

Impact Factor 6.1



Journal of Cyber Security

ISSN:2096-1146

Scopus

DOI

Google Scholar



More Information

www.journalcybersecurity.com



Crossref



Google

Scholar

scopus

**RIGHT TO SELF DETERMINATION OF INDIGENOUS PEOPLE: INTERNATIONAL
AND NATIONAL PERSPECTIVES**

*Neena kumary K. P.
Assistant Professor
Government Law College,
Ernakulam, Kerala*

Abstract

India has the second largest tribal population in the world. That spread across different parts of the country which prominently includes forest and hilly areas. Right to self-determination is one of the important collective rights of Indigenous people. Self-determination of Indigenous people means autonomy, self-government or self-development within the state structure. International documents such as UDHR, ICCPR, ICESCR, ILO Conventions of 107 and 169 and UNDRIP are specifically deals with the right to self-determination of Indigenous and Tribal People. There are specific provisions under the Indian Constitution and various Legislations which specifically recognizes the right to self-determination of Indigenous people. Article 366 (25), Article 342, Article 244, Fifth Schedule and Sixth Schedule of the Constitution of India explicitly recognizing the rights of Indigenous and Tribal People of India. Legislations like Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and Panchayat (Extension to Scheduled Areas) Act, 1996 are unique legislations which absolutely recognize their right to autonomy and self-determination of Indigenous and Tribal People in various ways. Irrespective of these, there are difficulties in the implementation of right to self-determination of tribal people at the national as well as international level. Methodology adopted for conducting this study is doctrinal.

Keywords: right to self –determination, Indigenous and Tribal People, Autonomy, Constitution of India, Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, Panchayat (Extension to Scheduled Areas) Act, 1996.

Introduction

Indigenous People are considered as those who inhabited a country or a geographical region for a long time. Indigenous Peoples often lack formal recognition over their lands, territories and natural resources, are often last to receive public investments in basic services and infrastructure and face multiple barriers to participate fully in the formal economy, enjoy access to justice, and participate in political processes and decision making. Indigenous means native, belonging naturally,

that of the people regarded as original inhabitants of that area¹. Indigenous and tribal peoples are often known by national terms such as native peoples, aboriginal peoples, first nations, adivasi, janajati, hunter-gatherers, or hill tribes. The ILO Convention uses the inclusive terminology of “indigenous and tribal peoples” for the purpose of giving the diversity of peoples it aims at protecting, and ascribes the same set of rights to both groups². Provisions in the Indian Constitution and Legislations like Forest Rights Act, 2006 and Panchayat (Extension to Scheduled Areas) Act, 1996 provides for the protection of the Right to Self-determination of Indigenous People. The right to self-determination is a fundamental human right that identifies the inherent autonomy and distinct cultural identity of communities. Indigenous and tribal people, who have unique histories, cultures, and connections to their ancestral lands, hold a special place in the dialogues surrounding self-determination. Right to self-determination is one of the most important collective rights. The history of many Indigenous and tribal communities is marked by colonization, forced assimilation, and marginalization. The imposition of external systems of governance and exploitation of natural resources has often led to the erosion of their traditional ways of life. The struggle for self-determination is deeply rooted in the historical injustices faced by these communities.

Right to Self-determination: Nature and Scope

The right to self-determination is often understood as a collective right that applies to peoples as distinct entities. It emphasizes the collective identity, autonomy, and agency of communities or groups of people rather than individual rights. Collective rights emerged because individual human rights do not adequately protect peoples living collectively, especially indigenous peoples, local communities and other minorities³. These rights are otherwise known as third generation human rights or solidarity rights⁴ which were put forward by Karel Vasak⁵. Self-determination has two aspects, internal and external. Internal self-determination is the right of the people of a state to govern themselves without outside interference. External self-determination is the right of peoples to determine their own political status and to be free of alien domination, including formation of their own independent state. However, independence is not the only possible outcome of an exercise of

¹ Advanced Learner's Dictionary of Current English.3rd Ed. Oxford University Press.

² ILO Convention 169.peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

³ <https://www.foei.org/what-are-collective-rights/#:~:text=Collective%20rights%20are%20human%20rights,local%20communities%20and%20other%20minorities>.

