

PROTECTION OF RIGHTS OF INDIGENOUS PEOPLE IN INDIA: A STUDY IN HUMAN RIGHTS PERSPECTIVE

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Abstract: India being a pluralistic democratic country has the largest population of Indigenous People living in hills, plains and forest regions. These indigenous people are aboriginal communities having separate ethnic identity, traditional customs, norms and distinct governing system that are continue since time immemorial. The social and cultural traits of indigenous people distinguish them from the dominant community of pan- India. In Constitutional and legal parlance, they are known as 'Scheduled Tribe' and special they as these people are constitutional rights and legal status has been granted particularly under the Fifth and the Sixth Schedule of the Constitution of India. In order to protect the indigenous and tribal communities against exploitation and intrusion from outsiders and to protect their distinct cultural identity and social system, the Indian State has created 'Scheduled Areas' which are predominantly inhabited by indigenous communities. Under the Fifth Schedule and Sixth Schedule of the Constitution of India, special administrative arrangements have been provided for 'Scheduled Areas' for safeguarding the fundamental rights and development of tribal communities. However, over the past seven decades in India, the situation of indigenous people are not much improved, rather, they have been suffering from discrimination, exploitation and social exclusion from state, society and market forces and actors. Benefit of development has not been reached to them, ironically, it has harmed more by displacing them from their place of habitation and deprived them from their natural resources upon which their survival depended.

This paper aims to examine the status of indigenous people in the country and explores what kind of human rights are available in domestic legal framework to them. The modest attempt has been made to identify the problems of indigenous people in the country and what are the possible remedies to ameliorate their conditions.

Introduction:

Indigenous People: Definitional Debate: Defining the concept of "indigenous" while recognizing who are indigenous people is very complex task. There is no proper consensus on conceptualization of term 'indigenous' and its applicability in recognizing who are considered to be indigenous people in a given territory. In fact, indigenous has synonyms like 'aboriginal' and 'organic' social identity. The aboriginal or organic identity is considered as a salient feature of indigenous people who resides in a particular region since pre-historic and pre-colonial era.

The controversy about the meaning and application of indigenous people as an international concept is mainly based on norms applicable to indigenous peoples and their relationship within the State and the individuals. Prof. Benedict Kingsbury, a leading academician of international law specialized on indigenous people studies viewed that, 'controversy arises in particular from the implementation that distinctive rights of indigenous people are justified by the destruction of their previous territorial entitlements and political autonomy wrought by historic circumstances of invasion and colonization.'¹

It is difficult to define the 'indigenous' in South Asian context, because of its relative nature of application to the relevant groups and communities inhabiting in sub-continent for centuries. For example, the *Veddas* of Sri Lanka and the *Adivasis* of India and Bangladesh were colonised well before the European imperialist powers created the Commonwealth.² A similar situation arises in the case of *Sindhis*, *Baluchis* or *Pakhtuns* of modern day Pakistan and Afghanistan. Colonization led to the

destruction of many indigenous peoples whereas, the survivors were conquered or subjugated. The relative and slipperiness in the conception of 'indigenous' in the South Asian context meant that in the transformation of the colonial world to a world of new nation-states, the term 'indigenous' was equated with those wanting independence from Western imperialists or as one author has appropriately argued, was based on "pigmentational" or "racial" sovereignty.³

The differences in understanding the concept of indigenous and who constitute the indigenous people also surfaced during the adoption of UN Declaration on the Rights of Indigenous Peoples at United Nations forum. Most of the south Asian countries had made objection over the definition of 'indigenous people' and application of 'right to self-determination' in their respective countries at the time of voting in Human Rights Council, particularly the representatives of Pakistan and India had categorically objected.⁴ In fact, it was understood by some south Asian countries that all peoples in their territorial boundaries are indigenous and, therefore, no distinctions could, on indigeness, be made. Due to this reason, Afghanistan, Pakistan, India, or Bangladesh had not ratified the ILO Convention (No. 169; 1989) concerning to Indigenous and Tribal peoples in independent countries.⁵

