



RIGHT TO DEVELOPMENT WITH RESPECT TO TRIBALS IN INDIA

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Abstract: India, is a nation of diversity and have a very rich culture and history. One of the important part of culture and history of India are Tribals. The reference of tribal communities has been made in epics like Ramayana and Mahabharata. The tribals also participated in the independence struggle of India. Freedom fighters like Birsa Munda, Tantya Bhil and many more are still remembered for their resistance against the British Rule. The tribals were exploited during British rule to a great extent and their rights in the forest areas were curtailed making them quite vulnerable and poor. Despite all these hardships and difficult situations, these tribals contributed their part in every field for the struggle and development of India as a nation.

After independence from the British rule, the framers of the Constitution knew that these tribals are in need of comparatively more protection than other citizens of India. So, some provisions for the benefit of tribals were added in provisions of Constitution of India, specially in Part III of the Constitution regarding the rights of the individuals of tribal community as well as Schedule V and Schedule VI, which provided for the specified areas to be designated as Scheduled Areas for the tribals. However, it is also important to note that, these provisions which are made for the benefit of tribals sometimes prove to be discriminating too, as many times due to the provisions of the Constitution, the assimilation of tribals in the society apart from tribal areas become difficult.

In this paper, the author will try to point the right to development of tribals and the difference between the development aspiration of the tribals from the mainstream society, as the tribals too have the right to development. In this paper, the author will also try to harmonize these rights with the other rights of development and to provide a balancing path towards the right to development, as everyone is entitled to right to development. The author will also try to highlight the importance of judiciary and the role of the state in harmonizing these conflict between the rights.

Index Terms: Tribals, Rights, Constitution, Development, Development Projects.

I. MEANING OF DEVELOPMENT

The term development signifies a process of upgradation, in short, the evolution of any particular thing or individual. The term 'development' usually signifies a positive change in a particular entity. According to oxford dictionary, 'development' means "the gradual growth of something so that it becomes more advanced, stronger etc."¹ So, the definition of development has a very wide meaning which can include anything and any meaning can be attributed to the word 'development' according to the individualistic interpretation. It can led to a situation in which, there might be a conflict between individuals regarding the meaning of development as development of a particular individual may not necessarily be the development of others. Some might argue that development can not only be individualistic but can also be community based, but the community in itself is a very large term, a community can not always be uniform, the goals and aspiration of communities also differ, (e.g.) the development goals of a person or community residing in a city might be differ from the person or community residing in the villages, they might have some common goals but there can be different

¹ <https://www.oxfordlearnersdictionaries.com> (last seen 21st February 21, 2024).

development goals also. So, it is important to harmonize the development goals of both the parties. So, in reality, to secure the development goals for every individual, communities or even nations is very difficult task.

II. DEVELOPMENT OF TRIBALS IN INDIA

Tribals account for around 9% of the total population of India and they are one of the least developed community in India.² The tribal community of India were disconnected from the mainstream society since ancient times, usually living in forests and with their distinct culture and traditions.³ Apart from these, these tribals have community oriented society and depend on nature for their livelihood.⁴ So, in a way the social structure of tribals are different from the mainstream society as there is nothing with reference to economic development which is an important factor of development in the mainstream society. So, it can be deduced that the development goals of tribals may be different from the mainstream society.

After independence, the framers of Constitution knew that the condition of tribals are not good. So, many provisions were added for the benefit of tribals in the Constitution of India. Schedule V and Schedule VI of the Constitution of India declares particular areas of India as Scheduled Areas which are predominantly inhabited by the tribals. Apart from these, the Part III of the Constitution of India guarantees Fundamental Rights which benefit tribal population also. To improve the condition of tribals, the Constitution provided for Article 15(4)⁵ and Article 29⁶ to provide benefit in education. Apart from this, Articles 342(1) & (2) of Constitution of India provides for the inclusion or exclusion of tribes of any particular state or union territory as Scheduled Tribes by the President, after consultation of Governor of the particular state, through public notification. Also, some special provisions are made for the tribals of Nagaland, Assam and Manipur under Articles 371(A), 371(B) and 371 of the Constitution of India. The following principles were followed for the development of tribals, also known as “Nehruvian Panchsheel”:

- i. “Tribals should be allowed to develop according to their own genius.”⁷
- ii. “Tribals’ rights in land and forests should be respected.”⁸
- iii. “Tribal teams should be trained to undertake administration and development without too many outsiders being inducted.”⁹
- iv. “Tribal development should be undertaken without disturbing tribal, social and cultural institutions.”¹⁰
- v. “The development index for tribals must be quality of their life and not the money spent.”¹¹

These principles are for the protection of the tribals from exploitation. However, the above-mentioned principles stagnated the assimilation of the tribals with the mainstream society. The culture of tribals became restricted to the scheduled areas and the forests in which they are residing, similarly, the tribals also have no or least knowledge about the society which is beyond the forests and scheduled areas which led to a situation in which the development goals of both the community became quite different.