⁴ Dny práva – 2009 – Days of Law: the Conference Proceedings, 1. edition.

Brno : Masaryk University, 2009, ISBN 978-80-210-4990-1,

https://www.law.muni.cz/sborniky/dny_prava_2009/files/prispevky/tvorba_prava/Cornescu_Adrian_Vasile.pdf

⁵ <https://link.springer.com/article/10.1007/s12142-019-00565-x>

self-determination. The preservation of cultural identity is another critical aspect of the right to self-determination. Indigenous and tribal people often face cultural assimilation as external influences permeate their communities. The right to make decisions about their own cultural practices, languages, and education systems is integral to maintaining their unique identities.

International Instruments which recognizes Right to self-determination.

The idea of Self-determination found its way to Articles 1 and 55 of the UN Charter as the principle of “equal rights and self -determination of peoples”. The right to self -determination did not explicitly appear in the UN Declaration of Human Rights, but, it became the focus of General Assembly’s Declaration on the granting of Independence to colonial countries and Peoples in 1960.

The right to self-determination is a fundamental principle recognized in various international instruments. It asserts the right of people to freely determine their political status, pursue their economic, social, and cultural development, and manage their own affairs. The main international instruments are, United Nations Charter (1945), International Covenant on Civil and Political Rights (ICCPR, 1966), International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966), Declaration on the Granting of Independence to Colonial Countries and Peoples (1960), Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States (1970), United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP, 2007)

(a) The U N Charter

The UN Charter is the foundational document of the United Nations and enshrines the principle of self-determination in its preamble and Article 1(2).

Article 1(2) states that.....one of the main purposes of the United Nations, and thus the Security Council, is to develop friendly international relations based on respect for the “principle of equal rights and self-determination of peoples”⁶.....

It emphasizes the right of all peoples to determine and decide their own government, which may relate to the questions of independence, autonomy, referenda, elections, and the legitimacy of governments. Hence, it can be seen that, this is not completely dealing with the rights of Indigenous people but applicable in general.

(b) Universal Declaration of Human Rights (1948)

The Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in 1948, includes principles that are foundational to the right to self-determination. While the UDHR itself does not explicitly use the term "right to self-determination," several articles within

⁶ <https://www.un.org/securitycouncil/content/purposes-and-principles-un-charter-i-un-charter#rel1>

the declaration touch upon aspects related to the self-determination of individuals and groups, including Indigenous people.

Article 2: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status." This article underscores the universality of human rights, reinforcing the idea that all individuals, including Indigenous people, are entitled to the same fundamental rights.

Article 3: "Everyone has the right to life, liberty, and security of person." The right to life, liberty, and security of person is a foundational aspect of self-determination, as it recognizes individuals' autonomy and freedom from external coercion⁷

While the UDHR provides a broad framework for human rights, specific recognition of the right to self-determination for Indigenous people has been further developed in other international instruments.

(c) ILO Convention concerning the Protection and Integration of Indigenous and other Tribal and Semi Tribal Populations in Independent Countries (Convention No.107 of 1957)

Indigenous and tribal Population Convention of International Labour Organization 1957 is the first convention which exclusively deals with the rights of Indigenous and Tribal People. Its primary focus is to recognize and protect the cultural, religious, civil and social rights of indigenous and tribal populations within an independent country, and to provide a standard framework for addressing the economic issues that many of these groups face. Hence, the Convention does not provide adequate significance to the right to self -determination of Indigenous People, particularly its underlying assumption that the only possible future for indigenous peoples was integration into the larger society and that others should make decisions on their development. With the growing awareness, organization and participation of indigenous peoples at the national and international levels during the 1960s and 1970s, these assumptions were challenged⁸. As a result of this, the ILO Convention of 1989 has been framed and recognized.

(d) International Covenant of Civil and Political Rights (1966)

The International Covenant on Civil and Political Rights (ICCPR) is one of the fundamental international human rights treaties adopted by the United Nations. While the ICCPR primarily focuses on civil and political rights, it also contains provisions that are relevant to the right to self-determination. The right to self-determination is more explicitly addressed in other international

⁷ <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

⁸ <https://pro169.org/c-107-and-ilo-history/>

instruments, but the ICCPR traces certain aspects related to this broader concept. Article 1 of the ICCPR recognizes the right of all peoples to self-determination and obligates states to promote and respect this right. It states....." All 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." This article emphasizes the equal and inalienable rights of all human beings, laying the groundwork for the principle of self-determination.