Notably, only acceptable definition of indigenous people has been given by UN Special Rapporteur Martinez Cobo. He defines indigenous people as under:

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 the 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.⁶

Indigenous People and International Law: Indigenous peoples did not have adequate recognition in the international legal framework till 1980s. The only international agency, the International Labour Organization (ILO) has been working on the issue of indigenous people since 1920s, and it had contributed significantly in addressing the problems of indigenous and tribal peoples at global level. It has adopted important conventions related to indigenous people i.e The ILO Convention on Indigenous and Tribal Population, 1957 (No. 107) and later, this convention was replaced by another legally binding convention i.e The ILO Convention on Indigenous and Tribal Peoples (No. 169). However, it was the emergence of indigenous people's movement at global level during 1980s, that drew the global attention towards the problems of indigenous and tribal communities. Various projects were undertaken for investigating the wide-spread discrimination of indigenous peoples in different countries. Subsequently, United Nations established a Working Group on the Indigenous Populations in 1982.⁷ The mandate of the Working Group included the development of standard-setting instruments that led to the first draft of the Declaration in 1994. The Declaration was important in understanding the problems of indigenous people and recognizing the rights of indigenous people. It provided the recognition of rights of indigenous people within legal and normative international order. It brought together all preexisting rights relevant to indigenous peoples into one coherent document. The United Nations took the historic step in adopting a Declaration on the Rights of Indigenous Peoples (UNDRIP) on 13 September 2007.⁸

At the other global forums also the rights of indigenous people has been recognized. In 1987, the International Commission on Environment and Development took the significant cognizance of rights of indigenous people. It emphasized that these people need special attention as the forces of economic development disrupt their traditional life-style. It advocated that life style of indigenous people can offer modern societies many lessons in the management of resources in complex forest, mountain and dry land ecosystem. The Commission also recommended for (a) recognition of their traditional rights (b) to give them right to have a decisive voice in formulating policies about resource development in their area, and (c) the protection of traditional rights should be accompanied by positive measures to enhance the well being of the community in ways appropriate to the life style of these groups.⁹

Later in 1992, the Earth Summit under its principle 22 also recognized that ‘indigenous people and their community and local communities, have a vital role in environmental management and development because of their traditional knowledge and practice, which are ecological friendly and preserving the biodiversity of the earth. It appealed the state to recognize and duly support their identity, culture and interest and enable their effective participation in the achievement of sustainable development.’¹⁰

For addressing the problems of indigenous people in the world wide and recognizing human rights of indigenous people, the United Nation General Assembly had declared the year 1993 as ‘the International year for the World’s Indigenous People’. The International Labour Organization (ILO) Convention no. 107- Indigenous and Tribal Populations’ adopted in 1957, had advocated for the integration and assimilation of its multicultural population (indigenous and tribal people) into the mainstream of the national life. Later on in 1989, the ILO Convention of Indigenous and Tribal People no 169 has declared that the distinct cultural traditions of indigenous and tribal people must be protected by the national laws and place them on an equal footing in terms of their contribution to the making of the world’s culture. It further declared various rights of indigenous people, such as—(a) right of ownership and possession over the lands which they have traditionally occupied (Article 14); (b) recognition and protection of their cultural, social religious and spiritual values and practice (Article 5); (c) obligation of the Government to consult with tribal people on all legislative or administrative measures affecting them and established ways for tribal people to participate in decision making by the Government (Article 6); (d) right of tribal people to decide the priorities for any development affecting them or their land (Article 7); (e) right of tribal people to their land’s natural resources, minerals, benefit of their exploitation and right to be compensated for damage (Article 15); (f) guarantee to respect tribal people’s customs and laws (Article 8).¹¹

The United Nation Development Programme (UNDP) has also in 2001, adopted a policies of engagement relating to indigenous people.¹² The UNDP has adopted a Policy to seek participation of indigenous people in decision making process particularly those that may effects their human development and environment. It has also recognized their right to self-determination. It also advocates for the proper rehabilitation and reintegration of displaced indigenous people because of developmental activity, and their ownership rights pertaining to forest produces, forest land and intellectual rights including indigenous knowledge.

