

HUMAN RIGHTS AND RIGHTS OF INDIGENOUS PEOPLE

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‘Democracy’ the word originated in English language in the late 16th Century, which means a type of government which is equal for each and every citizen. Every individual can contribute equally directly or indirectly through the elected representatives in the advancement, growth, development and formulation of laws. It follows social, economic and cultural atmosphere that allows individuals to adopt political, social and economic self determination.

The modern era of human rights can be drawn to fight to end slavery, genocide, discrimination, and government domination. After World War I, many scholars, activists, and some national leaders called for a declaration and accompanying international system—the League of Nations—to protect the most basic fundamental rights and human freedoms. Atrocities during World War II made clear that earlier struggles to secure individual rights and restrain the power of governments to violate these rights were inadequate. The time was ripe for agreement of a globally recognized instrument that treasured these values. Then was born the Universal Declaration of Human Rights (UDHR) as part of the development of the United Nations (UN).

The UDHR was the first international document that brought the basic civil, political, economic, social and cultural rights that all individuals should enjoy in life. The UN General Assembly approved the declaration universally on December 10, 1948. The vote to adopt the UDHR was considered an achievement as it unified various nations and conflicting political regimes. The UDHR was not legitimately binding, though it carried great ethical and moral weight. In order to give the human rights enumerated in the UDHR the force of law, the United Nations enlisted two covenants, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The division of rights between these two treaties is imitation, a reflection of the global ethical divide during the Cold War. Though politics prohibited the creation of an integrated treaty, the two covenants are interrelated, and the rights confined in one covenant are necessary to the implementation of the rights contained in the other. Together, the UDHR, ICCPR, and ICESCR are

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recognised as the International Bill of Human Rights. They contain an inclusive list of human rights that governments must respect and promote, including:

- Right to Equality
- Security of person
- Freedom from slavery
- Freedom from arbitrary arrest/detention
- Freedom of movement and residence
- Due process of law
- Freedom of opinion and expression
- Freedom of association and assembly
- Right to safe and healthy working conditions
- Right to form trade unions and to strike
- Right to adequate food, clothing, and housing
- Right to education; and
- Right to health.

Human rights is a word that most of the people have heard directly or indirectly, but do we really know the basics of the concept? To many Americans human rights comprise the right to bear arms, the right to a free education, or the right to vote etc. But to others Americans, human rights include being able to walk down the street without being questioned by police, to walk freely anywhere without asking anyone; it is the right to go to any place without being followed. For some others it is the basic right to fall in love with whomever they want. Since the formation of America, people have been struggling all their lives for their basic rights. From the right to vote to the right to equality and right to live with dignity.

Human rights are rights intrinsic to all human beings in this world, whatever our nationality, place of residence, race, caste, sex, national or ethnic origin, color, religion, language, or any other status.¹ We are all equally eligible to our human rights without any perception or discrimination. These rights are all universal, collective, worldwide, inalienable, non-discriminate, interdependent, and

¹<https://www.un.org/en/universal-declaration-human-rights/> (Retrieved on 10.02.2018)

indivisible. Human rights are the rights that every person on this planet earth should have to live a happy, fair, contented and satisfactory life.

Human rights are inseparable. Irrespective of if they relate to civil, cultural, economic, political, or social issues, human rights are hereditary to every individual. Negating someone of one of their basic rights will affect the rest of their rights. It obstructs enjoyment of the other rights in life. If anyone has the right to live a life of good standard, it should not be challenged at the expense of another right, like the right to education, right to live with dignity.

The vow of the United Nations to human rights originates from the Organization's establishing Charter.¹ The international community has a responsibility to uphold and protect these rights. Let us make sure that the people who need the rights utmost, are made aware that this Declaration exists — and that it exists for them. Let us each understand our responsibility to make these universal rights a living reality for every individual everywhere.

In perhaps the most deep and attractive words of any international agreement, 'all human beings are born free and equal in dignity and rights. The vows made by all States in the Universal Declaration of Human Rights are in themselves enormous achievement, discrediting the dictatorship, discrimination and contempt for human beings that have marked the past. The Universal Declaration promises to all the economic, social, political, cultural and civic rights that strengthen a life free from want and fear. They are not an incentive for a good behaviour. They are not state-specific, or particular to a certain period or social group. They are the indisputable privileges of all people, at all times, and in all places — people of every colour, caste, from every race and ethnic group, every religion; whether or not they are disabled; citizens or migrants; no matter their sex, their class, their creed. Human rights abuses did not finish when the Universal Declaration was embraced. But since then, numerous people have gained greater liberation. Violations have been prohibited; independence and sovereignty have been attained. Many people — though not all — have been able to safeguard freedom from anguish, sufferings, unwarranted imprisonment, summary execution, enforced disappearance, harassment and unjust discrimination, as well as fair access to education, economic opportunities, and satisfactory resources and good health-

