



RIGHTS AND INTEREST OF INDIGENOUS PEOPLE: IN POST INDEPENDENT INDIA FROM THE PERSPECTIVE OF HUMAN RIGHTS

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Abstract:

People who inhabited a land before it was conquered by colonial societies and who consider themselves distinct from the societies currently governing those territories are called Indigenous peoples. Large areas of the earth's surface are inhabited by substantial number of Indigenous Peoples. According to rough estimates, globally they account for about one sixth of the population; there are some 370 million indigenous people around the world, the rights of who are often ignored, yet, due to their geographical spread across continents and countries, Indigenous Peoples. They live in nearly all the countries on all the continents of the world and form a spectrum of humanity, ranging from traditional hunter gatherers and subsistence farmers to legal scholars. Despite the extensive diversity in indigenous communities throughout the world, all indigenous peoples have one thing in common- they all share a history of injustice. The nations of the world refuse to recognize that indigenous peoples have human rights. They have been denied the right to participate in governing process of the current state systems. Conquest and Colonization have attempted to steal their dignity and identity as indigenous peoples, as well as the fundamental right of self-determination.

Key words: *Indigenous people, Human Rights, Law, Principles, Development, etc.*

Introduction:-

The well-known Stephan Corry observed that “The imperial era was largely based on the dispossession of most of the world’s indigenous people ... It cannot be considered over until the world accepts these peoples’ rights”.³ The Indigenous issue has attained importance in India as a whole during the last two decades but the manner of claiming this status in the Northeast is different

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³ Stephen Corry, Director of Survival International, interviewed by Haider Rizvi, UN Faces Test on Native Rights, Inter Press Service, October 13, 2006.



from that in “Mainland” India. The People who inhabited a land before it was conquered by colonial societies and who consider themselves distinct from the societies currently governing those territories are called Indigenous Peoples.⁴ In many parts of the world, indigenous peoples are fighting to protect their homelands from the kinds of environmental destruction that some people call “development”.

The United Nations Organisation (UN) speaks of at least 5,000 indigenous groups with a population of 300 millions living in more than 70 countries but it has never defined the concept. In South Asia “the majority populations have lived in the area for millennia” (Sanders 1993:126). Thus, the indigenous issue is different in India from that of the West. Besides, most western countries recognize the indigenous status while the Indian State does not. Thus, in India it is a self-imposed identity that most Scheduled tribes in “mainland” India claim, based on chronology alone. Some Dalit groups contest this status of some of them but claim it for themselves on the plea that they have been in the country for centuries before them as well as the Dravidians. Some Tamil political parties claim that the Dravidians are indigenous to India and that the Aryans who came from outside imposed Brahminism on them.

“Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”⁵. In India, 461 ethnic groups are recognized as Scheduled Tribes. These are considered to be India's indigenous peoples. In mainland India, the Scheduled Tribes are usually referred to as Adivasis. With an estimated population of 84.3 million, they comprise 8.2% of the total population.⁶

Identification of indigenous peoples:-

Convention No. 169 of the International Labour Organization (ILO) provides a set of subjective and objective criteria, which are jointly applied to guide the identification of indigenous peoples⁷ in a given country. According to these criteria, indigenous peoples:

- Descend from populations who inhabited the country or geographical region at the time of conquest, colonization, or establishment of current state boundaries;

⁴ <http://www1.umn.edu/humanrts/edumat/studyguides/indigenous.html>

⁵ Draft Declaration on the Rights of Indigenous Peoples, Article 3.

⁶ www.iwgia.org/regions/asia/india last access 26/12/2016

⁷ The Convention uses the inclusive terminology of “indigenous and tribal peoples” and ascribes the same set of rights to both groups. In Latin America, for example, the term “tribal” has been applied to some Afro-descendant communities.



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- Retain some or all of their own social, economic, cultural, and political institutions, irrespective of their legal status;
- Have social, cultural, and economic conditions that distinguish them from other sections of the national community;
- Have their status regulated wholly or partially by their own customs or traditions or by special laws or regulations;
- Identify themselves as indigenous peoples

Other characteristics highlighted by a number of institutions are:

- A special relationship with land and natural resources;
- A history of oppression and ongoing conditions of non-dominance; » Aspirations to continue to exist as distinct peoples.

Problems of Indigenous People:-

Indigenous peoples are being subjected to various unimaginable sufferings. Their miseries are being further compounded due to their economic status. Most of the Indigenous People are not only poor but uneducated to have not been fortunate enough to receive the bare minimum of education. Hence the awareness level is also low and on that account lag far behind others. A contributory factor towards their plight is poverty. The Human rights movement has begun to recognize the centrality of poverty and their worst consequences in many Human Rights violations.⁸“Indigenous peoples around the world have sought recognition of their identities, their ways of life and their right to traditional lands, territories and natural resources; yet throughout history, their rights have been violated. Indigenous peoples are arguably among the most disadvantaged and vulnerable groups of people in the world today. The international community now recognizes that special measures are required to protect the rights of the world’s indigenous peoples”⁹.

