



From Global Principles To Local Realities: Safeguarding Indigenous Rights In International And National Law

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ABSTRACT

One of the main tenets of international initiatives to promote tolerance and diversity is the acknowledgement and defense of indigenous rights. The complex interactions between national and international legal frameworks, which are essential protections for tribal people around the globe, are at the core of our project. The United Nations Declaration on the Rights of Indigenous Peoples, a landmark agreement that outlines fundamental rights globally, is at the center of this discussion. At the national level, laws concerning Scheduled Tribes and traditional Forest Dwellers are important because they are crucial in guaranteeing the preservation and advancement of indigenous rights in certain areas.

This article provides a thorough analysis of how international and national legislation protect indigenous rights in relation to local reality and global principles. It examines the methods by which these rights are maintained through a comparative examination, closely examining the difficulties and achievements faced at both levels. The article highlights the significance of efficient implementation and enforcement methods while shedding light on the practical consequences of global principles in local contexts by dissecting the intricacies involved in this dual dimension. It emphasizes the necessity of bridging the gap between international mandates and domestic realities in order to truly defend the rights of indigenous populations, drawing on case studies and legal analysis.

INTRODUCTION

The acknowledgement and defense of indigenous rights are vital symbols of our shared commitment to diversity and inclusivity in the complex fabric of global governance. The complex interactions between national and international legal frameworks—which act as cornerstones protecting the rights of tribal groups across the globe—are at the core of this undertaking. The United Nations Declaration on the Rights of Indigenous Peoples is a foundational document that outlines the fundamental rights of indigenous peoples worldwide and is crucial to this discussion. Simultaneously, at the federal level, laws like those pertaining to Scheduled Tribes and traditional Forest Dwellers are essential to guaranteeing the preservation and advancement of tribal rights in particular areas.

INDIVIDUAL RIGHTS OF TRIBAL COMMUNITY

1. RIGHT TO SELF DETERMINATION

The privilege to self-determination is the privilege of individuals decide their own fate. Specifically, the standard permits individuals to pick its own political status to decide its own type of monetary, social and economic turn of events. Exercise of this privilege can bring about a wide range of results extending from political freedom through a full coordination of state. The significance lies morally justified to pick, with individuals' preferred goal that the result ought not to influence the option to pick. By and by the conceivable result of an activity of self-assurance will frequently decide the demeanour of government towards the real case my kin or a country. In any case, the privilege to self-assurance is perceived in worldwide law as a privilege of procedure not of result, having a place with individuals and not to states and government.

there is no specific, complete definition of people, but references have been made to a definition proposed by the UN Special Rapporteur Martinez Cobo in his study on discrimination against indigenous populations: *“Indigenous communities, people and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the cities now prevailing in those territories, or parts of them. They form at present non-dominant*

sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as people, in accordance with their own cultural patterns, social institutions and legal systems.'

The instrument for protecting the right to self-determination are-

- Article 1(2), Charter of the United States, 1945
- Articles 1 and 12, International Covenant on Civil and Political Rights, 1966
- Article 1(1), International Covenant on Economic Social and Cultural Rights , 1966
- Convention on the Elimination of All Forms of Racial Discrimination, 1965
- General Recommendation No.21 on Right to Self-determination, Committee on the Elimination of Racial Discrimination, 1963
- Article 29, Convention on the Rights of the Child,1989
- Convention on the Prevention and Punishment of the Crime of Genocide General Comment No.12 on Self-determination, Human Rights Committee, 1948
- Article II, Resolution 260A(III) on the Convention on the Prevention and Punishment of the Crime of Genocide, General Assembly
- ILO Convention concerning Indigenous and Tribal People in Independent Countries, No.169, 1969
- Declaration of Principles of International Law Concerning Friendly Relations and Cooperation Among States, 1970
- Declaration on the Granting of Independence to Colonial Countries and People, 1960
- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1962
- Resolution 1803 (XVII) of 14 December 1962,'Permanent Sovereignty over Natural Resources', UN General Assembly

In a study conducted there were parameters as to self-determination which formed the part of the questionnaire asked from the tribal people of Ranchi district of Jharkhand state. The findings are as follows:

1.Number of families residing in a tribal village- During the study it was found out that there were more than 80 families stayed in a tribal village.

In each community, how many family resides

51 responses

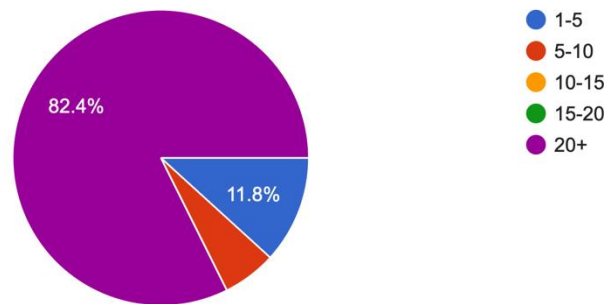


Figure 1

2. Number of members in a family- 17.6% people responded to have less than 4 members in their family. 43.1% people had upto 6 people in their family. 23.55 of people had upto 8 people in their family, 65 people had upto 9 persons in their family and 9.8% people have more than 9 persons in their family. It was also found that the joint family culture still subsists in the tribal areas.