The UN Declaration on the Rights of indigenous People, 2007 set up important standards for treatment of indigenous people and restoration of their human rights. It declares that indigenous people have suffered from ‘historic injustice’ and they have been prevented from exercising their right to development in accordance with their own needs and interest. They should not be discriminated of any kind. The Declaration comprehensively elaborate on the basic inherent rights of the indigenous people and mandates the countries to adopt them and evolve legislative and administrative measures to implement them. The declaration has enumerated several rights of indigenous people.

Significantly, the UNDRIP has synthesized the individual and collective rights of indigenous people between the state and the individual. The Preamble of the Declaration says, “Indigenous people are entitled without discrimination to all human rights recognized within international law, and that Indigenous Peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples.” The Declaration is aimed to serve “as a standard of achievement to be pursued in a spirit of partnership and mutual respect’ between states and indigenous peoples, providing “the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.”¹³

Indigenous people in India: Demographic Scenario: India being a pluralistic democratic country has the largest indigenous and tribal population in Asia (8.43 million), which is primarily concentrated in two different regions. One concentration of tribes lives along the Himalayas stretch ranging from the hills of north-west region to north eastern regions of the country.¹⁴ In the northeastern states of the country about ninety per cent of the population is tribal. Another concentration of indigenous

population exists in central peninsular regions of the country.¹⁵ Most of the indigenous people resides in the hills and forest regions and largely depends upon the forest and agricultural farming for their livelihood.¹⁶

In Indian social context, the *Adivasi*(tribes) are not considered as a part of the four *Varnas* of Hindu society. Unlike castes, tribes tend to form self-sufficient economic units. The tribal society tends to be egalitarian, with its leadership based on ties of kinship and personality rather than on heredity status. Tribes significantly consist of segmentary lineages whose extended families provide the basis for social organization and control. They don't recognize the hegemony of any religious authority outside their clan. Professor Burman Roy views that tribes are "peoples whose political and social organization is based primarily on moral binding among kins, real and putative, who have a custodial attitude towards nature and are outside the jati(caste) Varna system."¹⁷

Indian Tribes: Constitutional and Legal Safeguards: Though India has not officially accepted the presence of 'indigenous peoples' within its territory at United Nations forums, however, the indigenous or tribal communities, popularly known as *Adivasis* (meaning original inhabitants) in the country are legally recognized as 'Scheduled Tribes' in the Constitution of India.¹⁸ The government of India has federally recognized 630 Scheduled Tribes communities residing different parts of the country and speaking a plethora of different languages.¹⁹ In order to protect their distinct social and cultural attributes and ethnic identities, indigenous peoples have been provided a 'special protection' apart from other general constitutional rights i.e. 'fundamental rights' as a citizen under the Constitution of India. Under the Part III of the Indian Constitution, Scheduled Tribes are provided all fundamental rights similar to other citizens of the country, such as the right to equality, freedom from exploitation, right to religion and other civil and democratic rights.²⁰ Besides this, the Indian state has the political obligation to take special measures to promote the educationally and economic interests of the Scheduled Tribes.²¹ Notably, certain percentage of seats are reserved in the union parliament and legislative assemblies for providing political participation in the decision making process to indigenous and tribal communities.²² In order to protect the indigenous and tribal communities against exploitation and intrusion from outsiders and to protect their distinct cultural identity and social system, the Indian State has created 'Scheduled Areas' which are predominantly inhabited by indigenous communities. The non-tribal or outsiders are legally prohibited to settle and acquire property in these 'Scheduled Areas'.²³ Under the Fifth Schedule²⁴ and Sixth Schedule²⁵ of the Constitution of India, special administrative arrangements have been provided for 'Scheduled Areas' for safeguarding the fundamental rights and development of tribal communities. These two Schedules have very different mechanism for governing scheduled tribes under their jurisdiction. The Fifth Schedule permits the State government to extend its executive power to the Scheduled Areas²⁶ and granted the Governor of the State the authority to "make regulations for the peace and good government of any area[Scheduled Area]"²⁷ The Governor could also preclude the application of any federal or state law in the 'Scheduled Area'. Secondly, the Governor of each State having Scheduled Areas shall, annually, or whenever required by the President of India, submit a report regarding the administration of the Scheduled Areas²⁸ The Fifth Schedule also creates Tribes Advisory Council (TAC) in each state having 'Scheduled Areas'.²⁹ The duty of the TAC is to advise the Governor on the matter related to the 'welfare and advancement' of the Scheduled Tribes.³⁰ These councils could make laws for management of land, forest, shifting cultivation, appointment or succession of chiefs or headpersons, inheritance of property, marriage and divorce, social customs and any matter relating to village or town administration.³¹

