

NEED FOR DEVELOPMENT CASTING A SHADOW TOWARDS RIGHTS OF INDIGENOUS PEOPLE

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INTRODUCTION

The rights of indigenous people have recognized from over the past three decades in international law and policies because of the movement driven by them. The international movement driven by indigenous men and women during 1970s together at national and international level become the reason for recognition of their human rights. Their rights get recognized so that one can avoid the reoccurrence of the situation of red Indians in America and aboriginal in Australia.

The United Nations human rights system is playing an important in recognition of rights of indigenous people. They incorporated many bodies such as United Nations Working Group on Indigenous population for implementing rights of indigenous people. One of its main achievement was the General Assembly adoption in 2007 of the United Nations Declaration on the Rights of Indigenous people, which by 2010 was accepted by majority of states of United Nations and opposed by none¹. Every year, 9th august is regarded as indigenous people day.

Therefore this research paper explains who are indigenous people and what are the rights which are grant to them. And how their human rights are getting violated. Also why it is important to protect their human rights.

STATEMENT OF THE PROBLEM

This research work is mainly based on identifying the human rights of indigenous people and their position in the society. This study is ultimately exercised to know what are the rights grant to indigenous people and the way these rights are implementing so that problem of indigenous people can be solved. It comprises of detailed study of the rights of indigenous people which are granted to them through different conventions and declaration. This research work contains the position of indigenous people in 1970s and the efforts taken at international level so that

¹ <http://www.ohchr.org/Documents/Publications/fs9Rev.2.pdf> (last visited 2 February,2018, 20:00 p.m)

their problem can be solved. In old times they did not get any rights and therefore, it became an extreme necessity to take necessary steps so that their rights can be recognized. A number of conventions and declarations were made which provide them various kinds of different human rights which will be discussed in brief in this research work. The number of steps were taken by government so that they can get recognition in society. The study also contains the position of indigenous people in India. Apart from that, it has finally concluded that where governments of countries are lacking behind due to which their rights are getting violated.

OBJECTIVES

The study was encouraged to accomplish the following objectives:

- To list the number of rights which are granted to indigenous people through declarations and conventions.
- To highlight the importance of rights of indigenous people at the international level.
- To cover provisions laid down in the constitution of India regarding rights of indigenous people.
- To identify the causes of the demolition of human rights of indigenous people in India.
- To explain the concept of indigenous peoples, and the reason behind the recognition of their rights.
- To cover all possible and positive steps taken in protecting human rights of indigenous people.

HYPOTHESIS/ RESEARCH QUESTIONS

- What was the main motto that elevated the requirement for the recognition of rights of indigenous people?
- Whether problems of indigenous people were solved or not after granting them their human rights.
- How far it helped indigenous people so that their culture can be protected?
- What were the effective measures taken at the international level so that indigenous people can get their rights?
- Whether the condition of indigenous people improved or not with time?
- Whether the organs which are set up for implementing rights of indigenous people were performing successfully or not?

- Whether Indian govt. was successful or not in solving the problem of indigenous people or not?

RESEARCH DESIGN

Hard work has been made to undertake the study of how human rights of indigenous people are getting violated. The researcher has undertaken the study of both primary as well as secondary sources.

I began my research on the internet by using Google to get an understanding of exactly what I would be discussing. I have gone through several journals to understand about the other people's opinion on my topic. I have also gone through some relevant books for information pertaining to Human rights and rights of indigenous people. The primary and secondary method of study have been adopted in preparing this research paper. The primary methods contain the provisions of various declaration and conventions on rights of indigenous people and also acts passed by parliament to implement this rights. This research work is concerned with some legal problem, issue or question and therefore legal research method has been adopted. . The researcher, has not primarily but referred to some online sources that are available for the purpose of research work on the subject of human rights. Through all of these resources, I was able to gather the information needed in order to justify my argument.

LIST OF ABBREVIATIONS

&:- and

A.C.:-Appeal cases

A.I.R.:-All India reporter

Anr.:- Another

ASEAN :- Association of Southeast Asian Nations

Asst.:- Assistant

Edn.:- Edition

Eg:- Example

Govt.- Government

HR :- Human Rights

ILO:- International Labour Organization

Ltd.:- Limited

Pg.:- Page no.

