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# Human rights of Tribes and Indigenous People

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YASHI SINGH<sup>1</sup> AND KSHITIJ AGARAWAL<sup>2</sup>

## ABSTRACT

*Indigenous people are someone who are living since time immemorial even before the colonisation and with the intention of fostering their culture and tradition and concomitantly bearing the despicable conditions forced upon them either by seizing their livelihood or treating them inhumanly. There are 750 million tribal groups around the world which are in the urgent need to get international attention simultaneously working on the implications of law.*

*This paper follows the methodological approach proving systemic violence against indigenous population. The article provides with the case studies<sup>2</sup> of two countries which at present are facing the music. These countries are India and Guatemala. Further the authors have given their own analysis and recommendations which should get heed.*

*The protagonists of the article have also taken step to mention the NBA which is the biggest displacement project in the history of India and the whole project revolves around Adivasis who are the tribal groups of India. The paper also foresees the quandaries of Cameroon who are forced to evict their lands without their free and prior consent. People of Cameroon are killed by eco guarded who are funded by WWF.*

*Paper also put forth the problem of inter-tribal violence which is not addressed by any international instruments and need distinctive law on the same. Thus co-authors have tried to list every minute detail necessary for the readers to take cognizance of.*

**Keywords:** *Inhumaly, Cameron, Tribal, Displacements*

## I. BACKGROUND

International Law was typically accustomed to save the sovereignty of the States rather than protecting the rights of the individual.<sup>3</sup> The ramifications of World War I made the scholars around the world to clap eyes on Human Rights and for the first time human rights were recognized by the Charter of the United Nations and the Universal Declaration on Human Rights, adopted by the General Assembly in 1945 and 1948 consecutively. Since then human rights are seen as the linchpin to determine the development taking place in a nation in terms

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<sup>3</sup> K.C. Joshi, International Laws & Human Rights (4th edn, EBC 2019)

of the status quo of women, children, minorities and other vulnerable group in societies.

Many pundits have tried to define human rights by appraising specific standards. Susan Moller Okin states that a human right is “a claim to something (whether a freedom, a good or a benefit) of crucial importance for human life”. A.K. Ganguly J of the Supreme Court of India in *Ram Deo Chauhan v. Bani Kant Das*<sup>4</sup> has rightly observed:

“Human right is a broad concept and cannot be straitjacketed within narrow confines. Any attempt to do so would truncate its all-embracing scope and reach, and denude it of vigor and vitality”.<sup>5</sup>

Human rights are thus inalienable and every individual has an equal footing to take rational steps on the violation of any human rights within the framework of the national and international law.

100 days of butchering in Rwanda by the ethnic group of Hutu tribe singling out Tutsi tribe was the worst ethnic cleansing among the tribal groups in 1994. This gross invasion of human rights led to the death of 800000 Tutsi and 30000 moderate Hutus, further, 150000-250000 women were raped. According to UN by the end of 1980s, 480000 Rwandans had become refugees. According to critics, even today the effects of genocide are conspicuous. The holocaust led the Tribal people around the world to apprehend the importance of their human rights and to establish their own institutions to get justice which further led International Forum to protect human rights of tribe and indigenous people.

Delving deep into the aspects of human rights of tribe and indigenous people, it is crucial to grasp the meaning of indigenous people. There has been no universal definition of indigenous people till now. Indigenous People are divergent of the opinion to lay precise definition of them as it may not be applicable to all terrains, instead they tend to keep the structure flexible.<sup>6</sup> ILO Convention NO. 169 has taken empirical mode to the subject based on opinions which states that tribal people are people in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations.<sup>7</sup>

There are an estimated 370 million indigenous people dwelling from Arctic to South Pacific

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<sup>4</sup> REVIEW PETITION (C) NO.1378 OF 2009

<sup>5</sup> Supra Note. 1

<sup>6</sup> Kristen A. Carpenter & Angela R. Riley, “Indigenous Peoples and the Jurisgenerative Moment in Human Rights” (2014) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2220573](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2220573) (Last visited on 10<sup>th</sup> Oct, 2020)

