

**HUMAN RIGHTS AND REALITY OF TRIBAL'S PROBLEMS IN GOA:
ISSUES AND DISCOURSES.**

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Abstract

Fiducially the Tribal Community in Goa has been most Vulnerable Section in the Unequal, Domination and Exploitation ridden society. In regard, the ratio of Tribal people is living below poverty line, and their socio- economic conditions are poorest. Even before pre and post colonial periods, the unchanged condition of Tribal peoples like Gawda, Kunbi and Velip are leading life of social exclusion in the state of Goa. The violation of fundamental human rights and the state cruelty has been committed against on Tribal Communities. In the state of Goa for last many decades the Tribal Communities being fully isolated and faced Social discrimination in the society. While understanding of current Tribal societies is need a basic respect to the historical processes, which have determined the course of succeeding changes in political, Economic and socio- cultural life of the Tribal communities in Goa. The Indian democratic state accords several statutes in the constitution where the Rights of Tribal communities are protected and Social Justice is determined. However, the current democratic experiment has not been successful.

In order, the first movement began from Tribal's Communities to fight their Rights in the state of Goa. All Tribal people within or outside of state have a thing in common- they all share a history of injustice. The present paper explores within the larger

framework of human rights in general and how Tribal rights violated in particular in the state of Goa.

Key words: *Tribal Society, codification, Human Rights, Social Justice, constitutional framework.*



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Tribal People: Goa'n Context

The Tribal people namely Gawda, kunbi and velip have a long history even before the arrival of the colonial Ruler in the state of Goa. In initial stage, the Tribal's Society was Agriculturalist, Socialistic, and democratic, republican of village communities in Goa.

The ancestors of Gawda, Kunbi and velip tribes were racially belonging to the proto-Australoid Group. They are also called as Mull Goenkars –meaning of first settler of Goa or the first men to walk on this land. And they were fully attached to the land, forest, livestock and wildlife. The aboriginal people of Gawda, Kunbi and velip Communities was established a village community institution called as Gavpon or 'Gaonkari' system in Vernacular language. In the village community institution called as Gavpon or 'Gaonkari' system have a significant role of village headman of Gaonkar or Budhovant, and in order to control the land issue independently and also enforcing some of the judicial powers. In the Gavpon or 'Gaonkari' institution the entire management and practice in the aspect of Social, economically, politically, religious and cultural interaction. The entire tribal farmers were tilling the land and they were all the member of the Gavpon, and this system of cultivation was on co-operative basis and there was no private ownership of land.

Further the Budhvonts and other Gaonkars had the Powers of Civil and Criminal administration of justice with their own respective village Jurisdiction. The agricultural land was jointly owned by the group of tribal villagers. While, the Administrator of Gaonkars or Budhvonts took keen interest to generate the revenue into Gvpone either by means of auction of Agricultural land or rented Agricultural land for cultivation purpose. During the period of colonialism, the Tribal peoples also suffered from External and Internal Invader. The Western Colonial rulers including the Portuguese

regime; some of the Portuguese administrative and scholars took keen interest in this system and found vast potential for revenue generation in the Gaonkary system.

The Tradition, convention and the modes of working of Gavpon all merged into a single integrated discipline or code called Code of Comunidade. Therefore, the individual right of tribal persons on the land has been nullified after the codification by Portuguese ruler.

Rights of Tribal Communities at human rights perspective.

In the state of Goa for past many decades the issue of human rights-violation of rights to life, and livelihood of Tribal peoples' is a central concern. The Right to Livelihood and Right to access land is the human right of Scheduled Tribe to dignified and productive livelihood which enables them to live in Peace, Security, justice and dignity of Tribal Community. All the Tribal peoples have the fundamental human rights to fulfilling, dignified work and livelihood, including equal access to land and productive resources, and to basic labor protections. There are many human Rights violation took place especially Right to livelihood and Land includes the following universal, indivisible, interconnected and interdependent of human rights. With regard to the promotion and protection of their natural resources based livelihood of tribal people in Goa.

The Tribal people have right to livelihood and work that is freely chosen and that contributes to an adequate standard of living. The human right to basic labor protection; freedom of association; freedom from forced labor; adequate ,safe working conditions; equal pay for equal work.

The human rights have strong provision for prohibition form discrimination based on ground gender, race, ethnic identity, or any other status. The various provision of human rights can protected the interest of Tribal people that is the equality before the law, including equality in rights to own land or to inherit, right to equal access to productive resources, including land ,credit, and technology, right to equal access to education and training etc. The international norm of human right have the large interest of Tribal's peoples to maintain their own of life , including the right to use lands to which they have traditionally had access for subsistence. There are certain provisions which have lay down that to maintain their distinctive spiritual and material relationship

with the lands, to own land individually and in community with other, and to transfer land rights according to their own customs.

