

# Judiciary: The Protector of the Tribal Rights

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## **Abstract:**

Since its emergence after independence, the judiciary has played the role of protector of the Constitution. The framers of the Constitution have also made provision for the judiciary to discharge this role through various writs under Articles 32 and 226. To protect, promote and preserve the rights of the tribal communities various provisions are enacted in the Indian Constitution. The development of tools like Public Interest Litigation (PIL) by the judiciary in the late 70s has significantly contributed to the protection of public interests. In protecting the constitutional and fundamental rights of the helpless, deprived and displaced tribals, the judiciary has interpreted the constitution's right to equality under Article 14-18, right to liberty and livelihood under Article 19, right to life under Article 21, right to religious freedom under Article 25-28 etc. according to the times and circumstances. Through judicial activism and public interest litigation, the judiciary has provided justice to all the underprivileged, exploited, victims and poor of the country who did not have access to the courts. According to the 2011 census, there are about 8% tribal communities in the country. This community is not only uneducated but also an economically weaker section of the society. Most importantly, this tribal community is also the most affected by liberalisation and developmental works. Governments not only displace this community to exploit natural resources but in many cases neglect to allocate compensation. There are many cases where even after decades, the work of rehabilitation and resettlement has not been completed. In such cases, it is only due to the intervention of the judiciary that the deprived and displaced people can get justice. In many cases, after the decision of the judiciary, the development projects have been stopped and the rehabilitation works of the displaced people have been completed. Due to the socio-economic, cultural and political marginalisation of the tribal communities, the Judiciary has adopted a positive approach towards these people while delivering the judgement according to the provisions made in the constitution. In this research paper, I will look into the cases related to the tribals with non-tribals, civil society organisations, the state which are called in the context while dealing with the tensions and conflicts by the judiciary in its judgements in the tribal areas.

**Keywords:** Judicial Activism, Public Interest Litigation, Rehabilitation and Resettlement, Compensation, Samta Judgement and Niyamgiri Judgement.

## **Hypothesis:**

Judiciary has proved to be a protector for the helpless tribal community.

## **Research Methodology:**

Secondary research included a thorough and extensive review of existing literature, High Court and Supreme Court's landmark decisions, government reports, news articles, magazines, research papers,

lawyers, judges and experts opinions published in several publishing platforms and laws and court verdict publishing websites.

### **Introduction:**

Development and displacement are two sides of the same coin. After independence, the colonial model of development was adopted for the rapid development of the country. For the development of the country, works like rail, road, infrastructure development, industrial development, construction of big dams for power generation etc. were given impetus. To fulfill the need of land for these works, a large number of people started being displaced. According to one figure, more than 40% of the victims of displacement have been tribal and indigenous people. An attempt was made to pacify these displaced people by giving them small compensation. In many cases of displacement, compensation has not been provided even after decades. That means many displaced people did not get the benefits of the Rehabilitation and Resettlement programs. These deprived people had to bear the brunt of the rampant corruption in the government machinery and the indifferent attitude of the government. In such a situation, the only option left is the judiciary to check the dictatorial attitude of the executive and legislature. Due to the humanitarian approach of the judiciary, underprivileged people got justice in many cases including displacement. In this research paper, we will take some such cases in which the underprivileged got justice and the judiciary has proved to be a boon for such people. Here are some court cases in which the underprivileged have got justice:

### **Samata v State of Andhra Pradesh & Ors<sup>1</sup>:**

It is the case of ignorance of the rights of the tribal communities in Visakhapatnam district of Andhra Pradesh. The state government of Andhra Pradesh was extracting resources and leasing out mining to big corporations in the Schedule Areas. It was a clear cut violation of the section 3(1)(a) of the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959. This section of the regulation prohibits the transfer of land from tribals to non tribals in the Scheduled Areas. The state government's move was challenged by the non-governmental organisation, Samata in Andhra Pradesh High Court in 1993. Referring to the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959, the NGO, Samata filed the writ petition citing that, "The government is also a 'person' and does not have the authority to grant mining leases to non-tribals in the Scheduled Areas."<sup>2</sup> (Rebbapragada, 2017, 17).

The Andhra Pradesh High Court dismissed the petition of Samta. The court held that in the definition of "person" of the section 3(1)(a) of the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959, the government does not come under this purview. It applies only to the natural persons like tribals and non tribals. So the regulation does not restrict the Andhra Pradesh state government to transfer the tribal land to non-tribals in the Scheduled Areas.

The NGO Samata challenged the decision of the Andhra Pradesh High Court in the Supreme Court. In this case the Apex Court declared the decision of the Andhra Pradesh High Court null and void. The Apex Court overturned the interpretation of the Andhra Pradesh High Court of the word "person" in 1997.

