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EDITORIAL

I am deeply honored to serve at the pleasure of this office, as the Editor for Indian Bar Review published by the Bar Council of India Trust. The principal responsibility of this office is to function as the guardian of the legal standards of this country. Ours is the largest democracy of the world that houses the fastest growing youth population on the planet, with 33% of India's citizens between 15 to 35 years of age. The newest challenge one can say, is to ensure that this huge force becomes an active and constructive instrument in addressing social issues to create a more just and equitable world.

We as a community, have to rethink what it takes to build the capacity of these young people to become leaders of tomorrow and bring in social change. It is the need of the hour that the enormous community of lawyers, old and young citizens of this country, be wholly conversant with its Constitution as well as the working of the governmental machinery, be engaged in civil responsibilities and participate in active citizenship. Gender violence, rights of indigenous people, independence of justice delivery system are a few themes that this issue focuses on.

For far too long, the 'Aam Aadmi' of India has felt neglected and unimportant in the functioning of the government and nation building. We often see general public, shy away from raising their voices against wrongful governance and simply blaming the ineffective and inefficient government. But if we ever plan to improve upon this world, we need to challenge the status quo. People need to meet their political rights and freedoms by carrying out their political responsibilities first.

In the recent times, the judiciary, through judicial activism, has contributed enormously to expanding the boundaries of justice and equity. A great arena of judicial activism begun with the interpretation of the word 'life' in Article 21 of the Constitution to include a life of dignity as a fundamental right, instead of just survival. Right to privacy now reads as a right to safeguard privacy family, marriage, child bearing, education, procreation among other things. Indian Judiciary has played an active role

justice. Clinical Legal Education system should be given importance and there should be made some changes in our present legal education. The stays, long leaves of judges, summer and winter leaves should be curtailed. The lengthy procedure followed in Indian courts should be followed as per the developed countries court procedure or early expedition of cases. Every case should be proceeds within time limits. The right to get justice for criminal case within a year and for civil case within 2 years should be constitutionally guaranteed. The appeals, review, matters should be disposed off within 6 months. There is also a need to make time barring provisions in all civil and criminal laws to enact the judgment by each and every court. "Debate over judicial reform besides controversy over appointments has been simmering at the top level the government". The effort is to make the judicial justice quick and just. Another recommendation to ease the burden on judicial system is to set up specialized commercial fast track courts similar to that of tax. The district courts presently have to deal with a broad range of civil, criminal and commercial cases.

Judicial Activism must mean – "the active process of implementation of the rule of law, essential for the preservation of a functional democracy". The judiciary and the government should work towards improving justice system of effective professional training to newcomers, especially in the field of constitutional litigation, is leading to inefficiencies in the justice delivery system.

INDIAN TRIBES RUN THE GAUNTLET OF CHALLENGES IN THE GLOBALISED WORLD – A PROBE ON REALITY

Dr. Jayasankar K.I.*

"No cause is more worthy than the cause of human rights. Human rights are more than legal concepts: they are the essence of man. They are what make man human. That is why they are called human rights; deny them and you deny man's humanity."

— **Jose W. Diokono**
(First Chairman, Philippines Presidential Committee on Human Rights)

INTRODUCTION

GLOBALISATION as a concept refers to the ways in which developments in one region can rapidly come to have significant consequences for the security and wellbeing of communities in quite distant regions of the globe.¹ It is a "process of trans-nationalization of production and capital. It standardizes the consumer's tastes and legitimizes them with the help of international institutions.² Therefore obviously the process is a move towards a borderless regime of free trade and transactions based on competition.³ Globalisation involves economic integration, transfer of

* Assistant Professor, Department of Law, Central University of Kerala.
1. http://www.helsinki.fi/geography/development_geography/what_is_globalisation.pdf

2. E.g. World Bank, IMF and WTO.

3. Oommen MA, 2001, "Globalization and Poverty: The Indian Case", Malayala Manorama Year Book, p. 563.

policies across borders which transmits knowledge, stabilize culture and establishment of a global market free from socio-political control.⁴

