Tribal Uplift and the Rule of Law

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When India became free, Indians made a new tryst with destiny best articulated by Nehru, the then first servant of the people. Addressing the nation he said:

"The service of India means the service of the millions who suffer. It means the ending of poverty and ignorance and disease and inequality of opportunity. The ambition of the greatest man of our generation has been to wipe every tear from every eye. That may be beyond us, but as long as there are tears and suffering so long our work will not be over."  

Every Indian according to this solemn undertaking, must have the right and opportunity freely to unfold his full potential; and this universal right of self-expression, when actualised; is true development integrated with the quality of life of the lowliest layers of society, not the bourgeois economist's camouflage of 'growth' divorced from justice nor G.N.P. sacrificing social justice. No more 'blood, toil, tears and sweat' for the fifty million adivasis of India scattered mostly in sub-human social milieu and surviving for ages, to borrow Tagore's words, as "the eternal tenants of an extortionate system", with their cultural genius repressed, their equal personality suppressed and their material well-being crushed for long by the pervasive feudalists, later by the Raj rulers and now by the bourgeoisie generally. Our Socialist Republic, under a Constitution "We, the People of India, enacted

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and gave unto ourselves”, resolved, in the preambular pledge itself, ‘to secure:

Justice, social, economic and political;

Equality of status and of opportunity;

.... dignity of the individual and the unity and integrity of the Nation’.

Ours is a Democratic, Secular, Socialist Republic with egalitarian ethos. The Paramount Parchment thus obligates the State to organize a development-oriented way of life for every citizen and so the constitutional mandate turns its focus, if the national promise is not bogus, on the most depressed sector — antyodaya — and engineers its rehabilitation into an equal, fraternal society endowed with individual dignity and economic viability.

This constitutional compulsion to uplift the adivasi les miserable of India is a socialist egalitarian imperative, consistent with our spiritual heritage and materialist base and futuristic in its hunger to establish a New Order where the worth of personhood is the measure of our culture. Dr. Ambedkar, who maintained that our Constitution was essentially socialist, warned the Constituent Assembly:

“We must make our political democracy a social democracy as well. Political democracy cannot last unless there lies at the base of it social democracy. What does social democracy mean? It means a way of life which recognizes liberty, equality and fraternity as the principles of life. These principles of liberty, equality and fraternity are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality, equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without fraternity, liberty and equality could not become a natural course of things. I would require a constable to enforce them. We must begin by acknowledging the fact that there is complete absence of two things in Indian society. One of these is equality. On the social plane, we have in India a Society
based on the principle of graded inequality which means elevation of some and degradation for others. On the economic plane, we have a society in which there are some who have immense wealth as against many who live in abject poverty. On the 26th January, 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognizing the principle of one man one vote and one vote one value. In our social and economic life we shall, by reasons of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has so laboriously built up”.2

In this background, the pregnant adjective ‘socialist’ qualifying our Republic, although introduced less than a decade back, implies a resurgent humanism and scientific socialism, with an egalitarian material base where the adivasi have-nots — a sort of invisible Fourth World within the Indian Third World — have a claim on the national resources to be raised to equal stature and culture and the State has to forge planned strategies to effectuate this intent of the Founding Deed. The dynamics of development means in the Indian setting, humanizing to a high degree the deprived tribals and catalysing with practical strategies and feeling concern, their equal potential. The cornerstone of this Fourth World Jurisprudence is our Constitution. Indeed, many Articles in Parts III, IV and XVI reinforce the constitutional concern for the tribal lot implicit in the preamble. A quick glance gives us

the legal foundation for this Tribal Imperative of Human Rights and Welfare Orientation including ‘protective discrimination’ truly underlying in the equality guaranteed in an unequal society.

Basically, Article 14, tuned to the notes of the Preamble, declares equality and equal protection as a State duty. Equality between unequals, as explained by the Supreme Court in Thomas and the Railway cases, demands the dynamics of strategic processes of equalisation to eliminate inequality and established broad egalite as integral to social justice. Article 14 lays down:—

“The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”.

