



ORIGINAL RESEARCH PAPER

Law

AN ANALYTICAL STUDY OF LAWS IN THE CONTEXT OF SCHEDULED TRIBES IN BANASKANTHA DISTRICT

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ABSTRACT

Scheduled Tribes (STs) in India represent historically marginalized communities requiring special legal protection. This research paper analytically examines the constitutional provisions, statutory laws, and state-level measures applicable to Scheduled Tribes, with special reference to Banaskantha district of Gujarat. The study highlights the effectiveness, challenges, and implementation gaps of these laws in ensuring social justice, economic development, and protection from exploitation. Scheduled Tribes (STs, indigenous people) are one of the most marginalised communities in the political sphere. Political marginalisation of STs due to historical injustices has compelled the Indian state to explore alternative means to ensure adequate representation for them by adopting a political reservation system. Political reservation has, therefore, become their primary means of political empowerment, wherein it has ensured the redistribution of political resources in favour of the marginalised communities. Against this backdrop, the article explores the location of tribal communities in the colonial political system and the reasons for their disproportionate representation, the nature and dynamics of ST reserved constituency and the effects of political reservation on these communities.

1. INTRODUCTION

India is home to a large tribal population, constituting about 8.6% of the total population. These communities are characterized by distinct culture, geographical isolation, and socio-economic backwardness. To uplift their condition, the Indian Constitution and various laws provide safeguards. Banaskantha district of Gujarat has a significant tribal population, especially in its eastern and border areas. Despite legal protections, these communities still face issues like poverty, illiteracy, land alienation, and exploitation. The article begins by focusing on the tribes' location and their representation in the colonial political system, the paradoxes embedded in the colonial pattern of representation and their implications on the tribal people. It explores the criteria employed for reserving a constituency and describes the journey from a multimember constituency to a single-member constituency. It also briefly discusses constitutional provisions by narrowing down to political reservation, impact of delimitation of constituencies order, 1976, and changes that occurred because of the enforcement of the delimitation of constituencies order, 2008, at the national and state levels with statistical evidence.

1.1 Tribes in the Colonial Political System

Tribes in the Colonial Political System The tribal society has a long history of self-governance, own conception of democracy, autonomy and tribal lifeworld. It was structured around communitarian and egalitarian democratic values, thereby facilitating the tribal lifeworld. This was probably one of the most important reasons why the tribal representatives in the Constituent Assembly, such as J. J. M. Nichols Roy and Jaipal Singh, apparently advocated a 'tribalized' form of democracy in post-colonial India. The advent of Britishers in India challenged their autonomy, patterns of governance and notion of democracy by total disregard of their lifeworld. As a result, many tribal communities launched insurrections against the British. The colonial forces, however, followed the confrontational path and suppressed tribal revolts by military means and brought them under a single political regime through coercion, war and conquest. This authoritative integration of the tribes into the mainstream political system not only undermined the tribal practice of democracy but also imposed new political settings that were hitherto alien to them (Wessendorf, 2001, p. 10). Subsequently, the tribal communities became part of the colonial political system.

2. Objectives of the Study

1. To analyse constitutional and legal provisions related to Scheduled Tribes.
2. To study implementation of these laws in Banaskantha district.
3. To suggest measures for effective enforcement of laws.

3. Constitutional Provisions for Scheduled Tribes

The Constitution of India provides a strong legal framework for the protection and development of Scheduled Tribes:

- **Article 14:** Equality before law
- **Article 15:** Prohibition of discrimination
- **Article 46:** Promotion of educational and economic interests of STs
- **Article 244 & Fifth Schedule:** Administration of Scheduled Areas
- **Article 342:** Identification of Scheduled Tribes

These provisions ensure social justice, political representation, and economic development of tribal communities.

4. The Causes of Tribal Unrest

Tribal unrest and Discontent are a cumulative effect of number of factors. The factors or causes that led to the tribal, unrest and discontent may be listed here;

- **Government Failure:** The failure of the Government to take appropriated measure to rehabilitate the tribal population both before and after independence had disappointed the tribal population both and after independence had disappointed the tribals Independent India's Constitution envisages a comprehensive and well-designed scheme of action for the tribal protection and development.
- **Irresponsibility and Lack of Accountability of the Agencies of Tribal Development:** - Indifference. Lethargy and lack of sympathy on the part of the administrators and bureaucrats in dealing with the tribal problem and grievances have been obvious.
- **Unjust Forest Policy:** - Inconsiderate and unsympathetic forest laws and regulation damaged the tribal emotionality. Lands traditionally owned and cultivated by the tribal have been branded as "forest lands" under the new Forest Policy.

