

# LEGALFOXES LAW TIMES

## **HUMAN RIGHTS OF INDIGENOUS PEOPLE**

**“ THE LAND IS SACRED”**

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### **ABSTRACT:-**

This paper aims at shedding light on the Human Rights of Indigenous people. Indigenous people are known as first people, Aboriginal people or Native people, are ethnic groups who are the original owners and caretakers of a given region, in contrast to groups <sup>1</sup>that have settled, occupied or colonised the area more recently. They are not vindictive by nature.

Indigenous people have the right to self-determination. By virtue of that right, they freely determine the political status and freely pursue the economic, social and cultural development.<sup>2</sup>

International law guarantees rights to Indigenous people regarding traditional lands, knowledge, cultural preservation and human security. Protection of indigenous people's cultures and resources contribute to the protection of the global environment. International law provides rules and arenas to further the interest of Indigenous people. There are declaration passed by the United Nation, which, while not binding on states, often receive such widespread support that their principals are deemed part of customary international law.

The United Nation Declaration on the right of indigenous people (UNDRIP) is an instrument adopted by the United Nation on 13th September 2007 to enshrine the rights that “constitute the minimum standards for the survival, dignity and well-being of the Indigenous people of the world”

The UNDRIP protects collective rights that may not be addressed in other human rights charters that emphasise individual rights and also safeguards the individual rights of Indigenous people.<sup>3</sup>

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<sup>1</sup> [https://www.facebook.com/thekhoisanpeople/posts/?ref=page\\_internal](https://www.facebook.com/thekhoisanpeople/posts/?ref=page_internal)

<sup>2</sup> <https://medium.com/graduatesofdemocracy/self-determination-and-national-identities-within-plurinational-states-83c7eae8a619>

**“Whatever the power does, it does in a circle”**

**KEYWORDS:-** Indigenous, Aboriginal, vindictive, Preservation, Survival.

**INTRODUCTION OF INDIGENOUS PEOPLE:-**

“Indigenous people are culturally distinct communities and people. The land on which they live and the resources on which they depend are linked to their cultures, identity, livelihood as well as their spiritual and physical well being. They are inheritors of unique cultures and ways of relating to people and the environment. Despite their cultural differences, indigenous people from all around the world share common problems related to the protection of their human rights as distinct peoples.”

**OBJECTIVE OF THE PAPER:-**

Human Rights of Indigenous People is a global issue reaching across national boundaries as well as international boundaries socio-economic, cultural and class distinction. This problem is not only widely dispersed geographically, but its incidence is also extensive, making it a typical and accepted problem of society. Despite all the positive developments in International Human Rights positive standard setting Indigenous people continue to face serious human rights abuses on a day to day basis. Yet no other issue related to indigenous people has been so widely ignored and so little understood.

**INTRODUCTION AND HISTORY:**

People who inhabited a land before it was conquered by colonial societies and who consider themselves distinct from the societies currently governing those are called Indigenous People. They are also known as aboriginal people or native owners as they were the real owners of that land. The United Nations International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights state that all peoples have the right of self-determination by virtue of which they “freely determine their political status and freely pursue their economic, social and cultural development.”

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<sup>3</sup> [https://indigenousfoundations.arts.ubc.ca/un\\_declaration\\_on\\_the\\_rights\\_of\\_indigenous\\_peoples/](https://indigenousfoundations.arts.ubc.ca/un_declaration_on_the_rights_of_indigenous_peoples/)

The Indigenous People of the world are very diverse. They live in nearly all the countries on all the continents in the world and they form the ambit of humanity ranging from traditional hunters and farmers to legal scholars. In some of the countries, Indigenous People form the majority of the population while in others they are in small minorities. These people are concerned with preserving land, promoting culture and protecting language. They are always adjusting and adapting to changes in the world. Indigenous People recognize their common plight and work for their self-determination. All Indigenous people of the world have one thing in common- They all share a history of injustice. They have been enslaved, murdered and tortured. They have been denied the right to participate in governing processes of the current state systems. Conquest has attempted to steal their dignity as indigenous people as well as the fundamental right of Self Determination.

### **TERMS USED IN HUMAN RIGHTS OF INDIGENOUS PEOPLE:**

**RAPPOREUR:** An expert entrusted by the UN with a special human rights mandate, acting in his or her personal property.

**COLONIZATION:** An act of establishing a body of people living in a new territory but retaining ties with the parent state.

**SELF-DETERMINATION:** The right of a national group ("people") living in a territory to choose for themselves a form of legal and political organisation for that territory.

**COLLECTIVE:** Denoting the number of persons or things considered as one group or whole.

**GROUP:** A number of individuals assembled together or having some unifying relationship.

**TREATY:** A contract in writing between two or more political authorities (as states or sovereign) formally signed by representatives duly authorized and usually ratified by lawmaking authority of the state.