India witnessed an era of globalized economy in 1991 when its economy was under the curse of fiscal and balance of payment crisis which driven her to initiate several structural adjustment reforms and economic liberalization. Since then, India's share to the global economy is getting impressively larger. Today, looking at overall health of the economy and growth performance, India seems to have struck the right note of the globalization string.⁵ The wave of Globalization has been experienced by various sections of multi-dimensional Indian society, their livelihood, employment, socio-cultural life including their cultural and religious practices, health, education, women and disadvantaged and socially backward sections differently. But the impact of Globalization on tribal communities is multifaceted as they are the ones that evidently negatively affected not only in India but all over the world.⁶ In this paper the researcher has attempted to make a probe on the space of the tribal population in India from which they are facing the globalized world.

INDIAN TRIBES IN TRANSITION

The tribal people in India at present living between two world. One is their own world which are in transition and the another is new social order created by globalization and modernization process through implementing some development programmes. India has the largest concentration of tribal population anywhere in the world except perhaps in Africa.⁷ In India scheduled Tribes are spread across the country mainly in forest and hilly regions. These people, in India, are treated as low, abominated and

untouchable because of the adherence to outdated social norms and the cast system.⁸

Tribes in India have become to be conceptualized primarily in relation to their geographical and social isolation from the larger Indian society. It is not in relation to the stage of their social formation. The term 'tribe' which is being used for the administrative convenience now has been adopted by the tribal themselves to mean the dispossessed and deprived people of a region. A wide range of groups and communities at different levels of the social formation have all come to be categorized as tribes. By virtue of the fact that tribes lived in isolation from the larger Indian society, they enjoyed autonomy of governance over the territory they inhabited. They were holding the control over the land, forest and other resources. Tribes governed themselves in terms of their own laws, traditions and customs. But the colonial rule brought tribes and non-tribes into single political and administrative structure by means of war, conquest and annexation. This was followed by introduction of new and uniform civil and criminal laws as well as setting up of administrative structures that were alien to tribal tradition and ethos.⁹

The tribal population in India, though a numerically small minority, represents an enormous diversity of groups. They vary among themselves in respect of language and linguistic traits, ecological settings in which they live, physical features, size of the population, the extent of acculturation, dominant modes of making a livelihood, level of development and social stratification. They are also spread over the length and breadth of the country though their geographical distribution is far from uniform. These indigenous or tribal people, the original settler, are mostly live in forest, hills and other naturally isolated regions which are rich in mineral resources. They are identified by different names based on ecological or economical or historical or cultural characteristics as adivasi, janjati, vanyajati etc.¹⁰ The Census of 2011 enumerates the total population of Scheduled Tribes at 10,42,81,034 persons, constituting 8.6 per cent of the population of the country.¹¹ There are wide ranging diversities among

8. <https://www.youthkiawaaz.com/2017/02/does-india-care-to-protect-its-tribal-women>.
9. Virginius Xaxa, "Constitutional Provisions, Laws and Tribes" YOJANA January 2014.
10. <https://www.thefreelibrary.com/Defining+tribes+in+the+Indian+context.-a0314801292>.
11. Census 2011 Report.

4. Nelmani Jaysawal & Sudeshna Saha, 'Marginalisation of Tribal Communities due to Globalization', Indian Journal of Dalit and Tribal Studies (IJDTs) Volume-2, Issue-2, July-December 2014, pages 37-54, ISBN : 2348-1757.

5. Andre Gunder Frank, "Reorient: Global economy in the Asian age" U.C. Berkeley Press, 1998.

6. Aniruddha Vitthal Babar, 'Analytical Study of the Impact of Globalization on Tribal Communities in India with Reference to Economic Justice, All Inclusive Growth and Social Transformation', Journal of Poverty, Investment and Development, ISSN 2422-846X An International Peer-reviewed Journal Vol. 21, 2016.

