



The rights of indigenous peoples: constitutional and legal provisions for their protection and development

Dr. Vinod Kumar Bagoria

Associate Professor, Faculty of Law, Jai Narain Vyas University, Jodhpur, Rajasthan, India

Abstract

Due to the notion that tribes had primitive social structures, which implied that tribal people were at a lower level in the evolutionary social hierarchy in terms of their socio-cultural characteristics, economics, and political systems, the two ideas are connected. A common stereotype about tribes was their simplicity and resistance to regional government changes. Tribes are viewed as social groups in the Indian context that exist independently of governmental and cultural organisations. Each definition of a tribe emphasises a different aspect of tribal existence, such as how the tribe engages with the state, civilization, and development processes, as well as specifics on their culture, way of life, and economy. Yet at this point, notions of "backwardness," "indigeneity," and "independence from the wider Hindu culture" began to predominate concepts of tribe. The majority of tribes were identified by what they were not: they did not practice Vedic Hinduism, they were not Muslims, there was no economic or theological stratification in their society, and they did not participate in "modern" culture or economy. The anthropological understanding of tribes in the nineteenth century claimed that the term referred to both a particular kind of civilization based on familial relationships and a stage of evolution. In the first perspective, the tribe is characterised by standard definitions as a social group having a distinct geographic region, dialect, cultural homogeneity, and unifying social organisation. Relative equality within the group, the absence of intricate governmental systems, strong and practical familial ties, collaboration, territorial integrity, cultural and linguistic diversity, and lower levels of technology are only a few of the characteristics associated with tribal communities. In the second situation, tribes are viewed as "primitive" cultures in the sense that they lack all the characteristics of contemporary, Western society, such as being illiterate, "uncivilised," nonindustrial, rural, etc.

Keywords: rights of indigenous peoples, constitutional and legal provisions, protection and development

Introduction

The Indian Constitution and laws enacted under it recognize the special status of tribal communities. While sociologists and social anthropologists debate the defining characteristics of tribes, the Constitution recognizes that tribal communities need and deserve special protections, and the political executive must act to ensure that these protections are extended to tribal communities. Therefore, a programming scheme is used to be able to determine whether tribal communities and tribal areas fall under the allocation.

According to the first view, standard definitions describe tribes as social groups having a distinct geographic region, dialect, defined cultural homogeneity, and unified social organization. A mixture of characteristics attributed to tribal groups include: relative egalitarianism within the group, absence of complex political structures, strong and functional kinship, cooperation, territorial integrity, cultural and linguistic specificity, and low technological level. According to the latter view, tribes are considered "primitive" societies because they do not have all the characteristics of modern Western societies, because they are illiterate, "uncivilized", non-industrial, rural, etc.

The two views are related in that tribes are seen as a primitive social organization, which means that tribal peoples are at a lower stage of the evolutionary social hierarchy in terms of socio-cultural characteristics, economic and political structure, and are often seen as mere descriptions. As well as being immune to larger regional

policy changes. Tribes in the Indian context are also defined as groups outside the structure of the state and civilization.

Every definition of a tribe emphasises a different aspect of tribal life, such as their relationship to the state, civilization, and development processes, as well as the distinctive characteristics of their existence, culture, and economy. Yet, the prevailing tribal beliefs at the period were "backwardness," "indigenization," and exclusion from the greater Hindu culture. The tribes can be identified mostly by what they do not practice, such as Vedic Hinduism, Islam, considerable degrees of economic and theological stratification, or membership in "modern" economies or civilizations [2].

Anthropological descriptions of tribal communities have largely provided working definitions of tribes that are often specific to their sites of study, as tribes vary widely in population size, lifestyle, and level of integration into capitalist economies. For example, the range of occupations practiced varied greatly from tribe to tribe these could be: hunters and gatherers, rotational cultivators, regular cultivators, herders, craftsmen, agricultural laborers and plantation workers and industry. The Constitutional Amendment Law of 1950 was based on the list of "backward tribes" established by the colonial government in 1936, which also included a list of all registered tribes recognised at the time. When independent India carried out its first census in 1951, the country had recognized Scheduled Tribes. The phrase "Scheduled Tribe" is a political-administrative classification that falls short of

adequately expressing the vast social complexity of the numerous tribes included in its group.