**SIGNED:** To write one's name as a token of assent, responsibility or obligation.

**RATIFICATION :** Ratification defines the international act whereby a state indicates its consent to be bound to a treaty if the parties intended to show their consent by such an act. The institution of ratification grants states the time-frame to seek the required approval for the treaty on domestic level.

**ENTER INTO FORCE:** When it enters into force, a treaty is legally binding on all parties that have ratified the treaty. A treaty usually goes into effect when a certain number of states have ratified it.

**ACCEDE:** Accession is the action where a state accepts the offer to become a party to a treaty already negotiated and signed by other states.

**RESERVATIONS:** When a state makes a reservation to a treaty, it means that the state considers itself bound to the treaty, except for those provisions to which it makes the reservation. Reservations must not be conflicting with the purpose and object of the treaty.

**GENERAL ASSEMBLY:** It is the main deliberative organ of the United Nations. It is composed of representatives of all the member states, each of which has one vote. The General Assembly passes resolutions on important issues concerning everything from outer space to disarmament.

**INTERNATIONAL DECADE:** An International Decade is a ten-year period in which the UN focuses on a specific issue (for eg: Indigenous people) and tries to fulfill important goals regarding that issue.

**COVENANT:** A usually solemn, formal and binding agreement. It is similar to treaty.

### **EMERGING ISSUES:**

- **VIOLENCE AGAINST WOMEN:** An indigenous woman is more likely to be raped with some estimates showing that more than one in three indigenous women are raped during their lifetime.
- **SYSTEMATIC RACISM:** Indigenous people frequently raise a concern about outright racism and systematic discrimination from the state and its authorities. At their most extreme, these forms of discrimination lead to gross violations of human rights, such as murder, rape and other forms of violence or intimidation. These forms of discrimination are often either difficult to quantify and verify or are simply not documented by the authorities, or not disaggregated based on ethnicity.
- **CRIMINALIZATION OF PROTEST:** Indigenous people frequently face detention due to criminalization of social protest activities. The most serious shortcoming in human rights protection in recent years is the trend of the use of legislation and the justice system to criminalize social protest activities and legitimate demands made by indigenous organizations and movements in the protection of their rights.
- **INDIGENOUS HUMAN RIGHT DEFENDERS:** They are increasingly targeted as terrorists for promoting and protecting decades old guaranteed right. This alarming trend is seen all around the world.

### **LAW ENFORCEMENT:**

The UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLE (UNDRIP) was adopted by the General Assembly on 13<sup>th</sup> September, 2007.

It is a universal instrument for the rights of Indigenous People all across the globe. It establishes a universal framework of minimum standards for the survival, dignity and well-being of the indigenous people of the world. It also elaborates or explains the existing human rights and freedoms to indigenous people. The Declaration is particularly valuable because Indigenous people including the aboriginal people were involved in its drafting. The adoption of this instrument is the clearest indication that the international community is committing itself to the protection of the individual and collective rights of indigenous peoples.

#### THE GENERAL ASSEMBLY

Guided by the principles of the charter of the United Nations and good faith in the fulfilment of the obligations of the states in accordance with the charter.

Assert that Indigenous people are equal to all other people while recognizing and protecting their rights.

Recognizes that the situation of Indigenous people vary from region to region and country to country and the importance of national and regional particularities should be taken into consideration.

#### ARTICLE 1:

This article is an important reminder that human rights are inherent to all people and that, as Aboriginal people they have an entitlement to all human rights and freedoms and not only those mentioned in the Declaration on the Rights of Indigenous Peoples. When they affirm their rights, they seek to exercise rights that they have they do not ask for special treatment. This article also emphasises that we have rights not only as individuals but also collectively as Aboriginal people. This has particular significance for issues such as language, cultural heritage, traditional land and water. We might have a right to language as an individual but that is not meaningful unless the right to the language of the group is valued and protected.

#### ARTICLE 2:

Indigenous people are free and equal to all others and have the right to be free from any kind of discrimination including discrimination based on their identity or origin.

#### ARTICLE 3:

Indigenous people have the right to self-determination. This means that they can choose their political status and develop as they want.

#### ARTICLE 4:

As a form of self-determination, Indigenous people have the right to autonomy or self-government to their own affairs.

**ARTICLE 5:**

Indigenous people have the right to keep and develop their distinct institutions. They also have the right to take part in the life of the rest of the country if they wish to do so.

**ARTICLE 6:**

Every Indigenous person has the right to be a citizen of a country.

**ARTICLE 7:**

Indigenous People must be free from genocide and other acts of violence including the removal of their children by force.

