
Protection And Promotion of Rights of Tribes in India: A Case Study on Kain Tribe

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Abstract

The violation of the rights of Indian tribes has been the issue of the hour. We have researched those issues keeping in light the spite of the Kanikaran or Kani Tribe of southern India, who represent similar Indian tribes and highlight the factors contributing to deprivation of their basic Human rights. This study aimed to identify issues constituting human rights violations among the tribes and analyse the legislative and judicial contribution to protection and promotion of rights of Tribal. The research has been conducted using doctrinal and descriptive methods wherein the statutes, reports, journals etc. have been the sources of the data so analysed. The research has shown problems that endanger tribals human rights such as the threat of displacement violating their right to adequate livelihood, inadequacies in implementation of laws violating their rights of being protected from injustices, and poor health and sanitation facilities violating their right to live in a clean and healthy environment. In the legal regime, both at the national and international level, there is need to frame laws and policies while considering the opinion of the Tribals themselves in order to make it favourable to them. The research's scope can be seen in the light of academic purpose and knowledge contribution while it also suffers from limitations such as its lack of primary data and subjective interpretation. This research shall help us identify threats to tribals in India amounting to human rights violations and suggest the way forward, but it is also subjective and, therefore, can be interpreted through a different perspective concerning the research questions mentioned in this study.

Keywords: Human Rights, Indigenous People, Judicial Contribution, Kani Tribe, Legal Regime, Promotion, Protection, Tribes, Violation

Introduction

'Development of the tribal's should be according to the lines of their own thinking

-Jawaharlal Nehru

The STs are native people who possess unique cultures, are topographically separated, and have low financial standing. For quite a long time, ancestral gatherings or groups of tribal people have stayed beyond the domain of the overall improvement process because of their homes in forests and sloping lots. Government of India after the freedom fight, incorporated in the Constitution reservation for S.T.s and gave exceptional arrangements for their well-being and advancements on account of S.T. people group across the States in India and of whom 75 are the S.T.s are generally in reverse and are named as Primitive Tribal Groups. The more significant part of the ancestral regions is sloping, blocked-off undulating level grounds in the wood's region of the nation, bringing about the bypassing of Advancement projects for these places. Because of this issue, facilities for growth and advancement in ancestral regions for skilled and educational training, streets, medical services, correspondence, drinking water, sterilization and so on are not guaranteed. These tribal people's rights are not protected and promoted. Rather they are subjected to human right violation in form of threats to livelihood, inability to live with dignity, inadequate clean water, and sanitation facilities etc. Kani tribe being one such Indigenous has been discussed, as a representative sample of other Indian tribes who face similar problems that directly violates their basic Human rights. Therefore, this study shall help us identify the problems faced by Kani tribe and similar Tribes in India, which lead to deprivation of basic human rights and whether the laws related to tribal people protect and promote them adequately or not.

Unlike every other human being the tribal people ought to be ensured with every basic human right as well as every fundamental right but however they suffer from various issues such as lack of basic livelihood, illiteracy, threat of their shelter being taken away, poor living conditions etc. which bereaves them of their basic human rights. Kani Tribe being an indigenous tribe faces similar problems that deprive them of basic human rights, so in this study, we shall highlight the common problems faced by the Kani tribe and similar other tribes in India. The general set of laws of India doesn't work for tribals while in its viable structure. There exists a constant threat of

displacement and in case of any injury inadequate compensation. These tribals have their own social issues, and they are conventional and limited by customs. Because of the absence of training and improvement, they are eccentric and have faith in antiquated and inane practices that can be destructive. Marriage during childhood, killing of infants, manslaughter, creature penance, trade of spouses, dark enchantment and other adverse practices are yet common among them. They trust in extraordinary powers and want to keep up with these practices. They would rather not change their huge ancestral person, and subsequently, it's said that 'tribes are the tribesmen first, the tribesmen last, and the tribesmen all the time.' So, therefore, we shall in this study investigate various problems faced by these tribal people in India and know how their basic liberties or rights are being violated and abused rather than being protected and promoted.

