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Implementation of Indigenous and Tribal Law in India: A Comparative Study on Legal Obligations

DR. SAKSHI PATHAK¹

ABSTRACT

This research article undertakes a comprehensive comparative analysis of the implementation of indigenous and tribal laws in India, scrutinizing the legal obligations that govern these unique legal frameworks. India, with its diverse cultural and ethnic landscape, recognizes the significance of preserving and protecting the rights of indigenous and tribal communities. However, the effectiveness of implementing these laws remains a critical area of inquiry.

The study initiates by providing an overview of the historical context and evolution of indigenous and tribal laws in India, highlighting the constitutional provisions and international commitments aimed at safeguarding the rights of these communities. It examines the legal obligations imposed on the Indian state to protect, promote, and implement these distinct legal systems, drawing parallels with global practices and standards.

Through a comparative lens, the article analyzes case studies of different states within India, considering variations in the recognition and enforcement of indigenous and tribal laws. The research explores the challenges faced in integrating these legal systems into the broader national legal framework, with a focus on issues such as conflicting laws, jurisdictional complexities, and the role of customary practices.

Furthermore, the article investigates the role of governmental institutions, judiciary, and other stakeholders in ensuring the effective implementation of indigenous and tribal laws. It critically evaluates the mechanisms in place for dispute resolution, resource allocation, and community empowerment within the context of these legal frameworks.

The findings of this study contribute to the ongoing discourse on the intersection of indigenous and tribal rights with the mainstream legal system in India. The comparative approach allows for a nuanced understanding of the strengths and weaknesses in the implementation of these laws, offering insights for policymakers, legal practitioners, and academics to enhance the legal protection and empowerment of indigenous and tribal communities in the country.

¹ Author is an Assistant Professor of Law at Chotanagpur Law College, Namkum, Ranchi, India.

I. INTRODUCTION

“Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”²

The ‘Adivasis’ literally translated as ‘original inhabitants’ is a term used to refer to the Tribal population in the country classified by the International Labour Organization as the ‘indigenous’ population. While there is a very thin line of difference between the term Tribal and Indigenous, the International Labour Organization rightly decided to include both the terms so as to cover the maximum number of people. This to ensure that there is no question of being the Original inhabitants of the region but having a prior claim to the natural resources against the outsiders.³ The Constitution of India defines the Scheduled Tribes negatively, as groups that are not ‘castes. Such a classification is based on very many factors like Social organization, economy and living conditions, Language and religion.

There are about 370 million people spread in over 70 countries that recognize themselves as Indigenous or Tribal population.⁴ India alone is home to more than Half of the world’s Tribal Population which constitutes about 8.2% of the population of the country.⁵ Thus, it becomes particularly important to analyse whether there is adequate protection and whether the Tribal laws of the country comply with International standards.

Moreover, even after more than 70 years of guaranteeing the protection and promotion of the Tribal rights under the constitution and various statutes, the Tribal society still suffers from many human right violations.⁶ Among these come Land Alienation to non-tribal, Failure to ensure forest rights, disadvantages of development policies, culture and language rights and the various violations of PESA Act in India.⁷

The present paper seeks to highlight the regime under International Law for the protection,

² Article 3 of the Draft Declaration on the Rights of Indigenous Peoples, U.N. Doc. E/CN.4/Sub.2/1994/2/Add.1 (1994)

³ Virginius Xaxa. “Tribes as Indigenous People of India.” *Economic and Political Weekly*, vol. 34, no. 51, 1999, pp. 3589–3595. *JSTOR*, www.jstor.org/stable/4408738. Accessed 9 Apr. 2020.

⁴ Who are the indigenous and tribal peoples? International Labour Organization, Available at https://www.ilo.org/global/topics/indigenous-tribal/WCMS_503321/lang--en/index.htm. Last accessed on 09.04.2020.

⁵ Office of the Registrar General and Census Commissioner ((2011) Total population, population of scheduled castes and scheduled tribes and their proportions to the total population New Delhi: Office of the Registrar General and Census Commissioner.

⁶ Poulter, S. (1998). *Ethnicity, Law and Human Rights. The English Experience*, Oxford Clarendon Press

⁷ Krishna Halavath, Human Rights and Realities of Tribals’ Lives in India: A Perfect Storm, *IOSR Journal Of Humanities And Social Science (IOSR-JHSS)* Volume 19, Issue 4, Ver. II (Apr. 2014), PP 43-46.

preservation and advancement of the Tribal society. The paper shall further, after a thorough study of the Domestic structure of Tribal Laws in India, throw light on whether the standard of protection under the International Law regime is followed or not. The paper also throws brings out the global best practices in the most important areas relating to tribal rights and compare the same with the threshold of protection in India.

For the ease of discourse and effective delineation of issues, the paper shall be dealing with three broad sub topics. *Firstly*, dealing with the International obligations vis-à-vis India's Domestic Legal structure, *Secondly*, the Global best practices vis-à-vis the status in India and *Lastly*, the Conclusions and Recommendations.

II. HUMAN RIGHTS AND 'SPECIAL' TRIBAL RIGHTS

The human rights are of great importance has been recognized worldwide.⁸ Seeing tribal rights in isolation of Human rights, dangers treating these groups as a charity and not as a group of people towards whom the state has responsibilities.⁹ While Human Rights necessarily extends to Tribal People, the question is, "Why special rights for Tribal and Indigenous groups?"

The relationship between Human rights and Tribal Rights has been a topic of debate for many. A few scholars vehemently opine that these are two absolutely disjunctive branches that are antithetical to one another. Such assertions come on the twin argument that *firstly*, Human rights find most of the Tribal laws incompatible and hence, endanger their sustenance and *secondly*, guaranteeing Human rights to the society through development often devastates the health, economic sustenance and land of the Indigenous people.¹⁰ While on the other hand, many strongly believe that Tribal Laws complement and further the already instated Human rights.¹¹ The debate seems to have found its end with the conclusion that Tribal law has thoughtfully integrated and furthered human rights norms to 'uncover and revitalize' their own legal traditions and support claims for religious freedom, natural resources and equality.

Tribal Law has now become a more specialized branch of Human Rights for bridging divide in the area of development and social justice.¹² While the law deals with various aspects of

⁸ Baxi, Upendra. (2002). The future of human rights. New Delhi: Oxford University Press.

⁹ Krishna Halavath, Human Rights and Realities of Tribals' Lives in India: A Perfect Storm, IOSR Journal Of Humanities And Social Science (IOSR-JHSS) Volume 19, Issue 4, Ver. II (Apr. 2014), PP 43-46.

