



Positing institutional mechanism of NCST: An intensive intervention on tribal distress and development in India

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Abstract

The tribal community in India have a significant role in development and prosperity of the country. But even after 73 years of independence a large section of tribal population is still under the shadow of poverty and underdevelopment. Post independent India has witnessed ethos of emotional plea for tribal development by successive governments and tribal development seems more a slogan of good governance. It is acknowledged that a wide population of Scheduled Tribes have not received much benefit from the development process in spite of huge contribution in the development process through different means. The government of India has formulated various policies, plans and programmes including constitutional bodies to look after the affairs for the rapid and overall development of the tribal people in the country. Yet, such efforts of the government seem to have failed to achieve the goal of improving adequate socio-economic development of tribal community. Despite of all claims made by successive governments in India the quest for tribal development is yet to become a reality. The paper aims to study the institutional mechanism of tribal development to find out the strength and weakness of the mechanism. In the process it intends to examine the role of National Commission for Scheduled Tribes (NCST) to make specific recommendations on the issue of tribal development.

Keywords: scheduled tribe, tribal development, NCST, socio-economic, atrocity

Introduction

The tribal population in India is considered to be the largest in comparison to any other nation states in the world. In spite of a significant contribution in the process of development and prosperity, the tribal population is observed to be exploited socially, economically and politically. It's a bitter truth that despite of continuous efforts through different equitable policies, as claims by different government, the tribal population is lacking behind the rest of the world in terms of development in all sphere. Due to their social disability and economic backwardness, they were grossly handicapped in getting reasonable share in elected offices, government jobs and educational institutions and therefore, it was considered necessary to follow adequate steps to ensure their equitable participation in governance. Tribal Development in India has always been a matter of great concern since independence, at least in pen and paper. Several tailor made programmes have been declared by both the Union Government as well as state governments from time to time for the overall development of tribal people. With changing times, it has also been observed that the tribal population for a number of reasons have become the worst victims of the so called development model. Displacement, Illiteracy, zero health care facility, unemployment and growth of extremism in the tribal dominated area have given a new dimension to the problem of tribal development. Consequently law makers in the country decided to evolve certain institutional mechanism to look in to the specific issues pertaining to the problem of tribal development.

Institutionalism simply refers to an approach that emphasis the role of institutions in the process of governance. An institution is a relatively enduring collection of rules and

organized practices, embedded in structures of meaning and resources that are relatively invariant in the face of turnover of individuals and relatively resilient to the idiosyncratic preferences and expectations of individuals and changing external circumstances (March and Olsen 2013) [7]. The government of India created an institution named National Commission for Schedule Tribes (NCST), as a mechanism to oversee the implementation of various safeguards provided to Scheduled Tribes under the Constitution or under any other law for time being in force or under any other order of the government and to evaluate the working of such Safeguards (Government of India 2014a, 2). The Commission has been created by amending Article 338 and by inserting a new Article 338A in the Constitution through the 89th Constitution Amendment Act, 2003 (Government of India 2008, 1). The objective of the Commission is to act as an independent agency to investigate, monitor and record any violation of the Constitutional rights of the Scheduled Tribes, suggest measures for tribal development and in general act on their behalf (Centre for Policy Research 2010) [1].

The paper has made an extensive attempt to study and analyse the institutional mechanism of tribal development in India. This work is purely based on normative method of Social Science Research, by consulting secondary resources like books, journals and government reports. In this process the work has picked up some specific cases of intervention by the NCST with the help of Annual report of the commission from the year 2011-12 to 2015-16. Further, different stake holders like Members, officials of NCST and members from tribal communities are also interviewed to add an empirical dimension to the work.

