



Legislation in India concerning the Rights of Indigenous Peoples and the Environment

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Abstract: The recognition and protection of the rights of Indigenous peoples are becoming increasingly important, while there is still a significant need for progress in this area. The Indigenous Peoples are particularly affected by the decline in biological diversity and environmental degradation due to their reliance on subsistence economies and strong spiritual ties to their lands and territories. Environmental degradation, large-scale industrial activities, toxic waste, conflicts, forced migration, and land-use and land-cover changes (such as deforestation) pose threats to their lives, survival, knowledge, environment, and health conditions. Conversely, when the rights of Indigenous Peoples are protected, including their rights to land, territory, and resources, both their culture and nature flourish. This study examines the provisions outlined in the Constitution of India on the rights of Indigenous populations and environmental legislation in India.

Keywords: Indigenous Peoples, Constitution, Environment

I. Introduction

Indigenous people globally exhibit a deep sense of gratitude and reverence towards land, natural resources, traditions, and customs. A single definition would not capture the full range and diversity of the Indigenous Peoples of the world. The United Nations Permanent Forum on Indigenous Issues has identified Indigenous peoples as inheritors and practitioners of a culture very distinct in their identity of the dominant societies in which they live in and have managed to retain their social, cultural, economic, and political characteristics. Despite of their cultural disparities, Indigenous People from various regions of the world face similar challenges in safeguarding their rights as unique cultural groups. Indigenous peoples are protagonist as guardians of biodiversity and forms a central character in the implementation of sustainable development and land management. The loss of land and resources brings about the cloud of extinction of their identity, social habitat and their dignity. The escalation in terms of exploitation of natural resources to fodder the needs of local and global consumption pushes Indigenous peoples away from their habitation in the name of development to realise the Government's policies of large-scale projects or implementing of extractive activities. However, the international community now recognizes that special measures are required to protect their rights and maintain their distinct cultures and way of life.

The United Nations Conference on Environment and Development (the Earth Summit), which took place in Brazil in 1992, marked a significant shift in the advancement of indigenous peoples' rights pertaining to the environment. Several legal instruments, including the Rio Declaration, Agenda 21, and the Convention on Biological Diversity, were created during the Earth Summit. These instruments set international legal standards to safeguard the rights of Indigenous peoples to their traditional knowledge and practices in the field of environmental management and conservation. Significantly, there is now a global legal structure that acknowledges the distinct connection indigenous peoples have with their ancestral territories.

The Conference also acknowledged the significant contribution of indigenous peoples and their communities in the management and development of the environment. The international community recognised the significance of Indigenous peoples' traditional knowledge and practices and made a commitment to promote, enhance, and safeguard the rights, knowledge, and practices of Indigenous peoples and their communities. Indigenous peoples and Non-Governmental Organisations (NGOs) convened at Kari-Oca, Brazil, during the Earth Summit expressed their environmental apprehensions. The Kari-Oca Declaration and the Indigenous Peoples' Earth Charter, which were endorsed during this gathering, articulated the principles upheld by indigenous communities worldwide and acknowledged their unique connection with the planet. The collective voice of indigenous peoples played a pivotal role in shaping the result of the Earth Summit. Another significant outcome of the Earth Summit was the formal acceptance of the Convention on Biological Diversity. The Convention acknowledges the strong reliance of several indigenous groups on biological resources and the importance of distributing the advantages derived from utilising traditional knowledge, innovations, and practices to preserve biological diversity, including species diversity. The presence of a wide range of species is crucial for the proper functioning of ecosystems, and the ability of species to persist is an indication of the overall well-being of the environment. Indigenous populations have already experienced the loss or face the potential loss of their ancestral

territories and sacred locations, many of which possess the highest levels of biodiversity on the planet. Countries that have ratified the Convention on Biological Diversity are required to enact domestic laws or modify their constitutions to guarantee the involvement of indigenous communities in the preservation and sustainable utilisation of their natural surroundings.

