

**A CRITICAL STUDY OF PROTECTIVE LAWS OF TRIBES IN INDIA:
ITS EFFICACY AND IMPLICATIONS
(WITH SPECIAL REFERENCE OF MADHYA PRADESH)**

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ABSTRACT

In fact, the aim and objective of critical study is intended to draw and focus the problem and challenges of tribes communities of India. The present scenario of tribal situation presents a vivid picture. The constitution of India and several protective laws, Act, etc. provides tribes rights to preserve their autonomy, arts, culture, land, homelands & language. In spite of comprehensive legal framework for socio-cultural development and upliftment, the tribes communities have several issues and problems. The existing protective legislation on looking to the National Development Programme does not protect the life support system of the habitat. In result the tribes have no solution except to embraces the Naxalism – a new kind of Adivasi movement. There are 8.2% of population of country is of tribes communities so, a detailed and critical study of protective laws are inevitable today to seek tribes participatory role in the administration and in the development. The area of study of the legal system is selected of Madhya Pradesh wherein the largest tribes population are dwelling in the forest areas and is of a medley of ethnic group. The evaluation of legal efficacy and their implications can be drawn on empirical method of study to find out the remedial solutions.

Keywords: - *Tribes, Protective laws, Ethnic, Habitat, Home lands, Dwelling, Adivasi.*

INTRODUCTION

Tribal world of India includes one hundred million tribe's communities and their settlements are in two regions – tribes of hinterlands and tribes of NEFA in seven sister states, where the majority of 80% tribal population are found in the rural or near forested areas. As such out of 8.2% tribal communities of our national population, 92% tribes live in rural areas. The term Scheduled tribe¹ has not be defined in our constitution under article 342 but article 366(M)

¹ Scheduled Tribes are those tribes that have been notified by the President India under the constitution

define the term- means forest dweller, vanvasi, adivasi. The term adivasi is denoted for heterogeneous set of ethnic and tribal groups. There are 532 types who are speaking 100 different languages. The Govt. of India and Nine states have been striving for upliftment of their life with preserving their cultural, traditional life style.

The scheduled areas² denote the tribal regions either of V or VI scheduled. Each scheduled areas has its own mechanism for its governance until the PESA. The V scheduled areas are governed by the state and empowered to make law and while VI scheduled areas have been given a complete autonomy and vested judicial authority through traditional legal system. As per decision of Supreme Court in Pu My Llai Hlychho Case that there is no provision of constitution within constitution but there is need of protective laws for scheduled areas of nine states. These are A.P., H.P., Orisa, Jharkhand, Gujarat, Rajasthan, Maharashtra, M.P. and Chhattisgarh.

The National Commission for SC/ST, under the provision of the constitution, Tribes advisory council under the PESA 1996 and joint forest committee under Forest Right Act 2006 are constituted for advancement of tribal's. The institutes of social studies have been examining its progress but are not satisfied.

All Protective laws right from customary law, working of the commission and Act, Rules, framed for its implementation in nine state are not found to obtain a clear picture for right place of tribal in the development of nation keeping their culture, tradition and joy of life. So there is still need to understand these people and their problems. Neither, Anthropological Approach nor open door approaches are absolutely suited to absorb into the mainstream. So idea of integration with protection is more suitable to make it progressive in its own way since tribals have not lost their ethnic identity.

The resources are depleted to sustain tribal population. The tragic reality is that these development schemes are not in the favour of tribal. Tribal have to unfold their capabilities to develop. But, how can tribals participates in the development? This could be done only through specific protective legislation. The Self Governance laws which have the concept of innovative thoughts have been introduced such as provision of Gram Sabha in the PESA 1996 and M.P. tribal Self Rule 1997. Forest Right Act 2006 and Forest Rules 2007 have been legislated to grant tribal Forest Right.

