



INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

RIGHTS OF THE INDIGENOUS IN INDIA: ISSUES & CHALLENGES

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ABSTRACT:

India is home to the largest population of indigenous peoples of any country in the world. Roughly a quarter of the world's indigenous population – around 80 million people – are scattered across India, their numbers a staggering diversity of ethnicities, cultures and socio-economic situations. They range from some of the last uncontested indigenous communities in the world, such as the Gonds and Santals of central India. They include not only communities who live under conditions of extreme destitution, but also communities with social indicators well above the national average. But across circumstances and areas, like other indigenous communities around the world, India's indigenous peoples do share one characteristic – social, political and economic marginalization. In India, 461 ethnic groups are recognized as Scheduled Tribes. These are considered to be India's indigenous peoples. In mainland India, the Scheduled Tribes are usually referred to as Adivasis, 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. The main themes of the paper is the rights of indigenous with special reference to education media and employment and the major issues related to achieve those rights.

KEYWORDS: Indigenous, Rights of Indigenous

INTRODUCTION:

It is estimated that there are more than 370 million indigenous people spread across 70 countries worldwide. Practicing unique traditions, they retain social, cultural, economic and political characteristics that are distinct from those of the dominant societies in which they live. Spread across the world from the Arctic to the South Pacific, they are the descendants - according to a common definition - of those who inhabited a country or a geographical region at the time when people of different cultures or ethnic origins arrived. The new arrivals later became dominant through conquest, occupation, settlement or other means. Among the indigenous peoples are those of the Americas (for example, the Lakota in the USA, the Mayas in Guatemala or the Aymaras in Bolivia), the Inuit and Aleutians of the circum polar region, the Saami of northern Europe, the Aborigines and Torres Strait Islanders of Australia and the Maori of New Zealand. These and most other indigenous peoples have retained distinct characteristics which are clearly different from those of other segments of the national populations.

CONCEPT OF INDIGENEOUS:

Considering the diversity of indigenous peoples, an official definition of “indigenous” has not been adopted by any UN- system body. Instead the system has developed a modern understanding of this term based on the following:

- Self- identification as indigenous peoples at the individual level and accepted by the community as their member.
- Historical continuity with pre-colonial and/or pre-settler societies
- Strong link to territories and surrounding natural resources
- Distinct social, economic or political systems
- Distinct language, culture and beliefs
- Form non-dominant groups of society
- Resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities.

PART 1: IMPORTANT THEMES IN THE DECLARATION:

The main themes are: (i) the right to self-determination; (ii) the right to be recognized as distinct peoples; (iii) the right to free, prior and informed consent; and (iv) the right to be free of discrimination.

The right to self-determination: The right of indigenous peoples to self-determination is fundamental to UNDRIP. While there are different interpretations, self-determination generally means that indigenous peoples have the right to decide what is best for them and their communities. For example, they can make their own decisions on issues that concern them and carry them out in the way that will be meaningful to indigenous

peoples, while being respectful of the human rights of their community members (including children) and other peoples as well.

Indigenous peoples have the right to be independent and free. They have the right to be citizens of the country they live in and at the same time to be members of their indigenous communities. As citizens, they have the right to choose to build relationships with other peoples and to take active roles in the country in which they are living.

The right to cultural identity: Indigenous peoples are equal to all other peoples, but they also have the right to be different, for example in the way they dress, the food they eat and in the language they speak.

The right to free, prior and informed consent: Free, prior and informed consent means that indigenous peoples have the right to be consulted and make decisions on any matter that may affect their rights freely, without pressure, having all the information and before anything happens.

Protection from discrimination: The right to be free from discrimination means that governments must ensure that indigenous peoples and individuals are treated the same way as other people, regardless of sex, disability or religion.

PART 2: LIFE, LIBERTY, CULTURE AND SECURITY

Article 7: Right to life, liberty and security

Every indigenous person is born with the right to life, to live freely (liberty) and to be safe and secure. Indigenous peoples as a group have the right to live freely, be safe and secure, and not exposed to violence. For example, the children of an indigenous group may not be taken away from their family by force.

Article 8: Assimilation or destruction of culture

Indigenous peoples and individuals have the right not to be assimilated – meaning, they have the right not to be forced to take up someone else's culture and way of life, and for their culture not to be destroyed.

Article 9: Belonging to an indigenous community or nation

Indigenous peoples and individuals have the right to belong to indigenous communities or nations. They may not be discriminated against because of their belonging to (being a member of) an indigenous community or nation.

