

PROTECTING INDIGENOUS LAND RIGHTS: MARK OF CONFLICT OR MEASURE FOR SOCIAL EQUALITY

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ABSTRACT¹

In the words of Joan Carling, Advisory Board Member of Land Rights Now “Communities around the world rely on their families. But their lands also feed the world”. One of the important aspect of human survival or sustenance is based upon the land and its subsidiaries that is the product of the land. No one can be denied the access to the resource and outsourcing a group or community of people just because he/ she are claiming their rights upon the land being customary possession or protector of their land. Yet, the indigenous and local communities who have protected these lands for centuries, legally just own one- fifth. These lands not only fulfil the purpose of sustenance of local people. But it serves many purposes like community lands acts like biodiversity hot spots, it reduces massive carbon emission, it can boost farmers’ productivity. Indigenous lands protects women right to hold the property. It helps small scale food producers to protect and sustain diverse food cultures and landscapes. The only way to minimize the control of indigenous and ethnic properties to be converted into private properties by the industrialists to fulfill their sole purpose to extract money can easily be controlled by the promoting and protecting the interests of the these local communities. They are basic source of the traditional knowledge.

INTRODUCTION

India is home to about 700 tribal groups with a population of 104 million, as per 2011 census. These indigenous people constitute the second largest tribal population in the world after Africa. As industries encroached upon their lands, many communities were displaced and some continued

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to wage a struggle to either protect their homes or demand a fair compensation.² Tribes constitute around 9.6 percent of the total Indian population, and of the total tribal population around 80 percent are found in Central India. Tribes in India are mainly characterized by their geographical location and distinct culture. The interests of the aboriginals or the indigenous people in India with that of State enforcement agencies and non-State actors has always been the issue. The trust they reposed in the State government has always been defied.

WHO ARE TRIBAL/INDIGENOUS PEOPLE?

The word 'Tribe' denotes a group of people living in fixed territory. These tribes are a social group living in a fixed territory having no such specialization of functions and the people living in these social groups are known as tribes or tribal people. There are demarcations in the tribes as well, example sub groups, groups and further classification. These people living different from the mainstream of the society and leading their own lives according to their tradition and culture. They in the terms of Scott are the inhabitants of "shattered zones".

The Anthropological Survey of India under the 'People of India Project' identifies 461 tribal communities in India. They are enumerated at 67,583,800 persons constituting 8.08 per cent of the total population as per the 1991 census. The question of tribes in India is closely linked with administrative and political consideration³.

Being economically and socially deprived they scammed to the hands of the International Private Big Companies to surrender their lands for construction of Industries, coal mines, and what not. For meagre sum of amount they surrendered their lands which was their "everything". Militant struggle peeped their way in against the anti- displacement movement.

² Karnika Bahuguna, Madhu Ramnath, Kumar Sambhav Shrivastava, Richard Mahapatra, M Suchitra, Anupam Chakravarty, "Indigenous People In India And The Web Of Indifference" <https://www.downtoearth.org.in/Coverage/Governance/Indigenous-People-In-India-And-The-Web-Of-Indifference-55223> Published On Wednesday 10 August 2016

³ Virginius Xaxa, "Tribes As Indigenous People Of India", Economic And Political Weekly, Vol. 34, No. 51 (Dec. 18-24, 1999)

EVOLUTION OF TERM “TRIBE” IN INDIA⁴

The early ethnographers were not very clear about the distinction between caste and tribe in India. The 18th century writings, for example, showed synonymous use of the term tribe with caste. Later it was even used in a cognate manner as one could see in the use of phrase 'caste and tribes of India' by Risley and many others in their writings. Efforts to make a distinction between the two began to be made after initiative was taken to collect detailed information about the people for the census. In 1901 Officials did tried to distinguish which was not too adequate. According to them Tribe is one who practiced animism which further was replaced by religion. It is only in the post-independence period that more systematic effort was made towards distinguishing tribe from caste.s. In the colonial ethnography, the concern shown by the British administrators-scholars was to mark off tribe from caste. Hence tribes were shown to be living in complete isolation from the rest of the population and therefore with- out any interaction or interrelation with them. This was something which even Scott was talking about.

EVOLUTION OF TERM “INDIGENOUS”

The term indigenous or its equivalent has been used in anthropology to describe groups called tribes', the term was used for the first time in 1957 by Roy-Burman undated. It gained wide currency after 1993 with the declaration of the year 1993 as the international year of the indigenous. In 1957 the general conference of the ILO adopted a convention concerning protection and integration of indigenous and other tribal and semi-tribal population in independent countries. The convention framed general international standards for facilitating government actions towards protecting and promoting progressive integration of these people into the respective national community.