Articles 15 and 16 are specific applications of this equalisation process vis-a-vis education and employment relating to Scheduled Castes and Scheduled Tribes. He who boasts himself that he can hunt with the hounds and run with the hare ceases to be credible, judged by constitutional values. Today, many progressive souls, prating about equal justice but forgetting social realities, condemn benign discrimination for the backwardmost tribal sector although it is a constitutional fundamental. They miss the dialectics of gross class disparities, the dynamics of death sentence on depressed status and the strategies of radical reversal of the suppressive system. The contra-constitutional wave of anti-reservation and opposition to carry-forward rule and promotional reservation is an elitist device using economic have-nots as their ploy. For once protective discrimination of the S.C./S.T. is off, the high-boring will goggle up all the high offices, leaving the poor man’s child far behind, because the elite youth gets class education in costly class schools closed to the rest. Given the same class school opportunity the tribal child will beat the hight-born hallow! Our education, our examinations, our public service selection and professional processing are geared to the megapolis, not rural regeneration. Our class-rooms distort our

destiny. Gandhiji deplored the slavery of *harijan-girijan* humans and predicted a bloody revolution if their lot were not alleviated:

"Working for Economic Equality means abolishing the eternal conflict between capital and labour. It means the levelling down of the few rich in whose hands is concentrated the bulk of the nation's wealth on the one hand, and the levelling up of the semi-starved, naked millions on the other. A non-violent system of government is clearly an impossibility so long as the wide gulf between the rich and the hungry million persists. The contrast between the palaces of New Delhi and the miserable hovels of the poor labouring class nearby, cannot last one day in a free India in which the poor will enjoy the same power as the richest in the land. A violent and bloody revolution is a certainty one day, unless there is a voluntary abdication of riches and the power that riches give and sharing them for the common good".  

In short it is a founding faith and fighting creed of militant social justice inserted in the Preamble and expanded in later Parts that emancipation of the tribal proletariat is a major task of the State. All the institutions of national life are bound, under Article 38, to enliven social and economic justice and the three major instrumentalities of the State — the Executive, the Judiciary and the Legislature — are equally obligated functionally to fulfil, in their respective spheres, this sublime responsibility. If there are feudalists, parliamentarians, civil servants and judges who are unhappy with tribal levelling up and as integral to that process, protective discrimination, they must forsake positions under the Constitution which is the *suprema lex*. One can't enjoy power under the Constitution and be allergic to the panchama proletariat's rapid promotion. That is betrayal. On the contrary, commitment to the Constitution and its ideals is now a fundamental duty. The patriotic inspiration for our Freedom Struggle included uplift of *adivasis* and other socio-economic untouchables.

6. Constitution of India, Article 51A.
The time has come to implement at once, without alibis of 'administrative efficiency' and 'merit principle', the social justice thrust of the Constitution. The stark fact is that, despite judicial bombast and paper plans and multi-point programmes, the Scheduled Tribes are at the victim's end of barbarity and injustice, privation and sharp practice inflicted on them by the 'civilised' gentry.

Under our constitutional order, a socialist rule of law is basic to the social justice complex. This is fundamentally different from the formal Dicean rule of law which can flourish in an unjust system where inequality is writ large in life. Of course, in a capitalist society Dicey did some service by enthroning law and court above all else, leaving law itself to be unjust and inhuman in its substantive content and even processual operation.

In the setting of socialist jurisprudence, the developmental demands of the tribal communities gain jural meaning. Phrase-mongering and verbal balderdash have no place in a society where 36 years after independence millions of tribals are unfree, and unblushingly we still take action to end serfdom which admittedly exists and pass legislation against bonded labour, traffic in human beings and forced labour without even minimum wages. The gap between the word and the deed, the promise-performance hiatus, the bombast and bamboozle of Plans rich with strategies vis-a-vis the Scheduled Caste/Scheduled Tribe sector, the esoteric researches of specialist institutes and the silent sleep to which the results are officially put in the pigeon-holes of the Secretaries, the elite committees with lip-stick legal aid to weaker sections and the noisy social action groups and the harmless noises they make in hills and forests and the total indifference and gross betrayal by the self-styled saviours of tribal people make one wonder why the Constitution is so impotent, Parliament, including Opposition, so mild, court so casual, officialdom so unconcerned and the Planning Commission so inconsequentially eloquent! The villain of the piece is lack of legislative, executive and judicial will to salvage and restore the adivasi to his constitutional birth-right, despite a planned verbosity, strategy of futility and of judicialised injustice. The politics of tribal justice is loaded against
these depressed humans because of the class interests of the spectrum of Parties, from Congress to Communist, plus the crimsonlabelled and communally-oriented plurality of Treasury Benches and Opposition fronts. The various governments in Kerala did not care or dare notify or enforce the make-believe bill passed in 1975 to interdict and nullify alienations of lands of gullible tribals to non-tribal sharpers. The story of the still-born Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act, 1975 is an acid comment on the treatment of adivasis as electorally expendable or manipulable at the polls.