The Sixth Schedule which contains the administrative mechanism for tribes of northeastern regions and seems to have provided considerable autonomy to indigenous communities for self-governance.³² It has created several "autonomous" regions, each allocated to a particular tribe.³³ The Scheduled Areas of northeastern states are governed through Autonomous District Council (ADC) and Regional Council (RC) endowed with legislative, judicial, and executive powers.³⁴

After independence of the country, Indian state had taken special interest for the development of tribal people in the country. In 1952, former prime minister Pt. Jawaharlal Nehru had visualized a development guidelines for State in order to develop the tribal in a special manner. These guidelines were based on

the pattern of Nehruvian Panchsheel - five principles formed to guide the administration of Tribal of India. These were as such:

- a) Tribal should be allowed to development according to their own people genius.
- b) Tribal right in land and forest land should be respected ;
- c) Tribal Teams should be trained to undertake administration and development without outsiders being inducted;
- d) Tribal development should be undertaken without disturbing Tribal Social and Cultural Institutional;
- e) The index of tribal development should be the quality of their life and not the money spent.

Later on several other development projects were initiated by the Indian state through government policies from time to time. These includes as:

- The Tribal Panchsheel Philosophy led to formation of Special Multi-Purpose Tribal Block for community development in tribal areas.
- The systematic development plan for tribal by the government began with the Vth Five Year Plan when the concept of Tribal Sub-Plan was introduced by the Planning Commission under the scheme of Special Component Plan for development of SCs and STs. The emphasis was on area development and focused only on tribal development.

The National Forest Policy declared in 1988 provided for the protection of the rights of tribal people in India. The Policy Statement declared that, 'Having regarded to the symbiotic relationship between tribal forest and forest, a primary task of all the agencies responsible for forest management including the development, should be to associate the tribal people closely in the protection, regeneration and development of forests as well as to provide gainful employment to people living in and around the forest. It has suggested to replace the contractors to cut the trees by Tribal Cooperative; develop forest village at par with revenue village; undertake integrated area development programmes to meet the needs of the tribal economy; introduce family welfare schemes to improve the status of people.

Apart from the constitutional safeguards to Scheduled Tribes, there are several legislative measures taken at federal and state levels for protection of rights of scheduled tribes. Some major laws which are enacted by the Union government specific to the protection of constitutional rights of the scheduled tribes and their welfare.

The Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA) which was extension of 73 rd Amendment of the Constitution, considered to be remarkable initiative by the Govt. to safeguard the interest of tribal people. It provides the Gram Sabha a legal sanctity and recognizes it as the basic unit of administration. It empowers the tribal community with granting them entitlement of controlling natural resources and taking care of all their activities at the levels of planning, execution and evaluation. The consent and approval of Gram Sabha was mandatory before initiating any development projects that affect the tribal community such as matters related to land acquisition, compensation and rehabilitation. The Gram Sabha were empowered to settle land dispute, regulate money lending, restore illegally transferred tribal lands and issue of utilization certificates for projects undertaken within its jurisdiction.