Scheduled Tribes in India

Tribals are considered as the aboriginals and often they are called "Adivasi". Adivasi is a Sanskrit word combination of two words "Adi" and "Vasi". "Adi" refers to first and "Vasi" means residence. So the term "Adivasi" means the first origin or the first residents of motherland. It is believed that tribals were never part of any Varna system (The Hindu 2011) ^[22]. In fact Tribals existed even before any religion came into existence. As per 2011 census report, the tribal population comprise of 8.6 per cent of the total population of the country. There are 10 states (Andhra Pradesh, Chhatisgarh, Gujarat, Jharkhand, Karnataka, Madhya Pradesh, Maharashtra, Odisha, Rajasthan and West Bengal) having 82 per cent of the total tribal population in India. According to the Tribal Ministry of India, a number of 705 notified Scheduled Tribes in India are living in different parts of the country. Among these tribal groups there are 75 tribal communities which are in much vulnerable condition, and therefore these tribal groups are identified as Particularly Vulnerable Tribal Groups (PVTG)s by the Ministry of Home Affairs, living in 18 states and Union territory of Andaman and Nicobar Islands (Chandramouli 2013). Tribals have their own unique and distinct culture and tradition. Around 200 to 300 tribes still have their own dialect and speak their own language which is still unknown to outer world. Even the Supreme court of India said in a judgment in 2011, that Schedule Tribe are the community which is true native of India, it means tribals are the first to inhabit this land and the rest of all communities came later and are immigrants (The Hindu 2011) ^[21].

Tribals Situation in India: Rhetoric and Reality

Tribal communities in India are considered to be the most neglected, suppressed, exploited in India and are backward on the various grounds, and therefore they need special consideration to walk hand in hand with the rest of the country. There has always been a need for the overall development of tribals since independence. The constitutional makers formed various special provisions for tribals. The Sixth Schedule [Articles 244(2) and 275(1)] provide for the special administration and control of the Scheduled areas and Scheduled Tribes in Assam, Meghalaya, Tripura and Mizoram. Meanwhile the fifth Schedule [244 (1)] deals with the rest of the states in India (Xaxa 2008, 7-8). Moreover, Article 15(4) provides the state to make special provision for SCs and STs or socially and educationally backward classes. According to this article seat are reserved for the SCs and STs in all educational institution in India. Article 29(1) empowers Schedule Tribes the right to conserve and preserve their distinct culture, language and script. Article 350A instruct the state government and the local authority to make such provisions that the children belonging to linguistic minority community are to be instructed in their mother tongue at least in the primary stage of education. Article 330 and 332 of the constitution provides for reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People and in the Legislative Assemblies of the States respectively (Government of India 2015a, 6-9) ^[9].

Despite of such eye-catching legislation tribal communities still live in darkness where the basic amenity of life is still a dream for them. Even studies and government reports indicates that tribals are in vulnerability in terms of health education income and other basic facilities which are

considered to be the basic need of the human life. Tribal communities are not only backward but they are prone to multiple exploitations at different levels. This is one of the primary reason for which the tailor made programmes of tribal development are not giving desired results. Several instances of discriminative and exploitative treatment against members of tribal community who are employed in govt as well as non-govt sectors have also been reported in different forums. There are also instances of discriminative treatment against tribal students in different institutions of the country. Although, the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 is enacted by the government to prevent atrocities against tribals. The atrocities against tribals don't seem to be decreasing with the time. The National Crime Records Bureau (NCRB) reveals that a total of 8,257 cases were registered in 2019 for the crime committed against STs in India. It's a rise of 26 per cent as compared to the crimes committed in 2018 (Singh 2020). It is also to be noticed that there are also a number of cases which are never reported due to various reasons.

Tribals have been living in the area which is rich in terms of natural resources but they are under the shadow of darkness since decades. The *Jal, Jangal, Jameen* (water, forest, land), inhabited by the tribal communities are used for the sake of development, so to boost the economy of the nation. But the Scheduled Tribe community hardly get any share from that developmental project or boosted economy. Despite of living in the forest area since long, they don't have supporting governmental documents to prove their ownership over their own house and land. This leads to the non-availability of benefits under National Rehabilitation & Resettlement Policy formulated by the government of India. It is a fact that 90 per cent of the coal and 50 per cent of most minerals and dam are in the tribal region of the country (Lloyd 2015) ^[16]. They have been the worst victim of so called developmental projects established by the government. Indeed, Official data reveals that around 50 per cent of the total people displaced due to various developmental projects are tribals (Tripathy 2011). Such developmental projects has not only affected sustainable life of tribal but has tremendously affected the nature.