¹⁰ James S. Phillips (2015) The rights of indigenous peoples under international law, Global Bioethics, 26:2, 120-127, DOI: 10.1080/11287462.2015.1036514

¹¹ Kristen A. Carpenter & Angela R. Riley, Tribal Rights, Human Rights, 2013 Mich. St. L. Rev. 293, available at <http://scholar.law.colorado.edu/articles/94/>.

¹² Tribal rights are human rights as standard for bridging divide between development, social justice, New Delhi, Business Standard. Available at https://www.business-standard.com/article/news-ani/tribal-rights-are-human-rights-as-standard-for-bridging-divide-between-development-social-justice-116122700161_1.html.

protection of these population, the Human rights regime remains the most extensive and exhaustive protection mandate in all aspects.¹³ Thus, the implementation of the Human right obligations in letter and spirit while making it especially tailored to suit the varied problems of the Tribal communities,¹⁴ has become the way to enhance protection especially when it comes to socio economic discussions.¹⁵

The international conventions and agreements can help us understand the dimensions of Tribals' Human rights in the Indian society.¹⁶ The crux of the discussion thus, is that the Human Rights guaranteed to all also extends to the Tribal and Indigenous population but since the histories of these people have been marked by discrimination, ethnocide, marginalization and they face human right violations even today, they require a 'special' "*articulations of universal human rights, as they apply to indigenous peoples*".¹⁷ This thus, requires conceptualization and special measures or privileges to ensure effective equality with all sectors of the society.¹⁸

III. THE HISTORY OF INTERNATIONAL OBLIGATIONS FOR INDIGENOUS

The history of International Obligation for Tribals is a history of struggle for the legal protection and survival of these historical communities lacking land entitlements, that began in the 1970s.¹⁹ Various NGOs²⁰ and indigenous groups appealed to the International community extending the request for special recognition of principles like self-determination and non-discrimination as they apply to these groups.²¹ In addition to scholarly writings from legal publicists, and sociological activists, various international conferences were attended by the representatives of these groups, most importantly, the 1977 International Non-Governmental Organizations Conference on Indigenous Populations in the Americas, held in Geneva,

¹³ Nair, R. (2006). Human rights in India: Historical, social and political perspectives. New Delhi: Oxford University Press

¹⁴ Poulter, S. (1998). Ethnicity, Law and Human Rights. The English Experience, Oxford Clarendon Press.

¹⁵ Tribal rights are human rights as standard for bridging divide between development, social justice, New Delhi, Business Standard. Available at https://www.business-standard.com/article/news-ani/tribal-rights-are-human-rights-as-standard-for-bridging-divide-between-development-social-justice-116122700161_1.html.

¹⁶ Krishna Halavath, Human Rights and Realities of Tribals' Lives in India: A Perfect Storm, IOSR Journal Of Humanities And Social Science (IOSR-JHSS) Volume 19, Issue 4, Ver. II (Apr. 2014), PP 43-46.

¹⁷ Understanding the Indigenous and Tribal, Peoples Convention, 1989 (No. 169), HANDBOOK For ILO Tripartite Constituents. Available at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_205225.pdf.

¹⁸ Understanding the Indigenous and Tribal, Peoples Convention, 1989 (No. 169), HANDBOOK For ILO Tripartite Constituents. Available at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_205225.pdf.

¹⁹ Marks, G., 2000. Sovereign States vs Peoples: Indigenous Rights and the Origins of International Law. *Austl. Indigenous L. Rep.*, 5, p.1.

²⁰ Clarke, G., 1998. Non-governmental organizations (NGOs) and politics in the developing world. *Political studies*, 46(1), pp.36-52.

²¹ Mary B. Davis, Native America in the Twentieth Century: An Encyclopedia, First Published in 1996, Routledge, First Published in 1996.

Switzerland. This is the first time these groups could speak for themselves at the UN.²² The resolution recognized that;

*“The brutal colonization to open the way for the plunder of their land and resources by commercial interests seeking maximum profits; the massacres of millions of native peoples for centuries and the continuous grabbing of their land which deprives them of the possibility of developing their own resources and means of livelihood; the denial of self-determination of indigenous nations and peoples destroying their traditional value system and their social and cultural fabric. The evidence pointed to the combination of this oppression resulting in the further destruction of the indigenous nations.”*²³

The result was the establishment of UN Working group on Indigenous Population,²⁴ for the “promotion and protection of human rights and fundamental freedoms of indigenous peoples; to give attention to the evolution of international standards concerning indigenous rights.”²⁵ India is very active to make oral and written submissions in the group.²⁶ These efforts resulted in the development of a new segment of rights under the recognized Human rights.²⁷

While the ILO had a Convention Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries,²⁸ but the same to be revised as it was highly criticised. Thus, pursuant to a ‘Meeting of experts’ in 1986 in 1989, the Convention on Indigenous and Tribal Peoples was unanimously adopted.²⁹ Furthermore, there are various documents in the Inter-American Commission of Human Rights like the 1973 Policy Guidelines, and the 1989 OAS General Assembly resolution. In this manner, the world has come to agree on a common ground as to the governance on the minimum standards that must apply to the Indigenous populations.³⁰

²² Sanders, D., 1989. The UN working group on indigenous populations. *Human Rights Quarterly*, 11(3), pp.406-433.

²³ The ‘Geneva Conference: Official Report’, in (1977) 1 (77), Treaty Council News.

²⁴ Economic and Social Council resolution 1982/34.

²⁵ Mandate of the Working Group on Indigenous Populations, UNHR Office of the High Commissioner, Available at <https://www.ohchr.org/EN/Issues/IPeoples/Pages/MandateWGIP.aspx>.

²⁶ Mary B. Davis, *Native America in the Twentieth Century: An Encyclopedia*, First Published in 1996, Routledge, First Published in 1996.

²⁷ Mary B. Davis, *Native America in the Twentieth Century: An Encyclopedia*, First Published in 1996, Routledge, First Published in 1996.

²⁸ ILO Convention, No. 107, 1957.

²⁹ ILO Convention, 1989, No. 169.

³⁰ S. James, *Cultural Survival Quarterly Magazine*, *International Law And Indigenous Peoples: Historical Stands And Contemporary Developments*. Available at <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/international-law-and-indigenous-peoples-historical-stands>.

