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Impact of Indian constitution and human rights on tribal people in Santhal pargana

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Abstract

In order to protect the tribal rights, land and property and to preserve the distinct culture and way of life of tribals, the successive governments have provided several constitutional provisions and accepted the need of allowing them to develop in their own genius. But the governments have consciously overlooked the provisions and ignored the rights of tribals in an inhuman manner. Instead of implementing them, the state has imposed general administrative set-up and general rules that are not applied in the Scheduled Areas. And the tribal rights have been systematically deprived in every aspect of their life.

Keywords: Indian constitution, tribal rights, land and property

Introduction

India's population includes nearly one hundred million tribal people ^[1]. The word 'Tribe' denotes a group of people living in fixed territory. These tribes are a social group living in a fixed territory having no specialization of functions and the people living in these social groups are known as tribes or tribal people. Tribes constitute around 9.6 percent of the total Indian population, and of the total tribal population around 80 percent are found in Central India. India has the second largest tribal population in the world.

The Santhal are an Austroasiatic speaking Munda ethnic group in South Asia ^[2]. Santhals are a major Scheduled Tribe of Jharkhand state, mainly residing in Santhal Pargana division and West and East Singhbhum, Hazaribagh, Ramgarh, Dhanbad and Giridih districts. Some of its population was also found in Bhagalpur Purnia, Saharsa and Munger divisions of Bihar state. The Santhal tribe also lives in the states of West Bengal, Odisha, Madhya Pradesh and Assam. This tribe was called Saotar because of their long stay in the Saot area of Midnapore district of West Bengal, which later came to be known as Santhals ^[3].

The Constitution of India has provided special provisions to the tribal people to safeguard their interests. Article 15 of the Indian Constitution states that the state shall not discriminate any citizen on grounds of religion, race, caste, sex, place of birth or any of them. This explains that every citizen of India is provided equal rights and opportunities without any discrimination. Government of India has made reservation for the tribes in employment under Article 16(4) of the Constitution of India. The Government of India has reserved seats in The House of People (Lok Sabha) and The State Legislative Assemblies under Article 330 and 332 of The Constitution of India. Article 19(5) of the Constitution of India guarantees the tribal people right to own property and enjoy it in any part of the country. Article 338 of The Constitution of India grants the right to appoint a Commissioner to look after welfare activities of tribes. Article 46 of the Constitution of India states that, The State shall promote with special care the educational and economic interests of the weaker sections of the people and in particular, the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. Under Article 275(i) of the Constitution of India the Centre Government is required to give grants-in-aid to the State Government for approved Tribal Welfare Schemes.

Aims and Objectives

1. The aim of the research is to explore the impact of the constitution and their benefits given to tribal communities.
2. The aim of the research is to find the problems faced by tribal communities.
3. The aim of the research is to make the tribal community aware of statutory and human rights and to empower them.

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Hypothesis

Hypothesis is a test of normal relationship between two

variables, which is logically correlated with each other.

Population

Table 1: (Bihar State)

Total			Rural			Urban		
Person	Males	Females	Person	Males	Females	Person	Males	Females
69,914,734	35,930,560	33,984,174	61,195,744	31,170,556	30,025,188	8,718,990	4,760,004	3,958,986

Table 2: (Santhal Pargana District)

Total			Rural			Urban		
Person	Males	Females	Person	Males	Females	Person	Males	Females
3,717,528	1,899,410	1,818,118	3,461,435	1,760,678	1,700,757	256,093	138,732	117,361

Literacy Rate

Table 3: (Bihar State)

Person	26.20
Male	38.11
Female	13.62

Table 4: (Santhal Pargana District)

Person	22.26
Male	33.49
Female	10.52

Age group of Santhal migration

Table 5: Age group of Santhal migration

S. No.	Age Group	Frequency	Percentage
1	16-25	25	25
2	26-35	33	35
3	36-45	27	27
4	46-55	09	9
5	65-65	06	6
	Total	100	100

Source: www.iosrjournals.org

Age is a very important component for migration decision. The migrant families decide considering age who should migrate. It is always the physically strong who are sent outside for work. The Table No. 5. Reveals the age group of the migrats.

