



## CIRCUMSTANCE OF TRIBAL JUSTICE IN INDIA

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The tribal India forms a distinct picture of the country. There are about 40 million tribals in India. They belong to over 200 ethnic groups or tribes, which are different from one another in terms of their racial, linguistic and cultural identity. They are concentrated in hills and forests, and are still cut-off from the main stream of development. It is necessary for all of us to try to understand what is best in them and try to preserve those values even while we are trying to initiate them into the mysteries of modern civilization. The tribal people are, in fact, the original inhabitants of the soil. But, due to ignorance and poverty, they do not know their rights and privileges. After independence, the constitution of India provided safeguards for the Tribal people. To translate these constitutional provisions into practice special schemes were still continuing.

The Criminal Tribes Act 1924 came into force on 15.03.1924. It was an Act of consolidated laws relating to criminal tribes. If the provincial Government has reason to believe that any tribe, gang or class of person or any part of tribe, gang or class is addicted to systematic commission of non-bailable offences, then the Government was authorized to declare that such tribe, gang or class, as the case may be, is a criminal tribe for the purpose of the said Act. The Government was empowered to restrict the movement of the tribes or settle their place of residence. It had power to establish industrial, agricultural or reformatory settlement for the criminal tribe. This Criminal Tribes Act, 1924 came to be repealed by the Criminal Tribes Laws (Repeal) Act, 1952.

Roots of protective discrimination is seen way back and is traced in the Resolution dated

29.05.1933, passed by Government of Bombay. General Department vide Resolution No. 9330, Bombay Castle, based on the report published by The Depressed Classes and Aboriginal Tribes Committee in July 1930 This Committee recommended the changes in the previous classes shown as 'Backward' and 'Depressed' to 'Intermediate' and 'Backward' respectively. The Committee further suggested that the 'Backward Classes' be again sub divided into 'Depressed Classes' consisting of untouchable classes only: "Aboriginal and Hill Tribes consisting of inhabitants of forest areas, and Other Backward Classes consisting of the wandering tribes who may not be aboriginals or live in forest areas but who need special care as being very backward. The list of Backward Class was prepared on these lines.

The purpose and criteria denoted in the Committee report, was that no community should be permitted to remain in the 'Backward Classes' category after the special aid and protection to be afforded to the classes for its advancement and that to ensure this the backward class Board should review the list of Backward Classes from time to time and submit to Government recommendations for the removal from it of any community which is not treated as untouchable by the other classes of the community and which has reached a certain standard of literacy - the exact standard to be

fixed by Government in consultation with the Backward Class Board and an economic status beyond which special assistance is not necessary

Thus, the policy of preferential treatment in education, employment and representative institutions was initiated by the British and some princely states in colonial days, further extended by the State in post independence years in pursuance of the Constitutional command, is meant for those sections of our Society, who were denied access to these opportunities for centuries by the discriminative and oppressive social order. The unequal competition is explained by a famous analogy - Two runners at the starting line are readying themselves for the 100 yard dash. One has his legs shackled, the other not. The gun goes off and the race begins. The unfettered runner immediately takes the lead and then rapidly increases the distance between himself and his shackled competitor. Before the finish line is crossed over the judging officer blows his whistle calls off the contest on the grounds that the unequal conditions between the runners made it an unfair competition, and orders removal of the shackles.

The President published STs order on 06.09.1950. By virtue of Act No. 63 of 1956, published on 25.09.1956, the S.C. and S.T. Orders (Amendment) Act, 1956 was passed, in the context of the State Reorganisation Act, 1956. In respect of State of Maharashtra, the STs

Order was published in Part VII-A of the Eighth Schedule of the Bombay Reorganisation Act, 1960. By virtue of Act No. 108 of 1976, published on 18.09.1976, the S.C. and S.T. Orders (Amendment) Act. 1976 was passed. The S.T. Order in relation to Maharashtra was published in Part IX of the Schedule. The most oppressed and neglected have been identified and specified as 'STs' under the Constitutional Order issued by the President in terms of Art 342 of the Constitution. Part XV of Constitution of India concerns with special provisions relating to certain classes. It is well known that equality envisaged by the Constitution of India means equal treatment to equals. To treat unequal equally is not equality. Therefore, Constitution itself provided for certain concessions to the backward classes so as to achieve the goal of equality.

Originally, Article 15 as enacted contained only 3 sub-clauses. Sub-clause (0) was inserted by the Constitution (First Amendment) Act 1951 as a result of the decision in *State of Madras Vs. Smt. Champakam Dorairajan*, reported in AIR 1951 SC 226, wherein Hon'ble Supreme Court confirmed the judgment of Madras High Court holding that Communal Reservation is bad and violated Article 15 and Article 29(2) of Constitution of India. Article 15(4) of Constitution of India authorizes the State to make a special provision for the

advancement of any socially and educationally backward classes of citizens, as distinguished from SCs and STs.

