

Indigenous Knowledge and Indigenous Community in India: A Study in Human Rights Perspective

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Introduction

Indigenous Knowledge possessed by the indigenous communities in India or any other parts of the world is invaluable asset of the human civilization. Ever since the human civilization began on the planet Earth, the human beings in interaction with nature have learned many things for their survival and development. The indigenous people who are primarily depended upon nature for survival, living in ancestral land for centuries and are untouched with modernity, alien values and cultural influence, still possess the old heritage of knowledge. Indigenous communities have discovered several medicinal values of plants in nature, developed methods of farming which not only heals their diseases, but also survived them in environmental crises. The knowledge possessed by the Indigenous communities is secret, sacred things for them and they don't share it with outsiders or alien world. It passes through generation to generation within indigenous communities. Over the past two-three decades, the indigenous knowledge of the indigenous people are being misappropriated and utilized by the agents of modern development particularly by the multinational companies for getting commercial benefits without giving acknowledgement to these indigenous communities for possessing a traditional knowledge of medicines. Even the indigenous knowledge of agriculture and forestry has proved worth in protection of environment from degradation and pollution. Hence, protection of Indigenous knowledge of indigenous people has become a issue of human rights for which the state and various international intuitions are making their efforts.

The paper has modest attempt for understanding the concept of indigenous knowledge while analyzing the problems being faced by the indigenous communities in India in this regard from the human rights perspective.

Indigenous Knowledge

Indigenous Knowledge or "Traditional Knowledge" is known as source of knowledge that has been accumulated and possessed by the indigenous communities which they learned through experience, practices in their social, cultural life in interaction with nature. Grenier says, 'Indigenous Knowledge is stored in people's memories and activities and is expressed in stories, songs, folklore, proverbs, dances, myths, cultural values, beliefs, rituals, community laws, local language and taxonomy, agricultural practices, equipment, materials, plants species and animal breeds. Indigenous knowledge is shared and communicated orally by specific example, and through culture.'¹

Indigenous Knowledge denotes the different sources of knowledge and different methods for teaching and learning exists within the social, cultural, ecological and epistemological context of local communities.²

The knowledge is basically used to cure diseases of human as well as animal and to develop nutrition, to bring out better agricultural systems in farming, to improve the arts and craft, and to

¹ Louise Grenier, "Working with Indigenous Knowledge: A Guide for Researcher (Ottawa on ; International Development Research Centre, 1998)

² Linda Tuhiwai Smith, (1999), 'Decolonizing Methodologies : Research and Indigenous People, Zed Books Ltd.

maintain the religious practices and astrological beliefs. Indigenous knowledge is embedded in community practices, institutions, relationships and rituals. It provides the basis for problem solving strategies for the communities.

Indigenous Knowledge reflects alternate way in which inhabitants of the area have come “to understand themselves in relationship to their natural environment and how they organize that folk knowledge of flora and fauna, cultural belief, and history to enhance their life.” The source of knowledge derives from “personal experience, the spirit world, elders and other adults and peers”.³

The knowledge of indigenous people is our cultural asset. The indigenous Knowledge which was till that a sacred, secret thing for ingenious people for their survival has now become a source of knowledge for ‘other world’ to utilize them for human welfare and development. Knowledge is needed for the development of the human society and not for economic gain.⁴

Indigenous People in India

In India, the indigenous population mainly referred as Tribes or *adivasi* that constitutes a major part of demographic resource of Indian sub-continent and they are mainly concentrated near the regions of mineral and natural resources. Tribes are indigenous people, who are ‘original inhabitants’, living in the hinter or forest lands for centuries together. Buddhabeed maintains that “a tribe is a social group and the members of which live in a common territory, have a common dialect, uniform social organization and possess cultural homogeneity, having common ancestor, and shared systems of political organization and religious pattern.”⁵

Tribes are aboriginal native people, uncivilized and uncultured, people from the modern point of view

³ Semali, Ladislaus.M and Kincheloe Joe, (1999), ‘What is Indigenous Knowledge?’, New York: Falmer Press

⁴ Hayke, F (1945), ‘Use of Knowledge in Society’, American Economic Review, Vol-35,p 519

