adivasi Sangamams in South India, PUCL, PUDR etc., are indicative of these modest attempts to raise - fundamental issues and define an alternative political agenda that frontally challenges the institutions and structures of our bourgeois democracy.

5. POLICY RELATED TO TRIBAL SETTLEMENT

The National Policy, therefore, mandates that the following guidelines be followed when tribals are resettled:

- When displacement becomes inevitable, each scheduled tribe family having land in the earlier settlement shall be given land against land. A minimum of two hectares of cultivable land is considered necessary and viable for a family (comprising man, his wife and unmarried children).
- Tribal families having fishing rights in their original habitat shall be granted fishing rights in the new reservoir or at any other alternative place.
- Reservation benefits enjoyed at the original settlement shall be continued at the resettlement area.
- Additional financial assistance equivalent to nearly one and a half year's minimum agricultural wages for loss of customary rights and usufructuary rights of forest produce shall be given.
- Tribals are to be resettled close to their natural habitat by treating all the people so displaced as one group to let them retain their ethnic, linguistic and socio-cultural identity and the network of kinship and mutual obligations
- Free land is to be provided for social and religious congregations.
- If resettlement is possible only away from the district/taluka, then substantially higher benefits in monetary terms shall be given.
- When tribal families are resettled in masse, all basic minimum amenities shall be provided at the new sites. They include roads and passages, electricity, drainage and sanitation, safe drinking water, educational and health care facilities, fair price shops, a community hall and a panchayat office.

6. STATE POLICY AND THE TRIBAL:-

The edifice of colonial forestry was inherited by the Government of Independent India and immediately put to work in the service of the State's primary goals of rapid industrialization. The

National Forest Policy 1952 underlies continuity of the colonial policy. It reinforced the claim of the State to exclusive control over forest protection and production. Significantly this policy identifies shifting cultivation as one of the main threats to State forestry. But in turn this affects the basic rights of the tribals to be dependent on forest resources. Hence, many tribal groups mounted a sustained challenge to the continuing denial of their rights. The Khanwar tribes of Madhya Pradesh protested in 1957 against revenue collection and called upon the people to defy forest laws which violated their customary rights. Their slogan, "Jangal Zamin Azad Hai", (forest and land are free gifts of nature) succinctly expressed the opposition to external control and commercial use. Another concept of conflict is the 'Contractor System' which is the modus operandi of forest working in India. The State's unwillingness to replace the contractor system has given rise to militant movements. Naxalite movement is one of the results of this type of exploitation.

7. PROCESS OF DESENSITIZATION AND LAND ALIENATION:

An overwhelming majority of the tribals are agriculturalists. They owned the land in their own rights. Their entire life process was centered and built upon two major means of production i.e., the forest and the land. To understand the dynamics of land problems in totality, one needs an understanding of the logic of the underlying forces that govern its ownership pattern. The specific economic form in which unpaid surplus labour is pumped out of the direct producers, determines the relation of the rulers and the ruled. Hence land problem of a particular area has to be understood from its historical perspective. Historical evidence is ample which proves the conception of desensitization as a net result of the uneven structural changes that have taken place from time to time due to the commoditization of the tribal economy in which land plays a critical and predominant role.

8. CONCLUSION

The system of bribing local officials charged with enforcing the reserves is so well established that the rates of bribery are reasonably fixed (by the number of plows a farmer uses or the amount of grain harvested). Tribal people often end up doing unpaid work for Hindus simply because a caste Hindu, who has paid the requisite bribe, can at least ensure a tribal member that he or she will not be evicted from forestlands. The final irony, notes von Fürer-Haimendorf, is that the swidden cultivation many tribes practiced had maintained South Asia's forests, whereas the intensive cultivating and commercial interests that replaced the tribal way of life have destroyed the forests.

Also in the operations of denudation of forest on a massive scale tribal labour had been used to a great extent to clear off the forest area which was a method of the landlords to alienate the tribals from the forests. This further widened the gap between the tribal landless and landed gentry of the non-tribal communities.

The object of the Fifth and Sixth schedules to the Constitution is not only to prevent acquisition, holding or disposal of the land in Scheduled Areas by the non-tribals from the tribals or alienation of such land among non-tribals inter se but also to ensure that the tribes remain in possession and enjoyment of the lands in Scheduled Areas for their economic empowerment, social status and the dignity of their person. Equally exploitation of mineral resources for national wealth undoubtedly, is for the development of the nation. The competing rights of tribals and the state are required to be adjusted without defeating the rights of either India 1997. Follow the guideline of the provision of fifth and sixth schedules of the constitution, so that development of tribal should be according to them not by the mainstream mode of development where one rich man exploits all the resources in the name of Development.

Tribal communities face the 'triple burden' of disease. Apart from high rates of malnutrition and

communicable diseases (TB, leprosy, HIV etc), the advent of rapid urbanisation, and changing lifestyles and environment, has led to a rise in non-communicable diseases as well (cancer, diabetes, and hypertension). These are both in addition to the burden of mental illness and subsequent addictions so, now have to focus on their health aspects also. We need to provide them better healthcare facilities.

Formed a committee consisting of tribal representatives and the committee can take state visits to tribal areas, organised a national workshop, reviewed evidence from other countries, and looked to organisations working on ground with tribal communities to identify possible solutions, and chart a roadmap for the future.

An annual budget equal to 2.5 GDP per capita basic must be allocated and spent on tribal healthcare because the mainstream mode of modernization brings with it lots of hazards and which affect the tribal people's health because they are not resistant to that situation. Due to their lack of health which affects their daily routine which sends them back to poverty and then poverty causes all the social economic development of tribals like education which is the main key factor of development and knowing their way of living another one is livelihood which majorly affects on tribal way of living.

Follow the Guidelines suggested by the Xaxacommittee on tribal communities of India and National Rehabilitation and resettlement Policy 2007 while resettlement of tribal and monitor the tribal resettlement so that they get benefits if they are resettled in the other habitations.

REFERENCE:

- National Policy On Tribals. (2005).
- <http://www.mcrhrdi.gov.in/87fc/policies/NATIONAL%20POLICY%20ON%20TRIBALS.pdf>
- Marfatia, A. (2018). India's first comprehensive tribal health report India Development Review.
- Hays, J. (2019). Tribal People in India | Facts and Details.
- Understanding the Land Rights of Tribal Populations in Scheduled Areas | Centre for Policy Research. (2019).
- Land alienation and tribal people's rights: A case study of Mayurbhanj district in Orissa. (1999).