

FREEDOM WITHIN THE LAW

The Search for Adivasi Autonomy

Curtis Riep¹

The term ‘adivasi’, a Sanskrit derivation meaning ‘original inhabitant’ has come to define a population of nearly one hundred million people in India. Used synonymous with the title, ‘tribal’, adivasis are found in some 450 communities. These groups range from closely-knit tribes of hunter-gatherers and pastoralists to large agricultural communities with upwards of several million members.² Adivasi communities are particularly present in the Indian states of Orissa, Chattisgarh, Madhya Pradesh, Rajasthan, Gujarat, Maharashtra, Bihar, Andhra Pradesh, Jharkhand, Bihar, West Bengal, Mizoram and other Northeastern states. With over 80 per cent of the tribal people, the adivasis of the central and southern regions of India have experienced the greatest “intrusion of the Indian mainstream and of the pan-Indian model of the state, society, economy and culture”³. Through current processes of modernization, the adivasis are increasingly being subjugated, dispossessed, and usurped - in large part - by the politics of economic development. The monolithic character of modern India has made uncertain the future of an adivasi identity.

¹ Author interned with the Research Foundation for Governance: in India in winter 2009. He is an International Relations graduate from University of Calgary, Canada.

² Priyadarshi, R., Suman Sahai and Raghu Velankar. 2005. ‘Understanding Indigenous Peoples Declarations: Research Project on Protection of Indigenous Knowledge of Biodiversity’. Gene Campaign: 3.

³ Kurup, Apoorv. ‘Tribal Law in India: How Decentralized Administration Is Extinguishing Tribal Rights and Why Autonomous Tribal Governments Are Better’. *Indigenous Law Journal* 7(1): 89.

Being adivasi, asserts the existence of a collective identity, and is thus political. In fact, the adivasi term took shape in the 1930s as part of the political process of demanding autonomy; by using both a term found in Indian languages that represented claim to original territorial rights and avoided degrading terms in different vernaculars⁴. Inherent to a cultural identity based on communal survival, adivasi struggles for political and economic self-determination intersects the processes of modernity and development propagated by government and commercial sectors in India. The hegemony of a modern Indian developmental agenda has triumphed over tribal rights and marginalized the adivasi identity. Kaushik Ghosh highlights the divide between a “primitive adivasi margin” and a “modern national mainstream”, which emerged as a form of exclusive governance initiated by the colonial state and their relations with tribal populations. Absorbed by the logic of the modern nation-state, this form of exclusive governance or “exclusive governmentality” posits the primitive adivasi nature outside the Hindu-Aryan nation⁵. Such would lay a basis for exploitation in the name of ‘national progress’ or ‘national development’.

The adivasi identity is fundamental to a way of life that includes distinctive relations with the land, forest and river⁶. With processes of national development that have led to the construction of dams, mines, and industries on adivasi settlements – the intrinsic qualities that make up what an adivasi is, have been transformed into resources for the nation. Displacement and deforestation are two negative outcomes of developmental processes

⁴ Ghosh, Kaushik. 2006. *The Modernity of Primitive India: Adivasi Ethnicity in Jharkhand and the Formation of a National Modern*. Princeton University: 12.

⁵ *Ibid* at 1-10.

⁶ Baviskar, Amita. 1995. ‘Displacement and the Bhilala Tribals of the Narmada Valley’. In *The Dam and the Nation*. Oxford University Press, Delhi: 104-134.

common to adivasis⁷. The processes in both cases are similar. The difference is that displacement removes the natural inhabitants from their land without any preparation or resources and deforestation deprives the adivasi of their livelihood. Even the Supreme Court of India has observed that:

“Agriculture is the only source of livelihood for scheduled tribes, apart from collection and sale of minor forest produce to supplement their income. Land is their most important natural and valuable asset and imperishable endowment from which the tribals derive their sustenance social status, economic and social equality and permanent place of abode and work and living. It is a security and source of economic empowerment. Therefore, the tribes too have great emotion attachment of their lands. The land, on which they live and till, assures them equality of status and dignity of person and means to economic and social justice and is a potent weapon of economic empowerment in a social democracy.”⁸

The protection of tribal rights in this context of exploitation of natural resources from the land owned by the peoples not belonging to the dominant society is imperative to the survival of an adivasi cultural identity.

Discourse regarding the fate of the adivasis has generally been framed as a dichotomy between assimilation-autonomy and development-deference⁹. The conventional line of thinking theorizes that a balance between tribal assimilation and preservation must be taken in accordance with a national policy that upholds adivasi rights without compromising development. In theory, this seemingly simple concept is one thing; in

⁷ Priyadarshi, R., Suman Sahai and Raghu Velankar. 2005. ‘Understanding Indigenous Peoples Declarations: Research Project on Protection of Indigenous Knowledge of Biodiversity’. Gene Campaign: 5.