7. https://vky.gujarat.gov.in/Assets/downloads/guidelines_income_skill_enhancement_prj.pdf

them in respect of languages spoken, size of population and mode of livelihood. The number of communities that find their place in the list of the Schedule of the Indian constitution is reflective of this diversity.¹² Accordingly as per the Government of India Records The Government of India records there are 698 Scheduled Tribes in our country. As per the Census of India 2011, the number of individual groups notified as Scheduled Tribes is 705.¹³

While it is not possible to provide detailed descriptions of the demographic features and socio-economic status of each of these tribal groups, this section attempts to map out the broad contours of the Scheduled Tribes of the country in terms of their demography and geography

INDIAN TRIBES UNDER THE CONSTITUTION FACING THE GLOBALISED WORLD

Groups and communities identified and enumerated as tribes during British rule came to be re-classified as Scheduled Tribes after the Constitution was adopted in 1950. Article 366(25) refers to Scheduled Tribes as such tribes or tribal communities or groups as are deemed under Article 342 of the Constitution. According to Article 342 of the constitution, the Scheduled tribes are the tribes or tribal communities which have been declared as such by the President through a public notification. It is given in Article 14 of the Indian Constitution: "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." In India, since these people are considered low and are not treated well the Constitution of India provides several rights to these people for safeguarding their interests.

The constitution ensures the protection of various right against Scheduled Cast and Scheduled Tribes including the caste discrimination which was a menace faced by them. Historically the scheduled castes have occupied the lowest status in the Indian society. A central feature of caste discrimination is the concept of 'untouchability' based on the notion that certain caste groups are considered 'impure' and 'polluting' to other caste

12. See Draft National Tribal Policy, 2006. The Government of India, in its records 698 Scheduled Tribes in India. As per the Census of India 2011, the number of individual groups notified as Scheduled Tribes is 705.

13. Report of the High Level Committee on Socioeconomic, Health and Educational Status of Tribal Communities of India.

groups, leading to social expulsion, economic exploitation and denial of human dignity. Article 17 of the Constitution outlaws the practice of 'untouchability'.¹⁴ However, despite legal and constitutional provisions as well as affirmative action schemes, SCs and STs continue to face many forms of untouchability practices as well as social, economic and institutional deprivations even today.

In spite of protective laws and constitutional provisions, the rights of indigenous tribal population to self-determination, land, and culture, continue to be seriously violated.¹⁵ They also face:

- (a) denial of control over their development, based on their values, needs and priorities;
- (b) political under-representation and lack of access to social and other services; and
- (c) marginalisation resulting from mega projects exploiting their lands and natural resources, causing large scale evictions and loss of livelihoods.

In India, the government's foremost concern which moulded its tribal development policy was securing the welfare and socio-economic enhancement of the tribal people. The policy imbued with a high sense of respect for the tribal cultures and traditions, is stoutly opposed to any kind of interference by outside agencies which are likely to contribute to the destruction of the tribal art, culture and so on.¹⁶

FAILED VISION AND FADING DEVELOPMENT — A REALITY

Globalization has paved the way for a new trend of amalgamation in development process all over the globe. In the name of uplifting the backward countries and regions and civilizing the 'less civilized' indigenous people in these areas, the current form of LPG (Liberalisation, Privatisation, Globalisation) development is creating wealth for the

14. Article 17 of the Indian Constitution is a legislation that abolishes practice of untouchability in any form. According to the provision of Article 17, "enforcement of any disability arising out of untouchability" is a punishable offence in accordance with law.

15. See: Concluding Observations of the Committee on the Elimination of Racial Discrimination, India, 2007, CERD/C/ IND/CO/19, paras 19, available at: <http://www2.ohchr.org/english/bodies/cerd/cerd70.htm>.

16. Raha M. K. and Das J. C., Constitutional Safeguards for Scheduled Tribes in Buddhadeb Chaudhuri (ed.), Tribal Development in India: Problems and Prospects, Delhi: Inter-India Publications, 1982, p. 312.

modernizing elites.¹⁷ This is at the cost of the livelihood and security of the indigenous peoples in these areas. The case of India is not an exception to this fact. Looking at overall health of the economy and growth performance,¹⁸ India seems to have struck the right note of the globalization string and at the right time. With its vast natural and human resources and ability to synchronize the speed of change taking place in the international market, many have considered the India's economy as one of the most vibrant economy in the world. But the Liberalization, Privatization and Globalization policy has not percolated the socio-economic benefit to the downtrodden, common citizen of India.

