RIGHTS OF INDIGENOUS PEOPLES: IDENTITY CRISIS IN A MELTING-POT

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RIGHT OF TRUE PEOPLE

If one has to mull over the effects of the development of the very human rights law, one amongst many will undoubtedly be the poignant conditions of the Original populace of a particular land, territory or their property against the civilised anglicised society which is taking over. The basic reason that comes to the forefront is their non-conformity to the newly made constitution of the urbane. They did lack the anglicised edification, moreover were reluctant to the new changes made which has adversely resulted in their marginalization at the hands of the educated. The educated being the prominent, overt leaders through their elected governments instead of recognizing the rights of the dwellers over their land and environment culture, often insensitively snatched their land along with the facilities provided with. This attitude compelled them to become refugees thereby forcing them into two ways of living life; firstly residing in evolving urban slums and secondly inculcating the violence leading to violent aggressions i.e. the notorious Naxalites and Maoists.

Indigenous peoples³ constitute those societies who consider themselves separate from the present societies governing those territories. These groups of people have inhabited the land prior to colonial occupation which makes them distinct.

Statistically indigenous peoples comprise around three hundred to five hundred million, representing eighty percent of the world’s cultural and biological diversity, and occupying twenty percent of the entire land surface of the world. The diversity as witnessed among the indigenous people is vast. They can be found in almost every continent of the world and range from conventional hunters and gatherers to legal scholars. For the very purpose the Commission on Human Rights appointed a Special Rapporteur on the rights of indigenous peoples in 2001, as part of thematic system of Special Procedures. In 2004 The Special Rapporteur’s mandate has been renewed by the Commission on Human Rights and

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by the Human Rights Council in 2007. For a better view of statistics of minorities and indigenous people one can gather country-wise information through given reports under United Nations Special Rapporteur on the rights of indigenous people\(^4\). One can also refer to The World Directory of Minorities and Indigenous People in accordance to various countries for the same. The rapporteurs offer recommendations to the government of the very countries where they conduct researches and help them work effectively within an international standard. The indigenous people form the majority of the population in some countries and minorities in others. They are concerned with preserving and protecting their land, unique cultures and languages. Acclimatization has become a part of their lives; they are constantly adjusting and adapting themselves to changes of the world.

**IDENTITY AT STAKE**

In spite of such diversity all indigenous peoples have faced injustice at one or the other point of their lives. There have been cases of slavery, torture and murder of indigenous peoples. It is not just limited to a few scarce incidents but has become fatalities of large scale genocide. These people have been refused the right of participation in voicing their opinion in governance of the current state systems. The process of colonisations has robbed them off their identity and stripped their dignity as the original populace.

The residents who did not have documentary evidence of ownership were displaced merely in the name of development i.e. the organised plundering of natural resources like minerals, water resource or forest resource. An ecologically sustainable/balanced act that lasted for not centuries but millennium is being damaged overnight through acts of legislature or parliament. A more disturbing fact is that forcing such people to pitiable existence is not even considered a cognizable offence. The true people with original existence are given the derogatory names of scheduled classes and tribes/ primitives. The lives of the residents who once lived harmoniously with nature, leading a happy and healthy social life without depending on market driven unsustainable economy have now been plundered. As a reverting act to the injustice, overnight, the areas became flash points along with violence getting triggered against the administrative decisions. The administrative personnel have also been becoming the target. Unfortunately the insensate inward looking avaricious crooked

\(^4\) *Country reports*, Available at http://unsr.jamesanaya.org/list/country-reports (Last accessed on 25/04/2016)
politicians, the ones in power, started considering these opposition to the unjustified administrative decisions, as acts of terror. We, here forget to address the fact that the famished people are voluntarily or otherwise forced to exhibit strong emotions of anger and hostility no matter if it is against the establishments or against the individuals.

Stereotype is stupid. Living with nature is smarter. The dim-witted calling intelligent stupid when facing stereotypical conditions, make youngsters thoughtless to reality. The school and college education adding to the adversaries also force youth to form a complacent attitude to the real world. The human rights of only elite and organised society are highlighted. Those who don’t play the game or fall out of the cluster are left out from the human rights act without a legitimate reason. Traditional remedies, culture and knowledge system was local, recognized and relevant. So the outlandish concepts of development imposed upon the originals in the name of modernisation, didn’t fit in well. And the law also does not protect them.

