

**PATERNALISTIC PHILANTHROPY
Vs.
DIALECTICS OF INEQUALITY:
CONSIDERATIONS FOR INCLUSION IN OR
EXCLUSION FROM THE CATEGORY OF
SCHEDULED TRIBES ***

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A. Context of 1950s

In the 1950s when the criteria for the determination of STs were being discussed and debated in different forums, the implicit ideas underlying the discourse were broadly as follows:

- (i) Stage theory of evolution of human social and political organization (or in other words, a crude form of Social Darwinism) along with technological evolution held the ground.
- (ii) (a) In the stage theory framework, a broadly conceived western life-style was considered to be at one polar end, life-styles of tribal peoples in general were considered to constitute the other polar end.

(b) Agriculture was considered to be in the mid-position between hunting and gathering economic pursuits, moving towards industrial production. The non-agricultural hunting and gathering peoples were considered to be pre-agricultural peoples at the lower rung of the evolutionary schema.
- (iii) Community or communal resource holding system was considered to be the residue of a political economy, which through the transformational law of historical materialism, had moved towards individual resource holding system. While those with Marxist orientation looked forward to state takeover of private productive resources and then through the continued operation of the law of dialectical materialism to the withering away of state; corporate take-over of the resources was not much in the consciousness of many scholars – whether of Marxist or of non-Marxist orientation, though the process had already started.

(a) As a heritage of the freedom struggle, there was an overriding sense of responsibility among the leaders of the struggle who had come to power in the post-independence period, to provide immediate relief to the mass of the population who had lived a life of woe and misery during the colonial dispensation.

(b) Among the more perceptive section of the leadership there was an awareness that many legacies of feudal control and management of resources and life-ways, which were allowed to continue (if not always nurtured by the colonial rulers

particularly in the rural and outlying tribal areas), were fairly strong in many parts of the country. The imposition of the comprador bourgeoisie was no less galling. Hence, the tribal and other vulnerable sections of the populations required protection from all these forces of domination, exploitation and marginalization of the population.

(iv) Leaders of freedom struggle were also aware of the fact that colonial rulers had successfully kept the bulk of the peoples in the periphery of the territorial, political, and social network of the country, aloof from the rest of the countrymen. However, they were not equally alert of the fact that in the 19th century the nationalist leadership of the country had failed to make a common cause with the resistance movement of the tribal peoples against colonial encroachments on their lands and resources. Even then a language of integration in the “mainstream” entered in the social and political vocabulary not only of India, but of many of newly independent countries particularly of Asia. In this again many failed to differentiate between integration and assimilation. Besides, ‘mainstream’ seemed to implicitly mean North Indian brahmanical cultural postulates.

B. Present Context

Currently the context of recognition of STs has radically changed.

(i) While technological evolution and such additive changes had taken place and are taking place, crude Social Darwinism has by and large been discarded.

Under influence of the concept of Social Darwinism even in the first half of the 20th century, many entertained negative views about the mental capacity of the tribal peoples, but since then experimental psychology and research in brain-neuroscience have discarded the negative valuation of such people’s mental capacity. On the other hand, Chomsky’s linguistic theory focusing on presence of universal grammar has established the unity of human mind.

(ii) Stage theory with reference to core livelihood activity (e.g., hunting and gathering, fishing, etc.) which is somewhat tied up with a version of historical materialism (bereft of dialectical materialism) is now questioned by many. Palaeontological research shows that in some sites diverse modes of livelihood coexisted. Current ethnographic

studies show that in many cases hunters and gatherers are involved in trade not only in the local markets but even in national and international markets, and the commodities marketed by them constitute important components of agricultural and industrial economy. While it is amateurish to categorize such peoples as bearers of pre-agricultural economy, the plans and programmes that logically follow from such categorization have sometimes been found to be harmful to the concerned peoples.

