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Rights Of Indigenous Peoples Of India: A Global And Indian Perspective

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Abstract:

The rights of Indigenous peoples have gained increasing international recognition in recent decades. These communities, often marginalized and dispossessed of land and identity, have distinct cultural, linguistic, and historical identities. This paper explores the evolution of Indigenous rights from a global to a national context, focusing on international legal instruments, state obligations, and the specific scenario in India. It also addresses contemporary challenges and suggests ways to strengthen Indigenous rights protection.

Keywords: Indigenous people, India, rights, linguistic, historical identities, cultural identity.

Introduction

Indigenous peoples are the original inhabitants of territories before colonization or the formation of modern nation-states. Globally, there are over 476 million Indigenous people across 90 countries, constituting about 6.2% of the world's population. Despite their cultural richness and traditional knowledge systems, they face systematic marginalization, discrimination, land dispossession, and social exclusion.

Indigenous Peoples in India comprise an estimated population of 104 million or 8.6% of the national population. Although there are 705 officially recognized ethnic groups, there are many more ethnic groups that would qualify for the scheduled tribe status, but which are not officially recognized. Therefore, the total number of tribal groups is undoubtedly higher than the official figure.

This paper explores the framework of rights available to Indigenous peoples at international and national levels, with a specific reference to India, where various Indigenous groups are recognized constitutionally as "Scheduled Tribes."

International Legal Framework

The international community has increasingly recognized the unique rights of **indigenous peoples**, including their rights to land, culture, language, autonomy, and self-determination. Various **treaties, declarations, and mechanisms** have evolved to protect these rights globally.

1. ILO Convention No. 169 (1989) :

The most important binding treaty concerning Indigenous and Tribal People, emphasizing land rights, consultation, and cultural preservation. And India is not a signatory.

2. **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP, 2007):** Adopted by the UN General Assembly, it affirms Indigenous peoples' right to self-determination, traditional lands, cultural identity, education, and free, prior, and informed consent (FPIC). Though India is not a signatory to it (UNDRIP, 2007) and has not formally signed or ratified but India had voted in favour of adopting the declaration in 2007. India has consistently stated that it supports the Principles of UNDRIP but does not consider the declaration applicable within India because it believes that all Indians are Indigenous.
3. **Universal Declaration of Human Rights & ICCPR (International Covenant On Civil and Political Rights/ ICESCR (International Covenant on Economic, Social and Cultural Rights)**

Universal Declaration of Human Rights (UDHR) – 1948

The **UDHR** is a landmark document adopted by the United Nations General Assembly on **10 December 1948**. It outlines a common standard of human rights for all people across all nations.

Key Features:

- Contains **30 articles** covering civil, political, economic, social, and cultural rights.
- Asserts rights such as:
 - Right to life, liberty, and security
 - Freedom of speech, religion, and assembly
 - Right to work, education, and adequate living standards
- Though **not legally binding**, it has influenced many national constitutions and international treaties.

International Covenant on Civil and Political Rights (ICCPR) – 1966

The **ICCPR** is a legally binding treaty that came into force in **1976**. It builds upon the UDHR and focuses on **civil and political rights**. It includes the following rights -

- Right to life, freedom from torture, and slavery
- Freedom of thought, speech, religion, and assembly
- Right to a fair trial and participation in public affairs
- Prohibits arbitrary arrest or detention

International Covenant on Economic, Social and Cultural Rights (ICESCR) – 1966

ICESCR was adopted in **1966** and in force since **1976**, the **ICESCR** deals with **economic, social, and cultural rights**. It covers the following rights -

- Right to work and fair wages
- Right to social security and health
- Right to education
- Right to an adequate standard of living, including food, clothing, and housing

Together: The International Bill of Human Rights

The **UDHR**, **ICCPR**, and **ICESCR** together form what is often called the **International Bill of Human Rights**, setting the global foundation for human rights protections

Although not specifically for Indigenous peoples, they ensure the right to equality, non-discrimination, and cultural participation. And India is a signatory to all of these International Covenant and it has signed the UDHR in 1948, ratified the ICCPR and acceded to the ICESCR on April 10, 1979.

4. Convention on Biological Diversity (CBD), 1992

India is a signatory to the Convention on the Biological Diversity (CBD). India ratified the CBD on February 18, 1994. The CBD is a multilateral treaty aimed at conserving biodiversity, its sustainable use and ensuring fair and equitable sharing of benefits from genetic resources. India's ratification of the CBD has significantly influenced its environmental policies. Article 8(j) of CBD acknowledges the role of indigenous knowledge and traditional practices in **biodiversity conservation**. Supports the **equitable sharing of benefits** arising from the use of indigenous resources and knowledge.