The consequential adverse effects of invasion of territories, discrimination in cultures and the identities and basically historical colonization of/on indigenous people has drawn attention of the international community. It is very much evident by the very embracement of international principles and guidelines, also by the establishment of institutions specifically targeting the very concerns. Further on the platform of regional human rights mechanisms these very rights are being promoted.

The various UN Conventions, such as the United Nations International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights have stated that all indigenous peoples have the right of self-determination; they “freely determine their political status and freely pursue their economic, social and cultural development”.5

PEOPLE OR PEOPLES?

Due to the uncertainty revolving around the meaning of the word ‘peoples’ the correct ambit of ‘peoples’ has not been determined. The dispute over using the term “peoples” is that it may be associated with independent statehood or the right of secession, as has been feared by certain state governments. Such states would fancy terms such as ‘tribes’ which do not have

any such implication of association. Whereas the indigenous peoples prefer calling themselves “peoples” for the reason that is it can be linked with innate identification of a distinctive individuality. Terming them as “Indigenous People” is finding the middle ground between the two disputing parties. Despite this concession or rather because of this compromise, indigenous peoples find themselves discriminated against. Their advocates feel that their right to self-determination\textsuperscript{6} has been denied in the form of racism.

The term which will very well fit in the current topic being discussed is ‘commercial myopia’. The practice of commercial myopia entails looking for a utility value in every organism/ material and even human beings. This showcases the avarice of commercial establishments to extract the maximum out of human beings in favour of their own requirements in any form whatsoever.

Commercial myopia is gnawing the fabric of social and cultural unity. Human rights and law evolved on it, needs to be severed from commercial calculations because humanity is compelled to pay a huge price when commerce is the only language people speak.

So retrospectively we realise that the inclusion of indigenous people did not involve any munificence or benevolence on the part of commercial institutions rather they had a latent and a shady reason driving their actions. For example while debating upon whether inclusion of indigenous people served educational and training purposes; the truth came out to be astonishing. The reason was not the development of the socially outcast rather was the use of the unorganised people as economical labour. The inclusion of indigenous people has a veiled agenda of mischief. Because these locals like to live off the grid and do not preferably use any fossil fuel, electricity, pharmaceutical company’s formulations or manufactured white goods, they challenge the profits of the organizations. In order to satiate the ever increasing need of consumers for the products ergo the policy of inclusion of indigenous people into the community came into play.

In the same way when we look at the development schemes of disabled, what comes to the forefront is again the very basic underlying greed of the commercial firms. It is no prudent or a viable step to support someone for lifetime even when they have productive capacity tapped in them. The immense energy stored can only find an outlet when engaged in training and productive exercises.

\textsuperscript{6} Self-determination: The right of a cohesive national group (“peoples”) living in a territory to choose for them a form of political and legal organization for that territory.
When the issue of human rights is addressed, what cannot go unnoticed is the prominent cause for its violation. The answers to this are the missionary activities by the two dominant religions i.e. Islam and Christianity.

Pitiably, in some parts Islam is enforced as a way to escape annihilation. Similarly Christianity puts at stake the contemporary lifestyle and ways, and also regards the sustainable practices as stupid and primordial. The missionary activities which originally intended to spread peace, love and amity are now the prominent reasons for massacres leading to extinction of many ethnic groups and communities. The live examples are the unprecedented genocide in Latin American countries, Australia, Africa and North America.

The biggest flaws here are not the activities of unlawful people but the incapability of law to incorporate differences or failure in providing provisions with flexibility. For the reason that scope of law is limited, one should not resort to punitive action against the outlaw. The voice raised by the dissent of true people in lesser developed areas takes shape of small terror organizations.

So whether it is the maoist movement, naga or bodo outrage; they are the outright failure of the main stream law to be sensitive to the needs and perceptions of the ethnic minorities. What is being practiced now is a conspiracy theory- State sponsored terrorism. Likewise it is believed the Al Qaida, ISIS, Boko Haram and many separatist movement are intended to weaken local governments and in the turmoil the human rights goes for a toss. It is an orchestration of crime against dissent.

**UN- THE HARBINGER OF CHANGE**

As said earlier in the development of human rights law a major contribution can safely be attributed to the United Nations. The laws and policies of the human rights’ system of the united nation agencies have been the grounds on which the issues of the rights of the indigenous people have developed. Some of the pioneering work has been undertaken by the institutions listed below.

