

## **INFRINGEMENT OF HUMAN RIGHTS OF THE SCHEDULE TRIBES IN INDIA.**

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### **Abstract**

*This article is about the human rights violation of the schedule tribes or the “indigenous people” of India. Moreover, in this article we have discussed regarding the increase in crime rate of the Tribals. The historical and theoretical aspects of the Tribals is brought into discussion for analytical study and then legislative provisions for them is discussed so that if possible new amendments could be considered. This article lays emphasis on restoration of rights of the Scheduled tribes by effective legislative, administrative and judicial mechanism so that the human rights of these people is not infringed and they can live their life in a dignified way with their heads held high.*

### **Keywords**

Atrocities, Schedule tribes, crime rate, indigenous people, violation

### **Research Methodology**

This article has followed the descriptive analytical legal research, which is descriptive and qualitative style. This article has also adopted the data analytical method for productive conclusion of statements. This article aims to study the atrocities faced by the schedule tribes which is a gross violation of a human right also and how we can prevent it by strengthening it with analytical legislative support.

### **Introduction**

Human Rights are those rights which is inherited by an individual through the nature and not by any law of the land, the law of the country just makes sure it's protected by implementing provision which will safeguard those natural human rights. The human rights of the tribal community have been constantly under threat and has been facing gross violation since centuries.

The Human rights of the Tribals should be a big concern for the people in India. These rights have been constantly emanated from the Universal Declaration on Human Rights of 1948 and is constantly being developed and upgraded through political contestation and various internal

debates and discussions to further include a wide range of rights which are fundamental to live a dignified human life.

As per the reports of United Nations Human Rights Council, March 2022, India has been a failure of various treaty obligations which concerns the protection and Integration of Indigenous and other tribal and semi-tribal people in Independent countries. The report also submits that the security forces in Indian by using their special powers given by the Armed Force Special Powers Act have infringed the rights of the tribal people in the Central and north east India due to the rumors of them being associated with insurgent groups, as a result of which mass killings and other violence have committed against those indigenous tribes. These people are often ill-treated, physically attacked, arbitrarily detained, killed yet the government of India has not taken appropriate steps to protect the human rights of these tribal community. These acts are a gross violation of article 7, 21, 24 and 30 of UNDRIP (United Nations Declaration on the Rights of Indigenous People), article 3, 5, 9, 10, 13, 20 and 25 of UDHR (Universal Declaration of Human Rights), Article 1 of International Convention for the protection of all persons from enforced Disappearance and Article 4,6,7,9,10 and 15 of ICCPR (International Covenant on Civil and Political Rights).<sup>1</sup>

The Indian Constitution have guaranteed various basic rights to the and freedom to the Tribals of the country but still they are unprotected in this modern era of Civilization. Even after possessing various fundamental rights and having Directive Principle of state policy, the fundamental duties and effective implementation of Judicial Mechanism for the protection of the human rights of the Tribals underlines the importance of constitutional culture of India. This can be witnesses due to increase in crime rate of the Tribals in India.

### **Historical Background and Evolution of Schedule Tribe**

The Republic of India has approximately 645 district tribal community (as per 2011 census report) and our law of the land i.e. the constitution of India recognise these tribal communities as ‘Schedule Tribes’ or Primitive Tribal Group<sup>2</sup>. The tribal of India used to live in the forest hills, natural isolated regions and accordingly their names would be kept based on their natural habitat. Adivasis i.e. primitive people are the commonly used term for schedule tribe and Anushchit janjati i.e. Schedule tribe is the constitutional name covering all the tribes present in

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<sup>1</sup> United Nations Human Rights Council, (March 2022) Observations on the State of Indigenous Human Rights in India, [https://www.upr-info.org/sites/default/files/country-document/2022-10/JS11\\_UPR41\\_IND\\_E\\_Main.pdf](https://www.upr-info.org/sites/default/files/country-document/2022-10/JS11_UPR41_IND_E_Main.pdf)

<sup>2</sup> Sagar, (Mar. 30, 2018), The Most Vulnerable Primitive Tribal Groups in India, Retrieved from <https://geographyandyou.com/vulnerable-primitive-tribal-groups-india/>

India. Tribals of India forms an Integral part of the Indian Civilisation and have also contributed various elements in the ancient civilisation.

