

Tribes & Environmental Conservation

Introduction

The tribals are popularly herd as the ‘guardians’ of the forest and its resources. There has to be an understanding so as to how these tribals are associated with the forests and what are their various claims over the same. Firstly, who are the tribals and what constitutes forest is being discussed. Further, the relationship existing between the tribals and the forest in socio-economic and legal aspects are pondered into. It also establishes that such relation has a strong legal basis though it is founded mainly on socio-cultural aspects and traditions.

Secondly, the paper deals with the various laws existing with a blend of traditions and customary laws and so on. It discusses about the need for legal interventions to protect the forests and it’s in habitants. The objective of the Forest Act is viewed in a sense such as one of the means of exploitation mechanisms by the British during pre-independence. The lack of considerations for appropriate laws is also complained in this section highlighting other conflicting laws with the tribals.

Thirdly, the various hindrances faced in governing the tribals and their land are being discussed wherein the Constitutional Safeguards are brought into the lime light. It also deals with various socio-economic and legal difficulties and drawbacks with a taste of various constrains faced during the process of implementation of these laws. Finally, the paper concludes with a problem solving model which is brought up by the authors wherein there is suggestions and recommendations to draw line between the development and the displacement of tribals, as being a welfare state, the paramount importance is the welfare of the people. Further, it consists of various judgements rendered by the Hon’ble Supreme Court in several of its decisions to construct a model for the survival of tribal’s along with the economic interest of the State.

TRIBAL'S AND ENVIRONMENT: AN OVERVIEW.

India has its own reservations towards forests and they have occupied an important position from ancient times. The Ancient Indian scriptures such as the Mahabharata and the Ramayana give picturesque descriptions of forest life in dandakaranya and nandavana. There were Mughal Emperors who encouraged making of orchids popularly known as 'bhags' and on the other hand kings like Ashoka and Shivaji issued orders encourage the planting of trees along the roads and on camping sites and prohibiting the cutting of fruit trees. In general, before the advent of British rule in India, the regulation 'of people's use of forest was mainly done through local customs and laws. These discouraged the cutting of trees like banyan and so on viewing its social, cultural and ethical associations with the society. Several temples had forests regarded as sacred and any cutting of trees was prohibited. Even now we have some devrayas in the country.¹

India has the second largest concentration of tribal population, after that of African continent. The total schedule tribe population in India, as per 1991 Census, is about 6.78 crores which constitute about 8.08% of total population of 83.86 crores in the country, excluding the population of the state of Jammu and Kashmir where Census would not be conducted due to disturbed situation. Of this, about 87 per cent Scheduled Tribe population is concentrated in the central belt covering 8 states of Madhya Pradesh, Orissa, Bihar, Maharashtra, Gujarat, Rajasthan, Andhra Pradesh and West Bengal. About 10 per cent in the north- eastern region and about 3 per cent are in the other states. Madhya Pradesh has the highest concentration of 1.54 crore Scheduled Tribe population in the country.²

The main causes of backwardness of tribal population are exploitation and illiteracy. tribals continue to be exploited trough liquor and money lending. Economic development of tribals is not possible without effective protection against exploitation and without improving literacy. There is need for careful review of the situation. Illiteracy has also been adding to the exploitation of tribals. As a result of various steps taken by the central and state governments, there has been some improvement in the literacy among the schedule tribes. Education has brought about awareness and strength among the youth who are now prepared to face the challenge of changed scenario. Various causes of unrest among the Scheduled

¹Sharad Kulkarni, Forest Legislation and Tribals: Comments on Forest Policy Resolution, Economic and Political Weekly, Vol. 22, No. 50 (Dec. 12, 1987), pp. 2143-2148.

²Source available at www.tribal.nic.in last viewed on 20/02/2013.

Tribes have been identified and analysed. Discontent among tribals has been surfacing time and again either in the form of separate state or an agitation for better deal of development.³

Tribals are the people who live in forest and that is the basic reason they are so closely related to them. Forests are the only means of their survival and the only source of energy to their survival. They not only consider the forest as one of the most important part of their life but the whole environment per say.⁴ Tribals are the people who are backward in nature and lives on the basic elements provided by the nature. Even today they have sunlight as the basic source of light and energy and what the other light they know is that generated from fire. The word electricity is even not known to many of the tribes. This is the reason they consider every part of environment from trees to rivers as very important part of their life as they are the only means of human survival as per their understanding.⁵ The quantum of importance given to environment is not limited here they have given the environment as to the status of god and they worship trees, sun rivers, air and land. They even protect the environment considering it as their responsibility towards the lord of the human race.⁶

THE LAWS RELATING TO THE TRIBAL'S AND THE FOREST.

