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Hinduisation of Schedule Tribes vis-a-vis Codified Hindu Law

ABHIRUCHI SINGH¹

ABSTRACT

Tribal people have their own distinct identity. The Constitution of India safeguards their distinct identity. To achieve desired Constitutional goal codified Hindu law exempts Schedule tribes from its application. The whole idea of such impunity is to protect the tribal customary laws governing the matters related to marriage, inheritance, succession etc. Nonetheless, the fact of Hinduization of tribals has always been a matter of discourse. On one hand it is considered as a process of integration of tribal into mainstreams of society. On the other hand the effects of hinduization of tribals became a matter of concern. Hinduized Schedule tribes have been claiming parity with Hindus in matter of application of codified Hindu law. This work brings forth the sociological and legal aspect of Hinduization of tribals. In addition to this, the work also endeavors to study the efforts of Judiciary in protecting the rights of tribal people despite the legislative bar contained in Codified Hindu law.

I. INTRODUCTION

Diversity has always been a hallmark of Indian society. These diversities emerged as a result of various long and historical complex processes. Tribes are one such example of diversity.

²Tribal people's culture and identities form integral parts of their lives. Their ways of life, customs and traditions, institutions and customary laws, land use and forms of social organization etc are usually different from those of dominant population. Special measures are therefore required to be taken to ensure that their cultural identities are appropriately protected.³

There is a constitutional duty on the state to take positive and stern measures for the survival and preservation of the integrity and dignity of tribals.⁴

In line of achieving constitutional goal the state has adopted policy to bring Scheduled Tribes into the mainstream of society through a multipronged approach for their all-round

¹ Author is a Assistant Professor at Siddhartha Law College, Dehradun, India.

²Pg 1 Xaxa, V. (2008). State, Society, and Tribes: Issues in Post-colonial India. India: Dorling Kindersley (India), licencees of Pearson Education in South Asia.

³ [https://www.tribal.nic.in/DivisionsFiles/NCST-RM/NCST/18SplNCSTReport\(mainReport\).pdf](https://www.tribal.nic.in/DivisionsFiles/NCST-RM/NCST/18SplNCSTReport(mainReport).pdf) (Accessed on 26-07-2021 at 5:00 pm)

⁴ Lingappa Pochanna Appelwar vs. State of Maharashtra (1985) 1 SCC 479.

development without disturbing their distinct culture. Five principles spelt out in 1952, known as Nehruvian Panchasheel, have been guiding the administration of tribal affairs. One such principle outlined is “**Tribal development should be undertaken without disturbing tribal social and cultural institutions**”.⁵

II. SOCIOLOGICAL ASPECT OF HINDUIZATION

INTEGRATION: A CULTURAL CHANGE

Discarding the earlier approaches of isolation and assimilation the new policy regarding Indian tribes proposed for integration. John Glinn describes integration as an ideal state in which all parts of a culture gears smoothly into each other and describes how tendencies to smooth gearing come about. One way he calls inconsistency that one custom does not interfere with the performance or achievement of others: another is by relatedness, a condition whereby the performance of one custom meaningfully supports the performance of others and a third way is functional linkage, in which the presence of one custom absolutely requires others to become operative.⁶

There are various modes of the process of integration of tribe into the Hindu society. One of the process by which tribals assimilated into Hinduism is proselytisation, the most common terms used to describe the process are ‘Sanskritisation’ and ‘Hinduisation’.⁷

Process of cultural change amongst tribes has been discussed by Rajendra K Sharma⁸ in his work “Indian Society, Institutions and Change”.

1. **Simple adoption:** In this process tribe simply adopts the culture of another tribe.
2. **Acculturation:** It is a process in which a culture almost engulfs another culture and changes it. This involves a wider and deeper cultural change. The Indian tribal culture is being constantly influenced by Hindu culture, so much so that some tribes are almost Hindu in culture.
3. **Assimilation:** In this process of cultural change, a culture is not only adopted but also assimilated, and therefore become an integral part of adopting culture.

⁵ <http://www.mcrrdi.gov.in/87fc/policies/NATIONAL%20POLICY%20ON%20TRIBALS.pdf> (Accessed on 26-07-2021 at 5:00 pm)

⁶ Ghurye, G. S. (1980). *The Scheduled Tribes of India*. United Kingdom: Transaction Books.

⁷ ESWARAPPA, KASI. (2013). Book Review- Proselytisation in India: The process of Hinduisation in tribal societies. *Sociological bulletin*. 62. 490-492.)

⁸ pg 167 Sharma, R. K. (2004). *Indian Society, Institutions and Change*. India: Atlantic.

III. LEGAL ASPECT OF HINDUIZATION

ANALYSIS OF LEGISLATIVE BAR: The Schedule Tribes in India are governed by their customary uncodified laws in matters of marriage, inheritance, succession, adoption etc and enjoy constitutional protection of their culture and identity. Codified Hindu Law expressly exempts from its application, a large number of constitutionally recognized scheduled tribes in various parts of India. It reads

(2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

The customary law of the Scheduled Tribe has been preserved by the legislature. This provision is a step towards the integration approach adopted by state for the welfare of Schedule tribes. Idea behind exempting Schedule tribes from application of Codified hindu law is, the Tribal customs, rituals and laws received constitutional protection under article 341 read with article 366(24) and article 342(i) read with article 366 (25).