- (iii) It is frequently forgotten that today non-agricultural peoples with simple technology have many options other than agriculture if they want to change their sources of livelihood. Besides, agricultural economy is going through a phase of stagnation, and employment potential of agriculture is very limited. Hence, movement from non-agricultural less-sophisticated technology-based occupations to agricultural sector is not always inevitable. Awareness of all these realities also have a bearing on laying down the criteria for recognition of STs and their sub-categorization as Primitive Tribal Groups (PTGs).
- (iv) As already mentioned, stereotype of undeveloped mental capacity of STs has no scientific base. Even then the stereotype of the irrationality and superstition in regard to the psyche of the tribal peoples is entertained by many. In India, in official parlance the words 'primitive trait' occur frequently without indication of what the primitive traits are. There are, however, some unstated (unspecified) indicators of the matter, which are covered by 'primitive traits'. One of the most important markers centres round the aetiology of diseases and the therapeutic practices as found among many tribes. But recent researches in neuroscience, psychiatry and psychotherapy indicate that far from being irrational, these practices convey a lot of prudence developed through generations of observation and trial and error. Particularly the recent discovery of "empathy neuron" in neuroscience has helped to see many tribal practices in a completely new light.
- (v) Another instance of so-called superstition of the tribal peoples focuses on their veneration of nature, and of the various endowments of nature by cognition of them as spiritual entities or containers of spiritual entities. For all these beliefs and practices the term animism is used in a pejorative sense.

Modern studies of comparative religion, however, show that there is hardly any religious system which does not contain similar elements. The main difference is that while many tribal peoples consider their grasp of the essential nature of the phenomenal world as

knowledge of concrete reality, the interpreters of the so-called universalistic religions go in for theorizing the same and for more open interface with the phenomenal world. Perhaps in philosophical terms, the first pattern of approach to the phenomenal world can be described as ‘onto-epistemological’ with the phenomenal world; while the latter system provides some space of accommodative articulation, but the articulation is not of simple additive nature. It is dialectical in nature in which a dimension of power and domination is involved.

(vi) What has been hinted here about the relationship between direct experience-based tribal religion and so-called universalistic sacred text-based religion holds good for cultures (not only tribal cultures but all cultures) and their encompassing civilizations. The relationship is not just additive or huddling in nature; it is dialectical. As in the case of the relation between folk religions and so-called universalistic religions, in case of culture and civilization also domination and hegemonic imposition tend to operate. There is a point of view that conviviality nurtures culture, hegemony imposes civilization. This formulation deserves deep reflection in the context of the eco-crisis of unprecedented scale currently staring mockingly at humanity as a whole.

(vii) The root of ecological crisis may be traced to the anthropocentric world-view projected and promoted by European renaissance and later in the 17th century era of enlightenment. Renaissance and enlightenment by extolling conquest of nature, and not harmonization with nature as the supreme value, has legitimized unchecked exploitation and extraction of the endowments of nature to the extent that many life-forms have already become extinct; some other life-forms have become endangered; and continued existence of many more life-forms - including that of the species homo-sapiens - is now being questioned. As Levi Strauss points out, it is not fortuitous that ideological thrust of enlightenment and on-march of colonialism coincided in time.

Pushed to the brink, a large segment of humanity now feels humbled and a process of reassessment of the life-ways of the tribal peoples geared to the empathetic extension of the self to the surroundings, and to the harmonization with the diverse endowments of nature is also taking place. Besides, growing awareness of the rich indigenous knowledge system relating to the dynamics of bio-diversity, is exuding admiration of many all over the world.

- (viii) If eco-crisis has made the more perceptive segment of humanity come down from the pedestal and seek in tribal life-ways the magic-formula for self-protection by protection of nature, the ethos of sharing with and caring for progressively inclusive others inside that marks life-ways of many tribes (though incompatible with the classical mode of capital formation), is now being looked upon by many with new appreciation. Recent researches in ethnology, by locating altruistic behaviour even in many lower life-forms like insects, have given tremendous boost to the rationality, ethics-aesthetics and in many cases to trans-rational creativity, informing the life-ways of many tribal communities.
- (ix) Discovery of altruistic behaviour even in some lower life-forms and in social behaviour of most tribal societies confirms that sociologist Max Weber's description of tribal societies as regulated anarchies as against Hobbes formulations that 'in the state of nature humans are in war of all against all' is not an empty rhetoric, it offers an extremely important criterion for recognizing tribal social formations.
- (x) When tribal communities are described as regulated anarchies, it means that the regulatory powers of the tribal communities do not derive their legitimacy from the superior coercive power of the state but from the internal regulatory mechanisms of the communities themselves. Presence of altruism in lower life-forms suggests that the internal regulatory mechanisms of the tribal societies may be basically rooted in species attributes of humans. These species attributes then are, in the conceptual frame of historical fern and braided, the conditioned facts of human life, which the tribal communities try to abide by, but which become deflected in certain contingent situations. The non-tribal societies, which are generally the victims of contingent situations of life, are trying to retrieve their species attributes. It is in this perspective that the tribal peoples are perceived as indigenous, as distinct from the non-tribal peoples; in the sense that they continue to live by the species attributes of humans and can be described as moral communities or homo-sociologic.
- (xi) Ethnographic literature suggests that kinship ties are quite strong among most tribes; also such literature indicates that they entertain a sentiment of custodial relation with specific endowments of nature, including land and forest, which are traditionally associated with them. These two attributes functioning conjointly establish a moral bond with the specific