Apart from this, the following rights are mentioned and recognized under ICCPR.

Non-discrimination (Article 2): Indigenous peoples are entitled to the rights protected by the ICCPR without discrimination of any kind. States are obliged to ensure that indigenous individuals and communities enjoy the same rights and freedoms as other members of society⁹.

Cultural rights (Article 27): Article 27 of the ICCPR recognizes the rights of minorities to enjoy their own culture, practice their own religion, and use their own language. Indigenous peoples often fall within the scope of this protection¹⁰.

Political participation (Article 25): Indigenous individuals have the right to participate in the conduct of public affairs, directly or through freely chosen representatives, which includes the right to participate in decision-making processes that affect them¹¹.

(e) International Covenant on Economic Social and Cultural Rights (1966)

Similar to the ICCPR, the ICESCR in Article 1 recognizes the right of all peoples to self-determination. The International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted in 1966, explicitly recognizes the right to self-determination in Article 1. This article asserts the right of all peoples to freely determine their economic, social, and cultural development. The relevant portion of Article 1 reads as follows:

⁹ <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

¹⁰Article 27: In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

¹¹ Article 25: Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

"All 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.¹²"

The inclusion of the right to self-determination in the ICESCR highlights the inter relationship of civil and political rights and economic, social, and cultural rights. Together, these two covenants are often referred to as the International Bill of Human Rights. The following are the crucial points regarding ICESCR in the context of right to self -determination.

Economic Development: The ICESCR recognizes the right of peoples to freely pursue their economic development. This includes the right to work, the right to just and favorable conditions of work, the right to an adequate standard of living, including adequate food, clothing, and housing, and the continuous improvement of living conditions.

Social Development: The covenant emphasizes the right of peoples to freely pursue their social development. This includes the right to education, the right to the highest attainable standard of physical and mental health, and the right to participate in cultural life.

Cultural Development: The right to self-determination, as articulated in the ICESCR, encompasses the right of peoples to freely pursue their cultural development. This recognizes the importance of preserving and promoting cultural identity and heritage.

Participation in Development: The covenant implies that the people have the right to actively participate in decisions affecting their economic, social, and cultural development. This aligns with principles of democratic governance and participatory development.

(f) ILO Convention of Indigenous and Tribal People (Convention No.169 of 1989)

The aim of the Convention No 169 of Indigenous and Tribal People of International Labor Organization, 1989 is to facilitate the development of dialogue between a country's government and the Indigenous Peoples who live in that country. Its central aim is to protect the human rights of Indigenous Peoples and acknowledge "the aspirations of these peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live."¹³

Article 1: The convention applies to:

a) Tribal peoples in independent countries whose social, cultural, and economic conditions distinguish them from other sections of the national community.

¹² <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

¹³ <https://www.culturalsurvival.org/news/after-30-years-only-23-countries-have-ratified-indigenous-and-tribal-peoples-convention-ilo>

b) Peoples in independent countries who are regarded as indigenous on account of their descent from the populations that inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural, and political institutions¹⁴.

The following provisions are significant in relation to the right to self -determination of Indigenous People.

Article 7: Indigenous and tribal peoples have the right to decide their own priorities for the process of development, insofar as it affects their lives, beliefs, institutions, and spiritual well-being.

Article 8: Governments shall consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures that may affect them directly.

Article 13: Indigenous peoples shall have the right to participate in decision-making in matters that would affect their rights and, through their institutions, to maintain and develop their own indigenous decision-making institutions.

Article 14: The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized.

Article 15: The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded.

The convention does recognize and protect a range of rights that are closely related to the broader concept of self-determination for indigenous peoples.

(g) UN Declaration on the Rights of Indigenous People (UNDRIP 2007)

The Declaration is the most extensive instrument describing the rights of indigenous peoples in international law and containing minimum standards for the recognition, protection and promotion of these rights. It establishes a universal framework of minimum standards for the survival, dignity, wellbeing and rights of the world's indigenous peoples¹⁵.

