



Tribes Impact : Legal and Administrative System

Dr. Amulya S. Suman

P. G. Department of pol. Sc, Binod Bihari Mahto Koylanchal University, Dhanbad, India

Article Info

Publication Issue :

Volume 6, Issue 1

January-February-2023

Page Number : 15-21

Article History

Accepted : 01 Jan 2023

Published : 25 Jan 2023

Abstract : There are also other anomalies in the process of scheduling such as instances of increasing the communities within the Scheduled Tribes list in the state without simultaneously reserving electoral constituencies for STs. There is also the concern that some tribes classified under the Particularly Vulnerable Tribal Groups (PVTGs) have not yet been notified as Scheduled Tribes, a situation that the NCST has taken up. In recent years, commentators have questioned the established criteria for inclusion as both outdated (since 'isolated existence' does not hold true for most communities today, even those living in remote forest areas) and derogatory to tribal groups (the idea of 'primitivism' is insulting to tribal culture and identity). Issues pertaining to scheduling criteria and anomalies have been examined in a report submitted by the Task Force set up on February 3, 2014 under the Chairmanship of Dr. Hrusikesh Panda, Secretary, Ministry of Tribal Affairs – and so no more need be said here.

Keywords : Tribes, Impact, Legal, Administrative, System, NCST, Particularly

The Indian Constitution, and laws made under it, recognise the special status of tribal communities. While sociologists and social anthropologists have debated the defining characteristics of a tribe, the Constitution recognises that tribal communities need and deserve special protections and that the politico-administrative establishment must act to ensure that such protections are extended to tribal communities. Accordingly, the device of scheduling has been adopted to enable identification of tribal communities and tribal areas that are to come within this dispensation.

It is necessary to examine the early origins of the concept of 'tribe' and its transformation in various historical and political contexts, specifically during the colonial period in the Indian sub-continent. In the Roman context, the term 'tribe' was used to refer to a state of barbarism, but also to indicate a tributary relationship between a group and the imperial State, with who gifts and tributes were exchanged. Tribe, therefore, referred to a particular relationship between centre and periphery, which was equally applicable to the tribal relationship with the Mughal Empire in India. One of the other early meanings of tribe was also that of a group claiming common ancestry. Later, the idea of the tribe as people living in 'primitive' conditions became dominant. The reference to a particular relationship with the State was pushed to the background by an emphasis on the tribe as an autochthonous, homogeneous whole – an independent, self-contained unit.

In India, the local equivalent of the term 'tribe' is often assumed to be '*jana*' or 'communities of people' based on the usage of the term in ancient Buddhist and puranic texts. In this conception, the term *janawas* used in

opposition to the term *jatito* indicate that these communities were outside the *jatior* hierarchical caste system of social organisation. This view, however, was not universally accepted, since other scholars point out that the categories of *jana* and *jatido* not neatly overlap with that of tribe and caste respectively in the present context.

It was largely following the various tribal rebellions during the colonial period that tribes came to be seen as the region's 'original inhabitants' who existed outside of the caste system and had been marginalised by the more advanced caste-Hindu society. The nineteenth-century ethnographic view of tribes argued that the term referred to both a *particular type of society* based on kinship ties and a *stage of evolution*. In the former view, standard definitions describe the tribe as a social group with a definite area, dialect, cultural homogeneity and unifying social organisation. An amalgam of the various traits ascribed to tribal groups include: relative egalitarianism within the group, the absence of complex political structures, strong and functional kinship bonds, cooperation, territorial integrity, cultural and linguistic distinctiveness, and lower levels of technology. In the case of the latter view, tribes are seen as 'primitive' societies in the sense of lacking all the traits of modern, Western society in that they are non-literate, 'uncivilised', non-industrial, rural, and so on.

