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## **Human Rights of Indigenous People and Remedies for Protection**

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### **Introduction**

Adivasis are indigenous people as they are historically disadvantaged and backward. They are known by different names such as nation people, tribals, vanavasis, Girijans etc. They are also called aboriginals because they were dwelling on their lands before settlers or outsiders came from elsewhere to settle there. They are inhabited a geographical region when outsiders having different cultures or ethnic origins arrived there. The outsiders became a dominant group through different measures like conquest, occupation, settlement etc. They are different from outsiders from the different point of view like complexion, language, faith, food habit, and a host of other things. The United Nations Organizations in its report that indigenous communities, people and nations are those which having a historical continuity with pre-invasion and pre-colonial societies that in their territories consider themselves distinct from other sectors of societies. They want to establish their ethnic identity. The cultural patterns, social institutions and legal systems lead to their future generations. The impact on exploitation, marginalisation, assimilation, repression, torture and murder on aboriginals and they are excluded from the decision making process of the state. Their rights are violated openly and subjected to inhuman treatments of various kinds. Their number is in between 300-500 million worldwide. The occupation ranges from traditional hunter-gatherers to farmers or marginal farmers to legal scholars. The United Nations Organizations and its sister concern like Human Rights Commission have played an important role for the protection and promote the rights have been engaged.

The role of international organizations, civil society members and national governments by providing several measures as they face serious threats on existence as human beings. Governments across the world pay a little attention to values, traditions and human rights of aboriginal people. They are mostly illiterate, unemployed and lack basic necessities to live in a standard human life. They are discriminated in schools and exploited in workplace as the national governments deny aboriginals to live and manage their traditional lands. Different policies and programmes have been implemented by the governments across the globe in order to exploit land occupied by aboriginal.

### **II. Human Rights of indigenous people**

Indigenous communities, people and nations are those which having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories considered themselves distinct from other sectors societies now prevailing in these territories or parts of them. They are tribal, aboriginals, native people and first nation people. They were living on their lands before outside settlers came to their place of inhabitation. The new arrivals in later days became the dominant group through conquest, occupation settlement or by other means. "Indigenous people have a set of specific rights based on their historical ties to a particular territory and their cultural or historical distinctiveness from other populations that are often politically dominant."

### **III. Present condition of the Indigenous people**

It is estimated that there are more than 370 million indigenous people spread across 70 countries worldwide. They embody and nurture 80% of world's cultural and biological diversity and occupy 20% of the world's land surface. They are considered world's most disadvantaged group. Being they are exploited, tortured, assimilated, threatened, marginalized, repressed and murdered whenever they stand by their rights, demand for due share from the national economy. Due to the impact of alien culture and religious practices, their traditional religious practices, language, culture, clothing, eating habit and livelihood pattern are at the verge of destruction. They have been exploited to a great extent by the outsiders. They are found in different countries of all continents of the world. Generally, they are hunter gatherers and marginal farmers. Much diversity is found between indigenous people of different groups. They have become conscious of their rights and are striving hard to retain their dignity. They are aware of their exploitation and negligence. In the past they were enslaved, tortured and sold as raw-materials in the international markets. In the past, they were victimized and subjected to genocide. All over the world, three things i.e., land, forest and water bodies are play important role for the indigenous people. There are

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many diversities in between groups of indigenous people they share a common problem i.e., exploitation and injustice. Colonialism and imperialism dismantled their identity and dignity, the right to self-determination.

#### **IV. Role of International Initiatives for the realization of Human Rights by the indigenous people**

Universal Declaration of Human Rights guarantees the fundamental rights of all human beings, due to faulty government policies across states values and traditions of human rights of indigenous people get lip service by states. Values and traditions human rights policy of assimilation is dangerous and detrimental to the cultures and traditions of aboriginal people. Literacy and unemployment rate are high among the indigenous people as they are discriminated in schools, workplace and government offices due to their racial background.

The UN declaration on the rights of indigenous people was adopted by the UN General Assembly in 2007. It advocates standard for the treatment of indigenous people and that is expected to help in eliminating discriminations and maltreatments labeled against aboriginals. The premises of this Declaration are –

(a)The indigenous people should have rights to culture, identity, language, employment, health, education etc. collectively and individually.

(b)They should have right to maintain and strengthen their own institutions, culture and traditions including free to pursue their own development at par with their own needs and aspirations.

(c)Indigenous people's discrimination is to be prohibited at any cost.

(d)They should have effectively participate in all matters that concern them and their right to remain distinct and to pursue their own visions of economic and social development.

