

# **Recent Trends In Humanities and Social Sciences**

A decorative graphic featuring two stylized flowers, one in the upper right and one in the middle left. Dashed lines originate from the flowers and curve across the cover. The background consists of several concentric, wavy lines that create a sense of depth and movement.

**VOLUME - 1**

**Chief Editor  
Babita Labh Kayastha**

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# **Recent Trends In Humanities and Social Sciences**

**Volume - 1**

**Chief Editor**

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**Chapter - 7**  
**Protection of Rights and Right to Livelihood of  
Scheduled Tribes under Constitution of India**

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# Chapter - 7

## Protection of Rights and Right to Livelihood of Scheduled Tribes under Constitution of India

Vijay M. Gawas

### Abstract

The Indian constitution is guaranteeing Right to live to every citizen of Indian. The necessities and basic requirements for human beings which provided under constitution of India i.e Right to life include Right to livelihood, Right to food, Right to Safe and drinking water, Right to decent environment, and Right to education, Right to provide medical care and shelter. Similarly, the word Right to life' as inserted under Article 21 and "it takes an sweep not only in the concept of mere physical existence but also all finer values of life including the right to work and right to livelihood" [1]. The Right to live is a fundamental right guaranteed to all persons those who are residing in India including citizens and non-citizens. Therefore, the Right to life guaranteed under article 21 includes right to livelihood and Right to work of the Indian Constitution. For this purpose, secondary data from law books, law articles, law journals, newspapers, etc. have been used.

**Keywords:** Livelihood, land, displacement, deprive, amendment, act.

### 1.1 Introduction

The more recent concept of sustainable livelihoods is being projected as an advance over sustainable development. For many NGOs and development practitioners 'livelihood' is a straightforward term, as defined in dictionaries; the means of living and substance" [2]. Chambers (1995) defined livelihood as the 'means of gaining a living, including tangible assets (resources and stores), intangible assets (claims and access) and livelihood capabilities' including coping abilities, opportunities and sundry freedoms" [3].

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<sup>1</sup> Neepa Jani. Artciel 21 of Constitution of India and Right to Livelihood, published in Voice of Research. 2013; 2(2):61. ISSN No.2277-773.

<sup>2</sup> Sumi Krishna. Women's Livelihood Rights: Recasting Citizenship for Development, published by sage publication, New Delhi, 2007, 5.

<sup>3</sup> Ibid

The broader focus on livelihood rather than on incomes was also projected on the document called *Agenda 21* (United Nations 1992), the non-binding 'Plan of Action' adopted at the 1992 UN Conference on Environment and Development at Rio de Janeiro, Brazil. 'Enabling the poor to achieve sustainable livelihoods' is up-front in the chapter 'Combating Poverty'<sup>4</sup>. It states: While managing resources sustainably, an environmental policy that focuses mainly in the conservation and protection of resources for their livelihood. Otherwise it could have an adverse impact both on poverty and on chances for long-term success in resources and environmental conservation.' Further, 'The long term objective of enabling all people to achieve sustainable livelihood should provide an integrating factor that allows policies to address issues of development, sustainable resource management and poverty eradication simultaneously'<sup>[5]</sup>.

The Right to Livelihood is considered an important part of mankind's Right to life. In addition to the fact that in the Indian constitution is forbidden to deprive the livelihood. The Right to livelihood and enjoying the minimum facilities is a device to continue life and also considered important part of right to life. The Government has a prime role to ensure livelihood security to each and every citizen of India.

However, the Indian Constitution does not yet recognize right to livelihood to its citizen but it recognizes right to life as fundamental Right under article 21. The Right to life as interpreted as right to lead meaningful, complete and dignified life. Indian Constitution also has a several provisions for protection of tribal rights and their interest.

There are number of government programmes and projects have been planned and executed to ensure livelihood security to the tribal peoples. Some of the prominent government programmes that have provisions for diversifying livelihood options of the vulnerable groups include Non-discriminatory access to work.