Although this group has never been completely defined, the Indian constitution designates some populations as Scheduled Tribes in order to grant them particular welfare protections. According to the Indian Constitution, tribes are defined as those ethnic or racial groups.

Concept and Historical Context

The Montague Chelmsford Report of 1918 also referred to the management of these "backward areas". The report recommends demarcating the areas where these people live and excluding them from the normal laws of the province. These proposals were embodied in the Government of India Act 1919, which empowered the Governor General in Council to declare any part of British India a backward area and ordered that no law or part of any law does not apply or applies to that region. The Government of India Act 1935, by special provisions (Sections 91 and 92), empowers the Governor in Council to declare any area excluded or partially excluded, continuing the previous arrangement. However, the legislation does not apply to "tribes", which is not a term defined by law but applies to the areas in which these people live. From then on, for the first time, the backward tribes obtained some representation in the provincial assemblies. It was not until 1937 that the British classed them as a "backward class" and listed them as Scheduled Tribes under the Government of India Act 1935. In 1936, all provinces except Punjab and Bengal were included in the list of backward tribes. The rule of the British Crown in India consisted of four political arrangements:

1. A presidential estate where the Crown reigned supreme,
2. Residential areas where the British Crown was present through its people and the imperial rulers were subordinate to the Crown,
3. Proxy (tribal) districts or surrogates partially excluded areas governed in the name of the royal family without touching Zemstvo,
4. Excluded areas where representatives of the royal family act as puppet leaders (Northeast).

The Indian Union is organized around presidential estates. After the transfer of power, the rulers of the colonies signed the "Deed of Accession" on behalf of the rulers, and in return they received the Privy Council Fellowship^[1].

After independence, with the entry of vassal states into the Commonwealth and the merger of excluded and partially excluded territories, British forest law was extended overnight to most of these areas – often with the stroke of a pen. The princely state forests were converted into government reserves and protected forests without any process to document the rights of aborigines and residents in these forests. The result was the overnight expropriation of large areas that actually belonged to indigenous communities, causing much discontent and ongoing rebellions such as the Warli Rebellion in Maharashtra (1956-1958). (For more information on forest law, see the discussion in Section 7, Forests, of Part II, Land, Natural Resources and the Environment).

Although no clear criteria have been established for this purpose, it is officially accepted that the identification of a Scheduled Tribe (ST) is based on the following characteristics: -

1. Original character;
2. Distinctive culture;
3. Geographic isolation;
4. Shyness in contact with the general community; and
5. Delay.

Although these criteria are not explicitly stated in the Constitution, they are accepted in practice and are based on the 1931 census; the 1955 report of the Commission of the First Backward Class (Kaka Kalelkar Commission), which viewed the tribes "having an autonomous and exclusive existence, not entirely incorporated into the subject of the people" Scheduled Tribes can be religiously affiliated with any major world religion. They lead this lifestyle, which qualifies them as a Scheduled Tribe.

The Indian government established a committee in 1959 to look into the welfare of the chosen tribes, but even this group was unable to come up with a proper description. The committee was led by Shri. VN Dhebar. The committee concluded that the Scheduled Tribes could be identified by the fact that they lived alone in the mountains, and that even though they lived on the plains, they lived separate, excluded lives and were not fully integrated with the assimilated rest. On his recommendation, he reiterated his position that the technical definition of a tribe is any group classified as a Scheduled Tribe under Section 342^[4].

The Scheduled Caste and Scheduled Tribes Order (Amendment) Act 1967, Joint Committee of Parliament and 1969 (Chanda Committee) is also working to give final status to the tribes. ST members who migrate from a pre-determined community area to another area in the same state retain ST status. However, if the person moves to another state, they cannot apply for ST status in that state. In June 1999, the government changed the way it included or excluded claims from the ST list. Applications for ST listing must first be approved by the relevant State/UT government and forwarded to the Register General of India (RGI).