Article 10: Forceful removal and relocation

Indigenous peoples may not be removed or relocated by force from their lands. If they are relocated, then only with their free, prior and informed consent, meaning that they have the right to make decisions on relocation freely, without pressure, having all the information and before anything happens. They also have the right to compensation for their relocation, and the option to return to their land, if possible.

PART 3: CULTURE, RELIGION AND LANGUAGE

Article 11: Right to culture

Indigenous peoples have the right to practice and revive their culture and traditions. Governments will work with indigenous peoples to ensure indigenous property rights to their cultures, knowledge, spiritual and religious traditions are respected, and to address cases where these have been used without free, prior and informed consent.

Article 12: Right to spiritual and religious traditions and customs

Indigenous peoples have the right to practice their spiritual and religious traditions. Governments will, with indigenous peoples, ensure that indigenous peoples are free to practice, protect and revive and keep alive their cultures, spiritual, religious and knowledge traditions.

Article 13: Right to know and use language, histories and oral traditions

Indigenous peoples have the right to recover, use and pass on to future generations their histories and languages, oral traditions, writing systems and literature and to use their own names for communities, places and people. Indigenous peoples also have the right to be heard and understood in their own languages.

PART 4: EDUCATION, MEDIA AND EMPLOYMENT

Article 14: Establishment of educational systems and access to culturally sensitive education

Indigenous peoples have the right to set up and manage their own schools and education systems. Indigenous individuals, particularly children, have the same right as everyone else to go to school and cannot be left out because they are indigenous. This means that governments must ensure that indigenous peoples – particularly children – living in, or outside of, their communities get the same benefit from the education system as others in ways that respect indigenous cultures, languages and rights.

Article 15: Accurate reflection of indigenous cultures in education

Indigenous peoples have the right to their cultures and traditions being correctly reflected in education and public information. Governments will work with indigenous peoples to educate non-indigenous peoples in ways that respect indigenous peoples' rights and promote a harmonious society.

Article 16: Media

Indigenous peoples have the right to create their own media (i.e., radio, TV and newspapers) in their own language and to access non-indigenous media. Government-owned media has a duty to reflect indigenous cultural diversity. Governments will also encourage privately owned media to reflect indigenous cultural diversity.

Article 17: Employment

Indigenous individuals and peoples have the right to be treated fairly and not be discriminated against in all matters relating to work and employment. Indigenous children should be especially protected from work that harms them, and that is bad for their health and education. Governments will work together with indigenous peoples to protect children from this kind of mistreatment.

PART 5: PARTICIPATION AND DEVELOPMENT

Article 18: Participation in decision-making

Indigenous peoples have the right to take part in decision-making in all matters affecting them. This includes the rights of indigenous peoples to select who represents them and to have indigenous decision-making processes respected.

Article 19: Free, prior and informed consent for laws and policies

Governments must seek indigenous peoples' views and opinions and work together with them through their chosen representatives in order to gain their free, prior and informed consent before laws are passed or policies or programs are put in place that will affect indigenous peoples.

Article 20: Subsistence and development

Indigenous peoples have the right to their own political, economic and social systems, and to follow their own traditional ways of growing food and other activities that help them in their daily living. They have the right to seek justice where this right is taken away.

Article 21: Economic and social well-being

Indigenous peoples have the right to improve their economic and social well-being, and governments will take action to help indigenous peoples do so, with particular attention to the rights of indigenous elders, women, youth, children and persons with disabilities.

Article 22: Indigenous elders, women, youth, children and persons with disabilities

Governments, with proper consultation with indigenous peoples, will ensure indigenous elders, women, youth; children and persons with disabilities have their rights respected. Governments will ensure that indigenous women and children are free from all forms of violence and discrimination.

Article 23: Priorities and strategies for development

Indigenous peoples have the right to set their own priorities and directions for development of their communities. Governments will support indigenous peoples to run their own organizations and services, and in deciding for themselves issues affecting their health, housing and other matters.

Article 24: Right to health

Indigenous peoples have the right to use traditional medicines and health practices that they find suitable. They have the right to access health care and social services (i.e., get prenatal care, go to the doctor or social worker or get help with food and housing) without discrimination. Indigenous individuals have the same right to health as everyone else, and governments will take the necessary steps to realize this right.

PART 6: LAND AND RESOURCES

Article 25: Spiritual relationship with traditional land and resources

Indigenous peoples have the right to their special and important spiritual relationship with their lands, waters and resources and to pass these rights to future generations.

