

## A Relook upon the Indian Constitution to Check with Tribal Living

Partha Sarathi Sarkar

IGNOU (Pursuing M.A. in Anthropology)

and

Mukur Dey

Burdwan University (MPhil in Economics)

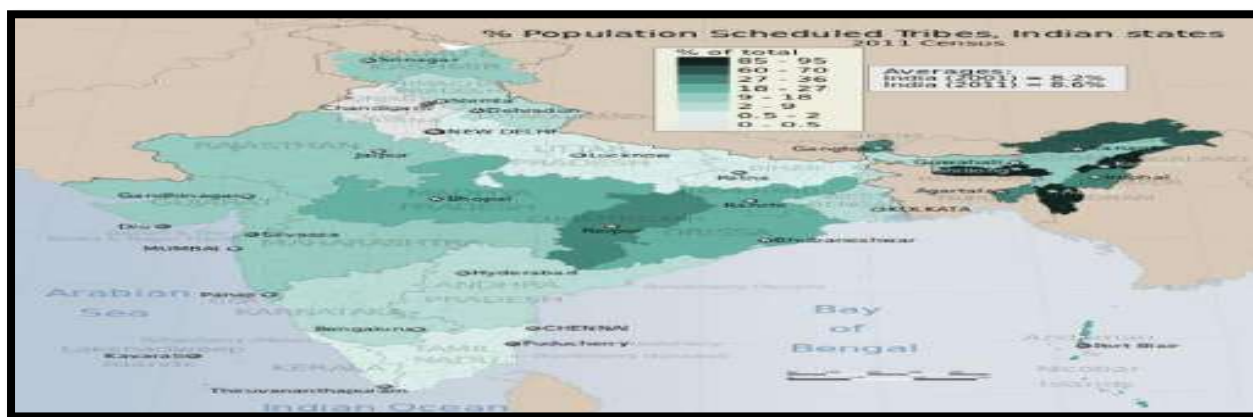
E-mail: ps999495@gmail.com

### Abstract

*Development is a very academically enlightened topic and the present time of modernity is calling the people to be homogenised. The policy level approaches are meaningfully impacted upon the issue of human development. The Tribal issue is quite important in this case of development because they are not similar to the other people of this nation of India. They have historically lived in the nation, but at the outskirts even they were termed as criminal just for their racial identity. Henceforth the liberation of India has a liability to promote their interest. These people are living out of the limitation to the modernity so their living has to be separately read. The Indian Constitutional provisions are helping the people to be promoted when they are getting equal treatment in law and the fifth or sixth schedule is protecting them from the outside effects. In this connection the scenario is much troublesome as the people from the tribal lands are not getting the proper privilege to design their own living. The people are hardly aware about the Constitutional provisions so those are also not helpful for them. This is a picturesque to say that the tribal people are now in a curiosity to check what is positive for them and what is not! This study is trying to intervene in this situation to offer a good living for the tribal people which will make the development of India much sustainable.*

**Keywords:** Human development, Nation, Tribal lands, Constitutional provisions

### Introduction



Map 1: Presence of Tribal people in India

“Tribes or tribal communities or parts of or groups within such tribes or tribal communities”

Article – 366(25) of Indian Constitution

In a nation like India the people development is of utmost importance in any consideration and from the very basic line of the Constitution India is confirmed that it will work for the under privileged. Since 1950 India has designed a lot of plans and programs which are undoubtedly showing that the governance structure in India is of highly interested to help and cooperate with the people who are not so empowered and in this manner the nationhood has started several plans as well as programs. It is also a good point to manage the development management of the tribal people. In the fifth and sixth schedule of the Indian Constitution several actions are being said for the tribal but the research question lies there as because just giving some opportunities do not signify the welfare of any section in a large country similar to the said. It can be highly understood that the development of tribal is not much happened just due to the government understanding level. The government is driven by the qualified persons who are staying at a distant area

from the tribal living and amazingly it can be noted that most of policy makers are not even much aware of the tribal culture because of their ambiguity of work profile and academic profile. Henceforth the maximum effective development cannot be in this manner. Yet the government has no consideration in this case. The government is much satisfied by promulgating some idealized points but the visionary line of approach is lacking when the public sentiment of the tribal people are being overlooked. So the tribal must come into the scene without having any fake promise. The government must ask the tribal people who are dwelling in the forest lands even without any much privileges including education or health.