² Scheduled Areas are those, which are under the V or VI Schedule where the tribal populations are dominated

The Gram Sabha³ for Self Ruling is based on their customary law⁴ and traditions. The Forest Right Act 2006 grants tribes ownership in forest land and its minor forest produce⁵. This novel idea cannot be translated into reality due to rigid cast system, gender inequality, rich and deprived. Can tribal communities in such conditions set a right? How long will it take for its progress? Poverty, unemployment, land alienation⁶ is still continue. Rights of resources are still away from tribals. The efficacy of the Gram Sabha will remain dismal to play key role where participation is low and deeply fragmented. The Gram Sabha does not have the basic capacity to explore the community resources in the interest of tribals. The tribals are backward due to their isolation from the mainstream of the nation. In the present model of development, where forceful acquisition⁷ of land and displacement of thousands are happening. It is because of the formal legal system where the principles of State's Eminent Domain are prevailing. This ideology ignores the view on community resources where people's substances are a part of ecosystem. But the present scene of tribals is unchanged due to their ignorance of protective laws and non awareness of the provision of the self governance system. Experience of 10 yrs after introduction of new system presents the critical situation. So critical study has become necessary for effective implication of Gram Sabha-the Coming of PESA.

THE STUDY DESIGN

Objective of Study

There is a considerable need of the hour to study the problems of tribals and their reasons for becoming isolation from the development program. A closer look establishes that the legal provisions for tribals peoples are failure to address. Some legal provisions are caused a conflict between tribal and national interest. This conflict originates the dissatisfaction and compels the tribes to be away from the main stream, though; they are living in rich biodiversity but under in tragic conditions. The Central Act PESA 1996 aimed to operationalized decentralized the powers

³ Gram Sabha consists of persons whose names are included in the electoral rolls for the Panchayat at village level.

⁴ Customary Law originated from the age old custom and is recognized as such by the people and the judiciary.

⁵ Minor Forest produce is not defined in the central PESA/ M.P. Tribal Self Rule but may include all kinds of forest produce other than timber and fuel wood and as such is inclusive of several forest produced were state does not have a monopoly.

⁶ Transfer of property or pussion of lands from scheduled tribe to any other person.

⁷ Acquiring ownership of land in the scheduled areas for development projects.

to the Gram Sabha/ village assembly in matters of development, management of natural resources and adjudication in accordance with the tradition and custom but these enabling rules are not find itself in the right place. So critical study of legal provisions of major Acts are required for its amendments for effective implications.

Area of Study

Out of Nine Scheduled States, The special references have been taken from M.P. State to find out the impact and their problems. The four tribal districts⁸ of M.P. where the population is more than 50% has been taken in particular to assess the impact. The sources of impact have been drawn from different social survey, judicial views, workshops held in tribal districts and from tribal institutes.

Methodology

On the following way we can make contribution for guiding suggestions and for tribals prospects in socio-cultural development-

1. Awareness about the legislative powers of Gram Sabha⁹ under PESA 1996¹⁰ and M.P. tribal Self Rules¹¹ and Forest Right Act 2006 and its Rules 2007.
2. How to preserve and protected the tribals rights of culture and tradition in sustainable manner.
3. Find out the shortcoming of legislations for successful implementation.

Tribal Attitude toward Tribal Laws

The paper is also attempted to obtain the response of tribal people to get their views on Self Ruling. The ground reality is based on fact finding of Gram Sabha in the Scheduled Areas. It was accepted that the newly Gram Sabha institution will emerge as effective tools of self governance. Unfortunately, the expectations have largely remained unfulfilled. The tribals view can be assess from the four tribal districts of M.P. where more than 50% tribal population resides in 29 tribal blocks out of 89 blocks in M.P. the Gram Sabha of scheduled areas does not perform their role due to

1. Non awareness of the provision of the Self Rule.

⁸ Tribal district selected for particular reference- Mandala, Dindori, Jhabua and Barwani.

⁹ Manage natural resources- Land, water and forest in the village of scheduled areas and safeguards and preserve the tradition and culture, cultural identity, community resources and customary mode of resolution.

