

## Protection of Socio-Economic Rights of Indigenous Peoples in India

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### Abstract

*In India, the term Indigenous Peoples is not used, 'indigenous people' are generally understood and implied in its usage in the United Nations. However, most of the times the people that falls within the category of 'Scheduled Tribes' are considered as indigenous peoples in India. India has one of the largest populations of indigenous peoples and are an integral part of populations and their contribution in sustainable development and protection of biodiversity cannot be overlooked. The Indian legal framework has been drafted to include the rights of everyone and to ensure the protection of all. Yet, there are still number of atrocities that are faced by them, like social boycott, honour killing and the economic deprivation with the introduction of patent over their traditional knowledge. They are regarded as the vulnerable groups and many a times they are left out of the purview of development policies. The available Indian law provides for varying degree of such protection there are certain instance when such rights are not enjoyed by certain indigenous communities. Due to this they have been the victim of discriminations and are easily targeted, they are socially, politically and economically marginalized. There are increasing rates of crimes against them. They are subjected to various difficulties; there are cases where they are forcibly evicted from their land making them suffer their right to livelihood. This article aims to highlight the various rights guaranteed by Indian legislations to indigenous peoples and also provides an insight to the various problems that are faced by them.*

**Keywords:** Socio-economic, Indigenous Peoples, Schedule Tribe, Sustainable Development, Conventions, Declaration.

### I. INTRODUCTION

Indigenous peoples are culturally distinct societies and communities; they have their own unique culture and traditions. Indigenous people make 6% of the global

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population but they are the extreme poor but have rich cultural traditions and live in close connection with the nature. Since, they live in close contact with the nature they are dependent upon such resources for their livelihood. Hence, they are collectively responsible for the use, conservation of the natural resources and such resources are related to their livelihood, culture, tradition and also with their physical wellbeing. Being one of the most vulnerable groups they have faced many adversities since the ancient times.<sup>2</sup> There are various instances which shows that they have faced discriminations and even today they encounter differences. There are issues which highlights that their rights are violated, they are even forcibly evicted from their lands. Time and again the protection of their rights has been discussed yet, their rights have neither been acknowledged nor protected. There are many international and national initiatives for the protection of their rights, yet there is no proper implementation. The scenario has worsened and with numerous developments and advancements their hardships have increased as they are mostly left out of these schemes or policies. Indigenous people are closely associated with the resources that are available to them, they have practiced sustainable development which has directly helped in conservation and management of natural resources. The community rights they enjoy are often violated without any opportunity for them to speak for it. With patents and biotechnological invention the resources are being genetically engineered and often times such activities hamper the rights of the indigenous people to use such resources. As mentioned above they are dependent upon the resources available to them such use are also closely linked with their culture and traditions. Many times their rights are violated and they suffer the loss. Since, their rights over such resources is not recognised and protected it becomes difficult for them to fight for their rights. Since, very beginning they have been using the resources freely and they have tried to conserve the same. Such, practices also have led them to find solutions to various issues related to food insecurity, environmental issues etc. many scientist, environmentalist also look at the practices that are followed by indigenous peoples. There are numerous instance that shows that failure to provide recognition and protection has severely affected their human rights. Only if their rights are protected it will directly

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<sup>2</sup> THE WORLD BANK, *Indigenous Peoples*, <https://www.worldbank.org/en/topic/indigenouspeoples>, (last visited Mar. 13)

improve their socio-economic conditions. It gives them the strength to speak for their rights and also provides identity to them.

## II. Definition of Indigenous Peoples

The term “Indigenous” is used to define peoples or communities who have unique identity and their existence can be traced back to ancient times. They are considered to be shy in nature as most of them reside in remote areas near the forests.<sup>3</sup> There is no universal definition of indigenous peoples but there are certain criteria which if fulfilled then such people can be regarded as indigenous. They live far from the modern society and often times regarded as “tribal”. They are vulnerable ones and easy targets. Still there are places which cannot be visited because they live a completed isolated life.<sup>4</sup> They lack knowledge of what their rights are and due to this their lands gets captured and also, they are discriminated on the basis of race, culture and ethnicity.<sup>5</sup> Indigenous peoples have distinct culture and tradition and their traditions are often linked to the use of natural resources.<sup>6</sup>

In “Study of the problem of discrimination against indigenous population” Jose Martinez Cobo,<sup>7</sup> has mentioned few criteria’s that are essential to recognise indigenous peoples, they are:

- Such communities should have historical incidents of invasion/colonization
- Have distinctive characteristics
- Vulnerability
- Such communities should be determined to carry forward their tradition, culture in order to preserve their identity.

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<sup>3</sup> ARCTIC CENTRE, *Definition of indigenous people*, <https://www.arcticcentre.org/EN/arcticregion/Arctic-Indigenous-Peoples/Definitions> (last visited Mar. 14, 2023)

<sup>4</sup> CULTURAL SURVIVAL, <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/defining-indigenous> (last visited Mar. 15, 2023)

<sup>5</sup> *Id* at 2.

<sup>6</sup> GOVERNMENT.NO, <https://www.regjeringen.no/en/topics/indigenous-peoples-and-minorities/Sami-people/midtpalte/What-Defines-an-Indigenous-People/id451320/> (last visited Mar. 15, 2023)

<sup>7</sup> Jose R. Martinez Cobo of Ecuador was appointed Special Rapporteur for the study of the problem of discrimination.