How many members are there in your family?
51 responses

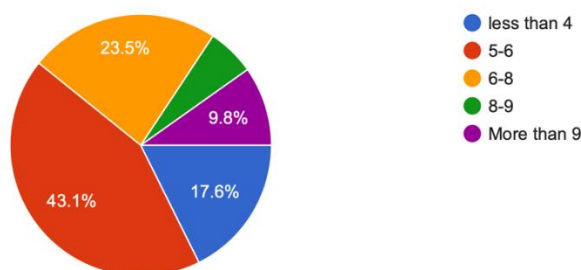


Figure 2

3. Employment status in each household- Only 25.5 % of people out of 51 were themselves employed. As to the number of persons employed in their family were very less resulting in poor economic conditions.

Are you employed?
51 responses

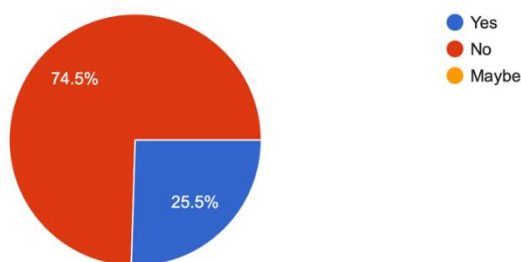


Figure 3

4. Nature of employment- Out of the sample size of 51 people 78.4% are self- employed that is either they were agricultural farmer or laborer’s in nearby areas. While 11.8 % had Government jobs. Others worked in semi-government body or private organization; but none of them had their own business.

Type of employment
51 responses

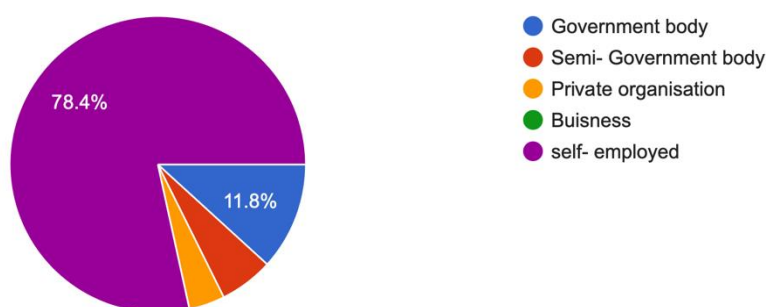


Figure 4

2. RIGHT TO NATIONALITY

The term nationality signifies the legal tie or link between an individual and the State ensuring the effect to be given to that individual's right and obligations at international law. Individuals of a particular nation are supposed to owe allegiance to their State. Such individuals, who owe permanent allegiance to a State are known as nationals of the state. In other words, the status of a natural person is attached to a state by the tie of allegiance. Nationality of a person is determined in accordance with the principles of municipal law. Nationality is the medium through which an individual can enjoy the benefits from international law. Therefore, it is very essential to know the nationality of an individual, to deal with any international legal problem. International law does not permit the individuals to have multiple nationalities or no nationality. Oppenheim has very rightly stated that nationality of an individual is his quality of being subject to a certain State.¹ The International Court of Justice, while disposing the leading *Nottebohm Case*² gave the definition of Nationality in the following words: "A man's nationality forms a continuing state of things and not a physical fact which occurs at a particular moment. A man's nationality is a continuing legal relationship between the sovereign state on the one hand and the citizen on the other. The fundamental basis of a man's nationality is membership of an independent political community. This legal relationship involves right and corresponding duties upon both or the part of the citizen no less than on the part of the State."

The regional and international instruments protecting the right of nationality are:

- Convention on the Reduction of Statelessness, 1961
- Convention relating to the Status of Stateless Persons, 1954
- Convention relating to the Status of Refugees, 1951
- Protocol Relating to Status of Refugees, 1951
- Declaration on the Human Rights of Individuals who are not Nationals of the Country in which they live, 1985
- The Rights of Non-Citizens, OHCHR, 2006

3. RIGHT TO LIFE

The right to life covers such as extrajudicial killings by State agents, imposition of the death penalty, and enforced disappearance. The right to life is protected in the core regional and universal human rights instruments, including the following:

- Article 6 of the ICCPR, 1966
- Article 3 of UDHR, 1945
- Second Optional Protocol to the ICCPR aiming at the abolition of Death Penalty, 1966
- Article 4 of African Charter on Human and People's Right, 1986
- Article 4 of American Convention on Human Rights, 1969
- Article 1 of American Declaration on the Rights and Duties of Man, 1948
- Article 5-8 of Arab Charter on Human Rights, 2004
- Article 9 of Convention on the Protection of the Rights of Migrant Workers and Members of their Families, 1990
- Article 6 of the Convention on the Rights of Child, 1989
- Article 2 of European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950
- Inter-American Convention on the Forced Disappearance of Persons

4. SPECIAL RIGHTS FOR WOMEN, CHILDREN, YOUTH, ELDERS AND PERSON WITH DIABILITIES

Indigenous women around the globe endure a similar human right maltreatment that are executed against indigenous men, including forced migration from their genealogical lands, pollution and destruction of their waters and domains, no or constrained access to education and health care and murder and violence by military. Indigenous lady likewise face human rights infringement that are explicitly identified with their gender, for example, rape, forced sanitization process, deficient reproductive health care and domestic violence. By and large the colonization process, missionisation and presentation of money have caused or contribute a decay of indigenous women status inside their networks. For example, cases record the prohibition of indigenous women from dealings and dynamic process identifying with their lands and domains as a result of mistaken suspicions this is a man's undertaking.³ The main issues of women rights related to the violence against women, sexual and reproductive rights and health, political and civil participation. Marriage and family, human trafficking, labor and employment and property related rights.