Similar, there was building capacities of Scheduled Tribe groups and traditional forest dwellers to claim land under the scheduled tribes and other traditional forest Dweller (Recognition of Forest Rights) Act, 2006. Moreover, ownership of Revenue land and ensuring equal access to resources and skill for the tribal groups' etc.

Therefore, the constitution of Indian under article 21 declared that "No person shall be deprived of his life or personal Liberty except according to

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<sup>4</sup> Ibid

<sup>5</sup> Ibid

procedure established by law” [6]. This article protects the right of life and personal liberty not only from executive action but also from the legislative action. Therefore, this right extends to citizens as well as Non-Citizen. According to this article it should be given widest possible interpretation.

## **1.2 Conceptual Frame Work of Article 21 Right to Life and Liberty**

Article 21 is one of the Articles that clearly and definitely identifies that the fundamental rights are enforceable against the State which is defined by Article 12 in Part III of the Constitution of India. Within the definition of Article 12 of the Constitution of India, the term of State includes the Government and Parliament of India and the government and the legislature of each of the states and all local or other authorities within the territory of India or under the control of the Government of India<sup>7</sup>. The laws inconsistent with or in derogation of fundamental rights but inconsistent with the provisions of this part and the extent of such inconsistency to be void. Even the state shall not make any law which take away or abridges the rights conferred by Part III of the Constitution of India<sup>8</sup>. But in case any such law made is in contravention of Article 13 then it shall, to the extent of the contravention, be void.

However, the violation of rights by private individuals does not come within the preview of Article 21 of the Indian Constitution. All the human rights are given to achieve the specified objects viz. Right to food, Right to water, Right to a decent environment, and Right to education, Right to provide medical care and shelter, among others.

It is obviously true that State can deprive any person of his life or personal liberty only through the medium of operation of any law which is a valid law. It should comply with the requirement in case any procedural law can validly deprive any person's life and liberty; such procedure prescribed by law. It should be a result of valid exercise of legislative power by the concerned law making authority<sup>9</sup>. It is pertinent to note here that when a competent legislature enacts such law according to the procedure prescribed by law and such law found to be established by an incompetent legislature, then such law would be a still-born one or incompetent to the powers of the concerned legislature. As result, the procedure prescribed by law treated to be invalid guaranteed under Article 21<sup>10</sup>.

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<sup>6</sup> Dr. Pandey JN. 44<sup>th</sup> Edition, Constituted Law of India, publisher Central Law Agency, 30D/1, Motilal Nehru Road, Allahabad-2, 2007, 278.

<sup>7</sup> Ibid, 54. 6 at 57.

<sup>8</sup> See, Supra Note 1

<sup>9</sup> See, Supra Note 8 at 61

<sup>10</sup> Ibid at 9



The relevant Articles which would govern such law as contemplated by Article 21 and as such which would be tested are Articles 14, 19 and 22 of the Constitution of India. Article 14 used two expression deals with equality before law and equal protection of law. However, in case the procedure prescribed by law does not stand the test of Article 14 <sup>[11]</sup>, such law will not be in a position to hold the State accountable for depriving the personal life and liberty as guaranteed under Article 21 <sup>[12]</sup>.

Article 19(1) (g) guarantees that all citizens shall have the Right to practice any profession or to carry on any occupation, trade or business <sup>[13]</sup>. Therefore, Article 21 has received an expanded meaning of the term of 'life' in the decisions of the Supreme Court. The term 'life' is under Article 21 of the Constitution has been given a broad interpretation and is considered equivalent to the right to adequate livelihood and right to work. The wording of Article 21 is expressed in a negative manner and it differs strikingly with Article 19(1) (g) which is expressed in positive terms <sup>[14]</sup>.