<sup>7</sup> [https://www.ilo.org/global/topics/indigenous-tribal/WCMS\\_503321/lang--en/index.htm](https://www.ilo.org/global/topics/indigenous-tribal/WCMS_503321/lang--en/index.htm) (Last visited on 10<sup>th</sup> Oct, 2020)

in almost 90 countries while they make up 5% of the world's population and constituting 15% of the world's poor and one-third of extremely poor.<sup>8</sup> The conventional occurrences which can be traced back among indigenous people is injustice, marginalization and exclusion from their own national lands. Indigenous people are living since time immemorial, before colonization took place in any given country and proselytizing their customs forward to successive generations.<sup>9</sup> They are incessantly fighting for their rights to possess their traditional land, sacred places, subjugation and violence. Array of reports have shown that there was a downsizing in the rate of deforestation in the forests where Tribal people were settled as they are well equipped with the techniques of alleviating the effects of climate change. Henceforth national governments should provide them with logistics. In lieu of supporting them, governments of different countries are involved in criticizing them for harming wildlife in the forest. Government's main agenda is to attract tourism to make money out of the safari business keeping the survival of tribal people at stake. Article 10 of UNDRIP explicitly states that "Indigenous peoples shall not be forcibly removed from their lands and territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return. Part II of ILO Convention No.169 which embodies Article 13-Article 19 is wholly dedicated to stand guard the land of tribal people.

Redressal should be such which dispense tribal people with all the desideratum to live sustainably including the fertile land for doing agriculture on which majorly tribal people are dependent as in many instances the compensation has been given in the form of money through which an individual gets inapt to even procure a basic house for living. Loss of community lands can also prove to be fatal for indigenous people who further get deprived of their livelihoods. According to the reports of HLRN. Government authorities of India damaged almost 8000 homes and forcefully evicted virtually 40000 people in the name of conservation without their prior consent in 2017.<sup>10</sup> The adjudications have been taken place by the Supreme Court of India who functioned on public interest litigation, keeping aside the human rights of indigenous peoples. In contrast there are classic examples in India where tribal people are at helm of saving biodiversity with the help of government. Soliga tribal

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<sup>8</sup> UN, "International Day of the World's Indigenous People"

<https://www.un.org/en/events/indigenousday/> (Last visited on 10th Oct, 2020)

<sup>9</sup> University of Minnesota Human Rights Center, "The Rights of Indigenous People"(2003)

<http://hrlibrary.umn.edu/edumat/studyguides/indigenous.html> (Last visited on 10th Oct, 2020)

<sup>10</sup> Chris Lang, "India: Almost 40000 People Were Evicted In The Name Of Conservation In 2017" (2018)

<http://www.conservation-watch.org/2018/03/08/india-almost-40000-people-were-evicted-in-the-name-of-conservation-in-2017/> (Last visited on 10<sup>th</sup> Oct, 2020)

community in southern India is residing in Biligirirangana Hills Tiger Reserve and it has been reported that there has been increase in the population of tigers in recent years. The community members worship tigers as deities.<sup>11</sup>

Cameroon which is central African country sails in the same boat like India in terms of human right violations of indigenous people. Baiga tribe in Cameroon is specifically confronting forced evictions by the concerned authorities subsidized by WWF.<sup>129</sup> They are not allowed to enter the threshold of the forest which were once their traditional land and their means of sustenance and are brutally beaten and killed by the eco-guards who are primarily appointed by national government to stop the poaching activities in forest.

Thus, slaughtering people is not at all the decent way to impede tribal people from hunting. There are virtual solutions to stop poaching. Now national governments should be at crossroads where it is requisite to safeguard tribal people from the dire situations revolving around them. Chad-Cameroon pipeline project has adversely affected indigenous people by involuntary displacement of tribes. Desecration of cultural sites which trespassed Article 11 of UNDRIP, violation of Article 10 of UNDRIP which enunciates the concept of free and prior consent from tribal people before acquiring their land, meetings, conducted in French which is clearly not clench by tribal people and documents were distributed not keeping in mind the education level, language and culture of tribal people which in turn made documents incoherent shows ingrained problems in the implementation of international instruments. In 30<sup>th</sup> session, Working Group on the Universal Periodic Review of Cameroon vocalized the “concern of Cultural Survival (Organization which works uniquely for indigenous peoples) for the need of definition of Indigenous peoples, the adverse impact of extractive industry in the land of tribal people and urged Cameroon government to compensate Indigenous for land degradation”. Committee on the Elimination of Racial Discrimination recommended that “Cameroon should reduce the distance between national courts and the areas where indigenous people live and by establishing official services for interpretation into their language.<sup>13</sup>