5. UNESCO (United Nations Educational, Scientific and Cultural Organization) Instruments

UNESCO is a specialized agency of the United Nations with the aim of promoting World Peace and Security through international cooperation in education, arts, science and culture. And India has been a member of UNESCO since its inception in 1946. UNESCO Convention for the Safeguarding of Intangible Cultural Heritage (2003) – **Protects languages, rituals, and traditional knowledge**.

Universal Declaration on Cultural Diversity (2001) – Supports cultural rights of indigenous peoples. The **Universal Declaration on Cultural Diversity (2001)** is a landmark document adopted unanimously by UNESCO's General Conference on 2 November 2001. It affirms that cultural diversity is as essential to humanity as biodiversity is to nature, and frames it as a "*common heritage of humanity*."

The international legal framework provides a **robust foundation** for protecting indigenous rights, emphasizing **self-determination, land rights, cultural identity, and participation**. However, the effectiveness of this framework depends on **national implementation, global advocacy, and genuine engagement** with indigenous communities.

National Legal Framework: The Indian Context

India recognizes Indigenous communities under the constitutional term "Scheduled Tribes (STs)." Indigenous people of India are those communities which recognized by the Constitution as historically marginalized and culturally distinct groups with unique social, economic, and cultural traditions. They are considered the original inhabitants of various regions, often living in close harmony with nature and possessing traditional knowledge systems. The government identifies them for special protections and development initiatives under constitutional and legal provisions. India has several laws and constitutional provisions, such as the *Fifth Schedule* for central India and the *Sixth Schedule* for certain areas of north-east India, which recognise 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.

The Constitution provides for special rights and protections:

1. Constitutional Safeguards:

Article 15(4), 16(4): Reservation in education and employment.

Article 15(4) was added to the Constitution through the First Constitutional Amendment in 1951. Article 15(4) of the Indian Constitution is an exception to the general prohibition of discrimination under Article 15. It allows the State to make special provisions for the advancement of socially and educationally backward classes of citizens, as well as for Scheduled Castes (SCs) and Scheduled Tribes (STs). This includes provisions like reservations in educational institutions and jobs.

Article 16(4) of the Indian Constitution is an important provision that allows the state to make special provisions for the reservation of appointments or posts in favor of any backward class of citizens who, in the opinion of the state, are not adequately represented in the services under the state.

Article 244: Administration of tribal areas.

Article 244 of the Indian Constitution deals with the administration of Scheduled Areas and Tribal Areas. It includes Fifth and Sixth Schedule of Indian Constitution.

Fifth Schedule & Sixth Schedule: Special governance provisions for tribal areas.

The 5th and 6th Schedules of the Indian Constitution deals with the administration and control of tribal areas and Scheduled Tribes in different states. The 5th Schedule focuses on general provisions for Scheduled Areas and Scheduled Tribes in states other than Assam, Meghalaya, Tripura, and Mizoram. The 6th Schedule specifically addresses the administration of tribal areas in Assam, Meghalaya, Tripura, and Mizoram, granting them greater autonomy.

Article 46: Promotion of their educational and economic interests.

Article 46 of the Indian Constitution directs the State to promote the educational and economic interests of the weaker sections of society, particularly Scheduled Castes and Scheduled Tribes, and to protect them from social injustice and all forms of exploitation. This article is part of the Directive Principles of State Policy (DPSP), which are guidelines for the government to create a welfare state.

Article 338 – National Commission for Scheduled Castes

Its functions include among others:

Investigate and monitor all matters relating to the constitutional and other legal safeguards for the SCs and to evaluate their working;

Inquire into specific complaints with respect to the deprivation of rights and safeguards of the SCs.

Article 338-A – National Commission for Scheduled Tribes

Article 338A of the Indian Constitution establishes the **National Commission for Scheduled Tribes (NCST)**, a constitutional body dedicated to safeguarding the rights and promoting the welfare of Scheduled Tribes (STs) in India. It was inserted by the **89th Constitutional Amendment Act, 2003**, and came into effect on **19 February 2004**

2. Legislations:

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA): Recognizes traditional land and forest rights.

