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Tribal Rights and Federalism: Addressing Indigenous Concerns in India

Dr.Jisha Abraham

This article deals with the interface of tribal rights and federalism in India and the challenges of indigenous communities in that zone lie in the safety of their land, resources, and cultural identities. The analysis of constitutional provisions made under Fifth and Sixth Schedules will be made from the viewpoint of efficiency and limitations in safeguarding tribal autonomy. The article attempts to delineate mixed trends of success and failure in protecting tribal rights through various case studies, such as the Dongria Kondh tribe of Odisha's fight and the Narmada Valley project, and gives vent to the role played by judiciary, state governments, and civil society in redressing these concerns. It therefore implies potential reforms of the Indian federal structure that will better respond to needs and concerns among tribal communities in line with international comparisons. The conclusion emphasizes a greater demand for inclusiveness and participation in development so that tribal rights are accommodated but also infuse into the social, economic, and political framework of India.

Keywords: *Tribal rights, Federalism, Indigenous Communities, Land rights, Constitutional Provisions*

Introduction

India is home to over 700 Scheduled Tribes, referred to collectively as Adivasis, which makes up about 8.6% of the population. Indigenously different and dwelling in secluded parts of the nation for

thousands of years, their cultural identity varies extensively, mainly relying on natural resources. Even after constitutional recognition and protection, Adivasis are still at a risk of marginalization, exploitation, and removal through various aspects of development projects and land alienation. Indian federal structure is a part and parcel tool that has been utilized in balancing state power with the central authority to protect tribal rights. However, the system has received much controversy due to uneven implementation as well as inconsistency in policies (Xaxa, 2008). This paper will investigate the relation between tribal rights and federalism in India, focusing on constitutional provisions, challenges, and reform opportunities. The article, through historical context, case studies, and with a comparative analysis with global examples, will understand how best federalism can be designed to address the problems concerning India's indigenous people.

Historical Context of Tribal Rights in India

The tribal people of India were highly independent during the pre-colonial times and remained in direct contact with the land and natural resources. Isolation kept them away from the influence of other powers than British rule. This equilibrium lost balance when the British introduced certain policies, such as the Forest Acts and the revenue systems of the land that alienated them from their lands not only alienating them but also disintegrated the traditional system of governance in those communities (Rycroft, 2014).

Tribal areas were virgin sources of revenue generators in British colonization; British policies led to the mass displacement of tribals. Acquisition of tribals' land for plantations, mining, and infrastructure projects was done without the tribals' consent, and this led to severe revolts against them, such as the Santhal Rebellion (1855-56) and Munda Rebellion (1899-1900) (Devalle, 1992). These movements reflected an expression of tribal people's resistance to safeguard their lands and resources.

It was during post-independence, after India had gained independence, that the special position of tribal communities came to be recognized by the framers of the Indian Constitution in the special provisions for their protection. Thus, to establish tribal autonomy as

well as self-governance in the regions that are tribally dominated, the Constitution granted Fifth and Sixth Schedules. Fifth Schedule is applicable to the tribal areas in mainland India, and the Sixth Schedule is applicable to the tribal areas in the northeastern states (Xaxa, 2008).

It also resorted to affirmative action by means of reservations in political representation, education, and employment to elevate Scheduled Tribes. However, the goal of rapid industrialization and development pursued by the state has allowed the interests of tribal communities to be kept at bay from rights over resources and only seen their displacement due to large-scale infrastructure projects like dams, mines, and industrial estates that have worsened their socio-economic challenges increasingly (Baviskar, 2004).

Federalism in India: Structure and Working

The Indian Constitution has provided for a quasi-federal polity wherein the powers are distributed between the Centre and the States. The Seventh Schedule of the Constitution provides the subjects under the Union, State, and Concurrent Lists which delineate the areas of legislation for both the types of government. Federalism is an essential feature of tribal governance in the sense that the ability of the state government having its powers over subjects such as land, forests, and law and order matters that are directly relevant to the rights of the tribesmen.

The Fifth and the Sixth Schedule form particularly important provisions for tribal governance. The Fifth Schedule spells out the setting up of Tribal Advisory Councils for states with Scheduled Areas. These councils advise the state governments with regard to the welfare of the Scheduled Tribes. The Sixth Schedule, as applied to Assam, Meghalaya, Mizoram and Tripura, has vested Autonomous District Councils (ADCs) of significant legislative, executive and judicial powers over the particular subjects that permit more autonomy for the tribes themselves (Khanna, 1999).

The division of powers in the federal structure of India directly concerns the administration of tribal governance. Here, whereas the legislative prerogatives on topics of welfare concerning the tribes are kept by the centre, their enforcement varies between states. Divisions

in the protection of tribal rights can be seen to be at significantly different levels across states. For example, it is not uniformly implemented the Forest Rights Act of 2006. Some states are actively recognizing on land rights of tribal communities while others are behind them (Gadgil & Guha, 1995).