The two views are connected in that tribes were seen as having primitive social organisation, implying that tribal people were at a lower stage in the evolutionary social hierarchy in terms of their socio-cultural characteristics, economy and political structures, often being described as simple as well as insulated from changes in the larger regional polity. Tribes in the Indian context have also been defined as groups remaining outside of the structures of State and civilisation.

Each definition of tribes stresses on a particular aspect of tribal life – their relationship with the state, civilization and processes of development as well as specific features of their culture, livelihood, and economy. However, the dominant conception of tribe that developed during this period revolved around notions of 'backwardness', indigeneity, and separation from the larger Hindu civilization. Tribes were identified largely in terms of what they were not: they did not practice Vedic Hinduism, they were not Muslim, their societies were marked by the relative absence of economic and ritual stratification, and they were not integrated into the "modern" economy or civilization.

The Census of India has also played a critical role in shaping the modern understanding of tribe through its efforts at enumeration and classification. The proper delineation of tribes began with the colonial census in the late nineteenth century to provide detailed information about the population of the sub-continent. Through this exercise, certain communities were labeled as tribes although the criteria transformed over time. In the 1881 census, the term used was 'forest tribes', a sub-category within the broader group of 'agricultural and pastoral castes'. In the 1901 census, tribes were identified as those who 'practiced animism' thus placing religious practices at the centre. Therefore, those practicing Hinduism were viewed as castes, while those practicing animism were labeled tribes, although this criterion would change in the following decades such that, at present, Scheduled Tribes can practice any religion, including Hinduism and Christianity. In later censuses, additional references to territory were included, producing the label of 'hill and forest tribes' in 1921 and 'primitive tribes' a decade later. The new descriptions laid emphasis on the isolation of tribes within hill and forest areas as well as their 'primitive' way of life. One of the earliest

attempts to create a list of tribes in the sub-continent was during the 1931 census which identified 'primitive tribes'. This was followed by a list of "backward tribes" for the provinces made under the Government of India Act, 1935. In the 1941 census, tribes were identified not in terms of their religion but according to their 'origin', that is, tribes were those who have a 'tribal origin'.

Subsequent ethnographers have contested these conceptualisations, arguing that tribes have constantly been in interaction with other social groups, and that, terms such as 'primitive' and 'backward' are based on the problematic assumption of social evolutionism. Other scholars have argued that the conception of tribe as isolated was based on their emergent marginalisation through unjust forest policies, forced sedentarization and pacification during British colonial rule. Large segments of the tribal population were integrated into the market economy during this period through the appropriation of their lands as well as their labour in commercial forestry, mines and plantations.

In the post-colonial period, therefore, certain anthropologists have tended to view the 'tribe' as a colonial construction, rendering fixed and rigid those identities which were earlier relatively fluid and contextual. Anthropological accounts of tribal communities have largely provided working definitions of tribe which have often been specific to their site of study given that tribes differ considerably in terms of their population size, mode of livelihood and level of integration within the capitalist economy. There is huge differentiation, for example, in the range of occupations practiced among tribes – they may be: hunters and gatherers, shifting cultivators, settled agriculturalists, pastoralists, artisans, farm labourers, and plantation and industrial workers.

The 1950 Constitutional Amendment order with the full list of Scheduled Tribes recognised at the time was largely based on the list of "backward tribes" prepared by the colonial administration in 1936. At the time of the first census of independent India in 1951, there were 212 recognised Scheduled Tribes in the country. The term Scheduled Tribe itself is a politico-administrative category that does not capture the enormous social complexity of the various tribes encompassed within its fold. The Constitution of India categorised certain sections of the population as Scheduled Tribes to make available special welfare provisions to them – even though this category was never properly defined. In a circular fashion, tribes are defined as those groups enumerated as tribes under the Indian Constitution. Thus, Article 366(25) of the Constitution defines Scheduled Tribes as follows:

"Scheduled Tribes means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under article 342 to be Scheduled Tribes for the purposes of this Constitution."

