

# **Indigeneity, Anthropology and the Indian Tribes: A Critique**

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## **Abstract**

Indigeneity concept is central to discussions of political and legal rights of indigenous people. It is argued that there are enough evidences which demonstrate that India's tribespeople are 'the' indigenous people of India, who are forced to remain marginalized. Despite India's defiance in global forums, India's apex Supreme Court has recognized in a 2011 verdict 'scheduled tribes' as the 'indigenous people of India'. Recently, some scholars have viewed indigenous movements from the prism of 'Adivasi' movements. It is construed that neither the indigenous nor the Adivasi nomenclature is realistic enough to scaffold all India narrative. Adivasi populace has restricted peninsular presence. We find neither any single national 'Adivasi Movement'; nor any national indigenous political front. In anthropology too the ethics and the indigeneity definition discourses have created impasse and dilemma. Author recommends bringing 'strategic essentialism' of indigeneity within anthropological advocacy paradigm as a political tool for empowering the marginalized tribes.

The transnational concern over indigenous people and their rights has led to extensive debate surrounding 'indigeneity' in recent years. Even though many nation-states do not identify their native, aboriginal and tribespeople at par with 'indigenous people' as characterized in UN circle, especially in Asia; the tribespeople everywhere now employ 'indigeneity' variously to stress their cultural, political, and economic exploitation and historical injustices. Indigeneity has thus emerged as a leading political tactic in the counter-hegemonic resistance against exploitive regimes throughout the world. Keeping these perspectives in view, this critique explicates the chronological growth of the idea of indigenous people together with indigeneity on global stage, involvement of various international outfits supporting indigenous 'collective' rights, and the increasing engagement of the anthropologists in the indigenous movements, in various capacities. In Asian nation-states including India, we find strategic rejection of the notion of 'indigenous people', even though most Asian countries have sizeable sections of people who are legitimate indigenous people with diverse historical antecedents. Such groups have been sidelined in most countries and turned into subalterns, as in India. The fact that the tribes of India are India's undisputed indigenous people has been established in many new ethnographic-linguistic writings including genetic-genomic findings; and in recent years the Indian judiciary has proclaimed this fact forcefully in some vital judgments, even though they collide concurrently with state policy and skeptical historical narratives

of dominant communities<sup>1</sup> This article further seeks to explain these issues by highlighting the predicaments of Indian tribes in larger global scaffold as also in the aftermath of Indian state's purported proactive social protection initiatives, which seem to have only complicated the indigenous rights issues.

### **Indigenous People and Indigeneity: Global Declarations and Legal Reinterpretation**

The recorded history of indigenous peoples in the UN is traceable since 1982 when the Working Group on Indigenous Peoples was established by a decision of the United Nations Economic and Social Council. It completed a draft declaration on the rights of indigenous peoples in 1993. In the meantime, International Labor Organization came forward with a definition characterising indigeneity, especially through the Convention 169 on 'Indigenous and Tribal Peoples' (ILO 1989). The UN Permanent Forum of Indigenous Peoples was created in 2001 with a broad mandate to deal with six main areas: economic and social development, culture, the environment, education, health, and human rights. It was followed by United Nations Declaration on the 'Rights of Indigenous Peoples' (General Assembly; 13 September 2007). The document emphasized the rights of indigenous peoples to maintain and strengthen their own institutions, cultures and traditions, and have the right to self-determination, so that they can freely determine their political status and pursue their development. They have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their rights to participate fully, if they choose to, in the political, economic, social and cultural life of the state. The Declaration addresses both individual and collective rights, cultural rights and identity, rights to education, health, employment, language, and others. UN Declarations are generally not legally binding; however, they represent the dynamic development of international legal norms and reflect the commitment of states to move in certain directions, abiding by certain principles. The Declaration indeed establishes an important standard for the treatment of indigenous peoples and support them in combating discrimination and marginalization (<http://www.un.org/esa/socdev/unpfii/en/declaration.html>).

The United Nations Permanent Forum on Indigenous Issues has decided not to adopt any formal definition and to present self-identification as the ultimate criterion. Indigenous people are therefore, ultimately, those who claim to be indigenous—a solution that is as satisfactory as one could imagine within the current nation-state-dominated international 'constitution'. Second, it is problematic to have the recognition of indigenous people controlled by an international body.

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<sup>1</sup> Tribespeople of India are referred as *vanvasi* (forest dwellers) by the *Sangh Parivar*, which is ideologically committed to *Hindutva*. The Sangh Parivar's effort to recast Adivasis as *vanvasi* is a critical component of the ideological project of *Hindu Rashtra*. The reason why the Sangh denies Adivasis the status of the original dwellers is that it runs counter to its own claim that the Aryans, who brought Vedic civilization to the country, are the original inhabitants of the land (Philip, A.J., 'Hindutva, the lexical way: Delegitimizing the Adivasi', © *Indian Express*, 1999; 'Adivasi vs Vanvasi: The Hinduization of Tribals in India', *Outlook Magazine*, November 20, 2002; <http://www.outlookindia.com/article/Adivasi-vs-Vanvasi-The-Hinduization-of-Tribals-in-India/217974> ).

The term 'indigenous' has also become part of legal discourse, since global agencies regard 'indigenous peoples' rights' as part of 'international customary law', visualized through international legal instruments. The 1948 Universal Declaration of Human Rights and the two International Covenants of 1966 (one on Economic, Social, and Cultural Rights, the other on Civil and Political Rights) list the rights of individuals vis-à-vis states. Current debates within this conceptual framework concern the legitimacy of religious or other cultural norms as sources of individual rights and legal claims. Current debates within this framework concerns the sort of 'external protections' (self-governance, specific economic rights, language protection) necessary to ensure real equality, and the extent to which one ought to permit social norms that would not be permitted in the wider society—for example, those which discriminate against women—to be enforced within a minority group (Bowen 2000). Convention No. 169 is an international legal instrument that broadly sets forth binding provisions for the protection of indigenous peoples' rights, inspired by respect for their cultures, ways of life and traditional forms of organization. It also establishes specific mechanisms by which states are to carry out their obligations in this regard. Convention No. 169 also recognizes the right of indigenous peoples to use their own customs and customary law to deal with their affairs and resolve their conflicts. Right to land and territory is ensured in the Convention No. 169. Widely accepted working definitions of the term 'indigenous people' within the international discourse thus emphasize four criteria, namely first-comer, non-dominance, cultural difference and self-ascription (Saugestad 2001: 43). These definitions reveal 'indigeneity' to be a variant of collectivized-autochthonous ethnicity that has been marginalized by dominating later-comers, who are running, the state, in which the indigenous discrimination take place. It was expected that potent resistance to the international indigenous project will come from strong nations. Thus, in 2007, the only four voting countries to reject the international indigenist 'Declaration on the Rights of Indigenous Peoples', were Australia, the United States, Canada, and New Zealand. Previously they had opposed it over 30 years. Although the staunch resistance to the international indigenous mission came from these countries; fact remains that the very international perceptions of what 'indigeneity' is and who 'indigenous peoples' may be came from these countries (Merlan 2009). Unsurprisingly, the themes of 'first occupants of a country', and 'landownership', issues of 'autonomy' and 'self-determination', inextricably linked with indigeneity, were seen as admonition.

The rights of indigenous peoples are considered 'collective' rights, which belong to them as peoples and collective subjects, as well as 'original' rights, since they hold 'historical' rights predating the nation-states.<sup>2</sup> This recognition is based on what some authors have called a 'legal order of diversity' (UNESCO-UNI 1991-59) in which nation-states recognize their multiethnic and multicultural character. Unfortunately, however, in most of the countries with indigenous populations, the relationship has been marked by confrontation—a confrontation between the indigenous organizations that seek respect for cultural diversity and territorial rights, and the repressive governments. Governments

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<sup>2</sup> James Anaya has discussed all the latest treaties in the international law of indigenous peoples which promise their collective rights (Anaya, S. 2004).

seek integration of indigenous populations into the schemes of the dominant unitary culture, and the nation's social, political, and economic models are injected into indigenous peoples' traditional territories by state projects. There are more than 370 million self-identified indigenous peoples in some 70 countries around the world (<http://www.ifad.org/english-indigenous>).