¹⁰ Panchayats (Extension to the Scheduled Areas) Act 1996 came into force on 24th Dec. 1996.

¹¹ M.P. Tribal Self Rule 1997 came into force 5th Dec. 1997.

2. Non co-operation of beauracy.
3. Discard view of Elite Society.
4. Lack of capabilities.
5. The power structure at village level remains oppressive.

Mandala District is tribal district in M.P. in central India. The district lies in Mahakoshal region. It is a very backward district. It has nine tribal blocks. Much of the population is Adivasi (Gonda, Baigya) Dindori tribe district is situated at the eastern part of M.P. There are seven Janpad Panchayats with tribal dominance. Jhabua and Barwani tribal district lies in the south western part of M.P. Adivasi populations are dominated in 8 tribal block and 7 blocks of these two districts respectively. In these districts, there is a common system to manage their affairs with traditions and cultures and presents a very clear picture about the Gram Sabha and their functioning.

1. The Gram Sabha is being conducted on regular basis but the fact says that quorum actually not met. The signatures of the electoral are taken from their house. It is only formalities.
2. Low Participation in the Gram Sabha due to lack of awareness of meeting.
3. Lack of awareness of Women and their little interest in the Gram Sabha.
4. Villagers are not consulted in drawing up the agenda. When questions are asked related to developments, it is found nil. When asked that dose the tribals know whether there is an Act on Tribal Self Rule, their answer is negative about this system. 75% do not know the provision and existence of Gram Sabha system.
5. It is also observed that there is no awareness program regarding participation in the Gram Sabha and empowerment of tribal people.

The States Attitude to Tribal Self Rule

There are some glaring omissions in the state legislation such as

1. State legislation on Panchayat shall be in consonance with customary law, management practices of community resources, safeguarding the tradition and Customs¹² have been omitted for example in Rajasthan.
2. The Central PESA gives discretion to states to assign to any tier of the Panchayat body to manage Minor Water Bodies¹³. There is no definition give in the Act. The states too have

¹² A rule of conduct which in a given place and among given groups has been followed for a considerable time.

ignored. The states practices show that there are water users association, water shed committee have been created such as in M.P. & A.P. There is no linkage with self ruling units.

3. There are two land issues emerge in the context of self rule. One on land acquisition and on land alienation & restoration of illegally alienated lands. Lands belonging to a scheduled tribe can be transferred to non-tribal under the various lands revenue code of states. As regards land acquisition, the power invested to Gram Sabha by the PESA. It mandates the consultation¹⁴ of Gram Sabha development projects. The state of M.P. states the Gram Sabha shall be consulted but not having power to decide but keep in vague. The power of second issue has been vested the Gram Sabha. The Panchayat at appropriate level. The state of M.P. has not introduced this provision at all.
4. Forest and Forest based resources subjects are also critical to the lives of the tribals. The Gram Sabha has power of ownership¹⁵. There are also two issues emerge- the definition of minor forest produce and the jurisdiction to exercise the powers. The area of ownership where it will be exercised is exempted. The state of M.P. Act has not transfer the power of ownership of minor forest produce under the state PESA. The state intention is exclude the most important resource on which tribal life depends. It the most surprising that the more rich biodiversity and forested state has completely ignore the provision. Adivasis are also facing the primary problems arised from M.P. Forest Rules 1997. The forest department continuous to interfere in the process of people attempting claimed rights. The community rights continue to be neglected and discouraged. Under the Act, Forest Committee is being formed at the Panchayat level in the revenue village while M.P. PESA provides in hamlet level Gram Sabha. There is an also a problem of tribals of getting ST Certificate from forest department. Harassment in Protected areas and Tiger Reserves, pressurized to relocate from forest.
5. The state of M.P. legislated several laws and rules to protect the interest of tribes community and preserve their traditional right. The state has taken a positive step by establishing various institution to promote and preserve the tradition of tribes community such as tribal forest

¹³ This is not defined in Central PESA/ MPESA but may include small structure, small tanks, wells used-----for drinking, cattle and agriculture purposes.