The list of tribes drawn up by the colonial and post-colonial government was based on political and administrative considerations, given that State recognition could be translated into important protective and developmental benefits. However, the identification of such groups has been based on recommendations made by the officials of the 1931 Census, the First Backward Classes Commission 1955, and the Report of the Advisory Committee on the Revision of the Lists of Scheduled Castes and Tribes, 1965. The currently followed criteria for identification are: primitive traits, distinctive culture, geographical isolation, shyness of contact with the community at large, and general backwardness. As can be seen from several of these identifying features, the idea of the tribe as the 'primitive' has clearly continued into the post-colonial period.

The first Backward Classes Commission (Kaka Kalelkar Commission) appointed by the President of India under Article 340 argued that the tribes:

“Lead a separate exclusive existence and are not fully assimilated in the main body of the people. Scheduled Tribes may belong to any religion. They are listed as Scheduled Tribes, because of the kind of life led by them.”

In 1951, the Tribal Welfare Committee comprising of anthropologists, social workers and administrators met under the Indian Conference of Social Work in Calcutta and recommended these criteria for differentiation of tribes: tribes are those who are still confined to their original forest habitats and follow the old pattern of life; semi-tribal communities are those who have settled down in rural areas and practice agriculture and similar occupations; acculturated tribal communities are those who have migrated to urban and semi-urban areas and are working in industries and have modern cultural traits, and other tribal communities who have been totally assimilated into the Indian population. However, there are many forest-dwellers who are not tribals; settled agriculture is practiced by many tribes (who are not semi-tribal in other respects) and migration to urban areas does not necessarily lead to the shedding of all tribal cultural traits.

In 1959, the Government of India appointed a Commission headed by Shri. U.N. Dhebar to look into the welfare of the Scheduled Tribes and even this commission failed to arrive at a satisfactory definition. The Commission concluded that Scheduled Tribes can be identified by the fact that they live apart in the hills, and even where they live on the plains, they lead a separate, excluded existence and are not fully assimilated with the rest of society. As per its recommendations, it reiterates the position that the technical definition of a tribe is any group listed as a Scheduled Tribe under Article 342.

The granting of ST status to certain social groups is an on-going process, indicating that there are groups which might identify themselves as tribes but which remain outside of the official ST category. The First Backward Classes Commission set up by the President of India in 1953, recommended the declaration of additional communities as Scheduled. Thus, through another order in 1956, the President notified a modification of the list of Scheduled Tribes. In the 1961 census, the number of Scheduled Tribe communities increased to 427, which was twice the number from the previous census. This increased to 432 by the time of the 1971 census.

As the issue of anomalies within the ST list constantly arose, the government set up the Advisory Committee on the Revision of the Lists of Scheduled Castes and Scheduled Tribes (Lokur Committee Report) which was to advise on the proposals received by the government on revision of these lists in a “rational and scientific manner”. The committee was specifically asked for its recommendations on whether communities listed as Scheduled Tribes in one area of a particular State or Union Territory (UT) should be recognised in other parts of the same State or UT as well as in other States.

A glance at the lists of tribes recommended for both inclusion and exclusion by the Lokur Committee throws further light on their considerations while determining the legal status of groups claiming tribal identity. Some of the reasons cited for inclusion of new tribes within the list include ‘very isolated’, ‘still living in caves’, ‘living in forest areas’, or more vaguely, ‘are primitive jungle tribes’, ‘having tribal characteristics’, ‘very backward tribe’, and ‘distinctive dress and customs’. Clearly, a mixture of geographical and locational features as well as primitiveness and backwardness account for the suggested Constitutional recognition of a

range of tribes. On the other hand, the explanations for suggested exclusion from the list were 'not a tribe', 'do not possess tribal characteristics', 'population insignificant' and 'assimilated with the general population'. On the question of enumeration, the Lokur Committee noted that in light of several Supreme Court rulings on the matter, it would be necessary for the government to list not simply the name of each tribe under the Schedule but to create a compendium of all local synonyms, phonetic variations and sub-tribes within each tribe in order to ensure that confusions over inclusion are avoided. The committee held that, in light of this onerous task, it should henceforth be assumed that any caste or tribe specified in the list would automatically include all synonyms, variations and sub-groups.