IV. INTERNATIONAL OBLIGATIONS FOR THE RIGHTS OF TRIBAL PEOPLE

The struggle brought forth immense developments in the International arena. As discussed in the previous chapter,³¹ Human Rights treaties apply to the Indigenous people as well as some special international instruments recognizing their rights. Thus, to summarise the International legal regime for protection of Tribal Rights, we would have:

- a. The system of Human Right Treaties and Soft Law Instruments including the UDHR, ICCPR and the ICESCR as well as its additional Protocols
- b. Special Instruments like the United Nations Declaration on the Rights of Indigenous Peoples and the ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries, 1989 (No. 169)
- c. Human rights and tribal rights under the Regional systems including the African Commission on Human and Peoples' Rights, Organization of American States and the Council of Europe and European Court of Human Rights. This shall not be discussed in depth since the scope of the paper is to analyse International law as it applies to India and hence, such regional systems shall not be evaluated in depth.
- d. There are various International law organs working for the rights as well. The work and cooperation by United Nations on Indigenous peoples' issues and work of the United Nations High Commissioner for Human Rights and Office of the United Nations High Commissioner for Human Rights. This includes other UN agencies working in a specialized way for Food Access and Environmental Rights. It also includes the United Nations Development Programme, UN Environmental Programme, United Nations Educational, Scientific and Cultural Organization,³² and United Nations Framework Convention on Climate Change and associated instruments.³³

For a better understanding of these issues, all the instruments and law shall be dealt with separately.

³¹ Chapter 3.

³² http://portal.unesco.org/culture/en/ev.php-URL_ID=35393&URL_DO=DO_TOPIC&URL_SECTION=201.html.

³³ <https://unfccc.int/>.

V. SPECIAL INSTRUMENTS FOR TRIBAL RIGHTS

Special Instruments for Indigenous Rights includes *firstly*, the Draft Declaration on rights of Indigenous peoples,³⁴ formed in furtherance of Human Rights Council Resolution 2006/2,³⁵ initially drafted by the working group on Indigenous population in 1985.

The Draft Declaration is one of the most comprehensive statement and comprises of 46 articles and 9 parts. These include Fundamental Rights, Life and Security, Culture, Religion, and Language Laws, Education, Media, and Employment, Participation and Development, Land and Resources, Self-Government and Indigenous, Implementation and Minimum Standards. The main principles that the declaration seeks to promote are Self Determination,³⁶ Right to Autonomy,³⁷ Right to Land, territories and Resources³⁸ along with right to relief in this regard,³⁹ Economic, social and cultural Rights,⁴⁰ (rights to health, education, employment, housing, sanitation, social security and an adequate standard of living),⁴¹ Collective Rights like the Right to culture,⁴² Equality and Non-Discrimination,⁴³ and the Right to make Treaties and Agreements with the States.⁴⁴

Secondly, the ILO Convention No. 169 of 1989 is Treaty made specially for preserving the Rights of the Tribal Groups. It is the First convention to elaborately address the specific needs of Tribal groups' human rights. This convention is illustrative of the State's responsibility in promoting and protecting human rights of Indigenous groups. While the convention is often

³⁴ Draft Declaration on the Rights of Indigenous Peoples, U.N. Doc. E/CN.4/Sub.2/1994/2/Add.1 (1994), Available at <http://hrlibrary.umn.edu/instree/declra.htm>.

³⁵ Human Rights Council Res. 2006/2, Working group of the Commission on Human Rights to elaborate a draft declaration in accordance with paragraph 5 of the General Assembly res. 49/214 of 23 December 1994 (2006), Available at <http://hrlibrary.umn.edu/hrcouncil2-2006.html>.

³⁶ Article 18 of the Draft Declaration on the Rights of Indigenous Peoples, U.N. Doc. E/CN.4/Sub.2/1994/2/Add.1 (1994).

³⁷ Article 4 and Article 34 of the Draft Declaration on the Rights of Indigenous Peoples, U.N. Doc. E/CN.4/Sub.2/1994/2/Add.1 (1994).

³⁸ Article 26 (1) of the Draft Declaration on the Rights of Indigenous Peoples, U.N. Doc. E/CN.4/Sub.2/1994/2/Add.1 (1994).

³⁹ Article 27 of the Draft Declaration on the Rights of Indigenous Peoples, U.N. Doc. E/CN.4/Sub.2/1994/2/Add.1 (1994).

⁴⁰ Article 3 of the Draft Declaration on the Rights of Indigenous Peoples, U.N. Doc. E/CN.4/Sub.2/1994/2/Add.1 (1994).

⁴¹ Human Rights Committee, general comment No. 23 (1994) on the rights of minorities and Committee on Economic, Social and Cultural Rights, general comment No. 21 (2009) on the right of everyone to take part in cultural life. Note, also, Inter-American Court of Human Rights, Case of the Plan de Sanchez Massacre v. Guatemala, Series C, No. 116, Judgement of 19 November 2004.

⁴² Article 27 of the Draft Declaration on the Rights of Indigenous Peoples, U.N. Doc. E/CN.4/Sub.2/1994/2/Add.1 (1994).

⁴³ Article 1 and Article 2 as Interpreted by the Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua; Case of the Sawhoyamaya Indigenous Community v. Paraguay, Series C, No. 146, Judgement of 29 March 2006.

⁴⁴ Study on treaties, agreements and other constructive arrangements between States and indigenous populations" (E/CN.4/Sub.2/1999/20).

criticised as being less comprehensive than the Declaration, it covers a wider range of rights like rights to development, customary laws, lands, territories and resources, employment, education and health.⁴⁵ It is also important to Highlight that the Conventions like the ILO Convention No. 169 present principles of Customary International law and are hence, applicable even to states that are not parties to it.⁴⁶

Thirdly, specialized rights are given under various regional and domestic systems.⁴⁷ Furthermore, indigenous people now have the right to appeal to the International forums following procedures under the UN, the OAS and ILO, even though the enforcement procedures for Human right violations are limited.⁴⁸

Other general and Human Right Instruments that affect Indigenous peoples' rights are, ⁴⁹The Universal Declaration of Human Rights, 1948⁵⁰, Convention on the Prevention and Punishment of the Crime of Genocide, 1951⁵¹, International Covenant on Civil and Political Rights, 1966⁵², International Covenant on Economic, Social and Cultural Rights, 1966⁵³, Convention on the Elimination of All Forms of Racial Discrimination, 1966⁵⁴, Convention on the Rights of the Child, 1990⁵⁵ especially Article 29 and 30 of the convention that relate to right to cultural identity, language and religion for people of Indigenous origin, Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities, 1992⁵⁶, The Rio

⁴⁵ Indigenous Peoples and the United Nations Human Rights System, United Nations Human Rights, Office of the High Commissioner, Page 29, Available at <https://www.refworld.org/pdfid/5289d7ac4.pdf>.