The FRA or Forest Rights Act, is the Scheduled Tribes and other Traditional Forest Dwellers (Recognition Of Forest Rights) Act, 2006, passed by the Indian Government .It aims to recognize and vest forest rights, including land and resource rights, with forest dwelling tribal communities and other traditional forest dwellers who have been living in and depending on forests for generations.

Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA): Empowers Gram Sabhas in tribal areas.

PESA Act 1996 is a landmark law enacted by the Government of India to extend the provisions of Part IX of the Constitution (which deals with Panchayati Raj Institutions) to the **Scheduled Areas** of the country. The main aim of the PESA Act is to recognize the **rights of tribal communities** in Scheduled Areas to

govern themselves through their own systems of self-government, and to preserve and safeguard their customs, traditions, and resources.

Land Alienation Laws: Various state laws prevent the transfer of tribal land to non-tribals.

In India, laws regarding land alienation aim to protect indigenous populations, particularly Scheduled Tribes (STs), from losing their ancestral lands to non-tribals. These laws are rooted in the recognition of historical injustices and the need to preserve the cultural and economic well-being of tribal communities.

- **Constitutional Provisions:**

The Indian Constitution, particularly Schedule V, provides for the protection of tribal land rights and safeguards against displacement due to land acquisition. Governors in states with scheduled areas can restrict land transfers from tribals to non-tribals.

- **State Enactments:**

Many states have enacted specific laws to prevent land alienation. These laws often require consent from tribal communities before any land transaction can occur. They may also restrict the transfer of tribal land through sale, lease, or other means.

- **Land Acquisition Laws:**

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLARR Act), while not exclusively for tribals, includes provisions for rehabilitation and resettlement when land is acquired for public purposes.

Institutional Framework

India has established a multi-tiered institutional framework to protect the rights and promote the development of indigenous people, officially referred to as **Scheduled Tribes (STs)**. This framework includes constitutional provisions, statutory bodies, and specialized agencies.

- **Ministry of Tribal Affairs** – Nodal ministry for ST welfare.

The **Ministry of Tribal Affairs** was established in 1999 after being carved out from the Ministry of Social Justice and Empowerment. Its primary goal is to ensure the **integrated socio-economic development of Scheduled Tribes (STs)**. The Ministry formulates policies, plans, and programs specifically tailored to uplift tribal populations. It supports state governments, union territories, and voluntary organizations through financial assistance and developmental schemes. These initiatives span across education, health, livelihood, and cultural preservation.

- **National Commission for Scheduled Tribes (NCST)** – Monitors and reports on safeguards.

The **National Commission for Scheduled Tribes (NCST)** is a constitutional body in India, established on **19 February 2004** through the **89th Amendment of the Constitution**. It was carved out from the earlier combined National Commission for Scheduled Castes and Scheduled Tribes to provide focused attention to issues concerning Scheduled Tribes.

The NCST is tasked with safeguarding the rights of Scheduled Tribes by:

- Monitoring the implementation of constitutional and legal safeguards.
- Investigating complaints related to deprivation of rights.
- Advising on planning and socio-economic development
- Evaluating the progress of development programs and welfare schemes.

- **Integrated Tribal Development Agencies (ITDAs)** – Implement tribal development programs at the grassroots level.

Integrated Tribal Development Agencies (ITDAs), also known as Integrated Tribal Development Projects (ITDPs), are special administrative units established by the Government of India to ensure focused development of tribal communities. These agencies operate in areas with a significant tribal population (typically more than 50%) and aim to bridge the socio-economic gap between tribal and non-tribal populations.

Key Objectives of ITDAs:

- Promote sustainable livelihood opportunities for tribal people.
- Improve access to education, healthcare, housing, and infrastructure.
- Preserve tribal culture and protect their rights over land and forest resources.
- Facilitate implementation of various government schemes specifically meant for tribal welfare.

ITDAs act as nodal agencies at the district or sub-district level, coordinating with various departments to ensure the effective delivery of services. They play a crucial role in empowering tribal communities and integrating them into the national development process while respecting their unique identity and culture.

Policies and Welfare Schemes

India has developed a comprehensive set of policies and welfare schemes to uplift its Indigenous communities—officially recognized as *Scheduled Tribes (STs)*—with a focus on education, health, livelihood, and cultural preservation.

