



# TRIBAL RIGHTS IN INDIA WITH SPECIAL REFERENCE TO THE STATE OF ODISHA

CHUNURAM SOREN: Ph.D. Research Scholar in Sambalpur University, Odisha, India under NFST Scheme, Ministry of Tribal Affairs, Govt. of India, New Delhi.

Professor (Dr.) Sudhansu Ranjan Mohapatra, Research Guide and Dean of Legal Studies in Sambalpur University, Odisha, India.

## Abstract:-

*India is one of the nations in the world to have expanded special arrangements for the hundreds of ethnic minorities in general and tribal communities in particular. The most important of the various rights that needs immediate protection by several domestic laws to the tribal people. The economic and social rights of the tribal communities must be protected in India with the integration of new laws that will be in tune with the human rights movements across the world. The protection of Human Rights of the tribal peoples is a large issue that attracts global norms beyond the national frontier. The present study has taken into justification the development of the laws relating to the tribal peoples in international as well as the national sphere. The study has also brought to attention the part played by the judiciary in the protection and upliftment of these tribal people. The provisions of the Indian Constitution in parts III, IV, X call for special consideration to the protection of tribal and tribal areas. Scheduled V and Scheduled VI are specially created for the tribal people in India. The problems are the scarcity of adequate legislation to protect the rights of this section of society. The existing legislation falls short of providing the basic rights to these people and satisfying their basic needs to a great extent. They have to fulfil the Constitutional objectives in the form of equality before the law and equal protection of the law.*

**Keywords:** Tribal Rights, Constitution, Various Acts

## I. Introduction:

Tribal people's rights being a part of the broad human rights phenomena have acquired significance in recent times. As human beings the people who live in tribal lands acquire a similar set of rights as others. Being citizens of the country, they are entitled to a number of privileges as well. From time immemorial, there have been violations of their fundamental rights. In contemporary society the state comes to their rescue to some extent. The increasing awareness of the concept of human rights under the aegis of the UNO, world media, NGOs etc. proves beneficial to the victims.

Human rights are those conditions which are inherent to nature and without which one cannot live as a human being. These rights and fundamental freedoms allow one to develop fully and use one's human qualities, intelligence, talents and conscience to satisfy one's spiritual, physical, social and other needs. They are based on human kind's increasing demand for a life in which the inherent dignity and worth of each human being will receive respect and protection.

Individuals may exercise rights that belong to individuals either as human beings or as members of a group. The Universal Declaration of Human Rights enumerates rights of the first sort; they go to, "everyone without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Various other provisions are also made by the Constitution of India to improve the lives of the Scheduled Tribes. This research explores the concept of rights available to the scheduled tribes in India and also carries out the analysis of these rights along with the contribution of the Supreme Court and the social activists who helped in improving the condition of the scheduled tribes and safeguarding their rights.

"Tribal Sovereignty" is really the right to limited self-government, to define its own membership, to manage tribal property and to regulate tribal business and domestic relations.

## Review of Literature:

The researcher reviewed the following literatures for the study.

**1. Jayashankar K.K. and Jonson Philip, (2011), 'Constitutional Law'** identified that the Constitution, which lays down the basic structure of the nation's policy, is built on the foundation of certain fundamental values. They argued that the Preamble, the fundamental rights section and the Directive Principles are the soul of the Constitution.

- 2. Jaswal Vikram Singh, Jaswal Sweta, (2011), 'Justice V.R. Krishna Iyer's concept of Social Justice'** brought an analytical study that social justice as the abolition of various types of discrimination. The book examines Justice Iyer's views on social, economic, political and cultural justice.
- 3. Kumar Mahesh, Tyagranjan K.R. and Sharma R.V. Manoj, (2011), 'Indian Constitution'** pointed out the complex concept of the Indian Constitution and discuss the many amendments which have been made to the Constitution since its inception. The authors provide in-depth information about the Indian legal provisions and the sound judicial system in India, especially the Supreme Court and the High Courts.
- 4. Makwana M.H. and Pais Richard, (2011), 'Back ward classes and Social Justice'** focus their study on issues of social inequality and Constitutional safeguards for Scheduled tribes. They also look at the reservation policy based on social justice and the policy's historical Constitutional background. They discuss the benefits of the reservation policy and the important role of the beneficiaries in social change.
- 5. Choudhry R.N. and Naqvi S.K.A., (2012), 'Scheduled Castes and Scheduled Tribes (Prevention and Atrocities) Act, 1989'** remarked the implementation of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. They highlighted the important function of Act. This Act has played as a legislative measures intended to do justice to members of the Scheduled Castes and Scheduled Tribes.
- 6. Gupta Dr. Pallavi, (2012), 'Back ward class reservation and concept of creamy layer'** sought to analyze the socio-economic life among the tribal people. Her study focuses on the cultural pluralism of various religions, castes, languages and regions. She highlights the fact that social, educational and economic inequalities have existed from time immemorial in different social segments of society in India.
- 7. Stephen L. Pevar, (2012), 'The rights of Indians and Tribes'** suggested that state power over water rights, civil rights, criminal jurisdiction and civil jurisdiction of federal Indian affairs. Tribal self-Government is the more oriented to the tribal communities.
- 8. Aswal B.S., (2012), 'Tribal and Human Rights'** has defined the Tribal Development and European Union Regional Integration and its implication on Human Right. The researcher has studied the entire concept as to rights of person's tribal people. He also observed the situation of tribal women, children, prisoners and tribal people refuses right.
- 9. Agarwal A.N., (2013), 'Tribals of Odisha'** shows the pattern of socio-economic conditions of tribals in Odisha with respect to three indicators that is, health, education and economy. He gave emphasis on education as an important component of human development which indicates a person's productivity and income earning potential by imparting basic as well as specialized skills. Economic growth is a necessary condition for human development and it is one of the major components to satisfy the basic needs of life.