ILO Convention No.169 have laid down the definition of indigenous and tribal peoples, the Convention has laid down the criteria for identifying the peoples concerned. Indigenous peoples are those section of population who have a long history and have faced various adversities due to conquest, colonization or have settled in the present state boundaries. Irrespective of their legal status, the indigenous communities have retained their social, economic, cultural and political institutions.<sup>8</sup>

A general definition is given ‘International Labour Organization’s Convention concerning Indigenous and Tribal Peoples (169)’ under Article 1(1b)<sup>9</sup>. The Indigenous peoples are still facing discrimination, they are socially, economically and politically lagging due to which they are deprived of the benefits that are made available to them.<sup>10</sup> Both at the International and national various polices and laws are being farmed to recognised the rights of the indigenous peoples. The main cause of such initiatives were because of the various movements started by the indigenous groups, societies and domestic, regional and international states. <sup>11</sup>In 2007, the General Assembly adopted the United Nations Declaration on the rights of the indigenous peoples, it stated that people belonging to indigenous communities shouldn’t be discriminated and their economic and social conditions needs to be improved. Indigenous people should have access to education, employment facilities, training and they should be able to enjoy better housing facilities. It is the duty of the states to oversee their conditions and take effective measures so that there is an upliftment in their economic and social conditions. There are certain sections of indigenous

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<sup>8</sup> ILO, [https://www.ilo.org/global/topics/indigenous-tribal/WCMS\\_503321/lang-en/index.htm](https://www.ilo.org/global/topics/indigenous-tribal/WCMS_503321/lang-en/index.htm) (last visited Mar. 16, 2023)

<sup>9</sup> This Convention applies to people in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

<sup>10</sup> INDIGENOUS PEOPLES, <https://www.amnesty.org/en/what-we-do/indigenous-peoples/> (last visited Mar. 12, 2023)

<sup>11</sup> INDIGENOUS PEOPLES AND THE UNITED NATIONS HUMAN RIGHTS SYSTEM, UNHR, <https://www.ohchr.org/documents/publications/fs9rev.2.pdf>, (last visited Mar. 12, 2023)

communities like the women, children, older people and people with disabilities, and it is very essential that special attention must be given to their needs.<sup>12</sup>

It is not wrong to say that various rights for protection of indigenous peoples have been result of debates, discussions at international level. Such rights includes right to self-determination, right over their land and the use of the resources that are available to them.<sup>13</sup> The right to land and to use the resources available to them is one of the major concern as it has threatened their traditional practices and their livelihood.<sup>14</sup> The World Health Organization characterizes indigenous populations as groups residing in or having a special connection to their ancestral lands, who see themselves as members of a traditional cultural group with deep root different from the modern society and nations.<sup>15</sup> These communities have preserved the unique social, economic, culture and political structures which makes them different from others.<sup>16</sup>

### III. Rights of Indigenous Peoples

Every human being have certain rights which are acknowledged and protected by the States. The State is duty bound to protect and acknowledge the rights of every individuals. Indigenous Peoples are also a part of the society, though they live far from the influence of modern societies. Such communities are distinct on the basic of ethnicity, language and religious and cultural diversity. But, there are various instances when their rights are violated and they are discriminated just because they are different from the majority of population living in the societies. Since, they are in minority they encounter discriminations and to put an end to such hardships it is very important to provide them with rights which they can

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<sup>12</sup> *IMPLEMENTING THE UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES*, INTER\_PARLIAMENTARY UNION, <http://archive.ipu.org/PDF/publications/indigenous-en.pdf> (last visited Mar. 12, 2023)

<sup>13</sup> *THE RIGHTS OF INDIGENOUS PEOPLES*, UNIVERSITY OF MINNESOTA, <http://hrlibrary.umn.edu/edumat/studyguides/indigenous.html> ,(last visited Mar.12, 2023)

<sup>14</sup> *HUMAN RIGHTS, UNITED NATIONS*, <https://www.un.org/development/desa/indigenouseoples/mandated-areas1/human-rights.html> (last visited Mar. 12, 2023)

<sup>15</sup> UNESCO, *INDIGENOUS PEOPLES*, <https://whc.unesco.org/en/glossary/275> (last visited Feb.24, 2026).

<sup>16</sup> *INDIGENOUS POPULATIONS*, WHO, [https://www.who.int/topics/health\\_services\\_indigenous/en/](https://www.who.int/topics/health_services_indigenous/en/) (last visited Mar. 12, 2023).

enjoy. The human rights are enjoyed by everyone and hence to protect their diversity and tradition it is essential to recognise and protect their human rights. There are many Declaration and Conventions that have recognised the rights of the indigenous communities. Such rights are basic rights and must be made available to them. Few such rights are listed below.

#### ***A. Self-determination***

Right to self-determination means that the citizens has the right to form its political entity and is one of the core principle laid down by the international law. Right to self-determination allows the indigenous peoples to choose their representative. This includes indigenous peoples' autonomy over cultural matters and also have participation in decision-making on matters that are related to them. For implementation of any legislative or administrative measures the State requires to have consultation and also requires to obtain prior informed consent from them.<sup>17</sup> It empowers them to choose their government or statehood and not to be influenced by external influences.