The Scheduled Tribes and Scheduled Areas Commission (Bhuria Commission) Report (2002-2004) has pointed out that winds of change have been sweeping through tribal society and this has resulted in the growth of individualism, particularly among the youth. However, despite transformations in the internal communitarian dynamics of tribal society which threaten to alter its very 'tribal-ness' the Commission noted that tribal identity is likely to reassert itself in the form of traditional norms and mores.

The Bhuria Commission Report further stated that:

"As an individual, individualism may be practised by a tribal when he is at large and may be abroad, but even in facing the larger world his psyche looks backwards to lean on the support of his own tribal community, thereby revealing the profundity of bonds with his tribe".

Beyond definitions of 'tribes', the Indian context has produced a situation in which classification of communities as Scheduled Tribes is not uniform throughout the country but varies based on often arbitrary administrative boundaries. Several committees have taken note of this anomalous situation, introduced through the Government of India Act, 1935, whereby members of the same tribe from an ethnological or social point of view are recognised as Scheduled Tribes in one State or one part of a State and not in others. That is, the category of Scheduled Tribes, although distinct, was connected to an understanding of 'tribal areas' in that, until 1976, area restrictions were in operation with regard to recognition as a Scheduled Tribe. This meant that it was possible for X tribe to be recognised in district Y of a particular State but not in neighbouring district Z of the same State. Thus, ST status was linked to place, although the place itself need not be a Scheduled Area.

According to the Lokur Committee, these territorial restrictions acted as a barrier to spatial and social mobility, since moving out of the area in which their tribe is recognised would imply the loss of all benefits and privileges. Such restrictions were therefore, seen to be contrary to the goal of tribal integration which advocates the end to tribal 'isolation' and the inter-mingling of populations. Despite recognition of the often bizarre consequences of area restrictions, the Lokur Committee refrained from recommending changes in the same since inter-state movement of tribes was deemed to be negligible at the time. Their report also dismissed the idea of an all-India Scheduled Tribes list, since the Constitution provides for lists to be made only at the State or UT level. The Lokur Committee recommended that the various tribes in the list should be administratively differentiated, so as to ensure that priority in development planning should be given to the more deprived, among the groups.

In 1976, the Removal of Area Restrictions (Amendment) Act was passed, which removed area restrictions on the recognition of Scheduled Tribes, making lists applicable to entire States rather than blocks and districts

within States as was the case earlier. This led to a substantial increase in the tribal population as recorded in the census. Now, a tribe is included within the Scheduled Tribe list on a state-wide basis – although it is possible that the same tribe is not Scheduled Tribe in other states. However, it has been noted that the sharp increase in recorded tribal population between the 1971 and 1981 censuses was not only due to the removal of area restrictions but due to misreporting to census officials by groups with nomenclatures sounding similar to that of certain Scheduled Tribes. Between 1971 and 1981, the population of Scheduled Tribes, as recorded in the Census, rose by 95 per cent in Maharashtra and 690 per cent in Karnataka. This occurred despite the fact that reporting oneself as a Scheduled Tribe in the census does not in any way support claims for Scheduled Tribe status under the Constitution.

Despite efforts made by various governments, there continue to be several anomalies in the scheduling of tribes. The National Commission for Scheduled Tribes (NCST) has noted that cases involving inclusion of communities which are scheduled in one state and non-scheduled in a neighbouring state need to be given priority in order that members are not denied benefits any further. The Banjaras, for example, are a recognised Scheduled Tribe settling in various parts of the country, including now in Delhi. However, the strong association between the idea of a tribe and that of rurality has led to the refusal of the Government of Delhi to list them as a Scheduled Tribe in the capital city – rather, they are included within the list of Scheduled Castes. Another curious distinction in the state of Assam is that between plains tribals and hill tribals, so the Garos, Karbis, Hajongs, Dimasas, Mon-Tai speaking peoples, Singphos, Hmars, Nagas, hill tribals, lose their scheduled status once they come down to the plains and the Bodos, Lalungs, Mech-Kacharis, all plains tribals, lose their scheduled status if they go to the hills.