However, it would not strike down the potency of the Right to Life and Personal Liberty, as the parameter of Article 21 which guaranteed every citizen who is residing in India, the right to effective and dignified existence. It is also necessary to state here, that the guarantee of being assured that adequate means of right to livelihood and the right to work are implied in Article 21, which the State did not think are fundamental rights of citizen. However, the aforementioned rights are imperative in order to lead a healthy life except when it is deprived through the enactment of valid laws. It is a duty born to the State to protect the adequate means of livelihood and the right to work <sup>[15]</sup>. But it cannot permit any citizen to insist on the carrying out of any work which is dangerous by itself or which is illegal Article 19(1) (g) read with under clause (6) of Article 19. However, right to work and right to carry on any legal occupation are permissible in order to enjoy adequate means of livelihood. It would remain well sustained in the combined operation of Articles 14, 19(1) (g) and 21 of the Indian constitution <sup>[16]</sup>.

### **1.3 Directive Principles of State Policy and Fundamental Rights**

The Directive Principles of State Policy contained in Part IV of the Constitution certain obligations of the State. The Directive Principles

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<sup>11</sup> Ibid, 7 at 62

<sup>12</sup> Ibid at 10

<sup>13</sup> See, Supra Note 7 at 203

<sup>14</sup> See, Supra Note 13

<sup>15</sup> Ibid at 14

<sup>16</sup> Ibid at 15

according to the chief architect of the Indian Constitution Dr. B. R. Ambedkar, 'have a great value for they lay down that our ideal is economic democracy <sup>[17]</sup>. Thus, the Constitutional ideal is not only social and political democracy but also economic democracy. For that prime reason itself Directive Principles of State Policy have been included in the Constitution <sup>[18]</sup>. The main intention of including Part IV in the Constitution is that it may form a set of instructions issued to the prospective lawmakers and executives for their guidance for good governance. Similarly, Part IV enjoys a very high place in the Constitutional scheme as it imposes obligations on the State to take positive actions for creating socio-economic conditions in which there will be an egalitarian social order with social and economic justice to all section of the society <sup>[19]</sup>.

The Directive Principles of State Policy contained in Part IV of the Constitution and imposes certain obligation on the state to take positive action in certain direction in order to promote the welfare of the people and achieve economic democracy. While reason for making this reason for making this principles could not enforced through courts of law, but the principles laid down therein are considered fundamental in the governance of the country <sup>[20]</sup>. However, as opposed to Article 21, which is enforceable by the courts, these Directive Principles contained in Part IV of the Indian Constitution are not enforceable by any court.

The duty of the State to apply these principles beckons the State both, in its executive, as well as, legislative capacity" <sup>[21]</sup> guided by them and these functions of the State have to be monitored in the light of these directive principles Similarly, the functions of the State to be monitored by the directive principles and the purpose of these relevant Directive Principles of State Policy are found in Article 39(a) and Article 41. Article 39(a) lays down that the State shall, in particular, direct its policy towards securing, (a) Equal Right of men and women to an adequate means of livelihood <sup>[22]</sup>. Article 41 provides the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want" <sup>[23]</sup>.

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<sup>17</sup> See, [shodhganga.inflibnet.ac.in/bitstream/10603/75392/11/11\\_chapter%203.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/75392/11/11_chapter%203.pdf) dated 12<sup>th</sup> January, 2018.

<sup>18</sup> Ibid

<sup>19</sup> Ibid

<sup>20</sup> Prof. Pande GS. 18<sup>th</sup> Edition, Constituted Law of India, publisher University Book House Pvt. Ltd, Jaipur, 2018, 330.

<sup>21</sup> Ibid

<sup>22</sup> See, Supra Note 15 at 390

<sup>23</sup> Ibid 22 at 390

The correct connotation of the term 'life' as work under Article 21 and according to this view the constitutional duty of the State follows from the aforesaid Directive Principles of State Policy under Article 39(a) and Article 41. It means that the State is under obligation while enacting such laws in connection with "deprivation of life of any person which is protected by Article 21, to see to it that it does not falter in its constitutional obligation of making effective provisions for securing right to work"<sup>24</sup> and also for providing adequate means of livelihood to its citizens.