Three traits of indigenous people:-

⁴ *Ibid*

1. First, the indigenous are those people who lived in the country to which they belong before colonization or conquest by people from outside the country or the geographical region.
2. Secondly, they have become marginalized as an aftermath of conquest and colonization by the people from outside the region.
3. Thirdly, such people govern their life more in terms of their own social, economic and the cultural institution than the laws applicable to the society or the country at large.

Indians has more oftenly used the term “adivasi” unlike in international arena where words like aboriginals, authochthonous are used.

PROBLEMS OF INDIGENOUS PEOPLE IN WESTERN PART OF THE WORLD⁵

Pope Alexander VI (1493) started subjugating Native American’s land to first colonial rule and afterwards being annexed by subsequent rulers. In the modern times this subjugation is replaced by contemporary forms of oppression, assimilation, development schemes, privatization of land, water. The transnational Multi- National Corporations and National Elites have benefited themselves from the sources of indigenous people. Through various treaties U.S Government in 18th-19th Cent. Made Indigenous people to relinquish their lands and made them agreed to take smaller tracts in return of education, protection, health care and other forms of compensation. During 1950’s US government promised indigenous people better job opportunities and relocation. This massive relocation project seduced many tribal members to move from their economically depressed reservations into cities with the promise of jobs and opportunity. Once in the city, tribal members found themselves without the promised prosperity or the security of tribal life. Some returned home but many stayed in the cities and became known as "urban Indians”.Those who agreed to sell their lands and terminate their treaties and agreements with the government. By selling lands, Indigenous tribal nations gave up the protections insured by the treaties. The tribes would also no longer be sovereign entities.

⁵ Tom B.K. Goldtooth, "Continuing Threats To Indigenous People's Sovereignty And Survival", Race, Poverty & The Environment, Vol. 11, No. 1, Reclaiming Our Resources: Imperialism & Environmental Justice (Summer 2004)

When reservation for Indigenous people were created government realized that abundant natural resources were found to exist upon these lands: timber, minerals, petroleum, fur bearing habitat, fish and water. They all have been relocated in the name of Hydroelectric projects, extraction of natural resources. These plans posits to help indigenous people but it was directly increasing the US economy.

There were serious examples where indigenous people were exploited in US in the name of development:

1. The Black Hills region of South Dakota where rich deposits of gold and other minerals were found in the 1800s, none of the Lakota tribal members of Pine Ridge reservation benefited.
2. In the 1868 treaty by the United States and the Lakota Sioux nation, the U.S. government recognized the Black Hills as part of the Great Sioux Reservation, set aside for exclusive use by the Lakota Sioux people. However, after the discovery of gold in 1874, the government confiscated the land. To this day, ownership of Black Hills remains the subject of a legal dispute between the government and the Lakota Sioux.

In the eyes of many Indigenous spiritual leaders, the source of these pressures can be traced to the long historical processes by which humans have become increasingly alienated from the Mother Earth. They all raised their voices that how agreements made by WTO are undermined and always been working to make US government realized that what mother Earth meant to them.

PROVISIONS UNDER UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLE

Article 10- Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 15(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 23 Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Article 26 (1). Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

(2). Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

(3). States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 40- Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

.Land Rights u/d UNDRIP are provided under Articles 18⁶, 19⁷, 26, 27⁸, 28⁹, 30¹⁰, 32¹¹, 37¹², 38¹³, and 46¹⁴

⁶ Indigenous Peoples Have The Right To Participate In Decision-Making In Matters Which Would Affect Their Rights, Through Representatives Chosen By Themselves In Accordance With Their Own Procedures, As Well As To Maintain And Develop Their Own Indigenous Decision-making Institutions.

⁷ States Shall Consult And Cooperate In Good Faith With The Indigenous Peoples Concerned Through Their Own Representative Institutions In Order To Obtain Their Free, Prior And Informed Consent Before Adopting And Implementing Legislative Or Administrative Measures That May Affect Them.

⁸ States Shall Establish And Implement, In Conjunction With Indigenous Peoples Concerned, A Fair, Independent, Impartial, Open And Transparent Process, Giving Due Recognition To Indigenous Peoples' Laws, Traditions, Customs And Land Tenure Systems, To Recognize And Adjudicate The Rights Of Indigenous Peoples Pertaining To Their Lands, Territories And Resources, Including Those Which Were Traditionally Owned Or Otherwise Occupied Or Used. Indigenous Peoples Shall Have The Right To Participate In This Process.