Tribals are peace loving people. Their attachment to the land traditionally occupied either for habitation or cultivation is unmatched. They generally resisted invasions on their territory. They have also at time reacted violently against their exploiter represented by money lenders, middle man , contractors, liquor vendors, zamindars and government administrators, particularly forest, exercise, police and revenue official. Recorded history, particularly after the advent of the British mentions a series of struggles waged by the tribals against the British as well as other exploiters for their survival and they followed their own traditional laws, legal systems and customs.

The various issues can be in some manner be classified relating to the development of tribal culture, planning and the self-government of tribal areas. The problem with development plans is that they rarely take into account the existing culture and economy of the tribals. The logic for imposing these programmes is created by the belief that tribals are backward and helpless and they need outsiders to act as their guardians which is certainly

³ D.C. SAH, TRIBAL ISSUES IN INDIA (RAWAT PUBLICATIONS 1ST ED., 2004).

⁴ MAHENDRA MOHAN VERMA, TRIBAL DEVELOPMENT IN INDIA: PROGRAMMES AND PERSPECTIVES 516 (MITTAL PUBLICATIONS 1ST ED., 1996)

⁵ A.K. PANDEY, TRIBAL SOCIETY IN INDIA (MANNAK PUBLICATION 1997).

⁶ BAIDYANATH SARASWATI, TRIBAL THOUGHT AND CULTURE (CONCEPT PUBLISHING COMPANY, 1ST ED., 1991)

false. The disadvantage here is that these masqueraded guardians abuse their privilege thereby depriving the tribals their right to livelihood.⁷

After the Indian Independence and declaration of it being a 'welfare state', it became the bound duty of our planners to ensure the development of the poor masses suffering from hunger, poverty, disease and illiteracy. There were special provisions included in the Constitution to safeguard the social, economic, educational and political interests of weaker sections of the community including tribals. The tribals were been only treated as those living far away from civilisation in the forests and hills but post independence, the policy of laissez-faire followed by the British could no more be continued. The tribals also had the right to come in line with society and for that the gap between them and rest of the people had to be bridged. Post-Independence, the forest department took over the monopoly of developing forests and tribals became foreigners in their own forests and hills especially after the promulgation of Forest Conservation Act, 1980.

The Forest Act, being the product of the British colonial days, reflects the exploitive intensions of colonial and feudal society of the time, rather than the environmental and ecological interests. Based on a revenue-oriented policy, its main object was to regulate dealings in forest produce and augment the public exchequer by levy of duties on timber.⁸ The Act also provides for procedures for reservation and incidence of reservation. No right could be acquired in or over reserved forest except by (a) succession; or (b) under a grant or contract entered into with government; or (c) by any other persons having pre-existing rights. The rights were though lost as soon as the draft notification was issued. Any person indulging in prohibited acts such as setting fire to the forests, hunting, trespassing, quarrying, fishing and setting traps was liable to be prosecuted. The State Government on the other hand can assign any of its rights in a reserved forest to a village community and make rules in furtherance.⁹

OTHER SUBSEQUENT LAWS FOR ENVIRONMENTAL PROTECTION.

The forest dwelling Scheduled Tribes were living in the famous for generations. Their plight was miserable in the past. It continued to be so in spite of several ameliorative efforts

⁷Sharit Kumar Bhowmik, Development Perspectives for Tribals, Economic and Political Weekly, Vol. 23, No. 20 (May 14, 1988), pp. 1005-1007.

⁸ P.LEELAKRISHNAN, ENVIRONMENTAL LAW IN INDIA (LEXIS NEXIS BUTTERWORTHS WADHWA NAGPUR, 3RD ED., 2012.

⁹ G.S. NARWANI, TRIBAL LAW IN INDIA (RAWAT PUBLICATIONS 1ST ED., 2004).

on the parts of the states. Non-recognition of their over forest land and habitat was a historical injustice. The forest rights law of 2007¹⁰ aims to do away with this injustice. Endowing the tribal people and other forest dwellers¹¹ with certain rights¹² and duties, the law makes an attempt to recognise relationship of the tribal people and the forest. There are lingering fallacies that cast shadows on the Forest Rights Act that has the potential for conversion of tribal villages into. Such a clandestine process of privatisation will defeat the very purpose of the law meant to restore the tribal people to their original habitat.