The research has asked to make a complete level analysis upon the issue of tribal living. The people were not in the same boat so the evolution did not work for them as like the other people. In this line of social living the tribal people shared a mis-managed development figurine in their lifestyles. The people are having a set of own idealization upon their living but the realization of government does not match with that. In this case a situational conflict may arise. This conflict is creating a disturbance in case of the tribal progress which can alternatively make them despair. So there is every need of designing a different plan.

Here a review has been placed but with a new approach to say that tribal development is not possible with the Constitution rather they should design their own. Here it is a unique point to note that the people should design their own living. They will not be compelled to have situated in a situation which will be made by bureaucratic. It will speak their voice to claim their own living with which they will dream their living and work for that by their own manner.

### **Objective of the Study**

The study has used the set up of the tribal to clearly say a point that is the modernized living is not good for the tribal people especially who are living in several parts of the country namely India. Several works have done for the tribal but their development is still to be satisfactory. There is not much fixed belief that the tribal living has marvellously changed with the Indian Constitution. It is indeed crucial to check if the tribal people are living in an unsatisfactory manner. For this purpose the study has been carried out to have a complete knowledge on:

- Is the Indian Constitution really effectual for the tribal development?
- Is the tribal concept enough ready to live in modernized living?
- How the tribal living is getting problematic stage when the concept of Constitution has worked?
- How the further policies can be done for the tribal people?

Tribal living is an important issue for a welfare centric nation like India where they have lived from a historical period though they were shifted in the forests then suddenly the modernized living has occurred in the independent as well as Constitutionally driven country. No country's development is short lived so that must have to be sustainable. In this case the tribal living is of much questionable lift. The study has tried in these two considerations to insure them with a good living.

### **Implications of Study**

Tribal people are matter of huge academic discussions now-a-days. They are living far from the other contemporary people. So the cultural transmission is tough with them. They are marginal and terminated henceforth any consideration to them by focusing on the modernity can make some complexities rather. In this situation the tribal may have some disturbing living. Indian Constitution has designed the style of living for the tribes but from the modernised considerations. In this case the expected development may not be seen to occur. Henceforth the total situation can be problematic for both the parties. This study is trying to make a note here to say that tribal development could be more finely done if the tribal could design their own living. In this way the tribal development may occur which will finely adjust the nation's progress also.

### **Limitation of the Study**

The study has not taken any empirical data in the total understanding and there is no chance of gratification of their knowledge with the governance structure. Tribal people are living with their own set of governance so the comparative line of approach between the two governance structures has not been placed. The study has based upon a simple hypothetical analysis. And there is not enough proof to restructure the total Indian governance rather the study is taking its shape by checking with the possibilities of tribal living. The suggestions of this study should be implemented in the field to say if they are really much efficient or not. The study has no post facto analysis so the variables are not saying any concrete thinking.

## Methodology

The tribal people are considered here the most vulnerable communities who are far away from the modernised set up when the people are not getting the usual benefits for the people for the other people who are living in other places. Somehow it can make a complete follow up with the tribal and non-tribal consideration. The descriptive nature of this paper has done with due privilege in the analysis of policy line up. It has tried to emphasise the total tribal issue irrespective of any specific group of people. This study is making an understanding that the tribal people are not enough good with the Indian Constitution as the book is of modernized living and if the modernized issue is being assured with the people then they may feel somehow uncomfortable as because development is an evolutionary process. This study has seen several policy gaps which are imbibed even from the aspect of the Constitution. Here a review has been placed by keeping full understanding upon the tribal placement in India. It is a simple issue specific analysis to understand the living of the Tribal people. It can be useful for the further policy design by taking help from the Indian Constitution.

