



**Implementational Issues in Guaranteeing Human Rights among Adivasis in India: With
Special Reference to Fundamental Rights**

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Abstract

The urban-rural divide in India is a well-known phenomenon. The practice of class divide is another age-long convention. Right from the principles of development to the understanding of fundamental rights as envisioned in the constitution of India, the irony of reaching out to the indigenous masses of the nation remains an irony. The founding fathers of the nation had looked into these banes which had harrowed the adivasis for ages. It was therefore a novel and graceful gesture to safeguard the welfare of the indigenous populace. Since India became republic, the adivasis have been ensured their natural rights to their lands, rituals and to their culture. However, the dreams of attaining them in their entirety in a free nation remain a distant cry. This is mainly because of the absence of awareness among the adivasis. The unaware indigenous India either lacks perception of their rights or they are deprived and manipulated by those who lack the spirit to respect their place in one Unified India. Even in 21st Century, the adivasis do not know what is theirs for asking. In the absence of earnest awareness for their rights, they are so marginalized that everything seems purposeless and pointless. *Why is this truth still a burning issue? Why does indigenous India keep away from fundamental rights activism?* These are some of the challenges which this article attempts to understand. It also highlights some suggestions to create a better world for them.

Key words: Indigenous, Adivasis, Rights, Constitution, Rural, Issues, Awareness

Since 1947, Fundamental Rights and duties have been the main focus of Indian democracy.

The emphasis on three principles of Democracy - Freedom, Equality and Fraternity, has been

seen as the core of our life in independent India. The fortitude of this promise is clearly indicated in the preamble of the constitution wherein lies the spirit of true democracy:

WE, THE PEOPLE OF INDIA having solemnly resolved to constitute India into a ***SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC*** and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith, and worship;

EQUALITY of status and of opportunity; and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do **HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.**

This article attempts to study whether these basic tenets have reached the tribal communities of India in their true form and spirit or they are stuck in the mayhem of implementational issues. The constitution of our nation has provided special measures for the adivasis along with the fundamental rights of the citizens. It was deemed right that the tribes of India be given special impetus to push them forward at par with the rest of the republic of India. Articles 341 and 342 have specifically defined the status of the tribes of India. These tribes were officially announced as ‘*scheduled*’ with the order in 1950. With this important step, the tribes of India officially found their place in the new republic. We even have a National Commission for Scheduled Tribes to especially supervise the progress of various tribal related issues. The official webpage of NCST [National Commission for Scheduled Tribes] states ‘*The framers of the Constitution took note of the fact that certain communities in the country were suffering from extreme social, educational and economic backwardness arising out of age-old practice of untouchability and certain others on account of this primitive agricultural practices, lack of infrastructure facilities and geographical isolation, and who need special consideration for safeguarding their interests and for their accelerated socio-economic development. These communities were notified as Scheduled Castes and Scheduled Tribes as per provisions contained in Clause 1 of Articles 341 and 342 of the Constitution respectively.*

Geographically, most of the Tribal communities live in the hilly terrains where they are closer to Nature and its resources. They have a very secluded lifestyle which is generally controlled by their own culture and beliefs. Agriculture is their main means of sustenance. With some lands given to them since independence, they have managed to pull through to twenty first century so far. As proud citizens of a free nation, these communities have been bravely facing the challenges of postmodern times despite many issues surrounding them. The world around them is rapidly changing its perspectives and its vision. The truth of their existence and their normal evolution has largely depended on the consciousness of being there. They have withstood all kinds of atrocities and apathy to step into 21st century. Scheduled as they are in a nation, the fact of their 'being' and the challenges of their 'becoming' have always been issues of great concerns.

It's a long journey already from 1947-1950. Numerous changes have been witnessed at all fronts of the nation. But, things haven't changed much as expected for indigenous groups. The isolation and marginalization is still a hallmark of their existence. In the last few decades, with the arrival of liberalization and free market system, our nation seems to have shifted its focus on consciously designing the course of urbanization to meet the challenges of fast evolving world. With robust planning on Smart Cities and corporatization of our life, we have positively announced the advent of Digital India. Amidst all this, however, the scheduled areas still cry for enhanced attention and care. The divide between scheduled areas and the rest of the country in terms of social well being, justice and equality is far from over. The dichotomy of Adivasis and the rest has created more problems than solutions. It has formed existential issues and raised more doubts than trust among the indigenous lot. The presence of human rights and opportunities for better life as guaranteed in the Constitution of India hasn't really worked to an expected degree and satisfaction. The relevance of fundamental rights among these masses is slowly getting diluted in the fervor of new age India. The Adivasis in general do not know the weight of these rights in their daily life and thus fail to avail these specific and exclusive provisions of the Constitution.