The International Labour Organisation (ILO) Convention No. 169 and the UN draft Declaration on the Rights of Indigenous Peoples both acknowledge the entitlement of indigenous peoples to engage in the utilisation, administration, and preservation of natural resources. Since the Earth Summit in 1992, there has been a persistent increase in concern about the rights of indigenous peoples and the environment. Both indigenous and non-indigenous individuals are becoming more cognizant of the fact that traditional territories and natural resources play a crucial role in the economic and cultural preservation of indigenous communities. Hence, a multitude of nations have formed dedicated Environment Ministries and formulated comprehensive national Environment Policy Statements and Strategies. While several governments now engage in consultations with indigenous communities over land rights and environmental matters.

II. Indigenous Peoples and their Rights- A Global Perspective

Before the 1970s, Indigenous peoples in Western industrialised countries were not given any substantial representation in international law texts. They were mostly regarded as mere legal entities within the framework of domestic law. In response to the efforts of Indigenous peoples to raise awareness about their rights and issues on the international stage, the 1970s saw the beginning of a worldwide resurgence of Indigenous cultures and movements. Gordon Bennett's pioneering research in 1978 sparked a growing fascination among Western legal experts in the field of Indigenous rights within the framework of international law. The scholarship produced by Russell Lawrence Barsh and Douglas Sanders had a crucial role in maintaining the enthusiasm for Indigenous rights among legal scholars in North America during the 1980s. Robert Williams' influential 1990 book, *The American Indian in Western Legal Thought*, offers a comprehensive examination of the writings and speeches of prominent European intellectuals and religious leaders. Williams argues that these theories served as a moral justification for the violent oppression of Indigenous peoples and the confiscation of their territories. Expanding on Williams's research, other authors, like S. James Anaya, have broadened the scope of the area to include other subjects related to Indigenous matters within the context of international law.

Presently, a wide-ranging group of legal and interdisciplinary scholars from various Indigenous and non-Indigenous backgrounds worldwide has developed an extensive programme concerning Indigenous rights within the realm of international law. Prominent modern researchers in the field of international law are now focusing their attention on Indigenous issues. In addition, the enactment of the United Nations (UN) Declaration on the Rights of Indigenous People in 2007 has revived the study of Indigenous rights, specifically focusing on the Declaration's extent, relevance, and impact on domestic legislation concerning Indigenous rights.

The term "Indigenous rights" encompasses a range of rights that can be legally or morally asserted by Indigenous peoples. The international legal framework known as the Universal Declaration of Human Rights (UDHR) of 1948, along with the subsequent International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), pertain to individual Indigenous individuals and do not explicitly refer to Indigenous peoples. The inaugural global conference dedicated to addressing the rights of Indigenous peoples was the ILO Convention No. 107 of 1957. This convention confirms the responsibility of states to honour and protect Indigenous ways of living. However, the strategy received significant criticism for being "integrationist" in its aim to facilitate the "modernization" of Indigenous peoples and their gradual incorporation into their respective national communities (ILO Convention No. 107, 1957, Preamble). This approach considers Indigenous peoples as individuals or subgroups within a broader society, rather than as a distinct collective entity with unique traits, and hence warrants special protection. During the 1970s, the United Nations started to address and prioritise matters concerning Indigenous communities. The UN appointed Mr. José Martínez in the late 1970s to do a study on Indigenous issues. Cobo's conclusive report meticulously recorded the hardships endured by Indigenous communities and issued a plea to the global community to officially acknowledge Indigenous rights on both the international and national scales. The 1980s commenced with the formation of the UN Working Group on Indigenous Populations and concluded with the adoption of ILO Convention No. 169. The convention embraces the idea of eliminating the assimilationist approach of previous standards and acknowledges the unique contributions of Indigenous and tribal peoples to cultural diversity, social and ecological harmony, as well as international cooperation and understanding (ILO Convention No. 169, 1989, Preamble). The influence of this Convention has been constrained due to its low ratification. The 1993 Draft Declaration reinforces the significance of Indigenous rights within the framework of international law. The 2007 Declaration of Rights on Indigenous Peoples reinforces the enhanced position of Indigenous rights in international legal arenas. The American Declaration on the Rights of Indigenous Peoples was adopted by the Organisation of American States in 2016, following over thirty years of advocacy and discussion. This Declaration expands the scope of Indigenous matters addressed in the 2007 United Nations Declaration. It encompasses the rights of Indigenous peoples who choose to live in isolation or have just had contact with the outside world, as well as Indigenous peoples impacted by armed conflict.