#### ***B. Rights over land, resources and territories***

Indigenous peoples often face force eviction from their lands/homes. They identify themselves to the geographical areas that they live in and it is very important to recognise their rights to land. There are numerous legislations, policies that are adopted by the United Nations that has recognised the rights to land, territory and resources of the indigenous peoples. They've long used these resources, and relied on their lands for daily life. Their tradition, culture are also connected with the land and resources that they live in. So, their rights to land must be recognised and protected at all cost.<sup>18</sup>

#### ***C. Socio-Economic and Cultural Rights***

Apart from above mentioned rights the social, cultural rights of the indigenous peoples also includes clean environment, better sanitation facilities, job employment opportunities, free education and good health services. The

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<sup>17</sup> AUSTRALIAN HUMAN RIGHTS COMMISSION, <https://www.humanrights.gov.au/our-work/un-declaration-rights-indigenous-peoples-1> (last visited Mar. 14, 2023)

<sup>18</sup> JEREMIE GILBERT, LAND RIGHTS AS HUMAN RIGHTS, <https://sur.conectas.org/en/land-rights-human-rights/> (last visited Mar. 12, 2023)

Indigenous Peoples have a vast cultural practices that has a deep root to their identity. Such, unique and distinctive cultures must be protected. In recent times traditional knowledge, traditional cultural expressions are gaining lots of importance, and only if the cultural rights of the indigenous communities in protected we can safeguard the old age tradition and practices.<sup>19</sup>

#### ***D. Collective Rights***

The rights of Indigenous peoples are collective. They follow their conventions, cultures, and practices jointly since they are part of a community. They are mostly dependent on one another, and neither private nor individual rights are understood. But, there are no laws or procedures that recognize the idea of collective rights or offer protection. It is important to remember that they are all acknowledged as indigenous groups. Therefore, both nationally and internationally, their collective rights must be recognized and upheld.

#### ***E. Non-Discrimination and Equality***

The fundamental right to equality must be granted to everyone, regardless of caste, religion, sex, creed, colour, etc. They must be treated with the utmost respect and without prejudice. They must be able to freely and effectively engage in the decisions that impact them, and their rights must be acknowledged and upheld. Neither the government nor private actors may use coercion, intimidation, or control. The government has an obligation to incorporate indigenous groups in policies and initiatives that support their development.<sup>20</sup>

#### ***F. Free and prior informed consent***

It is very essential that consent of indigenous peoples needs to be taken and such consent needs to be free and informed to them beforehand. There are many measures, initiatives that are undertaken by the Government before implementing such the consent of indigenous peoples needs to be obtained as it

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<sup>19</sup> THE RIGHT TO HEALTH, WHO, <https://www.ohchr.org/Documents/Publications/Factsheet31.pdf> (last visited Mar. 15, 2023)

<sup>20</sup> EQUALITY AND NON-DISCRIMINATION, UNITED NATIONS <https://www.un.org/ruleoflaw/thematic-areas/human-rights/equality-and-non-discrimination/> (last visited Mar. 12, 2023)

may affect them.<sup>21</sup> Many the resources that are used by them is taken away for research purposes, during such events their consent needs to be obtained as they have the right to land and resources. The companies and researchers must consult with the people before doing research on the resources and also disclose the activities so that they can decide in better manner. It is also important that they receive the benefits after the utilization of the resources.

#### **IV. Indigenous Peoples In India**

In India the term 'Indigenous' communities or 'indigenous' peoples is not used. But there are Schedule Tribes in India. In India there are more than 705 ethnic communities who are officially recognised as "Schedule Tribes". The Schedule Tribes in India are also termed as Adivasis, literal meaning of it is 'Indigenous Peoples'. The Fifth and Sixth Schedule of Indian Constitution is solely there for recognition of scheduled tribes of Central and North Eastern India respectively. The provisions laid down under this schedule provides for the protection of rights of Indigenous Peoples to their use their resources like land and right to self-government. India also has provided the support to the Declaration on the Rights of Indigenous Peoples which was introduced by United Nations. But even after this there provisions for their protection is still in early stage.<sup>22</sup>

India has a huge population belonging to indigenous communities, they amount to 8.6% of the population. For recognising and protecting their rights the Indian Government has ratified many declarations and conventions. The term "indigenous" is not used in India as it is used in other countries. However, the people falling in the group of schedule tribes are regarded as indigenous in India. The Schedule Tribes have distinct characteristic traits that differentiates them from others in the society. They inhabit up to 20% of land areas. Though they have different characteristic traits it is very difficult to provide a clear definition to the 'tribal' term.

India's tribal communities are grouped into categories like Veddids, similar to Australian Aboriginals; Paleamongoloid Austro-Asiatic peoples from the

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<sup>21</sup> FREE, PRIOR AND INFORMED CONSENT OF INDIGENOUS PEOPLES, UNHR, <https://www.ohchr.org/Documents/Issues/ipeoples/freepriorandinformedconsent.pdf>. (last visited Mar.12, 2023.)