#### **V. Aboriginals in India**

Indigenous people constitute 8.6% of India's population as per 2011 census. They live in the states like Andhra Pradesh, Chhatisgarh, Gujarat, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, West Bengal, North-Eastern states and the Andaman and Nicobar Islands. Tribals or adivasis generally live in cloistered, exclusive, remote and inhospitable areas like hills and forests. Tribal societies tend to be egalitarian as there was community ownership of land. Tribals do not believe in the system of caste The landlords tried to extract the maximum economic benefits which helped in the rampant exploitation of tribals. The economic and educational upliftment of tribals in India is not satisfactory. They lack a basic standard of living.

#### **VI. Aboriginals in Odisha**

Scheduled Tribe constitutes nearly 22.21% of the total population of Orissa. About sixty-two communities have been designated as Scheduled Tribes in Odisha out of which 13 have been recognized as Primitive Tribal Groups (PTGs). The main tribes are Kondhs, Gonds, Santals, Mundas, Oraons, Bhattadas, Bhuymij, Saoras, and Parajas as these communities are mainly dependent on shifting cultivation.

#### **VII. Living conditions of Tribal Community**

Tribes are separate from Non-Tribes and other categories of people living in a same land in India. The British conducted a detailed enumeration of Tribal in the year 1930. Tribes were distinguished from caste, on the basis of their culture and ecological conditions. They have distinct psychological make up for the enjoying the life. Most particularly, they enjoy their marital life. The large tribes of India are living in villages. By their nature they are simple and traditional. There is vast diversity among the tribes in terms of habitation, ecology, economic status, language, religion and contacts with the outside world many tribes live in their own world. Many of them don't know the taste of democracy and education. However, tribals have their own characteristics. They believe in kinship and keep little value on surplus accumulation of wealth and makes trading.

They live in a commutation society. Mostly they engaged themselves in the agriculture and some rely on the forest products. Some other live with some allied occupations. They have their cultural autonomy. As already stated, they believe in kinship. For them kinship is not simply a principle of social organization, it is also a principle of inheritance, division of labour and distribution of power and privileges. They possess morality, religious belief world view of their own. They have their own judicious opinions in the matter of any disputes arising out of marital relation, inheritance or communal difference.

They have been exploited economically, socially and otherwise by the non-tribal, living in the vicinity. Since the regime of British rule, tribal have revolted against their exploitation. It is stated that, "Tribal

exclusiveness, intact Tribal solidarity and tribal consciousness on the one hand and the dependence upon towns and cities, administration and mobilization against their exploitation on the other, have existed simultaneously among the tribal people. Even the revival of tribal aboriginality has been expressed in the form of an instrument of protest against the external intrusions and imposition of rules and regulations.” Tribals are exploited and facing multifarious problems out of modernization. The situation is well realized by the founding father of the constitution. Thus they have made special provision for the Scheduled Tribes.

### **VIII. Tribal Identity in the Constitution, Right to equality and right of tribal**

Article 14 of the Indian Constitution contains the general provision of equality before law. Thus it became the responsibility of the state to maintain balance and end inequality. The phrases “equality before law” and “equal protection of law” have been used in the Universal Declaration of Human Rights and many countries guarantee them through their respective constitutional law. The right to sue and be sued, to prosecute and be prosecuted for the same kind of action should be same for all citizens and understanding without distinctions of race, religion, wealth, social status or political influence.” It is to be noted that, “equality before law” ensures, equal law to be made by the state and without applying any discriminatory treatment. It strikes out arbitrariness and makes the law just, fair and reasonable. The phrase supposes the law made by the state should be equal.

Equality doesn’t mean mere legal equality, but it means social equality. Right to equality enshrined in the constitution is neither merely a formal right nor a vacuous declaration. It is a positive right and the state is under an obligation to undertake measures to make it real and effectual. A mere declaration of the fundamental right can’t make unequal equal.

The equal protection of the laws guaranteed by the Art. 14 do not mean that, all laws must be general in character. It does not imply to mean that same law should apply to all persons. It never proposed to mean that every law must have universal application, in all circumstances. The varying needs of different classes of persons often require separate treatment. The nature of our society is as such, there should be different laws for different categories of people, and particularly those are living in disadvantaged condition of life.

To achieve social welfare objective states have made innumerable legislations and geared up social reformative measures for uplifting the socio-economic, socio-cultural development. The rapid social transformation and profusion of other progressive changes are taking place, yet many people living in tribal community, suffering from social ostracism and leading an undignified social status, because they do live with their traditional practices and old social custom.

### **IX. Doctrine of Equality aims for egalitarian society:-**

The doctrine of equality as envisioned in the constitution supposes an egalitarian society, where the quantum of inequalities can be minimized. Thus in *Minerva Mill’s* case the apex court held that, the equality clause of Indian constitution does not speak of mere formal equality before the law but embodies the concept of real and substantive equality which strikes at the inequalities arising on account of vast social and economic differentiation and is thus consequently an essential ingredient of social and economic Justice.