¹Mertus, Julie A., (2005), *The United Nations and Human Rights, A guide for new era*. London and New York: Routledge Tailor and Francis group

care. They have obtained fairness for wrongs, and national and international safeguards for their rights, through the strong planning of the international human rights legal system. The power of the Universal Declaration is the power of notions to change the domain. It motivates us to continue working to safeguard that all people can gain freedom, equality and self-esteem. One vigorous aspect of this task is to empower people to claim what should be guaranteed: their human rights.

The United Nations and Human Rights:

The Charter of the United Nations represents a significant development so far as faith in and respect for Human Rights is concerned. The signing of the Charter of the United Nations also marks the formal recognition that Human Rights is a matter of international concern. The appalling atrocities caused by the Nazis on the Jews and other races during the Second World war led to a strong movement for the international protection of fundamental Human Rights, and the Charter contains numerous references to them. Indeed, with the horrors perpetrated by Nazi and Fascist leaders still in their minds, the makers of the Charter were determined that the rights of the individual be made an international concern. Human Rights are mentioned for the first time in any international treaty (not counting the treaties for the protection of minorities concluded after the First World War, which related to the rights of special groups but not to Human Rights in general) because the drafters of the Charter were looking behind the facts of war to its causes, that is to say, to the existence of dictatorship which makes wars possible.

The signing of the United Nation Charter which incorporates several provisions concerning Human Rights has done much to stimulate the large amount of international Human Rights which are respected today. The provisions contained in the U. N. Charter regarding Human Rights run throughout 'like a golden thread'. Much of the credit goes to the determined lobbying by Non Governmental Organizations at the San Francisco Conference. The delegates of some of the States at the San Francisco Conference were in support of the implementation of even stronger provisions concerning Human Rights. An attempt, which proved unsuccessful, was also made to incorporate in the U. N. Charter an International Bill of Human Rights.

Human Rights and the Indian Constitution:

The Constitution of the Republic of India which originated on 26th January, 1950 with 395 Articles and 8 Schedules, is one of the most decorative fundamental laws ever embraced. The Preamble to the Constitution affirms India to be a Sovereign, Socialist, Secular and Democratic Republic. The term 'democratic' signifies that the Government gets its power from the will of the people. It provides a feeling that they all are equal irrespective of the race, caste, creed, religion, which language they speak, sex and which culture they belong to. The Preamble to the Constitution vows justice, social, economic and political, liberty of thought, expression, belief, faith and worship, equality of status and of prospect and fraternity promising the dignity of the individuals and the harmony and integrity of the nation to serve its citizens.¹

Fundamental Rights and Human Rights

The judicially enforcement of fundamental rights which encompass all seminal civil and political rights and some of the rights of minorities are enshrined in part III of the Constitution (Articles 12 to 35). These comprise the right to equality, the right to freedom, the right against exploitation, the right to freedom of religion, cultural and educational rights and the right to Constitutional remedies.

Fundamental rights vary from ordinary rights in the sense that the previous ones are unchallengeable. No law, ordinance, tradition, usage, or administrative order can condense or take them away. Any law, which is breakable of any of the fundamental right, is void. Fundamental rights are the modern name for what have been conventionally known as natural rights. The Supreme Court of India has also acknowledged these fundamental rights as 'Natural Rights' or 'Human Rights'. Fundamental rights are those prodigious and basic rights, which are accepted and assured as the natural rights inherent in the prestige of a citizen of a free country.

Understanding the term 'Indigenous'

Considering the diversity of indigenous people, an endorsed definition of 'indigenous' has not been embraced by any UN-system body. Instead the system has developed a modern understanding of this word based on the following:

¹ Prof. Pylee, M.V., *Constitutional Government in India*, (2008), New Delhi: S Chand and Company Limited

- Self- identification as indigenous people at the distinct level and recognized by the community as their associates.
- Historical endurance with pre-colonial and/or pre-settler civilizations
- Strong link to territories and close natural resources
- Distinctive social, economic or political systems
- Diverse language, culture and beliefs and philosophies
- Form non-dominant groups of communities
- Resolve to sustain and reproduce their ancestral backgrounds and systems as distinctive peoples and communities.