#### **1.4 Right to Livelihood and Judicial Contribution**

The expanded meaning of life has been held to include the means of livelihood. It means that life would be meaningless without livelihood or it is impossible without food. In case deprivation of livelihood must be through procedure prescribed by law which must be just, fair and reasonable, then it can be challenged for deprivation of a decent standard of living and offending the right to life conferred by Article 21.

Despite this, the main aim of Article 21 is to prevent the encroachment upon personal liberty, and deprivation of life, except according to procedure established by law. It means that this fundamental right has been provided against state only<sup>[25]</sup>, in case if the act of a private individual amounts to "encroachment upon the personal liberty, or deprivation of life of another person, in such a case the violation would not fall under the parameters set by Article 21"<sup>[26]</sup>.

However, the Indian Constitution has also made available the remedy to aggrieved person for violation of their fundamental rights. In case of any such violation they can either approach under Article 226 of the constitution or under general law. Suppose the act of any 'private individual violates the personal liberty or life of another person and such act is supported by the State, the act will certainly come under the ambit of Article 21'<sup>[27]</sup>.

During the 1980s, activist jurisprudence in India extended the fundamental rights a deeper and more inclusive interpretation. Most significant for women and men is the right to livelihood, which has been made an enforceable right under the Constitution since the 1985 judgment of the Supreme Court, upholding the right of pavement dwellers who were being evicted from the streets of Mumbai. The court held that as the

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<sup>24</sup> See, Supra Note 20.

<sup>25</sup> Ibid at 24.

<sup>26</sup> Ibid at 25

<sup>27</sup> Ibid at 26

pavement and slum dwellers resided near their places of work, their forceful eviction would result in the loss of livelihood, which would be tantamount to denial of the right to life, as their right to life, and their right to work, were interdependent<sup>28</sup>. Further, the Supreme Court was held that Right to livelihood is only one aspect of the right to life<sup>29</sup>. Yet, despite constitutional and legal provisions, in practice citizenship is embedded in webs of power, prestige and authority that create differential rights on axes of class, caste, ethnicity, gender and age. This was unfortunately reflected in another case the judgment criminalized the poor by holding that if the state facilitated the relocation of slum dwellers; it would amount to rewarding pickpockets<sup>30</sup>.

According to this view of the Supreme Court the right to life includes right to livelihood and deprivation of livelihood must be through procedure prescribed by law which must be just, air and reasonable, not fanciful<sup>[31]</sup>. Further, the Right to livelihood include right to life because the person cannot survive without their livelihood. Therefore, the right to livelihood is treated as part and parcel of the right to life. It was held that the concept of "right to life and personal liberty" guaranteed under Article 21 of the Constitution includes the "right to live with dignity" which in turn includes the right to livelihood. The court came to hold that the right to life as guaranteed by Articles 21 of the Indian Constitution included the right to livelihood<sup>[32]</sup>.

The same view was taken by the Supreme Court and while rendering its decision, the court held that right to life includes right to livelihood and therefore right to livelihood cannot hang on to the fancies of individual in authority. The deprivation of livelihood must be through procedure prescribed by law which must be just, fair and reasonable, not fanciful, oppressive or at vagary<sup>33</sup>. In *LIC of India v. Consumer Education & Research Center*<sup>[34]</sup> the court considered the interpretation of 'right to life' and its extent to right to livelihood.

In the case of *M.J. Sivani & Ors. V. State of Karnataka & Ors* AIR (1995) 6SCC289, the court held "that regulation of video games or

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<sup>28</sup> *Olga Tellis v. Bomaby Municipal Corporation* AIR (1986)SC180.

<sup>29</sup> *Ibid*

<sup>30</sup> *Almitra Patel v. Union of India*, 2000(2): SCC-679.

<sup>31</sup> *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi and others* 1 SCC, 1981, 608.