In 2006, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act was enacted for the protection of forest rights of indigenous communities.³⁵ This act is instrumental in providing legal entitlement over forest land to tribes and compensation in case of diversion of forest for any development propose.

In spite of several legislative and administrative measures taken up by the Indian state for protection of rights of tribal communities and for their welfare, indigenous and tribal communities continue to suffer the discrimination, subjugation and deprivation even after six decades of India's independence.³⁶ In fact, the development programs for tribe have not been effectively implemented because of various loopholes in government administration which has caused exploitation and exclusion to indigenous communities in the country.³⁷

Noticeably, India has shown its concern on the issue of Indigenous people and tribal at global forums. Indian government has ratified the ILO Convention on Indigenous and Tribal Populations, 1957(No. 107), however, it has yet to ratify the ILO Convention on Indigenous and Tribal Populations, 1989(No. 169). Importantly, India is also signatory to UNDRIP, which indicates, its concern towards the preservation of indigenous people.

However, in spite of all welfare measures and legislative protection, the situation of indigenous people is not much better and they are still discriminated and exploited.³⁸

Ironically, despite having these legislations the tribals have been suffered the exploitation of state particularly the Forest management. Large numbers of tribals have been imprisoned by Forest Management officials calling them “encroachers” of forest land, though these poor tribals were making huts and farming for their survival and livelihood. A majority cases have been lodged against tribes under various sections of the colonial Indian Forest Act, 1927, the Indian Protection of Wildlife Act, 1972, and Indian Penal Code.³⁹

Despite the constitutional and legal safeguard provided the Indian State, the indigenous population of the country has continuously suffering the problem of subjugation, discrimination and exploitation. Significantly tribes are more backward not only in comparison to general population but with the other social the categories also like Schedule Caste, Backward Social groups etc.

Discrimination and Social Exclusion of the Indian Tribes: There has been several enlightened policies for tribal development that have been introduced by the Indian State, however, they were never been effectively implemented and operationalised, leading into unsatisfactory consequences. The pathetic condition of tribes could be visualized through the developmental indicators.

The work participation rate among the Schedule Tribes in India was as low as 49.1 per cent as per 2001 census. About 69 per cent of these were classified as main workers, while the remaining 31 per cent were treated as marginal workers. About 82 per cent tribes engaged in primary sector activities like cultivation and agricultural labour. There has been downfall in the tribes as no significant social transformation among tribes in India. There has been alarming increase in the number of agricultural labour and migrant worker in India which provided clear indication of decline in tribal economy due to large scale encroachment by the Forest Department and alienation of land by non-tribal. Tribes also suffered the marginalization and exclusion from their livelihood resources. During the past three decades there has been steady decrease in the percentage of tribal cultivators from 68.15 in 1961 to 54.5 in 1991. Conversely, percentage of agricultural labors has increased from 19.71 in 1961 to 32.69 in 1991.⁴⁰

There has been perennial conflict between tribes and the dominant regional non-tribes community at the tribal regions. It is seen that the interest of tribes are sacrificed to protect the interest of non-tribes for fulfilling their economic interest. Even the state governments have enacted several acts to protect the interest of the non-tribes. For instance, the Andhra Pradesh (Selected Areas) Land transfer Regulation, 1959 was amended in 1970. The Kerala Scheduled Tribes (Regulation of Transfer of Land and Restoration of Alienated land) Act 1975 has been repealed to provide concession in the possession of land to the non-tribe persons.