Another predicament is the consequence that flows from the provision for critical wildlife habitat. the forest rights in critical wildlife can be subsequently modified or resettled when the officials under wildlife Protection Act 1972 are satisfied that the activities or impact of the presence of holders of forest rights are sufficient to cause irreversible damage and threaten the existence of the said species and their habitat.¹³ As a result, the forest area where the tribal area where the tribal people have freedom to move in search of subsistence and livelihood is to great extent reduced. The induction of the critical wildlife habitat can be criticised as affecting the very purpose of the Act. Any law relating to forest rights treating the tribals as foes, and not as friends, of the forest habitat will only help mask the intruders, and treat forest communities as scapegoats. This fact has been considered and accepted by the National Tiger Conservation Authority when it suggested that tiger reserve states should recruit local forest dwelling tribes as field staff. It is essential to strike the distinction between those who are in the forests for survival and livelihood, and those who are there for commercial purpose and for making profit. 'It is the latter category that needs to be prevented from gaining access to forests. This is the real fight.'¹⁴

¹⁰The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2007. It came into force on 1 January 2008.

¹¹ *Id.*s 2(o). Member or community who has for at least three generations prior to the 13th day of December 2005, primarily resided in and who depend on the forest or forest or forest land for bona fide livelihood needs.

¹² *Id.* s3. Forest rights include the right to hold and live in forests, to have title over lands, community rights over *nistar*, entitlements to water bodies, grazing lands and traditional resource access, biodiversity access and community right to intellectual property and traditional knowledge related to forest diversity and cultural diversity.

¹³ The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest rights) Act 2007, s 3(2) (ii): role in the clearance of development projects; s 4(2)(e): free and informed consent for modification of forest rights in critical wildlife habitat; s 5: duty to protect forest habitat; s 6: authority to determine forest rights.

¹⁴ Bala Bhatia, 'Compulsory Concerns', *Economic and Political Weekly*, 19th November 2005, pp 4890, 4892.

LACK OF PROVISIONS FOR THE PROTECTION OF TRIBES AND THEIR DISPLACEMENT.

The original intension of the framers of the Forest Act was to safeguard the imperial and feudal interests of the time. The analysis of the cases shows how the courts tailored the needs of changing times into the mechanism. In the seventies, courts upheld the claims of other social demands at the expense of environmental degradation. In the eighties, the significance of environmental protection was being recognised. In the nineties, they went further and read environmental values into the existing law. In the twenty-first century, the courts have advocated new strategies incorporating 'net present value' and 'special purpose vehicle' for natural regeneration and ambitious rehabilitation schemes when forest is to for non-forestry development purposes.¹⁵

The Constitutional Safeguards and other related laws.

- 1) As per the field observation, a major constraint in the way of effective implementation of the intended objectives was the inordinate delay in amending relevant laws and rules at the state level.
- 2) Departments of revenue, forest, irrigation, mines, fisheries, excise have perhaps not yet been even been briefed about the changed roles of the departmental officials as per new provisions.
- 3) Training of elected persons of Tribal areas was also not held to create awareness among tribals regarding such provisions regarding participation and empowerment of tribal people.
- 4) Above all, there seems to be a lack of political support and inertia at the state level regarding implementation of PESA¹⁶, 1996.
- 5) The state government passed an Act of 1999 also perhaps due to legal obligation according to which PESA was to be enacted by the states by 1997 which was displayed by two years and amendment in relevant rules has been further delayed by more than four years.

The constitution provides various safeguards in favour of scheduled Tribes. These may be broadly divided into two parts, viz., (1) Protection and (2) Development. Protection of interest of scheduled Tribes is very essential for their development. The protective provisions

¹⁵ G.S. GHURYE, THE SCHEDULED TRIBES (POPULAR PRAKASH & BOMBAY, 3RD ED., 1995).

