

Indigenous People and the International Discourse: Issues and Debates

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Abstract: *The question of tribal identity is not new either to international concern or internal contentions of any state but the theme needs to be revisited because of the mounting international pressure in many parts of the world for their dignified rights. The focus is on how global interconnectedness has influenced their lives today and impacted the very discourse of tribal rights. There are two very important reasons why this problem requires serious attention. Firstly, since we are close to the end of the Second Decade for the Rights of the Indigenous People, what implications the two decades of international attention impacted on the existence of the indigenous people. And secondly, with the recent upsurge of violence in Kokrajhar and other disturbed areas of Assam, what future does this issue holds. This paper attempts to trace the growth of the international concern for indigenous people, moving to a crucial issue of defining the very idea of 'indigenous'. The next section takes up three key issues of self determination, land rights and community and its space in international discourse and finally moving on to the concluding remarks.*

Key words: *indigenous people, rights, identity.*

Recent years have witnessed a momentous growth in the concern for indigenous people all over the world. Their presence and claims as the first settler of the land they inhabit has formed part of a veritable discussion. Ironically, however, over the time the concept of indigenous people has become synonymous with a sense of powerlessness, marginalisation and a kind of social insecurity. Indigenous people everywhere have been continually subjected to marginalisation by the other sections of the population. Their basic rights are curtailed, land is alienated and their habitats are encroached by the ever increasing demands of development of the state. A general tendency towards these people globally has been - that they are "either to be conquered or converted to the dominant belief of advanced society"¹. As a result, they have undergone tremendous onslaught on their culture, tradition and rights.

A steady rise of these problems has evoked a world wide concern and these have been recognised at international level and also many institutions are now making a tremendous effort to the cause. The year 1993 was declared an International Year of the Indigenous People by the United Nations. This Declaration enumerated a wide range of rights and fundamental freedom the indigenous peoples ought to enjoy, their security and protection, besides their inalienable right to belong to an indigenous community and continue practicing their tradition, customs as matter of their individual choice, including land rights. The Declaration strongly adhered to prevention of discrimination and protection of minority rights by giving ample scope for these people to control any development over their land, resources and to maintain and strengthen their institutions, culture and tradition. Furthermore, these people are guaranteed the right to be free from any adverse discrimination. Indigenous Peoples, in particular, have long asserted the right to determine their own development. Their right to accept or reject developmental proposals is implicit in their inherent right to self-determination and this has been well recognised in the Declaration.

There is now some persistent solidarity undercurrent working among different indigenous peoples as a resistance to the ongoing economic, political and cultural denial. The First Decade of the United Nations Declaration for the Rights of the Indigenous Peoples (1995-2004)² stirred up a demand for recognition of their distinct identity as the indigenous people of the country. The indigenous people have even been accorded the right to determine their relationship with the state, in matters relating to their local affairs and function autonomously. Even the Second Decade for the Rights of the Indigenous People (2004-2014) stated main objective to the strengthening of international cooperation for the solution of problems faced by indigenous

¹Hurst Hannum: *Autonomy, Sovereignty and Self Determination: The Accommodation of Conflicting Rights*, University of Pennsylvania Press, Philadelphia, 1990, pp 75.

²First International Decade of the World's Indigenous People'
<http://www.iwgia.org/sw11131.org> accessed on 21st September 2012.

people in such areas as human rights, the environment, education and health.³ Surely the Declarations has a huge appeal embracing every aspect that these indigenous people could garner for themselves.

Contemporary political scenario has turned into an arena of continuous struggle for the protection of rights and cultural identities. With the presence of multiple identities the problem of promotion of various identities and differences has turned to be extremely difficult. Today, we find plurality of identities within a single political structure and for this the dilemma has turned to be more acute.

The liberal democratic notion of politics gives primacy to individual rights and freedom. It is committed to individual well being where he can fulfil his interests and make progress. But on the other hand there are many who advocates priority to community life. This results in unresolved tensions between these two constituents of individual freedom and community ideals. Every nation today is aimed towards the preservation of a single, distinctive identity. This universal concept of singular identity at times falls short to uphold differences and over time forces every fragmented feeling and aspirations be submerged in the larger ideal of the society. The struggle between the community and individual ideals has infact turned into an irreconcilable difference.

This paper attempts to link and reflect on certain thematic concerns which seem to be integrally linked with these people. These are community, identity and a desire for autonomy. Here also the terms indigenous people, adivasis and tribals are used interchangeably.

Community is one such idea which is widely debate in the academic circle concerning the indigenous people. It is infact a building block on which the life of the indigenous people is catered around. The ideal of community took many different forms, from class solidarity or shared citizenship to a common ethnic descent or cultural identity.⁴ It lays higher emphasis on community life and shared understanding among the members. Shared values, identity, language, history or way of life are all essential elements of tribal life. Community is not a novel construct but already existed in the shared social customs, social practices, tradition, belief and some form of common understanding. The lives of persons within an indigenous community are often closely integrated and interdependent. Not only in terms of shared feelings but they also possess a parallel notion of community sentiments in matters of ownership of resources and land. This understanding is under great strain now because the present state system finds it impossible to adhere to the principle of community and individual at the same time.

Identity is another important aspect of tribal life all over the world. The indigenous people are increasingly asserting their identity to be closely interconnected with the natural environment in which they live-include the land and the resources that are available. Over the span of their existence they have developed not just a close link with the natural environment for their sustenance but also formed culture, tradition, myths, livelihood and even a kind of social control mechanism. So, the sense of identity and community is through which the tribals confirm their bonding with each other and also the other groups. This has in some ways also developed the notion of 'self', juxtaposed against the 'other'.