⁵ Chaudhari, Buddhabeed(ed.)(1990) Tribal Transformation in India: Socio-Economic and Ecological Development, Inter-India Pub. New Delhi, p. vi

who inhabitant the hills and *jungals*, and depend on the forest for their livelihood and survival. They live in isolation from the outer world and are self-reliant and independent communities. In comparison to Hindu caste society, the Tribes are not part of the four *Varnas* of Hindu society. Unlike castes, tribes tend to farm self-sufficient economic units. The tribal society tends to be egalitarian, with its leadership based on ties of kinship and personality rather than on heredity status. Tribes significantly consist of segmentary lineages whose extended families provide the basis for social organization and control. They don’t recognize the hegemony of any religious authority outside their clan. Burman views that tribes “peoples whose political and social organization is based primarily on moral binding among kins, real and putative, who have a custodial attitude towards nature and are outside the jati(caste) *Varna* system.”⁶

The indigenous population of India is 8.43 million is larger than that of any other country in the world. Around 630 identified tribes reside in the country. One concentration of tribes live in a belt along the Himalayas stretching through Jammu and Kashmir, Himachal Pradesh, and Uttaranchal in the west, to Assam, Meghalaya, Tripura, Arunachal Pradesh, Mizoram, Manipur, and Nagaland in the northeast. In the northeastern states ninety per cent of population is tribes.

Another concentration lives in the hilly regions of central India like Madhya Pradesh, Chhattisgarh, Orissa and to a lesser extent to Andhra Pradesh, which is a mainly forest and plateau region. Other tribes, including the Santhals, live in Jharkhand and West Bengal. Central

There are smaller numbers of tribal people in Karnataka, Tamil Nadu, and Kerala in south India in western India particularly in Gujrat and Rajasthan, and in the union territories of Lakshadweep and the Andaman Islands and Nicobar Islands. About one percent of the populations of Kerala and Tamil Nadu

⁶ Roy, Burman , (2000), The Indigenous Peoples and Problems of Human Rights . Paper presented in a Seminar held on February 28, 2000 in the Lal Bahadur Shastri National Academy of Administration, Mussorie.

are tribal, whereas about six percent in Andhra Pradesh and Karnataka belongs to tribal population.

Indigenous people also face different problems which threatens their survival itself. Over the decades the continuous economic and political intrusion by the non-tribal communities like money lenders, traders, industrialists into the tribal's domain and their forest regions for fulfilling their commercial interest have led to the problem of exploitation, discrimination and impoverishment of tribal people. Moreover, the rapid industrialization, urbanization and process of developmental growth initiated by the State through installation of various major industries, dams etc in tribal inhabitant regions leading to intrusion in the social and cultural life of tribal communities. Consequently, the process of cultural assimilation, integration of tribes into the pan-Indian cultural have caused problem for them like, a crisis of cultural identity, threat to erosion of traditional knowledge possessed by them. In spite of development process being nurtured by the state, the tribal population are getting more marginalized and excluded from mainstream and remained disadvantaged groups.

Rights of Indigenous People: International Dimension

Indigenous People are internationally defined and their human rights are enumerated for ensuring their protection and promotion. According to ILO Convention no. 169 Indigenous and Tribal people are those, "whose social, cultural and economic conditions distinguished them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations."

Later in 1992, the Earth Summit under its principle 22 also recognized that 'indigenous people and their community and local communities, have a vital role in environmental management and development because of their knowledge and traditional practice. It appealed the state to recognize and duly support their identity, culture

and interest and enable their effective participation in the achievement of sustainable development.

General Assembly of UN declared the year 1993 as 'the International year for the World's Indigenous People". The International Labour Organisation(ILO) Resolution, 1989, resolution 107 advocated for the integration and assimilation of its multicultural population (indigenous and tribal people) into the mainstream of the national life. Resolution no 169 has declared that the distinct cultural traditions of indigenous and tribal people must be protected by the national laws and place them on an equal footing in terms of their contribution to the making of the world's culture. It further declared various rights of indigenous people, such as—(a) right of ownership and possession over the lands which they have traditionally occupied(Article 14); (b) recognition and protection of their cultural , social religious and spiritual values and practice (Article 5); (c) obligation of the Government to consult with tribal people on all legislative or administrative measures affecting them and established ways for tribal people to participate in decision making by the Government(Article 6); (d) right of tribal people to decide the priorities for any development affecting them or their land (Article 7); (e) right of tribal people to their land's natural resources , minerals, benefit of their exploitation and right to be compensated for damage(Article 15); (f) guarantee to respect tribal people's customs and laws (Article 8).