III. Indigenous Peoples in India- An Overview

In India, Indigenous Peoples are often referred as *Adivasis* or Scheduled Tribe and are considered to be the original inhabitants of a country or a particular area. As per the census of 2011 there are about 705 ethnic tribes which has been notified in 30 states and Union Territory of India. The total tribal population is 8.6% of 104 million Indian population. The constitution of India has laid down provisions such as the Fifth Schedule, for central India, and Sixth Schedule, for North-East India, which gives rights to the Indigenous People to land and Self-governance. The Indian government had voted for the United Nation Declaration on the Rights of Indigenous Peoples on a condition that after independence all the Indians are considered Indigenous to avoid being divisive and undermining, as India has a diverse culture so it becomes pertinent to protect the rights of every citizen to maintain the unity of the Nation.

In India 90% of the tribal population live in the rural areas and does not necessarily fall under Hindu caste hierarchy, as most of the tribes dwelled in the forest areas and have their distinct cultural and religious practices. In contrast to that the Scheduled Caste in

India are socially stratified under the four-fold Varna system of Hinduism, often the lowest in the order i.e., *Sudras*, face societal exclusion in the form of untouchability. In the case of Scheduled Tribe, they have remained secluded from any physical or social contact from the mainstream thus preferred living in isolation. Every tribe in India has a distinct and unique identity and can be distinguished through its religious practices, language, political hierarchy, and territories. But one can attach a commonness of these tribes in the form of Nature Worship which makes them come under one roof of being termed as Totemic Tribe. The Dogma of Tribal people veers around spiritualism and supernaturalism. The very concept of pantheon involves nature with immortal ancestral spirits and deities dwelling on it forms an integral part of their customs and traditions. The tribal people believe that forest, mountains, lakes, rivers are the place of great reverence and should never be distressed and if done so then the repercussions could be hazardous for the entire community.

IV. Constitutional provisions pertaining to Tribes and Tribal Areas in India

The Government of India does not formally recognise any particular segment of its population as 'indigenous people' in the same manner as it is commonly understood and indicated in the United Nations. Instead, the government asserts that all its citizens are indigenous. However, in practical terms, those individuals classified as "Scheduled Tribes" (STs) are regarded as indigenous peoples in many of their interactions within the official category. While the terms 'STs' and 'Adivasis' or 'tribal' are not exactly interchangeable, it is generally acknowledged that the STs primarily refer to the indigenous people in the Indian context. Article 366(25) of the Constitution of India states that, scheduled tribes are tribes or tribal communities, or a section of them, or a group within those tribes or tribal communities, that are officially recognised as scheduled tribes under Article 342 of the constitution. The understanding of the Right to life as stated in Article 21 of the Constitution has been determined via a sequence of legal decisions to include the entitlement to a life characterized by respect and worthiness. These encompass a variety of other rights that are crucial and meaningful in ensuring a thorough and satisfying existence. Legal precedent has firmly established that Article 21 recognizes the right to livelihood, housing, a clean environment, water, and other socio-economic rights as fundamental rights. Hence for the progress and benefits of the Tribes and Tribal areas various Constitutional Provisions have been listed, some of which are as follows

