

**Extension of Legal Aid correspondent to DPSP and other Acts/Articles**Chatari Aarthi<sup>52</sup>**Abstract**

After India's Independence in 1947, the makers and planners of the country felt that the linguistic minorities should be offered adequate opportunities for the growth and development in socio-political arenas. Linguistic minorities were offered a set of economic, educational, linguistic rights for the preservation of their rich culture. This paper seeks to explore the several legal aid incentives aimed at the tribes and minorities present in India. The Constitution of India, through Fundamental rights and Directive principles, ensure that linguistic difficulties don't hinder the process of legal services. Bodo Accord, Legal Services Authorities Act 1987, Income Tax Act 1961 and other provisions are closely examined. In addition to this, organizations like Tribal Civil and Criminal Legal Assistance (TCCLA) that work for these causes and the harsh realities faced by them.

**Keywords:** DPSP, Legal Aid.

**I. Introduction**

The Directive Principles of State Policy prescribed in our Constitution aim to provide free Legal aid to all including certain classes of people and certain minorities. It authorizes the state to not compromise with the rights of the people to secure legal help and to enhance the Judicial standards of the country and make legal aid easily accessible to all.

There are approximately 700 ST/SC tribal groups spread across the states and UTs of India<sup>53</sup>. The number of languages spoken by these groups are roughly 480<sup>54</sup>. Free Legal aid makes sure that economic and financial situations don't render people of their legal rights. The DPSPs act as a yardstick for the government that direct and help them make better policies for the people.

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<sup>53</sup> Census 2011 by C. Chandramouli (Ministry of Home Affairs)

<https://www.census2011.co.in/#:~:text=Population%20Census%202011&text=Chandramouli%20is%20the%20Commissioner%20%26%20Registrar%20General%20of%20the%20Indian%202011%20Census.&text=The%20national%20census%20survey%20covered,tehsils%20%26%20over%206%20lakh%20villages>

<sup>54</sup> People's Linguistic Survey of India 2013

Article 39A of the DPSP advocates for Equal justice and free legal aid.<sup>55</sup> This research paper aims to look at what help the tribal groups are provided with since 19.47% of the total tribal population is monolingual.<sup>56</sup> Although there are certain programmes and Institutions are set up, their efficiency, help is questionable. The government has a formal body NALSA for this purpose but we need a deeper understanding to look at how it works and to how much of the total population does it utilize its resources.

Some communities and tribal groups are highly marginalized are they are not aware of the rights they are have. It's vital that necessary legal aid camps and centres must be set up and tribes are educated about their legal rights.

## II

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Law is one of the most important tools one can use to bridge the gaps communities have in a society with regards to caste, region, religion, race, gender and poverty/prosperity matters. Linguistic disparity that is present in India caused by different languages having different places in the strata. Some languages are used by large masses making them superior to the minority, marginalized tribal languages in India. Law has the power to curb this disparity the tribes face as they are provided with little to no legal safeguards. The Constitution of India according to Article 29 and 30 gives minorities the right to establish and administer educational institutions of their own in order to preserve their linguistic or cultural heritage.<sup>57</sup>

Then came the Linguistic Reorganization of States in 1953 to ensure the linguistic rights of minority groups in India.<sup>58</sup>

The demand for linguistic rights doesn't merely represent cultural revivalism but seeks to secure different linguistic groups political and economic justice. Their rights cannot be absolute if it doesn't include legal protection. Legal aid should be a part of the poverty alleviation schemes of the government policies. Some tribal languages are spoken by a small number of members such as the Manipuri dialects of Gangte and Kom<sup>59</sup>.

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<sup>55</sup> INDIA Const. Part iv, DPSP art.39A

<sup>56</sup> Ministry of Home Affairs, Census of Indian Languages 1991

<sup>57</sup> Supriyo Routh, *Providing Legal Aid: some untried means*, INDIAN LAW INSTITUTE, Vol. 50, No. 3 (JUL-SEP 2008)

<sup>58</sup> Shailendra Mohan, *Minority and Majority Linguistic groups in India: issues and problems*, (2010-2011)

<sup>59</sup> Abhijit Mohanty, *Several decades after Independence, many tribal languages in India face extinction threat*, DownToEarth (26<sup>th</sup> AUG 2020)

The attitudes of the tribes seem to be changing because of rapid urbanization where one thinks negatively of their mother tongue and seldom consider speaking in it. Ignorance of tribal languages is seen as an enhancement and a matter of prestige when it is not true at all. The shift to major languages such as Hindi gives them pride and then gradually a tribal language ceases to exist.