1. Working Group on Indigenous Populations
2. Human Rights Council and
3. United Nations Permanent Forum on Indigenous Issues,
Also H.R.C. formed in 2007 a body named Expert Mechanism on the Rights of Indigenous Peoples to provide thematic advice in form of researches and studies. Inter-American and African human rights system are the types of regional human right bodies that are constantly expanding as a part of international activity. These systems are into the international political and law areas, the ambit being as assorted as the intellectual property, environment and trade.

The international legal system has helped reverse the historical plight of the inhabitants. The states have over time realized the importance of recognition of the rights of the original populace. The endorsement of the indigenous declaration with a perspective of a partnership between the state and the indigenous people of the particular state was done after a proper negotiation. This declaration applies human rights law to various situations (general and specific) of the indigenous people.


The 24th Session of the Human Rights Council took into account Item 6 – Consideration of UPR Report of Canada which was presented by Ermineskin First Nation Counselor Brian Lee, in the International Indian Treaty Council, on the fateful day of September 19, 2013.

To further the development of indigenous people, United Nations Human Rights Council in its 24th Session, on September 9 – 27, 2013 conducted a half-day Discussion on Indigenous Peoples, at the IITC Intervention on the World Conference on Indigenous Peoples and Treaties were presented by Ronald Lameman.

The very same session conducted from September 9 – 27, 2013 also dealt with an Interactive Dialogue with the Special Rapporteur on the Rights of Indigenous Peoples and the Expert

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Mechanism on the Rights of Indigenous Peoples, an IITC Intervention on Access to Justice for Indigenous Peoples\textsuperscript{10} was then presented by Leonard Foster.

The United Nations and the specific bodies such as the expert mechanism and permanent forum, whose main focus is the indigenous issues, have provided unprecedented access to the indigenous people especially to non-state actors. Basically the working group on indigenous populations started the practice of enabling them to partake in mechanism and policies of the organization without the mandatory authorization with the Economic and Social Council. One can assess the extent of the chipping in the working of United Nations at the yearly sessions of the United Nations organization, which are attended by hundreds of indigenous individuals. While the sessions continue, the people are also provided with the opportunity of meeting the Special Rapporteur\textsuperscript{11} in person, who further explains the issues faced by the audience. As recommended by the Expert Mechanism, the human rights council in 2011 requested the S.G. to prepare a deed “on ways and means of promoting participation at the United Nations of recognized indigenous peoples’ representatives on issues affecting them, given that they are not always organized as non-governmental organizations, and on how such participation might be structured”\textsuperscript{12}

**COPING WITH IMPOSED ACTS**

In spite of providing the peoples with the PESA Act\textsuperscript{13}, 1996 a predicament arose. The right of peoples’ to govern themselves, seek justice as per the customary laws and to own the natural resources in their own habitat was sorely lacking. The conflict between state imposed laws and their traditions and customs curtails the scope of proper governance and redressal of the problems. Independence and post-independence witnessed the same problem and therefore introduced the Fifth Schedule for the tribes in peninsular India and Sixth Schedule for the ones in North-East in the Indian Constitution. However only recently the peninsular tribes were introduced to the decentralization thanks to Indian parliament which legislated the Panchayat (Extension to Scheduled Areas) Act, 1996 (or PESA). Though PESA aimed at


\textsuperscript{11} Special Rapporteur is a title given to individuals working on behalf of various regional and international organizations who bear specific mandates to investigate, monitor and recommend solutions to specific human rights problems.

\textsuperscript{12} Resolution 18/8, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, available at http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A.HRC.18.2.pdf

\textsuperscript{13} Panchayat (Extension to Scheduled Areas) Act, 1996
transferring fiscal and administrative powers from state to local governments, the reluctance of state to delegate authority towards the tribal interests’ has led to the tribal resorting to violence as their last recourse to assert their identities. Acts like National Tribal Policy\textsuperscript{14}, and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act\textsuperscript{15} have brought to the forefront the concerns of indigenous people. But it is a very sorry state of affairs that PESA is not advancing in obtaining its aim rather the concept of self-governance is at stake.