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 lays down various provisions which would play a significant role in the development of tribal communities. But, due to a massive miss management in its implementation part, the Act looks to be a big failure. Furthermore, Panchayats Extension to the Scheduled Areas (PESA) Act 1996 lays down various special provisions in scheduled areas, which seems to be intentionally ignored by the administration in its implementation. Tribals protested against the non-implementation of PESA act by placing a large stone slab inscribed with rules and provisions of the PESA Act at the entrance of their village, which is popularly known as *Pathalgadi* Movement. The government and mainstream media tried to dilute the issue and tagged it as 'Anti-National' and 'Maoist-driven' (Kiro 2018) ^[15]. Sri. Jua Oram, the former union minister for Tribal Affairs and present MP of Sundargarh constituency of Odisha in an interview stated that the movement is an act of naxals to spread anarchy (Mohanty 2018) ^[18]. In recent years the new economic policy of LPG has driven the states to transfer land and forests which has become now the tool of

exploitation to the rights of the poor in general and tribals in particular (Shah 2015) [19]. The provisions and safeguard made for the dignity and protection of tribals more looks to be in theory and has a very little to do in reality.

NCST: An Anthology of Functioning

The framers of the Constitution realised that there are large number of certain communities in the country who are backward socially, educationally and economically as a result of long practice of untouchability and some amount of primitive practices. Constitution makers also felt that such backward classes needs a special treatment for safeguarding their interest as they have been living in geographical isolation and lack of infrastructure facilities. These communities were notified as Scheduled Castes and Scheduled Tribes as per Clause 1 of Articles 341 and 342 of the constitution respectively. National Commission for Scheduled Tribes was formulated in 2004 to look into the matter pertaining to Scheduled Tribes with special care and to protect from all discriminatory elements by sound and effective implementation of various safeguards mentioned in the constitution of India (Government of India 2015b, 1) [10]. This constitutional body has a systematic way of functioning according to the provision mentioned in the constitution. The National Commission for Scheduled Tribes (NCST) comprises of five persons and their service and tenure is governed by the NCST which is notified by the Ministry of Tribal affairs in 2004. The commission comprise of Chairperson, Vice-Chairperson and three fulltime members (including one woman). The Commission owns some specific power to act as a Civil Court regarding all matters related to Scheduled Tribes as mentioned under article 388(A). It has the power such as (Government of India 2020a)

1. Summoning and enforcing the attendance of any person from any part of India and examining him on oath.
2. Requiring the discovery and production of any document.
3. Receiving evidence on affidavits.
4. Requisitioning of any public record or copy thereof from any court of office.
5. Issuing commissions for the examination of witnesses the documents.
6. Any other matter which the President may, by rule, determine.

The commission inquire into the matter complained before the commission with respect to the violation of rights and safeguard of Scheduled Tribes. The commission also ask the complainer to produce the supporting documents so to look after their grievances in an effective and efficient manner. Beside this whenever any act of atrocities against Scheduled Tribes comes to the knowledge of the commission it voluntarily gets in contact with the law enforcement and administrative authorities of concerned state or district and monitor proper and needful action is taken by the concerned authority according to the law and the special provisions made for STs. The Commission also ensures needful and adequate action by monitoring and issuing instructions to the concerned authorities. The commission also may visit the place of the incident and look after the arrangements in general the action taken by the state government in particular depending upon the sensitivity of the case, so to provide adequate relief and rehabilitation to the victim or their family members (Government of India 2007, 8-9) [3].

Furthermore, the commission gives advice to the union and state regarding socio-economic development of STs and also take part in the planning process. It keeps on reporting upon the working of safeguards for STs to the president annually and whenever commission may deem it necessary. It also recommends by its report such specific measures that may be taken by the union and states for the effective implementation of safeguards for the welfare, protection and socio-economic development of the Scheduled Tribes in India (Government of India 2020b) [14]. The commission is also assigned with some of the additional functions such as to take measures to protect the rights of the tribals over minerals and water resources, forest and land and ownership over the minor forest products as lay down by the law. It should also keep watch over rehabilitation and resettlement of land alienated and displaced tribals whose life and livelihood is affected due to the establishment of various developmental projects. To ensure proper, effective and full implementation of the provision of (PESA Panchayat Extension to Scheduled Areas) Act, 1996 is another very crucial duty and function of the ST Commission (Government of India 2007, 9) [3].