## II. CASE STUDY

### (A) India

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<sup>11</sup> Abhijit Mohanty, “Tribal Communities Suffer When Evicted In The Name Of Conservation” (2019) <https://www.downtoearth.org.in/blog/forests/amp/tribal-communities-suffer-when-evicted-in-the-name-of-conservation-64376> ( Last visited on 10th Oct, 2020)

<sup>12</sup> Cultural Survival, “Observation on the state of Indigenous Human Rights in Cameroon” (2017)

<sup>13</sup> United Nation Human Right Council, “ Universal Periodic Review- Cameroon” <https://www.ohchr.org/EN/HRBodies/UPR/Pages/CMindex.aspx> (Last visited on 10th Oct, 2020)

India has the most assorted culture with the hefty population of 1.37 billion people having conflicting opinions. Out of such massive populace, indigenous people constitute 8.6% of the population according to the census 2011. Orissa has the largest number of tribes. In India the government does not take cognizance of word “Indigenous People” as the government claims that all the inhabitants of India are indigenous and instead substituted the word Scheduled tribes which was substantially based on backward tribes.<sup>1411</sup> The term backward reflects an antipathy towards tribal people where it creates a notion among people that tribal people have dearth. Article 366 (25) of the Indian Constitution has circulated the definition of Scheduled tribe as; “Scheduled Tribes means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of the constitution”

In 1959, government of India appointed the Commission headed by Shri U.N. Dhebar uttered that any group classified as Scheduled Tribes in Article 342 can be a practical definition of tribe. Article 342 of the Indian Constitution authorizes the President after consultation with the State government to issue an order for the first list of Scheduled Tribes. Any subsequent insertion or deletion can be done with the Act of Parliament adhering to clause (2) of Article 342.<sup>15</sup>

### **(B) ANALYSIS OF XAXA COMMITTEE REPORT**

Tribal people of India rule the roost over fifth and sixth Schedule of the Constitution of India. Fifth schedule is explicitly for Union to use their executive powers in Schedule areas and sixth schedule kindred executive authority of the north eastern states which are Assam, Meghalaya, Tripura and Mizoram. Fifth schedule creates Tribal Advisory Council and sixth schedule shapes District and Regional Councils. In 2014, Professor Virginius Xaxa emerged with a Xaxa committee report on Tribal Communities of India where both the schedules were in line of fire. The report unlatched some pointers as stated below

1. Acts like Wildlife Protection Act 1972, Environment Act 1986, Panchayat Act 1992 have proven to be pernicious to tribal people subsequently forcing them to evict their traditional lands. It was recommended by the Xaxa report for the Governor to have hand in policies passed by Parliament of India bearing in mind the state of affairs in a State. Though there is not an iota of contingency vis-à-vis Governor’s discretionary power to produce any subject on the table related to tribal people in TAC but time and

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<sup>14</sup> Join stake holders, “The Situation of the Right of Indigenous People” (2017)

<sup>15</sup> .Prof. Virginius Xaxa, ‘’ Report of the High-Level Committee on Socio-Economic, Health and educational Status of Tribal Communities of India” (2014)

again there have been many specimens where bureaucrats have questioned the discretionary power of the governor further stating that it is subject to the advice of Council of Minister

2. In 2013, the constitutional validity of the unrestricted authority of the Governor sprang up through Special Leave Petition and considering all aspects of the issue it was made crystal clear that Governor has the discretionary power to bring matters for the deliberations in TAC. Contrary to the ruling by Ministry of Law and Justice there are grey areas which needs to be sorted and the places where Governor is at the wheel of advising TAC there it is traditionally observed that TAC act as a glove puppet of Governor where important agendas are kept aside and even if they are on discourse, no further actions are taken to get onto the solutions.
3. Tribal Advisory Council is the consequence of a mandate of fifth schedule, it further comprises of 20 members out of which three-fourth will be Scheduled Tribes MLAs in the state. Xaxa Committee vouched for reducing the MLAs to one- half and the remaining one- half should be composed of Chairperson of the District Panchayat bodies of the Scheduled Areas on the basis of turn.
4. Xaxa committee also stressed on the need of autonomous council in mainland similar to sixth schedule. This will enhance the development of tribes in mainland like West Bengal and Jharkhand who are in dire need for the same. The Panchayats can be the medium between tribal people in Scheduled Areas and State Governments according to the 4(o) provision of PESA act 1996 which states “The State Legislature shall endeavor to follow the pattern of sixth schedule to the Constitution while designing the administrative arrangements in the Panchayats at district level in the Scheduled Areas”
5. Autonomous Councils should be well funded by State Finance Commission and should come under its ambit so that it can further take actions upon the execution of policies.