Displacement among tribes is caused due to development projects based on industries, irrigation and hydraulic projects introduced by the state. It was noted that around 21.3 million population has been displaced during 1951-90 in the states of Andhra Pradesh, Bihar, Gujarat, Maharashtra, Madhya Pradesh, Rajasthan and Orissa. And out of this 8.54 million (40 per cent) have been tribes. As far the rehabilitation of tribal are concerned only 2.12 million (24.8 p.c) have been resettled so far.⁴¹

The issue of tribal land alienation laws has been matter of great concern for protecting rights of tribes. The process of dispossession or Alienation of tribal Land is multi-dimensional in nature that involves interplay of social, cultural, economic and political forces.⁴² Jaganath also elaborates that, “the

fundamental reason for tribal land alienation is fragile, constantly shrinking economic base of the tribes. Their non-monetized self-sufficient economy crumbled and the tribes become exposed to batter or cash transactions for the fulfillment of their basic needs”⁴³

Despite of progressive and protective legislation, tribal people all over the country are perpetually threatened over their land rights. Laws and policies governing forest have also contributed towards the dispossession of tribals. The parts of forest lands are categorized as reserved forest through government legislations, consequently the tribal lands are appropriated by government or non-tribal people whereby the tribals are alienated from land. Prasad argues that non-implementation of development programmes and lack of rights on the forest and non-agricultural land has led to the crisis of livelihood faced since colonial times and it has been further accentuated in post independence period.⁴⁴ Ramchandra Guha also pointed out that first the colonial British state(Forest policy 18940 and then independence India(forest policy 1952) have laid bare vast tracts of forest and turned them into agricultural land, leading to dispossession of the tribes.⁴⁵

Conclusion: It is very much understood that, indigenous people and tribal population in india have been systematically socially and economically excluded and marginalized since colonial period causing severe vulnerability towards them and violating of their basic human rights.

Indigenous people have faced an apathetic attitude of Indian state which is revealed through their pathetic condition at development sector. The ‘inclusive policy’ for bringing tribal into national mainstream through various development policies has lead them to ‘exclusion’ from their own cultural traditional identity. Moreover, tribes are worst victim of process of rapid globalization and liberalization, where the state is disposing its obligation and receding from welfare measures.

It is true that Indian Government has adopted strategies to integrate the tribes within the mainstream society by providing them necessary infrastructure facilities since 1990s. Unfortunately, neither have the tribes been integrated within the national mainstream, nor has any tangible progress noticed for tribes. The sense of exclusion, crisis of identity and dispossession of lands and threat to livelihood have compounded the problem of discontent and dissatisfaction among the tribes resulting into emergence of various movements for tribal rights in different parts of the country. The process of democratization and political mobilization of tribal people has been visualized in their radical struggle which also known as Naxalite movement that has questioned the legitimacy of the Indian state.

Hence, there is need to formulate such forest policies or land legislation must be updated in consistent with new situation or challenges being faced by tribes in wake of fast globalization and modernization process. The state should promote and preserve the maintenance of traditional knowledge being possessed by tribes and make every effort to protect their customary rights, and respect their land and cultural rights. Restoring alienated land to tribal people is more viable and sustainable option for retaining ownership rights of forest land to the tribes.

References:

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2. Javaid Rehman,(1998) “Indigenous peoples at Risk: A Survey of Indigenous Peoples of South Asia”, in b. K. Roy Burman and B. G. Verghese (eds), *Aspiring to be : The Tribal, Indigenous Condition*(Konark Publishers, Delhi,) pp72-121
3. Russell Barsh(1986), “Indigenous Peoples: An Emerging Object of International law”, *AJIL*, No. 80, p 375
4. Bilal Hayee, the representative from Pakistan noted that “his country had voted in favor of the Declaration both in the Human Rights Council and in the Assembly. Although the Declaration did not define indigenous peoples, he hoped that its adoption would fulfill the aims of the International Decades for the rights of Indigenous Peoples and enable them to maintain their cultural identity, with full respect for their values and traditions.” Whereas, Mr. Ajai Malhotra,