<sup>22</sup>INDIGENOUS PEOPLES IN INDIA, IWGIA <https://www.iwgia.org/en/india.html> (last visited Mar.14, 2023).

northeast; Greco-Indians who migrated from Central Asia into Gujarat, Rajasthan, and Pakistan; and Negritos of the Andaman Islands, including the Great Andamanese, Sentinelese etc. The Northeast hosts over 200 indigenous groups, such as the Bodo, Khasi, Jaintia, Naga, Garo, Tripuri, Mikir, Apatani, Kuki, and Karbi, mostly of Mongoloid stock speaking Tibeto-Burman or Mon-Khmer languages— with Arunachal Pradesh tribes like “Adi, Aka, Apatani, Dafla, Gallong, Khamti, Monpa, Nocte, Sherdukpen, Singpho, Tangsa, and Wancho” being Tibeto-Burman, alongside Meghalaya’s Garo (Tibeto-Burman) and Khasi (Mon-Khmer). In southern regions, proto-Australoid tribes including Irula, Paniya, Adiya, Sholaga, and Kurumba speak Dravidian dialects. Scheduled Tribes also exist in states like Uttar Pradesh, Himachal Pradesh, West Bengal, Arunachal Pradesh, Sikkim, Nagaland, Manipur, and Mizoram, with communities extending across borders into China (including Tibet), Bhutan, Myanmar, and Bangladesh.<sup>23</sup>

In India, the Scheduled Tribes are defined as ‘such tribes or tribal communities or parts of, or groups within such tribes, or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of the Constitution.’<sup>24</sup> As they have a long history of being a disadvantaged group they are provided certain rights by the Indian Constitution. The Indian Constitution under Article 342 (1) provides for the definition of Schedule tribes. It includes all the tribes or communities or part of a groups of a tribal community as declared by the President of India. Hence, the President has provides such information through a public notification There is no specific criteria that has been developed for the purpose, but the Scheduled Tribes are identified on the basis of the following characteristic: the people are considered as Schedule tribes if they have certain primitive traits, follow distinctive culture, reside in an isolated geographical location, and they are ,mostly considered backward as they are shy and live aloof from the society. As, mentioned there are more than 200 indigenous groups residing in India, but very few communities know about their rights, they are still being targeted and discriminated. Their rights are still being violated and infringed by private or government players.

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<sup>23</sup> C.R. Bijoy, Shankar Gopalakrishnan and Shomona Khanna, *India and the Rights of Indigenous Peoples*, Asian Indigenous Pact (AIPP) Foundation, 2010, page.13

<sup>24</sup> INDIAN CONST. Art. 366, cl.2.

## V. Issues Faced by Indigenous Peoples in India

In India indigenous/ tribal people amount to 8.6% of country's population as recorded in 2011 census and there is a decline in their birth rates due to reasons like poverty, poor literacy and low fertility rate. Along with these issues they also face the problem of displacements one instance that is important to note is displacement caused by Sardar Sarovar Dam in Gujarat which led to thousands of tribal peoples being displaced from their lands. As they are displaced, they are required to move to new place but such movement can lead to erosion of their culture and tradition, one of the examples is the traditional rituals practiced by the tribes of Great Andamanese is on the verge of extinction. Such extinction can lead to disappearance of culture, tradition, language and practices of that particular tribe/communities. They are also below the poverty line and right to economic benefits aren't enjoyed by them, there is also economic marginalization as many indigenous people live in forest and are still dependent upon the natural resources available to them. Many times, their right to livelihood is infringed due to many activities of mining and industrial activities. Even, the right to self-determination that is a guaranteed human right to the indigenous communities is violated, many indigenous communities are politically marginalized and they do not get fair representation in the political process. They are exploited and marginalized by powerful groups be it private or government officials. They also lack proper education and health care facilities; they are likely to get diseases due to poor health facilities. The Indigenous Peoples face many problems and they have been subjected to discrimination and are most of the times left out of the purview of development policies and schemes. Along with this they face issues related to health and development.<sup>25</sup> With lack of proper food and sanitation there is increase in malnutrition which has caused death of community member, particularly women and children. Since, there is poor health facilities they are prone to various diseases. Even after 75<sup>th</sup> years of Independence, the challenges in health sector such as lack of education, absence of minimum health care and food insecurity is continuing major problems for the indigenous tribal people in India. India is a country which provides for free and compulsory education, but there are many areas where education has not reached.

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<sup>25</sup> PROMOTING AND PROTECTING MINORITY RIGHTS, UNHR, [https://www.ohchr.org/sites/default/files/Documents/Publications/HR-PUB-12-07\\_en.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/HR-PUB-12-07_en.pdf) (last visited Mar. 13, 2023).

Poor school buildings, inexperienced teachers is also the reason why indigenous peoples do not encourage their children to go to schools. With number of development projects by corporates they have lost their lands and also resulted in loss of the natural resources and creating havoc for the tribal without any alternative livelihood option. The issue of unemployment among the indigenous/tribal youth is a cause of concern.<sup>26</sup>

The Indigenous peoples have a close connection with the natural resources and land that they live in, but with policies of liberalization and the new state concept of utilization of resources are directly infringing their rights to the use of such resources. With rapid technological advancements the economic and political strength of world capitalism has created disadvantage to the rights of indigenous peoples over the land they have settled in. All available laws those relating to lands, forests, minor forest produce, water resources, etc. restrain people from using forests. Primary resources such as fuel, fodder and minor forest produce which were available free to villagers are today either non-existent or have to be brought commercially.<sup>27</sup> For the Indigenous peoples, globalization is associated with rising prices, loss of job security and lack of health care. The other issue is that they are being displaced due to the introduction of liberalization, privatization and globalization (LPG), as the areas inhabited by indigenous population have been subject to various protests due to involuntary displacement. With the loss of the resources and displacement they exist the issue of rehabilitation. Only 21 lakh indigenous community members have been rehabilitated so far of the estimated 85 lakh persons displaced due to development projects and natural calamities. In the name of upgradation of lifestyle of poor indigenous tribal people, the market forces have created wealth for their

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<sup>26</sup> SITUATION OF INDIGENOUS PEOPLES AND RIGHTS TO HEALTH, INDIGENOUS WOMEN'S NETWORK, INDIA <https://www.ohchr.org/sites/default/files/Documents/Issues/IPeoples/EMRIP/Health/IndigenousWomenNetworkIndia.pdf> (last visited Mar. 14, 2023).