## Discussion

“When we live in alignment with who we are and how we want to live, we will attract and find like-minded individuals.” -- Akiroq Brost

Human living is an eminent proof to say that they have got the teaching that they are somehow more than the nature itself. From the very primitive type of cave livings to the hut making humans have walked a long path. But at that time tribal living was the only way out and then based on economic perspective some people were coming out to settle in a very sparse area and for this cause the tribal people were changed into modernized. And then the so-called modernized people were trying to motivate the tribal people as like them, in this way a complexity has been originated. India was ruled by the British and as per their thinking the people who were not like they then they were back warded in culture. From this approach the British administration made the tribal as even the criminal who were not following them. After independence also the thought did not change and the Constitution has told to develop the tribal but the governance has made them unilateral to the non-tribal. Here this total ups and downs will be discussed.

## Tribal in Indian set up

India is unique in its construction with the three kinds of society formation – urban, rural and tribal (Kapur 2018) when it has a clear cut difference among them. The tribal people are very different with their own dialect to the bodily formation. The people are individualised from the other citizenry in India. In India, tribal people are always seen as not the progressed being because of a single reason that they are not allied to the modernization (Sindhi 2012) so the policy analysis has not seen them from their basic core rather they are being addressed as illiterate or uncivilized. From this background it can be concluded to see that the tribal people are not equal citizen to the other people of India. The 1996 Act namely Panchayat Extension to Scheduled Areas (PESA) has given them the Right to be elected in their own areas (Kurup 2008) which is also not assuring the tribal system because as per the written copy at least the community leader system has not been properly given to be continued, this kind of things are directly attacking them to lose their idealization upon tribalism. Henceforth the tribal people are not getting chance to be progressed rather they are suppressed at the extent of unhappiness in their lives. Therefore they must have to check with their potentialities. Tripathi (2016) has said that the tribal people are acquiring 15% of the total land so the government is trying to do some help for them under compulsion. Tribal are occupying the main force of Indian governance so they can never ever be ignored from the setting of the total government stature. In this connection the first government in India passed two schedules in Constitution which was written in 1946 - 1950. Hopefully there was enough effort to help the people but the mode of action was not much tribal centric.

## Tribal in Indian Constitution

Articles 341 and 342 of Indian Constitution have defined the tribal who are far away from the modernized living. Krishnan (1985) has said that the fifth schedule of Indian Constitution has come into a point to make a mind for saying the government is preserving the tribal culture but undoubtedly that is upon the cost of the modernized set of governance. Sarkar (2014) here has said that the tribal people are not only protected by these mentioned schedules rather there is a set of other sections and Articles which are giving them a more holistic welfare. Those can be said as

Social Rights: Articles 21, 21A, 23, 24, 16(4), 335

Economic Rights: Articles 244, 244A and 275

Political Rights: Articles 164, 330, 332, 243D and 243T, 338A, 341 & 342

Employment Rights: Articles 15(5), 16(4) and 16(4A)

## Educational and Cultural Rights: Articles 14, 15, 15(4), 16, 17, 29, 46 and 350

So it can be said that the Constitutional makers were very interested to give some light among the tribal for their development. In this manner the tribal were secured with the chance of growth but Indian Constitution is a book on justice based on the modernized living henceforth the traditional individuality may not be search out if the tribal are indigenous in true sense! Therefore the basic principle of Indian Constitution to keep the people as they are culturally cannot be seen in Constitution if the aspect of implementation is in overall consideration. Still the tribes are getting

### **Some privileges**

- a) To setup Tribes Advisory Council according to the provision of Indian constitution.
- b) The Governor has the power to adapt laws passed by Parliament and State legislature in such a way that it suits these areas according to the provision of Indian constitution.
- c) It deals the Governor has power to make regulation, and also maintain a good governance and peace in the scheduled area.
- d) It extends that Union gives certain direction to State for the administration of the Fifth Schedule Area.

