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From the Margins to the Mainstream: Legal Protections for Tribal Employment in India

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INTRODUCTION

The indigenous people in India, collectively categorised as Scheduled Tribes (STs) or Adivasis, have inhabited the structural margins of the economic world for millennia. While geologically secluded and discriminated against economically, they are also systematically demarcated from their traditional life intertwined with forests and therefore, heavily multidimensionally marginalised. The question of placing tribal people into the modern economy of India not only demands a distribution of Welfare benefits but, more critically, state intervention in the form of strong legal and constitutional measures. The creation of structure-building efforts to move tribal people from being marginalised to structurally included can occur only if it is reliant upon public employment. In what follows, the blog is presented in parts, critically analysing constitutional provisions, legislation, and judicial decisions which constitute the structure of legal safeguards available to tribal people.

1. The Constitutional Framework of Equality

The Constitution of India admits that absolute equality (equal treatment for unequals) reinforces structural injustice and thus introduces a regime of protective discrimination that ensures a level playing field for Scheduled Tribes in state employment. The basic structures of reservations in the Constitution lie in public employment safeguards which are laid down by Article 16(4) of the Constitution of India, which provides for initial reservations, later supplemented by Article 16(4A) for promotional reservations and Article 335 for balancing historic needs against administrative ones.

Equality of Opportunity & Affirmative Action: While Article 16(1) clearly articulates equality of opportunity in public employment, Article 16(4) allows for reservation of appointments or posts in any state service for any backward class of citizens (including STs)

inadequately represented in the state services.¹ and hence modifies the emphasis on individual non-discrimination in laws to group-specific substantive equality.

Promotion & Backlog Safeguards: In order to allow the tribal workforce from getting stuck in structural stagnation, i.e., entering public services at an entry level position, but being barred by the glass ceiling at higher levels of the organisational structure, additional provisions have been added in order to bring additional safeguards:

- Article 16(4A) inserted by the 77th Amendment: allowing reservation in promotions;²
- Article 16(4B) inserted by the 81st Amendment: permitting carry forward of unfilled reserved vacancies from previous years to be treated as a separate class and thus not counting them against 50% ceiling within a single year.³

Balancing Administrative Need with Historic Justice: Article 335 of the Constitution specifically requires that the claims of the Scheduled Tribes to appointments in the services and posts in the Union and the States shall be taken into consideration consistently with the maintenance of efficiency.⁴ A proviso to the same was added by the 82nd Amendment, stipulating that the State can make any provision for relaxation in qualifying marks and standards in examinations for promotions in favour of the members of Scheduled Tribes, so that artificial barriers created by institutions no longer exist.⁵

2. STATUTORY SAFEGUARDS AGAINST ECONOMIC COERCION

While the Constitution broadly guarantees rights to STs, these require targeted legislation in order to be incorporated into day-to-day lives and to remove social discrimination through targeted laws. The backbone for these safeguards comprises the SC/ST (Prevention of Atrocities) Act, 1989 and The Forest Rights Act, 2006.

The Prevention of Atrocities Act, 1989: This Act acts as a primary punitive framework against the structural manipulation of labour rights⁶ of the tribes and their exclusion through informal mechanisms such as economic boycotts, denial of credit access, or exploitation in the form of unpaid forced labour (through informal employment arrangements).⁷ It specifically penalises the

¹INDIA CONST. art. 16, cl. 4.

²INDIA CONST. art. 16, cl. 4A, amended by The Constitution (Seventy-seventh Amendment) Act, 1995.

³INDIA CONST. art. 16, cl. 4B, amended by The Constitution (Eighty-first Amendment) Act, 2000.

⁴INDIA CONST. art. 335.

⁵INDIA CONST. art. 335, amended by The Constitution (Eighty-second Amendment) Act, 2000.

⁶The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, No. 33 of 1989, India Code.

⁷The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, No. 1 of 2016, India Code.

actions against ST and SC members, particularly where there are instances of direct economic deprivation and exploitation through opportunity exclusion. Through the significant amendment in 2015, force applied for forced labour and manual scavenging upon ST and SC members of labour by their employers stands clearly punishable, while a "physical boycott or other form of socially ostracising", or denial of contracted rights are recognised as penal offences.⁸

The Forest Rights Act, 2006: This Act aims at creating a structure of guaranteed livelihood based on the forest resources that tribal people inhabit and are dependent on, thus preventing them falling prey to forced migrant labour and the downward spiral of destitution from their only resource base being denuded from their control.⁹

3. THE JUDICIAL BACKBONE

The judiciary, particularly in India, is the crucial determinant and shaper of the Indian legal system pertaining to tribal employment, where interpretative pronouncements by judges on constitutional provisions, laws, and administrative policies form the essential scaffolding of the framework.

- **State of Kerala v. N.M. Thomas (1976)¹⁰**

The Court determined Article 16(1) as an affirmation of the principle of equal opportunity and substantive equality. It ruled that Article 16(4) of the Constitution cannot be viewed as an exception to Article 16(1) but as a mandate and guarantee to facilitate equal opportunity and upholds the relaxation of administrative rules for SC and STs.

- **Indra Sawhney v. Union of India (1992)¹¹**

The Mandal case, though, restricted the reservation ceiling at 50% in a single year did, however, uphold the constitutional necessity of affirmative action for public employment services. Subsequent amendments also brought about protections against the exclusion of ST employees from their promotional avenues.

5. CONCLUSION

The legal provisions regarding tribal employment serve as a testament to an extensive constitutional recognition of the injustices experienced by the Scheduled Tribes community and their inclusion in the modern world. Converting the concept of reservations from an act of generosity to a matter of right, tribal people have finally gained a foothold in positions of power.

⁸The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, § 3, No. 33 of 1989, India Code.

⁹The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, No. 2 of 2007, India Code.

¹⁰State of Kerala v. N.M. Thomas, A.I.R. 1976 S.C. 490 (India).

¹¹ Indra Sawhney v. Union of India, A.I.R. 1993 S.C. 477 (India).

Truly inclusive structures, however, can only be realised when tribals are moved from being beneficiaries of entry-level reservations to becoming significant actors and agents of decision-making and their unique experiences are translated into organisational policies and procedures.