

RIGHTS OF INDIGENOUS PEOPLE : NATIONAL AND INTERNATIONAL PERSPECTIVE

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Who are Indigenous People?

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, As defined by the United Nations Special Rapporteur to the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Indigenous communities, peoples and nations are: ...those which having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop, and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.

On the idea of “indigenous peoples” The issue of the rights of indigenous peoples, the subject of this plenary session, raises complex and difficult questions. It is estimated that there are more than 370 million indigenous people spread across 70 countries. They are distinct from the dominant societies in their countries. They have unique traditions, distinct culture and peculiar approaches towards land, life and religion. They are usually described as descendants of those who inhabited a country at the time when the people of dominant cultures or ethnic groups occupied the country. The dominant groups attained supremacy through conquest, occupation or settlement.

Who are the indigenous peoples of India?

In India, 461 ethnic groups are recognized as *Scheduled Tribes*,

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and these are considered to be India’s indigenous peoples. In mainland India, the Scheduled Tribes are usually referred to as *Adivasis*, which literally means indigenous peoples. With an estimated population of 84.3 million, they comprise 8.2% of the total population. There are, however, many more ethnic groups that would qualify for Scheduled Tribe status but which are not officially recognized. Estimates of the total number of tribal groups are as high as 635. The largest concentrations of indigenous peoples are found in the seven states of north-east India, and the so-called “central tribal belt” stretching from Rajasthan to West Bengal.

India has several laws and constitutional provisions, such as the Fifth Schedule for mainland India and the Sixth Schedule for certain areas of northeast India, which recognize indigenous peoples’ rights to land and self-governance. The laws aimed at protecting indigenous peoples have numerous shortcomings and their implementation is far from satisfactory. India has a long history of indigenous peoples’ movements aimed at asserting their rights.

Violent conflicts broke out in indigenous areas all over the country, but above all in the Northeast and the so-called “central tribal belt”. Some of these conflicts have lasted for decades and **continue** to be the cause of extreme hardship and serious human rights violations for the affected communities.

The Indian government voted in favour of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in the UN General Assembly. However, it does not consider the concept of “indigenous peoples”, and thus the UNDRIP, applicable to India.

At the United Nations, the government of India consistently denied existence or applicability of the concept of “indigenous peoples” to India. India had consistently opposed the UN Declaration on the Rights of Indigenous Peoples by the United Nations though it voted in favour at the General Assembly on 13 September 2007.

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. Nonetheless the concept of indigenous peoples has often been questioned in India.

International Human Rights Instruments:

Specific instruments on indigenous peoples' rights :

Indigenous Peoples' rights overlap with many other human rights. Many important Indigenous Peoples' rights are not framed in specific Indigenous Peoples' rights treaties, but are part of more general treaties, like the Universal Declaration of Human Rights or the Convention on the Prevention and Punishment of the Crime of Genocide. Specifically for the protection of rights of indigenous peoples at international level, there are many provisions which can be described as follows.

The UN Declaration on the Rights of Indigenous Peoples, (UNDRIP) : Adopted in 2007, the UNDRIP recognizes the wide range of basic human rights and fundamental freedoms of indigenous peoples such as the right to unrestricted self-determination and inalienable and collective land and resource right. It also establishes guarantees against ethnocide and genocide.

ILO Convention No. 169 on Indigenous Peoples : Adopted in 1989, it reflects changes in the position of indigenous and tribal populations and greater understanding of their position by governments, employers and workers.

ILO Convention No. 107 of 1957 concerning Indigenous and Tribal Populations In 1957, the ILO adopted convention 107 to be applied to indigenous and tribal populations in independent countries and aimed at protecting these peoples against abuses. In 1989, the revised version: ILO Convention 169 was adopted

Draft Declaration on the Rights of Indigenous Peoples :

This is the most comprehensive statement of the rights of Indigenous Peoples to date, establishing collective rights to a greater extent than any other document in international human rights law. It establishes the rights of Indigenous Peoples to the protection of their cultural property and identity as well as the rights to education, employment, health, religion, language and more. It also protects the right of Indigenous Peoples to own land collectively. Although States are not legally bound by the Declaration, it will exert a considerable amount of moral force when adopted by the General Assembly. Consisting of 46 Articles, the draft Declaration is divided into nine parts:

United Nations Organs for Indigenous Peoples' Human Rights

UN Working Group on Indigenous Populations : The United Nations Working Group on Indigenous Populations, a subsidiary organ of the Sub-Commission on the Promotion and Protection of Human Rights is the first and only UN body involved exclusively with matters concerning the human rights of Indigenous Peoples, It reviews national developments concerning the promotion and protection of Indigenous Peoples' human rights and develops international standards for Indigenous Peoples' human rights and freedoms. The Working Group also undertakes studies on a variety of issues affecting Indigenous Peoples

UN Permanent Forum on Indigenous Issues : In 2000. the Economic and Social Council (ECOSOC), one of the six main organs of the United Nations, established the Permanent Forum on Indigenous Issues to consider a wide range of issues affecting Indigenous Peoples. The Forum, which includes eight Indigenous experts, is the first and only international body in the United Nations that has Indigenous Persons as members., the environment, education, health, and human rights. From these discussions, the Forum

UN Working Group on the Draft Declaration on the Rights of Indigenous Peoples : This Working Group of the Commission on Human Rights meets once a year and is responsible for reviewing and debating the draft Declaration, The Declaration will be non-binding for States, however, it will serve as a powerful statement of universally accepted norms as it will be adopted by consensus of all member states of the UN and will provide a strong basis for arguing for greater legal protection for indigenous rights in many countries.