Autonomy is one of the most debatable ideal of the Declaration on the Rights of the Indigenous Peoples. Many signatory nations have problems with the inclusion of this principle of autonomy or of self determination. By the virtue of this principle the indigenous people are free to decide their own future course of action in matters of decision making both internal and external. And, therefore, this is being interpreted by many as a support for the secessionist principle. However the present paper would elaborate on this principle only as a demand on the part of the indigenous people to 'control their resources and participate in the process of decision making affecting their future and use of the resources of their habitat'.⁵

Continuous struggle of the indigenous people for their rights and protection of their distinct identity has made way in the United Nations Declaration on the Rights of Indigenous Peoples to stipulate special articles stating the rights of these people to maintain and strengthen their distinctive spiritual and material relationship with the lands, territories, waters and coastal areas, and other resources which they have traditionally owned or otherwise occupied or used, and to uphold their responsibilities to future generations in this regard. Also they have the right to assert their cultural identity and practice their traditions, including their religion, languages, and arts and the traditional right to maintain and develop their cultural structures and institutions.

With such an international pressure no nation could abstain from reacting to the problems of the indigenous peoples as this issue is very much inherent in every state. India is a land of vast diversity, ethnic, linguistic,

³'Second International Decade of the World's Indigenous People' <http://www.un.org/esa/socdev/unpffi/en/second.html> accessed on 21st September 2012.

⁴ Will Kymlicka: *Contemporary Political Philosophy*, Oxford University Press, New Delhi, 2005.

⁵Walter Fernandes: 'Natural Resources, Self Determination and the Indigenous Identity: An Introduction', pp 6 In Walter Fernandes (ed): *The Indigenous Question- Search for an Identity*, Indian Social Institute New Delhi, 1993.

religious to name a few. More than two hundred groups of indigenous peoples are found in the country and they are referred as 'Scheduled Tribes' or 'Adivasis'. However, the country produces no contrasting picture to their plight as suffered all world over. They have suffered the same fate whether in the colonial period or after the independence. Owing to such international pressure, India too had to heed to her indigenous people. Although the tribals have over the decades found their very own mode of resisting the outside intrusion and also searching for a new identity. This evolved in as a new form of consciousness and also a sense of distinct identity which was formed among the tribes in different part of India since past. This lead to the emergence of a new demand like that among the Nagas, Mizos and in Jharkhand and other parts of the country. The Naga identity began with fight against the state machinery and exploitation in the name of formation of national identity. Similarly, the Mizo rebellion and Jharkhand movement reacted to the exploitation of resources and the impoverishment of the indigenous people. Apart from the identity questions their struggle also encompassed a search for greater autonomy both political and economic. While for some other groups like in Jharkhand interpreted self-determination as a means for the local peoples control, but this was not the case for the Mizos and the Nagas. However one common aspect visible is that various tribal groups have always perceived a cultural identity to resist assimilationist tendency.

The question of tribal identity is not new either to international concern or internal contentions of any state but the theme needs to be revisited because of the mounting international pressure in many parts of the world for their dignified rights. Earlier the tribal population lived a life of isolation, now with the emergence of global interconnectedness and the penetration of market into their territory, the questions of their rights and protection of their identity and survival is become central concern. This paper does not revolve around any particular tribe or attempt to trace a trajectory of any tribal movement. Rather focus on how global interconnectedness has influenced their lives today and impacted the very discourse of tribal rights. There are two very important reasons why this problem requires serious attention. Firstly, since we are close to the end of the Second Decade for the Rights of the Indigenous People, what implications the two decades of international attention impacted on the existence of the indigenous people. And secondly, with the recent upsurge of violence in Kokrajhar and other disturbed areas of Assam, what future does this issue holds. This paper attempts to trace the growth of the international concern for indigenous people, moving to a crucial issue of defining the very idea of 'indigenous'. The next section takes up three key issues of self determination, land rights and community and its space in international discourse and finally moving on to the concluding remarks.

Historical Growth of International Concern

The notion of rights has assumed a centrality over past few centuries in the social, legal and political discourse. Today, it finds space mostly within a liberal democratic framework and within its periphery we must meaningfully concentrate on the natural, human and inalienable rights. "Unlike the earlier times where communities and groups were the fore bearers of rights as a whole, the modern conception is based on individual as the sole custodian of such rights from which, further groups derive their subsequent rights".⁶ Later, eminence of these individual rights further widened to his entitlement as a human being. Thus, his rights to life, property, liberties, democratic and social rights all came under the purview of Human Rights which are required essentially to maintain a humane condition of existence and for protection of dignity. This is not just related to justice, of good and democracy but even to the relationship that should prevail between the individual and the society. These are available today in the form of 'Universal Declaration of Human Rights, 1948'. It could very well garner accession of many states of the world and there was increased use of human right treaty bodies and vigilance in monitoring state actions. Despite this, it took more than few decades to assure specific rights pertaining to the indigenous people around the world who face considerable degree of attritions.

Significantly enough in the last few decades there has been a major shift from the socio political construct of these rights in general to the inclusion of the cultural aspect in it. In spite of this general agreement on wide range of human rights, like that of right to life, attention is now more focused on the preservation of the culture and tradition of the minority groups. There was an extensive approval of the Declaration on the Rights of the Indigenous Peoples. Effective and comprehensive means were assured for not just monitoring the human right status of these people but even their heritage, to enjoy their own culture, profess and practice their religion and a range of other such rights.