One of the landmark enactments in historical terms was the FRA, which sought to rectify the wrongs of the past by recognizing the traditional rights of forest-dwelling communities over forest lands. Despite a progressive intent, the Act has been encircled by bureaucratic delays and, more importantly, a lack of political will at the central and state levels (Nair, 2012). This brings out the complexities of coordination between the various levels involved in a federal system.

The Panchayati Raj system, a three-tier structure of local self-governance, was introduced through the 73rd Constitutional Amendment in an attempt to bring decentralised governance to the country. The Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA), extended this system to tribal areas governed by the Fifth Schedule. PESA was focused on the empowering role of Gram Sabhas or the village councils, which would then own both authority over local resources and the right to settle disputes, in addition to holding power in minor forest produce (Lobo, 1999).

In practice, PESA has been implemented unevenly across states and most of them have not taken the Act seriously enough. In Jharkhand and Chhattisgarh, to name a few, bureaucracies within these state systems have opposed the provisions under PESA, as well as general ignorance regarding these provisions, which has hindered Gram Sabhas from gaining power. Thus, tribal communities are often discriminated against with respect to the use of their lands and resources through decision-making processes.

Socio-economic disparities are common traits of the tribal regions and power is always centralized. Tribal areas face underdevelopment and a lack of infrastructure, which result in limited governance and service delivery. The point is that decisions are often taken either at state or national levels; tribes are deprived of making policies related to such matters (Hasan, 2000).

Effective coordination between the Centre and states is one of the primary issues. Though the Central Government deals with policy decisions concerning tribal welfare, these policies are to be implemented through the state governments. Thus, there is a delay in policy implementation due to poor coordination between the state and central governments uneven implementation of FRA and PESA (Sharma, 2008).

Contemporary Issues on Tribal Rights

Land rights are one of the most contentious issues in India among the Indian tribes. The 2006 FRA was landmark legislation aimed at recognizing the traditional rights of forest dwelling tribal communities over the forest land. However, its implementation varied across states: across many states, tribal communities were still waiting formal recognition on their lands (Bijoy, 2003). Land would not be overestimated to say it is at the core of tribal life. For indigenous people, land is more than an economic resource; it symbolises their cultural identity and spiritual practices. Continued alienation of the area through industrialisation, mining, and infrastructure projects has seen uproar and fierce lawsuits. In most instances, indigenous people have been resistant to displacement, although their efforts have been quashed at times by the government (Rath, 2006).

Large dams like the Sardar Sarovar Dam on the Narmada River have changed the lives of tribal communities, as thousands of tribal families are displaced and deprived of their means of livelihood while further dispersion of the social fabric of the entire community is carried out (Baviskar, 2004). Rehabilitation and compensation through legal provisions have often proved to be inadequate for most of the affected tribal communities in rebuilding their lives.

One of the best examples is the Narmada Bachao Andolan (NBA), which is essentially a people's movement protesting the displacement by the Narmada project. This exemplifies how the question of development versus tribals' rights has been placed in a sort of conflict. Here, even though NBA generated national and international awareness, the crux of the matter is that the state continues to favor the developmental project over the social well-being of the

tribals (Roy, 1999). All of these have enormous barriers in approaching tribal communities, including education, health care, and social welfare services. Most tribal areas are geographically isolated and combined with systemic discrimination and underfunding, which have resulted in poor educational output and limited healthcare access for the native population (Gadgil & Guha, 1995).

The health outcome in tribal populations is mostly alarming with a high rate of malnutrition, maternal mortality, infant mortality, and many such problems. Lack of healthcare facilities in the tribal areas combined with cultural barriers and lack of trust in modern medicine has caused much aggravation. The little infrastructures that have been created for education have also left the folks with minimal literacy levels and scarce economic development (Nair, 2012).

Political representation of tribal people has been one of the major issues in India's federal structure. Though scheduled seats exist in both Parliament and state legislatures for Scheduled Tribes, such representation does not quite come off well. Most of the tribal leaders do not have sufficient political influence to work out any meaningful change for their community, Shah points out (2004). There is a schedule under the Constitution known as the Sixth Schedule that provides an added autonomy to tribal communities in the northeast of India by providing for the formation of ADCs. ADCs have been empowered to enact legislation on subjects as diverse as land, forest management, and village administration. In practice, however, ADCs have become politically driven and bureaucratic inefficiencies have vitiated this effectiveness. (Rate, 2006) .

Success under federalism in protecting tribal rights varies significantly among the various states and regions. Some of the more successful cases include the Dongria Kondh tribe in Odisha, who were successful in winning a standoff with a multinational corporation that sought to mine on their sacred Niyamgiri Hills. Using legal action combined with community mobilization, both from national and international NGOs proved effective in winning the battle (Rycroft, 2014). The case of Narmada Valley projects, for instance has failed to ensure the rights of tribals. Thousands of tribal families were displaced

by the construction of dams in the River Narmada due to widespread protests and law battles against it. Welfare is shunned in favor of development without consideration for the plight of tribal communities, and this underscores a failure in India's federal system to protect tribals.