The international instrument as to the special rights of indigenous women are:

- Convention on the Elimination of All Forms of Discrimination Against Women, 1979
- Convention on Nationality of Married Women, 1958
- Convention on Political Rights of Women, 1954

¹Oppenheim, International Law Vol. I, Ninth Edition, 1992, p. 851

² Liechtenstein v. Guatemala (1955)

³ See Etienne and Leacock 1980

- Convention on Suppression of Traffic in Persons and of the Exploitation of the Prostitution of the others, 1949
- Article 2,3 &6 of ICCPR, 1966
- Article 2,3 & 7(i) of ICESCR, 1966
- UDHR, 1948
- Para 6,8,23,53 of United Nations Standard Minimum Rules for the Treatment of Prisoners, 2015

Indigenous people often experience discrimination and this can lead to various forms of exclusion or marginalized including their cultural and economic inclusion along with the political marginalization. The main issue or the right of child mainly includes the right to survival, life and development be I through educational institutions or otherwise. They have right to birth registration to a name and nationality, right to health and health care along with proper nutritional care, right to education along with the right to protection from abuse, violence and exploitation

The international instruments as to the special rights of indigenous children are:

- International Convention on the Elimination of All Forms of Racial Discrimination, 1965
- ICCPR, 1966
- ICESCR. 1966
- Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Beliefs, 1981
- Article 5 of Declaration on the Right to Development, 1986
- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992
- Agenda 21, 1992 (adopted at UNCED)
- A World Fit for Children – the outcome document of the UN General Assembly Special Session on Children, 2002

Youth incorporates individuals matured somewhere in the range of 15 and 24 years. Indigenous youth are vulnerable to a scope of social and financial components that influence their human rights. Indigenous youth are frequently driven away from their traditional networks and move to urban regions to seek after employment and educational opportunities. In the new urban condition, indigenous youth are regularly exposed to separation by the more extensive network and denied equal opportunities in employment and education. Indigenous youth have incredible trouble adapting when they are isolated from their traditional networks and live in a social situation that doesn't advance their support in financial or social life. This can affect their health and social problems, for example, wretchedness and substance abuse. As a rule, indigenous youth additionally need satisfactory access to moderate and culturally touchy health education and health care, expanding their danger of contracting preventable infections.

Indigenous youth acquire the duty to ensure and save their traditional lands, assets and consecrated locales whereupon their cultural heritage and identity is based. Be that as it may, numerous indigenous youth today are physically and mentally expelled from their cultural and traditional life. Indigenous youth require exceptional help with the goal that they can recapture and protect their own heritage and appreciate free access to their traditional lands and consecrated destinations. Proceeded with harm to nature compromises the endurance of numerous indigenous individuals. Since their cultural identity and heritage is indistinguishable from their traditional lands, the assurance and protection of condition is a need of indigenous youth around the world.

The international instruments in relation to the special rights of youth are:

- Convention on the Rights of Child, 1989
- The Optional Protocol on the Involvement of the Children in Armed Conflict, 2000
- Article 25 (2) of UDHR, 1948
- Article 24(1) of ICCPR, 1966
- Article 10 of ICESCR, 1966
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984
- Convention on the Elimination of All Forms of Racial Discrimination, 1965
- Convention on the Elimination on All Forms of Discrimination Against Women, 1979

Persons with disabilities face segregation and boundaries that confine them from taking an interest in the public arena on an equivalent premise with others consistently. They are denied their privileges to be remembered for the general schools framework, to be utilized, to live autonomously in the network, to move uninhibitedly, to cast a ballot, to partake in sports and cultural activities, to appreciate social assurance, to get to equity, to pick clinical treatment and to enter unreservedly into lawful duties, for example, purchasing and selling property. An unbalanced number of persons with incapacities in creating nations, frequently

underestimated and in outrageous neediness. The assurance ensured in other human right settlements, and grounded in the UDHR, ought to apply to all. Individual with incapacities have, in any case, remained to a great extent "undetectable", frequently side-lined in the rights, discussion and unfit to appreciate the full scope of Human Rights.

