

TRIBAL LANDS AT STAKE: BALANCING CONSERVATION AND INDIGENOUS RIGHTS

AUTHOR – ANURAG CHAUDHARY, ADVOCATE AT DELHI HIGH COURT

BEST CITATION – ANURAG CHAUDHARY, TRIBAL LANDS AT STAKE: BALANCING CONSERVATION AND INDIGENOUS RIGHTS, INDIAN JOURNAL OF LEGAL REVIEW (IJLR), 4 (4) OF 2024, PG. 839-842, APIS – 3920 – 0001 & ISSN – 2583-2344.

INTRODUCTION

"It is the power of our democracy that a daughter born in a poor house, a daughter born in a remote tribal area, can reach the highest constitutional post of India,"

– Droupadi Murmu (President of India)

The above statement given by our president which tells the achievement of not only a woman but a tribal woman who holds the highest position in the country but is it there with all tribes if not what we can do to save the right of people is being analyzed in this paper

In today's rapidly growing modernized world, where people are looking for development in every aspect to make their lives easier and full of comfort. The usage of natural resources in such a manner where it could be used in the most advanced way in advancement in various facets of lives, but the main thing we are forgetting in the world's which is nature and for that we have started to face various repercussions like climate change and because of that problem in the modern world there is a new evolution of terms from the past decade which is known as "Sustainable Development".

The basic definition given by UN is living today with natural resources in such a way that tomorrow should not be compromised.¹²⁹⁶ In India, 68 million people belonging to 227 ethnic groups and comprising of 573 tribal communities derived from six racial stocks namely - Negroid, Proto-Australoid, Mongoloid, Mediterranean, WestBreachy and Nordic exist in different parts of the country.¹²⁹⁷ The basic contention arises about the tribal and indigenous people living on the forest land there

right on natural resources, the right of these people were insured by our constitution makers while making the constitution under 5th and 6th schedule¹²⁹⁸. In today's scenario when the government is undertaking the forest land for the development and molding the basic right of tribal by establishing a procedure established by law. For the intention of development by overriding the right of tribal people is justified? The question we need to answer ourselves will be analyzed in the article.

Origin & Objective

The origin of the 5th and 6th schedule can be traced, when the sole representative of the tribal community Jaipal Singh Munda raised an issue in the constituent assembly for the separate state and right of the tribal community after which the 5th and 6th schedule were added in our constitution which talk about the preservation of the scheduled area in various states and the 6th schedule concerns with the autonomous region given for the north-eastern states like (Assam, Meghal, Assam, Tripura and Mizoram). The main objective of the schedule was to:

• **Autonomous** : As we know that tribal

¹²⁹⁶ United Nations, 'Explainer 2013 What is Sustainable Development?' (Webtv.un.org, 28 August 2023) <<https://www.un.org/sustainabledevelopment/blog/2023/08/what-is-sustainable-development/>> accessed 30 November 2024.

¹²⁹⁷ R Rai and V Nath, 'The Role of Ethnic and Indigenous People of India and Their Culture in the Conservation of Biodiversity' (FAO, 2022) <<https://www.fao.org/3/xii/0186-a1.html>> accessed 30 November 2024.

¹²⁹⁸ Constitution of India 1950, schs 5 and 6.

community have separate and distinct culture to

follow. And indigenous people living on the forest land from years should have certain autocratic right to enjoy the land and the particular region.

- Protection of tribal right: As we know in forest area usually tribes have TEK (Tradition Ecology knowledge) which transfer from one to another in oral form which talk about structure and functioning of natural ecosystem and sustainable use for human welfare.¹²⁹⁹

- Protection of land rights: The sole objective was the tribes and indigenous people

living in forest and various northern parts of state who have had war and protest during the colonial regime, just to ensure the land autonomy shall be preserved.

So for ensuring above right the various laws were made by constituent assemble and rights of tribal community were first preserved after the addition of 5th and 6th schedule in the constitution of India.

The objective of preserving right of tribal communities as highlighted by Jaipal Singh Munda in his constituent assembly speech on tribal community that "We do not want reservation on any unequal terms. We desire that so long as we come up to the standards which are required for appointment we should not be kept out of the picture at all."¹³⁰⁰ Furthermore there are certain practices which is known as traditional ecological knowledge of tribal community, which usually transferred from generation to generation through word of mouth,¹³⁰¹ which relates to various topics like

various herb and shrub having medicinal value to certain extent that it can cure snake bites, fractured bone and various other orthopedic treatments.¹³⁰²

Various legislation related to tribal community

During the time of Independence the 5th and 6th schedule were added to preserve the right of tribal community the renowned leader of tribal community Jaipal Singh Munda plays a key role in it, unfortunately his demand for separate state that for tribal was not fulfilled during the time he was alive but later on fulfilled in 2000, when Jharkhand was specifically established for tribal community and preserve the culture and practice.

