

Constitutional Safeguards And Their Usages: A Study of Santal Tribes Of Balasore District In Odisha

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Abstract. The largest tribal community in the Indian subcontinent is Santal. They found in Odisha, Jharkhand, West Bengal, Assam and Bihar and also Bangladesh and Nepal. For their overall development and protection our constitution has provided constitutional safeguards. The Tribal people are more disadvantage section of the society, therefore there is necessity to take affirmative action's by the government of their up-liftment of livelihood, human rights, and welfare of the deprived people. Why the tribal people need special protection and rights? The answer is they still lagging behind in the human progress, till today they are not assured about their legal rights over their traditional properties, their life are very despondent due to not the proper rehabilitation after displacement for developmental the projects; industrialisation has also heavily impact on their land which was intrude for development purpose. In the constitutional frame work Schedule Tribe has described under article 366(25) of Indian Constitution that Schedule tribes or tribal communities are those who are described in the article of 342 for the purpose of the constitution. According to the article 342, after the public notification and the consultation of Governor of that state; President can declare any tribe or tribal community as group or part of the tribes or tribal communities. Article 342(1) talked about through the Act of Parliament the order of the notification of the President under article 342, may include or exclude from the list of Schedule tribes. The 89th Amendment Act in 2003, the new article 338A was inserted in Indian Constitution. This paper tries to find out the usages of constitutional safeguards by Santal tribes of Balasore District in Odisha.

Keywords: Constitutional Safeguards, Social Justice, Human Rights

1 Introduction

Tribals are also acknowledged as aboriginals, primitive tribes, adivasis, original inhabitants of India, natives, jungle people and Indigenous people. The Tribal are the major aboriginal races in India who are older than Vedic Aryans and the Dravidians. They are the architects of the ancient Indian civilization. But they are the least incorporated into the society. It is because of their living in the hills and forest areas

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T. Pradhan et al. (eds.), *Proceedings of the World Anthropology Congress 2023 (WAC 2023)*, Advances in Social Science, Education and Humanities Research 821, https://doi.org/10.2991/978-2-38476-192-0 13

for thousands of years which was unnoticed by the outside world. Tribal people are those who are in a social group of same race, language customs, religion, etc. living in a same area. They are existing before the development of Nation State. The Tribal people are more disadvantage section of the society, therefore there is necessity to take affirmative action's by the government of their upliftment of livelihood, human rights, and welfare of the deprived people. There are so many attributes of the tribal people like oldest ethnic section of the population, culturally distinct groups, economically, educationally as well as socially backward people, most of their own tribal dialect which are not written script except only some few like Sanatali, Ho, Soura, Munda, Kui, Gondi, Bhili, Mizo, , Garo and Khasi and Kokborok, etc. Why the tribal people need special protection and rights or constitutional safeguards? The answers are they still lagging behind in the human progress, till today they are not assured about their legal rights over their traditional properties, their life are very despondent due to not the proper rehabilitation after the displacement for developmental projects; industrialisation has also heavily impact on their land which was intrude for development purpose. In the constitutional frame work Schedule Tribe has described under article 366(25) of Indian Constitution that Schedule tribes or tribal communities are those who are described in the article of 342 for the purpose of the constitution.

Article 342 empowers the President, after public notification and consulting the Governor of the concerned state, to designate any tribe or tribal community as a part of the scheduled tribes. Through an Act of Parliament, the President's notification under Article 342(1) can either include or exclude a tribe or tribal community from the list of scheduled tribes. In 2003, the 89th Amendment Act introduced Article 338A in the Indian Constitution, leading to the separation of the National Commission for Scheduled Castes and Scheduled Tribes into two distinct bodies: the National Commission for Scheduled Castes (NCSC) and the National Commission for Scheduled Tribes (NCST). Article 15(4) and Article 16(4) of the Indian Constitution provide constitutional backing for reservations in educational institutions and employment opportunities for Scheduled Tribes. The Fourth Amendment Act of 2022, facilitated by the Ministry of Law and Justice's Legislative Department, brought modifications to the 1950 constitutional order of Scheduled Tribes in Karnataka (substituting/inserting Scheduled Tribes-Kadu Kurua, Betta-Kuruba). Additionally, under the Second Amendment Act of 2022, Tamil Nadu made alterations to the 1950 constitutional order of Scheduled Tribes by inserting the Scheduled Tribe categories Narikoravan and Kurivikkaran.