Article 16 denotes the expression 'Backward Class of Citizen' and reflects about the reservation in the services under the State for which that Article has been enacted. When read with Article 15(4), the said expression means only those classes, which are socially, educationally and economically backward. Article 16(4) empowers State to make special provisions for reservation of appointments and posts in favour of any backward class of citizens, which in the opinion of the State are not adequately represented in the services under the State.

Article 46 contains a Directive Principle of State Policy - fundamental in the governance of the country enjoining the State to promote with special care, educational and economic interests of STs and to protect them from social injustices and exploitation. The provisions of Article 46 should not be confused with those of Article 16(4) and hence the expression "Weaker Sections of the People", in Article 46 should not be mixed up with the expression "Backward Class of Citizens", under Article 16(4). The purpose of Article 16(4) is limited, it is to give adequate representation in the services of the State to that class which has no such representation. Hence, Article 16(4) carves out a

particular class of people and not Individuals from the weaker section, and the class it carves out is the one, which does not have adequate representation in the services under the State.

Article 51-A (h) enjoins every citizen to develop scientific temper, humanism and the spirit of inquiry and reform. Again Article 51-A (h) requires a very citizen to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavor and achievement.

Proviso to Art. 164(1) lays down that in the States of Bihar, Madhya Pradesh and Orissa there shall be a Minister in charge of Tribal Welfare who may in addition be in charge of the Welfare of the SC and the backward class etc. Chapter X of the Constitution deals with the Scheduled and Tribal areas and with its administration. Article 243 D of part IX and Article 243 T of part IX A of Constitution provide for reservation of seats for S.C. and S.T. in Panchayat and Municipalities. Article 275 provides for a source of additional financial help from the Consolidated Fund of India to the State in which there are STs. This casts on the Union Government responsibility to make financial grants. Article 300 B of Constitution of India runs as under -

"300B (1) : The President may after consultation with the Governor or Ruler of a

State, by public notification specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution shall be deemed to be ST in relation to that State.

(2) : Parliament may by law include or exclude from the list of STs in a notification issued by the President under clause (1) of this Article any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notifications."

Article 330 and 332 provide for reservation of seats for S.C. and S.T. in the House of People and Legislative Assemblies of State. Article 334 provides that the reservation and special representation are to cease after 50 years. Article 335 imposes a constitutional obligation to take into consideration the claims of STs in the making of appointments to services and posts in connection with the affairs of the Union or of the States. Article 338 enjoins the appointment of a special officer for the ST by the President whose duty is to investigate all matters relating to the safeguards provided for STs under the Constitution and to report to the President upon the working of those safeguards at such intervals as may be directed by the President. Article 339 (2) : The executive power of the Union (Government) shall extend to the giving of directions to a State as to the drawing up and

execution of schemes specified in the directions to be essential for the welfare of STs in Stato. The First Plan recommended that a positive policy of assisting the tribe should be formulated in order to develop their statural resources and evolve a productive life, which can prevent exploitation by more organized economic forces. In the Second Plan it was emphasized that all welfare programmes should be made in the contact of tribal culture after reviewing their psychological and economic problems. The Third Plan, it was accepted in principle that in facilitating the development of agriculture, communication, health and education services, the tribal people should be enable to develop their own traditional wits and culture without pressure or imposition from outside. Under the Fourth Plan six pilot projects for Tribal Development known as Tribal Development Agencies were taken up in central sector. The Fifth Plan period saw the emergence of the Tribal Sub-plan strategy in the country at massive development of tribal areas and the tribal people. The Tribal sub-plan envisaged pooling of all available fiscal and personal resources and making use of them for a total integrated effort.

In this way, we find that massive efforts have been made for the socio economic development of the tribal people by the Government through organized economic

planning. In actual life an Adivasi has never been regarded as an individual. Therefore, even today Adivisi is treated as secondary citizen. A letter written by Shri Kaluram Dodhade, President of Bhumisena of Thane district was entertained as writ petition, wherein one of the complaint made was that the police never take any cognizance of the complaints made by the STs or Adivasis. This resulted in inclusion of Rule 114-A in Bombay Police Manual. The prevailing circumstances necessitated the passing of The SC and ST (Prevention of Atrocities) Act, 1989, to prevent the commission of offences of atrocities against the members of SCs and STs, to provide for Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto.

Since, the STs are a nomadic class of citizens, whose habitat being generally hilly regions or forests, results in their staying away from the mainstream of the national life. Therefore, the State is enjoined under our Constitution to provide facilities and opportunities for development of their scientific temper, educational advancement and economic improvement so that they may achievo excellence. equality of status and live with dignity. Reservation in admission to educational institutions and employment are major State policies to accord to the tribes, social and

economic justice apart from other economic measures.