***(C) Wildlife Trust of India and Ors. vs Union Of India And Ors<sup>16</sup>***

Accumulation of reports by different committees will not help tribal people to get justice until the government stands on the soapbox and draws attention on implementation of the recommendations by the committees after productive channelization of both human and economic resources. There are lot of issues which needs to get addressed. One of them being

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<sup>16</sup> W.P. (C) No. 109/2008

The Scheduled Tribes and Other Traditional Forest Dwellers Act 2006 which embarks with providing safe sanctuary to tribal people and their resources which are incessantly getting exploited since the hegemony of British till the present time. There recent courts case which has created a hullabaloo among tribal people is Wildlife Trust of India and Ors. vs. Union Of India And Ors<sup>17</sup>. dated 7 March 2018. The case was brought into light by environmentalist and conservationist claiming the Forest Act 2006 to be unconstitutional and pursued the court for the eviction of forest dwellers whose attestation have been castaway by the honorable court. The defenders which are Ministry of Tribal Affairs have chosen to bury their heads in the sand venturing the life of millions. Court has directed all the State Governments to file an affidavit indicating the following:

- 1- The number of assertions for allotment of land to forest dwellers under Forest Act 2006.
- 2- The number of claimants who have been rejected by the State Governments for the grant of land.
- 3- There should be a distinction made between claims made by Schedule Tribes and other traditional forest dwellers.
- 4- The needful steps taken by the State Governments against the applicants who have been rejected.

#### **(D) ANALYSIS OF REVIEW PROCESS**

Now, the predicament resonates around Ministry of Tribal Affairs which has turned blind eye to the existential crisis. Their own ministry has affirmed that most of the claims being rejected by the court has no solid base for turning down and needs to be reviewed. Many tribal people are not granted with Scheduled Tribe Certificates which automatically exclude them to avail the benefits of Forest Act 2006. The insouciant behavior of government has endangered the livelihood of horde. Tribal people who have been the drivers of their respective stories are the end sufferers. Recently the court has ordered to look upon the final rejection by the district level committee as there are three stages which determine whether the plaintiff will get approved or rejected. The three phases are gram sabha, sub-divisional and district. Now that the tribal people are waiting for the decision to emerge and there are two possible paths for the impartial review process:

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<sup>17</sup> W.P. (C) No. 109/2008

- 1- As there are people who have not received the Scheduled Tribe Certificates from the concerned authority, which leaves the government with the possibility of inviting the applications from people who have not acquire the certificate, further the whole process will be onerous as there will be bogus applications too which needs to be identified using appropriate tools. There could be a viable solution to it by creating a database keeping the track of population of Schedule Tribes by their names keeping in mind the census of 2011 and then matching it with the applicant's name. There will still be people who will not be recognized as they may not have their name in the particular database and this plight can only be deciphered by round table discussions.
  
- 2- For the fair out-turn of the review of the claimants being rejected at the final level by District, there is a solution which demands both human and economic resource so that the matter can be probed in the presence of claimant.

#### **(E) ARTICLE 21 AND RIGHT TO PROPERTY PERTAINING TO HUMAN RIGHTS OF TRIBE AND INDIGENOUS PEOPLE**

Woefully, tribal people are inflicted with the involuntary displacement from many years. Article 21 of the Indian Constitution reads: *“No person shall be deprived of his life or personal liberty except according to procedure established by law”*

It has been added further that life is a much broader concept and any bid to circumscribe it will be equated with killing the whole idea of incorporating Article 21 in the Constitution of India. It has been stated by polymaths that life is just not limited to breathing and it is not merely an animal existence as derived by gamut of judgments like Kharak Singh vs. State of Uttar Pradesh. Life is a wider notion which brings together right to livelihood, right to health, right to education etc. There is a comprehensible violation of Article 21 where tribal people are contemplated as animals whose right to livelihood has been annihilated.

Right to property was once the fundamental right under Article 19(1)(f) but after the 44<sup>th</sup> amendment in 1977, it was affirmed that Right to Property is a legal right under Article 300(a). The picturesque brought tribal people to the periphery of loosing their traditional property proving the deletion of Right to Property as fundamental right being counterproductive for tribal people.