According to Norm the right of Tribal people to use, manage and Safeguard the natural resources pertaining to their lands and also the have security of tenure and freedom from forced eviction. The international human right empowered to indigenous peoples to full and effective participation in shaping decisions and policies, including policies of development and agrarian reform, concerning themselves and their community , at the local, national and international level.

Problem of Land Alienation in Goa.

The constitution inclusive framework as provided in the fifth Scheduled of the Constitution of India. But the state level law which among others prohibit transfer of the lands belong to tribal peoples namely Gawda, Kunbi and Velip communities have failed to prevent land alienation. The main cause of land alienation has been the Land Acquisition Act-1984 under which the state Government can exercise power to take over any land in the name of the public interest or public purpose.

In the state of Goa the Non-tribal's have also illegally occupied lands belong to Tribal communities by force in pre or post colonial period. In some case the majority of Non-tribal people are marrying with tribal women for purpose of illegally occupied of lands. Even the Tribal organization, Directorate of Tribal welfare or any other NGO has not raise any issue in Goa.

Though, the Goa Government had issued a Notification dated on 21st August, 1978 wherein, it has been clearly Spelt out, that under Sub Section (2) of Section 24 of the Goa Daman and Diu, Land Revenue Code 1968(9 of 1969), the Administrator of Goa Daman and Diu was to declared that only occupancies of land belonging Scheduled cast and Scheduled Tribe shall not transferred from a tribal to another Non-tribal peoples without any specific terms & conditions.

As per Notification issued by state Government specified the procedure through inquire should be conducted or investigated by respective Deputy collector, Mamlatdar, joint Mamlatdar of respective District before issuance of any notice under Form X of the Goa Land Revenue Code,1968 in respect of Land belonging to Scheduled Cast and Scheduled Tribes Communities.

According to this Notification that it required verification to be done whether the land sold or occupancy belong to Scheduled cast and Scheduled Tribe person. If the land sold belongs to Scheduled cast and Scheduled Tribe persons, then mutation should not be carried out. So the party should be directed to obtain an NOC from the Collector as per Notification referred to herein.

Under such circumstances it also specified in the New Notification dated on 6th March 2014, which was issued by official Gazette, Government of Goa, that the Scheduled cast and Scheduled Tribe are free to deal with the private lands and private occupancies. But Government land belong to Scheduled cast and Scheduled Tribes, transferring such occupancy shall be required sanction form the Collector. According to this Notification the lands belongs to Scheduled cast and Scheduled Tribes are not safe in the state of Goa.

The important factor of land alienation to take into consideration, and it responsibilities was born to state Government to bring an amendment on land belong to Scheduled cast and Scheduled Tribes and prevention of unlawful transfer of tribal lands to non-tribal people.

Failure to ensure Forest Rights.

In the state of Goa the tribal communities have no Legal Right over the Forest Lands. They have been living on Land in thousand years and Cultivating kumeri Land for many Generations ago.

In pre and post colonial period the Non-tribal peoples were very easy to acquire the lands from Tribal Communities in Goa. Very often, the Law declares these unregistered lands as reserved or Protected Forests, or Sanctuaries and National parks.

The access of Tribal Communities to forest produce or to the Grazing of cattle is prohibited. Many of forest officers are giving threatened and penalized to Tribal peoples for entering into the forest area.

In the state of Goa the large number of Tribal Communities' were living in forest area and forest Guard or officer are uncertainly giving threatened of being evicted from their own houses.

For past many decades ago, when these Tribal Communities have protested against oppression by the Forest department or raise their voice to demand legal rights over the

forest lands but state has used force to suppress them to the extent of denying them the right to life.

In 2012, the state Government of Goa implemented the Scheduled Tribes and other Traditional Forest Dweller (Recognition of forest Rights) Act, 2006. This Act is aimed to provide justice to tribal communities by way of restoring and recognizing their pre-existing rights. The Government of Goa till today has failed to notify the settle of claim made by trial communities under Forest Rights Act of 2006. The state Examine around claim of land right made under the Scheduled Tribes and other Traditional Forest Dweller (Recognition of forest Rights) Act, 2006.

The list of claimant on forest land should be submitted to the Deputy-collectors of Revenue along with the copies of proofs. The Deputy-collectors of Revenue should examine all these cases and take decision as per the rules.

The act grants legal recognition to the right of traditional forest dwelling communities. Those who are cultivating the land prior to December 13, 2005 but do not have documents can claim the land.