The methodology applied to the study is completely fundamental and for the purpose of increasing the knowledge base through descriptive research. The methodology that shall be followed in this research will be based upon combination of doctrinal and empirical research methods. The rationale behind using doctrinal research is that it shall be based upon theoretical research on existing legal propositions and contain data from secondary sources such as case laws, textbooks, statutes, periodicals etc. The usage of empirical data includes reports of various organisations that have conducted statistical studies and surveys which have been considered secondary sources in our study. The research would be carried out in form of reflecting on the identifying the research problem, then proceed with the collection of data and analysis of the same to understand the basic human right violation of Tribal in India with specific reference to Kani Tribe.

Historical Background

From the 1850s the tribal communities were approximately alluded to as 'Depressed Classes, or Adivasis[1] (unique occupants).' The Raj was a frenzy of activity in the mid-twentieth century, investigating the feasibility of effective self-governance in India. The 'Morley-Minto Reforms Report, the Montagu-Chelmsford Reforms Report, and the Simon Commission' were all driving forces in this predicament. Reserving seats for the above-mentioned class in the legislature, both at the federal and state levels, was a very contentious subject in the proposed amendments. The British established the act,[2] intending to give Indian areas more prominent self-rule and establish a public bureaucratic structure. In 1937, the provision for seat reservations for the poor was put into effect. The Act defined the term 'Schedule Castes,' [3] but after independence, the Constituent Assembly went on to define the term 'Schedule Castes and Tribes', giving (through articles 341 and 342) the Prime Minister of India and the legislative heads of the states the authority to include a full listing of hierarchy and tribal groups. Two orders, 'Scheduled Castes order'[4] and The Constitution (Scheduled Tribes) Order, 1950[5], were used to create a comprehensive list of extant tribes and castes in India. The S.C.s are sometimes referred to as Dalits in modern writing. They used to be known as the Untouchables. The Scheduled Castes and Tribes account for around 16.6% and 8.6% of India's population, respectively, or around 104 million people (2011 statistics indicate as above).[6]

Indian And International Legal Regime on Rights of Tribal

With the advancement in the legislative system of India, the privileges of the individual Tribes have been brought into centre. Their freedoms are guaranteed through the ground norm that is the Constitution adhered to by other legal regulations which are as per the following:

The Constitution of India, 1950:

The Constitution accommodates elite assurance and security to S. Ts and explicitly incorporates the various tribes and their groups that have been specified under Article 342[7]

The Schedules of the Constitution, specifically 5th and 6th, set down provide that the organization, including land administration and guidelines of standard residency rehearses, of ancestral overwhelmed regions in the country. The 6th Schedule[8] is applicable to grounds belonging to tribes in upper east India, and the Fifth Schedule[9] is material to the STs and the management of Scheduled Areas, other than those where the 6th schedule applies.

Various Articles that safe the freedoms of tribals incorporate Article 15 which guarantees no segregation to be finished by the states on the grounds of 'religion, race, standing, sex, birthplace or any of them, there has been reserved spot for the clans or tribes in work under Article 16(4), there are reserved seats for them in lower house and upper house under Article 330 and 332 of the Constitution. In contrast, Article 19(5) ensures the ancestral individuals' right to claim property and appreciate it in any piece of the nation and Article 338 awards the option to name a Commissioner to take care of government assistance exercises of such tribals.

Other Legislative Provisions

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006' [9]:

The rights of the tribes are dealt with under this act as various other ancestral inhabitants of the forest who have been living in it for ages and give a structure to recording their privileges concerning forestland. The Act recognizes the chronicled unfairness endured by ancestral and other communities residing in forests in India who are necessary to the endurance and supportability of the woodland environment, yet large numbers of whom have

been dislodged and compelled to move, because of the state's implied improvement intercessions. The Forest Rights Act records rights of people as well rights of the community that vests in Scheduled Tribes and the people residing in the forests as given under section 3. These incorporate, entomb alia, freedoms of possession, holding and control of land for work, admittance to biodiversity etc. Sections 3 (1) (m), 4 (2), and 4 (8) provide rights and guarantee recovery and 'land remuneration' on account of constrained removals, Scheduled Tribes, and other conventional backwoods tenants guarantee recovery and 'land remuneration'

'The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989':

It expects to forestall monstrosities happening against individuals belonging to the SCs and STs and to give help and ensure remedy in case of the offence against them. The Act prohibits the unjust conquest or transformation of any land claimed by, owned by, or allocated to folks from a Tribe; the unjustified expulsion of people from STs, from the places where they reside, or impediment to the gratification of the provided rights and freedoms, including rights concerning the forest; and the constraining or forcing individuals from STs to leave their place of residence.