<sup>27</sup> STATE OF THE WORLD'S INDIGENOUS PEOPLES, UNITED NATIONS, <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2021/03/State-of-Worlds-Indigenous-Peoples-Vol-V-Final.pdf> (last visited Mar. 15, 2023).

interests at the cost of livelihood and security of these tribes in the areas.<sup>28</sup> Certain tribes have been characterised as Particularly Vulnerable Tribal Groups (PVTGs) (earlier known as Primitive Tribal Groups) on the basis of their greater 'vulnerability'. There are more than 75 tribes who are considered as PVTGs in India.<sup>29</sup>

If we lay down the issue faced by the indigenous peoples in the general manner they are as follows: - Firstly, the loss of control over the natural resources that they had enjoyed from time immemorial. It was with the advent of Britishers in India that their rights to use the resources or their rights to use and own the natural resources like land, forests, wildlife, etc. was infringed. Along with this the path towards the industrialisation in India and the discovery of mineral and other resources in the indigenous people's areas, opened the doors to outsiders. With displacement or loss over the rights of land the indigenous communities faced numerous issues, as they were totally uprooted from the land, surroundings that they lived in and were dependent upon.<sup>30</sup> Secondly, the lack of education is also one of the issues that is faced by the indigenous groups. As they live in complex surroundings with their beliefs and superstitions, they have less interest on the alien subjects that are taught in the schools. Though, education would help to increase their participation in the developments schemes but lack of education has made them stand at the end.<sup>31</sup> Thirdly, displacement and rehabilitation that is caused by the development process or industrialisation in most of the tribal inhabited areas. Many indigenous communities belonging to states like Orissa, West Bengal and Madhya Pradesh have faced the issues due to industrial activities after the independence. The compensation was not given properly and the no settlements were provided for the displaced communities hence, leaving

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<sup>28</sup> ISSUES RELATED TO SCHEDULED TRIBES, LOTUS ARISE, <https://lotusarise.com/issues-related-to-scheduled-tribes-upsc/> (last visited Mar. 13, 2023)

<sup>29</sup> VARIOUS PROBLEMS OF TRIBAL COMMUNITIES IN INDIA, INSIGHTIAS, <https://www.insightsonindia.com/social-justice/issues-related-to-sc-st/various-problems-of-tribal-communities-in-india/> (last visited Mar. 15, 2023)

<sup>30</sup> CO-MANAGEMENT OF NATURAL RESOURCES IN ASIA, <http://norden.diva-portal.org/smash/get/diva2:858552/FULLTEXT01.pdf>, (last visited Mar. 15, 2023)

<sup>31</sup> IMPORTANCE OF INDIGENOUS EDUCATION AND CULTURE HIGHLIGHTED, AS PERMANENT FORUM CONTINUE SECOND SESSION, UNITED NATIONS <https://press.un.org/en/2003/hr4674.doc.htm> (last visited Mar. 13, 2023)

them homeless.<sup>32</sup> Fourthly, the due to economic backwardness and insecure livelihood the indigenous communities have faced numerous health issues, and are often affected by diseases like malaria, cholera, tuberculosis, diarrhoea and jaundice, problems associated with malnutrition including low iron, anaemia, there is high mortality rates too.<sup>33</sup> Fifthly, there is an impact on the status of women as they are the ones who are engaged in activities that have the use of natural resources, due to the degradation of the natural environments the resources have been vanishing. As many are engaged in activities of mining, industries etc, the women are being commoditised.<sup>34</sup> Lastly, the most important one is the Erosion of Identity. Due to increase in modernisation and developments the traditional institutions of the indigenous communities have come into conflict with the modern institutions, which has caused issues regarding to the preserving of their identities. Not only there is decrease in the tribal activities and cultures it has also led to extinction of dialects and languages of tribal communities.<sup>35</sup> Hence, we can see that the tribal or indigenous communities in India are facing numerous issues. Apart from the above-mentioned issues, the other upcoming problems faced by the indigenous communities are as follows.

**a. Indigenous Peoples Rights over the use of natural resources is not recognised**

The rights of Indigenous Peoples over the resources are not acknowledged. Since they rely primarily on the natural resources that are accessible to them, indigenous peoples all over the world strive to coexist harmoniously with nature. Despite using the resources, the indigenous groups make an effort to preserve

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<sup>32</sup> A.B. OTA, DEVELOPMENT INDUCED DISPLACEMENT AND THE TRIBAL, [https://repository.tribal.gov.in/bitstream/123456789/73960/1/SCST\\_2009\\_book\\_0118.pdf](https://repository.tribal.gov.in/bitstream/123456789/73960/1/SCST_2009_book_0118.pdf) (last visited Mar. 12, 2023)

<sup>33</sup> TRIBAL HEALTH BULLETIN, NIRTH, [https://www.nirth.res.in/publications/tribal\\_health\\_bulletin/thb23\(1\)2016.pdf](https://www.nirth.res.in/publications/tribal_health_bulletin/thb23(1)2016.pdf), (last visited Mar. 15, 2023).