**10. Jain Neepa, (2013), 'Article 21 of Constitution of India and Right to livelihood'** opined that the tribals in India are assured of all facilities to develop themselves free from traditional restrictions. The article focuses on the right to life, including the right to livelihood and work as guaranteed under Article 21 of the Constitution.

**11. Kshirsagar Dr. R.K., (2013), 'Reservation: A Quest for Justice'** observes that the Constitution has pledged to raise the weaker sections of society to a higher level by providing certain protective safeguards. He points out that the quest for justice is in vogue with the help of Constitutional safeguards.

**12. Subramanyachary P., (2013), 'Status of Scheduled Tribes in Andhra Pradesh'** discussed the need to focus more on the development of the Scheduled Tribes and the need to implement the different programs and schemes in every state where there is a larger tribal population. His study also highlighted the lack of nutritious food, the ineffective implementation of schemes, a lower literacy rate and high drop-out rate and the lack of health facilities in the tribal areas.

**13. Khanna L.M., (2014), 'Indian social justice: A case for review'** wrote in his book on Indian social justice, takes a good look at the socio-economic life of the backward classes. He mentioned in his book the Constitutional backward of compensatory discrimination in favour of the backward classes with a focus on relevant articles of the Indian Constitution and various judgements related to the backward classes.

**14. Meena Dr. S.P., (2015), 'Human Rights of Tribes: Problems and Perspective'** examines various questions relating to the human rights of tribal people in India. He points out the urgent, necessary steps to protect the dignity of the tribal people and their rights. He reflects the cultural and social identity of tribal people through human rights. He explores the violation of fundamental rights particularly state brutality perpetrated on tribal people.

**15. Prasad Anirudh, Sen Chandra and Singh Pratap, (2016), 'Reservation: Policy practice and its impact on society'** stated the reservation policy, its practice and its impact on society with focus on the depressed classes in India. The three writers analyze the judicial interpretation of the reservation policy in India. The policy is to ensure certain underprivileged groups are represented in service and share in the governance of the country according to the notion of Dr. B.R. Ambedkar and the Mandal Commission report.

**16. Chakrabarti Dr. Shambhu Prasad, (2018), 'Tribal Rights in India'** has explained the conceptual and historical perspective of tribal rights in India. His article was eloquent to reflect constitutional interpretations relating to the rights of tribal people. He also referred a number of problems the tribal faces from non-tribal. He also emphasized the importance of collective approach of sociological, political and anthropological for the tribal study.

**17. Kumar Dr. Sumant, (2018), 'Tribal Rights in India: Challenges and Achievements'** has edited issues like Tribes, their problems and efficacy of safeguards written by Anshi Joshi and AnanyaVatsa, Changing concept of Tribal justice written by Puranjoy Ghosh, Tribal trafficking in India written by Afkar Ahmad, Injustice to tribals written by Pradeep Kumar Sharma, Forest rights of tribal written by Shweta Mohan and inequalities in the name of development written by Sumant Kumar and Lovely Kumari have been discussed in details in their hard research work.

### **Objective of the Study:**

1. To study the various rights of tribal people in India.
2. To investigate the real application of tribal rights.
3. To find out the problems of tribal people.
4. To assess the basis of findings required to suggest appropriate policy.

### **Hypotheses of the Study:**

1. Tribal rights are not implemented properly.
2. The state machinery has failed to safeguard the interests of tribal communities.

### **Research Methodology:**

The study is based on secondary sources of data and information. The focus of the study is mainly on tribal rights in India. The research methodology adopted for the purpose of research includes both empirical and doctrinal methods. The main sources of secondary data include books, journals, websites, periodicals, news- papers, report of tribal development etc. The study was conducted with searching and studying secondary literature and interviews were made with a total of 50 scheduled tribe people living in Odisha state. It was decided to study the problems of both illiterate and educated respondents were interviewed. The collected primary data is analyzed and discussed.

### **Area of the Study:**

Researcher has selected four district of Odisha as pilot study. These districts are like Mayurbhanj, Kendujhar, Sundargarh and Koraput. All these districts are tribal dominated districts of Odisha. The important source of income of tribal people is cultivation and cattle rearing.

### **Observations:**

Both participatory and non-participatory observation methods were used to get more insights and strengthen the research. It was helpful in the time of fieldwork to understand the real problems of the tribal people of that area.

**Individual Interview:**

A survey of 50 households was conducted. Respondents were interviewed through a schedule about their family status.

**Focus group discussion:**

Data were also collected from community with the help of focus group discussion. It was aimed at collecting information from 15 to 20 people sitting together and sharing their opinion about the rights and problems of the tribal community.