As per information 9735 total claims received for individual Rights, 357 total claims received for Communities Rights, facility claims received 12 and there was no receive claim from Community Forest Resources/Minor Forest produce in Goa. The total village wise claims received was approximately 10104 in entire state of Goa are kept pending at various levels till 2015.

Failure to Implementation New PSEA Act.

The Goa Legislative Assembly was showing lack of Incompetence to implemented PESA in the State. These types of act like PESA will marginally altered the power balance between state governments and the tribal's in the state of Goa.

In accordance to this PSEA, the tendency at the state level to monopolize power rather than share power with people at large. The lack of attitude has manifested itself in two forms. First, the majority of the states with tribal populations delay needlessly in their decentralization programs. Although, all states with Scheduled Areas have now enforced PESA except state of Goa. Their past dilatory performance has led to the risk of delays in future amendment necessary to reflect changed circumstances. Secondly,

when they did legislate, the states either ignored tribal customary law, social and religious practices and traditional management practices of community resources

The Strengthen of constitutional inclusive frame work provide protection for upliftment of tribal communities in Goa. The most important act was Panchayat (Extension to the Scheduled Areas) PESA Act 1996 has been enacted in other state in recent year.

According to this act empowers the Scheduled tribes to safeguard for preservation of the traditions and custom, cultural identity, community resources of the Tribal peoples? Very often this type of act was not implemented in the state of Goa, because state government has not show any keen interest to declare the scheduled areas.

The Panchayat (Extension to the Scheduled Areas) PESA Act 1996 play very important role for prevention of violation rights in case of illegal mining operating in tribal homeland and land acquisition in the scheduled area.

According to this PESA Act 1996 stated under clause 4.e. (1) provides that every Gramsabha shall approve the plans, programmers and project for social and economic development before such plan and programmers and project are taken up for implementation.

In addition to gains clause 4 (i) stated that the Gram sabha or the Panchayat at the appropriate level shall be consulted before making the acquisition of land in the Scheduled area for the development project. And before resettling or rehabilitating affected by such project in the scheduled area, the actual planning and implementation of the projects in the Scheduled areas shall be co-ordinate at the stale level.

Hence, the act was stated that the right of the tribal communities no necessary initiatives are taken up during any developmental project to take the opinion and consent of the Gramsabha, which constitutes people's opinions. The recommendation of Gram sabha is not made mandatory prior to granting prospecting license or mining lease in many cases.

However, without the enactment of PESA or implantation in the state of Goa, than it is a possibilities showing are less towards the welfare of the tribal communities in Goa. Even the government of Goa has also failed to implement the tribal sub-plan in the state of Goa.

Failure to Enactment of Tribal Law.

The safeguarded their Own Legitimate Rights and interests important Legal System to ensure that Scheduled Tribes enjoy equal and impartial legal protection, improve the social security system, and perfect the human rights guarantee mechanism.

While considering the land issue are present conflicts which as affecting to Tribal Communities in Goa. Therefore, it laid down the improvement of Land Reform policy that can be possible through Legal Framework and welfare policy.

The state Government should focus to develop a comprehensive policy on land and Land reform policy in Goa. It is essential that the Government should enact new law relating to Tribal protection interest and policy framework in Goa.

While such a process of taking better decision-making to need a broader support for the enacted law and improved the implementation Tribal policy in the state of Goa.

Failure to Notified Vth Scheduled areas in the state of Goa.

Under the Vth Scheduled Areas the Constitution entrusts the Governor the task of ensuring governance ‘in Schedule Five Areas, with absolute powers over the state government towards this end.

The Governors were also required to submit an annual report to the Parliament, which was meant to be an independent assessment on administration in Vth Scheduled Areas.

The term Scheduled Areas denotes “the tribal regions to which either the Fifth Schedule or the Sixth Schedule applies. The two Schedules have very different mechanisms for governing their jurisdictional areas”.

The Fifth Schedule was, until PESA was legislated, an entirely centralized system where the communities the majority being tribal were directed in their affairs by provincial governors. The Schedule permitted the states to extend their executive power to the Scheduled Areas, and granted the Governor of each state the authority to make regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area.

The Governor was thus the sole legislature for the Scheduled Areas and the Scheduled Tribes, competent to make laws on all subjects enumerated in the Constitutions Union, State, and Concurrent Lists.

The Governor could also preclude the application of any federal or state law in the Fifth Schedule areas. In the concern of Subject matter that has only two restrictions firstly, Governor would consult a Tribes Advisory Council before making any regulation. Secondly, that all regulations would receive Presidential assent before taking effect. These were considerations that had been settled well before independence, so that by voting on the inclusion of the Fifth Schedule in the Constitution the founding fathers were, in a sense, continuing the colonial typecast that the Tribes' contentment depended not so much on rapid political advance as on experienced and sympathetic handling, and on protection from economic subjugation by the non-tribal neighbors.