¹⁶ THE PANCHAYAT (EXTENSION TO SCHEDULED AREAS) ACT (OR PESA), 1996.

are contained in Articles 15(4)¹⁷, 16(4)¹⁸, 19(5)b¹⁹, 23²⁰, 29²¹, 46²², 164²³, 330²⁴, 332²⁵, 334²⁶, 335²⁷ and 338²⁸, 339(1)²⁹, 371(A)³⁰, 371(B)³¹, 371(C)³², Fifth Schedule³³ and Sixth Schedule³⁴. Articles 15(4), 16(4) and 19(5) are exception to the fundamental rights of equality and freedom guaranteed under Part III of the Constitution. Provisions relating to development of Scheduled Tribes are contained mainly in Articles 275(I)³⁵ first proviso and 339(2)³⁶. A brief mention of these provisions is given below.

ECONOMIC DEVELOPMENT

Provisions relating to economic development of Scheduled Tribes are mainly contained in Articles 275(1) and 339(2). Briefly, it may be stated that Article 275(1), first proviso envisages provision for grants-in-aid for meeting the cost of such schemes of development as may be undertaken by a state with the approval of the government of India for the purpose of promoting the welfare of its Scheduled Tribes or rising the level of administration of the rest

¹⁷INDIA CONST. ART.15(4) 'It empowers the state to make any special provision for the advancement to socially backward classes or scheduled caste and Scheduled Tribes.'

¹⁸INDIA CONST. ART.16(4) 'This is an exception to the right to equality and permits reservation for backwards class of people, that can be the scheduled castes or Scheduled tribes.'

¹⁹INDIA CONST. ART.19(5)b 'Safeguard of Tribal interest in property.'

²⁰INDIA CONST. ART.23 'Prohibit force labour and it is referred in the case of tribals as at many places tribals are forced to work as bonded labour.'

²¹INDIA CONST. ART.29 'Article provides protection to Scheduled tribe communities to preserve their languages, dialects and cultures.'

²²INDIA CONST. ART.46 'Promotes educational and economic interest of Scheduled castes and Scheduled Tribes.'

²³INDIA CONST. ART.164 'Special provision for the minister looking after the tribal welfare in the state.'

²⁴INDIA CONST. ART.330 'Provides reservation in House of People for the members of scheduled Tribes.'

²⁵INDIA CONST. ART.332 'Provides reservation in Legislative Assemblies of every state for the members of scheduled Tribes.'

²⁶INDIA CONST. ART.334 'The term of reservation was extended from 10 years to 40 years from the date of commencement of Constitution under this Article.'

²⁷INDIA CONST. ART.335 'This provides the limit of the reservation, any member of Scheduled castes or Scheduled Tribes can only be appointed to the services or post for the union or the state.'

²⁸INDIA CONST. ART.338 'Appointment of Special Officer by president for the safeguard of the Scheduled Castes and Scheduled Tribes.'

²⁹INDIA CONST. ART. 339(1) 'President may at any time or at the commencement of 10 years may appoint a commission to report on the administration of Scheduled Areas and the welfare of the Scheduled Tribes.'

³⁰INDIA CONST. ART. 371(A) 'TEMPORARY, TRANSITIONAL AND SPECIAL PROVISIONS'

³¹*Id.*,

³²*Id.*,

³³INDIA CONST. SCH. 5 'Provisions as to the Administration and Control of Scheduled Areas and Scheduled Tribes'

³⁴INDIA CONST. SCH. 6 'Provisions as to the Administration of Tribal Areas in the States of Assam, Meghalaya, Tripura and Mizoram.'

³⁵INDIA CONST. ART. 275(I) 'States.—(1) Such sums as Parliament may by law provide shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of such States as Parliament may determine to be in need of assistance, and different sums may be fixed for different States.'

³⁶INDIA CONST. ART. 339(2) 'Control of the Union over the administration of Scheduled Areas and the welfare of Scheduled Tribes'

of the areas, of the state. In pursuance of this Article, provision of special central assistance has been made to the states having Scheduled Tribe population. As per the Provision, the grant is to be made against such specific schemes as are necessary for the welfare of Scheduled Tribes and are undertaken with the prior approval of the Union Government. But this is not done. The grants are released without specific schemes.

Article 339(2) goes still further and empowers the Union Executive to issue directive to a state as to the drawing up and execution of schemes specified in the directive to be essential for the welfare of the Scheduled Tribes in the state. Despite poor performance by State Governments the powers vested in these provisions have not been utilised so far and no directive has been issued. However, in view of Article 244 of the Constitution, if tribal culture is to be preserved, the traditional laws and customs can be divided into three categories:

- (1) Those which protect the economic interests of tribals and empower them,
- (2) Those which are against the spirit of progressive law of the land, and finally
- (3) Those which hinder benefit of development programmes to tribals.