After addressing the problems faced by indigenous people at the hands of others, various world organizations (wings of U.N. basically) came to rescue. Chronologically in 1989 the International Labour Organization adopted Convention 169 which focuses on natives and tribal people. Following was the first United Nations International Decade on the ‘World’s Indigenous People’ in 1995-2004\textsuperscript{16} which thereby resulted in constructive developments in the state of affairs of the aboriginals. Many countries lent a helping hand by adoption of legislations pertaining to education, land, resources, language, justice, intellectual property rights, culture and some of them also included, self-governance, autonomy and legal pluralism. Year 1996 is marked by the Draft Declaration on the ‘Rights of Indigenous Peoples’\textsuperscript{17} by U.N.H.R.C. The Organization of American States is adhering to the same strategies in order to assist and support the locals. Moreover when international forums started displaying the problems of indigenous people on an international platform, the natives themselves increased their contribution to the same. With the passage of time just as all other underprivileged and discriminated-against groups, indigenous peoples also have got straight into their head that they can assert their rights only through societal effort and egalitarian partaking in the political procedure and agenda. One such incident elucidating the fighting spirit of the indigenous people to strive to claim what is rightfully theirs could be witnessed in the Niyamgiri incident of Odisha.

\textsuperscript{14} National Tribal Policy, 2006  
\textsuperscript{15} Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006  
\textsuperscript{17} Declaration on the rights of indigenous peoples, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, http://www.ohchr.org/EN/Issues/IPeoples/Pages/Declaration.aspx
NIYAMGIRI INCIDENT

The Dongria Kondh\textsuperscript{18} tribe have been residing in the beautiful lush green environment of the Niyamgiri Mountain ranges for several generations. They have developed a symbiotic, sacred and healthy relationship with nature. Their knowledge, relating to the various plants and wildlife native to their area, is vast. This priceless knowledge has survived the test of time by passing it on to the future generations. The most sacred hill range-Niyam Dongar\textsuperscript{19} is regarded as the dwelling of their supreme deity, Niyam Raja (The King of Law). The tribes have their own set of rules or ‘niyams’ that govern their lifestyle. As per their laws practice of deforestation on mountain tops is a sign of disrespect to their divine god and hence is taboo.

However, the harmonious lifestyle of the tribes recently met with an imminent threat from the Vedanta Aluminum Limited (VAL); a subsidiary of Vedanta Resources. VAL signed a Memorandum of Understanding (MoU) with the Government of Odisha for the construction of an alumina refinery. This was followed by plans to construct an open-pit, bauxite mining plant in order to obtain bauxite for the alumina refinery. To make matters worse, the plant was planned at the top of the sacred Niyam Dongar Mountain.

The 70 million tons of bauxite posed a grave predicament to the tribesmen. They clearly understood that the mine at the top of the mountain will retain all the monsoon rain and then hold deposits of water during the hot summer months. For the Dongria tribe the perennial streams are the only source of water for drinking and irrigation. The mining activity would adversely affect the conditions of these streams and would have serious repercussions on perennial nature of the streams.

Central Empowered Committee (CEC) has played a major role in the issue. It is a quasi-judicial body which had been set up in 2002 by the Supreme Court aiming to look into environmental and forest issues. Owing to the fact that Niyamgiri comes under the ambit of schedule 5 of the Indian constitution which prohibits the transfer of tribal land to non-tribal people, further voices were raised through different environmentalists and wildlife activists such as Prafulla Samantara and Delhi-based geologist R. Sridhar and Biswajit Mohanty of the Wildlife Society of Orissa (best known for his campaign to save the Olive Ridley turtles)

\textsuperscript{18} Dhongri kondh, SURVIVAL INTERNATIONAL, http://www.survivalinternational.org/tribes/dongria.
\textsuperscript{19} Id.
towards the same cause. The CEC reports\textsuperscript{20} indicated that ministry of environment ignoring the possible environmental threats had comprehensively given clearance to vedanta. In a shocking turn of events on August 8, 2008 the Supreme Courts callously adjudged clearance of forest for mining thereby rejecting CEC report. The court for obvious reasons faced objections from the original populace of Niyamgiri who contended that they had to face acute plight due to the indifferent attitude of the court. Despite the vociferous protests, environmental clearance was granted to the industries in April, 2009 for mining operations; a decision which spelled doom for the Dongria Kondh.