Article 26: Right to own, use, develop and control traditional land and resources

Indigenous peoples have the right to own and develop their land and resources. Governments will legally recognize and protect these lands and resources, and will take action to respect indigenous peoples' laws and traditions in non-indigenous legal systems.

Article 27: Indigenous laws and traditions on land and resources

Governments will respect and recognize indigenous peoples' laws and traditions about land and resources and take action to have these respected in non-indigenous legal systems. Indigenous peoples have the right to get help from governments to protect their lands.

Article 28: Rights when lands and resources are wrongly taken away

Indigenous peoples have the right to get back or to be compensated when their lands, territories or resources have been wrongly taken away, occupied, used or damaged without their free, prior and informed consent.

Article 29: Conservation and protection of the environment, lands and resources

Indigenous peoples have the right to their environment being protected. Governments will respect and protect the right of indigenous peoples to develop and protect their lands, water bodies and other natural resources. No dangerous materials should be placed on indigenous peoples' lands without their free, prior and informed consent. Governments will protect the health of indigenous peoples who are affected by dangerous materials placed on their land.

Article 30: Military activities

Military activities will not take place on indigenous lands without indigenous people free, prior and informed consent, unless it is necessary for the well-being of all of society and it takes place through consultations with indigenous peoples' representatives.

Article 31: Cultural and intellectual property

Indigenous peoples have the right to their cultural and intellectual property, and governments will recognize and protect this right. Examples of cultural and intellectual property are stories, songs, dance, designs, art, ceremonies, sacred sites and remains of ancestors. Intellectual property includes things like indigenous peoples' knowledge of their laws, spiritual, social, health, education, economic, and environmental beliefs, systems and practices.

Article 32: Land and resource development

Indigenous peoples have the right to decide how they wish to develop their lands and resources. Governments must respect and protect these rights. Indigenous peoples' free, prior and informed consent must be obtained when any decisions are made that may affect the rights to their lands,

PART 7: SELF-GOVERNMENT AND INDIGENOUS LAWS

Article 33: Identity, membership and citizenship

Indigenous peoples have the right to decide what their identity or membership is. They also have the right to decide who their members are according to their own customs and traditions. Indigenous peoples have a right to be citizens of the country in which they live.

Article 34: Distinctive institutional structures and customs

Indigenous peoples have the right to their own structures, traditions and laws in ways that ensure that indigenous peoples enjoy the highest standards of human rights.

Article 35: Individual responsibilities

Indigenous peoples have the right to decide what responsibilities individuals in their community have towards the community as a whole.

Article 36: Right to maintain and develop contacts, relations and cooperation

Indigenous peoples living in different countries have the right to be in contact and carry out activities with each other. Governments, in consultation with indigenous peoples, will support indigenous peoples in exercising this right.

Article 37: Recognition, observance and enforcement of treaties and agreements

Governments will respect all the agreements they have made with indigenous peoples. The Declaration in no way reduces the rights of indigenous peoples in other agreements previously made by indigenous peoples with governments.

PART 8: IMPLEMENTATION

These articles explain how governments and the United Nations should work together – in consultation with indigenous peoples – to make sure the rights of all indigenous peoples are protected. Together with indigenous peoples, governments should create laws, shape policies and provide funds to implement the Declaration.

Indigenous peoples have the right to have access to support from the international community in carrying out activities that will lead to this reality. Where their rights are violated, indigenous peoples have the right to compensation.

Indigenous peoples also have a right to access fair conflict resolution with governments or other parties when their individual and collective rights are not being honored. These conflict resolution processes should respect indigenous rights, customs, and legal systems and promote the highest standards of human rights.

Governments and the United Nations, including the United Nations Permanent Forum on Indigenous Issues, should work with indigenous peoples to make sure the rights of all indigenous peoples as provided by the Declaration are realized and protected.

PART 9: UNDERSTANDING THE DECLARATION

These articles explain how to understand the Declaration. Governments can do more but not less than what is written in the Declaration. The Declaration also applies to both males and females. The Declaration contains both rights and responsibilities of indigenous peoples. Care must be taken to ensure that the rights are not used to deliberately disturb the unity, peace and security of a country.

Challenges facing the Indigenous community today

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.