**Sample Method:**

Simple random sample method was applied for the study. 50 persons were selected as respondents from 10 villages of four districts of Odisha.

**Questionnaire Design and Survey:**

A structured questionnaire was used to collect the sample contained both open and closed ended questions. Nominal scale from 'Yes' and 'No' was applied for the study. The first part of the questionnaire deals with demographic profile of the respondents and the second part deals with awareness and perception of rights of tribals. Survey method was used to collect the data from the respondents.

**Data Collection:**

Both primary and secondary data used for the study.

**Sample Size:**

Researcher issued 80 questionnaires and collected 50 questionnaires for analysis and study. The remaining 30 questionnaires were not taken due to incompleteness.

**Statistical Tools used:**

Statistical tools like percentage analysis, frequency distribution for the study.

**Reliability Test:**

In order to measure the internal consistency among the research variables, the researcher applied percentage analysis. The results a good and unbiased degree of internal reliability among the items and this leads to further analysis of the data.

## II. Study and Analysis of Tribal Rights:

### 1. Tribal Land Rights Acts, 1976:

- Land rights are integral part of land laws. Land laws address the legal mandates in regards to land ownership. Land rights refer to the social acceptance of land ownership.
- According to Section 4(3) of the land rights Act, a date has been affixed for determining whether the rights to land which has not been cultivated before and after 31<sup>st</sup> December 2005.
- Under section 3(1)(a) read with Section 4(6), as long as the land that is being cultivated by themselves for their livelihood but whose documents are not available at the claimant's disposal, a minimum of 4 hectares of land can be claimed.
- As per section 3(1)(f) and 3(1)(g), if the land of the claimant has been illegally occupied by the Forest Department or is subject to a Forest-Revenue Department's dispute, he/she can still claim those land rights on presentation of a patta or a government lease.
- Section 4(4) of the Act provides for the protection of the land in a way that permits the selling or transfer to anyone except through inheritance.

The response of the Indian judiciary in protecting the rights of the tribal peoples in exploitation of mineral sources from the land owned by these peoples can be seen from the following observations of the Supreme Court;

#### *Samatha vs State of Andhra Pradesh*

“Agriculture is the only source of livelihood for Scheduled Tribes, a part from collection and sale of minor forest produce to valuable asset and impensable endowment from which the tribals derive their substance social status, economic and social equality and permanent place of abode and work and living. It is a security and source of economic empowerment of their lands. The land, on which they live and assure them equality of status and dignity of person and means to economic and social justice and it, is a potent weapon of economic empowerment in a social democracy”.

### 2. Tribal Forest Rights Act, 2006:

- The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of forest rights) Act, 2006 was enacted to protect the marginalized socio-economic class of citizens and balance the right to environment with their right to life and livelihood.
- Sanctioning a legal recognition of the rights of the traditional communities living in forested areas since time immemorial who have been kept deprived of their basic fundamental legal rights due to the draconian provisions of the colonial forest Acts.
- The Act also aims to shift away from the excess state control of the forests which were kept away from the purview of public discourse and discussion. This democratizes and gives a respectful recognition to the tribal identity.

- This Act provides for guidelines for undertaking developmental facilities of the villages in and around forested areas.

### **3. Forest Dwellers Act, 2006:**

- Section 2(o) of the Forest Dwellers Act stipulates that the person should be bonafide dependent on forest, its land and resources for their livelihood.
- Section 2(c) of the Act provides that the person is a member of the Scheduled Tribe.
- Section 4(1) of the Act provides that the person is a resident of an area where they are scheduled.

### **4. Protection and Conservation of Forest Rights Act:**

- Forest Rights Act, rights are provided to the community for protecting and managing the forest.
- Section 3(1)(i) of the Act provisions for right and power of the conservation and protection of the community forest.
- Section 5 of the Act vests rights to different forest-dwelling communities for safeguarding their habitat, wildlife etc.

### **5. Tribal Water Resources Rights:**

- Tribal water rights are based on federal law; state law is a factor in water rights adjudications due to allocation of water to tribes.
- Section 12-Claims to right of way, right to water resource or to use of water etc.
- Water symbolized many things including life and death, strength, change, healing, dreaming and unconditional love.
- Water is the single most important tool for performing agriculture of tribal people.
- From birth to death water remains an essential ingredient in performing all rituals in Hindu society.

### **6. Tribal Mining Right:**

- Mining laws and policies of India governs the land and forest rights. The mines and minerals (Development and Regulation) Act, 1957 is the primary legislation regulating the mining sector.
- Mining laws and policies of India govern lands and forests rights of tribal people.
- Mining activities in various states in the region have many impacts on the natural environment, forests, land alienations, water pollution resulting in livelihoods loss.
- Many parts of India tribal land acquisition for mining activities demonstrates the violence of mining and reveals the formal and informal activities deployed by state and private companies to disposes the poor tribal people.
- Mining leading to displacement of tribals, destruction of their livelihood support system including forests and water sources.