In the last few decades the rights of the indigenous people has received increased attention at international level and in the discourse of political and legal studies. This concern for indigenous peoples is therefore not a new phenomenon. It in fact began in the first half of the nineteenth century as a concern for aborigines or tribal peoples in the colonies. However at the very onset the question that comes to the fore front is who the indigenous people are? "These terms 'aborigine' or 'tribe' is being closely connected with European

⁶Bhikhu Parekh: 'Marx and the Theory of Rights' pp 11 In Upendra Baxi, Geeti Sen & Jeanette Fernandes(eds): *The Right to be Human*, Lancer International, New Delhi, 1987.

colonialism, carrying negative connotations like relative backwardness and supposed primitivism. Sections of the population in the colonies were demarcated as tribes. Anthropologists and other social scientists provided the academic justification by defining people on the basis of their distinct physical features, race and several other criteria like tribal languages, animism, hunting and gathering etc”.⁷

The establishment of The International Labour Organisation (ILO) was a significant step in framing standards for the protection of the indigenous and tribal populations. Significant changes were made in this area after the Second World War and between 1950 and 1970, the ILO worked as the lead agency in an internationally funded multi-dimensional development programme for indigenous populations in South America. Beginning since 1921, the organisation made several contributions to the study of conditions of indigenous populations. It was involvement of the ILO which led to the adoption of the Indigenous and Tribal Peoples Convention’ in 1957, popularly known as ILO Convention No. 107. In 1957 the ILO adopted the Convention No 107 “Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries”. This Convention was established with other international organisations. However as its name indicated it sought to integrate the indigenous groups into the national society in the condition of farmers, peasants and workers.⁸

It was again partially revised in Convention No. 169 “Concerning Indigenous and Tribal Peoples in Independent Countries” in 1989. It focused more upon the protection of social, cultural, religious and spiritual values and practices of indigenous peoples. It also importantly stipulated “self-identification as indigenous or tribal as a fundamental criterion of determining to which group it applies”.⁹

It is only in May 1948 that the United Nations first took up to study the social problems regarding the aboriginal populations of the American continent. Mario Ibarra has provided in detail the slow evolution of the United Nations concern for the indigenous peoples in particular. However importantly in the 1970s, Mr. Willemsen Diaz, who worked in the United Nations Human Rights Centre in Geneva, initiated efforts to incorporate the indigenous issue into the agenda of the United Nations. As a result of his works a Sub Commission accepted a recommendation to set up a separate study on the problems of discrimination against indigenous populations. The study was authorised in 1972 with Mr. José Martínez Cobo as the Special Rapporteur. From 1973 to 1980, the Sub Commission examined progress report and from 1981 to 1983 received various chapters from the final report for consideration.¹⁰ However the final report was delayed due to financial crunch.

Again in the 1960s the International Work Group for Indigenous Affairs (IWGIA) and Survival International were formed. They took up various campaign against the genocide and ethnocide of indigenous populations in South America. In 1975, some of the pioneer indigenous organisations such as the World Council of Indigenous Peoples in Canada and the International Indian Treaty Organisation in the US were formed. They started lobbying the United Nations and the Western European governments. The Government of Norway was the first to be convinced and other Northern European countries joined later on.¹¹

In the 1960s the International Work Group for Indigenous Affairs (IWGIA) was formed and took up the campaign against the genocide and ethnocide of indigenous populations in South America. Finally in 1982, at the initiative of the Netherlands, and with the support of some of the European states, a United Nations Working Group on Indigenous Populations was set up. The United Nations Working Group on Indigenous Populations started its work in 1982. It was entrusted with the task to develop a criterion for determining the concept of indigenous, to examine events relative to the promotion of human rights and fundamental freedom of indigenous population and also to develop standards to guide member states of the United Nations in relation to the rights of the indigenous people.

However, it is important to note that the Working Group, which is a part of a Sub Commission of the United Nations Human Rights Commission, had no adjudicatory or legislative functions. These bodies are to discuss human rights issues and draft proposals. They may indicate the norms of international law as established by member states in practice, but they do not have the power to establish new norms. Even the norms or principles established in the declarations of the United Nations General Assembly do not become international law until these are subsequently ratified by the state in the form of covenants and other international instruments.¹²

⁷Tapan Bose: ‘Definition and Delimitation of the Indigenous Peoples of Asia’ in [http:// www.iwgia.org/sw312.asp](http://www.iwgia.org/sw312.asp)

⁸Mario Ibarra: ‘Annotations for a Chronology of Indigenous Peoples in International Law’ pp 131-143. In Walter Fernandes (ed): *The Indigenous Question- Search for an Identity*, Indian Social Institute New Delh, 1993.

⁹Malcolm N Shaw: *International Law*, Cambridge University Press, UK, 2005, pp 278.

¹⁰ Mario Ibarra: ‘Annotations for a Chronology of Indigenous Peoples in International Law’ pp 131-143. In Walter Fernandes (ed): *The Indigenous Question- Search for an Identity*, Indian Social Institute New Delh, 1993.

¹¹Tapan Bose: ‘Definition and Delimitation of the Indigenous Peoples of Asia’ in [http:// www.iwgia.org/sw312.asp](http://www.iwgia.org/sw312.asp)

¹²Russel Lawrence Barsh: “Indigenous Peoples: An Emerging Object of International Law”. *The American Journal of International Law*, Vol. 80, No. 2. Apr., 1986, pp. 369-385.

Since the 1980s various attempts were made to find a plausible definition for indigenous people. Significantly in 1988 the United Nations Voluntary Fund for Indigenous Populations met for the first time. It sought to facilitate the attendance of the indigenous representatives at the meeting of the working Group on Indigenous Populations.¹³ It was a major step in bringing the indigenous representatives on an international platform to put forward the grievances and aspirations of these marginalised people. And in 1990 the United Nations adopted a resolution proclaiming 1993 as the International Year for Indigenous Peoples thereby allowing scope for discussion and protection of their rights.