¹⁴ Deliberation of persons on some subject without a building effect.

¹⁵ The exclusive right of possession, enjoyment and disposal.

Research Centre at Bhopal, Indra Gandhi Manavsangrahalaya, Bharat Bhavan and Social Research Centre and Act like such as-

- M.P. Exercise Act 1995, where 45 liters liquor is allowed to keep, manufacture and for consumption to tribals.
- M.P. Minor-Mineral Rule 1996 grants approval for mining by Gram Panchayat.
- M.P. lend Revenue Act 1959 provide for restoration of wrongfully alienated lands of tribals.
- M.P. tribals are getting employment as well as 20% bonus out of profit of Tendu Leaves.
- M.P. Gram Nayayalay Adhiniyam 1996 recognizes the power of Gram Sabha to safeguard and preserve the customary mode of dispute of resolution under Sec. 31 of the Act.
- State Govt. strict transfer of land to Non-Tribal by any kinds and there are complete ban on money lending.

Shortcomings of Tribal Laws

In spite of the various steps taken by the state in formulation of legislation of tribal laws there are still Lacuna in the Laws and the rules which has to be overcome

1. **Inadequate protection under the schedule tribes and other traditional forest dwellers (Recognition of Forest Rights) Act 2006**_which grants tribes sub major of ownership in forest lands and its forest produce. It is a much more significant and progressive law in favour of tribes. 60% of the country forest cover is found in 187 tribal districts where less than 8% of National population lives. This reflects the culture of the tribal's peoples to conserve forest. Following are the Forest Rights of tribals:-

- a) Occupation forest land prior to 13 Dec. 2005 and other traditional dweller that are in the last 3 generation up to 4 hectares.
 - b) Forest land is not transferable
 - c) Right to hold & live in the forest land
 - d) Self cultivation
 - e) Rights over community resources
 - f) Realization of Forest Rights in protected area
1. The present law has diluted the interest of the forest dwelling scheduled tribes with that of the other traditional forest dwellers. The law has lost its essence. The glimpses into

history of forest laws marked by beginning of the forest governance system that excluded forest depended community in the name of scientific forestry, national development, conservation and industrial growth. The states are found it struggling to define rights over forest and minor forest products, but the M.P. state has defined it on land, water & forest excluding reserve forests which do not come under the PESA.

2. Extension of cut of date is another short coming of the Act to qualifying for holding of rights up to 2005. It is quite immaterial to forest dwelling schedule tribes from generation. This cut of dates is in favour of other traditional forest dwellers recognizing the forest land for three generation.
3. Increase in the ceiling of land occupation under sec. 4, which states that the area restricted under actual operations and shall in no case exceed 4 hectares. This provision hardly benefits the schedule tribes.
4. There is no provision in forest conservation Act 1980 & Forest Rights Act 2006 to drop out or closed the cases of minor forest produce cases. The Supreme Court of India in Goda Varman Case 1997 banned the regularization of tribal revenue village and village in forest area of schedule tribes.
5. The village forests are assigned to local tribal communities for its management and use. The Panchayat Extension Act 1996 grants tribal communities over the ownership of the minor forest produce. It is also found that there is a different objective of the JFM for forest conservation and village communities.
6. The lacks of community participation in policies to manage water resources in scheduled area are also visible.

2. The tribal struggle to cope with state laws

Contrary of PESA, the state law has debased the tribal traditions of self governance & compels the tribe to adopt the non tribal concepts under in part IX of the constitution and abolished the indigenous governance. The Panchayat system has eroded the significance of traditional councils. The Manki-Munda system in Jharkhand has preferred their traditional laws.