How to generate the political will to liberate the tribal people? By naxalite terrorism and misguided tribal violence or police counterviolence and feudal fury? It becomes vital that the elan of the law comes to the rescue. But sans will, how can law be made or enforced? Intellectuals, humanists, social action groups, radicals, if any, in all parties and professions, must rouse the militant mass consciousness of tribal people to resist unrighteous oppression and demand effective legislation for their human dignity and right, and force the pact of social justice vis-a-vis these hill communities. Today their plight is sad. Pro-Aryan inhabitants and owners of the soil, driven to remote forests first, and now, landless in their own lands survive as bonded labour. Civil Rights Laws, Tribal Sub-Plans, Commissions and all that is done in the name of welfarism are a collection of bubbles unless the exploitative social structure is changed and mutations of social justice wrought into the economic fabric.

Law cannot go it alone and paper legislation is paper tiger even as paper subplans are literary cosmetics and implementation processes statistical counterfeit. It is a pity the Scheduled Caste/Scheduled Tribe Commissioner is a toothless functionary and can deplore but cannot enforce. A Tribal Ombudsman with power to investigate, try and punish when laws for tribal welfare are violated, is the need of the hour. He will hear both sides and himself be a committed tribal with the rank of a High Court Judge. Rather, he will be specially appointed to the Tribal Division of Every High Court to be created, lest Article 226 be invoked to paralyse every little action he takes. Appeal from his
orders must be only to the Supreme Court where too a bench (with a benign ‘bias’ for human rights of Indian sub-humans, may one hope?) will hear such cases. The Judiciary is said to be so divided that social justice for submerged species may well be governed by influences of other planets on the zodiac than the Earth! 7

Tribal courts with powers of affirmative action, freedom from procedural trammels, adversarial blinkers, procedural sophistries and Maxwellian interpretational misguidance and no appeals and revisions save to the Tribal Division of the High Court are necessary. Otherwise welfare laws and protective provisions will be legal traps and promises of unreality. The exotic sophistry of legal justice must be abandoned in favour of a more congenial, mobile, accessible, quick-to-move, inexpensive, easily finalised and broadly just system tuned to the needs of an artless people hungry for a fair deal.

The judicial system has become more sensitized to social justice now, much to the anger of Indian Oxbridge jurist-judges. Much has been achieved in social welfare legislation, much in people-oriented judicial interpretation and procedural simplification. But “the undone vast” is a challenge. Constitutional amendments, minimal though, may be needed, but tribal credibility will be a casualty if the current litigative justice were to be continued as the rule of law.

A new tribal jurisprudence, with processual flexibility, decisional swiftness and early finality, affirmative action strategies and quick execution on the spot of orders passed, is a desideratum. New presumptions under the law of evidence, power to rely on reports relevant to tribal welfare legislation, provision for assistance of social action groups, public interest litigation, test litigation, pro bono initiation and intervention and a host of other mutations to Anglo-Saxon legal methodology must be worked out. Even the substantive law — criminal and civil — will have to be re-written taking just note of the backward status of tribals and proclivities of feudalists.

Article 39-A is a rescue shelter. It reads:—

“Equal justice and free legal aid — The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities”.

Its imaginative and effective operation calls for a dynamic Free Legal Services Scheme. Tribunals of Tribals, for Tribals, by Tribals, with special staff, field personnel, prosecuting agencies, mobile courts, funding social action groups and immunity from political interference are necessary. In a country where dacoits and illicit fire-arms makers have a political lobby, how easy is it to visualise ‘victimisation’ politics against tribals, rendering impotent even a few zealous officials?

It might be argued that tribal exploitation is a global phenomenon. So is murder; war crime and mafia. Does the fact that gruesome criminality is globally spread make wickedness virtue, inhumanity, humanity or feudal wrong, socialist right? We are exploitatively guilty, not innocent by global alibi. The tragedy is that while development of tribal personality is basic to our Constitution and Nehru’s Panchasheel, these tongueless tribals suffer in the name of development — of course, capitalistically and globally! We make them extremists.