The term schedule area mark the line, for the specifics land being used by the tribal community.

The 5th schedule enshrined under article 244(1) talks about the conservation of right of tribal community and right of indigenous people in all over India excluding 4 states, where the governor hold the responsibility of administration and the (tribal advisory council) TAC shall be established under each state which consist of 20 member out of which ¾ member represented by STs community. The Fifth Schedule of the Indian Constitution provides protection for the 100 million tribal members, or 8% of the nation's population, through the establishment of legal rights to lands and resources in what are known as Scheduled Areas.¹³⁰³ The first commission was set up in year 1961 Dhebar commission¹³⁰⁴, also known as "Panchsheel Committee" officially for examining the condition of tribal community and recommended autonomous tribal advisory council (TACs), includes protection of land rights and inclusion of tribal representative. The

¹²⁹⁹ H Tynsong, M Dkhar and B Tiwari, 'Review: Traditional Ecological Knowledge of Tribal Communities of North East India' (2020) 21(7) Biodiversitas Journal of Biological Diversity <<https://doi.org/10.13057/biodiv/d210743>> accessed 30 November 2024.

¹³⁰⁰ J Singh Munda, 'The Most Democratic People on Earth: An Adivasi Voice in the Constituent sAssembly' (Indian History Collective, 2020) <<https://indianhistorycollective.com/jaipal-singh-munda-historyofindia-constituent-assembly-adviasirights/>> accessed 30 November 2024.

¹³⁰¹ Tynsong, Dkhar, and Tiwari, 'Traditional Ecological Knowledge' (2020).

¹³⁰² Rai and Nath, 'The role of ethnic and indigenous people of India and their culture in the conservation of Biodiversity' (2022).

¹³⁰³ Mithun, P., Bhanumathi, R., Kumar, S., and Bandhopadhyay, A., 'Indigenous and Tribal Communities, Biodiversity Conservation and the Global Environment Facility in India: General Overview and a Case Study of People's Perspectives of the India Ecodevelopment Project: A Report Study Team' (n.d.) in Samta <<https://www.samtaintia.org.in/>> accessed 23 September 2023.

¹³⁰⁴ Dhebar Commission Report (Government of India, 1961)

6th schedule enshrined under article 244(2) which was specifically meant for Assam, Meghalaya, Tripura and Mizoram states as these states hold most of the tribal population due to which these states were given full autonomy for self governance and significant control over the land forest and all of the natural resources to that much extent to make their own laws and also to receive funds from central government to development for social infrastructure but the government has authority to increase or decrease the boundary of the schedule area.

Forest dwellers are the indigenous people who are the member of community tribes and lived in forest area for their livelihood and cultural practice, the forest dweller are also entitled for the claim of rights if the resident of land from past 3 generation or 75 years or prior to 13-12-2005. The person is having government authorized public evidence that establish claim like census, survey etc(Rule 13)¹³⁰⁵, the forest right act establish certain land rights, community rights, ownership over certain product right over biodiversity and the right are to certain extent of rehabilitation if the traditional tribal which is living from 75 years will be rehabilitated if displaced without proper notice.¹³⁰⁶

The most significant legislation in support of 5th schedule was 73rd amendment which was Panchayat (Extension of schedule area act) Raj, commonly known as PESA act,1996 that help in decentralization of governance in schedule area and schedule tribes and gave power to self governance by being a part of panchayat. It gave power to control over the resources and right to customary law and social religious practice. Under section 18¹³⁰⁷ of Wildlife (Protection) act, 1972 the state government by

notification can declare area as protected area and declare them as sanctuary and under section 32¹³⁰⁸ The Indian forest act,1927 the state can make rules regarding grant license forest produce to inhabit regarding the use of forest, but the main question lies when the displacement happened to indigenous people living in the area and how hotels and resorts are allowed to exist inside against the wildlife act and the right of displaced community.

Case Study of infringement Indigenous Rights

In recent times when the government overshadowing the right of indigenous people in state of Jharkhand where 10,000 people were charged with sedition law¹³⁰⁹ in Kunti district in Jharkhand which is birth place of freedom fighter Birsa Munda, which the movement start with the "Patalgadi movement" the practice used by indigenous people primarily for death of people they incurred the details about the dead person on tomb but the movement took momentum when the state sign an MOU investment in mining replenishing the right of indigenous people various advisees faces land alienation and displacement from their original land. The two act were there The Chota Nagpur Tenancy -CNT Act, 1908 and santhal pargana tenancy act which prohibit transfer of land to non tribal from tribal but the CM Raghubar Das bring amendment whichenable to acquire the land of tribal, and the later on objective was to gave the land to industries to gave priorities to the forest resources.¹³¹⁰ The same practice was followed where the right of indigenous people where encrftated in on stone so as to remind authority the right available to tribal community before encroaching them. In case of Samatha v. State of Andhra Pradesh & Ors¹³¹¹ which revolve around the 5th schedule and right of tribal

¹³⁰⁵ The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, r 13.