### III

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Legal aid provided by the state shall conform to the linguistic diversity in India. There has been a formal body formed to look into this matter yet although there aren't any specific safeguards for native tribal language speakers who aren't professed with English or the dominant language of their respective state. The rate of the tribal languages being spoken is on a decline, and the state must ensure protection of their languages with respect to legal aid.

As of the 1991 Census, 93.80% and 6.20% of the total tribal population in India are rural and urban based respectively. Tribal bilingualism is rural and non-tribal bilingualism is urban. We can see a drastic fall in the fall of the number of Tribal languages being spoken in the last two decades. There can be multiple reasons for this. In multi-lingual and pluri-lingual societies in India, small linguist groups tend to develop inferiority complex over their language and culture. Highly marginalized tribal groups are easy victims of it. The main reason for this, according to Ayesha Kidwai, Centre of Linguists, Jawaharlal Nehru University in New Delhi is something called "Language Shift Phenomenon"<sup>60</sup>.

#### LANGUAGE SHIFT PHENOMENON:

A process whereby a language community (bilingual or multilingual groups) begin using one language over the other language and this gradually results in the lesser used language to slowly decline.

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<https://www.downtoearth.org.in/blog/governance/seven-decades-after-independence-many-tribal-languages-in-india-face-extinction-threat-73071>.

<sup>60</sup> DTE staff, Language census: *Many Language tongues now have fewer takers*, Down to earth (Jul. 6, 2018), [www.downtoearth.org.in/news/environment/language-census-many-tribal-tongues-now-have-fewer-takers-61044](http://www.downtoearth.org.in/news/environment/language-census-many-tribal-tongues-now-have-fewer-takers-61044)

This happened in the case of Bodo and Santhal languages of the 8<sup>th</sup> Schedule. The number of Bodo speakers has reduced to 4.53% of the total percentage in 2011<sup>61</sup>. According to Haimendorf, the Bonda tribes believed that the prayers and mystic chants are to be offered in Odiya as they think that it is the correct way to talk to deities and spirits.<sup>62</sup> Superstitions and other social causes contribute to the language shift phenomenon and while some tribes learn other dominant languages that help in communication or their legal needs etc, a large number of them remain rural. This not only increases the pressure on the monolingual groups to learn other languages but also leaves them no safeguards for the conservation of their languages with regards to judicial aspects.

Ruth Rubio Marin's theory states that it is pretty obvious that a state can't have multiple languages all in one but it can create conditions that allow the enjoyment of the sphere of bounded equality which state membership entails while avoiding liabilities linked to linguistic capabilities. A type of non-instrumental right comprises of the power of linguistic minorities that enable them to protect their environment without having to giving in and leaning the dominant language (instrumental language).<sup>63</sup>

Giving promotional rights to assist the linguistically sensitive minorities to make them strong enough that they battle the acclimatization of the dominant languages is also a type of language rights many states indulge in (Sami language getting representation in countries like Norway even though they are a minority language. They also have their own representative Norwegian Sami Parliament<sup>64</sup>).

### **Bodo Accord:**

These linguistic rights have been applied in the Indian scenario during the Bodoland struggle. The Assamese government decided to grant an official status to the Bodo language and approved an ordinance to establish a Bodo Kachari Autonomous Welfare Council, ending the struggle of decades with an attempt to bring peace to the BTAD (Bodoland Territorial Area District). The third Bodo accord was signed on 27<sup>th</sup> January. <sup>65</sup>

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<sup>61</sup> Ministry of Home Affairs, Census of Indian Languages 2011.

<sup>62</sup> Furer Haimendorf, Tribes of India: The Struggle for Survival 316-317(Los Angeles. Oxford, 1982)

<sup>63</sup> Ruth Rubio Marin, *Language Rights: Exploring the competing Rationales*. Oxford University Press (2003) Pages: 52-73

<sup>64</sup> Nils Oskal, *Political Inclusion of the Saami as indigenous people in Norway*. International Journal on Minority and Group Rights, (2001)

Available at: [jstor.org/stable/24675172](http://jstor.org/stable/24675172)

<sup>65</sup> Sushanto Talukdar, *The Third Bodo Accord: A New Deal*, The Frontline (19<sup>th</sup> FEB 2020, 17:09 IST)

This can also be done by states to suppress anti-Nationalist or separatist tendencies the minorities may develop if their needs are being ignored and the dominant group. A Tolerant regime must be followed towards them where rather than remaining neutral, the state engages in the protection of a certain language or more languages. although the state doesn't 'tolerate' them because it is their homeland at question and they are very much a part of it.