⁴⁶ S. James, Cultural Survival Quarterly Magazine, INTERNATIONAL LAW AND INDIGENOUS PEOPLES: HISTORICAL STANDS AND CONTEMPORARY DEVELOPMENTS. Available at <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/international-law-and-indigenous-peoples-historical-stands>.

⁴⁷ Indigenous Peoples and the United Nations Human Rights System, United Nations Human Rights, Office of the High Commissioner, page 30, Available at <https://www.refworld.org/pdfid/5289d7ac4.pdf>

⁴⁸ S. James, Cultural Survival Quarterly Magazine, INTERNATIONAL LAW AND INDIGENOUS PEOPLES: HISTORICAL STANDS AND CONTEMPORARY DEVELOPMENTS. Available at <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/international-law-and-indigenous-peoples-historical-stands>.

⁴⁹ Study Guide on the Rights of Indigenous people, Human Rights Library, University of Minnesota, Available at <http://hrlibrary.umn.edu/instreet/b1udhr.htm>.

⁵⁰ Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948), Available at <http://hrlibrary.umn.edu/instreet/b1udhr.htm>.

⁵¹ Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277, entered into force Jan. 12, 1951.

⁵² International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976.

⁵³ International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976.

⁵⁴ International Convention on the Elimination of All Forms of Racial Discrimination, G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force Jan. 4, 1969.

⁵⁵ Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2 1990.

⁵⁶ Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities, G.A. res. 47/135, annex, 47 U.N. GAOR Supp. (No. 49) at 210, U.N. Doc. A/47/49 (1993).

Declaration of Environment and Development and Agenda 21 that highlight the need to grant Tribal groups more control over their land, management of resources and participation in decision making,⁵⁷ Convention on Biological Diversity, 1992⁵⁸ that calls for the practice and preservation of indigenous knowledge and tradition as well as encourages equitable sharing⁵⁹, Vienna Declaration and Programme of action, 1993,⁶⁰ which recognizes the contribution of these communities and reaffirms their right to economic, social and cultural wellbeing and the Report on the International Conference on Population and Development, 1994.⁶¹ This is very important as it highlights the importance of Indigenous Group's say on development and environmental programs as well as their contribution in managing land and protecting natural resources.⁶²

Swepston (2015),⁶³ reiterates that the international tribal law is albeit weak. Only the ILO is responsible for the two international Conventions for the rights of indigenous and tribal people.⁶⁴ Consequently, these conventions mark the basic rights and the widely accepted terms and definitions that national laws have put into place. The author further iterates that the UN Declaration on the Rights Of Indigenous Peoples 2007 should thus, be read in conjunction with the ILO Convention 169.

Thus, we see that all issues relating to Indigenous Rights are covered in international law including Fundamental Rights, Life and Security, Economic Rights, Development Rights, Culture, Religion, Language Laws, Education, Media, Employment, Participation and Development, Land and Resources, Self-Governance, Implementation and Minimum Standards as well as Environmental Rights.

VI. STATUS OF INTERNATIONAL LAW IN INDIA

India practices dualism which means that International Law obligations are different from the domestic law of the country. Thus, while there is no automatic translation of international

⁵⁷ Rio Declaration, Principle 22 and Agenda 21, Chapter 26.4

⁵⁸ Convention on Biological Diversity, G.A. res. 49/117, 49 U.N. GAOR Supp. (No. 49) at 143, U.N. Doc. A/49/49 (1994).

⁵⁹ Article 8(j) of the Convention on Biological Diversity, G.A. res. 49/117, 49 U.N. GAOR Supp. (No. 49) at 143, U.N. Doc. A/49/49 (1994).

⁶⁰ Vienna Declaration, World Conference on Human Rights, Vienna, 14 - 25 June 1993, U.N. Doc. A/CONF.157/24 (Part I) at 20 (1993).

⁶¹ Report of the International Conference on Population and Development, Available at <https://undocs.org/pdf?symbol=en/A/CONF.171/13/Rev.1>.

⁶² Paragraph 6 of the Report of the International Conference on Population and Development.

⁶³ Swepston, L., 2015. *The Foundations of Modern International Law on Indigenous and Tribal Peoples: The Preparatory Documents of the Indigenous and Tribal Peoples Convention, and Its Development through Supervision. Volume 1: Basic Policy and Land Rights*. Brill Nijhoff.

⁶⁴ The Indigenous and Tribal Populations Convention, 1957 (No. 107) and the Indigenous and Tribal Peoples Convention, 1989 (No. 169).

rights, Article 51 of the Constitution of India provides that:

“The State shall endeavour to The State shall endeavour to:

(c) foster respect for international law and treaty obligations in the dealings of obligations in the dealings of organised peoples with one peoples with one another”

The International obligations, once ratified by India, do not automatically translate into the municipal law. The penetration of International Law is permitted by the Indian constitution in 3 ways:

- a. By the Legislature under Article 253 read with Entry 13 and 14 of List I under the Seventh Schedule of the constitution of India. The parliament has exclusive power to legislate on all conceivable international matters which have been enumerated under the Union List. Under this list main entries relating to international matters are: foreign affairs,⁶⁵ United Nations Organization,⁶⁶ participation in international conferences, associations and other bodies and implanting of decisions made thereat,⁶⁷ and entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries⁶⁸ etc.
- b. By the Executive under Article 73 of the constitution of India.
- c. By the Judiciary implicit on a conjoint reading of Article 51 (c) and Article 142 of the Constitution of India.

While there is Dualism in India, a much-recognized International Law principle is The Principle of Integration. The principle of Integration implies that the states must strive to integrate into their municipal law, the principles relating to the protection and preservation of the environment that they have consented to be bound by under various treaties.⁶⁹ The necessary implication of such a Principle is to make the states comply with the International Law by making it a part of the domestic legislation of the state.⁷⁰ This would ensure that the states are fulfilling their commitment towards a better future.⁷¹

⁶⁵ Entry 10, List I, VIIIth Schedule of the Constitution of India.

⁶⁶ Entry 12, List I, VIIIth Schedule of the Constitution of India.

⁶⁷ Entry 13, List I, VIIIth Schedule of the Constitution of India.

⁶⁸ Entry 14, List I, VIIIth Schedule of the Constitution of India.

⁶⁹ Weatherill, S., 1995. *Law and integration in the European Union* (p. 203). Oxford: Clarendon Press.

⁷⁰ Nollkaemper, A., 2012. Three conceptions of the integration principle in international environmental law. In *Environmental Policy Integration* (pp. 34-44). Routledge.