Moreover as per the guidelines of the Ministry of Environment and Forests\textsuperscript{21} (MoEF) –“[f]or projects requiring clearance from forest as well as environment angles, separate communications of sanction will be issued and the project would be deemed to be cleared only after clearance from both angles…”\textsuperscript{22} Accordingly any commercial activity before being given clearance has to obtain an environment clearance certificate. The same rule applied to the activities pursued by Vedanta in lieu of establishing the alumni refinery and the mining plant.

The Dongria Kondh of the Niyamgiri hills protested against the Supreme Court and the government in which around 40 tribesmen had barred people from entering the forest with tree trunks and held banners which read ‘We are Dongria Kondh. Vedanta cannot take our mountain.’ Many such protest followed up such as; hundreds and thousands of men armed with the traditional weapons such as arrows and spears danced and sang along the roads of Bhubhaneshwar, many crossed the Niyamgiri sea in the way of protests whereas others took out a procession, men, women and children marched to the gates of the company and destroyed their property. Many of them formed human chains in order to prevent the Vedanta from entering the hills. The demonstrators prevented many of the Vedanta activities and thus portrayed real courage all the while. It is also remarkable that not only the inhabitants but also the international organizations like Survival International\textsuperscript{23}, Amnesty International\textsuperscript{24} and Foil


\textsuperscript{21} \textsc{Ministry of Environment and Forests}, http://www.moef.gov.in/

\textsuperscript{22} \textit{Proposal Requiring Clearance from Environmental Angle}, available at http://envfor.nic.in/legis/forest/forguide.html (Last accessed on 26/04/2016)

\textsuperscript{23} \textit{The movement for tribal peoples}, SURVIVAL INTERNATIONAL, available at http://www.survivalinternational.org/ (Last accessed on 26/04/2016)

\textsuperscript{24} AMNESTY INTERNATIONAL, https://www.amnesty.org.in
Vedanta\textsuperscript{25} aided the cause, provided them with the financial support against the blatant violation of the human rights.

Keeping in mind the continuous protests by the Dongria tribe, the government of India sent an expert team to review the situation at Niyamgiri. The team were of the opinion that the bauxite mining undertaken by VAL is unfavourable to the survival of the Dongria Kondh tribe; it was a corollary that could not be ignored. The report prepared by the team for submission to the MoEF was essential as it was critical for the deliberation of Final Forest Clearance for Vedanta.

Following the report, the environment ministry declined Vedanta’s plans and also issued a warning for not following pollution guidelines and starting work without prior permission. This was followed by an appeal by the Orissa Mining Corporation\textsuperscript{26} to reconsider the decision. However the Supreme Court on April 18, 2013 discarded the appeal on the mining ban and gave the Dongria Kondh a decisive say in granting permission to Vedanta’s mining project. The court acknowledged that the Dongria Kondh had a right to worship their sacred mountain which they sought to ‘protect and preserve’ and that those with any religious and cultural rights must have a say in the decision-making process. The court hence provided them with three months period to contemplate and come up with a decision regarding the hazardous mining project.

The Forest Rights Act (FRA)\textsuperscript{27} established in 2006 ensured that the rights of the indigenous people are protected in terms of first seeking their assent before proceeding with any construction on their land. However in the Niyamgiri case, there was a glaring inadequacy on the part of the government in protecting the Dongria Kondh’s cultural, traditional and religious rights. It reflected a dire need to improve to present laws and guidelines, to mould them to include the rights of the tribal people. The Dongria Kondh has now paved the path for all destitute tribes to reclaim their rights. The struggles of the indigenous people are very well portrayed in the case of Niyamgiri tribe, but what’s remarkable is their fight back. A resounding no by the Niyamgiri tribe is very striking even after the unjustified treatment they got.

\textsuperscript{25} FOIL VEDANTA, available at http://www.foilvedanta.org/ (Last accessed on 25/04/2016)
\textsuperscript{26} ORISSA MINING CORPORATION, AVAILABLE AT http://www.omcltd.in/ (Last accessed on 25/04/2016)
\textsuperscript{27} Forest Rights Act, 2006
AFTERMATH OF THE IMPOSED LAWS