Traditions should also coincide with progress. Customs should fit in with the progressive law and spirit of the Constitution. The equality of women should be honoured. The Gram Sabha should be empowered, and alienated resources of the tribals must be restored. They should be protected from police prosecution or harassment of courts on account of so-called technical offences. Economic progress coupled with preservation of tribe culture should be the motto.

POSSIBLE PROBLEM SOLVING MODEL:

One has to understand that the existence of poor people among groups which are characterised by attributes which connote structural-statutory or social-privilege is no argument against safeguarding the less privileged groups from inequality and oppression. As for the desired unity of the poor-tribal and non-tribal-there is much scope for real (as opposed to forced) unity: lack of access to forest land and other forest produce like timber and grazing; corrupt and oppressive practices of the forest officials as well as revenue and tribal welfare officials; low wages paid for procuring minor forest produce (tendu leaf, and gum, for instance); low wages paid for casual labour in the forest development corporation's depots; all these are common problems which have united the tribal and non-tribal poor in the

scheduled areas in a joint struggle against the state and other oppressive forces, under the leadership of the CPI(ML) groups.³⁷ In particular, expropriation of the lands of the non-tribal landlords in the scheduled areas, and a thorough rationalisation of the state's monopoly over forest land as well as forest produce, will go a long way in solving the problems of the tribals and the non-tribal poor. This is the truth that the state does not want the people to realise and so it pits the interests of the tribals against those of the 'small' non-tribal landholders.³⁸

In rural areas, it is really the dalits, the tribals and the marginal farmers who will truly benefit from afforestation and forest conservation. As, they need wood for a variety of basic daily needs-fuel, agricultural equipment, housing, etc. They do not have access to, nor will they be able to afford, kerosene and cooking gas. The more expensive housing material like aluminium, cement is out of their reach. Minor forest produces are not only a source of income, but also to a large extent determine their health status. The tribals are irrevocably and closely attached to the jungle, in a symbiotic relationship. Without their active co-operation, no afforestation programme will ever succeed.³⁹

One can assume generally that it is the present developmental system is superior to the tribal way of life but this view is being increasingly challenged. Indeed it is becoming threateningly obvious that the modern industrial development model is environmentally unsustainable, economically unstable and a cause of social disintegration. Tribal agitations in recent times have not just been centred on the demand for statehood but have taken up the issues of rights over natural resource-use and the right to livelihood as opposed to forcible displacement. These new kinds of movements are a result of the realisation that gaining statehood alone is no answer to the problem of alienation which has its roots in the colonisation of India by the British in pursuance of the interests of British industry. The ongoing struggle against the Narmada project has sparked the imagination of the whole country in this respect.⁴⁰

³⁷ M.C. BEHRA, INTERVENTIONS IN TRIBAL DEVELOPMENT: CHALLENGES BEFORE TRIBES IN INDIA IN THE ERA OF GLOBALISATION (SERIALS PUBLICATION, NEW DELHI, 1ST ED., 2010).

³⁸ K. Balagopal, Pitting the Tribals against the Non-Tribal Poor, Economic and Political Weekly, Vol. 24, No. 21 (May 27, 1989), pp. 1149+1151+1153-1154.

³⁹ R. V. Bhuskute, Tribals, Dalits and Government Lands, Economic and Political Weekly, Vol. 24, No. 42 (Oct. 21, 1989), pp. 2355-2358.

⁴⁰ Rahul, Tribals and 'Development', Economic and Political Weekly, Vol. 26, No. 9/10 (Mar. 2-9, 1991), p. 527.

The Bhumi Kisan Hakka Savrankshan Committee has been working among the tribals of Dangs district (Gujarat) for their betterment. The committee had organised a rally of tribals against their suppression by the forest and police departments. The committee's major demands include right to work, proper shelter for the homeless and right over land which the tribals have cultivated over the centuries, and also provision of basic amenities such as electricity, school, transport, roads-and drinking water. It is a pity that if some individuals and organisations try to make tribals conscious of their rights and mobilise them to ensure social justice, our 'democratic welfare' state treats them as goondas and criminals. It is not only the state machinery which uses force to suppress such democratic activities. Even sections of the press have stigmatised them as 'gangs of criminals and Naxalites'. When some individuals protested against such unprofessional journalism, none of the regional papers published even a couple of the letters that were sent to them.⁴¹

THE DRAWING OF LINE BETWEEN DEVELOPMENT AND DISPLACEMENT.

