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The Rights of the Indigenous People

Sukanya Bhat^a

^aSymbiosis Law School, Hyderabad, India

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The number of indigenous peoples in the world is between 30 and 500 million, embodying and nurturing 80% of the world's cultural and biological diversity, and occupying 20% of the world's land area. The indigenous peoples of the world are very diverse. They live in almost every country on every continent in the world, forming a human range, from traditional hunter-gatherers and subsistence farmers to jurists. In some countries, indigenous peoples make up the majority of the population; others include minorities. Indigenous peoples are concerned about protecting land, protecting language, and promoting culture. Some indigenous people strive to protect their traditional way of life, while others seek to participate more in the current state structure. Like all cultures and civilizations, indigenous peoples are always adjusting and adapting to changes in the world. Indigenous peoples recognize their common difficulties and strive for self-determination; based on their respect for the land. Despite the diversity of indigenous communities around the world, all indigenous peoples have one thing in common: they all have a history of injustice. Indigenous peoples were killed, tortured, and enslaved. In many cases, they were victims of genocide. They are deprived of the right to participate in the current management process of the state system. The conquest and colonization attempted to rob them of their dignity and identity as indigenous peoples and their basic right to self-determination. The objective of this research is to study the rights of the Indigenous people under International laws as well as Indian Law.

Keywords: *self-determination, diversity, indigenous people.*

INTRODUCTION

The term Indigenous has reigned as a comprehensive term for many years. This prevailing definition for the term has not been derived by any system of a UN body on account of the diversity of the indigenous people. In few countries other terms are preferred like: tribes, Adivasi, ethnic groups, hill people nomads, peasants, etc.¹ It is anticipated that there are more than 370 million indigenous people spread across 70 countries worldwide. According to a common definition, indigenous people are persons who are the descendants of the ancestors who resided in that country or a geographical region at the time when people of ethnic origins arrived. They are the holders of unique believes, knowledge systems, and languages. The immense knowledge of practices will help in the sustainable development of natural resources. They have a unique relationship to their traditional land, as it plays an important role in collective and cultural survival. Even though they constitute only 5 % of the world population they are responsible for protecting 80% of the planet's biodiversity. ²

At the UN Climate Summit in New York in September 2019, Indigenous people from around the world committed to contributing to the reduction of greenhouse gas emissions with the help of their knowledge and actions. In order to adhere to the commitment, the Indigenous people put forth a condition, that was needed in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) for complete implementation.

HYPOTHESIS

The rights of the Indigenous people have long been ignored. They have to be implemented more strictly to prevent discrimination. Their self-determination is nowhere spoken of. There is a dire need for stricter implementation and identification of the rights of the indigenous people.

DEFINITION OF INDIGENOUS PEOPLE AS GIVEN UNDER INTERNATIONAL LAW

¹ Dwayne Mamo, *The Indigenous World 2020* (34th edn, The International Work Group for Indigenous Affairs 2020)

² *Ibid*

Earlier several attempts were made to define Indigenous people under international law. The following are the definitions prescribed by the International Labour Organisation, United Nations, and World Bank.

International Labour Organisation: A conference of the International Labour Organization was held in 1957. Convention number 107 was the first treaty to classify the indigenous people as special subjects of human rights³ was adopted for the protection and integration of Indigenous, semi-tribal, and Tribal people.⁴ In 1985, a need was felt to have various changes in the previous convention, due to the changing attitude and approach towards these people worldwide. In 1989, The ILO adopted Convention No. 169 based on the recommendations of various international organizations and committees of experts appointed by the ILO. The definition given is as follows: “People in an independent country are considered aboriginals, and they retain them based on the ancestry of the population or geographic area of the country when they invaded or established the current borders, and regardless of their legal status. Some of its own social, political, cultural, and economic systems have been established. »Convention No. 169 is still vital to the indigenous defence.

United Nations: A definition was proposed by the “UN Study on Discrimination against Indigenous population”. But due to the lack of some components, the definition was replaced. The new definition was as follows: “Indigenous groups, people 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 sections of the societies now prevailing in those territories, or parts of them. They are not the dominant section in society but they are determined to preserve, develop and transfer to future generations their inherited territories, and their ethnic identity, as the basis of their continued existence as peoples, in agreement with their cultural patterns, social institutions, and legal systems”⁵.

The World Bank: According to the World Bank’s Business Directive 4.20, it was mentioned that due to the diversity of indigenous groups, it is difficult to give a definition. However, the

³ Indigenous and Tribal Population Convention 1957, cl 107

⁴ Mamo (n 1)

⁵ Indigenous and Tribal Population Convention 1957, cl 107

operating instructions give this standard: the terms "indigenous people", "indigenous minorities", "tribal groups" and "registered tribes" describe social groups with cultural and social identities that are different from influential societies. Eventually exposing them to the development process is private.