So the basic problem is not their mentioning in the Constitution copy but they are getting problem due to the modernization which is occupying them with the cooperative angle in the name of Constitutional provision. The tribal are getting the Autonomous District Councils under the Autonomous District Council Act 1979 but they are still driven by the external stakeholders on their own land (Mohapatra 2017).

### **Problem in between tribal and modernity**

Jha (2004) has defined the Constitutional makers as the members of Constitutional assembly to frame a set up for keeping governmental decisions as the representation of the public. It denotes the governmental decision is reflected with the name of governance but in the name of the people. In the Article 45 the state has taken the responsibility to develop India so the participation of people has get lesser importance for directing the nation and Elder (2009) has told that the Constitution has written itself in English which is a foreign language since the tribal people were not comfortable with that language. It is also to be noted down here that the people were literate in British system of education so at least in hypothetical sense it can be said that they were not having deep knowledge upon the tribalism. It is a true fact that tribal participation could not be much prominently seen in the assembly. Banerjee (2016) has explained that tribal are the reasons of counter - insurgency or policy – making but they are not coming in the knowledge consideration when the tribal people are less in number in state archives. In this way the tribal people are mentioned in the Constitution but they are not from their own background so the condition is not much effective till date. The people are not perfected with proper maturity till date and the reason is that they are not well accepted when the Constitution is playing like a barrier. Babcock (2014) has said that the Indian Constitution has considered sovereignty as the goal of the nation but due to the political silence the effective approach of the book has further failed to work upon so the tribal people have faulty second class citizen with semi – sovereignty which is creating problem in them. It can be finally said that having some rules do not mean some effective change if those are failed to be properly implemented and if the tribal are not feeling any attributive attachment. Ranganatha (2014) has rather felt satisfied to see that in the Article 342 the Indian democratic thinking has given the President that authority to have a name of tribal with which the tribal persons are getting reservations which is a good initiative for them. But the point comes here again to claim a dubiousness as giving some reservation is not sufficient to relate between a progress and a community.

### **Conclusion**

Tribal is a term to denote the most primitive in a situational set up of under development and the persons who are not as modern as expected in the twenty first century. They are living in a very sparse area where the modernity can hardly enter for achieving the best chance of being promoted. Rather the people are full of natural resources when the technical knowledge has not been given to them. In the Indian population scenario the people constitute around 9 per cent of the total head count. In this case they are not a very strong force to compel the government to do anything but being a welfare oriented country India have to assure a level of prominent help to them. They should getting proper care and privilege by the government so their development can stay continuous.

For this purpose the Constitution has given them enough opportunity to come forward when they should get equal treatment as the other comparatively promoted citizens. The fifth and sixth schedules have given them chance to be developed by ensuring several actions including set up of developmental bodies. But the different indicators are saying

that the tribal people are not getting much benefit of the governance. This situation is asking to make some other kind of thinking.

The tribal should not be treated as just the under developed or back trodden because if it is a perspective only except the access of opportunities then it will create more problem for the people. They will be demoralised and the efficiency of developing efforts will not be seen to act upon their communities. The people should be aware about the both kinds of living by naming as traditional and modern after which they will be able to decide which path has to be taken. The resources which will be complimentary to the natural assets should take place in their living. In this way it can be said that not only the constitution rather the tribal oriented growth will be helpful for them.

**Suggestions**

Every living has a pattern of understanding and maturity, in this connection there is very set of unwritten rules besides the regulations which are called as norms. The set of norms which are very unique with the people who are not understood as the modernized can be termed as tribal. The set of norms are further dealing with the living with the people. In this consideration from the very basic tribal are different from the contemporary progressed people. The group of people who are further making the tribal communities are checking with this connection. Henceforth if they are living in designed households which are designed by the people then they cannot ever be much happy. This study has explored the connection to go in some further way in this connection for saying that Indian Constitution has taken effort but the effort has not helped much the people. If there can be an illustration in this connection then that can be as below.