⁹ 1. Indigenous Peoples Have The Right To Redress, By Means That Can Include Restitution Or, When This Is Not Possible, Just, Fair And Equitable Compensation, For The Lands, Territories And Resources Which They Have Traditionally Owned Or Otherwise Occupied Or Used, And Which Have Been Confiscated, Taken, Occupied, Used Or Damaged Without Their Free, Prior And Informed Consent. 2. Unless Otherwise Freely Agreed Upon By The Peoples Concerned, Compensation Shall Take The Form Of Lands, Territories And Resources Equal In Quality, Size And Legal Status Or Of Monetary Compensation Or Other Appropriate Redress.

¹⁰ 1. Military Activities Shall Not Take Place In The Lands Or Territories Of Indigenous Peoples, Unless Justified By A Relevant Public Interest Or Otherwise Freely Agreed With Or Requested By The Indigenous Peoples Concerned. 2. States Shall Undertake Effective Consultations With The Indigenous Peoples Concerned, Through Appropriate Procedures And In Particular Through Their Representative Institutions, Prior To Using Their Lands Or Territories For Military Activities.

¹¹ 1. Indigenous Peoples Have The Right To Determine And Develop Priorities And Strategies For The Development Or Use Of Their Lands Or Territories And Other Resources. 2. States Shall Consult And Cooperate In Good Faith With The Indigenous Peoples Concerned Through Their Own Representative Institutions In Order To Obtain Their Free And Informed Consent Prior To The Approval Of Any Project Affecting Their Lands Or Territories And Other Resources, Particularly In Connection With The Development, Utilization Or Exploitation Of Mineral, Water Or Other Resources. 3. States Shall Provide Effective Mechanisms For Just And Fair Redress For Any Such Activities, And Appropriate Measures Shall Be Taken To Mitigate Adverse Environmental, Economic, Social, Cultural Or Spiritual Impact.

¹² 1. Indigenous Peoples Have The Right To The Recognition, Observance And Enforcement Of Treaties, Agreements And Other Constructive Arrangements Concluded With States Or Their Successors And To Have States Honour And Respect Such Treaties, Agreements And Other Constructive Arrangements. 2. Nothing In This Declaration May Be Interpreted As Diminishing Or Eliminating The Rights Of Indigenous Peoples Contained In Treaties, Agreements And Other Constructive Arrangements.

¹³ States, In Consultation And Cooperation With Indigenous Peoples, Shall Take The Appropriate Measures, Including Legislative Measures, To Achieve The Ends Of This Declaration.

¹⁴ 1. Nothing In This Declaration May Be Interpreted As Implying For Any State, People, Group Or Person Any Right To Engage In Any Activity Or To Perform Any Act Contrary To The Charter Of The United Nations Or Construed As Authorizing Or Encouraging Any Action Which Would Dismember Or Impair, Totally Or In Part, The Territorial Integrity Or Political Unity Of Sovereign And Independent States. 2. In The Exercise Of The Rights Enunciated In The Present Declaration, Human Rights And Fundamental Freedoms Of All Shall Be Respected. The Exercise Of The Rights Set Forth In This Declaration Shall Be Subject Only To Such Limitations As Are Determined By Law And In Accordance With International Human Rights Obligations. Any Such Limitations Shall Be Non-Discriminatory And Strictly Necessary Solely For The Purpose Of Securing Due Recognition And Respect For The Rights And Freedoms Of Others And For Meeting The Just And Most Compelling Requirements Of A Democratic Society. 3. The Provisions

India voted in favour of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007 and signed the ILO Convention 107, the government continues to deny the term and concept of “Indigenous Peoples” claiming that all Indians are Indigenous¹⁵. The Supreme Court in case of **Kailas & Others v. State of Maharashtra**¹⁶ observed that Scheduled Tribes (Indigenous Peoples) are the original inhabitants, constitute 8% of the population, and that the Mundas language predates the Dravidian languages - making pre-Dravidian Aborigines the ancestors of the present Tribals or Adivasi (Indigenous Peoples)¹⁷ who were persecuted in the 17th century.