The United Nation Development Programme (UNDP) has also in 2001, adopted a policies of Engagement relating to indigenous people. The UNDP has adopted a Policy to seek participation of indigenous people in decision making process particularly those that may affect their human development and environment

The UN Declaration on the Rights of indigenous People, 2007 set up an important standard for treatment of indigenous people and restoration of their human rights. It declares that indigenous people have suffered from 'historic injustice' and they have been prevented from exercising their right to development in accordance with their own needs and interest. They should not

be discriminated of any kind. The Declaration comprehensively elaborate on the basic inherent rights of the indigenous people and mandates the World-states adopt them and evolve legislative and administrative measures to implement them. The declaration has enumerated several rights of indigenous people. Some important articles pertaining to safeguard of human rights of indigenous people are as below.⁷

Article 1

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.
2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 15

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.
2. States shall take effective measures, in consultation and cooperation with the

indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

Article 24

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.

Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

Human Rights of Indian People (Tribes): Constitutional and legal Safeguards

Being aware about the problems of tribal or indigenous people, the founding authors of Indian Constitution had made special provisions for promotion of educational and economic interest of tribal people and for the protection them against all forms of exploitation and social injustice.

⁷ Adopted by United Nation General Assembly under Resolution no. A/RES/66/142 on September 13, 2007

Under the Constitution the Preamble, Part-III(Fundamental Rights) Part- IV (Directive Principles of the State Policy), V and IV Schedules(Autonomous Administration of Tribal Districts) are having main safeguard provisions for tribes . Under the Article 46 'the state shall promote, with special care, the educational and economic interests of the weaker sections of the people, and in particular , of the Scheduled Caste and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.'

The Constitution has also provided reservation for special representation for STs in the Lok Sabha and State Legislative Assemblies(Arts. 330, 332 and 334). Though the Constitution protects the general rights of all Indian citizens to move freely, settle anywhere and acquire property but it has made special provisions to protect the tribal interest through creating 'scheduled Areas . It also permits the States to make reservation in public services in case of inadequate representation and requiring them to consider their claims in appointments to public services. Special provision for administration and control of schedule areas and Tribal Areas (Art. 224, V and VI schedules) and grant –in –aid to the states to meet the cost of such schemes of development as may be undertaken by them for promoting the welfare of the ST or raising the level of Schedule Areas (art. 275), are also guaranteed. Indian state has also set up statutory body in States and Centre like National Commission for Schedule Tribe in order to promote their welfare and safeguard their interest.(Art. 164 and 338). Later on with a view to effectively deal with crime against the ST two special laws, viz ., Protection of Civil Rights Act, 1955 and Scheduled Caste and Schedule Tribes (prevention of Atrocities) Act 1989 were enacted.

Development of Indigenous People and Indian State

In 1952, former Prime Minister Pt. Jawaharlal Nehru visualized Policy guidelines, based on five principles

of *Panchsheel* for State in order to develop Indigenous People (Tribal).

- I. Tribal should be allowed to development according to their own people genius.
- II. Tribal right in land and forest land should be respected ;
- III. Tribal Teams should be trained to undertake administration and development without outsiders being inducted;
- IV. Tribal development should be undertaken without disturbing Tribal Social and Cultural Institutional;
- V. The index of tribal development should be the quality of their life and not the money spent.

To realize the above aspirations into reality, the Indian State had begun development programmes focusing areas inhabited by the tribes with the creation of 43 Tribal Blocks in 1953. Later, Tribal Sub-Plan (TSP) was introduced in 1974 during the Fifth Five Year Plan to provide for financial allocations in proportion to the population of STs in the annual plans at the Central and State level. Several schemes and projects related educational, employment etc were implemented time to time through Governmental/Non- Governmental agencies for inclusive development of the tribes.

The National Forest Policy declared in 1988 provided for the protection of the rights of tribal people in India. The Policy Statement declared that, 'Having regarded to the symbiotic relationship between tribal forest and forest, a primary task of all the agencies responsible for forest management including the development, should be to associate the tribal people closely in the protection, regeneration and development of forests as well as to provide gainful employment to people living in and around the forest.'

Another land mark effort in the direction of safeguarding the interest of tribal was made through legislative enactment. The Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA) which was

extension of 73rd Amendment of the Constitution, considered to be remarkable initiative by the Govt. to safeguard the interest of tribal people. It provides the *Gram Sabha* a legal sanctity and recognizes it as the basic unit of administration. It empowers the tribal community with granting them entitlement of controlling natural resources and taking care of all their activities at the levels of planning, execution and evaluation. The consent and approval of *Gram Sabha* was mandatory before initiating any development projects that affect the tribal community such as matters related to land acquisition, compensation and rehabilitation. The *Gram Sabha* were empowered to settle land dispute, regulate money lending, restore illegally transferred tribal lands and issue of utilization certificates for projects undertaken within its jurisdiction.