### **X. Distributive Justice:-**

Social Justice relates to those rights, which an individual legitimately expects from the society. An individual shares in common with society those minimum right, without which his life goal remained unaccomplished. The concept of social justice means to distributive justice. It sweeps the all objectives of removing inequalities in socio-cultural and socio-economic condition of life. It means to achieve social goal and affording equal opportunities to all citizens in the social front. The state should take action for the people who are really unequal in their wealth, health, education, social status. The state have positive role to develop plans, adopt schemes, create new devices and prepare designs for the purpose of achieving welfare. It is to be noted that the courts have taken very positive steps and given the status of fundamental to certain directive principles of state policy. If states failed to take proper action, the constitutional courts can develop new doctrine or create grand norms to bridge inequality. To remove inequalities state must take some affirmative action to root out social evils and elevate the weak and disadvantaged class of people.

### **XXI. Tribal Peoples and Victims of Developments:-**

There are stringent legislations against the institution of dowry system. Despite these developments tribal peoples are victims of the present laws. Lack of modern and social consciousness make the situation worse. Often functional dispute originate from alliances based on customary practices and religious believes

It is always change and based on social order. The essential feature of life is transformed, because of co-existence of stability and change in the society and culture. The synthesis of Hindu, Christian and Muslim custom on the fields of marriage, inheritance and succession, is clearly marked today.

#### **XXII. Quest for Equality and betterment:-**

Scheduled Tribes in India are varied in terms of their socio-cultural, political and economic development. “Some follow Hinduism, some follow Islam and some people are in transitional phase, while others are adhering to their old life styles”. The constitution of India envisages different schemes and provisions for their upliftment. The quest for their equality and betterment can be well conceived from the languages of the constitution.

Though Art. 14 envisage equality before law and equal protection of law, Art. 15 (4) provides that, “Nothing in this Article or in clause (2) of Art. 29 shall prevent the state from making any special provision for the advancement of any socially and educationally backward classes of citizens or for Scheduled Castes and the Scheduled Tribes.” But in practice there is vast difference.

Article 46 of Indian Constitution provides that, “The state shall promote with special care the educational and economic interests of the weaker section of people and in particular of the scheduled castes and the Scheduled Tribes and shall protect them from social injustice and all forms of exploitation.”

#### **XXIII. Administration of Scheduled Area and Tribal Areas:-**

(1)The provision of the fifth schedule shall apply to the administration and control of the Scheduled Area. And the Schedule Tribes in any state .....other than (the state of Assam, Meghalaya, Tripura and Mizoram).

(2)The provisions of the sixth schedule shall apply to the administration of the tribal areas in (the state of Assam, Meghalaya, Tripura and Mizoram).

Similarly Art. 244 (A) envisages for the formation of an autonomous state comprising certain tribal area.

#### **XXIV. Special Provision for Representation:-**

Art.330 says- (1) Seats shall be reserved in the house of the people. The Schedule Tribes except the Scheduled Tribes in the autonomous district of Assam and (c) the S.T. in the autonomous District of Assam. Similarly, Art.332 provides for the reservation of seats in the Legislative Assembly in the states.

It is to be remembered that adequate representation makes the situation simple and progressive. Through representation one can be able to express himself. One can put-forth one’s demand through such representation. The number of seats reserved in any state or union territory for such castes and tribes are based on the population basis. The expression population for the purpose of the Article means the population ascertained on the basis of census.

The apex court explained the purpose of reservation constituencies. It states that “reservation of constituencies is to ensure representation in the legislatures to such tribes and castes which are deemed to require special efforts for their upliftment. The person seeking election from such constituencies must be the true representatives of that tribe.”

#### **XXV. Constitutional Amendments to ensure Social Equality:-**

To make the provision most effective following amendments have been made from time to time. The 51<sup>st</sup> Amendment 1984 makes it clear that reservation of seats in Assam Assembly for Schedule Tribes will be made from the whole state except the autonomous district of Assam.

In the 58<sup>th</sup> Constitutional Amendment it has been amended in Art. 332 and the reservation of seats provided for “The Schedule Tribes in Arunachal Pradesh, Meghalaya, Mizoram and Nagaland.” It provides that if all the seats in the legislative Assembly of those states in existence on the date of coming into force the amendment, where held by members of the Schedule Tribes, all the seats except one shall be reserved for the schedule tribes.”

Initially, under the provision of Art.334 the reservation for these classes of persons was made for ten years from the commencements of the constitution. Since then, this duration has been extended from time to time. Art. 330 provides explanation that – “In this Article and in Article 332, the expression “population” means the population as ascertained at the last preceding census of which the relevant figures have been published.