#### **(F) SALWA JUDUM MOVEMENT**

Movements like SalwaJudum against Maoist were the fig leaf to hide the cracks in the

government. Government in Bastar region of Chhattisgarh had initiated the movement disguising it to be the movement of tribal people which fanned the migration of tribes to Andhra Pradesh according to the report of The Internal Displacement Monitoring Centre of the Norwegian Refugee Council. The movement came to a bad end, costing life of tribal people and rape of tribal women in 2011. The government spent large amount on the movement setting aside the emotional toll on tribal people who joined the movement either due to the coercion from Maoist or as Special Police Officer which included local tribal youth to confront against Maoist without any appropriate training from the government. This event proved to be a kiss of death for tribal people. Recently Chhattisgarh government has formed new battalion called Bastariya Battalion who is reviving the history and is setting against Maoist. Now the question which is transpiring among tribal community is, if Salwa judum is back clothed in the form of Bastariya Battalion.<sup>18</sup>

#### **(G)NARMADA BACHAO ANDOLAN**

There is a massive ongoing movement which has resulted in the displacement of almost 200000 people, affecting roughly 43000 families according to Cultural Survival Report. The whole movement centers on Narmada River famously known as NBA which is the brainchild of Medha Patekar. There is a need of light to be shed on quandaries pertaining to corruption and the compliance with NWDT award:

1. The Sardar Sarovar Project stands on the river Narmada in Gujarat where Madhya Pradesh, Rajasthan and Maharashtra has its own share of water for the generation of Electricity Narmada Water Disputes Tribunal in its final order on December 12, 1979 came up with sixteen clauses, with the clause XI particularly for project affected families (PAFs). NWDT laid the guidelines for the Resettlement and Rehabilitation (R&R) Land Acquisition and Submergence of displaced persons.
2. Now sub clause III and sub clause IV of Clause XI has a key role to play regarding the funding for the R&R of the project affected families by Gujarat to Madhya Pradesh and Maharashtra. Gujarat was also responsible under clause III to furnish with all the cost and human resource required by Madhya Pradesh for the rehabilitation for the tribal people who are turned out and providing them with all the amenities which Madhya Pradesh deems to think fit for them. Gujarat under clause IV has to sponsor out sees who does not want to leave their native place and resettle them.

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<sup>18</sup> RS Jangid & Mukul Kulshreshtha, ‘‘ Sardar Sarovar Project: Fake Sale Deeds And Rehabilitation Sites Irregularities Inquiry Commission ‘‘ (2014)

3. Now as that, Madhya Pradesh was assisted with funding to overhaul the conditions of tribal people, it was the core responsibility of the Madhya Pradesh government to divert the funds for consummation for the right purpose but in 2007 the writ petition was filed stressing on the irregularities and corruption that got surfaced during the rehabilitation process.
4. Clause IV (3) (c) enumerates the civic amenities that should be in place during the R&R of Project Affected Families. NWDT has listed the civic amenities as:
  - (a) One Primary School (3 rooms) for 100 families
  - (b) One Panchayat Ghar for every 500 families
  - (c) One Dispensary for every 500 families
  - (d) One seed store for every 500 families
  - (e) One Children's park for every 500 families
  - (f) One village pond for every 500 families
  - (g) Drinking water well with trough for every 50 families
  - (h) Each colony should be linked to main road by roads of appropriate standard.
  - (i) One platform for every 50 families
5. Thus, if there are 130 families then there ought to be 2 primary schools as per the guideline of NWDT and in contrary if there are 102 families, then 5% of cushioning is provided to make it just for Narmada Valley Development Authority to lay 1 primary school for 102 families with all the equipment necessary for the functioning of school.
6. It was noted that out of 88 rehabilitation sites, there were many which were not constructed with either all the civic facilities as mentioned in clause IV(3)(c) or if there were then it was a poor quality construction which represented the large funds being averted in the pockets of government officials and bureaucrats.
7. Many officials who had been upfront while inspections came up with MANIT 2014 report compiled by IIT Mumbai and MANIT-Bhopal which made others cottoned on to the fact that there were many sites like Dharampuri R&R site where the dimensions of plots were reduced without any coherent reasoning from 60x90 ft to 40x60 ft. The line of reasoning which was given was tagging Dharampuri as urban area which was illogical as NWDT has not created any discernment which bars urban area to get the reduced plot size. There are also the cases where there are no social amenities like

parks for children, platforms for elderly people which make the rehabilitation process more vulnerable for tribal people.