<sup>34</sup> WOMEN, GENDER EQUALITY AND CLIMATE CHANGE, WOMEN WATCH, [https://www.un.org/womenwatch/feature/climate\\_change/factsheet.html](https://www.un.org/womenwatch/feature/climate_change/factsheet.html) (last visited Mar. 13, 2023).

<sup>35</sup> DK Sinha, *Six Main Problems Faced by the Indian Tribes*, (last visited Mar. 15, 2023), <https://www.yourarticlelibrary.com/tribes/six-main-problems-faced-by-the-indian-tribes/42401>

them because they recognize their worth and the need for them for future generations. They have acquired this use through several trials and errors, and these materials constitute a significant portion of their knowledge.<sup>36</sup> Their rights are frequently infringed, and in many jurisdictions, their identity, cultures, and traditions are not acknowledged. They are viewed as second-class citizens. These communities are frequently compelled to abandon their native habitats in order to meet the demands of capital-intensive markets, and they frequently endure severe violence and abuse that is frequently supported by the government.<sup>37</sup> “John Galtung divides the violence against indigenous communities into three categories. He is regarded as the originator of peace studies and is a Norwegian sociologist who founded the journal of Peace Research.” He stated that the first is physical, followed by cultural and structural. The majority of indigenous tribes worldwide suffer from structural violence, which is enforced by social institutions and the social structure, depriving them of their fundamental human rights. Due to the lack of recognition of their rights, they have experienced and continue to experience severe discrimination in the form of racism, poor involvement in public life, unlawful land use, and cultural violence. The majority of developing nations are home to indigenous communities and have abundant biodiversity, but because of their inadequate provincial administrative systems, these communities’ rights to use resources are frequently violated, or perhaps more accurately, their rights as communities are never acknowledged and safeguarded.<sup>38</sup> The NER region in India is home to around 427 distinct tribal tribes. They speak their own languages and have unique cultures, traditions, and customs. Their own traditional wisdom is quite old and primarily derived from the abundant bioresources in the area. Since the beginning of time, they have kept and preserved both the knowledge and the resources related to it. The primary issue is that only information produced in labs is acknowledged, whereas the rights of traditional holders are not. Recognizing the rights of traditional

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<sup>36</sup> *Indigenous Peoples and the nature they protect*, UNITED NATIONS, <https://www.unep.org/news-and-stories/story/indigenous-peoples-and-nature-they-protect> (last visited Mar. 15, 2023)

<sup>37</sup> STATE OF THE WORLD’S INDIGENOUS PEOPLES, ECONOMIC & SOCIAL AFFAIRS, [https://www.un.org/esa/socdev/unpfi/documents/SOWIP/en/SOWIP\\_web.pdf](https://www.un.org/esa/socdev/unpfi/documents/SOWIP/en/SOWIP_web.pdf) (last visited Mar. 23, 2023).

<sup>38</sup> *Id.* at 36.

knowledge holders is crucial since it will protect their rights to such use and enable them to receive some financial rewards.<sup>39</sup>

**b. Lack of documentation of Indigenous Knowledge**

Indigenous people and local communities all around the globe have developed vast traditional knowledge and it is very essential and important to them. Most of the traditional knowledge that is followed in the region is either too old or only in oral form. The failure to document the knowledge has caused various issues to the indigenous communities. Since the majority of knowledge is passed down orally, the prior art requirements cannot be met because there isn't a document that can serve as evidence of prior art. The social, cultural, and economic interests of local and indigenous groups are thus thought to be safeguarded through the documentation of traditional knowledge. Indigenous peoples have been using this traditional knowledge for millennia, but it has been lost due to a lack of documentation. The knowledge will only be acknowledged, arranged, and registered as proof of prior art if it is documented.<sup>40</sup> It is important to note that documentation should be completed with the indigenous people's prior consent. Once the Traditional Knowledge is recognised they must be given the right to determine who has control over a database and the data. The documentation needs to be done in proper manner so that such data can be identified to database owner. There should be a proper provision that acknowledges the authority to control the database's contents. The process of documentation is not an easy one and still susceptible to exploitation, but if such data are safeguarded by appropriated regulations, such as copyright laws or by specialized database legislation, such as the European Union's sui generis data base protection it can be a great achievement.<sup>41</sup>

One of the great measures that could aid in protecting the people's traditional knowledge is the establishment of the People Biodiversity Register (PBR) in

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<sup>39</sup> Maria Debbaram et. al., *Traditional Knowledge of Medicinal Plants in Tribes of Tripura in North East India*, 14AJTCAM157, 158-160, 2017.

<sup>40</sup> INDIGENOUS PEOPLE'S TRADITIONAL KNOWLEDGE MUST BE PRESERVED VALUED GLOBALLY, SPEAKERS STRESS AS PERMANENT, FORUM OPENS ANNUAL SESSION, UNITED NATIONS, <https://press.un.org/en/2019/hr5431.doc.htm> (last visited Mar.15, 2023)

<sup>41</sup> DOCUMENTING TRADITIONAL KNOWLEDGE- A TOOLKIT, WIPO [https://www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_1049.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_pub_1049.pdf) (last visited Mar. 15, 2023)