If the RGI is satisfied with the state government's proposal, it recommends the proposal to the central government, which then submits it to the National ST Council for recommendation. The Cabinet then makes a decision and presents proposals in the form of bills to modify the presidential decree to include or exclude it on a case-by-case basis. Some groups were first identified in 1975-76 and then considered ST's most marginalized groups in 1993-94. These have been included in a new category called Primitive Tribal Groups (PTGs) for the purpose of administering special programs for them.

Besides STs, there is another type of community also called "tribes". These are the Designated Tribes (DNT). These communities were originally classified as criminal tribes under the Criminal Tribes Act 1871^[5] and were said to have "engaged in the systematic commission of non-dischargeable crimes". Once a tribe is "notified" as criminal, all of its members must register with the local magistrate or they will be charged with a crime under Indian criminal law^[6]. The Criminal Tribes Act of 1952 abolished notices, however, this law was superseded by a series of Habitual Offender Acts which required police to investigate a suspect's criminal tendencies and determine whether his profession "facilitated a fixed lifestyle".

Lack of accurate census and classification is a serious issue for Designated and Nomadic Communities, which makes it difficult to plan and implement social assistance programs.

These communities are divided into Scheduled Castes, Scheduled Tribes, and still others as Other Backward Classes (OBC). Also, like the ST listings themselves, listings for the same group vary from state to state and even within the same state. For instance, Kaikadis are recognised as scheduled castes in the Vidharba district of Maharashtra, as VimuktaJatis and nomadic tribes (VJNTs) in the rest of the state, and as a scheduled caste in neighbouring Andhra Pradesh.

The Banjaras are similarly recognised as a Scheduled Tribe in Andhra Pradesh, Odisha, and Bihar, a Scheduled Caste in Karnataka, Delhi, and Rajasthan, an OBC in Uttar Pradesh,

and an Unrecognized Tribe in Tamil Nadu. Since that many groups are not recognised and are denied access to affirmative action policies and development programmes despite historical (and continuing) injustice that these people face, these inconsistencies have not been remedied, these facts aggravate the situation of DNT. Confront. Furthermore, the lack of reliable data on the population, geographic distribution and development indices of these groups makes it difficult for policy makers to develop effective intervention strategies for TSD. There are 198 unnotified tribes and 1,500 nomadic and semi-nomadic groups throughout the nation, according to some estimates.