⁸ Fernanda Doz Costa: Poverty and Human rights: From Rethoric to Legal Obligation, A critical account of Conceptual Frameworks, SUR International Journal of Human Rights, No. 9, December, 2008, p.82

⁹ United Nations Permanent Forum on Indigenous Issues (UNFPII), accessed Dec. 26, 2016



Human rights violations against indigenous peoples:-

India has witnessed an increase in atrocities against indigenous peoples/tribals in recent years. According to the “Crime in India 2013” report, published in 2014 by the National Crime Records Bureau (NCRB) of the Ministry of Home Affairs, a total of 6,793 crimes committed against tribals were reported in the country during 2013, as compared to 5,922 cases in 2012, an increase of 14.7%.⁴ These are only the reported cases of atrocities committed by non-tribal, and do not include cases of human rights violations by the security forces.¹⁰

Indigenous Peoples and UN:-

The United Nations has committed its unwavering support to a future where all indigenous peoples will enjoy peace, human rights and well-being, and has responded to indigenous peoples’ demands, welcoming them as partners. The United Nations Declaration on the Rights of Indigenous Peoples was adopted in September 2007, and the Permanent Forum on Indigenous Issues meets annually at UN Headquarters, bringing together indigenous peoples, Member States, NGOs, UN agencies and other intergovernmental organizations. Much work remains to be done in advancing the implementation of the United Nations Declaration on the Rights of Indigenous Peoples. One condition for facilitating the implementation of the Declaration is information about the state of the world’s indigenous peoples. The Permanent Forum recognized this in its first session when it recommended that the United Nations system produce a publication “on the state of the world’s indigenous peoples, containing data on indigenous peoples and discussing issues relating to indigenous peoples in the thematic areas within the Forum’s mandate.”¹¹ It based on the thematic areas which highlights some major issues of indigenous peoples. In a world confronted by multiple crises, indigenous peoples remain committed to their struggles, and their cultures continue to be vibrant while their traditional knowledge is an invaluable source of ingenuity. Indigenous peoples are stewards of some of the most biologically diverse areas of the globe, and their biological and cultural wealth has allowed indigenous peoples to gather a wealth of traditional knowledge which is of immense value to all humankind and it discussed many of the issues addressed by the Declaration on

¹⁰India_IW2015_web.pdf

¹¹ Permanent Forum on Indigenous Issues, Report on the first session (12-24 May 2002) E/2002/43/Rev.1 Para 8.



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the Rights of Indigenous Peoples and is a cooperative effort of independent experts working with the Secretariat of the Permanent Forum on Indigenous Issues. It covers poverty and well-being, culture, environment, contemporary education, health, human rights, and emerging issues.

The right to self-determination:-

The right of self-determination of peoples is a fundamental principle in international law. It is embodied in the Charter of the United Nations and the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. "All peoples have the rights of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."¹²

The right of self-determination has also been recognized in other international and regional human rights instruments such as Part VII of the Helsinki Final Act 1975 and Article 20 of the African Charter of Human and Peoples' Rights as well as the Declaration on the Granting of Independence to Colonial Territories and Peoples. It has been endorsed by the International Court of Justice. Furthermore, the scope and content of the right of self-determination has been elaborated upon by the United Nations Human Rights Committee and Committee on the Elimination of Racial Discrimination as well as international jurists and human rights experts.

Legislation Concerning Indigenous Peoples:-

India is signatory to the ILO Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries and it has legal responsibilities for its implementation.¹³The Supreme Court in its latest judgment on 5 January 2011 while dismissing the Criminal Appellate Jurisdiction arising out of Special Leave Petition (Crl) No. 10367 of 2010¹⁴ unequivocally asserted that Scheduled Tribes are indigenous peoples of India and the apex court further went on to describe the history of oppression from the days of Mahabharata.

¹²Article 1, paragraph 1 of Charter of the United Nations and the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights

¹³ www.iwgia.org/regions/asia/india last seen 26/12/2016

¹⁴Kailas & Others.. Appellant (s) -versus- State of Maharashtra



India has several laws and constitutional provisions, such as the Fifth Schedule for mainland India and the Sixth Schedule for certain areas of north-east India, which recognize indigenous peoples' rights to land and self-governance. The laws aimed at protecting indigenous people's rights, however, numerous shortcomings and their implementation is far from satisfactory.

The Indian government voted in favour of the UNDRIP in the UN General Assembly. However, it does not consider the concept of "indigenous peoples", and thus the UNDRIP, applicable to India.