At the domestic level, the Constitution provides autonomy to tribal areas in matters of governance under the Fifth and Sixth Schedules, which is further fortified by the **Samatha v. State of Andhra Pradesh & Ors**¹⁸ (1997) judgment where the Supreme Court declared that the transfer of tribal land to private parties for mining was null and void under the Fifth Schedule. The framework for protection of the rights of tribal and indigenous people is further strengthened by the Recognition of Forest Rights Act, 2006 which protects the individual and community rights of tribal people in forest areas and their right to free and prior informed consent in event of their displacement and resettlement.¹⁹

DEBATE IN THE CONSTITUENT ASSEMBLY REGARDING PROTECTION TO INDIGENOUS PEOPLE

Dr. Ambedkar has always been criticized for not supporting the rights of indigenous people because people thought that giving rights to schedule tribes would undermine the interests of Schedule Caste. But it was not true in one of his books 'Thoughts on Pakistan' (1942), Dr. B.R.

Set Forth In This Declaration Shall Be Interpreted In Accordance With The Principles Of Justice, Democracy, Respect For Human Rights, Equality, Non-Discrimination, Good Governance And Good Faith.

¹⁵ C.R. Bijoy, Shankar Gopalakrishnan, And Shomona Khanna, India And The Rights Of Indigenous Peoples, 2010. Accessed 16, August 2016 From [Http://Aippnet.Org/India-And-The-Rights-Of-Indigenouspeoples-2/](http://Aippnet.Org/India-And-The-Rights-Of-Indigenouspeoples-2/)

¹⁶ (2011) 1 Scc 793

¹⁷ Kailas V. State Of Maharashtra, (2011) 1 Scc 793

¹⁸ Air 1997 S.C. 3297

¹⁹ Pushkar Anand & Amit Kumar Sinha, “Protecting Rights Of Tribal”, The Hindu, February 27, 2017 02:15 Ist

Ambedkar advocated for special arrangements to Bihar and Orissa, where the tribal population was higher.²⁰

In his other book 'Communal Deadlock and Ways to Solve It' (1945), he writes about the Aboriginal Tribes thus "...The Aboriginal Tribes have not as yet developed any political temper therefore they fall prey to easily become mere instruments in the hands either of a majority or a minority and thereby disturb the balance without doing any good to themselves. Dr. Ambedkar was knowing that Schedule Tribes are vulnerable therefore they can become the conflicting cause in the politics hence, he advocated for separate commission For Schedule Tribes u/A. 342. The Fifth and Sixth Schedule of the Constitution of India speak about the tribals. Apart from these articles, we have **Fundamental Rights (Art.12-35)** that apply to every citizen of the country. **The Directive Principles of State Policy (Art.36-51)** specify in the guidelines to the states that every possible act must be undertaken to improve the conditions of all the citizens, which includes the Scheduled Tribes (Adivasis).

It was the efforts of the Dr. Ambedkar that people belonging from Schedule Caste and Schedules Tribes and other Backward classes people that they can live their life with high heads.

As contended by M.L. Garasiya that Babasaheb Bhimrao Ambedkar didn't utter a single word for the Adivasis in the Constituent Assembly, it was the honourable late Shri Jaipal Singh Munda who, as a leader of Adivasis, put forth the concerns of Adivasis with much force. Respectable Shri Jaipal Singh Munda was an Adivasi from Jharkhand, who was the captain of the Indian Hockey team that won a gold in the Winter Olympics in 1928 which were held in Amsterdam. Contended by M.L.Garasiya further it was the efforts of Jaipal Singh that Scheduled Tribes got its place in the Constitution. Mr. Jaipal moved further amendments to the Fifth Schedule of the Constitution as he wanted the inclusion of the term 'Scheduled Tribe' along with 'Scheduled Areas and was unhappy that he was not consulted during the Drafting.

²⁰ Adv. Mahendra Jadhav, "Dr. Ambedkar On Scheduled Tribes", Round Table India, [Http://Roundtableindia.Co.In/Index.Php?Option=Com_Content&View=Article&Id=8794:Dr-Ambedkar-On-Scheduled-Tribes&catid=119:Feature&Itemid=132](http://Roundtableindia.Co.In/Index.Php?Option=Com_Content&View=Article&Id=8794:Dr-Ambedkar-On-Scheduled-Tribes&catid=119:Feature&Itemid=132), Published On 27th September 2017

Dr. Ambedkar, refuting the allegations made by Mr. Jaipal Singh, explained the importance of the Fifth Schedule (**Articles 215A (a) and 215B (1)**) saying, "I may mention that the Drafting Committee in putting forth this new Schedule had discussed the matter with the representatives of the provinces who are concerned with this particular matter; namely of Scheduled Areas and Scheduled Tribes. We had also taken into consideration the opinion of my honourable friend, Mr. Thakkar, who knows a great deal about this matter and I may say without contradiction that this new Schedule has the approval of all the parties who are concerned in this matter, and I hope that the House will have no difficulty in accepting the new Schedule in place of the old one."²¹ Dr. Ambedkar not only advocated for the said classes but has given fundamental rights to each and every citizen.