Who are the Indigenous People

“Although there have been numerous attempts at offering an objective or legal definition of who is an indigenous person, most are seriously lacking in clarity”.¹⁴ The development of "indigenous peoples" as a significant concept in international practice has not been accompanied by any general agreement as to its meaning. The controversy further encompasses conflicting views about the norms applicable to the indigenous people, their relationship with state and also struggle over the roles of international institutions and most importantly recognition of the distinct category of indigenous people.¹⁵

With the legal institutional nature of rights, defining a concept has turned out to be an essential prerequisite. Quite a higher degree of contention revolves around the very idea of defining the idea of indigenous or of the indigenous people at large. The term ‘Indigenous Peoples’ has not been universally accepted without objection. Even the alternatives to it have proved to be less acceptable. Earlier when these peoples were referred as primitive or backward is now considered inaccurate. The word Indian in the American context has offended Quechua, Aymara and other indigenous peoples of South America. Many other find the term tribal or tribe as derogatory while peoples in Asia makes no objection to it. Again in Australia the terms Aboriginal or Aboriginal People are preferred.¹⁶

Many writers on their turn even suggested alternatives like native peoples, tribal minorities, national minorities, autochthonous peoples or Fourth World. Julian Burger’s work elucidates this definitional problem in detail. The writer has interestingly found that governments with indigenous populations have themselves provided some official definition for their use. Like in Latin America these people are referred officially as Indian, in Philippines they are designated as national minorities and in India as the Scheduled Tribes. Nevertheless finding an overarching definition to fit in all the existing tribals around the world proved to be immensely difficult. Many attempts were made in different groups to map out an evolutionary conception of their transition from savage, barbaric stage to that of a civilised one.

The United Nations as an institution, as Benedict Kingsbury has found, enjoys less autonomy from its member states and indigenous groups in matter of definition. Since its practice has a greater political implication it has avoided adopting any definition for defining these people.¹⁷ However in practice the organisation has to some extent been guided by a working definition in the 1986 report of UN Special Rapporteur Martinez Cobo:

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.¹⁸

This definition widely came under criticism for defining indigenous people in chronological perspective of being original inhabitants. Turning again to the question of definition, several Asian governments and many scholars state that this definition applies only to the conquered peoples of the Americas, Australia, New Zealand and the Pacific areas and leaves out the tribal peoples of Asia and Africa. In the countries where migration has continued for thousands of years, it is impossible to identify any group as indigenous on a chronological basis.

¹³Mario Ibarra: ‘Annotations for a Chronology of Indigenous Peoples in International Law’ pp 143. In Walter Fernandes (ed): *The Indigenous Question- Search for an Identity*, Indian Social Institute New Delh, 1993.

¹⁴H. Hannum: “New Developments in Indigenous Rights”. *Virginia Journal of International Law* 23, 1998. pp 649-678.

¹⁵Benedict Kingsbury: "Indigenous Peoples" in International Law: A Constructivist Approach to the Asian Controversy”*The American Journal of International Law*, Vol. 92, No. 3. Jul., 1998, pp. 414-457.

¹⁶Julian Burger: : *Reports from the Frontier-The state of the World’s Indigenous Peoples*, Zed Book Ltd, London, 1987 pp 7.

¹⁷Benedict Kingsbury: ‘The Applicability of the International Legal Concept of “Indigenous Peoples” in Asia’, pp 344-345 In Joanne R. Bauer and Daniel A. Bell (eds): *The East Asian Challenge for Human Right*, Cambridge University Press, United Kingdom, 1999.

¹⁸José Martinez Cobo: Study of the Problem of Discrimination against indigenous populations, UN Doc. E/CN.4/Sub.2/1986/7/Add.4, paras. 379-80.

Also there is no equivalent sense of understanding of the term 'indigenous', 'tribal' in the Asian region. For instance at many occasion representatives of countries like Pakistan and India strongly advocated for the use of the term 'tribal' and even interchangeably with *Adivasi*, a term in common use as in India, often translated as "indigenous" or "aboriginal." Many Asian states on the other hand have also challenged the applicability of the term 'indigenous', with the Indonesian representatives declaring majority in their country as indigenous.¹⁹

Even while the framing of the Draft Declaration the Government of India on its part has taken a formal position in the United Nations stating that it is difficult to say who are the indigenous and who are not; but the representatives have also described India's concern for the welfare of the tribal population. The Declaration which has significantly affected the political environment through out the world and a passive response on the part of the government had in fact projected a lack of understanding of the emerging global reality.²⁰

However the issue becomes quite complex in the Asian context for recognition and identification of these people. Like India, Bangladesh and Myanmar too have made similar arguments, stressing that indigenous peoples are descendants of the original inhabitants who have suffered from conquest or invasion from outside. Beside this building on the notion of indigenous peoples as the peoples who came first (or at least earlier than the others who are now dominant), representatives of the government of India have made the practical argument that the concept cannot apply because, after centuries of migration, absorption and differentiation, it is impossible to say who came first.²¹ Similar position is echoed in China's argument that all of the nationalities in China have lived there for ages. Thus, in 1991 the representative of India in the Working Group on Indigenous Populations commented that most of the tribes in India share ethnic, racial and linguistic characteristics with other people in the country, and that three to four hundred million people there are distinct in some way from other categories of people in India." Nonetheless, it has proved possible as a practical matter to enumerate detailed lists of Scheduled Tribes under the Fifth and Sixth Schedules to the Indian Constitution; these constitutional categories have provided a practical starting point for identification of groups to whom policies of international agencies relating to indigenous peoples have been applied in India."²²

Indian representatives at many occasion further elaborated how due to intermarriages among communities made it impossible to determine the case of tribal identity and it is difficult to find communities that retain their pristine tribal character. Eminent internationally acclaimed writer on this issue Douglas Sanders has found two obvious problems with the statement made by India. There is a paradox when the Indian side state that all tribes have been absorbed and on the other hand refer to the special provisions initiated by the state to aid the tribal population and even noted the existence of tribal majority in the North East India. Also the importance on the racial purity and pristine nature of the tribes creates problems, this when universally applied there would be no indigenous peoples anywhere.²³

Despite the definitional problem, India today is under pressure of international agencies, organisations, civil liberty associations and have agreed to respect indigenous culture, language, religion, land and distinct identity. In agreement to such international arrangement, governments over time have adopted explicit or implicit policies towards these people either through encouraging assimilation or through constitutional measures or with the goal to create an overarching national identity. The State has taken steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession, the recent Forest Right Act is evidence to it. Though how far it has actually succeeded in providing basic protection to these people through various such measures is another debatable issue.