There are also other anomalies in the process of scheduling such as instances of increasing the communities within the Scheduled Tribes list in the state without simultaneously reserving electoral constituencies for STs. There is also the concern that some tribes classified under the Particularly Vulnerable Tribal Groups (PVTGs) have not yet been notified as Scheduled Tribes, a situation that the NCST has taken up. In recent years, commentators have questioned the established criteria for inclusion as both outdated (since ‘isolated existence’ does not hold true for most communities today, even those living in remote forest areas) and derogatory to tribal groups (the idea of ‘primitivism’ is insulting to tribal culture and identity). Issues pertaining to scheduling criteria and anomalies have been examined in a report submitted by the Task Force set up on February 3, 2014 under the Chairmanship of Dr. Hrusikesh Panda, Secretary, Ministry of Tribal Affairs – and so no more need be said here.

References

1. Particularly, Part X of the Constitution under which Schedules V & VI were incorporated into the Constitution to provide for particular responsibilities of the state with respect to administration of areas inhabited by the tribal populations; apart from a variety of enabling provisions for the betterment of individuals belonging to tribal communities.
2. ‘Preamble’ to the Constitution of India (as on 01 January 2001), New Delhi: Lok Sabha Secretariat, n.d., Article 366 Constitution of India, Ibid., Articles 29 (1) & (2).

3. Siddiqur Rahman Osmani, 'An Essay on the Human Rights Approach to Development' in Arjun Sengupta, et al, eds., Reflections on Right to Development, New Delhi, 2005, p.110.
4. Declaration on the Right to Development, adopted by General Assembly resolution 41/128 of 4 December 1986, Article 1.
5. Arjun Sengupta, 'The Right to Development as a Human Right', Paper written for the François-Xavier Bagnoud Center for Health and Human Rights, Harvard School of Public Health, 1999, pp. 9. Siddiqur Rahman Osmani, Op. Cit., p.112.
6. Rajiv Malhotra, 'Right to Development: Where Are We Today' in Arjun Sengupta, et al, (eds.), Reflections on Right to Development, New Delhi, 2005, p.145.
7. Indigenous and Tribal Populations Convention, 1957 (No. 107) adopted by the General Conference of the International Labour Organisation on 26 June 1957, Article 2.
8. India's hesitation in ratifying this Convention is mainly due to the explicit mention of the right to self-determination. India, faced as it is with a variety of violent and non-violent identity movements in the North-east part of the country and Kashmir, is loathe to accept this principle fearing balkanisation of the country on tribal lines.
9. Indigenous and Tribal Peoples Convention, 1989 (No. 169) adopted On 27 June 1989 by the General Conference of the International Labour Organisation, Article 2.
10. Sengupta, 'The Right to Development', Op. cit., p. 10. Will Kymlicka, "Nation-building and Minority Rights: Comparing West and East" in Journal of Ethnic and Migration Studies, vol. 26, no. 2, April 2000, p. 183.
11. Stephen May, Tariq Modood & Judith Squires, 'Ethnicity, Nationalism, and Minority Rights: Charting the Disciplinary Debates' in Stephen May, Tariq Modood & Judith Squires, eds., Ethnicity, Nationalism and Minority Rights, Cambridge: Cambridge University Press, 2004, p.4.
12. Will Kymlicka, Multicultural Citizenship: A Liberal Theory of Minority Rights, Oxford University Press, 1995 as discussed in Ibid., p. 4. This has had a significant impact on the conception of liberal state as well as liberal-democratic politics.