## 7. Tribal Property Rights:

- Property rights have been a key part of modern tribal peoples' movements around the world; yet the tribes in India are regularly deprived of these rights.
- The root of the problem that the tribes have a legal rather than fundamental rights to property under Indian law, which has made it possible for the state to acquire tribal lands if it meets the low threshold of having consulted or sought recommendations before doing so.
- The most straightforward way of substituting consent for consultation is to alter the balance of power between the states and the tribal local governments by making property a fundamental right for the tribes as well. Even though states can still acquire tribal community property by qualifying this right and paying just compensation, the extent of police powers would be significantly curtailed, since any state actions interfering with fundamental rights will be judicially reviewable for its effects and consequences under the well-established principles of the Indian Supreme Court.
- The mandate for such a provision has been constitutionally given to Parliament, which can make "any special provision for the advancement of the Scheduled Tribes". If recognized, the fundamental right would be one of many provisions securing tribal interests: the Fifth and Sixth Schedules are examples and so is Parliament's ability to legislatively restrict a citizen's right to travel or reside in any part of India if such law was for the protection of the interests of any Scheduled Tribe.

## 8. Community Intellectual Rights:

- The state recognizes the original rights of tribal people and local communities over plant and genetic resources under community intellectual rights protection Act, 1997.
- It includes traditional medicines, agricultural methods and local techniques discovered and developed.
- Republic Act, 1997 is a tribal peoples right Act to recognize, protect and promote the rights of tribal cultural communities.
- It creates National Commission on tribal people to establish, implement mechanisms and allocate the funds.
- The National Commission for Scheduled Tribes is the primary Government agency to formulate and implement policies, plans and programs for recognition, promotion and protection of tribal people.
- The protection of indigenous knowledge is achieved through the recognition of land rights, strengthening the management of national resources, biodiversity and knowledge based on customary laws.

## 9. The Reservation Right:

- The reservation policy was intended to social change. The Scheduled Tribes need reservation in public jobs and education by implementing the concept of welfare and social justice system.

- Fundamental Rights in Part III of the Constitution play a vital role in version social justice to the Scheduled Tribes. The Directive Principles of State Policy in Part IV denotes the goals to achieve.

## 10. Human Rights:

- Human Rights are defined under Protection of Human Rights Act, 1993 under as it's Section 2(d) as the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India. International Human rights law lays down the obligations on Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedom of individuals or groups.

## 11. Right to Food:

- *Kapila Hingorani vs State of Bihar*

The Right to Food not only means that hunger and malnutrition are eradicated, but that future malnutrition can be eradicated by Court action or other comparable mechanisms holding the state accountable on its obligations under the right to Food.

- *Chameli Singh vs State of Uttar Pradesh*

The Apex Court referring to Article 11 of the International Covenant on Economic, Social and Cultural Rights, 1966 held that the State parties recognize “the right to everyone to an adequate standard of living for himself and for the family including food, clothing, housing and to the continuous improvement of living conditions”. The state parties were to take appropriate steps to ensure realization of the thought.

## 12. Right to Shelter:

- The Supreme Court has enlarged the meaning of life under Article 21 of the Constitution to include within its ambit, the right to shelter. In some cases upholding the right to shelter, the Court looked at differentiating between a mere animal-like existence and a decent human existence, thereby bringing out the need for a respectable life.
- *Shantistar Builders vs Narayan Khimalal Totame*

“The right to life would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal it is the bare protection of the body, for a human being it grows in every aspect-physical, mental and intellectual. The Constitution aims at ensuring fuller development of every child. That would be possible only if the child. That would be possible only if the child is in proper home. It is not necessary that every citizen must be ensured of living in a well-built comfortable

house but a reasonable home particularly for people in India can even be mud-built thatched house or mud-mud-built fireproof accommodation”.

### 13. Right to Work:

- *Murlidhar Dayandeo Kesekar vs Vishwanath Pandu Barde*

“The Preamble, the Directive Principles and the Fundamental Rights including the right to life, the apex court held that economic empowerment and social justice are Fundamental Rights to the tribes. The basic aim to the welfare State is the attainment of substantial degree of social, economic and political equalities and to achieve self-expression in his work as a citizen, leisure and social justice. The distinguishing characteristic of the welfare State is the assumption by community acting through the State and as its responsibilities to provide the means, whereby all its members can reach minimum standard of economic security, civilized living, capacity to secure social status and culture to keep good health. The welfare State, therefore, should take positive measure to assist the community at large to act in collective responsibility towards its member and should take positive measure to assist them to achieve the above”.

### 14. Right to Education:

- *Brown vs Board of Education*

“It is the very foundation of good citizenship. Today, it is principal instrument in awakening the child to cultural value, in preparing him for later professional training and helping him to adjust normally to his environment. It is said that child is the future of nation. The quality of education of the child will determine the quality of life in nation”.

- *Mohini Jain vs State of Karnataka*

The Hon’ble Supreme Court has emphasized the protection of life and personal liberty as well as right to education as guaranteed in Article 21 and 21A of the Constitution of India.

“Right to life is the compendious expression for all those rights which the courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to peruse. The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The State Government is under an obligation to make endeavor to provide educational facilities at all levels to its citizens”.

## 15. Socio-Economic Rights:

- Social and economic rights are most important for tribal development and empowerment.
- This leads to the creation of certain inalienable rights that the tribal communities must enjoy and state must protect and implement.
- The State must promote with special care the socio-economic interests of the tribal people under Article 46 of the Constitution.
- Grant-in-aid from the consolidated fund of India for welfare of Scheduled Tribes under Article 275(1) of the Constitution.
- The maintenance of efficiency administration tribal areas, the Central and State Governments should appoint suitable administrators.