Some key issues in international debates on Indigenous People

"Much of the discussion on the human rights of indigenous peoples over the past years has focused on issues linked with their identities. Apart from their demand for respect for their fundamental right to life and the end to genocidal practices, indigenous representatives have stressed the importance of self-definition, the respect for their land and natural resources, their community sentiments, the honouring of treaties and other agreements

¹⁹ Douglas Sanders: "The UN Working Group on Indigenous Populations" *Human Rights Quarterly*, Vol. 11, No. 3. Aug., 1989, pp. 406-433.

²⁰ B K Roy Burman: 'Tribal Development in World System Perspective', pp 46 In Amar Kumar Singh & M C Jabbi (eds): *Tribals in India. Har-Anand Publications*, New Delhi, 1995.

²¹ Douglas Sanders: 'Indigenous Peoples on the International Stage', pp 127 in Walter Fernandes(ed): *The Indigenous Question: Search for an Identity*, Indian Social Institute, New Delhi 1993.

²² Benedict Kingsbury: 'Indigenous Peoples in International Law: A Constructivist Approach to the Asian Controversy', *The American Journal of International Law*, Vol. 92, No. 3. (Jul., 1998), pp. 414-457.

²³ Douglas Sanders: 'Indigenous Peoples on the International Stage', pp 128 In Walter Fernandes (ed) (1993): *The Indigenous Question- Search for an Identity*, Indian Social Institute New Delhi.

that indigenous peoples concluded with states and, in differing degrees, the right to self-determination.”²⁴ The three issues of land rights, self determination and community ideas have formed central debate in the international arena. The paper tries to provide some reflection on these issues of debate.

Land Rights: The right to land and natural resource has always been considered as central by the indigenous people. Today land is not just important to their physical survival but they are also culturally linked to it. These people have a history of shared community feelings which extends to all their practices and even land is under such communal control. Various studies by Fernandes, Ken S Coates and others substantiate this argument. So closely these indigenous people are linked to their natural surrounding that any disruptive practice and alienation is viewed as a threat to their existence. Ironically many writers have found that the “Indigenous people in many countries like Brazil, Argentina Africa and others have been pushed off arable land and forced into unattractive territory where they struggle to maintain a living”.²⁵

Indigenous people all around the world are increasingly asserting their identity to be closely interconnected with the natural environment in which they live which include the land and the resources that are available. Over the span of their existence they have developed not just a close link with them for their sustenance but also a way of identity. “Land, in its most comprehensive manifestation includes water, forest, mountains, is the basis of all human life”²⁶. Here the work has used the terms land and forest many a times interchangeably.

For indigenous peoples land occupies a sacred quality. It is not only revered and respected but is also regarded as inalienable in their philosophy. “For them land is a living entity which can neither be claimed for oneself nor subjugated”.²⁷ The centrality conferred on land is also a recognisable phenomenon among the tribal population of India. In matter of marginalisation and exploitation the condition of these people reflects no better position.

The origin of tribal problem regarding their right over land can be traced to their immemorial custom of regarding “land belongs to God.”²⁸ It is for which they regarded the right of inheritance to land as meaningless. But the complications of a modern nation state imposes some set limitations like the need to pay revenue as a token of ownership. This has led the original inhibitors of land to loss all their community claims to it and also the right to collect timber or firewood without prior permission. But traditionally there were many tribal communities in the North East India where different clans claimed communal ownership to land. They upheld that land belonged to the people and to the community at large and families merely enjoyed an occupancy right over it for sustenance like in Meghalaya. Communal ownership of land was also seen in Nagaland. J N Das in his work has given a detail picture of the land rights among tribes of the states of North East with in depth analyses of their customary practices. But the irony as Videh Upadhyay points out, customary usages becomes law and are recognised by legal bodies only when they are recorded as rights in land records or other such documents.²⁹

However over the past few years all such communal ownership to land and to forest resources has been erased only to add on to the miseries of the forest dwellers and the indigenous people. “In 1995 to conserve the country’s forest resource the Supreme Court in a judgment has banned felling of trees and wood based activities in different states”.³⁰ Tiplut Nongbri in her work has in detail dealt with the impact of such law in the state of Meghalaya which can be very well used to analyse the pitiable condition of indigenous people elsewhere as a result of this process.

The process of economic development is gradually usurping the natural resources of water, land and tree vital for the subsistence of the tribal communities. The mainstream society, as Fernandes has pointed out in his work views such resource only as raw material for furthering the industrial growth. This ironically transforms the means of livelihood of a community to a source of profit for some one else. This in process weakened the “symbiotic relation” between these people and the environment. Tribals are now losing the areas traditionally

²⁴Hilary N. Weaver: Indigenous Identity: What Is It, and Who Really Has It? *American Indian Quarterly*, Vol. 25, No. 2. (Spring, 2001), pp. 240-255.

²⁵Ken S Coates: *A Global History of Struggle and Survival*, United Kingdom: Palgrave, 2004 pp189.

²⁶Minar Pimple & Manpreet Sethi: ‘Occupation of Land in India: Experiences and Challenges’ pp235 In Sam Moyo & Paris Yeros, (eds): *Reclaiming the land: The Resurgence of Rural Movements in Africa, Asia and Latin America*, United Kingdom, Zed Books, 2005.

²⁷Julian Burger: *Reports from the Frontier-The state of the World’s Indigenous Peoples*, Zed Book Ltd, London, 1987 pp14.

²⁸J N Das: ‘Rights over Land among Tribes of North East’ pp 91 In Sarthak Sengupta: (ed): *Tribal Situation in North-East India*, Inter-India Publication New Delhi, 1994.