The word 'indigeneity', like its near-synonym 'aboriginality', forms an abstract noun from 'indigenous people'. The Oxford English Dictionary defines 'aboriginality' as 'the quality of being aboriginal; existence in or possession of a land at the earliest stage of its history'. In a similar way, 'indigeneity' is derived from 'indigenous', which means 'born or produced naturally in a land or region; native or belonging naturally to (the soil, region, etcetera)' from *indu*, an old Latin root meaning 'within' (Waldron 2003). Jeremy Waldron (2003) argues that if aboriginality is the 'quality of being aboriginal', then indigeneity can be defined as 'the quality of being indigenous', which itself describes the quality of being born or produced naturally in a land or region. In 1991, the World Bank defined Indigenous Peoples being those identified in particular geographical areas by the presence in varying degrees of the characteristics such as close attachment to ancestral territories and to the natural resources in these areas; self-identification and identification by others as members of a distinct cultural group; an indigenous language, often different from the national language; presence of customary social and political institutions; and primarily subsistence-oriented production (McGuinne 2014 web). Autochthonous is another term often used within United Nations circles, as synonymous with indigenous. Indigeneity and autochthony have in common a reference to a supposed primo-occupancy and cultural specificity as a basis for specific rights, maintaining cultural specificity, leading in many cases to demand for self-determination.

### **Indigeneity, Indigenous Advocacy and Anthropological Dilemma**

History of anthropological indigenous advocacy is traceable to the incident of 'Amazon genocide' on indigenous people, which had alarmed several anthropologists, who came forward to establish the International Work Group for Indigenous Affairs (IWGIA) in 1968, which is now a foremost platform for advocacy anthropology. Today indigenous peoples from all over the world are involved in IWGIA's global network ([www.iwgia.org](http://www.iwgia.org)). In recent decades much of anthropology's interest in local, native, autochthonous peoples has been framed in terms of indigeneity, whereby local movements revolving around race, ethnicity, or religion, have come to be seen as indigenous rights movements. Niezen (2003) attributes the origins of international 'indigenism' to the intersecting development of identity politics and universal human rights laws and principles. Other analyses focus on the delocalizing impact of modernity (Appadurai 1996, Giddens 1984). In the meantime several reputed anthropological journals such as *Current Anthropology*, *Anthropology Today* and *Social Anthropology* have brought out special issues on theme of indigeneity, reflecting emerging concerns. Adam Kuper (2003), initiated a debate with his article 'The Return of the Native', published in *Current Anthropology*, in which he presented the term 'indigenous' as a sheer remnant of the nineteenth century evolutionism, a more politically correct equivalent of the terms 'primitive' and 'native'. He proposed that the term should be abandoned, provoking passionate protest from many other anthropologists, who often

employ indigeneity to advocate the rights of several dispossessed groups (Kenrick and Lewis 2004). Alan Barnard stressed on the term's validity, as a relational, legal concept – 'a useful tool for political persuasion' – and a concept that is contingent historically and situationally, and not capable of being captured within one nomothetic definition (Barnard 2006).

There was an extended debate countering Kuper's perspective and, more generally, the whole question of indigeneity in *Anthropology Today* (2002–2004). Trond Thuen and Barnard strongly argued that Kuper's accusations are misplaced and pointed out the need for anthropologists to focus instead on the shifting relationships between indigenous peoples and the governments and majorities in their countries. Evie Plaise argues that any attempt to separate legal from anthropological understandings of the term 'indigenous' is impractical. Many scholars have indeed argued that indigenous identity itself was a product of historic political processes. Drawing on the work of cultural theoretician Stuart Hall (1996), Clifford (2001) and Li (2000) suggested that one way to elide this debate over authenticity is to focus on the articulation of indigeneity. These developments have made 'indigeneity' a central issue for contemporary social anthropology, whereby anthropology requires continued engagement in a politics of critical solidarity with indigenous peoples. Writing in *Current Anthropology*, Andre Beteille (1998) critiqued the emotionalism of certain anthropologists whose 'state of moral excitation' is to blame for the idea of 'indigenous people'. In response to Andre Beteille's discomfort about the 'idea of indigenous people' (1998), John Brown Childs and Guillermo Delgado-P. (1998) countered that the development of the concept of indigenous people is not the result of any anthropological impetus; rather this concept has been forged by numerous communities of indigenous peoples themselves around the world. Indeed, anthropologists have constantly accompanied the UN's Working Group on Indigenous Peoples and other organizations and have contributed to make indigenous voices heard. Fact remains that the concern for indigenous people does open up 'ground upon which mutually respectful interactions of indigenous peoples and anthropologists can develop' (Varese 1996). Another commentator, Elizabeth Pesta (1998) argued that with regard to contemporary social problems, the designation 'indigenous' is often the basis from which legal and constitutional rights are defined, and from which social problems are addressed (<http://www.publicanthropology.org/archives/current-anthropology-1998>).

Kottak (1999) argues that anthropologists' personal witnessing of threats to their subjects imposes a moral responsibility, and Hodgson (2002) points out that the uneven topography of power in the world makes neutral representation by anthropologists impossible. Scholars such as Li (2000) have looked at the way agency is exercised in the articulation of indigeneity, which she says opens up room to maneuver that might otherwise be unavailable, even if some of the elements employed in this articulation are essentialized. Li (2000: 163) writes, 'the telling of this story [of indigeneity] in relation to Lindu or any other place in Indonesia has to be regarded as an accomplishment, a contingent outcome of the cultural and political work of articulation through which indigenous knowledge and identity were made explicit, alliances formed, and media attention appropriately focused'. Anthropologists have also highlighted the value of

indigenous environmental knowledge and conservation in the larger discourse of indigeneity, especially indigenous movements. Such anthropological association with indigenous rights movements and violence are welcome even though they 'challenge anthropological theory as well as ethics', as argued by Dove, who also suggests the importance of analyzing the contradictions inherent in the co-evolution of science, society, and environment (Dove 2006).

### **South/South-East Asian Linkage and India's Indigenous People**

There have been both rejection and strategic acceptance of the concept of indigeneity within Asian nation-states. Nepal has endorsed the global nomenclature of 'indigenous people' to classify a section of its people; though China, India, Myanmar, Indonesia, and others reject it (Li 2000; Tsing 2007; Merlan, 2009). There are an estimated 260 million indigenous peoples in Asia, making it the most culturally diverse region in the world. Asian indigenous peoples face problems, such as loss of control over land and natural resources, discrimination and marginalization, heavy assimilation pressure and, violent repression by state security forces. There are numerous indigenous insurgent groups seeking political self-determination and cessation. Several countries have legislations that protect the rights of indigenous peoples; nevertheless, these rights are systematically diluted, often ignored or overruled. In India, it is widely held that 'the peoples, whom the anthropologists call tribes, happen to be the indigenous, autochthonous people of India' (Ray 1972; Thapar 1966). Anthropologists, historians and linguists (Pattanayak 1998; Riskey 1915) generally accept that the Austro-Asiatic speaking tribes seem to be the original inhabitants of India. The Indian tribes speak over 700 languages belonging to language families of Austro-Asiatic, Dravidian and Tibeto-Burman. We witness a strong South Asia-South-East Asian linkage in linguistic and cultural spheres. The proto-Australoid tribes, who speak dialects belonging to the Austric linguistic group, are believed to be the basic element in the Indian population (Thapar 1966). Some other scholars (Buxton 1925; Sarkar 1958) have, however, proposed that the Dravidians are the original inhabitants. New genetic and genomic studies reveal the early ancestry of numerous Indian tribes, including tribes of the Andaman Islands. India has served as a major corridor for the dispersal of 'modern humans' out of Africa (Cann 2001).