III. DEVELOPMENT PROJECTS: IMPACT ON TRIBALS

The development projects, like construction of dams, roads, mines and other big infrastructure projects are very important for the development any nation and it require a large amount of capital and land. As the forest areas are very resource rich, it is the first priority for any development project. It is also important to note that these forest areas are mainly inhabited by the tribals. So, the most affected community due to this project is tribal community. According to study performed by the Working Group on the Development and Welfare of Scheduled Tribes in 1993, which has been based on about 110 development projects mentioned that about 50% of total population displaced by the development projects were the tribals.¹² Similarly, according to 29th Report

² Census (2011), Primary Census Abstracts, Registrar General of India, Ministry of Home Affairs, Government of India, available at: <http://www.censusindia.gov.in>, see also, *Kailas & Others v. State of Maharashtra*, (2011) 1 SCC 793.

³ A.K. Pankaj, *Tribes in India*, DEPARTMENT OF SOCIAL WORK INDIRA GANDHI NATIONAL TRIBAL UNIVERSITY REGIONAL CAMPUS MANIPUR 1, 3 (2022), <http://www.igntu.ac.in/eContent/IGNTU-eContent-590220362838-MSW-2-AjeetKumarPankaj-TribesinIndia-1,2.pdf>.

⁴ V. Xaxa, *Tribes as Indigenous People of India*, 34 *Economic and Political Weekly* 3589, 3589 (1999).

⁵ This Article provides that State can make any special provision for the advancement of socially and economically backward classes or for the Scheduled Castes and Scheduled Tribes.

⁶ Article 29(1) & (2) both deals with protection of interests of minorities, with Article 29(2) dealing with, “No citizen shall be denied admission into any educational institution receiving funds from the state, on the basis of religion, race, caste, language or any of them.

⁷ C. Mishra, *Tribal Philosophy and Pandit Nehru*, 74 *ODISHA REVIEW* 100, 106-107 (2017).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² S. Kothari, *Whose Nation? The Displaced as Victims of Development*, 31 *ECONOMIC AND POLITICAL WEEKLY* 1476–1485, 1476 (1996).

of the Commissioner of Scheduled Caste and Tribes¹³, around 40% of displaced populations either by land acquisition or projects which deprive people of their livelihood are the tribals.

The main point here is that, for any development project a considerable number of population is displaced, and majority of them are tribals. The only way to indemnify the tribals is to pay them compensation and as mentioned earlier, the tribals are mainly inclined towards community and cultural rights. The right to development of tribals mainly revolve around land and its resources. So, the best way to compensate them is to give them land in exchange of land. The tribals who are residing in forests since generations have no legitimate proof for the ownership of the land in which they are living, which further complicate the process of compensation to be given to them. However, as per the provisions of Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (LARR Act) and Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, the Government recognized the traditional rights of the tribals in forests while awarding compensation in such cases.¹⁴ The second important problem faced is delay in compensation, in *K. Krishna Reddy v. Spl. Dy. Collector, Land Acqn. Unit II, LMD Karimnagar*¹⁵, it was held that, "...there should not be gap in awarding of compensation, as the value of rupee is dwindling due to inflation, and the amount of compensation that is needed in 1977 is definitely lesser than that to be needed in 1988, and it will not have the same value and the beneficiaries will not be able to rekindle their previous position." Delays like these are very detrimental to the interests of the tribals as they have lost their habitat and have no money also, which compels them to work in employments with very less income. In this way, the position of tribals goes from bad to worse. The equitable distribution of the resources is very important for the process of development which is not happening in this case.