UN Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous peoples : Rodolfo Stavenhagen was appointed as the first Special Rapporteur on Indigenous Peoples on 24 April 2001. His mandate is as follows: to gather information on violations of human rights and fundamental freedoms of Indigenous Peoples, to formulate recommendations to prevent and remedy such violations and to work together with other experts of the UN Commission on Human Rights and of the Sub-Commission on the Promotion and Protection of Human Rights.

Constitutional and legal safeguards in India : Apart from administrative authorities including government wings of Department of Tribal Welfare both at central and state levels and interstate council, India has several independent bodies such as National Human Rights Commission, State Human Rights Commission, Minorities Commissions, Scheduled Caste and Scheduled Tribes Commission, National Commission for Women etc. to safeguard the human rights of peoples who claim to be treated as indigenous peoples. International efforts for their protection have their roots in the concern for the protection of their rights.

India has the largest concentration of tribal people anywhere in the world except perhaps in Africa. The prominent tribal areas constitute approximately about 15 per cent of the total geographical area of the country. The main concentration of tribal people is the central tribal belt in the middle part of the India and in the north-eastern states. However, they have their presence in all states and union territories. There are nearly 533 tribes (with many overlapping types in more than one State) as per notified Schedule under Article 342 of the Constitution of India in different States and Union Territories of the country with the largest number of 62 being in the State of Orissa.

The Constitution of India provides for a comprehensive framework for the socio-economic development of Scheduled Tribes and for preventing their exploitation by other groups of society. It provides the necessary safeguards for the rights of tribal peoples in Articles 15, 16, 17 and 23 of the Ministry of Tribal Affairs, Government of India. Article 46 of the “directive principles of the state policy” which are “fundamental in the governance of the country” states: “The State shall 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.”

Further Article 330 of the Constitution of India makes reservation of seats for Scheduled Tribes in the House of People. I may also mention Article 335 that requires the government to consider the claims of Scheduled Tribes in appointments to services and posts in

connections with the affairs of the Union or of a State.

In October 1999 a Ministry of Tribal Affairs was created by the Government of India through the bifurcation of the Ministry of Social Justice and Empowerment. The objective was to ensure more focused attention on integrated socio-economic development of the most underprivileged section of Indian society, the Scheduled Tribes in a Coordinated and planned manner.

In case of **Samantha v. State of A.P. (1997)8 SCC 191** it is said that “The Fifth and Sixth schedules constitute an integral scheme of the constitution with direction, philosophy and anxiety to protect the tribals from exploitation and to preserve natural endowment of their land for their economic empowerment to cognate social and economic democracy with liberty, equality, fraternity and dignity of their person in our political Bharat.” In spite of above provision in constitution many other Acts are there to protect and preserve the rights of tribes in India, PESA and Forest Right Act are few of them Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA) is a law enacted by the Government of India to cover the “Scheduled areas”, which are not covered in the 73rd amendment or Panchayati Raj Act of the Indian Constitution. It was enacted on 24 December 1996 to enable Gram Sabhas to self govern their natural resources.¹¹¹ It is an Act to provide for the extension of the provisions of Part IX of the Constitution relating to the Panchayats to the Scheduled Areas.

The Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA, 1996) was enacted and came into operation on 24 December, 1996. This Act extends Panchayats to the tribal areas of nine States, namely, Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand Maharashtra, Madhya Pradesh, Orissa and Rajasthan, which intends to enable tribal society to assume control over their own destiny to preserve and conserve their traditional rights over natural resources.

All the State Governments have enacted their State Legislations in pursuance with the PESA, 1996. However, the State Governments are required to amend all the relevant Acts/Rules to bring them in conformity with the provisions of the PESA, 1996.

Scheduled Tribes and other Traditional Forest Dwellers (recognition of forest rights) Act : After the enactment of the Act now Tribals and other forest dwellers will have the right to cultivate forest land to the extent under occupation, the right to own, collect, use and dispose of minor forest produce, rights inside forests which are traditional and customary like grazing. Tribals who have been living in and depending on forests, for their livelihood prior to 13 December, 2005, and other traditional forest dwellers who have been living in and depending on forests for their livelihood, for three generations prior to 13 th December, 2005 will have these rights.

Conclusion : When we go through provisions for indigenous people on international level, there are many laws, conventions, forums, declarations, and working groups Rapporteur etc. particularly for indigenous people. In other countries indigenous groups are well defined for example in America and African countries.

Though India has signed many international declarations like The UN Declaration on the Rights of Indigenous Peoples, (UNDRIP) and ILO convention no. 169 on indigenous peoples, yet there is no concept of Indigenous people in India. In Indian Constitution provisions for “Schedule Tribes” are available but Constitution of India does not define the “Schedule Tribes”. Article 342 embodies the law that President may specify by notification the tribes or tribal communities with respect to each State or union territory. Articles 15(4),16(4),19(1),275,239, are mainly framed for Schedule Tribes in Indian Constitution.

When we talk about Indigenous People in Indian scenario we do not found any specific provision for them. My opinion is first of all Indian Government should specify the characteristics of Indigenous people. Then there should be declaration about groups which would be considered as indigenous. Because India has signed many declarations related to Indigenous People, this exercise is necessary to segregate Indigenous People in India first.

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