Now the tribals have become intruders in their own land because of the introduction of forest laws which prevent them from earning from minor forest produce. Tribals as agricultural labourers in the plains, being alienated from their lands and people, are living in deplorable economic conditions. In many parts of India, tribals who were cultivators have become agricultural labourers. As a result, their position is getting eroded. The police, landlords, and the politicians lobby or nexus is creating havoc in the country. It is like the fence eating away the field; the police who are supposed to help the people are unleashing terror on common people not only in Valia of Bharuch district of Gujarat, but in many other parts of the Country. This sort of vandalism by the state machinery cannot be accepted and tolerated any more.⁴²

India's development model can be viewed such that, displacement caused by large projects has actually resulted in a transfer of resources from the weaker sections of society to more privileged ones with no doubt whatsoever. The Mega dams, in particular, create victims of development which are mainly tribals who never share the gains of development in any manner. It can be said that the bigger the development project, the greater the centralised control over it. This centralisation has a bias in favour of large landholders, rich farmers,

⁴¹Ghanshyam Shah, S. P. Punalekar, Jaganath Pathy, Surinder Jodhka, Gail Omvedt, S. Amalraj, B. D. Desai and Venkatshwarloo, Tribals' Rights, Economic and Political Weekly, Vol. 26, No. 14 (Apr. 6, 1991), p. 854, Also see, <http://www.jstor.org/stable/4397480>, last viewed on 24/02/2013.

⁴²P. R. Tada, Oppressed Tribals, Economic and Political Weekly, Vol. 29, No. 22 (May 28, 1994), p. 1310, Also see, <http://www.jstor.org/stable/4401242>, last viewed on 21/02/2013.

engineers, bureaucrats and politicians in today's contemporary world scenario. Thus, one can see that development projects have done very little to ease existing social inequalities. On the contrary, they have further exasperated the social structure in favour of the already socially, economically and politically powerful, thus throwing to the winds the socialist pretensions in the Constitution of India.⁴³

The purpose here, is not to take a comprehensive look at relevant case laws which is certainly gargantuan task, but to outline noticeable trends in how the case law has worked in relation to tribal rights. A superficial glance at some prominent court judgments suggests that adivasi forest and land rights have been taken seriously by the courts on occasions. For example, in the case of *Fatesang Gimba Vasava v. the State of Gujarat*⁴⁴, the Gujarat High Court ruled that the forest department's action to prevent the transport of bamboo for sale to tribals at concessional rates was unwarranted.

The court ruled that once bamboo had been converted to bamboo chips it did not constitute a produce from nature and hence was not a violation of the Indian Forest Act 1927⁴⁵. In both *Sri Manchegowda v. State of Karnataka*⁴⁶ and *Lingappa Pochanna v. State of Maharashtra*⁴⁷, the Supreme Court ruled in favour of the protection of adivasi lands: in the former case nullifying private purchases of adivasi land and in the latter allowing the state to enact legislation aimed at restoration of lands to adivasis. And then there is the famous *Samata*⁴⁸ judgment. In a prior case *P Rami Reddy v. State of Andhra Pradesh*⁴⁹, the Supreme Court had ruled that prohibitions against transfer of adivasi land to persons who were not adivasis were necessary given the poor economic status of adivasis. When adivasi rights (in the form of land or forest rights or more broadly livelihood rights) are juxtaposed with development concerns, these rights are often limited or redefined. For example, in the context of large-scale development projects, the courts have tended to privilege development both at the expense of social rights and the environment.

The Narmada and Tehri cases come immediately to mind but there are a host of other similar cases related to power projects, mining and industrialisation. More often than not in

⁴³Biswaranjan Mohanty, Displacement and Rehabilitation of Tribals, Economic and Political Weekly, Vol. 40, No. 13 (Mar. 26 - Apr. 1, 2005), pp. 1318-1320.

⁴⁴ AIR 1987 Guj 9.

⁴⁵Leelakrishnan 2005: 20-21.

⁴⁶ AIR 1984 SC 1151.