Planning is a process which calls for a delicate and carefully balanced system of priorities and must envisage at optimal utilisation of available investible financial resources. In spite of the substantial outlay for tribal development during the sixth plan period, i.e., 1980-85 the Scheduled Caste and Scheduled Tribes Commission and the Minister of State for Home Affairs have made no secret of their unhappiness on the inadequacy of implementing the integrated tribal development projects (ITDPs) and tribal sub-plans (TSP). The following comment is quite telling.
"Numerous other bodies and individuals have expressed similar concern. The evaluation studies of ITDPs and sectoral programmes within TSP areas are not many — but such of them as there are speak of the hiatus between the concept and the reality, the philosophy and the action, the dream and the actuality. Unless this gap is narrowed, the ideal will remain a mere chimera".8

Land is one of the main questions for adivasi justice, even as land reforms, rural and urban, are the backbone of Indian development. Exploitation takes the form of usurious loans and buying up of tribal lands for nominal, colourable consideration. The State of Andhra Pradesh, for instance, passed a few legislation and summed up this phenomenon in the official pamphlet:

The Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 came into force in the Scheduled Areas of Srikakulam, Visakhapatnam, East Godavari and West Godavari with effect from 4th March, 1959. The Regulation as it originally stood prohibited alienation of land without prior permission of the competent authority by tribals in favour of non-tribals. This was extended to the Scheduled Areas of Telengana w.e.f. 1.12.63 by virtue of the A.P. Regulation II of 1963. The Salient features of Regulation I of 1959 and Regulation II of 1963 are:

i) Transfer of immovable property by a member of the Scheduled Tribe to a non-scheduled tribe is null and void.

ii) In case of such transfer of land, the government can restore the land to the tribal owner or his heirs on application by any interested or suo moto.

iii) No land in the Scheduled Areas owned by a member of a scheduled tribe shall be attached and sold in execution of a money decree.

It was, however, observed that inspite of the protection envisaged, the Regulation could not prohibit such transfers.

Land can only be transferred to tribals: The A.P. (Scheduled Areas) Land Transfer (Amendment) Regulation, 1970 amended to plug loopholes in Regulation I of 1959. The amended Regulation prohibited and declared null and void transfer of immovable property situated in the Agency tracts by any person, whether or not such a person was a member of a scheduled tribe. To obviate difficulties that may arise where a person was not able to sell his immovable property to a tribal on reasonable terms, provision was made to surrender the land to government as per Section 3(8) (c) of the said Regulation and on payment of reasonable compensation as per Section 20 of the Andhra Pradesh Ceiling on Agricultural Holding Act, 1961. A statutory presumption in the Regulation is that until the contrary is proved, any immovable property situated in the Agency tracts and in the possession of non-tribal shall be presumed to have been acquired by such a person or his predecessor in possession through a transfer made to him by a member of a scheduled tribe.

The Andhra Pradesh (Scheduled Areas) Land Transfer (Amendment) Regulation, 1971 amended Regulation I of 1959 to facilitate mortgage, without possession, of any immovable property situated in the Agency tracts to any co-operative Society/Land Mortgage Bank, Commercial Bank /Financial Institution approved by the State. The condition is that in the event of default, the property shall be sold only to tribals or co-operative societies consisting wholly of members belonging to scheduled tribes.9

One of the major misfortunes of the Constitution is that almost every welfare measure affecting the vested interests is stalled for long years by court litigation and stay of operation. Meanwhile, all the mischief is done, even if finally the Act is

held intra vires. The Judiciary has been responsible — including the Supreme Court — for delaying land reforms and forcing Parliament to amend the Constitution to salvage major legislative under-taking of national movement. Even 30 years after the Constitution, land reforms are in the laps of the ‘robed’ brethren, wave after wave of stay after stay. Often, the cases swell into thousands, pond for several years, laws stand shelved during this period, at long last they are wholly struck down or partly, and at any rate, the Act gets often useless or obsolete by the mere delay. Not infrequently, what appear to be ‘occult’ grounds to commonsense are lethal judicial missiles — a la definition of ‘family’ in the Kerala Agrarian Law. The Karnataka High Court upset a large number of land tribunal orders, inter alia, because the evidence was not recorded in the hand writing of the Chairman himself, as directed by a rule! Legal mystique compounded by judicialese is too antique for the nation’s comprehension!

Laws were enacted in and around 1975 to give effect to the emancipation of bonded labour most of whom are tribals. But even to-day these *adivasis* are *adimas* (slaves), and flash-in-the-pan decisions of the Supreme Court show that even now these species are economically manacled and the ban does not work or deter the feudalists. At one-time Hon’ble Speaker of the Madhya Pradesh Assembly, at a public function, declared in the seventies that in his estate there were bonded labourers who clung to him! Yes, if pious declarations, without positive rehabilitation measures, are made, the law will hang limp. So, it is suggested that an *Inspectorate* specially designed for the deliverance of these serfs is a *must* if one means business.