INDIGENOUS PEOPLE AND INDIA

The term "programmed tribe" is not defined in the Indian Constitution. In contrast, Article 366 (25) refers to programmatic tribes as programmatic communities under Article 342 of the Indian Constitution. According to the article, the listed tribes are tribal communities and are part of groups of tribes or tribal communities declared by the President of India through public notice.⁶ 461 groups in India are recognised as Scheduled Tribes. In India, they are considered Indigenous people. They comprise 8.2 percent of the total population. Numerous other groups are not recognized but may qualify for the status of Scheduled Tribe. It is said that the estimated number of Tribal groups is 635. In the seven northeastern states, a maximum concentration of indigenous people is found. Moreover, they also reside in Central Tribal Belt which stretches from Rajasthan to West Bengal.⁷

India has various laws and provisions which recognise the rights of the indigenous people. For example, the Fifth Schedule is about mainland central India and the Sixth Schedule is for few areas in North East India. They deal with rights relating to self-governance. Though Indian laws have various shortcomings, it has a long history of movements with regards to asserting the rights of indigenous people. India was in favour of the United Nations Declaration on the Rights of Indigenous People. But India does not consider the UNDRIP applicable and also the term indigenous people. It has strict laws concerning the protection of Tribal Land. The laws prohibit the sale of Tribal land to non-Tribals and also the giving of isolated tribal lands to them. However, due to the poor implementation, more than 1 lakh cases of alienation were registered.

⁶ 'Ministry of Tribal Affairs, Government of India' (*Tribal.nic.in*, 2021) <<https://tribal.nic.in/Home.aspx>> accessed 04 August 2021

⁷ Indigenous and Tribal Population Convention 1957, cl 107

INDIAN CONSTITUTION AND TRIBAL RIGHTS (THE RIGHTS OF INDIGENOUS PEOPLE)

The Rights can be classified under 5 heads:

- 1) Educational and Cultural Rights;
- 2) Social Rights;
- 3) Economic Rights;
- 4) Political Rights and
- 5) Employment Rights.

1. Educational and Cultural Rights

The following Articles lay down rights related to the education and culture of the Tribal people.

Article 15(4): States that the socially and the economically backward classes should be provided reservations. The state is empowered to relax the qualifying marks minimum required for admission of Scheduled Castes and Scheduled Tribes.

Article 29: This Article guaranteed the right to safeguard the distinct language, script, and culture which any section or citizens residing in any part of the country may have.

Article 46: Instruct the country to promote special nursing education and the economic interests of the weakest sectors. It protects them from injustice and any form of exploitation.

Article 350: Gives the right to present the statement for addressing of grievance to any State authority or the Union in any of the languages in use.

2. SOCIAL RIGHTS

Article 23: Prevents bonded labour, because according to this Article it falls under the category of forced labour.

Article 24: It is forbidden to employ children under 14 years of age in factories or dangerous places.

3. Economic Rights

Article 164(1): The state is empowered to establish Ministry for Scheduled Tribes. This can be done in Madhya Pradesh, Orissa, etc...

Article 243, 330, and 334: Reservation of seats in the House of People or Panchayats for the Scheduled Castes and Scheduled Tribes.

Article 371: Special provisions for the North Eastern States.⁸

EMPLOYMENT RIGHTS

Article 16(4) and Article 16(4A): Reservations to scheduled tribes in employment and promotions.

Article 244-A: The Indian Parliament is authorized to form an autonomous state, including certain tribal areas (Assam), and establish a local agency or council of ministers for these states. When managing tribal areas in Assam, please comply with the provisions of the Sixth Schedule of the Constitution.

The Articles: 244, 330, 334, 371, and Article 164 protect the political rights of the Tribal people.

VARIOUS STEPS WERE TAKEN FOR THE EMPOWERMENT

1) National Registered Tribes Committee: This committee was established in accordance with the 89th Amendment to the 2003 Constitution. Three full-time members (one woman) and the vice president are part of it. From the date of inauguration, the members will serve for three

⁸ Constitution of India, art 371

years. This committee is responsible and has the power to investigate cases in which indigenous peoples are deprived of their rights and protect them. The committee plays an important role in guiding the development of registered tribes and has the power to monitor their progress.