They were the earliest among the present inhabitants of India<sup>3</sup>.

When the Aryans immigrants entered our country they also found a land of non-Aryans people whom they call “Dasyus” which denotes the people other than the Aryans. The Dasyus of the Vedic antiquity were mainly of two types i.e. the Kolarians and the Dravidians. Manu Sanhitis suggested that the tribes which lost the sacred rites or were out casted from the recognized caste and sub-castes are the Dasyus. During the Hindu period within the history of India about two thousand years from 800-600 B.C., only few scattered reference can be found of the Tribals of India, therefore their history can't be traced prominently. The internal movements of the tribal people within India empowers and speak their history in a manner which can be justified but at same time the tribal population of India, generally can't be considered as indigenous and native people belonging to their present tracts. And all these ambiguity is because the tribes inhabiting middle India and adjoining western Indian are in abundance and constitutes four-fifth of the tribal population of the overall India.

The inclusion of community as a scheduled tribe is considered as an ongoing process. The requisite characteristics of these tribal community can be traced by their Primitive traits, geographical isolation, distinct culture, shy of contact with community at large and last but the least economic backwardness. It's considered that tribal communities live in various ecological and geo-climatic conditions ranging from plain surfaces and humungous dense forests to hills and inaccessible areas where there could not be possible human interaction with other communities. They altogether are at different stages of social, economic and educational development in the recent era of progress.<sup>4</sup> Although few tribal communities have adopted a conventional path of life but at the other end of the whole spectrum there also exist certain Scheduled tribes who may be quite less in number and known as the Particularly Vulnerable Tribal Groups i.e. (PVTG)<sup>5</sup>, and they are specifically characterised by pre-agricultural level of

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<sup>3</sup> Tripathi, Dr. Rahul, 2018, Historical Background and Development Of Reservation In India: An Analysis, *Journal Of Humanities And Social Science*, Vol. 23, Issue 1, PP 09-13, Retrieved from [https://www.academia.edu/36820313/Historical\\_Background\\_and\\_Development\\_Of\\_Reservation\\_In\\_India\\_An\\_Analysis](https://www.academia.edu/36820313/Historical_Background_and_Development_Of_Reservation_In_India_An_Analysis)

<sup>4</sup> Sahani, Ramesh, 2013, Particularly Vulnerable Tribal Groups in India: An Overview, *Journal of the Anthropological Survey of India*, Vol. 62, Issue 2, PP 851-865, Retrieved from [https://www.researchgate.net/publication/262012652\\_Particularly\\_Vulnerable\\_Tribal\\_Groups\\_in\\_India\\_An\\_Overview](https://www.researchgate.net/publication/262012652_Particularly_Vulnerable_Tribal_Groups_in_India_An_Overview)

<sup>5</sup> Debasish Bhattacharjee, (Aug.28, 2018) Indian Aboriginal: Historical background of the Tribals in India. Retrieved from <https://anthropologyglobal.wordpress.com/2018/08/28/indian-aboriginal-historical-background-of-the-tribals-in-india/>

technology, they are having stagnant population, extreme low literacy and last subsistence level of economy.

Tribals were exposed to various problems i.e. poverty, physical and mental exploitation, existence of economic and technological backwardness, even exploited by socio-cultural handicaps which further degenerated their social and economic status<sup>6</sup>. There were even problems of their assimilation with non-tribal population due to which they always remain hesitant of grabbing their opportunity in this recent era of evolution. Thus all these obstacles in the path of the Scheduled tribes contributed to the pauperisation of the tribal people in the past and present. Hinduisation was also one of the major contributor who made Tribals in debt and exploited them according to their need, forced them to spend Hindu ways of life and rituals, as a result of which Tribals also occupied a very low rank in the Hindu society when they were forced to copy Hinduism<sup>7</sup>.