Shri Muniswamy Pillay (Madras): "...I think great credit is also due to the Drafting Committee for so ably bringing forward this Fifth Schedule which goes a long way to improve the conditions of the tribal people."²²

T H P Chentharassery in his book 'History of the Indigenous Indian' writes, "When Dr. Ambedkar took a resolute stand and applied his sharp weapon of non-cooperation, Jawaharlal Nehru, Mukherjee and Patel realized the graveness and value of Ambedkar's silent but meaningful protest. They made clear understanding on the problem with Ambedkar. As a result of their capitulation and the compromise, the chapter on Scheduled Castes and Scheduled Tribes was included in the draft constitution."²³

The work of other members of the Constituent Assembly firmly shows the efforts of the Dr. B.R. Ambedkar for upliftment of the indigenous people since the conception of the Indian Constitution.

²¹ Dr. B.R. Ambedkar 5.9.1949 Constituent Assembly Debates (Proceedings) – Vol.Ix

²² Shri Muniswamy Pillay (Madras) – 5.9.1949 Constituent Assembly Debates (Proceedings) – Vol.Ix

²³ Thp Chentharassery – History Of The Indigenous Indians

PROTECTION PROVIDED TO INDIGENOUS PEOPLE IN INDIA²⁴

Article 14 guarantees right to equality and equal protection of the laws to any person within the territory of India. These rights are also available to the indigenous peoples in India.

Article 15 states that the state shall not discriminate any citizen on grounds of religion, race, caste, sex, place of birth or any of them. Equal opportunities are granted to indigenous people too.

Government of India has made reservation for the tribes in employment under **Article 16(4)** of the Constitution of India.

The Government of India has reserved seats in The House of People (Lok Sabha) and The State Legislative Assemblies under **Article 330 and 332** of The Constitution of India.

Article 19(5) guarantees the tribal people right to own property and enjoy it in any part of the country.

Article 338 of The Constitution of India grants the right to appoint a Commissioner to look after welfare activities of tribes.

Article 46 of the Constitution of India states that, The State shall promote with special care the educational and economic interests of the weaker sections of the people and in particular, the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

Article 275(i) guarantees the Centre Government is required to give grants-in-aid to the State Government for approved Tribal Welfare Schemes.

Presently, the Constitution provides autonomy to tribal areas in matters of governance under the Fifth and Sixth Schedules.

²⁴ Gudipati Rajendera Kumar, "Protecting The Tribal Rights" The Hans India, <https://www.thehansindia.com/posts/index/Young-Hans/2017-03-15/Protecting-The-Tribal-Rights/286905>
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Forest Rights Act 2006 is another legislation drafted by the Legislature which further enhanced the protection of rights of the indigenous people.

ISSUE IN INDIA REGARDING LAND RIGHTS OF TRIBAL/INDIGENOUS PEOPLE

CHHATISGARH, JHARKHAND AND OTHER ADJOINING AREAS

During the privatization era in 1990's the Indian Government gave opportunity To International Private Companies to come in India and make investments which would boost up the economy of the Nation. It indeed proved to be great step but the government somewhere kept the interest of the these tribal people at stake. These people in lieu of better job, good life, education for their children gave their lands like it happened in USA but they got nothing in return. The states invite investments from domestic investors as well as foreign players whose interests are not only protected under domestic laws but also under the **BITs (Bilateral Investment Treaty)**. Most BITs grant investments made by an investor of one Contracting State in the territory of the other a number of guarantees, which typically include fair and equitable treatment, protection from expropriation, free transfer of means and full protection and security.²⁵

Xaxa Committee of 2014 shows that State became more concerned about interests of the Investing parties and more concerned about fulfilling contractual obligations towards the private investor instead of ensuring that tribal are not ousted from the land to which they are historically and culturally connected. Chhattisgarh and Jharkhand have reportedly entered into 121 and 74 such MoUs, respectively, with various private players. BITs are the tools to ensure protection to the Investors and not to the indigenous people.

The State (Jharkhand and Chhattisgarh) government is only too keen to sign MOUs with the big corporate houses – Tata, Essar, Mittal, Jindal... and to practically gift away the best deposits of iron ore as captive mines at a measly royalty of less than Rs. 50 a tonne. But the local industry is having to purchase iron ore at open market rates, which had touched upto Rs. 5800 per tonne

²⁵ See Footnote 24

recently.²⁶ This shows the two facet reality of the government wherein the Government is exporting the iron ore to International Companies at cheap rates however, the local companies have to purchase it from open market at higher rates.