Let us now spell out the six basic constitutional rights of every citizen in our country. Articles 12 to 35 of Indian constitution cover the fundamental rights indicating equality in all spheres of life:

1. **Right to Equality:** This right declares that all citizens are equal irrespective of caste, creed, colour and gender. It means that the nation treats everyone equally in matters of life.
2. **Right to Freedom:** This right articulates that citizens of the nation are free to live in all manners of life free from all kinds of fears.
3. **Right against Exploitation:** The country ensures through this right to be safe from exploitation of any kind. Independence in 1947 meant freedom from the dark times of subjugation of British Colonialism. No one will force anyone to work under any compulsion. Furthermore, all will be respectfully paid for one's labour and service.
4. **Right to Freedom of Religion:** India is a diverse country with many religions and communities professing faith in various dogmas and beliefs. The constitution states that everyone is free to practice one's own religion anywhere in the country free from any restriction.
5. **Cultural and Educational Rights:** We are proud to be in multilingual vibrant with beauty of multiculturalism. Not only do we speak different languages but we also have diverse cultural backgrounds. Hence, there is a provision in our constitution to guarantee cultural and educational rights to protect and preserve all languages and cultures through proper educational system.
6. **Right to Constitutional Remedies:** Our Constitution assures us equal opportunities to guard ourselves in matters of legal dynamics of our nation. We are well protected by this right in the court of law. All legal developments are framed to ensure equality for all.

These rights constitute an ideal set of principles around Freedom, Equality and Fraternity. Not only do they allow the people to enjoy freedom, peace and harmony but they also give ample opportunities to grow as citizens. Our country is the largest democracy in the world. While general populace is well aware of its rights due to the presence of good education and constitutional activism, the scheduled masses face a range of problems in interpreting these fundamental rights in their everyday life.

These challenges are briefly discussed here one by one. The Longstanding problem in the realization of right to equality is the deeply rooted class system of our society. Since independence, the privileged classes have developed fast in the ladder of social stratification and this has led to their fast and unprompted enculturation. The boundary between go-getters and non-starters and the difference between townsfolk and countryside villagers are slowly becoming a non-issue in the presence of abundant possibilities to wipe off these disparities. However, the earnest interest to

guarantee equality to the tribes of India hasn't sunk deep yet. The Adivasis were poor and shorn of equal opportunities to shine and rise and they still grope in the blind alley of inequality and identity crisis. In spite of the fact that our nation has framed some measures to assist them, the life of a normal Adivasi continues to brave all sorts of problems. The philosophy of an egalitarian society is what Adivasis practise in their own communities but when it comes to converting the same into larger context of national scenario they feel alienated and shunned. Having remained as exploited and neglected for many years, the present Adivasis feel betrayed that things should have moved at a quicker pace for them if not the quickest. The unwillingness from the rest of the nation to assure much needed mutual trust and respect has also pained them for long.

As such, the duplicity of talk about right to equality lets them get more distanced and isolated. Besides, the lack of awareness among common masses of the nation to understand the distinctive reality of the Adivasis adds more roadblocks. It is a truth that Adivasis have been looking for kinder eyes and have been expecting to see themselves at par with others. The relevance and parity are very important matters of life. In this context, it is agonizing to witness how the term 'Adivasi' or ST (Scheduled Tribe) gets misinterpreted to a denigrating categorization. The Adivasis are belittled and listed at the bottom in the stratified and classified society of our country. The separate SC/ST Act 1989 has not been successful in creating better vision and empathy among the common citizens.

Therefore, a conscious approach has to be taken to bridge this gap between the general masses and the indigenous lot. Ensuring merely economic wellbeing through several reservations in jobs will not suffice to give them a pride of place in society. The subtle sarcasm and uncanny references to the term 'Adivasis' must stop to begin the process of homogeny and equivalence. The relevance of tribal population must be seen as a thing of beauty and delight or else they will continue to be niggled and sneered upon by the others.

