

EXPLORING THE INTERFACE OF TRIBAL RIGHTS WITH REFERENCE TO GOND COMMUNITY- A CONSTITUTIONAL PERSPECTIVE

SANJANA BHARADWAJ

ASST. PROFESSOR FROM SCHOOL OF LAW, MIT WORLD PEACE UNIVERSITY, PUNE

ABSTRACT

The present study investigates the Gond Community, which is considered to be among the most populous indigenous groups globally. The Gond community, acknowledged as Scheduled Tribes by the Indian government, holds a notable position in the country. The nomenclature "Scheduled Tribes" was initially incorporated in the Constitution of India. As per the Constitution's Article 366 (25), Scheduled Tribes are referred to as tribes, tribal communities, or specific subgroups within such tribes or communities. These groups are identified under Article 342 as Scheduled Tribes, specifically for the Constitution's purposes.¹

The classification of a community as a Scheduled Tribe is determined by the criteria outlined in Article 342. These criteria include primitive traits, distinctive culture, geographical isolation, shyness of contact with the larger community, and backwardness.

The Gond Community, akin to other Adivasi tribes in India, has encountered significant socioeconomic obstacles and marginalization throughout history. This particular group is widely regarded as one of the most marginalized and underdeveloped segments of Indian society. As per the 2011 Census, the Scheduled Tribes demographic comprises 10,42,81,034 individuals, which accounts for 8.6% of the overall population of the country. This figure marks a rise from 8.2% recorded in 2001. Of the total Scheduled Tribes population, 10.03% are located in urban areas, while the remaining 89.97% reside in other areas.²

The Government of India has proposed the development of a National Policy for the Scheduled Tribes since the country's independence, acknowledging the necessity for concentrated attention and policy initiatives. The Scheduled Tribes encompass a total of 75 groups that are categorized as Primitive Tribal Groups. This classification is based on their comparatively rudimentary way of life and notably deficient levels of literacy. The aforementioned groups persist in a state of pre-agricultural economic development and encounter notable obstacles in their pursuit of socioeconomic progress.

Keywords: Tribal rights, Gond community, Article 29

INTRODUCTION

The Constitution's Article 15(4) confers authority upon the state to establish specific measures for the promotion of socially and educationally disadvantaged Scheduled Tribes. In the case of *State of Madras v. Champakam Dorairanjan*³, the Supreme Court mandated that the state must provide specific measures to address the needs of socially and educationally disadvantaged groups, such as Scheduled Castes and Scheduled Tribes.

The Constitution encompasses provisions aimed at facilitating the socioeconomic advancement and self-governance of Scheduled Tribes, which are delineated across multiple articles. These provisions serve to underscore the government's dedication to tackling the difficulties faced by these communities and fostering their holistic growth.

The Gond community, recognized as one of the most extensive indigenous groups in South Asia, and possibly globally, predominantly reside in the Deccan Peninsula of India. The individuals in question self-identify as members of the Gonds, Koit, or Koitur ethnic groups. According to scholarly research, it has been proposed that the Gonds established their settlement in Gondwana, presently located in the eastern region of Madhya Pradesh, during the period ranging from the ninth to twelfth centuries AD.⁴

The evolution of Gond states subsequent to the fourteenth century is documented in historical records authored by Muslim writers. During the period spanning from the sixteenth century to the mid-eighteenth century, the Gond monarchs exercised their authority over four distinct realms situated in central India, namely Garha-Mandla, Deogarh, Chanda, and Kherla. The

¹ Smita Yadav, *Prearity as a Coping Strategy of the Gonds: A Study of Insecure and Long-distance Seasonal Migration in Central India*, 14 INDIAN J. HUM. DEV. 7 (2020).

² Neeraj Gohil, *Potential and Planning for Tribal Tourism in India: A Case Study on Gond Tribes of Madhya Pradesh State, India*, 6 SCH. INT. J. MULTIDISCIPL. ALLIED STUD. ISSN 2394-336X 72 (2019).