⁷¹ Philippe Sands, *Principles of International Environmental Law* (Cambridge University Press, Second Edn. 2003), Pat Birnie and Alan Boyle, *International Law and the Environment*, (OUP, UK, Second Edn. 2002).

VII. DOMESTIC LEGAL OBLIGATIONS IN INDIA

The tribal people have historically been very independent communities. They have majorly relied on the forest for their needs and since the communities were small and close-knit, they never required anything from the modern world. However, unfortunately the position has changed. After the Britishers came, they slowly started sweeping the forest lands for the construction of railway lines, the establishment of industries etc. Due to the loss of their shelter, food and livelihood, tribal people were forced to take but small jobs to make a living. While through the centuries the situation has improved for many families, the Tribal population still faces a lot of problems.

Due to this, India has adopted after its independence, various measures for the protection and promotion of tribal rights. These include the safeguards in the Constitution as well as specific statutes to address the various problems faced by scheduled tribes.

Coming to the constitutional guarantees, we find that Tribal Population enjoys rights such as the Right to Equality,⁷² Non -discrimination,⁷³ reservation in Employment,⁷⁴ reserved seats in Lok Sabha,⁷⁵ and state legislative assembly,⁷⁶ Right to property,⁷⁷ right to appoint Commissioner for welfare of tribes,⁷⁸ and funds under welfare schemes by state government.⁷⁹

In addition to this, Article 46⁸⁰ requires the state to promote their economic and educational interests and protect against social injustice and exploitation. The constitution also prohibits any transfer of property belonging to tribal communities or lands that have been used by these people for generation.⁸¹

Various problems faced by the Tribal people include their own social problems, traditions and customs, Geographical separation, Land Alienation, Cultural problems, Educational problems, Economic problems, Health and Sanitation problems and damage to the environment. To tackle the problem of land alienation, encroachment on forests was made an offence under the Indian Forest Act, 1927 and later the Forest Conservation Act, 1980. The Scheduled Tribe and Other Traditional Forest Dwellers Act, 2006 recognizes ownership rights of tribes and other forest

⁷² Article 14 of the Constitution of India.

⁷³ Article 15 of the Constitution of India.

⁷⁴ Article 16 (4) of the Constitution of India.

⁷⁵ Article 330 of the Constitution of India.

⁷⁶ Article 332 of the Constitution of India.

⁷⁷ Article 19 (5) of the Constitution of India.

⁷⁸ Article 338 of the Constitution of India.

⁷⁹ Article 275(i) of the Constitution of India.

⁸⁰ Article 46 of the Constitution of India.

⁸¹ Schedule 5 of the Constitution of India.

dwellers. Furthermore, many legislations like the Forest Rights Act, 2006, Protection of Civil Rights Act, 1955, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Panchayat Extension to the Scheduled Areas (PESA) Act 1996 has been put into place along with the establishment of a Ministry for Tribal Affairs.

The contribution of the judiciary has also been immense. They have upheld and advocated certain rights for protection against environmental issues, such as right to healthy and hygienic environment⁸², right to safe drinking water,⁸³ right to livelihood⁸⁴ and the right to self-determination by mandatory consultation in *Orissa Mining Corporation Vs. Ministry of Environment and Forest & Ors.*⁸⁵

VIII. COMPARISON: INTERNATIONAL OBLIGATIONS VIS-À-VIS INDIA'S DOMESTIC LEGAL STRUCTURE

India is known for having a very enthusiastic attitude towards participation in International Institutions. However, history seems to show us that the same enthusiasm is not shared when it comes to the ratification of hard law under International Law.

Coming to India's attitude towards the International instruments made to further the interests of Tribal and Indigenous people, we find that the government has not ratified the Optional Protocols of the ICCPR, the ICESCR and the ILO Convention No. 169. In fact, India's ratification of the ILO conventions is limited to 41 out of 188 conventions. The conventions that have not been ratified include ILO conventions for Forced Labour,⁸⁶ Discrimination in employment and occupation,⁸⁷ and worst forms of child labour.⁸⁸

India has not been active in taking part in International discussions for the advancement of Tribal people as is reflected by the fact that it has not submitted reports and respond to queries. This expresses the fact that India doesn't take the ILO process very seriously.

It is true that merely because a country has not ratified an act, doesn't mean that it is irrelevant. As per Article 18,⁸⁹ after signing a treaty, the country is bound to comply with the objective of the act. However, the need of ratification is not overemphasized. It puts on the state the obligation to integrate international law into their domestic systems and confirm to the

⁸² M.C. Mehta vs. Union of India, AIR 1987 SC 1086.

⁸³ P. R. *Subhash Chandran v Government of Andhra Pradesh & Others*, 2001 (6) ALT 133.

⁸⁴ *Olga Tellis v. Bombay Municipal Corporation*, 1985 SCC (3) 545.

⁸⁵ W.P.(c) 180 of 2011

⁸⁶ International Labor Organization, Convention No. 29 and International Labor Organization, Convention No. 105

⁸⁷ International Labor Organization, Convention No.111.

⁸⁸ International Labor Organization, Convention No. 182.

⁸⁹ Article 18 of the Vienna Convention on the law of Treaties, 1969.

meetings and agreements held in furtherance to the conventions.

Furthermore, as much as Human Rights treaties affect the life of Tribal and Indigenous people, so do the instruments of Environmental law and India has been hesitant to enforce these including the Convention on Biological diversity even after ratification. This is evident by the fact that various environmental legislations in the country like the Coastal Regulation Zone Notification, 2006, The EIA Notification of 2020 and 2006 among others, have been retrogressed over the years.

Furthermore, in my opinion, it is wrong that India limits the policy assistance to the Scheduled tribes which doesn't include all the tribal and indigenous population in the country. Coming to specific aspects affecting the indigenous people, the following is an analysis of the extent of India's adherence to global standards.

a. Self-Governance

Self-governance is one of the most important issues in the debate for a dignified life for the tribal people. This flows from the indelible right to self-determination,⁹⁰ which is the right to pursue one's social, economic and cultural development without interference. In fact, to further the right to self determination, the term "population" was change to the term "peoples" in the ILO Convention No. 169.⁹¹ While the ILO Conventions do not refer to self-determination, it is a human right and even the convention notes that the tribal people must have the right to participate and consult in decisions that will affect them and that they should have the right to self-management.

The UN declaration on Rights of Indigenous people, 2007 recognize the right to self determination to "*freely determine their political status and freely pursue their economic social and cultural development*",⁹² and "*the right to autonomy or self-government in matters relating to internal and local affairs*".⁹³ Thus, the various facets of self-determination include autonomy and self-governance, full and effective participation, Consultation and participation in decision making, informed consent, recognition of traditional institutions and traditions and freedom to pursue economic, social and cultural development.⁹⁴

In India, there has been a long-standing discussion regarding this right and consequently, many provisions were put into place. *Firstly*, article 40 of the Constitution mandates the organization

⁹⁰ Article 1 of the ICCPR and ICESCR.