India, which is outlined in the Biodiversity Rule, 2004. The Biodiversity Management Committee must keep a PBR that contains details about the many plant species that have therapeutic qualities, as well as information regarding traditional knowledge and the names of those who possess it.<sup>42</sup> The PBR's primary goals are to safeguard the resources that are currently available and, in a sense, recognise the rights of those who possess traditional knowledge. However, the majority of the states have not kept the registrations up to date. In many places, the registers are incomplete and just in the first stages. The fact that the languages are different further creates issues because elderly individuals typically possess the information in their native language, making translation extremely challenging.<sup>43</sup> Documenting traditional knowledge provides a dual advantage for Indigenous peoples and local communities. First, it establishes the knowledge as prior art, preventing unauthorized patents on age-old practices. Second, even when such knowledge or resources are commercialized, documentation serves as a key tool to affirm community rights and ensure equitable benefit-sharing. This process ultimately safeguards both the cultural heritage embedded in traditional knowledge and the economic interests of the communities. By creating verifiable records, communities gain leverage in negotiations, protect against exploitation, and promote fair value distribution from innovations derived from their wisdom.<sup>44</sup>

### **c. No Community Rights Recognised**

Despite provisions for equitable benefit-sharing under India's Biological Diversity Act, Indigenous and tribal communities continue to face rights infringements, as highlighted earlier. The core issue stems from the lack of legislative recognition for community rights, leaving their collective claims unprotected. Indigenous communities thrive in tight-knit groups deeply intertwined with nature, where daily activities involve communal labour, resource sharing, and knowledge transmission based on group efforts rather than

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<sup>42</sup> PEOPLE'S BIODIVERSITY REGISTER (PBR) AND METHOD OF PREPARATION, GOA STATE BIODIVERSITY BOARD, (last visited Mar. 12, 2023).

<sup>43</sup> TRADITIONAL KNOWLEDGE AND INTELLECTUAL PROPERTY-BACKGROUND BRIEF, WIPO, [https://www.wipo.int/pressroom/en/briefs/tk\\_ip.html](https://www.wipo.int/pressroom/en/briefs/tk_ip.html), (Mar. 16, 2023).

<sup>44</sup> *Supra note*. 40

individual ownership.<sup>45</sup> Traditional knowledge emerges from this shared ethos, with no notion of private rights imposing individual ownership disrupts their systems and undermines communal entitlements. Proving rights over resources tied to this knowledge becomes challenging without legal backing for collectives, raising unresolved questions: Who qualifies as a “community” to receive benefits, and by what criteria? Poor execution of benefit-sharing mechanisms increases these gaps, infringing on their intellectual heritage.<sup>46</sup> This knowledge constitutes the communities’ intellectual property, developed and held collectively under unwritten customary laws emphasizing custodianship over ownership even family-held expertise serves the group. Recognizing these collective rights is essential to prevent exploitation and honour their stewardship role.

#### **d. Poor Implementation of available Legislation**

The indigenous or tribal communities in India face numerous issues as listed above. There are various provisions under the Indian Constitution and also legislation for their protection but still they are discriminated and marginalized. Constitutional provisions like Article 15 (4), 16(4), Article 46, Article 224, Article 275, Article 330, Article 332 and Article 338 provides certain rights and protection to the tribal communities in India. There are various legislations that also provides provisions for protection of the rights of the tribal and indigenous communities in India.

“The Panchayats (Extensions to Schedule Areas) Act,1996, The National Commission for ST Act, 2004, The Forest Rights Act, 2006 and The Land Acquisition Act, 2013”. Apart from these there are numerous policies farmed for recognition and protection of their rights yet, there is lack of implementation. Also, there is no specific legislation that solely provides protection to Indigenous peoples. The lack of universal definition also in a way causes issues for protection of their rights. They are one of the vulnerable groups and hence, they become easy prey. It is very important that there is specific legislation which

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<sup>45</sup> INDIGENOUS KNOWLEDGE AND TRADITIONAL KNOWLEDGE, [https://repository.upenn.edu/cgi/viewcontent.cgi?article=1172&context=anthro\\_papers](https://repository.upenn.edu/cgi/viewcontent.cgi?article=1172&context=anthro_papers) (last visited Mar. 15, 2023)

<sup>46</sup> *Supra* note. 42

provides them with proper protection and also proper implementation of the same.

## VI. Conclusion

After going through the various issues of the indigenous communities we can say that there is various initiatives adopted at the national and international level for the rights of indigenous peoples but still they are the ones who has and are suffering till today. There exists many challenges that needs to be faced with positive mindset. A number of governments have expressed concerns about ‘a possible imbalance between individual and collective rights’.<sup>47</sup> The rights that is guaranteed under the Articles of the United Nations Declaration on Rights of Indigenous Peoples according to some indigenous representatives are opposed to the right to self-determination, and their rights are subjected to limitations.<sup>48</sup>

Indigenous peoples have strived hard for their right to autonomy and self-government, they are still working together to determine their social, economic, cultural and political status. Additionally, their collective rights have been recognised and affirmed by a number of international agreements. And, even though their rights have been studied and contested on a national and international level, there are still issues for protection of the same. There is an increase in violence against the indigenous communities, the main issues are related to their traditional indigenous land, resources. many times they are deprived of the right to use the resources that are freely available to them. Right to land is one of the important right and there are numerous instances where their right to land is infringed, they are forcibly evicted and many times they lose control over their land and resources. Such cases have resulted in violence on indigenous women and children. Indigenous peoples play a vital role in preserving and transmitting their rich cultures, traditions, and knowledge systems, making it essential to recognize and respect their unique identities and

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<sup>47</sup> Intervention of the representative of Netherlands, UN Doc. E/CN.4/1997/102, para. 109. See also, Douglas Sanders, ‘The Legacy of Deskaheh: Indigenous Peoples as International Actors’ in Cynthia Price Cohen (ed), *The Human Rights of Indigenous Peoples* (Ardsley, N.Y.: Transnational Publishers, 1998) 73, 85; Sarah Pritchard, ‘Working Group on Indigenous Populations: Mandate, Standard-setting Activities and Future Perspectives’ in Sarah Pritchard (ed), *Indigenous Peoples, the United Nations and Human Rights* (London: Zed Books, 1998).