#### IV

Article 39A of the Indian Constitution or the DPSP provides for free legal aid to the weaker sections of the weaker sections of the society and ensures that they get justice alongside the majority. There have been a few laws and legislations passed that deal with the Government issues orders for the establishment of Legal Institutions for the emancipation of the tribal groups.

#### **Legal Services Authorities Act 1987:**

In the year 1987 the Parliament established the Legal Services Authorities Act 1987 which came into force in 1995. NALSA (National Legal Services Authority) a statutory body was created to monitor and evaluate implementation of legal aid programmes and to lay down policies and principles for efficient legal services.

The efficiency and substantiality of the Act is questionable. According to a study conducted by Prof. Jeet Singh Mann, Director at Centre for Transparency and Accountability in Governance, his research paper was funded by Indian Council of Social Science Research, Ministry of Human Resource Development. His study was conducted from 3029 legal aid beneficiaries, 609 judicial officers, 1007 empanelled legal aid advocates, 33 regulators and 3120 women. His study found that about 75% of the beneficiaries had opted for free legal aid and that 56% of Legal aid lawyers spend an average of 1-10 hours per week on legal aid cases and 58% of them spend on average of 20 hours and above on private cases.<sup>66</sup> Many of the free legal aid lawyers are disinterested and engage in acts of taking commission before they handle the cases. The quality of lawyers being provided to this committee is below the standards of the lawyers in the country. People of the SC/ST tribes are the poorest populace in India<sup>67</sup>, and it is devastating that their needs for steady, fair trials from legal aid is determined by the wealth

<sup>66</sup> Prof. Jeet Mann Singh, *Impact Analysis of the Legal Aid Services Provided by The Empanelled Legal Practitioners on the Legal Aid System in the City of Delhi*, Ref. No.: F-30-1/2013 (SA-II) RA-2012-14-GE-DEL-1376. Dated: 17 March 2017

<sup>67</sup> National Data of India 2018, NITI Aayog, Ministry of Health Affairs.

they possess. The quality of lawyers and practitioners that are allotted to the tribal groups is inferior to the private lawyers.

### **Income Tax Act 1961:**

The Income Tax Act 1961<sup>68</sup>, which asks the state to promote for the socio and legal empowerment of public in general and especially women, poor, illiterate, scheduled castes and scheduled tribes and other disadvantaged strata of public and for this purpose establish create and run a legal resource centre for dissemination of law, legal counselling and legal counselling and legal aid, conduct legal literacy and awareness programmes and workshops, research, investigate, analyse, monitor and evaluate the efficiency of law, legal institutions and judicial system.

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### V

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The Supreme Court in the decision for the Centre for Legal Research V. State of Kerala 1986 (CRI) 246 declared that no legal aid programme can be successful in reaching the people if its operation remains totally confined in the hands of the administration. We need more people stepping in and participating in the forms of voluntary organisations and social active groups. These organisations work amongst the deprived vulnerable sections of the society who have encountered difficulties. Although the state can't support each and every organisation it should support the strategic programme consisting of legal aid camps, Lok Adalats etc.<sup>69</sup>

The inclusions of Sections 277 to 282 and Section 331(1) of the CrPC<sup>70</sup> is an indicator of the legislative awareness to prospective issues of linguistic State governments to choose their own 'language of the court'. Abhinav Sekhri and Jinal Dadiya a BCL member at Oxford University believe that a translator employed by the State for this purpose is mandated to state the 'true interpretation of such evidence or statement'. However, in the absence of an express provision for a translator, a guilty person who knows only the minority language enjoys no explicit or even the right to translated prints under Section 207 of the CrPC. The right to translations and interpretations are thus described as limited during the stage of proceedings.<sup>71</sup> Majority of the

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<sup>68</sup> Income Tax Act 1961, section 7 (clause xxxi) ITA No.6057/Del./2010

<sup>69</sup> Legal Research V. State of Kerala (1986) AIR 1986 SC 2195

<sup>70</sup> Section 331(1) of the CrPC Resumption of inquiry or trial

<sup>71</sup> Aradhya Sethia, *Linguistic Barriers to Justice in Indian Criminal Procedure*, CRITICAL TWENTIES (9<sup>th</sup> AUG 2015).

judges from all courts do support giving free legal support to small tribes and a few of the district judges have also contributed in the setting up of awareness camps.