Under section 31 A (1) of the Indian Constitution that endowed with "payment of reimbursement at a rate which shall not be less than the market value there of" in the displacement in the name of development. The Rehabilitation Bill policy made a tribal growth plan for the SC and STs Families those who have affected due to various projects in the developmental progress work in India. In Balasore district of Odisha there was Tribal movement occurred in Baliapal and Bhograi test range area due to the developmental project of the Government.

Scheduled Tribes in Odisha has comprises 22.85% of population and third largest population of STs in India. "Santal" is derived from two words, "Santa" which means

"calm and peaceful" and "ala" means "man". "Ol chiki" is their own script of Santali which was invented by Pundit Raghunath Murmu. Their language (Santali language) belongs to the Austro-Asiatic sub-family languages of Munda group. Santali language has got the recognition as the first tribal language which get a wikipedia edition in its native script that was launched in the year 2018 2nd August. Presently, more than 70,000 words are content in Santali. There are 4.11% Santali spoken language according to 2011 census data in India and 2.06% in Odisha. Santali has recognised as the regional language in India according to the 8th schedule of the Indian Constitution. In India there are 6.4 million people who are speaking in Santali Language as per the 2001 census data. If we will look at the past, they were living a nomadic life. But later on in the end of the 18th century they were migrated from Chhotanagapur Plateau to Bihar's Santal paraganas and then entered into Odisha. They are very progressive community among other tribes in Odisha. They have well settled Political organisations like traditional village council headed by "Manjhi" or The village governance structure comprises a secular village headman known as the "Manjhi" and the Deputy village headman known as "Jog Manjhi." Supporting the Manjhi are various roles including the "Parmanik" as the assistant to the village headman, the "Gadet" serving as the secretary with seven messengers, and the "Jog Pramanik" acting as the Deputy Secretary. Additionally, there are positions such as the "Naike," the village head priest, and the "Kudam Naike," assisting the village priest. The council members consist of all household heads. During village council meetings, the "Manjhi" presides and resolves disputes. But, there is need to examine the constitutional safeguards, Social Justice and Human Rights used by them.

2 **Objectives**

- To study the constitutional safeguards and its usages by the Scheduled Tribes in India.
- To examine the use of Constitutional safeguards, Social Justice and Human Rights of Santal tribes in Balasore District of Odisha.

3 Review of Literature

- Behera, G., "Impact of literacy status on participation of Tribal Women in Panchayati Raj: A case study of Nilgiri ITDA Block of Balasore district in Odisha", stated that though government has taken so many programmes and policies for the up-liftment of the tribal people, they are not aware about those programmes and policies due to the lack of ignorance and illiteracy. In comparison with general population, the tribal population is very much poorer situation. Education is the medium to empower the Tribal community more particularly the women section of this community.
- Murmu,G., "Judicial system of Santal society", stated that judicial system of Santal society is a social structure that is very truthful and just, but it is seen in very few societies. The three stages of this system are giving justice to this

community. There is a need of a social infrastructure for this judicial system; otherwise this system will be obliterated from the country.

- Panda,I, "A review on Tribal Heritage of Modish with reference to Santal Community", said that the literacy is the important factor for socio- economic development but as per the census of 2011; Santal Community in Odisha the overall literacy rate is 52.2% which is the higher than all the ST Communities.
- Shadangi, S.K., "Tribals of India: Problems and Prospects special reference to Odisha", said that globalisation had impact on tribal culture, traditions, customs, their lifestyles, etc. It is not only in India but also in Odisha Tribals also and in terms of economic growth of this community had less impact on them and they are facing so many challenges in their life. In the changing scenarios of 21st century have little bit affect Tribal Communities and their lifestyles due to the adoption of globalisation and economic liberalisation. Both Central and State Government are trying to prepare them how to face the challenges and also develop systematically with the assistance of taking so many constitutional safeguards. Today some tribal people are aware about their constitutional rights as well as have acquired the requisite ability and Knowledge to coup-up to the complete life style.
- Meena, S.P., "Human Rights of Tribes: Problems and Perspectives", believed that due to the less educated they are unable to protect their rights. There is a need to educate them properly and fully; and awakening them; so that they can protect their human rights as well as they will get social justice. The solution of the whole problem lies by imparting knowledge to them. There is no other right ways to overcome all the problems like economic, political, social and educational. They are not getting the protective measures that has described in Indian Constitution.