3. The Central PESA 1996 & M.P. Tribal Self Rule 1997

1. The PESA 1996 is projected and as legislation transforming tribal representation in V schedule, but the tribes feel as deprived culturally and economically. This is a logical

- extension of V scheduled. This top down model has denied tribal communities rights on natural resources. Even the PESA & V schedule have also not prevented corporations from gaining control over natural resources and favours the non tribals.
2. Tribes in India are derived from their property rights. There is no legislation restricting acquisitions by the state in the public interest.
 3. There is a problem regarding use of certain concept 'community' or 'customary law' at the operation level. Customary laws are not properly codified and documented. The term 'community' is not defined in the act clearly, so there would be difficult to delimit a village.
 4. The critical wild life habitat a crucial aspect of the Forest Rights Act. The MOEF suggested that the people's rights in the National park should not be vested and be out of protected areas, but no forest dwellers will be evicted from forest land till process of CTH (critical tiger habitat) but states are not following the central PESA objective. Tiger Vs Tribal are still continue problem.
 5. The legal provisions of Central PESA in spirit have not been considered and adopted in M.P. PESA Tribal Self Rule.

CONCLUDING SUGGESTIONS

The law on tribal Self Rule first in time has recognized the competence of Gram Sabha to manage its community resources where tribal reside with its own self identity, common belief system and in cultural traits. Twist of words- consultation, consent, ambiguity and omission of fundamental principles can over right the basic intent of meaningful law- Tribal Self Rule. The state should come up in the approach to realize for any effective governance and integrate the tribal community closest to natural resources in their own way, but not by in effective legislation. The present scene of working of the Gram Sabha in Scheduled Area of M.P., which are progressive, require some modification and changes for effective functioning of the institution

The following suggestions may strength the tribal communities in their Self Governance System and make capable for active participation in the development and upliftment of the main stream.

- a) There are several development policies launched by the government for upliftment of tribes. They are formulated without taking into consideration of the ground realities. The care has to be taken.

- b) The tribes are being used to get their necessities from the forests without being knowing the techniques & plant species. Thus, necessary training to tribal communities is important.
- c) In case of displacement, the government should provide fertile land and other facilities relating to their life and livelihood.
- d) It is presumed that fault lies not with the substantive content of the V scheduled or the PESA but lies with their implications. The major cause of failure of self governance in tribal areas is the top-down approach. So, statutory reform that would institutionalize the tribal autonomy (a bottom up approach). Such as in introduction of fundamental rights of the property exclusive administrative and legislative power to tribal communities.
- e) Tradition should also coincide with progress. Custom should be fit in with the progressive law.
- f) The Tribal Research & Welfare Institute activities and their recommendation are followed for preparing appropriate policies, schemes for development of the tribe's communities.
- g) There is a need to define our own village in accordance with our tradition & custom as we are fully aware about their tradition, in absence of written documents.
- h) In approving the plans, programs and projects, we shall lay down the principles of identification and priority, desirability, viability and distribution of benefits amount the gram Sabha, so that the village as a whole can develop.
- i) Under poverty alleviation programmers the beneficiaries are selected by the outsiders like a teacher or other employee. This selection often left the actuality, so this power is vested to villagers.
- j) Power to plan own and manage water bodies are given to the Janpat Panchayat or the Zila Panchayat. It is not clear 0who will exercise. In our state Madhya Pradesh, this power is vested to Zila Panchayat while the same power is also vested to Gram Sabha to manage minor water bodies up to specified water areas & lease out for fishing, irrigation purposes while the central PESA excludes the role of Gram Sabha. Madhya Pradesh state has also not evolved the consultation for land acquit ion for development projects and rehabilitating the people, grant of lease for minor minerals. These are omitted by Madhya Pradesh PESA self rule so necessary powers be devolved by amending law.

- k) Management of Natural Resources, social and economic development of our villages and protecting tribal's from exploitation money lending and market practice power are given to gram Sabha by Central PESA, but it is omitted by Madhya Pradesh. So we must pressure to devolve the effective power be given to Gram Sabha.
- l) Customary law does not recognize the right of maintenance to women, not equal to men in such condition, whether customary mode of dispute resolution fit into the present legal system. The recourse is only available in prevailing legal system.
- m) There should be an enforcement agency, if one party refuses the verdict of Gram Sabha.

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