## 16. Panchayats (Extension to Scheduled Areas) Act, 1996:

- The provisions of the Panchayats (Extension to Scheduled Areas) Act, 1996 or PESA is a law enacted by the Government of India for ensuring self-governance through traditional Gram Sabhas for people living in the Scheduled Areas of India.
- Panchayat Extension to Scheduled Areas( PESA) Act,1996 is a law enacted by the Government of India. It is an Act to provide for the extension of the provisions of part IX of the Constitution relating to the Panchayats to the Scheduled Areas.
- The Scheduled Areas under Article 244(1) of the Constitution. The Act extended the provisions of Panchayats to the tribal areas of nine states that have Fifth Schedule Areas.
- A state legislation on panchayats in the Scheduled Areas take care of customs, religious and traditional management practices of community resources.
- Every village contains a grama sabha whose members are included in the electoral list of the panchayats at village level.
- The recommendation of the grama sabha is mandatory for granting mining licenses, planning and management of minor water bodies in panchayats..
- PESA empowers Grama Sabha with right to mandatory consultation in land acquisition, resettlement and rehabilitation of displaced persons.

## 17. SC/ST Prevention of Atrocities Act, 1989:

- The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was enacted with a view to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes and to provide for Special Courts and exclusive Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences.

- The said Act was amended in 2015 with an objective to deliver greater justice to members of the Scheduled Castes and the Scheduled Tribes.
- Scheduled tribe shall have the meaning assigned under clause(25) of Article 366 of the Constitution.
- Atrocity means an offence punishable under section 3 of this Act.
- The Criminal Procedure Code, 1973 (2 of 1974) is applicable for this Act.
- Court of Session specified as a Special Court under section 14.
- There is a special Public Prosecutor under section 15 of the act to plead the case.

### **18. Protection of Civil Rights Act, 1955**

- Civil Rights mean any right accruing to a person by reason of the abolition of untouchability under Article 17 of the Constitution.
- This Act requires at the place of hotel, construction work, public entertainment and place of worship.
- This Act was called untouchability offences Act, 1955. The Act was amended by the untouchability offences Amendment and Miscellaneous Act, 1976 and enforced the 19<sup>th</sup> November, 1976. It was renamed as protection of Civil Rights Act, 1955.
- It aims at protecting the Civil Rights eradicating discrimination on the grounds of birth, religion etc. its practice in any form is an offence and subject to punishment in accordance with law.
- The punishment to the offender under the Act is one to six months imprisonment and also fine from one to five hundred rupees.
- An Act to prescribe punishment for the enforcement of any disability arising therefrom and for matters connected therewith.

### **19. Criminal law in tribal areas:**

- Land acquisition, displacement and the commencement of project work without setting issues that arise in the context of the project have given rise to various forms of protest and resistance.
- Local people complained that when they raised their voices against a project proposal that was brought to them, they invariably found themselves charged with criminal cases.

### **20. Ministry of Tribal Affairs:**

- The Ministry of Tribal Affairs (MoTA) was set up in 1999 after the bifurcation of Ministry of Social Justice and Empowerment.
- MoTA has the objective of empowering Tribal Communities to be at par with others on all development indicators while preserving their unique identity and culture and placing them on a progressive and constructive path to enhance their partnership in Nation building.

## 10. National Commission for Scheduled Tribes:

- National Commission for Scheduled Tribes (NCST) was set up with effect from 19<sup>th</sup> February, 2004 by Article 338A in the Constitution. The duties and powers of NCST have been laid down in Clause (5) and (8) of the Article 338A of the Constitution.
- The Commission shall also discharge other functions in relation to protection, welfare, development and advancement of Scheduled Tribes.

## 11. Gram Nyayalaya Act, 2008:

- Section 3 of the Gram Nyayalaya Act, 2008 to establishment of Gram Nyayalaya in the village level for purpose of providing access to justice to tribal people.
- Section 8 provides Nyayadhikari not to preside over proceedings in which he/she is interested.
- Section 9 denotes Nyayadhikari to hold mobile Courts and conduct proceedings in villages.
- Article 39-A of the Indian Constitution mandates that the weaker sections of the society should receive free assistance.

## III. Tribal Acts and Rules of Orissa State:

### 1. The Orissa Scheduled Areas transfer of immovable property (Scheduled Tribes) Regulation, 1956

- This regulation aims at arresting land alienation. It is operating since the 4<sup>th</sup> October 1956.
- It lays prohibition on alienation of tribal land to the members of other communities without prior permission of competent authorities in the Schedule Area.
- A Scheduled Tribe person is not permitted to transfer his land if the same is less than one standard acre.
- It provides that illegal alienation and unauthorized occupation of the tribal land is restored to them.
- The competent authority is empowered to evict the person who is in unauthorized occupation of the Scheduled Tribe land.
- The regulation is not applicable mortgage of property by Scheduled tribe person with public Financial Institutions for cultivation or agriculture purpose and transfer of property within the Scheduled Tribes.
- This Act provides for imposition of penalty and rigorous imprisonment on the offenders. In illegal possession of land the fine will be Rs.200/- per year. The land alienated before 30 years does not come into the preview of the Act.
- The offender who take possession of the restored land of the scheduled Tribe will be penalized with Rs. 2,000/ or imprisonment of both.
- The Act is not coming under the jurisdiction of the Civil Court.