Failure to Set-up Tribal Advisory Council in Goa.

The Tribal Organization/NGO has been demanded to State Government to set-up Tribal Advisory Council in the state of Goa. Yet, there was no decision taken up by Goa Government to set-up Tribal Advisory Council in the state of Goa. In regard, the liabilities born to state Government to re-consider the demand of Tribal Organization/NGO and take immediate action.

Though the verification all the census reports 2011 of the total Tribal population are exist in the state of Goa. However, the state Government is showing lack of desire for upliftment of Scheduled Tribes of Gawda, Kunbi and Velip community to bring into National mainstream.

Through, Tribal Advisory Council under Tribal Sub-plan all the Tribal Development policy or any other Development project will lead the Development of Schedule Area in Goa.

Without set-up the Tribal Advisory Council then it is impossible to lead the State under Tribal Sub-plan all the Tribal Development policy or any other Development project in Goa.

Failure to Ensure Tribal Sub-plan in Goa.

The concept of incorporating Tribal Sub-Plan in the Annual Budget of the State was first introduced by the Planning Commission, Government of India in the 10th Five Year Plan, drawn in 2005 and 2006.

The main objective of the Tribal Sub-Plan was comprehensive development of Scheduled Tribal Area and it also focuses particularly on the welfare of individual and tribal family.

It is apparent that, in the time period nearing too many decades, there has not been any change in the life of the Tribal Communities in Goa, simply because the Tribal Sub-Plan has not been implemented.

The Director of Tribal Welfare of Goa and Scheduled Tribes Finance and Development Corporation Limited had no access to planning, preparing good scheme, and implementation of their development programmes and projects in Tribal area.

All this seemed to change for the good with the strategy of Tribal Sub-Plan under Twelfth Five Year Plan according to which, the Central funds are granted solely for the means of Tribal welfare, and not to be diverted for non-Tribal people or any other purpose under the Tribal Sub-plan. The Scheduled Tribes Commission, Tribal Welfare Department, Scheduled Tribes Finance and Development Corporation Limited act merely as Nodal agencies and perform a functional role to monitor the Tribal Sub-Plan fund.

Unfortunately, this has not happened because the Tribal Sub-Plan mechanism involves area specific development and special schemes for economically and socially small in number. But particularly, the state perception for Planning was deficient both in micro and macro planning.

While the implementation of Tribal Sub-Plan must mostly be trained, efficient and sensitive, the implementation of Tribal development programmes and policies of affirmative action has often been mindless and sterile. Immediately after, the Tribal Sub-Plan Strategy was initiated, even before the Planning Commission sent to the States and union ministry/Departments the comprehensive guidelines on the preparation of Tribal Sub-Plan.

But these were followed fully and the exercise that was undertaken was more of financial allocation with relevance to the field condition. This ultimately resulted to prove the satisfactory implementation of plans and programmes for the Tribal people in Goa. Now, the present Government has made the budget allocation under Tribal Sub-Plan and fund allotment.

For instance, the Planning Commission of the State Government has allotted 12% of the budget for implementation of the Tribal Sub-Plan and this fund is allotted in all Departments, but none of these funds have been utilized by any government departments.

According to the Report the Tribal Organization United Tribal Alliance Association (UTTA), Funds from the Tribal Sub-plan are not being utilized to its optimum level but only 70 cror have been utilized for Tribal development and remaining fund is unutilized by various departments in Goa.

Non-Implementation of tribal development policy, project and Programmes in State:

The Government has not framed any tribal development policy or any other project for tribal development project in Scheduled tribe area where more tribal population lives .Even the few tribal welfare schemes implemented in the state has proved ineffective.

The tribal Communities were not happy against the Government policy because the Procedure is very complicate to obtain certain benefit of various department or Scheme. Besides, the State is not ready to frame any tribal development policy or any other project in tribal area. Mostly the government development policy or any other Scheme has not reached in dominated tribal area during the successive five year plan periods and it also impact on their socio-economic mobility. Therefore, the Scheduled Tribes remain abysmally backward and socially excluded, still living in harsh environments.

Conclusion.

It grossly violation not only human rights but also denied their constitutional rights of Scheduled Tribes in the state of Goa. Moreover, the Scheduled Tribes people have been displaced purpose of mining or other dam project incident occurred in Goa.

The massive numbers of Agricultural land belonging to Tribal communities begin to grabbing by builder lobby and Politician in the name of Development. Hence, the right to livelihood and sustenance; culture, land, common property comes under jeopardy.

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