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<sup>1</sup> Samatha vs State of A.P. and Ors., AIR 1997 SC 3297, JT 1997 (6) SC 449, 1997 (4) SCALE 746.

<sup>2</sup> Rebbapragada, 2017, 17.

The Apex Court's verdict can be summarised as:

- In the interest of the nation the natural resources shall be utilised.
- A cooperative of the tribal people and the State Mineral Development Corporation Ltd can take up mining in the Scheduled Areas without violating the Forest (Conservation) Act, 1980 and the Environment (Protection) Act, 1986.
- Since a public corporation acts in the interest of the people that is why the Apex Court allowed the State Mineral Development Corporation Limited to take up mining in the Schedule Areas.
- The Court also emphasised the importance of Gram Sabha under PESA Act, 1996. It further held that over the resources of the gram sabha, it can take important decisions to protect and promote the interest of the tribal communities.
- The Court highlighted the importance of the deep relationship between the tribal communities and their land resources.
- If the land is transferred by the consent of the gram sabha, a permanent fund of 20% should be kept of the net profit for the development of the tribal communities.
- The Court directed the government to take policy decisions to uniformly govern the tribal lands across the country in accordance with the guidelines laid down in the judgement under which the national wealth in the form of minerals lies.
- The Court was not unaware that the conflicting interests of the State and the tribal communities would collide with each other. It was trying to make a balance between competing rights of tribal communities and states without infringing on any of those rights.
- The Court in its judgement provided a number of protective frameworks for the governance of land relations in the Scheduled Areas.

### **Niyamgiri Judgement:**

For the mining and refinery project a memorandum of understanding was signed between the Government of Odisha and Sterlite Industries India Limited (SIIL), the parent company of Vedanta Aluminium Ltd (VAL) in Lanjigarh Tehsil of Kalahandi district in April 1997. On 6 March 2004, VAL filed an application before the Supreme Court to clear the proposal to use 723.343 ha of land (including 58.943 ha of reserve forest land) in Lanjigarh Tehsil of Kalahandi district.<sup>3</sup>

There is a multiplicity of Dongria Kondh tribe in Niyamgiri hills of Kalahandi district of Odisha. Tribal people worship the deity 'Niyam Raja' on the Niyamgiri Hills of Kalahandi district. The Apex Court emphasised, "Needless to say, if the BMP (Bauxite Mining Project), in any way, affects their religious rights, especially their right to worship their deity, known as Niyam Raja, in the hills top of the Niyamgiri range of hills, that right has to be preserved and protected."<sup>4</sup> The Forest Advisory Committee (FAC) also suggested that before granting clearance to the project the issues of the tribal community rights over forest land under the FRA should be addressed on priority.

Summary of the Apex Court judgement:

- Initially, giving due importance to the sustainable development and the rights of the tribals, the Apex

<sup>3</sup> T. N. Godavarman Thirumulpad v. Union of India and Ors, Supreme Court of India, Writ Petition (Civil) No. 202 of 1995, judgement of 23 November 2007.)

<sup>4</sup> Odisha Mining Corporation Limited v. Ministry of Environment & Forest & Ors, Supreme Court of India, Writ Petition (Civil) No. 180 of 2011, judgement of 18 April 2013, 85 (para 58).

Court denied the environment clearance to VAL.

- The Apex Court suggested the concerned company to move the fresh application to the supreme court with mode of sustainable development and suggested rehabilitation package for the tribals.
- The apex court suggested 5% of the annual profit of the company or the 10 crore whichever is higher in the rehabilitation package for the Scheduled Areas development.
- The Apex Court widened the scope of FRA and held that the act provides a wide range of rights to the tribals. The Act does not confine to property rights or areas of habitation only, it has extended to customary rights to use forest resources too.
- The Court held that tribal rights under FRA should be read along with the rights of the tribals under the Articles 25 and 26 of the Indian constitution and various International conventions.
- At the same time the apex court examined the United Nations Declaration on the Rights of Indigenous People (2007) and International Labour Organisation conventions 107 and 169 which emphasised the protection and promotion of social, political and cultural rights of the indigenous people. The court held that these rights of the tribals derived from spiritual traditions, histories and philosophies and further added the rights of lands, territories and resources in it.
- Tribals have the right to maintain their distinctive spiritual relationships with their traditionally owned territories in the Scheduled Areas.
- The Court emphasised that the tribal rights to worship their deity should be preserved and protected.

#### **Banwasi Seva Ashram vs State of Uttar Pradesh, 1987<sup>5</sup>:**

This case was accepted by the Supreme Court through a later sent by the Banwasi Seva Ashram which works to protect the interest of the tribals. In this case Banwasi Seva Ashram raised the questions on the process of land acquisition by the Uttar Pradesh government. The government was acquiring the land for the National Thermal Power Corporation (NTPC) plant. Banwasi Seva Ashram also accused the forest officials of encroachment on tribal land and weakening the tribal movement. For generations tribals were living on that land.