endowments of nature. This tends to enhance their concern for eco-conservation of, as well as for equitable entitlement to nature's wealth.

(xii) Equity imperative, primarily associated with kinship-based social organization, has as an important factor contributed to the emergence of humans as a bio-social entity, while a streak of embedded altruism also contributes to the adherence to the cause of justice in all fields of individual and/or collective social relations. According to Rawls's postulate of justice - equity and justice do not necessarily go together. An individual or a collective has to struggle hard to ensure justice. But for such struggles to be sustainable, requires at least an optimum differentiation within the community, so that a specialized segment of the society can play the vanguard role. Imperative of justice-right moderated by the embedded equity concern, helps the process of holding on to an optimum level of differentiation and not excessive differentiation or inequity. In laying down the criteria for recognition of STs, the strategic need of accommodating limited inequity will have to be kept in view.

(xiii) (a) Commitment to the principle of justice has assumed a critical dimension in the contemporary world. In the era of IT revolution with the help of satellite imageries and sophisticated technology to assess the quantum of subsoil resources, it has now come to light that major resources of the world, relevant for social production, have a high concentration in the traditional habitats of the tribal peoples and of others analogous to the tribal peoples who are now described by UN, and agencies linked up with the UN, as indigenous peoples. But such peoples constitute only around 4 percent of the world population. Also, while the STs constitute only around 8 per cent of the population, major resources for social production and consumption have high concentration in traditional tribal habitats. The other side of the picture is that by perpetuating the myth of tribal and indigenous people's backwardness and under the cover of the agenda of their development, they are progressively being dispossessed of their life support resource base. If in the 19th and 20th centuries, the working class constituting the proletariat tended to play a similar role, it is interesting to note that the neo-Marxist sociologist Giovanni Arrighi has described them as 'status class'.

(b) Growing threat (through the predatory legal instrument of intellectual property right) to the life support resource base and to the tribal and indigenous peoples knowledge

system underlying the utilization of the resources has currently enhanced the potential role of resistance of such peoples against global hegemony similar to that of the working class against the monopoly bourgeoisie in the mid 19th -mid 20th century.

- (xiv) With progressive dispossession of resources, frequently through the operation of the residue of colonial jurisprudence also with massive displacement of population, the era of prehistory of capital as postulated by Adam Smith, which until recently continued for most of the tribes, is coming to the end. The spurt of Naxalite militancy is to be seen with this as the backdrop.

In India one need not agree with the operational mode of the Naxalites, as can be seen in the tribal predominant east, south-east and west central tribal belt, where they are espousing what they consider to be the cause of justice, particularly for the tribals and other vulnerable segments of the society, but it is difficult to say that it is always the concern to safeguard the interest of the tribal and other vulnerable social segments that motivate their action; sometimes pure party interest may take the upper hand. Limited social differentiation (as in ranked society as distinct from stratified society) of the tribal and vulnerable peoples should be considered a positive criterion for identifying ST category.

- (xv) The teleological view held by a section of Marxist scholars and non-Marxist scholars in general, that communal land and resource holding systems will have to be replaced by individual or individuals in free association or corporate, of state resource, holding systems for the sake of progress is now questioned in the light of experiences in Africa, insofar as non-Marxist scholars are concerned. The Marxist scholars have also been profoundly influenced by discovery of Marx's early manuscripts which when read along with his letter of 1882 to Vera Versluys, establishes that direct movement from communal systems to socialism is possible without passing through the capitalist path of development.