⁹¹ Article 1 (3) of the ILO convention 169.

⁹² Article 3 of the UN Declaration on Rights of Indigenous people, 2007.

⁹³ Article 4 of the UN Declaration on Rights of Indigenous people, 2007.

⁹⁴ Article 18, 19, 23, 32 and 38 of the UN Declaration on Rights of Indigenous people, 2007.

of panchayats and the power of self-governance. This was initially furthered to promote the decentralization of governance and it was felt that in a country as large as India, self-governance for local issues might be a boon. But in effect, majority villages have a small tribal population and since the caste system is still prevalent in India, these tribal people find it very difficult to be a part of the panchayat decision making in their own villages. Furthermore, while the 73rd and 74th amendment shifted to decentralized governance, the same was not extended to schedule V and schedule VI areas, Nagaland, Mizoram and Meghalaya which have a special status.⁹⁵ The conception of the Panchayat (Extension to Scheduled areas) Act, 1996 was a major step for furthering the Tribal Rights, via concrete provisions for determination of excise,⁹⁶ ownership for Minor Forest produce,⁹⁷ mandatory consultation with panchayat for cases of land acquisition and debilitation,⁹⁸ and for grant of license for extraction of minor minerals.⁹⁹

Unfortunately, the act applies only to 8 states and a special legislation, Panchayat Act, 2001 was enacted for Jharkhand, which has a high tribal population. Furthermore, the PESA suffers from Non-implementation because of the lack of knowledge regarding the legal rights, the lack of a designated ministry for the implementation of its provisions as the PESA falls under the aegis of both the Ministry of Tribal Affairs and the Ministry of Rural development.

Most importantly, the pendency of the Municipalities (Extension to Scheduled Areas) Bill of 2001 has created a gap in the administration of urban areas of the scheduled areas under Schedule V and VI.

This problem has been studied at length by A Kurup,¹⁰⁰ who analyses the Indian Law on tribal rights and found that one of the most important aspects contributing the degradation in the condition of tribal people is the highly decentralized administration. The paper analyses the framework of federalism in the country and traces the authority of the central and state in the affairs of tribal people with an analysis of the fifth and sixth schedule of the Constitution of India. The paper further reviews the Panchayat (Extension to scheduled areas) Act 1996 and finds that the state legislative incompetence and the incrementing environmental degradation has worsened the position of these people. Finally, the paper concludes to say that the institutionalization of autonomous tribal governance in the country is the best measure to

⁹⁵ Article 371A and 371G of the Constitution of India.

⁹⁶ Section 4 (m) (i) of the Panchayat (Extension to Scheduled areas) Act, 1996.

⁹⁷ Section 4(d) and 4 (m) (ii) of the Panchayat (Extension to Scheduled areas) Act, 1996.

⁹⁸ Section 4(i) of the Panchayat (Extension to Scheduled areas) Act, 1996.

⁹⁹ Section 4 (k) and 4 (l) of the Panchayat (Extension to Scheduled areas) Act, 1996.

¹⁰⁰ Kurup, A., 2008. Tribal Law in India: How decentralized administration is extinguishing tribal rights and why autonomous tribal governments are better. *Indigenous LJ*, 7, p.87.

ensure the thriving of this population.

b. Land, Natural resources, and environment

One of the biggest problems the indigenous populations have faced in the last 4 centuries has been land alienation. The biggest impact of modernization has been directly upon the encroachment into the forest and natural habitats of the tribal people. This has forced them to displace, leave their traditions and look for food and livelihood in the main-stream economy. Naturally, due to the unawareness of the modern ways and the lack of education the tribal population, which has a rich and diverse culture of their own, find themselves struggling to meet the basic requirements in the so called “modern mainstream society”.

Thus, the ILO conventions have long recognized the right of collective and individual ownership of their lands and the right to not be removed from their lands except legally for “*reasons relating to national security, or in the interest of national economic development or of the health of the said populations*”,¹⁰¹ the protection and preservation of the “*environment of the territories they inhabit*”,¹⁰² and to provide adequate compensation and restitution,¹⁰³ if such measures are taken.¹⁰⁴ Furthermore, the obligation to respect and foster the customs regarding the use of their lands is also paramount.¹⁰⁵ The lands of the tribal people are called the “*traditional homelands*”,¹⁰⁶ and measures to protect them from land alienation,¹⁰⁷ and participation in decision making,¹⁰⁸ is paramount.

The UNDRIP also recognizes and promotes these rights relating to the lands, territories, and resources,¹⁰⁹ and calls for the establishment of fair dispute resolution process for adjudication of land disputes.¹¹⁰

In India, many measures for the protection of tribal lands have been taken collectively by the legislature and the judiciary. In India, any alteration or acquisition of land requires prior consent of the Gram Sabha or the Panchayats or the autonomous District Councils,¹¹¹ who are required to consult affected people before rehabilitation as emphasized in the case of Orissa

¹⁰¹ Article 11 of the ILO Convention No. 107.

¹⁰² Article 7 of the ILO Convention No. 169.

¹⁰³ Article 28 of the UNDRIP.

¹⁰⁴ Article 12 of the ILO Convention No. 107.

¹⁰⁵ Article 13 of the ILO Convention No. 107.

¹⁰⁶ Article 13 and 14 of the ILO Convention No. 169.

¹⁰⁷ Article 17 of the ILO Convention No. 169.

¹⁰⁸ Article 15 of the ILO Convention No. 169.

¹⁰⁹ Article 26 of the UNDRIP.

¹¹⁰ Article 27 of the UNDRIP.

¹¹¹ Section 41(3) of RFCTLARR Act, 2013.

Mining Corporation Vs. Ministry of Environment and Forest & Ors.¹¹² The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 provides that no member of a forest dwelling Scheduled Tribes or Other Traditional Forest Dweller shall be evicted or without recognition and verification procedure.¹¹³ The ‘Right to fair compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 has been enacted to promote transparency and participation’,¹¹⁴ and a National Level Monitoring Committee for Rehabilitation and Resettlement has also been constituted.¹¹⁵ Wrongfully dispossessing members of scheduled classes and tribes from their land is a punishable offence under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. There are also special provisions for schedule V areas.¹¹⁶ While many laws are in place, India is often criticised for the lack of implementation and the biggest reason of the same is prejudice and discrimination against these people by the law enforcing officers.