8. Temples have not been raised as per the directions of NWDT, alternatively on inspection it was observed that instead of temples there was just a single statue of the Hindu God which were called as temples by NVDA. Local tribal youths prefer to go to Jeevan Shalas as there are nearly no facilities in primary schools built by NVDA. Medha Patkar revealed “We discovered that there were school on papers but not a single functional school existed on the ground”. Right to Education Act 2006 is clearly a damp squib as it not able to hold the dreams of our youth.
9. Facilities like street lights, water ponds and Troughs for livestock were under provisioned by a large percentage of 74.56% as reported by MANIT team in 2014. Absence of facilities like Primary Health Centers will result in the perish ability of tribal people or they will have to spend large amount for the hospitals in the cities manifesting callous behavior of the Madhya Pradesh government. There are different occasions where tribal people have not been allotted with the field to cultivate and if they are given the land, then the black soil which is not suitable for the growth of crops except cotton which hinders Adivasis to earn their bread and butter.
10. The poor designing of drainage system which is non-existing in 55 R&R sites out of 88 according to MANIT report will generate problems related to health of tribal people in monsoons.
11. There were two major judgements on the Narmada Valley Rehabilitation case. First judgement was given on 2005 which declared (a) 17 amenities should be delivered in the rehabilitation sites. (b) All the out sees who falls under the submergence zone should be rehabilitated and compensated in advance before one year of submergence in Gujarat and if the tribal people are not amenable to settle in Gujarat then necessary steps for rehabilitation should be taken before submergence in Madhya Pradesh and Maharashtra. (c) Every displaced family from whom more than 25% of land is procure, must be allotted with the percentage of land acquired from them according to the cap prescribed by NWDT for States with a minimum of 2 hectares per family considering every major son to be a sperate family. In 8<sup>th</sup> February 2017 the other holding was advance awarding 681 families with the compensation of 60lakhs in accordance with 30 lakhs per hectare and the ceiling being 2 hectare makes 60 lakhs under Land Acquisition act 2013. It was also stated that 1358 families who were

hoodwinked by middlemen were to be given 15 lakhs as full and final compensation.<sup>19</sup>

### **(H) ANALYSIS OF NARMADA VALLEY REHABILITATION SCHEME**

Mahatma Gandhi always laid stressed upon the liberation of an individual not just salvation from the British. He proclaimed that India may get free from British but in real sense people will get freedom when they will unfetter themselves from their degrading nature for others, otherwise India will be a place where British will be gone but their agents will not be and this is what has been the picturesque of 21<sup>st</sup> century where the violations of human rights of tribe and indigenous people are breached every day. The latest case of Narmada Valley Rehabilitation scheme is the best exemplification of infringement of human rights of tribe and indigenous people. Important clause like clause 3(1)(a) of Forest Rights Act 2006 and 4(a) of PESA Act 1996 which entitles tribal people to use their own community resources and land considering their customary and religious practices have paid no heed by the government of Madhya Pradesh. Also, activist has recently discovered that there are still 40,000 families who are at the perpetual state of suffering in Dharampuri where 191 villages have the constant fear of getting engulfed by water and in addition, they have not accrued any compensation or rehabilitation. The judgement passed by SC on 2005 has not given any weight by Madhya Pradesh government who were ready to take chance with the life of tribal people if were not pointed by evangelist for human rights.

### **(I) RECOMMENDATIONS**

1. Creation of a monitoring committee which should constitute of a chairman who should be the retired judge of the High Court of any state except Madhya Pradesh and Maharashtra, three activists peculiarly advocating for human rights of Tribe and Indigenous people, four officials from NVDA and two politicians each from both the ruling parties.
2. Monitoring committee can recruit human resources which they deemed fit for the purpose of investigation and further should take necessary actions for the sensitization of the people recruit for the investigation so that they can deal with tribal people based on humanistic principles.
3. Monitoring Committee should create a database where the total population of tribal people who got displaced and succeeded in getting rehabilitation and compensation

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<sup>19</sup> Narmada Bachao Andolan GRA Order Dt. 28.11.2017 (2019) <http://www.narmadaandolan.org/gra-order-dt-28-11-2017/> (Last visited on 10<sup>th</sup> Oct, 2020)

must have separate column by their names from previous record and then inviting the applications from those who have not been reestablished or compensated whether wholly or partially. On the basis of the data tribal people should be rehabilitated and compensated as per the last order of Supreme Court.