Act on equality and fair compensation[10]:

The act oversees the course of land procurement in India and identifies exceptional arrangements for the securing of land having a place with Scheduled Tribes. The Act gives that, beyond what many would consider possible, land ought not to be procured in 'Scheduled Areas,' and securing ought just to be completed as a final evident option.[11] The Act gives that in all instances of land securing in 'Scheduled Areas, earlier educated assent regarding the properly chosen neighbourhood bodies or the independent District Councils should be received[12].

Formation of PESA (Panchayats Extension to Scheduled Areas) Act, 1996:

This act is a regulation sanctioned by the Government of India to empower the Gram Sabhas of the ancestral locales to self-oversee and safeguard their regular assets. PESA forced limitations on the State Legislature and decentralized more power in possession of the Gram Sabha or Panchayat. It very well might be seen that the powers that can be practised by the Gram Sabha under this Act connect with the clans' traditions, customs, religion, land and mineral assets. It made the Gram Sabhas free and skilled to save and protect the traditions and practices of individuals and local area assets. Generally, this act allowed individuals to save their territory and regular assets and proposal of the Gram Sabha at fitting levels for any formative program in the ancestral region.

International Law and Tribal Rights

The indigenous groups are characterized as the first, local or first ethnic gatherings residing in their own or unique area or spot (Examples: Aborigines, American Indians or crude individuals who have not reached the advanced civilization) who may form a tribe or clans. A group of people of a tribe may establish an ethnic gathering, however, it has conjugal associations with individuals from different clans and is in persistent versatility or moving from place looking for resource economy, fundamentally grouping creatures (for example, Bedouins or clans residing for the most part in desert). Therefore, since our focus is on tribal rights, we shall focus on international law that specifically caters to the rights of Tribal people.

'Indigenous And Tribal Peoples Convention, 1989 (ILO Convention 169)':[13]

Across the world, ancestral people groups' properties are being taken and their groups are being crushed. The main worldwide regulation that can get ancestral people groups' property freedoms is the International Labour Organization Convention 169. ILO 169 perceives and safeguards ancestral people groups' property proprietorship privileges, and sets a progression of least U.N. guidelines regarding discussion and assent. It safeguards ancestral people groups overall correct to:

- Own the land they live on and use
- Settle on choices regarding projects that influence them
- Equity and opportunity

'United Nations Declaration on The Rights of Indigenous Peoples:[14]

This Declaration currently is a complete global instrument on the freedoms of native people groups. It lays out a widespread system of least principles for the endurance, poise and prosperity of the native people groups of the world and it expounds on existing basic liberties norms and crucial opportunities as they apply to the particular circumstance of native people groups. Even though these tribal people are like all organs of society, and are accused of endeavouring to get the general and viable acknowledgement and recognition of basic freedoms for everything people, they don't bear enforceable commitments under the significant common liberties arrangements. The tribals which don't have the imperative components of statehood under worldwide regulation are not qualified for participation in the U.N. or the association of American States[15] and thus, their claims against ancestral

legislatures can't be brought before the global bodies that are accused of observing and carrying out common liberties deals.[16]