The international instruments as to the special rights of the person with disabilities are:

- Convention on the Rights of Persons with Disabilities, 2006
- ICESR, 1966
- ICCPR, 1966
- Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984
- Convention on the Elimination of All Forms of Racial Discrimination, 1965
- Convention on the Elimination on All Forms of Discrimination Against Women, 1979
- Convention on Rights of Child, 1989
- Article 1 of UNESCO Convention on Discrimination in Education, 1960
- Article 1 of ILO Convention concerning Discrimination in Respect of Employment and Occupation, 1960

COMMUNITY RIGHTS OF TRIBALS

1. RIGHT TO EQUALITY AND NON-DISCRIMINATION

The general principle of equality and non-discrimination is a fundamental component of global human rights law. A supportive meaning of non-separation is contained in Article 1(1) ILO No. 169, which gives the segregation incorporates: 'Any differentiation, avoidance or inclination made dependent on race, shade, sex, religion, political sentiment, national extraction or social origin, which has the effect of invalidating or weakening correspondence of possibility or treatment in the work or occupation.' As needs be, the choice to rise to treatment requires that all individuals be managed similarly under the careful gaze of the law without separation. The guideline of uniformity and non-separation guaranteed that those in equivalent conditions are overseen similarly in law and practice. In any case, it is basic to push that just one out of each odd differentiation or difference in treatment will mean segregation. Generally speaking in international law, an encroachment of the rule of non-separation rises if:

- a. Equal cases are treated in various way
- b. A contrast in treatment doesn't have a goal and reasonable classification.
- c. If there is no proportionality between the point and looked for and the methods utilized.⁴

The international instruments in relation to the right to equality and non-discrimination are:

- Article 2 of UDHR, 1948
- Article 2 & 26 of ICCPR, 1966
- Article 2(2) of IESCR, 1966
- Article 2 of Convention on the Rights of Child, 1989
- Article 7 of International Convention on the Protection of the Migrant Workers and Members of their Families, 1990
- Article 5 of Convention on the Rights of Persons with Disabilities, 2006
- International Convention on the Elimination of All Forms of Racial Discrimination, 1965
- Convention on the Elimination of All Forms of Discrimination Against Women, 1979

Despite the existence of all the above legislations and International conventions, during the study of the sample of Indigenous tribes in Ranchi area of Jharkhand district it was found out that 21.6% of Adivasis out of 51 responses collected were subject to racial discrimination. While talking to them major points/ instances on which they were subjected to discriminations are:

- a. Promotion in employment
- b. Eating habits- Subject on eating dried green vegetables and being fed on a separate table in a wedding.
- c. During childhood in schools – Being called by the term of “jangli” and gestures of “jingalala hu”
- d. Untouchability- Experienced by the persons whose parents worked as laborer’s in nearby factories
- e. Use of words and gestures related to lower caste people and their traditional way of clothing.

⁴ Set up by international human rights supervisory bodies, including the European Cort (see Marckx v. Belgium), the Inter-American Court and the Human Rights Committee.

Have you been subjected to any form of discrimination on basis of race etc.

51 responses

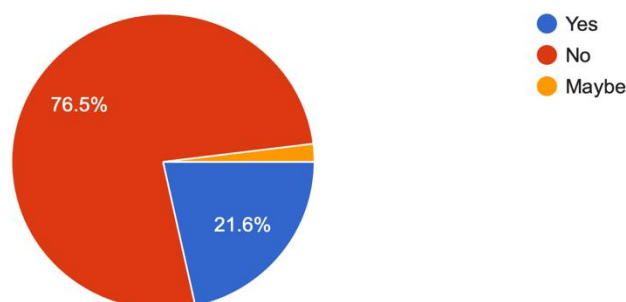


Figure 5

RIGHT TO MAINTAIN AND STRENGTHEN THEIR DISTINCT POTENTIAL ECONOMIC, SOCIAL AND CULTURAL LIFE

As an essential component of human dignity, self-rule and individual strengthening, monetary opportunity gives a demonstrated equation to financial advancement and achievement. The individuals who have faith in monetary opportunity trust justified of individual to choose for themselves to coordinate their lives. At its heart, financial opportunity is about individual self-sufficiency, concerned mainly with the opportunity of decision delighted in by people in obtaining and utilising monetary products and assets. The hidden supposition of the individuals who favour financial opportunity is that people know their necessities and wants best and a self-coordinated life, guided by one's own methods of reasoning and needs as opposed to those of a legislature or technocratic world class, is the establishment of a satisfying presence. Freedom of sense of pride stream from the capacity and duty to deal with oneself and one's family and are significant supporters of human poise and uniformity.

The international instruments relation the right to maintain and strengthen the economic, social and cultural life are:

- Article 22- 27 of UDHR, 1948
- Article 1,8,22,23,27 of the ICCPR, 1966
- ICESR along with the Optional Protocol on the International Covenant on Economic, Social and Cultural Rights, 1966
- Convention on the Rights of the Child, 1989
- Optional Protocol to the Convention on the Rights if the Child on the Involvement of Children in Armed Conflict, 2000
- Optional Protocol on the convention on the Rights of Child on the Sale of Children, Child Prostitution and Child Pornography, 2000
- Convention on the Elimination of Discrimination Against Women, 1979
- Convention on the Elimination of All Forms of Racial Discrimination, 1965
- Vienna World Conference on Human Rights Declaration and Plan of Action, 1993
- The Optional Protocol of the IESCR, 2008
- Convention Relating to Status of Refugees, 1951

Despite the existence of all the above legislations and International conventions, during the study of the sample of Indigenous tribes in Ranchi area of Jharkhand district it was found out that they have a specific social and cultural life.