Role of Judiciary in Safeguarding Tribal Rights

The Indian judiciary also played a very prominent role in safeguarding tribal rights, especially concerning questions of alienation of land and displacement. As an illustration, in the cases of Samatha (1997), the Supreme Court intervened on the side of the tribal communities that banned alienation of tribal lands to private companies for mining activities (Xaxa, 2008). However, less understood is the fact that the judiciary touts to definite limitations. Indeed, practically, enforcement in many cases has been side-lined with successive violations of the rights of tribes on account of hindrances from state governments. This calls for a more robust legal and institutional framework to basically enforce judicial decisions effectively (Sharma, 2008).

Coordinative operations of the central government and state government are undoubtedly vital for protection of tribal rights within a federal system. However, there is non-coordination between central and state governments in practice. Non-coordination brings policy incoherencies and delay in execution. For example, even though central government has come out with policies like FRA and PESA for protection of tribal rights, its implementation is found to take much time than desirable by respective state governments (Khanna, 1999). In land rights, the necessity of adequate intergovernmental coordination is precisely recognized. The drive for industrialization by the central government comes into a head-on collision with the rights of tribal communities, wherein development tension collides with the protection of tribal lands. Hence, tribal rights protection under federalism critically depends on ensuring that state governments place appropriate importance on the implementational efforts of tribal's welfare policies (Sharma, 2008).

NGOs and civil society have been a much-needed support system in the rights struggles of tribals. Legal aids, health care, and educational services are provided by NGOs to tribal populations. There is also lobbying and advocacy done by NGOs at national and international levels. Networking by NGOs in NBA and Niyamgiri struggles has helped draw attention to the plight of the tribals. However, the role of NGO in tribal areas has been controversy-laden and allegations by some state governments have also been levied on NGOs that obstruct the flow of developmental projects. However, amidst all these issues, NGOs continue to be an important catalyst for tribal rights in India (Rycroft, 2014).

Indigenous Issues and Federalism: A Comparative Analysis

Tribal communities in India are also not special with regard to the challenges they are facing. A number of federal systems around the world, including the United States, Canada, and Australia, also face the problem of indigenous rights. For instance, the United States, Canada, and Australia have created a distinct legal framework to ensure that the rights of indigenous people regarding land ownership, the right to preserve culture, and as regards participation in political life are acknowledged and protected (Iyer, 2007).

In the United States, for example, Native American tribes have received a degree of sovereignty, making it possible to control and manage their lands and resources. Similarly, in Canada, indigenous communities have had their rights to lands recognized in major court decisions, and in Australia, there is the commission dedicated to the interests of its indigenous peoples known as the Aboriginal and Torres Strait Islander Commission (Rath, 2006).

Many lessons India could learn about how to deal with its tribal communities' problems based on these experiences. Collective rights over the land have to be recognized and protected as one of the prime areas of reform. For example, legal recognition of their people's rights to the land set the foundation for the protection of indigenous cultures and livelihoods in Canada and Australia (Gadgil & Guha, 1995). More prominently, India can gain a better degree of participation in the direction of development to ensure that tribal communities are

represented in decision-making regarding their lands and resources. Reforms in this regard would take place from the way development projects have been planned and implemented to look forward to protection for tribals' rights (Nair, 2012).

Policy Measures to Enhance Tribal Rights

One of the main proposals for strengthening tribal rights in the federal structure in India is an overall reform of the legal mechanisms for the protection of these communities. This includes proper and effective implementation of the provisions regarding PESA and FRA, which include priority recognition of state governments on the rights of tribal land and increased autonomy of Gram Sabhas in tribal areas (Gadgil & Guha, 1995). The political representation of tribal communities has also to be increased so that the distinct voice of these communities may also be heard in the policy-making system. This could be achieved by the increase of the number of seats reserved for the Scheduled Tribes in the legislatures of the states and in the Parliament. More Autonomous District Councils can also be granted greater autonomy to the tribal areas (Sharma, 2008).

Thus, development initiatives in Tribal regions should therefore be carried out with due consideration to the rights of these communities. For example, the communities should be consulted with on decisions relating to their lands expropriation as well as exploitation of resources and planning of developments. Sustainable development hence needs to consider land protection and livelihood of the tribes while at the same time encouraging economic development (Baviskar, 2004). For effective policy implementations in the area of tribal welfare, improvement would be needed in coordination between the Central and State Governments. There could be additional mechanisms like implementing bodies exclusively for tribal welfare programs as well as in relevance making Tribal Advisory Councils to the policy-making process (Joseph, 2011).

Conclusion

Tribal rights and federalism work in tandem in India, where success in one quite often depends on the effectiveness of the other. The Indian Constitution provides for the protection of tribal rights,

which in practice have been far from consistent and, most of the time, inadequate in providing concrete results. This can be evinced from the difficulties of tribal communities in dealing with alienation of their land, displacement, and denial of essential services. Such issues underscore the necessity for reforms in the federal structure of India. These would include consolidating legal and institutional structures intended to safeguard tribal rights, furthering political representation at national levels, and intergovernmental coordination. All these measures will alleviate the concerns of India's tribals if other federal systems and a more rounded model for development are incorporated into the lessons learned.

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