¹³⁰⁶ Ministry of Home Affairs, Government of India, 'National Commission for Scheduled Tribes' (2004) [https://ncst.nic.in/sites/default/files/documents/ncst_reports/first_annual_report_of_ncst/PART%20I%20-%201st%20Rep ort%20NCST%202004-20059484175791.pdf](https://ncst.nic.in/sites/default/files/documents/ncst_reports/first_annual_report_of_ncst/PART%20I%20-%201st%20Report%20NCST%202004-20059484175791.pdf) accessed 23 September 2023.

¹³⁰⁷ Wildlife (Protection) Act, 1972, s 18A.

¹³⁰⁸ Indian Forest Act, 1927, s 325.

¹³⁰⁹ Sharma, S., '10,000 People Charged with Sedition in One Jharkhand District: What Does Democracy Mean Here?' (19 November 2019) Scroll.in <https://scroll.in/article/944116/10000-people-charged-with-sedition-in-one-jharkhand-district-what-does-democracy-mea-n-here> accessed 23 September 2023.

¹³¹⁰ Engage, E., 'Jal, Jangal Aur Jameen: The Patalgadi Movement and Adivasi Rights' (2019) https://www.epw.in/engage/article/patalgadi-movement-nation-autonomy-rightsadivasi-jharkhand?0=ip_login_no_cache%3Da87de72b7e5e80865a068b99a7d244bd accessed 23 September 2023.

¹³¹¹ *Samatha v State of Andhra Pradesh & Ors* [1997] AIR 3297 (SC).

people over the ownership of minerals resource lies in the schedule area the supreme gave some important guideline that need of protection of right of tribal land also recognize the tribal communities get fair share in mining activities and the gram sabha which also considered important player the consent of gram samba was emphasis and it emphasized the right of tribal people over there forest land.

In case of Orissa Mining Corporation v. Ministry of Environment & Forest & Ors¹³¹² the case involve the mining activity carried out by the mining company and the question of necessary environment clearance taken by the company , the supreme court in the judgment make balance between the economic development and environment by cancelling the mining lease license of the company as the company does not take the necessary clearance and there were significant violation of environmental law.

In case of Wildlife First & Ors v. Ministry of Forest and Environment & Ors¹³¹³ the supreme court gave significant guideline on environmental matter and also emphasis on strict implementation of Forest (Conservation) Act, 1980 and also highlight the protection of wildlife habitat and also ban certain activities that environment the judiciary plays a balancing role in development and environment protection.

Conclusion

Thus we can conclude that there is fundamental necessity to preserve our culture and also to maintain a balance between making development, the indigenous people over several generation have preservations the culture and developed a holistic traditional ecological system which could be lot less then the integrated information that only focus on culture or development. The constitutional guarantee and various law are preserved the

indigenous right of people even the UN¹³¹⁴ have put various money on stakes just to preserve the culture of the indigenous people and guarantee the indigenous people equal footage as said by Jaipal singh munda.

Bibliography

Legislation and Constitutional Provisions

- Constitution of India 1950, art 244(1) (5th Schedule), art 244(2) (6th Schedule).
- Panchayat (Extension to Scheduled Areas) Act 1996 (PESA).
- Indian Forest Act 1927, s 32.
- Wildlife (Protection) Act 1972, s 18.
- Forest (Conservation) Act 1980.
- Chota Nagpur Tenancy Act 1908.
- Santhal Pargana Tenancy Act 1908.

Cases

- **Samatha v State of Andhra Pradesh & Ors** (1997) AIR 3297 (SC).
- **Orissa Mining Corporation v Ministry of Environment & Forest & Others** (2013) AIR 652 (SC).
- **Wildlife First & Ors v Ministry of Forest and Environment & Ors** (2019) 4 SCC 748.

Reports and Commissions

- Dhebar Commission Report, 1961.

Other Sources

- United Nations, *Sustainable Development Goals*.
- President of India, Droupadi Murmu, Speech.

¹³¹² *Orissa Mining Corporation v. Ministry of Environment & Forest & Others* WP (Civil) No 180 of 2011.

¹³¹³ *Wildlife First & Ors v. Ministry of Forest and Environment & Ors* Writ Petition(s) (Civil) No(s). 109/2008.

¹³¹⁴ Mithun et al, 'Indigenous and Tribal Communities, Biodiversity Conservation and the Global Environment Facility in India: General Overview and a Case Study of People's Perspectives of the India Ecodevelopment Project: A Report Study Team' (n.d.)