The land grabbing in the region of Chhattisgarh and Jharkhand and the adjoining areas are at the maximum level. The sole reason being that particular area is rich in mineral and natural resources which can be excavated and extracted at cheap rates because of the following factors:

1. Indian Government is in favour of executing MoU's and BIT's as to encourage Foreign companies to invest in India and thereby clearly negates the rights of tribal people.
2. Cheap and easy manual force available because of the poverty prevalent in that region.
3. Easy to manipulate inhabitants of the place.

The importance of this region is due to:-

1. This State is as rich under its soil, as those who dwell on it are economically impoverished."²⁷ Chhattisgarh has more than 28 precious mineral resources including limestone, dolomite, coal, iron ore, diamond, gold, quartzite, tin ore, tin metal, granite, corundum, marble, beryl, bauxite, uranium, alexandrite, copper, silica, fluorite and garnet.
2. Today more than 6% of the country's cement is produced here by 7 large and 4 small cement plants with a total capacity of nearly 10.5 million tones. the well known brands of ACC and Ambuja have been taken over by the Swiss multinational Holcim, indeed 12.5% of Holcim's sales are now from its 24 Indian plants. Lafarge has also taken over two cement plants.
3. Seven percent of the country's bauxite, about 198 million tones, is available in this region.
4. Sixteen percent of the country's coal, a whopping 39,545 million tones is to be found in the Raigarh, Sarguja, Koriya and Korba districts of northern Chhattisgarh.

²⁶ Sudha Bhardawaj, "Gravest Displacement Bravest Resistance The Struggle Of Adivasis Of Bastar, Chhattisgarh Against Imperialist Corporate Landgrab.",

²⁷ Ravi Tiwari, General Secretary Of The Chhattisgarh Cement Manufacturers' Association States In An Article "Jansatta"

5. One-fifth of the country's iron ore – about 2336 million tones averaging 68% purity is found in the Dantewada, Kanker, Rajnandgaon, Bastar and Durg districts. The Bhilai Steel Plant is one of the world's most efficient steel plants.

The over exploitation of the natural resources alienating indigenous people from their own lands, not adhering to the needs of the people there, giving prima facie importance to foreign and national investors all these reasons cumulatively agitated people therefore, they resorted to non-constitutional or other methods to get claim back what was theirs- they actively joined Naxalism, Salwa Judum, Maoism. The last resort available to them is to create parallel autonomous government which functions like that of state government but with a clear cut motive to serve the interest of their own people. Soon this militant forces converted the face of the organization into a totalitarian regime. Politicization of the organized group severely affected the rights of the people at large.

Two incidents where state abhorrently affected the rights of the people

1. Hirakund Dam Project
2. Narmada Bachao Andolan

Where State defied the interest of these people in the name of development.

NORTH EASTERN AREAS²⁸

ARUNACHAL PRADESH	NAGALAND	MIZORAM	MEGHALAYA
(FORESTS) Total area- 6.7 million hectare Community Ownership- 60%	(OIL AND NATURAL GASES) Total reserve- 600 million tonnes	(FORESTS) Total area- 1.9 million hectare Community ownership- 30%	(COAL) Total reserve- 576 million tonnes

²⁸ *Supra* Note 1

<p>Centre- aligns with State policies and gives enough power to the state forest dpt. To take control</p>	<p>Value- 25, 20,000 crore Centre- only Union Government has control over oil resources</p>	<p>Centre- gives enough power to State Forest Dpt. To take decisions</p>	<p>Value-Rs. 2,01,600-4,60,800 crore Centre- Declares coal as a national asset but leaves mining to State government</p>
<p>State- on paper talks about community rights but in practice tries to take control over community forests</p>	<p>State- has given special powers to the Nagaland to govern land and its resources including oil</p>	<p>State- says traditional practices like <i>jhum</i> degrade forests, promotes plantations through privatization</p>	<p>State- officially admits Centre control over coal. Till NGT banned rat-hole coal mining in the state in April 2014</p>
<p>Communities- believe that they have absolute rights over the forest and Centre should not interfere</p>	<p>Communities- Land and its resources belong to people and they should get royalty from it</p>	<p>Communities- wants to follow traditional practices but are forced to give up lands for pvt. plantations</p>	<p>Communities- believes that coal belongs to them but most do not mine coal on their own due to lack of capital and hazards involved.</p>