¹⁴ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169

¹⁵ <https://www.ohchr.org/en/indigenous-peoples/un-declaration-rights-indigenous-peoples>

Article 3: Indigenous peoples have the right to self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social, and cultural development¹⁶.

Article 4: Indigenous peoples have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions¹⁷.

Article 5: Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social, and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social, and cultural life of the state¹⁸.

Article 18: Indigenous peoples have the right to participate in decision-making in matters that would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own decision-making institutions¹⁹.

Article 46: Nothing in the declaration shall be interpreted as implying for any state, people, group, or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action that would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states²⁰.

These provisions, inter alia, reflects the recognition of the collective right of indigenous peoples to self-determination, including the right to maintain and strengthen their distinct identities, cultures, and institutions. UNDRIP emphasizes the importance of the free and informed consent of indigenous peoples in matters affecting them and promotes the principle of respect for their autonomy and self-government. While not exclusively focused on self-determination, the UNDRIP recognizes the right of indigenous peoples to self-determination and emphasizes the importance of their free, prior, and informed consent²¹.

African Charter on Human and Peoples' Rights (1981): Article 20 of this charter recognizes the right of all peoples to existence and self-determination, and it prohibits any form of foreign domination.

These international instruments collectively form a framework for the protection and promotion of the right to self-determination, emphasizing its significance in the context of human rights and

¹⁶ https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

¹⁷ https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

¹⁸ Ibid

¹⁹ https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

²⁰ https://indianlaw.org/sites/default/files/Declarations_Booklet_2012_LRSreads.pdf

²¹ Das J. K., *Human Rights and Indigenous People*, p. 98, APH Publishing Corporation ,2016

international law. The African Charter on Human and Peoples' Rights (ACHPR) from 1981, which entered into force in 1986, is Africa's oldest human rights instrument, and established the African Commission on Human and Peoples' Rights.

Article 8 of the ACHPR states: "Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms." The right to conscientious objection to military service could be derived from this article, similar to article 18 of the ICCPR and article 9 of the ECHR.

These international Documents specifically deal with Internal as well as external self-determination. Internal self-determination is mostly applicable to Indigenous Communities. It means right to autonomy and self-government within independent states²².

Right to Self Determination of Tribal People in India

In India, The Constitution of India recognizes Tribal autonomy in its various provisions. In India, the two main regions of tribal settlements are the country's North Eastern region states bordering China and Myanmar and the highlands and plains of Peninsular India. This has been codified in the Constitution of India in Schedule V for tribes in peninsular India and Schedule VI for tribes in the north eastern region. The separate systems were approved by the Constituent Assembly formed at the time of independence after receiving recommendations that the distinct community structures and attitudes of the tribes in the regions could not be treated in a common law.

Constitutional Provisions for the protection of Right to Self -determination Tribal People in India

Evolution of Political Process in realizing Tribal rights in India

In the pre-Independence period of India, tribal administration varied across regions and was influenced by the diverse cultural, social, and historical contexts of different tribal communities. India, prior to gaining independence in 1947, was a land of princely states, British-ruled provinces, and diverse communities, including numerous tribal groups with distinct administrative setups. India was not a single, unified political entity during the pre-Independence era. There were numerous princely states, each with its own governance structure. In some princely states, tribal areas were administered by local rulers or chieftains who held authority over the tribal communities. In British-ruled provinces, tribal areas were often classified as "Scheduled Areas" or "Backward Tracts." The administration of these areas was guided by policies that aimed to protect the rights and interests of tribal communities. The Government of India Act of 1935 provided for special provisions for the

²² International NGO Conference on Indigenous People and Land, Held in Geneva, Switzerland, in 1981, Id at. 126.

administration of tribal areas²³. The precursor to the constitutional provisions related to Scheduled Areas can be traced back to the Government of India Act, 1935. This Act, enacted during British rule, included provisions for the protection of the interests of tribal communities in certain areas. There are Constitutional Provisions for the Protection of Tribal Rights in India. The Civil and Political rights are adequately protected under the provisions of Fundamental Rights. Collective/group rights are protected through various other provisions of The Constitution of India.