During the study I visited a place where the Munda Tribes existed and the Oraon tribe had migrated from the areas of Bihar after the Mughal invasion. There was chaos as to the co-existence of both the tribes at the same place. The place named as *Murmmu* is where the tribal elders sat together and agreed that west to this point the Mundas will reside while east to that point Oraons will reside. In representation of the same they dug and planted a log of wood as a common ground for both the tribes and since then one of their major festival named Jatra is celebrated there every year.

They also have freedom to celebrate their own festivals and uphold their own cultural identity. As per the survey conducted it was found out that there are majorly two festivals celebrated by the oraon tribe, munda tribes and the sonthals tribe i.e. Jatra, Sarhul and Karma.

- **SARHUL** – This festival is celebrated as per the new year of the tribes who follows the Hindu panchang as their calendar. The weather conditions for the upcoming year is predicted during the ritual. During this festival they worship Sakhua Tree. Two earthen pots are filled with water and left below the tree overnight. The amount

of water that recedes from the earthen pots by morning determine the crops to be sown in the upcoming year as the pots are made from the same mud where the agricultural lands of the tribes. Then in the morning after worship first the grains of rice are fed to the chicken. Then the chicken is sacrificed and if the chicken bleeds white it signifies that the tribe will have a peaceful year while if the chicken bleeds red first then the tribe would have to face certain challenges in the coming year. Then the chicken is fed to all males as prasadam. The tribals dance around the trees worshipping the nature and the festivities goes on for a week.

- **JATRA**- In this festival the eldest boy of the house travels barefoot and brings three stems of Sakhua Tree and plant them in their household. The mothers cook varieties of food and after the said stems are planted the households celebrate the origin of new life. It is then the responsibility of the same boy to take care of the trees until they grow.
- **KARMA** – The third major festival is karma. It's based on the motto "Karma is Dharma". Karam tree is kept in pond by unmarried boy. Unmarried Girl go to forest hide things. Then boy is supposed to finds it. If the boy is able to find all the girls belongings then the girl is vidai from 1-3 house then visarjan is done in the pond. Then all the people meet in akhara (a common place like a community center for the tribal area). Mera (mera is rice beer) is drank as Prasad.

2. RIGHT TO FREEDOM OF PEACE AND SECURITY

The particular triggers and setting of each armed conflict are unique; anyway the grave consequences share common attributes of genuine infringement, for example, forced displacement, extrajudicial executions, sexual violence and forced recruitment of children. The infringement against indigenous individuals in this setting of armed conflict causes injury and irreparable harm, devastate their way of life and tear separated the social fabric of affected indigenous communities. Conflict by and large impact indigenous people groups who are now underestimated and doorways them in poverty, sustaining high ignorance rates and poor health indicators.⁵

The international instruments in relation to the right of freedom of peace and security are:

- UDHR, 1948
- Convention on the Prevention and Punishment of the Crime of Genocide, 1951
- Article 4,6,7,8,15,18 of ICCPR, 1966
- ICESR, 1966
- Convention on the Elimination of All Forms of Discrimination, 1979
- International Labor Organization Convention 169, 1969
- Convention on the Rights of Child, 1989
- Rio Declaration including Agenda 21, 1992
- Article 2(2) of Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984

During the research it was found that Indigenous tribes are not subject to crimes like sexual violence and child abuse. But due to poor economic condition children often skip schools and work together with their elders in the agricultural farms and as labourers nearby to meet day to day needs.

3. RIGHT TO ESTABLISH EDUCATIONAL INSTITUTIONS AND OTHER INSTITUTIONS

Indigenous people though amount only 5% of the world's population, but they constitute a 15% of the world's poor.⁶ Among the many equalities they face the lack of access to quality education is particularly blatant. In many countries, indigenous people encounter more barriers to the completion of primary school and are less likely to obtain a diploma, certificate or degree than non-indigenous people. Progression to higher levels of education remains a challenge especially for girls. Rural indigenous people where have less access to teaching materials and a poor school infrastructure, urban areas do not always provide cultural appropriate services, for example mother tongue-based education.

On 15 April, 2020 a division bench of the Andhra Pradesh HC has quashed the government orders seeking to implement English as a compulsory medium of instruction at primary level in all the government schools in the state. The court held it to be violative of Article 19(1) (g) of the Constitution of India.⁷

The international instrument in relation to the right to establish own educational institutions in lieu of exercising the right to education are:

- Article 26 of UDHR, 1948
- UNESCO Convention against Discrimination in Education, 1960
- Article 13 of ICESR, 1966
- Article 28-30 of Convention on the Rights of the Child, 1989

⁵ Conflict, peace and human rights of indigenous people, presented by Victoria Tauli-Corpuz, UN Special Rapporteur on the rights of indigenous people, 14-15 May 2016, Columbia University, New York

⁶ World Bank "Indigenous Peoples". Last update: 2nd April 2019

⁷ Dr. Srinivas v. State of Andhra Pradesh & ors, WP No. 183/2019

During my study I didn't find any traditional schools but government and convent schools set up by the government and private individuals. The data as to the Right to education and educational institutes are explained below.