### **Theoretical Perspective on Crime against the Schedule Tribes;**

In our society people have been subjected to violent and discriminatory attitude towards tribals from a long time and that attitude gets passed on to new generations creating a cycle of violence.

Crimes against tribals may seem as a normal crime but there is a crucial difference and that is the intention. These crimes are a result of violent behavior towards the members of any tribe in order to discriminate and harm them. An individual that is a victim to such a crime only suffers it as he/she is a member of a certain tribe. Hence it is not only related to law and order but also to social injustices.

Adivasi's are the people that live separately with their tribes, aloof from the mainstream society. The cause of their exclusion from the society can be geography, difference in social structure and practices and primordial agricultural practices. Even though the Indian Constitution has separate reservation provisions for members of these Scheduled Tribes, upper class people continue to misuse their power to force these people to follow the ancient prejudiced form of social stratification. The attacks on these people most times are to send a message to the entire group and to punish and intimidate members who fight for their rights.

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<sup>6</sup> Kumar, V, 2018, Recalibrations of the Tribal's Socio, Economic and Political Status in Tanjavur: An Explorative Study, *International Journal of Research and Innovation in Social Science*, Vol. 2, Issue 4, Retrieved from <https://www.rsisinternational.org/journals/ijriss/Digital-Library/volume-2-issue-4/06-11.pdf>

<sup>7</sup> M. Ahiraj, (Mar. 05, 2015), Tribals continue to be exploited, Retrieved from <https://www.thehindu.com/news/national/karnataka/tribals-continue-to-be-exploited/article7030196.ece>

Violence against tribals has been present for a long time and it is the historically disadvantaged tribals that face violence in the hands of the upper class.

### **Crime Head-wise Analysis of atrocities/crimes against Scheduled Tribes**

#### **Murder**

A total of 122 cases of murder were reported in the country during the year 2013 which embarks an increase of -21.8% in a year, whereas 123 cases reported in the year 2016 as per the 2016 National Crime Records Bureau<sup>8</sup>.

#### **Hurt**

A total of 930 cases of hurt were reported in the country during the year 2013 which embarks an increase of 14% in a year, whereas 139 cases reported in the year 2016 as per the 2016 National Crime Records Bureau<sup>9</sup>.

#### **Rape**

Well, a total of 847 cases of rape of women who belongs to Schedule castes were reported in the country during the year 2013 whereas 917 cases were reported in the year 2016 as per the 2016 National Crime Records Bureau<sup>10</sup>.

#### **Kidnapping & Abduction**

In total 130 cases of Kidnapping and abduction of persons belonging to Schedule castes were reported during the year, 2013 whereas 128 cases were reported in the year 2016 as per the 2016 National Crime Records Bureau<sup>11</sup>.

#### **Dacoity**

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<sup>8</sup> National Crime Records Bureau, (2020, February 28), Atrocities against Schedule tribe, <https://ncrb.gov.in/en/crime-india>