4 Constitutional Safeguards and their Usages by Santali Community in Balasore District

For the overall development and protection of the Tribal which is constitutionally known as Scheduled Tribes enshrined in the Indian constitution. It has provided various rights and safeguards such as constitutional safeguards through rights such as political, economic, social, legal rights, etc. Our Preamble has emphasised on to secure its entire citizen which emphasised about social, Economic and Political Justice. Here all citizens mean all that includes tribal's also. The largest tribal community in the Indian subcontinent is Santal who found in the Eastern part of India mainly in Odisha, Jharkhand, West Bengal, Assam and Bihar. They also exist in Bangladesh and Nepal. They are one of the most inhabited tribal communities in India. In Odisha, they found primarily in Balasore, Mayurbhanj and Keonjhar districts.

Why the tribal people need special protection and rights or constitutional safeguards? The answers are they still lagging behind in the human progress, till today they are not assured about their legal rights over their traditional properties,

their life are very despondent due to not the proper rehabilitation after the displacement for developmental projects; industrialization has also heavily impact on their land which was intrude for development purpose. In the constitutional frame work Schedule Tribe has described under part XIX of the article 366(25) of Indian Constitution that Schedule tribes or tribal communities are those who are described in the part XVI of the article of 342 for the purpose of the constitution. According to the article 342, after the public notification and the consultation of Governor of that state; President can declare any tribe or tribal community as group or part of the tribes or tribal communities. Article 342(1) talked about through the Act of Parliament the order of the notification of the President under article 342, may include or exclude from the list of Schedule tribes. The 89th Amendment Act in 2003, the new article 338A was inserted in Indian Constitution. As per Article 338A, the National Commission for Scheduled Castes and Scheduled Tribes underwent division into two distinct commissions in 2004: The National Commission for Scheduled Castes (NCSC) and The National Commission for Scheduled Tribes (NCST). NCST stands as a constitutional body according to the provisions of Article 338A within the Indian Constitution.

The Indian Constitution, through Article 15(4) and Article 16(4), provides constitutional support by means of reservations for Scheduled Tribes in educational institutions and employment opportunities. Through the Fourth Amendment Act of 2022, administered by the Ministry of Law and Justice, Legislative Department, modifications were made to the 1950 constitutional order of Scheduled Tribes in Karnataka, involving the substitution or addition of Scheduled Tribes such as Kadu Kurua and Betta-Kuruba. Tamil Nadu (inserted the Scheduled Tribe- Narikoravan, Kurivikkaran) under Second Amendment Act 2022, has modified the 1950 constitutional order of Scheduled Tribes are not the arbitrary discrimination rather it is a protective discrimination. It is the requirement of the development for the Tribal people in India. Therefore, there are several constitutional safeguards are there for Scheduled Tribes for their overall development and they can assimilate in the main stream. They are categorized as Educational and Cultural, Social, economic, Political, Service safeguards, etc.

4.1 Educational and Cultural safeguards

- i. There are under article 15(4) talking about the special Provisions for advancement of other backward classes (which includes STs.)
- ii. Article-29 declared that protection of interests of Minorities (which includes STs.)
- iii. Article-46 in Directive Principles of State Policy(DPSP) stated that the State shall promote with special care that the educational and economic interests of the weaker sections of the people particularly SCs and STs and also protect from social injustice and all forms of exploitation.
- iv. Article-350 stressed that Right to conserve distinct language, script and culture, instruction in mother tongue.

4.2 Social Safeguards

- i. Article 23 emphasizes the prohibition of human trafficking, beggary, and other forms of forced labor.
- ii. Article 24 prohibits child labor.

4.3 Economic Safeguards

- i. Article 244(1) outlines provisions in the 5th schedule that apply to the administration and control of Scheduled Areas and Scheduled Tribes in states other than Assam, Meghalaya, Mizoram, and Tripura, which are covered under the 6th schedule per Article 244(2).
- ii. Article 275 provides grants in aid to specified states (Scheduled Tribes and Scheduled Areas) covered under the 5th and 6th Schedules of the constitution.

4.4 Political Safeguards

- i. Article 164(1) mandates Tribal Affairs Ministers in Bihar, Madhya Pradesh, and Odisha.
- ii. Article 243 emphasizes the reservation of seats for Scheduled Tribes in Panchayats.
- iii. Article 330 reserves seats for Scheduled Tribes in the Lok Sabha.
- iv. Article 337 reserves seats for Scheduled Tribes in State Legislatures.

4.5 Service safeguards

- i. Article 16(4) in Indian Constitution talked about that the state can enact legislation for the reservation of posts in the government sector or jobs in favour of the backward classes of citizens.
- ii. Article 16(4A) emphasised on the enact of any law, provision or reservations for the weaker sections (in favour of SCs and STs) of the society in matters of employment as well as promotion in government jobs.
- iii. Article 164(B) State Government can pass the legislation for the SC and ST Citizen in respect to reservation of government jobs.
- iv. Article 335 directs that "the claims of the SCs and STs Members are taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State."