Case Study

The Commission receives hundreds of grievances from individuals belonging to Scheduled Tribes and their Associations relating to violation of safeguards and other various matters every year with the help of its six regional offices situated at different parts of the country. These regional offices play a very significant role in prompt disposal of complaints filed by tribal individuals and groups under their jurisdiction. Cases, where sitting is necessary for which invoking of power of Civil Court is required is referred to the Headquarter for further adequate action. According to the data provided by the National Commission for Scheduled Tribes a total number of 4,459 complaints were filed to the commission between the sessions 2011-12 to 2015-16 as indicated in the table 1. It includes a total of 1,464 cases of Service matters, 1,650 cases of Economic and Social Development and 1,345 cases relating to Atrocity. It is to be noted that the number of complaints is mostly increasing in nature in all the three categories.

Table 1: Grievances Cases dealt by the Commission

Sl No	Year	Service Matters	Economic and Social Development	Atrocity Matters	Total
1	2011-12	213	347	147	707
2	2012-13	297	423	209	929
3	2013-14	232	220	247	699
4	2014-15	278	244	319	841
5	2015-16	444	416	423	1,283
Grand Total		1,464	1,650	1,345	4,459

[Source: Combined from NCST Report]

Cases Pertaining to Service Matter

As highlighted in the table 1, a total number of 1,464 service related complaints had been registered to the commission by ST individual or Association within the time period of five years. Some of the important cases are analysed.

Shri Fuldev Kujur, working as Multi-Tasking Staff in Ministry of Micro, Small & Medium Enterprises Development Institute, Gwalior sent a plea to the ST Commission on date 06-02-2012 regarding his transfer from Gwailor to Raipur. He stated that he had been working in Gwalior for last 13 years and his wife was working as

teacher in Surguja district of Chhattisgarh. He had requested for the transfer but the department was quite about his request. The commission came in contact Director, MSMI-DI, Indore who informed that all the MTS posts in Raipur are filled and none of them are interested to go to Gwalior. They also further informed that new recruitment for the post of MTS in under process by the Staff Selection Commission and as soon as it is done the applicant will be transferred to Raipur along with his post. The Commission was informed vide letter dated 11-7-2012 that the applicant has been transferred to Raipur (Government of India 2013, 132) [6].

A complaint was received from Shri Basudev Hembram, Engineering Assistant, Low Power Television Relay Centre, Luthurpunk, in Sonepur district of Odisha stating that he has been harassed by not relieving him from L.P.T to join at Doordarshan Kendra, Bhubaneswar. The Commission inquired regarding the issue from Director General, Doordarshan, New Delhi and Addl. D.G., Doordarshan, Kolkata. After much persuasion and so many reminders by the Commission finally Shri Basudev Hembram was relieved from L.P.T to join Doordarshan Kendra, Bhubaneswar (Government of India 2013, 135) [6].

Cases Pertaining to Economic and Social Development

A total number of 1,650 cases relating to economic and social development dealt by the Commission within the time frame of five years as indicated in the table 1. Some of the important cases are analysed in this study.

The Commission received a representation on date 27-03-2010 from Shri Pyar Singh of Bhatia village coming under Bistan Forest range of Khangore district in Madhya Pradesh. He stated that his family have been using some of the forestland for cultivation for last 45 years and he had no revenue land. He has been fined by the court for encroachment on the forestland. He pleads to the Commission for recognition of his encroachment of forestland under Forest Rights Act. The Commission took the matter with the District Collector, Khargone (West Nimar) vide letter dated 28-4-2010. After multiple reminders by the commission the District Collector, Khargone (West Nimar) informed vide his letter dated 23-7-

2011 that the applicant has been issued certificate for the land he has been cultivating under forest rights Act after approval of the district level committee (Government of India 2012, 94).