Overview of Literature

W.V. Grigson, "The Aboriginal in the Future Indian" (1944) 74 J. Royal Anthropological Inst. Gr. Brit & Ir. 33 [4].

Chanana Karuna, "Accessing Higher Education: The Dilemma of Schooling Women, Minorities, Scheduled Castes and Scheduled Tribes in Contemporary India."(1993)" 26 Higher Educ. 69 at 71 [5].

Virginius Xaxa, "Empowerment of Tribes" in Debal K. Singha Roy, ed., Social Development and the Empowerment of Marginalised Groups: *Perspectives and Strategies* (Thousand Oaks, CA: Sage Publications, 2001 at 203.) [6].

Shubhankar Dam, "Legal Systems as Cultural Rights: A Rights Based Approach To Traditional Legal Systems Under The Indian Constitution" (2006) 16 Ind. Int' I & Comp. L. Rev. 295 (claiming that development and deference cannot triumph together) [7].

Case Law

Bhauri Lal Jain and Anr. Vs Sub-Divisional Officer and Ors. On 24 April, 1972.

Issue: In this case, Mr. Sinha has urged that Section 42 of the Act is discriminatory, in as much as if action for election is taken before a Civil Court, there will be a defence that the suit is barred, if brought after twelve years, in case of non-Scheduled Tribe, or 30 years, in case of Scheduled Tribes, as under amended Article 65 of the Limitation Act, by Regulation I of 1969, but, there will be no defence, if action is taken before the Deputy Commissioner, under Section 42 of the Act, for eviction.

Research: The position, therefore, comes to this that whereas the suit will fail before the Civil Court, if such a defence is sustained, but if the plaintiff will go before the Revenue Court, i.e., the Deputy Commissioner, he will get the desired relief. Therefore, this was a harsher remedy and Section 42 was hit by Article 14 of the Constitution, as it was a denial of "equality before law or equal protection of laws."

Findings: That is to say, he can exercise those powers where eviction is sought for within twelve years of wrongful possession and the question of title does not fall for consideration, which question can only be decided, in a suit, by a Civil Court.

Indira Vs State Of Kerala, AIR 2006 Ker 1, 2006 (2) JCR 276, 2005 (4) KLT 119 Issue:

The Kerala (Scheduled Castes and Scheduled Tribes) Regulation of Issue of Community Certificates Act, 1996, is an Act enacted to provide for and to regulate the issue of community certificates to members of the scheduled castes and the scheduled tribes in the State of Kerala. Preamble to the Act states that in order to curb effectively the evil practices of securing such certificates by persons other than those belonging to scheduled castes and scheduled tribes for claiming the benefits of reservation.

Research: Constitution of India provides that all citizens of India shall have equality of status and of opportunity. Article 15(4) of the Constitution however provides that State is competent to make special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

Article 16(4) of the Constitution enables the State to make provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. Article 341 (2) authorises the Parliament by law to include or exclude from the list of

Scheduled Castes specified in a notification issued under Clause (1) any caste, race or tribe or part of or group within any caste, race or tribe.

Similar is the provision contained in Article 342 in relation to Scheduled Tribes. The object of Article 341 as well as Article 342 is to identify the castes, races or tribes which shall for the purpose of the Constitution be deemed to be, as the case may be, scheduled castes or scheduled tribe and therefore entitled to the protective rights conferred by the Constitution. Such castes, races, tribes or tribal have been included in the notification issued under the Constitution and the laws made by the Parliament.

Findings

The President or the Parliament does not determine caste of a group of persons, but only specifies a caste, race, tribe or group or part thereof, as the case may be, as Scheduled Caste or Scheduled Tribe.

References

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2. Cavallaro, Francesco; Rahman, Tania. The Santhals of Bangladesh. ntu.edu.sg. Nayang Technical University. Archived from the original (pdf) on 9th November 2016. Retrieved 17 November 2017.
3. <https://hi.vikashpedia.in> > education.
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