The tribal areas must not only be developed at par with the other regions of the nations but they must also be made centers of cultural evolution and social researches. Year after year, the various data suggests that India's tribal population is worst off in terms of income, health, education, nutrition, infrastructure and governance. Ironically, for various developmental processes, the government selects those regions which are inhabited mainly by tribals. It enforces unwanted displacement and impassiveness among the unfortunate tribals who are either illiterate or gullible to stage any campaign at a wider scale. Their cultural and historical bond with the land gets severed and this again swings more problems of unwantedness and hostility. This makes them foreign in their own lands. Equality essentially means mutual respect for all in every aspect of life and herein lies the liability of the nation to ensure a peaceful co-existence.

We have noticed a paradox that most of the backward areas in the country are inhabited by the Adivasis. In the state of Jharkhand, while the city districts have moved forward to better days; the rural districts with majority of indigenous population have been lagging behind for years. What are those issues which prevent these areas from witnessing progress? Are these issues so difficult to tackle that we just have to close all gates of development on the Adivasis living in these scheduled areas? People often refer to land laws as the sole reason for backwardness. But, we also forget that there are new methods like sustainable development which seeks to bring in growth without disturbing the existing laws on the ownership of lands. Certainly, much time has elapsed talking and discussing over these issues and it is time we implemented those which directly help the scheduled areas and their population

The second challenge in ensuring the right to freedom among the indigenous populace is the lack of understanding tribal consciousness. Perception of freedom in tribal way of life is different from that of the general masses. It is more natural and innate than manual and mechanical. Spontaneity defines freedom among them. There are no specific written sets of laws; rather there are traditions and rituals which continue to pass on generations after generations. The Adivasis get entangled amidst the modern meanings of freedom. Similarly, the educated tribals find it difficult to acculturate and espouse the newer sense of freedom when it comes to living one's daily life. The indigenous have had many moments of rebellions when their freedom was at stake. Any outside sway or coercion is immediately rejected as the tribal apprehension of freedom disallows foreign elements in their life. Freedom to them means boundless life.

This is why we often come across many instances of protests and disapproval for legislative and constitutional systems. The indigenous believe in their own manners of life which is bereft of legislative impositions and mannerisms. After India became republic, adaptation to a new life was a challenge. The first prime minister of India, Jawahar Lal Nehru, was fascinated by the spontaneity of tribal culture and their capacity of joy and heroism in spite of their appalling poverty, destitution, and ignorance. As such, to ensure all kinds of freedom among tribal population, one needs to first see through those nuances of their life which make them the way they have been for ages. Their distinctiveness needs better interpretation and their assimilation of national consciousness requires positive environment of sympathy and fraternity.

The next challenge in availing the right against exploitation to the tribal masses is perhaps the biggest of all. For years, the well heeled people have exploited this innocent population. The extensive and long use of forced labour and enforcement of displacement are common sights in their areas. We have examples in the history of Chotanagpur and Santhal regions. Birsa Munda came out

as the fine leader who openly voiced against all sorts of exploitation. His rebellion against exploitation was already preceded by tribal uprisings - Kol Insurrection (1830-33) and Santhal rebellion (1855). These uprisings were against encroachment of land, labour and livelihood of tribal communities. The primary reason for these uprisings was the imposition of the Permanent Settlement Act (1793) which had alienated the tribal communities from the land which they cultivated. This introduction of Zamindari had also brought the hitherto unknown practices like forced labour and several arbitrary taxes and rents levied upon the tribal peasantry.

So the question nevertheless stands - Have those exploitations ceased and are the tribals free from these dark truths? The answers to these important questions are not easy to come by because despite many actions to check evil practices, things haven't changed for good. Exploitations have changed hands and colours. So, the cognizance of the very fact of exploitation must be carefully taken up. It is twenty first century and the Adivasis haven't been able to free themselves from the shackles of exploitation. Due to economic backwardness, human trafficking has been rampant. Migration to other regions of the nation is a well known phenomenon. The NCRB (The National Crime Records Bureau) data released on Nov. 30 2017 showed just over 60 percent of the 23,117 victims rescued were children. Women and girls accounted for 55 percent. Such mindless trafficking of tribal people has destroyed many families and their displacement from their lands has been permanent.