- Alienation of Tribal Land to the Non-Tribals: -Lack of legislation to prevent the passing of the tribal land into the hands of non-tribals has added to tribal unrest. Due to some loopholes in the existing system of law the tribal land continues to be alienated to non-tribals for their own exclusive uses.
- Political Indifference: -Lack of interest and dynamism among the political elite to solve the tribal problem made them to become disgusted. National level political parties have not paid due attention to the genuine problem of the tribal.
- Absence of Efficient Tribal Leadership: -Tribals should be able to develop their own leadership to fight against exploitation and to secure justice. But unfortunately, various vested interests have prevented the emergence of powerful tribal leadership. There is virtually a vacuum of tribal leadership.
- Forceful Cultural Imposition: -Tribals are trying to come in touch with civilized people Leaders of various religious commonalities such as the Hindu, Christian and the Muslim are trying to approach them and influence their way of life. It is clear from the above. That Various Social, Political, economic and legal factors have contributed to the problem of tribal unrest.

5. Major Laws Related to Scheduled Tribes

- **Elimination of Transfer of Land Holdings of Tribals:** Due to exploitation of moneylenders and other elite sections of the society, the poor ST landholders are deprived of possession and ownership of the land held by them. The State Government has amended Section 73(A) and introduced the new Sections 73(AA) to 73(AD) in the Bombay Land Revenue Code. This new amendment empowers the Collectors to declare the transfer made by tribals to non-tribals in conservation of provision of Bombay Land Revenue Code as invalid. The amendment has been put into effect from since February 1981. The land held by tribals cannot be transferred without requisite permission of Collector.
- **Prevention of Atrocities Act, 1989:** The Government of India has been implementing the Prevention of Atrocities Act, 1989 from March 31, 1990 to protect members of Scheduled Castes and Scheduled Tribes from atrocities by non-SC and non-ST members of the society. Scheduled Castes and Scheduled Tribes (Prevention of Atrocity) Rules, 1995 have been framed under the Act, and these Rules lay down the norms for providing financial assistance to the victimized person/family. Government of Gujarat has adopted these norms and provides financial assistance along similar lines as those prescribed in the Scheduled Castes and Scheduled Tribes (Prevention of Atrocity) Rules, 1995.
- **Appointment of Officers:** At the Secretariat level, the Principal Secretary/Secretary looks after the implementation of the Prevention of Atrocities Act, while at the Commissionerate level, the Commissioner looks after the work. The Commissionerate also has a special 'Nagrik Cell' under the Deputy Director. At the district level, there are 13 Vigilance Officers and 2 Social Welfare Officers who look after incidents of atrocities within their jurisdiction. The Secretary, Social Justice and Empowerment (Tribal Development Department) is the Nodal Officer in accordance with Rule 9 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocity) Rules, 1995. Similarly, under Rule 10, the 13 district-level Vigilance Officers function as Special Officers.

6. National Commission for Scheduled Tribes

On the 89th Amendment of the Constitution coming into force on 19th February 2004, the National Commission for Scheduled Tribes has been set up under Article 338A on the bifurcation of the erstwhile National Commission for Scheduled Castes and Scheduled Tribes to oversee the implementation of various safeguards provided to Scheduled Tribes under the Constitution. The Commission comprises a

Chairperson, a Vice-Chairperson and three full time Members (including one lady Member). The term of all the Members of the Commission is three years from the date of assumption of charge. The National Commission for Scheduled Tribes functions from its Headquarters at New Delhi and from the State Offices of the Commission located in six States. There are 6 state offices of the National Commission for Scheduled Tribes which work as 'eyes and ears' of the Commission. They keep a watch on the formulation of policy and issue of guidelines relating to the welfare of Scheduled Tribes in the States/ UTs and keep the Commission's headquarters informed about the development periodically. Policy decisions taken by any state government/UT administration affecting the interests of the Scheduled Tribes are brought to the notice of the concerned authorities for necessary action.

7. Institutional Mechanism in Gujarat

- Tribal Development Department
- Special Courts for speedy justice
- High-level monitoring committees
- Welfare schemes and financial assistance

Special courts have been established even at district level to handle atrocity cases efficiently.

8. CONCLUSION

The legal framework for Scheduled Tribes in India is comprehensive and progressive. However, in districts like Banaskantha, the real challenge lies in effective implementation. While laws aim to protect tribal rights and promote development, socio-economic barriers and administrative gaps hinder their success. Therefore, a combined effort of government, society, and local institutions is essential to ensure true empowerment of tribal communities. After Independence, through the introduction of various welfare measures, the government expressed its great concern in the development and progress of the tribals. Now the administrations are required to go to the tribal areas to meet the tribals in order to find out their problems. The government expects the administrators to be honest and humane in their approach towards the tribals. It is unfortunate that such a change in the attitude of the bureaucrats has not taken place Hence, expected progress has not taken place in the tribal world, Still, the gap between the tribals and non-tribals is not bridged. The gap between the rich tribals and the poor tribals is also not minimized. Much is to be done in this regard "Nevertheless at the all-India level it cannot be denied that the tribal development schemes have broken the stagnation of tribal societies and have initiated the process of tribal transformation"

9. REFERENCES

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