It can be easily asserted that in almost all the States in the country, crimes against Scheduled Castes and Scheduled Tribes are high and their investigation and conviction low; literacy and landlessness, hutlessness and worklessness highest. The impact of the National Plan is lowest, of welfare legislation weakest, of litigative justice and of legal aid benefits actually derived, next to nil, of jobs in public services and economic assistance from State and other institutions far less than ‘reservations’. Resources insignificant, social and occupational status still deplor-
able, women's lot too bad for words, in short, equality, fraternity, individual dignity and social justice of tribals are such that a cultural-social revolution, whatever the process, is unavoidable, if the Constitution is to fulfil itself.

Massive hope-mongering boomeranging as militant dalit-panthering—that is all one can say, if the past failures were to cast their shadow on the present projects. The relevant Parliamentary Committee has expressed anxiety in its recommendations about the failure of welfare schemes.

The Prime Minister and Parliament and the Planning Commission may mean well but 'not intention but achievement' is the measure. On paper we are ready for a big break-through. But initiation, monitoring and actualisation are the troika of progress. So, we need a wave of awareness, of subplan literacy and stimulus for tribal participation. State Governments themselves are guilty of masterly inactivity.

The tribals cannot be fed on optimist falsehood much longer. Jargon has limited mileage. Law cannot, except on paper, rise higher than economic reality. So, the focus must be on Tribal economics with law as a tool. A Development Corporation (without politicians befouling the institution), a high-powered ombudsman with infrastructure, a Tribal Commission able to bark and to bite, Nationalised Banks giving all the finance for rehabilitation of tribals and a simplified tribal jurisprudence without paper-logging will aid life. Not condescending welfarism but right to social justice — that is the keynote thought. Mainstreaming, without corrupting, enriching the Indian cultural panorama but abolishing the dismal backwardness, Tribal India must unfold its full potential. That is the dynamics of Social Justice vis-a-vis adivasis.

The problems of the tribal brethren are sombre and macabre. They are the bonded labour, the feudal serfs, the raped womanhood, the murdered and molested les misérables, aliens in their home and exploited by plainsmen, living in slums and dying in distant hills! There are rehabilitation plans for adivasis which prove to be money-making plots for intermediaries. Justice in jungle is still in shambles.
The atrocities on harijans-adivasis qua dalits, according to toned down official reports, show a high level of murder, rape and other offences. For a sample, in 1978 the statistics of crimes against these people are as follows: murder of Harijans 63, Girijans 9, Rape of Harijans 76 and that of Girijans 30. In 1982, the figures are 69 and 4 plus 95 and 20 respectively. This is the Minimum Criminal Programme against scheduled castes and scheduled tribes. Legal Aid is so triumphant that hardly a criminal in this category gets convicted!

As between Scheduled Castes and Scheduled Tribes, the latter suffer more a neglect, less civil service jobs, more dupery and less development. Where there is a will — a political will for salvaging the socio-economic proletariat we euphemistically call scheduled castes and scheduled tribes — there is a way.

The new wave of 'merit' argument for educational institutions vis-a-vis scheduled castes and scheduled tribes students is blowing. Elite merit for export to the United States? Or rural-oriented talent for village development through Third World technology? Moreover, given appropriate opportunity and environment these hill-dwellers will beat the people who claim meritorious. Vivekananda who stung by glaring social injustice, argued:

"The same power is in every man, to the one manifesting more, the other less. Where is the claim to privilege? All knowledge is in every soul, even in the most ignorant, he has not manifested it, but perhaps he has not had the opportunity, the environments were not, perhaps, suitable to him. When he gets the opportunity he will manifest it. The idea that one man is born superior to another has no meaning in Vedanta."

Gandhiji made the little man of India the real man who mattered, harijans-girijans — the lowliest and the lost — being his dearest. He taught us 'Small is Beautiful' but our class-based politicians never learn. Ambedkar fought and drafted needed Arti-

cles but the locomotion of State action went with words, not deeds. Nehru navigated the nation with crimson sails to the heaven of human justice through human law with fabian socialist mariner's compass. He knew the lot of these lowly ones. But the power of the classes is too strong for fabians and our tryst with tribal destiny is still unredeemed. We lack the political will, the social integrity and the legal instrumentality to make tribal justice the measure of our political-social economic democracy. This is the rule of law, sensitized and conscientized by the mandate of the Constitution leading to socio-economic revolution in the structure of Indian society.