³ AIR 1951 SC 226

⁴ The political empowerment of scheduled tribes communities in uttar pradesh (a study of gond and kharwar tribes) | International Journal of Current Research, <https://www.journalcra.com/article/political-empowerment-scheduled-tribes-communities-uttar-pradesh-study-gond-and-kharwar> (last visited Jun 20, 2023).

Gond community is distributed across various states in India, including Maharashtra, Odisha, and central regions, and is closely linked to the hilly terrains and uplands of the Deccan Peninsula.¹

The state of Chhattisgarh, characterized by a notable presence of indigenous communities and a wealth of mineral reserves, bears significant significance for the Gond ethnic group. Notwithstanding the presence of ample resources, Chhattisgarh's Education Development Index indicates that its ranking falls below the national average and is markedly inferior to that of states with advanced educational systems.²

The Indian Constitution, which was put into effect in 1950, ensures that all individuals are entitled to freedom from discrimination and equality before the law, irrespective of their gender, caste, religion, origin, or any other relevant factors. The Constitution has incorporated group-specific rights to tackle the historical inequities experienced by particular social groups, such as dalits (formerly known as "untouchable castes") and adivasis. The official classification of Dalits is Scheduled Castes (SCs), whereas adivasis are officially classified as Scheduled Tribes (STs).

The aforementioned rights that are differentiated by group entail explicit quotas or reservations within elected entities, public sector employment (which was broadened to encompass private sector establishments in 2006), and admission to public education. Moreover, the Scheduled Castes (SCs) and Scheduled Tribes (STs) are accorded precedence in diverse governmental endeavors that are directed towards addressing poverty, such as the Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS) and programs that provide subsidized housing. The aforementioned measures aim to tackle the enduring marginalization and socio-economic obstacles encountered by said communities throughout history.

LEGAL SYSTEMS WITH REFERENCE TO INDIGENEOUS COMMUNITY

The deliberations pertaining to the rights of indigenous communities during the proceedings of the Constituent Assembly had a noteworthy influence on the final draft of the Indian Constitution. Various provisions were included to effectively address the concerns and aspirations of indigenous communities.

The Constitution's Fifth and Sixth Schedules were deliberately incorporated to protect the welfare of indigenous communities inhabiting regions such as Assam and other tribal territories. The perpetual implementation of the aforementioned schedules in the designated areas was guaranteed by Article 244 and Article 190 (Draft Constitution). Subsequently, the North-Eastern Areas (Reorganization) Act facilitated the establishment of novel states, while the Sixth Schedule underwent revision in 1971 to encompass the indigenous territories of these states.

The establishment of Tribal Advisory Councils under the Fifth Schedule has conferred upon them the authority to furnish counsel to the government with regard to issues pertaining to the well-being and progress of tribal communities. This mechanism facilitates the engagement of tribal representatives in decision-making processes and enables them to express their apprehensions.³

Furthermore, the Governor possesses the power to limit or modify the relevance of any legislation to the Scheduled Areas. This particular provision facilitates the incorporation of adaptability in the implementation of laws to cater to the unique requirements and situations of indigenous communities.⁴

The provisions that aim to safeguard and advance the rights, culture, and socio-economic welfare of tribal communities were acknowledged and incorporated as a result of the deliberations held in the Constituent Assembly. The aim was to foster a collaborative relationship between the Indian State and indigenous communities, with the objective of ensuring the fulfillment of promises made during the process of nation-building.⁵

PROVISIONS UNDER THE CONSTITUTION OF INDIA

The Constitution of India acknowledges the significance of indigenous legal systems and endeavors to safeguard and conserve them within the ambit of the nation's legal framework. The Constitution recognizes the importance of traditional laws and customs adhered to by indigenous communities.

The Indian Constitution's Part III, which ensures fundamental rights, acknowledges the entitlement to obtain justice. It is important to acknowledge that this entitlement is susceptible to specific constraints and boundaries. The Constitution's exact language does not definitively specify whether the entitlement to obtain justice solely pertains to formal establishments of justice administration or encompasses customary tribal legal systems as well.