²⁹Videh Upadhyay: ‘Customary Rights over Tanks’, *Economic and Political Weekly*, 38, November 2003, pp 4643-4645.

³⁰Tiplut Nongbri: ‘Effects of Logging Ban in North-east India: The Case of Meghalaya’ *Economic and Political Weekly* 36,no.31, 3 August 2001.

under their possession and slowly being pushed into the cycle of poverty and have turned into landless labourers and tenants. The rapid expansion of economy has threatened the stability of local ecosystem and drained available resources. The traditional rights of the tribals are ignored and the ideology of national development is used to legitimise their exploitation in the name of developing 'backward areas'.³¹

Earlier during the colonial times, "Indian traditional land ownership and land use pattern were changed to facilitate acquisition of land at low prices by British entrepreneurs for mining, plantation, and other economic pursuits."³² The land and the forest resources provided low cost raw materials for the British industries and thus their economic pursuit had to encroach upon the tribal areas rich in such resources. Not only that the colonial rule entered into the tribal land but also increasingly brought it under the legal jurisdiction. With these changes came in the notion of private property and it was in complete contrast to the tribal practice as they regarded land, forest and other natural resources with their habitat as customarily belonging to the community as a whole. And in the absence of the concept of private property the tribals failed to record their claims and further alienated them from their traditional holding. The loss of control over their natural resources, ambiguity in terms of land rights are all giving way to their powerlessness and definite threat to identity³³

Continuous exploitation of the tribal population all world the world has directed the international community-organisation, activists and others to actively look in to this important issue of survival of the indigenous peoples. The United Nations Declaration on the Rights of Indigenous Peoples stipulates special articles stating the rights of the Indigenous Peoples to maintain and strengthen their distinctive spiritual and material relationship with the lands, territories, waters and coastal areas, and other resources which they have traditionally owned or otherwise occupied or used, and to uphold their responsibilities to future generations in this regard. Also they have the right to assert their cultural identity and practice their traditions, including their religion, languages, and arts and the traditional right to maintain and develop their cultural structures and institutions.

Self determination: The cultural and the generational link of the indigenous people to particular geographical location have combined to shape the debate of self determination. Both self determination and minority rights have turned out to be importantly debatable in present times. Its emergence could be well traced to the times when government based on popular will was instituted against the monarchical institution. Even in contemporary times this principle has been well set within the framework of the United Nations. It well establishes the right of self determination as a fundamental human right which refers to individual and even collective whole.

The principle of national self determination can be applied where people who inhabit a continuous piece of territory unite to form a national community and there they have the right to determine their own future, through established political institutions of self-government to control that territory and live according to a uniformly decision. They are even entitled to form their own collective autonomy and follow particular value system. It therefore requires every national government to be accountable to the aspirations of the masses irrespective of any other considerations.³⁴

Self determination may be equally valuable to groups as to individuals so that they are able to decide the fate of the resources which are at their disposal. However this doesn't guarantee always that individual preferences will be upheld but what is important that some form of consensus and deliberative discourse along with civil and political rights is involved in it. This principle as Miller points out not only allows dissenting views to be heard, but also "exposes its prevailing principles and practices to crucial scrutiny".³⁵

Many writers and scholars working on this issue has comfortably distinguished between two forms, external and internal self determination.³⁶ This work takes up both the forms and tries to see them in the Third World perspective. External refers to the ability of people or minority to choose freely for independence or union with other states, whereas internal self determination means people of a sovereign state can elect and keep the government of their choice and has the right not to be oppressed by the central government. But this in course

³¹Walter Fernandes: 'Natural Resources, Self Determination and the Indigenous Identity: An Introduction', pp 5 In Walter Fernades (ed) (1993): *The Indigenous Question- Search for an Identity*, Indian Social Institute New Delhi.

³²Minar Pimple & Manpreet Sethi: 'Occupation of Land in India: Experiences and Challenges' pp 236 In Sam Moyo & Paris Yeros, (eds) (2005): *Reclaiming the land: The Resurgence of Rural Movements in Africa, Asia and Latin America*, United Kingdom, Zed Books.

³³B K Roy Burman: 'Indigenous People and their Quest for Justice, pp 3-12, In Buddhadeb Chaudhuri (ed): *Tribal Transformation In India- Ethnopolitics and Identity Crises*, Vol III, Inter India Publication, New Delhi, 1992.

³⁴David Miller: *Citizenship and National Identity*, Polity Press, UK, 2000 pp162

³⁵*Ibid.* 166

³⁶V T Thamilmaran: *Human Rights in Third World Perspective*, Har Anand Publishing, New Delhi, 1992 pp191

necessarily turned to be identified with fight only against colonialism where external self determination may be granted. Internal self determination on the other hand is often interpreted synonymously with local autonomy. It is understood as the right of people to control significant aspects such as culture, education, property relations, social matter, welfare etc.³⁷ This is a tendency normally seemed to be at work in the Third World countries where stronger assertion of self government, claims for greater autonomy might lead to instability in the state.

Hence the question of self determination has turned to be very crucial in international discourse. Like the notion of good is likely to vary from society so also the notion of self determination. The issue many a times has been branded as secessionist movement and a threat to the territorial integrity. The entire question of self determination is a vast one and can singly form a formidable debate but this paper is not attempting to probe into the depth of this. Discussion here only concerns the present debate revolving around the indigenous people and their aspiration to have some control over the resources and their way of life.³⁸ It is basically upholding and acknowledging their right to control the resources and their socio political structure which has found space in the debate emerging in many states like India.