4. Supreme Court should take punitive measures against the officials including the members of Monitoring Committee who are in any way involved in the corrupt practices under sec 409 of IPC and The Prevention of Money Laundering Act 2002 and the report for the same should be submitted by Monitoring Committee without any biasness.

All the recommendations given should not be limited to paper but should be implemented otherwise it will be a mug's game. Both Madhya Pradesh and Maharashtra should have two distinct monitoring committees for the validation of the process.

### **III. GUATEMALA**

Guatemala has been in wars, since its struggle on combating drugs due to its geographical placement between Columbia and USA which have prima facie, the world's largest drug cartels. Drug traffickers who sponsor opium cultivation give windfall to indigenous people of Guatemala to help them in farming and bootlegging which exposed them to intake of opium and health problems.<sup>20</sup> This has been the history of Guatemala where indigenous people were used by others and today, they are marginalized by State Government.

Guatemala, typically have three chief tribes: K'iche, Maya and Kaqchikel. Indigenous people of Guatemala have its own suffering from 1960-1996 of displacement of roughly 1.5 million people to Mexico, killing of almost 200,000 indigenous population, burning of houses and crops and vandalizing of cultural sites by army. United Nation Peace Accord signed in 1996 contained the barbaric acts of army towards indigenous population.<sup>21</sup> <sup>16</sup>Guatemala has ratified ILO convention 169 which should be perceived by government as a shield to Indigenous population but the question is; If Guatemala is adhering to ILO 169 or if it is on the verge of leaving another scar on indigenous people?

The honest answer to this question is YES. To prove the same there is a report by Cultural Survival which is an organization specifically for Indigenous people which holds water. The findings are as follow:

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<sup>20</sup> International Crisis Group, "Guatemala: Drug Trafficking and Violence" (2011) <https://www.crisisgroup.org/latin-america-caribbean/central-america/guatemala/guatemala-drug-trafficking-and-violence> (Last visited on 10th Oct, 2020)

<sup>21</sup> Cultural Survival, "Situation of Indigenous People in Guatemala" (2017)

1. It was beheld that in January 2017, 27 permits were allowed by the government to different companies, mostly from outside for mining in Huehuetenango without the prior and informed consent which is the mainstay of ILO Convention 169 and UNDRIP. Later the referendum was ensued within tribal community and more than the majority of tribal people had gainsaid the project. The government proclaimed that it has ultimate power to rule the land and exploit the resources. The entry of swarm of foreign companies is due to the government's vey own act of Mining in 1997 which legitimately authorized foreign companies to have 100% entitlement making them prerogatives of Guatemala.<sup>22</sup>
2. The Worldwide Movement for Human Rights reported that 26 human right defenders were murdered in 2018 and the majority of them were indigenous. In May alone seven human right ombudsmen for tribal people were put to death. There are arbitrary detentions of people who are vocalizing against the forced evictions. On January 17, 2017, Maya Chuj and Q'anjob'al tribes came out on roads for passive resistance against the scheme of PDH and SA companies to which military retaliated with firing on the protesters which resulted in the killing of an indigenous and land right advocate named Sebastian Alonso Juan.<sup>23</sup><sup>18</sup>
3. Indigenous activist is often tagged as drug traffickers by the government and are arrested without any base. They are arrested and convicted for the crime they have not done and instead incessantly fighting for ameliorating the mental anguish among tribal people.
4. Tribal people were not allowed to have ingression to radio frequencies, though Peace Accords initiated by UN in 1996 has the provision to allow indigenous people to have access to radio frequencies. There were precedents where there were raids by government at unlucrative radio stations of indigenous people for operating without the grant, though there is no law which articulates the punishment for operating without a license.<sup>24</sup>

### **(A) ANALYSIS**

After the appraisal of the above facts it is comprehensible that Freedom of Expression has been breached under Article 35 of the Guatemalan Constitution which guarantees the

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<sup>22</sup> UN Human Right Council Universal Periodic Review- Guatemala'' (2017)  
<https://www.ohchr.org/EN/HRBodies/UPR/Pages/GTindex.aspx> (Last visited on 10<sup>th</sup> Oct, 2020)

<sup>23</sup> Cultural Survival, ''Situation of Indigenous People in Guatemala'' (2017)