- **Pre-Matric and Post-Matric Scholarships:** Financial support for ST students to reduce dropout rates and promote higher education.
- **National Fellowship and Overseas Scholarship Schemes:** Encourage advanced studies and global exposure for meritorious tribal students.
- **Development Action Plan for Scheduled Tribes (DAPST):** Ensures earmarked funds across ministries for tribal welfare through convergence-based planning.
- **Particularly Vulnerable Tribal Groups (PVTGs) Development Programme:** Targets the most marginalized tribal communities with tailored interventions in health, housing, and livelihoods.
- **Pradhan Mantri Janjati Adivasi Nyaya Maha Abhiyan (PM JANMAN):** Launched in 2023 with a ₹24,000 crore budget to saturate PVTG habitations with basic services like roads, telecom, housing, and education.
- **National Scheduled Tribes Finance and Development Corporation (NSTFDC):** Provides concessional loans and skill development for tribal entrepreneurs.
- **Support to Tribal Research Institutes (TRIs):** Promotes research, documentation, and preservation of tribal culture and knowledge systems.
- **Vanbandhu Kalyan Yojana:** The Vanbandhu Kalyan Yojana (VKY) is a flagship initiative launched by the Government of India in 2014 to ensure the **holistic development of tribal communities** across the country. It reflects a shift from fragmented welfare schemes to an integrated, rights-based approach that emphasizes both **infrastructure and human development**.
- **Eklavya Model Residential Schools (EMRS) :** The Eklavya Model Residential Schools (EMRS) are a flagship initiative by the Government of India aimed at providing **quality education to tribal children** in remote areas. Launched in 1997–98, the scheme is implemented by the **Ministry of Tribal Affairs** through the **National Education Society for Tribal Students (NESTS)**.
- **TRIFED (Tribal Cooperative Marketing Development Federation) :** The **Tribal Cooperative Marketing Development Federation of India (TRIFED)** is a national-level cooperative body established in 1987 under the **Multi-State Cooperative Societies Act, 1984**. It operates under the **Ministry of Tribal**

Affairs, with the core mission of promoting the **socio-economic development of tribal communities** through sustainable marketing of their products and resources

- **Digital India for Tribes:** The **Digital India for Tribes** initiative refers to a set of efforts under the broader *Digital India* mission aimed at **bridging the digital divide** for India's tribal communities. While not a single standalone scheme, it encompasses multiple programs and strategies designed to empower tribal populations through **digital literacy, connectivity, and access to e-governance services**.

India's legal framework for Indigenous Peoples is **comprehensive**, aiming to protect their **cultural identity, land rights, and autonomy**. However, **effective implementation, legal awareness, community participation, and political will** are crucial for achieving real justice and empowerment.

Contemporary Challenges facing by Indigenous People

The Indigenous society has suffered greatly in the past. Many Indigenous people have overcome great hurdles to achieve great things for their communities. However, there are still many Indigenous people who are disadvantaged in our country. Statistically, Indigenous people have poor health, educational opportunities, life expectancy, employment options and many live in very remote areas. Along with these issues, many still have to deal with negative social attitudes.

There are many things being done to help Indigenous peoples but there is still a lot more that could be done.

Land Alienation And Displacement: Tribal communities continue to be displaced due to mining, dams, and industrial projects, often without proper rehabilitation.

Lack of Political Representation: Though constitutionally reserved, meaningful political participation often lacks due to external influence and marginalization.

Cultural Erosion: Language loss, forced assimilation, and homogenizing policies dilute Indigenous cultural identities.

Environmental Degradation: Environmental destruction in tribal regions not only affects biodiversity but the very survival of Indigenous cultures.

Judicial Interventions

Indian courts have upheld Indigenous rights in various judgments. India's judiciary has played a pivotal role in safeguarding the rights of Indigenous peoples—commonly referred to as Scheduled Tribes—especially in the face of displacement, environmental degradation, and cultural erosion.

Banwasi Seva Ashram v. State of Uttar Pradesh (1986) The Court emphasized the need to balance development with the rehabilitation and welfare of tribal communities, cautioning against displacement without adequate safeguards.

Samatha v. State of Andhra Pradesh (1997) The Supreme Court held that government land in Scheduled Areas cannot be leased to private mining companies. This ruling reinforced tribal land rights and emphasized the need for state accountability in protecting Indigenous territories.

Orissa Mining Corporation v. Ministry of Environment and Forest (2013) Also known as the *Niyamgiri case*, the Court upheld the rights of the Dongria Kondh tribe to decide on mining in their sacred hills. It recognized the role of the **Gram Sabha** in safeguarding cultural and religious rights under the Forest Rights Act.

Indigenous Peoples Organization v. Union of India (2021) This case highlighted the importance of community representation in legal proceedings affecting Indigenous rights. The Court acknowledged substantial representation and compliance with interim directions, reinforcing participatory justice.