## **2. The Orissa Land reforms Act, 1960 & 1964**

- This Act is advanced to safeguard the interest of Scheduled Tribes, Scheduled Castes and other people on land in non- Scheduled Areas of Orissa.
- It provides for eviction of non-tribal persons from the land of Scheduled Tribe persons which are found to in unauthorized occupation for than 30 years.
- In case of settlement of surplus lands the same under the section 45 shall be settled with Scheduled Castes and Scheduled tribes according to the proportion of their population in the village.
- The land settled cannot be transferred or disposed of within 10 years. Scheduled tribes and Scheduled Castes landless people are exempted from payment of court fee of application for settlement of ceiling surplus lands.

## **3. The Orissa (Scheduled Areas) Money lenders Regulation, 1967 and Orissa Regulation 2 of 1968**

- This Act regulates and controls the business of money lending in the Scheduled Areas of the state of Orissa with effect from the 16<sup>th</sup> November 1968.
- It permits the licensed money lenders to do the business at a rate of 9% simple interest for the secured loan and 12% for the non- secured loan.
- It prevents use of muscle men, treat force for collection of dues, grants receipts for repayments and mortgage of articles and prescribes penalty for offender which varies from Rs. 500/ to Rs. 1,000/ and imprisonment.

## **4. The Orissa Scheduled Areas exercise of criminal powers validation regulations, 1963.**

- The Fifth Schedule to the Constitution of India, the Governor of Orissa is pleased to promulgate the regulation, 1963.
- Regulation read with Section 30 of the Criminal Procedure Code 5 Of 1898 shall have any Court of law that the officers have not been legally vested with the powers.

## **5. The Orissa reservation of vacancies in posts and services for Scheduled Tribes Rules, 1976.**

- The objections and suggestions have been conferred by sub-section (2) of Section 18 of the Orissa Reservation of vacancies in posts and services for Scheduled Tribes Act, 1975, the State Government make the following regulations.
- ✓ Maintenance of Register.
  - ✓ De-reservation of vacancies.
  - ✓ Payment of travelling allowance.
  - ✓ Promotion based on selection.

✓ Annual Returns.

## 6. The Orissa Legal Aid to the poor Rules, 1975.

- Different forms of legal aids have been provided to the needy poor people including Schedule Castes and Scheduled Tribes. Each district has a Legal-Aid Committee.
- It sanctions or refuses legal aid. The said rule is replaced by 'Orissa State Legal Aid Advice Programme, 1981.
- Legal aid is given to eligible Scheduled Castes and Scheduled Tribes to establish and maintain their rights, title or possession of property in all Civil and Revenue Court provided that the opposite party is not a member of Scheduled Castes and Scheduled Tribes community or Government.
- It is also admissible for cases under the Untouchability Offence Act, 1955. Many Scheduled tribe and Scheduled Caste person have been benefited under this aid.

The criteria for success of the legal aid scheme:

- ✓ Criteria of high incidence of bona fide land ejection cases occurring among the Scheduled Caste and Scheduled Tribe communities.
- ✓ Full awareness absolute the legal provisions like Regulation 11/56 and the Orissa Land Reforms Code, 1965 on the part of the Scheduled Communities.
- ✓ Knowledge about the legal aid scheme formulated by Government of render financial help to these communities.
- ✓ Every detection and follow up action for illegal transfer cases by field officers working for tribal welfare.
- ✓ Proper selection of panel pleaders representing these communities to fight out cases in the interest of these communities and adequate and timely payment of their remuneration.
- ✓ Speedy disposal of cases of these types by the trying of magistrates.
- ✓ Restoration of the disputed land to the Scheduled Caste and Scheduled Tribe after the case is over.

## 7. The Odisha Forest Act, 1972

- This Act consolidated and amended the laws relating to protection and management of forests in the state.
- This Act classified the forests into three- Reserved Forests, Protected Forests and Village Forests.
- According to Section 36- Power to make rules for protection of forests.
- According to Section 39-Protection of forests for special purposes.
- According to Section 40-Power to assume manages of forests.
- According to Section 82- Additional powers to make rules.
- According to Section 85-Punishment for abetment of forests offences.



## 8. The Forest (Conservation) Act, 1980

- Restriction on the de-reservation of forests or use of forest land for non-forest purpose under section 2 of the Act.
- Any person aggrieved by decision of the State Government may appeal to National Green Tribunal under section 2-A of the Act.
- Constitution of Advisory Committee by the Central Government under section 3 of the Act.
- The Central Government may make rule under the provision of this Act under section 4.

## IV. Data Analysis:

Data was collected from four Districts of Odisha like Mayurbhanj, Kendujhar, Sundargarh and Koraput.

### 1. Age wise distribution of the Respondents

The age plays significant role in assessing the knowledge of the people. The increase in age people gets awareness and knowledge on different aspects of society. Hence the information on the age of the respondents was collected and presented in the following table.