The globalization has left a very deep blotch over growth of tribal people from multiple perspectives. They have been crippled by fast growth of industries, on the other, the benefits of development have not percolated among them.

A review of the health, education and income status of the tribals in post-Independence India is desolating. This shameful situation is mainly a consequence of the arrogance of the non-tribals in considering the tribals uncivilised. The western civilisation, and also the westernized Indians, have now come to realise the folly of not learning from the tribal heritage.¹⁹ Tribal communities have, witnessed to being broken into fragments of their habitats and homelands and the disruption of their cultures through rapacious tourism. All this has left them shattered and impoverished.²⁰ Entire communities across states have been dispossessed through state action, and have been reduced from owners of resources and well-knit, largely self-sufficient communities to wage earners in agriculture and urban agglomerates with uncertain futures. Yet we can scarcely forget that the rights of tribal communities in India are protected by the Constitution and special legislations.

Inclusive growth, social and economic development is the ultimate aim of every country. In India, the strategic plans known as 'five year plans' are

17. Rajkishor Meher, 'Globalization, Displacement and the Livelihood Issues of Tribal and Agriculture Dependent Poor People: The Case of Mineral-based Industries in India', *Journal of Developing Societies* 2009 25: 457, <http://jds.sagepub.com/content/25/4/457>.
18. Nayyar, Deepak. 2006. "Economic Growth in Independence India: Lumbering Elephant or Running Tiger?", *Economic and Political Weekly*, Vol. 41, no. 15, pp. 1451-1458.
19. Singh, A.K. 1995, *Development, Deprivation and Discontent of Tribals in India*. In *Tribals in India: Development, Deprivation, Discontent* (eds) A.K. Singh & M.K. Jabbi. New Delhi: Har Anand.
20. www.thehindu.com · Today's Paper · OPINION, July 24, 2015.

designed accordingly. Unfortunately, even after decades of independence, it was realized by policy makers that the Scheduled Tribes are still way behind the mainstream development process.²¹ It has also been realized that the general plans, schemes and programmes designed for the overall development of the economy have hardly improved the socio-economic status of the Scheduled Tribes at all; and the benefits of such general welfare schemes has failed to raise tribal people's standard of living in any significant manner whatsoever. socio-economic status of the Scheduled Tribes at all; and the benefits of such general welfare schemes has failed to raise tribal people's standard of living in any significant manner whatsoever. We have seen a huge noise being made over the abysmal human development situation in number of Tribal belts in India. The cases of infant deaths and chronic malnourishment have anguished many an analyst, as the social development miracle state of different parts in India, is embarrassed over the situation in its own backyard.²²

DEVELOPMENT Vs. DISPLACEMENT

In 2009, a Minority Rights Group International report revealed that indigenous or tribal communities are among the poorest in India. They barely enjoy basic socio-economic rights and face entrenched and endemic discrimination.²³ Indigenous peoples are the most affected by large-scale development-induced displacement, with many of their fundamental human rights being grossly violated in the process. These indigenous peoples have an extraordinarily rich and varied heritage of sacred spaces, ancestral lands and traditional knowledge. But their cultural expressions have not always received adequate recognition or protection.²⁴ Indeed, the right to culture is central to the enjoyment of a whole host of other rights, from education and health to language and livelihoods. Without it, a fair and equitable life is impossible to achieve. In its current interpretation, the right to culture of minorities and indigenous peoples contains several key aspects. For

21. A report on Livelihood Options Assets Creation out of Special Component Plan (SCP) & Tribal Sub Plan (TSP) Schemes and its Impact among SCs and STs in India by Socio-Economic and Educational Development Society (SEEDS), New Delhi. <http://www.livemint.com/Opinion/zgybxn6Vzluqx7Agu3l60J/Failures-in-development-programming>.
22. Minority Rights Group International, *State of the World's Minorities and Indigenous Peoples 2010 - India*, available at: <http://www.unhcr.org/refworld/country/MRGI,IND,4c33311631,0.html>.
24. "State of the World's Minorities and Indigenous Peoples 2016: Events of 2015", Edited by Peter Grant Minority Rights Group International. ISBN 978-1-907919-80-0 July 2016.