IV. ROLE OF JUDICIARY

The Supreme Court, in "*Nadini Sundar v. State of Chattisgarh*"¹⁶ commented on the logic of development as "the culture of unrestrained selfishness and greed which has been spawned by the modern ideology of development, it is usually justified by stating that unless the rapid and vast exploitation of natural resources take place, a nation cannot compete on the global scale and also cannot accumulate the wealth necessary for the problems like poverty, illiteracy etc. one hand this step taken, can propel the economic development of a particular nation but at the cost of suffering of indigenous population due to displacement and poverty if this development is not sustainable." So, it is important to mention that without the equitable distribution of resources the real definition of development cannot be realized.¹⁷ The persons who are displaced are entitled to rehabilitation. Rehabilitation is for the persons who have been rendered destitute because of a loss of residence or livelihood as a consequence of land acquisition.

However, the Supreme Court in many cases held that, with respect to the policy decisions of the State, the court can't interfere, as these policies are framed after a detailed discussion and after proper weighing financial constraints of the state and it is also based on the opinions of the experts, so it will not be fair if the court will interfere every now and then with respect to the policy decisions taken by the Government as no states have unlimited resources so, it is important for judiciary to respect that constraint.¹⁸ It was also held in another case, "...the State Government cannot be compelled to provide alternate accommodation to the displaced and it is for the authority concerned to consider the desirability and feasibility of providing alternative land considering the facts and circumstances of each case."¹⁹ So, it can be stated that the Supreme Court had shifted the burden to the authorities for the proper rehabilitation of the people who are being displaced. It was also held, "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."²⁰

¹³ 29th Report of the Commissioner of Scheduled Caste and Tribes, GOVERNMENT OF INDIA PRESS, New Delhi (1990).

¹⁴ Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, s. 3, No. 30, Acts of Parliament, 2013 (India).

¹⁵ AIR 1988 SC 2123 (India).

¹⁶ (2011) 7 SCC 547 (India).

¹⁷ C. de Wet, *Economic Development and Population Displacement: Can Everybody Win?*, 36 ECONOMIC AND POLITICAL WEEKLY 4637, 4637 (2001).

¹⁸ State of Punjab v. Ram Lubhaya Bagga, (1998) 4 SCC 117. See also, Ram Singh Vijay Pal Singh v. State of U.P., (2007) 6 SCC 44; Villianur Iyarkkai Padukappu Matyam v. Union of India, (2009) 7 SCC 561 (India).

¹⁹ Chameli Singh v. State of U.P., AIR 1996 SC 1051; and Samatha v. State of A.P., AIR 1997 SC 3297 (India).

²⁰ High Court of Judicature for Rajasthan v. Veena Verma, AIR 2009 SC 2938 (India).

In *State of Kerala v. Peoples Union for Civil Liberties, Kerala State Unit*²¹ the issue was regarding if Article 21 of Constitution of India provides for right to life and liberty, would it bring right of tribals to not to leave their lands as it is against their right to life and liberty. The Court was in the opinion that if this issue is to be read with fundamental rights, then it will be next to impossible to acquire the lands belonging to tribals, so a right of rehabilitation is to be given, it also mentions that “a distinction must be borne between a right of rehabilitation required to be provided when the land of the members of the Scheduled Tribes are acquired vis-a-vis a prohibition imposed upon the State from doing so at all.”

It could be inferred from all these cases that, the Court has followed a restrictive approach in determining the cases related to compensation as according to Court, it the policy decision of the Government to declare a particular area fit for the Development Project and to displace the people from a particular area.

In *Wildlife First and Others v. Ministry of Forest and Environment and Others*²², the illegal settlements made in the Forest areas of various states and it was heard by the Supreme Court and affidavits were filed by the various states regarding the illegal settlements in the forest areas and court ordered the list of illegal settlers in the various states of India which was then provided by the states. The main issue in this case was that it led to the conclusion that almost 11 lakh of people are residing illegally in the forest areas and they are not tribal people or traditional forest dwellers as per the requirement of PESA.

The Court ordered these tribals to be evacuated by four months of the order given, which stirred a huge controversy as the data provided by the state government was very large, and it was alleged that in the garb of this order many tribal people who were living legitimately there will be exploited and forced to leave the place where they are residing for so long. However, after the criticism, the Supreme Court stayed this order as soon as it was found that there can be misuse of this order. This case put a question that still the rights of these people are in grave danger of abuse and they are in constant danger of exploitation, it also put a question mark on the working of the Government agencies, as whether they are performing their duty efficiently or in an impartial way or not.