- (xvi) Self-definition as reinforcement of the criteria otherwise identified.

During the early 1980s to mid 1990s, under the aegis of the United Nations Working Group for Indigenous and Tribal Populations, annual meet of the tribal and indigenous peoples used to take place in Geneva. Thus, a global network of such peoples has come

into existence. Since late 1990s, such meets are taking place under the aegis of UN Open Ended Working Group. In these meets, at the beginning, the term ‘indigenous’ tended to be defined broadly as ‘autochthons’ but now, rather than the chronological sense, the term ‘indigenous’ is being defined in normative sense as peoples and their cultures rooted in their immediate social and physical environment and who constitute sharing and caring societies, committed to reciprocity and equity, who are being dispossessed and marginalized from their life support resource base. Such self-definition when harped on repeatedly year after year, particularly in a charismatic situation like world meet of tribal and analogous peoples hitherto not known to one another, tends to become a reality in real life, even for those whose life-ways were considerably different. One should not cynically undermine the value of the secondary dawn of normative self-creation of indigenous and tribal peoples. The secondary socialization of the tribals to this normative self-definition as and when it takes place, is a positive asset for humanity as a whole struggling to avert a cataclysmic ecological disaster and to overcome the schizophrenic alienation from self, from fellow human beings and from de-humanizing aggressive individualism.

Broad Consensus Prevailing Since 1950s in the Absence of Criteria for Recognition of the STs

While scheduling of sections of Indian citizens as STs under the provision of the constitution of the country is a matter of policy, the constitution has neither defined ST nor laid down the criteria for statutory recognition of ST. In the absence of the same, through a consultation meet of policy makers, academics and social activists, a broad consensus was generated in the early 1950s. With slight variation here and there, coloured by pragmatic considerations, the broad contour of the consensus has continued to exist even now. The main features of the same are as follows:

STs are people who:

(a) live in comparative physical and social isolation;

- (b) have distinct social organization in which primacy is accorded to kinship ties over all other types of regulatory mechanism of the society;
- (c) have languages and cultures of their own;
- (d) while some system of ranking, particularly prestige ranking may be found, there is no persistent intra-community stratification and hierarchy underpinned by the ideology of inequality;
- (e) entrain religious faiths and practices broadly termed as animism, which focuses on veneration and/or management of the forces and endowments of nature by supernatural means;
- (f) by and large involved in non-monetized barter economy, featured by mix of economic and social considerations and also have low level of technology.

While what has been described here as consensus of 1950s, is by this time almost outdated, the Tribal Affairs Ministry, Government of India, has circulated a set of criteria, which most generously speaking, can be described as regressive.

The essential characteristics of the tribal peoples as described by the Government of India (website <http://tribal.nic.in/index1.html>) are: (a) primitive trait; (b) geographical isolation; (c) distinct culture; (d) shy of contact with community at large; and (e) economic backwardness. On 19th November 2004, Government of India, however, presented slightly differently worded criteria. In place of the words 'community at large' one finds the words 'public at large'.

As already mentioned, there is hardly any community anywhere in the world which does not share one or another of the beliefs and practices of the tribal peoples. One may ask whether prejudice against number 13 as found among many sophisticated peoples of the West is a primitive trait or not. Again, what about prejudice against black cats among many Hindus, or

against chameleons among many Muslims? As regards geographical isolation, in most cases it is either outcome of colonial policy or by default of the non-tribal political elites, or the outcome of shift from one mode of transport and communication to another. Distinct cultures certainly exist, but this distinctiveness woven around the basic unity of human mind shyness of contact, is not a basic attribute of mind. As in the well-known case of the Jarawas, it must be examined contextually and historically. Again, there are studies which suggest that sometimes backwardness is imposed by dominating neighbours. Eklavya may not be a historical person, but the Eklavya myth is a social fact - his thumb was mutilated when it was apprehended that he might do better than prince Arjun in archery. In such cases the tribals remain backward so that others may go ahead.

In the altered paradigm, complementarity of diagnostic criteria by a set of functional criteria will have to be envisaged.