Smt. Pamabai Dadaji Pawar, residing in Kalamdari of Nasik district sent a representation to the Commission on date 19-06-2008 stating the problem of non-issuance of B.P.L. Ration Card to her family. She informed the commission that despite of living under acute poverty her family is deprive of availing BPL ration card. She has been requesting the concern authority for the rectification of error but her plea was not heard. The matter was taken up by the Commission with the District Collector, Nasik vide letter dated 11-02-2009. After much reminder by the Commission finally the District Collector, Nasik replied vide his letter dated 25-7-2011 that a BPL card has been issued to the complainant on 16-7-2011. The Commission confirmed the same from the complainant (Government of India 2012, 97).

Cases Pertaining to Atrocity

The Commission receives hundreds of grievances relating to atrocities every year. Atrocity simply refers to the offence committed by non-Scheduled Tribes upon Scheduled Tribes as defined in sections 3(1), 3(2) and section 4 of the Scheduled Castes and Scheduled Tribes (PoA) Act, 1989. A total number of 1,345 cases of atrocities had been registered to the commission as mentioned in table 1 and table 2. The cases of Atrocities are broadly divided into six categories viz. (i) Murder (ii) Rape (iii) Grievous hurt (iv) Land dispute (v) Caste abuse (vi) Miscellaneous nature (Others) as indicated in the table no.3. The table also reflects that the number of complaints is increasing by the time. Here there may be two possibilities either the act of atrocities is consecutively increasing or Schedule Tribes are becoming aware of their rights with the pass of time. It also shows that 23 cases are registered against the police in the year 2011-12 where as complaint registered after that particular year is not available in the annual reports of the commission. Some of the cases dealt by the Commission are indicated in table no.2.

Table 2: Types of Atrocity Cases dealt by the Commission

Sl. No.	Year	Murder	Rape	Grievous Hurt	Land Dispute	Caste Abuse	Others	Total	Atrocity by Police
1	2011-12	10	13	32	25	8	59	147	23
2	2012-13	10	21	49	25	10	94	209	-
3	2013-14	13	35	15	39	15	130	247	-
4	2014-15	36	38	43	32	28	142	319	-
5	2015-16	18	23	68	119	27	168	423	-
Grand Total		87	130	207	240	88	593	1,345	

[Source: Combined from NCST Report]

Smt. Saro Oraon, working as a Peon in the office of Dy. Director, Employment, Govt. of Jharkhand, Jamshedpur complained to the Commission on date: 08-01-2014 that Shri Dasrath Ambuj, Asstt. Director, Employment use to engage her in the household works at his residence. During the office hour whenever she goes to the chamber of Shri Dasrath Ambuj for serving water or for any other office work he holds her hand and touches her body parts. He even forces her to have physical relation with him. He also threatens her that if she denies she would be terminated from her job. She filed a case on dated 03.10.2012 in the SC/ST Police Station, Birsanagar, Jamshedpur. He was

arrested but soon released on bail and was appointed as Director of Dhanbad and Bokaro office. The Commission took up the matter with the Principal Secretary, Labour & Employment Department and Director General of Police, Govt. of Jharkhand on date: 21-05-2013. The Inspector General of Police, CID informed the Commission that the matter was inquired by Sr. Supdtt. of Police, Jamshedpur and the complaint is found to be true. A charge sheet has been filed under section 354/504 IPC and section 3(1)(x) of SC/ST (PoA), Act (Government of India 2014b, 84-85). The Commission received a complaint from Shri Mitesh Bhai Dhodi of Bhilada in Valsad district of Gujarat

regarding his abduction and physical assault with an intension of murder by some of the upper caste students of the university where he was studying. The Commission inquire about the matter from district collector and SP vide letter dated 19-09-2011. A report was received by the Commission from SP on 21-12-2011. The same was sent to the collector for registering case against the culprits under section 3 (1) (x) of SC/ ST (PoA) Act, 1989 and sanction of financial assistance to the victim vide letter dated 27/03/2012. The matter was delayed for taking necessary action despite of several reminders by the Commission. Finally, the financial assistance was granted to the victim in August, 2014 (Government of India 2015c, 110).