SC:- Supreme Court

US- United States

UN :- United Nations

UNDP :- United Nations Development Program

WHO ARE INDIGENOUS PEOPLE

Indigenous people spread worldwide and comprises of almost 300-500 million, and covers almost 80% of the worlds cultural and biological diversity, and occupy 20% of the worlds land surface.² Indigenous people are live in almost every countries of the world and comprises of traditional hunter gatherers, farmers, legal scholars. They are mainly concern with protecting their culture and land. They work for self determination. Also there is not appropriate definition to define indigenous people. They are mainly the persons who determine their own identity. The United Nation Permanent Forum on indigenous people defines them as the persons who have strong connection with land and natural resources. Also, the posses different social and political culture which usually makes them different. Indigenous peoples are also called by different names such as first peoples, aboriginal peoples or native peoples, because they are considered as original inhabitants of that land.

² <http://hrlibrary.umn.edu/edumat/studyguides/indigenous.html> (last visited 2 February, 2018, 21:00 p.m)

CONDITIONS OF INDIGENOUS PEOPLE IN 1970s

Wherever indigenous people live, they are considered as the most helpless gatherings. They are politically underestimated and encounter social, social and monetary segregation. Therefore, poverty rates among indigenous people groups are much higher than among the "standard" people. In various nations, indigenous people suffers from various types of cruelty, for example, forced evictions, violence, harassment, the destruction of their livelihoods and direct or more subtle pressure to assimilate.

In America, the red Indians or native Americans were considered as indigenous people and suffers from various atrocities. There are numerous examples of native American genocide by European colonists and later on by United States government. Their lands were taken by government and they sent far away from their ancestral property. Government don't permit red Indians to go to schools and become educated. Also, women of this tribes were suffering from the molestation and sexual harassment.

In Australia, the case of stolen generation was very much prevalent. The children of aboriginal were forcibly taken from their native places to different places without consent of their parents so that they can perceived civilized heritage not the cultural and values of aboriginals. Aboriginals often face violence and are marginalized from society.

RIGHTS OF INDIGENOUS PEOPLE

Due to various kinds of atrocities faced by indigenous people, they all come together and drive a movement so that their rights can get recognition. The movement was drive by women and man together so that their human rights of indigenous people get recognition. To recognize rights of indigenous people many treaties were signed, declarations were made. The international instrument signed for recognition of rights of indigenous people are discussed as follows-

- **THE UNITED NATION DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLE**

The Declaration on the Rights of Indigenous Peoples was enacted by the United Nations General Assembly on 13 September 2007. The states which are in favour are 144, 11 are absent and four States stood against³.

Article 2 of the Declaration on the Rights of Indigenous Peoples states that “indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.”⁴ Some of the most important rights granted by declaration are-

Right to self determination which means they are free to decide their political point of view and their social and economic culture. They are granted with the right to preserve their land, resources and territories which mean no one can take their lands from them.

The declaration identifies economic, social and cultural rights. The provisions of this declaration and ILO Convention 169 grants right to health, housing, security, education, employment and to live a standard life to indigenous people.

Also it recognizes collective rights and equality and non-discrimination. No person can be discriminated on the basis of caste, complexion, race, and place of birth.

- **ILO CONVENTION CONCERNING INDIGENOUS AND TRIBAL PEOPLES, 1989 (No. 169)**

It is mainly concerned with protecting them and also grants them right to health, employment, education and live adequate life. It provides responsibilities to government for protecting human rights of indigenous people.

- **UNIVERSAL DECLARATION OF THE HUMAN RIGHTS (1948)**

Every person is entitled to the rights of the Declaration which states that, “no distinction of any kind, on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁵

³ <http://www.ohchr.org/Documents/Publications/fs9Rev.2.pdf> (last visited 2 February, 2018, 21:30 p.m)

⁴ https://www.un.org/esa/socdev/unpfi/documents/BriefingNote6_GREY.pdf (last visited 2 February, 2018, 22:00 p.m)

⁵ Article 2, Universal Declaration of Human Rights

- **CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE (1951)**

Genocide means any of the following acts which have the intention of destroying, in whole or in part, a national, ethnical, racial or religious group: “killing members of the group; intentionally giving them serious bodily injury or mental harm to members of that particular group; imposing measures intended to prevent birth within the group; forcibly transferring children of the group to another group.”⁶

- **CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN**

This convention was made to eliminate every type of discrimination in work place and also to stop violence against women.