Supreme Court's decision was as follows:

- The Supreme Court held that the right to livelihood is a constitutional right of the tribals.
- Industrial Development is necessary but it should not be made at the expense of the fundamental rights of the tribals.
- To protect the right of habitat and other tribal rights, the Supreme Court passed an order to direct the state government.
- The Apex Court protected the right to livelihood and the interest of the tribals.
- Although, the acquisition was approved by the Apex Court but with some certain conditions. The conditions included rehabilitation, monetary compensation for crops and land and legal aid to the ousted forest dwellers.<sup>6</sup>

In India, protection of tribal rights has developed due to the influence of the judgments of the Supreme Court and various High Courts. Indian courts have given various positive judgments to protect the rights of tribes. The morale of the tribals has increased due to the positive attitude adopted by the Indian Court in the protection of the rights of the tribals, which has resulted in the declaration of the rights of the tribes

<sup>5</sup> Banwasi Seva Ashram vs State of Uttar Pradesh, 1987, 3 SCC 304.

<sup>6</sup> Anna Grear, Evadne Grant (eds.), Thought, Law, Rights and Action in the Age of Environmental Crisis 133-134 (Edward Elgar Publishing, UK, 2015).

as a result of their series of legal battles. As a result of the court's judgement, there has been an increase in the use of Article 32 and Article 226 of the Indian Constitution, due to which the tribal society has awakened in the fight for its rights against the state administration.

### **Olga Telis V Bombay Municipal Corporation AIR, 1996:**

In this case the Supreme Court has declared that the right to livelihood is an integral part of the right to life inducted in Article 21 of the Constitution of India.

The apex court declared “it would be great injustice to exclude the right to livelihood from the context of the right to life.”<sup>7</sup><sup>56</sup>

### **NCERT vs State of Arunachal Pradesh<sup>8</sup>:**

Another landmark judgement in which the Supreme Court ordered the rehabilitation of the displaced tribals. The apex court stated that the rehabilitation of the displaced tribals falls under article 21 of the constitution of India. The same judgement was repeated in the case of N.D.Jayal v Union of India<sup>9</sup>.

Some other important cases have come before the court in which the decision of the court has provided a ray of hope to the poor and deprived tribal society. The Court has accepted the rights of tribal communities over land and forest resources.

**Fatesang Gimba Vasava v. State of Gujarat<sup>10</sup>** ; In this case the High Court of Gujarat ruled that the action of the Forest Department to prevent the sale of bamboo to tribals at subsidised prices was unwarranted.

In this case too, the court's decision was in favour of the tribal community. The High Court of Gujarat honoured and protected the tribal's right of livelihood.

### **Anil Agarwal Foundation etc. v State of Orissa & Ors<sup>11</sup>:**

A landmark judgement by the Supreme Court in which the court protected the tribal rights by quashing the Odisha state government's initiative of land acquisition proceeding for setting up a University project in favour of a private company in the tribal region of Odisha. Since this initiative of the Odisha Government violated the constitutional rights of tribal people that is why the apex court quashed the grant of government land to the private project.

The court held that:

- Land acquisition from the tribals was not for a public purpose.
- The state government failed in hearing the objections of the tribes and it did not get consent from the concerned tribes.
- The Grant of land violated the tribal right to life and livelihood under Article 21 of the Indian Constitution since this is a deprivation of their cultural identity and natural resources.
- The apex court further held that the grant of land violated the right to equality under Article 14 and

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<sup>7</sup> Olga Telis V Bombay Municipal Corporation AIR, 1996 SC 180.

<sup>8</sup> NCERT v. State of Arunachal Pradesh, 1996 (1) SCC 742.

<sup>9</sup> N.D.Jayal v Union of India (2004) 9 SCC 362 at p 394.

<sup>10</sup> Fatesang Gimba Vasava and others vs State of Gujarat and Others, AIR, 1987, Gujarat, 9.

<sup>11</sup> Anil Agarwal Foundation etc. v State of Orissa & Ors, 12 April, 2023.



the right to freedom of occupation under Article 19 of the Indian Constitution.

### **The Sardar Sarovar Dam Project Judgements:**

A series of petitions had been filed by the Narmada Bachao Aandolan (NBA) for non compliance of rehabilitation guidelines laid down by the NWDT Award in connection with the Sardar Sarovar Dam project. Hearing the petition filed by the NBA the Gujarat High Court restrained further construction work on the dam on 25 February, 1994. The Supreme Court suspended the project work on 5 May, 1995 due to its failure to carry out rehabilitation methodically.<sup>12</sup> Grievance Redressal Authorities were appointed by the state governments of Gujarat, Madhya Pradesh and Maharashtra to address the complaints and grievances of the project affected persons with the direction of the Supreme Court. The thing to note is that the court used to give green signal to the project only whenever evidence of proper rehabilitation was produced before the court or the authorities presented a definite rehabilitation plan. In 2005, the Court observed that increasing the dam's height beyond 110 m cannot be permitted unless all the project-affected people are rehabilitated.<sup>13</sup> The NBA has increasingly resisted in every increment of the dam height, as every metre increment in dam height induced the displacement of the tribals.