<sup>32</sup> *Board of Trustees of the Port of Bombay V. Dilipkumar Rgahavendranath Nandkarni*, AIR (1983)SC109.

<sup>33</sup> *Delhi Transport Corporation V. D.T.C. Mazdoor Congress* AIR, SC, 101, 1991.

<sup>34</sup> AIR 9199505SCC482.

prohibition of some video games of pure chance or mixed chance and skill are neither violative of Article 21 nor is the procedure unreasonable, unfair, or unjust”<sup>35</sup>. Similarly, the denial of right of succession to women of Scheduled Tribes amounts to deprivation of their right to livelihood under Article 21 of the Constitution<sup>[36]</sup>. Deprivation of livelihood must be through procedure prescribed by law which must be fair, just and reasonable. In such a case, the deprivation of right to livelihood under articles 21 is sustainable. In *Chameli Singh v. State of Uttar Pradesh AIR (1996) SC1051*, the Supreme Court held that although the land of a landowner was adversely affected, his right to livelihood is not violated. The court opined that, the state acquires land in exercise of its power of eminent domain for a public purpose. The landowner was paid compensation in lieu of land, and therefore, the plea of deprivation of right to livelihood under Art. 21 is unsustainable”<sup>[37]</sup>. If anyone tries to deprive the right to livelihood without a just and fair procedure which is established by law then it can be challenged in court under Article 21 of the Indian Constitution. The same view the court held that the right to life include right to livelihood guaranteed Article 21 of the Constitution<sup>[38]</sup>.

It said that the right is not denied to a person who is already carrying on a profession of a medical practitioner and who is not permitted to simultaneously practice law. A similar view has been taken in the case of *Narendra v. state of Haryana*<sup>39</sup> where the court held that Article 21 guarantees to all persons residing in India the right to lead a dignified life which would include right to get adequate livelihood and work. No procedural law can deprive them of this right, unless such a law is enacted by a competent legislature and is not violative of any other fundamental rights especially articles 14 and 19(1) (g) of the Constitution of India. Article 21, Article 14, and Article 19 must be treated as a trinity of rights projecting a golden triangle. They ensure a healthy and effective life to all the residents in India including its citizens. However, right to livelihood under Article 21 cannot be interpreted so widely as to include within its ambit all sorts of claims relating to legal or contractual right of parties<sup>[40]</sup>

## 1.5 Tribal Movement for the Protection of Livelihood-A Recent

<sup>35</sup> See, <https://www.lawctopus.com/academike/article-21-of-the-constitution-of-india-right-to-life-and-personal-libe> dated 12/12/2018

<sup>36</sup> *Madhu Kishwar V. State of Bihar*, 1996, 5SCC-C125: AIR 1996SC1864.

<sup>37</sup> See supra Note 35

<sup>38</sup> *Dr. Haniraj J, Chulani V. Bar Council of Maharashtra & Goa*, AIR, 1996, 3SCC342.

<sup>39</sup> *Dr. Haniraj J, Chulani V. Bar Council of Maharashtra & Goa* and AIR, 1995, SCC519.

<sup>40</sup> *State of Raja Mahendra Pal HPV*. AIR. 1995SC, 1786.

## Development in Goa

The Gauda tribes<sup>41</sup> initiated and practice Kumeri (burn and shift) cultivation, which marked the beginning of agricultural operation in Goa. Kumeri cultivation, also known as shifting cultivation, was practiced in Goa for thousands of years. The busy growth on hill slopes in forest areas which was burned and cleared was used for the cultivation of Ragi. The Gauda Community by way of life and close relation to land had profound influence over the subsequent settlers<sup>[42]</sup>.

Land is a primary resource for the purpose of agriculture. Ironically, landlessness is the major problem among the tribal communities. They have very few with clear titles of ownership of their own lands. It implied that the ancestral land is inherited from generation to generation without clear titles of land ownership and some of the land has been obtained through land reforms with clear titles. Besides, tribal people also access forestlands, called kumari lands. Most of the tribal people lands are located in the forest area, but they have had possession and cultivating lands since time immemorial.