The Human Rights at Issue

The human rights of indigenous people and peoples are explicitly set out in the ILO Indigenous and Tribal Peoples Convention (No. 169), the Universal Declaration of Human Rights, the International Covenants, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, and other widely adhered to international human rights treaties and Declarations. They include the following indivisible, interdependent and interrelated human rights.¹⁵

The human right to freedom from any distinction, exclusion, restriction or preference based on their indigenous status which has the purpose or effect of impairing the enjoyment of human rights and fundamental freedoms those are:

- The human right to freedom from discrimination in access to housing, education, social services, health care or employment.
- The human right to equal recognition as a person before the law, to equality before the courts, and to equal protection of the law.
- The human right of indigenous peoples to exist.
- The human right to freedom from genocide and 'ethnic cleansing'.
- The human right to livelihood and work which is freely chosen and to subsistence and access to land to which they have traditionally had access and relied upon for subsistence.

¹⁵ . <http://www.pdhre.org/indigenous.html>. last access 26/12/2016



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- The human right to maintain their distinctive spiritual and material relationship with the lands, to own land individually and in community with others, and to transfer land rights according to their own customs.
- The human rights to use manage and safeguard the natural resources pertaining to their lands.
- The human right to freedom of association.
- The human right to enjoy and develop their own culture and language.
- The human right to establish and maintain their own schools and other training and educational institutions, and to teach and receive training in their own languages.
- The human right to full and effective participation in shaping decisions and policies concerning their group and community, at the local, national and international levels, including policies relating to economic and social development.
- The human right to self-determination and autonomy over all matters internal to the group, including in the fields of culture, religion, and local government.

In recognition of the fact that indigenous and tribal peoples are likely to be discriminated against in many areas, the first general, fundamental principle of The Tribal People's Convention No. 169 is non-discrimination. Article 3 of the Convention states that indigenous peoples have the right to enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. In Article 4, the Convention also guarantees enjoyment of the general rights of citizenship without discrimination. Another principle in the Convention concerns the application of all its provisions to male and female indigenous persons without discrimination (Article 3). Article 20 provides for prevention of discrimination against indigenous workers.¹⁶

In response to the vulnerable situation of indigenous peoples, Article 4 of the Convention calls for special measures to be adopted to safeguard the persons, institutions, property, labour, cultures and environment of these peoples. In addition, the Convention stipulates that these special measures should not go against the free wishes of indigenous peoples.

Recognition of the cultural and other specificities of indigenous and tribal peoples and consultation of the Tribal People's convention No. 169

¹⁶Article by [Akanksha Sharma](#) Tribal laws in india and tribal conventions on rights of indigenous people worldwide, Feb 25, 2012 or access at <http://www.articlesbase.com>.



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Indigenous and tribal peoples' cultures and identities form an integral part of their lives. Their ways of life, customs and traditions, institutions, customary laws, forms of land use and forms of social organization are usually different from those of the dominant population. The Convention recognizes these differences, and aims to ensure that they are protected and taken into account when any measures are being undertaken that are likely to have an impact on these peoples. The spirit of consultation and participation constitutes the cornerstone of Convention No. 169. The Convention requires that indigenous and tribal peoples are consulted on issues that affect them. It also requires that these peoples are able to engage in free, prior and informed participation in policy and development processes that affect them. The principles of consultation and participation in Convention No. 169 relate not only to specific development projects, but also to broader questions of governance, and the participation of indigenous and tribal peoples in public life.

In Article 6, the Convention provides a guideline as to how consultation with indigenous and tribal peoples should be conducted:

Consultation with indigenous peoples should be undertaken through appropriate procedures, in good faith, and through the representative institutions of these peoples;

The peoples involved should have the opportunity to participate freely at all levels in the formulation, implementation and evaluation of measures and programmes that affect them directly;

Another important component of the concept of consultation is that of representatively. If an appropriate consultation process is not developed with the indigenous institutions or organizations that are truly representative of the peoples in question, then the resulting consultations would not comply with the requirements of the Convention.

The Convention also specifies individual circumstances in which consultation with indigenous peoples is an obligation.

Consultation should be undertaken in good faith, with the objective of achieving agreement. The parties involved should seek to establish a dialogue allowing them to find appropriate solutions in an atmosphere of mutual respect and full participation. Effective consultation: in which the concerned have an opportunity to influence the decisions taken by them. This means real and timely consultation. For example, a simple information meeting does not constitute real consultation, nor does a meeting that is conducted in a language that the indigenous peoples present do not understand.



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Conclusion:-

Governments must seek indigenous peoples' views and opinions and work together with them through their chosen representatives in order to gain their free, prior and informed consent before laws are passed or policies or programs are put in place that will affect indigenous peoples. Indigenous peoples have the right to their own political, economic and social systems, and to follow their own traditional ways of growing food and other activities that help them in their daily living. They have the right to seek justice where this right is taken away. Governments need to respect and recognize indigenous peoples' laws and traditions about land and resources and take action to have these respected in non-indigenous legal systems. Indigenous peoples have the right to get help from governments to protect their lands. Indigenous peoples have the right to their environment being protected. Governments will respect and protect the right of indigenous peoples to develop and protect their lands, water bodies and other natural resources.

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