Self determination can satisfactorily be analysed as the demand of the indigenous people to have control over their own resources rather than critically viewing it as a secessionist movement. Self determination can well acknowledge the fact that these people are the first or the original occupant of the land and are to be actively engaged in the decision making process which impacts upon their lives. However as Fernandes has pointed out, a distinction has to be clearly crafted out to see the difference between autonomy and secession. The demand for right to run their affairs, their socio political structure, and control over their resources can not always be interpreted as secessionist and anti nationalist movement.³⁹ Self determination to many writers like Jaganath Pathy implies the right to natural resources and the appropriate political institutions and power to manage these. The assertion of self determination in Indian context is largely “directed towards negotiating their relationship with the state so as to defend their rights to maintain their identity”⁴⁰.

It is often found true that national identities once formed is resistant to incorporate any new political aspirations especially if it revolves around greater role in power sharing and autonomy. At present it is also very hard to “find political communities with shared national identities inhabiting continuous and neatly bounded territories, instead we find intermingled ethnic and other groups on the same ground.”⁴¹ Like pointed out we cannot always presuppose shared values to make a national identity. Likewise the aspiration for secession may not run common ground in many societies. There are undoubtedly few secessionist movements like in the North East. But when deeply analysed they too are reactions to their deprived existence, marginalisation and alienation which they face from the resources and power sharing matrix.

Community based sentiments are very strong among the indigenous people and their whole lives revolve around community and group. Self determination thus forms an essential condition for indigenous people to live a dignified life because it gives the power to determine for them the value and necessity of collective life and decide their future course of action. They have all the right to determine for themselves the relationship with one another and the state and the other people that influences their lives.

Self determination becomes important for the indigenous people because of the value these people attach to their collective autonomy, value living according to laws and practices that are compatible with their local understanding of social justice.⁴² Self determination is the idea of a community’s right to control its own future, and thus physically to survive and prosper to the fullest extent possible. “A community’s power of self determination is perceived as a crucial aspect of its identity and so also, in holistic terms, of its health and survival. When the phrase self determination is part of a community’s political lexicon it therefore becomes a very powerful expression, and carries great hope for the birth of physical changes in a community’s circumstances.”⁴³ It is often understood as to require representative government which would open up genuine

³⁷ V T Thamilmaran: *Human Rights in Third World Perspective*, Har Anand Publishing, New Delhi, 1992 pp195

³⁸ Walter Fernandes and many other writers have basically concentrated on this nature of the debate. See Fernandes for further elaboration.

³⁹ Walter Fernandes: ‘Natural Resources, Self Determination and the Indigenous Identity: An Introduction’, pp 6-7 In Walter Fernandes (ed) (1993): *The Indigenous Question- Search for an Identity*, Indian Social Institute New Delhi.

⁴⁰ Jaganath Pathy: ‘Tribal and the Indigenous People of the World’ pp 22 In Buddhadeb Chaudhuri (ed): *Tribal Transformation In India- Ethnopolitics and Identity Crises*, Vol III, Inter India Publication, New Delhi, 1992.

⁴¹ David Miller: *Citizenship and National Identity*, Polity Press UK, 2000, pp 162.

⁴² *Ibid* pp 177

⁴³ Caroline E Foster: *Articulating Self determination in the Draft Declaration on the Rights of Indigenous Peoples*, EJIL(2001)Vol 12 No.1, pp 142

avenues for political participation by individual and communities based on their distinct identity.⁴⁴ The inclusion of right to self determination in the Declaration provides scope on the part of the indigenous people to limit the overarching nature of the state and also recognise the importance of the participation of these people in the political process.

Self determination has over the debate assumed different connotations in different situations. The self determination of people colonised under foreign rule; of racial group suffering oppression and importantly also the right to self determination of the indigenous people. There is a constant tension between the exact definition of the term and its applicability. Self determination is a group's right to make decision together and for themselves about the condition and terms that govern shared aspects of life.⁴⁵

Indigenous people and many organisations working for them all over the world have actively asserted their rights of self determination and control over their resources. This is essential for it is intrinsically connected with the question of their well being, identity and overall decision making and power sharing process. This has many times formed the demand for self determination, for autonomous areas under their control and importantly control over their own future.

The right of the indigenous people to self determination is specifically based on the conditions in which they survive. It arises from the historical injustice inflicted on them and the need to protect their distinctiveness from the onslaught of time. The right to self determination essentially attempts to secure the basic human dignity of the indigenous people.

There had been lot of oppositions from different states like United States, Argentina, Brazil etc against the inclusion of the right to self determination in the Declaration arguing that they ought not to be given the power to break up as common parlance suggest its meaning. But the representatives of these people disagreed to settle for anything less to protect their identity and existence. This aspect has been taken up by Caroline E Foster, Cindy Holder and many other legal experts.

Indigenous peoples claim to the right of self determination is deeply problematic when the obvious question of strengthening either the state or the group arises in the debate. But it is not always, as the general view stand, be taken as a secessionist claim on the part of the indigenous people. Infact stating self determination as a basic human right and its very inclusion in the Declaration provides these people better bargaining power visa via the state and other people. It is not always as stated a claim for independent nationhood or secession. In equating self determination with setting up an independent state, conservative approach make it look like something, that Cindy Holder finds, that which "only select number of groups may have by *reducing* it to the bundle of right traditionally associated with independent statehood. Political autonomy in turn may suggest something more radical, like the governing authorities may have substantial positive obligations to these people."⁴⁶

Countries over time have made certain provision to accommodate the demand for some control of the indigenous people over their way of life. But is essential to recognise that the rights of the tribals to self determination is not always that of secession rather control over their natural resources and decision making process. This understanding can also make it possible for the identity and rights of the tribals as indigenous people of the country to find adequate representation and space within public discourse. Infact the legitimacy of the state rest on how effectively it is able to safeguard 'human rights and ensure participation of every section of people in the economic and political decision making process and not just a commitment to numerical majority.'⁴⁷

There is undoubtedly a tension between the demands for self determination and national objective of unification and for providing an overarching nationalist ideology. But this can be resolved if we balance the pursuit of national development on one hand and the obligation towards these marginalised people on the other to enjoy their space. The right to make decision about themselves, to protect and develop their social and cultural life, are

⁴⁴ Caroline E Foster has taken up the development of the concept of self determination in international law in detail

⁴⁵ Cindy Holder : 'Self-determination as a basic Human Right', pp 303 In Avigail Eisenberg & Jeff Spinner-Halev (2005): *Minorities within Minorities- Equality Rights and Diversity*. Cambridge University Press, UK.