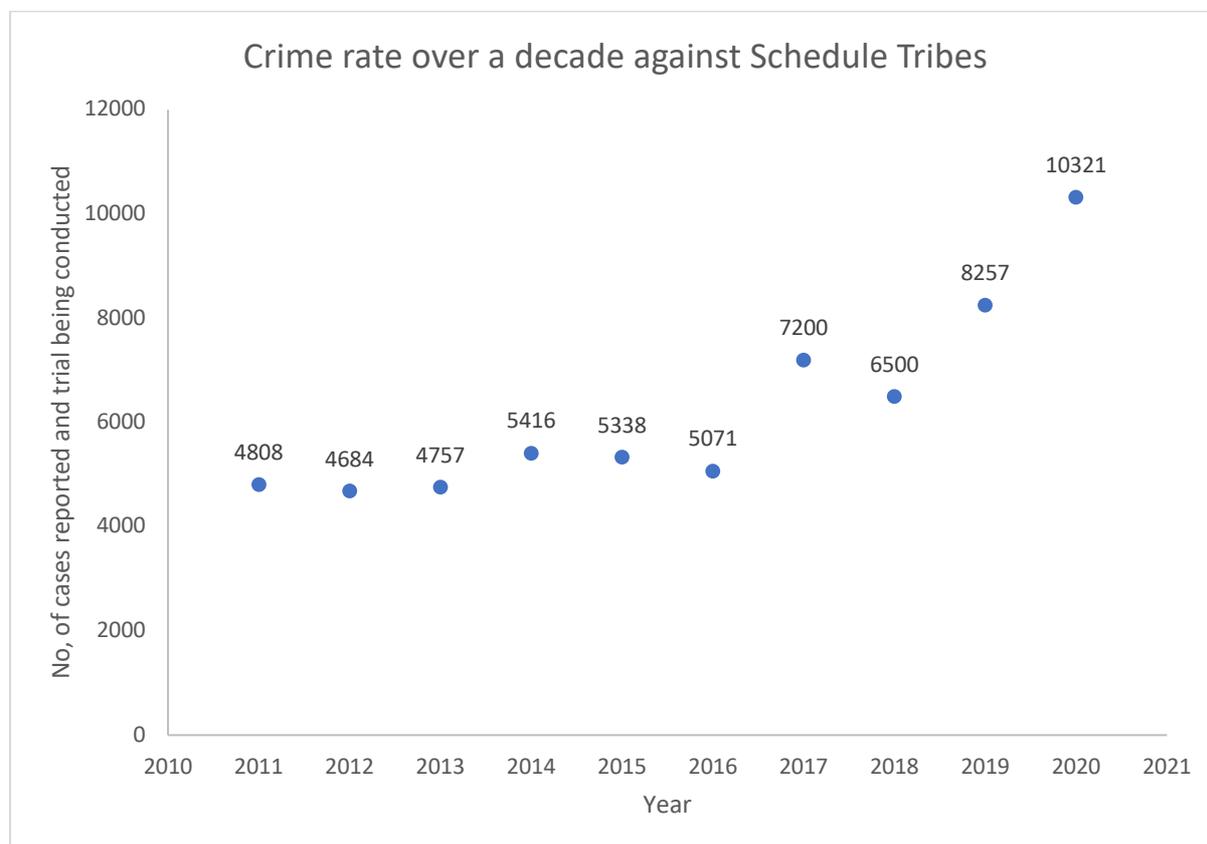
<sup>9</sup> National Crime Records Bureau, (2020, February 28), Atrocities against Schedule tribe, <https://ncrb.gov.in/en/crime-india>

<sup>10</sup> National Crime Records Bureau, (2020, February 28), Atrocities against Schedule tribe, <https://ncrb.gov.in/en/crime-india>

<sup>11</sup> National Crime Records Bureau, (2020, February 28), Atrocities against Schedule tribe, <https://ncrb.gov.in/en/crime-india>

In total 8 cases of Dacoity were reported during the year, 2013 whereas 9 cases were reported in the year 2016 as per the 2016 National Crime Records Bureau<sup>12</sup>.

