

NALSA (Protection and Enforcement of Tribal Rights) Scheme, 2015

BACKGROUND

Although the Census of 2011 enumerates the total population of Scheduled Tribes at 10,42,81,034 persons, constituting 8.6 per cent of the population of the country, the tribal communities in India are enormously diverse and heterogeneous. There are wide ranging diversities among them in respect of languages spoken, size of population and mode of livelihood. As per the Census of India 2011, the number of individual groups notified as Scheduled Tribes is 705.

The North Eastern States are not a homogeneous block, because of the diversities amongst themselves. There are about 220 ethnic groups with equal number of language and dialects. These groups can be broadly categorised into three main groups of Tibeto-Burman, Mon-Khmer and Indo-European.

Certain tribes have been characterised as Particularly Vulnerable Tribal Groups (PVTGs) (earlier known as Primitive Tribal Groups) on the basis of their greater 'vulnerability' even among the tribal groups. PVTGs, currently include 75 tribal groups, who have been identified as such on the basis of the following criteria: 1) forest-dependent livelihoods, 2) pre-agricultural level of existence, 3) stagnant or declining population, 4) low literacy rates and 5) a subsistence-based economy. As per the 2001 census, these 75 PVTGs had a total population of 27,68,322. The majority of the PVTG population lives in the six States of Maharashtra, Madhya Pradesh, Chhattisgarh, Jharkhand, Odisha, Andhra Pradesh and Tamil Nadu. The PVTGs among the tribes need special attention due to their vulnerability.

Up till independence the tribal population lived in comparative isolation from the national scene and lived almost a self-sufficient life in the remote and rugged forested tracts. The interactions of the colonial administrative machinery with the tribes in India were largely of

authoritarian and exploitative nature. They were largely interested to let them remain isolated and had no intention to integrate them with mainstream of national life.

After independence, the India Constitution adopted many provisions to provide tribal people with special status and Parliament through various protective legislations made conscious efforts to safeguard their interest. Planning Commission of India through its development initiative adopted Tribal SUB Plan (TSP) approach and under Panchayati Raj Institutions the Provisions of the Panchayats (Extension to Scheduled Areas) Act 1996 (PESA) was legislated.

Despite all these efforts made to improve the socio-economic conditions of tribes it is still a fact that the life situations of Scheduled Tribes (STs) have improved only marginally. The Human Development Index (HDI) of the STs is much lower than the rest of the population. The gap in the literacy rate is high. There are more ST families below the poverty line than those from other communities. Their percentage in government jobs is not in proportion to their population despite the provision of reservation. Their condition, thus, is far worse than that of the rest of the population and they have not been able to reach the envisaged level of development, where they could benefit from the opportunities offered by a fast expanding economy.

It was in this background that the NALSA felt the need to draw up a Scheme for the Tribal People. To facilitate this, a Committee was constituted to study the issue and come up with suggestions. The Committee submitted a comprehensive report to the Hon'ble Executive Chairman, NALSA on 9.8.2015 on the occasion of World Tribal Day. The present Scheme is based on the Report of the Committee.

The Scheme may be called "**NALSA (Protection and Enforcement of Tribal Rights) Scheme, 2015**".

OBJECTIVES

The Scheme is aimed at ensuring access to justice to the Tribal People in India. The access to justice would be facilitated in all its

connotations, i.e. access to rights, benefits, legal aid, other legal services, etc., so that the assurance of the Constitution of justice social, economic and political, is meaningfully experienced by the tribal population in the country.

Several legal rights are guaranteed to the tribal people under:

- The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 – (**FRA**)
- The Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989,
- The Right of children to Free and Compulsory Education Act, 2009,
- The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013,
- Panchayats (Extension to Scheduled Areas) Act 1996 – (**PESA**) and
- Fifth and Sixth Schedule of the Constitution of India.

These provisions are not implemented stringently, leading to violation of their legal rights. Such violations are one of the prime reasons for the marginalization of the tribal people.

This scheme is intended that these legal rights are not violated.