In 2004, a National Policy on Tribal was framed to recognize the importance of tribal people in preservation of the natural environment. It maintains, "Scheduled Tribes in general are the repositories of indigenous knowledge and wisdom in certain aspect," which must be protected and must use of it. The policy also have provisions for the health, education, language, land alienation, provision for safeguarding the Primitive Tribal Groups (PTG), research in tribal affairs, their assimilation, forest villages, displacement and resettlement.

In order to ensure the legal rights to tribals and other forest-dwelling communities, a Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 was enacted. The significant aspect of this Act is that it provided several kinds of rights to tribal that hitherto restricted by earlier legislation enacted in relation to forest and environment protection. The act 2006 endowed the tribal with the right to live in the forest, the right to cultivate for their livelihood, the right to collect minor forest produce, the right to graze cattle, the right to convert lease or grants (*pattas*) to titles, the right to convert forest village into revenue village, the right to settlement in the old habitations and un-surveyed villages, the right to access and community right over intellectual

property and traditional knowledge related to forest biodiversity and cultural diversity, the right to manage the community forest resources and right to enjoy any customary traditional except hunting.⁸

Ironically, despite having these legislations the tribals have been suffered the exploitation of state particularly the Forest management. Large numbers of tribal have been imprisoned by Forest Management officials calling them "encroachers" of forest land, though these poor tribals were making huts and farming for their survival and livelihood. A majority cases have been lodged against tribes under various sections of the colonial Indian Forest Act, 1927, the Indian Protection of Wildlife Act, 1972, and Indian Penal Code.⁹

The Post –independence India aimed to integrate the tribes into Indian society while protecting their distinct social and cultural identity. However, the nature of development plan pursued in tribal regions has consisted of expropriating the tribal community of their land, forest and other resources in the name of national integrity and regional development. Instead of enabling them to enjoy the benefits of development, tribal people have largely been deprived of their livelihood and left without any alternative avenues of employment and food security.

Problem of Displacement among tribes is major factor of tribal sufferings, which are primarily the product of developmental projects introduced by the state for the purpose of such as industries,

⁸ Saravanan, V(2009) , 'political Economy of the Recognition of Forest Rights Act, 2006: Conflict between environment and Tribal Development, ' South Asia research, Vol. 29(3), 199-221

⁹ In Tribal dominated region of Uttar Pradesh , which is also Naxalite affected, around 7000 people living below poverty line were booked for encroaching the forest land to built huts, for picking forest produce for livelihood and for agitations to protest against exploitation of Forest Officials. A Tribal Leader of National Forum of Forest People and Forest Workers (NFFPFW), Ashok Chandra, said that "Tribals are falsely implicated by the forest personnel l to extort money, exploit our women and to deter us from filing claim under the Forest Rights Act (FRA), 2006 which provides us right on forest land." See Times of India dt.29 Oct.2010

irrigation and hydraulic projects etc. Though tribes constitute only 8 per cent of the national population, more than 40 % among them are displaced and only 25% of them are resettled. Such form of development led to continue process of land alienation, eviction, marginalization and exploitation of the indigenous people. This phenomenon commonly called as 'development induced displacement'.¹⁰

The process of dispossession or alienation of tribal Land is multi-dimensional in nature that involves interplay of social, cultural, economic and political forces.¹¹ Jaganath also elaborates that, "the fundamental reason for tribal land alienation is fragile, constantly shrinking economic base of the tribals. Their non-monetized self-sufficient economy crumbled and the tribals become exposed to batter or cash transactions for the fulfillment of their basic needs"¹²

Laws and policies governing forest have also contributed towards the dispossession of tribals. The parts of forest lands are categorized as reseed forest through government legislations, consequently the tribal lands are appropriated by government or non-tribal people whereby the tribals are alienated from land. Prasad argues that non-implementation of development programmes and lack of rights on the forest and non-agricultural land has led to the crisis of livelihood faced since colonial times and it has been further accentuated in post independence period.¹³

¹⁰ Lous, Parkash (2003), 'Empowerment of Weaker sections : The Myth and Reality'. Jharkand Journal of Development and Management Studies, 1(2,) pp191-