**Graphical Representation of the crime trends against the Schedule tribes over the decade are as follows;**<sup>13</sup>



### **Indian Constitution acting as a guardian of the Schedule Tribe**

The framers of the Indian Constitution have framed laws to protect the Tribals of India, so that human rights and legal rights of those indigenous people are not violated. If the government of India efficiently start implementing these laws, then the crime rates as well as the oppression of the Tribals can be controlled. An effective administrative policy and its implementation can also improve the situation and would help the Tribals to restore their human rights. We have a very pioneering constitution in India. In 1950 itself it gave equal rights to all citizens but it also

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<sup>12</sup> National Crime Records Bureau, (2020, February 28), Atrocities against Schedule tribe, <https://ncrb.gov.in/en/crime-india>

<sup>13</sup> National commission for scheduled tribes, (2020, February 28), Reported Cases of atrocities against Scheduled tribes, <https://ncst.nic.in/content/crime-against-scheduled-tribes>

gave special protection to the members of STs who were deprived of their land and took strict action for its implementation and also made various provisions to safeguard their rights. So, we have a constitution which was pioneering in terms of giving rights to everyone. We also created specialized regimes of rights for particular groups. And the scheduled tribes were one of them. The scheduled castes were another group within that. But we find that despite having so much protection and schemes these communities are still unsafe and poor.

The scheduled tribes are one among many groups that have both individual and group representation in the federal structure of constitutional. Firstly, they have separately reserved electoral constituencies in Parliament and state assemblies in tribal dominated areas. The only other group which have this privilege are scheduled castes. They also have proportionate population reservations in educational institutions and government jobs. So the proportion of the scheduled tribes in the population at the time of the drafting of the constitution was seven percent and this protection is also available to the scheduled castes whose population was fifteen percent. So, that's how their seats have been reserved. STs are the only groups who got special protection for right of lands and the areas which are dominated by tribes mentioned in fifth and sixth schedule.

Article 338 A deals with The National Commission for ST. It has the authority to investigate and monitor issues related to safeguards provided to ST under the Constitution or other law or government Instructions. The Commission also investigates specific complaints related to ST's rights and guarantees, participates and advises on the planning process related to ST's socio-economic development, and evaluate the progresses of ST's development in Union and states. The Tribal Sub-plan (TSP) Strategy is an initiative of the Government of India aimed at the rapid socio-economic development of tribal people. Funding provided under a state tribal sub-plan must be at least equal to each state's ST population or UT. Similarly, central ministries need to allocate funds from budgets to tribal sub-plans. The National Commission of the Scheduled Tribe is obliged to participate and advise on ST's socio-economic development planning process and assess the progress of development between the Union and each state.

Many tribal and forest inhabitants were dependent on forest lands for generations. Forests are the root and source of their identity, customs and livelihood. However, issue of community access and rights over natural resources had always been contentious. Before Independence, these lands were called lands of British. And it was declared that these forests will be reserved by the government. This declaration process led to the extinguishment of traditional rights of forest dwelling communities, tribal as well as non-tribal. After Independence, the second phase of extension of government control over the forest begins. This started with the setting up of a

network of protected areas which further eroded rights of these forest dwelling communities. So we see that a lot of historical injustice was done through these forest dwelling communities. In India, maximum tribal population and many other forest holders get their livelihood or source of livelihood mainly from the forest resources and the proper and effective execution of tribal and forest landholders over the resources of the forest. It empowers the scheduled tribes to recognize the community rights as well as their individual rights over the resources of the forests.

The first and the major issue is the absence of proper survey and the settlement and the land record etc. So, without proper survey or without proper record of settlement or the land records it is difficult to assign customary rights of tribal over their forest land. So, in case of tribal most of the tribal do not have enough required documentary evidences in order to possess the forest land and they are considered as encroachers in the absence of required documentary evidence. This is the major threat to their existence or livelihood and the claim on the forest resources and in this regard the state governments has not taken any systematic effort or initiatives and according to the data till September 2018, around 4 million claims were filed and out of this around 2 million claims were rejected on the ground that they do not possess any required documentary evidence in order to claim their rights over the forest.