The terms PLVs, Legal Services Clinics, Front Office , Panel Lawyers and Retainer Lawyers will mean the same as defined under the National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010 and National Legal Services Authority (Legal Services Clinics) Regulations, 2011 and the NALSA Scheme for Para Legal Volunteers (Revised) and Module for the Orientation – Induction – Refresher Courses for PLV Training.

Part I : An overview of the issues of Tribal people

A. Vulnerability Issues

1. The lack of literacy amongst the tribal people is a crucial issue. As a consequence, the tribes remain unaware of their fundamental, legal and statutory rights. They also lack knowledge about the welfare schemes run by the government for their well-being, thereby resulting in lack of participation from their side.
2. Non implementation of the schemes introduced by the government to resolve the problems is another major concern. However, non-implementation of programmes for tribal welfare is also due to lack of skilled work force in the tribal areas.
3. Numerous armed conflicts affect large parts of tribal areas in contemporary India spanning the central region to the North East, leading to severe problems in accessing legal and administrative mechanisms and in the implementation of beneficial schemes.
4. In the recent years the state police and the paramilitary forces have been accused of grave human rights violations in the tribal areas including of alleged fake encounters and rape.
5. A number of tribal people are put in jails allegedly as Maoists. There have been cases of people staying in Jail for days, without their name in the charge-sheet. Bails are not granted as cases are serious such as waging war against India, sedition and so on.
6. The unfamiliar judicial processes make the tribal people dread the court, even if they are the ones who are suffering from lawlessness. They feel that the laws like Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989 do not exist for the protection of tribal people.
7. Migrating tribes face difficulties in accessing the welfare schemes run by the government. Some are totally devoid of any access.

8. There are preconceived notions or assumptions regarding the 'primitivism' and 'backwardness' of the PVTGs. It is essential for government bodies to shed assumptions of tribal backwardness and savagery and devaluation of the culture and traditions of these communities.
9. Many PVTGs and Scheduled Tribes (STs) are forest dwellers and depend heavily on land and forest resources for their subsistence. Over time, their habitat has been declared as Reserved Forest, Protected Forest, leaving them vulnerable to displacement and eviction without compensation.
10. All tribes in the list of PVTGs have not been granted ST status, thereby increasing the vulnerability of these tribes, who lack the protections and rights offered by the Fifth Schedule and the Provisions of Panchayat (Extension to Scheduled Areas) Act, 1996.
11. For PVTGs, the implementation of FRA has been poorest since their habitat rights are not clearly defined or understood by the Forest Department. No disaggregated information and data at the national level on status of the implementation of the provision for rights of PVTGs particularly of habitat rights under the FRA are available.
12. The North Eastern States share a large area of international boundary with the neighbouring countries of Bhutan, China, Myanmar and Bangladesh which makes it a very fertile ground for cross border terrorism, drug smuggling, arms smuggling, infiltration, etc.
13. Another issue which is of serious concern is human trafficking. Tribal people from central India and Assam appear particularly prone to trafficking.
14. Another issue is that till recently there has been no division of executive and judiciary. The institutions set up under the Sixth

Schedule apply customary laws which have their own issues as they are not codified.

15. Due to insurgency and law & order problems in the North East, there is absence of faith in the system. There has been a tendency of the public to take law into their hands, in what amounts to “mob justice” by dismantling/destroying houses of the suspected/accused persons and ostracising the family which leads to serious social problems. Even doctors and hospitals have not been spared for their alleged negligence in treatment of patients.
16. In the remote areas and villages large numbers of tribal people still believe in “Witch hunting”.
17. Tribal people are not treated with dignity and so feel alienated. For instance, the Jarawas tribes in Andaman Islands are treated like animals by the tourists. They are teased and tormented as if they are monkeys/animals and fun derived from their angry responses. Similar experiences were earlier common in Bastar where cultural mores were never understood.