Indigenous people are treated as minorities in certain circumstances so that there exists a certain relationship between them and other groups. This is evident from the fact that the elements of distinct cultural forms and non-dominance, as endorsed in the definition of indigenous peoples, frequently feature in the definition of minorities as well. Minority people living in a given country or locality, having a race-religion, language and traditions in a sentiment of solidarity, with a view to preserving their traditions, maintaining their forms of worship, ensuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other. However, the term 'minorities' seems to refer to ethnic minorities rather than indigenous minorities.

Although most indigenous peoples easily fit this definition, they object to being regarded as minorities, their argument being that the term denies them their separate and unique identity. Indigenous peoples of the world are claiming the right to be recognized as peoples rather than as minority populations.¹ The concept of populations is frequently included in the deflation of indigenous groups. This is done so that no question of self-determination can arise.

United Nations and Indigenous People:

It is predictable that there are approximately over 370 million native individuals across seventy countries world wide practicing distinguished traditions. All over the world from the Arctic to the South Pacific, these people are the descendants of those who settled in a country or a geographical area at the time

¹ May, Stephen, Modood, Tariq and Squire, Judith, *Ethnicity, Nationalism and Minority Rights*, (2004), New York: Cambridge University Press

when people of different principles, cultures or ethnic origins arrived. The new advents later became prevailing through conquest, occupation, livelihood, settlement or any other means. Indigenous peoples do not inevitably claim to be the only people intrinsic to their countries, but in many cases indigenous people are certainly “aboriginal” or “native” to the domains they live in, being descendants of those people that occupied a territory preceding to colonization or formation of the present state.

Indigenous peoples have their own distinctive languages, beliefs, cultures, philosophies and social and political institutions that are very different from those of conventional society. While indigenous peoples face the same practice of discrimination and banishment as other ethnic subgroups or minorities, there are very significant differences in terms of their rights and identity.

India and Indigenous people:

In India, sixty eight million people belonging to two hundred and twenty seven ethnic groups which comprise of five hundred and seventy three tribal communities originating from six racial stocks namely - Negroid, Proto- Australoid, Mongoloid, Mediterranean, West Breachy and Nordic exists in different part of the nation. These ethnic people commonly the indigenous tribals live close in the vicinity of jungles and have managed and preserved the biodiversity of their vicinities since long time. These tribals take shelter from jungles and consume wild edible plants equally raw and cooked. The flower and fruits are normally eaten raw however tubers, leaves and seeds are cooked. Tribals consume forest produce, forest timber and fuel timber. These tribals are existing in forest since centuries and have established a kind of kinship with forests. A tribe is a small group of people, generally associated closely that work together for the whole. Leadership is usually based on the rule and regulations of the elders. A tribe is normally part of a group of indigenous people who were the original inhabitants of a land and if that group of people is less in numbers than a group of who migrated from elsewhere and are racially different they become an ethnic minority.

India has been the land of tribes since time immemorial. They are the autochthons of the land before the onset of Aryans. Each tribe has a unique history, language and culture. The diversified economic and social formation coupled with varied ethos and style of life has always attracted various scholars to study them.

There are more than 500 groups in Indian society, which are officially designated as Scheduled Tribes (STs). Now, the question arises that who are Schedules Tribes? The concept of Tribes is thus of paramount importance to understand Tribes in Indian culture. Anthropologists and social scientists have made an attempt to define a tribe. According to Majumdar (1961) 'A social group with territorial affiliation, endogamous with no specialization of functions, ruled by the tribal officers, hereditary or otherwise, united in language of dialect, recognizing the social distance from tribe or castes but without any stigma attached in the case of caste structure following tribal traditions, beliefs, customs, liberalization of natural ideas from alien sources, above all consciousness of homogeneity of ethical and territorial integration.'

The meaning of the tribe according to the Shorter Oxford Dictionary is 'a social group comprising numerous families, clans, or generations together with slaves, dependents, or adopted strangers having a common character, occupation, or interest' In the encyclopedia Britannica, the families or small communities that constitute a tribe are said to trace their descent from a common ancestor. The states that Imperial Gazetteer of India that a tribe is a collection of families bearing a common name, speaking a common dialect, occupying professing to occupy a common territory and is not usually endogamous, through originally it might have been so.¹

Anthropological literature characterizes a tribe as a habitat in hilly or hill clad areas and forests or forest clad areas, isolated or semi-isolated from the wider community, having economic self sufficiency i.e. subsistence economy, with no surplus production, backward technology, lack of division of labour, having mechanical solidarity, economic exchange based on reciprocity or on barter, political autonomy or having their own political system, egalitarian values, having their own religious faith in animism and finally a sense of belongingness to the community

Collective Rights of indigenous people:

Contrary to other ethnic minority groups that struggle to protect their rights on a distinct level, indigenous people have always frazzled the need to identify their collective rights. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) distinguishes these collective rights. The UNDRIP was embraced by the UN General Assembly in 2007.