Table: 1 Rights of indigenous peoples in international perspective

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| Universal Declaration of Human Rights (1948) | The first international text to state that all persons are "equal in dignity and rights" was the Universal Declaration of Human Rights. Everyone has the right to the freedoms guaranteed by the Declaration of Independence, according to Article 1 of the Constitution, "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national origin or social status, fortune, birth or any other status."(Article 2) |
| Convention on the Prevention and Punishment of the Crime of Genocide (1951) | "The killing of a member of the group; the infliction of substantial bodily or mental injury to its material annihilation in whole or in part; actions to prevent births within groups; forcible transfer of children from one group to another" are all considered crimes of genocide. (Article 2) |
| International Covenant on Civil and Political Rights (1966) | The fundamental civil and political rights of people are outlined in this treaty. The provisions cover collective rights as well. People from these minority "should not be deprived of the right to have their own culture, to profess and practise their own religion with members of other groups, or to use their own language in nations where racial, religious, or linguistic minorities exist." (Article 27) |
| International Covenant on Economic, Social and Cultural Rights (1966) | The basic economic, social, and cultural rights of persons are outlined in this Treaty. Moreover, it outlines collective rights. |
| Convention on the Elimination of All Forms of Racial Discrimination (1966) | The term "racial discrimination" refers to "any distinction, exclusion, limitation or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise of equality," policies, human rights, and fundamental freedoms in the economic, social, cultural, or any other area of public life. (Article 1) |
| International Labor Organization (ILO) Convention 169 (1989) | The first international treaty to address the unique human rights requirements of indigenous peoples is the ILO Convention on Indigenous and Tribal Peoples. Governments' obligations to advance and defend the human rights of indigenous peoples are outlined in the Convention. |
| Convention on the Rights of the Child (1990) | The Agreement includes nondiscrimination against minors and other rules and suggestions pertaining to indigenous peoples (Article 2), distribution of news in minority languages through the media (Article 17), right to education, including human rights education, as well as the right to one's own culture, language, and beliefs. (Article 29) According to Article 30, children of ethnic minorities or those of indigenous descent shall not be denied the opportunity to practise their own religion, culture, or language. |
| Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (1992) | All minorities, including several indigenous peoples across the world, are included by the Declaration. Although collective rights may result from these individual rights, it exclusively addresses individual rights. The statement addresses minorities' rights as well as both nations' responsibilities to them. The national, ethnic, cultural, religious, or linguistic identity of |
| | minorities is one of the subjects discussed (Article 1); Associations between minorities, the development of culture, and involvement in choices affecting minorities (Article 2); exercising minority rights, both individually and collectively (Article 3); and instruction on racial minorities.(Article 4) |
| Rio Declaration of Environment and Development and Agenda 21 (1992) | The Rio Earth Summit is mentioned in both texts. It acknowledges the unique bond that exists between Indigenous peoples and their ancestral places. Indigenous peoples are crucial to the development and maintenance of the environment because of their traditional knowledge and ways of life. (Rio Declaration, Principle 22) Certain indigenous peoples may require more authority over their territories, self-management of their resources, and involvement in development choices if they are to fully benefit from this knowledge. (Agenda 21, Chapter 26.4) |
| Convention on Biological Diversity (1992) | "Respect, protect, and preserve the knowledge, innovations, and practises of indigenous and local communities that embody traditional ways of life relevant to the conservation and sustainable use of the biological holders of knowledge, innovations, and practises, and to encourage the equitable distribution of the benefits arising from the utilisation of such knowledge, innovations, and practises," the Convention instructs its signatories. (Article 8(j)) |
| Vienna Declaration and Programme of Action (1993) | The International Conference on Human Rights, held in Austria in 1993, concluded with the Vienna Declaration. "Recognizes the inherent dignity and distinctive contribution of indigenous peoples to social progress and pluralism, and firmly expresses the commitment of the international community to their economic, social, and |
| | cultural well-being," the declaration reads. (I.20) The Declaration further requests that the Draft Declaration on the Rights of Indigenous Peoples be finished, that the Working Committee on Indigenous Populations' mandate be updated and renewed, and that an international decade of indigenous peoples be declared. (II.28 – 32) |

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| Report of the International Conference on Population and Development (1994) | It was decided that indigenous peoples' opinions and needs should be taken into account in population, development, and environmental initiatives that impact them, and that they should get population and development services that are socially, culturally, and environmentally suitable. (Paragraph 6.24) Allowing indigenous peoples to own and govern their lands and protecting the ecosystems and natural resources they depend on was another crucial choice. (Paragraph 6.27) |
| Durban Declaration and Programme of Action (2001) | A component of the Durban Declaration and Program of Action is devoted to concerns affecting indigenous people. The Declaration is the first UN text to use the word "indigenous peoples" instead of "indigenous peoples," which is maybe more significant than all the suggestions combined. |
| UN Working Group on Indigenous Populations | The first and only UN entity devoted to the human rights of indigenous peoples is the Working Group on Indigenous Peoples, a subcommittee of the Sub- Commission on the Promotion and Protection of Human Rights. It sets worldwide criteria for the human rights and freedoms of indigenous peoples and evaluates national progress in their advocacy and protection. The Working Group also studies problems that relate to Indigenous peoples. Meetings of the working group are frequently attended by close to 700 persons, including |
| | representatives from governments, indigenous peoples, NGOs, and academia. |
| UN Permanent Forum on Indigenous Issues | The Permanent Forum on Indigenous Affairs was established in 2000 by the Economic and Social Council (ECOSOC), one of the six main United Nations bodies, to examine a variety of issues affecting indigenous peoples. The Forum is the first and only international organisation of the United Nations to have eight indigenous experts as members. The Forum educates people about Indigenous concerns, produces and disseminates information on Indigenous matters, and offers the Council professional opinion and direction. |
| UN Working Group on the Draft Declaration on the Rights of Indigenous Peoples | Each year, the Commission on Human Rights' working group meets to go through and discuss the draught declaration. While it will be approved by agreement among all United Nations member states, the declaration is not legally obligatory on nations, but it will be a strong statement of generally recognised values and a good starting point for arguing for stronger legal safeguards. Strong for native peoples in several nations. |
| UN Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous peoples | The purpose of the mission is to gather data on abuses of indigenous peoples' human rights and fundamental liberties, to create suggestions for mitigating and resolving these abuses, and to work with other UN specialists on the facilitation subcommittee and the protection of human rights. The Permanent Forum on Indigenous Issues and the Working Group on Indigenous Populations are both partners in the Rapporteur's work. |