instance, the right includes non-discrimination with regard to participation both in the cultural life of the state as a whole, and in minority and indigenous cultures. It also encompasses rights to cultural autonomy, and to the protection of cultural objects, customs, practices, traditions and manifestations. Recently, the right to culture has been discussed as part of the debate on 'cultural heritage', a term appearing more and more in human rights instruments.²⁵

Tribal population residing in forest areas face the threat of displacement in the name of forest conservation and also on account of various large development projects like irrigation dams, hydro-electric and thermal power plants, coal mines and mineral-based industries. This is a prime cause for discontent among the tribals especially who are the agriculturists among them. It is quite true that to establish an industry in their midst the agricultural land has to be taken away. Compensation on a fairly generous scale may be paid to the evacuees. It is estimated that owing to construction of over 150 major irrigation development projects since independence, over 16 million people were displaced from their villages, of which about 40 per cent belong to tribal population.²⁶ But adequate measures are not always taken to settle them elsewhere as, as trained workmen in industries. What they need more than money is work, and when this is not available easily, the compensation which they receive is often used up in order to meet their day-to-day needs. Despite Section 4(5) of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, which provides that no member of a forest-dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from land until the recognition and verification procedure for settlement of forest rights is complete, Indigenous Peoples are denied their rights and are repressed by the law.

POLITICAL UNDER REPRESENTATION

While many countries have experimented with mandates which seek to increase minority representation in the political process, the Indian experiment remains, by far, the most radical.²⁷ It is a fact that in modern

25. For example, various UNESCO instruments, the FCNM, the Faro Framework Convention on the Value of Cultural Heritage for Society and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

26. Raj. Fr. John Felix: Impact of globalization on tribal communities, The Goethals Indian Library and Research Society (accessed at <http://www.Goethals.in/collections/felixrajarticles/ImpactGlobalization.htm>).

27. Grofman, Bernard and Lijphart, Arend. Electoral Laws and Their Political Consequences, New York: Agathon Press 1986.

liberal democracies democracy is identified with the concept of majority rule.²⁸ However, the fear of abuse of power by the majority has also given rise to constitutionalism, designed to limit the power of those in government. Such limits restrain and control the exercise of authority by restricting the scope of majority rule, the substance of matters to be ruled upon and/or the procedure by which majority rule can be effected.²⁹ Despite such restraints on democratic majorities, minorities and indigenous peoples in particular-complain that they are insufficient. They complain both that their human rights have been infringed and that they need positive protection for the existence of their group. They argue that traditional, individualistic conceptions of democracy are insufficient for the protection of group needs and rights and that different approaches and measures need to be adopted.

Both indigenous peoples and political theorists have identified various possible alternative approaches, ranging from separate government to special accommodations within national governments. Those special accommodations include, *inter alia*, measures of autonomy (akin to models of federalism), guaranteed parliamentary representation, entrenched rights, veto powers, and proportional voting systems.³⁰ They don't pretend to remove or assimilate the differences between groups but regulate possible conflict between them through democratic devices.³¹ The result is power-

28. While it is justified in differing ways, it is recognised as being at least a practical requirement: while government may rest on the consent of all of the governed, effective government requires decisive decision-making, which is justified if it carries the support of a majority.

29. There are many constitutional devices adopted to restrain majorities, including those that focus on the structure of the state (e.g., federalism), on the division of powers between different decision-making bodies (e.g., checks and balances, the separation of powers, and judicial review), on the structure of the legislative body (e.g., bicameralism), on the electoral system (e.g., proportional electoral systems), on decision-making processes within deliberative bodies (e.g., qualified majorities and veto rights), as well as on the substance of possible decisions (e.g., bills of rights).

30. Two of the more popular models of democracy among political theorists are the closely-related consociational and consensus models, both of which aim to share and limit political power. The most significant work on both of these models is by Arend Lijphart. His most significant work on Consociationalism is *Democracy in Plural Societies: A Comparative Exploration* (1977). His work which describes consensus democracy is *Democracies: Patterns of Majoritarian and Consensus Government in 21 Countries* (1984).