The Indian subcontinent has been populated by a series of migrations propelled by significant technological innovations outside India since the first major expansion of non-African Homo sapiens, probably around 65,000 years before present. The likely major migrations include i) Austric language speakers soon after 65,000 ybp (years before present), probably from northeast ii) Dravidian speakers around 6,000 ybp from mideast with the knowledge of cultivation of crops like wheat and domestication of animals like cattle, sheep, goats iii) Indo-European speakers in several waves after 4000 ybp with control over horses and iron technology iv) Sino-Tibetan speakers in several waves after 6000 ybp with knowledge of rice cultivation. A notable feature of Indian society is the persistence of thousands of tribe-like endogamous groups in a complex agrarian and now industrial society. In this society populations of dominant groups have continued to grow, while those of subjugated groups may have stagnated most of the time (Gadgil et al. 1997). The archaeological evidences, based on stone tools from the Garo hills of Meghalaya, Northeast India, suggest that this region might have been inhabited as early

as in the Paleolithic period (Reddy et al. 2007). Northeast India is actually the crucial bridge between the Indian subcontinent and Southeast Asia and an important corridor for the initial peopling of East Asia. Indeed, Austro-Asiatic linguistic family dialects spoken by certain tribes in India, including Northeast India and entire Southeast Asia, they provide the signatures of genetic link between Indian and Southeast Asian populations. The genetic-genomic researches suggest that Austro-Asiatic Khasi from Northeast India represent a genetic continuity between the populations of South and Southeast Asia, thereby advocating that northeast India could have been a major corridor for the movement of populations from India to East/Southeast Asia (Das 2015).

Popular belief and some evidences point to the fact that many tribes were pushed into the hills after the invasions of the Indo-Aryan populations some 4,000 years ago. Myths and folklore of many tribes suggest that they had occupied much larger part of the subcontinent and they had independent existence until their territories were swamped by the dominant agricultural communities, earlier through normal incursions and later under the patronage of the British, who introduced several oppressive laws and regulations, and imposed taxes. As a result, there were numerous tribal revolts from the mid-nineteenth century onwards in several parts of eastern India. Nihar Ranjan Ray observed that the indigenous people had long settled in different parts of the country before the Aryan-speaking people penetrated India to settle down first, in the Kabul and Indus valleys and then within a millennium and a half, to spread out in slow stages, over large parts of the country and push their way of life and civilization over practically the entire area of the country along the plains and river valleys (Ray 1972).

Most of Indian tribes live in rural areas; many occupy remote hills and also the islands. In most places they profess old 'primitive economy'. Indeed, more than ten per cent tribes pursue shifting cultivation and hunting-gathering. The government of India refers to the tribes of India as 'Scheduled Tribes'. These tribes since 1950 have been enlisted so based on a 'notification' by the President under Article 342 of the Constitution of India. The characteristics considered for official 'notification' are 'primitive traits', 'distinctive culture', 'shyness with the public at large', 'geographical isolation', and 'backwardness'. Seventy-five 'most primitive' tribes, are now called in official jargon as 'particularly vulnerable tribal groups', following the recommendation of historically innovative Forest Rights Act, 2016. The tribes of India inhabit most parts of the country (except Punjab, Haryana, Delhi, Chandigarh and Puducherry (Pondicherry)). It is in parts of eastern, central and western India, where tribespeople are recognized as Adivasis. In view of their habitation in hills areas they are called as girijan and vanvasi/vanyajati or 'forest dwellers' (Srivastava 2010). However the foremost concentration of tribes is found in the north-eastern states (Assam, Manipur, Nagaland, Mizoram, Tripura, Meghalaya, Sikkim and Arunachal Pradesh). Most of these are tribal dominant states. The Anthropological Survey of India identified and located 635 distinct tribes in India. People of India project (1985-1995) identified 461 main tribes and 172 segments/minor tribes. Some territorial segments were also included. Hence, People of India project reported about 635 tribes (Singh 1994). This taxonomy was not based on census enumeration and administrative identification as 'scheduled tribe'.

## Indigenous Rights, Multiple State Initiatives and Disastrous Implementation

Indian state policy towards Indian tribes has been proactive since Indian independence and thus a mix of constitutional and budgetary instruments, followed by welfare and social protection initiatives have been in place. Nevertheless, the tribal areas suffer from scarcity, and the tribes, in general, have no access to basic health services and their number is declining due to poverty, malnutrition, ignorance on health care, and illiteracy. They have low literacy, high mortality, and poor hygiene. They are mostly unemployed that they migrate to urban centers in search of work. The poverty headcount index for the tribes fell by 31 percent between 1983 and 2004–05 (Das and Mehta). It is incorrect to claim that the tribes of north-east, since they have gained from education, have any better economic status, compared to tribes living as marginalized groups in most parts of central, eastern and western states. The Constitution of India provides an array of affirmative action programmes for the tribes. There are numerous laws and special regulations for protection of indigenous rights and tribal customary laws. Most of the safeguards are enshrined within the Articles 15, 16, 17 and 23 of Indian Constitution. There are numerous special programmes for India's 'most primitive indigenous people', now termed as 'particularly vulnerable tribal groups'. The Sentinelese tribespeople of the North Sentinel Island of the Andaman Islands (India) will probably qualify for being the world's most 'isolated' and virgin 'indigenous people'.

Recognizing the symbiotic relationship between tribes and forests, the National Forest Policy, 1988 had made provisions to safeguard the customary rights over forest lands of tribes. In order to implement these provisions, the Ministry of Environment and Forest (MoEF) issued instructions to states in 1990, highlighting the specific rights over numerous subjects such as: a) forest habitation for self- cultivation for livelihood, b) community rights such as *nistar*<sup>3</sup>, c) right to own, use or dispose of minor forest produce, d) conversion of forest village to revenue village, e) conversion of *pattas* or leases issued by any local authority or any state government on forest land to titles, and f) other traditional customary rights. However, excluded from customary rights were hunting, trapping or extracting body parts of any wild animal. Tribes could not indulge in any activity that adversely affects wild animals, forests and the biodiversity in the local area. The legal condition required that such communities had occupied forest land before October 25, 1980 [The Forest (Conservation) Act, 1980 came into force on this date]. The Bill prescribed 2.5 hectares as the upper limit of forest land that tribal nuclear family

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<sup>3</sup> Nistar refers to land or forest area set apart as community land. Villagers have usufruct (*nistar*) rights over them to get necessities, which include timber and fuelwood, burial/cremation grounds, MFPS (minor forest produces), *gaothan* (cattle-shed), pasture/ fodder, and public uses such as schools, playgrounds, places of worship etc. The *nistar-patruk* details the terms and conditions for the use of *nistar* land. Under British regime there was systematic attempt to abolish the Nistar rights and bring all estate under British rule, the system continued due to a unique set of circumstances. In central India *Zamindars* were tribals themselves and hence continued the system of Nistar rights. The only difference was that in exchange of these rights people were forced to work as bonded labourers (*begar*) for the Zamindar. Nistar thus means the concessions granted for removal from forest coupes on payment at stipulated rates, specified forest produce for bona-fide domestic use, but not for barter or sale. The *nistar* rates were fixed earlier by the Forest Department for the special forest produce in consultation with the District Collector. Under FRA, 2006, such powers are reallocated to Village Councils.

may be allotted. However, the Bill did not specify the kind of evidence that a tribal would require to prove their occupancy of forest land before 1980 (Dreze 2005). The term 'community forest resource' was also not defined, and hence, it was not clear whether these included resources within government owned forests including National Parks and Sanctuaries. Despite assurance towards genuine protection of indigenous rights and tribal customary laws, as ensured in above regulation, the tribespeople could not establish their occupancy antecedence in most cases and as such the policy proved to be disastrous.