## VI

Some states along with the help of District level Judges and several commissions have taken a step towards assuring the tribes legal aid through programmes and camps.

The tribes living at Manalthittu on Kodaikanal foothill in Tamil Nadu were given special legal aid awareness facilities. District and Sessions Judge R. Poornima said that a legal aid cell was established that would extend all legal help for them to get better facilities. They were also issued Aadhar cards and ration cards.<sup>72</sup> These legal programmes educate them about their property rights, land rights and common civil disputes in general. The local members and the members of the committee would probably have an understanding of the language to converse and help the tribes in their own regional dialects and can extend help in systematic manner.

In the state of Telangana, the establishment of Jan Adalats brought in a massive change and delivered justice at the footsteps of the SC/ST tribal communities, especially the districts of Khamman and Kothagudem. A vigilance and Monitoring committee was also set up to enhance the speed at which the cases of atrocities which take place against the members of SC/ST take place.<sup>73</sup> Committees like these help in faster delivery of justice towards the marginalized tribes and make them socially aware of their judicial rights.

A legal literacy camp was organised for tribals in Rampachodavaram, Andhra Pradesh near Godavari valley to enable them to seek aid as they had issues due to the construction of the Polavaram irrigation project. the authorities were coercing them and wanted to evict them, but, District Judge Sai Kalyana Chakravarthy conducted the camp to make sure the tribes are aware of their forest rights.<sup>74</sup> Legal Awareness camps like these make the tribes acknowledge their land rights etc so they can fight against the unruly evictors and also clear the disputes they have amongst themselves.

<sup>72</sup> Dindigul, Tamil Nadu, The Hindu, *Legal Awareness Camp for tribals* (31<sup>st</sup> JUL 2016, 5:48 IST) [thehindu.com/news/national/tamil-nadu/Legal-aid-awareness-camp-for-tribals/article14517566.ece](http://thehindu.com/news/national/tamil-nadu/Legal-aid-awareness-camp-for-tribals/article14517566.ece)

<sup>73</sup> Telangana Today, *Public faith in SC/ST commission has increased: Errolla Srinivas* (20<sup>th</sup> NOV 2020, 7:03pm) [telanganatoday.com/public-faith-in-sc-st-commission-has-increased-errolla-srinivas](http://telanganatoday.com/public-faith-in-sc-st-commission-has-increased-errolla-srinivas)

<sup>74</sup> *Legal Literacy Camps for tribals*, Times of India (15<sup>th</sup> OCT 2019, 5:28 IST) <https://timesofindia.indiatimes.com/city/visakhapatnam/legal-literacy-camp-for-tribals/articleshow/71587308.cms>

## VII

It is difficult for a Heteronomous society like India to advance solidarity and unification at both levels of Centre and State. We must acknowledge that all languages are not equal and don't have the same influence and power. India is moving forward to boost its linguistic pluralism. The strong emphasis on the multilingual secondary education reinforced by the Three Language Formula is contributing to a large-scale acceptance of multilingualism with respect to the tribal communities.<sup>75</sup> There are a few foreign funded programmes such as the Tribal Civil and Criminal Legal Assistance (TCCLA)<sup>76</sup> that intent to provide assistance to the unemployed, BPL tribes but we have no records or information about the whereabouts of such assistance programmes. We need more India based legal aid workshops and centres that have documented their work and have registered information about the tribes.

Weaker, marginalized minority scheduled languages must be given compensation for their difficulties due to dominant languages, in order for them to survive. Absolute equality is difficult to achieve but if linguistic variety is to be preserved, legislation and policy must respond to this goal. Every language should obtain identification and the acknowledgement its speakers' content to. Free Legal aid in many forms in India is absolutely necessary for tribal languages to protect their dialects, culture, heritage and traditions. In these changing times we need to be make sure that no marginalized group is isolated and is made independent and self-sufficient.

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<sup>75</sup> Thomas Benedikter, *Linguistic Minorities of India: An Appraisal of the linguistic rights of minorities in India*, Academia (MAR 2013) Chapter 10.2  
[https://www.academia.edu/43115428/Minority\\_Languages\\_in\\_India\\_An\\_appraisal\\_of\\_the\\_linguistic\\_rights\\_of\\_minorities\\_in\\_India](https://www.academia.edu/43115428/Minority_Languages_in_India_An_appraisal_of_the_linguistic_rights_of_minorities_in_India)

<sup>76</sup> TCCLA, BJA Government website,  
<https://bja.ojp.gov/program/tribal-civil-and-criminal-legal-assistance-tccla-program/overview>



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