⁴⁶ Cindy Holder : 'Self-determination as a basic Human Right', pp 309 In Avigail Eisenberg & Jeff Spinner-Halev: *Minorities within Minorities- Equality Rights and Diversity*. Cambridge University Press, UK, 2005.

⁴⁷ Hurst Hannum: *Autonomy, Sovereignty and Self Determination: The Accommodation of Conflicting Rights*, Philadelphia, University of Pennsylvania Press, 1990. pp 13

all expression of universally acknowledged rights.⁴⁸ And therefore these should have space within any democratic state.

Community: Community aspirations and sense of belonging has become a strong character in many tribal societies. For centuries they have survived in the informal society of a culture based on community aspiration, culture and also common property resource. Community membership has been one of the most crucial concerns centering the whole debate. Shared values, identity, language, history or way of life are all essential elements of tribal life. Community is not a novel construct but already existed in the shared social customs, social practices, tradition, belief and some form of common understanding. The lives of persons within an indigenous community are often closely integrated and interdependent. The intervention of market forces has led to strong institutionalisation of private property, not prevalent among these people, and earlier form of community concern has turned to market orientation and accumulation. Under this influence the indigenous economies and social system are witnessing great change earlier based on survival and stability concern to now that of accumulation. This has consequently led to the decline in traditional social welfare system and spread of commoditisation. The destruction of old communal economy, people's values etc are now increasingly being shaped by the matrix of market and the state. But since the market mechanisms is not geared towards social justice and equality so how far they could necessarily benefit the marginalised communities is widely debatable.

It is very essential to understand the link between community's control over their natural resources and their identity. Community control over their natural resources is very crucial as already stated. Since the tribal life values forest greatly they have over generations developed certain practices which were both environmental viable and also catered to their livelihood needs. Because of the close interaction between man and nature the tribals also valued the need to protect the forest and the environment. Their knowledge about the forest can be thus combined at the present times and there can be certain viable alternative which conceives people's involvement and some protection for customary access rights to the forest. Many important studies on this issue has inferred on some available conception of capacity building among forest communities and regenerating forest through planned initiatives. The concept of joint forest management (JFM) as a participatory model for managing forest can be effectively used to profit both the tribals and also protect forests.⁴⁹

Steady rise of the problems of indigenous peoples all over has evoked a world wide concern and this has been recognised at international level and many institutions are now making a tremendous effort to the cause. Wide concern about their inhuman existence everywhere and the continuous struggle for recognition of their distinctness in culture, way of life, the threat of survival suffered by them has brought about the necessity to institutionalise their demands. This has found recognition in the form of the Declaration on the Rights of the Indigenous Peoples.

The three issues discussed above have found space in the international discussion of indigenous issues. Their centrality has not only been asserted in the struggle and the movement of the indigenous peoples but also has come to assume a legal recognition owing to inclusion in the Declaration. However the question when addressed in the tribal context, the notion of rights cannot be all inclusive if it constitutes each human being as a self contained unit. Accordingly, it would be appropriate here to talk of group or community rights, which would articulate demands that arise from their specific needs. These people are linked to their natural surrounding-land, water, resources, forest not as any atomised self but they share a communal sentiment. They together form a part of the whole habitat in which they exist. In reality this mutual existence is being threatened and their present situation projects a precarious existence and they being treated as inferior.

These people were always bonded by a close link to their communities and land. Community identification becomes an important element and is even connected to a sense of people hood inseparably linked to sacred traditions, homeland and also shared history. So the sense of identity via a community is through which the tribals confirm their commonalities with each other. Though community belongingness has also invoked a sense of distinct 'self' and the 'other', where one group poses against each other in manner hampering peaceful existence. Also on the part of the state and other civil society organisations amicable solution has to be sought within these distinctiveness of community life.

⁴⁸Jaganath Pathy: 'Tribal and the Indigenous People of the World' pp 22 In Buddhadeb Chaudhuri (ed): *Tribal Transformation In India-Ethnopolitics and Identity Crises*, Vol III, Inter India Publication, New Delhi, 1992.

⁴⁹Arnab Sen & Esther Lalhrietpui: 'Scheduled Tribes (Recognition of Forest Rights) Bill A View from Anthropology and Call for Dialogue', *Economic and Political Weekly*, September 30, 2006, pp 4205-4210.

Where the problem comes to recognition of the rights of the indigenous people mere engagement with the protection and promotion of human rights can prove to be insufficient. The problem with a universal narrative of rights is a dilemma drawn from, as already noted, a modern liberal-democratic state which allow us little scope to speak of community sentiments. Also a strict distinction is created between the public and the private. Even the state here started acting as an instrument for protecting the inviolability of the domain of an individual. Therefore the idea of a community centric approach to the problems of the Indigenous People could not capture much the imagination.

While discussing the problems of the indigenous people it is necessary to see that the debate is not just between community or individual rights or that of development and survival. The central question of individual right, protection of their culture and identity, freedom of autonomy to decide their own future should find adequate space in the discursive practices of the state. Today there is an urgent need to recognise the socio cultural, political and economic need of the tribal population and also to acknowledge their autonomy in these matters. It requires search for alternative ways of development and progress without slaughtering the existence of these people. Crisis is bound to continue if we try to hinder their search for identity and assertion of rights. Rather than trying to assimilate them into the mainstream ideology the need is to strengthen their institutions and empower them to participate in the development process in their own way possible. Accepting their indigenous status would have a way for the recognising the principle of equality, community and justice.

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