1. Facility of School in villages- 96.1% of people of the 51 sample data have schools in their tribal areas.

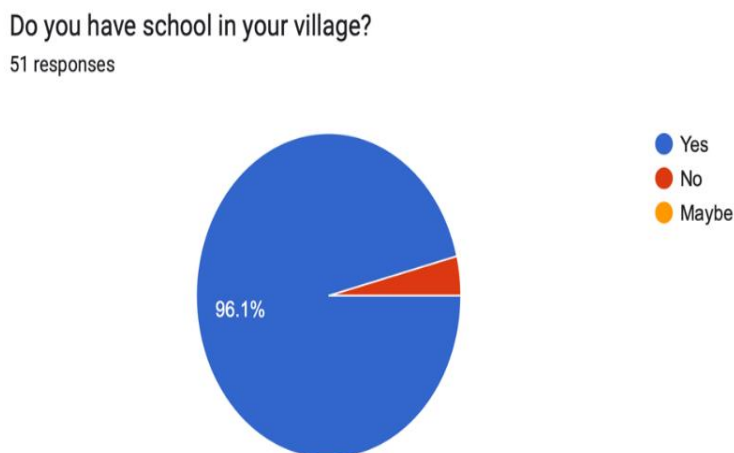


Figure 6

2. Level of School – 80.4% people responded to have primary schools in their tribal areas, 78.4% people responded to have middle school in the tribal areas, 21% people responded to have Secondary School in their area. Only 2% people responded to have a senior secondary school in area and 2% responded to have no schools but only aganwadi in their area. While 2% of people sent their kids to private schools.

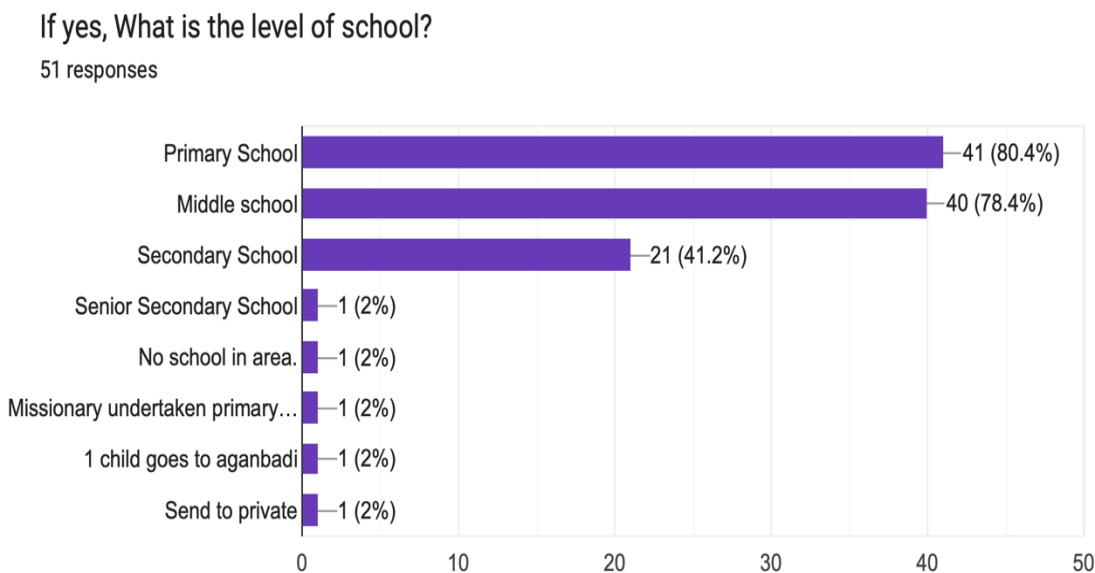


Figure 7

3. Number of Teachers in school- 70.5% people responded to have just 0-5 teachers in the school in that area which is quite less and the students do not get appropriate education. While 9.8% people responded to have 5-10 teachers, while 13.7 % responded to have more than 10 teachers. But overall, they specified that the. Number of teachers are far to less.

How many teachers are their in School

51 responses

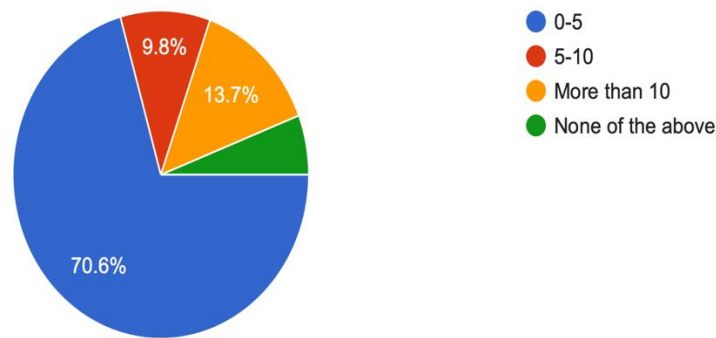


Figure 8

4. Regularity of teachers in school- 86.3% people responded that the teachers in their area attend the schools regularly but they are overburdened.

Do school teachers come regularly

51 responses

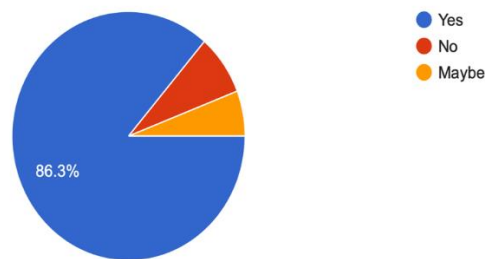


Figure 9

5. Regularity of children in schools- 60.8% of people responded that the children go to school regularly. 19.6% people responded that the students do not go regularly and the major reason behind that id that they have to lend a helping hand in agricultural farms and work as laborer’s to sustain the families economically.