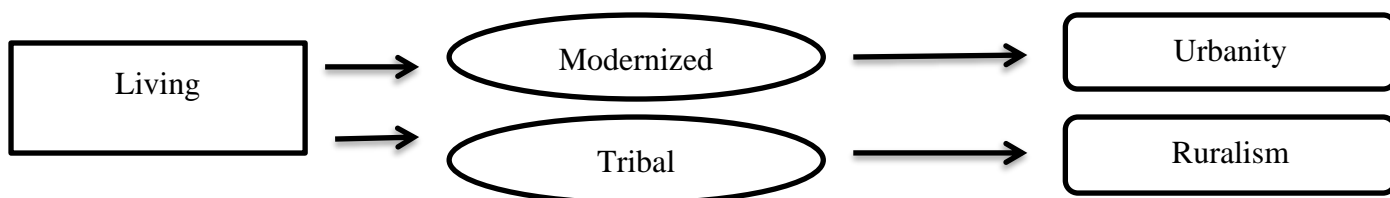


Illustration 1: Different set of living

This figure shows that from the very basic the tribal people are differently living which is not possible to totally erase from the minds. But due to the governance structure the people are being compelled to leave out the set of guidelines which they were following. It may be said as good initiative to give them modern privileges but did they ever hope for that in their lives? And the answer is no!! So why should they adopt the practices?

Here lies the importance of this paper as the tribal people are living in an ambiguous situation with which they can never ever be satisfied. The study has tried to make a policy chapter for the tribal people when they can be at least in a situation where they will understand that their views have been considered before offering the living in the household. Undoubtedly this policy consideration may further get a newer approach but this is here a separate thinking which has not considered modernization as the ultimate goal. The policy thinking can be as below.

The tribal should be in the main focus rather the governance and they will decide by them how the development upon their living will be designed. That must be sustainable because a bird best knows to make a nest. This unique approach will be said as modernized because modernization does not mean to state a reflective knowledge with which the knowledge givers are not feeling much attached. The government should go to the tribal for them in place of going to follow the Constitution. It will be definitely helpful.

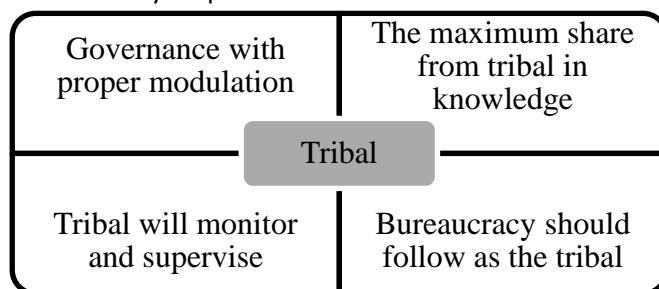


Illustration 2: A newer modelling in tribal living

The government should follow the wish and knowledge of tribal when they will occupy the position to design as per the need. The people should not overlook the governance but the governance will not work by their own. In this way a new day can be expected. The tribal are very much attached to the public administration not only with getting the exposure of this time rather they are with the administrative framework when they were in a separated region by having less forwardness. Henceforth their participation has to be assured from the ground level and every step should be judged by the tribal people first and not the government itself.