The process of land deprivation from tribal communities had begun during the colonial time. Thereafter, the tribal communities were forced to work as laborers on their own land in order to earn their livelihood. After the liberation of Goa, the landlords (Bhatkars), private persons, Contractors, Government and intermediaries like the members of Comunidades had dominated the agricultural and non-agricultural sector in Goa<sup>43</sup>. The majority of tribal communities focus on agricultural activity and most of their livelihoods depend on agricultural land.

Majority of the Tenancy lands are those lands, which the tribal people cultivate either as tenants or caretaker. Most of the tribal people obtaining rights, due to the land reform legislation namely, Goa, Daman and Diu Agricultural Tenancy Act 1964 which was brought into force in 1965 by the Union territory of Goa, Daman and Diu. The objective of the bill was to provide security to the Tillers who were cultivating the land for food grains

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<sup>41</sup> Explanation Note: Gauda Tribes of Goa has notified as Scheduled tribes under the Scheduled castes and Scheduled Tribes order (Amendment) Act, 2002 (central Act 10 of 2003 which has been passed by the parliament and assented to by the president of India on 7-1-2003 and published in then Gazette of India, Extraordinary, part II, Section 1, dated 8-1-2003 published official Gazette, Government of Goa under Notification No.10/3/2003-LA.

<sup>42</sup> Vijay M Gawas. Land reforms legislation in Goa: A commentary on controversial sunset clause proposed under the agricultural tenancy amendment act, 2014, International Journal of Law. 2017; (3):7

<sup>43</sup> Gawas Vijay. Political Economy of Tribal Development in Goa, published in International Peer Reviewed and Referred, Scholarly Research Journal for Interdisciplinary Studies. 2015; 3:844.

for survival and whose lands were originally owned by their ancestors <sup>[44]</sup>. However, tribal communities have still not obtained any clear titles to these lands.

It is observed that most of the tribal communities' occupations are to cultivate food crops for their survival and their livelihood and their income is earned through agricultural activity. A very large number of tribal people produce crop to sell in the local market for the purpose of earning cash and only a very small portion of the crop is retained for self-consumption. However, there are many impediments which these tribal communities face in producing their own food. In Goa, most of the tribal communities are engaged in agricultural activities. For instance, cultivation of four different crop categories in one year, during the three seasons, namely monsoon, winter, and summer.

It is seen that there is a tendency to grow rice either on ancestral lands because they are more fertile and suitable for the cultivation of rice. The crop is grown more on kumari lands that are located on hill slopes. It is also seen that to some extent the vegetables produced are sold in the local markets. When the Goa Agricultural Tenancy (Amendment) Bill, 2014 is re-enforced it will greatly affect the people, especially the scheduled tribes, scheduled castes, other backward class and minorities. While adopting the policy of contract farming, the landlord is more powerful and the tenant is made powerless with nil entitlement of creation of tenancy in contract farming. So the landlord can enter into agreement of contract farming except in cases of disputed lands <sup>[45]</sup>.

According to Goa Agricultural Tenancy (Amendment) Bill, 2014 the tenants are deprived of their rights by giving more power to landlords (Bhatkars). It was a conspiracy between the builder lobby, businessmen, politicians and landlords lobby for wiping out the rights of tenants in Goa. Therefore, the livelihood of tribal people which is dependent on the agricultural and non-agricultural sector in Goa has come under jeopardy <sup>[46]</sup>.

The tribal people have been struggling to secure land from the builder lobby, businessmen, politicians and landlords with the intention to secure a sustainable livelihood. Secondly, the forests are the primary resource for the tribal people and forest products contribute to the satisfaction of various livelihood needs such as fuel wood, timber for house construction,

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<sup>44</sup> See, Supra Note 43 at 10

<sup>45</sup> Ibid

<sup>46</sup> See, Supra Note 44 at 846

vegetables, and medicinal herbs. The conflict between the Forest Departments and tribal peoples for a long time because they face considerable hardship in accessing the forest to collect forest produce to make equipment, mainly for hunting and fishing because it continues to be a significant livelihood activity.