I. OIL RIGS MAJOR PROBLEM IN NAGALAND

The area is part of Schuppen Belt that is believed to hold 600 million tonnes of crude oil and natural gas. ONGC over-extracted the oil but gave very little share to the people in the region. Nagaland enjoys a special status under Article 371-A of the Constitution, which recognizes customary rights of communities over land and its resources. The state cannot allow ONGC to exploit the resources without their consent. CLOU (Changpang Land Owner's Union) demanded that the company should sign a lease agreement with the village council (traditional decision-making body in a village) or Lotha hoho (the apex body of the tribe). The Naga Students' Federation joined the protest, alleging that ONGC mined 1.02 million tonnes of oil, which is much more than the amount permitted to it in the exploration lease. ONGC shut shop in 1994 following widespread protests and threats from insurgent groups.²⁹

Though Article 371-A guarantees that no Central law pertaining to land and its resources applies to Nagaland unless the Assembly ratifies it, the state government did not want to take a chance. In July 2010, it passed a resolution which allowed it to develop petroleum reserves in the state, acquire mineral-bearing areas, set land compensation rates and landowners' share in the royalty and issue environmental and forest clearance to projects. In 2012, it introduced Nagaland Petroleum and Natural Gas (NPNG) Regulations. State stepped into the shoes of community people to protect their interests. But, Centre was baffled with this particular legislation. Worried that it might lose control over the vast reserve of petroleum—Nagaland has the potential to increase India's onshore oil production potential by 75 per cent—the then petroleum minister M Veerappa Moily wrote letters to then chief minister Neiphiu Rio, opposing NPNG regulations. In June 2013, Moily, on the recommendation of the Union Ministry of Home Affairs, asked Rio to rescind NPNG regulations and withdraw the notification inviting companies for developing the reserves. He said Article 371-A does not confer on the Nagaland Assembly power to make laws related to oil.³⁰

State firmly stood against the Centre's decision:

²⁹ *Supra* Note 1

³⁰ *Ibid*

As per the benefit-sharing mechanism of NPNG regulations, for every Rs 100 of crude oil produced, the company will give Rs 16 to the state and the communities. The state will keep 50 per cent of the share, or Rs 8, and pass on Rs 2 to landowners of the rigs. The District Planning and Development Board will get Rs 2 and the remaining Rs 4 will be divided among the community.

1. Naga Community was not happy with the scheme they contended, that atleast the land owners must be given access fee.
2. Government has not become owner of oil and gas because the (NPNG) rules clearly state that unless the landowner (of the rig) signs the agreement with the selected company.
3. They also contended that the process of awarding contracts to companies is also dubious. Instead of inviting bids, the NPNG regulations assess a company based on its track record in Nagaland, its experience and how conducive is its financial and operational profile to undertake oil operations. Final selection is simply done by a ministerial group headed by the chief minister. “No technical officer is involved in the selection process.

II. RAT HOLE MINING IN ASSAM FOR COAL

The 200-odd families in this tiny village in East Jaintia Hills district claim that they own a hill. They had traditionally depended on its 70 hectares (ha) forest for firewood and other produce and grew paddy on parts of it with approval from the village council. In 2010, some people from the village approached the Jaintia Hills Autonomous District Council (ADC) for individual pattas (land titles) over the forest.

The village council filed a petition requesting the ADC not to issue pattas over community land. The ADC, however, issued pattas over the entire forest to 13 individuals, saying it received a letter from the village council withdrawing its objections. RTI was filed by Village Council in which it was revealed that those 13 individuals had sold the forest to Donush Siangshai, a coal baron. It did

not take much time for Umkyrpong residents to realise that their forest has been grabbed for coal mining.

That particular contains about 576 million tonnes of coal, which is enough to sustain the economy of State for 10 years. Digging the coal mine on its own is a tough procedure and costly too therefore State exempted the mining there. Taking the advantage of the exemption Coal mafia's adopted an indigenous method, rat-hole mining. People dig up to 50-metre-deep pits on the hills till the coal seam is reached. From there horizontal tunnels are made through which a miner crawls to dig out coal. Coal mafias and the elites in the community took advantage of this exemption. Coal production in the state increased from 3.3 million tonnes in 1995-96 to about 6 million tonnes in 2009-10, show data based on royalty received by the government.³¹

1. The state does not have proper records of land titles or deeds and customary practices, dubious land deals became the order of the day. Community-owned land became easy targets.
2. The miners just buy coal below the land by making a one-time payment and tell the land owners that the top soil belongs to them.

10 years back this place was a peaceful land but now what pervades is war.