The Constitution of India categorizes certain communities as Scheduled Tribes (ST) under Article 366(25)²⁴. These communities are listed in the Schedule Tribe Order issued by the President of India. The provisions for their protection and welfare are enshrined in Articles 341 and 342.

Article 244(1): Article 244(1) The provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than the States of Assam Meghalaya, Tripura and Mizoram.

Fifth Schedule - Provisions as to the Administration and Control of Scheduled Areas and Scheduled Tribes: This schedule contains provisions related to the administration and control of scheduled areas in several states. It empowers the Governor to make regulations for the peace and good governance of these areas and to protect the rights of the tribal communities.

Sixth Schedule - Provisions as to the Administration of Tribal Areas in the States of Assam, Meghalaya, Tripura, and Mizoram: The Sixth Schedule provides for autonomous districts and autonomous regions in the states of Assam, Meghalaya, Tripura, and Mizoram. It outlines the powers and functions of autonomous district councils and regional councils in these areas.

Article 342: Article 342 empowers the President of India to specify the tribes or tribal communities that shall be deemed to be Scheduled Tribes in any state or union territory. This provision provides for the recognition of new tribes or communities as Scheduled Tribes and ensures that their rights are protected.

Article 244A - Formation of an Autonomous State comprising certain tribal areas in Assam and creation of local Legislature or Council of Ministers or both: This article provides for the creation of

²³ Harsh R Trivedi, *The Evolution of National Policy for Tribal Development*. Indian Institute of Public Administration, New Delhi, 1982 at p.11.

²⁴ Article 366(25) in The Constitution Of India 1949

(25) Scheduled Tribes means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of this Constitution.

an autonomous state comprising certain tribal areas in Assam and the establishment of a local legislature or council of ministers or both for the administration of the autonomous state²⁵.

Significance of Fifth and Sixth Schedules to the Constitution of India in the Context of Right to self-determination of Tribal People.

Fifth Schedule to the Constitution

The fifth Schedule to the Constitution of India deals with the administration and control of Scheduled Areas, which are areas inhabited by Scheduled Tribes. The provisions of the Fifth Schedule aim to safeguard the rights and interests of tribal communities and protect them from exploitation and alienation of their land and resources.

The contents of Fifth Schedule is that,

Definition of Scheduled Areas: The President of India has the authority, after consulting the Governor of the concerned state, to declare an area as a Scheduled Area. This declaration is typically made for areas where Scheduled Tribes are the predominant population.

Administration and Control: The administration and control of Scheduled Areas are entrusted to the Governor of the state. The Governor is empowered to make regulations for the peace and good governance of these areas. These regulations may prohibit or restrict the transfer of land by or among members of Scheduled Tribes.

²⁵ 244A. Formation of an autonomous State comprising certain tribal areas in Assam and creation of local Legislature or Council of Ministers or both therefor

(1) Notwithstanding anything in this Constitution, Parliament may, by law, form within the State of Assam an autonomous State comprising (whether wholly or in part) all or any of the tribal areas specified in Part I of the table appended to paragraph 20 of the Sixth Schedule and create therefor

(a) a body, whether elected or partly nominated and partly elected, to function as a Legislature for the autonomous State, or

(b) a Council of Ministers, or both with such constitution, powers and functions, in each case, as may be specified in the law

(2) Any such law as is referred to in clause (1) may, in particular,

(a) specify the matters enumerated in the State List or the Concurrent List with respect to which the legislature of the autonomous State shall have power to make laws for the whole or any part thereof, whether to the exclusion of the Legislature of the State of Assam or otherwise;

(b) define the matters with respect to which the executive power of the autonomous State shall extend;

(c) provide that any tax levied by the State of Assam shall be assigned to the autonomous State in so far as the proceeds thereof are attributable to the autonomous State;

(d) provide that any reference to a State in any article of this Constitution shall be construed as including a reference to the autonomous State; and

(e) make such supplemental, incidental and consequential provisions as may be deemed necessary

(3) An amendment of any such law as aforesaid in so far as such amendment relates to any of the matters specified in sub clause (a) or sub clause (b) of clause (2) shall have no effect unless the amendment is passed in each House of Parliament by not less than two thirds of the members present and voting