Kani Tribe And Identified Rights Violations Against Similar Tribes in India

In the following research, we shall be focusing on Kani tribe as an Indigenous Tribe that is settled in the forests of the Agasthiyamalai hills (Tirunelveli and Kanyakumari districts of Tamil Nadu and Thiruvananthapuram district of Kerala) of Western Ghats.[17] They have been from various names such as the 'Malai Arasars, Malai Arayars, Kanikarans,' Tribals etc.[18] They practise shifting cultivation. They have Muttu Kani as the political head of the tribe. They prefer peace over violence, they enjoy their life in jungle as they consider it as their home from where they get their daily survival items such as medicinal herbs, honey, and wild games. As per the 2011 census total population: is 'Kerala: 21, 251 (9,975 male and 11, 278 female) and Tamil Nadu: 3, 837 (1,879 Male and 1,978 females.' The Kanis are divided in speaking two different languages Tamil and Malayalam. Their staple diet is Tapioca which is either eaten raw or roasted on fire; they also grow. They also grow pepper, chillies, ginger and other spices. They raise paddy by broadcasting the seeds in the rain-fed slopes. Traditional medicinal knowledge is the highlight of the tribe, and there have been many ethnobotanical studies of the tribe that highlighted the speciality of the tribe. The tribe has traditional remedies such as the 'Vayaru vethana for treating abdominal colic, using *curculio orchioides* for treating asthma, *Hemidesmus* for treating cough, etc.' [19] The Kani tribe possessing characteristics of an indigenous community also suffer from threats or limitation such as poverty, scarcity of food due to availability of seasonal foods, lack of access to proper facilities for easy living etc. Identified Basic Human Rights violations against the Tribal People.

Kani Tribe being an indigenous tribe faces various problems that deprive them of basic human rights so in this study we shall highlight the common problems faced by the Kani tribe and similar other tribes in India. Unlike every other human being, the tribal people ought to be ensured with every basic human right as well as every fundamental right but however they suffer from various issues such as lack of basic livelihood, illiteracy, threat of their shelter being taken away, poor living conditions etc. which deprive them of their basic human rights. So, therefore, we shall in this study investigate various problems faced by these tribal people in India and how their human rights are being violated.

Forced Evictions and Displacement:

Privileges of tribals over their forest areas is a basic and unquestionable chronicled truth. From the hour of British expansionism in India when the Britishers began meddling in the ancestral area to take advantage of the rich ancestral assets. The protection as given in Schedule five of the Indian Constitution and different regulations at state level among others preclude move of the grounds of the Tribal people group for securing the lands belonging to these tribals[20]. In Andhra Pradesh, non-tribals have also unlawfully intruded on several hectares of land owned by tribal people groups by enticing and marrying tribal women. Global Human freedoms regulation has perceived the option to protect or satisfactory house for individuals to reside someplace in 'security, harmony and dignity and any such constrained ousting or land estrangement to non-tribals is violative of such fundamental common liberties.[21]

Insufficient Adherence to Current Statutes, Ordinances, And the Constitution

Amidst India's constitutional recourse for S.T.s, the government can buy land in the 5th and 6th Schedule zones that are involved or vacant for 'public purpose' initiatives. Because tribal peoples have no real title to the land that they have been living on and producing for generations, non-tribals have found it relatively easy to gain territory that was once known for tribal peoples, especially to the increasing role of private enterprise and the rise of modern country states. Although the '*National Forest Policy of 1988*' envisions a healthy association and relation between tribal peoples and the forests in which they reside, the Forest Act of 1927 essentially duped the tribal community. The Indian government enacted '*the Scheduled Tribes and Other Traditional Forest Dwellers Act in 2006*', however, it was never enforced. Until recently, the Indian government has failed to adequately educate the '*Forest Rights Act of 2006 Rules*' of Procedures.

Threat Of Eviction and Displacement

HRLN has recorded that over '11.3 million individuals in India live under the danger of constrained expulsion and relocation'. [22] The record incorporates an enormous level of native/ancestral people groups. The 2019 request by Supreme Court connected with the expulsion of tenants of the forest across India was because the 9.5 million individuals live in outrageous frailty and apprehension about approaching dislodging, and removal of these people would not just cause deficiency of their homes and environments, but also affect their vocations, societies, customs, and way of life that they have been living in association with nature. [23] Clashes in the upper east coming about because of land estrangement, convergence of untouchables, and the battle for normal assets, have likewise brought about broad dislodging of native/ancestral networks. [24]

Continuing Rights Violations

Basic liberties or basic human rights are the inheritances of each individual, and they structure a necessary piece of the socio-social texture of mankind everywhere. In any case, they are powerless against misuse and infringement. Concurring with the *'United Nations Declaration'*, The Indian Constitution also stipulates that 'the state will not discriminate against citizens based on their place of birth, race, religion, or social standing, and that the government shall prioritise the advancement and protection of all these fundamental rights which include the access to healthcare, accommodation, nourishment, and state pension; the capacity to work; the access to literacy; as well as the ability to be concerned about the social existence of one's general public. In any case, there is a massive disparity between ideal of basic liberty and the reality of gross breaches of common liberties of tribal peoples in India.[25]