Tribes in postcolonial era were systematically deprived and dispossessed of fundamental rights and territories, despite proclamation of intermittent tribal policies, which included the establishment of tribal development blocks to address the specific needs of tribes. It was, only in 1996, with the passing of the Panchayat (Extension to Scheduled Areas) Act (PESA), that India's indigenous people were given substantive powers to regain their fundamental rights and territories. Thus, tribal gram sabhas were empowered to preserve their customary practices, their community resources, their modes of dispute resolution, and importantly the right to approve government plans, programmes and projects within their jurisdiction (Mukul 1997: 929). The gram sabhas were allowed to decide about minor forest produce collection as well as to recommend granting of mining concessions. Sadly, PESA was not taken seriously in many states to sincerely implement the provisions. At the same time, the interference of 'forest officials' had created major hurdles.

Jharkhand has had a long tradition of customary institutions of local governance, the legitimacy of which was recognized by various enactments in the pre-independence era, such as the Chota Nagpur Tenancy Act 1908, Santhal Pargana Tenancy Act 1949, among others. The introduction of the PESA was an attempt to extend modern democratic institutions of local governance amongst the Adivasi population in scheduled areas, while not totally replacing the traditional institutions. This had created a sharp divide between the votaries of traditional systems premised on customary Adivasi headmen and the statutory panchayats elected democratically – a divide noticed during the field study. This state of affairs was observed by author during short visits to tribal districts of Jharkhand and Odisha a few years ago.

### **Forest Rights Act, 2006 and Other Laws: Predicaments of Execution**

The passage of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (Forest Rights Act or FRA) is regarded as a watershed event in the prolonged struggle of the Indian tribes. For the first time in the history of India, the state recognized that indigenous rights had been denied to tribespeople for long, and hence FRA, 2006, was brought in to compensate the 'historic injustice' done to tribes of India. The FRA addresses the right to live in forestland for habitation or cultivation, right of access, use and sale of minor forest produce, and right to protect, regenerate, conserve or manage any community forest resource, amongst other rights (these rights can be claimed both as individuals and as a community). It provides tribal and other forest dwelling communities the assertion of tenure rights and addresses important livelihood security issues, while also stressing the rights and responsibilities of

forest dwellers in maintaining sustainable forest use patterns and the conservation of forest biodiversity.

There are two main features of FRA which address exactly the demands made internationally on behalf of all 'indigenous peoples', and which have immense positive potential in Indian context. First is the package of rights that includes the claim of the community over tenure, occupancy and management of forests. Second, the decentralized self-governance model that it mandates. The new law thus authorizes the lowest tier of local self-governance—the Gram Sabha—as the decision-making body in governance. The FRA thus provides protection to customary laws, and thereby the right of ownership, access to collect, use or dispose of minor forest produce; entitlements to fish and other products of water bodies, grazing (both settled and trans-human) and traditional seasonal resource access of nomadic or pastoralist communities; community tenure of habitat and habitation for primitive tribal groups and pre-agricultural communities; right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity (excluding any traditional right of hunting or trapping or extracting any part of the body of any species of wild animal). The Gram Sabhas have been made vigilant to—'protect the wildlife, forest and biodiversity; ensure that adjoining water catchment area, water sources and other ecological sensitive areas are adequately protected; ensure that the habitat of the forest dwelling scheduled tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage; ensure that the decisions taken in Gram Sabha to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity are complied with' ([www.kalpavriksha](http://www.kalpavriksha)). According to a statement of Kalpavriksh, overall, the FRA both in spirit and in letter reflects a significant paradigm shift in the way forest governance has been officially viewed in the country ([www.kalpavriksha](http://www.kalpavriksha)).

Although the FRA came into force on 1 January 2009, lack of proper implementation has deprived tens of thousands of tribes of their rights to forest land. According to the Ministry of Tribal Affairs, as of 30 September 2011, a total of 3,149,269 claims had been received, of which only 2,808,494 cases could be dealt with ([www.aitpn.org/IRQ/Vol-III/2-3/April - September, 2008](http://www.aitpn.org/IRQ/Vol-III/2-3/April-September,2008)). Then, there was problem of poor response in many states.

FRA, 2006 became applicable in the Northeastern states only theoretically. It is true that this act is inapplicable in Nagaland and Mizoram on account of Article 371 A & G, but other areas fall under it. In most instances, the official forests have been notified without proper settlement of rights required by law and therefore many tribespeople and traditional communities are unable to claim rights in them. In Tripura the Tripura Land Reforms and Revenue Act of 1960 recognizes only individual land. That is against the common property managed according to the tribal customary law. Thus, Tripura tribes lost more than 72,000 acres of their land. Lands were lost to migrants and government projects (Fernandes and Bharali 2010: 77). The tribal insurgency in Tripura is linked to loss of some 40 percent of their land (Bhaumik 2003: 84-9). Tribes of Tripura could hardly be rescued by the FRA, 2006.

In the meantime the central ministry of tribal affairs has notified the amended rules under FRA, 2006. The new rules, notified on September 6, 2012 further empower the committee constituted under the Gram Sabha to prepare conservation and management

plan for community forest resources after forest dwellers' rights on such resources are recognised. The Gram Sabha will approve all decisions of the committee pertaining to issue of transit permits, use of income from sale of forest produce or modification of management plans, say the rules. Besides, no committee or individual official at the panchayat, block or forest range level except the forest rights committee shall be eligible to receive, decide or reject the forest rights claims. (www.downtoearth.org).

Consequent upon implementation of FRA, 2006, Maharashtra government has further notified the Maharashtra Village Forest Rules, 2014, which can be seen as further amendment to FRA, 2006. Dilip Gode and eight others in their letter to editor, *The Telegraph*, informed that:

The FRA, 2006, is a historical initiative to empower tribes by giving them the ownership of forest resources, but the community rights vested in this piece of legislation does not cover the entire ambit. To address this anomaly, Maharashtra has notified Maharashtra Village Forest Rules, 2014. As per the provisions under Clause 10(G) of MVFR, absolute rights over trees, timber and firewood are given to the gram sabha. This clause allows the local community to harvest timber for their use and livelihood. Central government should, therefore, give the right to harvest timber species to the communities by making necessary changes to the forest rights act. The rights-holders are equally responsible for the management of forest areas. Hence they should be given equal rights over timber. The forest department should provide technical help to harvest timber to the gram sabha if the latter so requests. If any proceed is obtained from the sale of timber by the forest department, the same should be deposited in the account of the gram sabha within that financial year (Gode 2014).

Both PESA and the FRA fundamentally confronted the old power relations, especially the conventional state-industry nexus, and tried to shift greater power to the tribespeople. Regrettably, there continued the interference of 'forest officials', which retarded the pace of implementation. At district and state levels the larger bureaucratic hurdles further hampered the process of verification and decision making. It can only be presumed that the bold initiative undertaken in the shape of the Maharashtra Village Forest Rules, 2014 becomes an eternal solution and worthy of emulation in other states of the union to ameliorate the indigenous predicaments.