The Forest Policy was against the tribal communities as the creation of various wildlife sanctuaries on tribal home land is a threat to the livelihoods of the tribal people who are dependent on forest land. The state Government has marked the boundaries of these areas without consideration of the existing tribal villages <sup>[47]</sup>. In fact, the tribal people's economy is dependent on forest land. For the past several generations, the tribal people lived in the forest area as their livelihood depended on forest land which was restricted by the Forest Department. Even the tribal villagers were not allowed to chop firewood on their own land <sup>[48]</sup>. So the tribal villagers are unable to chop wood which is necessary firewood for cooking and heating. Also, within the boundaries of the forest area, the tribal people are being restricted from grazing their own cattle in certain areas. Access to the forestland and forest produce is essential to the protection of the livelihood of the tribal people. However, instead of protecting the tribal people, development interventions in the state of Goa have mainly resulted in preventing the tribal people's access to their traditional sources of livelihood<sup>[49]</sup>.

Finally, it seen that after the liberation of Goa, the mining industry has further expanded and has caused a great problem for the tribal people. Most of the tribal land was covered under mining leases including the forest land in Goa. The huge number of mines operating on tribal areas has resulted in a bad impact on their livelihood caused resulting in their own land <sup>[50]</sup>.

## 1.6 Discussion and Conclusions

The decisions of the Supreme Court had to go through several decades until it could final settle on the interpretation of the word 'life' as specified under Article 21 of the Indian Constitution. The fundamental right guaranteed to all persons who are residing in India, and as contradistinguished with the sweep of Article 19(1) (g) where only citizens are covered. Similarly, the right cannot be interfered with by the State save according to the procedure established by law. It is possible only when a competent legislature should have passed a valid law. This valid law cannot

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<sup>47</sup> See, Supra Note 46 at 848

<sup>48</sup> Ibid

<sup>49</sup> Ibid

<sup>50</sup> Ibid 49at 849



come in conflict with any of the other fundamental rights especially those guaranteed under Article 14 and 19(1) (g).

Though, Article 14 extends to citizens, as well as, non-citizens of India, but Article 19(1) (g) is available only to citizens and not to the non-citizens in India. Similarly, Article 21 and Article 14 serve the same class of humanity residing in India but are available to both citizens, as well as, non-citizens. In fact, Article 21 is phrased in a negative form and it cannot be applied in absolute terms by way of a substantive provision as in the case of the fundamental right which is specified under Article 19(1) (g) and is available only to citizens of India <sup>[51]</sup>.

However, the State must recognize the rights of those who reside in forests areas as they also cultivate the land of the community from generation to generation. Most of the tribal communities are in isolated hamlets and perceive their political rights to livelihood and development as part of one whole. Therefore, the 'Development' is a contentious term because it is so diversely perceived. Conventionally, development has been treated as national economic growth measurable by the Gross Domestic Product (GDP). Development is about people, about enhancing their ability and power to direct their own lives, in the context of their environment, their history and aspirations for the future. Development is not about catching up with other people. But it is about an enlarged range and quality of choice, of lifestyles, of occupations. It encompasses better nutrition, health, education, and freedom from oppression and poverty. The process of development involves structural transformations in the organization of society and economy. Such a process cannot take place without altering the relationship of dominance and subordination, or affecting the interests of different groups within the society. Therefore, questions regarding the character direction and pace of development are fundamentally political questions <sup>[52]</sup>.

Similarly, the State is also prohibited from taking away the right to work and right to livelihood provided under Article 21 to all citizens and non-citizens of India except according to the a procedure established by law. The State also has a positive duty to be guided by Article 39(a) and Article 41 because they can make the right to life more effective, as envisaged by Article 21 <sup>[53]</sup>.