⁸ Supreme Court of India. 1997. In *Samantha v. State of A.P.* 8 SCC 191.

⁹ Dam, Shubhankar. 2006. ‘Legal Systems as Cultural Rights: A Rights’ Based Approach to Traditional Legal Systems Under the Indian Constitution’. *Indiana International & Comparative Law Review*. 16(2): 295-335.

reality, is quite another. For a workable solution, it must be recognized that a mode of autonomous tribal governance be enacted, which is framed under the Indian constitution and has complete support from the administrative regime and civil society. The recognition must be made that the adivasi have a right to autonomy and not simply decentralized administration.

The top-down approach of decentralization inscribed in the Fifth Schedule of the Constitution and in the The Panchayat Extension to Scheduled Areas (PESA), in large part has caused a failure of governance at the tribal level. Until the enactment of PESA, the Fifth Schedule derived a system that was completely centralized, where the affairs of the communities were directed by provincial governors¹⁰. In *The Panchayat (Extension to Scheduled Areas) Act* of 1996, Indian Parliament used its reserved authority to legislate stipulations of Part IX of the Constitution to the Fifth Scheduled areas. Fifth Schedule areas being the regions identified as tribal-dominated areas under the Indian Constitution. This act, essentially gave local groups “comprising a community and managing its affairs in accordance with traditions and customs” a form of limited self-government¹¹. Following the enactment of PESA, the communities outlined under the Fifth Schedule were directed to undertake a shift in the institutional structure of their sub-states and adopt practices that were believed to enable a functioning form of self-governance, such as democratic elections and an acceptance of the hierarchical Panchayat system

¹⁰ Kurup, Apoorv. ‘Tribal Law in India: How Decentralized Administration Is Extinguishing Tribal Rights and Why Autonomous Tribal Governments Are Better’. *Indigenous Law Journal* 7(1): 94.

¹¹ *PESA Act*. 1996. section 4b.

articulated under Part IX of the Constitution.¹² To many, PESA was considered to be a logical step forward from the foundation of the Fifth Schedule and Part IX of the Constitution. However, as time has shown, the adivasis right to self-governance has increasingly been undermined; leading to both a decline in autonomy over natural resources and cultural identity preservation.

The adivasis have remained marginalized in the modern system of Indian state governance; as both the PESA and the Fifth Schedule have done little to promote the status, distinction or pride of these peoples. The initiative for a decentralized form of governance has been circumvented by a coalition of interested parties, which include the political elite, resistant bureaucrats and a rent-seeking class whom are all united to the perpetuation of a “colonial centralized state structure”.¹³ In India, this form of decentralized governance ‘from above’ has defined the political, administrative and fiscal powers for tribal communities.¹⁴ This tendency is most clearly highlighted by the absence of voice for local tribal governments in decisions related to development plans. Natural resources - the life-support systems for the adivasis – are increasingly coming under the control of corporations. A process buttressed by the state development agenda; where any benefits from development rarely filter down to the local tribes.

¹² Kurup, Apoorv. ‘Tribal Law in India: How Decentralized Administration Is Extinguishing Tribal Rights and Why Autonomous Tribal Governments Are Better’. *Indigenous Law Journal* 7(1): 97.

¹³ Kumar, Shradha and Upadhyaya, Sanjay. 2009. ‘Grassroots Democracy: Local Governance Watch’. Social Watch India.

¹⁴ Kurup, Apoorv. ‘Tribal Law in India: How Decentralized Administration Is Extinguishing Tribal Rights and Why Autonomous Tribal Governments Are Better’. *Indigenous Law Journal* 7(1): 110.

The proposition for a form of self-governance for the adivasi people is essentially “freedom within the law” for one hundred million people in India.¹⁵ To preserve the culture and identity of the Indian indigenous, genuine autonomy of governance must be recognized as a distinct issue within the realm of constitutional law requiring more attention and systemic reform. Given the current emphasis on modernity and rapid development, the degeneration of the adivasis has become a bona fide and immediate threat. A process of “national development” that does not take into consideration the interests of the lands most ‘original inhabitants’ and threatens their very identity is to shame the preambular values of equality and fraternity in the Indian Constitution. It is important not to forget that the consent of the indigenous people of India in the original process of nation-building included a promise of substantial autonomy.¹⁶ Adivasi freedom within the framework of Indian law, truly becomes a struggle for the survival of a culture; an effort to preserve an identity of nearly one hundred million people; and a battle of pride for all of India.

¹⁵ *Ibid* at 12.

¹⁶ Dam, Shubhankar. 2006. ‘Legal Systems as Cultural Rights: A Rights’ Based Approach to Traditional Legal Systems Under the Indian Constitution’. *Indiana International & Comparative Law Review*. 16(2): 295-335.