Economic Deterioration and Cultural and Language Rights of The Tribes

The ancestral individuals are financially one of the most in reverse networks in the country. These individuals are frequently taken advantage of on account of pariahs, property managers and cash loan specialists because of their blamelessness and lack of education. Because of the absence of assets and uneconomical land possessions, this training has ended up being pointless for them. The tribal people are not being able to secure and promote their culture and linguistics even though Article 19 clause 5[26] expresses that an etymologist minority has the privilege to preserve and protect its culture and linguistics. However, considering the absence of command over human, authoritative, and monetary assets, the Tribal people group has not had the option to go to compelling lengths toward this path.

Health And Sanitation Problems

The essential common freedoms incorporate "Access to safe, affordable and reliable drinking water and sanitation services are basic human rights." [27] Wellbeing and disinfection are turning into an enormous issue for individuals of the tribe due to lack of education and obliviousness, and they are not prepared to invite the cutting-edge ideas of well-being and sterilization. Liquor addiction is also a serious issue alongside blood-borne sicknesses like Hepatitis B infection contamination is probably going to be high in the ancestral populace as a result of the regular act of inking. The adjustments in the climate and the natural parts of the environment increment the gamble of transmittable illnesses. The absence of information and appropriate sterilization has made the people of tribes vulnerable to these illnesses. Additionally, the shortage of clinical offices and the hesitance of specialists to work in rustic regions has increased the circumstance. There is a need to open clinical units in such tribal living areas. The clans ought to be furnished with monetary and social help to battle transferable and non-transmittable infections.

Judicial Contribution in Upholding Rights of The Tribes in India

Indian courts, through their decisions, have maintained the freedoms of native/ancestral or tribal groups to their properties and homes, and to quote a few, the milestone decision in *'Samatha v. Province of Andhra Pradesh'* [28], the S.C. of India restricted the exchange of ancestral land to non-ancestral and noted that 'the agriculture was their only way of earning revenue other than the produces from the forest, also the land for them was a sanctuary and a way of getting economic benefits and therefore these tribes possess emotional connect with their lands.'

In *Maala Pentamma v. Nizamaabad Municipality* [29] a case on house demolition of Scheduled Tribe members, the Hon'ble High Court of Hyderabad declared that it is critical for the state or its local councils to protect the interests of S.C.s, STs, and other Relatively weak Sections.

"A passing reference can be needed to Article 46 of the Constitution of India, which orders that the State will advance with extraordinary consideration the instructive and monetary interests of the more vulnerable Sections of individuals, ... what's more, specifically, of the Scheduled Castes and Scheduled Tribes, and will shield them from social treachery and all types of abuse." In *Sudama Singh v. Administration of Delhi (2010)* [30], A huge number of attorneys had a place with the minimized migrant and S.T. people group in a crucial dispute on the humanitarian rights and liberation to adequate dwelling in India. The Delhi High Court recognised

"the right to housing for all and held that constrained removal deprives everyone of a bundle of rights, including the privileges of working, shelter, well-being, literacy or education, access to metro conveniences, public transportation, and the right to survive with dignity across all circumstances."

Indira V. State Of Kerala [31], The court for this situation have referred to Articles of the Constitution such as Article 15(4), 16 (4), 341 & 342 for state to make arrangements for S.T.s and S.C.s who are socially and economically backward, reservations in jobs, recognition of various tribes and castes respectively in order provide them with due privileges. Etc. Such standings, races, and ancestral tribes have been remembered for the warning given under the Constitution and the regulations made by the Parliament. The judiciary must be sure to guarantee

through its judgment that the freedoms of its residents are upheld and that they are not subjected to any biasness based on their tribes or castes they have a place with.