Suggested Diagnostic Criteria for Statutory Recognition of STs in the Present Context

With the present context, as already described as the backdrop, the following diagnostic criteria are suggested:

A Scheduled Tribe is a people whose self-definition is that of:

- (a) Collective of citizens as an organic whole, who while committed to constitutional obligation of citizens constitutes a distinct social entity with own niche of cherished history (empirically validated or not), language (or distinct dialect) and ways of life which are accepted as identity markers by the concerned individual or group or their neighbours.
- (b) Has a social organization that may have horizontally compartmentalized segments which are not primarily ranked high or low, which however may be considered to be close to or

distant from the internally embedded centre(s) of political/administrative power due to historical (or believed in historical) reasons.

- (c) The social organization is primarily focused on kinship ties, and only secondarily on territoriality (that is living in and/or deriving livelihood from a common space or repository of shared resources).
- (d) In consequence of primacy of kinship ties, major chunk of social regulatory mechanism is woven around kinship system or interlaced with kinship system giving an image of state indifference (though not necessarily state antagonism).
- (e) Entertains a sense of custodial or jurisdictional right (more of the nature of para-political right rather than of the nature of proprietary right) in respect of territories or endowments of nature (which may/or may not be located in their traditional habitats or ancestral domains).
- (f) Through myths, legends, other narrations, social injunctions and stipulations are having an internalized commitment of sharing of goods and services with fellow members belonging to the same social orbit and of caring for the satisfaction of their needs, rather than strictly going by their socially prescribed entitlements.
- (g) Enjoying the sublime bliss of reciprocity as an aesthetic-ethical compact with various entities rather than as a pragmatic contract.
- (h) While not averse to sophisticated technology, acceptance of the same predicated to the harmonization with culturally prescribed roles of the diverse segments of the community.

The criteria mentioned here are illustrative and not exhaustive. Such criteria are not strictly objective, these are to be applied through inter-subjective discourse and again these cannot be applied in isolation.

Functional Criteria in Current and Emerging National and International Situation

While functional criteria are explicitly being suggested here as complementary to the updated diagnostic criteria, some anthropologists had even four decades ago postulated the presence of functional criteria. In 1966, in a professional journal, this author expressed the view that recognition of ST is a matter of policy. He was more explicit in his keynote address delivered in 1974 in a tribal policy workshop organized by the National Institute of Community Development (now National Institute of Rural Development). It was published by the institute the same year. Extract from the keynote address is included here. “When Indian society as a whole is class-ridden and when exploitation marks the social relations in almost every field, can the emerging tribal elites be very much different?”

“Is it not correct to observe that the emerging tribal elites are very much likely to be the nuclei of social transformation of the tribal societies? If so, is it... difficult to envisage that the crucial functions of the nuclei are not only to create aggregation of functions but also to generate a system of linkages? This is the first historical step towards breaking the barrier between the tribals and the national society - the crucial question is how in the modern context one is to look upon the tribal programme? Is it basically a task of philanthropy, whose task is status quo; or a task of nation building which welcomes social transformation? If it is the latter, how can one ignore the historical need of tribal elite of transformation?”

“It is the legacy of old paternalistic attitude toward the tribals that gets scared when sections among the erstwhile wards show that they intend to throw overboard the wardship”...

“A strategy of nation-building will in some context, require that the rate of advancement of the advanced sections among the tribals should be accelerated.”

What was presented in 1974 can be aptly described as dialectics of inequality.

With the foregoing perspective at the back of the mind, listing of some people as ST should be considered as part of a totality of social arrangement.

It will require examination of (a) Which other peoples are included in what category within the framework of the constitution? (b) What would be the likely effect of including some people in a particular category or of excluding them from a particular category?

If different communities belonging to the particular political administrative entity under consideration are found in other states/countries, it will also be necessary to examine whether there are social, cultural, economic and political linkages among them and how the inclusion in or exclusion from a statutory category would have bearing on the neighbouring entities, or on the social and political process of the region, or of the country as a whole, or on the analogous sans border entities and vice versa.

Further, the relevant policies, plans and programmes operating in the specified social milieu should be examined, and how categorization of some peoples in one manner or the other would be related to the same.