V. CONCLUDING REMARKS:

In concluding remarks, it can be said that the land alienation is tormenting the tribals for two centuries, the land alienation is also affecting the rights of the tribals and it aggravated their bad condition to a great extent. It is to be noted that land alienation and development projects are like infringement of rights of the tribals. It is to be understood that the development at the cost of the rights of a particular section of the society is not at all development especially if the weak sections of the society are compelled to lose their rights, this is not development but exploitation. Though through various legislations, in the last two decades, the condition of the tribals is slightly improved as at least through the legislations the Government has recognized the rights of the tribals which were not recognized earlier like forest rights, land rights etc., but on going through the practical scenario there is no big relief to them. The main matter of concern here is the time taking procedure to determine compensation, the compensation is valuable only if it is given in time, there are so many procedures for the compensation that the zest of compensation is failed, the time value of money and ever-increasing inflation plays its part and the compensation when been granted becomes too less for the beneficiaries.

The concept of eminent domain is still applicable, even the Courts do not interfere in the policy decision of the Government which was seen in many cases, the insufficient amount of compensation is held as policy decision of the government and the Court refused to interfere to determine the amount of compensation in case of displacement of the tribals.

On the other hand, it is also troublesome for the persons who are being investing in the development projects as in increased the amount of compensation by manifolds which led to further increase in the cost of project to be precise there is three to four time increase in the cost of the project due to hefty amount of compensation. This is making construction of big projects very difficult and exponential increase in the cost of construction. The solution here is not to make a pro-tribal legislation but to find a way in which both the parties are satisfied.²³

²¹ AIR 1998 SC 1703 (India).

²² Writ Petition (Civil) No. 109/2008 (India).

²³ R. Bajaj, *Criticism of the New Land Acquisition Act*, IPLEADERS INTELLIGENT LEGAL SOLUTIONS (June 15, 2014)

<https://blog.ipleaders.in/criticism-of-the-new-land-acquisition-act/>

In ‘*Wildlife First and Others v. Ministry of Forest and Environment and Others*’²⁴ the various states filed affidavits regarding the Scheduled Tribes (STs) and Other Traditional Forest Dwellers (OTFDs) who are living in the forest areas, it is to be noted that at least 0.35 million of STs and OTFDs are to be evacuated from the place where they are living and probably, they may be living there illegally but such a large number of illegal residents is very surprising as well as questionable. So, it can be assumed that the problems of tribal people are still not over even after the amendment in the legislation. The point being explained by the case mentioned above that somehow ways are being found to exploit the tribal people.

However, the LARR Act, 2013 is the legislation which can be said as friendly towards the farmers and the people who are being displaced. It may be argued that the cost of a development project is increased manifolds due to provisions of this act but it is also important to note that previously usually rehabilitation costs were not being added to the total project cost which automatically led to too much reduction in the cost of development.

With all these concluding remarks, it is important to provide for some of the suggestions which can be important, one thing that can be pointed out is that the tribals are one of the most vulnerable sections of the society, it is important to underline the fact that the most important thing for the tribals are their community rights and social rights, the displacement of tribals must be made so that they are not being affected at large. The group displacement must be made so that the tribals are not isolated and if the tribals are together with their community they can also protect their culture.

Secondly, it is also important to note that monetary compensation to the tribals is least advantageous to them, endeavors shall be made to provide them with land-to-land compensation as most of the tribals are not connected to the mainstream society so it is important to note that they might not feel connected to the people they don't know or they can't understand the culture. This process is time-taking and cannot be achieved at an instant. The true victory towards the human rights of tribals is achieved only when there is a humane touch towards the problem of tribals, not only legislation-based approach.

Thirdly, proper training and sensitization programs must also be included to make tribals comfortable with the mainstream society, so that the tribals might understand the way of living of the mainstream society and they may not feel alien if exposed to cities or towns.

Last, but not the least is to provide them proper training for the work, usually tribals know only about farming and works related to farming, if the ambit of work is increased and proper training and education is given then tribals can also do works like welding, electronics repairs and there will be proper participation of tribals in every field.

The zest being that the problem will not be solved with pro-tribal legislations, but a process which harmonizes the interest of all the stakeholders, whether be it tribals or industrialists or Government, it is important that one must stick to the true meaning of development.

²⁴ *Supra* note 22.