These rulings collectively underscore the judiciary's evolving role—from a passive interpreter to an active guardian of Indigenous rights.

Recommendations

The **recommendations on the rights of Indigenous Peoples** stem from a range of international frameworks, most notably the **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)**, adopted in 2007. These recommendations aim to uphold the dignity, identity, and autonomy of Indigenous communities worldwide.

India's approach to Indigenous rights—primarily concerning **Scheduled Tribes (STs)** or *Adivasis*—is shaped by both constitutional mandates and international norms. While India has not ratified ILO Convention 169, it has endorsed the **UN Declaration on the Rights of Indigenous Peoples (UNDRIP)**, and its domestic framework reflects many of its principles

- **Strengthen FPIC Mechanisms:** Ensure informed consent of Indigenous communities in development projects.
- **Inclusive Development Models:** Tailor schemes to fit Indigenous socio-cultural contexts.
- **Preservation of Indigenous Languages and Culture:** Implement educational and cultural promotion programs in tribal languages.
- **Legal Empowerment:** Increase awareness and accessibility to legal remedies for Indigenous communities.
- **Implementation of Laws:** Ensure effective implementation of FRA and PESA at the grassroots.

Conclusion

Indigenous peoples are not mere stakeholders but rights-holders with unique identities, worldviews, and knowledge systems. Recognizing their rights is not only a legal and moral obligation but a step toward inclusive and sustainable development. Both international instruments and national laws offer a framework for protection, but actual realization demands political will, participatory governance, and respect for Indigenous autonomy.

References

- Bulsara, S., & Sreenivasa, P. (n.d.). "Driven to bondage and starvation". "Combat Law", 2(5).
- Deshingkar, P., & Start, D. (2003, August). "Seasonal migration for livelihoods in India: Coping, accumulation and exclusion" [Working Paper]. Overseas Development Institute.
- Mosse, D., Gupta, S., Mehta, M., Shah, V., Rees, J. F., & KRIBP Project Team. (2002). Brokered livelihoods: Debt, labour migration and development in tribal western India. "Journal of Development Studies", *38*(5), 59–88.
- Rodríguez-Pinero, L. (2011). The Inter-American system and the UN Declaration on the Rights of Indigenous Peoples: Mutual reinforcement. In S. Allen & A. Xanthaki (Eds.), "Reflections on the UN Declaration on the Rights of Indigenous Peoples". Oxford: Hart Publishing.
- Centre for Minority Rights Development (Kenya) & Minority Rights Group International (on behalf of Endorois Welfare Council) v. Kenya, Communication No. 276/03 (2009).
- Human Rights Committee. (1994). "General comment No. 23 on the rights of minorities".
- Committee on Economic, Social and Cultural Rights. (2009). "General comment No. 21 on the right to take part in cultural life".
- Inter-American Court of Human Rights. (2004). "Case of the Plan de Sanchez Massacre v. Guatemala", Series C, No. 116.

- United Nations High Commissioner for Human Rights. (2012). *Report on the rights of indigenous peoples* (A/HRC/21/23).
- Report of the Commission on Human Rights on its Eighteenth Session (E/3616/Rev.1)
- OHCHR. (2008). “Working with the United Nations human rights programme: A handbook for civil society”. <https://www.ohchr.org>
- United Nations Development Group. (2009). Guidelines on Indigenous Peoples’ Issues. https://www.ohchr.org/Documents/Publications/UNDG_training_16EN.pdf
- Permanent Forum on Indigenous Issues..(n.d.).“Library documents”. <http://social.un.org/index/IndigenousPeoples/LibraryDocuments.aspx>
- www.iosrjournals.org
- www.culturalsurvival.org
- www.humanrightlawreview.in
- www.unwomen.org
- www.unicef.org
- www.unhabitat.org
- http://unfccc.int
- www.wipo.int/tk/en/
- www.pib.gov.in
- www.indiankanoon.org
- “NGO Shadow Report on Status of Adivasi/Tribal Women in India” for the 58th session of CEDAW, submitted by Inter-State Adivasi Women’s Network (ISAWN) of Mainland India, Indigenous Women’s Forum of North East India (IWFNEI) and Asia Indigenous Peoples Pact (AIPP), June 2014 <http://aippnet.org/india-ngo-cedaw-shadow-report-and-status-of-adivasi-tribal-women-in-india-for-the-58th-session-of-cedaw/>