**ARTICLE 8:**

Indigenous people shall be free from forced assimilation. Governments shall prevent: a.)actions that take away their distinct cultures and identities

b.)taking of their land and resources

c.)any form of forced assimilation

d.)propaganda against them

**ARTICLE 9:**

Indigenous people have the right to belong to Indigenous communities and nations in accordance with their traditions and customs.

**ARTICLE 10:**

Indigenous people shall not be removed from their land by force. Where they agree they should be provided compensation and where possible have the possibility to return.

**ARTICLE 11:**

Indigenous people have the right to practice and propagate their cultural traditions and customs.

**ARTICLE 12:**

Indigenous people have the right to their spiritual and religious traditions, customs and ceremonies. They have the right to their sacred sites, ceremonial objects and the remains of their

ancestors. Governments shall assist Indigenous people to recover their ceremonial objects and the remains of their ancestors.

**ARTICLE 13:**

Indigenous people have the right to their history, language, oral traditions, stories, writings and their own names for places and people. Governments shall ensure that in courts and other proceedings, Indigenous people can understand and be understood through interpreters and other appropriate ways.

**ARTICLE 14:**

Indigenous people have the right to their own schools and to provide education in their own language. Indigenous people especially children have the right to the same education as all other people. Governments shall assist Indigenous people especially the children who do not live in Indigenous communities to learn their own culture and language.

**ARTICLE 15:**

Education and public information shall reflect the dignity and diversity of Indigenous cultures, traditions and aspirations. In consultation with Indigenous people governments shall take measures to promote tolerance and good relations between Indigenous and other people.

**ARTICLE 16:**

Indigenous people have the right to establish and create their own media in their own languages. They shall also have equal access to non-Indigenous media. Government-owned media must reflect Indigenous cultures.

**ARTICLE 17:**

Indigenous people must not be discriminated against the matters connected with the employment.

**ARTICLE 18:**

Indigenous people have the right to participate in decisions that affect them. They can choose their own representatives and use their own decision-making procedures.

**ARTICLE 19:**

Governments shall consult properly with Indigenous people before adopting laws and policies that may affect them. They must use the principles of free, prior and informed consent – which means giving Indigenous people all the facts needed to make the decisions.

**ARTICLE 20:**

Indigenous people have the right to their own political, economic and social systems to pursue their traditional and other economic activities. Where Indigenous people have been deprived of their means of subsistence they are entitled to compensation.

**ARTICLE 21:**

Indigenous people have the right to improved economic and social conditions. This includes the areas of education, employment, housing, health and social security. Governments shall adopt special measures to ensure the improvement of economic and social conditions.

**ARTICLE 22:**

Particular attention shall be paid to the rights and needs of Indigenous elders, women, youth, children and persons with disabilities in the implementation of this declaration. Governments shall adopt measures, in conjunction with Indigenous peoples, to protect Indigenous women and children against violence and discrimination.

**ARTICLE 23:**

Indigenous people have the right to determine priorities and strategies for their development. They should be involved in determining health, housing and other economic and social programs and as far as possible try to administer these programs through their own organisations.

**ARTICLE 24:**

Indigenous people have the right to their traditional medicines and health practices. The plants, animals and minerals used in medicines shall be protected. Indigenous people shall have access to all the social and health services without discrimination. Indigenous individuals have an equal right to the highest attainable standard of physical and mental health.

**ARTICLE 25:**

Indigenous people have the right to keep and strengthen their distinctive relationship with their land, water and other resources.

**ARTICLE 26:**

Indigenous people have the right to own, use and control their land, water and other resources. Governments shall recognise and protect these land, water and resources.

**ARTICLE 27:**

Governments would establish a fair and independent process to recognise and decide the rights of Indigenous people related to land, water and other resources. The people shall have the right to participate in this process.

**ARTICLE 28:**

Indigenous people have the right to the return of their land and resources when taken without free, prior and informed consent. Where this is not possible they would receive fair compensation in the form of lands and resources or money.

**ARTICLE 29:**

Indigenous people shall receive assistance in order to restore and protect the environment of their land and resources. Hazardous material will not be stored or disposed of on the land of Indigenous people without their free and prior consent. Governments would take the measures to assist Indigenous people whose health has been affected by such material.

**ARTICLE 30:**

There would be no military activities on the land of Indigenous people unless justified by a public interest or agreed by the Indigenous people.

**ARTICLE 31:**

Indigenous people have the right to control and develop their cultural heritage, traditional knowledge, science and technology including seeds, medicines, knowledge of flora and fauna, oral traditions, designs, art and performances. Governments of the respective countries would take measures to recognise and protect these rights.