Contrarily, discretion of bringing the Schedule Tribes to the ambit of the Codified Hindu law lies in the hands of Central Government (union executive). In one of the case Division Bench held that no writ of mandamus can be issued by court to apply the Hindu Succession Act 1956, to the tribal areas of Himachal Pradesh.⁹ Consequently executive cannot be compelled to issue a notification extending the applicability of Codified Hindu Law to Schedule Tribes.

IV. ROLE OF JUDICIARY

Despite the above-mentioned legislative bar judiciary is determined to protect the rights of tribal people.

In case substantial question of law has been raised Whether Hindu Succession Act or Hindu Law is applicable in the matter of inheritance among the members of Scheduled Tribes, if they are sufficiently Hinduised.¹⁰

In *Chunku Manjhi and Ors. v. Bhabani Majhan and Ors*¹¹ it was observed that tribals can be governed in matters of inheritance and succession if they become sufficiently Hinduised. It was further observed by the court that the question whether the tribes are sufficiently hinduised or

⁹ Ganja Devi v. State of Himachal Pradesh 1997(2) HLR 733 (DB)

¹⁰ Lakshmi Narayan Tudu vs Smt. Basi Majhan AIR 2004 Jhar 121.

¹¹ AIR (33) 1946 Pat 218.

not is a mixed question of fact and law.

In *Budhu Majhi and Anr. v. Dukhan Majhi and Ors.*¹² it was held by court that it is not necessary that parties should be completely hinduised. It is enough that the person concerned is sufficiently Hinduised. Court also observed that no formal ceremony is required for a person to become a hindu.

*Labishwar Manjhi v. Pran Manjhi and Ors.*¹³ it has been clearly held that if the members of tribes follow customary and practices of Hinduism, the Hindu Succession Act, 1956 would be applicable. The said case related to the Santhal Tribe, who were seen following Hindu customs, and hence the Supreme Court held that the HSA would be applicable to their situation, in spite of the said tribe being a notified tribe.

In a recent judgment, the Himachal Pradesh High Court in case of *Bahadur v. Bratiya*,¹⁴ held that daughters in the tribal areas in the state shall inherit the property in accordance with the Hindu Succession Act, 1956 and not as per customs and usages in order to prevent the women from social injustice and prevention of all forms of exploitation.

V. CONCLUSION AND SUGGESTIONS

The Schedule Tribes, also known as aborigines are those sections of Indian population who still observe their tribal ways, their own peculiar customs and cultural norms. The tribal people have remained backward because of the fact that they live in inaccessible foes and hilly areas and have thus been cut-off from the main currents of national life. The schedule tribes need special provisions for safeguarding their interests. The main problem concerning these people is that their socio-economic conditions be improved at such a pace and in such a way as not to disturb suddenly their social organization and a way of living. Nonetheless the fact of Hinduization of tribals cannot be denied. The need is to evolve ways and means to gradually adjust the tribal population to change conditions and integrate them slowly in the general life of country without undue and hasty disruption of their way of living.¹⁵ The legislative bar contained in Codified Hindu Law is in fact in line of the idea that it may be harmful to the tribal people if they are brought into indiscriminate contact with the outside world. At the same time the provision allows the Central Government to extend the applicability of Codified Hindu Law to Schedule Tribes. Hence the provision embraces the integration approach which furthers the aim of state to bring tribals in mainstreams of society without disturbing their way of life.

¹² AIR 1956 Pat 123.

¹³ (2000) 8 SCC 587.

¹⁴ *Bahadur v. Bratiya* I L R 2015 (III) HP 1259.

¹⁵ Jain, M. P., Chelameswar, J., Naidu, D. S. (2018). *Indian Constitutional Law*. India: LexisNexis.

To paper seeks to make certain suggestion in light of the aforementioned discussion. Firstly, this matter requires immediate consideration of the Central Government. In recent judgment¹⁶ it has been pointed out “*The statutory embargo has been generating ingenious means for coming under the statutory provision for having dissolution of marriage. This matter requires immediate consideration of the Central Government.*”

Consideration by Central Government will help the Courts to maintain a consistent approach in adjudicating the matter of applicability of Codified Hindu Law on Schedule Tribes. It will further prevent unnecessary litigation when the application of Codified Hindu Law is extended to specified Schedule Tribe. This will also relieve the courts from the initial burden of deciding the fact of Hinduization of a member of Schedule tribe who is claiming parity with Hindus in matter of application of codified Hindu law.

It is an intriguing fact of the socio-economic history of contemporary India that in the absence of codified customary practices the members of tribal community have to prove and authenticate their likeness and similarity with their hindu neighbors to be governed by Hindu law specifically in matters of succession. In other words, if it can be shown that tribals are sufficiently Hinduised she/he may be covered under Hindu law.¹⁷ In line of aforementioned observation this work suggests that there is need for codification of customary tribal law. Customary laws in India are, for the most part undocumented and uncodified, and there is a strong view that codification of customary laws is essential to their preservation and also because uncodified customs leave immense space for interpretation and arbitrary action.¹⁸

¹⁶ Rupa Debbarma v. Tapash Debbarma, 2020 SCC OnLine Tri 425, decided on 09-09-2020

¹⁷ Chowdhry P. Understanding Women’s Land Rights: Gender Discrimination in Ownership (2017). India: SAGE Publications.

¹⁸ Mukhim P. Women’s Entitlement to Land and Livestock in Matrilineal Meghalaya in Kelkar G. and Krishnaraj M. (ed.). Women, Land and Power in Asia, (2013) Routledge