¹ Pandey, Girish Chandra, *Indian Tribes, the Habitat, Society, Economy, and Change*, (1991), New Delhi: Anmol Publications

Self determination:

Today, many indigenous people are still excluded from society and community. They are still deprived of their rights as equivalent citizens of a government. Nevertheless they are determined to preserve, cultivate and transmit to future generations their ancestral territories and their ethnic identity, claiming on their right to self-determination.

Self Identification:

Self-identification as indigenous group and acceptance as such by the group is an indispensable component of indigenous people's sense of identity. Their constant existence as people is closely associated to their possibility to accept their own fate and to live in accordance with their own cultural forms, patterns, social institutions and legal systems.

Land Rights and natural resources:

Indigenous peoples often inhabit land, which is rich in minerals and natural resources. Indigenous peoples have prior rights to their territories, lands and resources, but often these have been taken from them or they have been threatened to leave. Indigenous peoples face serious difficulties such as constant threats of territorial invasion and murder, plundering of their resources, cultural and legal discrimination, as well as a lack of recognition of their own institutions.

There is no universal and explicit definition of the theory of 'indigenous people', but there are a lot of criteria by which indigenous people worldwide can be identified and from which each group can be categorised. The most widespread methods are those proposed in the International Labour Organization (ILO) Convention no.169 and in the MartínezCobo Report to the UN Sub-Commission on the Prevention of Discrimination of Minorities (1986).

Main Human Rights concerns:

Scheduled Tribes face a wide variety of human rights violations. These range from individual violations of civil and political rights – such as killings and illegal detentions – to widespread violations of social, economic and political rights, including mass displacement and multiple forms of social discrimination. Many of these violations are not manifested in the official statistics which – for the similar reasons of discrimination and lack of access that are part of the problem – normally fail to record more than a small

portion of the incidents that occur. Key areas of rights violations comprise of militarisation and state suppression, forced displacement and land alienation, violation of forest and resource rights, and atrocities and discrimination.

Role of Media and civil society:

Adivasis and indigenous people continue to be highly marginalised in the Indian media and prevalent culture. Mainstream media – predominantly, but not only the English language elite media – rarely report on Adivasi regions or issues. When they do, most reporting falls into three categories: paternalistic welfare stories on deprivation, scarcity and poverty; stories of atrocities against them and stereotyped descriptions of the ‘exotic’ philosophies and social norms of these groups. These tendencies are predominantly pronounced with regard to analysis of the Northeast. Within the Northeast itself, the large existence of STs does safeguard that indigenous peoples’ issues obtain some attention in local media.

Central Government and State Governments have shown a lot of interest and have worked towards the upliftment of tribes but the progress attained so far is just reasonable. Government of India has undertaken and applied many tribal welfare programmes and guidelines but none of them have been operative and welfare of tribal people is a concerned issue as they contain 8.6 percent of the total population of our country and it is the responsibility of the Government to take care of every citizen and work towards their prosperity. Government has failed to implement these guidelines and procedures due to lack of political will and shortfall of administrative machinery, procedural delays and lack of appropriate monitoring. Today, tribal people are not even able to claim their rights due to poor reactions and response of the authorities. Moreover when they approach the authorities for entitlement of their rights, they are asked to produce some documents which they commonly do not have and thus they fall a prey to corruption and exploitation.

We have the belief that the government programmes and strategies fail because of the lack of interest shown by the authorities and government. Therefore, the undue haste is shown in the policy implementation and execution of the strategies. We think that welfare of the tribes should be the main aim of the government and no politics should be played on this issue. Development is possible through

education so, first of all the government should take steps in this direction because a country cannot develop unless its citizens are educated and well aware of their rights.¹ Government should also try to make judicial proceedings faster and easily accessible for the tribes. Also for the proper implementation of the welfare schemes and policies for the tribal benefit the tribes should be made aware about them through awareness and training programmes, the authorities should be well trained in this regard and proper constitution of the Gram Sabhas should be there because they act as a connecting link between tribes and the authorities.

The issues and the problems of the Tribes cannot be neglected and isolated from the main development agenda of the Government. The Sixth five year plan document stated that “three decades of the development have not had the desired impact on the socially, economically, educationally handicapped section.” Despite so many efforts made by the Government, the Tribal people are still deprived of a life which they are entitled to. We believe that Government and all the political parties should work together towards the welfare of the Tribes and should not be diplomatic on this sensitive issue.

¹ Saravanan, Velayutham, *Environmental History and Tribals in Modern India*, (2018), Singapore: Springer Singapore