B. Land Related Problems

1. Forest and hills are the main source of tribal identity. It is in this context that the devastation of lives of tribal people caused by loss of access to forest and involuntary displacement from their land has to be understood. Dispossession takes place both directly by depriving tribal communities of their land, habitat, livelihood, political system, culture, values and identity and indirectly through denials of benefits of development and of their rights.
2. Under the Resettlement and Rehabilitation (R&R) programme, land is not replaced and there is meagre reconstitution of livelihoods. Almost all the R&R colonies lack proper public health facilities, protected drinking water, marketing, schools and transportation.

3. Dependence on forests for food in the form of shifting cultivation, fruits and flowers, small game, tubers for medicines, fodder, material for house building, raw material for traditional art and crafts income by selling firewood, leaf-plates, fruits etc is substantial. This loss, due to displacement is not compensated and also affects food security.
4. A major portion of land falls under forest areas. Most of the tribal people of the interior areas are staying on forest lands without having any right, title, interest on those lands and there are no such legal provisions for those homeless tribal people for protection and enforcement of their rights under "The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006".
5. Another major problem with tribal people is a result of development projects viz. construction of dams, Forest sanctuaries, mining operations, etc. These developments lead to an influx of non-tribal people, seeking employment in these areas forcing the tribal people to migrate. Hence, the tribal people have not been able to reap the benefits of development projects.
6. Growing indebtedness contributes as one of the most important reasons for land alienation and displacement of tribal people. Tribal indebtedness (they are often tricked into accepting loans with exorbitant interests) often leads to situations of bonded labour.
7. Further, there have been violations of PESA which endow Gram Sabha "the power to prevent land alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawful alienated land of a Scheduled Tribe." In case of acquisition of forest lands, it is mandatory to consult with Gram Sabha of the affected area and obtain their free consent. However, often Gram Sabhas are neither sent notices for consultation, nor are their consent signatures taken.

8. The compensation given to the tribal people under The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is meagre and the living conditions that are provided on resettlement are very poor.
9. Another problem with tribal people is that instead of individual rights in the land, they believe in community rights and thus written proof of ownership are mostly not available in cases of litigation relating to land. The claims of tribal people in this respect are mostly based on oral evidences with consequential difficulties in establishing individual rights.

C. Legal Issues

The legal issues faced by the tribal people are as follows:

1. The recognition of rights of tribal people before their displacement from Protected Areas (PAs) is not being completed. Tribal people are evicted before verification and settlement of claims under the FRA. This has caused a decline in the economic status, as well as erosion in their customary forest practices.
2. Incorrect assumption by the Forest departments with regard to the FRA has led to violation of their legal rights. For instance, at some of the Forest Departments, it was believed, contrary to the provisions of section 4 (2) of the FRA that rights under FRA could not be claimed in Protected Areas (PAs) and that FRA is not applicable in Tiger Reserves.
3. Some problems that arise for tribal communities in claiming habitat rights include:
 - * lack of clarity over definition and interpretation of what is entailed in habitat rights;
 - * multiple interpretations of habitat, especially if the user rights of other, non- PVTG groups sharing the same territory are involved;

- * if the traditional habitat boundaries of PVTGs overlap with wildlife habitats; and
 - * a lack of awareness among such communities about the terms in which to articulate such claims.
4. There has been little perceptible effort to create awareness among women regarding the process of claim making, verification and the rules relating to it provided under the FRA.
 5. Claims filed by tribal people under the FRA are being rejected without assigning reasons, or based on wrong interpretation of the Other Traditional Forest Dwellers (OTFD) definition and the 'dependence' clause, or simply for lack of evidence or 'absence of GPS survey' (a lacuna which only requires the claim to be referred back to the lower-level body), or because the land is wrongly considered as 'not forest land', or because only forest offence receipts are considered as adequate evidence.
 6. The rejections are not being communicated to the claimants, and their right to appeal is not being explained to them nor its exercise facilitated. There is a need for awareness amongst tribal people, so that they can protect their legal rights against such practices.
 7. Section 3 (1) (m) of the FRA, regarding the rights of persons illegally displaced or evicted by development projects without proper compensation, has not been implemented at all.
 8. Lack of effective consultations with Gram Sabha and recognition of their rights of ownership in farm produce.