- representative from India said, “while the Declaration did not define what constituted indigenous peoples, the issue of indigenous rights pertained to peoples in independent countries who were regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region which the country belonged, at the time of conquest or colonization or the establishment of present State boundaries and who, irrespective of their legal status, retained some or all of their socio-economic, cultural and political institutions”. Bilal Hayee and Mr. Ajai Malhotra, “General Assembly Declaration on the Rights of Indigenous peoples; ‘Major Step Forward’ towards Human Rights for all says President” 107th and 108th UN General Assembly Meetings. September 2007,¹³ at, <http://www.un.org/News/Press/docs/2007/ga10612.doc.htm>
5. 72 ILO Bulletin 59 (1989); 28 ILM 1382; cf. Article 1(3)
 6. Jose Martinez Cobo(1986), Study of the Problem of Discrimination against indigenous Population, UN Doc.E/CN.4/Sub.2/1986/7/Add.4.paras. 379-80
 7. The Working Group on Indigenous Populations was established by Economic and Social Council resolution 1982/34 of 7 may 1982 (ESCOR Res. 1982/34 (1982). Also See, Julian Burger (1998), *Indigenous Peoples and the United Nations*, in Cynthia Price Cohen(ed.) Human Rights of Indigenous Peoples, (New York: Transnational Pub.)
 8. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the General Assembly on Thursday, 13 September 2007, by a majority of 144 states in favour, 4 votes against (Australia, Canada, New Zealand and the United States) and 11 abstentions (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russian Federation, Samoa and Ukraine) For details see www.ohchr.org/english/issues/indigenous/declaration.htm , Accessed on 25 December, 2015
 9. The Report of the International Commission on Environment and Development, *Our Common Future*, 1987, p 12
 10. www.un.org/esa/dsd/resource/res_docukeyconf_eartsumm.shtml
 11. ILO Convention 169- Indigenous and Tribal Peoples , 1989 came into enforce on September 5, 1991. See www.ilo.org
 12. UNDP Annual Report 2001. See www.undp.org
 13. Art.43, Universal Declaration on the Rights of Indigenous People. www.un.org
 14. Tribal density is scantily persist in the states of Jammu and Kashmir, Himachal Pradesh, and Uttaranchal in the North India and heavy density in the north east states such as Assam, Meghalaya, Tripura, Arunachal Pradesh, Mizoram, Manipur, and Nagaland in the northeast. Need a citation
 15. Andhara Pradesh, Jharkhand, Chhattishgarh, , Madhya Pradesh, Odisha.
 16. Christoph Von Furer –Haimendorf(1982), “ Tribes of India: The Struggle for Survival” ; Verier Elwin(1959), “ India’s North-East Frontier in the Nineteenth Century”
 17. Roy, Burman , (2000), The Indigenous Peoples and Problems of Human Rights . Paper presented in a Seminar held on February 28, 2000 in the Lal Bahadur Shastri National Academy of Administration, Mussorie.
 18. Article 342 provides for specification of tribes or tribal communities or parts of or groups within tribes or tribal communities which are deemed to be for the purposes of the Constitution the Scheduled Tribes in relation to that State or Union Territory. The essential characteristics first lay down by the Lokur Committee, for a community to be identified as Scheduled Tribes are – a) indications of primitive traits; b) distinctive culture; shyness of contact with the community at large; d) geographical isolation; and e) backwardness.
 19. There are other nomadic and primitive tribes which are also known as denotified tribes, which are not legally recognized as ‘Schedule Tribe’. See, Ministry of Tribal Affairs, Government of India, available at <http://tribal.nic.in/index>, Accessed on 25 December 2015
 20. Constitution of India, 1950, Part-III Fundamental Rights(Article-14-32)
 21. Article 46 ‘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 Caste and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.’. Constitution of India, 1950, Part-IV, Directive Principle of State Policy.
 22. Constitution of India, 1950, Arts. 330, 332 and 334