Do you send your children to school regularly

51 responses

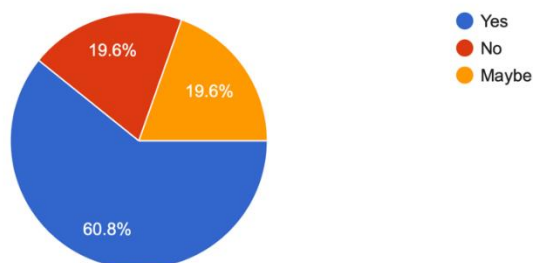


Figure 10

4. RIGHT TO REPRESENT

The main problem in the exercise of the right to represent is that the indigenous people low illiteracy level. They get easily pursued by the political parties and suffer otherwise. In most of the countries, irrespective of the reservation granted to the number of seats to be reserved for the indigenous people, they are left unattended

by the people. The right though granted goes wasted or unattended due to the exploitation of indigenous groups, who are persuaded by the powerful to stay away from the representation posts.

International instruments in relation to the right to represent are:

- Article 21 of the UDHR, 1948
- Article 2,25 of the ICCPR, 1966
- Convention for the Protection of the Human Rights and the Fundamental Freedoms, 1950

During the study of the sample of Indigenous tribes in Ranchi area of Jharkhand district it was found out that the tribal people were aware about their political rights. They actively voted in the elections, there was panchayat in their villages and they actively participated in contesting elections as well.

As for the voting 88.2% person activey vote in the elections, while 11.8% people did not.

Do you actively vote in all elections?

51 responses

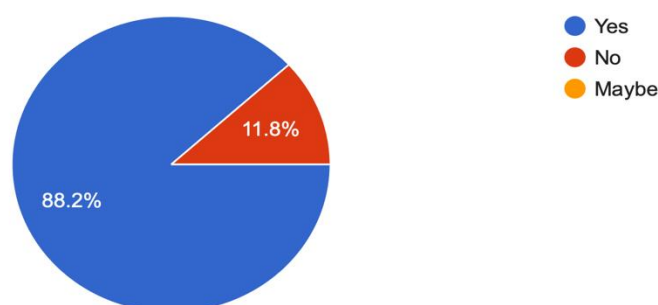


Figure 11

5. RIGHT TO DEVELOPMENT

Like every single human right, the privilege to improvement has a place with everybody, separately and on the whole, with no segregation and with their investment. The quest for monetary development isn't an end in itself. The privilege to advancement puts individuals at the focal point of advancement process, which expects to improve the prosperity of the whole population and of all person based on their dynamic, free and important cooperation being developed and in their reasonable dissemination of the subsequent advantages.

The instruments protecting the right to development are:

- UDHR, 1948
- Declaration on the Right to Development, 1986
- Article 1 of the ICESCR, 1966
- Principle 3 of the Rio Declaration, 1992
- Article 7 of the ILO Convention Concerning Indigenous Tribal People in Independent Countries, No. 169, 1969
- Section III, Article 11, UN Millennium Declaration, 2000
- Sustainable Development Goals, 2015

6. RIGHT TO INDEPENDENT LEGAL SYSTEM

They have been given full independence to the tribal communities to constitute their own redressal mechanism for any dispute or issue among themselves as per their own custom, rules and traditions.

7. RIGHT TO ANCESTRAL/ TRADITIONAL LAND

There is no international or regional instrument which specifically deals with the right of indigenous people to their ancestral lands. Instead the relevant provisions on the issue are scattered in various documents. ILO Convention no. 169 concerning Indigenous peoples to their ancestral lands. Indigenous people have such a strong bond with their lands that the possession and access to the land is preconditioned for them to survive and enjoy their fundamental rights. When indigenous people are denied access to their land, therefore, it is not only their right to land or right to property that is violated but often also other rights.

During the study in Ranchi district the people were evicted from their villages and ancestral land on the basis of development due to construction of roads and coal mines. The major displacement in the state of Jharkhand is due to coal mines and the natural habitats are being destroyed by the government blind eyed in the wake of the development of coal mines. Though the tribes I met only 11.8% who were evicted till date because the others still fall in the interior areas.

Also out of the sample size of 51 people 84.3% resided in rural area, 13.7% resided in urban area while 2% resided in forests.

Where do you reside

51 responses

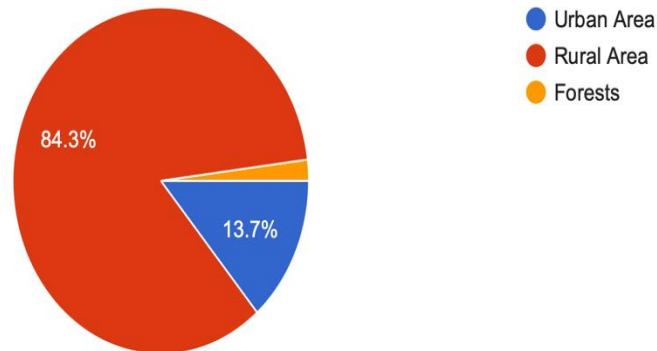


Figure 12

Have you been evicted from your Ancestral land?