CONCLUSION

After the colonization was over the West adopted another method to grab the natural resources situated at the remotest corner of the world via WTO Agreement. In India, the problem of indigenous people got more aggravated after liberalization and privatization era. Indigenous people across the globe are being alienated from their lands (and natural resources) and losing their traditional culture, knowledge and lifestyle. This is what happens when the money power rules the world; not the principles of human justice or equity. Consumerism is now a part of life, one is not satiated with what he possess and inquisitiveness to acquire more and more has made us insensitive towards "others problem". But somewhere we have neglected that these people have not only

³¹ *Supra* Note 28

maintained and preserved their culture and tradition but also helpful in maintaining ecological balance.

One of the basic necessities for human survival is land, apart from food and shelter. But how can one ensure food or shelter if land is not there. Out of these three amenities we can safely say that land is the most important one. Imagine, if one day the land where you are living is snatched away from you, and you no longer are liable to assert your rights over it. This was a small example of individual right, but where community right is at stake. This picture envisages bigger problems.

Indian Constitution under various provisions provides benefits, exemptions and acknowledges the rights of indigenous people. Even various International agreement like UNDRIP protects the right of indigenous people.

Despite of all the protection the fate of these people are decided by state as well as non-state actors and mostly by mafias and illegal encroachment. Like in North Eastern part Coal mafias and undue recognition given by central government over oil and natural resources. In Chhatisgarh, Jharkhand the illegal land acquisitions for mining, setting up of industries etc.

These so called “developmental” activities, which do not confer any direct benefit to the tribals, merely leave them landless and without means for survival. Monetary benefits do not really count when the lifestyle for generations is changed irreparably. *Displacement from their traditional habitations leaves them under acute trauma and uncertainty – there is institution in India that is interested in alleviating indescribable human sufferings of the tribals left to struggle for survival with any dignity.*

Article 46 of the constitution places an obligation upon States to promote the interests of Scheduled Castes and Scheduled Tribes and protect them from social injustice and all forms of exploitation. It must be mentioned that displacement of tribals from their lands amounts to violation of the Fifth Schedule of the Constitution as it deprives them of control and ownership of natural resources and land essential for their way of life.

The long and never ending battle for protection from illegal activities and asserting their rights over those lands is the matter in conflict. **The battle for Niyamgiri may be won by Odisha’s**

Dongria Kondhs and the Baiga tribe of Madhya Pradesh may have become the first indigenous people to get habitat rights in India after a century-long struggle. Recognizing their rights to forest areas and forest management practices is critical to understand their struggle for survival.

SUGGESTIONS

1. Enough decision making power must be given to the indigenous people to take their decision regarding “land and related rights”.
2. The Government relying on BITs must be relaxed to a greater extent because this instrument has led to the social and economic exploitation of the indigenous people.

The problem with BITs in India³²:

- a. None of the 80-plus BITs signed by India contains even a single provision on the rights of tribals. If India is going to renegotiate its existing BITs, it should create a special exception for taking regulatory measures for protecting the rights of tribal people, in which case it should have a textual basis in the BITs to derogate from investment protection obligations under BITs.
 - b. The strengthening of BITs must go hand in hand with the implementation of domestic legislations for the protection of the rights of tribals, where the state does not consider tribals as impediments in the development process.
 - c. As far as possible, tribal people should be given representation even in investment policymaking.
3. Promotion and preservation of Traditional knowledge prevalent within the community, because traditional knowledge is something which falls under the domain of law especially under the ambit

³² Pushkar Anand & Amit Kumar Sinha, “Protecting Rights Of Tribal”, The Hindu, February 27, 2017 02:15 Ist

of “patent laws”. Government’s role should be to protect the resources and traditional knowledge rather than to insist on capturing even the last frontiers of the indigenous people.

4. Every country which is a party to the CBD is supposed to form a National Biodiversity Action Plan and they need to protect traditional knowledge of indigenous people and local communities. India adopted National Biodiversity Action Plan in 2008, therefore, becomes more responsible towards indigenous people.

5. For these people “land” is not just the means of survival and sustenance but they have given the status of “mother” to their land. And utmost respect to the mother cannot be confined in the text or legislation.

6. There is a need for scientific discourse on the impact of climate change on species that grow in the wild and are used by indigenous people living close to forests. These tribal communities have traditionally controlled vast tracts of land and its resources, such as forests and coal, through well-established community institutions

Right now, protection to be given to the indigenous people is the cause of conflict for government and people but when the instruments developed like provisions under international and national government guarantees the protection what it posits then surely, it will create the social equality.