<sup>24</sup> Vicky Tauli- Corpuz, ''Report of the Special Rapporteur on the rights of indigenous peoples on her sit to Guatemala'' (2018)

freedom of speech and expression stating that no government order or law can hinder this right except the offensive speech, clinging to morals and Article 16 of UNDRIP allows “Indigenous people to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination”

There is a crucial point to grasp that in 1996 Peace Accord was signed to protect the rights of Indigenous population and in 1997, Mining Act was passed which gave 100% possession to foreign companies levying no tax on gamut of resources like use of water. This reveals that government was never interested in safeguarding the rights of indigenous population and verifies that government is the only entity here who demurs to a proposition for the sustenance of indigenous peoples in Guatemala.<sup>25</sup>

### **(B) RECOMMENDATIONS**

1. The International Community needs to come in unison to make Guatemala realize the importance of international instruments like ILO Convention 169 and UNDRIP leading further to impose strict economic sanctions if they neglect the call from International Community.
2. Working Group on Indigenous Populations should now get more active and should review the situation of indigenous people appertaining to human rights
3. USA should take all imperative steps to give shelter to refugees from Guatemala with the help of United Nation High Commissioner for Refugees
4. Guatemala has to sack the provision under Mining Act 1997 which gives 100% ownership to foreign companies to operate which coerce indigenous people to leave their lands without taking their free and prior consent.
5. International Community shall assist Guatemala government with the model to protect tribal people and their rights based on humanistic approach.
6. There should be a monitoring committee made inside Guatemala, having supervision of UNHRC and United Nation High Commissioner for Refugee to succor asylum to refugees in Mexico with proper camps and basic amenities for sustaining.

Guatemala being in hot water can come out by humanistic approach rather than by methodological approach.

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<sup>25</sup> Kristen A. Carpenter & Angela R. Riley, “Indigenous Peoples and the Jurisgenerative Moment in Human Rights” (2014)

### **(C) CONCLUDING REMARKS**

International instruments and national laws are pointless without any implication and human vigilance. Instruments like UNDRIP which are non-binding in nature are same as parched grounds from which water cannot be extracted. Countries have constantly violated the international instruments knowing that they are not having any binding repercussions. Many countries do not allow special rapporteurs to gain access in the country which weakens the foundation of International Organizations. There is no broaching of inter-tribal violence in countries in any of the international agreements. ILO Convention 169 is a binding agreement which grips government responsible for their action towards indigenous people but again it is not obligatory for States to ratify and the whole concept make things good from far away with constant faith of tribal people in the illusion which can never be the reality until the fundamental understanding of humanity. Slanders of the law should get comeuppance within the national or international structure. Article 1 of both ICCPR and ICESR has recognized self-determination as a abstract idea rather than a even. In most of the cases, indigenous people who have perceived the idea of self-determination had to bear the backlash. There are hundreds of resolutions passed by international Community which has strikes economic sanctions on countries who were finding to be abhorrent to human rights of Indigenous people. The simple answer to economic sanctions is Cuba which is surviving economic sanctions from 50 years. One thing needs to be rationalized that there is no law in the world which will work by itself unless laws are put in place. There should be a congruency between human and humanity where governments should beat swords into ploughshares rather than spending millions on movements like Salwa Judum. Tribal People have tyrannised people from ages but the only distinction, being today is our own who are involved in ethnic cleansing. In the article on observation there is a same pattern of actions used for subduing tribal people which represents that want for power can be contagious as usurpation has been the ultimate goal of humankind discerning the history. There is also an exhibition where tribal people are circumspective like people of Navajo Nation have formed NNHRC on the line of UNHRC to monitor the violations cropping up against their tribal communities and in contrast, tribes like Uyghurs are neglected who are suffering constant persecutions of China and need international help.

China has made place Uyghuristan by acquiring lands of Uyghurs who are indigenous population and substituting them with Han Chinese. The whole process has mitigated the population of Uyghurs from 94% to 45%. As of 25 January 2018, they have been placed in re education camps in the attempt from china to hold their position. Uyghurs are arbitrary

detained or killed in the name of terrorism.

Now is the time when we should thrive to save our successive generation from listening the anecdotes of bloodbath all over the globe and is the need of an hour to make a separate edict passing measures for combating inters tribal violence to not brink to a level where we witness a other Rwandan Genocide. .

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