2) Various Acts made by the Union Government for the Protection:

- The Untouchability(offences)Act, 1955: “The law provides sanctions for untouchable crimes and any disability implemented since then. A bill passed in 1976 changed the name of the law to the "Civil Rights Protection Act of 1955".
- The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act) 1985 and 1995: To prevent the social status of the Tribal people and to eliminate the tortures against them.
- The Scheduled Tribes Bonded Labour Abolition Act 1976: To protect the Tribal people from bonded labour. Save them from working under landlords who will make them do too much work by giving them fewer wages.
- The Child Labour Abolition Act, 1986: Prohibits the employment of children below 14 years in factories or hazardous places.
- Forest Conservation Act, 1980: Prohibits the use of forest land for non-forest purposes as it is means of livelihood for the Tribals.
- The Panchayat Raj Act 1996: To aid grants for the tribal people by constituting small bodies.
- The Minimum Wages Act, 1948: Minimum wages should be paid to people working in the organised sectors.

Supreme Court and High Court cases: In the case of *MC Valsala vs. The State of Kerala* the rule that said “if any child goes for inter-caste marriage and if any of the parents belong to SC or ST category can claim for reservation benefits but for that, they need to show that the person is handicapped or disadvantaged on being born a member of SC/ST family” was struck down. In the case of the State of Madras vs. Champakam Dorirajan to help the backward classes an order of the government was held invalid. In Article 15 of the Indian Constitution clause 4

was added so that the State can make specific provisions to support economically, socially, and educationally backward classes.

RIGHTS OF INDIGENOUS PEOPLE AND INTERNATIONAL LAWS

International Labour Organisation Convention

In 1957, International Labour Organisation adopted the first instrument to address the rights of the indigenous people. Convention No. 107 of the ILO integrates indigenous peoples into society and provides them with various protection measures. However, the Convention was not beneficial to the self-recognition process, so Convention No. 169 of the ILO. Its purpose is to preserve the aspirations and identity of indigenous peoples. Some important characteristics of the convention are the following:

Protection of cultural, social, and integrity values: According to article 5, the social, cultural, and spiritual values that must be respected must be protected.

Government responsibilities: Article 6, paragraph 1, of the Convention The government will ensure that indigenous peoples can participate in important decision-making. These people deserve a boost.

Reservation of Customs Duties: Article 8 (1) National laws and regulations must match the culture of these people. They should also be free to maintain their customs and practices. According to article 13, paragraph 1, their culture must not be hampered when applying the law.

Right to Decide: Indigenous people have control over their life and the liberty to choose their priorities.

UN Declaration on the Rights of Indigenous People

Resolution no 61/295 was adopted in the General Assembly of the United Nations on 13th September 2007. 46 Articles are there in the Resolution which talks about the rights of the Indigenous people. It sets out the collective and individual right to protect their society,

personality, language, occupation, health, and various other issues. It emphasises their rights to develop, strengthen their own needs and aspirations.⁹

1) Fundamental Rights with no Discrimination: According to Article 1 in the declaration they have the right to enjoy all the rights that common people enjoy. Article 2 prevents them from being discriminated against.

2) Cultural Rights: Article 7 protects them from violence. It empowers them to preserve and protect their cultural rights.

3) Self-Determination Right: It is an important right. They have a history of fighting for their rights. This right gives them a good political as well as a chance to develop their culture.

4) Right to use land, territory, and other natural resources: They have the right to control and protect their land, territory, and natural resources to achieve self-determination and preserve their culture.

5) Property and control rights: Article 36 stipulates that people have the right to obtain resources, such as land and territory. They can control the use of resources and land. They have the right to protect their culture and their traditions.

6) Social and economic rights: Article 21 of the Declaration stipulates that indigenous peoples have the right to continuously develop their social and economic situation for their well-being.

7) Certain Responsibilities of the State: The State is authorized to provide financial and mechanical assistance to indigenous peoples by contacting them. Indigenous peoples also have the right to receive adequate and effective treatment when their rights are violated.

CONCLUSION

There is a dire need to promote the rights of the indigenous people and to put an end to the discrimination that they face. Overexploitation of resources must be stopped. The issues such

⁹ Mamo (n 1)

as self-determination which have been never been talked about should be brought into notice. Also, the United Nations Convention has set a standard. India especially should start adhering to those. India lacks in full filling the international document of indigenous people's rights. The Indian Constitution indeed has Articles that address the issues of discrimination but the Government should ensure stricter implementation of laws to eliminate the issues. Various steps were taken by the Union Government should have proven effective but there was a lack of implementation and monitoring. India has the largest amount of tribal people after Africa. They constitute 15% of the population of the country. The Indian Constitution does not provide for the self -determination of Tribal people. Indian laws are to some extent better than the other countries if implemented properly.