So what stops the indigenous people from being alert and awake in realizing the right against exploitation? The answer is not far to seek- severe poverty. Clearly, the nation needs to get them rid of grave poverty which has been a constant problem in their agrarian life. Sustainable development has not been made easily available to them. As such, seasonal migrations to towns and cities have become normal affair. Besides, they are considered easy prey to human traffickers and cheap labour to middlemen. What's worse, one does not easy access to any agency for redressals when cornered and tortured. Furthermore, in the absence of solid approach from the government, the tribal masses get lost in the evils of cities and never return to their native land.

The fourth threat that weakens the right to Freedom of Religion - is the presence of predetermined notions about religious beliefs and practices. Religion is a very sensitive matter in our nation. One is judged regularly on the basis of one's profession of faith. Sadly, religious bigotry is ever increasing in an age which is seeking to incorporate digitalization in each aspect of our normal life. In such scenario, the tribals constantly struggle to protect their own rituals and beliefs. Years have passed in getting a proper identification for their faith. Lately, the indigenous masses of our country have drawn major attention to their set of values through campaigns to get themselves a separate religion. The battle for it has undergone many challenges and it has borne the brunt of apathy from

the nation. Why has it been so difficult to get an entitlement to practise their own religion? Why do we not deliberate on this important subject on national platforms? What stops the governments to address this topic? We are the live witness to non-commitment from those responsible to ascertain the definition of religion. The unrest among the Adivasis to get separate religion is palpable much more than ever. This has created a very unpleasant scene among us as all. What's worse, politicization of the matter has generated misgivings that tribal religion will always remain mere an election promise.

Secularism in India is a beautiful part of our constitution. We are one nation that generates appreciation from the people world over. But, does this secularism accept the fact of religion for Adivasis? While adjudicating a case [**Orissa Mining Corporation Ltd vs Ministry Of Environment & Forest on 18 April, 2013**] on mining in Niyamgiri hills in Odisha, the Supreme Court rejected the contention of the state government of Odisha that the Forest Rights Act deals with individual and community rights of the tribals and does not make any reference to the religious or spiritual rights protected under the Constitution. It further said that "Religious freedom guaranteed to Scheduled Tribes (STs) and the Traditional Forest Dwellers (TFDs) under Articles 25 and 26 of the Constitution is intended to be a guide to a community of life and social demands. Furthermore, "The above mentioned Articles guarantee them the right to practice and propagate not only matters of faith or belief, but all those rituals and observations which are regarded as integral part of their religion. Such orders from the bench of Supreme Court are heartening gestures but more needs to be done in guaranteeing respectful and permanent recognition to a separate identity to tribal faith.

The fifth barrier which creates problems in the guarantee of Cultural and Educational Rights is the absence of proper understanding of tribal culture and their native pedagogy. The right to education and preservation of culture is a wonderful foundation to maintain a true tribal identity. Culture is 'a priori' among the native Adivasis. It is not something that is naturalized by external dominance. Rather, an historical process is essentially involved in defining the traits of a distinct community as a tribe. This development is more of descent than ascent. It is passed on from elders to the young over the ages. It has defined knowledge systems that have external and internal framework that is taught in specific cultural contexts and places. As such, our modern educational pedagogy hasn't reached their environs to get them in big number to schools of learning.

The 2011 Census data [Registrar General of India] indicate that educational development of the STs is quite uneven among different states. The data indicate that some states with higher concentration of tribal population have been doing extremely well. They are Mizoram (91.5%), Nagaland (80.0%),

Manipur (77.4%), and Meghalaya (74.5%). Whereas some states with more number of tribal habitations continue to perform very low. They are Jharkhand (57.1%), Madhya Pradesh (50.6%), Orissa (52.2%), Rajasthan (52.2%), and Andhra Pradesh (49.2%)

Quality education means inclusion of tribal culture and history. The skills taught must have relevance in tribal ways of life. Enhanced interest must be generated among the Adivasis to get higher education. Despite the availability of instructions in native languages in primary schools, the expected growth in the school-goers hasn't been exceptional. In all this, we have to initiate general responses from all indigenous masses in tandem with the policies of the government to research on tribal epistemology.