The United Nations published the Universal Declaration of Human Rights\(^{28}\) on 10 December 1948. This declaration has garnered international recognition and worldwide acceptance. The declaration ensures the protection of fundamental rights of all human beings; however the human rights of Indigenous peoples have no safeguards. In spite of the declaration indigenous peoples continue to face jeopardy to their very existence. Government policies have posed a threat to the lives of indigenous peoples. The policies have always been in favour of commercial organizations and have wrongfully oppressed the indigenous peoples. Several of the underdevelopment indicators such as illiteracy rate, incarceration rate, unemployment rates, etc have indigenous peoples in higher proportion. These people are not spared from discrimination even in schools or at work place. Some countries deny them the right to learn their own language at schools. Their sacred land is snatched away from them in pretext of unjust laws and treaties. They are denied the right to manage their land and live off it, despite their ownership rights over the land since centuries. The traditions and cultures of the indigenous peoples have also been targeted at by the governments. All around the world, utter disregard for the rights, traditions and values of indigenous peoples, by the governments has been witnessed.

There has been an agreement over international discussions about the plight of indigenous peoples; a more meticulous application of the standards of human rights needs to be maintained to protect and promote their rights. Quite contrarily the indigenous peoples argue that a continuous failure of such treaties have proved it to be an unreliable resort to resolving the issue. They want the development of new documents concerning the specific requirements of the indigenous peoples over the globe. Despite the existence of the UN declaration of Human Rights, the law governing the collective human rights is indistinct and has fallen short in its efforts to protect the rights of indigenous peoples.

Right to self-determination is the central right according to the indigenous people which is given recognition at an international level. Implementation of this further complements other rights. Through this right the people have the choice to determine freely their political standing and in further pursuance of their economic, cultural and social objectives.

These take account of their right to participation in matters significant to their states’ rights and duties. Also the right to be consulted to obtain their prior informed consent for adoption or the implementation of legislative provisions that will further affect them in the near future can be counted in.

Collective rights are the ones that are vested in indigenous individuals who categorize themselves as peoples. The inclusion of this right for the individuals in the declaration is pioneering. Prior to this very Declaration though the right to self-determination was given recognition but no heed as such was paid to the concept of privileges vested in groups. Earlier the perception that the individual rights along with a mere collective approach would suffice as the justice system existed. But the adoption of this declaration with such rights in it brought to forefront the necessity to recognize collective rights of the indigenous committees for enabling them to enjoy humanity.

One of the defining features of the indigenous communities is their cultural distinctiveness. The declaration contains several clauses which give expression to their cultural equality and protect them from being adversely discriminated. The provisions favourably support the development of their various cultures. The committees on economic cultural and social rights through proper conditioning guarantee them their right to revitalize the existing traditions, cultural expressions and traditional knowledge. To control, maintain, protect and develop the identity that belongs to the indigenous individual in accordance to their heritage and customs is also the aim of this right.

The declaration of the United Nations and the ILO convention 169 both regard the right to equality and non-discrimination as their one significant objective to be achieved. The indigenous individuals are at a risk of being discriminated on grounds of origin and identity and therefore the recognition of their overall rights should have a fully justified, equal and a non-discriminative perspective. A provision stated by the inter-American court also states that collective rights of the inhabitants in relation to land and territories is equivalent to right of property of the non-indigenous. The rights in relation to agreements and contracts between original populace and the state is uniquely provided in the Declaration as “the recognition, observance and enforcement of treaties, agreements and other constructive arrangements
concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.” 29

As a declaration, the United Nations Declaration on the Rights of Indigenous Peoples30, is not an officially binding document though there exist clauses of various rights namely right to non-discrimination or right to recognition, located in treaty law of international human rights fraction of which is considered traditional international law binding in nature. According to the Office of Legal Affairs of the United Nations Secretariat31, “a ‘declaration’ is a solemn instrument resorted to only in very rare cases relating to matters of major importance where maximum compliance is expected”. The participation worldwide reflects consensus on the issues of rights of indigenous. The Declaration deserves utmost respect. This is established by the usage in first paragraph of the preamble when the General Assembly was guided through, while adopting it “guided by the purposes and principles of the Charter of the United Nations, and good faith in the fulfilment of the obligations assumed by States in accordance with the Charter”32

Furthermore, in 2008 the U.N Secretary-General stated on the International Day of the World’s Indigenous People:

“The Declaration is a visionary step towards addressing the human rights of indigenous peoples. It sets out a framework on which States can build or re-build their relationships with indigenous peoples. The result of more than two decades of negotiations, it provides a momentous opportunity for States and indigenous peoples to strengthen their relationships, promote reconciliation, and ensure that the past is not repeated.”33

But what is upsetting is that despite all the significant legislative measures undertaken and institutional reforms done, there exists an “implementation gap”34 between the legislations framed and the everyday realities of people.