(4) Any such law as is referred to in this article shall not be deemed to be an amendment of this Constitution for the purposes of Article 368 notwithstanding that it contains any provision which amends or has the effect of amending this Constitution

PART XI RELATIONS BETWEEN THE UNION AND THE STATES CHAPTER I
LEGISLATIVE RELATIONS Distribution of Legislative Powers

Tribal Advisory Council (TAC): The Governor is required to establish a Tribal Advisory Council to advise on matters related to the welfare and advancement of Scheduled Tribes in the state. The composition of the Tribal Advisory Council includes representatives of the Scheduled Tribes in the state, members of the Legislative Assembly, and other experts.

Land and Resources: The Fifth Schedule imposes restrictions on the transfer of land in Scheduled Areas, prohibiting or regulating the transfer of land from a tribal individual or community to a non-tribal person. Any laws regulating the transfer of land in Scheduled Areas must receive the President's approval.

Powers of Governors: The Governor is given the power to direct that any particular Act of Parliament or of the Legislature of the state shall not apply to a Scheduled Area or shall apply with specified modifications and exceptions. The Governor can also make regulations for the control of money lending to the Scheduled Tribes.

Development of Scheduled Areas: Special attention is to be given to the development of Scheduled Areas and the welfare of the Scheduled Tribes. The Governor, with the assistance of the Tribal Advisory Council, is responsible for formulating plans for the development of Scheduled Areas.

Protection from Exploitation: The Fifth Schedule seeks to protect Scheduled Tribes from exploitation and social injustice. It emphasizes the preservation of tribal culture and customs. The scheme of the Fifth Schedule is designed to strike a balance between the need for development in these areas and the protection of the rights and interests of the tribal communities residing there. It reflects a commitment to ensuring that the unique characteristics and vulnerabilities of Scheduled Tribes are taken into consideration in the administration of these designated areas²⁶.

Scheme of Sixth Schedule to the Constitution

The Sixth Schedule to the Constitution of India provides special provisions for the administration of tribal areas in the states of Assam, Meghalaya, Tripura, and Mizoram. The scheme of the Sixth Schedule is primarily aimed at preserving the autonomy and cultural identity of the tribal communities residing in these areas.

The Contents of Sixth Schedule are:

Autonomous Districts and Regional Councils: The Sixth Schedule creates autonomous districts within the states of Assam, Meghalaya, Tripura, and Mizoram, where tribal populations are concentrated. Each autonomous district is provided with a District Council responsible for local administration and governance. District Councils have the power to make laws on various subjects listed in the Sixth Schedule.

Powers of District Councils: The District Councils are empowered to make laws on a range of subjects, including land and its management, forests, inheritance of property, marriage and divorce,

²⁶ Apoorv Kurup, "Tribal Law In India: How Decentralised Administration is extinguishing the tribal rights and why autonomous tribal governance are better" Indigenous Law Journal Volume7/ Issue 1 (2008).

social customs, and administration of justice. The laws made by the District Councils must be submitted to the Governor, who may assent or withhold assent.

Executive Powers of District Councils: The District Councils have executive powers over the areas specified in the Sixth Schedule. They can also make regulations for the peace and good government of the autonomous districts.

Governor's Special Responsibilities: The Governor of the state has a special responsibility to ensure the administration of tribal areas. The Governor can appoint a Regional Council for two or more autonomous districts, and the Regional Council has powers over matters of common interest to the autonomous districts.

Financial Autonomy: The Sixth Schedule provides for financial autonomy to the District Councils. They are entitled to receive funds from the state government, and grants can be made by the President for the administration of the autonomous districts.

Land and Resources: The District Councils have the power to regulate and control the transfer of land and its management within their jurisdiction.

Protection of Tribal Customs and Traditions: The Sixth Schedule emphasizes the preservation of tribal customs, social practices, and traditions. The District Councils can make laws to regulate and protect these aspects of tribal life.