The Principal criteria for specifying the tribe or a tribal community, as a ST is "indication of primitive tribes, distinctive culture, geographical isolation, shyness of contact with community at large and extreme backwardness." Thus the criteria for specification of SCs and STs are distinct and different for the purposes of Article 341 and Article 342 of the Constitution of India. These criteria find their place specifically in the report of the Joint Committee constituted by the Union Parliament for consideration of the Parliamentary Bill for the revision of list of SCs and STs as originally specified by the respective orders notified by the President of India. The positive discrimination is meant for the oppressed and neglected ones, so identified and specified as STs. This classification has been done for the purposes of the Constitution and the identified groups bestowed with a special status in the Constitution. Despite specification of the said groups in the Constitutional and legal terms, the benefits of State's preferential policies, to a large extent, do not reach them. One of the prominent reasons behind this failure is the problem of investiture of social status on the intended beneficiaries in the terms of grant of Caste Certificate to the right persons. It is because of this, Hon'ble the Supreme Court of India, was

pleased to direct each and every State to constitute Scrutiny Committee, as mentioned in Madhuri Patil's judgment, reported in AIR 1995 SC 94. Thus, after establishment of Scrutiny Committee, the Committee was entrusted with the work of scrutinizing caste certificate of 12 standard Science students and all the employees wherever reservation policy is implemented. The Scrutiny Committee did the work of scrutiny of caste certificates of the employees employed in reserved posts of ST by the Employer, like, Central Government, State Government, Autonomous bodies, State and Central Government undertakings etc. It was first time where by virtue of judgment in Sudhakar Gawli's case, reported in 1998(2) Mh.L.J. 97. jurisdiction was decided by Hon'ble the High Court. It has led to clarification of limitation of scrutiny. which was placed in the form of G.R. dated 11.6.1998 thereafter substituted by G.R. dated 9.9.1999 and 13.4.2000. Recently Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of Caste Certificate Act, 2000 (Mah. XXI of 2001) is passed. In tact, implementation of reservation policy itself, when considered perspectively & judiciously gives a clear picture of necessity of scrutiny of every caste certificate utilized for benefits.

In all cases where there are synonyms or the Entries to be found both in the higher castes and the STs, if a person claims to be a person belonging to ST. as enumerated under the Presidential Schedule under Article 342 of the Constitution of India, and his present habitat is not in the hilly region or in isolated areas which were enumerated prior to the removal of Area Restriction Act 1976, it will be incumbent upon such person to establish that his ancestors were the residents prior to 1950 or before the removal of Area Restriction Act, 1976, in such areas and hereafter they have migrated to their present place of habitat. Unless and until the claimant establishes this, his claim as a Tribal cannot be considered. Hon'ble Supreme Court in Madhuri Patil's case observed that - Addl. Commissioner, in our view rightly held that an argument of social mobility and Their cultural advancement to some extent may be modernized and progressed but they would not be oblivious to or ignorant of their customary and cultural past to establish their affinity to the membership of a particular tribe.

More and more tendency of the people to grab the benefit of reservation increased from all the corners, as the reservation quota for ST is 7%. Thus, a person who does not belong to ST community and it succeeds in grabbing the benefits of reservation, upon invalidation of his caste claim by the verifying authority, is guilty

of commission of fraud on Constitution. Obviously, on discovery of such fraud on Constitution, the person is liable for the same. It is therefore, necessary to take urgent action against such benefit grabber instead of giving him protection. The relevant provisions of the Constitution emphasize particular care and duty required of all the organs of the State to take positive and stern measures for the survival, the protection and the preservation of the integrity and the dignity of the tribal. Hon'ble Supreme Court of India in G. Sundarasan's case, reported in 1995 (4) SCC 644 held that the petitioner is guilty of fraud on constitution and held the termination after 30 years of service, valid. In the light of Hon'ble Supreme Court's judgment in Madhuri Patil's case, Punit Rai, reported in (2003) 8 SCC 204 and R Vishwanath Pital (2004) 1 SCALE, Bank of India Vs. Avinash D. Mandivikar and others, reported in (2005) 7 SCC 690, appointment becomes nonest on invalidation of claim. Irrespective of this the question of equality can be answered by a quotation - A question was asked to Martin Luther King as to what he expects from a white man for solving the question of black men and in his humble way he replied, "if you want to solve the question of black men give a white man a white heart." Let me conclude with the words mentioned by Indian National Planners in the third Five Year Plan "Education is the most

important single factor in achieving rapid Economic development and technological progress and in creating a Social order founded on the values of freedom, Social Justice and equal opportunity. Programmes of Educational at the base of the effort to forge the bonds of common citizenship, to harness the energies of the people, and to develop the natural and human resources of every part of the country.”

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