News appeared in the Bhopal edition of Dainik Bhaskar on 02-05-2015 with heading "TTE threw woman from running train in Jabalpur". According to the news a tribal woman named Longa Bai was travelling in a reserved compartment with a general ticket. A railway TTE pushed her from a running train which caused losing one of her leg, as it was cut by the wheels of the train. On the basis of the news item the Commission asked the GM, WCR, Jabalpur, District Collector, Jabalpur and SP Jabalpur vide notice dated 06-05-2015 for a report regarding the issue. A reply was sent by Assistant Commissioner, Tribal Welfare Department, Jabalpur on date 29-05-2015 that a case has been registered in GRP Station, Jabalpur under section 3(2)(v) of SC/ST (PoA) Act. They further informed the commission that financial compensation has been initiated and forwarded to the authorities of Mandla district as she belonged there. The Commission followed up the matter with Assistant Commissioner, Tribal Welfare Department, Mandla vide letter dated 15-01-2016. The Commission was informed that the first instalment of 90,000/- was already transferred to the bank account of the victim and the rest amount would be transferred after the conviction of the accused by the court (Government of India 2016, 132)^[12].

An Estimate

All the above case studies established the fact that NCST has been trying to intervene in all most all the areas pertaining tribal development. Yet, it is to be noted that the intervention of the Commission is often not taken seriously by the administrative authorities of the concerned state or district where the incident took place. In some cases NCST also managed to correct the wrongness of the system. However, but in order to provide empowerment to tribal community NCST itself needs more power. It is to be noted that these are instances of only a few cases which are successfully handled by the commission. But there are maximum number of cases and complains which are pending before the commission to be intervened to deliver justice to the complainer.

Recommendations

1. It is observed that the post of five members including Chairperson and Vice-Chairperson are often vacant. The government should fill the post immediately after it gets vacant so that NCST may function in an effective manner.
2. NCST needs to be restructured in a way that all the tribal communities are represented in the commission. NCST be reformed in such a way that it will be an organisation combining political leaders, administrators and community leaders. In the absence of this

combination NCST will never rise to the level of fulfilling the expectations of tribal communities.

3. It has also observed that there is lack of co-ordination between the union Govt. and various state governments concerning the functioning of the NCST. NCST needs to be freed from the allegations that it has become a rehabilitating centre for tribal politicians. Steps must be taken to follow a legitimate procedure while appointing personnel and professionals for NCST. This will instil credibility and efficiency in the functioning of NCST.
4. Creation of NCST was a dream of tribal communities, tribal leaders and also was in accordance with the directives of Directive Principles of State Policy. NCST with its given status is working but it needs to be empowered and strengthened to enable it to fulfil its constructional obligations of addressing the national goal of tribal development and tribal empowerment.
5. The functioning of NCST has become routine in nature. NCST receives a number of cases of tribal exploitation every year but the lack of punitive powers the NCST finds it very difficult to restore justice. It's high time that the govt of India must work on reforming and restructuring NCST which will enable the body to fulfil its obligations. Replacement of recommending powers in favour of Decisive powers for NCST is the need of the hour. Late Shri. Maurice Kujur, Former Vice Chairman, NCST also had expressed his concern and anguish about this deficiency of NCST during the interview.

Conclusion

Indian National movement would not have attended the goals of independence without supported by the heroic tribal rebellion in different parts of the county. It is historically recorded that the tribal communities of India have played a very significant role in the making of India's identity and unity. In 1947 Britishers left and India became an independent nation but tribal communities are yet to get the test of independence, liberty, rights and empowerment. Right from the days of Nehru till Modi governments both at national as well as state level can take credit of devising innovative plans and programmes for tribal development. In all the elections whether national or local, tribal development occupies a centre stage in the election manifesto. But it is observed that after the govt. is formed all promise done for the development of tribals is not fulfilled. Lack of political will have so far remained the greatest road block in achieving the goals of tribal development and Empowerment. The tribal community is bounded with multiple numbers of issues and NCST with a minimum authoritative power is not capable enough of dealing with the issues pertaining to tribal development.

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