The use of the constitutional safeguards by Santal Community of Balasore District is very less in comparison with other communities. Total number of Population of ST Community in Balasore District is 275,678, out of which male population are 137,748 and female are 137, 930 which comprises 11.9% of total population in Balasore District as per census of 2011data. The literacy is the important factor for socio-economic development but as per the census of 2011; Santal Community in Odisha the overall literacy rate is 52.2% which is the higher than all the ST Communities but lower than the State literacy average. The sex ratio of Santal Community is 1008

female against 1000 male. But, in case of all ST; child sex ratio of Santal is 972 per 1000 male against 980 of all ST communities which is the lower than the overall ST but higher than the overall ratio in the State.

5 National Commission for Scheduled Tribes

According to Article 338A, the National Commission for Scheduled Tribes, comprising a Chairperson, a Vice Chairperson, and three members (including one female member), is established by the President. This commission's primary responsibility involves scrutinizing and assessing the constitutional safeguards allocated to Scheduled Tribes in India. Its core focus is on fostering the development. safeguarding interests Tribal progress. well-being. and the of the community.Panchavat (Extension to Scheduled Area) Act which is known as PESA brought a new paradigm for the development of Tribal Community in 1996. Ministry of Tribal Affairs (MOTA) is also working under the Indian Government for the development of the Tribal Communities. The main functions of this ministry are Tribal welfare, social security, social insurance; provide scholarships to Scheduled Tribe students, making various policies, planning and coordination of development for the Scheduled tribes, administration of Scheduled Areas, and provision of National Commission for STs, implementation of Protection of Civil Rights Act of 1955 and 1989 prevention of Atrocities Act and support the financial supports, etc.

6 Special Development Council (SDC)

The Special Development Council (SDC) is working in nine tribal districts namely Gajapati, Keonjhar, Koraput, Kandhamal, Mayurbhanj, Malkanagiri, Nawarangpur, Rayagada and Sundergarh. The aim of the SDC is to preserve the tribal culture and tradition, heritage and their identity. There is also required to set up the Special Development Council in Balasore District also. The tribal peoples more predominantly the Santal tribes will get benefit out of it.

7 Tribal Sub-Plan Strategy

Tribal Sub-Plan (TSP) strategy came in the fifth Five year Plan in the year 1974-75. This strategy was given emphasis on Tribal area's development and the socioeconomic developmental gap between Tribal's and others. The main aims of this TSP were socio-economic development and protection from exploitation. Through this plan government has tried to assimilate the tribal community into the main stream of the society and minimize the gap between them. Therefore, there is ITDA for the benefit of the Tribal Communities and Nilagiri is the only block that comprises Twenty Five Gram Panchayats and One Forty seven inhabited villages and other eleven uninhabited villages in Balasore District of Odisha which is the smallest Integrated Tribal Development Agency (ITDA) among other Twenty- Two ITDAs in the state.

But, other Santal tribals are also found in Basta, Bhograi and Baliapal Block. They are exempted from this Tribal Sub Plan. They are not much aware of their rights. They are still now depending only on agriculture. So, their Socio-economic development is very less.

8 Human Rights & Social Justice System in Santal Community

Due to the less educated they are unable to protect their rights. There is a need to educate them properly and fully; and awakening them; so that they can protect their human rights as well as they will get social justice. The solution of the whole problem lies by imparting knowledge to them. There is no other right ways to overcome all the problems like economic, political, social and educational. They are not getting the protective measures that has described in Indian Constitution. Social Justice is very crucial in Santal Community and they have a lot faith on it, because it is based on truth and modesty. It impact immence in santal community. Basically, there are three types of justice systems in santal tribal community from the ancient periods. They are;

8.1 Rural justice system (Atu)

Rural justice system which is also known as Atu is composed by five members namely Majhi, Jaga Majhi, paranik, jaga paragan, and Godet. Majhi is the head of the village as well as in rural justice system. Majhi has taken charges to solve all the problems of the villagers with the help of Jaga Majhi, paranik, jaga paragan, and Godet. In the absence of Majhi, Jaga majhi performed all the duties and responsibilities of rural justice system. Like a judge of the court Majhi verdict about the matters which brought to notice in the rural judicial system and the villagers looked at his verdict and obey as a law in that community. Like a direct democracy have the power to call the majhi and other four members of that judical systems.