### **Adivasis' Right to Self-Governance and the Indian Judiciary**

The Indian judiciary has been at the forefront in protecting the rights of the marginalized sections of Indian society. The Indian judiciary is known for its proactive role in the political system. The new activism of the Indian judiciary has generated a belief in the public mind that the judiciary could be relied upon to ensure the rights of the citizens, and it is an alternative resort when the legislature and executive mechanisms fail. Thus, in an earlier judgment, known as the *Samatha* or *Samata Judgment*<sup>4</sup> enshrined

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<sup>4</sup> In the early nineties, Samatha, an advocacy and social action group working for the rights of tribal communities and for the protection of the environment in Andhra Pradesh, was involved in an apparently local dispute over leasing of tribal lands to the private mining industries. The tribal community wanted to regain control over their lands rather than work as labor force in the mining operations on their own lands. After losing the initial battle in the lower and High Court, Samatha filed a Special Leave Petition in the Supreme Court of India. The four year legal battle led to a historic judgment in July 1997 by a three-judge

in the Constitution (Fifth Schedule). Samata filed a Special Leave Petition at the Supreme Court. After a four-year legal battle, it won a historic judgment in 1997 which declared null and void the transfer of land in the Scheduled Areas for private mining, and upheld the Forest Protection Act of 1980 that prohibits mining in Scheduled Areas. The Supreme Court ruled that the state should adhere to the laws and principles governing the tribal areas. It also recognized the (73rd) Amendment to the Constitution and the Panchayat Extension to Scheduled Areas (PESA) Act, 1996 that recognized the competence of Gram Sabhas to safeguard community resources and reiterated the Adivasis' right to self-governance.

### **India's Supreme Court validates 'indigeneity' of Tribes of India**

The Indian government has not accepted the nomenclature indigenous people to classify the tribes of India. Despite India's defiance in global forums, India's apex

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Supreme Court bench. It was a land-mark judgment in favor tribal rights. It permitted the mining activity to go on as long as it is undertaken by the government, or instrumentality of state or a cooperative society of the tribals. The instrumentality of the state has been defined by the Court as organizations which are completely owned by the government or where the government or its agencies are the majority shareholders.

As per the verdict all lands leased by the government or its agencies to private mining companies are null and void. It however upheld that transfer of land to the government or its instrumentalities is entrustment of public property because the aim of public corporations is in public interest. The salient features of this judgment are:

1. As per the 73rd Amendment Act, 1992, '...every Gram Sabha shall be competent to safeguard....Under clause (m) (ii) the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawful alienation of land of a scheduled tribe'.
2. Minerals to be exploited by tribals themselves either individually or through cooperative societies with financial assistance of the State
3. In the absence of total prohibition, the court laid down certain duties and obligations to the lessee, as part of the project expenditure: at least 20% of net profits as permanent fund for development needs apart from reforestation and maintenance of ecology.
4. Transfer of land in Scheduled Areas by way of lease to non tribals, corporation aggregate, etc stands prohibited to prevent their exploitation in any form.
5. Transfer of mining lease to non tribals, company, corporation aggregate or partnership firm, etc is unconstitutional, void and inoperative. State instrumentalities like APMDc stand excluded from prohibition.
6. Renewal of lease is fresh grant of lease and therefore, any such renewal stands prohibited.
7. In States where there are no acts which provide for total prohibition of mining leases of land in Scheduled Areas, Committee of Secretaries and State Cabinet Sub Committees should be constituted and decision taken thereafter.
8. Conference of all Chief Ministers, Ministers holding the Ministry concerned and Prime Minister, and Central Ministers concerned should take a policy decision for a consistent scheme throughout the country in respect of tribal lands.

#### **Strong Opposition to the Judgment**

Needless to say, vested interests of powerful corporate houses and the political class joined hands to negate the Apex Court's verdict. Like PESA, the Samatha Judgment also became a hurdle in their "development" plans. In March 2000 the Supreme Court dismissed the petitions of State & Central governments for modification of the Samatha order. (<https://socialissuesindia.wordpress.com/2012/09/06/the-samatha-judgment-and-the-fifth-schedule-of-the-constitution/>).

Supreme Court has issued a pertinent verdict in 2011 in case of a woman of Bhil scheduled tribe, resolving to some extent the very controversy pertaining to indigeneity and especially the suitability of category of 'indigenous people'. The Supreme Court in its latest judgment on 5 January 2011 unequivocally asserted that Scheduled Tribes are 'indigenous people of India'. On 5 January 2011, it dismissed a criminal appeal, concluding its judgment with a call to address historical wrongs done to the nation's tribal peoples: 'It is time now', the Court noted, 'to undo the historical injustice' done to these people.<sup>5</sup>

This judgment of 5 January 2011 pertains to a woman victim, among others, who belong to the constitutionally recognized Bhil tribe. In 1994, three men and one woman—all 'powerful persons' in her village—stripped, beat, and kicked the pregnant Nandabai in her house. The four accused were convicted by the Additional Sessions Judge, Ahmednagar on 05.02.1998. However, the Aurangabad Bench of Bombay High Court acquitted the accused of the offence under Section 3 of the SC/ST Act, but the conviction under the provisions of the IPC was confirmed. However, that part of the order regarding fine was set aside and each of the appellant was directed to pay a fine of Rs. 5000/- only to the victim Nandabai (<http://www.achrweb.org/>).

The Supreme Court expressed surprise 'that the conviction of the accused under the Scheduled Cases and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was set aside on hyper technical ground that the Caste Certificate was not produced and investigation by a Police Officer of the rank of Deputy Superintendent of Police was not done'. The apex Court stated that 'the sentence was too light considering the gravity of the offence'. The Court went to state that 'The parade of a tribal woman on the village road in broad day light is shameful, shocking and outrageous. The dishonor of the victim Nandabai called for harsher punishment, and we are surprised that the State Government did not

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<sup>5</sup> On 5 January 2011, the Supreme Court of India dismissed a criminal appeal, concluding its judgment with a call to address historical wrongs done to the nation's tribal peoples. This judgment pertains to dismissal of the Criminal Appellate Jurisdiction arising out of Special Leave Petition (CrI) No. 10367 of 2010 (Kailas & Others ... Appellant (s) -versus- State of Maharashtra. The court dismissed the petition which sought acquittal of the accused who were convicted for atrocities against a young woman, Nandabai, 25 years old belonging to the Bhil tribe, which is a Scheduled Tribe (ST) in Maharashtra. She was beaten with fists and kicks and stripped naked by the accused persons after tearing her blouse and brassieres and then got paraded in naked condition on the road of a village while being beaten and abused by the accused. The four accused were convicted by the Additional Sessions Judge, Ahmednagar on 05.02.1998 under Sections 452, 354, 323, 506 (2) read with Section 34 Indian Penal Code (IPC) and sentenced to suffer rigorous imprisonments for six months and to pay a fine of Rs. 100/-. They were also sentenced to suffer RI for one year and to pay a fine of Rs. 100/- for the offence punishable under Sections 354/34 IPC. They were also sentenced under Section 323/34 IPC and sentenced to three months RI and to pay a fine of Rs. 100/-. The appellants were further convicted under Section 3 of the Scheduled Cases and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and sentenced to suffer RI for one year and to pay a fine of Rs. 100/-. However, the Aurangabad Bench of Bombay High Court acquitted the accused of the offence under Section 3 of the SC/ST Act, but the conviction under the provisions of the IPC was confirmed. However, that part of the order regarding fine was set aside and each of the appellant was directed to pay a fine of Rs. 5000/- only to the victim Nandabai. (*India Human Rights Report*, Issue-2, October to December 2010, <http://www.achrweb.org/ihrq/issue2/indigenous.html>).

file any appeal for enhancement of the punishment awarded by the Additional Sessions Judge’.

At the outset the Supreme Court observed that:

This appeal furnishes a typical instance of how many of our people in India have been treating the tribal people (Scheduled Tribes or Adivasis), who are probably the descendants of the original inhabitants of India, but now constitute only about 8% of our total population, and as a group are one of the most marginalized and vulnerable communities in India characterized by high level of poverty, illiteracy, unemployment, disease, and landlessness.