There are various reasons for the implementation i.e. There is lack of resources and it is the result of lack of the political commitment in order to implement the FRA. The process is that the Gram Sabha will file the claim with the bureaucracy at the district level or with the sub-district level. So it is the duty and responsibility of bureaucracy in order to implement the decisions and to consider the claims filed by the Gram Sabha. So, the non-functioning or the poor functioning of the bureaucracy also impacts the implementation of the forest right act. Various policies and programs are initiated by the government and this can also impact the implementation of the FRA. Some examples like the environmental ministry had come up with the guideline which said that forty percent of the degraded foresting the country should be leased to private companies and this leasing should be for afforestation. So, these guidelines or policies and programs of the government will also impact the implementation of the FRA.

Recommendations which should be taken into consideration.

- The FRA should be executed in its true spirit along with the cooperation and coordination of the government.
- Secondly, the Gram Sabha should also be involved in the implementative process.
- Another reason is the left wing extremism affected areas. So, if this act of 2006 is

implemented in its true sense, this will help in building a relationship or a trust between the government and forest dwellers in that area. So this will reduce the land conflict, Naxalism, under-development and as a result of all this, there will be a reduction in the right of left wing extremism.

- There should also be use of modern technology and mapping and the forest administration should be strengthened and they should be willing to provide service to the gram Sabha for the proper implementation of the FRAs.

The bill for The Land Acquisition was implemented as act in 2013 was passed to protect the interests of STs and its main motive was to make sure that there should be transparency in the whole procedure of the possession of lands with minimal disruption to landowners and affected people and families and give fair and equitable indemnification to affected households.

The bill of 2013 was passed to remove manual scavenging as occupation. Its objective was to remove all these policies which employed the people as manual scavengers just because they belong to lower castes. It prohibits all construction and maintenance of unsanitary toilets and hiring of people to manually or dangerously clean sewers and septic tanks. The plan aims to upgrade the existing sewerage system to cover non-sewn areas and establishment of manure and sewage management system for mechanical cleaning of septic tanks, transportation and treatment of manure sludge. Equip the community and install a hygiene unit with an emergency phone number.

## **Conclusion**

The scheduled tribes always remain far from Indian society which made them prone to furthermore isolation. However, people are still combating for their rights so that they could live a proper life. To protect the tribal, Forests rights act was passed which preserved their rights and in later years this act was implemented properly. A special National commission was made for the scheduled tribes for their educational and economic development. And for their funding, the tribal sub-plan strategy was also initiated. Different state got their special provisions for tribal. Land Acquisition bill was passed for the transparency of the implementation of all provisions. And lastly a bill was passed which abolished manual scavenging. The recommendations provided by the United Nations Human Rights Council, Report in March 2022 would upgrade the condition of schedule tribes of the country.

Transformative constitutionalism is an approach to map the human rights of the schedule tribes which will frame the development of the status of these people and would help in delivering

justice to them. However, on account of the aforementioned discussion, I would like to offer some recommendations which might help in preventing the violation of human rights of the tribal people. These are i) Setting up of special tribunals who would be accountable for the cases registered in view of the scheduled tribes which would help in disposing speedy delivery of justice and will also help the people who are victimized to speak against the wrong committed against them. ii) Awareness should be spread regarding preserving the rights of the tribal people, moreover the tribal people should also be made aware regarding their social, political and legal rights. iii) There should be timely amendments with regard to the legislative provisions based on the annual crime data reports and incidents reported. iv) Strict administrative measures should be undertaken by the concerned government authorities so that the effective implementation of the various legislative provisions could be carried out.

We would like to conclude by stating that human rights of any individual should not be put into stake by any sort of discrimination prevailing in the country. With the evolution of technology humans have adapted themselves to use technology efficiently, in the same way people should also evolve their mental capabilities to accept the scheduled tribes as normal human being. The tribal people have contributed largely in art and cultural diversity, so their efforts should be recognized and should be treated as a gift to mankind. An inhuman treatment towards any tribal should be considered a crime against the whole society whose cognizance should be taken by the courts and the government, thereby delivering justice.