On 18 October, 2000 the Supreme Court visualised the positive impact of this dam project. Displacement does not violate the fundamental rights of the tribals. Rehabilitation in a new location would better their lives and enable them to access better amenities than their previous habitat. Relocation would lead to gradual assimilation into the mainstream society which will make the way for their progress and betterment. In this case the court adopted the middle path in between the development of the nation and better rehabilitation of the oustees.

Today the world community recognizes that there is a need to preserve the culture and identity of the tribals. The tribal community has also started becoming aware of their rights and has started registering their presence on almost every platform of the world. He has started advocating for his rights and is gradually getting ready for legal battle if needed. The problem arises when the non-tribal society is not able to include them. Since the majority of people in the tribal society lack education and awareness, they are unable to mix with the mainstream society. But the few educated leaders in the tribal society are trying to take them in the right direction. The trend of self-governance is developing among them in a modern manner. Still, it will take some time for this society to properly adopt modernity. Differences in language, culture, identity and rights between tribal and non-tribal create conflicts between them. There are many such cases where this vulnerable class has been threatened by non-tribals and state governments. Tribal people have been economically exploited in almost every country. English law, religious dictates of the tribes and government policies have been significant obstacles in the protection of the tribals. The judiciary has identified these constraints and provided relief to tribals from human rights violations.

The state government should ensure that the rights of tribals are not violated by non-tribals or state

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<sup>12</sup> Narmada Bachao Andolan v. Union of India & Ors, Supreme Court of India, Writ Petition (Civil) No. 319 of 1994, order of 5 May, 1995.

<sup>13</sup> Narmada Bachao Andolan v. Union of India & Ors, Supreme Court of India, Writ Petition (Civil) No. 328 of 2002, judgement of 15 March 2005, 15.

machinery. There is a need to set up comprehensive machinery as per international standards to protect the rights of tribals. There is a need to ensure justice towards this community in a comprehensive sense. There is a need to end the intolerance and retaliation growing against this community in the name of development. The positive attitude of the judiciary towards the tribal community will not be less than a boon for them.

Developmental projects, infrastructure development and construction of dams have led to massive displacement of tribals and forest dwellers in the country. The land of tribals has been grabbed by non-tribals and government machinery in collaboration with the capitalist class. The corruption inherent in the Indian government machinery has also been a problem for the tribals. The most important positive aspect of the judiciary in the last few decades has been towards protecting the rights of tribals. The sensitive feeling of the judiciary has increased towards the tribal community which was much needed to encourage them for a happy life in future. Access to the court was not easy for the deprived tribal community due to lack of education and poverty but due to the revolutionary changes in the judicial process of the judiciary, their access to the court can become easier. The modern weapon of the judiciary has become possible because of Public Interest Litigation. Public Interest Litigation is a welcome step by the judiciary to protect the interests of tribals. Any social organisation, philanthropist or social worker can take cases related to deprived tribals to the court through PIL. The interests of the tribal community cannot be protected by legislation alone; it requires a conscious judiciary. Incidentally, it started in the 1980s. The judiciary has, to a great extent, curbed the dictatorial attitude of the executive and the legislature. The judiciary has kept the capitalist class and market forces within their limits to protect the interests of the tribals. This has been possible because of judicial activism and dedicated judges and lawyers who have dedicated their profession and life to the cause of humanity.

### **Conclusion:**

In the era of liberalisation, privatisation and globalisation, natural resources have proved to be a problem for the tribals. The abundance of natural resources is found only in tribal dominated areas. Natural resources have different meanings for tribals, non-tribals, multinational corporations and the state. Some want to live a joyful life in the translucent environment of nature while others want to exploit these natural resources and make them a component of development. Competing claims on these natural resources are the cause of conflict between different actors. Tribal people have resorted to the judiciary including social movements to protect their interests and rights.

The Supreme Court of India has given some landmark judgments to protect the interests and rights of tribals. The Supreme Court has given some judgments which have become references for the protection and promotion of the rights of tribals, such as Samata and Niyamgiri Judgments. The judiciary has kept within its limits the arbitrary attitude and autocracy of the legislature and the executive. The Court has tried its best to overcome the complexities of balance between the interests of the tribal community and the public interest. Along with the interest of the country, the court has also made arrangements for the maximum welfare of the tribal community. Thus, the judiciary has proved to be no less than a boon for the tribal community.