D. Other legal issues

1. Criminal charges are filed, maliciously, against the tribal people, and in some cases non-tribal people, who protest against the acquisition of land and thereby against the establishment of developmental projects. It has been found that between 2005 and 2012, over 95 percent of the cases were found to be baseless and ended in acquittal.

2. Discrimination, violence and police brutality is experienced at regular intervals by the people belonging to the De-Notified Tribes because of the Habitual Offenders Act, 2000.
3. In Andaman and Nicobar, the 'Jarawa' tribe face incidents of sexual exploitation. Also, the people of the tribe were asked to give their blood samples for DNA testing without their informed consent.
4. A study for the Planning Commission revealed that 43.6 percent of the rehabilitated bonded labourers belong to Scheduled Tribes. This suggests that many tribal families are trapped in bondage. The main reason for bondage that is cited is indebtedness and food.

E. Issues related to education

The scenario of education in India regarding the tribal people has improved, but there are some problems which still persist. The issues relating to education are as follows:

1. There are a large number of schools which do not have minimum facilities.
2. Even where there is reasonable infrastructure and student enrolment, regular school attendance is a problem in the tribal areas, due to distances and poverty.
3. Teacher absenteeism is high.
4. There is poor level of student learning and high drop-out rate at class X. A possible explanation for this is the failure of tribal students to cope up.
5. There is a marked gender gap. There is a need for greater gender focus and social mobilization to encourage education of girls.
6. Once the tribal students manage to take admission, they are humiliated in various ways that they are demoralized. This leads to

a high school dropout rate. Derogatory names being given to tribal students from the North East are well-known.

7. There are residential schools for tribal girls which are often in the news for corruption, bad maintenance of facilities and sexual exploitation of resident girls.
8. As nomadic tribes are always on the move, their children miss out on education provided by the government for free.
9. Most of the tribal communities in India have their own mother tongue. But in most of the States, official/regional languages are used for classroom teaching and these are not understood by the tribal children particularly at primary level of schooling.
10. There is a need of familiarity for teachers teaching tribal children with tribal culture and language so that learning is hassle-free. For instance, most of the district officials, being from outside do not understand the languages of the people like Gondi and Halbi. Even the teachers in schools do not understand these languages.
11. Tribal children are not at ease in structured class rooms due to their affinity to nature causing them to lose interest in formal education as is presently provided.
12. The main reason of illiteracy amongst tribal people is low involvement of parents and community in education of tribal children and inadequate quality schools in Tribal areas. The Tribal Community is mostly unaware about the benefits of education.

F. Health issues

The tribal population face several health issues:

1. The national health model is primarily designed for the non-tribal areas. It does not take into account the different belief system, different disease burden and healthcare needs as well as the difficulties in delivering health care in a geographically scattered,

culturally different population surrounded by forests and other natural forces.

2. There is a lack of health care human resource that is willing, trained and equipped to work in tribal areas. Though buildings are built and health care institutions created in the form of health sub-centres, PHCs and CHCs, they often remain dysfunctional. This is further compounded by inadequate monitoring, poor quality of reporting, and accountability.
3. Factors such as unfriendly behaviour of the staff, language barrier, large distances, poor transport, low literacy and low health care seeking, lead to lower utilization of the existing health care institutions in tribal areas.
4. The absence of participation of ST people or their representatives in shaping policies, making plans or implementing services in the health sector often ends up targeting wrong priorities.
5. The tribal population is seriously affected by high consumption of alcohol and smoking, often resulting in addiction. Immediate and serious corrective policy measures to curb the same are necessary.
6. Child marriage among the different tribal communities is still prevalent as illiterate tribal people follow their old customs without understanding the laws of the land which results in poor health.
7. Tribal people seek treatment modes based upon their customary beliefs without resorting to any modern medicines even when they contract modern day illnesses leading to high mortality even in curable situations.
8. The Jarawas remain vulnerable to outside diseases to which they have little or no immunity. When the tourists enter their areas, they contract new diseases because of them. Their women and girls are also being sexually abused which result in many diseases for which the tribal people have no cure.