Constitutional and legal provisions for their protection and development.

However, these principles are considered to be at the heart of state governance, so of course they are important and must have considerable persuasion. Section 253 of the Legislation Governing the Implementation of International Agreements also describes how the State of India discharges its obligations under international law as follows: "Notwithstanding anything in the foregoing provisions of this Chapter, the Parliament shall have power to make laws for the protection of the whole or any part of the territory of India, To enforce any treaty, agreement or convention with any other country or country, or any decision made in an international conference, association or other body.

In addition, Schedule Seven empowers Parliament to make laws relating to international treaties, etc., as follows: "The making of treaties and agreements with foreign countries and the enforcement of treaties, agreements and agreements with foreign countries. (Entry 14 of List 1, Annex 7). Indian courts have played an important role in limiting the domestic application of international law, be it customary law or treaty law. In an early decision in 1954, the Calcutta High Court ruled that "if any Indian law conflicts with any principle of international law, Indian courts shall conform to the laws enacted by the legislature of the country in which they entered"^[7].

Thus, the Supreme Court was asked to consider the question of the application of customary international law in another case which reaffirmed that, while there is no doubt that States must move forward with the international community and that domestic law must respect the rules of international law right, no, the Court also held that, courts, which are organs of the state and not of international law, cannot apply if international law is in conflict with domestic law^[8].

International treaties are not binding on Indian courts unless they have been incorporated into domestic law. This view is

based on Article 253, and in a number of cases the various high courts have held that legislation is expressly required for a treaty to enter into force^[9]. The Supreme Court also reaffirmed this position and held that obligations arising from agreements or treaties do not themselves bind Indian citizens and that the legislative power in this regard rests with Parliament, according to section 14 of the Indian Act^[10].

In at least one case^[11], the Supreme Court found a way around the rule because it was unable to strike down a Civil Procedure Code provision that imprisoned civil debtors as a violation of international law. However, the Supreme Court, mired in its customary decisions, continued to hold that because the provision contained the right to life under Article 21 of the ICCPR, it was inconsistent with Article 11 of the ICCPR read together and should therefore be considered unconstitutional. In some recent cases involving human rights violations, courts have taken international conventions into account and found no inconsistencies between international conventions and domestic law.

Foremost among these was a Supreme Court ruling arising from a writ petition filed by a women's organization seeking to uphold India's commitment to the Convention on the Elimination of Discrimination Respect for Women (CEDAW) to enact effective measures to control sexual harassment in the workplace. The Supreme Court held that since India has no laws on a particular subject, the content of international conventions such as CEDAW is irrelevant in interpreting the guarantee of gender equality under Articles 14, 15, 19 (1) (g) And Article 21 of the Constitution of India, which therefore contains implied safeguards against sexual harassment in the workplace. The Supreme Court further stated that "any international covenant which is not contrary to fundamental rights and which is in accordance with their spirit must be read into these provisions in such a way as to amplify their meaning and

substance so as to further the objective of the constitutional guarantees" is implied in 51(c) and Parliament must enact laws to implement international conventions and standards under Article 253 and the mandate of Entry 14 of the Common List in Schedule 7 of the Constitution^[12].