The apex Court thereon explained the history and plight of the Bhils in particular and indigenous peoples of India in general:

The Bhils are probably the descendants of some of the original inhabitants of India living in various parts of the country particularly southern Rajasthan, Maharashtra, and Madhya Pradesh etcetera. They are mostly tribal people and have managed to preserve many of their tribal customs despite many oppressions and atrocities from other communities. According to ‘World Directory of Minorities and Indigenous Peoples–India’, in Maharashtra Bhils were mercilessly persecuted in the 17th century. If a criminal was caught and found to be a Bhil, he or she was often killed on the spot. Historical accounts tell us of entire Bhil communities being killed and wiped out. Hence, Bhils retreated to the strongholds of the hills and forests. Thus Bhils are probably the descendants of some of the original inhabitants of India known as the ‘aborigines’ or Scheduled Tribes (Adivasis), who presently comprise of only about 8% of the population of India. The rest 92% of the population of India consists of descendants of immigrants. Thus, India is broadly a country of immigrants like North America. While North America (USA and Canada) is a country of new immigrants, who came mainly from Europe over the last four or five centuries, India is a country of old immigrants in which people have been coming in over the last ten thousand years or so. Probably about 92% people living in India today are descendants of immigrants, who came mainly from the North-West, and to a lesser extent from the North-East.

Since this is a point of great importance for the understanding of our country, it is necessary to go into it in some detail. People migrate from uncomfortable areas to comfortable areas. This is natural because everyone wants to live in comfort. Before the coming of modern industry there were agricultural societies everywhere, and India was a paradise for these because agriculture requires level land, fertile soil, plenty of water for irrigation etc. which was in abundance in India. Why should anybody living in India migrate to, say, Afghanistan which has a harsh terrain, rocky and mountainous and covered with snow for several months in a year when one cannot grow any crop? Hence, almost all immigrations and invasions came from outside into India (except those Indians who were sent out during British rule as indentured labour, and the recent migration of a few million Indians to the developed countries for job opportunities). There is perhaps not a single instance of an invasion from India to outside India. India was a veritable paradise for pastoral and agricultural societies because it has level and fertile land, hundreds of rivers, forests etc. and is rich in natural resources. Hence for thousands of years people kept pouring into India because they found a comfortable life here in a country which was gifted by nature. As the great Urdu poet Firaq Gorakhpuri wrote: *Sar Zamin-e-hind par aqwaam-e-alam ke firaq/ Kafila guzarte gae Hindustan banta gaya* (In the land of Hind, the caravans of the peoples of the world kept coming in and India kept getting formed).

Who were the original inhabitants of India? At one time it was believed that the Dravidians were the original inhabitants. However, this view has been considerably modified

subsequently, and now the generally accepted belief is that the original inhabitants of India were the pre- Dravidian aborigines i.e. the ancestors of the present tribes or advasis (Scheduled Tribes). In this connection it is stated in *The Cambridge History of India (Vol. I), Ancient India* as follows:

It must be remembered, however, that, when the term 'Dravidian' is thus used ethnographically, it is nothing more than a convenient label. It must not be assumed that the speakers of the Dravidian languages are aborigines. In Southern India, as in the North, the same general distinction exists between the more primitive tribes of the hills and jungles and the civilized inhabitants of the fertile tracts; and some ethnologists hold that the difference is racial and not merely the result of culture. Mr. Thurston, for instance, says:

It is the Pre-Dravidian aborigines, and not the later and more cultured Dravidians, who must be regarded as the primitive existing race...These Pre-Dravidians...are differentiated from the Dravidian classes by their short stature and broad (platyrrhine) noses. There is strong ground for the belief that the Pre-Dravidians are ethnically related to the Veddas of Ceylon, the Talas of the Celebes, the Batin of Sumatra, and possibly the Australians (*The Madras Presidency*, pp. 124-5).

It would seem probable, then, that the original speakers of the Dravidian languages were outsiders, and that the ethnographical Dravidians are a mixed race. In the more habitable regions the two elements have fused, while representatives of the aborigines are still in the fastnesses (in hills and forests) to which they retired before the encroachments of the newcomers. If this view be correct, we must suppose that these aborigines have, in the course of long ages, lost their ancient languages and adopted those of their conquerors. The process of linguistic transformation, which may still be observed in other parts of India, would seem to have been carried out more completely in the South than elsewhere. The theory that the Dravidian element is the most ancient which we can discover in the population of Northern India, must also be modified by what we now know of the Munda languages, the Indian representatives of the Austric family of speech, and the mixed languages in which their influence has been traced (p. 43). Here, according to the evidence now available, it would seem that the Austric element is the oldest, and that it has been overlaid in different regions by successive waves of Dravidian and Indo-European on the one hand, and by Tibeto-Chinese on the other. Most ethnologists hold that there is no difference in physical type between the present speakers of Munda and Dravidian languages. This statement has been called in question; but, if it is true, it shows that racial conditions have become so complicated that it is no longer possible to analyse their constituents. Language alone has preserved a record which would otherwise have been lost. At the same time, there can be little doubt that Dravidian languages were actually flourishing in the western regions of Northern India at the period when languages of the Indo-European type were introduced by the Aryan invasions from the north-west. Dravidian characteristics have been traced alike in Vedic and Classical Sanskrit, in the Prakrits, or early popular dialects, and in the modern vernaculars derived from them. The linguistic strata would thus appear to be arranged in the order—Austric, Dravidian, Indo-European.

There is good ground, then, for supposing that, before the coming of the Indo-Aryans speakers the Dravidian languages predominated both in Northern and in Southern India; but, as we have seen, older elements are discoverable in the populations of both regions, and therefore the assumption that the Dravidians are aboriginal is no longer tenable. Is there any evidence to show whence they came into India? ... In Google 'The original inhabitants of India', it is mentioned: 'A number of earlier anthropologists held the view that the Dravidian peoples together were a distinct race. However, comprehensive genetic studies have proven

that this is not the case. The original inhabitants of India may be identified with the speakers of the Munda languages, which are unrelated to either Indo-Aryan or Dravidian languages'. Thus the generally accepted view now is that the original inhabitants of India were not the Dravidians but the Pre-Dravidians Munda aborigines whose descendants presently live in parts of Chotanagpur (Jharkhand), Chhattisgarh, Orissa, West Bengal, etc., the Todas of the Nilgiris in Tamil Nadu, the tribals in the Andaman Islands, the Adivasis in various parts of India (especially in the forests and hills) e.g. Gonds, Santhals, Bhils, etc. It is not necessary for us to go into further details into this issue, but the facts mentioned above certainly lends support to the view that about 92% people living in India are descendants of immigrants (though more research is required). It is for this reason that there is such tremendous diversity in India. This diversity is a significant feature of our country, and the only way to explain it is to accept that India is largely a country of immigrants. There are a large number of religions, castes, languages, ethnic groups, cultures etc. in our country, which is due to the fact that India is a country of immigrants. Somebody is tall, somebody is short, some are dark, some are fair complexioned, with all kinds of shades in between, someone has Caucasian features, someone has Mongoloid features, someone has Negroid features, etc. There are differences in dress, food habits and various other matters. ...As stated above, India has tremendous diversity and this is due to the large scale migrations and invasions into India over thousands of years. The various immigrants/invasers who came into India brought with them their different cultures, languages, religions, etc. which accounts for the tremendous diversity in India. Since India is a country of great diversity, it is absolutely essential if we wish to keep our country united to have tolerance and equal respect for all communities and sects. It was due to the wisdom of our founding fathers that we have a Constitution which is secular in character, and which caters to the tremendous diversity in our country. Thus it is the Constitution of India which is keeping us together despite all our tremendous diversity, because the Constitution gives equal respect to all communities, sects, lingual and ethnic groups, etc. in the country. The Constitution guarantees to all citizens freedom of speech (Article 19), freedom of religion (Article 25), equality (Articles 14 to 17), liberty (Article 21), and etcetera. However, giving formal equality to all groups or communities in India would not result in genuine equality. The historically disadvantaged groups must be given special protection and help so that they can be uplifted from their poverty and low social status. It is for this reason that special provisions have been made in our Constitution in Articles 15(4), 15(5), 16(4), 16(4A), 46, etc. for the upliftment of these groups. Among these disadvantaged groups, the most disadvantaged and marginalized in India are the Adivasis (STs), who, as already mentioned, are the descendants of the original inhabitants of India, and are the most marginalized and living in terrible poverty with high rates of illiteracy, disease, and early mortality.