Table 1 - List of Articles pertaining to Scheduled and Tribal areas

Articles	Definition
Article 14	Equality before Law.
Article 15	Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.
Article 15 (4)	The State is to make special provisions for the advancement of any socially and educationally backward classes of citizens or for (the Scheduled Castes) and the STs
Article 16 (4)	The State to make provisions for reservation in appointment, posts in favour of any backward class citizens, which in the opinion of the State is not adequately represented in the services under the State
Article 16 (4A)	The State to make provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.
Article 21	Protection of life and personal liberty
Articles 25-28	Right to Freedom of Religion
Article 29- 30	Cultural and Educational Rights
Article 46	The State shall promote with special care the educational and economic interests of the weaker sections of the people, and of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.
Article 243D	Reservation of seats for (a) the Scheduled Castes and (b) the Scheduled Tribes in every Panchayat
Article 243T	Reservation of seats for the Scheduled Castes and the Scheduled Tribes in every Municipality.
Article 243M (4) (b)	Parliament may, by law, extend the provisions to the Scheduled Areas and the tribal areas (panchayats)
Article 243 ZC (3)	Parliament may, by law, extend the provisions to the Scheduled Areas and the tribal areas (Municipalities)
Article 244	Administration of Scheduled Areas and Tribal Areas- Fifth Schedule (All States except the ones in Sixth Schedule) and Sixth Schedule (Applicable only to States of Assam, Meghalaya, Tripura and Mizoram)
Article 275(1)	Grants in aid to be provided each year for promoting the welfare of the STs and administration of Scheduled Areas
Article 330	Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People
Article 332	Reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States

Article 335	Claims of Scheduled Castes and Scheduled Tribes to services and posts.
Article 338 A	National Commission for Scheduled Tribes
Article 339	Control of the Union over the administration of Scheduled Areas and the welfare of Scheduled Tribes
Article 339 (1)	Appointment of Commission to report on the administration of the Scheduled Areas and the welfare of the STs in the states
Article 340	Appointment of a Commission to investigate the conditions of socially and educationally backward classes within the territory of India
Article 342	Specify the tribes or tribal communities or parts of or groups within tribes or tribal communities deemed to be Scheduled Tribes in relation to that State
Article 371 A	Special status to the State of Nagaland
Article 371 B	Special provisions for the State of Assam
Article 371 C	Special provisions for the State of Manipur
Article 371 F	Special provisions for the State of Sikkim
Article 371 G	Special provisions for the State of Mizoram
Article 371 H	Special provisions for the State of Arunachal Pradesh

V. Environmental Legislation in India

Over time, as environmental awareness has increased, there has been a shift in the commonly held belief that there is a conflict between environmental quality and economic growth. People now understand that these two factors are inherently interconnected and mutually beneficial. The current emphasis on the environment is not a recent development, environmental concerns have long been ingrained in Indian culture. The need of preserving and responsibly utilising natural resources has been emphasised in ancient Indian scriptures, which are over three thousand years old. More importantly the spiritual and cultural ethos of the indigenous people are aligned towards Nature and Environment which validates the relationship between their society and natural environment. Hence the constitutional, legislative and policy framework of a Nation needs to make an observation before implementing any developmental policies. The Rituals performed by these groups assimilate both spiritual and physical objects like land, mountains, river, forests. Hence the concept of development amongst the Indigenous people differs with that of pro developing agencies, who time and again dispossess them of their territories thus eroding their cultural significance. The indigenous people believe in freedom to choose their path of development alongside their culture and identity and maintains healthy balance between man and nature.