8.2 Regional justice system (Pargana)

To solve the various social problems; there is asystem of "Pargana" which is also known as Regional justice system. It is above the rural justice system or Atu. If anyone will not satisfy the decisions of "Majhi" then he or she can go to this pargana or Regional justice system. "Deshmajhi" and "Chakaldar" are the two lower rank majhi who assist to the Pargana or the president of Regional justice system for the judicial matters that comprises ten to fifteen villages.

8.3 Domestic justice system (La-Bir)

Domestic justice system is considered as the Supreme Court in santal community. If any santal people will not get justice properly from "Atu" and "Pargana" then this is the last judicial system where they will get the justice. It is the largest judicial system for santal community and "Dehuri" is the head of this judicial system. According to Dr. Chaturbhuja Sahu it is called as a sendra (hunting) judicial systems which given priority on hunting festivals of the Santals tha occures once or twice a year for few days. This judicial system has also emphasised on "the succession of the unmarried daughter develops on the order that first to her father, then brothers or their sons, then to her mother, then to her paternal uncles and if there are no male members then to her sister or their sons."

9 What is the Role of Social Justice in the Tribal Community

Advocating fairness and equity in various facets of society, social justice aims to ensure equal economic, educational, and workplace prospects. It also prioritizes the safety and security of both individuals and communities. At its core, social justice revolves around the principle that everyone should have equal rights and access to opportunities. Nonetheless, there exists considerable ambiguity regarding its precise definition. To gain a deeper comprehension of social justice, exploring its historical background proves beneficial. The Tribal Communities required more and more Social Justice to assimilate in the main stream through economic and education.

10 CONCLUSION

To conclude that after having so many constitutional safeguards, its usages are very minimal. Their thoughts and beliefs are not changing fully because of their superstitious nature. They thought that any unusual occurrences in nature are the cause by deities. In the name of God or Goddess they are still in practice in offering goats or buffaloes, but not the Mariah or human sacrifice. In the changing scenarios of 21st century have little bit affect Tribal Communities and their lifestyles due to the adoption of globalisation and economic liberalisation. Both Central and State Government are trying to prepare them how to face the challenges and also develop systematically with the assistance of taking so many constitutional safeguards as well as welfare and developmental plans and policies for Scheduled Tribes. Today some tribal people are aware about their constitutional rights as well as have acquired the requisite ability and Knowledge to coup-up to the complete life style. Honourable President of India Draupadi Murmu is the greatest example for tribal community more particularly for Santal tribes. In our constitution Santali have described as a Nation, who has separate language, society, culture and religion, but is it a Nation? Why they are deprived from their own identity for so many years?

Globalisation had impact on tribal culture, traditions, customs, their lifestyles, etc. It is not only in India but also in Odisha Tribals also and in terms of economic growth of this community had less impact on them and they are facing so many challenges in their life. Though government has taken so many programmes and policies for the upliftment of the tribal people, they are not aware about those programmes and policies due to the lack of ignorance and illiteracy. In comparison with general population, the tribal population is very much poorer situation. Education is the medium to empower the Tribal community more particularly the women section of this community. The Santal Tribals of Odisha more particularly in Balasore District they are lack of awareness about policies and programmes due to their ignorance. Illiteracy is the main reason for their overall backwardness. Their socio-economic condition and Political Sphere will improve through education and economic security. The main source of livelihood of the Santal tribals of Balasore District of Odisha is agriculture. Most of the tribal people are depending on agriculture that does not sustain satisfactorily.

The main aim of these constitutional safeguards for Scheduled Tribes is to bring them to the main stream of human civilization. How can they assimilate in the main stream of the society; both Central and state governments have taken so many steps, plans and programmes as well as policies. But, due to the less educated they are unable to assimilate in the main stream of the society and not able to protect their rights. There is a need to educate them properly and fully; and awakening them; so that they can protect their human rights as well as they will get social justice. The solution of the whole problem lies by imparting knowledge to them. There is no other right ways to overcome all the problems like economic, political, social and educational. They are not getting the protective measures that has described in Indian Constitution. Government is providing so many facilities for their enhancement. One of the example that The ministry of Tribal Affairs, Government of India is providing various scholarships for those Tribal Students who want to study Post Graduation, PhD and Post Doctoral in abroad like National Overseas Scholarship Scheme (NOS). Every year there are twenty numbers of awards provided to ST students; out of which seventeen awards given to the STs Students and three awards given to the Particularly Vulnerable Tribal Groups (PVTGs) students. This scheme facilitates 2.50 Lakhs per annum. But, the question is how many are getting benefits out of it in Balasore District? This paper has tried to find out that are the constitutional safeguards are properly utilising or not by the tribal communities as a whole and Balasore District as particular. The answer is not satisfactory.

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