32 Supra note 6.
33 Statement of Ban Ki Moon on International Day of the World’s Indigenous People
34 Implementation Gap, INTERNATIONAL SERVICE FOR HUMAN RIGHTS, available at http://www.ishr.ch
Another concern is that even after a state has provided ratification to an international standard concerning rights of the indigenous, local governments do not implement any such international standards. The executive and the judiciary tend to build a complacent attitude towards the same. Public officials overlook such legislation altogether, and courts do not seem to find it worthy enough to be taken into account. It is unsettling when numerous reports underline the fact that countries which willingly signed and ratified the I.L.O.’s Convention 169 are actually paying no heed towards its application in concrete areas. Often laws concerned with forests, water, mining and other natural resources are inconsistent with legislations on human rights. ‘Resource laws’ like these often safeguard the interests of the special; as a result, the human privileges and the legal rights of indigenous peoples are placed on the back burner.

On one hand some countries take recognition of the rights of indigenous people in enforcing the laws in their own time-honoured and conventional ways, only when applicable to restricted matters. On the other, courts do not support indigenous jurisdiction. And as a matter of fact, in many countries indigenous people (youth basically) often appear in criminal justice procedure and have higher captivity rates than non-indigenous ones. In countries like Europe, courts are caught up in centuries-old concepts like ‘terra nullius’, a doctrine that denied aboriginal’s sovereignty over their own lands, territories, and resources’. They replicate the express or implied verification of the tribal and racial dominance of the lineage of the European colonists; and they sanction the argument that the cultural assimilating indigenous people are not only inevitable but enviable. In countries like these, following a pluralist constitution will not serve the purpose alone; the judiciary has to be reformed along with.

A method called ‘peasant patrols’ has been seen to be effective in restoring law and order when adopted by local communities. In Peru a special law was passed so as to facilitate this method in wider justice procedure after its huge acceptability. The countries where the native courts and jurisdictions of the indigenous are acknowledged and cherished, reports show that

37 PAUL FRESTON, EVANGELICAL CHRISTIANITY AND DEMOCRACY IN LATIN AMERICA 157.
results are generally applaudable. Also a popular system of “community police” operates in southern Mexico amongst the indigenous tribes.

The very concept of anti-terrorist legislation which seeks to dismantle the justifiable social movements which claim various rights of the indigenous people mainly environmental, developmental and land rights are being followed by some states which has an adverse effect on the natives. Legislations of these kinds have a propensity to criminalize social actions, but severity of accusations and punishments for the convicted in this particular makes it worse than others.

Government on adoption of different measures can contribute to a great extent against the violation of rights of the indigenous people. Firstly it can invent new practical instruments so as to aim at ending the existing gap between the legislations formed and their implementation.

Secondly it can contribute by improving synchronization among various departments of the government in relation to the indigenous issues. Also establishing efficient ways so as to facilitate interaction between the affected people and the government agencies can be of further help. The budgets made by the parliamentary committees should address the issues related to indigenous people, along with creation of committees to monitor the working of such budgets and legislations. Thirdly government through secondary legislation can execute constitutional reforms.

On international platform favouritism towards human rights legislation during inconsistencies are contributory. Moreover incorporating standards into domestic laws of countries through international standards in relation to the rights of the original populace is appreciable. When on one hand to get the expected results, countries while imparting justice in cases of indigenous people can apply internationally set standards. On the other hand countries can provide electorate in various political platforms to the indigenous people after proper consultation.

Individually countries can establish different public offices or office of an ombudsman so as to restore the snatched rights of indigenous people; the recommendations and orders should be made mandatory on the government authorities. Countries can train their citizens to

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38 MAHESH K NALLA & GRAEME R NEWMAN, COMMUNITY POLICING IN INDIGENOUS COMMUNITIES 109.
interact with the indigenous people maintaining an intercultural environment. The indigenous people should also be well trained to facilitate effective lobbying to their own members in various departments of government.

All of these recommendations are intended for ensuring the implementation of national and international human rights standards for the rights of indigenous peoples. This is the latest challenge that must be confronted in the coming years if we are to move from rhetoric to practical application in the protection of indigenous peoples’ rights.