Proving land ownership

Today, the issue of land ownership is still an important one. Ancestral land is a vital element in maintaining Indigenous culture. It is also used by Indigenous people to determine their economic worth in their community. Land rights have been significant to Indigenous people as it meant they finally had a chance to reclaim their ancestral land and re-establish their culture. Indigenous groups that want to make a land claim face great challenges. Not only are the court cases expensive and require a lot of time, but they also require a great deal of proof and information which is difficult to obtain. Land right laws differ in every state, but in each land ownership case the Indigenous people must prove many things. They must be able to prove that ancestral customs and traditions are still being maintained, that a link to the land has been retained over the years and that the land has cultural significance to the Indigenous group making the claim. These are very difficult things to prove because Indigenous people do not have written records.

Remoteness

Although most Indigenous people live in country towns and cities there is still a percentage that live in very remote areas. This remoteness creates many challenges for them as it limits access to necessary services, like health services and educational institutions. It also reduces employment opportunities, which results in high unemployment.

Health

Indigenous people have the worst health status and highest mortality (death) rates. The indigenous population has suffered greatly in terms of health. Today, most Indigenous people have the same access to health care as the rest of the population. Yet, they still have the highest rates of poor health. Remoteness, lack of trust towards the medical industry and negative social attitudes are some of the reasons identified for this poor health. Some action has been taken and community-controlled health services are now supplied. These are services specifically for indigenous people, run by Indigenous people. A lot still needs to be done. The government needs to identify the problems and try and help Indigenous people to achieve better health.

Education and employment

Indigenous people still have the lowest statistics (attendance, retention, continuing their education). Today the major concerns in regards to Indigenous students are low retention rates and high rates of absences. Although initiatives (financial assistance) have been implemented, there is still a great deal that can be done to increase the importance of education amongst the indigenous community. Unfortunately, negative views towards the current system of education have led to high unemployment amongst the Indigenous population. Although many indigenous people have moved to towns and cities in search of work there are many who are still living in remote areas, where there are few positions vacant. Although the government has funded indigenous employment programs there is still more to achieve. Skills need to be taught, social attitudes need to be altered and more community effort needs to be made so that unemployment does not become a condition that is continually passed through the generations.

Social attitudes

One of the major challenges that unfortunately still faces the indigenous community today are the negative social attitudes that are still common. Much has been done recently to create an understanding amongst non-Indigenous people about their past and how it still affects them today. Reconciliation has become important in creating better understanding of Indigenous culture and building stronger relationships within the whole community.

REFERENCES:

- Centre for Minority Rights Development (Kenya) and Minority Rights Group International (on behalf of Endorois Welfare Council) v. Kenya, communication No. 276/03 (25 November 2009).
- Human Rights Committee, general comment No. 23 (1994) on the rights of minorities and Committee on Economic, Social and Cultural Rights, general comment No. 21 (2009) on the right of everyone to take part in cultural life. Note, also, Inter-American Court of Human Rights, Case of the Plan de Sanchez Massacre v. Guatemala, Series C, No. 116, Judgement of 19 November 2004.7 999/20).
- Luis Rodríguez Pinero, “The Inter-American system and the UN Declaration on the Rights of Indigenous Peoples: Mutual reinforcement” in Reflections on the UN Declaration on the Rights of Indigenous Peoples, Stephen Allen and Alexandra Xanthaki, eds. (Oxford, Hart, 2011).
- OHCHR, Working with the United Nations Human Rights Programme: A Handbook for Civil Society (2008).
- Permanent Forum on Indigenous Peoples, library of relevant United Nations materials: <http://social.un.org/index/IndigenousPeoples/LibraryDocuments.aspx> (accessed 4 June 2013)
- Report of the Commission on Human Rights on its Eighteenth Session (E/3616/Rev.1), para. 105.
- “Report of the United Nations High Commissioner for Human Rights on the rights of indigenous peoples” (A/HRC/21/23).30.
- United Nations Development Group, Guidelines on Indigenous Peoples’ Issues (2009). www.ohchr.org/Documents/Publications/UNDG_training_16EN.pdf (accessed 4 June 2013).
- Website : www.unhabitat.org
- Website: <http://unfccc.int>.
- www.unitar.org/pmcp/training-for-indigenous-representatives (accessed 4 June 2013).
- Website: www.unwomen.org
- Website: www.unicef.org
- www.wipo.int/tk/en/.
- www.wipo.int/wipolex/en/text.jsp?file_id=184668 (accessed 4 June 2013).
- www.ohchr.org/EN/AboutUs/CivilSociety/Pages/Handbook.aspx (accessed 4 June 2013)