**Table No-1:**

Respondents	Illiterates		Literates/Educated		Total	
	Frequency	%	Frequency	%	Frequency	%
18-25 Years	20	40	10	20	30	30
26-35Years	10	20	12	24	22	22
36-45Years	8	16	14	28	22	22
46-55Years	8	16	8	16	16	16
More than 55Years	4	8	6	12	10	10
Total	50	100	50	100	100	100

Source: Primary Source

**Analysis:** Among all the illiterate respondents, 20 (40%) are in the age group of 18 to 25 years are more and above 55 years respondents are less in number. Likewise educated respondents are less in age group above 55 years. It is observed that a great majority of the respondents are of younger aged.

**Table No-2. Impact of various rights on Tribal people.**

Respondents	Illiterate		Literate/Educated		Total	
	Frequency	%	Frequency	%	Frequency	%
Fully effective and Useful	15	30	20	40	35	35
Benefited to only few tribes	20	40	18	36	38	38
Not useful for majority of tribes	15	30	12	24	27	27
Total	50	100	50	100	100	100

Source: Primary Source

**Analysis:** Among all the illiterate and educated respondents impact highest and benefited to only few tribes and not useful for majority of tribes.

**Table No.-3 Implementation of Tribal Rights**

Sl.No.	Tribal Rights	No of Educated Respondents from different parts of Odisha. (n=50)					
		Implementing		Little Implementing		Not Implementing	
1	Land Right	30	60%	15	30%	05	10%
2	Forest Right	20	40%	25	50%	05	10%
3	Water Resources Right	05	10%	30	60%	15	30%
4	Mining Right	04	08%	32	64%	14	28%
5	Property Right	25	50%	05	10%	20	40%
6	Community Intellectual Right	02	04%	28	56%	20	40%
7	Reservation Right	35	70%	10	20%	05	10%
8	Human Right	15	30%	25	50%	10	20%
9	Food Right	10	20%	20	40%	20	40%
10	Shelter Right	15	30%	18	36%	17	34%
11	Work Right	22	44%	12	24%	16	32%
12	Education Right	35	70%	05	10%	10	20%
13	Health Right	10	20%	30	60%	10	20%
14	Socio-Economic Right	02	04%	38	76%	10	20%
15	Justice Right	05	10%	35	70%	10	20%
16	Empowerment Right	10	20%	30	60%	10	20%

Source: Primary Data

**Analysis:** From above questionnaire data collection, implantation of Tribal Rights like Land Right, Property Right, Reservation Right, Education Right are more than 50%, Little implementation in all rights except Land Right, Property Right and Education Right, Properly not implementing in all above rights where the opinion is less than 50%.

**Validation of hypotheses:**

	Question put to the respondents	No. of Respondents And %	No. of Yes, %	No. of No, %
H1	Whether Tribal rights are not implemented properly?	50 100%	40 80%	10 20%

Analysis: The study reveals that 80% of the respondents have the opinion that Tribal rights are not implemented properly.

	Question put to the respondents	No. of Respondents And %	No. of Yes, %	No. of No, %
H2	Whether the State machinery has failed to safeguard the interests of tribal communities?	50 100%	45 90%	5 10%

Analysis: The study reveals that 90% of the respondents have the opinion that the State machinery has failed to safeguard the interests of tribal communities.

**V. Results and Findings:**

- The researcher reviewed that land rights are fundamental to redressing the past injustice, alleviating social and economic disadvantages.
- Land rights legislation is about compensating tribal people for past dispossession, dislocation and removal of land by handing them back land with all rights.
- Indian government enacted the Forest Rights Act in 2006 to correct the historic injustice done to tribal people and forest dwellers but the implementation of the landmark legislation has been far from satisfactory.
- A recent study reveals a large variation in the outcomes of claims submitted under the Forest Rights Act across states.
- Experts working on the issue on the ground believe the biggest hurdles in proper implementation of the Forest Rights Act are the forest bureaucracy and corporate interests.
- Implementation of the Forest Rights Act has been slow and the rights of forest dwellers are still being violated.
- The researcher stated that the Scheduled tribes and other Forest Dwellers (Recognition of Forest Rights) Act, 2006 is a key piece of forest legislation 2006.
- The law claim to massive forest destruction and should be replaced.

- The researcher pointed out that the primary legal foundation for tribal water rights is the reserved rights doctrine. The reserved rights doctrine holds the reservations lands for tribes and access to water to fulfill the purpose.
- The researcher pointed out that tribals have the special rights over mines and minerals in their jurisdiction.
- The current Intellectual Property laws and Legislations in India do not fully protect indigenous knowledge systems. The indigenous knowledge is misappropriated, abused without proper recognition and acknowledgement.
- The researcher feels that human rights are to promote and protect tribal rights, but it not in reality due to proper implementation and judicial proceedings.
- .The researcher brought his opinion that PESA is a law enacted by Government of India to cover the Scheduled Areas. This particular Act extends the provisions of part IX to the Scheduled Areas of the country. PESA brought powers further down to the Gram Sabha level. Panchayats were given Constitutional status as an institution of local self- governance for rural India.
- The researcher understood that prevention of atrocities Act, 1989 is enough but judicial action is not adequate to provide justice to the tribal people. So crimes are increasing, victims are suffering.
- The researcher opined that criminal law is being used as a tool of the state to suppress dissent; Judicial Commission needs to be appointed to investigate cases filed against tribal and their supporters. It risen that the misuse of criminal law by the state.
- The researcher pointed out that Ministry of Tribal Affairs is a nodal agency for tribal development, but there is need of more focusing on schemes and programmes to tribal people.
- The researcher realized that National Commission for Scheduled Tribes should be more active to protect the rights of tribal people.
- Adequate steps were taken to safeguard the interest of the Scheduled Caste and Scheduled Tribe communities by stopping the illegal grabbing of land which they suffered since ages it was observed that the scheme exerted very little impact on these communities as the response to avail the benefit according from the scheme was very poor.