However, it was the intention of the Constitution's framers to guarantee the preservation of tribal communities' socio-cultural existence through the principle of substantial deference. This encompasses the entitlement to exercise judicial authority within the parameters of their established customary legal frameworks.

The Constitution recognizes and safeguards the entitlement of tribal communities to a traditional customary legal system, as a means to achieve their objectives. The statement underscores the importance of a nuanced comprehension of the entitlement to justice accessibility in the wider context of cultural rights. This ensures that indigenous communities can efficiently avail themselves of justice in line with their customary norms and traditions.

¹ Gyaneshwer Chaubey et al., *Reconstructing the population history of the largest tribe of India: the Dravidian speaking Gond*, 25 EUR. J. HUM. GENET. 493 (2017).

² *Id.*

³ Tribes Advisory Councils (TAC) have been constituted in all the ten states having Scheduled Areas, <https://pib.gov.in/pib.gov.in/Pressreleaseshare.aspx?PRID=1778540> (last visited Jun 20, 2023).

⁴ *Id.*

⁵ *Id.*

The Constitution contains provisions that serve to protect the interests of tribal communities and their respective legal systems in a pragmatic sense. The Indian Constitution's Fifth Schedule and Sixth Schedule have a specific focus on tribal areas. These provisions entail the creation of Tribal Advisory Councils and grant the Governor the power to limit or modify the application of any statute to the Scheduled Areas. The aforementioned measures facilitate the conservation and advancement of tribal legal systems and guarantee the engaged involvement of tribal representatives in decision-making procedures pertaining to their well-being and progress. Hence, the Constitution of India acknowledges and sustains the importance of indigenous legal systems, with the aim of safeguarding and conserving them, while simultaneously assimilating them into the wider legal structure of the nation.

The Indian Constitution's Article 29(1) is instrumental in safeguarding the cultural entitlements of diverse segments of the populace inhabiting India. The aforementioned provision confers upon any group that possesses a unique culture, language, or script the entitlement to preserve the same.

The significance of Article 29(1) lies in the incorporation of the term "distinct". This suggests that safeguarding of culture cannot be assumed as an inherent entitlement, unless the culture, language, or script in question is deemed to be "unique." This stipulation recognizes the sociological construct of culture and underscores the imperative to safeguard and conserve distinct cultural identities.

The customary judiciary system, which is deeply rooted in tribal culture, plays a crucial role in maintaining its unique identity. Consequently, it can be inferred that the legal framework pertaining to indigenous traditions may be safeguarded by the basic entitlement to culture as delineated in Article 29(1).

In addition, the conventional judiciary has explicitly acknowledged the customary legal system, which is based on traditions, as a crucial element of indigenous culture through its legal decisions. This statement acknowledges the significance of safeguarding and upholding tribal legal systems as an integral component of their cultural legacy.

It is important to highlight that India's cultural diversity and abundance notwithstanding, there have been limited instances of judicial rulings that specifically expound on the fundamental right to culture as enshrined in Article 29(1). The aforementioned statement highlights the necessity for additional investigation and elucidation of this essential entitlement to guarantee its efficient execution and safeguarding for all societal segments, encompassing tribal communities.

The Supreme Court in the matter of *Jagdev Singh v. Pratap Singh*¹ recognized the essence of the entitlement to safeguard language as enshrined in Article 29(1) of the Indian Constitution. As per the Court's ruling, the Constitution confers upon individuals the entitlement to safeguard their language, along with other rights. This entitlement pertains to the liberty to promote the safeguarding of language and to express opposition towards language bias. In contrast to the provisions of Article 19(1), the limitations that can be imposed on Article 29(1) are not considered to be justifiable. The Indian Constitution guarantees an absolute right to individuals or groups residing in India, or any part thereof, to preserve their language, script, or culture.

The constitutional implications of Article 29(1) and its recognition of the fundamental right to preserve one's culture are of great importance. This statement upholds the belief that both individuals and communities possess an innate entitlement to safeguard and advance their cultural legacy without unwarranted intervention or limitations.