Provided that the reference in this explanation to the last preceding census of which the relevant figures have been published shall until the relevant figures for the first census taken after the year (2026) have been published, be construed as a reference to the 2001 census.

#### **XXVI. Creation of National Commission for S.T.:-**

The Constitutional 65<sup>th</sup> Amendment Act 1990 has amended Art.338 of the Constitution and had established National Commission for Schedule Tribes in Place of Special offer.

Again it is to be noted that, by virtue of 89<sup>th</sup> Amendment Act 2003, Art.338 A has been substituted. As per Art.338A, National Commission for Schedule Tribes shall be appointed by the President of India, by warrant under his hand and seal. The appointment of the commission may regulate various matters and enjoy various powers.

According to clause (5) of Article 338A, the Commission can discharge following power and responsibility:-

(a) To investigate and monitor all matter relating to the safeguards provided for the Schedule Tribes under the constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards.

(b) To enquire into special complaints with respect to the deprivation of rights and safeguards of the Schedule Tribes.

(c) To participate and advice on the planning process of socio-economic development of the Schedule Tribes and to evaluate the progress of their development under the union or any state.

(d) To present to the President, annually and such other times as the commission may deem fit, reports upon the working of those safeguards and

(e) To discharge such other functions in relation to the protection, welfare and development and advancement of the Schedule Tribes as the President may subject to the provisions of any law made by Parliament by rule specify.

The basic postulate of such provision is to achieve welfare, protection, development and advancement of all facts of tribal life. The life as enshrined in Article 21 of the Indian Constitution and new feathers attached to it through judicial interpretation. But issues relating to tribal marriage in particular remain far behind for consideration. Because, the poverty related issues have not yet achieved remarkable result. Neither the community nor the society has taken note of the marriage related facts for consideration causing serious concern for many disadvantaged tribal women and children. Though there are no customary practices of bigamy among tribal, yet there are cases of bigamy. Accepting widow, wife of brother and keeping prevalent. In the absence of statutory law and unawareness, people are to accept sufferings without any fault in their part.

#### **XXVII. Offshoot of Wedlock Suffers:-**

Offshoot of the wedlock with a tribal woman and a non-tribal man often face trouble. Tribal are not secluded from non-tribal. When a non-tribal poor man accepts a tribal woman, their children holds to be as a non-tribal identity. The reservation criteria de-linked. In Anjana Kumari case the apex court held that, the condition precedent for granting tribe certificate being that one must suffer disabilities where from one belongs. The progeny of the wedlock of a tribal woman married to a non-tribal husband can't claim Schedule Tribe status. In case of poverty stricken family it became a curse to keep the constitutional benefit. If the situation is reverse the provision could be different. These conditions of social facts need proper consideration and must be well set in terms of constitutional mandate. In the absence of proper legislation in the matter of matrimonial relation, tribal people are suffering a lot.

#### **XXVIII. Welfare of Schedule Tribe and Administration:-**

Art. 339 empower President to appoint Commission to report on the matter of administration of Schedule Areas. The purpose of such administration is welfare of the Schedule Tribes. The executive power of the union shall extend to give direction to state as to drawing up and execution of schemes for the development and welfare of the Scheduled Tribes in the state.

#### **XIX. Legal Protection for Scheduled Tribes:-**

Art. 342, empowers President of India, to make public notification in consultation with the Governor of the state. Such declaration provide additional protection to the members of Scheduled Tribes having regard to social and educational backwardness from which they suffer for some considerable length of time. This to extend constitutional privilege meant for the benefit of Scheduled Tribes of the state and union territories as the case may be. The Parliament can by law include in or exclude from the list of

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S.T.s, specified in the notification, any tribe but saved for limited purpose is deemed to reach the benefit of the constitution only. The President's declaration in the matter is conclusive subject to an amendment under 342 (2) of the constitution. Jurisdiction of the civil court to cognizance of and given a declaration stands to prohibit by necessary implication. The language and terms of Article 342 are laudable. But the mechanism has not reached the ultimate goal for which it was created. Most particularly, to enrich the relief, unwanted suffering accrues out of marriage relationship.

#### **XX. Conclusion**

The Constitution and International provisions ensure tribal right for protection. The state parties have undertaken to take measures effectively and immediately in the various fields. India being a signatory of UDHR, tried to promote the fundamental rights and taken measures to face contemporary challenges. Yet many tribal don't know the test of democracy. But they possess morality, religious beliefs and world view of their own. Various studies reveal that tribal have been exploited socially, economically and otherwise. Since independence several legislations has been passed to protect the interest of the tribal people. Despite the developments tribal people are victims of the present legislation.

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