¹¹ It was noted that around 21.3 million population has been displaced during 1951-90 in the states of Andhra Pradesh, Bihar, Gujrat, Maharashtra, Madhya Pradesh, Rajasthan and Orissa. And out of this 8.54 million (40 per cent) have been tribes. As far the rehabilitation of tribal are concerned only 2.12 million (24.8%c) have been resettled so far. See, V Xaxa,(1991) "Tribe and Justice", in Rajeev Bhargava(et.al) Justice: Political, social, Juridical, New Delhi: Sage Pub. P-77

¹² Jagannath A, 2010, Tribal Rights, Dispossession and the state in Orissa', in EPW, vol XLV no33, p.61

¹³ Prasad, Archana 2005, 'Tribal Livelihood and Globalisation: The potential of Non-Timber forest produce Development in Central India' NMML, New Delhi, p.1

Indigenous Knowledge and Indigenous People: Future Challenges

The indigenous knowledge is being misappropriated, exploited under the process of globalization through infiltration in the life of indigenous people by several multinational companies for extracting huge commercial gain. They are getting patent over resources of knowledge possessed by indigenous communities in different parts of the world. Many scholars argue that rich sources of traditional and grassroots knowledge possessed by the indigenous communities in developing countries are threatened by globalization.¹⁴

Most of the indigenous and local communities are inhabited in world's most biological rich and diverse areas with abundance in natural resources, however they are economically deprived and underdeveloped , hence it is difficult for them to protect their own traditional knowledge from 'biopiracy', patent etc and they can't even fight legal battle as they are illiterate, ignorant and unorganized also.¹⁵ However, in some of the western countries, the Indigenous People are well mobilized and conscious to challenges the power structure of Multinational Corporation and the state and are asserting their sovereignty rights as first native to control the natural resources within their territories.

Significantly, for past few years, the global attention has turned towards the intellectual Property laws to preserve, protect and promote Indigenous Knowledge. Due to efforts of the United Nation, the rights of indigenous people are

¹⁴ Gadgil,M and Guha,R (1995), 'Ecology and Equity: The Use and Abuse of Nature in Contemporary India', Routledge, London; Shiva, V (1997), 'Biopiracy: The plunder of Nature and Knowledge', South End Press, Boston; Hill,S(1995), 'Globalisation or Indigenization: new Alignments between Knowledge and Culture', Knowledge and Policy, 8(2) pp 88-112

¹⁵ Barsh, Russel Lawrence,(2001), 'Who steals Indigenous Knowledge?', Proceedings of the Annual Meeting, American Society of International Law, Vol. 95, pp 156-161

recognized as human rights and protection of indigenous knowledge or traditional knowledge has become the responsibility of Nation States in all over the world. The protection of Indigenous or Traditional Knowledge has now become major issue of World Trade Organisation (WTO) to consider it as part of Intellectual Property Rights.

In India, there is huge source of indigenous knowledge of medicines, craft, arts and methods of farming etc that is available in the hinter lands of indigenous communities. Though this knowledge is not commonly known, but is pirated and stolen by the companies for getting profits. Many multinational companies have no longer denigrated traditional medicine and have in fact been trying to get patents on Indian medicines without acknowledging the source. India had long battle to get back the patent on its traditional remedies (medicines). It spent US\$5 million for fighting patents taken out on the spice Turmeric and Indian tree *Neem* for over ten years. To prevent foreign companies for patenting indigenous medicines, the Indian Government has made around 200,00 traditional medicines as “public property’ available for anyone to use but not to sell as a brand.

modernization, indigenous knowledge and culture of these indigenous communities can be perished, if we don’t protect them urgently. The state should promote and preserve the maintenance of traditional knowledge possessed by indigenous people and make every effort to protect their customary rights, and respect their land and cultural rights.

Conclusion

In the contemporary period of globalised world, the indigenous people are facing new challenges that has further endanger their survival. Globalization comes to local communities largely through market. Indigenous people come to know about new products through market and started using them while left leaving their traditional things. Privatization process and market dominance have destabilized the self –reliant and substance based economy of indigenous communities also.¹⁶

Thus, need of the hour is to formulate such law and policies for indigenous people so that their indigenous knowledge and culture can be protected. In wake of fast process of globalization and

¹⁶Dev Nathan (eds) (2004) Globalisation and Indigenous Peoples in Asia: Changing the Local –Global Interface. New Delhi:OUP

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