⁴⁷ AIR 1985 SC 389.

⁴⁸ AIR 1997 SC 3297.

⁴⁹ AIR 1998 SC 1626.

such cases adivasi rights to place (and culture) are denied and re-imagined in terms of rights to resettlement and rehabilitation. There are also a number of "environmental" cases where the protection of "pristine nature" results in limits placed on rights of use to natural resources such as forests and fisheries. The Doon Valley and Silent Valley cases are notable examples⁵⁰. In such cases, the environment takes precedence over development too. This can be explained by the fact that the environment, imagined in terms of pristine wildlife sanctuaries, unpolluted urban middle class localities, for example, are very much part of the middle class imagination that influences the judiciary either directly or indirectly.⁵¹

In the case of the *Dahanu Taluka Environment Protection Group v. Bombay Suburban Electric Supply Ltd Case*⁵², the Environmental Appraisal Committee brought to the Supreme Court's notice that the power project was located in an ecologically fragile area, but the Supreme Court ignored the report arguing that the centre had made use of a state expert committee report that had okayed the project⁵³. At least, the Supreme Court should have called for a review of the project. Time and again questions have been raised about the manner in which environmental impact assessments have been done but the courts have largely refrained from taking action unless an external funding agency has raised questions as in the case of the Morse Committee report for the Narmada.

The model which can be constructed for the survival of tribal's along with the economic interests of the State has to be based on a social-welfare state. The development by means of choking the rights of the weak is not correct by any means and in a democracy human resource and its rights are of paramount importance which cannot be ignored. Thus, one has to view all the advises rendered by the TAC and various other committee reports are to be weighed equally with welfare of the people. One has to bear in mind that economic progress coupled with preservation of tribal culture should be the motto.

⁵⁰Upadhyay 2000: 3790.

⁵¹ P.LEELAKRISHNAN, ENVIRONMENTAL LAW IN INDIA (LEXIS NEXIS BUTTERWORTHS WADHWA NAGPUR, 3RD ED., 2012.

⁵² 1991 A SCALE 472.

⁵³ Upadhyay 2000: 3790.

CONCLUSION

The role of the judiciary played in protecting forest and wildlife, by leaving the core areas uncovered by law as fields appropriate rather for legislative action than for judicial formulation is significant. Besides, emphasising the significance of forests, the courts endeavoured to protect the rights of persons affected by development projects and tribal people, who form part of the forest environment. Relying on the 'public trust' doctrine to protect and preserve forest and natural resources, they tried to enforce the concept of sustainable development to solve the environment-development dilemma, and upheld the controls on exfoliation of Wildlife. The decisions bear ample testimony to the increasing judicial concern for creative purposive interpretations of the law, with a view to protecting the forest and wildlife environment. However, these declared objectives are yet to be realised by enacting appropriate legislation. It is here, that the courts tried to fill the gaps and in this process, rightly looked at the problems in a holistic fashion.

Tribals suffered on one more front. 'Cursed' with the best mineral and other natural resources, these tribal pockets caught the devouring attention of the 'development dragons'. With no space to push back, tribals were uprooted once again and thrown helter-skelter, paving way for the huge hydroelectric and thermal power projects, and other industries. Recognizing the rights of the tribals to collect minor forest produce and sell it has tremendous potential of increasing the income of the tribals and thereby improving their standard of living. This also ensures that their dependence on forest would motivate them to protect the forest. Tribals will be freed from the clutches of the money lenders and petty businessmen who buy valuable minor produce from the tribals at throw-away prices and reap huge profits. The disposable income will surely help in improving the health and education indicators of the tribals.

The major problem faced by the tribal population at present time is about the lack of knowledge of their own rights. They themselves and others also are not aware of the particular rights which have been vested in them. The basic reason for such a mess is the lack of any specific legislation which specifies the rights of tribals with respect to the environment conservation. Tribal people has been worshipping the environment considering it as god from time immemorial and this is one of the main reason, they protect it from any hazard, as because of their moral obligations, but due to this emerging words the tribals have been suppressed in different manner by several powerful sects of society. Therefore, this is the need of the hour to specify their rights and enact a statute to support the tribal people to

secure their rights. The reason behind securing the rights of the tribal is just not limited to them but at last it comes to the protection of the environment and this is well understood from the paper now that tribal people are the best protectors of the environment, who serves the environment without serving much of their own selfish interest.

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