In this context the Constitution of India has played a crucial role in safeguarding the environment by imposing a duty on both the state and citizens to actively promote and preserve it. According to Article 48A and 51A, both the State and its residents have a primary duty to safeguard and enhance the environment, which includes forests, lakes, rivers, wildlife, and all living organisms. Prior to India's independence in 1947, there were already some environmental laws in place. However, the true motivation for establishing a comprehensive framework only emerged following the UN Conference on the Human Environment in Stockholm in 1972. In response to this announcement, the establishment of the National Council for Environmental Policy and Planning took place in 1972 under the purview of the Department of Science and Technology. The Council then transformed into the Ministry of Environment and Forests (MoEF) in 1985, which currently serves as the highest governing authority in the nation for overseeing and guaranteeing environmental conservation. In 1976, following the Stockholm Conference, environmental issues were officially recognised and included into the Directive Principles of State Policy and Fundamental Rights and Duties with the 42nd Amendment. Since the 1970s, the country has developed a comprehensive network of environmental legislation. The Ministry of Environment, Forest and Climate Change (MoEF) and the pollution control boards, namely the Central Pollution Control Board (CPCB) and the State Pollution Control Boards (SPCBs), collectively constitute the regulatory and administrative foundation of the sector. In addition, a policy framework has been created to enhance the legislative provisions. In 1992, the Ministry of Environment and Forests (MoEF) released the Policy Statement for Abatement of Pollution and the National Conservation Strategy and Policy Statement on Environment and Development. These documents aimed to create and support efforts to safeguard and enhance the environment. The Environmental Action Programme (EAP) was established in 1993 with the aim of enhancing environmental services and incorporating environmental issues into development projects. The Government has taken further measures to protect and preserve the environment, with a specific focus on the Indigenous Peoples. These actions are in line with the existing environmental policies and legislation as mentioned below:

- The Water (Prevention and Control of Pollution) Act, 1974, amended 1988
- The Water (Prevention and Control of Pollution) Cess Act, 1977, amended 1992 and 2003
- The Air (Prevention and Control of Pollution) Act, 1981 amended 1987
- The Wildlife (Protection) Act, 1972, Amended 1993,2002 and 2006
- The Forest (Conservation) Act, 1980, amended 1988
- The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006
- Biological Diversity Act, 2002
- Environment (Protection) Act, 1986 amended 1991

- The Environment (Protection) Rules, 1986
- The National Environment Appellate Authority Act, 1997
- National Green Tribunal Act, 2010
- The Factories Act, 1948 and Amendment in 1987
- The Public Liability Insurance Act, 1991, amended 2003
- The Indian Hazardous Wastes Management Rules Act 1989, amended 2000, 2003 and 2008

VI. Conclusion

Indigenous Peoples constitute a substantial and crucial segment of the human population. Their cultural inheritance, their manner of existence, their responsible management of this planet, and their profound understanding of the universe are a priceless repository for all of humanity. The term "Indigenous" encompasses various definitions and interpretations. Across all global regions, several diverse cultural communities coexist and engage with one another. However, it is important to note that not all these communities are regarded as indigenous or native to their specific geographical location. The indigenous population in India constitutes over 15 percent of the country's total population. They are spread across many regions, ranging from villages in the Indian Himalayas to the southernmost part of India, and from the far eastern corner of the northeastern states to the deserts of Rajasthan. The indigenous peoples are among the most marginalised and disadvantaged populations in the nation. The distinct way of life of indigenous peoples is markedly divergent from that of the rest of the globe. Indian indigenous peoples primarily rely on agriculture and handicrafts for their sustenance. India possesses administrative authorities at both the Central and State levels, including the government wings of the Department of Tribal Welfare and the inter-state council. Additionally, India has various independent bodies, such as the National Commission for Women, Minorities Commission, National Human Rights Commission, State Human Rights Commission, National Commission for Scheduled Castes, National Commission for Scheduled Tribes, and others. These bodies are responsible for protecting the rights of individuals who identify as Indigenous peoples in the country. There is also a well-established legal and legislative framework that is specifically for its indigenous and tribal population known as Scheduled Tribes. Nevertheless, it is imperative to monitor the policies and the entities accountable for executing them.

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