A legal petition was submitted in the matter of *Madhu Kishwar v. State of Bihar*², which contested the constitutionality of the Chotanagpur Tenancy Act of 1908. The petition contended that the clause which grants preference to male succession in property ownership was discriminatory in nature and contravened the assurance of equal protection as enshrined in Article 14 of the Constitution.

Nevertheless, the petition was dismissed by the Supreme Court, as it took into account the legal privileges accorded to the Mundas, Oraons, and Santhal tribes in the Bihar state.³ The Court acknowledged the observable obstacles encountered by indigenous communities and their profound connection to their distinct customs, traditions, and practices. The statement recognizes the obstacles in implementing personal law principles within tribal societies through the judicial system. It also highlights the challenges of adopting an elitist or equality-focused approach that fails to consider the unique cultural and social characteristics of these communities.

The aforementioned cases underscore the intricacies and subtleties inherent in construing and implementing the entitlement to safeguard cultural heritage as enshrined in Article 29(1) of the Indian Constitution, especially in light of the multifarious cultural and tribal circumstances prevailing in the nation. The unequivocal character of this entitlement guarantees the protection and reverence of the cultural customs and identities of individuals and communities, thereby contributing to the conservation of India's opulent cultural legacy.

The Indian Constitution's Article 21 confers upon all individuals the fundamental right to life and personal liberty, which is also applicable to tribal communities. Upon analyzing the tribal rights in correlation with Article 21, various noteworthy facets emerge. Initially, safeguarding the rights of indigenous territories and averting inequitable displacement is consistent with the assurance of the right to life and individual freedom. This involves the examination of instances of land procurement, initiatives for growth, and coerced displacement that may have an unequal impact on indigenous groups. The correlation between the entitlement to a hygienic and salubrious environment and Article 21 is noteworthy, particularly in relation to the sustainable subsistence and reliance on natural resources of indigenous communities. Achieving equilibrium between economic

¹ 1965 AIR 183, 1964 SCR (6) 750

² AIR 1996 5 SCC 125

³ *Kartik Oraon vs David Munzni And Anr.* AIR 1964 Pat 201

progress and ecological conservation is imperative for safeguarding the rights of indigenous communities.¹ The promotion of equitable access to justice and the implementation of fair legal procedures are crucial. The analysis pertains to the equitable availability of legal recourse for indigenous societies, encompassing aspects such as legal assistance, advocacy, and judicial procedures that are attuned to their cultural norms and values. Finally, the entitlement to life encompasses the comprehensive health and welfare of indigenous communities, underscoring the necessity for sufficient healthcare infrastructure, nourishment, and availability of fundamental amenities. A thorough comprehension of the constitutional rights of tribal communities can be attained by examining the various dimensions associated with Article 21.²

The acknowledgement of the entitlement to a customary legal framework as an integral component of the essential entitlement to culture, as ensured by Article 29(1) of the Indian Constitution, entails various implications that warrant contemplation.

The exclusion of designated areas where tribes adhere to their own customary law and unique traditional legal system from the application of laws enacted by Parliament should be construed as a crucial aspect of interpreting Articles 37(1)(A) and 37(1)(G) of the Constitution. The safeguarding of customary law and procedure, as well as the management of civil and criminal justice, encompassing verdicts rendered in compliance with the customary law of Nagaland and Mizoram, is guaranteed.