23. The definition of Scheduled Areas (under the fifth scheduled of the constitution) is “such areas as the President may by order declare to be Scheduled Areas.” The criterion for declaration of an area as Scheduled Area was identified by the first Scheduled Areas and Scheduled Tribes Commission (Dhebar Commission). The features of such area were: the preponderance of tribal population; compactness and reasonable size of the area, under-developed nature of the area, and marked disparity in the economic standard of the people.” Need a citation
24. Under the Vth Schedule the ‘Scheduled Areas ‘ are marked in was initially made applicable only to the states of Madras, Bombay West Bengal, Bihar, Central Provinces and Bihar, United Provinces and Orissa.
25. In the VIth schedule, in tribal areas in the states of Assam, Meghalaya and the Mizoram, Autonomous District Councils and Regional Councils were constituted. Need a citation
26. Andhara Pradesh, Jharkhand, Chhattishgarh, Himachal Pradesh, Madhya Pradesh, Gujrat Maharashtra, Odisha and Rajasthan
27. Constitution of India, 1950, Vth Schedule, Section 2; These provision is subjected to only two restrictions (i) that the Governor would consult a Tribal Advisory Council (TAC) “before making any regulation”, and , (ii) that all regulations would receive statutory assent from the President of India before taking effect.
28. Constitution of India, 1950, Vth Schedule, Section 2
29. TAC can be created in the States having Scheduled Tribes but not Scheduled Areas. TAC consists of twenty members of which three-fourth must be representatives of Scheduled Tribes in the Legislative Assembly of that State. Need a citation here.
30. Constitution of India, 1950, Vth Schedule,[Articles 244(1) 4(2)
31. Constitution of India, 1950, VIth Schedule,[Articles 244(1) 4 (3)
32. Autonomy mean the tribes are given right to self-determination in exercising some sort of executive, legislative and judicial power in their governance.
33. Constitution of India, 1950, VIth Schedule,[Articles 244(2) and 275(1) Section 1; The Sixth Scheduled provides for Administration of tribal areas in the States of Assam, Meghalya, Tripura and Mizoram
34. Constitution of India, 1950, VIth Schedule,[Articles 244(2) and 275(1) Section 1
35. Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 provides several kinds of rights to tribes that hitherto restricted by earlier legislation enacted in relation to forest and environment protection. These include the right to live in the forest, the right to cultivate for their livelihood, the right to collect minor forest produce, the right to graze cattle, the right to convert lease or grants (*pattas*) to titles, the right to convert forest village into revenue village, the right to settlement in the old habitations and un-surveyed villages, the right to access and community right over intellectual property and traditional knowledge related to forest biodiversity and cultural diversity, the right to manage the community forest resources and right to enjoy any customary traditional except hunting. See Saravanan, V(2009) , ‘political Economy of the Recognition of Forest Rights Act, 2006: Conflict between environment and Tribal Development, ‘ South Asia research, Vol. 29(3), 199-221
36. Fernandes, Walter(2008) ‘ Sixty years of Development –induced displacement in India: Impacts and the search for alternatives’ in ‘India Social development Report, 2008, Development and Displacement’, New Delhi: Centre for Social Development and OUP
37. Ibid.
38. The Committee on the Convention on the Elimination of Racial Discrimination in its state report on India(2007) revealed Indian government’s failure to protect indigenous peoples. See India, 05/05/2007, CERD/C/IND/CO/19, at paras. 19-26
39. In Tribal dominated region of Uttar Pradesh , which is also Naxalite affected, around 7000 people living below poverty line were booked for encroaching the forest land to built huts, for picking forest produce for livelihood and for agitations to protest against exploitation of Forest Officials. A Tribal Leader of National Forum of Forest People and Forest Workers (NFFPFW), Ashok Chandra, said that “Tribals are falsely implicated by the forest personnel l to extort money, exploit our women and to deter us from filing claim under the Forest Rights Act(FRA), 2006 which provides us right on forest land.” See Times of India dt.29 Oct.2010

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