Safeguards for Non-Tribals: The Sixth Schedule also includes safeguards for non-tribals residing in these areas, ensuring that their rights and interests are protected. The scheme of the Sixth Schedule reflects a commitment to preserve the autonomy and cultural identity of tribal communities in the specified states. It recognizes the diversity of the tribal population and provides a framework for self-governance that takes into account the unique needs and aspirations of these communities.

Political Empowerment: Political representation is crucial for Indigenous and tribal people to exercise their right to self-determination effectively. In many cases, these communities are underrepresented or excluded from decision-making processes that directly impact them. Ensuring their participation in governance structures is essential for upholding their autonomy and protecting their interests.

Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

The Forest Rights Act (FRA) of 2006 in India is a crucial legislation that recognizes and vests forest rights in forest-dwelling communities, including many Scheduled Tribes. Although the FRA doesn't explicitly use the term "right to self-determination," its provisions align with and contribute to the principles associated with self-determination in the context of indigenous and tribal rights.

Important provisions in the Forest Rights Act, 2006 which deals with Right to self-determination of Tribal People.

Recognition of Traditional Rights: The FRA recognizes and vests the forest rights and occupation of forestland in the hands of forest-dwelling communities, including Scheduled Tribes. This recognition

aligns with the broader concept of self-determination, emphasizing the autonomy of these communities in managing and controlling their traditional territories.

Community Forest Rights (CFR): The FRA provides for the recognition of Community Forest Rights, allowing communities to protect, manage, and conserve community forests. This acknowledgment empowers communities to make decisions about the use of forest resources collectively, contributing to the exercise of self-determination²⁷.

Consent and Decision-Making: The FRA emphasizes the role of Gram Sabhas (village assemblies) in the decision-making process related to the diversion of forestland for development projects. This ensures that local communities, particularly tribal communities, have the right to give or withhold their free, prior, and informed consent—a fundamental aspect of the right to self-determination²⁸.

Protection of Cultural and Natural Heritage: The FRA recognizes the importance of protecting the cultural and natural heritage of forest-dwelling communities. This recognition aligns with the self-determination principle, acknowledging the right of these communities to preserve and transmit their cultural practices and maintain control over their natural resources.

Prevention of Forced Evictions: The FRA prohibits the resettlement or eviction of forest-dwelling communities without their consent. This safeguard helps prevent actions that would interfere with the communities' right to determine their own development path and control their territories.

Land and Livelihood Security: By recognizing individual and community forest rights, the FRA contributes to the land and livelihood security of forest-dwelling communities. This security is essential for the exercise of self-determination, allowing communities to shape their economic, social, and cultural development.

Participation in Decision-Making: The FRA mandates the involvement of forest-dwelling communities in the decision-making process related to forest management and conservation. This participation is in line with the principles of self-determination, allowing communities to have a say in matters affecting their rights and interests.

While the Forest Rights Act primarily addresses historical injustices related to forest rights, it upholds broader human rights principles, including the right to self-determination. It recognizes and respects the autonomy and decision-making authority of indigenous and tribal communities in the context of their traditional territories and resources.

Panchayat (Extension to Scheduled Areas) Act, 1996

The Panchayats (Extension to Scheduled Areas) Act, 1996, commonly known as PESA (Panchayats Extension to Scheduled Areas Act), is a significant legislation enacted in India to extend the provisions of the Panchayati Raj system to the Scheduled Areas, where Scheduled Tribes (STs) constitute a significant portion of the population. Since the laws do not automatically cover the

²⁷ The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, Section 3

²⁸ Ibid Sec.6

scheduled areas, the PESA Act was enacted on 24 December 1996 to enable Tribal Self Rule in these areas. The Act extended the provisions of Panchayats to the tribal areas of nine states that have Fifth Schedule Areas. Most of the North eastern states under Sixth Schedule Areas (where autonomous councils exist) are not covered by PESA, as these states have their own Autonomous councils for governance²⁹. PESA aims to empower local self-governance institutions and enhance the participation of tribal communities in decision-making processes. While PESA doesn't explicitly mention the term "right to self-determination," its provisions are closely related to and supportive of the principles associated with the right to self-determination for indigenous and tribal communities.