CONDITIONS OF INDIGENOUS PEOPLE TODAY

Despite of various steps taken by government of various countries at international level still human rights of this people are violating. Some of rights which are violating are as follows:-

1. Their culture is threatened
2. They face discrimination as they cannot adapt to the modern way of life
3. They live in geographically isolated places and do not have access to amenities
4. Their interests are not included in the national policies

The main reason of violating the human rights of indigenous people is because of abstract poverty which they faced. Poverty is the overarching theme if you will see that affects indigenous peoples when it comes to health, education, our youth, our women. It affects

⁶ Article 2, Convention on the prevention and punishment of the crime of genocide

everything across the board. These is because they did not have enough resources to fulfill their needs.

POSITION OF INDIGENOUS PEOPLE IN INDIA

India has the largest number of indigenous people compare to other parts of the world. Due to this India is facing large number of problem in implementing the policies. Indigenous people face severe problem in India related to health, education and other basic services and often live in fragile eco-systems that are threatened by increasing commercialization and over exploitation. Different terms are used to describe indigenous people like hill tribes, adivasis, and some use backward classes. In India both govt. at central as well as state made many laws for protecting rights of indigenous people but most of them are ineffective in practical manner.

Indian constitution confers various kinds of rights to indigenous to protect their interest such as education and cultural rights (article 29). Also various laws were enacted such as the Untouchability Act, 1955.

The case of Narmada bachao andolan was the best way to recognize the rights of indigenous people. In that case social movement was drive by adivasis, farmers against the built of sardar sarover dam. The reason for starting this movement was to protect trees and to preserve their lands in which they live because almost 2,50,000 people were displaced from their land. Due to building of these dam their rights are getting violated because of these initially supreme court ordered to stop work but later on allow the same with some conditions which has to be fulfilled.

CONCLUSION AND SUGGESTIONS

This research paper concludes the whole condition of rights of indigenous people. It shows that the reason of recognizing the rights of indigenous people at international level. It talks about the movement which was driven by indigenous people so that their human rights get be identified at international level. This was mainly done to avoid the situation which occurs with red Indians and Australian aboriginals. In past decades, indigenous people were suffers from various types of atrocities such as they faced forced evictions, violence, harassment, the

destruction of their livelihoods and direct or more subtle pressure to assimilate. Due to which the united nation declaration of rights of indigenous people was signed in 2007 with 144 parties in favour of it so that their rights can be implemented. Many organs were setup to implement rights of indigenous people such as **UN Working Group on Indigenous Populations** and **UN Permanent Forum on Indigenous Issues** which help in implementing social, economical and political rights of indigenous people.

Every person who is considered as indigenous people is entitled to all universal individual human rights as well as collective rights which are given to indigenous people. Human rights are first and foremost individual rights. Like all human beings, indigenous peoples are also entitled to all the rights which are enshrined in the Universal Declaration on Human Rights and the subsequent international and regional human rights treaties.

Despite of making various conventions, declarations and treaties the problem is not solved. Today also rights of indigenous people are not fully implemented and they suffer from discrimination and their culture is threatened. The main reason of violating human rights is because of abstract poverty they are facing. It is indeed true government take various steps to solve this problem. Despite these positive developments in international forums, many indigenous people still live in very difficult circumstances. In many countries, indigenous peoples are largely excluded from political, economic and cultural life, and indigenous groups have a lower score than other population groups on many standard of living indicators, for example health and education. Indigenous peoples are also particularly vulnerable to the impacts of global climate change and the increasing pressure on the world's natural resources.⁷

To solve these problems it is necessary that the rights will implement in a proper way. Everyone should be aware of their rights. Anyone who spreads discrimination or accused of any offence like genocide must be punished. The government of nations must keep watch that the implementation was done in proper way or not. The scheduled tribes who are not aware of there human rights would be benefited if they come to know about the same. To spread awareness and promoting human rights media plays an important role. These problems can

⁷ <https://www.regjeringen.no/en/topics/foreign-affairs/human-rights/ny-struktur/urfolks-menneskerettigheter/id2008690/> (last visited 3 February, 2018, 10:00 a.m.)

only be overcome if people themselves stop discriminating on the basis of place of birth and caste.