Often the loopholes in these laws are put into place to snatch the tribal land for furthering development, which is apparently, unavoidable.¹¹⁷ However in this regard, it is highly appreciable that the judiciary has stepped up to resolve the conflicts and maintain a balance between the right to development and the right to forest land and a healthy environment. Various landmark cases can be discussed in this regard.

In *K.M. Chinappa v. Union of India*¹¹⁸, the Supreme Court observed that “it cannot be disputed that no development is possible without the adverse effect on the ecology and environment, and the projects of public utility cannot be abandoned and it is necessary to adjust the interest of the people as well as the necessity to maintain the environment. The balance has to be struck between the two interests. Thus, the onerous duty lies upon the State under the concept of ‘sustainable development’¹¹⁹ recognized as a fundamental right under Article 21¹²⁰ to preserve ecology and environment.¹²¹

¹¹² Orissa Mining Corporation Vs. Ministry of Environment and Forest & Ors., W.P.(c) 180 of 2011

¹¹³ Section 4 (5) of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

¹¹⁴ Press Information Bureau, Government of India, Ministry of Tribal Affairs, 22 JUL 2019 4:30PM by PIB Delhi, Land Rights of Scheduled Tribes, Available at <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1579747>.

¹¹⁵ Section 48 of RFCTLARR Act, 2013 vide DoLR’s Order No. 26011/04/2017-LRD.

¹¹⁶ Press Information Bureau, Government of India, Ministry of Tribal Affairs, 22 JUL 2019 4:30PM by PIB Delhi, Land Rights of Scheduled Tribes, Available at <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1579747>.

¹¹⁷ Article 16 of the ILO Convention No. 169.

¹¹⁸ *K.M. Chinappa v. Union of India*, AIR 2003 SC 724

¹¹⁹ Brundtland Commission Report, 1983; Principle 2 of Stockholm Conference, 1973; Principle 1 of Rio Declaration, 1992.

¹²⁰ *Madhu Kishore v. State of Bihar*, AIR 1996

¹²¹ *Research Foundation For Science Technology And Natural Resource Policy v. Union Of India And Others*, AIR 2007 SC (Supp) 852.

c. Socio Economic Justice

Right to life is a very broad term that has been interpreted by the Supreme court to include the right to livelihood, shelter, water, health, healthy and clean environment, and dignity. These are not only protected as fundamental rights but are also asserted as directive principles of state policies.¹²² These rights are also promoted internationally in tribal rights conventions as well as human rights conventions.

A very necessary interpretation of Right to Life is the Right to Rehabilitation. It is imperative for mere survival and consequently the dignity of a person to have a means of livelihood and shelter, basics of sustenance. This was emphasized in various cases like *Bandhua Mukti Morcha v. Union of India*¹²³ and *Neeraja Choudhary v. State of M.P.*¹²⁴ and *Public Union for Civil Liberties v. State of T.N.*¹²⁵ where the court directed to ensure an alternate means of livelihood and to provide adequate food, shelter and medical facilities and education to the children of such families as a “package of rehabilitation”.

The right to healthy environment has been incorporated, directly or indirectly, into the judgments of the court. Link between environmental quality and the right to life was first addressed by a constitutional bench of the Supreme Court in the *Charan Lal Sahu Case*¹²⁶ while the first indication of recognizing the right to live in a healthy environment as a part of Article 21 was evident from the case of *R. L. & E. Kendra, Dehradun v. State of U. P.*¹²⁷

In *Subash Kumar case*¹²⁸, the Court observed that:

“right to life guaranteed by article 21 includes the right of enjoyment of pollution-free water and air for full enjoyment of life.”

In *Shanti Star Builders v. Narayan Totame*¹²⁹, it was held that right to life is guaranteed in a civilized society would take within its sweep the right to food, the right to clothing and the right to a decent environment. Maintenance of health, preservation of the sanitation and environment falls within the purview of Article 21 of the constitution as it adversely affects the life of the citizen and it amounts to slow poisoning. This was reaffirmed in *M.C. Mehta v. Union of India*.¹³⁰ The rights like right to education, food and health support the positive right

¹²² Article 38 and 39 of the Constitution of India, 1950.

¹²³ *Bandhua Mukti Morcha v. Union of India*, 1984 3 SCC 181.

¹²⁴ *Neeraja Choudhary v. State of M.P.*, 1984 3 SCC 243.

¹²⁵ *Public Union for Civil Liberties v. State of T.N.*, (2013) 1 SCC 585.

¹²⁶ *Subhash Kumar v. State of Bihar*, 1991 (1) SCC 598.

¹²⁷ A.I.R 1985 S.C. 652.

¹²⁸ *K. Ramakrishnan v. State of Kerala*, AIR 1999 Kerala 385.

¹²⁹ *Shanti Star Builders v. Narayan Totame*, 1990(1) SCC 520.

¹³⁰ *M.C. Mehta v. Union of India* (1991) AIR SC 813 (Vehicular Pollution Case).

of environment¹³¹.

Moreover, Education is what making anyone's able to live in this world with dignity. However, speaking of the present context, receiving higher education is sometimes considered as a “privilege”, where not the entire population has got the right to be benefited from it.¹³² Hence, no one can ever claim of a “right to attend college” and where this privilege can be lost by a variety of reasons.¹³³ One of the emerging challenges of privatization of higher education, certainly, is the question of how higher learning being a scarce resource to be judiciously distributed to set the tune of democratic practice in a traditionally hierarchical society like India.¹³⁴ While India has accepted and acknowledged these rights, it must be noted that the same is not implemented and needs more clarify specially as they apply to the indigenous people.

IX. GLOBAL BEST PRACTICES VIS-À-VIS THE STATUS IN INDIA

In 2008, John B. Henriksen has conducted a “*Research on Best Practices for the Implementation of the Principles of ILO Convention No. 169*” that was adopted by the Programme to Promote ILO Convention No. 169. This document provides us with the global best practices for the tribal rights. This chapter shall provide an overview of these best practices, covering countries such as Norway, Finland, Sweden over various principles like the right to be consulted, the right to decide developmental priorities, the right to education, recognition of indigenous institutions and recognition of customs and customary laws.¹³⁵

The right to be consulted, that extends not only to decision-making within the framework of domestic or municipal processes but also to decision-making within the international realm,¹³⁶ is enshrined in International law. In Norway, the procedure was consultation is highly advanced. The tribal population has their own parliament known as the Sami Parliament that is required to give feedback to the authorities was various proposals that affect the Sami interests directly. The agreement codifies many objectives among which is the objective to “develop a partnership perspective between the state authorities and Sami parliament” for a common understanding of their situation and developmental needs.