**ARTICLE 32:**

Indigenous people have the right to determine strategies for the development of their land and resources. Governments will consult Indigenous people before giving approval to activities affecting their land or resources particularly the development of mineral, water and other resources. Just compensation must be paid for such activities.

**ARTICLE 33:**

Indigenous people have the right to determine who their members are. They have the right to decide upon the structures and membership of their organisations.

**ARTICLE 34:**

Indigenous people have the right to their own legal systems and customs as long as they accord with international human rights law.

ARTICLE 35:

Indigenous people can decide the responsibilities of individuals to their communities..

ARTICLE 36:

Indigenous people separated by international borders have the right to maintain relations and undertake activities with one another.

ARTICLE 37:

Governments would respect treaties and agreements entered into with Indigenous people.

ARTICLE 38:

Government will take measures to give effect to his declaration in consultation with indigenous people.

ARTICLE 39:

Indigenous people have the right to financial and other assistance from governments and international organisations to enjoy the rights recognised in the declaration.

ARTICLE 40:

Indigenous people have the right to fair procedures for the resolution of disputes with States and other parties and to effective remedies for infringements of their rights. These procedures must take account of Indigenous customs and traditions.

ARTICLE 41:

The United Nations and other international organisations would provide financial and other assistance in order to give effect to the rights recognised in the declaration.

ARTICLE 42:

The United Nations and its bodies including the Permanent Forum on Indigenous Issues would promote respect for this declaration.

ARTICLE 43:

The declaration contains only minimum standards for Indigenous people.

**ARTICLE 44:**

The rights recognised in this declaration are equally applicable to Indigenous men and women.

**ARTICLE 45:**

Nothing in this declaration affects other rights of Indigenous people that they presently hold or may get in the future.

**ARTICLE 46:**

Nothing in this declaration allows any action against the Charter of the United Nations or which harms the territorial integrity of independent countries.

**THE CASE OF INDIA:**

In India ,705 ethnic groups are notified as Scheduled Tribes (STs) spread across 30 states or Union Territories.They are considered to be India's Indigenous people.As per the census of 2011 they comprise 8.6% of the total population of India and almost 90% of them live in rural areas.The largest concentration of the Indigenous People are found in the north-eastern states of India and the Central tribal belt stretching from Rajasthan to West Bengal where these people are usually referred as Adivasis the literal meaning of which is Indigenous People.

India has several laws and constitutional provisions such as the Fifth Schedule of the Indian Constitution for mainland India and the Sixth Schedule for certain areas of north- east India which recognizes the right of Indigenous people related to land and self-governance.These laws which are aimed at protecting Indigenous people have a number of shortcomings in them.The Indian government voted in favour of the UN Declaration on the Rights Of Indigenous People(UNDRIP).

**CONCLUSION:**

Governments and societies across the world have struggled to work in partnership with Indigenous people when developing the policies and programs that affect them. This declaration documents the individual and collective rights in one document and provides a universal guide for future collaboration. It clearly defines how existing human rights are applicable to every man, woman and child throughout the world.

I am hopeful that Indigenous people our governments and our societies will use the declaration as the foundation to our meeting with each other recognising that Indigenous rights are human rights.

Indigenous People and Human Rights explore how general human right standards have enabled, empowered and constrained indigenous people in claiming and defending their essential economic, social, cultural, civil and political interests. Legal security and law enforcement with regard to the different aspects of the lives of indigenous persons i.e.(citizenship, identity papers, right to individual and collective ownership, rights to land and territory, intellectual property rights etc.) are an important element for the sustainability of the development process of the Indigenous People.

Increasing decentralization and devolution to local governments and its effects on local power and public investment are opening up new spaces for the participation of indigenous people in the administration of local government and management of territories, communities and neighbourhoods.

The UN Declaration ensures that indigenous peoples' rights to cultural integrity, education, health, and political participation are protected. The UNDRIP also provides for the recognition of the rights of the indigenous people to their land, natural and other resources, the observation of their treaty rights. The UN Declaration requires countries to consult with the indigenous people with the goal of obtaining their consent on the matters concerning them. The UNDRIP opens the pathway to significantly increase the democratic understanding of self-determination in a manner that contributes to develop modern international law on the question of self-determination and strengthen the Human Rights Of Indigenous People.

Address the following questions also:

1. Why do indigenous people have special rights?
- 2. Why do indigenous people matter?**
3. What are the indigenous values?
4. What issues do indigenous people face?
- 5. The link between global environmental change and the rights of indigenous populations**
- 6. Operations of the International Labor Organization and its work on behalf of Indigenous Peoples are essential reading**
- 7. Alienation of tribal land and repression under forest laws**
- 8. Cases: madhu kishwar v. state of bihar**

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