Certain features of PESA Act are,

Gram Sabha Empowerment: PESA empowers the Gram Sabha (village assembly) in the Scheduled Areas with significant authority and responsibility for local governance. The Gram Sabha is given the power to safeguard and preserve the traditions, customs, and cultural identity of the Scheduled Tribes, aligning with the idea of self-determination.

Self-Rule and Decision-Making: PESA provides for self-rule through local self-governance institutions, with the Gram Sabha acting as a key decision-making body. Decision-making powers on various aspects, including land and natural resources, are devolved to the Gram Sabha, emphasizing the community's right to decide its own development path.

Land and Natural Resources Management: PESA mandates that the Gram Sabha is responsible for approving plans, programs, and projects for social and economic development before they are implemented in the Scheduled Areas. The Gram Sabha has the authority to control land and natural resources within its jurisdiction, protecting the community's right to manage its traditional territories.

Ownership of Minor Forest Produce: PESA recognizes the community rights over minor forest produce, which is an essential source of livelihood for many tribal communities. This provision aligns with the concept of self-determination by recognizing the community's right to control and benefit from resources within their traditional territories.

Protection of Tribal Culture: PESA safeguards and preserves the customs, traditions, and cultural identity of the Scheduled Tribes. This protection aligns with the right to self-determination, acknowledging the community's right to maintain and perpetuate its cultural heritage.

Prevention of Alienation of Land: PESA prohibits the transfer of land from a Scheduled Tribe to a non-Scheduled Tribe without the consent of the Gram Sabha. This provision safeguards the community's right to control and protect its land, preventing external interference and ensuring self-determination. While PESA focuses on strengthening local governance and empowering Gram Sabhas, it can be viewed as a legislative measure that recognizes and promotes the principles of self-determination for tribal communities. The act seeks to enhance the autonomy of tribal communities in making decisions that affect their lives, resources, and overall development. A limitation of the PESA

²⁹ https://www.mha.gov.in/sites/default/files/PESAAct1996_0.pdf

law is that it is applicable only to those areas which are legally regarded as Scheduled Areas. A significant number of tribals living outside the scheduled areas are not covered by this legislation.

Problems and Apprehensions

Historical injustices, including displacement, dispossession of land, and exploitation, have had a lasting impact on tribal communities. Addressing these historical injustices is crucial for the meaningful recognition of the right to self-determination. Land is central to the identity, culture, and sustenance of many tribal communities. Issues such as land alienation, inadequate recognition of traditional land rights, and displacement due to development projects are issues faced by tribal communities. In many instances, development projects, including those related to natural resource extraction, are initiated without obtaining the free, prior, and informed consent of tribal communities. This lack of consultation is a threat to tribal autonomy and right to self-determination.

Conclusion

The right to self-determination for Indigenous and tribal people is an ongoing struggle fraught with challenges. Addressing historical injustices, recognizing and protecting land rights, preserving cultural identity, and ensuring political empowerment are key components in advancing the self-determination of these communities. International cooperation, legal frameworks, and genuine commitment from governments are necessary to create an environment where the rights of Indigenous and tribal people are not only acknowledged on paper but also actively protected and promoted in practice. By addressing these issues, societies can move towards fostering a more inclusive, just, and respectful coexistence with Indigenous and tribal communities.

.....

REFERENCES

1. Apoorv Kurup, "Tribal Law In India: How Decentralised Administration is extinguishing the tribal rights and why autonomous tribal governance are better" Indigenous Law Journal Volume7/ Issue 1 (2008).
2. Harsh R Trivedi, The Evolution of National Policy for Tribal Development. Indian Institute of Public Administration, New Delhi, 1982 at p.11.
3. https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_COD E:C169
4. <https://www.ohchr.org/en/indigenous-peoples/un-declaration-rights-indigenous-peoples>

5. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>
6. International NGO Conference on Indigenous People and Land, Held in Geneva, Switzerland, in 1981, Id at. 126.
7. Das J. K., Human Rights and Indigenous People, APH Publishing Corporation, 2016
8. https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf
9. https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf
10. https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf
11. https://indianlaw.org/sites/default/files/Declarations_Booklet_2012_LRSpreads.pdf
12. <https://www.culturalsurvival.org/news/after-30-years-only-23-countries-have-ratified-indigenous-and-tribal-peoples-convention-ilo>