Besides, the Central Government has implemented certain beneficial

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<sup>51</sup> See, *supra* Note 29

<sup>52</sup> See, *Supra* Note 30 at 3-4

<sup>53</sup> See, *supra* Note 52

statutes, such as, the National Rural Employment Guarantee Act, 2005. According to the Constitution of India, the state shall 'directs its policy towards securing that the citizen, man and women equally, have the right to an adequate means of livelihood' as stated under Article 39(a). It also says that the State shall 'make effective provision for securing the right to work' (Article 41).

Though the National Rural Employment Guarantee Act, 2005 (NREG Act) is an attempt to fulfill these half-a-century old constitutional provisions, it was passed by Parliament only after a sustained campaign and lobbying with political parties. In a period when public policy has been marked by the state withdrawing from providing social security, this new act significantly recognized the State's responsibility towards its poorest citizens <sup>[54]</sup>. Laws during the colonial and post-colonial times have, in their own way, regulated different occupational groups in an attempt to 'administer' and define the range of their activities, especially with regard to cultivation of crops and access to natural resources. After the independence of India, the First Five-Year Plan had emphasized the internalization of the development process through people's involvement <sup>55</sup> and land ownership is also critical in facilitating access to farm credit and other inputs <sup>[56]</sup>.

The law on the inheritance of property has now been reformed and the Hindu Succession (Amendment) Act, 2005, removes gender inequalities in the inheritance of agricultural land <sup>57</sup>. Besides, there has been a mobilization of women around a range of human rights and livelihood issues such as the right to grazing land and fair wages <sup>[58]</sup> as their right to land and livelihood has been constantly under threat <sup>59</sup>. During the colonial era, scientific conservation policy denied the needs of local communities at two levels. Firstly, it denied the tribal's their traditional subsistence by banning shifting cultivation and the collection of minor forest produce. Secondly, the peasantry in the settled agriculture regions-both wet and dry ecological zones-was deprived of their traditional grazing facilities. By encroaching on small forests, the government stripped many peasants of their grazing facilities <sup>[60]</sup>. Now the State has undertaken to settle all outstanding adivasi

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<sup>54</sup> Ibid 53 at 24

<sup>55</sup> Ibid 55 at 25

<sup>56</sup> Ibid 56 at 27

<sup>57</sup> Ibid 57 at 28

<sup>58</sup> Ibid 58 at 31

<sup>59</sup> Ibid 59 at 32

<sup>60</sup> Ibid 60 at 44

claims on forests and give them legal recognition to produce <sup>[61]</sup>. In addition, Agricultural Wage Labour is the main livelihood activity of the women-headed households in the charlands<sup>62</sup>. The seasonality of agricultural activity also raises the fear of crop damage due to flooding. Floods are a recurrent natural hazard that always accompanies life in the charlands <sup>[63]</sup>.

Now it is the duty of every State to protect the interest of tribal and other backward communities thereby adhering to Article 46 of the Constitution of India. This is in order to ensure the protection of these communities' significant rights over the land which their forefathers cultivated since time immemorial<sup>64</sup>. However, Article 21 is neither suspendable during emergency nor capable of being abrogated and amended. Therefore, the State has also a positive duty to be guided by Articles 21 <sup>[65]</sup>. Therefore we can establish the connection between the right to life including right to livelihood and the right to work as provided under Article 21. While Deprivation of livelihood would not only make life impossible to live, it could also denude life of its effective content and meaningfulness. However, if the deprivation of life is in accordance with the procedure established by law, then the right to livelihood is not regarded as a part of the right to life <sup>[66]</sup>.

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<sup>61</sup> Ibid 61 at 49

<sup>62</sup> Ibid 62 at 109

<sup>63</sup> Ibid 63 at 110

<sup>64</sup> See, supra Note 51 at 847

<sup>65</sup> See, supra Note 52

<sup>66</sup> Ibid

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## Note

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