The plight of Indian tribes has been described by this Court in *Samatha vs. State of Andhra Pradesh and Ors.* AIR 1997 SC 3297 (vide paragraphs 12 to 15). Hence, it is the duty of all people who love our country to see that no harm is done to the Scheduled Tribes and that they are given all help to bring them up in their economic and social status, since they have been victimized for thousands of years by terrible oppression and atrocities. The mentality of our countrymen towards these tribals must change, and they must be given the respect they deserve as the original inhabitants of India. The bravery of the Bhils was accepted by that great Indian warrior Rana Pratap, who held a high opinion of Bhils as part of his army. The injustice done to the tribal people of India is a shameful chapter in our country's history. The tribes were called 'rakshas' (demons), 'asuras', and what not. They were slaughtered in large numbers, and the survivors and their descendants were degraded, humiliated, and all kinds of atrocities inflicted on them for centuries. They were deprived of their lands, and pushed into forests and hills where they eke out a miserable existence of poverty, illiteracy, disease, etc.

And now efforts are being made by some people to deprive them even of their forest and hill land where they are living, and the forest produce on which they survive. The well known example of the injustice to the tribes is the story of Eklavya in the Adiparva of the Mahabharat. Eklavya wanted to learn archery, but Dronacharya refused to teach him, regarding him as low born. Eklavya then built a statue of Dronacharya and practiced archery before the statue. He would have perhaps become a better archer than Arjun, but since Arjun was Dronacharya's favourite pupil Dronacharya told Eklavya to cut off his right thumb and give it to him as 'guru dakshina' (gift to the teacher given traditionally by the student after his study is complete). In his simplicity Eklavya did what he was told. This was a shameful act on the part of Dronacharya. He had not even taught Eklavya, so what right had he to demand 'guru dakshina', and that too of the right thumb of Eklavya so that the latter may not become a better archer than his favourite pupil Arjun? Despite this horrible oppression on them, the tribes of India have generally (though not invariably) retained a higher level of ethics than the non-tribes in our country. They normally do not cheat, tell lies, and do other misdeeds which many non-tribes do. They are generally superior in character to the non-tribes. It is time now to undo the historical injustice to them. Instances like the one with which we are concerned in this case deserve total condemnation and harsh punishment (*India Human Rights Report*; <http://www.achrweb.org>).

### **Adivasi Identity, Indigeneity and Indigenous Movements**

Since the 1990s, it is observed that 'a self-styled Indigenous movement has emerged in India which has strengthened the political will and broadened the historical consciousness of many subaltern and marginal communities. Made up of national, regional, district level and grass-roots organisations, this movement seeks to empower 'Adivasis'—a term translated as 'Indigenous and Tribal Peoples'—in relation to the federation of states that rule throughout India' (Rycroft 2014). It is also stated that organisations such as the Indian Confederation of Indigenous and Tribal Peoples or *Bharatiya Adivasi Sangamam*, are the current flag-bearers of the Indigenous movement in India, and that its construction of a community of 'Indigenous and Tribal Peoples' resonates in India's federal states where the rights of Scheduled Tribes are ignored, and challenges the narrowness of existing definitions of 'Indigenous Peoples' in inter-governmental discourse, which tend to privilege the colonial encounter, over pre-colonial encounters, in the production of indigeneity (Karlsson 2003: 407-8; Rycroft 2014). It is premised that translation of 'Adivasi' as 'Indigenous and Tribal Peoples' is in itself a strategic move... an Adivasi identity refers to the multiple histories of resistance to and/or negotiation of the discourses and practices of marginalisation by the dominant groups in India, whether they be Hindu feudalists, Moghul governors, British colonials or Indian nationalists (Bates 1995: 105-9; Xaxa 1999: 1519-1524; Rycroft 2014: 1-17).

Such Observations are broadly credible and indeed there are many forceful movements (including Maoist outburst in Adivasi areas) which have challenged the local administrations and the nation-state variously. It is true that the term Adivasi has gained popularity among Indian activists, who have demonstrated their perspective forcefully and convincingly in global platforms. Several international agencies have accepted the problems of the Indian tribespeople as the Adivasi problem; relating the same with the concerns of the larger indigenous people, who are variously engaged in diverse struggles

for autonomy and human rights. Nonetheless, the reality is that the word Adivasi has limited circulation in India, even though some Adivasi fronts do claim to represent all tribes of India. Actually, the Adivasi populace has restricted presence within peninsular India, where the term is associated with ethnicity factor and political mobilisation. It is also seen that there is hardly any political front which unites Adivasis of North and South India. There is no single national 'Indigenous movement'. Thus, there are many Adivasi movements in peninsular India and added tribal movements in other areas (Singh 1982, 1983, 2006). Indian civil society movement also lacks a common all-India platform which may claim to represent the concerns of 'all tribes' of India.<sup>6</sup> There is no single political party representing all tribes of India in one fold. It is therefore one may say that there are numerous indigenous engagements, epitomising Adivasi Indigeneity as well as other indigenes in India.

Indigenous movements in India have a long tradition. Tracing the exploitation in historical perspective, Felix Padel (2014), refers to 'the great tribal rebellions' against British rule and says that these 'rebellions' had their origin in impacts of British invasion—increasing levels of government control and taxation, numerous takeovers of land and forest, and the British instigation to maximize production at the original inhabitants' expense. K.S. Singh (1985) divides the colonial era tribal movements in India into three phases, 1795-1860; 1860-1920 and 1920-1947. During these periods intensive colonialism including penetration of merchant capital ruined tribal economy affecting their relationship with the land and forest. Thus, the Birsa Munda movement in Chhota Nagpur aimed at the 'liquidation of the racial enemies, the Dikus, European missionaries and officials and native Christians. The Mundas would recover their 'lost kingdom'. There will be enough to eat, no famine; the people will live together in love' (Singh 1966: 193, 1983). In fact, K.S. Singh (1982, 2006) has incorporated movements of Adivasi and other tribespeople, including analogous people such as Ahom and Meitei within a single framework of 'tribal movements'.

In the years since Independence, the pace of dispossession has escalated. Tens of thousands of Adivasi—hundreds of thousands even—have been displaced by big dams and by mining and factory projects since the 1950s-60s. Resistance to displacement and takeovers of resources is far from easy. In Odisha, the Gandhamardan movement in the

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<sup>6</sup> The Campaign for Survival and Dignity (CSD), a federation of forest dwellers and tribal organisations located in eleven states of India appears to be the largest network linking majority of Indian tribes within a single platform. The Campaign includes the following state federations: *Bharat Jan Andolan*, National Front for Tribal Self Rule, *Jangal Adhikar Sangharsh Samiti* (Maharashtra), *Adivasi Mahasabha* (Gujarat), *Adivasi Jangal Janjeevan Andolan* (Dadra and Nagar Haveli), *Jangal Jameen Jan Andolan* (Rajasthan), *Madhya Pradesh Van Adhikar Abhiyan* (Madhya Prasad), *Jan Shakti Sanghatan* (Chhattisgarh), Peoples Alliance for Livelihood Rights, *Chattisgarh Mukti Morcha*, *Orissa Jan Sangharsh Morcha*, Campaign for Survival and Dignity (Orissa), *Orissa Adivasi Manch*, *Orissa Jan Adhikar Morcha*, *Adivasi Aikya Vedike* (Andhra Prasad), Campaign for Survival and Dignity (Tamil Nadu), *Bharat Jan Andolan* (Jharkhand). CSD is an all-India coalition consisting with activists spread in eleven states of India. They fight for tribal self-rule and also non-tribal issues. Recently, in its policy paper this national alliance has clarified a number of concerns that have been raised regarding the impact of the FRA, 2006 in different parts of India, especially in Northeastern States of India, where the constitutional provisions of sixth schedule and 371, A and G are stumbling blocks.