## VI. Conclusion:

The laws enacted for forests, exploitation of natural resources, land acquisition, etc, being based upon colonial principles are in direct contravention of Part II, IV and the provisions of the sixth schedule of the Constitution of India, thus giving the lie to the stated objectives of protecting tribal culture.

This benefited a few individuals by giving them a tenuous foothold in the Indian state structure as bureaucrats, law enforcers and politicians. However this facilitates the exploitation of the mass of the tribal people. It was inevitable for the tribal culture to hold out against the onslaught of the dominant bourgeois culture which was sanctioned as developed and backed by the state.

The problem area, inter alia, is the paucity of adequate legislation to protect the rights of this section of society. The existing legislation that deals with the basic rights of these people does not; to a great extent fulfil the basic needs of these people or further their actual interests. Neither, they fulfil the constitutional objectives in the form of equality before the law and equal protection of the law.

The protection of Human Rights of the tribal people is an issue that attracts global norms transcending national boundary. The present study has taken into account the development of the laws relating to the tribal people in the international as well as the national sphere. The study has taken into consideration the part played by the judiciary, so far as protection and upliftment of these people are concerned.

The findings of this study will likely rebound to the benefit of society considering that the tribals are just another set of people living in parallel with our system. Having their (indigenous) own systematic way of life shall not impede the way of life practiced by the rest of society. It must be understood that the tribals carry with them their immense indigenous knowledge, which needs to be explored for a better system of human life on earth. The greater demand for their upliftment and preventing them from various inhuman conditions that the state and the non- tribals provide is an example of the acknowledgement of the world community to the need for the co-existence of tribal and indigenous communities.

The conclusion is followed by the various measures the researcher thinks appropriate to address these challenges in the form of suggestions and recommendations. A set of short and long-term recommendations have been listed to address the plight of tribal peoples in Odisha.

**References:**

1. Chakrabarti Shambhu Prasad, (2018), "Tribal Rights in India", Patridge Publishing, Singapor.
2. Narayani G.S., (2004), "Tribal Law in India", Rawat Publications, New Delhi.
3. Thakur Devendra, (2009), Deep and Deep Publication Pvt. Ltd., New Delhi.
4. Behura N.K. and Panigrahi Nilakantha, (2006), "Tribals and the Indian Constitution", Rawat Publications, New Delhi.
5. Jayashankar K.K. and Jonson Philip, (2011), 'Constitutional Law', Pacific International, New Delhi.
6. Jaswal Vikram Singh, Jaswal Sweta (2011) 'Justice V.R. Krishna Iyer's concept of Social Justice', Deep and Deep Publication Pvt. Ltd., New Delhi.
7. Kumar Mahesh, Tyagranjan K.R. and Sharma R.V. Manoj (2011) 'Indian Constitution', Anmol Publications Pvt. Ltd., New Delhi.
8. Makwana M.H. and Pais Richard (2011) 'Back ward classes and Social Justice', Rawat Publication, New Delhi.
9. Choudhry R.N. and Naqvi S.K.A. (2012) 'Scheduled Castes and Scheduled Tribes (Prevention and Atrocities) Act, 1989', Orient Publishing Company, New Delhi.
10. Gupta Dr. Pallavi (2012) 'Back ward class reservation and concept of creamy layer', Deep and Deep Publications Pvt. Ltd., New Delhi.
11. Stephen L. Pevar (2012) 'The rights of Indians and Tribes', Oxford University Press, New York.
12. Aswal B.S. (2012) 'Tribal and Human Rights', Cyber Tech Publication, New Delhi.
13. Agarwal A.N. (2013) 'Tribals of Odisha', Gyan Publishing House, New Delhi.
14. Jain Neepa (2013) 'Article 21 of Constitution of India and Right to livelihood', Voice Research Publication, New Delhi.
15. Kshirsagar Dr. R.K. (2013) 'Reservation: A Quest for Justice', Kalpaz Publication, New Delhi.
16. Subramanyachary P. (2013) 'Status of Scheduled Tribes in Andhra Pradesh', The Dawan Publication.
17. Khanna L.M. (2014) 'Indian social justice: A case for review', Patridge Publication, India.
18. Meena Dr. S.P. (2015) 'Human Rights of Tribes: Problems and Perspective', Pointer Publisher, Jaipur.
19. Prasad Anirudh, Sen Chandra and Singh Pratap (2016) 'Reservation: Policy practice and and its impact on society', Kalpaz Publications, New Delhi.
20. Kamar Dr. Sumant(2018) 'Tribal Rights in India: Challenges and Achievements' Om Publications, New Delhi.