Secondly, acknowledging the absolute right to preserve culture implies that legislative intervention with tribal cultural practices in the guise of social reform would be proscribed. In contrast to the provision of Article 25 that pertains to the right to religion, Article 29(1) does not contain a clear exemption for matters related to social welfare and reform. Disrupting indigenous customs under the guise of societal improvement would contradict the fundamental principle of the entitlement to safeguard cultural heritage.³

It is noteworthy that the acknowledgement of the entitlement to a customary legal framework does not inherently ensure the safeguarding of all personal civil liberties within indigenous societies. Gender discrimination may persist in tribal societies, including instances of discrimination. Although recognizing a conventional legal system may foster diversity, it does not necessarily guarantee the safeguarding of essential human rights.⁴

Article 39 of Convention 169 recognizes the potential for tribal communities to interact with non-tribal entities within their own network as a consequence of acknowledging their entitlement to a customary legal system. This represents the third potential outcome of such recognition. This particular entitlement grants indigenous communities the authority to address interactions with non-indigenous communities through their traditional establishments. Furthermore, the acknowledgement of intellectual property rights pertaining to intangible cultural heritage serves to reinforce the safeguarding of indigenous cultural assets.

It is imperative to acknowledge that some legal frameworks may not sufficiently acknowledge the customary conflict resolution mechanisms prevalent in indigenous communities. The utilization of state institutions to address matters that pertain to the traditional lives of tribal communities can potentially lead to the infringement of their right to justice. In instances of this nature, it is plausible to deem the legal provisions as null and void.

CONCLUSION

The conservation of the customary legal frameworks of the tribal communities in India is of paramount importance in upholding their cultural legacy and safeguarding their self-governance. The legal systems that are based on customs hold significant knowledge that has been inherited and is not easily renewable or replaceable. In the course of the last century, conventional legal systems have encountered direct challenges from established laws and policies, underscoring the significance of their acknowledgement and safeguarding.

The recognition and preservation of customary legal systems can enable indigenous communities to revitalize their cultural practices, exercise control over the rate of assimilation, and establish proprietorship over their cultural resources. In the absence of acknowledgement, forthcoming cohorts may perceive their customary legal frameworks as unfamiliar in comparison to the dominant legal systems, unless intentional endeavors are implemented to conserve and maintain these customs.

The phenomenon of degradation is a critical issue that necessitates prompt intervention. The persistent intervention of legislative bodies in the customs of indigenous communities and the failure to recognize their legitimate position within the constitutional structure accelerates their deterioration. When the state adheres to the principles of equality, the contrast between deference and development may be perceived as a more equitable procedure.

Preventing affected communities from participating in the process of national development is in contradiction with the principles enshrined in the Indian Constitution, such as equality and fraternity. The consideration of the diverse components of a nation, including tribal members, cannot be disregarded in any interpretation of "national development," even in the most liberal sense. The Constitution's framers deemed the protection of the fundamental right to culture as highly significant, given its implicit recognition of India's diversity. In addition, the formation of the nation was contingent upon obtaining consent from the tribal entities, which entailed a commitment to ensuring a substantial degree of self-governance. Acknowledging the existence and validity of indigenous legal systems serves the dual purpose of safeguarding the cultural legacy of the Indian society and fulfilling the long-standing commitment to cultural autonomy.

¹ Michael Gracey & Malcolm King, *Indigenous health part 1: determinants and disease patterns*, 374 LANCET LOND. ENGL. 65 (2009).

² Tara Horrill et al., *Understanding access to healthcare among Indigenous peoples: A comparative analysis of biomedical and postcolonial perspectives*, 25 NURS. INQ. e12237 (2018).

³ Negotiating barriers, navigating the maze: First Nation peoples' experience of medical relocation - Lavoie - 2015 - Canadian Public Administration - Wiley Online Library, <https://onlinelibrary.wiley.com/doi/10.1111/capa.12111> (last visited Jun 20, 2023).

⁴ *Id.*

The conventional legal systems are a manifestation of tribal traditions and values, serving as a representation of indigenous cultural expressions. Over time, the identity of a group can be eroded by various processes, including but not limited to "national development" and "integration". The acknowledgement of customary legal systems as an inherent component of the entitlement to culture empowers indigenous communities to participate in this procedure, validating their involvement in determining their cultural future.

If evictions and displacement of tribal communities persist without equitable treatment, India risks losing its national dignity. The prioritization of "national development" over the rights and well-being of tribal communities may result in the accusation of violating a fundamental guarantee, which the political system may need to acknowledge.