51 responses

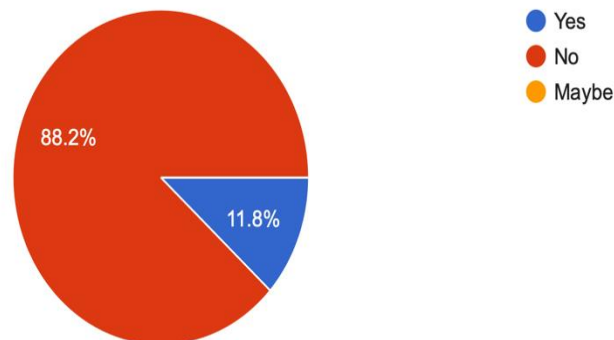


Figure 13

CONCLUSION & SUGGESTIONS

“Bir Buru Ote Hasa Okaya? Abuwa, Abuwa!” (Whose forests, hills and lands are these? These are ours). This is a famous slogan of Jharkhand’s Munda Adivasis, which they repeat even today to emphasize their claims over the lands, forests, hills, water and mineral resources. The slogan may have been created and used for the first time during the popular Adivasis resistance against British Imperialism, widely known as *Ulgulan* (Revolution), led by the Adivasi leader Birsa Munda, who is also called :*Dharti Abba*” (father of the land). The Ulgulan has inspired millions of Adivasis in India to fight for the protection of their lands, territories and resources. And of course, the fight will continue till the Adivasis exist in the corridor of the natural resources of India because there is a huge nexus between the State and the Corporates, who are determined to exploit the natural resources under the guise of growth and development (and even conservation and wildlife protection) for their economic and political gain. Nevertheless, the adivasis are also not going to give up their fight easily. The Adivasis have been strongly claiming for ages that they are the first settlers and indigenous people of India. Therefore they have the first rights over the land, territory and resources. The Adivasis resistance in claiming their hereditary rights over their natural resources goes back to mid-18th century, when the British Imperialist took over the political power by defeating the joint army of the Mughal Emperor at Buxar in 1764. This was the beginning of the Indian State. Later the British Army crushed and captured several kings and traditional heads, and their autonomous territories were merged into Indian State, which continued in a different form after India’s Independence. Nevertheless, the mighty Indian State has not yet succeeded in merging the entire territory into one state or so called nation.

The tribal people of North-East India, in Nagaland, Assam and Manipur and other states are generally as uncomfortable with the Indian States as Adivasis are in mainland India, for treating them in the same top-down, undemocratic manner characteristics of colonial rule. They have been demanding their autonomy in many territories of the country. The PATHALGARI MOVEMENT of Jharkhand, Odisha and Chhattisgarh is one such autonomous resistance, which insists that adivasis have a constitutional right to autonomy over their land, territory and resources.

The policies and laws imprinted the Adivasis as the encroacher and enemies of the forest and threat to the wildlife and created food insecurity for them. These legislations even alienated them from their livelihood resources along with their own cultural identity. Due to this there was an unrest among the adivasis whose land had been snatched away and livelihood means in lieu of different policies, but this marked the reason for the non-implementation of these policies properly around the country.

Also the so-called conservationist have been campaigning for eviction of Adivasis from the forest, and their intention was served through PIL's which brought up the Eviction Order of 2002 and again in February 2019. This resulted in the eviction of approx. 100,000 Adivasis in 2002 and as many as 10 million people in the 2019 order.

Therefore it arise certain questions in mind which really need to be consider to stop the exploitation of the Adivasis. The questions are:

- Are Adivasis encroachers of forest land?
- Are they a threat to forest and wildlife?
- Are they enemies of forest and wildlife?
- Should they be blamed for deforestation?
- Have they not contributed in protecting and conserving the forests, biodiversity and wildlife?

All these fundamental question will come in negative to you because, from the time immemorial the adivasis life cycle revolves around the nature only. Their whole livelihood depends upon the forests, is bringing such legislations not depriving them of their fundamental as well as human right of life. It is an established fact that Adivasis have been around the forests for so long that they cannot operate without each other.

In thousands of villages of Jharkhand, Odisha, Chhattisgarh, Madhya Pradesh and Maharashtra Adivasis have coined their own legal systems to protect and preserve the forests and wildlife as per their traditions and customs and these help them to co-exist with them. Still they are considered as the enemies.

The specific suggestions after conducting the studies are:

1. No more laws and policy are needed to be framed.
2. Forest should not be used as a source of revenue.
3. The rights guaranteed under international conventions and treaties should be granted to them as India is a signatory and ratified the conventions too.
4. The resources in relation to education must be specifically provided to the indigenous people/ tribes.
5. Proper implementation of Article 244 should be adhered.
6. Special courts should be established for the issues of the Adivasis and forests.
7. The implementation of government policies should reach Adivasis equally.
8. The implementation of the Schedule V of the Indian Constitution will result into the development of the tribal community.
9. The Adivasis should not in any case be evicted from their ancestral land.

India should rectify its claim in UN by stating that the ST's are the indigenous tribes of India