Impact Of Initiatives Regarding Tribals

The analysis of the above data depicts that tribals in India, irrespective of being recognised under the Constitution and through other legislative provisions still are not treated in parlance with the treatment given to non-tribals, and their regular problems have turned into factors contributing to rights violations. We can analyse the situation critically, keeping in mind the three research questions:

- First is the adequacy of national and International legal Regimes on the Protection and Promotion of Rights of Tribals. It has been seen that the laws though framed perfectly but remain loose on implementation. For e.g. Scheduled 5th and 6th give the right to secure land to the government in the interest of public which can cause displacement, and forest policies, instead of benefitting victimise the tribals, the authorities under the PESA act have been neglectful towards their duty. Kani tribals have been subjected to the threat of displacement from forest, not being allowed to have continuous access to forest resources which they depend upon for their livelihood constituting a basic human rights violation. The international laws make a slight distinction between the indigenous and tribe and therefore for these tribes the ILO alone ensures the rights of the tribal people, but again only the parties to it are subjected to ratifying their laws, bringing uncertainty in ensuring rights of tribals across the globe.
- Second the identified threats to Kani Tribe and similar Indian tribals are leading to deprivation of their basic Human Rights. The greater part of the ancestral regions is sloping, blocked off undulating level grounds in the wood's region of the nation, bringing about the bypassing of Advancement projects for these places. Because of this issue, facilities for growth and advancement in ancestral regions for skilled and educational training, streets, medical services, correspondence, drinking water, sterilization and so on are not guaranteed and these tribal people's rights are not protected and promoted rather they are subjected to the human right violation in form of threat to livelihood, inability to live with dignity, inadequate to clean water and sanitation facilities etc.
- Third the judiciary has contributed to protecting and promoting the rights of the Tribal people in India. They have upheld the following points:
 - They have restricted the exchange of ancestral land to non-ancestral as these lands hold emotional value to these tribal people
 - It is the duty of Government or its Local Bodies to safeguard the interests of the S.C.s, STs, and other similar weaker Sections.
 - Human rights are a bundle of rights, including the privileges to work, shelter, wellbeing, literacy or education, admittance to metro conveniences, and public vehicle and to live with dignity in all circumstances.
 So, from the above analysis, we can infer that rights of Tribal people should be ensured at all costs and it's the duty of the executive, judiciary, and legislature to uphold the same.

Conclusion & Recommendation

Infringement of basic human rights and common liberties makes numerous financial and psychological issues as should be visible in the event of Kanikaran Tribe who face the dangers of dislodging, deficient remuneration in the event of Inventing the therapeutic medication '*Jeevani*', threats of displacement, inadequate compensation in case of Inventing the medicinal drug '*Jeevani*', disappearing language and traditions, poor economic conditions, inability to gather forest produce who are subjected to government authorities etc. and so on It influences the nature and government assistance of individuals, and makes many problems. It is feasible to envision the existence chances of Tribal people groups working on through the execution of pragmatic measures alongside considering the freedoms agreed. Be that as it may, quiet on freedoms will constantly convey with it the risk of a re-visitation of paternalism and the treatment of a recognizable gathering as an issue 'deserving of good cause, not collections of people to whom society has liabilities and obligations. The established assurance, which administers and safeguards the freedoms and power of Tribal people group, needs prompt execution. Any other way, this would prompt a vanishing of the different Tribal people groups from the human picture. Along these lines, it is suggested that the Tribal people group's sway is in question by the intercession of non-Tribals in their space. In this way, there is a prompt need to comprise Tribal independence committees with the goal that the Tribal people group themselves can take care of the guidelines, execution, and advancement of the regions.

After site visits of affected regions have been conducted, a full assessment of the repercussions for the climate must be requested as part of the 'Forest clearance' procedure and a 'social effect evaluation' on the Indigenous

population group should be requested, including Free and Prior And informed of the Indigenous community with full compliance with 'the Forest Rights Act, 2006' which provide for restoration, resettlement, and adequate remuneration whenever the impacted town consents.[32]

Given the broad infringement of the right of housing and land privileges of native/ancestral people groups and networks, measures ought to be taken to carry out Constitutional arrangements, regulations, and moderate court decisions connected with their assurance; execute the 'United Nations Declaration on the Rights of Indigenous Peoples, which additionally perceives their freedoms to land and satisfactory house facilities;-guarantee to make successful systems to authorizing Tribals or ancestral land regulations, including re-establishing procured grounds to the first landholders. There is a need to authorize existing lawful preclusions on biases and consider ordering thorough fair legislation, along with the preparation and responsibility of protection measures to act aimlessly.

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