Constitutional Law is the interaction of the Constitution and the highest court. The Government, Central and State, have, for their policy and programmes, the Supreme Court's pronouncement in the *Soshit Karamchari Sangh case.* The guidelines are well worth re-telling. After dwelling on the provisions in Part III of the Constitution that embody the distilled essence of casteless and classless egalitarianism, the Court goes on to say:

"... it is a notorious fact of our cultural heritage that the Scheduled Castes and the Scheduled Tribes have been in unfree India nearly dehumanised, and a facet of the struggle for Freedom has been the restoration of full personhood to them together with the right to share in the social and economic development of the country. Article 46 is a Directive principle contained in Part IV. Every Directive Principle is fundamental in the governance of the country and it shall be the duty of the State to apply that principle in making laws, Article 46, in emphatic terms, obligates the State "to promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation". Reading Article 46 together with Article 16(4) the lucent intent of the Constitution-framers em-

erges that the exploited lot of the harijan-girijan groups in the past shall be extirpated with special care by the State. The inference is obvious that Administrative participation by SC & ST shall be promoted with special care by the State. Of course, reservations under Article 16(4) and promotional strategies envisaged by Article 46 may be important but shall not run berserk and imperil administrative efficiency in the name of concessions to backward classes. Articles 335 enters a caveat in this behalf. 13

The Court continued:

"The positive accent of this Article is that the claims of SC & ST to equalisation of representation in services under the State, having regard to their sunken social status and impotence in the power system, shall be taken into consideration. The negative element, which is part of the article, is that measures taken by the State, pursuant to the mandate of Articles 16(4), 46 and 335, shall be consistent with and not subversive of "the maintenance of efficiency of administration". 14

The Court pleaded for more aggressive policies than paper reservations if equality and excellence are the creed. In its view more must be done by a complex of processes by which harijans/girijans will get boosted in 'capabilities', and mainstreamed to share in the Civil Service cake. 15

In State of Kerala v. N. M. Thomas the Court emphasized the rationale for preferential treatment of the Scheduled Castes and Scheduled Tribes in the following words:

12. "The claims of the members of the Scheduled Castes and Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and the posts in connection with the affairs of the Union or of a State".


15. Id., p. 283.

"Our history, unlike that of some other countries, has found a zealous pursuit of Government jobs as a mark of share in State power and economic position. Moreover, the biggest — and expanding with considerable State undertakings — employer is government, Central and State, so much so appointments in the public services matter increasingly in the prosperity of backward segments. The Scheduled Castes and Scheduled Tribes have earned special mention in Article 46 and other 'weaker sections' in this context means not every 'backward class' but those dismally depressed categories comparable economically and educationally to Scheduled Castes and Scheduled Tribes".

In Akhil Bharatiya Soshit Karamchari Sangh 17 the court went on to look at the rationale of reservation of seats in the Legislature.

"To make democracy functional and the republic real the social and economic personality of these backward-most sections had to be restored. From this angle, the ancient injustice on the shudras among the shudras has to be liquidated by effective equalising measures. Power, material power, is the key to socio-economic salvation and the State being the nidus of power, the framers of the Constitution have made provisions for representation of these weaker sections both in the legislature and the executive".18

However the Court noted that all the rehabilitation measures pumped into the governmental process are of less gain and utility. The depressed and the downtrodden do continue to be uneasy. The Court observes:

"More poignant is the fact that all the welfare programmes have been only on paper, not in practical life. With all the 'pampering' complained of, we find that these downtrodden millions remain at the bottom of the socio economic scale and totter in the administrative services surviving with diffi-

18. Id., p. 290.
ulty and securing some promotion here or there amidst a hostile milieu". 19

There is a need for more autonomy and less bureaucracy in the affairs of tribals. Equally important, the economic emancipation and cultural beauty of tribal life must receive special attention. I have no doubt that within bourgeois parameters and subject to elite pressures, the State is striving to implement Fundamental Rights and Directive Principles of State Policy as well as the provisions for political representation. But law is what law does. So we must speed up. India can never really be free, whatever our boasts, till the last tribal is free. This is humanist democracy in our Socialist Republic.

Law and Life are not distant neighbours but locked in integral communion. Free India, based on the rule of Law, has enacted welfare statutes with antyodaya concern. Striking progress has been made, with a fresh feel for our adivasi brethren, with a dynamic perspective and a meaningful sub-plan. But the impact on the oppressive social structure, which is basic to this human bondage, is far from enough. 'We have miles to go' and 'promises to keep' since cultural desertification has made forest-dwellers desperate destitutes.

19. Ibid.