The following illustration would further clarify the issues:

If, for instance, when two communities, one with a weak and the other with a strong resource-holding capacity are included in the same statutory social category, there is a possibility that the sources would flow out from the weaker entity to the stronger entity. In

such a situation, depending upon the policy objective, along with listing of communities, appropriate juridical instruments will also have to be provided for.

Another situation, which is of international relevance, may be considered. In the present era of neo-liberal economy-based globalization, while state is becoming bereft of many of its regulatory functions, and there is growing free movement of capital and capitalist entrepreneurs, in the gap created by the erosion of state's role, NGOs - including international NGOs, are being increasingly inducted to fill up the gap; similarly, private sector entrepreneurs are encouraged to step into the vacated space of the public sector enterprises. In such a situation, the existing paternalistic approach and the criteria for recognition of STs described in the Government of India website would be quite relevant. But there could also be an alternative policy of, community rather than NGOs and private enterprises, filling up the vacated space of the state. In this shift in policy orientation, encouragement of the segments of the community, or in some cases encouragement of the more strategically placed community as a whole, would be a positive step.

In such a dynamic approach, listing of communities in statutory social categories would require examination of the following:

- (i) Whether inclusion in or exclusion from a specific statutory social category along with appropriate legal and other programmed instruments would help to release the social forces, which will thwart the march of hegemonic globalization and in its turn promote the advent of the neo-international economic order as envisaged in the UN Declaration in this regard in 1974.
- (ii) Whether such inclusion or exclusion will promote the realization of the Millennium Development Goals (MDG) as adopted by heads of 171 states in 2000 AD?

The functional criteria indicated here are illustrative, not exhaustive. Essentially, the approach here is informed by what Upendra Baxi describes as dialectics of inequality.

The decision should not be akin to the fancies and objectives of the policy makers only; it should be through the modality of inter-subjectivity discourse.

Primitive Tribe

During the Fifth Five Year Plan, the Government of India created a sub-category, Primitive Tribal Group (PTG) within the category of ST. The criteria laid down for the identification of PTGs as described in the website are as follows: (a) pre-agricultural level of technology; (b) very low level of literacy; and (c) declining or stagnant population.

It can be easily seen that in the perception of the Government of India, the regnum criterion in identification of STs in general also is possession of primitive trait, which as already indicated, may mean nothing more than subjective bias of the policy makers or programme framers. A more serious problem is when tribe itself is loaded with the attribute of alleged primitive trait, what does the repetition of the same load in case of the primitive tribes mean? Does it mean that their primitiveness is quantitatively or qualitatively more than that of the tribal peoples? In that case how to measure primitiveness? Or how to qualitatively delineate one type of primitiveness from another type in a ranking order.

It has already been indicated that delineation of pre-agricultural stage except perhaps, in the cases of the Jarawa, the Sentinelese, the Shompen, the Onge and the Great Andamanese of Andaman and Nicobar Islands is conceptually a flawed one. Even in case of most of the tribes of Andaman and Nicobar Islands, it is not empirically a fully correct one.

As regards stagnant or declining populations, it should be realized that many European countries are having significantly low or declining population. In India, the Parsees are

having oscillations between tangent and declining populations, but none would dare to call them a primitive tribe.

Perhaps some tribes may be vulnerable to various types of negative forces. They should better be called 'vulnerable tribes' rather than being encumbered by the term 'primitive tribe'. However, it is not the policy or programme associated with the category mentioned here.

Denotified Tribe

During the colonial rule some communities or sections within communities were from time to time declared as criminal tribes. Frequently, such declarations had nothing to do with the practice of criminal activities by them; often such declarations were made on political considerations. In 1949, Government of India had set up a Criminal Tribes Enquiry Committee and on the recommendation of the Committee, the Criminal Tribes Act was repealed. For the purpose of rehabilitation, the ex-criminal tribes were declared as 'denotified tribes'.

It is to be considered whether even after half-a-century, the label 'denotified tribe' should be tagged on to those who were earlier notified as 'Criminal Tribes', or whether it would be better to call them also 'Vulnerable Tribes'.

Besides, it was found that in many states the communities now treated as 'denotified tribes', were not actually listed as 'criminal tribes', as found in the list included in the Criminal Tribes Enquiry Committee Report. It is to be examined whether there was any other list of Criminal Tribes, not covered by the Criminal Tribes Enquiry Committee Report.

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