31. In more detail, consociational and consensus democracy replace simple majority rule with the principle of proportionality, both in the creation and operation of governments. There are four commonly accepted

sharing at a national level and group veto rights in certain circumstances, proportionality, and autonomy at the sub-national level.

Many years ago, leadership was based on heritage among the tribes. Completely responsible for all decision making, this form of leadership strengthened the tribes' villeges. In the new political framework, tribal leaders are puppets in the hands of the non tribal peoples; the real power rests in the hands of the non-tribal people to be used to their advantage. In areas such as Orissa, West Bengal, Madhya Pradesh, Rajasthan, Gujarat, Maharashtra and Andhra Pradesh, however where the tribes are in the minority and unable to assert themselves as a group due to lack of leadership, illiteracy and poverty, non-tribal people take advantage of the tribes, inflicting injustices and atrocities on them.³²

MARGINALIZATION WITH HUMAN RIGHTS ABUSES

Indigenous Peoples are disproportionately the targets of physical violence, and often are targeted by State security forces. For 2015, the National Crime Records Bureau (NCRB) of the Ministry of Home Affairs, reported a total of 10,914 crime cases against Indigenous Peoples committed by non-tribals, not including human rights violations committed by security forces.³³

It is also reported that the most significant human rights violations happened in the instances of police and security force abuses, including extrajudicial killings, torture, and rape; corruption, which remained widespread and contributed to ineffective responses to crimes, including those against women, children, and members of Scheduled Castes (SCs) or Scheduled Tribes (STs); and societal violence based on gender, religious

characteristics that are designed to cumulatively share, disperse, distribute, delegate and limit political power: a coalition of the leaders of significant groups in the society, autonomy over local affairs. Neither consociational nor consensus democracy prescribes any particular constitutional model, although some constitutional features are clearly more conducive to consociationalism and consensus than others (for example, parliamentary rather than presidential systems, election on the basis of proportional representation rather than first-past-the-post, and federalism rather than unitary states, where regional autonomy is adopted for geographically-based groups). See Lijphart, Democracy in Plural Societies, at 224.

32. <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/tribal-leadership-vs-congress-i-india>.

33. See 'Crime in India 2015 Statistics', National Crime Records Bureau (NCRB), 2015.
Year-wise Cases Reported under Crimes against S Cs and STs during 2001-2015 (All India).

affiliation, and caste or tribe.³⁴ The security forces allege tribals of having links with armed groups such as Maoists in central India and ethnic militants in the northeast. They are caught in alleged crossfires. As a result, there are numerous cases of human rights abuses against women, torture and injuries of tribals every year – more at the hands of security forces than armed groups, and many are not even reported.³⁵

CONCLUSION

The tribals are the part and parcel of Indian society, at the same time they are different. Lack of Special policy and programmes, which are required to address and redress these differences, have thrown them to face various challenges especially in the context of globalisation. Social Development is no longer a whole and sole responsibility of Government. The time has come for Corporate giants to play an active role in helping the Government to implement various Development policies for weaker sections of Indian society including Tribals. A new development model needs to be designed in such a fashion wherein responsibilities of social development will equally shoulder by both Government as well as Private players individually and collectively. When we plan for tribal development, we have to address these differences and take a special note of their situations and capabilities and provide them facilities to develop on the line they want to take.³⁶ At the same time it is essential to understand that outsiders cannot develop tribals; they can become only facilitators if they want to do so. If they have to unfold from within, they must have participation in any development decision. Their felt needs should be transfigured in development programmes³⁷ and then only the ideals of Justice, Equality, Liberty and Fraternity will be protected and Rule of Law will be established.

34. Country Reports on Human Rights Practices. 2015.

35. See Joint Stakeholders' submission on The situation of the rights of indigenous peoples in India. For 3rd cycle of the Universal Period Review (UPR) of India 27th Session of the Human Rights Council (Apr-May 2017).

36. Verma Sawaliya, Sharma Murali, Better Quality of Rural Life: North East Regions, Tribal, Dalits Areas, pp 52-53.

37. Joshi Vidyuta, Tribal Situation in India: Issues in Development : with Special References to Western India, Rawat Publications, 1998, pp 25.