<sup>48</sup> UN Doc.E/CN.4/1997/102,para.224.

rights. National, regional, and international organizations must collaborate to achieve this protection, enabling communities to fully benefit from global declarations and conventions designed for their safeguard. These communities often face forced displacement and resource plundering, with lands leased to mining and real estate firms without consent, stripping them of ancestral territories they freely use. Protests highlight ongoing losses, underscoring the urgent need for enforceable safeguards against such encroachments. Adopting policies to promote harmony among various population groups is necessary in order to think of practical ways to stop the violence that indigenous peoples experience. In a same vein, the development of an institutional and policy framework must be accompanied by the promotion of the full realisation of their rights. At the national and international levels, action must be taken to prevent and end violence as well as to advance equality. The National Crime Records Bureau in 2016 , reported 6,568 cases of crimes against Schedule Tribes in India which was a slight increase from 2015. More than 10,914 cases covered the issues of atrocities under the SC/ST (Prevention of Atrocities) Act typically committed by non-tribal, while excluding human rights violations by security forces such as extrajudicial killings and arbitrary arrests in tribal areas. In 2017, these forces continued facing allegations of abused against indigenous communities during anti-Maoist operations in states like Chhattisgarh and Orisha, including civilian deaths labelled as crossfire and sexual assaults, as noted by groups like Human Rights Watch. By 2023, reported cases had risen sharply to 12,960-a 28.8% jump with Manipur topping the list amid ethnic violence.<sup>49</sup>

India has numerous laws, such as “the Fifth and Sixth Schedules of the Constitution, the Panchayats (Extension to Scheduled Areas) Act (PESA)” of 1996, and state-specific land transfer regulations (e.g., the 1 of 70 Act in Andhra Pradesh), that restrict the sale or transfer of tribal lands. Despite these protections, implementation remains weak due to bureaucratic resistance, low claim approval rates under the Forest Rights Act (FRA) 2006 where over 36% of 18.7 million claims have been rejected and many remain pending and side-

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<sup>49</sup> ATROCITIES AGAINST SCHEDULE CASTES AND SCHEDULED TRIBES: WHAT HAS CHNAGED SINCE 2016?, <https://clpr.org.in/blog/atrocities-against-scheduled-castes-and-scheduled-tribes-what-has-changed-since-2016/> (last visited April.15, 2024).

lining of Gram Sabha's in decision-making. Forest-dwelling tribes continue facing eviction threats for conservation projects, with incomplete surveys, fragmented records, and high rejection rates exacerbating insecure tenure and livelihood risks, as seen in recent Maharashtra protests demanding better FRA enforcement.<sup>50</sup>

Tribal women and girls in India face compounded vulnerabilities, with violations of collective and individual rights including sexual violence, trafficking, murders, state-sponsored militarization, and displacement from development projects like mining and dams. NCRB's Crime in India 2016 reported 972 rape cases against Scheduled Tribe women (not 974), comprising 2.6% of total rapes that year; by 2023, such crimes surged in states like Manipur (part of 1,189 total ST rape cases nationally), amid ethnic conflicts exacerbating gang rapes and killings of Kuki-Zo women. Recent data shows Madhya Pradesh alone registering 7,418 SC/ST women rape cases from 2022-2024, highlighting persistent underreporting, low convictions, and systemic failures in protection.<sup>51</sup>

Hence, it is a need of the hour that the rights of indigenous communities are acknowledged and protected. It is very essential that the Governments take effective measures to see that the laws or policies are being implemented. The protection measures needs to be implemented and the indigenous communities needs to be made known about their rights. The crime rate against them are increasing and many remains un reported. They are one of the disadvantaged groups and it is very important they are protected from any atrocities caused either by the private players or the government.

Firstly, it is essential that a comprehensive and holistic approach needs to be adopted so that numerous connected issues can be addressed. The government can introduce sustainable development measures, it is very important to understand that development is necessary but such development must not exclude the ideas of sustainable one. It is important to look at the biological resources in the life of the tribal people so we need to find a way to balance between development and the rights of the tribal and indigenous communities.

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<sup>50</sup> *Id. at 49*

<sup>51</sup> CASTE DISCRIMINATION IN INDIA: A STUDY OF NCRB DATA (PART IV), <https://clpr.org.in/blog/caste-discrimination-in-india-a-study-of-ncrb-data-part-iv/> (Last visited April 15, 2024).

Secondly, Tribal and indigenous communities should have access to education. Since there is low literacy rate it is necessary to increase the literacy rate among them. Women empowerment is also important step that can be done. A society becomes a better one if the women is literate and empowered. Only if they are literate they can fight for their rights. Along with proper education they also should have easy access to good health care facilities. Lastly, there needs to be legal title to their land, they must have land rights. There are many instances where they are forcefully evicted and displaced. To stop this from happening it is important that their right to land is legally protected. Right to land is directly linked with their livelihood promotions, as many depend on the resources available to them and they earn their livelihood through the use of it. Hence, their right to livelihood needs to be promoted so they can become economically independent.