The Tribal identity is basically defined by their native culture. The uniqueness of their culture is inherent and has weathered all storms. Hence, the protection of culture is a prime concern among them. They are very possessive and protective of their culture. As such, the provision of constitutional right to culture is a big boon for the indigenous people to assert their existence. Their relevance in the nation is deeply constituted by their cultural habits and beliefs. The influence of modern culture has certainly impacted the tribal life. There is constant struggle to conserve the spirit of their culture. They recognize that they can endure the onslaught of external influences. The impending threats in forms of its youth being easily waylaid by modern changes are always there but they also know that they have their tribal consciousness and spirit for inspiration and hope.

It hasn't been easy for the Adivasis to withstand the allures of change. Self-identification keeps challenging them. The tribes in India in order to fight their own battles of assertion and identification face dual problems of Assimilation and Preservation. On one hand, they want to share the spirit of the nation on all fronts and on the other hand they naturally wish to preserve their identity. UN Declaration on the Rights of Indigenous Peoples '*The UN Declaration on the Rights of Indigenous Peoples* identifies' "indigenous peoples" as being the beneficiaries of the rights contained in the Declaration, without defining the term. The preamble of the Declaration, however, makes reference to certain characteristics normally attributed to indigenous peoples, such as their distinctiveness, dispossession of lands, territories and natural resources, historical and pre-colonial presence in certain territories, cultural and linguistic characteristics, and political and legal marginalization. Also, article 33, para.1, states that: Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live. Getting all these vibes and spirit of the declaration in real life of indigenous people of India will be a huge step in guaranteeing the right to culture,

Now let us discuss the sixth fundamental right: The right to Constitutional Remedies. Justice is a basic human right. To be human means to have justice. Hans-Dietrich Genscher, the German statesman once said that dignity, the desire for freedom and justice, is inherent in every human being. Our constitution has therefore clearly intended to ensure Justice for all. Special Act has been constituted to prevent atrocities against scheduled tribes in 1989. However, even to this day, atrocities committed against the Adivasis go on amassing. It just indicates how others view the life of an Adivasi. The general masses haven't been genuinely kind enough in helping the Adivasis in either climbing the social order or in preserving their identity. There are well written constitutional remedies but they are outside the reach of ordinary and poor Adivasis. Very few come forward in lending a helping hand in this regard. The indigenous masses in interiors of India are gullible and become victims of prevalent social turmoil. Besides being ill represented for legal matters, their voices have been subdued. Poverty and illiteracy add more problems to this trial of availing judicial remedy to address their concerns. Speaking at the national-level meet of para legal volunteers, organized by National Legal Services Authority (NALSA), New Delhi in October 2013, Chief Justice of India P Sathasivam said, "Illiteracy, social backwardness, physical, geographical, social and psychological distancing and even mental incapacity act as real barriers to the common people for getting access to the seats of justice. The result is that they become silent sufferers even while they face abject denial of justice."

Who do you hold responsible for such acts of missing justice? How do you remedy the cases of injustice among the Adivasis? The Adivasis in the absence of judicial activism continue to experience languor in the state of helplessness. Taking up legal causes and fighting them off isn't a pleasant act for them because they have known for years now that they would be ill represented. Failing to initiate any protest or legal procedure, they either surrender to many injustices happening around them or they just learn to ignore them. In this context, let us recall the words of Jaipal Singh Munda, the esteemed tribal member to the Constituent Assembly, who stated in his first speech (1946) on Objectives Resolution laid down by Jawaharlal Nehru,

"Sir, I am proud to be a *Jungli*, that is the name by which we are known in my part of the country. As a *jungli*, as an *Adibasi*, I am not expected to understand the legal intricacies of the Resolution. But my common sense tells me, the common sense of my people tells me that every one of us should march in that road of freedom and fight together. Sir, if there is any group of Indian people that has been shabbily treated it is my people. They have been disgracefully treated, neglected for the last 6,000 years. This Resolution is not going to teach *Adibasis* democracy. You cannot

teach democracy to the tribal people; you have to learn democratic ways from them. They are the most democratic people on earth”.

These words sufficiently echo the core of the problem we should definitely look into. The 75 years of independence is enough time to have got rid of many challenges of the Adivasis but as Jaipal Singh said that democracy must be learned the way Adivasis live.

Having pointed out these challenges, we must however accept that things are gradually changing with more conscious government agencies. A great many government agencies and NGOs are putting in great efforts to create a positive environment in their lands. Different schemes have been implemented to give them jobs, to assure universal education, to eliminate untouchability, to ensure all kinds of equality among village folks. But the journey to bring equality in spheres of life among common masses is a long one to cover.

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