mid-eighties brought together Adivasis and many non-tribal activists, preventing bauxite mining on a luxuriantly forested sacred mountain range in West Odisha, by facing countless arrests and beatings. Adivasi resisters in Kashipur from the 1990s have faced ferocious levels of intimidation and repression, culminating in the Maikanch police firing that killed three in December 2000, and again from 2004 till today (Padel 2014). Contemporary ‘development induced displacements’ at Odisha’s Kashipur, Lanjigarh and Kalinganagar are regarded by Binay Kumar Pattnaik as illustrations of ‘New Social Movements’. These three are resistance movements against mining based heavy metal industries (the Tata Steel at Kalinganagar, Utkal Alumina Industries Ltd. at Kashipur and Vedanta Alumina Ltd. at Lanjigarh) are not only led by tribal leaders; but there is increasing role of the civil society (intellectuals, mass media, activist’s organizations and NGOs) in shaping the course of the movement. Pattnaik argues that since the early 1980s micro movements in India have become points of convergence of such protests as movements by the landless, peasants, fishermen, Adivasis/tribals and displaced people fighting for livelihood, opportunities, dignity and development. These people’s movements also raise the issue of violation of human rights (Pattnaik 2014). The resistance, which we see in Odisha, Chhattisgarh, north Andhra and Jharkhand are basically tribal movements, arising in response to unbearable levels of exploitation and dispossession. As such, they are distinct from the Maoist insurgency, even when Maoists offer them support—support which is often used by government representatives and the media to paint the movements as Maoist when they are not. There has been considerable emphasis recently on critiquing ‘ecological romanticism’ that seems to idealize tribal cultures (Prasad 2003), or to set up a false image of ‘the ecological noble savage’—‘eco-incarceration’ in Alpa Shah’s phrase (2012). Alpa Shah’s argument arose in a review of Arundhati Roy’s *Walking with the Comrades* (2010), suggesting that Roy’s writing traps Adivasis in identity politics rather than revealing the Maoist conflict’s roots in class struggle. In this respect, Felix Padel highlights that Adivasis’ dispossession from their land is often termed ‘Development-Induced Displacement’, whereby the tribal people exist on a ‘final frontier’ of invasion and takeover of their land and territories, as resources get scarcer in a capitalist system whose growth expands beyond what the earth seems able to sustain (New Internationalist 2011). Felix Padel (2014) argues that social structure of a tribal community is destroyed at every level by displacement: the material culture of items grown and made by hand is replaced by factory made products; an economy based on a long tradition of skilled techniques of cultivation and use of forest is replaced by classification as ‘unskilled labour’ and a degrading dependence on wage labour; control over the local environment and channelling of water sources is replaced by the lowest level of social status in a highly polluted environment; and so on. Moreover, communities are painfully divided into those for and against a project, and traditional systems of values are overturned by the assault on features of the natural environment always regarded as sacred. Precisely because these processes of destruction are so extensive, yet so little recognized. According to Felix Padel ‘Cultural Genocide’ is the appropriate term for processes of change being imposed onto Adivasi communities. This destruction is almost invisible in the mainstream media most of the time, so passes almost unnoticed by much of mainstream society. Even at the grass-roots, so derogatory are mainstream attitudes towards tribal cultures in Odisha and neighbouring states that,

for example, the majority of non-tribals employed as school-teachers in Adivasi schools tend to show little or no interest in learning about Adivasi culture. The learning process tends to be uni-directional, with little reciprocity. 'Sustainable Development' and 'Corporate Social Responsibility' are regularly used as a mask that conceals the genocide, presenting a picture of benefits completely at variance with grassroots situations. Felix refers to B.D. Sharma (1984, 1992) who has delineated the web of poverty that enmeshes tribal areas, and spelt out the structural flaws in the present system of tribal development.

Here it may be appropriate, however, to explain a bit about the resistance and resurgence factor involved in indigenous struggle even in adverse social setting. An important issue is raised about continued existence of indigeneity in the event of 'displacement' or detachment from native territory. Under such conditions, indeed the indigenous culture and identity simply do not vanish as we notice in case of the tea tribes of Assam who have been detached from their 'home-lands' for two centuries but have all the more jealously preserved their culture and identity. In contrast to their kindred in original homeland (Jharkhand and neighborhood) the Assam Tea tribes, who served as slave-like 'coolies' in tea plantations, have been strategically kept outside the official 'Scheduled Tribe' list. Hence, these sixty and odd different tea-tribes have formed common political fronts by adopting a singular nomenclature 'Adivasi' and celebrating their tribal festivals regularly to preserve their culture and identity (Das 2015). For the Assam tea tribes, who are fiercely fighting to be recognized as 'Scheduled Tribe', the essence of enduring as indigenous (i.e. indigeneity) echoes their intrinsic spirit.

### **Discussion**

Indigeneity is a global phenomenon, central to discussions of political and legal rights of indigenous peoples. In this critique, we have broadly placed the issue of indigeneity in global and Indian contexts in order to understand the rights of indigenous peoples. It is argued that there are enough evidences which amply demonstrate that India's tribespeople are 'the indigenous people' of India and they have substantial residency in most of south Asia and significant linkages beyond. Everywhere they continue to suffer from 'primitiveness' and 'backwardness'.

The issue of global environmental concern vis-à-vis indigeneity could not be discussed above on account of lack of space. Indigenous environmental activists have articulated their views on declarations made by indigenous environmental activists since 2000. One core principle, related to indigenous environmental knowledge, is the conviction that the earth is a living being with rights and it is the responsibility of indigenous peoples to protect the earth from over-exploitation. Thus, there are immense scopes to reframe the scope of indigeneity in terms of values, identities and knowledge systems, a unified 'indigenous worldview'. It is highlighted that indigeneity in conjunction with indigenous knowledge could be especially supportive in multiple ways to achieve political recognition and advancement (Jung 2008).

As we discussed, the discourses of indigenous movements, indigenous resource rights, and the 'recognition' of indigenous status raise issues about the convention and ethics of research and pose moral challenges to anthropologists. The question remains whether

'indigeneity' should be principally rejected because of its cultural essentialism, deconstructed within contemporary anthropology, or whether its 'strategic essentialism' (Spivak 1988) should be politically endorsed in order to pragmatically improve the living conditions of marginalized groups. Despite disagreements, global anthropologists have endorsed the concept of indigeneity and advocated its employment as a political tool. Indian anthropology, as our review suggests, broadly suffers from its inertia to indulge in issues of genuine tribal narratives; land rights, poverty, displacement, social exclusion, gender issues and tribal dissent. It is argued that social scientists have largely neglected the Northeast region where we find the indigeneity used as a political tool systematically (Das 2013). Felix Padel (2014) has rightly criticized dominant trend in Indian anthropology wherein the mainstream analysis of tribal cultures still tends to understand them in terms of 'primitiveness' or 'backwardness'—a view basically established by colonial anthropology, that was geared towards controlling and 'civilizing' India's 'savage tribes'. The entry of the private capital to the resource rich tribal societies has intensified debates on the political economy of dispossession, displacement and tribal rights. In anthropology, it is mainly the issues of research priority, ethics and the definition (of indigeneity), which have created impasse and dilemma. There is need to diverge from such predicaments and reorient anthropological studies to fit into the domain of indigenous rights.

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*The Telegraph*, October 8, 2014; Letter to Editor by Dilip Gode and eight others, Nagpur.