Thus, Indian courts can enforce international treaties and conventions consistent with Indian law. Some of the major human rights enshrined in various international conventions are actually enshrined in the laws of the Indian Constitution. This is particularly true of the human rights contained in the UNDHR and the civil and political rights contained in the ICCPR. In addition, under the fundamental rights chapter, certain rights that are not specifically set out in the Constitution are considered fundamental rights, including many socio-economic rights contained in the International Covenant on Economic, Social and Cultural Rights. The right to a speedy trial^[13], the right to humane conditions in prison^[14], the right to free legal representation^[15], the right to monetary compensation^[16] in case of unlawful detention, violence in detention or imprisonment, the right to means of subsistence^[17] and the right of asylum^[18] are only these some examples of development.

When a state of emergency was declared under Section 352 of the Constitution in the mid-1970s, an interesting question arose regarding the application of international law. Several motions for orders have been filed with various high courts challenging the declaration of a state of emergency in light of the widespread arrests of political opponents of the then Prime Minister. In the ADM Jabalpur case^[19], the Supreme Court of India upheld by a 4 to 1 majority the power of the President to suspend basic rights in an emergency. It is clear that such a presidential decree and the government's arrest of hundreds of people without trial violate several international covenants, including the International Covenant on Civil and Political Rights. Interestingly, Judge HR Khanna, who boldly dissented, said in his judgment that if national law conflicts with international law, customary or otherwise, the court will apply national law^[20].

Regarding the application of international conventions and treaties on the rights of indigenous peoples to TK and pre-determined areas, the Supreme Court stated in a landmark case Samatha^[21]: "India, being a party to the successful proclamation of the Covenant on the Right to development and its political, legislative or executive power, giving equal importance to the advancement and rights of the people, especially the poor, Dalits and tribals under section 46 and sections 38, 39 and all others read together the right to life guaranteed by Article 21 of the Indian Constitution Act. Through this continuous pursuit and interaction, the right to life will become very important in realizing the full potential of "human being" as an inalienable human right and to improve the standard of living, to improve excellence, to live a dignified life, and to be equal in social and economic status Justice, Liberty, Equality and Fraternity, the Holy Trinity are the pillars for the establishment of an egalitarian social order in the Democratic Secular Socialist Republic of Bharat.

Conclusion and Suggestions

The Indian Constitution and laws enacted under it recognize the special status of tribal communities. While sociologists and social anthropologists debate the defining characteristics of tribes, the Constitution recognizes that tribal communities need and deserve special protections,

and the political executive must act to ensure that these protections are extended to tribal communities. Therefore, a programming scheme is used to be able to determine whether tribal communities and tribal areas fall under the allocation. It is necessary to examine the early origins of the concept of "tribe" and its transformation in various historical and political contexts, especially during the colonial period of the Indian subcontinent. The word "tribe" was used in a Roman context to describe both a barbarian state and a relationship of tributary relations between a group and the empire, with whom it traded gifts and tribute. There was a comparable tribal bond in the Indian Mughal Empire. Hence, the term "tribe" refers to a certain arrangement of the centre and the perimeter. One of the other early meanings of tribe was also a group claiming common ancestry. Indigenous peoples are the primary owners of the lands on which we depend, and their environmental knowledge must be preserved and embraced, not separated from their rightful lands. Society must promote their sense of belonging in order to integrate them into the everyday life of a country in full growth.

There are several obstacles to the smooth and inclusive functioning of self-governing councils in Sixth Schedule areas that need to be overcome. Actions taken by the governor to protect the interests of tribal communities should be explicitly mentioned in the governor's annual report to the president. The provisions of the Sixth Schedule provide considerable scope for autonomy and self-government. Unreported tribes are calling for action to remove stigma and prejudice from their lives. Tribal encounters with the criminal law have been one of the troubling aspects of the past decade.

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