¹³¹ *M.C. Mehta v. Union of India*, AIR 1992 SC 382.

¹³² Pratap Bhanu Mehta, “Brookings-NCAER India Policy Forum 2007” 8 *CPR* 27-23 (2007).

¹³³ Roy Lucas, “The Right to Higher Education” 41 *JHE* 55-64 (1970).

¹³⁴ Aurobindo Sahoo, “Young Scholars of Indian Education” 9 *NJPA* 22-26 (2011).

¹³⁵ Henriksen, J.B., 2008. Research on best practices for the implementation of the principles of ILO Convention No. 169. *OIT*, Sitio web: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_118120.pdf, pp.49-51.

¹³⁶ Anaya, James S. (2004) *Indigenous Peoples in International Law* (Second edition), Oxford University Press, pages 153-154

Finland, Norway and Sweden have also appointed a Nordic expert group in consultation with the Sami Parliaments and have supported the adoption of a Sami Convention to further these objectives.

As an example, for the promotion of Socio, economic and cultural rights, the jurisprudence of the UN Human Rights Committee is of immense importance.¹³⁷ They have through their decisions emphasised that these rights not only protect the Tribal Peoples traditional means of livelihood and customs but also extend to a positive obligation on the state to help them adapt to modern times.¹³⁸

Self-determination, an important facet of Tribal Rights is a very debatable topic. We find that Bangladesh has set an example by creating within its unitary system of governance, the legal and administrative system in the Chittagong Hill Tracts where 11 separate indigenous groups reside, each having different customs.¹³⁹ Norway has also taken a huge step in establishing the Sami Parliament in 1989 that is given the right over all questions that affect their interests as per the Norwegian Sami Act.

In regards to Education, the ILO has noted that the education of indigenous people as compared to non-indigenous has been pitiful in countries like Guatemala and Peru in Latin-America because of the poor quality of education.¹⁴⁰ Again, Norway has proved to be the country with best practices by implementing policies aimed at furthering both individual and collective rights to education while preserving the Sami language and Traditions with the help of the 1999 Education Act.

Lastly, in regard to the preservation and implementation of customs and traditions, Bangladesh illustrates that the best way is through state recognition and acceptance of indigenous customs and customary laws. There the matters of marriage, inheritance etc re regulated by unwritten customs and usages but the “partially autonomous indigenous-majority self-government system”,¹⁴¹ acknowledges and helps give effect to the indigenous law and jurisprudence. In fact, in Denmark, even the Criminal Code is based on the customary laws of the “Inuit tribe”.

¹³⁷ Ilmari Länsman et al. v. Finland (Communication 511/1992), Views adopted: 26 October 1994, Report of the Human Rights Committee, Vol. II, GAOR, Fiftieth Session, Suppl. No. 40 (A/50/40), pp. 66–76.

¹³⁸ Scheinin, Martin (2204) Indigenous Peoples’ Land Rights under the International Covenant on Civil and Political Rights

¹³⁹ These are the Bawn, Chak, Chakma, Khumi, Khyang, Lushai, Marma, Mru, Pankhua, Tanchangya, and Tripura.

¹⁴⁰ Williams, Sandra (2007) Indigenous Education Latin America http://poverty.suite101.com/article.cfm/indigenous_education_latin_america

¹⁴¹ Henriksen, J.B., 2008. Research on best practices for the implementation of the principles of ILO Convention No. 169. *OIT, Sitio web: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publicati on/wcms_118120.pdf*, pp.49-51.

Kenya on the other hand, demonstrates that the complete toleration of these traditions without any state intervention can lead to many problems as the Maasai female in Kenya still have to suffer from Female Genital Mutilation.

X. CONCLUSIONS AND SUGGESTIONS

This paper has explored the basic international guarantees available to Tribal people under various conventions and has compared it with the law in India. The paper has also studied the global best practices for various tribal rights. Thus, we find that while India, a country with almost 9% of tribal population, makes a sound attempt to foster the rights of tribal people through statutes, constitutional safeguards, and judicial efforts, lacks the implementation measures. There is a lot that we can learn from other countries and a lot of changes can be made to make the various legislations free of loopholes. In my limited knowledge, I propose the following recommendations that should be adopted by the government to further the rights of indigenous people:

- a. The Indigenous people lack representation. Like Norway, the government should create special Tribal Committees in various areas that have the right of being consulted by the government in creation of policies and laws that will affect them. These committees should be locally created with a centralized governance and given the right to represent at the level of state legislature directly. Otherwise their voice may be suppressed by the middlemen.
- b. The Tribal people are still prejudiced against and thus, the formation of such committees headed and run by the tribal people, will help them to raise their voice and avoid suppression by the privileged and majority.
- c. The government should take measures to ensure the implementation of PESA in all the states having indigenous population. They should also promote self-governance, specially for Tribal people and not only as a measure of local governance.
- d. India should extend its remedial policies like reservation, the application of SC/ST atrocities Act etc. to all tribal people regardless of whether they come under the category of Scheduled tribes or not.
- e. The forced displacement of these people under the garb of development necessity should be avoided as a last resort. Special courts for adjudicating these land disputes should be incorporated. Further, in case of displacement, they must be rehabilitated with an assurance of livelihood, food and education.

- f. The socio-economic rights should be promoted by providing quality education and health services for free and near the places that these people inhabit.
- g. The government should ratify the ILO Convention No. 169 and should regularly submit reports to the ILO Committee and should take part in multilateral discussions for the promotion of indigenous rights.
- h. Most importantly, the ministry of tribal affairs should carry on programmes for educating these people of their rights and provide them legal assistance free of cost. The ministry should also establish protocols for the creation of a body that can consult with Tribal people directly regarding their needs and consequently, draft and propose legislations to address them.

The Human rights extend to all but complex and pitiful past of the tribal people have made them susceptible to exploitation and consequently, they require special care, special laws and positive actions for the promotion of their Rights. The international law has developed tremendously for the promotion of the rights of tribal people and so have the laws in India. But there is still a long way to go for India to provide its Tribal Population the life it deserves and for this, a major overhaul in the system of tribal self-governance is required. Furthermore, strengthening of implementation, creation of special bodies for dispute resolution and proper consultation mechanism is of essence.

Thus, learning from the best practices globally and the international standards of Tribal Rights, India needs to change. After all, there is but light at the end of this tunnel and soon we will have a world that will respect the traditions of these people, provide them the bargaining power to choose a life that they desire to life and all the rights that all humans deserve.