## References

- Kapur, Radhika. Indian Society –Urban, Rural and Tribal. March 2018. Accessed on – August 3, 2019. Source - [https://www.researchgate.net/publication/323691689\\_Indian\\_Society\\_-\\_Urban\\_Rural\\_and\\_Tribal](https://www.researchgate.net/publication/323691689_Indian_Society_-_Urban_Rural_and_Tribal).
- Sindhi, Swaleha. Prospects and Challenges in Empowerment of Tribal Women. IOSR Journal of Humanities and Social Sciences, V 6 I 1: 46 - 54. Nov. – Dec. 2012. Accessed on – August 3, 2019. Source - <http://www.iosrjournals.org/iosr-jhss/papers/Vol6-issue1/G0614654.pdf?id=5913>.
- Kurup, Apoorv. Tribal Law in India: How Decentralized Administration Is Extinguishing Tribal Rights and Why Autonomous Tribal Governments are Better. Indigenous Law Journal, V & I 1: 87-126. 2008. Accessed on – August 3, 2019. Source - <https://tspace.library.utoronto.ca/bitstream/1807/17375/1/ILJ-7.1-Kurup.pdf>.
- Tripathi, Prakash. Tribes and Forest: A critical appraisal of the tribal forest right in India. Research Journal of Social Science and Management, V 6 N 6. October 2016. Accessed on – August 3, 2019. Source - [https://www.researchgate.net/publication/308794288\\_Tribes\\_and\\_Forest\\_A\\_critical\\_appraisal\\_of\\_the\\_tribal\\_forest\\_right\\_in\\_India](https://www.researchgate.net/publication/308794288_Tribes_and_Forest_A_critical_appraisal_of_the_tribal_forest_right_in_India).
- Krishnan, P. G. Constitution and Tribal Welfare. Cochin University Law Review, V IX: 49 - 66. 1985. Accessed on – August 3, 2019. Source - <http://dspace.cusat.ac.in/jspui/bitstream/123456789/11219/1/Constitution%20and%20Tribal%20Welfare.PDF>.
- Sarkar, Badal. Constitutional Provisions for Tribal Development in India. Political Science, V 3 I 2: 280 - 282. Feb 2014. Accessed on – August 3, 2019. Source - [https://www.worldwidejournals.com/paripex/recent\\_issues\\_pdf/2014/February/February\\_2014\\_13927853\\_88\\_5ba62\\_105.Dr.%20Badal%20Sarkar.pdf](https://www.worldwidejournals.com/paripex/recent_issues_pdf/2014/February/February_2014_13927853_88_5ba62_105.Dr.%20Badal%20Sarkar.pdf).
- Mohapatra, Gadadhara. Decentralised Governance and Tribal Development in Scheduled Areas of Northeast India: A Case Study of the Tripura Tribal Areas Autonomous District Council. Indian Journal of Public Administration, V 63 I 3. September 19, 2017. Accessed on – August 3, 2019. Source - <https://journals.sagepub.com/doi/abs/10.1177/0019556117720616>.
- Jha, Shefali. Representation and Its Epiphanies. Economic and Political Weekly, V 39 I 39. September 25, 2004. Accessed on – August 4, 2019. Source - <https://www.epw.in/journal/2004/39/special-articles/representation-and-its-epiphanies.html>.
- Elder, Joseph W. Hinduism, Modernity and Knowledge: India. Springer International Handbook on Education, V 22: 873 - 887. 2009. Accessed on – August 4, 2019. Source - [https://link.springer.com/chapter/10.1007/978-1-4020-6403-6\\_56](https://link.springer.com/chapter/10.1007/978-1-4020-6403-6_56).
- Banerjee, Prathama. Writing the Adivasi: Some historiographical notes. The Indian Economic and Social History Review, 53 (1): 1 - 23. 2016. Accessed on – August 4, 2019. Source - [https://www.cds.in/uploads/custom\\_files/1526966373\\_Writing%20the%20Adivasi.pdf](https://www.cds.in/uploads/custom_files/1526966373_Writing%20the%20Adivasi.pdf).
- Babcock, Hope. A POSSIBLE SOLUTION TO THE PROBLEM OF DIMINISHING TRIBAL SOVEREIGNTY. North Dakota Law Review, 90(13): 13 - 86. 2014. Accessed on – August 2, 2019. Source - <https://law.und.edu/files/docs/ndlr/pdf/issues/90/1/90ndlr13.pdf>.
- Ranganatha, B. Tribal identity and the implications for Political and Cultural Development: A Sociological Analysis. International Journal of Applied Science and Engineering, 2(1): 27 - 40. April 2014. Accessed on – August 2, 2019. DOI No. 10.5958/2322-0465.2014.01115.0. Source - <https://ndpublisher.in/admin/issues/IJASEV2N1d.pdf>.